Civic Government (Scotland) Act 1982

1982 CHAPTER 45

PART IV

OFFENCES, POWERS OF CONSTABLES, ETC.

Offences of annoying, offensive, obstructive or dangerous behaviour

46 Soliciting and importuning by prostitutes.

(1) A prostitute (whether male or female) who for the purposes of prostitution—

(a) loiters in a public place;

(b) solicits in a public place or in any other place so as to be seen from a public place; or

(c) importunes any person who is in a public place,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding **[**[F1]level 2 on the standard scale**]**.

(2) In subsection (1) above, "public place" has the same meaning as in section 133 of this Act but includes—

(a) any place to which at the material time the public are permitted to have access, whether on payment or otherwise; and

(b) any public conveyance other than a taxi or hire car within the meaning of section 23 of this Act.

Textual Amendments

F1 Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **s. 289G**

Changes to legislation: *Civic Government (Scotland) Act 1982, Cross Heading: Offences of annoying, offensive, obstructive or dangerous behaviour is up to date with all changes known to be in force on or before 13 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

47 Urinating etc.

Any person who urinates or defecates in such circumstances as to cause, or to be likely to cause, annoyance to any other person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding **[**[F2]level 2 on the standard scale**]**.

Textual Amendments

F2 Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **s. 289G**

[F3]48 Dogs: fouling of pavements.

. . . . . .

Textual Amendments

F3 S. 48 repealed (22.10.2003) by Dog Fouling (Scotland) Act 2003 (asp 12), **ss. 17**, 18(2)

49 Dangerous and annoying creatures.

(1) Any person who suffers or permits any creature in his charge to cause danger or injury to any other person who is in a public place or to give such person reasonable cause for alarm or annoyance shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding **[**[F4]level 2 on the standard scale**]**.

(2) A district court may, if satisfied that any creature kept in the vicinity of any place where a person resides is giving that person, while in that place, reasonable cause for annoyance, make an order requiring the person keeping the creature to take, within such period as may be specified in the order, such steps (short of destruction of the creature) to prevent the continuance of the annoyance as may be so specified.

(3) An application to a district court for an order under subsection (2) above may be made by any person.

(4) Any person who fails to comply with an order under subsection (2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding **[**[F4]level 3 on the standard scale**]**.

(5) The fact that there is a licence under the [M1]Dangerous Wild Animals Act 1976 in respect of a creature shall not of itself afford a defence in proceedings under this section relating to that creature.

(6) Where a court convicts a person of an offence under this section or discharges him absolutely [F5]..., it may, whether or not (in the case of conviction) it imposes a penalty under subsection (1) or (4) above—

(a) subject to subsection (8) below, make such order as it sees fit as to the disposal of the creature to which the proceedings relate;

(b) authorise a constable, in pursuance of such an order, to take possession of the creature.

(7) An order under subsection (6) above may, subject to any enactment relating to the protection or conservation of living things, be for the destruction of the creature to which it relates.

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(8) No creature disposed of under an order under subsection (6) above shall be given or sold for the purposes of vivisection.

Textual Amendments

F4 Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **s. 289G**

F5 Words in s. 49(6) repealed (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 2 para. 35(2)**; S.S.I. 2010/413, art. 2, sch. (with art. 3(1))

Marginal Citations

M1 1976 c. 38.

50 Drunkenness.

(1) Any person who, while not in the care or protection of a suitable person, is, in a public place, drunk and incapable of taking care of himself shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding **[**[F6]level 2 on the standard scale**]**.

(2) Any person who is drunk in a public place while in charge of a child under the age of 10 shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding **[**[F6]level 2 on the standard scale**]**.

(3) For the purposes of subsection (2) above, if a child appears to the court to be under the age of 10, the child shall be deemed to be under that age unless the contrary is proved.

(4) A constable may arrest a person for contravening subsection (2) above if he has reasonable cause to believe that the child in the charge of that person is under the age of 10.

(5) Any person who is drunk in a public place while in possession of a firearm (including a crossbow, airgun, air rifle or air pistol) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding **[**[F6]level 2 on the standard scale**]**.

(6) In this section, "public place" has the same meaning as in section 133 of this Act but includes—

(a) any place to which at the material time the public are permitted to have access, whether on payment or otherwise; and

(b) any public conveyance other than a taxi or hire car within the meaning of section 23 of this Act.

Textual Amendments

F6 Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **s. 289G**

51 Obscene material.

(1) Subject to subsection (4) below, any person who displays any obscene material in any public place or in any other place where it can be seen by the public shall be guilty of an offence under this section.

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(2) Subject to subsection (4) below, any person who publishes, sells or distributes or, with a view to its eventual sale or distribution, makes, prints, has or keeps any obscene material shall be guilty of an offence under this section.

[[F7](2A) Subject to subsection (4) below, any person who—

(a) is responsible for the inclusion of any obscene material in a programme included in a programme service; or

(b) with a view to its eventual inclusion in a programme so included, makes, prints, has or keeps any obscene material,

shall be guilty of an offence under this section.**]**

[[F8](3) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum or to both, or

(b) on conviction on indictment—

(i) in a case where the obscene material is or includes an extreme pornographic image, to imprisonment for a period not exceeding 5 years or to a fine or to both, or

(ii) in any other case, to imprisonment for a period not exceeding 3 years or to a fine or to both.**]**

(4) A person shall not be convicted of an offence under this section if he proves that he had used all due diligence to avoid committing the offence.

(5) Under an indictment for or on a complaint of a breach of subsection (1) above, the court may, if satisfied that the person accused is guilty of an offence under section 1(1) of the [M2]Indecent Displays (Control) Act 1981 (offence of public display of indecent matter), convict him of a breach of the said section 1(1).

(6) Nothing in this section applies in relation to any matter—

(a) . . . . . [F9]

(b) included in a performance of a play (within the meaning of the [M3]Theatres Act 1968).

(7) For section 5(4)(b) of the Indecent Displays (Control) Act 1981 (saving) there shall be substituted the following—

"(b) section 51 of the Civic Government (Scotland) Act 1982."

(8) In this section—

[[F10]"extreme pornographic image" is to be construed in accordance with section 51A;**]**

"material" includes any book, magazine, bill, paper, print, film, tape, disc or other kind of recording (whether of sound or visual images or both), photograph, drawing, painting, representation, model or figure . . . [F11];

"photograph" includes the negative as well as the positive version;

"public place" has the same meaning as in section 133 of this Act except that it includes any place to which at the material time the public are permitted to have access, whether on payment or otherwise;

[F12]...

[[F13] "programme" and "programme service" have the same meaning as in the Broadcasting Act 1990;**]**

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and the reference to publishing includes a reference to . . . [F14] playing, projecting or otherwise reproducing **[**[F15], or, where the material is data stored electronically, transmitting that data**]**.

Textual Amendments

F7 S. 51(2A) inserted by Broadcasting Act 1990 (c. 42, SIF 96), **ss. 4(6)**, 87(6), 163(2)

F8 S. 51(3) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 42(1)(a)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with sch.)

F9 S. 51(6)(*a*) repealed by Broadcasting Act 1990 (c. 42, SIF 96), ss. 163(3), 203(3), Sch. 21 (with ss. 4(6), 87(6), **Sch. 12 Pt. II para. 1**)

F10 Words in s. 51(8) inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 42(1)(b)(i)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with sch.)

F11 Words added by Cable and Broadcasting Act 1984 (c. 46, SIF 96), **s. 26**(*b*) and repealed by Broacasting Act 1990 (c. 42, SIF 96), ss. 163(4)(a), 203(3), Sch. 21 (with ss. 4(6), 87(6), **Sch. 12 Pt. II para. 1**)

F12 Words in s. 51(8) repealed (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 42(1)(b)(ii)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with sch.)

F13 Definitions inserted by Broadcasting Act 1990 (c. 42, SIF 96), **ss. 4(6)**, 87(6), 163(4)(b)

F14 Word inserted by Cable and Broadcasting Act 1984 (c. 46, SIF 96), **s. 26**(*c*) and repealed by Broadcasting Act 1990 (c. 42, SIF 96), ss. 163(4)(c), 203(3), Sch. 21 (with ss. 4(6), 87(6), **Sch. 12 Pt. II para. 1**)

F15 Words in s. 51(8) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 20**; S.I. 1995/127, **art. 2**

Modifications etc. (not altering text)

C1 The text of ss. 16, 18(11), 51(7) and 52(6) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Marginal Citations

M2 1981 c. 42.

M3 1968 c. 54.

[[F16]51A Extreme pornography

(1) A person who is in possession of an extreme pornographic image is guilty of an offence under this section.

(2) An extreme pornographic image is an image which is all of the following—

(a) obscene,

(b) pornographic,

(c) extreme.

(3) An image is pornographic if it is of such a nature that it must reasonably be assumed to have been made solely or principally for the purpose of sexual arousal.

(4) Where (as found in the person's possession) an image forms part of a series of images, the question of whether the image is pornographic is to be determined by reference to—

(a) the image itself, and

(b) where the series of images is such as to be capable of providing a context for the image, its context within the series of images,

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and reference may also be had to any sounds accompanying the image or the series of images.

(5) So, for example, where—

(a) an image forms an integral part of a narrative constituted by a series of images, and

(b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been made solely or principally for the purpose of sexual arousal,

the image may, by virtue of being part of that narrative, be found not to be pornographic (even if it may have been found to be pornographic where taken by itself).

(6) An image is extreme if it depicts, in an explicit and realistic way any of the following—

(a) an act which takes or threatens a person's life,

(b) an act which results, or is likely to result, in a person's severe injury,

(c) rape or other non-consensual penetrative sexual activity,

(d) sexual activity involving (directly or indirectly) a human corpse,

(e) an act which involves sexual activity between a person and an animal (or the carcase of an animal).

(7) In determining whether (as found in the person's possession) an image depicts an act mentioned in subsection (6), reference may be had to—

(a) how the image is or was described (whether the description is part of the image itself or otherwise),

(b) any sounds accompanying the image,

(c) where the image forms an integral part of a narrative constituted by a series of images—

(i) any sounds accompanying the series of images,

(ii) the context provided by that narrative.

(8) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum or to both,

(b) on conviction on indictment, to imprisonment for a period not exceeding 3 years or to a fine or to both.

(9) In this section, an "image" is—

(a) a moving or still image (made by any means), or

(b) data (stored by any means) which is capable of conversion into such an image.

Textual Amendments

F16 Ss. 51A-51C inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 42(2)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with sch.)

51B Extreme pornography: excluded images

(1) An offence is not committed under section 51A if the image is an excluded image.

(2) An "excluded image" is an image which is all or part of a classified work.

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(3) An image is not an excluded image where—

(a) it has been extracted from a classified work, and

(b) it must be reasonably be assumed to have been extracted (whether with or without other images) from the work solely or principally for the purpose of sexual arousal.

(4) In determining whether (as found in the person's possession) the image was extracted from the work for the purpose mentioned in subsection (3)(b), reference may be had to—

(a) how the image was stored,

(b) how the image is or was described (whether the description is part of the image itself or otherwise),

(c) any sounds accompanying the image,

(d) where the image forms an integral part of a narrative constituted by a series of images—

(i) any sounds accompanying the series of images,

(ii) the context provided by that narrative.

(5) In this section—

"classified work" means a video work in respect of which a classification certificate has been issued by a designated authority,

"classification certificate" and "video work" have the same meanings as in the Video Recordings Act 1984 (c.39),

"designated authority" means an authority which has been designated by the Secretary of State under section 4 of that Act,

"extract" includes an extract of a single image,

"image" is to be construed in accordance with section 51A.

Textual Amendments

F16 Ss. 51A-51C inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 42(2)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with sch.)

51C Extreme pornography: defences

(1) Where a person ("A") is charged with an offence under section 51A, it is a defence for A to prove one or more of the matters mentioned in subsection (2).

(2) The matters are—

(a) that A had a legitimate reason for being in possession of the image concerned,

(b) that A had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image,

(c) that A—

(i) was sent the image concerned without any prior request having been made by or on behalf of A, and

(ii) did not keep it for an unreasonable time.

(3) Where A is charged with an offence under section 51A, it is a defence for A to prove that—

(a) A directly participated in the act depicted, and
(b) subsection (4) applies.

(4) This subsection applies—
(a) in the case of an image which depicts an act described in subsection (6)(a) of that section, if the act depicted did not actually take or threaten a person's life,
(b) in the case of an image which depicts an act described in subsection (6)(b) of that section, if the act depicted did not actually result in (nor was it actually likely to result in) a person's severe injury,
(c) in the case of an image which depicts an act described in subsection (6)(c) of that section, if the act depicted did not actually involve non-consensual activity,
(d) in the case of an image which depicts an act described in subsection (6)(d) of that section, if what is depicted as a human corpse was not in fact a corpse,
(e) in the case of an image which depicts an act described in subsection (6)(e) of that section, if what is depicted as an animal (or the carcase of an animal) was not in fact an animal (or a carcase).

(5) The defence under subsection (3) is not available if A shows, gives or offers for sale the image to any person who was not also a direct participant in the act depicted.

(6) In this section "image" and "extreme pornographic image" are to be construed in accordance with section 51A.**]**

Textual Amendments

F16 Ss. 51A-51C inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 42(2)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with sch.)

52 Indecent photographs etc. of children.

(1) Any person who—
(a) takes, or permits to be taken **[**[F17]or makes**]**, any indecent photograph **[**[F18]or pseudo-photograph of a child**]**
(b) distributes or shows such an indecent photograph **[**[F19]or pseudo-photograph**]**;
(c) has in his possession such an indecent photograph **[**[F19]or pseudo-photograph**]**with a view to its being distributed or shown by himself or others: or
(d) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such an indecent photograph **[**[F19]or pseudo-photograph**]**, or intends to do so

shall be guilty of an offence under this section.

(2) **[**[F20]In subsection (1) above "child" means, subject to subsection (2B) below, a person under the age of **[**[F21]18**]**; and**]** in proceedings under this section a person is to be taken as having been a child at any material time if it appears from the evidence as a whole that he was then under the age of **[**[F21]18**]**.

[[F22](2A) In this section, "pseudo-photograph" means an image, whether produced by computer-graphics or otherwise howsoever, which appears to be a photograph.

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(2B) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Act as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.

(2C) In this section, references to an indecent pseudo-photograph include—

(a) a copy of an indecent pseudo-photograph;

(b) data stored on a computer disc or by other electronic means which is capable of conversion into **[**[F23]an indecent pseudo-photograph**]** .**]**

(3) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to imprisonment for a period not exceeding **[**[F24]6 months**]** or to a fine not exceeding the prescribed sum within the meaning of **[**[F25]section 225(8) of the Criminal Procedure (Scotland) Act 1995**]** (at the passing of this Act £1,000) or to both;

(b) on conviction on indictment, to imprisonment for a period not exceeding **[**[F26]**[**[F27]10 years**]]** or to a fine or to both.

(4) For the purposes of this section, a person is to be regarded as distributing an indecent photograph **[**[F28] or pseudo-photograph**]** if he parts with possession of it to, or exposes or offers it for acquisition by, another person.

[[F29](4A) Where a person is charged with an offence under subsection (1)(a) of making an indecent photograph or pseudo-photograph of a child, it shall be a defence for the person to prove that—

(a) at the time of the offence charged, the person was a member of OFCOM, employed or engaged by OFCOM, or assisting OFCOM in the exercise of any of their online safety functions (within the meaning of section 235 of the Online Safety Act 2023), and

(b) the person made the photograph or pseudo-photograph for the purposes of OFCOM's exercise of any of those functions.**]**

(5) Where a person is charged with an offfence under subsection (1)(b) or (c) above, it shall be a defence for him to prove—

(a) that he had a legitimate reason for distributing or showing the photograph **[**[F28] or pseudo-photograph**]** or (as the case may be) having it in his possession; or

(b) that he had not himself seen the photograph **[**[F28]or pseudo-photograph**]** and did not know, nor had any cause to suspect, it to be indecent.

(6) In paragraph 2 of the Schedule to the [M4] Visiting Forces Act 1952 (offences against the person in the case of which a member of a visiting force is in certain circumstances not liable to be tried by a United Kingdom court) the word " and" immediately preceding sub-paragraph (b)(iii) shall be omitted and after the said sub-paragraph (b)(iii) there shall be added—

"(iv) section 52(1)(a) of the Civic Government (Scotland) Act 1982."

[F30](7) . . . . . .

(8) In this section—

(a) references to an indecent photograph include an indecent film, a copy of an indecent photograph or film and an indecent photograph comprised in a film;

(b) a photograph (including one comprised in a film) shall, if it shows a child and is indecent, be treated for all purposes of this section as an indecent photograph of a child;

[[F31](c) references to a photograph include—

(i) the negative as well as the positive version; and

(ii) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph.**]**

(d) "film" includes any form of video-recording.

[[F32](e) "OFCOM" means the Office of Communications.**]**

[[F33](9) In this section, references to a photograph also include a tracing or other image, whether made by electronic or other means (of whatever nature), which is not itself a photograph or pseudo-photograph but which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both).

(10) And subsection (2B) applies in relation to such an image as it applies in relation to a pseudo-photograph.**]**

Textual Amendments

F17 Words in s. 52(1)(a) inserted (3.2.1995) by 1994 c. 33, **s. 84(6)(a)(i)** (with Sch. 9 para. 17)

F18 Words in s. 52(1)(a) substituted (3.2.1995) by 1994 c. 33, **s. 84(6)(a)(ii)** (with Sch. 9 para. 17

F19 Words in s. 52(1)(b)(c)(d) inserted (3.2.1995) by 1994 c. 33, **s. 84(6)(b)**; S.I. 1995/127, art. 2(1), **Sch. 1**

F20 Words in s. 52(2) inserted (3.2.1995) by 1994 c. 33, **s. 84(6)(c)**; S.I. 1995/127, art. 2(1), **Sch. 1**

F21 Word in s. 52(2) substituted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 16(2)**, 20(2); S.S.I. 2005/480, art. 2

F22 S. 52(2A)-(2C) added (3.2.1995) by 1994 c. 33, **s. 84(6)(d)**; S.I. 1995/127, art. 2(1), **Sch. 1**

F23 Words in s. 52(2C)(b) substituted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 41(1)(a)(i)**, 206(1); S.S.I. 2010/413, art. 2, sch.

F24 Words in s. 52(3)(a) substituted (3.2.1995) by 1994 c. 33, **s. 84(6)(e)(i)**; S.I. 1995/127, art. 2(1), **Sch. 1**

F25 Words in s. 52(3) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 44(3)**

F26 Words in s. 52(3)(b) substituted (3.2.1995) by 1994 c. 33, **s. 84(6)(e)(ii)**; S.I. 1995/127, art. 2(1), **Sch. 1**

F27 Words in s. 52(3)(b) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 19(1)(a)**, 89(2); S.S.I. 2003/288, art. 2, sch.

F28 Words in s. 52(4)(5)(a)(b) substituted (3.2.1995) by 1994 c. 33, **s. 84(6)(f)**; S.I. 1995/127, art. 2(1), **Sch. 1**

F29 S. 52(4A) inserted (26.10.2023) by Online Safety Act 2023 (c. 50), **ss. 214(5)**, 240(4)

F30 S. 52(7) repealed (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 13**; S.S.I. 2010/413, art. 2, sch.

F31 S. 52(8)(c) substituted (3.2.1995) by 1994 c. 33, **s. 84(6)(g)**; S.I. 1995/127, art. 2(1), **Sch. 1**

F32 S. 52(8)(e) inserted (26.10.2023) by Online Safety Act 2023 (c. 50), **ss. 214(6)**, 240(4)

F33 S. 52(9)(10) added (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 41(1)(a)(ii)**, 206(1); S.S.I. 2010/413, art. 2, sch.

Modifications etc. (not altering text)

C2 S. 52(2)-(2C) applied (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, **Sch. 3 para. 97(b)**; S.S.I. 2004/138, art. 2; S.I. 2004/874, art. 2

C3 The text of ss. 16, 18(11), 51(7) and 52(6) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

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C4 S. 52(8) applied (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, **Sch. 3 para. 97(b)**; S.S.I. 2004/138, art. 2; S.I. 2004/874, art. 2

Marginal Citations

M4 1952 c. 67.

[F34 52A Possession of indecent photographs of children.

(1) It is an offence for a person to have any indecent photograph [F35 or pseudo-photograph of a child] in his possession.

(2) Where a person is charged with an offence under subsection (1), it shall be a defence for him to prove—

(a) that he had a legitimate reason for having the photograph [F36 or pseudo-photograph] in his possession; or

(b) that he had not himself seen the photograph [F36 or pseudo-photograph] and did not know, nor had any cause to suspect, it to be indecent; or

(c) that the photograph [F36 or pseudo-photograph] was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

(3) A person shall be liable

[F37 (a)] on summary conviction of an offence under this section to [F38 imprisonment for a period not exceeding 6 months or to] a fine not exceeding level 5 on the standard scale [F39 "or to both."].

[F40 (b)] on conviction on indictment of such an offence to imprisonment for a period not exceeding 5 years or to a fine or to both.]

(4) Subsections (2) [F41 to (2C)][F42 and (8) to (10)] of section 52 of this Act shall have effect for the purposes of this section as they have for the purposes of that section.]

Textual Amendments

F34 S. 52A inserted by Criminal Justice Act 1988 (c. 33, SIF 39:1, 2) s. 161(1)(2)

F35 Words in s. 52A(1) substituted (3.2.1995) by 1994 c. 33, **s. 84(7)**; S.I. 1995/127, art. 2(1), **Sch. 1**

F36 words in s. 52A(2)(a)-(c) inserted (3.2.1995) by 1994 c. 33, **s. 84(7)(b)**; S.I. 1995/127, art. 2(1), **Sch. 1**

F37 Words in s. 52A(3) renumbered as s. 52A(3)(a) (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 19(1)(b)**, 89(2); S.S.I. 2003/288, art. 2, sch.

F38 Words in s. 52A(3) inserted (3.2.1995) by 1994 c. 33, **s. 84(7)(c)(i)**; S.I. 1995/127, art. 2(1), **Sch. 1**

F39 Words in s. 52A(3) added (3.2.1995) by 1994 c. 33, **s. 84(7)(c)(ii)**; S.I. 1995/127, art. 2(1), **Sch. 1**

F40 S. 52A(3)(b) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 19(1)(b)**, 89(2); S.S.I. 2003/288, art. 2, sch.

F41 Words in s. 52A(4) inserted (3.2.1995) by 1994 c. 33, **s. 84(7)(d)**; S.I. 1995/127, art. 2(1), **Sch. 1**

F42 Words in s. 52A(4) substituted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 41(1)(b)**, 206(1); S.S.I. 2010/413, art. 2, sch.

[F43 52B Sections 52 and 52A: exceptions for photographs of 16 and 17 year olds

(1) If subsection (2) below applies, the accused is not guilty of an offence under section 52(1)(a) of this Act of taking or making an indecent photograph of a child.

(2) This subsection applies if—

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(a) either—
(i) the photograph was of the child aged 16 or over; or
(ii) the accused reasonably believed that to be so;
(b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
(i) married to or civil partners of each other; or
(ii) partners in an established relationship; and
(c) either—
(i) the child consented to the photograph being taken or made; or
(ii) the accused reasonably believed that to be so.

(3) If subsection (4) below applies, the accused is not guilty of an offence under section 52(1)(b) of this Act relating to an indecent photograph of a child.

(4) This subsection applies if—
(a) either—
(i) the photograph was of the child aged 16 or over; or
(ii) the accused reasonably believed that to be so;
(b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
(i) married to or civil partners of each other; or
(ii) partners in an established relationship;
(c) either—
(i) the child consented to the photograph's being taken or made; or
(ii) the accused reasonably believed that to be so; and
(d) the showing or distributing of the photograph was only to the child.

(5) If subsection (6) below applies, the accused is not guilty of an offence under section 52(1)(c) of this Act relating to an indecent photograph of a child.

(6) This subsection applies if—
(a) either—
(i) the photograph was of the child aged 16 or over; or
(ii) the accused reasonably believed that to be so;
(b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
(i) married to or civil partners of each other; or
(ii) partners in an established relationship;
(c) either—
(i) the child consented to the photograph's being in the accused's possession; or
(ii) the accused reasonably believed that to be so; and
(d) the accused had the photograph in his possession with a view to its being distributed or shown only to the child.

(7) If subsection (8) below applies, the accused is not guilty of an offence under section 52A of this Act relating to an indecent photograph of a child.

(8) This subsection applies if—
(a) either—

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(i) the photograph was of the child aged 16 or over; or

(ii) the accused reasonably believed that to be so;

(b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—

(i) married to or civil partners of each other; or

(ii) partners in an established relationship; and

(c) either—

(i) the child consented to the photograph's being in the accused's possession; or

(ii) the accused reasonably believed that to be so.

(9) Subsections (2), (4), (6) and (8) above apply whether the photograph showed the child alone or with the accused, but not if it showed any other person.

Textual Amendments

F43 Ss. 52B, 52C inserted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 16(3)**, 20(2); S.S.I. 2005/480, art. 2

52C Section 52B: proof of exceptions

(1) This section applies for the purpose of determining whether a matter within a paragraph of section 52B(2), (4), (6) or (8) of this Act is the case.

(2) If sufficient evidence is adduced to raise an issue as to whether the matter is the case, it shall be held to be the case, except where subsection (3) below applies.

(3) This subsection applies where the prosecution proves beyond reasonable doubt that the matter is not the case.

(4) Otherwise, the matter shall be held not to be the case.**]**

Textual Amendments

F43 Ss. 52B, 52C inserted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 16(3)**, 20(2); S.S.I. 2005/480, art. 2

53 Obstruction by pedestrians.

Any person who, being on foot in any public place—

(a) obstructs, along with another or others, the lawful passage of any other person and fails to desist on being required to do so by a constable in uniform, or

(b) wilfully obstructs the lawful passage of any other person

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding **[**[F44]level 2 on the standard scale**]**.

Textual Amendments

F44 Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **s. 289G**

Changes to legislation: *Civic Government (Scotland) Act 1982, Cross Heading: Offences of annoying, offensive, obstructive or dangerous behaviour is up to date with all changes known to be in force on or before 13 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

54 Playing instruments, singing, playing radios, etc.

(1) Any person who—

(a) sounds or plays any musical instrument;

(b) sings or performs; or

(c) operates any radio or television receiver, record player, tape-recorder or other sound producing device

so as to give any other person reasonable cause for annoyance and fails to desist on being required to do so by a constable in uniform, shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £50.

(2) This section is without prejudice to any offence under section 62 of the [M5]Control of Pollution Act 1974 (operation of loudspeakers in streets).

[[F45](2A) Where a constable reasonably suspects that an offence under subsection (1) above has been committed in relation to a musical instrument or in relation to such a device as is mentioned in paragraph (c) of that subsection, he may enter any premises on which he reasonably suspects that instrument or device to be and seize any such instrument or device he finds there.

(2B) A constable may use reasonable force in the exercise of the power conferred by subsection (2A) above.

(2C) Schedule 2A to this Act (which makes provision in relation to the retention and disposal of property seized under subsection (2A) above) shall have effect.**]**

(3) Subsection (1) above shall not apply to the operation of a loudspeaker—

(a) for police, **[**[F46]fire-fighting**]** or ambulance purposes, by **[**[F47]Scottish Water**]** in the exercise of any of its functions, or by a local authority within its area;

(b) for communicating with persons on a vessel for the purpose of directing the movement of that or any other vessel;

(c) if the loudspeaker forms part of a public telephone system;

(d) if the loudspeaker—

(i) is in or fixed to a vehicle, and

(ii) is operated solely for the entertainment of or for communicating with the driver or a passenger of the vehicle or, where the loudspeaker is or forms part of the horn or similar warning instrument of the vehicle, solely for giving warning to other traffic, and

(iii) is so operated as not to give reasonable cause for annoyance to persons in the vicinity;

(e) otherwise than on a **[**[F48]road**]**, by persons employed in connection with a transport undertaking used by the public in a case where the loudspeaker is operated solely for making announcements to passengers or prospective passengers or to other persons so employed;

(f) by a travelling showman on land which is being used for the purposes of a pleasure fair;

(g) in case of emergency.

[F49] . . . . . .

[[F50](4) In subsection (3)(a), the reference to fire-fighting purposes is a reference to—

(a) the purposes of **[**[F51]the Scottish Fire and Rescue Service**]** ; or

(b) fire-fighting functions of any other employer of fire-fighters.**]**

Changes to legislation: *Civic Government (Scotland) Act 1982, Cross Heading: Offences of annoying, offensive, obstructive or dangerous behaviour is up to date with all changes known to be in force on or before 13 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F45 S. 54(2A)-(2C) inserted (1.12.1998) by 1998 c. 37, **s. 24(2)**; S.I. 1998/2327, **art. 2(1)**

F46 Words in s. 54(3)(a) substituted (2.8.2005) by Fire (Scotland) Act 2005 (asp 5), s. 90, **sch. 3 para. 11(a)** (with s. 77); S.S.I. 2005/392, art. 2(k)

F47 Words in s. 54(3)(a) substituted (1.4.2002) by Water Industry (Scotland) Act 2002 (asp 3), s. 71(2), **Sch. 7 para. 13(a)**, (with s. 67); S.S.I. 2002/118, **art. 2**

F48 Word substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 87(4)**

F49 Words in s. 54(3) repealed (1.4.2002) by Water Industry (Scotland) Act 2002 (asp 3), s. 71(2), **Sch. 7 para. 13(b)**, (with s. 67); S.S.I. 2002/118, **art. 2**

F50 S. 54(4) inserted (2.8.2005) by Fire (Scotland) Act 2005 (asp 5), s. 90, **sch. 3 para. 11(b)** (with s. 77); S.S.I. 2005/392, art. 2(k)

F51 Words in s. 54(4)(a) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 53(2)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

Marginal Citations

M5 1974 c. 40.

55 Touting.

(1) Any person who—

(a) in a public place—

(i) touts for the purpose of selling or advertising anything or otherwise obtaining custom so as to give any other person reasonable cause for annoyance; or

(ii) importunes any other person for that purpose so as to give that, or any other, person reasonable cause for annoyance; and

(b) fails to desist when required to do so by a constable in uniform,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding **[**[F52]level 2 on the standard scale**]**.

Textual Amendments

F52 Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **s. 289G**

56 Fires.

Any person who lays or lights a fire in a public place so as to endanger any other person or give him reasonable cause for alarm or annoyance or so as to endanger any property shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding **[**[F53]level 3 on the standard scale**]**.

Textual Amendments

F53 Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **s. 289G**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 22(1)(c) repealed by 2015 asp 10 s. 65(3)
- s. 49(9) added by 2010 asp 13 s. 200(1)(b)