

*Status: Point in time view as at 08/01/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Sex Offenders Act 1997 (repealed), Cross Heading: Offences in Scotland. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

#### SEXUAL OFFENCES TO WHICH PART I APPLIES

##### *Offences in Scotland*

- 2 (1) This Part of this Act applies to the following sexual offences under the law of Scotland, namely—
- (a) the following offences—
    - (i) rape;
    - (ii) clandestine injury to women;
    - (iii) abduction of a woman or girl with intent to rape;
    - (iv) assault with intent to rape or ravish;
    - (v) indecent assault;
    - (vi) lewd, indecent or libidinous behaviour or practices;
    - (vii) shameless indecency; and
    - (viii) sodomy;
  - (b) an offence under section 170 of the <sup>M1</sup>Customs and Excise Management Act 1979 (penalty for fraudulent evasion of duty etc) in relation to goods prohibited to be imported under section 42 of the <sup>M2</sup>Customs Consolidation Act 1876 (prohibitions and restrictions);
  - (c) offences under—
    - (i) section 52 of the <sup>M3</sup>Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children); and
    - (ii) section 52A of that Act (possession of indecent images of children);
  - (d) offences under the following provisions of the <sup>M4</sup>Criminal Law (Consolidation) (Scotland) Act 1995—
    - (i) section 1 (incest);
    - (ii) section 2 (intercourse with a step-child);
    - (iii) section 3 (intercourse with child under 16 by person in position of trust);
    - (iv) section 5 (unlawful intercourse with girl under 16);
    - (v) section 6 (indecent behaviour towards girl between 12 and 16);
    - (vi) section 8 (abduction of girl under 18 for purposes of unlawful intercourse);
    - (vii) section 10 (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16); and
    - (viii) subsection (5) of section 13 (homosexual offences).
  - [<sup>F1</sup>(e) an offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust).]
- (2) In sub-paragraph (1) above—

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- (a) subject to sub-paragraph (3) below, paragraphs (a)(iii) to (v) and (vii) and (d)(i) and (ii) do not apply where every person involved in the offence other than the offender was 18 or over;
  - (b) paragraphs (a)(viii) and (d)(viii) above do not apply where every person involved in the offence, other than the offender, was 18 or over and was a willing participant;
  - (c) paragraph (b) does not apply where the prohibited goods did not include indecent photographs of persons who were under the age of 16;
  - (d) paragraph (a)(viii) does not apply where the offender was under 20 and every other person involved in the offence was a willing participant;
  - (e) paragraph (d)(iv) does not apply in the case of an offence in contravention of subsection (3) of section 5 (unlawful sexual intercourse with a girl over 13 but under 16) where the offender was under 20; <sup>F2</sup> . . .
  - (f) paragraph (d)(viii) does not apply where the offender was under 20 and—
    - (i) where the offence involved an act of sodomy contrary to subsection (5) of section 13, every other person involved in the offence was a willing participant; or
    - (ii) the offence involved an act of gross indecency or shameful indecency contrary to the said subsection (5).
  - <sup>F3</sup>(g) paragraph (e) does not apply where the offender was under 20.]
- (3) Sub-paragraph (2)(a) above does not prevent the application of sub-paragraph (1)(a)(iii) to (v) above in any case where, in respect of the offence or finding, the offender—
- (a) is or has been sentenced to imprisonment for a term of 30 months or more; or
  - (b) is or has been admitted to a hospital subject to a restriction order.
- (4) For the purposes of sub-paragraph (2)(c) above—
- (a) subsections (2) to (2C) and (8) of section 52 of the <sup>M5</sup>Civic Government (Scotland) Act 1982 shall apply as they apply for the purposes of that section; and
  - (b) a person shall be taken to have been under the age of 16 at any time if it appears from the evidence as a whole that he was under that age at that time.

#### Textual Amendments

- F1** Sch. 1 para. 2(1)(e) inserted (8.1.2001 for S., 11.8.2003 for S. to the extent, if any, that it is not already in force) by [Sexual Offences \(Amendment\) Act 2000 c. 44, s. 5\(3\)\(a\)](#), 7(3); [S.S.I. 2000/452, art. 2\(e\)](#); [S.S.I. 2003/378, art. 2](#)
- F2** Sch. 1 para. 2: Word immediately before sub-para. (2)(f) omitted (S.) (8.1.2001) by virtue of [2000 c. 44, s. 5\(3\)\(b\)](#); [S.I. 2000/452, art. 2\(e\)](#)
- F3** Sch. 1 para. 2(2)(g) inserted (8.1.2001 for S., 11.8.2003 for S. to the extent, if any, that it is not already in force) by [Sexual Offences \(Amendment\) Act 2000 c. 44, s. 5\(3\)\(b\)](#), 7(3); [S.S.I. 2000/452, art. 2\(e\)](#); [S.S.I. 2003/378, art. 2](#)

#### Marginal Citations

- M1** 1978 c.2.  
**M2** 1876 c.36.  
**M3** 1982 c.45.  
**M4** 1995 c.39.  
**M5** 1982 c.45.

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