

**Section | 16**

Appendix E

*Edinburgh and Lothians Inter-agency*  
**Child Protection Procedures**

# Appendix E | Legislation

**Important Note: The following describes some of the relevant legal provision so complete accuracy cannot be guaranteed. Always refer directly to the legislation itself before making reference or taking action.**

## Legislation Contents

### Primary Legislation

#### The Children (Scotland) Act, 1995

Principles

#### The Police (Scotland) Act, 1967

Summary of core duties

#### The Criminal Procedure (Scotland) Act, 1995 – Schedule 1 (as amended)

Offences to which Schedule 1 applies

#### The Criminal Law (Consolidation) (Scotland) Act, 1995

Incest

Step-child

Person in position of trust

Proceedings and penalties

Intercourse with girl

Indecent behaviour with girls

Procuring

Abduction and unlawful detention

Permitting girl to use premises for  
intercourse

Seduction, prostitution etc. of girls

Trading in prostitution and brothel  
keeping

Allowing child to be in brothel

Homosexual offences

Conspiracy or incitement to commit sex  
acts outside UK

Commission of certain sexual acts  
outside UK

#### The Children and Young Persons (Scotland) Act, 1937

Ill-treat, neglect, abandon etc.

#### Criminal Justice (Scotland) Act, 2003

Chastisement

#### The Children (Scotland) Act, 1995

Legal Measures to protect children

Child Assessment Orders

Child Protection Order

Exclusion Orders

Effect of an Exclusion Order

Powers of arrest

Significant harm

Children requiring Compulsory Measures of  
Supervision

Conditions for referral to Children's Hearing

Emergency protection where Protection Order not  
available

Place of Safety

Recovery of Fugitive Children

Harbouring

### **Emergency Child Protection Measures (Scotland) Regulations, 1996**

Persons to be informed when child removed to Place of Safety

## **Further Legislation**

### **Sexual Offences (Amendment) Act, 2000**

Abuse of position of trust

### **Protection of Children and Prevention of Sexual Offences (Scotland) Act, 2005**

Grooming

Risk of Sexual Harm Orders

### **Tattooing Of Minors Act, 1969**

### **Child Abduction Act, 1984**

Parent etc. taking or sending child out of UK

### **Children Act, 1989**

Registration of Child Minders

### **Surrogacy Arrangements Act, 1985**

Meaning of terms

Negotiating On A Commercial Basis, etc.

Advertisements About Surrogacy

Offences

### **Civic Government (Scotland) Act, 1982**

Obscene Material

Indecent Child Photographs

Possession of Photographs

Interpretation

### **Protection from Abuse (Scotland) Act, 2001**

Attachment of Power of Arrest to Interdict

Duration, extension and recall

Notification to police

Powers and duties of police

Court appearance

Interpretation

### **Protection of Children (Scotland) Act, 2003**

Duty of Scottish Ministers to keep list

Reference following disciplinary action etc.



The following are the primary pieces of legislation that impact on Child Protection in Scotland

### **The Children (Scotland) Act, 1995**

Establishes

- The duty of local authorities to safeguard and promote the welfare of children in need (Section 22)
- The duty of local authorities to make enquires when they receive information that a child may be in need of compulsory measures of supervision (Section 53)
- Parental responsibilities and rights (Sections 1 & 2)
- Conditions for Referral to a Children’s Hearing for consideration as to whether a child is in need of compulsory measures of supervision (Section 52)

### **The Police (Scotland) Act, 1967**

Establishes the duty of the police to

- Prevent crime, preserve order and protect life and property
- Where a crime has been committed, carry out investigation and pass information to the Procurator Fiscal

### **The Criminal Procedure (Scotland) Act, 1995 - Schedule 1 (as amended)**

Lists offences against children under 17 years of age in respect of which Section 21 of the Act confers power on a police constable, in certain circumstances, to take people into custody without a warrant if they have committed or the constable has reason to believe they have committed the offences. Such offenders are commonly termed ‘Schedule 1 offenders’.

Schedule 1 offences are;

- 1.** Any offence under Part I of the Criminal Law (Consolidation) (Scotland) Act 1995 (Section 1 incest with a child, Section 2 intercourse with a step-child, Section 3 intercourse of person in position of trust with child under 16, Section 5 intercourse with a girl under 16, Section 6 indecent behaviour towards girl between 12 and 16, Section 7 procuring unlawful intercourse etc. in relation to a child, Section 8 abduction and unlawful detention of unmarried girl under 18, Section 9 permitting girl under 16 to use premises for intercourse, Section 10 causing or encouraging the seduction of, the prostitution of, unlawful intercourse with or the commission of an indecent assault on a girl under 16, Section 11 trading in prostitution and brothel-keeping in relation to a child, Section 12 allowing a child who is 4 or over but under 16 to be in a brothel, Section 13 homosexual offences)
- 2.** Any offence under Section 12 (Cruelty to person under 16), 15 (Causing or allowing persons under 16 to be used for begging), 22 (Exposing children under 7 to risk of burning) or 33 (Dangerous performances) of the Children and Young Persons (Scotland) Act 1937.
- 2A.** Any offence under the Prohibition of Female Genital Mutilation (Scotland) Act 2005 (Perform, aid, abet, counsel, procure or incite an act) where the person mutilated or, as the case may be, proposed to be mutilated, is a child under the age of 17 years.
- 2B.** Any offence under section 52 (Take, permit, make, distribute, possess with intent to distribute or advertise), or 52A (Possession) of the Civic Government (Scotland) Act 1982 in relation to an indecent photograph of a child under the age of 17 years.
- 2C.** Any offence under section 1 (Meet child following preliminary contact), 9 (Paying for sexual services of a child), 10 (Cause/incite provision by child of sexual services or child



pornography), 11 (Controlling child providing sexual services or involved in pornography) or 12. (Arranging or facilitating provision by child of sexual services or child pornography) of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 in respect of a child under the age of 17 years.

3. Any other offence involving bodily injury to a child under the age of 17 years.
4. Any offence involving the use of lewd, indecent or libidinous practice or behaviour towards a child under the age of 17 years.

(Schedule 1, as amended by the Prohibition of Female Genital Mutilation (Scotland) Act, 2005).

For the purposes of Referral to a Children's Hearing the offender need not necessarily have been convicted; it is sufficient that:

- The child has been the victim of a schedule 1 offence, or
- The child is, or is likely to become, a member of the same household as
  - A person who has committed a Schedule 1 offence, or
  - A child in respect of whom a Schedule 1 offence has been committed

all provable on balance of probabilities.

## **The Criminal Law (Consolidation) (Scotland) Act, 1995**

Creates sexual offences which apply to children.

### **Incest**

(1) Any male person who has sexual intercourse with a person related to him in a degree specified in column 1 of the Table set out at the end of this subsection, or any female person who has sexual intercourse with a person related to her in a degree specified in column 2 of that Table, shall be guilty of incest, unless the accused proves that he or she—

- (a) Did not know and had no reason to suspect that the person with whom he or she had sexual intercourse was related in a degree so specified; or
- (b) Did not consent to have sexual intercourse, or to have sexual intercourse with that person; or

was married to that person, at the time when the sexual intercourse took place, by a marriage entered into outside Scotland and recognised as valid by Scots law.

**Table - Degrees Of Relationship**

<b>Column 1</b>	<b>Column 2</b>
<b>1.Relationships by consanguinity</b>	
<p>Mother            Daughter            Grandmother            Grand-daughter            Sister            Aunt            Niece            Great grandmother            Great grand-daughter</p>	<p>Father            Son            Grandfather            Grandson            Brother            Uncle            Nephew            Great grandfather            Great grandson</p>
<b>2.Relationships by adoption</b>	
<p>Adoptive mother or former adoptive mother.            Adopted daughter or former adopted daughter.</p>	<p>Adoptive father or former adoptive father.            Adopted son or former adopted son.</p>

- (2) For the purpose of this section, a degree of relationship exists in the case of a degree specified in paragraph 1 of the Table—
- (a) Whether it is of the full blood or the half blood; and
  - (b) Even where traced through or to any person whose parents are not or have not been married to one another.
- (3) For the avoidance of doubt sexual intercourse between persons who are not related to each other in a degree referred to in subsection (1) above is not incest.

(Section 1).

### Step-child

Any step-parent or former step-parent who has sexual intercourse with his or her step-child or former step-child shall be guilty of an offence if that step-child is either under the age of 21 years or has at any time before attaining the age of 18 years lived in the same household and been treated as a child of his or her family, unless the accused proves that he or she—

- (a) Did not know and had no reason to suspect that the person with whom he or she had sexual intercourse was a step-child or former step-child; or
- (b) Believed on reasonable grounds that that person was of or over the age of 21 years; or
- (c) Did not consent to have sexual intercourse, or to have sexual intercourse with that person; or
- (d) Was married to that person, at the time when the sexual intercourse took place, by a marriage entered into outside Scotland and recognised as valid by Scots law.

(Section 2).

### Person In Position Of Trust

- (1) Any person of or over the age of 16 years who—
- (a) Has sexual intercourse with a child under the age of 16 years;
  - (b) Is a member of the same household as that child; and
  - (c) Is in a position of trust or authority in relation to that child,

shall be guilty of an offence, unless the accused proves that subsection (2) below applies in his or her case.

(2) This subsection applies where the accused—

- (a) Believed on reasonable grounds that the person with whom he or she had sexual intercourse was of or over the age of 16 years; or
- (b) Did not consent to have sexual intercourse, or to have sexual intercourse with that person; or
- (c) Was married to that person, at the time when the sexual intercourse took place, by a marriage entered into outside Scotland and recognised as valid by Scots law.

(Section 3).

### Proceedings & Penalties

- (1) Proceedings in respect of an offence under Section 1, 2 or 3 of this Act may be brought on indictment or, if the Lord Advocate so directs, on a summary complaint before the sheriff.
- (2) Summary proceedings in pursuance of this section may be commenced at any time within the period of 6 months from the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to his knowledge.
- (3) Subsection (3) of Section 136 of the Criminal Procedure (Scotland) Act 1995 (date of commencement of summary proceedings) shall have effect for the purposes of



subsection (2) above as it has effect for the purposes of that section.

- (4) For the purposes of subsection (2) above, a certificate of the Lord Advocate as to the date on which the evidence in question came to his knowledge is conclusive evidence of the date on which it did so.
- (5) Subject to subsection (6) below, a person guilty of an offence under Section 1, 2 or 3 of this Act shall be liable—
  - (a) On conviction on indictment, to imprisonment for any term of imprisonment up to and including life imprisonment; and
  - (b) On summary conviction, to imprisonment for a term not exceeding 3 months.

**(Section 4).**

#### **Intercourse With Girl**

- (1) Subject to section 205A of the Criminal Procedure (Scotland) Act 1995 (imprisonment for life on further conviction of certain offences) any person who has unlawful sexual intercourse with any girl under the age of 13 years shall be liable on conviction on indictment to imprisonment for life.
- (2) Any person who attempts to have unlawful sexual intercourse with any girl under the age of 13 years shall be liable on conviction on indictment to imprisonment for a term not exceeding ten years or on summary conviction to imprisonment for a term not exceeding three months.
- (3) Without prejudice to Sections 1 to 4 of this Act, any person who has, or attempts to have, unlawful sexual intercourse with any girl of or over the age of 13 years and under the age

of 16 years shall be liable on conviction on indictment to imprisonment for a term not exceeding ten years or on summary conviction to imprisonment for a term not exceeding three months.

- (5) It shall be a defence to a charge under subsection (3) above that the person so charged—
  - (a) Had reasonable cause to believe that the girl was his wife; or
  - (b) Being a man under the age of 24 years who had not previously been charged with a like offence, had reasonable cause to believe that the girl was of or over the age of 16 years.
- (6) In subsection (5) above, “a like offence” means an offence under—
  - (a) Subsection (3) above; or
  - (b) Section 4(1) or 10(1) of the Sexual Offences (Scotland) Act 1976 or Section 5 or 6 of the Criminal Law Amendment Act 1885 (the enactments formerly creating the offences mentioned in subsection (3) above and Section 9(1) of this Act); or
  - (c) Section 6 of the Sexual Offences Act 1956 (the provision for England and Wales corresponding to subsection (3) above), or with an attempt to commit such an offence; or
  - (cc) any of sections 9 to 14 of the Sexual Offences Act 2003;
  - (d) Section 9(1) of this Act.

**(Section 5** as amended by the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005).

## Indecent Behaviour With Girls

Any person who uses towards a girl of or over the age of 12 years and under the age of 16 years any lewd, indecent or libidinous practice or behaviour which, if used towards a girl under the age of 12 years, would have constituted an offence at common law shall, whether the girl consented to such practice or behaviour or not, be liable on conviction on indictment to imprisonment for a term not exceeding ten years or on summary conviction to imprisonment for a term not exceeding three months.

(Section 6 as amended by the Crime and Punishment (Scotland) Act 1997).

## Procuring

- (1) Any person who procures or attempts to procure
  - (a) Any woman under 21 years of age or girl to have unlawful sexual intercourse with any other person or persons in any part of the world; or
  - (b) Any woman or girl to become a common prostitute in any part of the world; or
  - (c) Any woman or girl to leave the United Kingdom, with intent that she may become an inmate of or frequent a brothel elsewhere; or
  - (d) Any woman or girl to leave her usual place of abode in the United Kingdom, with intent that she may, for the purposes of prostitution, become an inmate of or frequent a brothel in any part of the world,

shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.

- (2) Any person who
  - (a) By threats or intimidation procures or attempts to procure any woman or girl to have any unlawful sexual intercourse in any part of the world; or
  - (b) By false pretences or false representations procures any woman or girl to have any unlawful sexual intercourse in any part of the world; or
  - (c) Applies or administers to, or causes to be taken by, any woman or girl any drug, matter or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful sexual intercourse with such woman or girl,

shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.

- (3) A man who induces a married woman to permit him to have sexual intercourse with her by impersonating her husband shall be deemed to be guilty of rape.
- (4) A constable may arrest without a warrant any person whom he has good cause to suspect of having committed, or of attempting to commit, any offence under subsection (1) above.

(Section 7 as amended by the Crime & Punishment (Scotland) Act 1997)

In relation to “common prostitute”, “Prostitution” is not defined in the Act, but in English case law it was held that “prostitution means the offering for reward by a female of her body commonly for purposes of general lewdness. It is not necessary

to prove that the offer was for the purpose of natural sexual connection”.

### **Abduction And Unlawful Detention**

**(3)** Any person who detains any woman or girl against her will

**(a)** In or upon any premises with intent that she may have unlawful sexual intercourse with men or with a particular man; or

**(b)** In any brothel,

shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.

**(4)** Where a woman or girl is in or upon any premises for the purpose of having unlawful sexual intercourse, or is in a brothel, a person shall be deemed to detain such woman or girl in or upon such premises or brothel if, with intent to compel or induce her to remain in or upon the premises or brothel, he withholds from her any wearing apparel or other property belonging to her or, where wearing apparel has been lent or otherwise supplied to the woman or girl by or by the direction of such person, he threatens the woman or girl with legal proceedings if she takes away with her the wearing apparel so lent or supplied.

**(5)** No legal proceedings, whether civil or criminal, shall be taken against a woman or girl mentioned in subsection (4) above for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel mentioned in that subsection.

**(Section 8** as amended by the Criminal Justice (Scotland) Act 2003).

### **Permitting Girl To Use Premises For Intercourse**

**(1)** Any person who, being the owner or occupier of any premises, or having, or acting or assisting in, the management or control of any premises, induces or knowingly suffers any girl of such age as is mentioned in this subsection to resort to or be in or upon such premises for the purpose of having unlawful sexual intercourse with men or with a particular man

**(a)** If such girl is under the age of 13 years, shall be liable on conviction on indictment to imprisonment for life; and

**(b)** If such girl is of or over the age of 13 years and under the age of 16 years, shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.

**(2)** It shall be a defence to a charge under this section that the person so charged, being a man under the age of 24 years who had not previously been charged with a like offence, had reasonable cause to believe that the girl was of or over the age of 16 years.

**(3)** In subsection (2) above, “a like offence” means an offence under—

**(a)** Subsection (1) above; or

**(b)** Section 5(3) of this Act; or

**(c)** Section 4(1) or 10(1) of the Sexual Offences (Scotland) Act 1976 or Section 5 or 6 of the Criminal Law Amendment Act 1885 (the enactments formerly creating the offences mentioned in paragraphs (a) and (b) above).

**(Section 9).**

## Seduction, Prostitution, Etc., Of Girls

(1) If any person having parental responsibilities (within the meaning of Section 1(3) of the Children (Scotland) Act 1995), in relation to, or having charge or care of a girl under the age of 16 years causes or encourages

- (a) The seduction or prostitution of;
- (b) Unlawful sexual intercourse with; or
- (c) Or the commission of an indecent assault upon,

her he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.

(2) For the purposes of this section, a person shall be deemed to have caused or encouraged the matters mentioned in paragraphs (a) to (c) of subsection (1) above upon a girl who has been seduced or indecently assaulted, or who has had unlawful sexual intercourse or who has become a prostitute, if he has knowingly allowed her to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character.

(3) Subsections (1) and (2) above shall apply to a contravention of Section 6 of this Act in like manner as they apply to an indecent assault, and any reference to the commission of such an assault or to being indecently assaulted shall be construed accordingly.

(4) Where on the trial of any offence under this Part of this Act it is proved to the satisfaction of the court that the seduction or prostitution of a girl under the age of 16 years has been caused, encouraged or favoured by her father, mother or guardian it shall be in the power of the court to divest such person of all authority over her, and to appoint any person or persons willing to take charge of such girl to be her guardian until she has attained the

age of 21 years, or such lower age as the court may direct.

(5) The High Court of Justiciary shall have the power from time to time to rescind or vary an order under subsection (4) above by the appointment of any other person or persons as such guardian, or in any other respect.

(Section 10).

## Trading In Prostitution & Brothel-Keeping

(1) Every male person who

- (a) Knowingly lives wholly or in part on the earnings of prostitution; or
- (b) In any public place persistently solicits or importunes for immoral purposes,

shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding six months.

(2) If it is made to appear to a court of summary jurisdiction by information on oath that there is reason to suspect that any house or any part of a house is used by a female for purposes of prostitution, and that any male person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, the court may issue a warrant authorising a constable to enter and search the house and to arrest that male person.

(3) Where a male person is proved to live with or to be habitually in the company of a prostitute, or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person, or generally, he shall, unless he can satisfy the court to the contrary, be deemed to be knowingly living on the earnings of prostitution.

(4) Every female who is proved to have, for the purposes of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any other person, or generally, shall be liable to the penalties set out in subsection (1) above.

(5) Any person who

(a) Keeps or manages or acts or assists in the management of a brothel; or

(b) Being the tenant, lessee, occupier or person in charge of any premises, knowingly permits such premises or any part thereof to be used as a brothel or for the purposes of habitual prostitution; or

(c) Being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of such premises or any part thereof as a brothel,

shall be guilty of an offence.

(6) A person convicted of an offence under subsection (5) above shall be liable

(a) In the sheriff court to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding six months; and

(b) In the district court to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding three months,

or, in either case, to both such fine and imprisonment.

**(Section 11)**

“brothel” is not defined in the Act, but the following two English decisions would probably be followed by the Scottish courts;

(i) A brothel is a place where people of opposite sexes are allowed to resort for illicit intercourse, whether the women are common prostitutes or not.

(ii) A house occupied by one woman for the purpose of prostituting herself therein with a number of different men, but not allowing other women to use the premises for a like purpose, is not a brothel

### **Allowing Child To Be In Brothel**

(1) If any person having parental responsibilities (within the meaning of Section 1(3) of the Children (Scotland) Act 1995), in relation to, or having charge or care of a child who has attained the age of four years and is under the age of 16 years, allows that child to reside in or to frequent a brothel, he shall be liable on conviction on indictment, or on summary conviction, to a fine not exceeding level 2 on the standard scale or alternatively, or in default of payment of such a fine, or in addition thereto, to imprisonment for a term not exceeding six months.

(2) Nothing in this section shall affect the liability of a person to be indicted under Section 9 of this Act, but upon the trial of a person under that section it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under this section, to find him guilty of that offence.

**(Section 12)**

## Homosexual Offences

- (1) Subject to the provisions of this section, a homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of sixteen years.
- (2) An act which would otherwise be treated for the purposes of this Act as being done in private shall not be so treated if done
  - (b) In a lavatory to which the public have, or are permitted to have, access whether on payment or otherwise.
- (3) A male person who is suffering from mental deficiency which is of such a nature or degree that he is incapable of living an independent life or of guarding himself against serious exploitation cannot in law give any consent which, by virtue of subsection (1) above, would prevent a homosexual act from being an offence; but a person shall not be convicted on account of the incapacity of such a male person to consent, of an offence consisting of such an act if he proves that he did not know and had no reason to suspect that male person to be suffering from such mental deficiency.
- (4) In this section, “a homosexual act” means sodomy or an act of gross indecency or shameless indecency by one male person with another male person.
- (5) Subject to subsection (3) above, it shall be an offence to commit or to be party to the commission of, or to procure or attempt to procure the commission of a homosexual act
  - (a) Otherwise than in private;
  - (b) Without the consent of the parties to the act; or
  - (c) With a person under the age of sixteen years.
- (6) It shall be an offence to procure or attempt to procure the commission of a homosexual act between two other male persons.
- (7) A person who commits or is party to the commission of an offence under subsection (5) or subsection (6) above shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both and on summary conviction to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum (within the meaning of Section 225(8) of the Criminal Procedure (Scotland) Act 1995).
- (8) It shall be a defence to a charge of committing a homosexual act under subsection (5)(c) above that the person so charged being under the age of 24 years who had not previously been charged with a like offence, had reasonable cause to believe that the other person was of or over the age of sixteen years.
- (8A) A person under the age of sixteen years does not commit an offence under subsection (5)(a) or (c) above if he commits or is party to the commission of a homosexual act with a person who has attained that age.
- (9) A person who knowingly lives wholly or in part on the earnings of another from male prostitution or who solicits or importunes any male person for the purpose of procuring the commission of a homosexual act within the meaning of subsection (4) above shall be liable
  - (a) On summary conviction to imprisonment for a term not exceeding six months; or
  - (b) On conviction on indictment to imprisonment for a term not exceeding two years.
- (10) Premises shall be treated for the purposes of Sections 11(1) and 12 of this Act as a brothel if people resort to it for the purposes of homosexual acts within the meaning of subsection (4) above in circumstances in which resort thereto for heterosexual practices would have led to its being treated as a brothel for the purposes of those sections.

(11) No proceedings for

- (a) The offences mentioned in subsections (5) and (6) above; and
- (b) Any offence under subsection (9) above which consists of soliciting or importuning any male person for the purpose of procuring the commission of a homosexual act,

shall be commenced after the expiration of twelve months from the date on which that offence was committed.

(Section 13 as amended by the Convention Rights (Compliance) (Scotland) Act 2001 and the Sexual Offences (Amendment) (Scotland) Act 2000).

#### **Conspiracy or Incitement to Commit Sex Acts Outside the UK**

- (1) This section applies to any act done by a person in Scotland which would amount to the offence of incitement to commit a listed sexual offence but for the fact that what he had in view is intended to occur in a country or territory outside the United Kingdom.
- (2) Where a person does an act to which this section applies, what he had in view shall be treated as the listed sexual offence mentioned in subsection (1) above and he shall, accordingly, be guilty of, as the case may be, incitement to commit the listed sexual offence.
- (3) A person is guilty of an offence by virtue of this section only if, what he had in view would involve the commission of an offence under the law in force in the country or territory where the whole or any part of it was intended to take place, and conduct punishable under the law in force in the country or territory is an offence under that law for the purposes of this section however it is described in that law.
- (4) Subject to subsection (6) below, a condition specified in subsection (3) above shall be taken to be satisfied unless, not later than such time as the High Court may, by Act of Adjournal, prescribe, the accused serves on the prosecutor a notice

- (a) Stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in his opinion satisfied;
- (b) Setting out the grounds for his opinion; and
- (c) Requiring the prosecutor to prove that the condition is satisfied.

(5) In subsection (4) above “the relevant conduct” means what the accused had in view.

(6) The court, if it thinks fit, may permit the accused to require the prosecutor to prove that the condition mentioned in subsection (4) above is satisfied without the prior service of a notice under that subsection.

(7) In proceedings on indictment, the question whether a condition is satisfied shall be determined by the judge alone.

(8) Any act of incitement by means of a message (however communicated) is to be treated as done in Scotland if the message is sent or received in Scotland.

(9) In this section “listed sexual offence” means any of the following

- (a) Rape of a girl under the age of 16;
- (b) Indecent assault of a person under the age of 16;
- (c) Lewd and libidinous conduct;
- (d) Shamelessly indecent conduct involving a person under the age of 16;
- (e) Sodomy with or against a boy under the age of 16;
- (f) An offence under section 5(1) or (2) of this Act (unlawful sexual intercourse with a girl under the age of 13);
- (g) An offence under section 5(3) of this Act (unlawful sexual intercourse with a girl under the age of 16);



- (h) An offence under section 6 of this Act (indecent behaviour towards a girl between the age of 12 and 16);
- (i) An offence under section 13(5) or (6) of this Act where the homosexual act involves a person under the age of 16 (prohibition on certain homosexual acts).

**(Section 16A** as inserted by the Sexual Offences (Conspiracy and Incitement) Act 1996 and amended by the Criminal Justice (Terrorism and Conspiracy) Act, 1998).

### **Commission Of Certain Sexual Acts Outside The UK**

**(1)** Subject to subsection (2) below, any act done by a person in a country or territory outside the United Kingdom which

- (a) Constituted an offence under the law in force in that country or territory; and
- (b) Would constitute a listed sexual offence if it had been done in Scotland

shall constitute that sexual offence.

**(2)** No proceedings shall by virtue of this section be brought against any person unless he was at the commencement of this section, or has subsequently become, a British citizen or resident in the United Kingdom.

**(3)** An act punishable under the law in force in any country or territory constitutes an offence under that law for the purposes of subsection (1) above, however it is described in that law.

**(4)** Subject to subsection (5) below, the condition in subsection (1)(a) above shall be taken to be satisfied unless, not later than may be prescribed by Act of Adjournal, the accused serves on the prosecutor a notice

- (a) Stating that, on the facts as alleged with respect to the act in question, the condition is not in his opinion satisfied;
- (b) Setting out the grounds for that opinion; and
- (c) Requiring the prosecutor to prove that it is satisfied.

**(5)** The court, if it thinks fit, may permit the accused to require the prosecutor to prove that the condition is satisfied without the prior service of a notice under subsection (4) above.

**(6)** In proceedings on indictment, the question whether the condition is satisfied is to be decided by the judge alone.

**(6A)** A person may be proceeded against, indicted, tried and punished for any offence to which this section applies

- (a) In any sheriff court district in Scotland in which he is apprehended or is in custody; or
- (b) In such sheriff court district as the Lord Advocate may determine,

as if the offence had been committed in that district; and the offence shall, for all purposes incidental to or consequential on trial or punishment, be deemed to have been committed in that district.

**(6B)** In subsection (6A) above, “sheriff court district” shall be construed in accordance with section 307(1) (interpretation) of the Criminal Procedure (Scotland) Act 1995.

**(7)** Subject to subsection (8) below, in this section “listed sexual offence” means any of the following

- (a) Rape of a girl under the age of 16;
- (b) Indecent assault of a person under the age of 16;
- (c) Lewd, indecent or libidinous behaviour or practices;

- (d) Shamelessly indecent conduct involving a person under the age of 16;
  - (e) Sodomy with or against a boy under the age of 16;
  - (f) An offence under section 5(1) or (2) of this Act (unlawful sexual intercourse with a girl under the age of 13);
  - (g) An offence under section 5(3) of this Act (unlawful sexual intercourse with a girl under the age of 16);
  - (h) An offence under section 6 of this Act (indecent behaviour towards a girl between the age of 12 and 16);
  - (i) An offence under section 13(5) or (6) of this Act where the homosexual act involves a person under the age of 16 (prohibition on certain homosexual acts);
  - (j) An offence under section 52 of the Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children)
  - (k) An offence under section 52A of that Act (possession of indecent images of children);
  - (l) An offence under section 9 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) (paying for sexual services of a child);
  - (m) An offence under section 10 of that Act (causing or inciting provision by child of sexual services or child pornography);
  - (n) An offence under section 11 of that Act (controlling a child providing sexual services or involved in pornography); and
  - (p) An offence under section 12 of that Act (arranging or facilitating provision by child of sexual services or child pornography).
- (8)** “Listed sexual offence” includes
- (a) Any conspiracy or incitement to commit any such offence; and

- (b) Any offence under Section 293(2) of the Criminal Procedure (Scotland) Act 1995 (aiding and abetting etc. the commission of statutory offences) relating to any offence mentioned in subsection (7)(f) to (j) above.

**(Section 16B** as amended by the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005).

An offence under the above sections is included in **Schedule 1 to the Criminal Procedure (Scotland) Act, 1995** and, therefore, the offender may be apprehended in the circumstances specified in Section 21 of that Act.

### **The Children and Young Persons (Scotland) Act, 1937**

Section 12 creates offences against children (under 16)

- (1)** If any person who has attained the age of sixteen years and has the custody, charge, or care of any child or young person under that age, wilfully ill-treats, neglects, abandons, or exposes him, or causes or procures him to be ill-treated, neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of an offence.
- (2)** For the purposes of this section—
  - (a) A parent or other person legally liable to maintain a child or young person shall be deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him, or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, he has failed to take steps to procure it to be provided under the



enactments applicable in that behalf; (as adapted by National Assistance (Adaptation of Enactments) Regulations 1951);

- (b) Where it is proved that the death of a child under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the child) while the child was in bed with some other person who has attained the age of sixteen years, that other person shall, if he was, when he went to bed, under the influence of drink, be deemed to have neglected the child in a manner likely to cause injury to his health.
- (3) A person may be convicted of an offence under this section –
  - (a) Notwithstanding that actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of another person;
  - (b) Notwithstanding the death of the child or young person in question.
- (4) Where any person who has attained the age of sixteen years is tried on indictment for the culpable homicide of a child or young person under the age of sixteen years of whom he had the custody, charge, or care, it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under this section, to find him guilty of that offence.

(Section 12, as amended by the Children Act 1975, the Criminal Justice Act 1988 and the Criminal Justice (Scotland) Act 2003).

“Child” means a person under the age of fourteen years;

“Young person” means a person who has attained the age of fourteen years and is under the age of seventeen years.

An offence under Section 12 (above) is included in **Schedule 1 to the Criminal Procedure (Scotland) Act 1995**, and therefore the offender may be apprehended in the circumstances specified in Section 21 of that Act.

See below section 51 (Physical punishment of children) of the Criminal Justice (Scotland) Act 2003.

### **Criminal Justice (Scotland) Act, 2003**

Clarifies the law in relation to chastisement.

- (1) Where a person claims that something done to a child was a
  - physical punishment carried out in exercise of a parental right or of a right derived from having charge or care of the child, then in determining any question as to whether what was done was, by virtue of being in such exercise, a justifiable assault a court must have regard to the following factors;
    - (a) The nature of what was done, the reason for it and the circumstances in which it took place
    - (b) Its duration and frequency
    - (c) Any effect (whether physical or mental) which it has been shown to have had on the child
    - (d) The child’s age and
    - (e) The child’s personal characteristics (including, without prejudice to the generality of this paragraph, sex and state of health) at the time the thing was done.
- (2) The court may also have regard to such other factors as it considers appropriate in the circumstances of the case.
- (3) If what was done included or consisted of
  - (a) A blow to the head
  - (b) Shaking or
  - (c) The use of an implement



the court must determine that it was not something which, by virtue of being in exercise of a parental right or of a right derived as is mentioned in subsection (1), was a justifiable assault; but this subsection is without prejudice to the power of the court so to determine on whatever other grounds it thinks fit

- (4) In subsection (1), “child” means a person who had not, at the time the thing was done, attained the age of sixteen years.

### (Section 51)

## Legal Measures to Protect Children

**The Children (Scotland) Act 1995** is the primary legislation for the protection of children in emergencies; in situations where it is necessary to plan assessments; or for the provision of longer-term legal measures to protect or supervise them.

The Act established ‘orders’ aimed at protecting children from harm and to assist in establishing whether children may be in need of protection from harm. They are:

- Child Assessment Order
- Child Protection Order
- Exclusion Order

In addition, emergency child protection measures are available under the Act where there is an immediate need to secure the safety of a child.

## Child Assessment Orders

- (1) A sheriff may grant an order under this section for an assessment of the state of a child’s health or development, or of the way in which he has been treated, on the **application of a local authority** if he is satisfied that -

- (a) The local authority have reasonable cause to suspect that the child in respect of whom the order is sought is being so treated (or neglected) that he is suffering, or is likely to suffer, **significant harm** (see below);
- (b) Such assessment of the child is required in order to establish whether or not there is reasonable cause to believe that the child is so treated (or neglected); and
- (c) Such assessment is unlikely to be carried out, or be carried out satisfactorily, unless the order is granted.

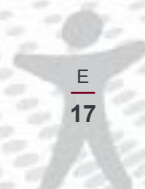
## (2) Where -

- (a) An application has been made under subsection (1) above; and
- (b) The sheriff considers that the conditions for making a child protection order under section 57 of this Act (see below) are satisfied,

he shall make such an order under that section as if the application had been duly made by the local authority under that section rather than this section.

## (3) A child assessment order shall -

- (a) Specify the date on which the assessment is to begin;
- (b) Have effect for such period as is specified in the order, not exceeding seven days beginning with the date specified by virtue of paragraph (a) above;
- (c) Require any person in a position to produce the child to -
  - (i) Produce him to any authorised person;
  - (ii) Permit that person or any other authorised person to carry out an assessment in accordance with the order; and



- (iii) Comply with any other conditions of the order; and
  - (d) Be carried out by an authorised person in accordance with the terms of the order.
- (4) A child assessment order may -
- (a) Where necessary, permit the taking of the child concerned to any place for the purposes of the assessment; and
  - (b) Authorise the child to be kept at that place, or any other place, for such period of time as may be specified in the order.
- (5) Where a child assessment order makes provision under subsection (4) above, it shall contain such directions as the sheriff considers appropriate as to the contact which the child shall be allowed to have with any other person while the child is in any place to which he has been taken or in which he is being kept under a child assessment order.
- (6) In this section “authorised person” means any officer of the local authority, and any person authorised by the local authority to perform the assessment, or perform any part of it.

(Section 55).

### Child Protection Order

- (1) Where the sheriff, on an **application by any person**, is satisfied that -
- (a) There are reasonable grounds to believe that a child
    - (i) Is being so treated (or neglected) that he is suffering **significant harm** (see below); or
    - (ii) Will suffer such harm if he is not removed to and kept in a place of safety, or if he does not remain in the place where he is then being accommodated (whether or not he is resident there); and

- (b) An order under this section is necessary to protect that child from such harm (or such further harm),

he may make an order under this section.

- (2) Without prejudice to subsection (1) above, where the sheriff on an **application by a local authority** is satisfied -

- (a) That they have reasonable grounds to suspect that a child is being or will be so treated (or neglected) that he is suffering or will suffer significant harm;
- (b) That they are making or causing to be made enquiries to allow them to decide whether they should take any action to safeguard the welfare of the child; and
- (c) That those enquiries are being frustrated by access to the child being unreasonably denied, the authority having reasonable cause to believe that such access if required as a matter of urgency,

he may make a Child Protection Order.

- (3) Without prejudice to any additional requirement imposed by rules made by virtue of section 91 of this Act, an application for a child protection order shall

- (a) Identify
  - (i) The applicant; and
  - (ii) In so far as practicable, the child in respect of whom the order is sought;
- (b) State the grounds on which the application is made; and
- (c) Be accompanied by such supporting evidence, whether in documentary form or otherwise, as will enable the sheriff to determine the application.

- (4) A child protection order may, subject to such terms and conditions as the sheriff considers appropriate, do any one or more of the following -



- (a) Require any person in a position to do so to produce the child to the applicant;
  - (b) Authorise the removal of the child by the applicant to a place of safety, and the keeping of the child at that place;
  - (c) Authorise the prevention of the removal of the child from any place where he is being accommodated;
  - (d) Provide that the location of any place of safety in which the child is being kept should not be disclosed to any person or class of person specified in the order.
- (5) Notice of the making of a child protection order shall be given forthwith by the applicant to the local authority in whose area the child resides (where that authority is not the applicant) and to the Principal Reporter.
- (6) In taking any action required or permitted by a child protection order or by a direction under section 58 of this Act the applicant shall only act where he reasonably believes that to do so is necessary to safeguard or promote the welfare of the child.
- (7) Where by virtue of a child protection order a child is removed to a place of safety provided by a local authority, they shall, subject to the terms and conditions of that order and of any direction given under section 58 of this Act, have the like duties in respect of the child as they have under section 17 of this Act in respect of a child looked after by them.

(Section 57).

### Exclusion Orders

- (1) Subject to subsections (3) to (9) below, where on the **application of a local authority** the sheriff is satisfied, in relation to a child, that

the conditions mentioned in subsection (2) below are met, he may grant an order under this section excluding from the child's family home any person named in the order (in this Part of this Act referred to as the "named person").

(2) The conditions are:

- (a) That the child has suffered, is suffering, or is likely to suffer, **significant harm** (see below) as a result of any conduct, or any threatened or reasonably apprehended conduct, of the named person;
  - (b) That the making of an exclusion order against the named person
    - (i) Is necessary for the protection of the child, irrespective of whether the child is for the time being residing in the family home; and
    - (ii) Would better safeguard the child's welfare than the removal of the child from the family home; and
  - (c) That, if an order is made, there will be a person specified in the application who is capable of taking responsibility for the provision of appropriate care for the child and any other member of the family who requires such care and who is, or will be, residing in the family home (in this section, sections 77 to 78 and section 91(3)(f) of this Act referred to as an "appropriate person").
- (3) No application under subsection (1) above for an exclusion order shall be finally determined under this section unless -
- (a) The named person has been afforded an opportunity of being heard by, or represented before, the sheriff; and



(b) The sheriff has considered any views expressed by any person on whom notice of the application has been served in accordance with rules making such provision as is mentioned in section 91(3)(d) of this Act.

(4) Where, on an application under subsection (1) above, the sheriff

(a) Is satisfied as mentioned in that subsection; but

(b) The conditions mentioned in paragraphs (a) and (b) of subsection (3) above for the final determination of the application are not fulfilled,

he may grant an interim order, which shall have effect as an exclusion order pending a hearing by the sheriff under subsection(5) below held within such period as may be specified in rules made by virtue of section 91(3)(e) of this Act.

(5) The sheriff shall conduct a hearing under this subsection within such period as may be specified in rules made by virtue of section 91(3)(e) of this Act, and, if satisfied at that hearing as mentioned in subsection (1) above, he may, before finally determining the application, confirm or vary the interim order, or any term or condition on which it was granted, or may recall such order.

(6) Where the conditions mentioned in paragraphs (a) and (b) of subsection (3) above have been fulfilled, the sheriff may, at any point prior to the final determination of the application, grant an interim order.

(7) An order under subsection (5) or (6) above shall have effect as an exclusion order pending the final determination of the application.

(8) Where -

(a) An application is made under subsection (1) above; and

(b) The sheriff considers that the conditions for making a child protection order under section 57 of this Act (Child Protection Order) are satisfied,

he may make an order under that section as if the application had been duly made by the local authority under that rather than under this section.

(9) The sheriff shall not make an exclusion order if it appears to him that to do so would be unjustifiable or unreasonable, having regard to

(a) All the circumstances of the case, including without prejudice to the generality of this subsection the matters specified in subsection(10) below; and

(b) Any requirement such as is specified in subsection (11) below and the likely consequences in the light of that requirement of the exclusion of the named person from the family home.

(10) The matters referred to in subsection (9)(a) above are

(a) The conduct of the members of the child's family (whether in relation to each other or otherwise);

(b) The respective needs and financial resources of the members of that family;

(c) The extent (if any) to which -

(i) The family home; and

(ii) Any relevant item in that home,

is used in connection with a trade, business or profession by any member of the family.

(11) The requirement referred to in subsection (9)(b) above is a requirement that the named person (whether alone or with any other person) must reside in the family home, where that home



- (a) Is or is part of an agricultural holding within the meaning of the Agricultural Holdings (Scotland) Act 1991; or
- (b) Is let, or is a home in respect of which possession is given, to the named person (whether alone or with any other person) by an employer as an incident of employment.

**(12)** In this Part of this Act -

“caravan” has the meaning given to it by section 29(1) of the Caravan Sites and Control of Development Act 1960;

“exclusion order”, includes an interim order granted under subsection (4) above and such an order confirmed or varied under subsection (5) above and an interim order granted under subsection (6) above; except that in subsection (3) above and in section 78 of this Act, it does not include an interim order granted under subsection (4) above;

“family” has the meaning given in section 93(1) of this Act;

“family home” means any house, caravan, houseboat or other structure which is used as a family residence and in which the child ordinarily resides with any person described in subsection (13) below and the expression includes any garden or other ground or building attached to and usually occupied with, or otherwise required for the amenity or convenience of, the house, caravan, houseboat or other structure.

**(13)** The description of person referred to in the definition of “family home” in subsection (12) above, is a person who has parental responsibilities in relation to the child, or who ordinarily (and other than by reason only of his employment) has charge of, or control over him.

**(Section 76)**

### Effect of an Exclusion Order

- (1)** An exclusion order shall, in respect of the home to which it relates, have the effect of suspending the named person’s rights of occupancy (if any) and shall prevent him from entering the home, except with the express permission of the local authority which applied for the order.
- (2)** The sheriff, on the application of the local authority, may, if and in so far as he thinks fit, when making an exclusion order do any of the things mentioned in subsection (3) below.
- (3)** The things referred to in subsection (2) above are
  - (a)** Grant a warrant for the summary ejection of the named person from the home;
  - (b)** Grant an interdict prohibiting the named person from entering the home without the express permission of the local authority;
  - (c)** Grant an interdict prohibiting the removal by the named person of any relevant item specified in the interdict from the home, except either
    - (i)** With the written consent of the local authority, or of an appropriate person; or
    - (ii)** By virtue of a subsequent order of the sheriff;
  - (d)** Grant an interdict prohibiting the named person from entering or remaining in a specified area in the vicinity of the home;
  - (e)** Grant an interdict prohibiting the taking by the named person of any step of a kind specified in the interdict in relation to the child;
  - (f)** Make an order regulating the contact between the child and the named person,



and the sheriff may make any other order which he considers is necessary for the proper enforcement of a remedy granted by virtue of paragraph (a), (b) or (c) of this subsection.

- (4) No warrant, interdict or order (except an interdict granted by virtue of paragraph (b) of subsection (3) above) shall be granted or made under subsection (2) above if the named person satisfies the sheriff that it is unnecessary to do so.
- (5) Where the sheriff grants a warrant of summary ejection under subsection (2) above in the absence of the named person, he may give directions as to the preservation of any of that person's goods and effects which remain in the family home.
- (6) The sheriff may make an order of the kind specified in subsection (3)(f) above irrespective of whether there has been an application for such an order.
- (7) On the application of either the named person or the local authority, the sheriff may make the exclusion order, or any remedy granted under subsection (2) above, subject to such terms and conditions as he considers appropriate.
- (8) In this Part of this Act references to a "relevant item" are references to any item within the home which both
  - (a) Is owned or hired by any member of the family concerned or an appropriate person or is being acquired by any such member or person under a hire purchase agreement or conditional sale agreement; and
  - (b) Is reasonably necessary to enable the home to be used as a family residence, but does not include any such vehicle, caravan or houseboat or such other structure so used as is mentioned in the definition of "family home" in section 76(12) of this Act.

## Powers of Arrest

- (1) The sheriff may, whether or not on an application such as is mentioned in subsection (2) below, attach a power of arrest to any interdict granted under section 77(2) of this Act by virtue of subsection (3) of that section.
- (2) A local authority may at any time while an exclusion order has effect apply for such attachment of a power of arrest as is mentioned in subsection (1) above.
- (3) A power of arrest attached to an interdict by virtue of subsection(1) above shall not have effect until such interdict, together with the attached power of arrest, is served on the named person.
- (4) If, by virtue of subsection (1) above, a power of arrest is attached to an interdict, the local authority shall, as soon as possible after the interdict, together with the attached power of arrest, is served on the named person, ensure that there is delivered:
  - (a) To the chief constable of the police area in which the family home is situated and
  - (b) Where the interdict was granted by virtue of section 77(3)(e) of this Act, to the chief constable of the area in which the step or conduct which is prevented by the interdict may take place,  
  
a copy of the application for the interdict and of the interlocutor granting the interdict together with a certificate of service of the interdict and, where the application to attach the power of arrest was made after the interdict was granted, a copy of that application and of the interlocutor above granting it and a certificate of service of the interdict together with the attached power of arrest.

## (Section 77)

- (5) Where any interdict to which a power of arrest is attached by virtue of subsection (1) above is varied or recalled, the person who applied for the variation or recall shall ensure that there is delivered to each chief constable specified in subsection (4) above a copy of the application for such variation or recall and of the interlocutor granting the variation or recall.
- (6) A constable may arrest without warrant the named person if he has reasonable cause for suspecting that person to be in breach of an interdict to which a power of arrest has been attached by virtue of subsection (1) above.
- (7) Where a person has been arrested under subsection (6) above, the constable in charge of a police station may -
- (a) If satisfied there is no likelihood of that person further breaching the interdict to which the power of arrest was attached under subsection (1) above, liberate him unconditionally; or
  - (b) Refuse to liberate that person.
- (8) Such a refusal to liberate an arrested person as is mentioned in subsection (7)(b) above, and the detention of that person until his appearance in court by virtue of either subsection (11) below, or any provision of the Criminal Procedure (Scotland) Act 1995, shall not subject that constable to any claim whatsoever.
- (9) Where a person has been liberated under subsection (7)(a) above, the facts and circumstances which gave rise to the arrest shall be reported to the procurator fiscal forthwith.
- (10) Subsections (11) to (13) below apply only where -
- (a) The arrested person has not been released under subsection (7)(a) above; and
  - (b) The procurator fiscal decides that no criminal proceedings are to be taken in respect of the facts and circumstances which gave rise to the arrest.
- (11) A person arrested under subsection (6) above shall wherever practicable be brought before the sheriff sitting as a court of summary criminal jurisdiction for the district in which he was arrested not later than in the course of the first day after the arrest, such day not being a Saturday, a Sunday or a court holiday prescribed for that court under section 8 of the said Act of 1995, on which the sheriff is not sitting for the disposal of criminal business.
- (12) Subsections (1), (2) and (4) of section 15 of the said Act of 1995 (intimation to a person named by the person arrested) shall apply to a person arrested under subsection (6) above as they apply to a person who has been arrested in respect of an offence.
- (13) Where a person is brought before the sheriff under subsection(11) above -
- (a) The procurator fiscal shall present to the court a petition containing
    - (i) A statement of the particulars of the person arrested under subsection (6) above;
    - (ii) A statement of the facts and circumstances which gave rise to that arrest; and
    - (iii) A request that the person be detained for a further period not exceeding two days;
  - (b) The sheriff, if it appears to him that
    - (i) The statement referred to in paragraph (a)(ii) above discloses a prima facie breach of interdict by the arrested person;
    - (ii) Proceedings for breach of interdict will be taken; and
    - (iii) There is a substantial risk of violence by the arrested person against any member of the family, or an appropriate person, resident in the family home,

may order the arrested person to be detained for a period not exceeding two days; and

- (c) The sheriff shall, in any case in which paragraph (b) above does not apply, order the release of the arrested person from custody (unless that person is in custody in respect of some other matter); and in computing the period of two days referred to in paragraphs(a) and (b) above, no account shall be taken of a Saturday, a Sunday or any holiday in the court in which proceedings for breach of interdict will require to be raised.

(14) Where a person -

- (a) Is liberated under subsection 7(a) above; or
- (b) Is to be brought before the sheriff under subsection (11) above,

the procurator fiscal shall at the earliest opportunity, and, in the case of a person to whom paragraph (b) above applies, before that person is brought before the sheriff, take all reasonable steps to intimate to -

- (i) The local authority which made the application for the interdict;
- (ii) An appropriate person who will reside in, or who remains in residence in, the family home mentioned in the order; and
- (iii) Any solicitor who acted for the appropriate person when the interdict was granted or to any other solicitor who the procurator fiscal has reason to believe acts for the time being for that person,

that he has decided that no criminal proceedings should be taken in respect of the facts and circumstances which gave rise to the arrest of the named person.

(Section 78 as amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995).

### ‘Significant Harm’

The welfare of the child remains paramount in all considerations regarding the application for ‘orders.’ The Act requires the condition of ‘significant harm’ to be satisfied. Whilst the term is not defined in the Act it is considered to be,

“...harm that is serious and not of a minor, transient (...for a short time only, temporary... *The Collins English Dictionary, 1986*) or superficial nature....harm will be significant only when it is clearly more serious than the potential trauma removal from home will almost inevitably cause a child.”

(K. Norrie: Footnote to Children (Scotland) Act, 1995)

### Children requiring Compulsory Measures of Supervision

- (1) The question of whether compulsory measures of supervision are necessary in respect of a child arises if at least one of the conditions mentioned in sub Section (2) below is satisfied with respect to him.
- (2) The conditions referred to sub Section (1) above are that the Child
- (a) Is beyond the control of any relevant person
- (b) Is falling into bad associations or is exposed to moral danger
- (c) Is likely
- (i) To suffer unnecessarily; or
- (ii) Be impaired seriously in his health or development, due to a lack of parental care
- (d) Is a child in respect of whom any of the offences mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children to which special provisions apply) has been committed



- (e) Is, or is likely to become, a member of the same household as child in respect of whom any of the offences referred to in paragraph (d) above has been committed.
  - (f) Is, or is likely to become, a member of the same household as a person who has committed any of the offences referred in paragraph (d) above
  - (g) Is, or is likely to become, a member of the same household as a person in respect of whom an offence under sections 1 to 3 of the Criminal Law (Consolidation) (Scotland) Act 1995 (incest and intercourse with a child by step-parent or person in position of trust) has been committed by a member of that household
  - (h) Has failed to attend school regularly without reasonable excuse
  - (i) Has committed an offence
  - (j) Has misused alcohol or any drug, whether or not a controlled drug within the meaning of the Misuse of Drugs Act 1971
  - (k) Has misused a volatile substance by deliberately inhaling its vapour, other than for medicinal purposes
  - (l) Is being provided with accommodation by a Local Authority under Section 25, or is the subject of a Parental Responsibilities order obtained under section 86, of this Act and, in either case, his behaviour is such that special measures are necessary for his adequate supervision in his interest of others
- (3) In this part of the Act ‘supervision’ in relation to compulsory measures of supervision may include measures taken for the protection, guidance, treatment and control of the child.

#### (Section 52)

#### Emergency Protection Where Protection Order Not Available

- (1) Where, on the **application of any person**, a justice of the peace is satisfied
  - (a) Both that the conditions laid down for the making of a child protection order in section 57(1) of this Act are satisfied and that it is probable that any such order, if made, would contain an authorisation in terms of paragraph (b) or (c) of subsection (4) of that section; but
  - (b) That it is not practicable in the circumstances for an application for such an order to be made to the sheriff or for the sheriff to consider such an application, he may grant to the applicant an authorisation under this section.

- (2) Where on the **application for a local authority** a justice of the peace is satisfied
  - (a) Both that the conditions laid down for the making of a child protection order in section 57(2) of this Act are satisfied and that it is probable that any such order, if made, would contain an authorisation in terms of paragraph (b) or (c) or subsection (4) of that section; but
  - (b) That it is not practicable in the circumstances for an application for such an order to be made to the sheriff or for the sheriff to consider such an application, he may grant an authorisation under this section.

- (3) An authorisation under this section may
  - (a) Require any person in a position to do so to produce the child to the applicant;
  - (b) Prevent any person from removing a child from a place where he is then being accommodated;
  - (c) Authorise the applicant to remove the child to a place of safety and to keep him there until the expiration of the authorisation.

- (4) An authorisation under this section shall cease to have effect
  - (a) Twelve hours after being made, if within that time



(i) Arrangements have not been made to prevent the

child's removal from any place specified in the authorisation; or

(ii) He has not been, or is not being, taken to a place of safety or;

(b) Where such arrangements have been made or he has been so taken when

(i) Twenty-four hours have expired since it was so given; or

(ii) An application for a child protection order in respect of the child is disposed of,

whichever is the earlier.

(5) Where a **constable has reasonable cause** to believe that

(a) The conditions for the making of a child protection order laid down in section 57(1) are satisfied;

(b) That it is not practicable in the circumstances for him to make an application for such an order to the sheriff or for the sheriff to consider such an application; and

(c) That, in order to protect the child from significant harm (or further such harm), it is necessary for him to remove the child to a place of safety, he may remove the child to such a place and keep him there.

(6) The power conferred by subsection (5) above shall not authorise the keeping of a child in a place of safety for more than twenty-four hours from the time when the child is so removed.

(7) The authority to keep a child in a place of safety conferred by subsection (5) above shall cease on the disposal of an application in relation to the child for a child protection order.

(8) A child shall not be

(a) Kept in a place of safety; or

(b) Prevented from being removed from any place, under this section where the Principal Reporter considers that the conditions for the grant of an authorisation under subsection (1) or (2) above or the exercise of the power conferred by subsection (5) above are not satisfied, or that it is no longer in the best interest of the child that he should be so kept.

#### (Section 61)

(Where Emergency Powers are used, see **Emergency Child Protection Measures (Scotland) Regulations 1996** below for notifications required)

#### Place of Safety

'Place of Safety' in relation to a child is defined as

(a) A residential establishment provided by a local authority

(b) A community home within the meaning of section 53 of the Children Act 1989

(c) A police station

(d) A hospital, or surgery, the person or body of persons responsible for the management of which is willing temporarily to receive the child;

(e) The dwelling-house of a suitable person who is so willing

(f) Any other suitable place the occupier of which is so willing

(Section 93 (1) as amended by Section 74 of the Regulation of Care (Scotland) Act 2001)



## Recovery Of Fugitive Children

- (1) A child who absconds -
- (a) From a place of safety in which he is being kept under or by virtue of this Part of this Act;
  - (b) From a place (in this section referred to as a “relevant place”) which, though not a place of safety such as is mentioned in paragraph (a) above, is a residential establishment in which he is required to reside by virtue of section 70(3)(a) of this Act or a hospital or other institution in which he is temporarily residing while subject to such a requirement; or
  - (c) From a person who, by virtue of a supervision requirement or by section 74 of this Act, has control over him while he is being taken to, is awaiting being taken to, or (whether or not by reason of being on leave) is temporarily away from, such place of safety or relevant place,

may be arrested without warrant in any part of the United Kingdom and taken to the place of safety or as the case may be the relevant place; and a court which is satisfied that there are reasonable grounds for believing that the child is within any premises may, where there is such power of arrest, grant a warrant authorising a constable to enter those premises and search for the child using reasonable force if necessary.

- (2) Without prejudice to the generality of subsection (1) above, a child who at the end of a period of leave from a place of safety or relevant place fails to return there shall, for the purposes of this section, be taken to have absconded.
- (3) A child who absconds from a person who, not being a person mentioned in paragraph (c) of subsection (1) above, is a person who has control over him by virtue of a supervision requirement may, subject to the same provisions as those to which an arrest under

that subsection is subject, be arrested as is mentioned in that subsection and returned to that person; and the provision in that subsection for a warrant to be granted shall apply as respects such a child as it applies as respects a child mentioned in that subsection.

- (4) If a child -
  - (a) Is taken under subsection (1) above to a place of safety or relevant place; or
  - (b) Is returned under subsection (3) above to a person,  
  
but the occupier of that place of safety or of that relevant place, or as the case may be that person, is unwilling or unable to receive him, that circumstance shall be intimated forthwith to the Principal Reporter.
- (5) Where intimation is required by subsection (4) above as respects a child, he shall be kept in a place of safety until -
  - (a) In a case where he is subject to a supervision requirement, he can be brought before a children’s hearing for that requirement to be reviewed; or
  - (b) In any other case, the Principal Reporter has, in accordance with section 56(6) of this Act, considered whether compulsory measures of supervision are required in respect of him.

## (Section 82)

## Harbouring

- (1) A person who
  - (a) Knowingly assists or induces a child to abscond in circumstances which render the child liable to arrest under subsection (1) or (3) of section 82 of this Act;



- (b) Knowingly and persistently attempts to induce a child so to abscond;
- (c) Knowingly harbours or conceals a child who has so absconded; or
- (d) Knowingly prevents a child from returning -
  - (i) To a place mentioned in paragraph (a) or (b) of the said subsection (1);
  - (ii) To a person mentioned in paragraph (c) of that subsection, or in the said subsection (3),

shall, subject to section 38(3) and (4) of this Act, to section 52(5) and (6) of the Children Act 1989 and to Article 70(5) and (6) of the Children (Northern Ireland) Order 1995 (analogous provision for England and Wales and for Northern Ireland), be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

### (Section 83)

**Emergency Child Protection Measures (Scotland) Regulations 1996** require certain persons to be informed when a child is removed to place of safety.

As soon as reasonably practicable after a child has been removed by a constable to a place of safety under section 61(5) of the Act, a constable shall, subject to regulation 5 below, take such steps as are reasonably practicable to inform the following persons of the matters specified in regulation 4 below:

- (a) Any relevant person in relation to the child;
- (b) Any person, other than a relevant person, with whom the child was residing immediately before being removed to the place of safety;

- (c) The local authority for the area in which the place of safety to which the child was removed is situated;
- (d) Where not falling within paragraph (c) above, the local authority for the area in which the child is ordinarily resident;
- (e) The local authority for the area in which the child was residing immediately before being removed to a place of safety (where they are not the authority under (c) or (d) of this regulation); and
- (f) The Principal Reporter.

### (Regulation 3)

The following matters are specified as matters on which the persons mentioned in regulation 3 above are to be informed:

- (a) The removal of the child by a constable to a place of safety;
- (b) The place of safety at which the child is being, or is to be, kept;
- (c) The reasons for the removal of the child to a place of safety; and
- (d) Any other steps which a constable has taken or is taking to safeguard the welfare of the child while in a place of safety.

### (Regulation 4)

Where a constable is informing the persons mentioned in paragraphs (a) and (b) of regulation 3 above, he may, where he considers it necessary to do so in order to safeguard the welfare of the child, withhold from those persons any of the information specified in regulation 4(b) and (d) above.

### (Regulation 5)



Where a child has been removed to a place of safety by a constable under section 61(5) of the Act, a constable keeping him in a place of safety shall, subject to subsections (6) to (8) of that section, continue to so keep him only so long as he has reasonable cause to believe that

- (a) The conditions for the making of a child protection order laid down in section 57(1) of the Act are satisfied; and
- (b) It is necessary to keep the child in a place of safety in order to protect him from significant harm (or further such harm).

#### **(Regulation 6)**

The following is **further legislation** that impacts on Child Protection

#### **Sexual Offences (Amendment) Act 2000 Abuse of position of Trust**

- (1) Subject to subsections (2) and (3) below, it shall be an offence for a person aged 18 or over
  - (a) To have sexual intercourse (whether vaginal or anal) with a person under that age; or
  - (b) To engage in any other sexual activity with or directed towards such a person, if (in either case) he is in a position of trust in relation to that person.
- (2) Where a person (“A”) is charged with an offence under this section of having sexual intercourse with, or engaging in any other sexual activity with or directed towards, another person (“B”), it shall be a defence for A to prove that, at the time of the intercourse or activity
  - (a) He did not know, and could not reasonably have been expected to know, that B was under 18;
  - (b) He did not know, and could not reasonably have been expected to know, that B was a person in relation to whom he was in a position of trust; or

(c) He was lawfully married to B.

- (3) It shall not be an offence under this section for a person (“A”) to have sexual intercourse with, or engage in any other sexual activity with or directed towards, another person (“B”) if immediately before the commencement of this Act
  - (a) A was in a position of trust in relation to B; and
  - (b) A sexual relationship existed between them.
- (4) A person guilty of an offence under this section shall be liable
  - (a) On summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both;
  - (b) On conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both.
- (5) In this section, “sexual activity”
  - (a) Does not include any activity which a reasonable person would regard as sexual only with knowledge of the intentions, motives or feelings of the parties; but
  - (b) Subject to that, means any activity which such a person would regard as sexual in all the circumstances. **(Section 3)**

#### **Meaning of “position of trust”**

- (1) For the purposes of section 3 above, a person aged 18 or over (“A”) is in a position of trust in relation to a person under that age (“B”) if any of the four conditions set out below, or any condition specified in an order made by the Secretary of State by statutory instrument, is fulfilled.



(2) The first condition is that A looks after persons under 18 who are detained in an institution by virtue of an order of a court or under an enactment, and B is so detained in that institution.

(3) The second condition is that A looks after persons under 18 who are resident in a home or other place in which

- (a) Accommodation and maintenance are provided by an authority under section 23(2) of the Children Act 1989 or Article 27(2) of the Children (Northern Ireland) Order 1995;
- (b) Accommodation is provided by a voluntary organisation under section 59(1) of that Act or Article 75(1) of that Order; or
- (c) Accommodation is provided by an authority under section 26(1) of the Children (Scotland) Act 1995,

and B is resident, and is so provided with accommodation and maintenance or accommodation, in that place.

(4) The third condition is that A looks after persons under 18 who are accommodated and cared for in an institution which is

- (a) A hospital;
- (b) A residential care home, nursing home, mental nursing home or private hospital;
- (c) A community home, voluntary home, children's home or residential establishment; or
- (d) A home provided under section 82(5) of the Children Act 1989,

and B is accommodated and cared for in that institution.

(5) The fourth condition is that A looks after persons under 18 who are receiving full-time education at an educational institution, and B is receiving such education at that institution.

(6) No order shall be made under subsection (1) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(7) A person looks after persons under 18 for the purposes of this section if he is regularly involved in caring for, training, supervising or being in sole charge of such persons.

(8) For the purposes of this section a person receives full-time education at an educational institution if

- (a) He is registered or otherwise enrolled as a full-time pupil or student at the institution; or
- (b) He receives education at the institution under arrangements with another educational institution at which he is so registered or otherwise enrolled.

(9) In this section, except where the context otherwise requires

“authority” means

- (a) In relation to Great Britain, a local authority

“community home” has the meaning given by section 53(1) of the Children Act 1989

“hospital” has

- (b) In relation to Scotland, the meaning given by section 108(1) of the National Health Service (Scotland) Act 1978

“mental nursing home”

- (b) In relation to Scotland, means a nursing home registered under section 1 of the Nursing Homes Registration (Scotland) Act 1938

“private hospital”

- (a) In relation to Scotland, means “private psychiatric hospital” within the meaning of section 77(1) of the Regulation of Care (Scotland) Act 2001 (asp 8)



“residential care home”

- (b) In relation to Scotland, means an establishment in respect of which a person is registered under section 62 or 63 of the Social Work (Scotland) Act 1968

“residential establishment” has the meaning given by section 93(1) of the Children (Scotland) Act 1995 as the meaning of that expression in relation to a place in Scotland

**(Section 4** as amended by the Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005).

#### **Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005**

Meeting a child following certain preliminary contact

**(1)** A person (“A”) commits an offence if

- (a) Having met or communicated with another person (“B”) on at least one earlier occasion, A
  - (i) Intentionally meets B;
  - (ii) Travels, in any part of the world, with the intention of meeting B in any part of the world; or
  - (iii) Makes arrangements, in any part of the world, with the intention of meeting B in any part of the world, for B to travel in any part of the world;
- (b) At the time, A intends to engage in unlawful sexual activity involving B or in the presence of B
  - (i) During or after the meeting; and
  - (ii) In any part of the world;
- (c) B is
  - (i) Aged under 16; or
  - (ii) A constable;

(d) A does not reasonably believe that B is 16 or over; and

(e) At least one of the following is the case

- (i) The meeting or communication on an earlier occasion referred to in paragraph (a) (or, if there is more than one, one of them) has a relevant Scottish connection;
- (ii) The meeting referred to in sub-paragraph (i) of that paragraph or, as the case may be, the travelling referred to in sub-paragraph (ii) of that paragraph or the making of arrangements referred to in sub-paragraph (iii) of that paragraph, has a relevant Scottish connection;
- (iii) A is a British citizen or resident in the United Kingdom.

**(2)** In subsection (1) above

- (a) The reference to A’s having met or communicated with B is a reference to A’s having met B in any part of the world or having communicated with B by any means from or in any part of the world (and irrespective of where B is in the world); and
- (b) meeting or travelling or making of arrangements has a relevant Scottish connection if it, or any part of it, takes place in Scotland; and a communication has such a connection if it is made from or to or takes place in Scotland.

**(3)** or the purposes of subsection (1)(b) above, it is not necessary to allege or prove that A intended to engage in a specific activity.

**(4)** A person guilty of an offence under this section is liable

- (a) On summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) On conviction on indictment, to imprisonment for a term not exceeding 10 years or a fine or both.

(5) Subsections (6A) and (6B) of section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 (which determines the sheriff court district in which proceedings against persons committing certain sexual acts outside the United Kingdom are to be taken) apply in relation to proceedings for an offence under this section as they apply to an offence to which that section applies.

#### (Section 1).

The Act also makes provision in regard to application, grounds, effects (Section 2), variation, renewal and discharge (Section 4) of **Risk of Sexual Harm Orders** designed to protect children from sexual behaviour.

The Act further creates offences of paying for sexual services of a child (section 9), causing or inciting provision by child of sexual services or pornography (Section 10), controlling a child providing sexual services or pornography (Section 11) and arranging or facilitating a child providing sexual services or pornography (Section 12).

### Prohibition of Female Genital Mutilation (Scotland) Act 2005

Offence of female genital mutilation

(1) A person who performs an action mentioned in subsection (2) in relation to the whole or any part of the labia majora, labia minora, prepuce of the clitoris, clitoris or vagina of another person is guilty of an offence.

(2) Those actions are-

- (a) Excising it;
- (b) Infibulating it; or
- (c) Otherwise mutilating it.

(3) No offence under subsection (1) is committed by an approved person who performs an action mentioned in subsection (4).

(4) Those actions are-

- (a) A surgical operation on another person which is necessary for that other person's physical or mental health; or
- (b) A surgical operation on another person who is in any stage of labour or has just given birth, for purposes connected with the labour or birth.

(5) The following are, for the purposes of this Act, approved persons-

- (a) In relation to an action falling within paragraph (a) of subsection(4), a registered medical practitioner;
- (b) In relation to an action falling within paragraph (b) of that subsection, a registered medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming such a practitioner or midwife.

(6) For the purposes of determining whether an operation is necessary for the mental health of a person, it is immaterial whether that or any other person believes that the operation is required as a matter of custom or ritual.

#### (Section 1)

### Aiding and abetting female genital mutilation

(1) A person who aids, abets, counsels, procures or incites-

- (a) A person to commit an offence under section 1;
- (b) Another person to perform an action mentioned in section 1(2) in relation to the whole or any part of that other person's own labia majora, labia minora, prepuce of the clitoris, clitoris or vagina; or



- (c) A person who is not a United Kingdom national or permanent United Kingdom resident to do a relevant act of genital mutilation outside the United Kingdom, commits an offence.
- (2) An act is a relevant act of genital mutilation if it would, if done by a United Kingdom national or permanent United Kingdom resident, constitute an offence under section 1.
- (3) No offence under subsection (1)(c) is committed if the relevant act of genital mutilation-
  - (a) Is an action mentioned in section 1(4); and
  - (b) Is performed by a person who, in relation to the action, is an approved person or provides services corresponding to those of an approved person.

**(Section 3)**

**Tattooing Of Minors Act, 1969**

Prohibition

It shall be an offence to tattoo a person under the age of eighteen except when the tattoo is performed for medical reasons by a duly qualified medical practitioner or by a person working under his direction, but it shall be a defence for a person charged to show that at the time the tattoo was performed he had reasonable cause to believe that the person tattooed was of or over the age of eighteen and did in fact so believe.

**(Section 1).**

For the purposes of this Act “tattoo” shall mean the insertion into the skin of any colouring material designed to leave a permanent mark.

**(Section 3).**

**Child Abduction Act, 1984**

Parent, Etc. Taking Or Sending Child Out Of U.K.

- (1) Subject to subsections (4) and (5) below, a person connected with a child under the age of sixteen years commits an offence if he takes or sends the child out of the United Kingdom
  - (a) Without the appropriate consent if there is in respect of the child
    - (i) An order of a court in the United Kingdom awarding custody of the child to any person; or
    - (ii) An order of a court in England, Wales or Northern Ireland making the child a ward of court;
  - (b) If there is in respect of the child an order of a court in the United Kingdom prohibiting the removal of the child from the United Kingdom or any part of it.
- (2) A person is connected with a child for the purposes of this section if
  - (a) He is a parent or guardian of the child; or
  - (b) There is in force an order of a court in the United Kingdom awarding custody of the child to him (whether solely or jointly with any other person); or
  - (c) In the case of a child whose parents are not and have never been married to one another, there are reasonable grounds for believing that he is the father of the child.
- (3) In this section, the “appropriate consent” means
  - (a) In relation to a child to whom subsection (1)(a)(i) above applies
    - (i) The consent of each person



(a) Who is a parent or guardian of the child;  
or

(b) To whom custody of the child has been awarded (whether solely or jointly with any person) by an order of a court in the United Kingdom; or

(ii) The leave of that court;

(b) In relation to a child to whom subsection (1)(a)(ii) above applies, the leave of the court which made the child a ward of court;

provided that, in relation to a child to whom more than one order referred to in subsection (1)(a) above applies, the appropriate consent may be that of any court which has granted an order as referred to in the said subsection (1)(a); and where one of these orders is an order referred to in the said subsection (1)(a)(ii) no other person as referred to in paragraph (a)(i) above shall be entitled to give the appropriate consent.

(4) In relation to a child to whom subsection (1)(a)(i) above applies, a person does not commit an offence by doing anything without the appropriate consent if

(a) He does it in the belief that each person referred to in subsection (3)(a)(i) above

(i) Has consent; or

(ii) Would consent if he was aware of all the relevant circumstances; or

(b) He has taken all reasonable steps to communicate with such other person but has been unable to communicate with him.

(5) In proceedings against any person for an offence under this section it shall be a defence for that person to show that at the time of the alleged offence he had no reason to believe that there was in existence an order referred to in subsection (1) above.

(6) For the purposes of this section

(a) A person shall be regarded as taking a child if he causes or induces the child to accompany him or any other person, or causes the child to be taken; and

(b) A person shall be regarded as sending a child if he causes the child to be sent.

(7) In this section “guardian” means a person appointed by deed or will or by order of a court of competent jurisdiction to be the guardian of a child.

(Section 6, as amended by Schedule 1, Law Reform (Parent and Child) (Scotland) Act, 1986 and the Age of Legal Capacity (Scotland) Act, 1991).

### Power Of Arrest

A constable may arrest without warrant any person whom he reasonably suspects of committing or having committed an offence under this Part of this Act.

(Section 7).

### Children Act, 1989

#### Registration of Child Minders

Part X of this Act requires Local Authorities to register persons who act as child minders for reward or who provide day care for children. Local Authorities enforce this Act.

### Surrogacy Arrangements Act 1985

#### Meaning of terms

(1) The following provisions shall have effect for the interpretation of this Act.

(2) “Surrogate mother” means a woman who carries a child in pursuance of an arrangement—

(a) Made before she began to carry the child, and

(b) Made with a view to any child carried in pursuance of it being handed over to, and the parental rights being exercised (so far as practicable) by, another person or other persons.

- (3) An arrangement is a surrogacy arrangement if were a woman to whom the arrangement relates to carry a child in pursuance of it, she would be a surrogate mother.
- (4) In determining whether an arrangement is made with such a view as is mentioned in subsection (2) above regard may be had to the circumstances as a whole (and, in particular, where there is a promise or understanding that any payment will or may be made to the woman or for her benefit in respect of the carrying of any child in pursuance of the arrangement, to that promise or understanding).
- (5) An arrangement may be regarded as made with such a view though subject to conditions relating to the handing over of any child.
- (6) A woman who carries a child is to be treated for the purposes of subsection (2)(a) above as beginning to carry if at the time of the insemination or of the placing in her of an embryo, of an egg in the process of fertilisation or of sperm and eggs as the case may be that results in her carrying the child.
- (7) “Body of persons” means a body of persons corporate or unincorporate.
- (8) “Payment” means payment in money or money’s worth.
- (9) This Act applies to arrangements whether or not they are lawful. (**Section 1**, as amended by Human Fertilisation and Embryology Act, 1990).

No surrogacy arrangement is enforceable by or against any of the persons making it.

(**Section 1A**, as inserted by Human Fertilisation and Embryology Act, 1990).

### Negotiating On A Commercial Basis, Etc.

- (1) No person shall on a commercial basis do any of the following acts in the United Kingdom, that is—
  - (a) Initiate or take part in any negotiations with a view to the making of a surrogacy arrangement,
  - (b) Offer or agree to negotiate the making of a surrogacy arrangement, or
  - (c) Compile any information with a view to its use in making, or negotiating the making of surrogacy arrangements, and no person shall in the United Kingdom knowingly cause another to do any of those acts on a commercial basis.
- (2) A person who contravenes subsection (1) above is guilty of an offence; but it is not a contravention of that subsection—
  - (a) For a woman, with a view to becoming a surrogate mother herself, to do any act mentioned in that subsection or to cause such an act to be done, or
  - (b) For any person, with a view to a surrogate mother carrying a child for him, to do such an act or to cause such an act to be done.
- (3) For the purposes of this section, a person does an act on a commercial basis (subject to subsection (4) below) if—
  - (a) Any payment is at any time received by himself or another in respect of it, or
  - (b) He does it with a view to any payment being received by himself or another in respect of making, or negotiating or facilitating the making of any surrogacy arrangement.

In this subsection “payment” does not include payment to or for the benefit of a surrogate mother or prospective surrogate mother.

**(4)** In proceedings against a person for an offence under subsection (1), above, he is not to be treated as doing an act on a commercial basis by reason of any payment received by another in respect of the act if it is proved that—

- (a)** In a case where the payment was received before he did the act, he did not do the act knowingly or having reasonable cause to suspect that any payment had been received in respect of the act; and
- (b)** In any other case, he did not do the act with a view to any payment being received in respect of it.

**(5)** Where—

- (a)** A person acting on behalf of a body of persons takes any part in negotiating or facilitating the making of a surrogacy arrangement in the United Kingdom, and
- (b)** Negotiating or facilitating the making of surrogacy arrangements is an activity of the body, then, if the body at any time receives any payment made by or on behalf of—
  - (i)** A woman who carries a child in pursuance of the arrangement,
  - (ii)** The person or persons for whom she carries it, or
  - (iii)** Any person connected with the woman or with that person or those persons, the body is guilty of an offence.

For the purposes of this subsection, a payment received by a person connected with a body is to be treated as received by the body.

**(6)** In proceedings against a body for an offence under subsection(5) above, it is a defence to prove that the payment concerned was not made in respect of the arrangement mentioned in paragraph (a) of that subsection.

**(7)** A person who in the United Kingdom takes part in the management or control—

- (a)** Of any body of persons, or
- (b)** Of any of the activities of any body of persons,

is guilty of an offence if the activity described in subsection (8) below is an activity of the body concerned.

**(8)** The activity referred to in subsection (7) above is negotiating or facilitating the making of surrogacy arrangements in the United Kingdom, being—

- (a)** Arrangements the making of which is negotiated or facilitated on a commercial basis, or
- (b)** Arrangements in the case of which payments are received (or treated for the purposes of subsection (5) above as received) by the body concerned in contravention of subsection (5) above.

**(9)** In proceedings against a person for an offence under subsection(7) above, it is a defence to prove that he neither knew nor had reasonable cause to suspect that the activity described in subsection (8) above was an activity of the body concerned; and for the purposes of such proceedings any arrangement falling within subsection (8)(b) above shall be disregarded if it is proved that the payment concerned was not made in respect of the arrangement.

**(Section 2).**

### **Advertisements About Surrogacy**

**(1)** This section applies to any advertisement containing an indication (however expressed)—

- (a)** That any person is or may be willing to enter into a surrogacy arrangement or to negotiate or facilitate the making of a surrogacy arrangement, or

- (b) That any person is looking for a woman willing to become a surrogate mother or for persons wanting a woman to carry a child as a surrogate mother.
- (2) Where a newspaper or periodical containing an advertisement to which this section applies is published in the United Kingdom, any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence.
  - (3) Where an advertisement to which this section applies is conveyed by means of a telecommunication system so as to be seen or heard (or both) in the United Kingdom, any person who in the United Kingdom causes it to be so conveyed knowing it to contain such an indication as is mentioned in subsection (1) above is guilty of an offence.
  - (4) A person who publishes or causes to be published in the United Kingdom an advertisement to which this section applies (not being an advertisement contained in a newspaper or periodical or conveyed by means of a telecommunication system) is guilty of an offence.
  - (5) A person who distributes or causes to be distributed in the United Kingdom an advertisement to which this section applies (not being an advertisement contained in a newspaper or periodical published outside the United Kingdom or an advertisement conveyed by means of a telecommunication system) knowing it to contain such an indication as is mentioned in subsection (1) above is guilty of an offence.
  - (6) In this section “telecommunication system” has the same meaning as in the Telecommunications Act 1984.
- (a) In the case of an offence under Section 2 to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or both,
  - (b) In the case of an offence under Section 3 to a fine not exceeding level 5 on the standard scale.
- (3) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.
  - (4) Where the affairs of a body corporate are managed by its members, subsection (3) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
  - (5) In any proceedings for an offence under Section 2 of this Act, proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in the management or control of a body of persons or of any of the activities of the body, or by any person doing any of the acts mentioned in subsection (1)(a) to (c) of that section on behalf of the body, shall be admissible as evidence of the activities of the body.
  - (6) In relation to an offence under this Act, Section 136(1) of the Criminal Procedure (Scotland) Act 1995 (proceedings must be commenced within that time) shall have effect as if for the reference to six months there were substituted a reference to two years.

### **(Section 3)**

#### **Offences**

- (1) A person guilty of an offence under this Act shall be liable on summary conviction—

**(Section 4, as amended by Criminal Procedure (Consequential Provisions) (Scotland) Act, 1995).**



## Civic Government (Scotland) Act 1982

### 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.
- (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.
- (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.
- (3) A person guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a period not exceeding 6 months or to both or on conviction on indictment, to a fine or to imprisonment for a period not exceeding 3 years 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 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—
  - (b) Included in a performance of a play (within the meaning of the Theatres Act 1968).
- (8) In this section—

“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;

“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;

“prescribed sum” has the same meaning as in Section 225(8) of the Criminal Procedure (Scotland) Act 1995;

“programme” and “programme service” have the same meaning as in the Broadcasting Act, 1990;

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

**(Section 51, as amended by Cable and Broadcasting Act, 1984, Broadcasting Act, 1990, Criminal Justice and Public Order Act, 1994, and Criminal Procedure (Consequential Provisions) (Scotland) Act, 1995)**

### Indecent Child Photographs

- (1) Any person who—
  - (a) Takes, or permits to be taken or makes, any indecent photograph or pseudo-photograph of a child;
  - (b) Distributes or shows such an indecent photograph or pseudo-photograph;

- (c) Has in his possession such an indecent photograph 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 or pseudo-photograph, or intends to do so,

shall be guilty of an offence under this section.

- (2) In subsection (1) above “child” means, subject to subsection(2B) below, a person under the age of 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 18.

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

- (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 a 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 6 months or to a fine not exceeding the prescribed sum within the meaning of Section 225(8) of

the Criminal Procedure (Scotland) Act 1995 or to both;

- (b) On conviction on indictment, to imprisonment for a period not exceeding 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 or pseudo-photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person.

- (5) Where a person is charged with an offence 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 or pseudo-photograph or (as the case may be) having it in his possession; or

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

- (8) In this section—

- (a) References to an indecent photograph includes 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;

- (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 electronic means which is capable of conversion into a photograph;

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

(Section 52, as amended by the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005).



## Possession of Photographs

- (1) It is an offence for a person to have any indecent photograph 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 or pseudo- photograph in his possession; or
  - (b) That he had not himself seen the photograph or pseudo-photograph and did not know, nor had any cause to suspect, it to be indecent; or
  - (c) That the photograph 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
  - (a) On summary conviction of an offence under this section to imprisonment for a period not exceeding 6 months or to a fine not exceeding level 5 on the standard scale or to both,
  - (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) to (2C) and (8) of Section 52 of this Act shall have effect for the purposes of this section as they have for the purposes of that section.

(Section 52A, as inserted by the Criminal Justice Act 1988, and amended by Criminal Justice and Public Order Act 1994 and the Criminal Justice (Scotland) Act 2003).

## Interpretation

“public place” means any place (whether a thoroughfare or not) to which the public have unrestricted access and includes—

- (a) The doorways or entrances of premises abutting on any such place; and
- (b) Any common passage, close, court, stair, garden or yard pertinent to any tenement or group of separately owned houses.

(Section 133).

## Protection from Abuse (Scotland) Act 2001

### Attachment of Power of Arrest to Interdict

- (1) A person who is applying for, or who has obtained, an interdict for the purpose of protection against abuse may apply to the court for a power of arrest to be attached to the interdict under this Act.
- (2) The court must, on such application, attach a power of arrest to the interdict if satisfied that—
  - (a) The interdicted person has been given an opportunity to be heard by, or represented before, the court;
  - (b) Attaching the power of arrest would not result in the interdicted person being subject, in relation to the interdict, to a power of arrest under both this Act and the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59); and
  - (c) Attaching the power of arrest is necessary to protect the applicant from a risk of abuse in breach of the interdict.
- (3) The court, on attaching a power of arrest, must specify a date of expiry for the power, being a date not later than three years after the date when the power is attached.

(Section 1).

### **Duration, extension and recall**

- (1)** A power of arrest comes into effect only when it has been served on the interdicted person along with such documents as may be prescribed.
- (2)** A power of arrest ceases to have effect-
  - (a)** On the date of expiry specified by the court;
  - (b)** When it is recalled by the court; or
  - (c)** When the interdict to which the power is attached is varied or recalled,  
whichever is the earliest.
- (3)** The duration of a power of arrest must, on the application of the person who obtained it, be extended by the court, if satisfied that-
  - (a)** The interdicted person has been given an opportunity to be heard by, or represented before, the court; and
  - (b)** The extension is necessary to protect the applicant from a risk of abuse in breach of the interdict.
- (4)** The court, on extending the duration of a power of arrest, must specify a new date of expiry for the power, being a date not later than three years after the date when the extension is granted.
- (5)** Where the duration of a power of arrest has been extended-
  - (a)** The extension comes into effect only when it has been served on the interdicted person along with such documents as may be prescribed; and
  - (b)** Subsection(2) applies as if the date referred to in paragraph (a) of that subsection were the new date of expiry specified by the court in granting the extension.
- (6)** Subsections (3), (4) and (5) apply to further extensions as they apply to an initial extension.

- (7)** A power of arrest must be recalled by the court if -
  - (a)** The person who obtained it applies for recall; or
  - (b)** The interdicted person applies for recall and the court is satisfied that-
    - (i)** The person who obtained the power has been given an opportunity to be heard by, or represented before, the court; and
    - (ii)** The power is no longer necessary to protect that person from a risk of abuse in breach of the interdict.

**(Section 2).**

### **Notification to police**

- (1)** As soon as possible after-
  - (a)** A power of arrest has been served;
  - (b)** An extension of the duration of a power of arrest has been served;
  - (c)** A recall of a power of arrest has been granted; or
  - (d)** The relevant interdict has been varied or recalled,  
  
the person who has obtained such power, extension, variation or recall, or such other person as may be prescribed, must deliver such documents as may be prescribed to the chief constable of any police area in which the relevant interdict has effect or (in the case of paragraph (d)) had effect before it was varied or recalled.
- (2)** In this section “relevant interdict” means the interdict to which the power of arrest is or was attached.

**(Section 3).**

## Powers and duties of police

- (1) Where a power of arrest attached to an interdict has effect a constable may arrest the interdicted person without warrant if the constable-
  - (a) Has reasonable cause for suspecting that person of being in breach of the interdict; and
  - (b) Considers that there would, if that person were not arrested, be a risk of abuse or further abuse by that person in breach of the interdict.
- (2) A person who is arrested under subsection (1) must be informed immediately of the reason for the arrest and must thereafter be taken to a police station as quickly as is reasonably practicable and detained until-
  - (a) Accused on petition or charged on complaint with an offence in respect of the facts and circumstances giving rise to the arrest; or
  - (b) Brought before a court under section 5.
- (3) A person who is detained under subsection (2) is entitled-
  - (a) To be informed immediately of the rights given by paragraphs (b) to (e);
  - (b) To have, on request, intimation of the detention and of the place of detention sent, without delay, to a solicitor and to one other person reasonably named by the detained person;
  - (c) To have, on request, intimation given to a solicitor that the solicitor's professional assistance is required;
  - (d) To have, on request, the solicitor informed, as soon as the information is available, of the court to which the detained person is to be taken and the date when that is to happen; and
  - (e) To have, on request, a private interview with the solicitor before any appearance in court under this Act.
- (4) Where a person detained under subsection (2) appears to the officer in charge of the police station to be under 16 years of age the officer must where practicable, without delay and in addition to complying with subsection (3), send intimation of the detention and of the place of detention to any person known to have parental responsibilities and rights in relation to the detained person or to have care of that person; and any person to whom such intimation is given must be permitted reasonable access to the detained person.
- (5) The following matters are to be recorded by the police in connection with the detention of a person under subsection (2)-
  - (a) The time at which the person was arrested;
  - (b) The police station to which the person was taken;
  - (c) The time when the person arrived at that police station;
  - (d) The address of any other place to which the person is, during the detention, thereafter taken;
  - (e) The time when the person was informed of the rights given by subsection (3);
  - (f) The time and nature of any request made by the person under subsection (3); and
  - (g) The time and nature of any action taken by a police officer under subsection (3) or (4).
- (6) When a person has been arrested under this section the facts and circumstances giving rise to the arrest must be reported to the procurator fiscal as soon as is practicable.

## (Section 4).

## Court appearance

- (1) If the procurator fiscal decides that no criminal proceedings are to be taken in respect of the facts and circumstances which gave rise to the arrest, the detained person must wherever practicable be brought before the sheriff sitting as a court of summary criminal jurisdiction for the district in which the person was arrested not later than in the course of the first day after the arrest, such day not being a Saturday, a Sunday or a court holiday for that court.
- (2) Nothing in subsection (1) prevents the detained person from being brought before the sheriff on a Saturday, a Sunday or a court holiday if the sheriff is sitting on such a day for the disposal of criminal business.
- (3) When the detained person is brought before the sheriff under this section the procurator fiscal must present to the court a petition-
  - (a) Giving particulars of the detained person;
  - (b) Stating the facts and circumstances which gave rise to the arrest;
  - (c) Giving any information known to the procurator fiscal about the circumstances which gave rise to the interdict and the attachment of the power of arrest;
  - (d) Giving any other information known to the procurator fiscal and relevant to an assessment of the risk of abuse or further abuse in breach of the interdict; and
  - (e) Requesting the court to consider whether, on the information presented, a further period of detention is justified.
- (4) If it appears to the sheriff, after affording the detained person the opportunity to make representations, that-
  - (a) The information presented to the court discloses a prima facie breach of the interdict by that person; and

- (b) There would, if further detention were not ordered, be a substantial risk of abuse or further abuse by that person in breach of the interdict,

the sheriff may order that person to be detained for a further period not exceeding 2 days.

- (5) If the sheriff does not order further detention the detained person must, unless in custody in respect of any other matter, be released from custody.

## (Section 5)

### Interpretation

In this Act, unless the context otherwise requires-

“abuse” includes violence, harassment, threatening conduct, and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress;

“conduct” includes-

- (a) Speech; and
- (b) Presence in a specified place or area;

“court” means the Court of Session or a sheriff;

“documents” includes documents in electronic form;

“interdict” includes interim interdict;

“interdicted person” means-

- (a) In section 1, the person against whom the power of arrest is sought (being the person or one of the persons prohibited by the interdict mentioned in subsection (1) of that section); and
- (b) In sections 2 and 4, the person against whom the power of arrest has been granted;



“parental responsibilities and rights” has the same meaning as in the Children (Scotland) Act 1995;

“person” means natural person;

“power of arrest” means a power of arrest under this Act; and

“prescribed” means prescribed by rules of court.  
**(Section 7)**

### **Protection of Children (Scotland) Act 2003**

Duty of Scottish Ministers to keep list

- (1)** The Scottish Ministers shall keep a list of individuals whom they consider to be unsuitable to work with children.
- (2)** An individual may be included in the list only in accordance with section 5, 6 or 10 below.
- (3)** The Scottish Ministers may at any time remove an individual from the list if they are satisfied that the individual should not have been included in it.

**(Section 1)**

### **Reference following disciplinary action etc.**

- (1)** An organisation shall refer to the Scottish Ministers the case of an individual who is or has been working in a child care position if-
  - (a)** Any of the circumstances mentioned in subsection (3) below; or
  - (b)** The circumstance mentioned in subsection (4) below,  
  
has arisen.
- (2)** An organisation which fails to comply with the duty imposed by subsection (1) above is, subject to subsection (5) below, guilty of an offence and liable-

- (a)** On summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
  - (b)** On a conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.
- (3)** The circumstances referred to in subsection (1)(a) above are-
- (a)** That the organisation has dismissed the individual on the ground that the individual has (whether or not in the course of the individual’s work) harmed a child or placed a child at risk of harm;
  - (b)** That the individual has resigned, retired or been made redundant in circumstances such that the organisation would have dismissed the individual, or would have considered dismissing the individual, on such ground if the individual had not resigned, retired or been made redundant;
  - (c)** That the organisation has, on such ground, transferred the individual to a position within the organisation which is not a child care position;
  - (d)** That the individual is, or was, employed by the organisation for a fixed term and the organisation has formed the opinion that-
    - (i)** If the individual’s employment was not due to expire at the end of the fixed term, the organisation would dismiss the individual, or would consider dismissing the individual, on such ground; or
    - (ii)** If the individual’s employment has expired at the end of the fixed term, the organisation, if the individual were still employed by the organisation, would have dismissed the individual, or would have considered dismissing the individual, on such ground.

- (4)** The circumstance referred to in subsection (1)(b) above is that-
- (a)** The individual has, in circumstances not falling within subsection(3) above-
    - (i)** Been dismissed by the organisation;
    - (ii)** Resigned, retired or been made redundant; or
    - (iii)** Been transferred by the organisation to a position within the organisation which is not a child care position;
  - (b)** Information not available to the organisation at the time of the dismissal, resignation, retirement, redundancy or transfer has since become available; and
  - (c)** The organisation has formed the opinion that, if that information had been available at that time and if (where applicable) the individual had not resigned, retired or been made redundant, the organisation would have dismissed the individual, or would have considered dismissing the individual, on such ground as is mentioned in subsection (3)(a) above.
- (5)** An organisation may (but, despite subsection (1) above, need not) refer the case of an individual to the Scottish Ministers under this section where the dismissal, resignation, retirement, redundancy, transfer or suspension took place or, as the case may be, the organisation's opinion was formed before the date on which this section comes into force.

**(Section 2)**

**Reference by employment agency etc.**

An organisation which carries on an employment agency or an agency for the supply of nurses:

- (1)** An organisation may refer to the Scottish Ministers the case of an individual who is or has been working in a child care position if-
  - (a)** The organisation has decided not to do any further business with the individual on the ground that the individual has (whether or not in the course of the individual's work) harmed a child or placed a child at risk of harm; or
  - (b)** The organisation has decided on such ground not to find the individual further work, or to offer or supply the individual for further work, in a child care position.
- (2)** An organisation may (but, despite subsection (1) above, need not) refer the case of an individual to the Scottish Ministers under this section where the dismissal, resignation, retirement, redundancy, transfer or suspension took place or, as the case may be, the organisation's opinion was formed before the date on which this section comes into force.

In relation to an organisation which carries on an employment business:

- (1)** An organisation shall refer to the Scottish Ministers the case of an individual who has been offered or supplied by the organisation for work in a child care position if-
  - (a)** Any of the circumstances mentioned in subsection (3) below has arisen.
- (2)** An organisation which fails to comply with the duty imposed by subsection (1) above is, subject to subsection (5) below, guilty of an offence and liable-
  - (a)** On summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;



- (b) On a conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.
- (3) The circumstances referred to in subsection (1)(a) above are-
  - (a) That the organisation has dismissed the individual on the ground that the individual has (whether or not in the course of the individual's work) harmed a child or placed a child at risk of harm;
  - (b) That the individual has resigned, retired or been made redundant in circumstances such that the organisation would have dismissed the individual, or would have considered dismissing the individual, on such ground if the individual had not resigned, retired or been made redundant;
  - (c) That the organisation has, on such ground, decided not to offer or supply the individual for further work in a child care position.
- (5) An organisation may (but, despite subsection (1) above, need not) refer the case of an individual to the Scottish Ministers under this section where the dismissal, resignation, retirement, redundancy, transfer or suspension took place or, as the case may be, the organisation's opinion was formed before the date on which this section comes into force.

### (Section 3)

#### Reference by certain other persons

- (1) A person to whom this section applies may refer to the Scottish Ministers the case of an individual who is or has been working in a child care position if-
  - (a) On the basis of evidence obtained by the person in the exercise of relevant functions, the person considers that the individual has (whether or not in the course of the individual's work and whether before or after this section comes

into force) harmed a child or placed a child at risk of harm; and

- (b) That case has not been referred to the Scottish Ministers under section 2 above in respect of the act which harmed a child or placed a child at risk of harm.
- (2) This section applies to-
  - (a) The Scottish Commission for the Regulation of Care;
  - (b) The Scottish Social Services Council;
  - (c) The General Teaching Council for Scotland; and
  - (d) Any other person specified for the purposes of this section in an order made by the Scottish Ministers.
- (3) For the purposes of subsection (1)(a) above, "relevant functions" means-
  - (a) In relation to the Scottish Commission for the Regulation of Care and the Scottish Social Services Council, such functions as are conferred on the Commission or, as the case may be, the Council by the 2001 Act or any other enactment;
  - (b) In relation to the General Teaching Council for Scotland, such functions as are conferred on it by or under the Teaching Council (Scotland) Act 1965 (c.19); and
  - (c) In relation to a person specified in an order made under subsection (2)(d) above, such functions as are specified for the purposes of this section by the order.

### (Section 4)

Inclusion in list following referral under section 2(1) or 4(1)

- (1) The Scottish Ministers, on being satisfied as to the matters set out in subsection (2) below in relation to a reference to them under section 2(1) or 4(1) above, shall proceed in accordance with subsections (3) to (6) on the following page.

- (2) Those matters are-
- (a) That the reference is not vexatious or frivolous; and
  - (b) That the information submitted to the Scottish Ministers with the reference indicates that it may be appropriate for an individual to be included in the list kept under section 1(1) above.
- (3) The Scottish Ministers shall-
- (a) Invite observations from the individual-
    - (i) On the information submitted with the reference; and
    - (ii) If the Scottish Ministers think fit, on any observations made in response to an invitation under paragraph (b) below; and
  - (b) Invite observations from the organisation which, or person who, made the reference-
    - (i) On any observations made by the individual on the information submitted with the reference; and
    - (ii) If the Scottish Ministers think fit, on any other observations made in response to an invitation under paragraph (a) above.
- (4) The Scottish Ministers, having considered the information submitted with the reference, any observations submitted to them and any other information which they consider relevant, shall-
- (a) Where they are satisfied as to the matters set out in subsection(5) below, include the individual in the list by-
    - (i) Where the individual is provisionally included under section 7(1) below in the list, amending the list so as to indicate that the individual's inclusion is no longer provisional; or
    - (ii) Where the individual has been removed under section 7(4) below from the list, restoring the individual to the list; or
  - (b) Where they are not so satisfied, remove or, as the case may be, confirm the removal of the individual from the list.
- (5) Those matters are-
- (a) That the organisation which, or person who, made the reference reasonably considered the individual to have (whether or not in the course of the individual's work) harmed a child or placed a child at risk of harm; and
  - (b) That the individual is unsuitable to work with children.
- (6) Where the Scottish Ministers have made a determination under subsection (4)(a) above they shall-
- (a) Provide the individual in respect of whom the determination is made with notice specifying whether the individual is to be included in the list; and
  - (b) If they are aware that the individual is working in a child care position for an organisation at the time of the determination, provide the organisation with such notice.

**(Section 5).**

**Individuals named in the findings of certain inquiries**

- (1) Where-
- (a) A relevant inquiry has been held;
  - (b) The report of the person who held the inquiry names an individual who is or has been working in a child care position; and
  - (c) It appears to the Scottish Ministers from the report-



- (i) That the person who held the inquiry found that the individual has, at a time when the individual was working in a child care position (whether or not in the course of the individual's work and whether before or after this section comes into force), harmed a child or placed a child at risk of harm; and
  - (ii) That the individual is unsuitable to work with children, the Scottish Ministers may proceed in accordance with subsections (2) to (4) below in order to determine whether the individual should be included in the list kept under section 1(1) above.
- (2)** The Scottish Ministers shall-
- (a) Invite observations from the individual-
    - (i) On the report, so far as relating to the individual; and
    - (ii) If the Scottish Ministers think fit, on any observations submitted under paragraph (b) below; and
  - (b) Invite observations from the person for whom the individual, at the time of the act or omission which gave rise to the finding that the individual harmed a child or placed a child at risk of harm, worked-
    - (i) On any observations made by the individual on the report; and
    - (ii) If the Scottish Ministers think fit, on any other observations made in response to the invitation under paragraph (a) above.
- (3)** The Scottish Ministers, having considered the report, any observations submitted to them and any other information which they consider relevant, shall-
- (a) Where they are satisfied as to the matters set out in subsection(4) below, include the individual in the list by-
    - (i) Where the individual is provisionally included under section 7(1) below in the list, amending the list so as to indicate that the individual's inclusion is no longer provisional; or
    - (ii) Where the individual has been removed under section 7(4) below from the list, restoring the individual to the list; or
  - (b) Where they are not so satisfied, remove or, as the case may be, confirm the removal of the individual from the list.
- (4)** Those matters are-
- (a) That the person who held the inquiry reasonably considered that the individual has, at a time when the individual was working in a child care position (whether or not in the course of the individual's work), harmed a child or placed a child at risk of harm; and
  - (b) That the individual is unsuitable to work with children.
- (5)** Where the Scottish Ministers have made a determination under subsection (3)(a) above they shall-
- (a) Provide the individual in respect of whom the determination is made with notice specifying whether the individual is to be included in the list; and
  - (b) If they are aware that the individual is working in a child care position for an organisation at the time of the determination, provide the organisation with such notice.
- (6)** In this section "relevant inquiry" means any of the following-
- (a) An inquiry held-
    - (i) By the Scottish Ministers;
    - (ii) By the Scottish Parliament (including an inquiry held by a committee or sub-committee of the Parliament);
  - (b) An inquiry held by a tribunal appointed under the Tribunals of Inquiry (Evidence) Act 1921 (c.7);
  - (c) Any other inquiry or hearing designated for the purposes of this section by an order made by the Scottish Ministers.

**(Section 6)**

### Provisional inclusion in list

**(1)** Where the Scottish Ministers-

- (a)** Are to determine, under section 5(4) above, a reference under section 2(1) or 4(1) above; or
- (b)** Decide to make a determination under section 6 above,

they shall provisionally include the individual in respect of whom the determination is to be made in the list kept under section 1(1) above.

**(2)** The list shall indicate whether an individual's inclusion in it is provisional upon such a determination.

**(3)** The Scottish Ministers shall-

- (a)** Provide an individual who is provisionally included in the list with notice of that fact; and
- (b)** If they are aware that the individual is working in a child care position for an organisation at the time when the individual is provisionally included in the list, provide the organisation with such notice.

**(4)** If the Scottish Ministers have not made a determination under section 5 or 6 above within the relevant period they shall remove the individual from the list pending their determination.

**(5)** The "relevant period" is-

- (a)** Where the circumstance or, as the case may be, act in respect of which a reference under section 2(1) or 4(1) above is made is the subject of legal or disciplinary proceedings, the period of six months which begins on the date on which the proceedings are finally determined;
- (b)** In any other case, the period of six months which begins on the date on which the individual is provisionally included in the list; or

**(c)** Where either of the periods mentioned in paragraphs (a) and (b) above is extended under subsection (6) below, the extended period.

**(6)** The sheriff may, on an application by the Scottish Ministers and on cause shown, extend the period mentioned in paragraph (a) or (b) of subsection (5) above by such period of up to six months as the sheriff may specify.

**(7)** For the purposes of subsection (5)(a) above, proceedings are finally determined when-

- (a)** The proceedings are terminated without a decision being made;
- (b)** A decision is made against which no appeal (other than an appeal which need not be timeous) lies;
- (c)** In a case where an appeal lies with leave against a decision, the time limit for applications for leave expires without leave being granted; or
- (d)** In a case where leave to appeal against a decision is granted or is not required, the time limit for appeal expires without an appeal being brought.

**(8)** For the purposes of subsection (7) above, an appeal which need not be timeous is-

- (a)** An appeal under Part VIII (appeals from solemn proceedings) of the Criminal Procedure (Scotland) Act 1995 (c.46) in relation to which the High Court must, if the appeal is to be competent, extend the time within which intimation of intention to appeal or note of appeal or both may be given; or
- (b)** An appeal under section 191 (appeal by suspension on ground of miscarriage of justice) of that Act.

### (Section 7)



## Individuals convicted of an offence against a child

- (1)** Subject to subsections (3) and (4) below, on convicting an individual of an offence against a child the court-

  - (a)** Where the offence is a relevant offence, shall; or
  - (b)** Where the offence is not a relevant offence, may (if it thinks fit), propose to refer the case of the individual to the Scottish Ministers.
- (2)** Subsection (1) above applies in relation to offences committed before and after this section comes into force.
- (3)** Where an individual convicted of an offence against a child was under 18 years of age when the offence was committed, the court may propose to refer the case only if it is satisfied that the individual is likely to commit a further offence against a child.
- (4)** Where an individual convicted of an offence against a child was 18 years of age or over when the offence was committed, the court shall not propose to refer the case if it is satisfied that the individual is unlikely to commit a further offence against a child.
- (5)** The court shall, subject to subsection (6) below, make the reference proposed under subsection (1) above to the Scottish Ministers.
- (6)** The court shall not make the reference proposed under subsection (1) above unless-

  - (a)** The period during which an appeal against the proposed reference may be brought has expired without an appeal being brought; or
  - (b)** Where the appeal is brought within that period, it is dismissed or abandoned.
- (7)** The Scottish Ministers shall include an individual referred to them under subsection (5) above in the list kept under section 1(1) above.
- (8)** On so including an individual in the list the Scottish Ministers shall-

  - (a)** Provide the individual who is so included with notice of that fact; and
  - (b)** If they are aware that the individual is working in a child care position for an organisation at the time of the determination, provide the organisation with such notice.
- (9)** For the purposes of this section-

  - (a)** An individual commits a relevant offence if the individual-

    - (i)** Commits any offence mentioned in paragraph 1 of schedule 1 to this Act; or
    - (ii)** Falls within paragraph 2 of that schedule; and
  - (b)** An individual commits an offence against a child if the individual-

    - (i)** Commits a relevant offence;
    - (ii)** Commits any other offence in respect of which the person in relation to whom the offence was committed was a child, and references to being convicted of, or charged with, a relevant offence or, as the case may be, an offence against a child are to be read accordingly.
- (10)** The Scottish Ministers may by order amend subsection (9)(b) above or schedule 1 to this Act so as to modify, for the purposes of this section, the meaning of “offence against a child” or “relevant offence” by-

  - (a)** Adding offences to or, as the case may be, removing them from those referred to in that subsection or, as the case may be, schedule; or
  - (b)** Varying any of the descriptions of the offences there referred to.

**(11)** Subsection (12) below applies to an individual charged with an offence against a child-

- (a) If-
  - (i) The individual is acquitted on the ground of insanity; or
  - (ii) The court, following an examination of facts under subsection (1) of section 55 (examination of facts) of the Criminal Procedure (Scotland) Act 1995 (c.46), makes a finding under subsection (2) of that section in respect of the individual; and
- (b) The court makes any order mentioned in section 57(2)(a) to (d) of that Act of 1995 in relation to the acquittal or finding.

**(12)** An individual to whom this subsection applies is-

- (a) To be treated, for the purposes of this section, as having been convicted of the offence; and
- (b) Entitled to appeal, under section 106(1)(db) (right of appeal in solemn proceedings) or, as the case may be, 175(2)(cb) (right of appeal in summary proceedings) of that Act of 1995, against a reference made under subsection (1) above as if the individual had been convicted of the offence.

**(Section 10** as amended by the Criminal Procedure (Amendment)(Scotland) Act 2004).

### **Offences relating to work in a child care position**

- (1)** It is an offence for an individual who is disqualified from working with children to apply for, offer to do, accept or do any work in a child care position.
- (2)** It is a defence for an individual charged with an offence under subsection (1) above to prove that the individual did not know, and could not reasonably be expected to have known, that

the individual was, at the time of the offence, disqualified from working with children.

- (3)** It is an offence for an organisation to-
  - (a) Offer work in a child care position to, or procure such work for, an individual who is disqualified from working with children;
- (4)** An organisation commits an offence under subsection (3) above if the organisation offers work in a child care position to, or procures work in a child care position for, an individual who is already working for the organisation.
- (5)** It is a defence for an organisation charged with an offence under subsection (3) above to prove that the organisation did not know, and could not reasonably be expected to have known, that the individual was, at the time of the offence, disqualified from working with children.
- (6)** An act which would, but for this subsection, be an offence under subsection (1) or (3) above is not an offence if-
  - (a) The individual who commits the act or, as the case may be, the individual in relation to whom the organisation commits the act, is disqualified from working with children by virtue only of paragraph(c) of section 17(1) below;
  - (b) That individual is, by virtue of subsection (1)(b) or (c) of section 142 (prohibition from teaching etc.) of the Education Act 2002 (c.32), allowed to carry out work to which that section applies only-
    - (i) In circumstances specified in a direction under that section; or
    - (ii) If conditions specified in such a direction are satisfied; and
  - (c) The act relates to such work or to any other work in a child care position being carried out in such circumstances or, as the case may be, in satisfaction of such conditions.



**(7)** A person guilty of an offence under subsection (1) or (3) above is liable-

- (a)** On summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
- (b)** On conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.

**(Section 11).**

### **Applications for removal from list**

- (1)** An individual who is included in the list kept under section 1(1) above may, with the leave of the sheriff, apply to the sheriff for a determination as to whether or not the individual should continue to be included in the list.
- (2)** On an application under subsection (1) above, the sheriff, if satisfied that the individual is not unsuitable to work with children, shall by order direct the removal of the individual from the list; otherwise the sheriff shall dismiss the application.
- (3)** An application for leave to make an application under subsection(1) above may not be made unless-
  - (a)** Subject to subsection (7)(a) below, the condition set out in subsection (4) below is fulfilled; and
  - (b)** The individual has made no other such application for leave-
    - (i)** In the period of ten (or, in the case of an individual who was a child at the relevant time, five) years ending with the date on which the individual makes the application for leave; or, as the case may be
    - (ii)** In any other period specified in an order made under section 15(8) below.

**(4)** That condition is-

- (a)** In the case of an individual included in the list under section 10(7) above, that-
    - (i)** At least ten (or, in the case of an individual who was a child at the relevant time, five) years have elapsed since the day on which the individual was so included; and
    - (ii)** In the case of an individual-
      - (A)** whose sentence is a term of imprisonment or a term of detention; or
      - (B)** detained in a hospital pursuant to an order of the court, the individual has been released or, as the case may be, ceases to be liable to be detained in the hospital; and
  - (b)** In the case of any other individual, that the individual has been included (otherwise than provisionally) in the list for a continuous period of at least ten (or, in the case of an individual who was a child at the relevant time, five) years.
- (5)** For the purposes of subsections (3) and (4) above, the “relevant time” is-
- (a)** The time at which the offence in relation to which the individual was referred, under section 10(1) above, to the Scottish Ministers was committed; or, as the case may be
  - (b)** The time at which the individual is considered by the person-
    - (i)** Who referred the individual, under section 2(1) or 4(1) above, to the Scottish Ministers; or, as the case may be
    - (ii)** Who held the inquiry in respect of which the individual was included, under section 6 above, in the list, to have harmed a child or placed a child at risk of harm.

**(6)** Where-

- (a) An individual is released on licence under Part I (detention, transfer and release of prisoners) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9); or
- (b) A supervised release order is, in relation to the release of an individual, granted under section 209 (supervised release orders) of the Criminal Procedure (Scotland) Act 1995 (c.46),

the individual is, for the purposes of subsection (4)(a)(ii) above, to be treated as being released on the day on which the licence expires (otherwise than by being revoked) or, as the case may be, the order expires.

**(7)** The sheriff may-

- (a) On being satisfied as to the matters set out in subsection (8) below, consider an application for leave to make an application under subsection (1) above despite the fact that it does not fulfil one or both of the conditions set out in subsection (3) above;
- (b) Grant such an application for leave only if the sheriff is satisfied as to those matters.

**(8)** Those matters are-

- (a) That the individual's circumstances have changed since the individual was included (otherwise than provisionally) in the list, or, as the case may be, since the individual last made such an application for leave; and
- (b) That the change is such that the application should be considered or, as the case may be, leave should be granted.

**(Section 14).**

**Appeals: inclusion in list under section 5 or 6 etc.**

- (1)** An individual who is included (otherwise than provisionally) in the list kept under section 1(1) above may appeal to the sheriff against a determination, under section 5 or 6 above, of the Scottish Ministers to include the individual in the list.
- (2)** An appeal under subsection (1) above may not be lodged later than three months after the date on which the Scottish Ministers made the determination or decision being appealed unless the sheriff, on cause shown, so allows.

**(3)** The sheriff, unless satisfied-

- (a) That the individual has harmed a child or placed a child at risk of harm; and
- (b) That the individual is unsuitable to work with children,

shall allow an appeal under subsection (1) above and direct the removal of the individual from the list; otherwise the sheriff shall dismiss the appeal.

- (4)** A party to an appeal under subsection (1) above may appeal to the sheriff principal against any decision of the sheriff to allow or dismiss the appeal.

**(5)** An appeal may be made by-

- (a) An individual who has made an application under section 14(1) above; or
- (b) The Scottish Ministers,

to the sheriff principal against the decision of the sheriff on the application.

- (6)** An appeal may, with the leave of the sheriff principal, be made by-

- (a) The individual who is included in the list kept under section 1(1) above; or



(b) The Scottish Ministers,

to the Inner House of the Court of Session against any decision of the sheriff principal to allow or dismiss an appeal under subsection(4) or (5) above.

(7) The decision of-

(a) The sheriff principal; or

(b) If leave is granted to appeal to the Inner House, that House,

on any appeal shall be final.

(8) In allowing or dismissing an appeal, under subsection (6) above, of the decision of a sheriff principal on an appeal under subsection(5) above, the Inner House may by order specify a period other than the period specified in section 14(3)(b) above as the period during which the individual may not make an application to the sheriff for leave to make a further application for an order under section 14(2) above.

(9) Where an individual has been convicted of an offence involving conduct (whether or not in the course of the individual's work) which harmed a child or placed a child at risk of harm, no finding of fact on which the conviction is based may be challenged on an appeal under subsection (1) or (4) above.

**(Section 15).**

### Meaning of “disqualified from working with children”

(1) References in this Act to being disqualified from working with children are to be treated as references to being-

(a) Included (otherwise than provisionally) in the list kept under section 1(1) above;

(b) Included (otherwise than provisionally) in the list kept under section 1 (duty of Secretary of State to keep list of individuals considered unsuitable to work with children) of the Protection of Children Act 1999 (c.14);

(c) Subject to a direction under subsection (1)(a) of section 142 (prohibition from teaching etc.) of the Education Act 2002 (c.32), given on the grounds mentioned in subsection (4)(b) of that section, not to carry on work to which that section applies;

(d) Subject to a disqualification order (within the meaning of Part II (protection of children) of the Criminal Justice and Court Services Act 2000 (c.43)); or

(e) An individual falling within subsection (2) below.

(2) An individual falls within this subsection if, under the law of Northern Ireland, the Channel Islands, the Isle of Man, any British overseas territory or any other territory or country outwith the United Kingdom, the individual is subject to a prohibition or disqualification which the Scottish Ministers by order provide corresponds to disqualification (by virtue of any of paragraphs (a) to (d) of subsection (1) above) from working with children.

**(Section 17)**

### Interpretation

(1) In this Act-

“the 2001 Act” means the Regulation of Care (Scotland) Act 2001 (asp 8);

“agency for the supply of nurses” has the meaning given by section 32 of the Nurses (Scotland) Act 1951 (c.55);

“child” means a person under the age of 18;

“child care position” has the meaning given by schedule 2 to this Act;

“disciplinary proceedings” means proceedings in which the regulatory body for a profession is to decide whether disciplinary action should be taken against an individual carrying on that profession;

“disqualified from working with children” is to be construed in accordance with section 17 above;

“employment agency” and “employment business” have the same meanings as in the Employment Agencies Act 1973 (c.35);

“harm” includes harm which is not physical harm;

“legal proceedings” means civil or criminal proceedings in or before any court or tribunal;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);

“managers of an educational establishment” has the same meaning as in the Education (Scotland) Act 1980 (c.44);

“organisation” means-

- (a) A body corporate or unincorporate;
- (b) An individual who, in the course of a business, employs or otherwise gives work to other persons;
- (c) The managers of an educational establishment;

“prescribed” means prescribed by regulations made by the Scottish Ministers;

“term of detention” means a term of detention-

- (a) In a young offenders institution; or
- (b) By virtue of section 208 of the Criminal Procedure (Scotland) 1995 Act (c.46), in some other place;

“work” includes-

- (a) Work of any kind, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract;
- (b) An office established by or by virtue of a prescribed enactment, and

(c) Caring for, or supervising, children whilst participating in any other organised activity,

and references to an individual “working” are to be construed accordingly.

**(2)** For the purposes of this Act, an individual is made redundant if-

- (a) The individual is dismissed; and
- (b) For the purposes of the Employment Rights Act 1996 (c.18) the dismissal is by reason of redundancy.

**(Section 18).**

#### **Notices**

**(1)** A notice required by section 5(6)(a), 6(5)(a), 7(3)(a) or 10(8)(a) above to be given by the Scottish Ministers to an individual may be given-

- (a) By delivering it to the individual,
- (b) By leaving it at the individual’s proper address, or
- (c) By sending it to the individual at that address.

**(2)** For the purposes of subsection (1) above and of paragraph 4 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999, a person’s proper address is that person’s last known address.

**(Section 19)**



## Offences by bodies corporate etc.

- (1) Where an offence under this Act committed-
- (a) By a body corporate other than a local authority, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who-
    - (i) Is a director, manager or secretary of the body corporate; or
    - (ii) Purports to act in any such capacity;
  - (b) By a local authority, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who-
    - (i) Is an officer or member of the authority; or
    - (ii) Purports to act in any such capacity;
  - (c) By a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who-
    - (i) Is a partner; or
    - (ii) Purports to act in that capacity;
  - (d) By an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who-
    - (i) Is concerned in the management or control of the association; or
    - (ii) Purports to act in the capacity of a person so concerned;

the individual (as well as the body corporate or, as the case may be, the local authority, Scottish partnership or unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

## (Section 20)

### Other linked documents

Children's Hearing Scotland Rules 1996

Blueprint on the Processing of Children's Hearing Cases 2001

