



# Civic Government (Scotland) Act 1982

## 1982 CHAPTER 45

### PART IV

#### OFFENCES, POWERS OF CONSTABLES, ETC.

##### *Offences of annoying, offensive, obstructive or dangerous behaviour*

#### **46 Soliciting and importuning by prostitutes**

- (1) A prostitute (whether male or female) who for the purposes of prostitution—
- (a) loiters in a public place ;
  - (b) solicits in a public place or in any other place so as to be seen from a public place ; or
  - (c) importunes any person who is in a public place,
- shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £50.
- (2) In subsection (1) above, " public place " has the same meaning as in section 133 of this Act but includes—
- (a) any place to which at the material time the public are permitted to have access, whether on payment or otherwise ; and
  - (b) any public conveyance other than a taxi or hire car within the meaning of section 23 of this Act.

#### **47 Urinating etc.**

Any person who urinates or defecates in such circumstances as to cause, or to be likely to cause, annoyance to any other person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £50.

#### **48 Dogs: fouling of pavements**

- (1) Subject to subsection (2) and (3) below, any person in charge of a dog who allows it to deposit its excrement upon—
  - (a) a footpath or footway ;
  - (b) a grass verge maintained by a local authority and situated adjacent to a footpath or footway ;
  - (c) a pedestrian precinct maintained by a local authority ;
  - (d) any place maintained by a local authority and used exclusively as a children's play area ; or
  - (e) any place maintained by a local authority and used for recreational or sporting purposes being a place in relation to which this section applies by virtue of subsection (2) below,shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £50.
- (2) This section applies in relation to a place, being a place referred to in subsection (1) (e) above, only if a notice stating that this section applies to it and the effect of such application is displayed at the entrance to that place or elsewhere so that it may be seen by members of the public intending to have access to the place.
- (3) This section shall not apply to a blind person in charge of a dog kept and used solely for his guidance or to a stockperson in charge of a working dog being used for droving livestock.
- (4) In this section " footpath " and " footway " have the meanings respectively assigned to them by section 50(1) of the Roads (Scotland) Act 1970.

#### **49 Dangerous and annoying creatures**

- (1) Any person who suffers or permits any creature in his charge to cause danger or injury to any other person who is in a public place or to give such person reasonable cause for alarm or annoyance shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £50.
- (2) A district court may, if satisfied that any creature kept in the vicinity of any place where a person resides is giving that person, while in that place, reasonable cause for annoyance, make an order requiring the person keeping the creature to take, within such period as may be specified in the order, such steps (short of destruction of the creature) to prevent the continuance of the annoyance as may be so specified.
- (3) An application to a district court for an order under subsection (2) above may be made by any person.
- (4) Any person who fails to comply with an order under subsection (2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £200.
- (5) The fact that there is a licence under the Dangerous Wild Animals Act 1976 in respect of a creature shall not of itself afford a defence in proceedings under this section relating to that creature.
- (6) Where a court convicts a person of an offence under this section or discharges him absolutely or makes a probation order in relation to him, it may, whether or not (in the case of conviction) it imposes a penalty under subsection (1) or (4) above—

- (a) subject to subsection (8) below, make such order as it sees fit as to the disposal of the creature to which the proceedings relate;
  - (b) authorise a constable, in pursuance of such an order, to take possession of the creature.
- (7) An order under subsection (6) above may, subject to any enactment relating to the protection or conservation of living things, be for the destruction of the creature to which it relates.
- (8) No creature disposed of under an order under subsection (6) above shall be given or sold for the purposes of vivisection.

## **50 Drunkenness**

- (1) Any person who, while not in the care or protection of a suitable person, is, in a public place, drunk and incapable of taking care of himself shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £50.
- (2) Any person who is drunk in a public place while in charge of a child under the age of 10 shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £50.
- (3) For the purposes of subsection (2) above, if a child appears to the court to be under the age of 10, the child shall be deemed to be under that age unless the contrary is proved.
- (4) A constable may arrest a person for contravening subsection (2) above if he has reasonable cause to believe that the child in the charge of that person is under the age of 10.
- (5) Any person who is drunk in a public place while in possession of a firearm (including a crossbow, airgun, air rifle or air pistol) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £50.
- (6) In this section, "public place" has the same meaning as in section 133 of this Act but includes—
- (a) any place to which at the material time the public are permitted to have access, whether on payment or otherwise; and
  - (b) any public conveyance other than a taxi or hire car within the meaning of section 23 of this Act.

## **51 Obscene material**

- (1) Subject to subsection (4) below, any person who displays any obscene material in any public place or in any other place where it can be seen by the public shall be guilty of an offence under this section.
- (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.
- (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 3 months or to both or, on conviction on indictment, to a fine or to imprisonment for a period not exceeding two years or to both.

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- (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—
- (a) included in a television or sound broadcast by the British Broadcasting Corporation or the Independent Broadcasting Authority or a programme transmitted to the premises of subscribers to a diffusion service licensed by the Secretary of State ; or
  - (b) included in a performance of a play (within the meaning of the Theatres Act 1968).
- (7) For section 5(4)(b) of the Indecent Displays (Control) Act 1981 (saving) there shall be substituted the following—
- “(b) section 51 of the Civic Government (Scotland) Act 1982”.
- (8) In this section—
- " 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 289B of the Criminal Procedure (Scotland) Act 1975;
- and the reference to publishing includes a reference to playing, projecting or otherwise reproducing.

## **52 Indecent photographs etc. of children**

- (1) Any person who—
- (a) takes, or permits to be taken, any indecent photograph of a child (meaning, in this section a person under the age of 16);
  - (b) distributes or shows such an indecent photograph ;
  - (c) has in his possession such an indecent 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 intends to do so
- shall be guilty of an offence under this section.
- (2) 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 16.
- (3) A person guilty of an offence under this section shall be liable—

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- (a) on summary conviction, to imprisonment for a period not exceeding 3 months or to a fine not exceeding the prescribed sum within the meaning of section 289B of the Criminal Procedure (Scotland) Act 1975 (at the passing of this Act £1,000) or to both ;
  - (b) on conviction on indictment, to imprisonment for a period not exceeding two 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 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 (as the case may be) having it in his possession ; or
  - (b) that he had not himself seen the photograph and did not know, nor had any cause to suspect, it to be indecent.
- (6) In paragraph 2 of the Schedule to the Visiting Forces Act 1952 (offences against the person in the case of which a member of a visiting force is in certain circumstances not liable to be tried by a United Kingdom court), the word " and " immediately preceding sub-paragraph (b)(iii) shall be omitted and after the said sub-paragraph (i)(iii) there shall be added—
- “(iv) section 52(1)(a) of the Civic Government (Scotland) Act 1982.”.
- (7) References in the Criminal Procedure (Scotland) Act 1975 (except in sections 171 and 368 thereof) to the offences mentioned in Schedule 1 to that Act shall include an offence under subsection (1)(a) above.
- (8) In this section—
- (a) references to an indecent photograph include an indecent film, a copy of an indecent photograph or film and an indecent photograph comprised in a film;
  - (b) a photograph (including one comprised in a film) shall, if it shows a child and is indecent, be treated for all purposes of this section as an indecent photograph of a child;
  - (c) references to a photograph include the negative as well as the positive version ;
  - (d) " film " includes any form of video-recording.

### **53 Obstruction by pedestrians**

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

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

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £50.

### **54 Playing instruments, singing, playing radios, etc.**

(1) Any person who—

- (a) sounds or plays any musical instrument;

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

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

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

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

- (a) for police, fire brigade or ambulance purposes, by a water authority in the exercise of any of its functions, or by a local authority within its area ;
- (b) for communicating with persons on a vessel for the purpose of directing the movement of that or any other vessel;
- (c) if the loudspeaker forms part of a public telephone system;
- (d) if the loudspeaker—
  - (i) is in or fixed to a vehicle, and
  - (ii) is operated solely for the entertainment of or for communicating with the driver or a passenger of the vehicle or, where the loudspeaker is or forms part of the horn or similar warning instrument of the vehicle, solely for giving warning to other traffic, and
  - (iii) is so operated as not to give reasonable cause for annoyance to persons in the vicinity ;
- (e) otherwise than on a highway, by persons employed in connection with a transport undertaking used by the public in a case where the loudspeaker is operated solely for making announcements to passengers or prospective passengers or to other persons so employed ;
- (f) by a travelling showman on land which is being used for the purposes of a pleasure fair;
- (g) in case of emergency.

In this subsection, " water authority " has the meaning assigned by section 3 of the Water (Scotland) Act 1980.

## 55 Touting

(1) Any person who—

- (a) in a public place—
  - (i) touts for the purpose of selling or advertising anything or otherwise obtaining custom so as to give any other person reasonable cause for annoyance ; or
  - (ii) importunes any other person for that purpose so as to give that, or any other, person reasonable cause for annoyance ; and
- (b) fails to desist when required to do so by a constable in uniform,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £50.

## **56 Fires**

Any person who lays or lights a fire in a public place so as to endanger any other person or give him reasonable cause for alarm or annoyance or so as to endanger any property shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £200.

### *Preventive offences*

## **57 Being in or on building etc. with intent to commit theft**

- (1) Any person who, without lawful authority to be there, is found in or on a building or other premises, whether enclosed or not, or in its curtilage or in a vehicle or vessel so that, in all the circumstances, it may reasonably be inferred that he intended to commit theft there shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £500 or to imprisonment for a period not exceeding 3 months or to both.
- (2) In this section " theft" includes any aggravation of theft including robbery.

## **58 Convicted thief in possession**

- (1) Any person who, being a person to whom this section applies—
  - (a) has or has recently had in his possession any tool or other object from the possession of which it may reasonably be inferred that he intended to commit theft or has committed theft; and
  - (b) is unable to demonstrate satisfactorily that his possession of such tool or other object is or was not for the purposes of committing theftshall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £500 or to imprisonment for a period not exceeding 3 months or to both.
- (2) For the purposes of subsection (1) above, a person shall have recently had possession of a tool or other object if he had possession of it within 14 days before the date of—
  - (a) his arrest without warrant for the offence of having so possessed it in contravention of subsection (1) above; or
  - (b) the issue of a warrant for his arrest for that offence ; or
  - (c) if earlier, the service upon him of the first complaint alleging that he has committed that offence.
- (3) Where a court convicts a person of an offence under this section or discharges him absolutely or makes a probation order in relation to him in respect of such an offence it may order the forfeiture of any tool or other object in respect of the possession of which he was convicted or discharged absolutely, or, as the case may be, the probation order was made.
- (4) This section applies to a person who has two or more convictions for theft which are not, for the purposes of the Rehabilitation of Offenders Act 1974, spent convictions.
- (5) In this section "theft" includes any aggravation of theft including robbery.

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*Powers of constables etc.*

**59 Powers of arrest and apprehension**

- (1) Subject to subsection (2) below, a constable may, where it is necessary in the interests of justice to do so, arrest without warrant a person whom he finds committing an offence to which this section applies or a person who is delivered into his custody in pursuance of subsection (3) below.
- (2) A constable who is not in uniform shall produce his identification if required to do so by any person whom he is arresting under subsection (1) above.
- (3) The owner, tenant or occupier of any property in, upon, or in respect of, which an offence to which this section applies is being committed or any person authorised by him may apprehend any person whom the owner or, as the case may be, the tenant, occupier or authorised person finds committing that offence and detain the apprehended person until he can be delivered into the custody of a constable.

In this subsection "property" means heritable or moveable property.

- (4) This section applies to offences under sections 50, 57 and 58 of this Act.
- (5) This section shall not prejudice any power of arrest conferred by law apart from this section.

**60 Powers of search and seizure**

- (1) Subject to subsections (2) and (3) below, if a constable has reasonable grounds to suspect that a person is in possession of any stolen property, the constable may without warrant—
  - (a) search that person or anything in his possession, and detain him for as long as is necessary for the purpose of that search;
  - (b) enter and search any vehicle or vessel in which the constable suspects that that thing may be found, and for that purpose require the person in control of the vehicle or vessel to stop it and keep it stopped ;
  - (c) enter and search any premises occupied by a second hand dealer or a metal dealer for the purposes of his business;
  - (d) seize and detain anything found in the course of any such search which appears to the constable to have been stolen or to be evidence of the commission of the crime of theft

and may, in doing so, use reasonable force.

In this subsection " second-hand dealer " and " metal dealer " have the meanings respectively assigned to them by sections 24(2) and 37(1) of this Act.

- (2) The power under subsection (1)(b) above to require the person in charge of a vehicle or vessel to stop it shall be exercisable only by a constable in uniform.
- (3) A constable who is not in uniform shall not be entitled to exercise the powers which he may exercise under subsection (1) (a) to (c) above until he has produced his identification—
  - (a) in relation to the exercise of powers under subsection (1)(a) above, to the person in respect of whom the powers are exercised;



- (b) in relation to the exercise of powers under subsections (1)(b) or (c) above, to the person for the time being in charge of the vehicle, vessel or premises and to any other person in or on the vehicle, vessel or premises who, having reasonable cause to do so, requests to see it.
- (4) In subsection (1) above "theft" includes any aggravation of theft including robbery.
- (5) Nothing in this section prejudices any power of entry or search or any power to seize or detain property or any power to require any vehicle or vessel to be stopped which is exercisable by a constable apart from this section.
- (6) Any person who, without reasonable excuse—
  - (a) fails to allow a constable in pursuance of subsection (1) above to enter and search any premises, vehicle or vessel, or seize and detain anything found in the course of such search ;
  - (b) when required by a constable in pursuance of subsection (1) above to stop a vehicle or vessel and keep it stopped, fails to do so ; or
  - (c) obstructs a constable in the exercise of his powers under subsection (1) above; shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £200.

## **61 Protection of insecure premises**

- (1) Where—
  - (a) any premises have been left open, unlocked or otherwise insecure; and
  - (b) in the opinion of a constable, the insecurity of the premises is likely to conduce to the commission of an offence,the constable may take such reasonable steps as he may consider necessary to make the premises secure.
- (2) Any reasonable expense incurred by a constable in making any premises secure under subsection (1) above may be recovered by the police authority from the occupier (or, where there is no occupier, from the tenant or, where there is no occupier or tenant, from the owner) of the premises.