

Scottish Crime Recording Standard

Crime Recording and Counting Rules

October 2023

Statement of Purpose

Crime is recorded by the police and others to assist both central and local Government to establish whether their policies are effective in driving down crime, and to gain understanding of the relative performance of policing and criminal justice providers within Scotland.

The public in making informed decisions about the risk of crime to themselves as individuals and to allow judgements on how effective Government and police have been in tackling crime and in providing police and their partners with data which informs the targeted use of resources and allows the relative effectiveness of different methodologies to be established.

As can be seen, this is a tripartite relationship where no individual stakeholder need is given greater credence than another. However, it is unlikely for a variety of reasons that Recorded Crime Statistics will ever give a full picture of crime. It is, therefore, important to emphasise that Government, and the police generally consider Crime Statistics in conjunction with Crime Survey data and other sources, in order to achieve the aims stated above.

Introduction

Counting Rules for Recorded Crime

The Counting Rules provide a national standard for the recording and counting of crimes and offences recorded by the Police Service of Scotland (Police Scotland), known as 'recorded crime'. The Rules were devised to take account of the Scottish Crime Recording Standard (SCRS) which was introduced on 1st April, 2004 with the aim of providing a more victim orientated approach to the recording of crime and ensuring uniformity in crime recording standards across Scotland.

The Scottish Crime Recording Board, chaired by the Scottish Government Justice Analytical Services comprises members of Police Scotland, Scottish Police Authority, British Transport Police, Ministry of Defence Police, Crown Office and Procurator Fiscal Service, HM Inspectorate of Constabulary in Scotland and any other body that may be invited. The Board will act as guardian of and ultimate decision maker on issues relating to the Scottish Crime Recording Standard.

The Board will fulfil its purpose and objectives through a number of functions. These functions will remain under review over time, and some will be undertaken by supporting working groups. Further information is available on the Scottish Government internet pages.

Contents Part One

Section A	Scottish Crime Recording Standard
Section B	Whether and when to record
Section C	Detections
Section D	Subsuming of crimes
Section E	No Crime/Recorded In Error/Duplicates
Section F	Transfer of crime and dealing with crimes outside the Police Scotland area
Section G	Notification of crime via internet
Section H	Third party reporting
Section I	Hate Incidents/Hate Crime
Section K	Evidence based crime recording
Section L	Scottish Government Justice Directorate Crime Codes

Contents Part Two

Introduction	Crime Recording
Annex 1	Group 1 – Non-sexual Crimes of Violence
Annex 2	Group 2 – Sexual Crimes
Annex 3	Group 3 – Crimes of Dishonesty
Annex 4	Group 4 – Damage and Reckless Behaviour
Annex 5	Group 5 – Crimes against Society
Annex 6	Group 6 – Anti-social Offences
Annex 7	Group 7 – Miscellaneous Offences
Annex 8	Group 8 – Road Traffic Offences

Part One – Scottish Crime Recording Standard

Section A – Scottish Crime Recording Standard

Introduction

In April 2004, the Scottish Crime Recording Standard (SCRS) was introduced throughout Scotland.

The Standard was produced by the Scottish Crime Registrar's Group and agreed by the Association of Chief Police Officers in Scotland (ACPOS), following research that identified the need to develop a more victim orientated approach to crime recording. This followed on from the National Crime Recording Standard, which was introduced in England and Wales in April 2002.

Tackling crime and the causes of crime are key priorities for Police Scotland. Ethical recording of crime is integral to modern policing and it is vitally important that crime recording and disposal practices are capable of withstanding rigorous scrutiny.

Police Scotland Code of Ethics is a set of guiding principles that define how the Police perform their duties and is enshrined in decisions made as individuals and as a service. The code is designed as a guide to help provide positive outcomes and improve the safety and wellbeing of people, places and communities in Scotland. Police Scotland's core values include Integrity, Fairness, Respect and Human Rights.

Accurate and timely recording of crime assists analysis of crime patterns, trends and fluctuations and supports the National Intelligence Model. Accurate crime data illustrates to the Service, Local Government and the public at large how the police are performing and identifies areas, if any, which require greater resourcing.

The Standard sets out to ensure a more victim-orientated approach is taken to recording crime. A more detailed approach with regards to the practical recording and application of the SCRS can be found within further sections of this manual.

The ultimate responsibility for ensuring compliance lies with the Chief Constable, discharged on a daily basis by the appointed Crime Registrars.

All recordable crime will be recorded electronically and strictly in line with this manual. The subsequent investigation of crime will be the responsibility of individual local Commanders. All recorded crime will be retained on systems in accordance with the Police Scotland Record Retention Standard Operating Procedure.

Any reference to 'crime' in this manual also refers to offences under statute.

The purpose of this manual is to advise on the recording of crime laid down by the SCRS which is underpinned by the counting rules for crime, where crimes and offences are grouped under recognised categories for statistical purposes as defined by the Scottish Government for production of National Statistics.

All crime reports are subject to the rules set out in this document, which are under constant review. Updates to counting rules will normally be effective from 1st April each year.

It must be recognised that it is impossible to cover every conceivable crime and scenario and therefore this manual concentrates on crimes in common use.

Police officers should seek further guidance from the Police Scotland Legal Database.

Aim of the Standard

The aim of the standard is:

To provide a more victim orientated approach that serves the needs of our communities, and ensures uniformity in crime recording practices throughout Scotland.

Principles

The following principles apply:

All reports of incidents, whether crime related or not, will result in the creation of an incident report which is auditable;

Following initial registration, an incident will be recorded as a crime in all cases if:

- the circumstances amount to a crime defined by Scots Law or an offence under statute; and
- there is no credible evidence to the contrary;

Once recorded, a crime will remain recorded unless there is credible evidence to disprove that a crime had occurred.

Sources of Crime

It is recognised that reports of crime can be received from a variety of sources and do not always result in an incident (via Command and Control) being created before a crime is recorded. Whilst the auditable trail in most cases will be by the creation of an incident (via Command and Control), on occasions the initial details can be noted by other means e.g. within officer's notebook and a crime recorded directly thereafter.

Section B – Whether and when to record

Incident Recording – Compliance with SCRS

Incident compliance with SCRS is assessed on whether an incident recorded on the relevant Command and Control system provides a clear narrative to either dispel or confirm criminality. A "record to investigate" approach should be applied in support of a victim-centred service.

In the main, incidents reported to the police as crimes will result in a corresponding crime report(s) being created. On occasions an incident initially reported to the police may not appear to be crime related, however, following further enquiry criminality may be identified. It is important that the content of an incident provides,

- an overview of the details of the initial call
- any update on the initial report
- any action taken, and
- the outcome.

Where evidence subsequently emerges to contradict that a crime has occurred, prior to an incident reaching a conclusion, the incident must be updated accordingly.

The following provides a brief synopsis of what is required to ensure incident compliance with SCRS.

- Incident disposals must make a clear distinction which identifies the incident as a crime or a non-crime e.g. on STORM an SC01 disposal code indicates the incident has resulted in a Crime/Offence having been identified.
- Conflict between the opening and closing narratives must be fully explained. Any credible evidence which contradicts the original report must be clearly outlined. When an incident at the outset infers a crime or apparent criminal activity, and subsequent Police attendance and investigation into the circumstances confirms that no crime under Scots Law or offence under statute was committed, or there was insufficient information to confirm a

crime, the incident must be clearly updated with a satisfactory narrative which eliminates any inference of criminality and fully justifies a non-crime disposal.

- “VPD submitted”, “reported for information only”, “no complaint” or “advice given” are not considered suitable incident narrative disposals where there is inference of criminality.
- Where victim refuses to make complaint, or, wishes to advise Police of the crime “for information only”, there is still a requirement for a crime to be recorded.
- Where no judgement can be made due to a potential victim being drunk or otherwise impaired, the incident must be followed up when the person is in a fit state. Incidents must not be closed "pending further call from victim" or that an officer will follow up later without a clear update to confirm the disposal as a crime or non-crime.
- When it cannot be confirmed whether any crime has occurred on officers attending, the incident must be deferred for further enquiry to be made, and the incident updated appropriately prior to final disposal.
- The crime reference number must be added to the corresponding incident when a crime report is raised, to provide a clear audit trail between the two systems.
- Linked incident records are created when more than one report is received about the same incident and rather than replicate the text on the entire linked incident records they are cross-referenced on the incident recording system. It is important to check that the main incident has been correctly finalised.
- Reports of a crime received from, or on behalf of, someone who is suffering from a mental health condition and either insufficient information has been provided to initially record a crime, or, whilst having provided an initial report of a crime, it was felt their condition was such that it was unclear whether the incident(s) had occurred, then pro-active attempts to follow up such reports should be done as soon as reasonably practicable. The complainer should not be left to re-contact the police at a later date to report the incident(s). Crime

related incidents involving persons lacking capacity should be assessed on a case-by-case basis and reference should be made to the section within this manual covering 'Crime Related Incidents Involving Persons Lacking Capacity'.

- Where sufficient information has been provided in relation to a sexual crime, creation of the crime report must not be delayed by awaiting the statement from the victim by a Sexual Offences Liaison Officer.
- Where an initial report is received which indicates that a crime may have occurred and the victim is not immediately available to confirm details sufficient to record a crime, reasonable attempts must be made to make contact with the victim in order to obtain these details before the incident can be closed. The incident log must be fully updated to document the number of attempts made.
- Lost property or civil matter decisions, rather than criminal, must be accompanied by the full rationale for this decision on the incident/crime report.
- Hit and Run type collision incidents are required to be raised and fully updated to dispel any criminality inferred (e.g. damage so minor in nature driver unaware of collision), however if unable to dispel initial criminality a crime report must be raised to facilitate any necessary enquiry. There is no requirement to wait 24 hours to establish if the offending driver reported the collision prior to recording a crime.
- Crime related incidents occurring within schools can only be dealt with by the school as outlined within the 'Incidents on School Premises' section of this manual.

Recording a Crime

The degree to which Police Scotland investigate an initial report from a victim, or person reasonably assumed to be acting on behalf of the victim, to establish whether a crime has occurred or not will vary with the circumstances of the report. Such investigation may range from questioning over the telephone when the initial report is made, to fuller investigation of the circumstances surrounding the allegation. However, it is envisaged such further investigations, to facilitate the crime recording decision, would be the exception, not the norm.

Minimum Information Required to Record

Whilst it is difficult to be absolute, the minimum level of information required to raise a crime report is as follows:

- An approximate date/date range;
- An approximate locus; and
- If an MO can be established (to ascertain crime type).

Where a decision is made to delay the recording despite having what would be deemed appropriate information to record, this must be made clear and sufficiently justified on the incident recording system.

Parents, Carers and Professional Reports

Where reports are received by individuals acting in a professional capacity or parents/carers acting as a guardian or responsible adult reporting crime on behalf of/in the best interests of another they should be regarded as acting on behalf of a victim.

Where there is no doubt as to their status and/or position or the veracity of their report, those reports must be recorded as crimes. Recording should occur regardless of whether the victim has given their permission for the reporting individual to speak to the police and irrespective of whether the victim subsequently confirms that a crime has occurred.

Where a decision is taken not to record a crime being reported, possibly due to there being concerns around the veracity of the report, there must be justification for this decision.

Timeliness of Recording

In all cases, where a crime is made known to the police, by any means, a crime report must be recorded as soon as reasonably practicable. The importance of ensuring that crime reports are submitted as soon as possible is paramount to ensuring the victim's needs are met and the relevant information is available for allocation of enquiry, assessment, statistical and analytical purposes. An incident will be recorded as a crime if, the circumstances amount to a crime as defined by Scots Law or an offence under statute and there is no credible evidence to the contrary.

All crimes must be recorded as soon as reasonably practicable and within a period of 72 hours from the time the incident is first notified. In most cases this will result in details of the reported crime being submitted to the crime system prior to termination of duty. If no crime is recorded within 72 hours the reason for the delay must be fully explained and justified within the incident log. In exceptional circumstances a maximum of 7 days is permitted to take into account situations outwith Police control.

Recording should not be delayed in order to wait for further details of the case, including the likelihood of obtaining a detection. Where sufficient information has been provided in relation to a sexual crime, creation of the crime report must not be delayed by awaiting the statement from the victim by a Sexual Offences Liaison Officer.

Additional crimes made known to Police during the investigation of lengthy enquiries must be recorded as soon as reasonably practicable following notification to Police.

Additional Reports of Crime

Where a complainer reports that the same crime has occurred in the past, or has also happened to a neighbour, these additional reports should be followed up and additional crimes recorded where appropriate.

For example - a report of vandalism to a vehicle is received where the complainer also advises that it appears their neighbour's vehicle was also damaged. A crime should be recorded for the initial vandalism reported and enquiry made in respect of the information regarding the neighbour's vehicle, with an outcome of either a further crime being recorded or justification on the incident as to why no crime is being recorded.

Amendment of Crime Type

Where a crime type has been amended on a crime report, particularly if a crime is being upgraded or downgraded, the rationale must be noted on the crime report to justify the decision made, thereby providing an audit trail. The Crime Registrar will determine whether a crime should be recorded and/or the appropriate crime classification where there is uncertainty.

Uncooperative Complainers

It is not uncommon for someone to report a crime to the police and to then refuse to engage with an investigation. This happens in relation to all crime types, but appears particularly common for victims of sexual crime who can sometimes lose confidence following the initial report and become reluctant to engage with the police. In such cases, a crime should be recorded where there is sufficient information to do so, and an uncooperative tag should be assigned. Only where a complainer freely retracts their initial report and no crime has occurred can such incidents be closed without a crime report.

Visual Recording Systems

Where officers can identify the persons involved from an image or it is appropriate to carry out further enquiry to identify the persons and, on the balance of probabilities, the officer believes that a crime has occurred, an investigation should be considered and a crime recorded. Where the basis for recording the crime is based solely on visual recording evidence, it is important that the provenance of the recording can be established. It is not the intention of the SCRS to record as crimes all incidents that

could be construed as crimes when viewed remotely. For example, where, as a result of events, police officers attend the scene of a disturbance but all parties have left, this should be recorded as an incident only rather than as a recorded crime.

Age of Criminal Responsibility

Where children below the age of criminal responsibility are reported as having been involved in criminal behaviour a crime must be recorded. A recorded crime committed by a child of non-age may be shown as detected if there would have been a sufficiency of evidence to have reported the child by SPR had they been over the age of criminal responsibility. In these circumstances the sufficiency of evidence must be documented on the crime report. The Age of Criminal Responsibility (Scotland) Act 2019 which commenced on 17 December 2021 increased the age of criminal responsibility from 8 to 12.

Admission by Offender

Where an offender admits to committing a crime and there is no confirmation of that crime having occurred, no crime report should be recorded unless other evidence of the crime exists.

Date Made Known for Statistical Purposes

Sources of crime reports are many and varied, originating with members of the public and police officers alike. The police will record crimes made known to them regardless of when they occurred. The timing of a recorded crime, for statistical purposes, should relate to the date it is recorded on the crime recording system e.g. a crime committed in September, but reported to the police and recorded as a crime in October, should be included in the recorded crime statistics for October.

Non-Recent Crimes

In circumstances where a victim discloses a further non-recent crime to Police over and above crimes which were previously recorded and investigated, where the

further crime is undated and would have been incorporated within the crimes already recorded if disclosed at the earlier time, a new crime must be recorded.

Example 1 A crime is reported in 1991 and was recorded on the crime recording system at that time as undetected, however, further information has come to light which enables the crime to be re-investigated and reported to the Procurator Fiscal.

- A crime report should be created on the present crime system which would enable the detection to be counted.

Example 2 A crime is reported in 1991 and was recorded on the crime recording system at that time and was detected, although no proceedings were taken at that time by the Procurator Fiscal. Further information has come to light which enables the crime to be re-investigated and the Procurator Fiscal has requested a report be submitted for consideration of criminal proceedings.

- No crime should be created on the present crime recording system as it would have been counted as a recorded and detected crime at that time.

Example 3

A complainer advises that they reported a crime in 1991 however due to changes to crime recording systems no trace of this report can be found.

- A crime should be recorded on the present crime system.

Points to Consider

Establishing the Locus

Where the Location of a Crime is Unknown

In the vast majority of cases the location of a crime will be apparent or can be established by reference to the counting rules within Annexes 1 to 7 of this

document. In circumstances where the location of a crime is unknown or cannot be established by reference to the counting rules the following should be considered:

- Where, on the balance of probability, the crime could reasonably have occurred.
- Where the offender would reasonably be expected to be at the time of the crime e.g. home address.
- If at the time of the report the location of the offender and victim cannot be determined, then the crime may be recorded as having occurred at the victim's home address.

Theft in Transit

All reports of Theft in Transit (other than by air or sea) will be recorded as a crime at the point of departure unless there is evidence the theft occurred at a specific location.

Please see Section 'F' in relation to crimes committed in the air and at sea, and outside the jurisdiction of Police Scotland.

Locus for Communication Type Offences

Where 'A' reports receiving a threatening communication (e.g. phone/internet/social media) the locus will initially be recorded where the call is received (as this is where it can be evidenced as occurring at that stage). Only if enquiry confirms the specific location where the communication was made from can the locus be amended to 'where made from' e.g. confirmation that call made by landline, admission by accused.

This is also the case in respect of the locus for other offences which take place over the phone/internet/social media etc. e.g. extortion, sexual crime.

Where the communication is confirmed as having been sent from outwith the UK, the crime must remain recorded with the locus being 'where received'.

Where the communication is confirmed as having been sent from a specific location elsewhere in the UK, only where the relevant Force accept the transfer of the crime can the crime be updated to 'No Crime'.

Online Child Sexual Abuse Activist Groups

In circumstances where a suspect commits an offence by communicating with a person or group of persons purporting to be a child under controlled conditions the locus will be as follows:

- If a meeting takes place the locus will be where the meeting takes place.
- If arrangements are made to meet and no meeting takes place the locus will initially be recorded where the suspect would reasonably be expected to be at the time of the crime e.g. home address.
- Where a sexual communication offence e.g. communicating indecently, cause to view sexual image has occurred, the locus will initially be recorded where the suspect would reasonably be expected to be at the time of the crime e.g. home address.
- If during the course of the investigation a specific locus is identified the crime will be updated to the correct locus.
- If there is sufficient evidence to report an offender for having made the communication but insufficient evidence to determine where the communication was made from, the locus will be where the communication can be evidenced as having been received.

Crimes Committed Elsewhere in the UK

Where a crime is reported where there is either a direct interaction between the victim and suspect at the time the crime is committed, or where the victim is not present but a clear locus for a crime such as theft or vandalism can be identified, a crime report should be raised to record the full details with the locus being where the crime took place. This should then be forwarded to the relevant Force for recording. Once the receiving Force confirm they have recorded the crime and advise a reference number the Police Scotland crime report can be closed with the 'No Crime' disposal code.

Crime Committed Outwith the UK

Where a crime is reported where there is a direct interaction between the victim and suspect at the time the crime is committed which occurs outwith the UK, a crime should not be recorded unless the circumstances meet provisions within Scots Law for consideration of that crime to be prosecuted in Scotland.

Crimes Committed Remotely

It should be noted that crimes committed remotely e.g. online Fraud, communications offences, sending sexual images, and other cyber related crime should continue to be recorded in accordance with the Scottish Crime Recording Standard. These crimes can only be updated as having been transferred to another UK Force where the receiving Force accept ownership, record the crime and forward the corresponding reference number. If the locus for a remote crime is confirmed as having occurred outwith the UK and the victim was in Scotland at the time of the offence, the crime will remain recorded by Police Scotland with a Scottish locus.

National Crime disposals of “Undetected – Suspect Elsewhere UK” or “Undetected – Suspect Outwith UK” should be used where the crime remains recorded by Police Scotland.

Crimes Committed Offshore

Where the locus of a crime is offshore, this should be recorded in the waters nearest to the Division where the crime takes place, which may not necessarily be the same Division who will be undertaking enquiry.

Crimes Committed against Victims in Scotland Where Suspect is Outside Scotland

In circumstances where a victim is in Scotland at the time a crime is committed and the suspect is determined to be outside Scotland a crime will be recorded and retained by Police Scotland unless the location is established as being elsewhere in the UK and ownership is accepted by another UK Force. If crime transfer is accepted by another UK Force and crime reference number provided the crime report may be updated to ‘No Crime’. If crime transfer is not accepted the recorded crime will be retained by Police Scotland.

Example 1 While victim 'A' is in Scotland they are defrauded of money by means of bank transfer and a crime of Fraud is recorded. Enquiry determines a home address of suspect in Wales and Welsh Force accept the crime transfer.

- The recorded Fraud should be updated to 'No Crime' and a 'No Crime – Other UK' disposal applied to the crime report.

Example 2 While victim 'B' is in Scotland they are sent unwanted sexual images by a person they have befriended on social media and a crime of Sexual Offences (Scotland) Act 2009, S6 is recorded. Enquiry determines the images were sent from an IP address which is based in Turkey.

- The recorded Sexual Offences (Scotland) Act 2009, S6 offence should be retained as a recorded crime by Police Scotland with the locus being where the images were received.

Example 3 While victim 'C' is in Scotland they are defrauded of money by means of bank transfer and a crime of Fraud is recorded. The suspect is believed to be somewhere in England but enquiry is unable to determine a locus sufficient to transfer the crime to another Force.

- The recorded Fraud should be retained as a recorded crime by Police Scotland with the locus being the victim's home address.

Crimes Committed against Scottish Victims who are outside Scotland at the time of the Crime

Provisions within certain pieces of legislation such as Criminal Procedure (Scotland) Act 1995, Section 11, Domestic Abuse (Scotland) Act 2018, Section 3 and Sexual Offences (Scotland) Act 2009, Section 55 allow for specific offences which occur outwith Scotland to be prosecuted in Scotland.

In these circumstances any offences which are recorded for the purpose of reporting an offender to the Procurator Fiscal should be recorded with a locus external to Scotland.

The Domestic Abuse Act 2021 enacted by the UK Parliament in June 2021 gives the following offences extra-territorial jurisdiction:

- Assault (Common Law)
- Sections 1-4 of the Sexual Offences (Scotland) Act 2009
- Section 39 of the Criminal Justice and Licensing (Scotland) Act 2010 (Stalking)

These provisions give Scottish Courts the jurisdiction to hear those cases committed by any UK national anywhere in the world. It does not need to be a domestic offence.

For Assault, the act must constitute a crime in the country outside Scotland and if it had occurred in Scotland, it would constitute the crime of assault.

For the sexual offences, if they commit the act in another country which would be an offence if committed in Scotland, they can be prosecuted here.

For stalking, the conduct should occur outwith the UK, but if it had happened in Scotland would have constituted the crime of stalking.

Example 1 While victim 'D' who has a home address in Scotland is on holiday in Spain they purchase property in Spain which they discover is part of a scam and does not exist. They report the matter to Police Scotland when they arrive home.

- No crime should be recorded

Example 2 While victim 'E' is on holiday in Spain they are assaulted by a person in their party. Both victim and suspect reside in Scotland. The matter is not reported to local police and is reported to Police Scotland when they arrive home.

- No crime should be recorded however, provisions under Domestic Abuse Act 2021 would give Scottish Courts jurisdiction to hear such a case provided that the

circumstances constituted a crime in the country outside Scotland and if it had occurred in Scotland, it would constitute the crime of assault. Any crime recorded for this purpose should have a locus outwith Scotland.

Circumstances Where a Crime May Not Be Recorded

Where No Crime Has Occurred

If an apparent crime related incident proves not to involve criminality, the incident record disposal will clearly depict the circumstances dispelling criminality. If, following the creation of a crime report, subsequent investigation proves that no crime occurred; the crime report will be marked accordingly. A full description of steps taken and the reason behind the change in status will be detailed in the crime report.

Recording on Other Systems (incl. Conditional Offers, Self-Generated Reports etc.)

The exceptions to the Principles are where standing agreement with the Procurator Fiscal or Reporter exist precluding the requirement to raise a crime report. For example, Conditional Offers or Fixed Penalty Notices in relation to moving Road Traffic Offences where these are not always recorded on a crime recording system, although are recorded on an auditable system for statistical purposes.

All incidents coming to the attention of the police will be registered by the creation of a report, which is auditable. This practice will ensure the Service has all available information to hand when determining possible crimes and will allow an audit trail to be created for future audit and inspection purposes. Where a report is recorded as a crime initially and does not require immediate police response (e.g. self-generated reports), it is not always necessary for an incident record to be created. However, where the report is not initially recorded as a crime, an auditable incident record should be registered (whether on the Incident System or some other accessible and auditable means).

Unable to Confirm Details of Initial Report

Where a complainer reports an incident which initially indicates a crime may have occurred, there is insufficient information available to record a “skeleton” crime report and reasonable enquiry has been made to contact the complainer in order to obtain the details of the alleged crime, but without success, no crime report need be created. However, the incident must be endorsed with a record of the attempts made.

Where sufficient detail has been obtained, a crime report must be raised, even though the police have been unable to contact the complainer to obtain further information.

A refusal to provide a statement is insufficient justification to close an incident as a non-crime. If any doubt exists as to the validity of a report, a crime must be recorded unless it can be evidenced that a crime did not occur.

No Victim, Witness etc. Traced

Where there are grounds to suspect that a crime may have taken place but no victim (or person reasonably assumed to be acting on behalf of the victim) can immediately be found or identified, the matter should be recorded as an incident until such time as confirmation of a crime can be ascertained. Where a crime report is not being raised, the auditable incident record must be fully updated to explain the circumstances. If sufficient details are reported by an apparently reliable witness who is of the opinion that a crime has been committed, and no victim can be traced, a crime will be recorded e.g. reliable witness reports one person being assaulted by two others on a public street.

Public Order Incident

In the case of a public order incident where on the arrival of the police there is no continuing disorder and no specific intended victim, the incident will not be routinely recorded as a crime. Reasonable enquiries should be undertaken to identify specific victims and secure any supporting evidence that would enable further police action in terms of arrest or summons. Where enquiries fail to identify any victim or produce supporting evidence, the incident will remain recorded as an incident only. Where police arrive at a scene and witness disorder, they will deal with the matter appropriately and where crimes are apparent, record a crime(s), as required. Where there is no specific intended victim, and where an officer warns an offender to stop the unlawful behaviour and the offender heeds the warning and no further action is taken, no crime report is required.

Anonymous Reports

Anonymous reports of crime must be supported by corroborative evidence prior to the creation of a crime report. Where a victim's details are withheld from the police the circumstances reported will normally be recorded as an incident only until such times as victim details are made known.

Specialist Reporting Agencies

Over 50 specialist agencies, other than Police, report cases to the Procurator Fiscal where the types of offences can include benefit fraud, illegal dumping of waste and infringement of trading standards. Where another reporting agency has primacy over an investigation and agrees to record, report and conduct an enquiry, there is no requirement for Police to record a crime. In most instances, these Agencies, being specialists in their own areas of expertise will have a statutory duty to investigate and report direct without involving the police.

Agencies do not have full powers to act in all circumstances (e.g. where a member of staff is assaulted), therefore, some incidents may be referred to the Police for a crime report to be raised.

Examples of other reporting agencies include:

- British Telecom
- Department for Transport
- Department for Work and Pensions
- Driver and Vehicle Licensing Agency (DVLA)
- Fire and Rescue Service
- Food Standards Agency
- Gangmasters Licensing Authority
- Health and Safety Executive
- HM Revenue and Customs
- Local Authorities

- National Health Service
- Royal Mail
- Trading Standards
- UK Border Agency

Balance of Probability

In all cases where apparent criminal activity is reported, but a crime is not initially recorded, the police would be expected to carry out reasonable enquiries to confirm whether a crime has in fact, on the balance of probability, been committed through seeking confirmation, from the victim, a person reasonably assumed to be acting on behalf of the victim, witnesses or via other supporting evidence. Where this cannot be confirmed, the incident should be endorsed with the enquiries made and for audit purposes, the reason why a crime was not recorded.

Crimes can be made known to the police through a variety of channels. No corroborative evidence is required before a crime report is raised, if on the 'balance of probability' a crime has occurred. In most cases, a belief by the victim (or person reasonably assumed to be acting on behalf of the victim) that a crime has occurred will be sufficient to justify its recording as a crime. A crime should be recorded when it is more likely than not that a crime has been committed. The police will determine whether the circumstances, as reported, amount to a crime defined by Scots Law, or an offence under statute.

The fact that a person is drunk or otherwise impaired might have a bearing on the balance of probability issue within the crime recording decision-making process. As a minimum, a crime incident must be recorded and followed up by the police when the person is in a fit state. However, if at the time of reporting supporting evidence exists, a crime should be recorded, regardless of the victim's condition.

Uncooperative Victims

In circumstances where a person reports that a crime has occurred, and there is sufficient information to confirm, but the victim, witness and/or complainer refuses to co-operate with the police, a crime report will be raised and the appropriate 'Uncooperative' tag assigned.

Power of Discretion

The SCRS while laying down a standard for ethical crime recording does not remove a police officer's power of discretion when dealing with:

- instances of anti-social behaviour
- minor acts of disorder
- minor road traffic violations.

However, there will be occasions when priorities or local initiatives will limit powers of discretion as the police introduce tactical measures to deal with specific local problems or enforce new legislation.

On occasions when a police officer has used their power of discretion to verbally warn in the circumstances highlighted above, there is no requirement for a crime report to be raised. However, the auditable incident record must be fully updated with the circumstances and the rationale for the action being taken. In the use of discretionary powers, the decision must be appropriate to the circumstances and will be subject to scrutiny. Crimes should continue to be recorded in all circumstances where the crime is victim based, e.g. sexual crime, assault, theft, vandalism, hate crime, domestic crime.

Examples where an officer can use discretion:

- Anti-social behaviour;
- Minor acts of disorder e.g. stand up fights where no serious injury is sustained and no party claims to have been assaulted;
- Minor road traffic violations when a police officer has used their power of discretion to verbally warn.
- Where a Roads Policing officer makes a decision to use power of discretion not to issue a Prohibition Notice.

Incidents on school premises

When a minor incident occurring on school premises is reported to the police, including those witnessed by, or reported directly to the police school liaison officers, the officer dealing should, in the first instance, invite the victim or the person acting on their behalf to report the matter to the head teacher to be dealt with under normal school discipline procedures. Such reports should be recorded as an incident only, until or unless:-

- They judge it to be a serious incident*;
- Having brought the matter to the attention of the school, they receive a formal request from the school to investigate; or
- The child, parent or guardian or the child's representative asks the police to investigate.

The above excludes where the:

- victim or suspect is an adult e.g. teacher
- victim or suspect is not a pupil at the school where the incident has occurred
- incident has occurred on school transport to or from school
- incident has occurred on a school trip
- incident has occurred outwith normal school hours

The term "school premises" includes residential schools, however, the incident must have occurred during normal school hours within the confines of the teaching or recreational area for the above practice to be considered.

A serious incident is one that has led/is intended to lead/is likely to lead/or threatened to lead to serious harm or loss to any school child in the view of the child, parent or child's representative. Any Assault meeting the definition of Serious Assault should be classed as a serious incident which should be dealt with by police.

Counter Allegations

In circumstances where counter allegations are made, the officer must apply the 'balance of probability' test. Consideration should be given to any injuries sustained, who was the initial aggressor and whether the alleged assault was as a result of retaliation, or in justified self-defence. Every case should be judged on its merits and officers do not require to raise crime reports on every occasion where a counter allegation is made. There may be occasions when a decision is made to report the principle perpetrator to the Procurator Fiscal with the circumstances outlined within the Police report, however, this does not in itself provide sufficient justification for not recording a crime should the circumstances be assessed that the principle perpetrator was also assaulted without justification.

Where the decision is made not to raise a crime report, this should be clearly explained on the Command and Control Log and/or initial crime report raised.

Where doubt exists, submit a crime report. Following enquiries, where evidence suggests no assault took place, authority should be sought to have the crime report updated to 'No Crime'.

- Example 1
- Police are called to a domestic incident by an anonymous caller regarding a person assaulting their partner. On police attending, both parties are very drunk and aggressive. Both make counter allegations of assault, although no injuries are apparent. A credible third party (in opinion of attending officers) within the house confirms they were shouting at each other but no assault took place. Police speak to both parties in isolation and they agree things got out of hand but neither were assaulted.
- No crime reports for Assault should be raised as there is credible evidence to justify no crime took place. Consideration must be given in relation to the extent of the arguing (e.g. Establish a disorder type crime such as Criminal Justice and Licensing (Scotland) Act 2010 Sec 38). In such a circumstance, it is vital that a detailed disposal is placed on the Command and Control System to explain the rationale

behind the circumstances. Assessment of the incident must be thorough to ensure future safety of all parties involved.

Example 2 'A' assaults 'B' and makes a counter allegation that they were assaulted by 'B'. There is evidence that the injuries sustained by 'A' were inflicted by 'B' in self-defence.

- 1 x Assault ('A' assaulting 'B')

Example 3 'A' assaults 'B' and is then subjected to a sustained attack at the hands of 'B'.

- 2 x Assault ('A' was the main instigator and 'B's' retaliation was not justified retaliation or self-defence).

Crime Related Incidents Involving Persons Lacking Capacity

The following guidance should be considered when a crime related incident is reported to the police involving a victim or offender who lacks capacity.

Where a crime is reported, the police have a duty to obtain sufficient information from the victim, or person(s) acting on behalf of that victim, to submit a crime report and investigate where appropriate.

In all cases where a minor crime is reported, e.g. Common Assault, Theft etc. and following enquiries, it becomes apparent that the suspect lacks capacity, supporting evidence (e.g. a statement/document which may be recorded in the police officer's notebook/mobile device or other related document) should be obtained from a named registered medical practitioner e.g. doctor, with regard to their capacity to having committed that crime. This should be to the effect that the suspect lacks the capacity in acknowledging their actions as defined by the Adults with Incapacity (Scotland) Act 2000. This credible evidence confirms there was no criminal intent to support that a crime took place. Therefore, the relevant procedure should be followed to have the crime report updated to 'No Crime'.

In all circumstances where a serious crime is reported, e.g. Serious Assault, all Sexual Offences etc., and following investigation it becomes apparent that the suspect lacks capacity, the crime will remain recorded and must not be updated to 'No Crime'. Any additional crime(s) committed at the same time as a 'serious crime' must also remain recorded. If a sufficiency of evidence exists, a police report (SPR2) will be submitted to the Procurator Fiscal who will make the decision based on the evidence presented, whether or not criminal intent can be proved and if it is in the public interest to proceed with the case. In such cases, the crime report will result in a detected crime. If there is not a sufficiency of evidence the crime will be recorded as undetected.

Crime related incidents reported involving persons lacking capacity should be considered on a case-by-case basis, depending on the medical evidence presented at the time to determine the aspect of criminal intent. A crime report should be recorded in all cases unless medical evidence obtained from a named registered

medical practitioner e.g. doctor, is available from the outset which clearly confirms a lack of criminal intent and the incident is fully updated to this effect.

Where an individual will permanently lack capacity it is sufficient for reference to be made to medical notes by a medical practitioner e.g. nurse, however, in cases where the illness has not been diagnosed as being permanent this must be assessed by an appropriately qualified medical practitioner e.g. doctor.

Human Trafficking

Human trafficking can be understood as the illegal trade and exploitation of human beings. It can take many forms and cover a wide variety of activities but human trafficking always involves either exploitation of a person or the intention to exploit a person. For the purposes of trafficking, a child is any person under 18 years of age. A trafficking victim does not have to cross international boundaries but merely being moved from one place to another within Scotland or the UK for the purpose of exploitation is sufficient.

Crimes reported which occur within Scotland will be recorded in accordance with SCRS. Crimes which have occurred outwith Scotland will not be recorded. In circumstances where the locus of a crime is unknown but is known to have occurred in the UK, the locus will be where it can reasonably be inferred to have occurred. Where on the balance of probability the locus is within Scotland, however, an approximate locus cannot be identified the locus will be where the person has come to the attention of the relevant authorities.

Example 1 A potential victim of trafficking states that they were forced to work in a named restaurant or an unknown restaurant which can be established as being within Scotland, working long hours and with no pay.

- A crime report is required.

Example 2 A potential victim of trafficking states that they were forced to work for no money and in poor conditions at a named or unnamed warehouse in an unknown location overseas.

- No crime report is required.

Example 3 A potential victim of trafficking states that they were forced to work for no money and in poor conditions at a named or unnamed warehouse in the Manchester area.

- No crime report is required. A crime transfer package should instead be sent to the relevant police force for their consideration.

A European Union directive has been ratified by the UK Government for the non-prosecution or non-criminalisation of persons where it can be shown that they were coerced or forced to commit crime through being a victim of trafficking. In these cases liaison with the area Procurator Fiscal will decide whether it is in the "public interest" to continue with the prosecution of a potential victim of trafficking.

Where a person is believed to have been coerced or forced to commit crime this does not negate the requirement to record the crime committed.

Example 4 'A' is charged with a Theft by Shoplifting where the enquiry concludes that it is more than likely that they have been the victim of trafficking and the Procurator Fiscal has advised they will not prosecute.

- A crime of Theft by Shoplifting should be recorded and shown as detected (this meets the criteria of a "cleared up" crime due to reporting being considered as inappropriate in line with the EU directive and direction from the Procurator Fiscal).

Crime Occurring in Prisons

Before reporting an incident to the Police, the prison will consider each case to assess whether it can be dealt with by means of the prison adjudication system, which can in some instances provide a relatively quick and cost effective means of dealing with minor crimes in prisons. Where a prisoner has been dealt with by way of the prison adjudication system, this does not remove the ability for the circumstances also to be reported to the Police to be dealt with as a crime.

Some crimes will be so serious that referral to the Police is necessary whilst others may be reported due to aggravating factors. An informed and balanced decision must be taken in making a referral to the Police regarding the appropriate actions for each individual case.

It should be noted where prisoners are detained in State Hospitals that this type of establishment does not meet the definition of a "Prison" per Prisons (Scotland) Act 1989.

Section C - Detections

Detections

The date 'cleared up' (detected) will feature as the index reference for statistical purposes e.g. a crime recorded in September and detected in October, should be included in the detected crime statistics for October.

A 'cleared up' crime, can be defined as follows:

There exists a sufficiency of evidence under Scots Law, to justify consideration of criminal proceedings notwithstanding that a report is not submitted to the Procurator Fiscal or Children's Reporter because either:

- by standing agreement with the Procurator Fiscal or Children's Reporter, the Police formally warn the accused, or
- reporting is inappropriate due to the non-age of the accused, death of the accused or other similar circumstances.

Time Barred Cases

Where a crime has been identified as being 'time barred', however, there would have been sufficient evidence to report the accused otherwise, the crime should be counted as detected.

Fixed Penalty Notices (FPN)

The Crimes/Offences covered by Fixed Penalty Notices, which are recorded as detected, are as follows:-

- Licensing (Scotland) Act 2005, Section 115 – Disorderly conduct.
- Licensing (Scotland) Act 2005, Section 116 – Refusal to leave premises.
- Civic Government (Scotland) Act 1982, Section 47 – Urinating or defecating in circumstances causing annoyance to others.

- Civic Government (Scotland) Act 1982, Section 54(1) – Persisting to annoyance of others, in playing musical instruments, singing, playing radios etc. on being required to stop.
- Criminal (Consolidation) (Scotland) Act 1995, Section 52(1) – Vandalism
- Local Government (Scotland) Act 1973, Sections 201 and 203 – Consuming alcoholic liquor in a public place.
- Breach of the Peace

Although the following offences are included as being suitable for disposal by way of a Fixed Penalty Notice, it is not common practice to issue a Fixed Penalty in respect of these offences.

- Civic Government (Scotland) Act 1982, Section 50(1) – Being drunk and incapable in a public place.
- Civic Government (Scotland) Act 1982, Section 50(2) – Being drunk in a public place in charge of a child.
- Malicious Mischief

It should be noted that there must always be sufficiency of evidence to justify consideration of criminal proceedings in relation to such crimes/offences outlined within any agreed protocol, before a crime can be recorded as detected.

Recorded Police Warnings

The Recorded Police Warning scheme (RPW) aims to address minor offending behaviour which Police Scotland currently report to the Procurator Fiscal resulting in either a non-court disposal or no action being taken on the grounds of triviality.

The Lord Advocate has issued guidelines for the Recorded Police Warning scheme which is now the first step in a three tier disposal process i.e. Recorded Police Warning, Fixed Penalty Notice, SPR.

The Recorded Police Warning Scheme replaces the Formal Adult Warning scheme and any other previously agreed (by local PF) warning scheme.

A Recorded Police Warning requires the same sufficiency of evidence to prove the crime as that which would be required to report the circumstances to the PF by SPR.

Crime Resolution (Non-Investigation)

There will be occasions when a crime is reported to the police but it is evident that the complainer or victim is reluctant to assist police, provide a statement or they state that they do not wish the police to investigate the crime. This reluctance can be for a number of reasons and includes fear of repercussions.

This should have no bearing on the actual recording of the crime and this should continue to be done in adherence of the Scottish Crime Recording Standard.

It should be remembered that the aim of the Scottish Crime Recording Standard (SCRS) is:

- To provide a more victim orientated approach that serves the needs of our communities, and ensure uniformity in crime recording practices throughout Scotland.

The crime recording / investigation process in its simplest format can be separated into three basic stages:

1. Record Crime
2. Investigate the Crime
3. Warn/Report Offender

Just because you start at 'level 1' does not mean you must always finish at 'level 3'.

The principles of the SCRS indicate that a crime must be recorded and in the majority of occasions complainers fully support this official record of their incident but, to consider fully their needs, Divisions must contemplate breaking the link between the need to record and the need to investigate.

However where a victim does not wish a crime investigated, the police, in deciding whether or not to pursue the investigation, must take the following into account

- The safety of the victim;

- Public safety; and
- Public interest.

In essence the wishes of the victim must be balanced with the public safety and public interest and if it is felt that any of these factors are compromised then the crime should be investigated. The safety of the victim, both in relation to the incident reported, and any form of repercussions should the suspect be approached, or the crime investigated by the police must be taken into consideration.

This Crime Resolution Policy will be implemented in relation to minor or non-serious crime only.

The use of this Crime Resolution Policy, must not be allowed to become an excuse for inappropriate non-investigation. Where a crime is not investigated on the wishes of the victim, the reasons for so doing must be fully recorded and auditable.

The victim must be made aware that, should a similar incident reoccur or the current incident subsequently be linked to other offences, the matter could be reopened for further investigation.

Where a victim / complainer is assessed as being uncooperative with the police and a decision is taken not to investigate the crime, a tag which is searchable for statistical purposes, must be placed on the crime report to record this fact.

To prevent the abuse of such a policy the decision not to investigate must be made at an appropriate level depending on the individual circumstances, the expectation being the decision would be taken by an officer of the rank of Inspector or above.

Excerpts from the Lord Advocate's Guidelines to Chief Constables on the investigation and reporting of Sexual Offences (issued November 2008)

Reporting to the Procurator Fiscal

Cases in which there is Insufficient Evidence (Undetected)

Where there is a patent insufficiency of evidence the victim must be advised of this fact at the earliest possible opportunity. In line with the reporting of all other crimes, a report should not be submitted to the Procurator Fiscal where there is a patent insufficiency of evidence. (Submitting a report merely serves to delay intimation to the victim of the inevitable decision to take no proceedings). Similarly, subject sheets or occurrence reports should not be submitted in such cases.

Uncorroborated allegations and the Moorov Doctrine

The investigating officer is responsible for interrogating intelligence systems to make any connections between allegations by two or more victims and a single accused. This is particularly important where the Moorov doctrine may apply. Two or more offences which may be linked by applying the Moorov doctrine should be reported together on a single police report.

Regardless of whether a report is submitted to the Procurator Fiscal, or whether criminal proceedings are commenced, investigating officers have a responsibility to ensure that relevant intelligence information about the crime, suspect and, where appropriate, the victim is recorded in intelligence databases.

Officers should ensure that any available risk assessment information and any circumstantial evidence or other information which may support the allegation is highlighted in the police report. This will be critical in cases dependant on the application of the Moorov doctrine.

Cases where there is Sufficient Evidence (Detected)

For the avoidance of doubt, where there is sufficient evidence, a report must always be submitted to the Procurator Fiscal for consideration. This includes cases in which

there is a technical sufficiency but there are doubts over the quality of the evidence. While the process of gathering sufficient evidence and making appropriate links between cases is a function of the investigating officer, the ultimate decision in rape cases rests entirely with the Procurator Fiscal. Where there is sufficient evidence to raise a prosecution for rape, there is a strong presumption that the Procurator Fiscal will proceed to investigate by precognition.

Cases where the Question of Sufficiency of Evidence is Finely Balanced

The circumstances of many rapes and the high standard of evidence required by Scots law can make it difficult to determine whether there is sufficient evidence to prosecute. In cases where the evidence is marginal, the decision about sufficiency in law rests with the Procurator Fiscal.

Recording/Reporting of Rape

In circumstances where a victim reports a crime of Rape and there is insufficient evidence to corroborate penetration, but sufficient evidence to prove Attempted Rape or Assault with intent to Rape, then a crime of Rape should be recorded.

An SPR2 libelling a charge of Rape should be submitted to the Procurator Fiscal detailing the full circumstances for their consideration. The Rape crime report will be shown as detected in these circumstances. Whilst the accused may be charged with Attempted Rape or Assault with intent to Rape due to the evidence available, the "Remarks" section of the SPR should provide an explanation as to why the charge being libelled on the front page of the SPR is one of Rape. The following has been agreed by COPFS and must be added to the "Remarks" section of an SPR2 for cases where Rape is libelled but it is considered there is only a sufficiency of evidence to report Attempted Rape or Assault with intent to Rape:

'A charge of Rape has been libelled within this SPR2 to reflect the crime reported by the victim. The circumstances have been fully investigated and it is considered that, despite significant and sufficient evidence in respect of the other essential evidential elements there is insufficient evidence to prove penetration. On this occasion, the Accused has been charged with Attempted Rape / Assault with intent to Rape (as appropriate).'

This will allow the Procurator Fiscal to fully consider the evidence presented and enable them to change the charge to that which they intend to proceed with, and thus preserve the victim orientated approach to crime recording required by SCRS.

Recording and Reporting of Drug Offences

A number of drug types can be recorded and reported to the Procurator Fiscal based on a presumptive field test or presumptive laboratory test. Where this is not applicable and analysis is required an 'Undetected' Crime Report, based on the suspected drug type, must be recorded with an explanation in the 'Enquiry Log' that the substance is awaiting analysis.

Where a large quantity of suspected controlled drugs has been recovered with no immediate 'owner' identified and further enquiry will be carried out e.g. confirmation of substance being a controlled drug, DNA, fingerprints etc. in order to confirm a crime and identify the 'owner', a crime report should be recorded.

On completion of enquiries, even if the drug is confirmed as being a controlled substance, however, no 'owner' has been identified to allow the reporting of the circumstances, then the property should be treated as 'found' and the crime report updated to 'No Crime'.

Section D - Subsuming of Crimes

Subsuming is a term used to record a number of criminal acts as one crime. However, more serious crimes such as Robbery or Rape may take into account a number of other criminal acts which may amount to individual crimes in their own right if committed in isolation.

For example - 'A' approaches 'B', pushes 'B' to the ground, shouts abuse, demands money and removes money from the pocket of 'B'. The various elements (assault, threatening or abusive behaviour, and theft) all amount to a crime of Robbery, a crime in its own right.

The following is intended as general guidance on when subsuming may be appropriate.

Further enquiries should be directed to the Crime Registrar.

Group 1

In general crimes within Group 1 may not be subsumed.

Example 1 'A' is abducted and sometime later whilst being held against their will, is stabbed.

- 1 x Abduction
- 1 x Serious Assault or Attempt Murder dependant on the evidence, plus possession of offensive weapon/bladed article used in commission of crime if committed in a public place, school or prison. The injury was not received during the act of abduction. It occurred at a later point in time. It is therefore not subsumed.

Where an incident involves the same complainer and offender, crimes such as serious assault or threats may be subsumed into an attempt murder, murder or robbery.

Example 2 ‘A’ threatens ‘B’ with a knife, demanding their wallet. ‘B’ refuses and a scuffle ensues and ‘B’ is stabbed several times to the abdomen resulting in serious injury. ‘A’ removes the wallet from ‘B’s’ jacket and makes off.

- 1 x Robbery with the Attempted Murder subsumed plus possession of offensive weapon/bladed article used in commission of crime if committed in public place, school or prison. If the stabbing occurred after the Robbery this would be recorded as Robbery and Attempted Murder. If the victim had died both Murder and Robbery would be recorded.

Example 3 Person A accidentally sustains a broken arm whilst being abducted.

- 1 x Abduction. The injury has been sustained as part of the abduction and is not a deliberate act.

Group 2

In Group 2, Sexual Crimes, some activities taking place as part of a single incident can automatically be subsumed. For example if a victim suffers sexual assault, a digital penetration and also a rape, by the same offender, as part of one incident, the sexual assault and digital penetration can be subsumed into the charge of rape which is the most serious crime.

Subsuming is restricted to conduct which falls within that outlined in Sections 1, 2 and 3 of the Sexual Offences (Scotland) Act, 2009; Sections 28, 29 and 30 relating to Older Children; and Sections 18, 19 and 20 relating to Younger Children where a single (most serious) crime may be recorded provided that this occurred as part of one incident, otherwise separate crimes must be recorded.

Example 1 ‘A’ is held down and punched before being raped by ‘B’. Following the rape ‘B’ assaults ‘A’ again resulting in ‘A’ sustaining a broken arm.

- The charge of common assault in this circumstance is a precursor to the Rape for the first attack and only Rape should be recorded provided that it can be shown the intent of the attack was to Rape. Since the second assault occurred after the Rape a separate crime of Serious Assault must be recorded. If 'A' had sustained a broken arm during the Rape this assault would have formed part of the Rape.

Where there is a time delay between crimes occurring, they will not generally be subsumed.

Example 2 'A' and 'B' were having an argument 'B' started hitting 'A' following which 'A' left the room and went to bed. The following morning 'B' hit 'A' again before sexually assaulting 'A'.

- Due to the time delay the common assault the previous evening, would be recorded as a separate crime. The common assault which took place in the morning would form part of the sexual assault provided that it can be shown the assault was a pre-cursor to the sexual assault, otherwise both crimes should be recorded.

Groups 3 & 4

The subsuming of crimes is mainly applicable, but not exclusive, to crimes within crime groups 3 and 4, which have occurred at the same locus on the same occasion with the same complainer.

Example 1 'A' comes across a van sitting stationary in a wooded area. 'A' finds the keys to the van in a box to the rear of the vehicle and drives it around, damaging the van before running off.

- The damage to the van would be subsumed into the Theft of Motor Vehicle as this is the more serious crime.

Example 2 'A' breaks into a house, steals articles from within including car keys and steals the householder's car from the driveway

- The property is owned by one complainer and occurred at the same date and time. The theft of the car is subsumed into the more serious crime of housebreaking and is considered a continuous course of conduct.

Example 3

'A' drives a moped over a golf course, churning up turf on 8 greens causing extensive damage costing thousands of pounds, thereafter writes a slogan on the green keeper's hut with white paint.

- The property is owned by one complainer (the Golf Club), sits within the confines of private property and the acts occurred at the same date and time, therefore, one crime of Malicious Mischief should be recorded due to the malicious destruction of property and the high value of damage caused.

Example 4

'A' breaks into a house, steals money lying in the bedroom, forces open a locked box and steals jewellery from within.

- The Theft by OLP to the box will be subsumed within the Theft by Housebreaking. They are the same crime type (theft) and this is considered to be a continuity of action.

Example 5

Vehicle is broken into. An attempt is made to steal the vehicle but fails, property to the value of £25 is stolen from within the vehicle.

- The attempted theft of the vehicle is subsumed into the theft of property from the vehicle, even though the value of the vehicle is greater than that of the property stolen. The theft of the property is a completed crime while the attempted theft of the vehicle is incomplete.

Example 6

Persons unknown damage a water pipe feeding a large pond, so that the water level drops and they can gain access to steal valuable fish from the pond.

- The vandalism to the water pipe (Group 4) is subsumed into the theft (Group 3) as the theft is the more serious crime and this is a continuous course of conduct.

Example 7

Person unknown breaks into a first floor flat and steals a TV. On exiting the flat they turn on the taps and the water floods through the floor to the ground floor flat below.

- The flooding to the flat below (vandalism) is subsumed into the housebreaking.

Example 8

'A' steals a credit card and hands it to 'B'. 'B' later uses the card twice to remove funds at an ATM and then passes the card to 'C' who makes three withdrawals from an ATM.

- 1 x Theft for the theft of the card and 1 x Theft by OLP (ATM) for the withdrawal of funds, with two suspects thereon. The theft of funds is counted per account and as only one account has been affected the withdrawal by 'C' is subsumed within that of 'B' and both are named as suspects.

Example 9

Persons break into a cottage, remove property and thereafter break into 2 unoccupied holiday homes and a lockup garage within the same grounds owned by the same complainer.

Note: If holiday homes are occupied, rules per hotel rooms apply.

- Only 1 crime report is required for Theft by Housebreaking (dwelling) as the buildings are within the same curtilage and owned by the same complainer.

Group 6

Example 1

'A' shouts and swears at 'B' in their home before assaulting 'B' causing slight redness to their face.

- 1 x Common Assault. There are no witnesses experiencing fear or alarm to merit a Section 38 offence being recorded.

Example 2

In a public place 'A' shouts and swears at 'B' before punching 'B' in the face.

- 1 x Common Assault. There is no requirement to record a Section 38 offence or Breach of the Peace in addition to the assault.

When subsuming is not appropriate

Offences committed where there is no victim and the Procurator Fiscal is the complainer (e.g. Road Traffic Offences) will be counted per offence in addition to any victim based crimes (unless otherwise specified in the counting rules).

Where the incident involves crimes against the person and also crimes against property, the property crimes will be counted in addition to the victim based crimes.

Where there are two victims of the same crime type within the incident, the crime perpetrated against each individual victim will not automatically be subsumed and be counted as one crime. The specific counting rule for that crime type will apply.

Section E - 'No Crime', Recorded in Error and Duplicates

A crime, once recorded, should be classified as a 'No Crime' if one of the following criteria is satisfied:

- Where following the report of an incident, a crime is recorded, and additional credible information is available which determines that no crime has been committed.
- The crime was committed outside the jurisdiction of Police Scotland and the respective Force has accepted the transfer of the crime.
- A procedural error has been made for a non-victim based crime/offence, e.g. error on completing an ASBFPN or COFPN.

The term 'No Crime' relate to crimes already recorded, and are therefore distinct from incident reports which do not result in a crime being recorded.

It should be noted that 'No Crime' is a final disposal and should not be applied as an interim measure to any recorded crime.

The 'No Crime' rule can be applied to crimes recorded at any time during the financial year and may include offences recorded in previous financial years.

The Crime Registrar is the final arbiter for all 'No Crime' decisions.

The reason for the 'No Crime' decision must be explained in detail in the crime/incident report along with the details of the requesting and authorising officer. A victim of crime making "no complaint" is insufficient justification to reclassify a recorded crime to 'No Crime'.

Where relevant, when a decision to 'No Crime' has been made complainers must be kept updated on the status of the investigation and the 'No Crime' conclusion, not just that enquiries have been concluded. This must be documented on the crime report.

Examples of crime which should be updated to 'No Crime'

Example 1 'A' reports that they were robbed. The crime is recorded and investigated but the complaint is shown to be false. 'A' is then charged with wasting police time.

- 'No Crime' the Robbery and record 1 x Wasting Police Time

Example 2 A report of a sneak in theft of a handbag is reported by 'A' and recorded. 'A' later contacts the police to advise that their partner 'B' had placed the handbag within a cupboard without 'A's' knowledge and no theft had taken place.

- Update the Theft to 'No Crime'

Examples of crime which should remain recorded

Example 1 A rape is reported to and recorded by the police. Following investigation there is no evidence to disprove a crime occurred.

- The Rape remains recorded.

Example 2 A complaint of assault is made and recorded by the police. The next day the complainer contacts the police stating they wish no further action to be taken although they confirm an assault had taken place.

- The Assault remains recorded although an uncooperative tag should be appended (no complaint does not necessarily mean no crime).

Example 3 'A' reports their vehicle windscreen is smashed by someone throwing a brick and a Vandalism is recorded. Enquiry identifies and provides sufficient evidence that a child aged 7 was responsible and there is nothing to suggest this was an accidental act.

- The Vandalism remains recorded (whilst a child of non-age was identified as being responsible this should remain

recorded. Where there is sufficient evidence to confirm the child was responsible and there is nothing to indicate this was accidental, then the crime can be updated to 'detected').

Example 4 'A' is detained by security staff for stealing a small value of confectionary from a shop. Officers request 'No Crime' on the basis of low value involved and the person has been verbally warned.

- Theft by Shoplifting remains recorded.

Medical Updates/No Crime

Sexual Offences (Scotland) Act, 2009, Section 1 provides that “penetration to any extent” amounts to Rape and any subsequent medical update which is inconclusive as to whether penetration occurred is insufficient rationale to reclassify any recorded crime to 'No Crime'.

Recorded in Error/Duplicates

Where a duplicate crime report has been raised the crime number in respect of the 'live' crime report should be cross-referred on any duplicate crime report to provide an auditable trail. Care should be taken to ensure that the two records relate to the same circumstances involving the same complainer on the same date.

If the reported incident was recorded as a crime in error or found to have been over-recorded the “Recorded in Error” National Crime disposal should be used.

Note – Where an incident is initially recorded as a crime and later discovered not to be a crime the 'No Crime' option will be used.

Section F - Transfer of Crime and Dealing with Crimes outside Police Scotland area

In circumstances where a crime is committed within the jurisdiction of another policing area, the receiving Division/Force will record an initial report e.g. incident. The details of the crime should then be forwarded to the relevant area. The victim, or person making the report, will be advised of the action being taken.

The area recording the crime report will forward the Crime Reference Number for cross-referencing with the original report, thus providing an audit trail. This area will be responsible for further contact with the victim or person making the original report.

Where there is a disagreement between policing areas, the area receiving the original report will refer the case to the local Crime Manager or Crime Registrar for review. The Crime Manager or Crime Registrar from the original area will review the circumstances and decide, in consultation with the other Crime Manager or Crime Registrar if the case is suitable for transfer. Whilst the question of ownership is being resolved that area has a duty to ensure that all necessary steps are taken in relation to victim care, preservation of evidence and meeting the immediate needs of the investigation.

In circumstances where a person resident outside Scotland contacts Police Scotland direct to report a crime believed to have been committed in Scotland, they should be directed to report the circumstances to their local Police Force in the first instance. In cases of fraud where the person is resident in England or Wales they should be directed to report the circumstances to Action Fraud.

Crime Transfer Standards

Where appropriate, crimes can be transferred from other UK Forces and vice versa under NCRS/SCRS reciprocal agreements and where required assistance given in the investigation.

For all crimes with the exception of communication type crimes and Fraud the following minimum information standards should be adhered to when transferring a

crime to another Force/Division or for acceptance of a transferred crime from another Force/Division:

- An approximate date/date range
- An approximate locus sufficient to identify the area where the crime occurred
- A modus operandi sufficient to establish a crime type

It should be noted that “somewhere in Scotland/England” is not sufficient to identify an area.

Where a minimum standard of information has been provided sufficient to record a crime, a crime may be recorded without a detailed statement being provided.

For all crimes which involve use of the telephone or internet, the locus will be where the offending communication can be evidenced as having been received, and will only be updated to where the communication was sent from if a specific location can be evidenced. No crime will be transferred to another Force/Division until such times as the necessary evidence confirming jurisdiction is obtained. In the main this will involve the provision of Cycomms evidence by the initial enquiring Force/Division. It should be noted that the provision of an IP or E-mail address or the location of a telephone mast on their own may provide a line of enquiry, but without additional confirmation are insufficient to justify crime transfer. Only where a locus can be evidenced will a transfer be accepted. If a specific location is not provided the crime will be retained by the area where the communication was received. There is an expectation that Forces/Divisions will provide the necessary assistance to further any investigations.

Where the communication is confirmed as having been sent from a specific location elsewhere in the UK and the crime transfer is accepted by another Force the recorded crime may be updated to ‘No Crime’ on provision of a crime reference number. If the crime transfer is not accepted the crime will remain recorded where the communication was received.

Where the communication is confirmed as having been sent from outwith the UK, the crime must remain recorded with the locus being ‘where received’ and must not be updated to ‘No Crime’.

Rules for transferring crimes of Fraud are contained within the Fraud pages in Part 2 of this manual.

Crimes Committed against Victims in Scotland Where Suspect is Outside Scotland

In circumstances where a victim is in Scotland at the time a crime is committed and the suspect is determined to be outside Scotland a crime will be recorded and retained by Police Scotland unless the location is established as being elsewhere in the UK and ownership is accepted by another UK Force. If crime transfer is accepted by another UK Force and crime reference number provided the crime report may be updated to 'No Crime'. If crime transfer is not accepted the recorded crime will be retained by Police Scotland.

Example 1 While victim 'A' is in Scotland they are defrauded of money by means of bank transfer and a crime of Fraud is recorded. Enquiry determines a home address of suspect in Wales and Welsh Force accept the crime transfer.

- The recorded Fraud should be updated to 'No Crime'.

Example 2 While victim 'B' is in Scotland they are sent unwanted sexual images by a person they have befriended on social media and a crime of Sexual Offences (Scotland) Act 2009, S6 is recorded. Enquiry determines the images were sent from an IP address which is based in Turkey.

- The recorded Sexual Offences (Scotland) Act 2009, S6 offence should be retained as a recorded crime by Police Scotland with the locus being where the images were received. The disposal 'Undetected – Suspect Outwith UK' should be selected.

Example 3 While victim 'C' is in Scotland they are defrauded of money by means of bank transfer and a crime of Fraud is recorded. The suspect is believed to be somewhere in England but enquiry is

unable to determine a locus sufficient to transfer the crime to another Force.

- The recorded Fraud should be retained as a recorded crime by Police Scotland with the locus being the victim's home address. The disposal 'Undetected – Suspect Elsewhere UK' should be selected.

Crimes Committed against Scottish Victims who are outside Scotland at the time of the Crime

Crimes committed against a Scottish based victim who is not in Scotland at the time of the crime should not be recorded. However, provisions within certain pieces of legislation such as Criminal Procedure (Scotland) Act 1995, Section 11, Domestic Abuse (Scotland) Act 2018, Section 3 and Sexual Offences (Scotland) Act 2009, Section 55 allow for specific offences which occur outwith Scotland to be prosecuted in Scotland. In these circumstances any offences which are recorded for the purpose of reporting to the Procurator Fiscal should be recorded with a locus which is outwith Scotland.

Example 1 While victim 'D' who has a home address in Scotland is on holiday in Spain they purchase property in Spain which they discover is part of a scam and does not exist. They report the matter to Police Scotland when they arrive home.

- No crime should be recorded.

Example 2 While victim 'E' is on holiday in Spain they are assaulted by a person in their party. Both victim and suspect reside in Scotland. The matter is not reported to local police and is reported to Police Scotland when they arrive home.

- No crime should be recorded. Under exceptional circumstances local Procurators Fiscal may decide to prosecute such cases in Scotland. If this is the case any crime

recorded in order to report a case should be recorded with the locus in Spain.

Procedure for recording crimes committed in the Air or at Sea

Where a crime is reported on an aircraft in flight and it is not clear where the crime has occurred it will be recorded as follows:

For Internal UK Flights

The area/Force covering the aircraft's departure location must record the crime. Crimes reported to third party areas/Forces will be recorded as an incident and referred for crime recording to the area/Force covering the airport of departure. A common sense approach should be adopted where crimes are committed aboard an aircraft in flight and the matter is dealt with by Police on arrival.

Aircraft in Flight

The following principles should be taken into account when a crime is reported aboard an aircraft in flight:

British Aircraft - In terms of jurisdiction COPFS can prosecute anything during the course of a flight (from when the doors close for take-off until they are opened on landing) in a British controlled aircraft as if it occurred in the UK.

Foreign Aircraft Travelling to the UK – If it is a foreign aircraft travelling to the UK, i.e. UK is its next destination, COPFS can prosecute for offences if they would also constitute an offence in the country in which the aircraft is registered.

Foreign Aircraft Travelling from the UK – If it is a foreign aircraft travelling from the UK to another country and the offence occurs in flight then it should be reported to the country of destination.

Note - the above rules also apply to crimes committed at sea. In these circumstances replace "aircraft" with "ship" and "airport" with "seaport".

Ministry of Defence

Crimes committed On Ministry of Defence property will be recorded by the Division for that area, unless the Division has agreed following a request by the Ministry of Defence Police to cede primacy of investigation, in which case the crime will be recorded by the Ministry of Defence Police.

British Transport Police

Details of any offence reported to the police that has been committed on railway premises that are within the jurisdiction of the British Transport Police, should be passed to the British Transport Police for recording in accordance with policy. The British Transport Police will be responsible for the annual reporting of offence statistics to the Home Office/Scottish Government in the format applicable to that Force. Similarly offences that are reported to British Transport Police and which have been committed outside of the normal Jurisdiction of that Force will be reported to the local policing area for adoption.

The principle rule to be taken into consideration when deciding to transfer a crime to or from British Transport Police should be the location of the victim or their property at the time of the crime. For example,

- A person stands on a roadway (owned by a local authority) and throws a missile at and damages a passenger train; the offence should be recorded by BTP.
- A person standing on a station platform property throws missiles at a private house and breaks a window; the offence should be recorded by the local policing area.
- Road Traffic offences committed on railway level crossings should be recorded by BTP.

In the case of a crime occurring in one police force area and finishing in another area the following crime recording practice should be followed.

- If it is an ongoing crime e.g. disorder which starts on the jurisdiction of BTP they will record the crime.
- If it starts on another police area that other force will record the crime.
- In circumstances where the disorder element of a crime is one that is subsumed the crime will be recorded where the recordable crime occurs e.g. victim is subjected to threatening or abusive behaviour in one area immediately before being assaulted in another, will be recorded where the assault takes place.

In the case of any dispute the police area first receiving the complaint will be responsible for the recording and investigation of the crime until the respective Crime Registrar can come to an agreement as to who will take primacy in the investigation in these cases the crime will then be retained or transferred as appropriate.

Where crimes committed in another area are detected by BTP officers, in the general course of their enquiries, they should normally be transferred to the local force for recording. Offenders will be reported to the PF or other appropriate agency by means of a police report.

Obtaining Crime Reference Number or Transferring a Crime to BTP

To obtain a BTP crime reference number a copy of either the incident log or crime report (or in exceptional cases the victim's statement, providing it contains sufficient detail) should be sent to the British Transport Police Crime Recording Centre (CRC), who will input the report to the BTP Crime system.

The CRC will respond with the crime reference number by E-mail.

Section G - Notification of Crime via Internet

Where the reporting of specific crimes/offences via the Internet is in place such reports will be managed by each Division independently and recorded.

Where an e-mail is received which does not fall into the appropriate crime category i.e. lost property, advice required etc. the relevant department will be notified and required to act upon it appropriately.

Section H – Third Party Reporting

The definition of third party reporting is;

Any report of a crime, incident or intelligence made to the police from a partner agency, organisation or other group or person. The report must be made on behalf of a third party or parties who have not reported the crime incident or information by any other means.

Third party reports can be provided by telephone, letter, e-mail or other form of electronic communication, or in person.

In circumstances where a third party reports a crime to police and the victim refuses to engage with police to provide sufficient details to confirm the crime, no crime should be recorded, notwithstanding the need to record the details in an incident record.

However, if sufficient details are reported by an apparently reliable witness who is of the opinion that a crime has been committed, a crime will be recorded e.g. a reliable witness reports one person being assaulted by two others on a public street.

Anonymous reports of crime must be supported by corroborative evidence prior to the creation of a crime report. Where a victim's details are withheld from the police the circumstances reported will be recorded as an incident only until such times as victim details are made known.

Section I – Hate Incidents and Hate Crimes

Note - At time of publication of the SCRS Manual the Hate Crime and Public Order (Scotland) Bill had not been introduced into law.

Hate Incidents

There will be occasions when incidents occur where no crime has been committed but the incident itself is perceived to have been motivated due to hate or prejudice. In such cases these incidents will be recorded as hate incidents.

Perception

In terms of the perception element consideration must be given to:

- Who perceived the circumstances to amount to being a hate incident/crime.
- Why it was perceived to be a hate incident/crime.

Hate Crimes

A Hate crime is defined as 'A crime motivated by malice or ill-will towards a social group'.

Key aspects of hate crime are as follows:-

There must be active ill will or elements of vindictive feelings towards an individual or their perceived association with a social group.

The crime is based on the motivation of malice or ill will towards a social group. This means the question of whether the victim of a hate crime actually belongs to a social group or not, is irrelevant. For example, if someone is the victim of a homophobic attack, whether they are gay or not is irrelevant.

An individual may be targeted because of their vulnerability. This should not be automatically interpreted as hate crime. For example, an elderly female who is assaulted and robbed may have been targeted because she is vulnerable, as opposed to being targeted due to ill will or malice towards her belonging to a specific social group.

If a crime is reported and is perceived to be motivated by hate by the victim or any other person, including a police officer, it should be recorded and investigated as such.

Statutory legislation exists which creates an aggravation of any criminal offence against a person or their property when motivated wholly or part by an offender's hatred of someone because of their perceived:-

Disability

Where a crime or incident is perceived by the victim or any other persons to have been motivated by disability, actual or perceived. The term 'disability' will be recognised as physical or mental impairment which has a substantial and long term adverse effect on a person's ability to carry out normal day to day activities.

Transgender Identity

Any crime or incident perceived by the victim or any other person to have occurred or have been motivated by an individual's believed identity.

Race, Colour, Ethnic Origin, Nationality or National Origin

Any crime or incident perceived by the victim or any other person to have been motivated due to a victim's race, colour, nationality (including citizenship), ethnic or national/cultural origins including Gypsy Travellers. This will also include incidents where it is perceived that an individual or group are associated with any of these categories.

Religion or Belief

An crime or incident perceived by the victim or any other person to have been motivated by malice or ill-will based on the victim's association, or perceived association with a particular religious group, or a group with a perceived religious affiliation. This includes instances of sectarianism.

Sexual Orientation

Any crime or incident perceived by the victim or any person to have occurred or have been motivated by an individual's believed sexual orientation. The victim need not necessarily be a member of that social group, for example, a straight man leaving a gay club and being subject to homophobic abuse would still be a hate crime due to the motivation that the perpetrator believes that the man is gay by reason of his perceived association with the gay club.

Although there is no specific legislation which creates a specific offence in relation to the characteristics of 'age' or 'gender', it is important to recognise that people may suffer discrimination, victimisation and harassment at any age or whatever gender they may be, particularly if they are perceived as being vulnerable. If a victim were to be targeted specifically due to their age or gender, this can be treated as a common law aggravation by the court.

Examples of Hate Crimes and Recording Practices

Example 1 Person reports being subjected to verbal abuse perceived to be racially motivated.

This conduct was not witnessed by others.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or Abusive Behaviour (with Racial aggravator).
Note - there is no corroboration to the racially aggravated conduct so the Criminal Law (Consolidation) (Scotland) Act 1995, S50A offence is not relevant.

This conduct was witnessed by others.

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S50A, Racially Aggravated Conduct (with Racial aggravator). Note - corroborative evidence of racially aggravated conduct justifies recording under S50A.

- Example 2 Person reports a brick having been thrown at their living room window, breaking same and perceives this to be racially motivated providing reasons for same.
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism (with Racial aggravator)
- Example 3 Person reports a slogan perceived to be racially motivated has been scratched into the bodywork of their car.
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism (with Racial aggravator)
- Example 4 Person reports being assaulted. No comments are made by the assailant but the incident is perceived to be racially motivated.
- 1 x Assault (with Racial aggravator)
- Example 5 Person reports being assaulted. Comments made by assailant were perceived to be racially motivated and were uncorroborated.
- 1 x Assault (with Racial aggravator). Note - no requirement to record a crime for the comments made which are subsumed into the assault.
- Example 6 Person reports being assaulted. Comments made by assailant were perceived to be racially motivated and were corroborated by witnesses.
- 1 x Assault (with Racial aggravator). Note - no requirement to record a crime for the comments made which are subsumed into the assault.
- Example 7 Disabled person reports being shouted and sworn at where comments made were perceived to be motivated by prejudice towards their disability.
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or Abusive Behaviour (with Disability aggravator)

- Example 8 Deaf person reports someone mimicking Sign Language towards them in an offensive manner which is perceived to be motivated by prejudice towards their hearing impairment.
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or Abusive Behaviour (with Disability aggravator)
- Example 9 Person is assaulted. During the assault the assailant makes comments which were perceived to be motivated by prejudice towards their transgender identify.
- 1 x Assault (with Transgender aggravator)
- Example 10 Person has comments scratched into the bodywork of their car. The comments were perceived to be motivated by prejudice towards their sexual orientation.
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S52 Vandalism (with Sexual Orientation aggravator)
- Example 11 Suspect who is caught stealing goods from a shop makes a comment perceived to be racially motivated to a member of staff which is not corroborated.
- 1 x Theft by Shoplifting
 - 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or Abusive Behaviour (with Racial aggravator).
Note - the uncorroborated racial comment is a separate crime which cannot be subsumed into the shoplifting and must be recorded separately. If corroborated Criminal Law (Consolidation) (Scotland) Act 1995, S50A would be recorded in preference to S38.
- Example 12 Suspect who is caught stealing goods from a shop assaults a member of staff and makes a comment perceived to be racially motivated which is corroborated.
- 1 x Theft by Shoplifting

- 1 x Assault (with Racial aggravator)

Note - the Assault is a separate crime which cannot be subsumed into the shoplifting and must be recorded separately.

Note - no requirement to record a crime for the comment made which is subsumed into the assault.

On 24 March, 2010 the Offences (Aggravation by Prejudice) (Scotland) Act, 2009 was introduced which makes provisions about the aggravation of offences by prejudice relating to disability or to sexual orientation or transgender identity.

Section K – Evidence Based Crime Recording

There can be various occasions where a crime or offence is committed notwithstanding the fact that the criminal act is not directed toward a specific intended victim.

Crimes/offences of this nature are frequently 'self-generated' by the police as they are identified through undertaking proactive policing measures but can also be brought to our attention by members of the public. In such circumstances the complainer is likely to be recorded as 'Procurator Fiscal'.

Regardless of how the police are made aware of the crime the decision to record will be based on the evidence available; this will include any evidence of members of the public and police officers who have witnessed the criminal behaviour; as well as any physical or circumstantial evidence available.

Examples of crimes/offences which are considered to be evidence based are:-

- Public Mischief
- Drugs Offences
- No Insurance
- No Driving Licence
- Driving while using a mobile phone
- Seat Belt Offences
- Speeding Offences

There will be circumstances where there is evidence to show that an offence has been committed 'against the State' although the identity of the offender(s) hasn't been established. However, there will be cases where the offence is only complete if the criminal liability of the offender can be proven.

Section L - Scottish Government Justice Directorate (SGJD) Crime Codes

For statistical purposes all crimes are recorded and classified under a SGJD crime code assigned to a crime grouping. The following is a list of all current SGJD codes and crime groupings:

SGJD Crime Codes/Classifications (Groups) - Effective from 1 April 2023

Group 1	Non-sexual Crimes of Violence
Group 2	Sexual Crimes
Group 3	Crimes of Dishonesty
Group 4	Damage and Reckless Behaviour
Group 5	Crimes against Society
Group 6	Anti-social Offences
Group 7	Miscellaneous Offences
Group 8	Road Traffic Offences

Group 1 Non-sexual Crimes of Violence

Murder and Culpable Homicide

1/000	Murder
3/001	Culpable Homicide (common law)
3/006	Corporate homicide

Death by Dangerous Driving

3/002	Causing death by dangerous driving
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3/003 Death by careless driving when under influence of drink/drugs
3/004 Causing death by careless driving
3/005 Illegal driver, disqualified/unlicensed etc. involved in fatal
accident

Serious Assault and Attempted Murder

2/000 Attempted Murder
4/000 Serious Assault
4/001 Causing serious injury etc. by culpable and reckless conduct
4/002 Illegal driver, disqualified/unlicensed etc. causing serious injury
4/003 Serious assault of retail worker
11/007 Female genital mutilation

Common Assault

47/001 Common Assault
47/006 Common Assault of an emergency worker
47/012 Common Assault of a retail worker

Robbery

6/000 Robbery and Assault with intent to Rob

Domestic Abuse (Scotland) Act

11/012 Domestic abuse of male
11/013 Domestic abuse of female

Other non-sexual violence

7/000 Threats and Extortion

8/001	Cruelty (neglect and causing) to and unnatural treatment of children
8/002	Child stealing (Plagium)
8/003	Exposing child under 7 to risk of burning
9/000	Abortion
10/000	Concealment of pregnancy
11/001	Possess a firearm with intent to endanger life, commit crime and cause
11/002	Abduction
11/003	Ill-treatment and neglect of mental patients and vulnerable adults
11/004	Cruel and unnatural treatment of an adult
11/005	Drugging
11/006	Chemical weapon offences
11/009	Forced marriage
11/010	Slavery or forced labour
11/011	Human organ offences
47/009	Offence of Stalking

Group 2 Sexual Crimes

Rape and Attempted Rape

14/000	Rape (offences prior to 1 December 2010)
14/001	Rape of male (16+)
14/002	Rape of female (16+)
14/003	Rape of older male child (13-15 years)
14/004	Rape of older female child (13-13 years)

14/005	Rape of young male child (under 13)
14/006	Rape of young female child (under 13)
15/000	Attempted rape (offences prior to 1 December 2010)
15/001	Attempted rape of male (16+)
15/002	Attempted rape of female (16+)
15/003	Attempted rape of older male child (13-15 years)
15/004	Attempted rape of older female child (13-15 years)
15/005	Attempted rape of young male child (under 13)
15/006	Attempted rape of young female child (under 13)

Sexual Assault

16/000	Indecent Assault (prior to 1 December 2010)
16/001	Sexual assault by penetration of male (16+)
16/002	Sexual assault by penetration of female (16+)
16/003	Sexual assault by penetration of older male child (13-15 years)
16/004	Sexual assault by penetration of older female child (13-15 years)
16/005	Sexual assault of male (16+)
16/006	Sexual assault of female (16+)
16/007	Sexual assault of older male child (13-15 years)
16/008	Sexual assault of older female child (13-15 years)
16/009	Sexual coercion of male (16+)
16/010	Sexual coercion of female (16+)
16/011	Sexual coercion of older male child (13-15 years)
16/012	Sexual coercion of older female child (13-15 years)
16/015	Sexual assault by penetration of young male child (under 13)

16/016	Sexual assault by penetration of young female child (under 13)
16/017	Sexual assault of young male child (under 13)
16/018	Sexual assault of young female child (under 13)
16/019	Cause young male child (under 13) to participate in sexual activity
16/020	Cause young female child (under 13) to participate in sexual activity
18/002	Sexual intercourse with girl under 13 (prior to 1 December 2010)
18/022	Lewd and libidinous practices

Causing to view sexual activity or images

16/013	Causing a person into being present/looking at sexual activity
16/021	Causing young child (under 13) to be present/looking at sexual activity
16/023	Sexual exposure to a young child (under 13)
16/025	Causing an older child (13-15 years) to be present/looking at sexual activity
16/037	Sexual exposure to older child (13-15 years)
17/002	Public indecency
17/003	Sexual exposure

Communicating Indecently

16/014	Communicating indecently
16/022	Communicating indecently with young child (under 13)
16/036	Communicating indecently with older child (13-15 years)

Threatening to or disclosing an intimate image

- 16/039 Threatening to disclose an intimate image
- 16/040 Disclosure of an intimate image

Indecent photos of children

- 18/018 Taking, distribution, possession etc. of indecent photos of children

Crimes associated with prostitution

- 18/001 Procuration (excluding homosexual acts)
- 18/007 Brothel keeping
- 18/009 Immoral traffic
- 18/010 Offences relating to prostitution
- 18/012 Procuration of homosexual acts
- 18/017 Soliciting services of person engaged in prostitution
- 12/000 Incest
- 13/001 Illegal homosexual acts
- 13/003 Attempt to commit unnatural crimes
- 16/024 Voyeurism against young child (under 13)
- 16/025 Intercourse with older male child (13-15 years)
- 16/026 Intercourse with older female child (13-15 years)
- 16/027 Penetrative sexual activity with older male child (13-15 years)
- 16/028 Penetrative sexual activity with older female child (13-15 years)
- 16/029 Sexual activity with older male child (13-15 years)
- 16/030 Sexual activity with older female child (13-15 years)

16/031 activity	Cause older male child (13-15 years) to participate in sexual
16/032 activity	Cause older female child (13-15 years) to participate in sexual
16/033	Older male child (13-15 years) engaging in sexual conduct with another older child
16/034	Older female child (13-15 years) engaging in sexual conduct with another older child
16/038	Voyeurism against older child (13-15 years)
16/041	Communications Act 2003 (sexual)
17/004	Voyeurism
18/003 December	Sexual intercourse with child under 16 (offences prior to 1 2010)
18/004	Carnal knowledge of mentally disordered person
18/005	Householder permitting carnal knowledge of mentally disordered person
18/013	Conspiracy to commit sexual acts outside the UK
18/014	Grooming of children for the purpose of sexual offences
18/015	Procurator of sexual services from children under 18
18/016	Procurator of child under 18 for pornography
18/019	Sexual abuse of trust of person under 18
18/020	Sexual abuse of trust of mentally disordered person
18/021	Bestiality
18/023	Administering a substance for a sexual purpose
18/024	Possession of extreme pornography

Group 3 Crimes of Dishonesty

Housebreaking

19/004	Theft by housebreaking domestic property (dwelling)
19/005	Theft by housebreaking domestic property (non-dwelling)
19/006	Theft by housebreaking other property
19/007	Housebreaking with intent to steal domestic property (dwelling)
19/008	Housebreaking with intent to steal domestic property (non-dwelling)
19/009	Housebreaking with intent to steal other property
19/010	Attempted housebreaking with intent to enter and steal domestic property (dwelling)
19/011	Attempted housebreaking with intent to enter and steal domestic property (non-dwelling)
19/012	Attempted housebreaking with intent to enter and steal other property

Theft by opening lockfast places

20/001	Theft by opening lockfast place (excluding motor vehicle)
20/002	Opening lockfast place (excluding motor vehicle) with intent to steal
20/003	Attempted opening lockfast place (excluding motor vehicle) with intent to steal

Theft from a motor vehicle

20/004	Theft by opening lockfast place (motor vehicle)
20/005	Opening lockfast place with intent to steal (motor vehicle)

20/006 Attempted opening lockfast place with intent to steal (motor vehicle)

Theft of a motor vehicle

22/002 Theft of motor vehicle and contents including taking and driving away

22/006 Attempted theft of a motor vehicle

Shoplifting

22/003 Theft by shoplifting

Other theft

22/001 Theft not elsewhere classified (excluding motor vehicle)

22/004 Theft of a pedal cycle

22/005 Theft from a motor vehicle not elsewhere classified

Fraud

25/000 Fraud

Other dishonesty

21/001 Prevention of crimes

21/002 Vagrancy and known thief

21/003 In building with intent to steal

23/000 Reset

24/000 Breach of trust and embezzlement

26/000 Forgery and uttering (excluding currency offences)

27/000 Bankruptcy

30/000	Corruption
31/001	Currency offences
31/004	Proceeds of crime/money laundering offences

Group 4 Damage and Reckless Behaviour

Fire-raising

32/001	Fire-raising (excluding muirburn)
32/003	Fire-raising (muirburn)

Vandalism

33/010	Computer Misuse Act 1990 (causing damage)
33/012	Vandalism
33/014	Malicious Mischief

Reckless Conduct

33/002	Reckless conduct with firearms
33/003	Flying aircraft to the danger of life or property
33/004	Endangering rail passengers
33/006	Culpable neglect of duty
33/007	Endangering ship by breach of duty
33/011	Reckless conduct (not with firearms)
33/016	Culpable and reckless conduct involving aircraft

Group 5 Crimes against Society

Crimes against Public Justice

38/002	Election etc. offences
38/003	Public Mischief (including wasting police time)
38/004	Falsely accusing (named) person of crime
38/006	Escape and rescue (including escape from police custody or prison)
38/007	Resisting arrest
38/010	Personation of police
38/011	Failing to give name or remaining with constable
38/013	Obstructing constable in pursuance of lawful duty
38/017	General attempts to defeat/pervert the ends/course of justice
38/018	Failure to notify police/provision of false information
38/019	Protection of vulnerable groups
39/001	Contempt of court
39/002	Failure to appear after undertaking to police
39/004	Publishing restricted information about person under 16 involved in trial
39/005	Failing to appear for trial having been given court bail
39/007	Bail offences other than absconding or re-offending
39/008	Accused failing to appear at trial diet
39/009	Offences by witnesses
39/010	Prevarication on oath etc.
39/011	Perjury and subornation
39/012	Breach of non-harassment order issued by criminal court

39/013	Breach of non-harassment order issued by civil court
39/014	Breach of anti-social behaviour order
39/015	Breach of sex offender order
39/016	Breach of parenting order
39/017	Breach of risk of sexual harm order or interim risk of sexual harm order
39/018	Breach of football banning order
39/020	Breach of violent offender order
39/021	Breach of domestic abuse interdict/notice/order
39/022	Breach of forced marriage order
39/023	Breach of trafficking and exploitation order

Weapons Possession (not used)

43/001	Possession of an offensive weapon
43/002	Restriction of offensive weapons
43/003	Having in a public place an article with a blade or point
43/004	Having in a prison an article with a blade or point
43/005	Possession of a firearm in a prison
43/006	Possession of an offensive weapon (not elsewhere specified) in a prison
43/007	Possession of an offensive weapon (not elsewhere specified) in a school
43/008	Having in a school an article with a blade or point
43/015	Possession of a corrosive substance
43/017	Possession of certain dangerous knives in a private place
43/019	Possession of prohibited offensive weapon in a private place

Weapons Possession (used in crime)

43/009	Possession of offensive weapon used in other criminal activity
43/010 other	Having in a public place an article with a blade or point used in criminal activity
43/011 criminal	Possession of offensive weapon in a prison used in other activity
43/012 criminal	Having in a prison an article with a blade or point used in other activity
43/013 criminal	Possession of offensive weapon in a school used in other activity
43/014	Having in a school an article with a blade or point used in other criminal activity
43/016 activity	Possession of a corrosive substance used in other criminal activity
43/018 in	Possession of certain dangerous knives in a private place used in other criminal activity
43/020 used in	Possession of prohibited offensive weapon in a private place used in other criminal activity

Drugs – Supply

44/001	Illegal importation of drugs
44/002	Production, manufacture or cultivation of drugs
44/003	Supply, possession with intent to supply etc. of drugs
44/006	Bringing drugs into prison
44/007 custody	Psychoactive substance – Production, supply or possession in custody
44/008	Psychoactive substance – Other offences

44/099 Drugs, other offences

Drugs – Possession

44/004 Possession of drugs

Other crimes against society

34/001 Treason

34/002 Seditious

34/003 Official Secrets Acts

34/004 United Nations sanctions offences

34/005 Protection of cultural property

35/001 Mobbing and rioting

35/002 Public processions etc.

35/003 Trespass, crimes against public order

35/004 Raves, crimes against public order

35/005 Obstruct/hinder other emergency worker in pursuance of duty

36/001 Terrorism, money laundering related offences

36/009 Prevention of terrorism, other offences

37/001 Explosive substances legislation

37/002 Unlawful use of explosives

37/003 Reckless blasting

40/000 Conspiracy

40/001 Offences related to Serious Organised Crime

41/000 Sacrilege

42/001 Wrecking

42/002 Piracy and hijacking

Group 6 Anti-social Offences

Threatening or Abusive Behaviour

47/002	Breach of the peace
47/008	Threatening or abusive behaviour
47/013	Threatening or abusive behaviour of a retail worker

Racially Aggravated Conduct

47/004	Racially aggravated harassment
47/005	Racially aggravated conduct

Drunkenness and Other Disorderly Conduct

60/001	Drunk and incapable and habitual conduct
60/003	Drunk in charge of a child
60/004	Drunk and attempting to enter licensed premises
60/005	Drunk or drinking in unlicensed premises
60/006	Disorderly on licensed premises
60/007	Drunk in or attempting to enter designated sports ground
60/008	Refusing to quit licensed premises
72/008	Consuming or alcohol in designated places, byelaws prohibited
47/007	Antisocial behaviour offences

Urinating etc.

47/003	Urinating etc.
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Group 7 Miscellaneous Offences

Community and Public Order Offences

48/000	False calls to emergency services and bomb hoaxes
50/001	Children and young person's offences not elsewhere classified
50/003	Education Acts
50/004	Tattooing of Minors Act 1969
50/005	Child minding and day care for children
50/006	Employment of children (non-industrial)
50/007	Employment of children (industrial)
50/008	Selling loose cigarettes
50/009	Not displaying notice tobacco products sold to 18 and over
50/010	Selling tobacco or nicotine vapour products to persons under 18
50/013	Offences against selling spray paint to children
50/014	Smoking in car with child
59/001	Handling obscene material
59/002	Sex shop offences
66/000	Social security offences
71/000	Pedlars Act and offences against certificates issued by Local Authority
72/004	Licensing offences (Civic Government (Scotland) Act 1982)
72/005	Obstruction of local official
72/006	Common stairs offences
72/007	Civic Government (Scotland) Act 1982 not elsewhere classified
79/002	Obstruction by pedestrian

79/003	Touting
83/001	Weights and Measures Acts
83/002	Registration of business names
83/003	Prices Act 1974
83/007	Copyrights Acts
83/008	Fair Trading Act 1973
83/009	Restrictive Trade Practices Act 1976
83/010	Consumer Protection Acts
83/012	Consumer Credit Act 1974
83/013	Trading offences
83/016	Registration of care establishments
83/018	Rent Acts
83/019	Video Recordings Act 1984 not elsewhere classified
84/001	Wireless Telegraphy Act offences
84/002	General Post Office/telecommunications offences
84/003	Disclosure of information
84/004	Interception of communications
84/005	Data Protection Act offences
84/006	Computer Misuse Act 1990 offences (unauthorised access)
85/002	Charitable collection offences
85/008	Public utilities (gas, electric etc.) legislation
85/018	Sex Discrimination Act 1974
85/019	Census Acts
85/020	Race relations legislation
85/022	Social Work and community service offences

85/030 Child Support Act 1991

Environmental Offences

53/001 Petroleum Acts
53/002 Energy Acts
56/001 Salmon and Freshwater Fisheries offences
56/002 Sea fisheries offences
63/001 Factories legislation not elsewhere classified
63/002 Fire Precaution Acts
63/003 Health and Safety and Work Acts
63/004 Employment and property protection legislation
63/007 Trade Union and Labour Relations Act
67/000 Merchant Shipping Acts not elsewhere classified
73/001 Litter offences
73/002 Refuse Disposal (Amenity) Act 1978
73/003 Oil pollution in navigable waters
73/004 Control of pollution
73/006 Clean air acts
73/007 Sanitary laws
73/008 Food safety and food standards offences
73/009 Milk Acts
73/011 Water Acts
73/012 Town and Country Planning Acts
73/014 Housing (Scotland) Acts
73/015 Caravan Sites and Control of Development Act 1906

73/016	Methylated Spirits (Sale by Retail) (Scotland) Act 1937
73/019	Other environmental offences
73/020	Contravention of Section 6(1) by continuing to operate proscribed processes
73/021	Fail to comply with or contravention of enforcement or prohibition notice
73/022	Other conservation offences
80/000	Offences relating to roads and road works
82/002	Lighting fires without consent of owner
82/003	Lodging without consent of owner
85/003	Agricultural offences
85/006	Building legislation
85/013	Aviation legislation
85/028	Archaeological legislation

Licensing Offences

46/001	Betting
46/002	Gaming
46/003	Gaming by means of machine
46/004	Lotteries and amusements with prizes
49/000	Brokers (licensed) and Auction Acts
52/000	Crossbow offences
55/000	Firearms, miscellaneous offences
55/001	Air weapons licensing offences
61/001	Sale of drink to person under 18
61/003	Licensed person, employee or agent drunk in licensed promises

61/004	Permitting riotous behaviour in licensed premises
61/010	License holder of off sales permit person under 18 to sell alcohol
61/099	Licensed premises, other offences
62/004	Club licensing offences
62/006	Person under 18 buying excisable liquor or consuming in a bar
62/009	Purchasing excisable liquor for consumption by person under 18
62/012	Alcohol offences, travelling to and from sporting event
62/013	Sports grounds offences, possessing alcohol etc.
62/014	Confiscation of alcohol from person under 18
62/099	Liquor licensing laws, other offences
70/000	Pawnbrokers, dealers firearms offences
81/001	Hackney carriage offences
81/002	Public service vehicles offences

Animal Offences

51/001	Cruelty to Protected Animals (excluding dogs)
51/002	Rabies orders
51/003	Failure to comply with legal requirements relating to animals
51/004	Wild Birds, offences involving
51/006	Cruelty to dogs
51/008	Protection of livestock from dogs
51/009	Guard Dogs Act 1979
51/011	Dogs bred for fighting
51/012	Keeping dogs under proper control, contravention of an order
51/013	Hunting with dogs

51/014	Cruelty to wild animals
51/015	Offences involving badgers
51/016	Other wildlife offences
51/099	Dogs, other offences
56/003	Possession of salmon or trout unlawfully obtained
56/004	Possession of salmon or trout as a result of an offence
57/001	Poaching and game laws
57/002	Deer (Scotland) Act offences

Other Miscellaneous Offences

45/000	Aliens and immigration offences
50/011	Offences relating to persons disqualified from working with children
50/012	Prevent a person feeding a baby milk in a public place
54/000	Keeping and supply of explosives
58/000	Harbour Acts
68/001	Absentees and deserters
68/099	Naval, Military and air force, other offences
73/023	Dog fouling
73/024	Smoking in public places
74/001	Medical Acts
74/002	Dentists Acts
74/003	Nurses (Scotland) Acts
74/006	Poisons Acts
74/007	Medicines Acts
74/008	National Health Service (Scotland) Acts

75/000	Railways
76/001	Bigamy
76/002	False declarations
76/003	Births, deaths, marriages, registration offences
76/004	Marriage (Scotland) Act 1977
77/000	Revenue and Excise offences (excluding drugs)
85/001	Prisons (Scotland) Act 1989 not elsewhere classified
85/004	Investment legislation
85/005	Industrial training and statistics of trade offences
85/010	Fire services legislation
85/012	Solicitors (Scotland) Acts
85/014	Local government legislation
85/015	Architects registration offences
85/016	Estate agents acts
85/021	Legal aid and advice legislation
85/025	Industrial and provident society's offences
85/034	Anti-social behaviour, private landlord offences
85/036	Offences under the Charities and Trustees Investment (Scotland) Act
85/037	Failure to comply with a Property Factor Enforcement Order

Group 8 Road Traffic Offences

Dangerous and Careless Driving

300/001	Dangerous driving offences
300/002	Driving carelessly

Driving under the influence

301/001	Driving motor vehicle while unfit through drink or drugs
301/002	In charge of motor vehicle while unfit through drink or drugs
301/003	Driving motor vehicle with blood alcohol content above prescribed limit
301/004	In charge of motor vehicle while blood alcohol content above prescribed limit
301/005	Failure to provide breath specimen at roadside
301/006	Failure to provide breath, blood or urine specimen at police station
301/007	Driving motor vehicle while under the influence of a controlled drug above prescribed limit
301/008	In charge of motor vehicle while under the influence of a controlled drug above prescribed limit

Speeding

303/000	Speeding in restricted areas
304/000	Other speeding offences

Unlawful use of motor vehicle

302/000	Vehicle excise licence offences
310/000	Using motor vehicle without test certificate
313/000	Driving while disqualified from holding or obtaining licence
314/000	Driving without a licence (including under age)
315/000	Driving licence, other offences
316/000	Failure to insure against third party risks
317/000	Insure against third party risks, other offences

318/000 Registration or identification mark offences (not lighting)

Vehicle defect offences

319/000 Lighting offences, motor vehicles

320/000 Construction and Use Regulations (other than lighting)

Seat belt offences

323/000 Seat belt offences

Mobile phone offences

324/000 Mobile phone offences

Other Road Traffic offences

78/001 Dangerously riding a bicycle or tricycle

78/002 Carelessly or inconsiderately riding a bicycle or tricycle

78/003 Drunk when riding a bicycle

78/099 Bicycles, other offences

79/001 Pedestrian traffic offences

305/000 Driver's neglect of traffic directions (not pedestrian crossing)

306/000 Driver's contravention of pedestrian crossing regulations

307/000 Accident offences

308/000 Parking offences

309/000 Failing to provide information to identify driver of vehicle

311/000 Motorway traffic offences

321/000 Motor vehicle records of work (e.g. tachograph) offences

399/000 Motor vehicles, other offences

Part Two – Counting Rules

Introduction

Crime Recording

The following Annexes will assist when recording crime. Each Annex is broken down by Crime Group with each crime type providing an abbreviated definition, who the victim/complainer is, the locus of the crime, how the counting rules apply, any notes pertinent to the recording and the relevant SGJD code. It must be recognised that it is impossible to cover every conceivable crime and scenario and therefore this manual concentrates on crimes in common use. Further guidance can be sought from the Police Scotland Legal Database.

The following terminology will be referred to within this manual, the definitions of which are provided hereunder:

Continuity of Action (where applicable)

Where a person, or group of people acting together for a common purpose, undertake a series of actions, which when viewed individually would constitute a crime or offence on each occasion and these actions are similar in conduct and content, then this continuity of action should be taken as one crime or offence, irrespective of the timescales or loci involved, providing:-

- they are the same crime type
- they are the same victim/complainer

Subsume (where applicable)

The subsuming of crimes is mainly applicable to crimes within crime groups 3 and 4 which have occurred at the same locus on the same occasion with the same complainer. This means that where multiple incidences of the same crime of

dishonesty, damage to property, or a combination of both, are committed on the same occasion at the same locus with the same complainer will be recorded as 1 crime only. Where it would be possible to record multiple types of crimes of dishonesty (e.g. theft by housebreaking and OLP) within the same incident, only one crime type i.e. the most 'serious' will be applied. (See Section 'D' for more information on subsuming)

Course of Conduct (where applicable)

A course of conduct must involve conduct on at least two occasions.

Incident (where applicable)

A crime or offence which can refer to more than one victim and/or accused and does not necessarily have to take place all at the same locus, but clearly the actions are deemed to be a continuous act and all part of the one encompassing event.

Group 1 – Non-sexual Crimes of Violence

Crime Category	SGJD Code
Abduction	11/002
Antisocial Behaviour, Crime and Policing Act 2014, S122	
- Forced Marriage	11/009
Assault:	
- Common Assault	47/001
- Common Assault (Emergency Worker and Police)	47/006
- Common Assault of Retail Worker	47/012
- Drugging	11/005
- Serious Assault (incl. Emergency Worker and Police)	4/000
- Serious Assault of Retail Worker	4/003
Attempted Murder	2/000
Children and Young Persons (Scotland) Act 1937, S12	
- Cruelty and Unnatural Treatment of Children	8/001
Corporate Manslaughter and Corporate Homicide Act 2007, S1	3/006
Criminal Justice and Licensing (Scotland) Act 2010, S39	
- Stalking	47/009
Culpable Homicide	3/001
Domestic Abuse (Scotland) Act 2018	11/012
	11/013
Extortion	7/000
Firearms Act 1968, S16-18	11/001
Health (Tobacco, Nicotine etc., Care) Scotland Act, S26 & S27	

- Care Worker – Ill Treatment of Patients	11/003
<u>Human Trafficking and Exploitation (Scotland) Act 2015</u>	
- S1, Human Organ Offences	11/011
<u>Human Trafficking and Exploitation (Scotland) Act 2015</u>	
- S1 and S4, Slavery or Forced Labour	11/010
<u>Murder</u>	1/000
<u>Road Traffic Act 1988, S1</u>	
- Causing Death by Dangerous Driving	3/002
<u>Road Traffic Act 1988, S2B</u>	
- Causing Death by Careless Driving	3/004
<u>Road Traffic Act 1988, S3A</u>	
- Causing Death by Careless Driving (where under the influence of Drink or Drugs	3/003
<u>Road Traffic Act 1988, S3ZB</u>	
- Causing Death by Driving without a licence/insurance/ Disqualified driver	3/005
<u>Robbery and Assault with intent to Rob</u>	6/000
<u>Threats</u>	7/000

11/002 Abduction

General Rule

One crime for each identified victim

Definition

Abduction is the crime of carrying off, or confining, any person, forcibly, and without lawful authority.

Victim

Person abducted

Locus

Where crime takes place

Examples

Example 1 'A' abducts 'B', an adult, and takes them to a remote building where they are confined for a week and assaulted whilst there until 'C' pays a drugs debt.

- 1 x Abduction
- 1 x Assault (depending on injuries either common or serious assault recorded)

Example 2 'A' forces 'B', 'C' and 'D' into a bedroom at knifepoint and orders them not to leave or they will be stabbed.

- 3 x Abduction (possession of knife crime can be recorded if abduction occurred outwith the private residence, in a public place).

- Example 3 'A' and 'B' are forced into a vehicle and held against their will with the vehicle thereafter being driven off.
- 2 x Abduction
- Example 4 'A' is seriously assaulted whilst being forcibly dragged into a vehicle and carried off against their will.
- 1 x Abduction (the assault is considered to be part of the commission of the crime of abduction)
- Example 5 A bus containing 20 people is hijacked.
- 20 x Abduction
- Example 6 Three persons enter an unlocked dwelling armed with baseball bats. One rounds up the occupants and temporarily confines them to the kitchen area while the others ransack the house and steal property belonging to all occupants of the household. The confinement ends when the suspects leave the house with the stolen property. No person is injured.
- 1 x Robbery (against group of people) - if individuals had been threatened/assaulted and relieved of property from their person additional crimes of Robbery would be required. No requirement to record Abduction in these circumstances.
- Example 7 During an argument 'A' assaults 'B' resulting in 'B' stating they are leaving the house. 'A' locks the door and refuses to allow them to leave. 'B' makes no effort to leave by any other means, is not unduly alarmed and goes to bed. On waking the next morning 'A' makes no attempt to confine 'B' within the house and 'B' leaves.
- 1 x Common Assault (no requirement to record Abduction unless there were circumstances which indicated the complainant had tried to continually leave by other means but was unable to, or was in fear as to what might happen to them should they attempt to leave/obtain assistance). An

assessment should be made on a case by case basis as to whether an Abduction is appropriate.

Example 8 'A' is forced into a vehicle and taken to a house where they are assaulted resulting in serious injuries.

- 1 x Abduction
- 1 x Serious Assault

Note

The essential feature of the crime of Abduction is the deprivation of the victim's personal freedom by either carrying them away against their will or confining them, so as long as the victim is unable to move from where you confine them it does not matter where they are confined to. Tying someone to a tree in a public park would be abduction as soon as the person is tied up and cannot get free as then they have been deprived of their liberty.

If whilst being confined, further crimes occur e.g. drugging, assault, rape, the additional relevant crime(s) must also be recorded.

Plagium

Stealing a child under the age of puberty, i.e. 12 years for females and 14 years for males. Although not commonly used, Plagium (or attempt) still applies in certain circumstances.

Children (Scotland) Act 1995 makes provisions for parental responsibilities. The 1995 Act makes changes from custody to residence orders and created a civil rather than criminal framework.

Abduction should be preferred in instances where force is used. The crime of Plagium should be used where a person (including a parent) has no parental rights/responsibilities and takes a (pre-pubescent) child who is willing to go.

Where the circumstances relate to the "Taking or sending a child out of the United Kingdom" without appropriate consent reference should be made to Section 6 of the Child Abduction Act 1984.

**11/009 Antisocial Behaviour, Crime and Policing Act 2014,
Section 122
Forced Marriage**

General Rule

One crime for each accused or group of accused if acting together.

Definition

Section 122 - Offence of Forced Marriage: Scotland

- (1) A person commits an offence under the law of Scotland if he or she:
- (a) uses violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage, and
 - (b) believes, or ought reasonably to believe, that the conduct may cause the other person to enter into the marriage without free and full consent.
- (2) A person commits an offence under the law of Scotland if he or she:
- (a) practices any form of deception with the intention of causing another person to leave the United Kingdom, and intends the other person to be subjected to conduct outside the United Kingdom that is an offence under subsection (1) or would be an offence under that subsection if the victim were in Scotland.

Victim

Person who suffers violence, threats or other coercion

Locus

Where violence, threats or coercion takes place

Examples

- Example 1 Person is threatened on two occasions by telephone, on another two occasions in person, and is assaulted (minor injury) for the purpose of coercing them to enter into a marriage.
- 1 x Antisocial Behaviour, Crime and Policing Act 2014, S122, Forced Marriage
 - 1 x Assault (with Common Assault offence modifier)

Note

Any crime of violence committed as part of a pattern of behaviour amounting to a Section 122 offence must be recorded separately in accordance with the General Rule for that crime type.

Assault – Common Assault

- 47/001 Common Law**
- 47/006 Emergency Workers (Scotland) Act 2005, Sections 1, 2, 3 and 5**
- 47/006 Police and Fire Reform (Scotland) Act 2012, Section 90**
- 47/012 Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, Section 1**

General Rule

One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded

Definition

Common Law

Every attack directed to take effect physically on the person of another is assault, whether or not actual injury is inflicted. There must be criminal intent: an accidental injury, even although caused by a mischievous act, does not amount to assault.

Emergency Workers (Scotland) Act 2005

Section 1

A person who assaults, obstructs or hinders another person acting in a capacity of an emergency services worker commits an offence (emergency services workers include members of the fire and ambulance services). For Section 1 to apply the locus does not require to be in a hospital. Section 5 applies to incidents in hospitals or hospital grounds.

Section 2

A person who assaults, obstructs or hinders another person acting in a capacity of an emergency worker who is responding to emergency circumstances commits an offence. (emergency workers include prison officers, member of coastguard, member of RNLI, medical practitioner, nurse, midwife, social worker, mental health officer, prisoner custody officer).

Section 3

A person who assaults, obstructs or hinders a person assisting an emergency worker commits an offence.

Section 5

A person who in a hospital or within its grounds assaults, obstructs or hinders another person acting in a capacity of an emergency worker commits an offence (emergency workers include medical practitioner, nurse, midwife and ambulance service personnel).

Police and Fire Reform (Scotland) Act 2012, Section 90

(1) It is an offence for a person to assault—

- (a) a person (“A”) acting in a capacity mentioned in subsection (3), or
- (b) a person assisting A while A is acting in such capacity.

(3) The capacities are—

- (a) that of a constable,
- (b) that of a member of police staff,
- (c) that of a member of a relevant police force when such member is executing a warrant or is otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,
- (d) that of a person who—

- (i) is a member of an international joint investigation team that is led by a person acting in a capacity mentioned in paragraph (a) or (c), and
- (ii) is carrying out functions as a member of that team.

Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, Section 1

(1) It is an offence for a person to assault, threaten or abuse another person—

- (a) who is a retail worker, and
- (b) who is engaged, at the time, in retail work.

(2) No offence is committed under subsection (1) unless the person who assaults, threatens or abuses knows or ought to know that the other person—

- (a) is a retail worker, and
- (b) is engaged, at the time, in retail work.

Victim

Person who is assaulted

Locus

Where crime takes place

Common Law Examples

Example 1 'A' confirms having been assaulted but wishes no police involvement.

- 1 x Assault (with Uncooperative tag)

Example 2 'A' advises their friend 'B' has been assaulted, but unknown when or by whom. 'B' is extremely drunk and has a bruise on their face, but states that they fell and were not assaulted. 'B' refuses medical attention.

- Leave as incident, unless the officer believes on the balance of probability 'B' has been the victim of assault, in which case a crime report should be raised.

Example 3 Person reports to police that they have been assaulted on two specific occasions over the last two weeks resulting in minor injury. Dates provided.

- 2 x Assault (Common)

Example 4 'A' assaults 'B' on two separate occasions within an hour where there is a clear gap in time between the two assaults.

- 2 x Assault (Common)

Example 5 Person reports to police that they have been assaulted on four occasions over the last six months at the same locus. Dates are not known.

- 1 x Assault (Common)

Example 6 Person reports to police that they have been assaulted on four occasions over the last six months. Two assaults occurred at locus 1 and two occurred at locus 2. Dates are not known.

- 2 x Assault (Common) - one for each locus

Example 7 Two persons engage in a stand up fight where only minor injury is sustained by both parties and neither claim to have been assaulted.

- It is possible that the attending officer(s) may wish to warn both parties of their actions, using discretion, or dependent on circumstances and whether the public were present during the altercation they may wish to libel a Criminal Justice and Licensing (Scotland) Act 2010, S38 offence or Breach of the Peace against both parties.

Example 8 During a domestic incident 'A' is subjected to threatening and abusive behaviour and is assaulted by 'B'. There is a sufficiency of

evidence to report 'B' for the threatening and abusive behaviour but insufficient to report for the Assault. No other conduct is disclosed.

- 1 x Assault (Common) - undetected
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or Abusive Behaviour – detected

Example 9

During a domestic incident 'A' is subjected to threatening and abusive behaviour before being assaulted by 'B'. There is insufficient evidence to report 'B' for either crime. No other conduct is disclosed.

- 1 x Assault (Common) – undetected (since the threatening or abusive behaviour occurred either immediately before, during or after the assault this may be subsumed into the assault. Had there been a sufficiency of evidence to report 'B' only the assault should be recorded).

Example 10

'A' is assaulted by 'B' with a baseball bat in a public place causing minor injury.

- 1 x Assault (Common)
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S47 (1), Possession of an Offensive Weapon – used in crime

Example 11

'A' whilst walking along the road becomes aware of a sudden pain to their arm and on turning around sees 'B' aiming and firing what they think was a BB gun at them from the window of a passing vehicle. 'A' does not suffer any serious injury as a result of being struck and indications are they were struck with a pellet. The suspect is not traced and therefore the weapon not recovered.

- 1 x Assault (Common) – since it cannot be confirmed that it was a BB gun no weapon offence requires to be recorded.

Example 12

Persons walking in the street become aware of someone indiscriminately firing what they think is a BB gun out the window

of a passing vehicle. One person reports having been struck on the leg resulting in only a red mark on their skin. The suspect is not traced and therefore the weapon not recovered.

- 1 x Culpable and Reckless Conduct – since it cannot be confirmed that it was a BB gun no weapon offence requires to be recorded.

Emergency Workers (Scotland) Act 2005 examples

Example 1 On being brought into hospital to receive treatment for an injury, the patient punches a nurse who is tending to their wound.

- 1 x Emergency Workers (Scotland) Act 2005, S5, Assault

Example 3 On being brought into hospital to receive treatment for an injury, 'A' punches a nurse, who is tending to 'A's' wound. When the police arrive 'A' punches Officer 'B'. After being conveyed to the police office, 'A' punches Officer 'B' again.

- 1 x Emergency Workers (Scotland) Act 2005, S5, Assault
- 2 x Police and Fire Reform (Scotland) Act 2012, S90 (1) (a), Assault.

Example 4 Prison officer is assaulted by a prisoner while walking along corridor within prison. No serious injury caused.

- 1 x Assault (common). Emergency Workers (Scotland) Act 2005 does not apply as the prison officer was not responding to emergency circumstances at the time).

Example 5 A nurse walking along the corridor between wards, whilst on duty is assaulted. No serious injury caused.

- 1 x Emergency Workers (Scotland) Act 2005, S5, Assault

Example 6 A nurse at the GP clinic is assaulted by a patient attending to be treated for a minor ailment.

- 1 x Emergency Workers (Scotland) Act 2005, S1, Assault

Police and Fire Reform (Scotland) Act 2012, S90 examples

- Example 1 Two police officers are assaulted by kicking and punching both to the head and body.
- 2 x Police and Fire Reform (Scotland) Act 2012, S90 (1) (a)
- Example 2 On accused being placed within the rear of the police vehicle at Locus 1, 'A' kicks a police officer and then on being removed from the police vehicle to be taken into the custody suite at Locus 2 'A' further kicks and spits on the same police officer.
- 2 x Police and Fire Reform (Scotland) Act 2012, S90 (1) (a)
(two separate incidents with clear break between both).
- Example 3 A visitor to a Police station assaults a member of Police Staff on duty within the public office.
- 1 x Police and Fire Reform (Scotland) Act 2012, S90 (1) (a)

Retail Workers Examples

- Example 1 A retail worker is assaulted in the course of their employment and the offender either knew or ought to have known that the worker was acting in the course of their employment.
- 1 x Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, S1, Assault of Retail Worker
- Example 2 A retail worker is assaulted, threatened and abused by reason of their employment where the assault was at least partly motivated by malice towards the worker by reason of their employment.
- 1 x Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, S1, Assault of Retail Worker (threatening or abusive behaviour is subsumed).

Example 3 Customer directs abusive and threatening comments at one retail worker and assaults another, whilst acting in the course of their employment.

- 1 x Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, S1, Threatening or Abusive Behaviour of Retail Worker
- 1 x Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, S1, Assault of Retail Worker

Note

There is a distinction between Common and Serious Assault, i.e. Serious Assault is dependent on injuries sustained and is recorded under separate SGJD codes.

In all cases where a crime of assault is recorded the exact nature of the injuries sustained by the victim must be made absolutely clear in the enquiry summary in order that a full assessment can be made regarding the accuracy of the crime classification. Full details of any medical treatment received and prognosis must be included. If no injury has been sustained by the victim this must also be confirmed.

It is not necessary, in order to constitute this crime, that the attack should take effect. To throw a stone at another person is assault, although the attacker's aim is faulty or the stone is evaded.

- Where 'A' intends to assault 'B' and strikes 'C' instead, by the doctrine of transferred intent, he is guilty of assaulting 'C'. While 'B' is the intended victim, they would become a witness to the assault on 'C'.

Where a child has been assaulted, this should be recorded as a Common Law Assault and not under the Children and Young Persons (Scotland) Act 1937.

In circumstances when officers are dealing with suspected non-accidental injuries to children who are too young to give an accurate account of how these injuries occurred reliance is placed on the expert opinion of medical professionals. When an enquiry reaches the point where a medical professional confirms a non-accidental

injury which cannot be accounted for and which appears, on the balance of probability, more serious than just the rough handling of a young child a crime of Assault categorised by the extent of injury should be recorded.

Hamesucken

Crimes formerly known as Hamesucken should be recorded as either Serious Assault or Common Assault depending on the seriousness of injury. The force used to gain entry to the dwelling is an aggravation of the assault if the assault occurs at the victim's home address, however, if the assault occurs elsewhere any damage caused to property in the process of gaining entry should be recorded as a separate crime.

Police and Fire Reform (Scotland) Act 2012

Police Staff – members of Police Staff are a capacity provided for in Police and Fire Reform (Scotland) Act 2012, Section 90(1) (a) by 90(3) (b) and any assaults on Police Staff should be recorded under this legislation. The member of Police Staff need only be performing their duty as a member of Police Staff and does not require to be assisting a constable at the time of the assault.

- Section 90(1) (b) – ‘person assisting’ should not be used for a police officer/police worker.

Emergency Workers (Scotland) Act 2005

The Emergency Workers (Scotland) Act 2005 does not affect the specific legislative protection of the police in performance of their functions under Section 90(1) of the Police and Fire Reform (Scotland) Act 2012. However, Section 1 of the Emergency Workers (Scotland) Act 2005 is a broader provision than Section 90(1). Case law has interpreted Section 90 as requiring a physical element to the assaulting, resisting, obstructing, molesting or hindering. Section 4 specifically makes it an offence to hinder or obstruct by other than physical means (for example, by the provision of false information). This situation is not covered by the 2012 Act.

Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021

Meaning of “Retail Premises” - Retail premises includes all high-street shops, supermarkets, department stores, shopping centres, etc., and also includes pubs and bars (drinks counting as “goods”) and petrol stations (fuel also counting as “goods”). A vehicle used wholly or mainly as a shop (such as an ice-cream van) is likely to count as retail premises; but even where a vehicle does not count as retail premises (because it is used primarily to provide a transport service), a person selling goods on the vehicle (e.g. a member of train crew selling drinks from a trolley) would be doing retail work, and so would be protected under the Act.

Meaning of “Retail Worker” - Anyone whose usual place of work is retail premises counts as a retail worker while working in those premises. This includes when a person is working on land that forms part of those premises (for example, a supermarket worker collecting trolleys in the store car-park).

11/005 Assault - Drugging

General Rule

One crime for each victim

Definition

This crime is committed when drugs are feloniously administered with intent to produce stupefaction.

There need be no further intent, and it is not necessary that any injury to the person be caused.

Victim

Person drugged

Locus

Where crime takes place (if locus unknown - the crime report should highlight that the exact locus cannot be established).

Examples

Example 1 'A' and 'B' out together claim to have had their drinks spiked with a drug. Urine tests confirm a 'date rape' drug present in their bodies.

- 2 x Assault (with Drugging offence modifier)

Example 2 'A' and 'B' report their drinks having been spiked and have provided reasonable explanations for reaching this conclusion.

- 2 x Assault (with Drugging offence modifier)

Example 3 'A' reports they think their drink was spiked a week ago due to memory loss after two drinks and waking up feeling unwell.

- 1 x Assault (with Drugging offence modifier)

Example 4

'A' is out with friends for a drink. 'A' wakes up the next day with memory loss of the previous night and an injury. Friends advise 'A' that they were foaming at the mouth and lost the ability to walk unaided. Medical professionals confirms the injury to be a needle puncture wound.

- 1 x Assault (with Drugging offence modifier)

Example 5

'A' is within a shop buying groceries when they feel a sharp pain. 'A' identifies 'B' nearby as a possible culprit, with CCTV evidence showing 'B' stabbing 'A' with a needle. No after affects are felt from this attack.

- 1 x Assault (with Common Assault offence modifier)

Note

Where a person reports information whereby they think or feel they were 'drugged' with no reference to a sexual act having taken place, and it is reasonable to conclude from the circumstances outlined this may be the case, a crime report will initially be recorded under the appropriate crime category. Whilst there may be uncertainty as to the validity of the report, a record to investigate approach should be taken.

There may be circumstances where Sexual Offences (Scotland) Act 2009, S11 (administering a substance for sexual purposes) will be applicable as opposed to a Drugging offence being recorded.

Assault Serious Assault

- 4/000 Serious Assault - Common Law**
- 4/000 Serious Assault - Emergency Workers Act 2005,
Sections 1, 2, 3 and 5**
- 4/000 Serious Assault - Police and Fire Reform (Scotland)
Act 2012, Section 90**
- 4/003 Serious Assault - Protection of Workers (Retail and
Age Restricted Goods and Services) (Scotland) Act
2021, Section 1**

General Rule

One crime for each victim

Definition

Every attack directed to take effect physically on the person of another is assault, whether or not actual injury is inflicted.

The injuries sustained determine whether the assault will be classed as Serious.

An assault or attack in which the victim sustains injury resulting in detention in hospital as an inpatient, for the treatment of that injury or, any of the following injuries whether or not detained in hospital,

- Fractures - fractures mean the breaking or cracking of a bone. Note: Nose is cartilage not bone so a 'broken nose' should not be classified as a Serious Assault unless it meets one of the other criteria.
- Internal injuries
- Severe concussion

- Lacerations requiring sutures, or equivalent, which may lead to impairment or disfigurement
- Any other injury which may lead to impairment or disfigurement

Note: The following are not included in the definition of serious assault:

- Detention in hospital as an inpatient, for observation only.
- Lacerations which are unlikely to lead to impairment or disfigurement.
- Loss of consciousness (if caused by strangulation see guidance in Attempted Murder section)
- A broken nose (note: a broken or cracked nose is classed as a common assault as the nose is made of cartilage and not bone)
- A broken tooth (note: the loss of a tooth/tooth replaced back in position should be classed as Serious Assault).
- Bruising or red marks

For the purpose of this definition disfigurement includes permanent scarring anywhere on the body, irrespective of whether the scarring might normally be covered by hair or clothing.

The term "sutures or equivalent" includes any surgical body tissue closure technique such as stitches, staples, glue. If a laceration is closed using such a technique there will be a presumption of resultant permanent scarring unless a medical practitioner confirms otherwise. If it is considered that a laceration requiring a skin closure technique does not amount to disfigurement the full rationale must be updated on the crime report together with details of the medical practitioner who confirms that the laceration is unlikely to lead to permanent scarring.

Breakage to nose cartilage where there are no complications will be recorded as common assault, however, if the breakage is to the bone at the top of the cartilage or further corrective surgery is required, a crime of Serious Assault will be recorded.

In circumstances where x-rays are not routinely carried out to determine full extent of injury such as the cracking of ribs, the confirmed diagnosis of any medical practitioner treating that injury is sufficient to confirm extent of injury.

Victim

Person assaulted

Locus

Where crime takes place

Examples

The following examples highlight the requirement to record a crime of Serious Assault based on the extent of injury. Care should be taken to ensure that the crime is recorded in accordance with either Common Law or the relevant legislation in place for the victim based on their employment.

- Example 1 'A' is assaulted by 'B' with a baseball bat, resulting in them being detained in hospital for their injuries.
- 1 x Serious Assault
 - 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S 47 for possession of an offensive weapon used in the commission of a crime if occurring in a public place, school (S49A) or prison (S49C).
- Example 2 An ambulance worker is seriously assaulted by 'A' who they is treating for their injuries.
- 1 x Serious Assault (the crime report should identify the victim to be an emergency worker)
- Example 3 'A' assaults 'B' and 'C', both on duty serving police officers, by punching them on the face. 'B' sustains a fractured cheek bone, while 'C' sustains a broken nose.
- 2 x Police and Fire Reform (S) Act, 2012 S90 (1) (a) – one for Serious Assault (fractured cheek bone) and one for Common Assault (broken nose)

- Example 4 Two persons engage in a stand up fight in where one is seriously injured.
- 1 x Serious Assault. (If no person sustains serious injury recording Criminal Justice and Licensing (Scotland) Act 2010, S38 (Threatening or Abusive Behaviour) could be considered if it can be shown that persons were caused fear or alarm as a result of the conduct).
- Example 5 'A' knowing that they have tested positive for HIV, has unprotected sexual intercourse with 'B' with the intention of infecting 'B', and 'B' becomes infected.
- 1 x Serious Assault
- Example 6 'A' reports being assaulted on numerous occasions at the same locus by the same suspect and sustained injuries from one of the assaults which amounted to Serious Assault although specific dates of these attacks are not known.
- 1 x Serious Assault
 - 1 x Common Assault (each is a different crime classification)
- Example 7 'A' in the knowledge that they have tested positive for HIV has unprotected sexual intercourse with 'B' resulting in 'B' contracting the HIV virus.
- 1 x Culpable and Reckless Conduct (no evidence of intent to cause harm but evidence that indicates criminal recklessness).
- Example 8 A pregnant female is kicked to the stomach during an assault resulting in a miscarriage. A doctor confirms the miscarriage was caused by the assault
- 1 x Serious Assault

Note

In all cases where a crime of assault is recorded the exact nature of the injuries sustained by the victim must be made absolutely clear in the enquiry summary in order that a full assessment can be made regarding the accuracy of the crime classification.

Full details of any medical treatment received and prognosis must be included. The lack of a medical update is not a valid reason to record a Common Assault instead of Serious Assault.

In circumstances where a victim of an Assault refuses medical treatment and the extent of injury cannot be confirmed the crime will be classed as Common Assault unless it is clear to the attending Police officers that any injuries sustained meet the definition of Serious Assault.

In circumstances where the aggressor is injured as a direct result of assaulting the victim e.g. breaks a finger when punching the victim, this should not be classed as a Serious Assault. Where the parties involved assault each other and it is unknown how serious injuries were caused then Serious Assault would be relevant.

Downgrading crimes of Serious Assault to Common Assault some considerable time down the line is not an acceptable practice. The definition states "may lead to impairment or disfigurement" which requires the crime to be recorded based on the assessment of the injury at the time of initial treatment. If a victim is revisited by Police at a later date and there is visual confirmation that the victim does not have a scar the crime should remain recorded as Serious Assault.

Hamesucken

Crimes formerly known as Hamesucken should be recorded as either serious assault or common assault depending on the seriousness of injury. The force used to gain entry to the dwelling is an aggravation of the assault if the assault occurs at the victim's home address, however, if the assault occurs elsewhere any damage caused to property in the process of gaining entry should be recorded as a separate crime.

Emergency Workers (Scotland) Act 2005

A serious assault on an emergency worker should be recorded as a crime under Emergency Workers (Scotland) Act 2005 under SGJD code 4/000.

The Emergency Workers (Scotland) Act 2005 does not affect the specific legislative protection of the police in performance of their functions under the Police and Fire Reform (Scotland) Act 2012, Section 90(1) (a). However, Section 1 of the Emergency Workers (Scotland) Act 2004 is a broader provision than Section 90(1) (a). Case law has interpreted Section 90 as requiring a physical element to the assaulting, resisting, obstructing, molesting or hindering. Section 4 specifically makes it an offence to hinder or obstruct by other than physical means (for example, by the provision of false information). This situation is not covered by the 2012 Act.

Police and Fire Reform (Scotland) Act 2012, Section 90

An assault on an on duty police officer or member of police staff should be recorded under the Police and Fire Reform (Scotland) Act 2012 Section 90(1) (b) – ‘person assisting’ should not be used for a police officer/police worker.

2/000 Attempted Murder

General Rule

One crime for each identified victim

Definition

Attempting to kill without necessary cause. In order to constitute the crime, there must be either an intention to kill, or a wilful act so reckless as to show that the person who committed it was utterly regardless of the consequences.

Victim

Identified victim of intent

Locus

Where crime takes place

Examples

Example 1 Terrorists plant a bomb under a jeep containing 5 people. The bomb explodes killing 2, seriously injuring 2, and 1 escapes unharmed.

- 2 x Murder
- 3 x Attempted Murder

Example 2 'A' deliberately drives a car at speed at 'B' but also knocks down 'C' and 'D'. 'B', 'C' and 'D' all survive.

- 3 x Attempted Murder

Example 3 A hotel is set on fire, 25 people escape uninjured.

- 1 x Fire-raising (or 25 x Attempted Murder, if there has been an intent to kill or harm everyone in the building e.g. by securing doors)
- Example 4 Door providing only means of entry/exit to high rise flats barricaded and set on fire, all residents rescued with no injury.
- 1 x Attempted Murder for each identified victim
- Example 5 'A' presents a gun at 'B' and robs them of money. Before making off, 'A' shoots 'B' narrowly missing vital organs. 'A' survives.
- 1 x Robbery
 - 1 x Attempted Murder (occurred after the Robbery)
 - 1 x Firearms Act 1968, S17 (2) & (5) (possess firearm while committing offence in Schedule 2).
- Example 6 'A' presents a knife at 'B' demanding money. 'B' refuses and 'A' stabs 'B' several times to the abdomen and robs them of money.
- 1 x Robbery (Attempted Murder is subsumed as this is part of the Robbery)
 - 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S47
or
 - 1 x S49 (Possession of offensive weapon/bladed article used in commission of a crime if committed in a public place, school or prison).
- Example 7 'A' threatens to kill 'B' and stabs them to the chest with a knife.
- 1 x Attempted Murder
 - 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S47
or
 - 1 x S49 (Possession of offensive weapon/bladed article used in commission of a crime if committed in a public place, school or prison). In most cases this will be recorded as Attempted

Murder unless the stabbing was of so little force to penetrate the skin or the weapon used had a very small blade which could not cause a fatal injury.

Example 8 'A' threatens to kill 'B' and stabs them once to the arm in a public place with a knife causing a laceration requiring sutures.

- 1 x Serious Assault
 - 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S47
- or
- 1 x S49 (Possession of offensive weapon/bladed article used in commission of a crime if committed in a public place, school or prison). Despite the threat to kill, the stab wound is unlikely to present a threat to life and therefore unlikely to be recorded as an Attempted Murder unless there are extenuating circumstances present such as the knife being directed at a vital area and the victim evades the blow.

Note

Where there is intention on the part of the perpetrator to kill the victim, followed by the perpetration of a level of violence which points to the individual seeking to follow up that threat this will be recorded as Attempted Murder.

In circumstances where a victim is subject to strangulation the following must be considered before recording Attempted Murder:

- Did the attack represent a genuine threat to life.
- Did the victim lose consciousness.
- Did the attack stop following intervention by a third party.
- Did the assailant stop the attack.
- Was the attack brief or sustained.

- Is there significant bruising or neck injury to evidence the level of violence used.
- Was the attack perpetrated by a sustained two hand choking technique.
- In circumstances where a victim has been subject to a stabbing the following should be considered when deciding whether to record a crime of Attempted Murder:
 - Size and type of weapon used.
 - Degree of penetration.
 - Damage caused to vital organs.
 - Proximity of wound to vital organs.
 - Was the attack frenzied or sustained.
 - Level of force used.

In circumstances where a motor vehicle is driven at or towards a person the following should be considered when deciding whether to record a crime of Attempted Murder:

- Was this a deliberate act as opposed to an attempt to scare the victim?
- The manner in which the vehicle was being driven e.g. acceleration towards victim.
- What means of escape did the victim have and what evasive action was taken.
- Where the victim was in relation to the vehicle e.g. walking on pavement.
- Extent of injury (if any) sustained by the victim.

Where a violent act results in an injury which in the opinion of a medical practitioner presents a clear and unequivocal danger to life then this will be recorded as Attempted Murder. This will generally involve knife wounds to the throat, neck, vital organs and to the chest area.

Each case needs to be considered on its own merit and must be confirmed by a statement from a medical practitioner as to the extent of the injury. The rationale for

this is that every injury, including relatively minor wounds might, if untreated, result in death and therefore the key element is that without immediate and urgent treatment death was a likely consequence.

Where there is no clear and unequivocal medical evidence to support the degree of injury it is still possible to record a violent act as Attempted Murder, however, the level of recklessness must be evidenced. Such scenarios might include strangulation to the point of unconsciousness even though there is no lasting injury, stab wounds to the abdomen and chest which miss vital organs or setting fire to premises with people within where little or no injury is sustained.

Where an initial crime has been recorded as Attempted Murder and the victim later dies as a result, the crime should be upgraded accordingly e.g. Murder, whether or not the report has been forwarded to the Procurator Fiscal.

If there is any dubiety as to the correct crime to record please consult your Crime Registrar.

**8/001 Children and Young Persons (Scotland) Act 1937,
Section 12
Cruelty and Unnatural Treatment of Children**

General Rule

One crime for each child and where specific dates and/or loci identified separate crimes to be recorded.

Definition

Section 12 (1) makes it an offence to wilfully ill-treat, neglect, abandon or expose a child 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).

12(2)(a) For the purposes of this section if a parent or other person legally liable to maintain a child or young person or the legal guardian of 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;

For persons presumed to have "custody, charge or care" of a child or young person:

Any person to whose charge a child or young person is committed by any person who has parental responsibilities in relation to him shall be presumed to have charge of the child or young person.

Victim

Child subjected to ill-treatment

Locus

Where crime takes place

Examples

- Example 1 A parent leaves two children under 10 years old at home for 48 hours without adequate food or drink and with no responsible adult in charge.
- 2 x Children and Young Persons (Scotland) Act 1937, S12
- Example 2 17 year old found within house drunk, asleep in bed and in charge of two children, aged 4 and 9 who are playing in the living room near to an open lit fire.
- 2 x Children and Young Persons (Scotland) Act 1937, Section 12
- Example 3 'A' neglects their two pre-school children 'B' and 'C' who are found to be malnourished and sleeping in their own excrement.
- 2 x Children and Young Persons (Scotland) Act 1937, Section 12
- Example 4 'A' abandons 'B', a 2 year old infant for an afternoon in a car in a supermarket car park on a warm day.
- 1 x Children and Young Persons (Scotland) Act 1937, Section 12
- Example 5 Child minder leaves three young children alone in the house for several hours, resulting in one child becoming injured.
- 3 x Children and Young Persons (Scotland) Act 1937, Section 12
- Example 6 'A' leaves their 8 year old child in bed asleep while going to the shops. On police attending at the house the child is found within,

watching television, and there are no concerns around the conditions within the house. 'A' returns shortly after police arrival.

- The circumstances fail to meet the proof required for a S12 offence and a partner agency referral should be considered.

Example 7

A vehicle stopped by police finds the driver to be over the drink drive limit. There is a 4 year old child secured within the vehicle. There is nothing to suggest the driver was driving erratically or that the child was in any specific danger.

- 1 x Road Traffic Act 1988, S5 (should the driver's erratic driving result in an accident or the erratic driving was such that there was a significant risk of an accident then this would be sufficient to evidence risk presented to the child and a S12 would be appropriate).

Example 8

A search of a dwelling recovers a cannabis production within a bedroom, also living within the house is a 7 year old child. There is a smell within the house of cannabis, however, other than this, the living conditions are of a good standard and the child appears in good health.

- Insufficient justification for recording a S12. Had the child been sleeping within the same room as the cannabis plants further information may determine whether a S12 would be relevant, e.g. a medical opinion sought as to any impact on the child, social work/school assessment as to whether a decline has been noticed in the child's behaviour.

Note

Prior to 2003 assaults on children were covered by Section 12, however, all assaults on children will be recorded under common law including any assaults occurring prior to 2003.

The act of leaving a child alone and unsupervised is not, by itself, an offence nor is it enough to justify a prosecution under this legislation. We have to show specific risk to the child i.e. the likelihood of unnecessary suffering, before this can go ahead.

'What if' syndrome does not apply to these cases.

Proof - The courts have taken a very strict interpretation of this legislation.

Essentially the crown is required to prove three things:

- That the accused ill-treated, abandoned, exposed or neglected the child;
- That this was done "wilfully";
- That the neglect itself was "likely to cause him unnecessary suffering or injury to health"

"Ill-treatment, "Abandonment", "Exposure" or "Neglect":

There is no definition of "ill-treatment", "abandonment" and "exposure" within the section and therefore those words are left to speak for themselves. However, the word "neglect" must be read together with Section 12(2) (a) which provides that, for the purposes of this section, certain conduct such as a failure to provide adequate food, clothing, medical care or lodging, is deemed to constitute neglect in such a manner as to cause suffering or injury.

Where the conduct falls within Section 12(2) (a), the standard to be applied is that of "adequacy". Therefore, to cite but one example, should a parent or carer fail to provide a child with adequate food, he will be deemed to have neglected the child in a manner likely to prove injurious to the child's health. Adequacy has to be tested by reference to what a reasonable parent would regard as being adequate, in the sense of being just sufficient or tolerable.

Where the conduct does not fall under that provided by Section 12(2) (a), the Crown must prove that the accused has failed to achieve the standard of proper care and attention which would be expected of the reasonable parent whether this is due to a deliberate decision or act or, alternatively, an omission to do what was required.

Where 'A' is found to be drunk and has sole responsibility of looking after a child, it must be shown that this would likely cause the child unnecessary suffering or injury

to health e.g. if child required feeding, changed prior to 'A' becoming sober and was unable to do so.

In terms of recording a Section 12 offence the PF is the complainant and case outcomes have dictated the level of evidence required to determine an offence under Section 12 is relevant.

“Wilfully”

The offence is committed whether or not the parent intends to put the child at risk or foresees that the child might be put at risk.

“Likely to cause him unnecessary suffering or injury to health”:

The element that causes most difficulties evidentially is proof that the ill-treatment, abandonment, exposure or neglect was “likely to cause the child unnecessary suffering or injury”. This cannot be left subject to speculation. In the light of this strict interpretation of the statute, it is important to note that cases such as these are notoriously difficult to prove, particularly where there is no evidence of suffering or injury caused.

3/006 Corporate Manslaughter and Corporate Homicide Act 2007, Section 1

General Rule

One crime for each person killed

Definition

- (1) An organisation to which this section applies is guilty of an offence if the way in which its activities are managed or organised:
 - (a) causes a person's death, and
 - (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.
- (2) The organisations to which this section applies are:
 - (a) a corporation;
 - (b) a department or other body listed in Schedule 1;
 - (c) a police force;
 - (d) a partnership, or a trade union or employers' association that is an employer.
- (3) An organisation is guilty of an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in subsection (1).
- (4) For the purposes of this Act:
 - (a) "relevant duty of care" has the meaning given by section 2, read with sections 3 to 7;
 - (b) a breach of a duty of care by an organisation is a "gross" breach if the conduct alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances;

- (c) “senior management”, in relation to an organisation, means the persons who play significant roles in—
- (i) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or
 - (ii) the actual managing or organising of the whole or a substantial part of those activities.

(5) The offence under this section is called—

- (a) corporate manslaughter, in so far as it is an offence under the law of England and Wales or Northern Ireland;
- (b) corporate homicide, in so far as it is an offence under the law of Scotland.

(6) An organisation that is guilty of corporate manslaughter or corporate homicide is liable on conviction on indictment to a fine.

(7) The offence of corporate homicide is indictable only in the High Court of Justiciary.

Complainer

Procurator Fiscal

Victim

Deceased

Locus

Where crime takes place

Examples

Example 1 As managing director of a corporation, fail to adequately manage the repair and maintenance of a mobile elevated platform in a way

that amounted to a gross breach of relevant duty of care causing the death of two people.

- 2 x Corporate Manslaughter and Corporate Homicide Act 2007, S1

Example 2

Following a Police and Health and Safety Executive investigation into the deaths of two workers on a building site, the foreman on the site is charged with Culpable Homicide and the building firm with Corporate Homicide.

- 2 x Culpable Homicide (for crime recording purposes in circumstances where both Culpable Homicide and Corporate Homicide exist and different persons/bodies are being held to account, recording the common law crime will take precedence.

Note

Offences of this type are determined by the Procurator Fiscal following consideration of presented evidence. This can on occasions take a considerable period of time which is outwith the control of Police. No offence should be recorded until a decision is made by the Procurator Fiscal.

47/009 **Criminal Justice and Licensing (Scotland) Act 2010,**
Section 39
Stalking

General Rule

One crime for each course of conduct

Definition

- (1) A person (“A”) commits an offence, to be known as the offence of stalking, where A stalks another person (“B”).
- (2) For the purposes of subsection (1), A stalks B where—
 - (a) A engages in a course of conduct,
 - (b) subsection (3) or (4) applies, and
 - (c) A's course of conduct causes B to suffer fear or alarm.
- (3) This subsection applies where A engages in the course of conduct with the intention of causing B to suffer fear or alarm.
- (4) This subsection applies where A knows, or ought in all the circumstances to have known, that engaging in the course of conduct would be likely to cause B to suffer fear or alarm.
- (5) It is a defence for a person charged with an offence under this section to show that the course of conduct—
 - (a) was authorised by virtue of any enactment or rule of law,
 - (b) was engaged in for the purpose of preventing or detecting crime, or
 - (c) was, in the particular circumstances, reasonable.
- (6) In this section “conduct” means—
 - (a) following B or any other person,

- (b) contacting, or attempting to contact, B or any other person by any means,
- (c) publishing any statement or other material—
 - (i) relating or purporting to relate to B or to any other person,
 - (ii) purporting to originate from B or from any other person,
- (d) monitoring the use by B or by any other person of the internet, email or any other form of electronic communication,
- (e) entering any premises,
- (f) loitering in any place (whether public or private),
- (g) interfering with any property in the possession of B or of any other person,
- (h) giving anything to B or to any other person or leaving anything where it may be found by, given to or brought to the attention of B or any other person,
- (i) watching or spying on B or any other person,
- (j) acting in any other way that a reasonable person would expect would cause B to suffer fear or alarm, and “course of conduct” involves conduct on at least two occasions.

Victim

Person being targeted

Locus

Where crime takes place or, if the course of conduct includes multiple locations, the locus will be the victim’s home address

Examples

- Example 1 A person reports being followed home each night from work by the same individual, over a one week period.
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S39, Stalking
- Example 2 A person is followed around a shopping centre in Division 'A' on day 1 and on day 2 sees the same suspect standing near to their house in Division 'B' watching it for over an hour.
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S39, Stalking
- Example 3 Person reports receiving unwanted telephone calls from the suspect on landline and mobile, the suspect hanging about outside their place of work, and being followed by the suspect at various locations.
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S39, Stalking (recorded at victim's home address).
- Example 4 'A' reports that 'B' has: been waiting outside their place of employment and attempting to engage in conversation even though 'A' has requested 'B' to cease from this course of conduct; sent flowers to 'A' at their place of work; sent letters seeking to start a relationship. Circumstances now being report due to 'B' touching 'A's' breast at which point 'A' pushed 'B's' hand away and ran off.
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S39, Stalking
 - 1 x Sexual Offences (Scotland) Act 2009, S3, Sexual Assault
- (Where incidents on their own may not result in behaviour amounting to Section 38, or where the conduct is reported as a course of conduct which together may amount to a Section 39,

there is no requirement to record each incident as a Section 38. Where a separate crime has occurred e.g. Assault, Sexual Crime or damage to property, then this should be recorded, even though considered as part of the course of conduct of the Section 39, Stalking).

Example 5

Victim reports being followed by the suspect, receiving unwanted text messages and the suspect loitering near their place of work on several occasions. A crime under Criminal Justice and Licensing (Scotland) Act 2010, S39, Stalking is recorded and the suspect charged and reported to the Procurator Fiscal. Prior to their court appearance the suspect subjects the victim to further abuse by telephone.

- No additional crime should be recorded. The circumstances of the new report form part of the course of conduct of Stalking and should be reported to the PF by memo. If bail conditions have been breached by contacting the victim a Breach of Bail should be recorded.

Example 6

Victim reports being followed by the suspect, receiving unwanted text messages and the suspect loitering near their place of work on several occasions. A crime under Criminal Justice and Licensing (Scotland) Act 2010, S39, Stalking is recorded, the suspect is reported to the PF and dealt with by a court. Two weeks after sentencing by the court the suspect follows the victim to their home address causing them fear and alarm.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or Abusive Behaviour (since the earlier course of conduct was dealt with by a court the report from the victim amounts to a single crime and would not amount to a new course of conduct unless it involved conduct on at least two occasions).

- Example 7 Victim reports being followed by the suspect causing fear and alarm and a crime under Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or Abusive Behaviour is recorded. While this crime is being investigated the victim receives a number of abusive telephone calls from the suspect and a separate crime under Communications Act 2003, S127 is recorded.
- This additional report combined with the earlier S38 offence elevates the behaviour to a course of conduct. The S38 offence should be reclassified to a crime of Criminal Justice and Licensing (Scotland) Act 2010, S39 Stalking and the recorded S127 updated to 'No Crime' with rationale that this is included within a course of conduct cross referenced to the earlier crime report.

- Example 8 Victim reports receiving several abusive text messages and telephone calls from the same suspect.
- 1 x Communications Act 2003, S127 (non-sexual). (While the number of calls received amounts to a course of conduct this is adequately covered by Communications Act 2003 and under normal circumstances should not be considered as a crime of Stalking unless other criminal elements contribute towards the course of conduct. However it should be noted that the crime of Stalking provides for behaviour which may cause a particular individual fear or alarm which might not cause the average member of the public fear or alarm. Should a course of conduct which causes fear or alarm include communications of a benign nature which would not meet the provisions of Communications Act 2003, S127 a crime of Stalking should be considered).

Note

This offence was introduced on 13 December 2010.

All examples listed in this Section relate to circumstances which do not amount to domestic incidents. In circumstances where there is a course of conduct of domestic abuse all of which occurs after 1 April 2019 reference should be made to recording guidance listed under the Domestic Abuse (Scotland) Act 2018 pages. Any course of conduct of domestic abuse which occurred prior to 1 April 2019 will be recorded in line with legislation in place at the material time.

3/001

Culpable Homicide

General Rule

One crime for each person killed

Definition

Culpable Homicide may be committed in the following 3 ways:

- Intentional Killing: where the death is intentionally caused in circumstances, which are neither murderous nor justifiable. Thus, death, inflicted in the heat of passion, immediately following severe provocation, or in such circumstances of self-defence as do not fully justify it, fall into this category.
- Unlawful Act: When it results from an unlawful act, although death was not intended or probable. A blow with a fist, deserting and exposing an infant, and throwing stones, are examples of acts which may be regarded as blamable, although the ensuing death could not reasonably have been expected.
- Negligence: It is also culpable homicide if death ensues, from undue negligence or carelessness in the performance of a lawful act or duty. Thus, a person discharging a firearm in a reckless manner, or a chemist carelessly selling poison in mistake for a medicine, would probably be held guilty of this crime if death were occasioned by gross negligence.

Complainer

Procurator Fiscal

Victim

Deceased

Locus

Where crime takes place (or if unknown where body is found)

Examples

No examples

Note

No examples have been provided as in the majority of occasions consultation with the Procurator Fiscal will take place before the decision is made as to the crime required to be recorded.

Domestic Abuse (Scotland) Act 2018, Section 1(1)

Abusive behaviour towards partner or ex-partner

11/012 Male victim

11/013 Female victim

General Rule

One crime for each course of conduct per victim (see below)

Definition

Section 1 - Abusive behaviour towards partner or ex-partner

(1) A person commits an offence if:

- (a) the person A engages in a course of behaviour which is abusive of A's partner or ex-partner B, and
- (b) both of the further conditions are met

(2) The further conditions are:

- (a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm,
- (b) that either
 - (i) A intends by the course of behaviour to cause B to suffer physical or psychological harm, or
 - (ii) A is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.

(3) In the further conditions, the references to psychological harm include fear, alarm and distress.

Section 2 - What constitutes abusive behaviour

(1) Subsections (2) to (4) elaborate on Section 1(1) as to A's behaviour

(2) Behaviour which is abusive of B includes (in particular):

(a) behaviour directed at B that is violent, threatening or intimidating,

(b) behaviour directed at B, at a child of B or at another person that either:

(i) has as its purpose (or among its purposes) one or more of the relevant effects set out in subsection (3), or

(ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects set out in subsection (3).

(3) The relevant effects are of:

(a) making B dependent on, or subordinate to, A

(b) isolating B from friends, relatives or other sources of support

(c) controlling, regulating or monitoring B's day-to-day activities

(d) depriving B of, or restricting B's, freedom of action

(e) frightening, humiliating, degrading or punishing B.

(4) In subsection (2):

(a) in paragraph (a), the reference to violent behaviour includes sexual violence as well as physical violence,

(b) in paragraph (b), the reference to a child is to a person who is under 18 years of age.

Section 5 - Aggravation in relation to a child

(1) This subsection applies where it is, in proceedings for an offence under

1(1)—

(a) specified in the complaint or libelled in the indictment that the offence is aggravated by reason of involving a child, and

(b) proved that the offence is so aggravated.

- (2) The offence is so aggravated if, at any time in the commission of the offence—
- (a) A directs behaviour at a child, or
 - (b) A makes use of a child in directing behaviour at B.
- (3) The offence is so aggravated if a child sees or hears, or is present during, or an incident of behaviour that A directs at B as part of the course of behaviour.
- (4) The offence is so aggravated if a reasonable person would consider the course of behaviour, or an incident of A's behaviour that forms part of the course of behaviour, to be likely to adversely affect a child usually residing with A or B (or both).
- (5) Evidence from a single source is sufficient to prove that the offence is so aggravated.
- (11) In this section, the references to a child are to a person who—
- (a) is not A or B, and
 - (b) is under 18 years of age.

Victim

Person subjected to abusive behaviour

Locus

Where crime takes place or if the course of conduct includes multiple locations consideration should be given for the location to be the locus of the first incident or the victim's home address at the time of the offence. Additional crimes which are recorded but not reported by SPR will continue to be recorded in accordance with the locus rule for that crime type.

General points of note

Course of Behaviour

The Domestic Abuse (Scotland) Act 2018 (DASA), Section 1 offence won't be appropriate for all domestic offending and existing common law and statutory offences will continue to be used where appropriate in the facts and circumstances of individual cases.

While a 'course of behaviour' is defined in the Act as involving behaviour on at least two occasions, it will not always be appropriate to use this offence simply because there have been two incidents. This is particularly so when the time period between incidents is lengthy, and more reflective of discrete abusive acts than a course of conduct, or where there have been two incidents within a very short space of time but no evidence that these incidents are part of a pattern or course of abusive behaviour.

The words "course of abusive behaviour" implies a unity of purpose behind the accused's acting which makes it appropriate to treat several incidents as part of one course of conduct.

Each individual case will require to be considered on its own facts and circumstances and consideration must always be given to what is the most appropriate charge. Regard should be had to the overall circumstances and nature of the behaviour as well as the underlying dynamic, context, risk assessment information and the history and background of the relationship, any previous incidents and offending by the accused and any other relevant information, which might demonstrate a connection and underlying nexus between the behaviours, notwithstanding differences in the type of behaviours.

Where the offending constitutes a series of behaviours which can be characterised as separate and distinct offences as opposed to a pattern or course of behaviour, this is unlikely to meet the test of it being part of a course of conduct and consideration should be given to using other charges as opposed to a Section 1.

- Example - Where there are a small number of abusive incidents which have occurred over a short period of time e.g. repeated calls/texts over a period of

three or four days and where there is no indication of an underlying dynamic or history of controlling or abusive behaviours within the relationship, it may be more appropriate to use a Communications Act 2003, S127 offence; conversely a DASA Section 1 charge will likely be appropriate even for two instances of abuse, where there is an underlying dynamic or history of controlling or abusive behaviours within the relationship, provided the statutory requirements of DASA are met.

- Example - Where there has been an incident of aggressive verbal abuse behaviour towards a complainer which is followed at a later time by an assault on the complainer, in the absence of a history of controlling and abusive behaviour and where these incidents are the only matters to be reported, it may be more appropriate to treat these as separate offences as opposed to a course of conduct and report them separately as a Criminal Justice and Licencing (Scotland) Act 2010, S38 and an Assault instead of a Domestic Abuse (Scotland) Act 2018, S1 offence.

Where offences have occurred after 1 April 2019, for the purposes of crime recording, in circumstances where there is a course of conduct of Abusive Behaviour which meets the above criteria and a sufficiency of evidence (two or more corroborated incidents) to report an offender, only the Section 1 Abusive Behaviour crime should be reported by SPR (see exceptions below).

Any other crime which has been recorded in accordance with Counting Rules as stipulated in General Rules below will remain recorded on crime systems but will not be included in the SPR. These additional crimes may be marked as detected (1) if corroborated within the course of conduct being reported or (2) if uncorroborated, there is sufficient underlying nexus that links them to the course of conduct being reported. The setup of crime recording systems in individual Police Scotland Divisions will determine how this process is managed.

Crimes occurring prior to 1 April 2019 will require to be evidenced separately.

The following crimes should not be included within the Section 1(1) offence and should instead be reported separately using existing statutory and common law

charges. These crimes will require to be evidenced separately from the Section 1(1) course of conduct.

- Sexual Offences (Scotland) Act 2009, Section 1 - Rape (and attempted rape)
- Sexual Offences (Scotland) Act 2009, Section 2 - Sexual Assault by penetration (and attempted sexual assault by penetration)
- Murder
- Attempted Murder

For all other offending behaviour, where it appears part of a course of abusive behaviour and meets the statutory requirements of the Domestic Abuse (Scotland) Act, it should be reported within a DASA Section 1 charge rather than as a separate alternative charge.

Aggravation involving a child

For reporting purposes, in circumstances where it is specified in the complaint under Section 1(1) that the offence is aggravated by reason of involving a child an aggravation in relation to a child should be highlighted in the Police report. It should be noted that evidence from a single source is sufficient to prove that the offence is so aggravated.

In addition to the above any criminal conduct directed at a child should be recorded as a separate crime.

General Rules (relating to conduct occurring after 1 April 2019)

Single "one-off" incidents of abusive behaviour are not covered by this legislation and will continue to be recorded appropriate to the circumstances reported.

- In circumstances where the behaviour spans a time period before and after the introduction of the legislation appropriate crime(s) will be recorded to account for the period before the introduction of the legislation, provided that the conduct would have amounted to a crime at that time.
- In circumstances where a course of conduct is reported where there is insufficient evidence to report to the Procurator Fiscal (needs two or more

corroborated incidents) an undetected Domestic Abuse offence will be recorded.

- In circumstances where there is a course of conduct of behaviour which constitutes a Domestic Abuse (Scotland) Act 2018, Section 1 offence which includes individual elements of conduct which would amount to Criminal Justice and Licensing (Scotland) Act 2010, Section 38 (Threatening or Abusive Behaviour), Section 39 (Stalking) or Communications Act 2003, Section 127, only the Domestic Abuse offence will be recorded to account for the course of conduct.
- The inclusion of conduct amounting to Criminal Justice and Licensing (Scotland) Act 2010, Section 39, Stalking within a Domestic Abuse (Scotland) Act 2018, Section 1 offence is dependent on there being a sufficient history of abusive behaviour to justify a Section 1 offence. If there is insufficient to justify a Section 1 offence but sufficient for Section 39, Stalking in terms of two or more incidents which cause fear or alarm a Section 39 offence should be recorded.
- Where there is a course of conduct of behaviour which includes crimes of assault, the crimes of assault will be recorded in accordance with existing SCRS rules in addition to the Domestic Abuse offence.
- Where there is a course of conduct of behaviour which amounts to crimes of assault only, the crimes of assault will be recorded in accordance with existing SCRS rules in addition to a Domestic Abuse offence.
- Where there is a course of conduct of behaviour which includes crimes of a sexual nature, the sexual crimes will be recorded in accordance with existing SCRS rules in addition to the Domestic Abuse offence.
- Where there is a course of conduct of behaviour which includes a Communications Act 2003, Section 127 offence of a sexual nature, this should be recorded in addition to any Domestic Abuse offence.
- Where there is a course of conduct of behaviour which amounts to crimes of a sexual nature only, the sexual crimes will be recorded in accordance with existing SCRS rules in addition to the Domestic Abuse offence.

- Where there is a course of conduct of behaviour which includes crimes of dishonesty, the crimes of dishonesty will be recorded in accordance with existing SCRS rules in addition to the Domestic Abuse offence.
- Where there is a course of conduct of behaviour which amounts to crimes of dishonesty only, the crimes of dishonesty will be recorded in accordance with existing SCRS rules in addition to the Domestic Abuse offence.
- Where there is a course of conduct of behaviour which includes crimes of damage to property, the crimes against property will be recorded in accordance with existing SCRS rules in addition to the Domestic Abuse offence.
- Where there is a course of conduct of behaviour which amounts to crimes of damage to property only, the crimes against property will be recorded in accordance with existing SCRS rules in addition to the Domestic Abuse offence.
- Reference to property above would exclude items deemed to be jointly owned as part of a relationship.

Other crimes which sit in isolation as crimes in their own right will continue to be recorded as that crime per existing SCRS rules but in circumstances where there is also a course of conduct of abusive behaviour the substantive crime and the Domestic Abuse offence will be recorded.

Examples

For the purpose of the following examples all conduct disclosed occurs after the introduction of Domestic Abuse (Scotland) Act 2018 on 1 April 2019. Where the example shows that an offence under Domestic Abuse (Scotland) Act 2018, Section 1 should be recorded it will need to be evidenced that this forms part of a pattern of abusive behaviour where there is a unity of purpose behind the accused's actions. If a pattern of abusive behaviour cannot be evidenced then stand-alone crimes will be recorded excluding the Domestic Abuse offence.

- Example 1 'A' and 'B' are ex-partners. 'B' reports being confronted by 'A' in the street and being shouted and sworn at. No other conduct is disclosed.
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or Abusive Behaviour (single incident).
- Example 2 'A' and 'B' are partners. 'B' reports being shouted and sworn at by 'A' immediately before being assaulted. No other conduct is disclosed.
- 1 x Assault (subsumes S38, Threatening or Abusive Behaviour) – single incident
- Example 3 'A' and 'B' are partners. 'B' reports being assaulted by 'A' on three occasions at their home address where the dates of these assaults are not known. No other conduct is disclosed.
- 1 x Domestic Abuse (Scotland) Act 2018, S1 (1)
 - 1 x Assault (only one required as dates not known)
- Example 4 'A' and 'B' are ex-partners. 'B' reports being subjected to abusive behaviour by 'A' on several occasions which includes two crimes of assault where the dates of these assaults are known.
- 1 x Domestic Abuse (Scotland) Act 2018, S1 (1)
 - 2 x Assault (two required as dates are known)
- Example 5 'A' and 'B' are partners. 'B' reports having been assaulted by 'A' on unknown dates on two occasions at separate locations and sexually assaulted on another occasion.
- 1 x Domestic Abuse (Scotland) Act 2018, S1 (1)
 - 2 x Assault (dates unknown but crime required for each locus)
 - 1 x Sexual Offences (Scotland) Act 2009, S3, Sexual Assault
- Example 6 'A' and 'B' are ex-partners. 'B' reports receiving a threatening telephone call from 'A'. No other conduct is disclosed.

- 1 x Communications Act 2003, S127 (1) (single incident)
- Example 7 'A' and 'B' are ex-partners. 'B' reports receiving several threatening telephone calls from 'A', 'A' loitering outside 'B's' workplace and being followed by 'A'.
- 1 x Domestic Abuse (Scotland) Act 2018, S1 (1)
- Example 8 'A' and 'B' are partners. 'B' reports that 'A' prevents 'B' from meeting up with friends, controls their finances and regularly humiliates then in public.
- 1 x Domestic Abuse (Scotland) Act 2018, S1 (1)
- Example 9 'A' and 'B' are ex-partners. 'B' reports being followed by 'A', receiving abusive text messages and 'A' loitering near 'B's' place of work on several occasions. A crime under Domestic Abuse (Scotland) Act 2018, Section 1(1) of Abusive Behaviour is recorded and 'A' is charged and reported to the Procurator Fiscal. Prior to their court appearance 'A' subjects 'B' to further abuse by telephone.
- 1 x Communications Act 2003, S127 (once initial report has gone to the Procurator Fiscal any additional conduct should be recorded separately and cross referred to the initial report).
- Example 10 'A' and 'B' are ex-partners. 'B' reports being followed by 'A', receiving abusive text messages and 'A' loitering near 'B's' workplace on several occasions. A crime under Domestic Abuse (Scotland) Act 2018, S1 (1) was recorded and reported to the Procurator Fiscal. Two days later 'A' attends at the home of 'B' and makes various threats which cause 'B' alarm.
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or Abusive Behaviour (since the earlier course of conduct was reported to the Procurator Fiscal this new report from 'B' amounts to a single crime and would not

amount to a new course of conduct unless it involved conduct on at least two occasions).

- Example 11 'A' and 'B' are partners. 'B' has previously reported being threatened by 'A' and a crime under Criminal Justice and Licensing (Scotland) Act 2010, S38 Threatening or Abusive Behaviour is recorded. While this crime is being investigated 'B' received a number of abusive telephone calls from 'A'.
- This additional report combined with the earlier S38 could elevate the behaviour to a course of conduct. If a pattern of abusive behaviour can be evidenced the earlier recorded S38 should be updated to “No Crime” or reclassified (depending on local IT systems) to 1 x Domestic Abuse (Scotland) Act 2018, S1(1) to account for what is now a course of conduct. If any offence under Communications Act 2003, S127 was recorded for the abusive calls it should be updated to ‘No Crime’ with rationale that this is included within a course of conduct cross referenced to the earlier crime report. If a pattern of abusive behaviour cannot be evidenced an additional crime under Communications Act 2003, S127 should be recorded.
- Example 12 'A' and 'B' are ex-partners. 'B' reports having been assaulted by 'A', having property stolen by 'A' and having property wilfully damaged by 'A'. Dates of these crimes are not known.
- 1 x Domestic Abuse (Scotland) Act 2018, S1 (1)
 - 1 x Assault
 - 1 x Theft
 - 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S52 Vandalism
- Example 13 'A' is released on Bail following a course of conduct amounting to Domestic Abuse (Scotland) Act 2018, S1 (1) against 'B'. 'A' later

contacts 'B' in breach of these conditions of bail. No other criminal conduct is disclosed.

- 1 x Criminal Procedure (Scotland) Act 1995, S27 Breach of Bail

Example 14 'A' is released on Bail following a course of conduct amounting to Domestic Abuse (Scotland) Act 2018, S1 (1) against 'B'. 'A' later contacts 'B' and subjects them to threatening and abusive behaviour.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or Abusive Behaviour (with Bail aggravation)(since a course of conduct under S1(1) has already been reported to the Procurator Fiscal any additional conduct should be recorded separately and cross referred to the initial report).

Example 15 'A' is released on Bail following a course of conduct amounting to Domestic Abuse (Scotland) Act 2018, S1 (1) against 'B'. 'A' later approaches 'B' and assaults them.

- 1 x Assault (with Bail aggravation)(since a course of conduct under Section 1(1) has already been reported to the Procurator Fiscal any additional conduct should be recorded separately and cross referred to the initial report).

The following examples involve conduct disclosed which occurs both pre and post introduction of Domestic Abuse (Scotland) Act 2018 on 1 April 2019.

Example 16 'A' and 'B' are partners. 'B' reports being assaulted by 'A' at their home address on date 1 (pre legislation) and on date 2 (post legislation).

- 2 x Assault (if both assaults had occurred after the introduction of Domestic Abuse (Scotland) Act 2018 an additional S1 (1) offence may be required.

- Example 17 'A' and 'B' are ex-partners. 'B' reports being confronted by 'A' in the street and being shouted and sworn at on date 1 (pre legislation) and on date 2 (post legislation). 'B' also reports receiving abusive text messages from 'A' (post legislation).
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or Abusive Behaviour (pre legislation)
 - 1 x Domestic Abuse (Scotland) Act 2018, S1 (1), (post legislation)
 - Note that conduct occurring prior to the introduction of Domestic Abuse (Scotland) Act 2018 cannot be included within a S1 (1) course of conduct.

Note

- All three conditions under Section 1 must be met for the offence to have been committed.
- A course of behaviour must involve behaviour on at least two occasions so single incidents of abuse are not covered but may be under other legislation.
- The commission of an offence under Section 1(1) does not depend on the course of behaviour actually causing B to suffer harm of the sort mentioned in section 1(2).
- Behaviour which is not "directed at" a person is not covered by this provision. This ensures that where e.g. a person has an affair with a third party, which may cause their partner to be humiliated, this does not directly fall within the scope of the offence.
- In circumstances where an accused who has been reported to the Procurator Fiscal for a course of conduct of Domestic Abuse commits a further crime against the same victim, this amounts to a separate crime and should not be included within the course of conduct already reported. Should more than one crime be committed this will amount to a second course of conduct.

If conditions of Bail/Undertaking etc. are breached where no criminality occurs, a breach of Bail/Undertaking etc. offence should be recorded. If a crime is committed while breaching these conditions the substantive crime will be recorded and the breach of the condition shown as an aggravation.

7/000 Extortion

General Rule

One crime for each victim/business and continuity of action.

Definition

Extortion is the crime of obtaining money, or any other advantage by threats.

Victim

Person threatened

Locus

Where threat is made from (if known), otherwise where received.

Examples

Example 1 Shop owner being forced to pay monthly payments for 'protection' of their shop.

- 1 x Extortion

Example 2 Over a one week period an adult 'A' and an older child 'B' engage in consensual sexual conversation over social media.

At the end of the week each willingly sends naked images of themselves to the other party. 'B' then receives a message from 'A' threatening to circulate the naked images if 'B' does not send more naked images. 'B' takes more images and sends them to 'A'.

- 1 x Sexual Offences (Scotland) Act 2009, S34, Communicating indecently with an older child
- 1 x Sexual Offences (Scotland) Act 2009, S33, Causing an Older Child to look at a sexual image

- 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2019, S2, Threat to disclose an intimate image.
- 1 x Sexual Offences (Scotland) Act 2009, S4 Sexual Coercion (no consent)

'A' asks 'B' to remove their clothes which is viewed by 'A' over social media. 'B' then receives a message from 'A' showing them photos taken of them removing their clothing which 'B' was unaware had been taken. 'A' threatens to circulate the naked images if 'B' does not send more naked images. 'B' does not send any more images.

- 1 x Sexual Offences (Scotland) Act 2009, S34, Communicating indecently with an older child
- 1 x Sexual Offences (Scotland) Act 2009, S4, Sexual Coercion (if non-consensual otherwise S31)
- 1 x Sexual Offences (Scotland) Act 2009, S36, Voyeurism (in respect of the taking of images without consent).
- 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2019, S2, Threat to disclose an intimate image.

Example 3

While 'A' and 'B' (both adults) are in a relationship 'B' takes photographs of a sexual nature of 'A' which 'A' consents to. 'A' decides to end the relationship and 'B' threatens to circulate the photographs on the internet should 'A' not continue to have sex with them. As a result, 'A' has sex with 'B' over a period of time at same locus (dates not specific) in fear that the photographs will be circulated.

- 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2016, S2, Threat to disclose an intimate image.
- 1 x Sexual Offences (Scotland) Act 2009, S1 Rape

Example 4

Two adults ('A' and 'B') engage in consensual sexual conversation over social media during which each willingly sends the other

naked images of themselves. The following week 'A' receives a message from 'B' threatening to circulate the naked images if 'A' does not send money to a specified bank account. 'A' sends the money.

- 1 x Extortion (recorded where 'A' received the threat unless the location of 'B' can be established).

Example 5

'A' contacts 'B' on social media stating that they will disclose certain information from 'B's' past unless 'B' performs a sexual act on webcam. 'B' complies and 'A' records the act without the knowledge of 'B'. 'A' later distributes the image of 'B' on social media.

- 1 x Extortion (which incorporates 'B' being caused to participate in a sexual act)
- 1 x Sexual Offences (Scotland) Act 2009, S9, Voyeurism (for recording the act)
- 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2016, S2 Distribute intimate image

Example 6

'A' downloads an app which allows them to communicate online. 'A' accepts a friend request where immediately 'A' is asked to send indecent images and if they did not do so, their broadband would be cut. Complainer blocked the suspect.

- 1 x Communications Act 2003, S127 (Sexual) – if no explicit communication content; Sexual Offences (Scotland) Act 2009, S7 would be applicable if explicit content (as the threat is not real and deliverable and the complainer does not think there is any real likelihood the threat would or could be carried out, an Attempt Extortion would not be applicable).

Example 7

'A' and 'B', both adults, engage in consensual sexual communication over social media during which 'A' asks 'B' for a naked image of themselves. 'B' agrees to provide a naked image

to 'A' and shortly thereafter 'A' threatens to circulate the image unless 'B' send them money. No money is sent and the naked image is sent separately to two of 'B's contacts who are alarmed on viewing same.

- 1 x Attempted Extortion
- 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 (Disclose intimate image) for distributing the intimate image
- 2 x Sexual Offences (Scotland) Act 2009, Section 6, Coercing a person to look at a sexual image (if this had been sent to both parties in one communication only 1 x Sexual Offences (Scotland) Act 2009, Section 6 would be required).

Note

The motive and the manner in which the threat is made are immaterial.

A distinction should be drawn from robbery where the threats must be at or immediately before the appropriation of property. Extortion is used where the threat is not immediate. It is immaterial whether or not the threat is carried out.

In circumstances where a physical sexual act has been carried out on a person as part of an Extortion, both the Extortion and the sexual conduct should be recorded.

With effect from 3 July 2017 if a threat involves the disclosure of intimate images Extortion should only be recorded if a demand is made for money or valuables, otherwise a crime under Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 should be recorded.

11/001 Firearms Act 1968, Sections 16 to 18

General Rule

One crime for each firearm

Definition

Section 16 – Possession of a Firearm with Intent to Injure

It is an offence for a person to have in his possession any firearm or ammunition with intent by means thereof to endanger life or cause serious injury to property, or to enable another person by means thereof to endanger life or cause serious injury to property, whether any injury to person or property has been caused or not.

Section 16A - Possession of a Firearm with intent to cause Fear of Violence

It is an offence for a person to have in his possession any firearm or imitation firearm with intent—

- (a) by means thereof to cause, or
- (b) to enable another person by means thereof to cause any person to believe that unlawful violence will be used against him or another person.

Section 17 – Use of a Firearm to Resist Arrest or Possess while Committing an Offence

- (1) It is an offence for a person to make or attempt to make any use whatsoever of a firearm or imitation firearm with intent to resist or prevent the lawful arrest or detention of himself or another person.
- (2) If a person, at the time of his committing or being arrested for an offence specified in Schedule 2 to this Act, has in his possession a firearm or imitation firearm, he shall be guilty of an offence under this subsection unless he shows that he had it in his possession for a lawful object.

Section 18 – Carrying a Firearm with Criminal Intent

- (1) It is an offence for a person to have with him a firearm or imitation firearm with intent to commit any offence specified in Schedule 2 to this Act, or to resist arrest or prevent the arrest of another, in either case while he has the firearm or imitation firearm with him.
- (2) In proceedings for an offence under this section proof that the accused had a firearm or imitation firearm with him and intended to commit an offence, or to resist or prevent arrest, is evidence that he intended to have it with him while doing so.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 'A' is found in possession of 2 loaded firearms with intent to endanger life.
- 2 x Firearms Act 1968, S16
- Example 2 'A' is found in possession of 2 loaded guns and 'B' has 1 loaded gun, with intent to injure.
- 3 x Firearms Act 1968, S16
- Example 3 Person enters a shop with a firearm and makes off with the shop takings.
- 1 x Robbery
 - 1 x Firearms Act 1968, S17 (2) & (5) - Possess firearm while committing offence in Schedule 2 (see Notes)

- Example 4 Person enters a taxi with a firearm, points the weapon at the driver and demands to be taken to a specified locus which the driver complies with.
- 1 x Abduction
 - 1 x Firearms Act 1968, S17 (2) & (5) - Possess firearm while committing offence in Schedule 2 (see Notes)
- Example 5 Person armed with a shotgun aims and fires the weapon at a moving motor vehicle which has one occupant.
- 1 x Attempted Murder
 - 1 x Firearms Act 1968, S17 (2) & (5) - Possess firearm while committing offence in Schedule 2 (see Notes)

Note

In circumstances where a firearm is used in the commission of a crime only one crime under Sections 16, 17 or 18 will be recorded. If any crime under any of these Sections is recorded there is no requirement to record additional crimes under Sections 19 (Carrying Firearm in a public place) or 20 (Trespassing with firearm).

Schedule 2 - Offences to which Sections 17(2) and 18 apply in Scotland:

- Abduction.
- Administration of drugs with intent to enable or assist the commission of a crime.
- Assault.
- Housebreaking with intent to steal.
- Malicious mischief.
- Mobbing and rioting.
- Perverting the course of justice.
- Prison breaking and breaking into prison to rescue prisoners.

- Rape.
- Robbery.
- Theft.
- Use of threats with intent to extort money or property.
- Wilful fire raising and culpable and reckless fire raising.
- Offences against Section 57, Civic Government (Scotland) Act, 1982.
- Offences against Sections 2, 3 or 4, Explosive Substances Act, 1883.
- Offences against Section 178, Road Traffic Act, 1988.
- Offences against section 90 of the Police and Fire Reform (Scotland) Act 2012.

Section 16 and 16A offences are primarily for situations where no other offence has actually been committed (at the stage of intent only). This is to allow for an offence in circumstances where a person possesses a firearm with the intent of endangering life, cause serious injury to property, or cause any person to believe that unlawful violence will be used against him or another person. Sections 16 and 16A can be used in circumstances where the person is in possession and is not limited to “carrying” (as in Section 18 or 19) and there is evidence that they intend to do any of the restricted activities. Additionally, Sections 16 and 16A apply where they intend to enable another person to do any of the restricted activities (e.g. they are keeping a weapon to supply to someone else).

**11/003 Health (Tobacco, Nicotine etc. and Care) (Scotland)
Act 2016, Sections 26, 27
Care Workers – Ill Treatment of Patients**

General Rule

One crime for each course of conduct identified against each victim

Definition

Section 26 - Care Worker

- (1) An individual commits an offence if the individual—
- (a) has the care of another individual by virtue of being a care worker, and
 - (b) ill-treats or wilfully neglects that individual.

Section 27 - Care Provider Offence

- (1) A care provider commits an offence if—
- (a) an individual who has the care of another individual by virtue of being part of the care provider's arrangements ill-treats or wilfully neglects that individual,
 - (b) the care provider's activities are managed or organised in a way which amounts to a gross breach of a relevant duty of care owed by the care provider to the individual who is ill-treated or neglected, and
 - (c) in the absence of the breach, the ill-treatment or wilful neglect would not have occurred or would have been less likely to occur.

A "care worker" means:

- an employee who provides adult health care or adult social care,
- a volunteer who provides adult health care or adult social care,
- an individual who supervises or manages employees or volunteers providing adult health care or adult social care,

- a director or similar officer of an organisation whose employees or volunteers provide adult health care or adult social care.

An "employee" means:

- an individual in paid employment, whether under a contract of service or apprenticeship or under a contract for services.

A "volunteer" means:

- a volunteer for a body, other than a public or local authority, the activities of which are not carried on for profit.

A "care provider" means

- a body corporate, a partnership or an unincorporated association which provides or arranges for the provision of (i) adult health care, or (ii) adult social care
- an individual who provides that care and employs, or has otherwise made arrangements with, other persons to assist with the provision of that care.

"Adult health care" means

- a service for or in connection with the prevention, diagnosis or treatment of illness provided to an individual aged 18 or over: (a) under the health service continued under Section 1 of the National Health Service (Scotland) Act 1978 or (b) by persons providing an independent health care service mentioned in 10F(1) of that Act.

"Adult social care" means

- a service (a) in section 47(1) (a), (b), (d) or (m) of the Public Services Reform (Scotland) Act 2010 to the extent that the service is provided to an individual aged 18 or over, or (b) in Section 47(1) (g) or (j) of that Act to the extent that the service is provided to an individual aged 16 or over.

Victim

Person who has been ill-treated or neglected

Locus

Where crime takes place

Examples

Example 1 'A' provides unpaid care for 'B' at the home address of 'B' and enquiry establishes 'A' has ill-treated 'B' over a period of time, 'A' does not work for any organisation and is a family member.

- 1 x Cruel and Unnatural Treatment (Common Law)

Example 2 'A' works for a carer organisation and as part of their duties visits 'B' on a regular basis, as do other carers. Concerns by the family of 'B' result in a camera being placed within the house which shows 'A' ill-treating 'B' on a number of occasions, which includes binning food meant for 'B', logging on the record that food had been provided and eaten by 'B'.

- 1 x Health (Tobacco, Nicotine etc. Care) (Scotland) Act 2016, S26

Example 3 Over the course of a week two care workers while acting together ill-treat a person for whom they have a responsibility of care.

- 1 x Health (Tobacco, Nicotine etc. Care) (Scotland) Act 2016, S26 (persons acting together)

Example 4 Over the course of a week two care workers two care workers acting independently of each other ill-treat a person for whom they have a responsibility of care.

- 2 x Health (Tobacco, Nicotine etc. Care) (Scotland) Act 2016, S26

Example 5 On three occasions over the course of a week a care worker ill-treats a person for whom they have a responsibility of care.

- 1 x Health (Tobacco, Nicotine etc. Care) (Scotland) Act 2016, S26

Example 6 Over the course of a week a care worker assaults and ill-treats a person for whom they have a responsibility of care (dates of assaults not known).

- 1 x Health (Tobacco, Nicotine etc. Care) (Scotland) Act 2016, S26
- 1 x Assault

Example 7 A care worker assaults a person for whom they have a responsibility of care on two occasions (dates of assaults known).

- 2 x Assault

**11/010 Human Trafficking and Exploitation (Scotland) Act
2015, Sections 1 and 4**

General Rule

Section 1 – One crime for each accused (unless acting together).

Section 4 – One crime for each victim.

Definition

Section 1 - Offence of Human Trafficking

- (1) A person commits an offence if the person—
 - (a) takes a relevant action, and
 - (b) does so with a view to another person being exploited.
- (2) In this Part, “relevant action” means an action which is any of the following—
 - (a) the recruitment of another person,
 - (b) the transportation or transfer of another person,
 - (c) the harbouring or receiving of another person,
 - (d) the exchange or transfer of control over another person, or
 - (e) the arrangement or facilitation of any of the actions mentioned in paragraphs (a) to (d).
- (3) It is irrelevant whether the other person consents to any part of the relevant action.
- (4) For the purposes of subsection (1), a person takes a relevant action with a view to another person being exploited only if—
 - (a) the person intends to exploit the other person (in any part of the world) during or after the relevant action, or
 - (b) the person knows or ought to know the other person is likely to be exploited (in any part of the world) during or after the relevant action.

Section 4 - Slavery, servitude and forced or compulsory labour

(1) A person commits an offence if—

- (a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is so held, or
- (b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform such labour.

Victim

Person subjected to human trafficking/forced labour

Locus

Where crime committed (if known), otherwise where crime reported. If same accused and victim and various locations are involved can be recorded as a course of conduct.

Crime Recording Principles

For crime recording purposes if a person has been trafficked for the purpose of prostitution or for being the victim of a sexual offence the following principles will apply:

Person trafficked for purpose of prostitution - record Human Trafficking offence only

Person trafficked for the purpose of prostitution and evidence of actual procurement - record Human Trafficking offence plus Criminal Law (Consolidation) (Scotland) Act 1995, S7 Procure

Person trafficked for the purpose of prostitution, procured and evidence of sexual offences - record Human Trafficking offence plus Criminal Law (Consolidation) (Scotland) Act 1995, S7, Procure and relevant offence(s) under Sexual Offences (Scotland) Act 2009.

Person trafficked for purpose of being a victim of a sexual offence where no sexual offence occurs - record Human Trafficking offence only

Person trafficked for purpose of being a victim of a sexual offence where sexual offences occur – record Human Trafficking offence plus relevant offences(s) under Sexual Offences (Scotland) Act 2009.

Examples

Example 1 Where an accused arranges for the transport around Scotland of women involved in prostitution including circumstances where they drive the women around themselves or employ someone else to drive them around.

- 1 x Human Trafficking and Exploitation (Scotland) Act 2015, S1

Example 2 Where an accused travels to another country to recruit individuals, promising them a better life and then arranges for them to return to Scotland to work in their business where they are exploited and made to work long hours, for little pay.

- 1 x Human Trafficking and Exploitation (Scotland) Act 2015, S1

Example 3 Where an accused picks up two individuals from the airport and looks after them at their home before telling them that they have to go out and commit acts of Shoplifting as a means of repaying them.

- 2 x Human Trafficking and Exploitation (Scotland) Act 2015, S1 (one crime for each victim)

Example 4 Where an accused arranges the flights and taxi for an individual who then travels to Scotland and is then threatened by the accused that they must tend a cannabis cultivation otherwise their family will be harmed.

- 1 x Human Trafficking and Exploitation (Scotland) Act 2015, S1

Example 5 'A' owes money in their own country and after being assaulted and threatened with further violence is advised that work could be arranged in the UK to pay off the debt. 'A' travels to UK on their own passport and on arrival in city 'X' in England is met by persons who confiscate 'A's' passport. 'A' is locked in a warehouse and taken to and from a place of employment where they work for 5 months receiving little pay. 'A' is later taken to various places of employment in cities 'Y' and 'Z' in England where they are subjected to similar working and living conditions. 'A' manages to escape to Scotland and reports the circumstances to Police.

- No crime to be recorded ('A' was not trafficked by persons in Scotland and no crime has occurred in Scotland. Consideration should be given to forwarding details to the relevant Force for recording and further enquiry.

Example 6 'A' on arrival in Scotland by clandestine means, not orchestrated in Scotland, seeks asylum. 'A' reports various crimes to Police all of which have occurred in countries outwith the UK.

- No crime to be recorded ('A' was not trafficked by persons in Scotland and no crime has occurred in Scotland).

Example 7 'A' attends at a Police Station in Division 'Z' and outlines circumstances indicating they have been trafficked into Scotland and forced to work for no pay. They have managed to escape, are unable to identify where they were held however can say they have walked for several hours before arriving at the Police Station. The assessment being that the locus may be within one of three Divisions.

- Record crime with a locus within Division 'Z'

Note

Crimes reported which occur within Scotland will be recorded in accordance with SCRS. Crimes which have occurred outwith Scotland will not be recorded.

In circumstances where the locus of a crime is unknown but is known to have occurred in the UK, the locus will be where it can reasonably be inferred to have occurred.

Where on the balance of probability the locus is within Scotland, however, an approximate locus cannot be identified the locus will be where the person has come to the attention of the relevant authorities.

A European Union directive has been ratified by the UK Government for the non-prosecution or non-criminalisation of persons where it can be shown that they were coerced or forced to commit crime through being a victim of trafficking. In these cases liaison with the area Procurator Fiscal will decide whether it is in the "public interest" to continue with the prosecution of a potential victim of trafficking.

Where a person is believed to have been coerced or forced to commit crime this does not negate the requirement to record the crime committed.

Example: "A" is charged with a Theft by Shoplifting where the enquiry concludes that it is more than likely that they have been the victim of trafficking and the Procurator Fiscal has advised they will not prosecute.

- A crime of Theft by Shoplifting should be recorded and shown as detected (this meets the criteria of a "cleared up" crime due to reporting being considered as inappropriate in line with the EU directive and direction from the Procurator Fiscal).

The Asylum and Immigration (Treatment of Claimants) Act 2004, Section 4 was repealed by the Human Trafficking and Exploitation (Scotland) Act, 2015 in May, 2016.

**11/011 Human Trafficking and Exploitation (Scotland) Act
2015, Section 1
Human Organ Offences**

General Rule

One crime for each victim

Definition

Section 1 - Offence of Human Trafficking

- (1) A person commits an offence if the person—
 - (a) takes a relevant action, and
 - (b) does so with a view to another person being exploited.
- (2) In this Part, “relevant action” means an action which is any of the following—
 - (a) the recruitment of another person,
 - (b) the transportation or transfer of another person,
 - (c) the harbouring or receiving of another person,
 - (d) the exchange or transfer of control over another person, or
 - (e) the arrangement or facilitation of any of the actions mentioned in paragraphs (a) to (d).
- (3) It is irrelevant whether the other person consents to any part of the relevant action.
- (4) For the purposes of subsection (1), a person takes a relevant action with a view to another person being exploited only if—
 - (a) the person intends to exploit the other person (in any part of the world) during or after the relevant action, or
 - (b) the person knows or ought to know the other person is likely to be exploited (in any part of the world) during or after the relevant action.

Victim

Person subjected to organ removal

Locus

Where offence committed (crime per location) if known, otherwise where reported.

Examples

No examples

1/000 Murder

General Rule

One crime for each victim

Definition

Murder is committed when a human being is killed without a necessary cause. In order to constitute the crime, there must be either an intention to kill, or a wilful act so reckless as to show that the person who committed it was utterly regardless of the consequences.

Victim

Deceased

Complainer

Procurator Fiscal

Locus

Where crime takes place (or if unknown where body is found)

Examples

Example 1 'A' places a bomb in a public house and warns the police. The bomb explodes before full evacuation, killing ten people and wounding a further fifteen, with the remaining four people escaping unhurt.

- 10 x Murder
- 19 x Attempted Murder

Example 2 'A' robs a bank and deliberately shoots dead a cashier.

- 1 x Murder
- 1 x Robbery
- 1 x Firearms Act 1968, S17 (2) & (5) for possessing a firearm while committing an offence in Schedule 2

Example 3 'A' rapes 'B' and then causes their death by strangulation.

- 1 x Murder
- 1 x Sexual Offences (Scotland) Act 2009, S1 Rape

Example 4 'A' deliberately drives a car towards 'B', intending to kill them but also knocks down 'C' and 'D'. 'B', 'C' and 'D' are killed.

- 3 x Murder

Example 5 Four persons are discovered murdered at the same address.

- 4 x Murder

Note

Suspicious deaths should remain recorded as an incident until it has been established through a post mortem examination or other evidence that a murder has occurred. Whenever it has been formally decided that the death is as a result of a crime then a crime report should be created.

3/002

**Road Traffic Act 1988, Section 1
Causing Death by Dangerous Driving**

General Rule

One crime for each fatal collision

Definition

A person who causes the death of another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.

Complainer

Procurator Fiscal

Victim

Deceased

Locus

Where crime takes place

Examples

Example 1 'A' drives their car in a dangerous manner and collides with car driven by 'B' who is killed along with passengers 'C', 'D' and 'A's passenger 'E'.

- 1 x Road Traffic Act 1988, S1 Causing Death by Dangerous Driving

Example 2 'A' drives their car in a dangerous manner and collides with two vehicles driven by 'B' and 'C'. Both 'B' and 'C' are killed.

- 1 x Road Traffic Act 1988, S1 Causing Death by Dangerous Driving

Example 3

'A' drives their car in a dangerous manner and collides with car driven by 'B'. 'A' continues to drive in same manner and collides with car driven by 'C' half a mile away on same road. Both 'B' and 'C' are killed.

- 2 x Road Traffic Act 1988, S1 Causing Death by Dangerous Driving (plus other Road Traffic offences as appropriate)

Note

Offences of this type are determined by the Procurator Fiscal following consideration of presented evidence. This can on occasions take a considerable period of time which is outwith the control of Police. No offence should be recorded until a decision is made by Procurator Fiscal.

3/004

**Road Traffic Act 1988, Section 2B
Causing Death by Careless Driving**

General Rule

One crime for each fatal collision

Definition

A person who causes the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, is guilty of an offence.

Complainer

Procurator Fiscal

Victim

Deceased

Locus

Where crime takes place

Examples

Example 1 'A' drives their car in a careless manner and collides with car driven by 'B' who is killed along with passengers 'C', 'D' and 'A's passenger 'E'.

- 1 x Road Traffic Act 1988, S2B Causing Death by Careless Driving

Example 2 'A' drives their car in a careless manner and collides with two vehicles driven by 'B' and 'C'. Both 'B' and 'C' are killed.

- 1 x Road Traffic Act 1988, S2B Causing Death by Careless Driving

Example 3 'A' drives their car in a careless manner and collides with car driven by 'B'. 'A' continues to drive in same manner and collides with car driven by 'C' half a mile away on same road. Both 'B' and 'C' are killed.

- 2 x Road Traffic Act 1988, S2B Causing Death by Careless Driving (plus other Road Traffic offences as appropriate).

**3/003 Road Traffic Act 1988, Section 3A (1) Causing Death
by Careless Driving where under the influence of
drink or drugs**

General Rule

One crime for each fatal collision

Definition

If a person causes the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, and

- (a) he is, at the time when he is driving, unfit to drive through drink or drugs, or
- (b) he has consumed so much alcohol that the proportion of it in his breath, blood or urine at that time exceeds the prescribed limit, or
- (c) he is, within 18 hours after that time, required to provide a specimen in pursuance of Section 7 of this Act, but without reasonable excuse fails to provide it, or
- (d) he is required by a constable to give his permission for a laboratory test of a specimen of blood taken from him under section 7A of this Act, but without reasonable excuse fails to do so,
- (e) he is guilty of an offence.

Complainer

Procurator Fiscal

Victim

Deceased

Locus

Where crime takes place

Examples

Example 1

'A' drives their car in a careless manner and collides with a car driven by 'B' who is killed along with passengers 'C' and 'D'. The proportion of alcohol in 'A' is found to exceed the prescribed limit.

- 1 x Road Traffic Act 1988, S3A Causing Death by Careless Driving where under the influence of drink or drugs (no requirement to record a separate offence for driving where under the influence of drink or drugs)

**3/005 Road Traffic Act 1988, Section 3ZB Illegal
Driver/Disqualified/Unlicensed etc. involved in Fatal
Collision**

General Rule

One crime for each fatal collision

Definition

A person is guilty of an offence under this section if he causes the death of another person by driving a motor vehicle on a road and, at the time when he is driving, the circumstances are such that he is committing an offence under –

- (a) Section 87(1) of Road Traffic Act 1988 (driving otherwise than in accordance with a licence),
- (b) Section 103(1) (b) of Road Traffic Act 1988 (driving while disqualified), or
- (c) Section 143 of Road Traffic Act 1988 (using motor vehicle while uninsured or unsecured against third party risks).

Complainer

Procurator Fiscal

Victim

Deceased

Locus

Where crime takes place

Examples

Example 1 'A' drives their car and collides with car driven by 'B' who is killed along with passengers 'C' and 'D'. 'A' is found to be currently serving a driving ban and is uninsured.

- 1 x Road Traffic Act 1988, S3ZB Causing Death by Driving whilst Disqualified/No Insurance,
- 1 x Road Traffic Act 1988, S103 Driving whilst Disqualified
- 1 x Road Traffic Act 1988, S143 No Insurance

Note

Where a road death has occurred where the driver is found to be driving with no licence, whilst disqualified, or with no insurance there is a requirement to record separate offences under Road Traffic Act 1988, S87, S103 and S143 as appropriate.

6/000

Robbery and Assault with intent to Rob

General Rule

One crime for each victim

Definition

When person(s) has/have been physically assaulted, or verbally threatened or weapons have been presented or used, in order to gain or attempt to gain property.

Victim

Person(s) robbed / attempted to be robbed

Locus

Where crime takes place or where instigated

Examples

- Example 1 Person enters a shop in possession of a weapon and presents it at the members of staff and other customers and demands money, which is handed over by staff.
- 1 x Robbery
 - 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S 47 or S49 (Possession of offensive weapon/bladed article used in commission of a crime if committed in a public place, school or prison).
- Example 2 A person presents a weapon to 'A' and 'B', threatens violence, and robs 'A' of clothing and 'B' of money.
- 2 x Robbery

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S 47 or S49 (Possession of offensive weapon/bladed article used in commission of a crime if committed in a public place, school or prison).

Example 3 'A' punches and kicks 'B' demanding money. 'B' resists and fights off 'A'. 'A' flees empty handed. 'B' has a fractured cheek bone.

- 1 x Assault with intent to Rob

Example 4 'A' enters bank, pointing a gun at the cashier, demands and receives money from the cash drawer then robs four persons in the bank of personal property.

- 5 x Robbery
- 1 x Firearms Act 1968, S17 (2) & (5) - Possess firearm while committing offence in Schedule 2

Example 5 Three persons enter unlocked dwelling armed with baseball bats. One rounds up the occupants and temporarily confines them to the kitchen area while the others ransack the house and steal property belonging to all occupants of the household. The confinement ends when the suspects leave the house with the stolen property. No person is injured.

- 1 x Robbery (against group of people - had individuals been threatened/assaulted and relieved of property from their person additional crimes of Robbery would be required. No requirement to record Abduction in these circumstances).

Example 6 'A' presents a gun at 'B' and robs them of money. Before making off 'A' shoots 'B' narrowly missing vital organs. 'A' survives.

- 1 x Robbery
- 1 x Attempted Murder
- 1 x Firearms Act 1968, S17 (2) & (5) - Possess firearm while committing offence in Schedule 2.

- Example 7 Masked and armed offenders enter a dwelling and:
- (a) Threaten 'A' to obtain the keys to their car. 'A' refuses and is assaulted. 'B' is then threatened and produces the keys to the car which is subsequently stolen. 'C' is also in the house and is threatened, before jewellery 'C' is wearing is stolen.
 - 1 x Assault with intent to Rob (A)
 - 2 x Robbery (B and C)
 - (b) As above, but also ransack the house and steal property owned by all family members, but not in their possession.
 - 3 x Robbery (1 for household items stolen, 2 for items being removed by violence from individual family members)
- Example 8 Shop assistant is walking down the road on their way to the bank to lodge the shop takings. Suspect approaches them and threatens them with a knife. Person hands over the shop takings and the suspect also takes their handbag and contents.
- 1 x Robbery (shop owner is additional complainer who own the shop takings)
 - 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S47 or S49 (Possession of offensive weapon/bladed article used in commission of a crime if committed in a public place, school or prison).
- Example 9 'A' enters shop and threatens shop assistant with broken bottle, thereafter reaches behind counter and steals cigarettes owned by the shop and a mobile phone owned by the shop assistant.
- 1 x Robbery (the shop owners are the additional complainers for the cigarettes)
 - 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S47 or S49 (Possession of offensive weapon/bladed article used in

commission of a crime if committed in a public place, school or prison).

- Example 10 'A' grabs handbag from shoulder of 'B', 'B' holds on to the straps pulling the handbag back towards them while 'A' continues to pull on the handbag. 'B' screams loudly and 'A' runs off without the handbag.
- 1 x Attempted Robbery (struggle is sufficient violence to justify recording Attempted Robbery)
- Example 11 'A' is holding their mobile phone in their hand when 'B' snatches the phone from their hand and runs off.
- 1 x Theft
- Example 12 'A' is holding their mobile phone in their hand when 'B' snatches the phone and runs off. 'A' runs after 'B' and is assaulted in an attempt to regain their mobile phone.
- 1 x Theft
 - 1 x Assault (in this example the Theft is complete before the Assault occurs)
- Example 13 While 'A' is being assaulted by 'B' their wallet falls out of their pocket.
- (a) 'B' stops the attack on seeing the wallet, picks up the wallet and runs off.
- 1 x Robbery (while there may not have been any dishonest intention on the part of 'B' when 'A' was first assaulted, 'B' formed this intention during the Assault and therefore Robbery applies).
- (b) 'B' stops the attack and runs off, returns shortly thereafter, picking up the wallet from the ground and makes off.
- 1 x Assault

- 1 x Theft (the circumstances indicate the attack on 'A' was complete and the theft occurred as an afterthought).

Where it is unclear at which point property was stolen, when no other reason can be established for the assault, then Robbery must be recorded.

Example 14 'A' deliberately knocks 'B' off their pedal cycle and while 'B' is lying on the ground 'A' makes off with the pedal cycle.

- 1 x Robbery

Example 15 'A' approaches 'B' late at night in a dark alley and is asked to hand over their mobile phone without any specific threat of violence being made. 'A' hands over their phone to 'B' who runs off.

- 1 x Robbery (In these circumstances a refusal to comply is likely to be met with violence so that the threat of it can be readily implied. The behaviour of the suspect has given rise to fear or alarm in the victim as to the consequences of refusing to comply)

Example 16 'A' and 'B' are partners who reside together. Whilst within their home 'A' assaults 'B'. 'A' then forces mobile phone out of 'B's' hand when 'B' tries to call police. The mobile phone does not leave the property and is returned to 'B' when the situation has calmed down.

- 1 x Assault (In circumstances which might otherwise amount to Robbery, in a domestic situation such as where a mobile phone is taken by force in the home for the sole purpose of preventing it's owner from contacting police or for examining its contents, where the phone is returned to the owner a short time later never having left the home, it should be taken into consideration that taking possession of the phone for these or similar purposes amounts to behaviour of a controlling nature which may form part of a course of conduct of Domestic Abuse. If the mobile phone was not returned to the owner or

was taken outwith the home this would amount to Robbery. This example is included as a guide only and each circumstance must be assessed on its own merit).

Example 17 'A' steals property belonging to 'B'. 'B' later assaults 'A' and retrieves their property.

- 1 x Theft (against complainer 'B')
- 1 x Assault (against complainer 'A')

Note that whilst the property was obtained from 'A' following an act of violence this was not obtained feloniously since 'B' was the rightful owner.

Example 18 'A' attends at the home address of 'B', kicks the door, shouting and swearing demanding they answer the door. 'B' advises they are phoning the police at which point 'A' kicks the door open to find 'B' standing with a mobile phone in their hand. 'A' grabs hold of 'B' pulling the phone from their hand and leaves the locus with the phone.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38 (conduct was complete before the 'robbery' and nothing to indicate intent was to commit the 'robbery')
- 1 x Robbery

Note

Violence is an essential accompaniment of robbery but the violence may be constructive and need not take the form of actual physical assault. It is sufficient if the owner is compelled to submit to the appropriation of his property under fear of immediate personal injury. Thus, the mere display of force, whether by weapons, menaces or threats, reasonably calculated to intimidate and overawe, is violence within the meaning of the law.

Behaviour which alarms or intimidates an individual for the personal and immediate consequences of resistance or refusal is sufficient to amount to robbery.

If the violence consists of menaces only, the threat must be of present personal injury: the crime is not robbery if the threat is of some future evil which may possibly be averted.

The felonious appropriation of property, by violence or threats of violence within the victim's home, or by a mob to the alarm of the lieges, is an aggravation of robbery.

If articles are moved from the position in which they are ordinarily placed, and the owner is either forcibly restrained or intimidated from interfering, the crime is robbery, although the articles are not taken out of the room or place where they are kept.

The appropriation of an article, by a sudden snatch or pull, constitutes robbery, when it is accomplished by personal violence.

If, during an assault, not perpetrated from any dishonest motive, the assailant forms the intent of appropriating the property of his victim and does so, or where violence is not intended by a thief, but results from the resistance put up by the owner endeavouring to retain his property, robbery is committed. It is not robbery for a thief, with the stolen property in his possession, forcibly to prevent the owner from regaining (recovering) it.

For ease of reference, where the thief is already in possession of the property and the complainant is assaulted when trying to regain their property, theft and assault is relevant. Where the complainant is trying to retain their property and is assaulted/threatened, Robbery is relevant.

If no other motive for committing an assault can be established, and property is taken, the default crime will be Robbery.

7/000 Threats (common law)

General Rule

One crime for each victim and continuity of action or per incident (as appropriate)

Definition

Threats, whether verbal or written, are criminal if they menace some substantial injury to the recipient or to his property and the threat is perceived as real and deliverable.

Generally the crime of Threats should only be used on those occasions where there is a threat to life and there is tangible evidence or intelligence of an imminent or grave threat to life which is known to be real and deliverable in some way.

The most appropriate offence for almost all circumstances where the behaviour of an offender is threatening will be Criminal Justice and Licensing (Scotland) Act 2010, S38 – Threatening or Abusive Behaviour.

Applying this as the appropriate offence does not reduce the impact as the tariffs on conviction for an offender allow for appropriate disposal depending on the severity of the offence and overall impact on the victim.

Alternative Offence - Communications Act 2003, S127 – Send offensive/indecent/obscene/menacing message by public electronic communications.

Victim

Person threatened

Locus

Where threat was made from, if known, otherwise where received

Examples

- Example 1 'A' receives two letters threatening their life over a drugs debt. The sender has an extensive history of violence and 'A' believes they are more than capable of carrying out this threat.
- 1 x Threats
- Example 2 Telephoning complainer and threatening to kill them and their children. The suspect has seriously assaulted the complainer on a previous occasion and it is believed they are more than capable of carrying out this threat.
- 1 x Threats (this should not be recorded under the Communications Act 2003, S127)
- Example 3 Calling at house, threatening complainer or suspect will burn their house down. Complainer knows the suspect and does not believe they will see this threat through.
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38 Threatening or Abusive Behaviour.
- Example 4 'A' is the estranged partner of 'B'. 'A' sends 'B' a letter saying they will kill 'A' and 'C', their 3 year old child, if 'A' does not give them weekly access to 'C'. 'A' has seriously assaulted 'B' before and the threat is considered real.
- 1 x Threats (child was not recipient and is too young to identify whether threat is real and deliverable)
- Example 5 Over a one month period 'A' receives a number of threats on their life from various members of their family, several members of which have extensive history of violence towards other family members.
- 1 x Threats (although received from various members of their family the circumstances indicate they are 'acting together'). If no evidence of imminent or grave threat to life record as 1 x

Criminal Justice and Licensing (Scotland) Act 2010, S38
Threatening or Abusive Behaviour.

Example 6

A celebrity receives three threatening letters from unknown sources threatening their life.

- 3 x Criminal Justice and Licensing (Scotland) Act 2010, S38 Threatening or Abusive Behaviour as it is not known whether these letters represent an imminent or grave threat to life.
- Note: Where the threat is contained in a letter (whether signed or not), the crime is complete when the letter is dispatched, even although it does not reach the person for whom it is intended.
- There is no requirement to wait for multiple calls to be made to prove a course of action. Where there is sufficient evidence to prove one call a crime record may be raised.

Group 2 – Sexual Crimes

Introduction

Sexual Offences (Scotland) Act, 2009

The Sexual Offences (Scotland) Act, 2009 has come about as the result of widespread media and academic criticism of the current law in Scotland surrounding rape and other sexual offences, particularly the gender specific nature of the common law offence of rape.

The Bill was introduced to the Scottish Parliament on 17 June 2008, incorporating the majority of recommendations which had been made by the Scottish Law Commission. It was passed on 10 June 2009 and implemented on 1 December 2010.

The Act repeals a number of common law crimes including rape, clandestine injury to women and sodomy. It also creates a number of new statutory sexual offences. The Act provides a statutory description of consent, which is defined as 'free agreement' and provides a non-exhaustive list of factual circumstances during which consent will be deemed to be absent.

The Act creates a number of new 'protective' offences, which criminalise sexual activity with children and mentally disordered persons. Protective offences are placed into categories concerning young children (under 13) and older children (13-15).

There are offences of 'abuse of position of trust' for a person in such a position over a child or person with a mental disorder, to participate in sexual activity with that person. Whilst the Scottish Law Commission recognised that there are currently statutory offences in place, it recommended that they be consolidated into a single Act on sexual offences rather than continuing in the current rather piecemeal fashion. In doing this, it has also been possible to address inconsistencies with the current law.

Consent

The Act now provides that consent is to be defined as 'free agreement'. The reason for this definition is that it captures those circumstances where consent may be given but because of violence or threat, consent in these circumstances would not be freely given.

In addition to this definition, the Act provides a non-exhaustive list of situations or 'statutory indicators' where consent or 'free agreement' will be deemed to be absent. It does not imply that there will be consent in those situations which are not listed.

If the prosecution provide that one of these factual situations apply then this will suffice to prove that consent was not given.

Circumstances in which conduct takes place without free agreement:

- Where the conduct occurs at a time when B is incapable of consenting to it because of the effect of alcohol or any other substance.
- Where B agrees or submits to the conduct because of violence used against B or any other person, or because of threats of violence made against B or any other person.
- Where B agrees or submits to the conduct because B is unlawfully detained by A.
- Where B agrees or submits to the conduct because B is mistaken, as a result of deception by A, as to the nature or purpose of the conduct.
- Where B agrees or submits to the conduct because A induces B to agree to submit to the conduct by impersonating a person known personally to B.
- Where the only expression or indication of agreement to the conduct is from a person other than B.
- Where B is asleep or unconscious.

Section 15 of the Act also clarifies the position where consent is given then subsequently withdrawn. It states the following:-

- Consent to conduct does not itself imply consent to any other conduct.

- Consent to conduct may be withdrawn at any time before, or in the case of continuing conduct, during the conduct.
- If the conduct takes place, or continues to take place, after consent has been withdrawn, it takes place, or continues to take place, without consent.

Stealthing

Non-consensual condom removal, or "stealthing", is the practice of a man covertly removing or damaging a condom during sexual intercourse, when his sex partner has only consented to condom-protected sex. These reports should initially be recorded as Rape (Sexual Offences (Scotland) Act, 2009, S1) pending further enquiry.

Attempt at Crime - Criminal Procedure (Scotland) Act 1995, Section 294

The above means that any attempt to commit a crime under the 2009 Act is in itself a crime.

Compound Crimes

The Crown Office has advised that where conduct falls within that outlined within Sections 1, 2 and 3 of the Sexual Offences (Scotland) Act 2009 which relates to adults and, similarly Sections of the Act which refer to Older Children (Sections 28, 29 and 30) and Younger Children (Sections 18, 19 and 20), compound charges should be used. The Scottish Government have advised that in such cases only the most serious crime should be recorded/counted for statistical purposes. The modus operandi on a crime report must outline the full details of the conduct.

Interpretation

Section 60 of the Sexual Offences (Scotland) Act 2009 provides that:

For the purposes of this Act:

- (a) penetration, touching, or any other activity,

- (b) a communication,
- (c) a manner of exposure, or
- (d) a relationship,

is sexual if a reasonable person would, in all the circumstances of the case, consider it to be sexual.

Incidents Involving Mixed Age Groups

Where a mixed age group is present in relation to,

- Coercing/Causing a Person/Young Child/Older Child to Look at a Sexual Image
- Causing a Person to See or Hear an Indecent Communication
- Communicating Indecently

the offence relating to the lowest age group present only should be recorded, as this is the most serious.

Where a mixed age group is present in relation to,

- Sexual Exposure
- Voyeurism

if it cannot be evidenced that the conduct was directed towards a specific age group, then the offence relating to the lowest age group present should be recorded.

Counting Rules

Any offence, which has occurred prior to 1 December 2010 should be recorded in line with the appropriate legislation in place at that time. Should the conduct have occurred prior to and after 1 December 2010 the appropriate offence(s) under the old and new legislation must be recorded.

Acting for purposes of Sexual Gratification or to Humiliate, Alarm or Distress

There is no requirement to prove someone was in fact humiliated, distressed or alarmed or provide corroboration. If it can reasonably be inferred that the accused acted so as to obtain sexual gratification, or to humiliate, distress or alarm the person that is sufficient. Whether the person was in fact humiliated, distressed or alarmed is irrelevant.

Recording/Reporting of Rape

In circumstances where a victim reports a crime of Rape and there is insufficient evidence to corroborate penetration, but sufficient evidence to prove Attempted Rape or Assault with intent to Rape, then a crime of Rape should be recorded.

An SPR2 libelling a charge of Rape should be submitted to the Procurator Fiscal detailing the full circumstances for their consideration. The Rape crime report will be shown as detected in these circumstances. Whilst the accused may be charged with Attempted Rape or Assault with intent to Rape due to the evidence available, the "Remarks" section of the SPR should provide an explanation as to why the charge being libelled on the front page of the SPR is one of Rape. The following has been agreed by COPFS and must be added to the "Remarks" section of an SPR2 for cases where Rape is libelled but it is considered there is only a sufficiency of evidence to report Attempted Rape or Assault with intent to Rape:

'A charge of Rape has been libelled within this SPR2 to reflect the crime reported by the victim. The circumstances have been fully investigated and it is considered that, despite significant and sufficient evidence in respect of the other essential evidential elements there is insufficient evidence to prove penetration. On this occasion, the Accused has been charged with Attempted Rape/Assault with Intent to Rape (as appropriate).'

This will allow the Procurator Fiscal to fully consider the evidence presented and enable them to change the charge to that which they intend to proceed with, and thus preserve the victim orientated approach to crime recording required by SCRS.

Medical Updates/No Crime

Sexual Offences (Scotland) Act, 2009, Section 1 provides that “penetration to any extent” amounts to Rape and any subsequent medical update which is inconclusive as to whether penetration occurred is insufficient rationale to reclassify any recorded crime to ‘No Crime’.

Sexual Activity involving Children

Where parties involved in sexual activity are children (i.e. below the age of 16 years), whilst partner agency liaison may be the chosen route to address the behaviour, this does not negate the requirement to record the appropriate crime(s).

Persons Purporting to be Older/Younger

Where a young child/older child purports to be older/younger than they are, the appropriate Section of the Act should relate to the actual age of the child and not the age they purport to be.

Where someone purports to be a young/older child for the purpose of enticing someone to carry out sexual activity and the individual being enticed believes they are doing so with a young/older child, this is sufficient to record an attempt to commit the relevant offence with the appropriate Section being the age the person purports to be.

Offences committed outside the United Kingdom

Section 55(1) of Sexual Offences (Scotland) Act 2009 provides that if a UK national does an act in a country outside the United Kingdom which would, if it had been done in Scotland, constitute a "listed offence" then the UK national commits that offence.

Part 2 of Schedule 4 of Sexual Offences (Scotland) Act 2009 defines a "listed offence" as:

- An offence under Part 1 of Sexual Offences (Scotland) Act 2009 against a person under the age of 18 (Sections 1 to 11)
- An offence under Part 4 of Sexual Offences (Scotland) Act 2009 (Sections 18 to 26 committed against young children)
- Sexual abuse of trust (Sexual Offences (Scotland) Act 2009, Section 42)
- Sexual abuse of trust of a mentally disordered person (Sexual Offences (Scotland) Act 2009, Section 46) where the mentally disordered person is under the age of 18
- Indecent assault of a person under the age of 18
- An offence under Section 52 or 52A of Civic Government (Scotland) Act 1982
- An offence under Sections 9 to 12 of Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005
- Conspiracy or incitement to commit any offence specified above
- An offence under Section 293(2) of Criminal Procedure (Scotland) Act 1995 (aiding and abetting the commission of a statutory offence) relating to any statutory offence specified above

In these circumstances a crime should be recorded and marked as being external to Police Scotland.

Legislation Effective Dates

The following table provides details of historic statutory sexual crimes and crimes at common law and the effective dates of the relevant legislation:

Act	Section	Applicable From	Applicable To
Criminal Law Amendment Act 1885 - intercourse girl under 13	S4	Passed 14/8/1885	14/12/1976
Criminal Law Amendment Act 1885 - intercourse with girl under 16	S5	Passed 14/8/1886	14/12/1976
Sexual Offences (Scotland) Act 1976 - intercourse with girl under 13	S3(1)	15/12/1976	30/03/1996
Sexual Offences (Scotland) Act 1976 - attempt intercourse with girl under 13	S3(2)	15/12/1976	30/03/1996
Sexual Offences (Scotland) Act 1976 - intercourse with girl 13-16	S4(1)	15/12/1976	30/03/1996
Criminal Law (Consolidation) (Scotland) Act 1995 - intercourse girl under 13	S5(1)	01/04/1996	30/11/2010
Criminal Law (Consolidation) (Scotland) Act 1995 - Attempt intercourse girl under 13	S5(2)	01/04/1996	30/11/2010
Criminal Law (Consolidation) (Scotland) Act 1995 - intercourse with girl 13-16	S5(3)	01/04/1996	30/11/2010
Sodomy	-	-	30/11/2010
Rape	-	-	30/11/2010
Criminal Law (Amendment) Act 1922 - lewd and lib girl between 12-16	S4	04/08/1922	14/12/1976
Sexual Offences (Scotland) Act 1976 - lewd and lib girl between 12 and 16	S5	15/12/1976	01/04/1996

Act	Section	Applicable From	Applicable To
Lewd, Indecent & Libidinous Practices & Behaviour - Boys under 14 and girls under 12 years of age	-	-	30/11/2010
Criminal Law (Consolidation) (Scotland) Act 1995 - Girl between 12 and 16	S6	01/04/1996	30/11/2010

Rules for Recording Non Recent Crimes

Where specific dates and/or loci are individually identified and can be evidenced, a separate crime report will be recorded for each occasion. If not, between dates will be recorded on a single crime report. If different crime types are identified and occur on a different date these should be recorded separately. Refer to compound crime rules under Group 2 for further information. If crimes are committed against a child they will be recorded in accordance with any age specific legislation relevant to the age of the child at given points during the time period specified

Examples

For the purpose of these examples all sexual crimes are assumed to have involved the same victim and perpetrator. Where different perpetrators are involved separate crimes will be recorded. If sexual crimes occur within a time period before and after the introduction of the Sexual Offences (Scotland) Act 2009 on 1 December 2010 both the common law crime (pre legislation) and statutory crime (post legislation) must be recorded subject to the rules above.

Where specific dates are known

- Example 1 Victim reports being raped on six occasions at the same locus. Specific dates are known (all after 1 December 2010).
- 6 x Sexual Offences (Scotland) Act 2010, S1, Rape
- Example 2 Victim reports being raped on six occasions and on three separate occasions had been subjected to sexual assaults, all at the same locus. Specific dates are known (all after 1 December 2010).
- 6 x Sexual Offences (Scotland) Act 2009, S1, Rape
 - 3 x Sexual Offences (Scotland) Act 2009, S3, Sexual Assault
- Example 3 Victim reports being raped on six occasions, all at the same locus. Dates of four of the rapes are not known but the victim can be specific about two of the dates (all after 1 December 2010).
- 3 x Sexual Offences (Scotland) Act 2009, S1, Rape (1 crime for between dates, 2 crimes for specific dates)

Different locations

Example 4 Victim reports being raped on six occasions at locus 1 and on three occasions at locus 2. Specific dates are not known (all after 1 December 2010).

- 2 x Sexual Offences (Scotland) Act 2009, S1, Rape (crime for each locus)

Example 5 Victim reports being raped on three occasions at locus 1 and on three occasions at locus 2. Specific dates are known for the rapes at locus 2 (all after 1 December 2010).

- 4 x Sexual Offences (Scotland) Act 2009, S1, Rape (1 crime for locus 1, 3 crimes for locus 2)

Occurring pre and post Sexual Offences (Scotland) Act 2009 (December 2010)

Example 6 Victim reports being raped on six occasions at the same locus. Specific dates are not known but the victim advises three of the rapes occurred prior to 1 December 2010.

- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape
- 1 x Rape (common law)

Various offences over a period of time

Example 7 Victim reports being assaulted on numerous occasions at locus 1, raped on two occasions and assaulted on numerous occasions at locus 2. During one of the assaults at locus 2 the victim sustained a broken arm which is confirmed by medical records. No rape occurred on this occasion. Other than the broken arm specific dates are not known (all after 1 December 2010).

- Locus 1 - 1 x Common Assault
- Locus 2 - 1 x Sexual Offences (Scotland) Act 2009, S1, Rape
- Locus 2 - 1 x Serious Assault
- Locus 2 - 1 x Common Assault

Example 8 Victim reports being assaulted on numerous occasions at the same locus and sustained injuries from one of the assaults which amounted to Serious Assault although specific dates of these attacks are not known.

- 1 x Serious Assault
- 1 x Common Assault (different crime classifications)

Example 9 Victim reports being raped on two occasions and on another occasion digitally penetrated, all at the same locus (all after 1 December 2010).

- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape
- 1 x Sexual Offences (Scotland) Act 2009, S2, Sexual Assault by Penetration

Example 10 Victim reports being assaulted on numerous occasions, and raped once over a period of time encompassing a date range both before and after 1 December 2010. All crimes occurred at the same locus but no specific dates are known.

- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape
- 1 x Common Assault

Single crime occurs during time period covered by different legislation

Example 11 Female reports being raped on a single occasion where she is unsure of the date but advises that it was sometime between 2009 and 2012. The victim turned 13 in November 2011.

Had this been a course of conduct where the victim was raped on several occasions between date one and date two we would have recorded:

- January 2009 to 30 November 2010 - 1 x Common Law Rape

- December 2010 to November 2011 (13th birthday) - 1 x Sexual Offences (Scotland) Act 2009, S18, Rape of Young Child
- November 2011 to December 2012 – 1 x Sexual Offences (Scotland) Act 2009, S1 Rape

Given that the victim was raped only once, only one crime should be recorded. This should be based on the legislation/common law in place when "on the balance of probability" the crime is more likely to have occurred. If still unable to determine using the "balance of probability" record on the basis of the legislation/common law pertaining to the youngest age. In the example above if unable to determine a timeframe a Common Law Rape should be recorded.

Sexual Offences (Scotland) Act 2009 – Counting Rules

Crime Type	Relevant Section of Act	Description	Counting Rule
Rape/Having Intercourse with an Older Child	Section 1(1) Section 18 Section 28	Includes Male and Female Covers penetration of Vagina, Anus and Mouth S1) – Adult and Older Child (aged 13-15 years – where no consent) S18 – Young Child (below 13 years) – irrelevant whether consent given S28 – Older Child (aged 13-15 years) – if no consent S1 (1) will apply.	One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded
Sexual Assault by Penetration	Section 2(1) Section 19 Section 29	Includes Male and Female Covers penetration of Vagina and Anus This will cover situations where the complainer knows they have been penetrated however they cannot say what penetrated them. S2(1) – Adult and Older Child (aged 13-15 years - where no consent) S19 – Young Child (below 13 years) – irrelevant whether consent given S29 – Older Child (aged 13-15 years) – if no consent S2 will apply	One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded
Sexual Assault	Section 3(1) Section 20	Covers touching sexually, sexual activity with physical consent, ejaculates semen,	One crime for each victim and where specific dates and/or loci

Crime Type	Relevant Section of Act	Description	Counting Rule
	Section 30	<p>emits urine or saliva (sexually), penetrates sexually.</p> <p>Indecent assault, although not repealed, is still available for behaviour falling outwith definition of Sexual Assault.</p> <p>If evidence victim subjected to penile penetration, sexual assault should not be recorded.</p> <p>S3(1) – Adult and Older Child (aged 13-15 years - where no consent)</p> <p>S20 – Young Child (below 13 years) – irrelevant whether consent given</p> <p>S30 – Older Child (aged 13-15 years) – if no consent S3 will apply</p>	are identified separate crimes to be recorded
Sexual Coercion, Causing a Young Child/Older Child to Participate in a Sexual Activity	Section 4 Section 21 Section 31	<p>Intentionally causes person to participate in sexual activity.</p> <p>S4 – Adult or Older Child (aged 13-15 years – where no consent)</p> <p>S21 – Young Child (below 13 years)</p> <p>S31 – Older Child (aged 13-15 years) – if no consent then S4 will apply</p>	One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded
Coercing/Causing a Person/Young Child/Older Child to be Present During a Sexual Activity	Section 5 Section 22 Section 32	Intentionally engages in sexual activity or causes a person to be present while a third person engages in such activity for the purpose of obtaining sexual gratification; humiliating, distressing or alarming.	One Crime For Each Incident, Or, Course of Conduct

Crime Type	Relevant Section of Act	Description	Counting Rule
		<p>S5 – Adult or Older Child (aged 13-15 years – where no consent)</p> <p>S22 – Young Child (below 13 years)</p> <p>S32 – Older Child (aged 13-15 years) – if no consent then S5 will apply</p>	
Coercing/Causing a Person/Young Child/Older Child to Look at a Sexual Image	<p>Section 6</p> <p>Section 23</p> <p>Section 33</p>	<p>Intentionally causes a person to look at a sexual image for purpose of obtaining sexual gratification; humiliating, distressing or alarming.</p> <p>S6 – Adult or Older Child (aged 13-15 years – where no consent)</p> <p>S23 – Young Child (below 13 years)</p> <p>S33 – Older Child (aged 13-15 years) – if no consent then S6 will apply</p>	One Crime For Each Incident, Or, Course of Conduct
Communicating Indecently	<p>Section 7(1)</p> <p>Section 24(1)</p> <p>Section 34(1)</p>	<p>Sexual communication whether written or verbal for purpose of obtaining sexual gratification; humiliating, distressing or alarming.</p> <p>S7(1) – Adult or Older Child (aged 13-15 years - where no consent)</p> <p>S24 (1) – Young Child (below 13 years)</p> <p>S34(1) – Older Child (aged 13-15 years) – if no consent S7(1) will apply</p>	One Crime For Each Victim and Continuity of Action or Per Incident (as appropriate)

Crime Type	Relevant Section of Act	Description	Counting Rule
Causing a Person to See or Hear an Indecent Communication	Section 7(2) Section 24(2) Section 34(2)	Intentionally causes a person to see or hear (by whatever means) a sexual written or verbal communication for purpose of obtaining sexual gratification; humiliating, distressing or alarming. S7(2) – Adult or Older Child (aged 13-15 years – where no consent) S24(2) – Young Child (below 13 years) S34(2) – Older Child (aged 13-15 years) – if no consent S7(2) will apply	One Crime For Each Victim and Continuity of Action or Per Incident (as appropriate)
Sexual Exposure	Section 8 Section 25 Section 35	Exposure of genitals, intentionally, in a sexual manner for obtaining sexual gratification; humiliating, distressing or alarming. Can be committed in private. Public Indecency remains. Where circumstances meet definition of Sexual Exposure, public indecency should not be recorded. S8 – Adult S25 – Young Child (below 13 years) S35 – Older Child (aged 13-15 years)	One Crime For Each Incident or Course Of Conduct
Voyeurism	Section 9 Section 26 Section 36	Without consent, observes, operates equipment to observe, records with intention of looking at an image, installs equipment or constructs or	One Crime For Each Incident or Course of Conduct

Crime Type	Relevant Section of Act	Description	Counting Rule
		<p>adapts a structure or part of a structure to enable observation of a private act for the purpose of obtaining sexual gratification; humiliating, distressing or alarming.</p> <p>S9 – Adult</p> <p>S26 – Young Child (aged below 13 years)</p> <p>S36 – Older Child (aged 13-15 years)</p>	
Administering a Substance for Sexual Purposes	Section 11	Intentionally administers a substance to or causes a substance to be taken with purpose of stupefying or overpowering, to enable person to engage in a sexual activity.	One Crime for Each Victim
Engaging while an Older Child in Sexual Conduct with or Towards Another Older Child	Section 37	Older child (aged 13-15 years) who engages in sexual conduct with another Older Child and Older Child who has consented to sexual conduct with another Older Child (includes penetration and touching). (If non-consensual – rape, sexual assault by penetration or sexual assault relevant).	One Crime For Each Participant
Sexual Abuse of Trust (Children)	Section 42	Person over 18 years, in a position of trust, intentionally engages in sexual activity with or directed towards person under 18 years.	One Crime For Each Victim
Sexual Abuse of Trust of a Mentally	Section 46(1)	Person, in a position of trust, intentionally engages in sexual	One Crime For Each Victim

Crime Type	Relevant Section of Act	Description	Counting Rule
Disordered Person		activity with or directed towards mentally disordered person.	

Crime Category	SGJD Code
Sexual Offences (Scotland) Act 2009	
Section 1 – Rape	14/001 to 14/004
Section 1 – Attempted Rape	15/001 to 15/004
Section 18 – Rape of a Young Child	14/005 to 14/006
Section 18 – Attempted Rape of a Young Child	15/005 to 15/006
Section 28 – Having Intercourse with an Older Child	16/025 to 16/026
Section 2 – Sexual Assault by Penetration	16/001 to 16/004
Section 19 – Sexual Assault on a Young Child by Penetration	16/015 to 16/016
Section 29 – Engaging in Penetrative Sexual Activity with or Towards an Older Child	16/027 to 16/028
Section 3 – Sexual Assault	16/005 to 16/008
Section 20 – Sexual Assault on a Young Child	16/017 to 16/018
Section 30 – Engaging in Sexual Activity with or towards an Older Child	16/029 to 16/030
Section 4 - Sexual Coercion	16/009 to 16/012
Section 21 – Causing a Young Child to Participate in Sexual Activity	16/019 to 16/020
Section 31 – Causing an Older Child to Participate in a Sexual Activity	16/031 to 16/032
Section 5 – Causing a Person into being present during a Sexual Activity	16/013
Section 22 – Causing a Young Child to be present during a Sexual Activity	16/021
Section 32 – Causing an Older Child to be present during a Sexual Activity	16/035
Section 6 – Coercing a Person into looking at a Sexual Image	16/013

Section 23 – Causing a Young Child to look at a Sexual Image	16/021
Section 33 – Causing an Older Child to look at a Sexual Image	16/035
Section 7(1) – Communicating Indecently	16/014
Section 24(1) – Communicating Indecently with a Young Child	16/022
Section 34(1) – Communicating Indecently with an Older Child	16/036
Section 7(2) – Causing a Person to see or hear an Indecent Communication	16/014
Section 24(2) – Causing a Young Child to see or hear an Indecent Communication	16/022
Section 34(2) – Causing an Older Child to see or hear an Indecent Communication	16/036
Section 8 – Sexual Exposure	17/003
Section 25 – Sexual Exposure to a Young Child	16/023
Section 35 – Sexual Exposure to an Older Child	16/037
Section 9 – Voyeurism	17/004
Section 26 – Voyeurism towards a Young Child	16/024
Section 36 – Voyeurism towards an Older Child	16/038
Section 11 – Administering a substance for a Sexual Purpose	18/023
Section 37 – Engaging while an Older Child in Sexual Conduct With or towards another Older Child	16/033 to 16/034
Section 42 – Sexual Abuse of Trust (Children)	18/019
Section 46 – Sexual Abuse of Trust of a Mentally Disordered Person	18/020

Other Sexual Crimes

[Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016, S2](#)

- Disclose or threaten to disclose intimate image or film 16/039 to 16/040

[Assault \(Indecent\)](#) 16/000

<u>Bestiality</u>	18/021
<u>Civic Government (Scotland) Act 1982, S46</u>	
- Prostitution	18/010
<u>Civic Government (Scotland) Act 1982, S52</u>	
- Indecent images of children	18/018
<u>Communications Act 2003, S127 (Sexual)</u>	16/041
<u>Criminal Law (Consolidation) (Scotland) Act 1995, S1</u>	
- Incest	12/000
<u>Criminal Law (Consolidation) (Scotland) Act 1995, S7</u>	
- Procuration (excluding Homosexual Acts)	18/001
<u>Prostitution (Public Places) (Scotland) Act 2007, S1</u>	18/017
<u>Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005</u>	
- Grooming of Children	18/014
<u>Public Indecency</u>	17/002
Repealed Sexual Crimes	
(The following crimes were repealed as a result of the introduction of the Sexual Offences (Scotland) Act 2009 and accordingly will only be applicable for reported crimes occurring prior to 1 December 2010).	
<u>Assault with Intent to Rape/Attempted Rape</u>	15/000
<u>Criminal Law (Consolidation) (Scotland) Act 1995, S3</u>	
- Person with custody or care of girl or other causing her seduction	18/008
<u>Criminal Law (Consolidation) (Scotland) Act 1995, S5 (1)</u>	
- Sexual Intercourse with girl under 13	18/002
<u>Criminal Law (Consolidation) (Scotland) Act 1995, S5 (3)</u>	

- Sexual Intercourse with girl under 16	18/003
<u>Criminal Law (Consolidation) (Scotland) Act 1995, S6</u>	
- Lewd, Indecent and Libidinous Practices	18/022
<u>Criminal Law (Consolidation) (Scotland) Act 1995, S13</u>	
- Homosexual Acts (Illegal)	13/001
<u>Criminal Law (Consolidation) (Scotland) Act 1995, S13</u>	
- Procurement of Homosexual Acts	18/012
<u>Lewd, Indecent and Libidinous Practices (Common Law)</u>	18/022
<u>Rape (Common Law)</u>	14/000
<u>Sodomy/Attempted Sodomy</u>	13/001

Crime Code Breakdown - Sexual Offences (Scotland) Act 2009

Description	Coding	Section of Act
Rape – Male (16+)	14/001	1
Rape – Female (16+)	14/002	1
Rape – Male (13-15)	14/003	1
Rape – Female (13-15)	14/004	1
Rape – Male (under 13)	14/005	18
Rape – Female (under 13)	14/006	18
Assault with intent to Rape – Male (16+)	15/001	1
Assault with intent to Rape – Female (16+)	15/002	1
Assault with intent to Rape – Male (13-15)	15/003	1
Assault with intent to Rape – Female (13-15)	15/004	1
Assault with intent to Rape – Male (under 13)	15/005	18
Assault with intent to Rape – Female (under 13)	15/006	18
Intercourse with Older Child – Male (13-15) (Consensual)	16/025	28
Intercourse with Older Child – Female (13-15) (Consensual)	16/026	28
Sexual Assault by Penetration – Male (16+)	16/001	2
Sexual Assault by Penetration – Female (16+)	16/002	2
Sexual Assault by Penetration – Male (13-15)	16/003	2
Sexual Assault by Penetration – Female (13-15)	16/004	2
Sexual Assault by Penetration – Male (under 13)	16/015	19
Sexual Assault by Penetration – Female (under 13)	16/016	19
Penetrative Sexual Activity – Male (13-15) (Consensual)	16/027	29

Description	Coding	Section of Act
Penetrative Sexual Activity – Female 13-15) (Consensual)	16/028	29
Sexual Assault – Male (16+)	16/005	3
Sexual Assault – Female (16+)	16/006	3
Sexual Assault – Male (13-15)	16/007	3
Sexual Assault – Female (13-15)	16/008	3
Sexual Assault – Male (under 13)	16/017	20
Sexual Assault – Female (under 13)	16/018	20
Sexual Activity – Male (13-15) (Consensual)	16/029	30
Sexual Activity – Female (13-15) (Consensual)	16/030	30
Sexual Coercion – Male (16+)	16/009	4
Sexual Coercion – Female (16+)	16/010	4
Sexual Coercion – Male (13-15)	16/011	4
Sexual Coercion – Female (13-15)	16/012	4
Cause to Participate Sexual Activity – Male (under 13)	16/019	21
Cause to Participate Sexual Activity – Female (under 13)	16/020	21
Cause to Participate Sexual Activity – Male (13-15) (Consensual)	16/031	31
Cause to Participate Sexual Activity – Female (13-15) (Consensual)	16/032	31
Coerce into Being Present Sexual Activity – Male & Female (16+)	16/013	5
Coerce into Being Present Sexual Activity – Male & Female (13-15)	16/013	5
Cause to be Present Sexual Activity – Male & Female (under 13)	16/021	22

Description	Coding	Section of Act
Cause to be Present Sexual Activity – Male & Female (13-15) (Consensual)	16/035	32
Coerce to Look at Sexual Image – Male & Female (16+)	16/013	6
Coerce to Look at Sexual Image – Male & Female (13-15)	16/013	6
Cause to Look at Sexual Image – Male & Female (under 13)	16/021	23
Cause to Look at Sexual Image – Male & Female (13-15) (Consensual)	16/035	33
Communicating Indecently – Male & Female (16+)	16/014	7(1)
Communicating Indecently – Male & Female (13-15)	16/014	7(1)
Communicating Indecently – Male & Female (under 13)	16/022	24(1)
Communicating Indecently – Male & Female (13-15) (Consensual)	16/036	34(1)
Cause See/Hear Indecent Communication – Male & Female (16+)	16/014	7(2)
Cause See/Hear Indecent Communication – Male & Female (13-15)	16/014	7(2)
Cause See/Hear Indecent Communication – Male & Female (under 13)	16/022	24(2)
Cause See/Hear Indecent Communication – Male & Female (13-15) (Consensual)	16/036	34(2)
Sexual Exposure – Male & Female (16+) and (13-15) where accused under 16 years	17/003	8
Sexual Exposure – Male & Female (under 13)	16/023	25
Sexual Exposure – Male & Female (13-15)	16/037	35
Voyeurism – Male & Female (16+) and (13-15) where accused under 16 years	17/004	9

Description	Coding	Section of Act
Voyeurism – Male & Female (below 13)	16/024	26
Voyeurism – Male & Female (13-15)	16/038	36
Administering a Substance for Sexual Purposes	18/023	11
Engaging while an Older Child in Sexual Conduct – Male	16/033	37(1)
Engaging while an Older Child in Sexual Conduct – Female	16/034	37(1)
Engaging while an Older Child in Consensual Sexual Conduct – Male	16/033	37(4)
Engaging while an Older Child in Consensual Sexual Conduct – Female	16/034	37(4)
Sexual Abuse of Trust (Children)	18/019	42
Sexual Abuse of Trust of a Mentally Disordered Person	18/020	46(1)

Sexual Offences (Scotland) Act 2009, Section 1

Rape (Including Attempted Rape and Assault with Intent to Rape)

General Rule

One crime for each victim and where specific dates or loci are identified separate crimes to be recorded

Definition

If a person ("A"), with A's penis –

- (a) without another person ("B") consenting, and
- (b) without any reasonable belief that B consents,

penetrates to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B then A commits the offence of rape.

Assault with Intent to Rape (Sexual Offences (Scotland) Act 2009, Section 1)

The accused physically and/or sexually assaults the complainer with the intention of penetrating his or her mouth/vagina/anus with his penis without his/her consent.

Attempted Rape (Sexual Offences (Scotland) Act 2009, Section 1)

The accused attempts to penetrate the vagina/anus/mouth of the complainer with his penis without the complainer's consent and the accused had no reasonable belief that the complainer was consenting.

Victim

Person who has been raped

Locus

Where crime takes place

Examples

- Example 1 'A' reports having been raped. The offender insists that 'A' consented although 'A' insists that this was not the case.
- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape.
- Example 2 A person reports being anally penetrated by a male without consent.
- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape
- Example 3 A male reports being anally penetrated by another male in 2008 without consent.
- 1 x Sodomy
- Example 4 'A' falls asleep at a party and wakes to find that 'B' has placed his penis in 'A's' mouth.
- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape
- Example 5 'A' reports that they have been raped by the same person on numerous occasions over several years and cannot specify dates although the last time was on or after 1st December 2010.
- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape
 - 1 x Rape (Common Law)
- Example 6 'A' reports that they have been raped on specific dates by the same person twice prior to 1st December 2010 and three times after.
- 2 x Rape (Common Law)
 - 3 x Sexual Offences (Scotland) Act 2009, S1, Rape
- Example 7 'A' reports that they were forced into carrying out oral sex, thereafter anally penetrated and vaginally penetrated by the same person during the one incident all without consent.
- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape

- Example 8 Whilst asleep 'A' is digitally penetrated by 'B'. 'A' awakes and protests creating distance between them. 'A' falls back to sleep and is later awoken by 'B' who has removed 'A's' underwear and attempts to lie on top of 'A' and insert his penis into her vagina.
- 1 x Sexual Offences (Scotland) Act 2009, S1, Attempted Rape
 - 1 x Sexual Offences (Scotland) Act 2009, S2, Sexual Assault by Penetration
- Example 9 Victim reports having been raped by the same perpetrator on several occasions and also disclosed attempts to rape on separate occasions. All occurred at the same locus where dates are not known but all occurred after 1 December 2010.
- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape
 - 1 x Sexual Offences (Scotland) Act 2009, S1, Attempted Rape
- Example 10 'A' reports having been raped on several occasions by the same suspect over the past three months. During this period the suspect has penetrated the victim's vagina, mouth and anus with his penis where clear indications were given by the victim that these actions were without consent. All rapes occurred at the same locus and specific dates are not known.
- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape
- Example 11 'A' reports that they have been raped on several occasions by the suspect over the past three months. During this period the victim advises that on separate occasions they were subjected to sexual assault and digital penetration against their will. All crimes occurred at the same locus and specific dates are not known.
- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape
 - 1 x Sexual Offences (Scotland) Act 2009, S2, Sexual Assault by Penetration

- 1 x Sexual Offences (Scotland) Act 2009, S3, Sexual Assault
(Requirement to record each different crime type if committed on separate occasions).

Compound Crimes

Example 12 'A' reports that they were sexually assaulted, their anus was digitally penetrated and they were raped.

- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape
(incorporating conduct including sexual assault, penetration and rape within modus operandi)

Note

This section applies to offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, the old common law rules of rape, sodomy or assault (indecent) will apply.

Where persons act individually, even though there is only one victim, count each individually.

Where several people act together, this will be recorded as one crime.

The rule relating to the law of rape is not the use of force but reference to the victim's lack of consent, which is defined by the Act as "free agreement". The Act also contains a non-exhaustive list of situations in Section 13 where consent will be deemed to be absent.

Where more than one location has been identified a crime should be recorded for each, e.g. a victim reporting having been raped at a locus in Tayside and at a locus in Fife would result in two crimes.

Recording/Reporting of Rape

In circumstances where a victim reports a crime of Rape and there is insufficient evidence to corroborate penetration, but sufficient evidence to prove Attempted Rape or Assault with intent to Rape, then a crime of Rape should be recorded.

An SPR2 libelling a charge of Rape should be submitted to the Procurator Fiscal detailing the full circumstances for their consideration. The Rape crime report will be shown as detected in these circumstances. Whilst the accused may be charged with Attempted Rape or Assault with intent to Rape due to the evidence available, the "Remarks" section of the SPR should provide an explanation as to why the charge being libelled on the front page of the SPR is one of Rape. The following has been agreed by COPFS and must be added to the "Remarks" section of an SPR2 for cases where Rape is libelled but it is considered there is only a sufficiency of evidence to report Attempted Rape or Assault with intent to Rape:

'A charge of Rape has been libelled within this SPR2 to reflect the crime reported by the victim. The circumstances have been fully investigated and it is considered that, despite significant and sufficient evidence in respect of the other essential evidential elements there is insufficient evidence to prove penetration. On this occasion, the Accused has been charged with Attempted Rape/Assault with intent to Rape (as appropriate).'

This will allow the Procurator Fiscal to fully consider the evidence presented and enable them to change the charge to that which they intend to proceed with, and thus preserve the victim orientated approach to crime recording required by SCRS.

Sexual Offences (Scotland) Act 2009, Section 18

Rape of a Young Child (Including Attempt)

General Rule

One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded

Definition

If a person (“A”), with A’s penis, penetrates to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of a child (“B”) who has not attained the age of 13 years, then A commits the offence of rape of a young child.

Victim

Child who has been raped

Locus

Where crime takes place

Examples

Example 1 Two young children who are under 13 years old enter a dwelling where a male has sexual intercourse with both.

- 2 x Sexual Offences (Scotland) Act 2009, S18, Rape of a Young Child.

Example 2 A young child under 13 years old has reported that a male penetrated their anus with his penis

- 1 x Sexual Offences (Scotland) Act 2009, S18, Rape of a Young Child.

- Example 3 A young child under 13 years old reports that a male penetrated their mouth with his penis
- 1 x Sexual Offences (Scotland) Act 2009, S18, Rape of a Young Child.
- Example 4 'A' reports that in 2001 when, under the age of puberty, they were forced to perform oral sex on adult 'B'.
- 1 x Lewd and Libidinous Practices.
- Example 5 Victim reports having been raped on numerous occasions over a six year period between the ages of 11 and 17 by the same perpetrator at the same locus where specific dates are not known. All crimes occurred after 1 December 2010.
- 1 x Sexual Offences (Scotland) Act 2009, S18, Rape of a Young Child (to account for ages 11 to 12)
 - 1 x Sexual Offences (Scotland) Act 2009, S1, Rape (to account for ages 13 to 17 - use "older child" offence modifier).

Compound Crimes

- Example 6 A young child who is under 13 years old reports that on the same occasion they were sexually assaulted, their anus was digitally penetrated and they were raped.
- 1 x Sexual Offences (Scotland) Act 2009, S18, Rape of a Young Child (incorporating conduct which includes the sexual assault, penetration and rape within the modus operandi).

Note

This section applies to all offences occurring on or after 1st December, 2010.

Young children are not considered capable in law of giving consent to sexual activity and accordingly it is irrelevant to the offence whether or not the young child has been a willing participant in the act.

This section applies to offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, the old common law rules of rape or lewd and libidinous practices may be appropriate.

Recording/Reporting of Rape

In circumstances where a victim reports a crime of Rape and there is insufficient evidence to corroborate penetration, but sufficient evidence to prove Attempted Rape or Assault with intent to Rape, then a crime of Rape should be recorded.

An SPR2 libelling a charge of Rape should be submitted to the Procurator Fiscal detailing the full circumstances for their consideration. The Rape crime report will be shown as detected in these circumstances. Whilst the accused may be charged with Attempted Rape or Assault with intent to Rape due to the evidence available, the "Remarks" section of the SPR should provide an explanation as to why the charge being libelled on the front page of the SPR is one of Rape. The following has been agreed by COPFS and must be added to the "Remarks" section of an SPR2 for cases where Rape is libelled but it is considered there is only a sufficiency of evidence to report Attempted Rape or Assault with intent to Rape:

'A charge of Rape has been libelled within this SPR2 to reflect the crime reported by the victim. The circumstances have been fully investigated and it is considered that, despite significant and sufficient evidence in respect of the other essential evidential elements there is insufficient evidence to prove penetration. On this occasion, the Accused has been charged with Attempted Rape / Assault With Intent to Rape (as appropriate).

This will allow the Procurator Fiscal to fully consider the evidence presented and enable them to change the charge to that which they intend to proceed with, and thus preserve the victim orientated approach to crime recording required by SCRS.

Sexual Offences (Scotland) Act 2009, Section 28

Having sexual intercourse with an Older Child

General Rule

One crime for each victim and where separate dates and/or loci are identified separate crimes to be recorded

Definition

If a person (“A”), who has attained the age of 16 years, with A’s penis, penetrates to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of a child (“B”) who-

(a) has attained the age of 13 years, but

(b) has not attained the age of 16 years,

then A commits the offence of having intercourse with an older child.

Victim

Child who has been penetrated

Locus

Where crime takes place

Examples

Example 1 Two older children aged 13 to 15 are invited into a dwelling where an adult male has consensual sexual intercourse with them.

- 2 x Sexual Offences (Scotland) Act 2009, S28, Having Sexual Intercourse with an Older Child.

Example 2 An older child aged between 13 and 15 reports that an adult male had sexual intercourse with them without any consent being given.

- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape

Example 3 A report is received that an older child aged 13 to 15 years has willingly performed oral sex on a male person over the age of 16 years.

- 1 x Sexual Offences (Scotland) Act 2009, S28, Having Sexual Intercourse with an Older Child

Example 4 An older child aged 13 to 15 years discloses that they had consensual sexual intercourse on a number of occasions with their partner who is also aged 13 to 15 years.

- 1 x Sexual Offences (Scotland) Act 2009, S37 (1) - male
- 1 x Sexual Offences (Scotland) Act 2009, S37 (4) - female

Note - If only one participant requires to be jointly reported per Lord Advocate's Guidelines, only one crime should be recorded. If neither participant is to be reported no crimes should be recorded.

Example 5 An older child aged 13 to 15 years discloses that they had consensual sexual intercourse with an adult male most Fridays over a period of time.

- 1 x Sexual Offences (Scotland) Act 2009, S28, Having Sexual Intercourse with an Older Child (due to the indications being this has been a continuity of action, only 1 crime should be recorded).

Example 6 A female 'A' who is aged 15 has consensual sexual intercourse with a male 'B' aged 17. 'B' later inserts his penis into 'As' mouth without her consent.

- 1 x Sexual Offences (Scotland) Act 2009, S28, Having Sexual Intercourse with an Older Child

- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape

Example 7

A female 'A' who is aged 15 has consensual sexual intercourse with a male 'B' aged 17. During intercourse 'A' tells 'B' to stop and he continues.

- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape (no requirement to record Section 28 as this is a continuous act which develops into a rape).

Example 8

A female 'A' who is aged 15 reports having been raped by a male 'B' aged 17. 'A' also discloses that on previous occasions she has engaged in consensual sexual intercourse with 'B' where dates are unknown.

- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape
- 1 x Sexual Offences (Scotland) Act 2009, S28, Having Sexual Intercourse with Older Child

Compound Crimes

Example 9

An older child aged 13 to 15 years discloses that she had willingly allowed her boyfriend, who is over 16 years of age, to digitally penetrate her vagina, fondle her breasts and that they had consensual sexual intercourse.

- 1 x Sexual Offences (Scotland) Act 2009, S28, Having Sexual Intercourse with Older Child (incorporating details of the conduct within the modus operandi).

Note

Where the intercourse has not been consensual, a crime of rape should be recorded.

Although there is some overlap between the older child offences and the non-consensual offences, this means that any instances of sexual activity between an adult and an older child can be prosecuted as an older child offence, even where it

cannot be proved beyond reasonable doubt that the activity took place without the consent of the child.

This section applies to all offences occurring on or after 1st December, 2010. This section applies to all offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, the old common law of Lewd and Libidinous Practices will apply or the offence of Sexual Intercourse with Girl over 13 but under 16.

Sexual Offences (Scotland) Act 2009, Section 2

Sexual Assault by Penetration

General Rule

One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded

Definition

If a person (“A”), with any part of A’s body or anything else –

(a) without another person (“B”) consenting, and

(b) without any reasonable belief that B consents,

penetrates sexually to any extent, either intending to do so or reckless as to whether there is penetration, the vagina or anus of B then A commits the offence of sexual assault by penetration.

Victim

Person who has been sexually assaulted

Locus

Where crime takes place

Examples

Example 1 An adult reports being drunk at a party and falling asleep in a friend’s bed. Another adult takes advantage of the situation, removes complainer’s lower clothing and digitally penetrates the anus.

- 1 x Sexual Offences (Scotland) Act 2009, S2, Sexual Assault by Penetration

- Example 2 A female is grabbed from behind by a male when out walking. He penetrates her vagina although she is unable to say what with.
- 1 x Sexual Offences (Scotland) Act 2009, S2, Sexual Assault by Penetration
- Example 3 A female reports that in 2008, a male digitally penetrated her vagina without her consent.
- 1 x Assault (indecent) at Common Law
- Example 4 Whilst asleep 'A' is digitally penetrated by 'B'. 'A' awakes and protests creating distance between them. 'A' falls back to sleep and is later awoken by 'B' who has removed 'A's' underwear and attempts to lie on top of 'A' and insert his penis into her vagina.
- 1 x Sexual Offences (Scotland) Act 2009, S1, Attempted Rape
 - 1 x Sexual Offences (Scotland) Act 2009, S2, Sexual Assault by Penetration
- Example 5 'A' in the belief that female 'B' is concealing property belonging to 'A' internally subjects 'B' to a non-consensual search of her vagina.
- 1 x Sexual Offences (Scotland) Act 2009, S2, Sexual Assault by Penetration

Compound Crimes

- Example 6 A female reports that she was grabbed from behind whereby her breasts were fondled, she fell to the ground whereby the male placed his hand up her skirt and digitally penetrated her anus.
- 1 x Sexual Offences (Scotland) Act 2009, S2, Sexual Assault by Penetration (incorporating conduct including sexual assault and penetration within modus operandi).

Note

This offence will tackle situations where the complainer knows that they have been penetrated however they cannot say what penetrated them e.g. because they were blindfolded.

There is an element of overlap between this section, rape and sexual assault, however where the Crown has evidence that the victim was subjected to penile penetration, a charge of Rape (Section 1) would be recorded.

This section applies to offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, the old common law rules of rape, sodomy or assault (indecent) will apply.

Sexual Offences (Scotland) Act 2009, Section 19

Sexual Assault on a Young Child by Penetration

General Rule

One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded

Definition

If a person (“A”), with any part of A’s body or anything else, penetrates sexually to any extent, either intending to do so or reckless as to whether there is penetration to the vagina or anus of a child (“B”) who has not attained the age of 13 years, then A commits the offence of sexual assault on a young child by penetration.

Victim

Child who has been sexually assaulted

Locus

Where crime takes place

Examples

- Example 1 A young child under 13 years old reports that her vagina was penetrated by a male however she does not know what penetrated her because she had her eyes closed.
- 1 x Sexual Offences (Scotland) Act 2009, S19, Sexual Assault on a Young Child by Penetration
- Example 2 A young child under 13 years old reports that an adult carried out digital penetration of their anus.
- 1 x Sexual Offences (Scotland) Act 2009, S19, Sexual Assault on a Young Child by Penetration

- Example 3 A young child under 13 years old has allowed her 13 year old boyfriend to penetrate her vagina with an object.
- 1 x Sexual Offences (Scotland) Act 2009, S19, Sexual Assault on a Young Child by Penetration.

Compound Crimes

- Example 4 A young child under 13 years old reports that she was grabbed from behind whereby her breasts were fondled, she fell to the ground whereby the male placed his hand up her skirt and digitally penetrated her anus.
- 1 x Sexual Offences (Scotland) Act 2009, S19, Sexual Assault on a Young Child by Penetration (incorporating conduct including sexual assault and penetration within modus operandi)

Note

This section applies to all offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, the old common law rules of rape, sodomy or lewd and libidinous practices may be appropriate.

Young children are not considered capable in law of giving consent to sexual activity and accordingly it is irrelevant to the offence whether or not the young child has “consented”.

Sexual Offences (Scotland) Act 2009, Section 29

Engaging in Penetrative Sexual Activity with or towards an Older Child

General Rule

One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded

Definition

If a person (“A”), who has attained the age of 16 years, with any part of A’s body or anything else, penetrates sexually to any extent, either intending to do so or reckless as to whether there is penetration, the vagina or anus of a child (“B”) who-

(a) has attained the age of 13 years, but

(b) has not attained the age of 16 years,

then A commits the offence of engaging in penetrative sexual activity with or towards an older child.

Victim

Child who has been penetrated

Locus

Where crime takes place

Examples

Example 1 An older child aged 13 to 15 discloses that she has allowed her partner who is over 16 years of age, to digitally penetrate her vagina.

- 1 x Sexual Offences (Scotland) Act 2009, S29, Engaging in Penetrative Sexual Activity with or towards an Older Child.

Example 2 An older child aged 13 to 15 discloses that her partner who is over 16 years of age, digitally penetrated her vagina without her consent.

- 1 x Sexual Offences (Scotland) Act 2009, S2, Sexual Assault by Penetration.

Compound Crimes

Example 3 An older child aged 13 to 15 discloses that she allowed her partner, who is over 16 years of age, to fondle her breasts and digitally penetrated her vagina.

- 1 x Sexual Offences (Scotland) Act 2009, S29 Engaging in Penetrative Sexual Activity with or towards an Older Child (incorporating conduct including sexual assault and penetration within modus operandi).

Note

Although there is some overlap between the older child offences and the non-consensual offences, this means that any instances of sexual activity between an adult and an older child can be prosecuted as an older child offence, even where it cannot be proved beyond reasonable doubt that the activity took place without the consent of the child.

This section applies to all offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, the old common law of Lewd and Libidinous Practices will apply or the offence of Sexual Intercourse with Girl over 13 but under 16.

In this section concerning 'Older Children', if the child consents to participate in the activities, it should be charged under the 'Older Children' section of the legislation. However if there is no consent to this at all, then Section 2 of the legislation should apply, as the penalties are greater.

Sexual Offences (Scotland) Act 2009, Section 3

Sexual Assault

General Rule

One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded

Definition

If a person (“A”)-

- (a) without another person (“B”) consenting, and
- (b) without any reasonable belief that B consents,

does any of the things mentioned below, then A commits the offence of sexual assault.

Those things are, that A-

- (a) penetrates sexually, by any means and to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B,
- (b) intentionally or recklessly touches B sexually,
- (c) engages in any other form of sexual activity in which A, intentionally or recklessly, has physical contact (whether bodily contact or contact by means of an implement, and whether or not through clothing) with B,
- (d) intentionally or recklessly ejaculates semen onto B,
- (e) intentionally or recklessly emits urine or saliva onto B sexually.

Victim

Person who has been sexually assaulted

Locus

Where crime takes place

Examples

Example 1 A female is grabbed from behind by a male when out walking. He fondles her breasts and her vagina over her clothing.

- 1 x Sexual Offences (Scotland) Act 2009, S3, Sexual Assault

Example 2 Two adults lying asleep awake to find a male ejaculating semen over them.

- 2 x Sexual Offences (Scotland) Act 2009, S3, Sexual Assault

Example 3 Person penetrates female's vagina with an object without her consent.

- 1 x Sexual Offences (Scotland) Act 2009, S2, Sexual Assault by penetration.

Example 4 'A' is forced by 'B' to masturbate 'B'. 'A' and 'B' are both adults.

- 1 x Sexual Offences (Scotland) Act 2009, S3, Sexual Assault

Note

The offence of Sexual Assault replaces the previous common law offence of assault aggravated by indecency in respect of conduct falling within its scope. However, the common law of assault is not repealed and is still open for any behaviour falling out with the statutory definition of sexual assault

There is an element of overlap between this section, rape and sexual assault by penetration however where the Crown has evidence that the victim was subjected to penile penetration, a charge of sexual assault will not be brought.

This section applies to offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, the old common law rules of assault (indecent) will apply.

Where offences occur which encompass a combination of Sections 1, 2 and 3, only the most serious should be counted/recorded for statistical purposes and a compound charge used to report.

Sexual Offences (Scotland) Act 2009, Section 20

Sexual Assault on a Young Child

General Rule

One crime for each victim and where separate dates and/or loci are identified separate crimes to be recorded

Definition

If a person (“A”) does any of the things mentioned below, “B” being in each case a child who has not attained the age of 13 years), then A commits the offence of sexual assault on a young child. Those things are, that A-

- (a) penetrates sexually, by any means and to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B,
- (b) intentionally or recklessly touches B sexually,
- (c) engages in any other form of sexual activity in which A, intentionally or recklessly, has physical contact (whether bodily contact or contact by means of an implement, and whether or not through clothing) with B,
- (d) intentionally or recklessly ejaculates semen onto B,
- (e) intentionally or recklessly emits urine or saliva onto B sexually

Victim

Child who has been sexually assaulted

Locus

Where crime takes place

Examples

- Example 1 A young child under 13 years old is approached by an unknown person who touches the young child's private parts over their clothing.
- 1 x Sexual Offences (Scotland) Act 2009, S20, Sexual Assault on a Young Child
- Example 2 A young child under 13 years old allows their friend who is an older child aged 13 to 15, to touch them in a sexual manner.
- 1 x Sexual Offences (Scotland) Act 2009, S20, Sexual Assault on a Young Child
- Example 3 Whilst looking after young female child a male exposes himself and thereafter engages her in sexual activity by placing her hand on his penis and touching her vagina.
- 1 x Sexual Offences (Scotland) Act 2009, S20 Sexual Assault on a Young Child (this would be treated as a single course of conduct).
- Example 4 A 13 year old female has consensual sexual intercourse with a 12 year old male.
- 1 x Sexual Offences (Scotland) Act 2009, S20 Sexual Assault on a Young Child (per this legislation there is no need to establish an absence of consent as the child under the age of 13 is deemed to be incapable of consenting to sexual activity. Since the suspect is 13 and female the appropriate offence is under Section 20. Had the gender of the two participants been reversed the appropriate offence would have been Section 18, Rape of a Young Child.
- Example 5 Victim reports having been sexually assaulted on numerous occasions over an eight year period between the ages of 9 and 17 by the same perpetrator between 2008 and 2016 at the same locus where specific dates are not known.

- 1 x Lewd and Libidinous Practices (common law) to account for 2008 to 2010 when the victim was 9 up to age 11 when Sexual Offences (Scotland) Act 2009 was introduced in 2010
- 1 x Sexual Offences (Scotland) Act 2009, S20, Sexual Assault of a Young Child, to account for period when victim was aged 12 (Post 2010)
- 1 x Sexual Offences (Scotland) Act 2009, S3, Sexual Assault, to account for ages 13 to 17 (use "older child" offence modifier)

Note

This section applies to offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, the old common law rules of lewd and libidinous practices and/or Indecent Assault will apply.

Young children are not considered capable in law of giving consent to sexual activity and accordingly it is irrelevant to the offence whether or not the young child has "consented".

Where offences occur which encompass a combination of Sections 18, 19, and 20 only the most serious should be counted/recorded for statistical purposes and a compound charge used to report.

Sexual Offences (Scotland) Act 2009, Section 30

Engaging in Sexual Activity with or towards an Older Child

General Rule

One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded

Definition

If a person (“A”) who has attained the age of 16 years, does any of the things mentioned below, “B” being in each case a child who-

- (a) has attained the age of 13 years, but
- (b) has not attained the age of 16 years

then A commits the offence of engaging in sexual activity with or towards an older child.

Those things are, that A-

- (a) penetrates sexually, by any means and to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B,
- (b) intentionally or recklessly touches B sexually,
- (c) engages in any other form of sexual activity in which A, intentionally or recklessly, has physical contact (whether bodily contact or contact by means of an implement, and whether or not through clothing) with B,
- (d) intentionally or recklessly ejaculates semen onto B,
- (e) intentionally or recklessly emits urine or saliva onto B sexually.

Victim

Child who has been engaged in sexual activity

Locus

Where crime takes place

Examples

Example 1 An older child aged 13 to 15 reports that he allowed his partner who is over 16 years of age to touch his penis.

- 1 x Sexual Offences (Scotland) Act 2009, S30, Engaging in Sexual Activity with or towards an Older Child

Example 2 An older child aged 13 to 15 is approached by an unknown adult and touched by this person on his penis over clothing without consent.

- 1 x Sexual Offences (Scotland) Act 2009, S3, Sexual Assault

Note

This section applies to all offences occurring on or after 1st December, 2010.

In this section concerning 'Older Children', if the child consents to participate in the activities, it should be charged under the 'Older Children' section of the legislation. However if there is no consent to this at all, then Section 3 of the legislation should apply, as the penalties are greater.

Where offences occur which encompass a combination of Sections 28, 29 and 30 only the most serious should be counted/recorded for statistical purposes and a compound charge used to report.

Sexual Offences (Scotland) Act 2009, Section 4

Sexual Coercion

General Rule

One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded

Definition

If a person (“A”)-

(a) without another person (“B”) consenting to participate in a sexual activity, and

(b) without any reasonable belief that B consents to participating in that activity

intentionally caused B to participate in that activity, then A commits the offence of sexual coercion.

Victim

Person who has been sexually coerced

Locus

Where crime takes place

Examples

Example 1 An adult is forced by another to touch themselves in a sexual manner.

- 1 x Sexual Offences (Scotland) Act 2009, S4, Sexual Coercion

Example 2 An adult ‘A’ is forced by an Adult ‘B’ to touch another ‘C’ in a sexual manner. ‘A’ and ‘C’ are non-consenting.

- 1 x Sexual Offences (Scotland) Act 2009, S4, Sexual Coercion - in respect of 'A'
- 1 x Sexual Offences (Scotland) Act 2009, S3, Sexual Assault - in respect of 'C'

Example 3 'A' is forced by 'B' to masturbate 'B'. 'A' and 'B' are both adults.

- 1 x Sexual Offences (Scotland) Act 2009, S3, Sexual Assault

Example 4 An adult 'A' engages in consensual sexual communication with 'B' over social media. 'A' believes 'B' is of the opposite sex. 'A' agrees to film themselves undertaking a sexual act and sends the recording to 'B'. 'B' discloses they are not the person they purported to be.

- 1 x Sexual Offences (Scotland) Act 2009, S4, Sexual Coercion

Note

The offence of sexual coercion is designed to criminalise behaviour, which compels the complainant to engage in sexual activity, which may, but need not, involve contact with the offender. This may involve compelling the victim to engage in sexual activity with an animal, an object or themselves.

There is an overlap to a certain extent with the offence of sexual assault in cases where the perpetrator compelled the victim to engage in conduct which involved physical contact with the perpetrator. However, this offence is primarily intended to capture coercive sexual conduct which does not involve physical conduct between the perpetrator and the victim.

In circumstances where a person is caused to take a naked image of themselves this amounts to causing that person to participate in a sexual act, unless this forms part of an extortion.

Sexual Offences (Scotland) Act 2009, Section 21

Causing a Young Child to participate in a Sexual Activity

General Rule

One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded

Definition

If a person (“A”) intentionally causes a child (“B”) who has not attained the age of 13 years to participate in a sexual activity, then A commits the offence of causing a young child to participate in a sexual activity.

Victim

Child who has participated in the sexual activity

Locus

Where crime takes place

Examples

Example 1 A young child under 13 years old is forced by ‘A’ to touch the penis of another person ‘B’.

- 1 x Sexual Offences (Scotland) Act 2009, S21, Causing a Young Child to Participate in a Sexual Activity

Example 2 Two young children under 13 years old are asked by a person to touch themselves in a sexual manner, which they do.

- 2 x Sexual Offences (Scotland) Act 2009, S21, Causing a Young Child to Participate in a Sexual Activity

Note

This section applies to all offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, the old common law crime of Lewd and Libidinous Practices will apply.

Young children are not considered capable in law of giving consent to sexual activity and accordingly it is irrelevant to the offence whether or not the young child has “consented”.

There is an overlap to a certain extent with the offence of sexual assault in cases where the perpetrator compelled the victim to engage in conduct which involved physical contact with the perpetrator. However, this offence is primarily intended to capture coercive sexual conduct which does not involve physical conduct between the perpetrator and the victim.

In circumstances where a person is caused to take a naked image of themselves this amounts to causing that person to participate in a sexual act, unless this forms part of an extortion.

Sexual Offences (Scotland) Act 2009, Section 31

Causing an Older Child to participate in a Sexual Activity

General Rule

One crime for each victim and where separate dates and/or loci are identified separate crimes to be recorded

Definition

If a person (“A”) who has attained the age of 16 years, intentionally causes a child (“B”), who either-

- (i) has attained the age of 13 years, but
- (ii) has not attained the age of 16 years,

to participate in a sexual activity, then A commits the offence of causing an older child to participate in a sexual activity.

Victim

Child who has participated in a sexual activity

Locus

Where crime takes place

Examples

Example 1 An older child aged 13 to 15 is encouraged by a person over the age of 16 to touch themselves in a sexual manner and they carry this out.

- 1 x Sexual Offences (Scotland) Act 2009, S31, Causing an Older Child to participate in a Sexual Activity

Example 2 An older child aged 13 to 15 is forced by a person over the age of 16 to touch themselves in a sexual manner.

- 1 x Sexual Offences (Scotland) Act 2009, S4, Sexual Coercion

Example 3

An older child aged 13 to 15 years is forced by 'A' who is over 16 years, to touch 'B' in a sexual manner.

- 1 x Sexual Offences (Scotland) Act 2009, S4, Sexual Coercion
- 1 x Sexual Offences (Scotland) Act 2009, S3, Sexual Assault in respect of 'B' (this will depend on the age of 'B').

Note

This section applies to all offences occurring on or after 1st December, 2010.

There is an overlap to a certain extent with the offence of sexual assault in cases where the perpetrator compelled the victim to engage in conduct which involved physical contact with the perpetrator. However, this offence is primarily intended to capture coercive sexual conduct which does not involve physical conduct between the perpetrator and the victim.

In circumstances where a person is caused to take a naked image of themselves this amounts to causing that person to participate in a sexual act, unless this forms part of an extortion.

In this section concerning 'Older Children', if the child consents to participate in the activities, it should be charged under the 'Older Children' section of the legislation. However if there is no consent to this at all, then Section 4 of the legislation should apply, as the penalties are greater.

Sexual Offences (Scotland) Act 2009, Section 5

Coercing a person into being present during a Sexual Activity

General Rule

One crime for each incident or course of conduct

Definition

If a person (“A”)-

- (a) without another person (“B”) consenting, and
- (b) without any reasonable belief that B consents,

either intentionally engages in a sexual activity and for a purpose mentioned in subsection (2) does so in the presence of B or intentionally and for a purpose mentioned in that subsection causes B to be present while a third person engages in such an activity, then A commits the offence of coercing a person into being present during a sexual activity.

The purposes in subsection (2) are-

- (a) obtaining sexual gratification,
- (b) humiliating, distressing or alarming B.

Victim

Person who has been coerced into being present during a sexual activity

Locus

Where crime takes place

Examples

Example 1 'A' is at a party when they receive a call from 'B' asking them to come upstairs to the bedroom. When 'A' enters the room they find 'B' having sexual intercourse with another.

- 1 x Sexual Offences (Scotland) Act 2009, S5, Coercing a person into being present during a Sexual Activity

Example 2 On three separate occasions on the same day at the same locus 'A' says "excuse me" to three females and when they turn round 'A' is masturbating.

- 3 x Sexual Offences (Scotland) Act 2009, S5 Coercing a person into being present during a Sexual Activity

Note

The Act defines "in the presence of" as places where A can be seen by B.

It is not essential to prove that the victim actually observed the activity; it is enough that the activity was in a place where it was capable of being observed by the victim.

This section applies to offences occurring on or after 1st December, 2010. It will not apply for relevant activity occurring before this date. Depending on the circumstances, a breach of the peace or an assault (indecent) may be the appropriate charge in this case.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, the Young Child offence should be recorded.

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application should be recorded as a crime of "Cause to view sexual image" and not one of "Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

Sexual Offences (Scotland) Act 2009, Section 22

Causing a Young Child to be present during a Sexual Activity

General Rule

One crime for each incident or course of conduct

Definition

If a person (“A”) either-

- (a) intentionally engages in a sexual activity and for a purpose mentioned in subsection (2) does so in the presence of a child (“B”) who has not attained the age of 13 years, or
- (b) intentionally and for a purpose mentioned in that subsection causes B to be present while a third person engaged in such an activity

then A commits an offence of causing a young child to be present during a sexual activity.

The purposes in subsection (2) are-

- (a) obtaining sexual gratification,
- (b) humiliating, distressing or alarming B.

Victim

Child/children who has/have been present during the sexual activity

Locus

Where crime takes place

Examples

Example 1 ‘A’ and ‘B’ engage in sexual intercourse whilst asking their 2 young children who are under 13 years old to sit and watch.

- 1 x Sexual Offences (Scotland) Act 2009, S22, Causing a Young Child to be present during a Sexual Activity

Example 2

An adult takes a relative who is a young child under 13 years old, to a sex show where other adults are performing sexual intercourse with each other.

- 1 x Sexual Offences (Scotland) Act 2009, S22, Causing a Young Child to be present during a Sexual Activity

Note

This section applies to all offences occurring on or after 1st December 2010. If the offence occurred prior to this date, the old common law of Lewd and Libidinous Practices will apply.

It is not essential to prove that the young child actually observed the activity; it is enough that the activity was in a place where it was capable of being observed by the young child.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, the Young Child offence should be recorded.

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application should be recorded as a crime of "Cause to view sexual image" and not one of "Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

Sexual Offences (Scotland) Act 2009, Section 32

Causing an Older Child to be present during a Sexual Activity

General Rule

One crime for each incident or course of conduct

Definition

If a person (“A”) who has attained the age of 16 years either-

- (a) intentionally engages in a sexual activity and for a purpose mentioned below does so in the presence of a child (“B”), who-
 - (i) has attained the age of 13 years, but
 - (ii) has not attained the age of 16 years, or
- (b) intentionally, and for a purpose mentioned in subsection (2) causes B to be present while a third person engaged in such an activity

then A commits the offence of causing an older child to be present during a sexual activity.

The purposes are-

- (a) obtaining sexual gratification,
- (b) humiliating, distressing or alarming B.

Victim

Child who has been present during the sexual activity

Locus

Where crime takes place

Examples

- Example 1 For their own sexual gratification, two adults encourage an older child aged 13 to 15 into a bedroom in order that the older child can watch the adults engage in sexual intercourse with each other. The child attends and adults carry out sexual indulgences in full view of the older child.
- 1 x Sexual Offences (Scotland) Act 2009, S32, Causing an Older Child to be present during a Sexual Activity
- Example 2 Two adults against the will of the child, force/coerce an older child aged 13 to 15, into a bedroom in order that the older child can watch the adults engage in sexual intercourse with each other.
- 1 x Sexual Offences (Scotland) Act 2009, S5 Coercing a Person into being present During a Sexual Activity
- Example 3 An adult is seen in a public place apparently masturbating under a towel, although is not exposing themselves. An adult with an older child aged 13 to 15 witnesses this act.
- 1 x Sexual Offences (Scotland) Act 2009, S5, Cause to be present during Sexual Activity (the suspect was in a public place and was not being discrete - while the child is aged 13 to 15 there was clearly no consent).

Note

This section applies to all offences occurring on or after 1st December, 2010. It is not essential to prove that the older child actually observed the activity; it is enough that the activity was in a place where it was capable of being observed by the older child.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, the Young Child offence should be recorded.

In this section concerning 'Older Children', if the child consents to participate in the activities, it should be charged under the 'Older Children' section of the legislation.

However if there is no consent to this at all, then Section 5 of the legislation should apply, as the penalties are greater.

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application should be recorded as a crime of "Cause to view sexual image" and not one of "Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

Sexual Offences (Scotland) Act 2009, Section 6

Coercing a person into looking at a Sexual Image

General Rule

One crime for each incident or course of conduct

Definition

If a person (“A”) intentionally and for a purpose mentioned below causes another person (“B”)-

- (a) without B consenting, and
- (b) without any reasonable belief that B consents,

to look at a sexual image, then A commits the offence of coercing a person into looking at a sexual image.

The purposes in subsection (2) are-

- (a) obtaining sexual gratification,
- (b) humiliating, distressing or alarming B.

Victim

Person who has been coerced into looking at the sexual image

Locus

Where sent from, if known, otherwise where received

Examples

Example 1 An adult reports receiving an e-mail with a video attachment from a known person. The text of the e-mail suggests that the recipient should open the video attachment to view footage of an innocuous event. Upon opening the attachment it is an explicit sexual video.

- 1 x Sexual Offences (Scotland) Act 2009, S6, Coercing a person to look at a Sexual Image

Example 2

An adult reports receiving a sexual image via email. It is established during investigation that the email was not intended to be sent to the complainer and was in fact intended for the sender's partner.

- 1 x Communications Act 2003, S127 (Sexual), Indecent or Obscene Messages, may be appropriate due to the absence of the intent to humiliate, distress or alarm or for obtaining sexual gratification.

Example 3

'A' approaches a camera attached to the house of 'B' and indecently exposes themselves in front of the camera knowing that 'B' will review the content.

- 1 x Sexual Offences (Scotland) Act 2009, S6, Coercing a person to look at a Sexual Image

Example 4

On reviewing CCTV from the previous day 'A' and 'B' are seen to be engaged in a sexual act, it is clear they are aware there is CCTV as they wave at the camera and regularly look up at the camera, smiling and waving.

- 1 x Sexual Offences (Scotland) Act 2009, S6, Coercing a person to look at a Sexual Image (as the circumstances indicate they were aware they were being viewed/going to be viewed). If the circumstances indicate they were unaware of the CCTV then a Public Indecency would be applicable.

Note

For the purposes of this section, a sexual image is defined by the act as an image (produced by whatever means and whether or not a moving image) of-

- 'A' engaging in a sexual activity or of a third person or imaginary person so engaging,

- 'A's genitals or the genitals of a third person or imaginary person.

A 'topless' pin-up would not be considered a sexual image as the subject's genitals are not visible.

The offence of coercing a person into looking at a sexual image is only committed if the victim did not consent to looking at the image and the accused had no reasonable belief that the victim so consented. Furthermore, the accused does not commit the offence if he or she had intended to direct or send the image to someone other than the victim (i.e. by email).

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application should be recorded as a crime of "Cause to view sexual image" and not one of "Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

If a victim receives an intimate image of themselves this does not constitute any offence under Abusive Behaviour and Sexual Harm (Scotland) Act 2016 or Sexual Offences (Scotland) Act 2009. In these circumstances an offence under Communications Act 2003, Section 127 (sexual) should be recorded.

This section applies to offences occurring on or after 1st December, 2010. It will not apply for relevant activity occurring before this date. Depending on the circumstances, a breach of the peace, an assault (indecent) or an offence under the Communications Act may be the appropriate charge in this case.

A general point regarding all the offences requiring a 'purpose' – Section 49 of the Act provides that the 'purpose' is established if in all the circumstances it may reasonably be inferred that accused was doing the thing for the purpose in question.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, the Young Child offence should be recorded.

Sexual Offences (Scotland) Act 2009, Section 23

Causing a Young Child to look at a Sexual Image

General Rule

One crime for each incident or course of conduct

Definition

If a person (“A”) intentionally and for a purpose mentioned below causes a child (“B”) who has not attained the age of 13 years to look at a sexual image, then A commits the offence of causing a young child into looking at a sexual image.

The purposes in subsection (2) are-

- (a) obtaining sexual gratification,
- (b) humiliating, distressing or alarming B.

Victim

Child who has looked at the sexual image

Locus

Where sent from, if known, otherwise where received

Examples

Example 1 A young child under 13 reports receiving a sexual image on their mobile phone. The image has been sent to them intentionally by an adult to cause alarm.

- 1 x Sexual Offences (Scotland) Act 2009, S23, Causing a Young Child to look at a Sexual Image

- Example 2 Two young children under 13 years old are subjected to watching pornographic films by their babysitter, every Friday night for 6 weeks.
- 1 x Sexual Offences (Scotland) Act 2009, S23, Causing a Young Child to look at a Sexual Image (indications are this has been a course of conduct).
- Example 3 A report is received that two young children under 13 years old have independently been shown indecent photos showing genitals on a mobile phone by an older child.
- 2 x Sexual Offences (Scotland) Act 2009, S23, Causing a Young Child to look at a Sexual Image
- Example 4 A 12 year old child has been corresponding separately by e-mail with two adults who do not know and are not aware of each other. The relationship with the two adults has been building to the point where the communication becomes sexual and they ask the child to send them a naked photo in exchange for naked images of themselves. The child sends them photos of a naked person (head not in the photos) and in return receives naked photos of the adults (heads not in the photos). The photos sent by the child are those of an anonymous person found on the internet. Throughout the correspondence the child claims to be 16 years old.
- 2 x Sexual Offences (Scotland) Act 2009, S23, Causing a Young Child to look at a Sexual Image
 - 2 x Sexual Offences (Scotland) Act, 2009, S24, Communicating Indecently with a Young Child

Note

This section applies to all offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, the old common law of Lewd and Libidinous Practices will apply.

For the purposes of this section, a sexual image is defined by the act as an image (produced by whatever means and whether or not a moving image) of-

- 'A' engaging in a sexual activity or of a third person or imaginary person so engaging,
- 'A's genitals or the genitals of a third person or imaginary person.

A 'topless' pin-up would not be considered a sexual image as the subject's genitals are not visible.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, the Young Child offence should be recorded.

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application should be recorded as a crime of "Cause to view sexual image" and not one of "Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

If a victim receives an intimate image of themselves this does not constitute any offence under Abusive Behaviour and Sexual Harm (Scotland) Act 2016 or Sexual Offences (Scotland) Act 2009. In these circumstances an offence under Communications Act 2003, Section 127 (sexual) should be recorded.

Sexual Offences (Scotland) Act 2009, Section 33 Causing an Older Child to look at a Sexual Image

General Rule

One crime for each incident or course of conduct

Definition

If a person (“A”) who has attained the age of 16 years, intentionally and for a purpose mentioned below causes a child (“B”) who-

(a) has attained the age of 13 years, but

(b) has not attained the age of 16 years,

to look at a sexual image, then A commits the offence of causing an older child to look at a sexual image.

The purposes are-

(a) obtaining sexual gratification,

(b) humiliating, distressing or alarming B.

Victim

Child who has looked at the sexual image

Locus

Where sent from, if known, otherwise where received

Examples

Example 1 An older child aged 13 to 15 years reports that an adult has convinced/encouraged them to look at a number of photographs, all of which show the adult engaged in various

sexual acts with another adult person. The older child looks through all the photographs.

- 1 x Sexual Offences (Scotland) Act 2009, S33, Causing an Older Child to look at a Sexual Image.

Example 2

An older child aged 13 to 15 years reports that an adult has forced her to look at a number of photographs, all of which show the adult engaged in various sexual acts with another adult person. The older child looks through all the photographs.

- 1 x Sexual Offences (Scotland) Act 2009, S6, Coercing a person to look at a Sexual Image

Example 3

Two children, one a young child aged under 13 years, the other an older child aged 13 to 15 are encouraged to sit and watch pornographic films showing full sexual intercourse by an adult babysitter every Friday night for 6 weeks. The children watch the films although they are not made to and can leave at any point.

- 1 x Sexual Offences (Scotland) Act 2009, S23, Causing a Young Child to look at a Sexual Image (the young child offence is recorded due to this being the most serious, and only one crime is required to be recorded due to the circumstances indicate this to be a course of conduct).

Example 4

Two children, one a young child aged under 13 years, the other an older child aged 13 to 15 are forced to sit and watch pornographic films showing full sexual intercourse by an adult babysitter on a number of occasions where specific dates are unknown.

- 1 x Sexual Offences (Scotland) Act 2009, S23, Causing a Young Child to look at a Sexual Image (the young child offence is recorded due to this being the most serious, and only one crime is required to be recorded due to the circumstances indicate this to be a course of conduct).

Note

This section applies to all offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, the old common law of Lewd and Libidinous Practices or an offence under the Communications Act 2003, Section 127 will apply.

For the purposes of this section, a sexual image is defined by the act as an image (produced by whatever means and whether or not a moving image) of-

- 'A' engaging in a sexual activity or of a third person or imaginary person so engaging,
- 'A's genitals or the genitals of a third person or imaginary person.

A 'topless' pin-up would not be considered a sexual image as the subject's genitals are not visible.

In this section concerning 'Older Children', if the child consents to participate in the activities, it should be charged under the 'Older Children' section of the legislation. However if there is no consent to this at all, then Section 6 of the legislation should apply, as the penalties are greater.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, the Young Child offence should be recorded.

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application should be recorded as a crime of "Cause to view sexual image" and not one of "Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

If a victim receives an intimate image of themselves this does not constitute any offence under Abusive Behaviour and Sexual Harm (Scotland) Act 2016 or Sexual Offences (Scotland) Act 2009. In these circumstances an offence under Communications Act 2003, Section 127 (sexual) should be recorded.

Sexual Offences (Scotland) Act 2009, Section 7(1)

Communicating Indecently

General Rule

One crime for each victim and continuity of action or per incident (as appropriate)

Definition

If a person (“A”) intentionally and for a purpose mentioned in subsection (3) sends, by whatever means, a sexual written communication to or directs, by whatever means, a sexual verbal communication at, another person (“B”)-

(a) without B consenting to its being so sent or directed, and

(b) without any reasonable belief that B consents to its being so sent or directed,

then A commits the offence of communicating indecently.

The purposes in subsection (3) are-

(a) obtaining sexual gratification,

(b) humiliating, distressing or alarming B.

Victim

Person who has received the indecent communication

Locus

Where communication made from, if known, otherwise where communication received

Examples

Example 1 A person for the purposes of obtaining sexual gratification intentionally sends a sexually explicit text message to another adult on their mobile phone without the consent of the recipient.

- 1 x Sexual Offences (Scotland) Act 2009, S7 (1),
Communicating Indecently

Example 2

A person for the purposes of obtaining sexual gratification intentionally sends a sexually explicit text message to multiple recipients on their mobile phones without the consent of the recipients.

- 1 x Sexual Offences (Scotland) Act 2009, S7 (1),
Communicating Indecently (Continuity of action).

Example 3

'A' sits down beside 'B' (aged over 16 years) on a bus and makes sexual comments to 'B'. 'B' is frightened and says nothing. 'B' eventually arrives at their stop and 'A' lets them off.

- 1 x Sexual Offences (Scotland) Act 2009, S7 (1),
Communicating Indecently

Example 4

'A' sits down beside 'B' (aged over 16 years) on a bus and makes a series of sexual comments to 'B' throughout the journey. As 'B' gets up to get off the bus they are sexually assaulted by 'B'.

- 1 x Sexual Offences (Scotland) Act 2009, S3, Sexual Assault
- 1 x Sexual Offences (Scotland) Act 2009, S7 (1),
Communicating Indecently

Example 5

'A' sits down beside 'B' (aged over 16 years) on a bus and makes sexual comments to 'B' just before sexually assaulting them.

- 1 x Sexual Offences (Scotland) Act 2009, S3, Sexual Assault (since the sexual comments were made in the immediate lead up to the sexual assault there is no requirement to record a separate offence of Communicating Indecently).

Example 6

Person 'A' who resides in 'X' Division sends sexually explicit text messages to 'B' who resides in 'Z' Division.

- 1 x Sexual Offences (Scotland) Act 2009, S7(1), Communicating Indecently, the locus being 'Z' Division unless there is clear evidence that 'A' was in a specific location in 'X' Division at the time the communication was sent.

Note

For the purposes of this section, a sexual communication can be either a written communication or a verbal communication:

“Written communication” means a communication in whatever written form, and without prejudice to that generality includes a communication which comprises writings of a person other than A (as for example a passage in a book or magazine) and “Verbal communication” means a communication in whatever verbal form, and without prejudice to that generality includes-

- a communication which comprises sounds of sexual activity (whether actual or simulated), and
- a communication by means of sign language.

For the offence of Communicating Indecently to be committed, the accused must intend to communicate with the victim.

If the purpose is not to obtain sexual gratification or to humiliate, distress or alarm, Communications Act 2003, Section 127 may be appropriate.

In circumstances where a victim is subjected to indecent communication which occurs in the immediate lead up to, during or immediately after a sexual crime such as Rape, Sexual Assault or Sexual Coercion there is no requirement to record a separate crime of Communicating Indecently.

This section applies to offences occurring on or after 1st December 2010. It will not apply for relevant activity occurring before this date. Depending on the circumstances, a charge under the Communications Act 2003 may be appropriate in this case.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, the Young Child offence should be recorded.

Sexual Offences (Scotland) Act 2009, Section 24(1)

Communicating Indecently with a Young Child

General Rule

One crime for each victim and continuity of action or per incident (as appropriate)

Definition

If a person (“A”) intentionally and for a purpose mentioned in subsection (3) –

(a) sends, by whatever means, a sexual written communication to, or

(b) directs, by whatever means, a sexual verbal communication at,

a child (“B”) who has not attained the age of 13 years, then A commits the offence of communicating indecently with a young child.

The purposes in subsection (3) are-

(a) obtaining sexual gratification,

(b) humiliating, distressing or alarming B.

Victim

Child who has received the indecent communication

Locus

Where communication made from, if known, otherwise where received

Examples

Example 1 A young child under 13 years of age receives sexually explicit messages on social media from a known person with a view to distressing or alarming the child.

- 1 x Sexual Offences (Scotland) Act 2009, S24 (1),
Communicating Indecently with a Young Child

Example 2 A parent and their young child under 13 years have each received the same text message of an indecent nature on their mobile phones. The messages have been sent by the same person, directly to the parent and the child.

- 1 x Sexual Offences (Scotland) Act 2009, S24 (1),
Communicating Indecently with a Young Child (due to the Young Child offence being the most serious).

Purporting to be older-younger

Where a young child/older child purports to be older/younger than they are, the appropriate Section of the Act should relate to the actual age of the child and not the age they purport to be.

Example 3 A young child purports to be an adult and communicates over social media with an adult who believes the person they are communicating with is an adult, the communication being of a sexual nature.

- 1 x Sexual Offences (Scotland) Act 2009, S24 (1),
Communicating Indecently with a Young Child

Where someone purports to be a young/older child for the purpose of enticing someone to carry out sexual activity and the individual being enticed believes they are doing so with a young/older child, this is sufficient to record an attempt to commit the relevant offence with the appropriate Section applicable being the age the person purports to be.

Example 4 An adult purports to be 12 year old and communicates over social media with an adult who believes the person they are communicating with is 12 years old, the communication being of a sexual nature.

- 1 x Sexual Offences (Scotland) Act 2009, S24 (1),
Communicating Indecently with a Young Child – Attempt

Note

For the purposes of this section, a sexual communication can be either a written communication or a verbal communication:

“Written communication” means a communication in whatever written form, and without prejudice to that generality includes a communication which comprises writings of a person other than A (as for example a passage in a book or magazine) and “Verbal communication” means a communication in whatever verbal form, and without prejudice to that generality includes-

- a communication which comprises sounds of sexual activity (whether actual or simulated), and
- a communication by means of sign language.

For the offence of Communicating Indecently with a Young Child to be committed, the accused must intend to communicate with the victim.

In circumstances where a victim is subjected to indecent communication which occurs in the immediate lead up to, during or immediately after a sexual crime such as Rape, Sexual Assault or Sexual Coercion there is no requirement to record a separate crime of Communicating Indecently.

This section applies to all offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, the common law crime of Lewd and Libidinous Practices will apply or an offence under the Communications Act 2003.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, the Young Child offence should be recorded.

Sexual Offences (Scotland) Act 2009, Section 34(1)

Communicating Indecently with an Older Child

General Rule

One crime for each victim and continuity of action or per incident (as appropriate)

Definition

If a person (“A”) who has attained the age of 16 years, intentionally and for a purpose mentioned in subsection (3), sends, by whatever means, a sexual written communication to or directs, by whatever means, a sexual verbal communication at, a child (“B”) who-

(a) has attained the age of 13 years, but

(b) has not attained the age of 16 years,

then A commits the offence of communicating indecently with an older child.

The purposes are-

(a) obtaining sexual gratification,

(b) humiliating, distressing or alarming B.

Victim

Child who has received the indecent communication

Locus

Where communication made from, if known, otherwise where received

Examples

Example 1 The parents of an older child aged 13 to 15 years, find a sexually explicit text message on their phone. The child reported receiving

the sexually explicit text message willingly on the mobile phone from an adult friend with the knowledge of the content.

- 1 x Sexual Offences (Scotland) Act 2009, S34 (1),
Communicating Indecently with an Older Child

Example 2

An older child aged 13 to 15 years, receives an unwanted sexually explicit text message on the mobile phone from an adult who intended the child as the recipient for the purposes of causing distress.

- 1 x Sexual Offences (Scotland) Act 2009, S7 (1),
Communicating Indecently

Example 3

An older child aged 13 to 15 years receives unwanted sexually explicit messages on their Social Networking Site from an adult intended to cause humiliation.

- 1 x Sexual Offences (Scotland) Act 2009, S7 (1),
Communicating Indecently

Example 4

An older child aged 13 to 15 years receives sexually explicit messages on social media from an adult, the purpose being to carry on a sexual conversation between the older child and the adult, for which the adult is obtaining sexual gratification.

- 1 x Sexual Offences (Scotland) Act 2009, S7 (1),
Communicating Indecently

Example 5

Parent and their child, aged 13 to 15 years, have been receiving unwanted text messages of an indecent nature on their mobile phones. The messages have been sent by the same adult to the adult's and child's phones for the purpose of causing distress and humiliation.

- 1 x Sexual Offences (Scotland) Act 2009, S7 (1),
Communicating Indecently (indicates sent with same purpose)

Example 6 Four persons acting together send indecent messages to an older child aged 13 to 15 years for the purposes of causing distress and humiliation.

- 1 x Sexual Offences (Scotland) Act 2009, S7 (1),
Communicating Indecently

Note

For the purposes of this section, a sexual communication can be either a written communication or a verbal communication:

“Written communication” means a communication in whatever written form, and without prejudice to that generality includes a communication which comprises writings of a person other than A (as for example a passage in a book or magazine) and “Verbal communication” means a communication in whatever verbal form, and without prejudice to that generality includes-

- a communication which comprises sounds of sexual activity (whether actual or simulated), and
- a communication by means of sign language.

For the offence of Communicating Indecently with an Older Child to be committed, the accused must intend to communicate with the victim.

In circumstances where a victim is subjected to indecent communication which occurs in the immediate lead up to, during or immediately after a sexual crime such as Rape, Sexual Assault or Sexual Coercion there is no requirement to record a separate crime of Communicating Indecently.

This section applies to all offences occurring on or after 1st December, 2010. This section applies to all offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, the common law crime of Lewd and Libidinous Practices or an offence under the Communications Act 2003 may apply.

In this section concerning ‘Older Children’, if the child consents to participate in the activities, it should be charged under the ‘Older Children’ section of the legislation.

However if there is no consent to this at all, then Section 7 of the legislation should apply, as the penalties are greater.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, the Young Child offence should be recorded.

Sexual Offences (Scotland) Act 2009, Section 7(2)

Causing a person to see or hear an Indecent Communication

General Rule

One crime for each victim and continuity of action or per incident (as appropriate)

Definition

If, in circumstances other than are as mentioned in subsection (1), a person (“A”), intentionally and for a purpose mentioned in subsection (3) causes another person (“B”) to see or hear, by whatever means, a sexual written communication or sexual verbal communication-

- (a) without B consenting to seeing or as the case may be hearing it, and
- (b) without any reasonable belief that B consents to seeing as the case may be hearing it,

then A commits the offence of causing a person to see or hear an indecent communication.

The purposes in subsection (3) are-

- (a) obtaining sexual gratification,
- (b) humiliating, distressing or alarming B.

Victim

Person who has seen or heard the indecent communication

Locus

Where the indecent communication was seen or heard

Examples

- Example 1 'A' reports that while sitting on a bus they are shown a sexually explicit text message by 'B' for the purpose of alarming or distressing 'A'.
- 1 x Sexual Offences (Scotland) Act 2009, S7 (2), Causing another person to see or hear an Indecent Communication

Note

For the purposes of this section, a sexual communication can be either a written communication or a verbal communication:

“Written communication” means a communication in whatever written form, and without prejudice to that generality includes a communication which comprises writings of a person other than A (as for example a passage in a book or magazine) and “Verbal communication” means a communication in whatever verbal form, and without prejudice to that generality includes:

- a communication which comprises sounds of sexual activity (whether actual or simulated), and
- a communication by means of sign language.

For the offence of Causing a Person to See or Hear an Indecent Communication, the accused must intend to communicate with the victim.

This section applies to offences occurring on or after 1st December 2010. It will not apply for relevant activity occurring before this date. Depending on the circumstances, a Breach of the Peace or a charge under the Communications Act 2003 may be appropriate in this case.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, the Young Child offence should be recorded.

Sexual Offences (Scotland) Act 2009, Section 24(2)

Causing a Young Child to see or hear an Indecent Communication

General Rule

One crime for each victim and continuity of action or per incident (as appropriate)

Definition

If, in circumstances other than are as mentioned in subsection (1), a person (“A”), intentionally and for a purpose mentioned in subsection (3) causes a child (“B”) who has not attained the age of 13 years to see or hear, by whatever means, a sexual written communication or sexual verbal communication then A commits an offence of causing a young child to see or hear an indecent communication. The purposes in subsection (3) are-

- (a) obtaining sexual gratification,
- (b) humiliating, distressing or alarming B.

Victim

Child who has seen or heard the indecent communication

Locus

Where the indecent communication was seen or heard

Examples

- Example 1 ‘A’ talks loudly to ‘B’ regarding graphic sexual content with the purpose of letting a young child under 13 years overhear the conversation, to cause distress to the young child.
- 1 x Sexual Offences (Scotland) Act 2009, S24 (2), Causing a Young Child to see or hear an Indecent Communication

Example 2 A young child under 13 years is shown a letter containing a sexual written communication by an older pupil at school to cause distress.

- 1 x Sexual Offences (Scotland) Act 2009, S24 (2), Causing a Young Child to see or hear an Indecent Communication.

Note

For the purposes of this section, a sexual communication can be either a written communication or a verbal communication:

“Written communication” means a communication in whatever written form, and without prejudice to that generality includes a communication which comprises writings of a person other than A (as for example a passage in a book or magazine) and “Verbal communication” means a communication in whatever verbal form, and without prejudice to that generality includes-

- a communication which comprises sounds of sexual activity (whether actual or simulated), and
- a communication by means of sign language.

This section applies to all offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, the common law crime of Lewd and Libidinous Practices will apply.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, the Young Child offence should be recorded.

Sexual Offences (Scotland) Act 2009, Section 34(2)

Causing an Older Child to see or hear an Indecent Communication

General Rule

One crime for each victim and continuity of action or per incident (as appropriate)

Definition

If, in circumstances other than are as mentioned in subsection (1), a person (“A”), who has attained the age of 16 years, intentionally and for a purpose mentioned in subsection (3) causes a child (“B”) who has attained the age of 13 years but not the age of 16 years, a sexual written communication or sexual verbal communication then A commits an offence of causing a young child to see or hear an indecent communication.

The purposes in subsection (3) are-

- (a) obtaining sexual gratification,
- (b) humiliating, distressing or alarming B.

Victim

Child who has seen or heard the indecent communication

Locus

Where the indecent communication was seen or heard

Examples

Example 1 An older child aged 13 to 15 years is in a library sitting next to an adult where the adult writes sexually explicit poems in a notepad that can be seen by the child. The child communicates with the adult and the adult continues to write sexually explicit notes for sexual gratification.

- 1 x Sexual Offences (Scotland) Act 2009, S34 (2), Causing An Older Child to see or hear an Indecent Communication

Example 2

An older child aged 13 to 15 years is in a library when an adult intentionally causes the child to open a book where they have placed a sexually explicit piece of text to alarm the child.

- 1 x Sexual Offences (Scotland) Act 2009, S7 (2) - Causing another person to see or hear an Indecent Communication

Note

For the purposes of this section, a sexual communication can be either a written communication or a verbal communication:

“Written communication” means a communication in whatever written form, and without prejudice to that generality includes a communication which comprises writings of a person other than A (as for example a passage in a book or magazine) and “Verbal communication” means a communication in whatever verbal form, and without prejudice to that generality includes-

- a communication which comprises sounds of sexual activity (whether actual or simulated), and
- a communication by means of sign language.

This section applies to all offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, the common law crime of Lewd and Libidinous Practices will apply.

In this section concerning ‘Older Children’, if there is consent from the child to participate in the activities, it should be charged under the ‘Older Children’ section of the legislation. However if there is no consent to this at all, then Section 7(2) of the legislation should apply, as the penalties are greater.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, the Young Child offence should be recorded.

Sexual Offences (Scotland) Act 2009, Section 8

Sexual Exposure

General Rule

One crime for each incident of course of conduct

Definition

If a person (“A”) –

- (a) without another person (“B”) consenting, and
- (b) without any reasonable belief that B consents,

intentionally and for a purpose mentioned in subsection (2), exposes A’s genitals in a sexual manner to B with the intention that B will see them, then A commits the offence of sexual exposure.

The purposes are-

- (a) obtaining sexual gratification
- (b) humiliating, distressing or alarming B.

Victim

Person who was seen the sexual exposure

Locus

Where crime takes place

Examples

Example 1 A report is received that a naked person is standing at a window of a house watching passers-by.

- 1 x Public Indecency

- Example 2 A report is received that a naked person is standing at a window of a house in full view of adult passers-by knowing they are being watched.
- 1 x Sexual Offences (Scotland) Act 2009, S8, Sexual Exposure
- Example 3 Person reports that they were in a park with their older child aged 13 to 15 years when a male exposed his penis to them and started masturbating.
- 1 x Sexual Offences (Scotland) Act 2009, S5, Coerce person to be present during sexual activity. (Suspect has intentionally engaged in a sexual activity in the presence of both victims who have been caused to view this activity without their consent).
- Example 4 A male sits next to an adult female on a park bench, exposes his penis and starts masturbating.
- 1 x Sexual Offences (Scotland) Act 2009, S5, Coerce person to be present during sexual activity. (Suspect has intentionally engaged in a sexual activity in the presence of the victim who has been caused to view this activity without their consent).
- Example 5 A male sits next to a young female (over 16 years) on a bus. During the journey the male exposes his penis and starts masturbating, he then grabs the female's hand and forces her to touch his penis and after she draws her hand away he touches her breasts over her clothing. The girl is scared and makes no mention of this to any other passenger or the bus driver. The matter is reported to police when she arrives homes.
- 1 x Sexual Offences (Scotland) Act 2009, S5, Coerce person to be present during sexual activity
 - 1 x Sexual Offences (Scotland) Act 2009, S3, Sexual Assault

Example 6 During the course of an afternoon male exposes his genitals to three different people at three different locations.

- 3 x Sexual Offences (Scotland) Act 2009, S8, Sexual Exposure (three separate incidents)

Note

There must be exposure “in a sexual manner” for this offence. This is different from public indecency which is concerned with “public order” actions such as urinating in the street or sunbathing in the nude. The exposure must also be intentional. If the exposure by the suspect includes behaviour where the suspect intentionally

 engages in a sexual act in the presence of another person, e.g. masturbating, without their consent this amounts to a crime of "Causing a person into being present during a sexual activity" which is recordable under Sections 5 or 22 (depending on the age of the victim) and not a crime of Sexual Exposure. The Section 32 (older child) crime is not applicable if the conduct was non-consensual.

Unlike the offence of public indecency, which requires that the conduct takes place in, or can be seen from, a public place, the offence of sexual exposure can be committed in a private place, providing that the perpetrator’s intention in exposing his or her genitals is either for obtaining sexual gratification or distress, humiliate or cause alarm to their victim.

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application should be recorded as a crime of "Cause to view sexual image" and not one of "Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

This section applies to offences occurring on or after 1st December, 2010. It will not apply for relevant activity occurring before this date. Depending on the circumstances, a charge of public indecency may be appropriate in this case.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, if it cannot be evidenced that the conduct was directed towards a

specific age group, then the offence relating to the lowest age group present should be recorded.

Sexual Offences (Scotland) Act 2009, Section 25

Sexual Exposure to a Young Child

General Rule

One crime for each incident or course of conduct

Definition

If a person (“A”) intentionally and for a purpose mentioned in subsection (2), exposes A’s genitals in a sexual manner to a child (“B”) who has not attained the age of 13 years, with the intention that B will see them, then A commits the offence of sexual exposure to a young child.

The purposes are-

- (a) obtaining sexual gratification
- (b) humiliating, distressing or alarming B.

Victim

Child who has seen the sexual exposure

Locus

Where crime takes place

Examples

Example 1 Two young children under 13 years of age are invited into a dwelling house, where an adult exposes their genitals for the purpose of sexual gratification.

- 1 x Sexual Offences (Scotland) Act 2009, S25, Sexual Exposure to a Young Child (one crime, two victims)

Example 2 An adult intentionally exposes their genitals for the purpose of sexual gratification to a large number of young children aged under 13 years who are together in a play park.

- 1 x Sexual Offences (Scotland) Act 2009, S25 Sexual Exposure to a Young Child (Numerous Victims)

Where it cannot be inferred that the purpose was for sexual gratification, humiliating, distressing or alarming the children then it would be a crime of Public Indecency

Example 3 A young child under 13 years of age disturbs a male urinating in a nearby street, exposing his penis and clearly in a drunken state.

- There is no intention to act in a sexual manner or for gratification.

Note

There must be exposure “in a sexual manner” for this offence. This is different from public indecency which is concerned with “public order” actions such as urinating in the street or sunbathing in the nude. The exposure must also be intentional. If the exposure by the suspect includes behaviour where the suspect intentionally engages in a sexual act in the presence of another person, e.g. masturbating, without their consent this amounts to a crime of "Causing a person into being present during a sexual activity" which is recordable under Sections 5 or 22 (depending on the age of the victim) and not a crime of Sexual Exposure. The Section 32 (older child) crime is not applicable if the conduct was non-consensual.

Unlike the offence of public indecency, which requires that the conduct takes place in, or can be seen from, a public place, the offence of sexual exposure can be committed in a private place, providing that the perpetrator’s intention in exposing his or her genitals is either for obtaining sexual gratification or distress, humiliate or cause alarm to their victim.

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application

should be recorded as a crime of "Cause to view sexual image" and not one of "Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

This section applies to offences occurring on or after 1st December 2010. If the offence occurred prior to this date, the common law crime of Lewd and Libidinous Practices or a crime of public indecency will apply.

Where is a mixed age group e.g. young children and older children, subjected to the conduct, if it cannot be evidenced that the conduct was directed towards a specific age group, then the offence relating to the lowest age group present should be recorded.

Sexual Offences (Scotland) Act 2009, Section 35

Sexual Exposure to an Older Child

General Rule

One crime for each incident or course of conduct

Definition

If a person (“A”) who has attained the age of 16 years, intentionally and for a purpose mentioned in subsection (2), exposes A’s genitals in a sexual manner to a child (“B”) who-

- (a) has attained the age of 13 years, but
- (b) has not attained the age of 16 years,

with the intention that B will see them, then A commits the offence of sexual exposure to an older child.

The purposes are-

- (a) obtaining sexual gratification,
- (b) humiliating, distressing or alarming B.

Victim

Child who has seen the sexual exposure

Locus

Where crime takes place

Examples

Example 1 An older child aged 13 to 15 walks along a path when an adult male jumps out exposing his genitals and starts masturbating in front of the child.

- 1 x Sexual Offences (Scotland) Act 2009, S5, Coerce person to be present during sexual activity (suspect has intentionally engaged in a sexual activity in the presence of the victim who has been caused to view this activity without consent).

Example 2

An older child aged 13 to 15 years reports that they disturbed an adult male urinating in the street, exposing his penis and clearly in a drunken state.

- There is no intention to act in a sexual manner or for gratification.

Example 3

Two older children aged 13 to 15 report that they were sitting in the park when an adult male exposed his penis to them and caused them alarm.

- 1 x Sexual Offences (Scotland) Act 2009, S35, Sexual Exposure to an Older Child (One crime, two victims).

Example 4

A parent and an older child aged 13 to 15 walk along a path when an adult male jumps out exposing his genitals and starts masturbating in front of the parent and older child.

- 1 x Sexual Offences (Scotland) Act 2009, S5, Coerce person to be present during sexual activity (suspect has intentionally engaged in a sexual activity in the presence of both victims who have been caused to view this activity without their consent).

Example 5

Adult male corresponds with 14 year old female by social media and builds up a conversation, eventually working up to speaking to her direct. During the chat he persuades her to switch on her camera so that he can see her. He engages in flirtatious conversation, eventually escalating to asking her to undress for him, which she refuses to do. He then moves his camera down to show her his erect penis and he masturbates in front of her. She switches off the computer.

- 1 x Sexual Offences (Scotland) Act 2009, S33, Cause an Older Child to look at a Sexual Image (if consensual)
- 1 x Sexual Offences (Scotland) Act 2009, S34 (1), Communicating Indecently with an Older Child (if consensual).
- If neither were consensual Sections 6 and 7 would apply.

Note

There must be exposure “in a sexual manner” for this offence. This is different from public indecency which is concerned with “public order” actions such as urinating in the street or sunbathing in the nude. The exposure must also be intentional. If the exposure by the suspect includes behaviour where the suspect intentionally engages in a sexual act in the presence of another person, e.g. masturbating, without their consent this amounts to a crime of "Causing a person into being present during a sexual activity" which is recordable under Sections 5 or 22 (depending on the age of the victim) and not a crime of Sexual Exposure. The Section 32 (older child) crime is not applicable if the conduct was non-consensual.

Unlike the offence of public indecency, which requires that the conduct takes place in, or can be seen from, a public place, the offence of sexual exposure can be committed in a private place, providing that the perpetrator’s intention in exposing his or her genitals is either for obtaining sexual gratification or distress, humiliate or cause alarm to their victim.

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application should be recorded as a crime of "Cause to view sexual image" and not one of "Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

This section applies to offences occurring on or after 1st December 2010. If the offence occurred prior to this date, the common law crime of Lewd and Libidinous Practices or a crime of public indecency will apply.

Where is a mixed age group e.g. young children and older children, subjected to the conduct, if it cannot be evidenced that the conduct was directed towards a specific age group, then the offence relating to the lowest age group present should be recorded.

Sexual Offences (Scotland) Act 2009, Section 9

Voyeurism

General Rule

One crime for each incident or course of conduct

Definition

A person (“A”) commits an offence of voyeurism if A does any of the following things for a purpose mentioned in subsection (6), without B consenting and without any reasonable belief that B consents;

- (1) Observes B doing a private act.
- (2) Operates equipment with the intention of enabling A or another person (“C”), to observe B doing a private act.
- (3) Records B doing a private act with the intention that A or another person (“C”), will look at an image of B doing the act.
- (4A) Operates equipment beneath B's clothing with the intention of enabling A or another person (“C”), to observe B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible.
- (4B) Records an image beneath B's clothing of B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person (“C”), will look at the image.
- (5) Installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to do any of the above acts.
- (6) The purposes are:
 - (a) obtaining sexual gratification,

(b) humiliating, distressing or alarming B.

Victim

Person who has been observed

Locus

Where crime takes place

Examples

- Example 1 A person enters a public toilet and by looking underneath a toilet cubicle, observes another adult using the lavatory.
- 1 x Sexual Offences (Scotland) Act 2009, S9, Voyeurism
- Example 2 A person installs a camera in public changing rooms, which allows the person to view three adults in cubicles getting dressed.
- 1 x Sexual Offences (Scotland) Act 2009, S9, Voyeurism
- Example 3 A person installs 3 cameras, all in individual changing rooms within a sports centre, allowing the person to view a number of adults in each of the cubicles getting dressed.
- 1 x Sexual Offences (Scotland) Act 2009, S9, Voyeurism
- Example 4 'A' drills a hole in the wall of flatmate 'B' which 'A' uses to record video footage allowing a friend 'C' to view 'B' engaging in sexual intercourse with their partner.
- 1 x Sexual Offences (Scotland) Act 2009, S9, Voyeurism
- Example 5 A person walks along a High Street in a busy city centre, recording images up the skirts of any passing person and captures multiple images of 'up skirt' footage.
- 1 x Sexual Offences (Scotland) Act 2009, S9, Voyeurism
- Example 6 'A' and 'B' have sexual intercourse in private which is recorded by a video camera set up by 'A' without the knowledge of 'B'.

- 1 x Sexual Offences (Scotland) Act 2009, S9, Voyeurism

Note

A person is deemed to be doing a private act if the person is in a place which in the circumstances would reasonably be expected to provide privacy and-

- (a) the person's genitals, buttocks or breasts are exposed or covered only with underwear,
- (b) the person is using a lavatory, or
- (c) the person is doing a sexual act that is not of a kind ordinarily done in public.

This section applies to offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, a Breach of the Peace would be appropriate.

If there are distinct and separate occasions, such as periods where the camera was removed, then each time it is placed back in the locus, a separate crime would be recorded.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, if it cannot be evidenced that the conduct was directed towards a specific age group, then the offence relating to the lowest age group present should be recorded.

Sexual Offences (Scotland) Act 2009, Section 26

Voyeurism towards a Young Child

General Rule

One crime for each incident or course of conduct

Definition

A person ("A") commits the offence of voyeurism towards a young child if A does any of the following things for a purpose mentioned in subsection (6) in relation to a child ("B") who has not attained the age of 13 years:

- (1) Observes B doing a private act.
- (2) Operates equipment with the intention of enabling A or another person ("C") to observe B doing a private act.
- (3) Records B doing a private act with the intention that A or another person ("C"), will look at an image of B doing the private act.
- (4A) Operates equipment beneath B's clothing with the intention of enabling A or another person ("C"), to observe B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible.
- (4B) Records an image beneath B's clothing of B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person ("C"), will look at the image.
- (5) Installs equipment or constructs or adapts a structure or part of a structure with the intention of enabling A or another person to do any of the above acts.
- (6) The purposes are:
 - (a) obtaining sexual gratification

(b) humiliating, distressing or alarming B

Victim

Young child who has been observed

Locus

Where crime takes place

Examples

Example 1 A teacher at a primary school installs a camera in the changing rooms, which allows them to view young children getting changed. It is established that 30 children have been filmed in their underwear, for the purpose of the teacher's sexual gratification.

- 1 x Sexual Offences (Scotland) Act 2009, S26, Voyeurism towards a Young Child, with 30 victims (there is no requirement to record a separate Civic Government (Scotland) Act 1982, S52 offence in relation to this conduct unless further criminality is identified, e.g. search of home computer reveals indecent images of children indicating the images have been downloaded on to a separate device, or that the images have been distributed).

Example 2 An adult enters a public toilet within a shopping centre and by looking over the toilet cubicle, observes a young child under the age of 13 years using the lavatory.

- 1 x Sexual Offences (Scotland) Act 2009, S26 Voyeurism towards a Young Child.

Note

A person is deemed to be doing a private act if the person is in a place which in the circumstances would reasonably be expected to provide privacy and-

- (a) the person's genitals, buttocks or breasts are exposed or covered only with underwear,
- (b) the person is using a lavatory, or
- (c) the person is doing a sexual act that is not of a kind ordinarily done in public.

Young children are not considered capable in law of giving consent to sexual activity and accordingly it is irrelevant whether or not the child has given permission for the person to view them or record them.

This section applies to all offences occurring on or after 1st December, 2010. If the offence occurred prior to this date Breach of the Peace may have been libelled.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, if it cannot be evidenced that the conduct was directed towards a specific age group, then the offence relating to the lowest age group present should be recorded.

Sexual Offences (Scotland) Act 2009, Section 36

Voyeurism towards an Older Child

General Rule

One crime for each incident or course of conduct

Definition

If a person (“A”) who has attained the age of 16 years, does any of the following things for a purpose mentioned in subsection (6) in relation to a child (“B”) who-

- (a) has attained the age of 13 years, but
- (b) has not attained the age of 16 years,

then A commits the offence of voyeurism towards an older child.

Those things are;

- (1) Observes B doing a private act.
- (2) Operates equipment with the intention of enabling A or another person (“C”) to observe B doing a private act.
- (3) Records B doing a private act with the intention that A or another person (“C”), will look at an image of B doing the private act.
- (4A) Operates equipment beneath B's clothing with the intention of enabling A or another person (“C”), to observe B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible.
- (4B) Records an image beneath B's clothing of B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person (“C”), will look at the image.

(5) Installs equipment or constructs or adapts a structure or part of a structure with the intention of enabling A or another person to do any of the above acts

(6) The purposes are-

- (a) obtaining sexual gratification,
- (b) humiliating, distressing or alarming B.

Victim

Child(ren) who have been observed

Locus

Where crime takes place

Examples

Example 1 An employee at a secondary school installs a camera in the changing rooms, which allows them to view children getting changed. It is established that a number of “older children aged 13 to 15 years have been filmed in their underwear.

- 1 x Sexual Offences (Scotland) Act 2009, S36, Voyeurism towards an Older Child.

Example 2 An adult enters a public toilet within a shopping centre and by looking over the toilet cubicle, observes an older child aged 13 to 15 years using the lavatory.

- 1 x Sexual Offences (Scotland) Act 2009, S36, Voyeurism towards an Older Child.

Note

This section applies to all offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, Breach of the Peace may be appropriate.

A person is deemed to be doing a private act if the person is in a place which in the circumstances would reasonably be expected to provide privacy and-

(a) the person's genitals, buttocks or breasts are exposed or covered only with underwear,

(b) the person is using a lavatory, or

(c) the person is doing a sexual act that is not of a kind ordinarily done in public.

If there are distinct and separate occasions, such as periods where the camera was removed, then each time it is placed back in the locus, a separate crime would be recorded.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, if it cannot be evidenced that the conduct was directed towards a specific age group, then the offence relating to the lowest age group present should be recorded.

Sexual Offences (Scotland) Act 2009, Section 11

Administering a substance for Sexual Purposes

General Rule

One crime for each victim

Definition

If a person (“A”) intentionally administers a substance to, or causes a substance to be taken by, another person (“B”)-

(a) without B knowing, and

(b) without any reasonable belief that B knows,

and does so for the purpose of stupefying or overpowering B, so as to enable any person to engage in a sexual activity which involves B, then A commits the offence of administering a substance for sexual purposes.

Victim

Person who has taken the substance

Locus

Where substance is administered

Examples

Example 1 ‘A’ is in a bar drinking with friends when ‘B’ adds a drug to their drink, helps ‘A’ out the premises into a nearby alleyway where ‘B’ intends to have sexual intercourse with ‘A’. ‘B’ is stopped before any sexual assault occurs.

- 1 x Sexual Offences (Scotland) Act 2009, S11, Administering a substance for Sexual Purposes.

Example 2 'A' is in a bar drinking with friends when 'B' adds a drug to their drink, helps 'A' out the premises into a nearby alleyway where 'B' has sexual intercourse with 'A'.

- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape
- 1 x Sexual Offences (Scotland) Act 2009, S11, Administering a substance for Sexual Purposes.

Note – prior to December 2010 this would have been recorded as a crime of common law Rape with the drugging aspect forming part of the Rape conduct.

Example 3 'A' is in a bar drinking with friends when they suddenly feels very ill and have to be taken home. A friend phones the police who take a urine sample which is tested positive for GHB.

- 1 x Assault (with a Drugging offence modifier). Unless it can be inferred that the drugs were administered for the purpose of stupefying or overpowering for a sexual purpose.

Note

This section applies to offences occurring on or after 1st December, 2010.

If A, whether by act or omission, induces in B a reasonable belief that the substance administered or taken is (either or both)-

- (a) of a substantially lesser strength, or
- (b) in a substantially lesser quantity,

than it is, any knowledge which B has (or belief as to knowledge which B has) that it is being administered or taken is to be disregarded.

Sexual Offences (Scotland) Act 2009, Section 37(1) and 37(4) Engaging while an Older Child in Sexual Conduct with or towards another Older Child

General Rule

One crime for each participant

Definition

(1) If a person ("A"), being a child who has attained the age of 13 years but not the age of 16 years, does any of the things mentioned below, "B" being in each case a child who has also attained the age of 13 years but not the age of 16 years, then A commits the offence of engaging with an older child in sexual conduct with or towards another older child.

Those things are that A-

- (a) penetrates sexually, with A's penis and to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B,
- (b) intentionally or recklessly touches the vagina, anus or penis of B sexually with A's mouth.

(4) In the circumstances specified above, if "B" engages by consent in the conduct in question, then "B" commits an, to be known as the offence of engaging while an older child in consensual sexual conduct with another older child.

Complainer

Procurator Fiscal (Participant can be recorded as a witness)

Locus

Where crime takes place

Examples

Example 1 An older child 'A' aged 13 to 15 years discloses that he had consensual sexual intercourse on a number of occasions with his female partner 'B', who is also aged 13 to 15 years.

- 1 x Sexual Offences (Scotland) Act 2009, S37 (1) – male suspect and female victim
- 1 x Sexual Offences (Scotland) Act 2009, S37 (4) – female suspect and male victim

Note - If only one participant requires to be jointly reported per Lord Advocate's Guidelines, only one crime should be recorded. If neither participant is to be reported no crimes should be recorded.

Example 2 An older child aged 13 to 15 years discloses that they performed oral sex on their partner who is also an older child aged 13 to 15 years, both of which consented fully.

- 1 x Sexual Offences (Scotland) Act 2009, S37 (1) – male suspect and female victim
- 1 x Sexual Offences (Scotland) Act 2009, S37 (4) – female suspect and male victim

Note - If only one participant requires to be jointly reported per Lord Advocate's Guidelines, only one crime should be recorded. If neither participant is to be reported no crimes should be recorded.

Example 3 An older female child aged 13 to 15 years discloses that they had consensual sexual intercourse with a 16 year old male.

- 1 x Sexual Offences (Scotland) Act 2009, S28, Sexual intercourse with an Older Child

Example 4 'A' and 'B', both 12 years old enter into a consensual sexual relationship resulting in sexual intercourse taking place on a number of occasions. Enquiry concludes that there are no concerns that either has been the dominant party.

- The provisions of Sexual Offences (Scotland) Act 2009, Section 37 do not apply to “younger children”. Whilst children under 12 cannot consent, since both parties are 12 years old and enquiry has not identified any specific concerns such as imbalance of power, dominant party etc. to suggest that one party is responsible, no crime would require to be recorded. Where there are concerns then an appropriate Sexual Offences (Scotland) Act 2009 offence should be recorded.

Note

Although the wording of this section suggests that it would also cover non-consensual conduct, it is more appropriate that such conduct should be recorded as rape, sexual assault by penetration or sexual assault.

This section applies to all offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, the common law crime of Lewd and Libidinous Practices may apply.

Reference should be made to the guidelines of the Lord Advocate for this offence type. If the reported circumstances do not meet the criteria laid down by these guidelines for jointly reporting an accused there is no requirement for a crime to be recorded.

Sexual Offences (Scotland) Act 2009, Section 42 Sexual Abuse of Trust (Children)

General Rule

One crime for each victim

Definition

If a person (“A”) who has attained the age of 18 years-

(a) intentionally engages in a sexual activity with or directed towards another person (“B”) who is under 18, and

(b) is in a position of trust in relation to B,

then A commits the offence of sexual abuse of trust

Note - This section of the legislation is aimed at children aged 16 or 17 years of age.

Victim

Child over whom the suspect/accused had a position of trust

Locus

Where crime takes place

Examples

Example 1 An employee at a secure accommodation facility has consensual sexual intercourse with a resident who is aged 16. The employee has regular sole charge for the resident and is responsible for their care.

- 1 x Sexual Offences (Scotland) Act 2009, S42, Sexual Abuse of Trust

- Example 2 A teacher touches a 17 year old student in a sexual manner, to which the student consented.
- 1 x Sexual Offences (Scotland) Act 2009, S42, Sexual Abuse of Trust
- Example 3 A child aged 13 to 15 years stated that their stepfather had sexual intercourse with them without consent.
- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape
- Example 4 A teacher has consensual sexual intercourse with a 16 year old student.
- 1 x Sexual Offences (Scotland) Act 2009, S42, Sexual Abuse of Trust
- Example 5 A teacher has sexual intercourse with a 16 year old student which is non-consensual.
- 1 x Sexual Offences (Scotland) Act 2009, S1 Rape
- Example 6 A teacher has sexual intercourse with a 14 year old student which is consensual.
- 1 x Sexual Offences (Scotland) Act 2009, S28 Sexual Intercourse with an Older Child (while Section 42 covers all persons under 18, it is principally designed to protect young people aged 16 and 17 who, even though they are over the age of consent for sexual activity, are vulnerable to sexual exploitation from particular classes of people who hold a position of trust or authority in relation to them. Since the victim is aged 14 and Section 28 is an offence in its own right there is no requirement to record a separate offence under Section 42).
- Example 7 'A' reports that in 1994 when they were 16 years old they entered in a consensual sexual relationship with their teacher which ended when they left school and moved away to go to university when they were 17/18 years old.

- Given the age of 'A' and no relevant legislation in place at the material time with regard to a position of trust no crime requires to be recorded.

Note

This offence covers both circumstances where a sexual abuse of trust occurs in a family setting and where it is committed by a person who has a position of trust over a child in their care i.e. a school, residential institution or a hospital.

A person ("A") is deemed to be in a position of trust in relation to another person ("B") if any of the following five conditions are fulfilled:

- (1) B is detained by virtue of a court or under an enactment in an institution and A looks after persons under 18 in that institution.
- (2) B is resident in a home or other place in which accommodation is provided by a local authority under Section 26(1) of the Children (Scotland) Act 1995 and A looks after persons under 18 in that place.
- (3) B is accommodated and cared for in-
 - (a) a hospital,
 - (b) accommodation provided by an independent health care service
 - (c) accommodation provided by a care home service
 - (d) a residential establishment, or
 - (e) accommodation provided by a school care accommodation service or a secure accommodation service,and A looks after persons in that place.
- (4) B is receiving education at-
 - (a) a school and A looks after persons under 18 in that school, or
 - (b) a further or higher education institution and A looks after B in that institution
- (5) The fourth condition is that A-

- (a) has any parental responsibilities or parental rights in respect of B,
- (b) fulfils any such responsibilities or exercises any such rights under arrangement with a person who has such responsibilities or rights,
- (c) had any such responsibilities or rights but no longer has such responsibilities or right, or
- (d) treats B as a child of A's family.

A looks after a person for the purposes of this section if A regularly cares for, teaches, trains, supervises or is in sole charge of the person.

This section applies to all offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, an offence under Section 3 of the Criminal Law (Consolidation) (Scotland) Act 1995 or Section 3 of the Sexual Offences (Amendment) Act 2000 will be appropriate.

Prior to the introduction of the Sexual Offences (Scotland) Act 2009 the Criminal Law (Consolidation) (Scotland) Act 1995 Section 3 provided an offence for a person over the age of 16 to have sexual intercourse with a person under the age of 16 if he is a member of the same household as the child and is in a position of trust or authority in relation to the child.

The Sexual Offences (Amendment) Act 2000, Section 3 provided that it was an offence for a person of 18 or over to engage in sexual activity with a person under that age where there was a position of trust between the parties, other than in a family setting. "Position of trust" is defined so as to include persons looking after the child in a residential establishment of any kind (including a care home, young offender's institute, etc.), a hospital or an educational establishment.

The Mental Health (Care and Treatment) (Scotland) Act 2003 Section 313 provided that it was an offence for a person to engage in sexual activity with a mentally disordered person where he or she is providing care services in respect of that other person).

Sexual Offences (Scotland) Act 2009, Section 46

Sexual Abuse of Trust of a Mentally Disordered Person

General Rule

One crime for each victim

Definition

(1) If a person (“A”) –

(a) intentionally engages in sexual activity with or directed towards a mentally disordered person (“B”), and

(b) is a person mentioned in subsection (2),

then A commits the offence of sexual abuse of trust of a mentally disordered person.

(2) Those persons are –

(a) a person providing care services to B,

(b) a person who –

(i) is an individual employed in, or contracted to provide services in or to, or

(ii) not being the Scottish Ministers, is a manager of,

a hospital, independent health care service or state hospital in which B is being given medical treatment.

Victim

Mentally disordered person over whom the accused/suspect had a position of trust

Locus

Where crime takes place

Examples

Example 1 A care worker 'A' provides a car service for 'B' who has learning difficulties. 'A' has sexual intercourse with 'B' which is consensual and to which 'B' has the capacity to consent.

- 1 x Sexual Offences (Scotland) Act 2009, S46 Sexual Abuse of Trust of a Mentally Disordered Person.

Example 2 A mentally disordered person who due to their disorder is not capable of giving consent to sexual activities, discloses to a social worker that their care worker had sexual intercourse with them.

- 1 x Sexual Offences (Scotland) Act 2009, S1 Rape

Note

This offence applies to persons with a mental disorder, regardless of whether that mental disorder negates their ability to consent to sexual conduct.

Where a person's mental disorder negates the ability to consent, then this would be an offence under Sections 1, 2 or 3 of the Act, or one of the Younger Children Offences.

This section applies to all offences occurring on or after 1st December, 2010. If the offence occurred prior to this date, an offence under Section 313 of the Mental Health (Care and Treatment) (Scotland) Act 2003 or Section 3 of the Sexual Offences (Amendment) (Scotland) Act 2000, may apply.

Other Sexual Crimes

Abusive Behaviour and Sexual Harm (Scotland) Act 2012, Section 2 Disclosing, or threatening to disclose, an intimate photograph or film

16/039 Threatening to disclose an intimate image

16/040 Disclosure of an intimate image

General Rule

One crime for each victim and continuity of action or per incident (as appropriate)

Definition

Section 2 - Disclosing, or threatening to disclose, an intimate photograph or film

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

- (a) A discloses, or threatens to disclose, a photograph or film which shows, or appears to show, another person (“B”) in an intimate situation,
- (b) by doing so, A intends to cause B fear, alarm or distress or A is reckless as to whether B will be caused fear, alarm or distress, and
- (c) the photograph or film has not previously been disclosed to the public at large, or any section of the public, by B or with B’s consent.

(2) For the purposes of this section, a photograph or film is disclosed if it, or any data or other thing which is capable of being converted into it, is given, shown or made available to a person other than B.

Section 3 - Interpretation of section 2

(1) For the purposes of section 2, a person is in an “intimate situation” if—

- (a) the person is engaging or participating in, or present during, an act which—

- (i) a reasonable person would consider to be a sexual act, and
 - (ii) is not of a kind ordinarily done in public, or
- (b) the person's genitals, buttocks or breasts are exposed or covered only with underwear.

(2) In section 2—

“film” means a moving image in any form, whether or not the image has been altered in any way, that was originally captured by making a recording, on any medium, from which a moving image may be produced, and includes a copy of the image,

“photograph” means a still image in any form, whether or not the image has been altered in any way that was originally captured by photography, and includes a copy of the image.

Victim

Person who has received threat or whose intimate image has been disclosed

Locus

Threats - where threat made, if known, otherwise where received

Disclosure - where image disclosed, if known, otherwise victim's home address

Examples

- Example 1 Intimate images are exchanged consensually between 'A' and 'B' who are both adults. 'B' sends the images to 'C' causing alarm to 'A' and causing 'C' to be alarmed when images are received.
- 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2016, S2 (disclose intimate image)
 - 1 x Sexual Offences (Scotland) Act 2009, S6 (if images meet criteria for “Sexual”) for sending the images.

- Example 2 Intimate images are exchanged consensually between 'A' and 'B' who are both aged 14. 'B' sends the images to 'C' (also 14) causing alarm to 'A' and causing 'C' to be alarmed when the images are received.
- 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2016, S2 (disclose intimate image)
 - 1 x Civic Government (Scotland) Act 1982, S52 (1) (b), Distribute indecent image of a child
 - 1 x Sexual Offences (Scotland) Act 2009, S6 (if images meet criteria for "Sexual") for sending the images
- Example 3 Intimate images are exchanged consensually between 'A' and 'B' who are both adults. 'B' threatens to expose the images of 'A' on social media if further images are not sent. 'A' complies and sends further images to 'B'.
- 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2016, S2 (threat to disclose intimate image)
 - 1 x Sexual Offences (Scotland) Act 2009, S4, Cause to participate in a Sexual Act (for causing 'A' to participate in a sexual act by taking naked photographs of themselves).
- Example 4 Intimate images are exchanged consensually between 'A' and 'B' who are both adults. 'B' threatens to expose the images of 'A' on social media if further images are not sent. 'A' complies and sends further images to 'B' which 'B' discloses on social media.
- 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2016, S2 (threat to disclose intimate image)
 - 1 x Sexual Offences (Scotland) Act 2009, S4, Cause to participate in a Sexual Act (for causing 'A' to participate in a sexual act by taking naked photographs of themselves)
 - 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2016, S2 (disclose intimate image)

- Example 5 'A' and 'B' who are both adults engage in a sexual act which is filmed by 'C' without their permission and is later disclosed by 'C' on social media.
- 1 x Sexual Offences (Scotland) Act 2009, S9, Voyeurism
 - 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2009, S2 (disclose intimate image)
- Example 6 Intimate images are exchanged consensually between 'A' and 'B' who are both adults. 'B' shows the images of 'A' to 'C'. 'C' advises 'A' that they have seen the images which causes alarm to 'A'.
- 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2009, S2 (disclose intimate image)
- Example 7 Intimate images are exchanged consensually between 'A' and 'B'. 'B' threatens to expose the images of 'A' on social media if 'A' does not agree to have sexual intercourse with 'B'. 'A' succumbs to the threat and has sexual intercourse with 'B'.
- 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2016, S2 (threat to disclose intimate image)
 - 1 x Sexual Offences (Scotland) Act 2009, S1, Rape
- Example 8 Female 'A' is sunbathing topless in their enclosed garden when 'B' leans over the fence and takes a photograph of 'A' without their knowledge. 'B' shouts over to 'A' that they are going to post the image on social media. Police confirm that photograph was taken by 'B'.
- 1 x Sexual Offences (Scotland) Act 2009, S9, Voyeurism
 - 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2016, S2 (threat to disclose intimate image)
- Example 9 'B' sends a request (visual) to 'A' (both adults) over social media which 'A' accepts. When 'B' appears on the screen they are seen to be naked and masturbating and encourages 'A' to do likewise

which 'A' does. 'B' then terminates the visual contact and sends a message to 'A' with a link to a recording of 'A' masturbating stating that unless they send them money the recording will be distributed to 'As' friends and family. 'A' sends money and the recording is not distributed.

- 1 x Sexual Offences (Scotland) Act 2009, S9, Voyeurism
- 1 x Extortion (due to demand for money)

Example 10

'A' logs into their social media account and discovers that someone has gained access and posted a number of indecent photographs of them which were not previously in the public domain.

- 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2016, S2 (disclose intimate image)
- 1 x Computer Misuse Act 1990, S2 (unauthorised access with intent to commit further offences)

Example 11

'A' receives a 'friend request' on social media from 'B' who they do not know and accepts. 'B' threatens to circulate indecent images of 'A' if they do not send indecent photos. 'A' knows there are no indecent images to be circulated and blocks 'B'.

- 1 x Communications Act 2003, S127 (Sexual) - (since 'A' is aware there are no indecent images the threat cannot be followed through therefore an offence under Abusive Behaviour and Sexual Harm (Scotland) Act 2016 or Attempted Extortion would not be relevant).

Example 12

'A' receives a message from 'B' advising that they are going to post indecent images of them on social media, no demand is made and 'A' is aware that previous partners may well have indecent images of them.

- 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2016, S2 (threat to disclose intimate image)

Example 13 'A' obtains an indecent image of an unknown person from the internet onto which they superimposes the head of 'B' before distributing to others.

- 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2016, S2 (disclose intimate image) - legislation covers photos which have been altered.

Note

It is recognised that any threat to disclose an intimate image which is accompanied by an element of person gain on the part of the person making the threat could be considered as a crime of Extortion. The following guidelines should be considered:

- a threat to disclose is made where the demand is for money or valuables - record Extortion.
- a threat to disclose is made where the demand is of a physical sexual nature - record Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 plus any relevant physical sexual crime if the victim complies with the demand.
- a threat to disclose is made where the demand is for further sexual images - record Abusive Behaviour and Sexual (Scotland) Act 2016, Section 2 plus any relevant sexual crime if the victim complies with the demand.

If a victim receives an intimate image of themselves this does not constitute any offence under Abusive Behaviour and Sexual Harm (Scotland) Act 2016 or Sexual Offences (Scotland) Act 2009. In these circumstances an offence under Communications Act 2003, Section 127 (sexual) should be recorded.

16/000 Assault - Indecent

General Rule

One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded

Definition

Every attack directed to take effect physically on the person of another is assault, whether or not actual injury is inflicted.

Indecent assault is not a specific crime, it is assault accompanied by indecency.

Victim

Person subject of assault

Locus

Where crime takes place

Examples

Example 1 An 11 year old girl is touched between the legs by an adult. This occurred prior to 1 December 2010.

- 1 x Lewd and Libidinous Practices and Behaviour (due to the age of the victim this should not be recorded as Indecent Assault).

Example 2 A report is received that in 2003 when the victim was 14 years old they moved in to be looked after by their aunt who was 30 years old at the time. Within months of moving in they engaged in a penetrative sexual relationship.

- 1 x Assault (Indecent) – there would be no expectation for Incest to be recorded given the age difference and imbalance of power.

Note

With the introduction of the Sexual Offences (Scotland) Act, 2009, Sexual Assault will most likely be recorded, as opposed to Assault (indecent).

Sexual activity (excluding Rape) where the victim is a girl of or above the age of 12 years and under the age of 16 years should be recorded as a crime of Lewd, Indecent and Libidinous Practices per Criminal Law (Consolidation) (Scotland) Act 1995, Section 6.

Sexual activity (excluding Rape/Sodomy) where the victim is a boy under 14 years and a girl under 12 years of age should be recorded as Lewd, Indecent and Libidinous Practices (Common Law).

18/021 Bestiality

General Rule

One crime for each accused

Definition

A human being having carnal connection with any of the lower animals.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 A man is found in a field having sex with a sheep.
 - 1 x Bestiality

Note

The lower animals include:

- cattle;
- sheep;
- pigs;
- goats;
- horses;
- poultry;
- domestic birds;

- domestic rabbits;
- domestic dogs;
- domestic cats;
- pets and kept animals;
- captive birds.

**18/010 Civic Government (Scotland) Act 1982, Section 46
Prostitution**

General Rule

One crime for each accused

Definition

A prostitute (whether male or female) who for the purposes of prostitution loiters in a public place; solicits in a public place or in any other place so as to be seen from a public place; or importunes any person who is in a public place.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 A known prostitute (having previously been warned on two occasions or reported to PF) is found soliciting in a public area.

- 1 x Civic Government (Scotland) Act 1982, S46

Example 2 Person found loitering in a public place for the purpose of prostitution. Checks confirm that this is the first time the suspect has come to the attention of Police for this type of behaviour.

- Note as a First Street Warning - no crime should be recorded.

Note

The Lord Advocate's Guidelines to Chief Constables on the Enforcement of Prostitution Related Offences issued in October, 2007 outlines that "It remains the case that offences which apply to sellers can only be committed by 'a prostitute' and, as such, a pre-requisite for the prosecution of sellers is that the accused has received at least two police warnings (whether formal or informal)" and, "Where an offender has been the subject of direct measures on at least two previous occasions, consideration should be given to the submission of a report to the Procurator Fiscal on the third or any subsequent occasion.

A crime will only be recorded in circumstances where a person is reported to the Procurator Fiscal. If a person is warned no crime will be recorded.

18/018 Civic Government (Scotland) Act 1982, Section 52
Taking, distribution, possession, publish etc.
indecent photos of children

General Rule

One crime for each accused or group of accused where appropriate

Definition

Section 52A (1)

It is an offence for a person to have any indecent photograph or pseudo-photograph of a child in his possession.

Section 52

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.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Examination of a person's computer finds a number of indecent photographs of children. There is evidence to confirm that these photographs were downloaded from the internet and saved within a file on the computer.

- 1 x Civic Government (Scotland) Act 1982, S52 (1) (a) for taking/making the images - there is only a requirement for the "take/make" offence to be recorded.

Example 2 On examination, a person's computer is found to contain indecent images of children downloaded from the internet and evidence shows they have been aware of what they were looking at via identified search criteria, however, these images are not physically saved within a file/drive on the computer. A USB stick is also recovered with indecent images thereon, however, it cannot be evidenced that these were made/taken.

- 1 x Civic Government (Scotland) Act 1982, S52 (1) (a) for taking/making the images
- 1 x Civic Government (Scotland) Act 1982, S52 (1), Possession of Indecent Images (in respect of the USB stick)

Example 3 A number of indecent photographs of children are found on a computer used by two persons. Both parties refuse to acknowledge they were responsible and there is sufficient evidence that the photographs could have been downloaded by one or both parties.

- 1 x Civic Government (Scotland) Act 1982, S52 (1) (a) for taking/making the images (two accused), there is only a requirement for the take/make offence to be recorded.

- Example 4 A person is found to be in possession of a number of indecent photographs of children. There is evidence to confirm that these photographs were downloaded from the internet and saved within a file on the computer. There is also evidence to confirm that the images were distributed to others.
- 1 x Civic Government (Scotland) Act 1982, S52 (1) (a) for taking/making the images
 - 1 x Civic Government (Scotland) Act 1982, S52 (1) (b) for distributing the images
- Example 5 A person is found to be in possession of three indecent photos of young children. There is no evidence to show how these came into their possession.
- 1 x Civic Government (Scotland) Act 1982, S52A (1), Possession of Indecent Images
- Example 6 Examination of a computer reveals several indecent images of children some of which show children involved in acts of extreme pornography. There is no evidence to show how these images were obtained.
- 1 x Civic Government (Scotland) Act 1982, S52A (1), Possession of Indecent Images (this accounts for all images since all involve children).
- Example 7 A 19 year old male is found to be in possession of three indecent photos of a 16 year old female. The male and the female are in an established relationship.
- This would be recorded as an incident only as the male would be exempt under Civic Government (Scotland) Act 1982, S52B.
- Example 8 A 13 year old female sends her 14 year old boyfriend a naked photograph of herself via mobile phone. When the relationship

breaks up the male distributes the naked photograph to his friends.

- 1 x Civic Government (Scotland) Act 1982, S52 (1) (b) – for distributing the images (while it is noted the female has committed an offence by taking and distributing an indecent image of herself it is unlikely any crime would be recorded in these circumstances).
- 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2016, S2 (disclose intimate image).

Example 9

A teacher at a primary school installs a camera in the changing rooms, which allows the teacher to view the young children getting changed. It is established that 30 children have been filmed in their underwear, for the purpose of the teacher's sexual gratification.

- 1 x Sexual Offences (Scotland) Act 2009, S26 Voyeurism towards a Young Child, with 30 victims (there is no requirement to record a separate Civic Government (Scotland) Act 1982, S52 offence in relation to this conduct unless further criminality is identified, e.g. search of home computer reveals indecent photographs of children indicating the images have been downloaded on to a separate device, or that the images have been distributed).

Example 10

A portable digital storage device is found in a public place and handed in to Police. When the contents are examined indecent images of children are found. There is no evidence to link any individual with making these images or possessing the storage device.

- Record as an incident only. If a crime has been recorded to document progression of the enquiry it can be updated to 'No Crime'.

Note

The word “child” refers to any person under the age of 18 years old.

Any naked image of a child is considered to be an indecent image.

Civic Government (Scotland) Act 1982, Section 52B provides exceptions in specific circumstances where the photograph is of a child aged 16 or 17.

Under normal circumstances when recording crimes under Civic Government (Scotland) Act 1982, Section 52, crime of both taking and possessing indecent images will not be recorded together unless it can be shown that indecent images were taken and then stored on alternative media, e.g. USB stick, therefore presenting justification to record both taking and possessing. Where indecent images have been distributed a further crime will be recorded.

Possession – for the offence of possession to be complete the person has to have knowledge or control of the child abuse content. If the images or videos are recovered from user controlled areas of the hard drive e.g. my documents, desktop, downloads etc. then the charge is complete.

Making/Taking – relates to bringing a child abuse image or video into existence by, for example, downloading it from Peer2Peer network, downloading it from the internet, copying it from a peripheral device. The person is actively making a copy of a child abuse image or video that never previously existed. If the images or videos are found within unallocated space or internet cache then this is an area of the hard drive that the person does not control and might not have any knowledge that the images or videos are even there. In this instance for the charge to be complete then you would need to show that the person went actively looking for child abuse material e.g. child abuse search terms via search engines, e.g. Google or Peer2Peer search terms thus their presence is a result of user action.

**16/041 Communications Act 2003, Section 127(1)
Indecent, Obscene, Menacing Telephone
Call/Message of a Sexual Nature**

General Rule

One crime for each victim and continuity of action or per incident (as appropriate)

Definition

A person is guilty of an offence if he:

- (a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character, or
- (b) causes any such message or matter to be sent.

Victim/Complainer

Person receiving the message/Procurator Fiscal as appropriate

Locus

Where sent from, if known, otherwise where received

Examples

Example 1 Sexual comments/images not directly sent to any individual are posted in a general page on social media.

- 1 x Communications Act 2003, S127 (1) (a) (Sexual)

Example 2 During a relationship a person consents to their partner making a video of them performing sexual acts in the belief that this would not be shared. When the relationship breaks up the former partner posts a sexual video of the victim on a pornographic internet

site. No person has been physically caused to view the video but it can be freely viewed by any person accessing the site.

- 1 x Abusive Behaviour and Sexual Harm (Scotland) Act 2016, S2 (disclose intimate image)

Example 3 'A' sends abusive text messages to 'B' and while the comments make some sexual references, the overall content of the messages is deemed to be more abusive than sexual.

- 1 x Communications Act 2003, S127 (1) (a) (Non-Sexual).

Example 4 While 'A' and 'B' were in a relationship they took naked photographs of each other which was consensual. Several months after the relationship broke up 'A' sent 'B' some naked photos of 'B'.

- 1 x Communications Act 2003, S127(1)(a) (Sexual) - note - sending a person a sexual or intimate photograph of themselves is not provided for by Sexual Offences (Scotland) Act 2009 or Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

Example 5 'A' allows 'B' to borrow their mobile phone. A notification appears on the mobile phone that a message has been received which 'B' opens. The content of the message is clearly intended for 'A' and outlines a conversation between 'A' and 'C' of a sexual nature outlining what they have done and would like to do to young children.

- 1 x Communications Act 2003, S127 (1) (a) (Sexual) - the offence under S127 (1) (a) is complete once the message is sent and the criminality of the conduct does not depend on the message being received by someone resulting in it causing offence.

Note

Where a report is received that a number of telephone calls over a period of time have been received from the same person or persons acting together with the same purpose, only one crime should be recorded even if dates and times are available.

SGJD Code 16/041 is applied where the communication is sexual and 84/002 where it is non-sexual.

The Sexual Offences (Scotland) Act, 2009 was introduced on 1st December, 2010. As a result of this new legislation, circumstances which may have previously been recorded as a Communications Act offence may now be more suited to an offence of Communicating Indecently (Sections 7(1), 24(1), 34(1)).

**12/000 Criminal Law (Consolidation) (Scotland) Act 1995,
Section 1
Incest**

General Rule

One crime for each relationship

Definition

Any male person who has intercourse with a person related to him (within forbidden degrees) or any female person who has sexual intercourse with a person related to her (within forbidden degrees) 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 with that person (this would be charged as rape or assault - indecent); 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.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 A brother and sister have consensual sexual intercourse.
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S1,
Incest

- Example 2 Two brothers have consensual sexual intercourse with their sister.
- 2 x Criminal Law (Consolidation) (Scotland) Act 1995, S1,
Incest (one crime for each relationship)

Note

In a case involving consenting adults, it would be admissible to charge both parties with the crime (1 crime with 2 accused).

See relevant statute for Forbidden Degrees of Relationship. Section 2 of the above Act relates to a step-child.

18/001 **Criminal Law (Consolidation) (Scotland) Act 1995,**
Section 7(1)
Procuring

General Rule

One crime for each victim

Definition

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,

Victim

Person against whom the offence was committed

Locus

Where procurement takes place

Examples

Example 1 Person invites three females from the Philippines to work in the UK as nannies but on their arrival deploys them as prostitutes in a sauna.

- 3 x Criminal Law (Consolidation) (Scotland) Act 1995, S7, Procuration

Note

Subsections (2) and (3) have now been repealed so relevant references have been removed. Subsection (1) still stands.

A number of other charges may be relevant depending on the circumstances, such as Human Trafficking and Exploitation (Scotland) Act 2015, Criminal Justice (Scotland) Act 2003, Section 22 or Criminal Law (Consolidation) (Scotland) Act 1995, Section 11 depending on circumstances. The above example is to illustrate the counting rule under Section 7 that 3 crimes must be recorded.

**18/017 Prostitution (Public Places) (Scotland) Act 2007,
Section 1
Soliciting for the purpose of obtaining the services
of a person engaged in Prostitution**

General Rule

One crime for each accused or course of conduct

Definition

The Act criminalises loitering or soliciting in any public place for the purpose of obtaining the services of someone engaged in prostitution.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Person seen to be driving slowly, stopping and offering money to three prostitutes individually in the street for sex.

- 1 x Prostitution (Public Places) (Scotland) Act 2007, S1

Example 2 Two persons in a car stop a prostitute in the street and ask for sex.

- 1 x Prostitution (Public Places) (Scotland) Act 2007, S1 (2 crimes if accused acting independently).

Note

Section 1 creates two offences:-

- (a) Soliciting in a relevant place for the purpose of obtaining the services of someone engaged in prostitution, and
- (b) Loitering in a relevant place in circumstances from which it may reasonably be inferred that the person loitering was doing so for the purpose of obtaining the services of a person engaged in prostitution.

Section 2 of the Act provides that where a constable reasonably believes that a person is committing, or has committed an offence under Section 1, the constable may arrest that person without warrant.

18/014 **Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, Section 1**
Grooming of Children for the Purpose of Sexual Offences

General Rule

One crime for each victim

Definition

(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;
- (iv) A is a British citizen or resident in the United Kingdom.

Victim

Child being groomed

Locus

Where crime takes place

Examples

Example 1 Adult male engages a 13 year old child in conversation over social media. Over a period of time the conversation becomes sexual and arrangements are made for them to meet where it is clear that this is for a sexual purpose.

- 1 x Sexual Offences (Scotland) Act 2009, S34, Communicating Indecently with an Older Child
- 1 x Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, S1

Example 2 Adult 'A' engages 'B' (also an adult purporting to be 14 years old) in sexual conversation on social media during which they arrange to meet for the purpose of sexual intercourse.

- 1 x Sexual Offences (Scotland) Act 2009, S34, Attempt to Communicate Indecently with an Older Child
- 1 x Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, S1 for attempting to meet with a child for the purpose of sexual intercourse.

Example 3

'A', an adult, engages with 'B' (an adult using the false profile of a 14 year old female) on social media which later develops into sexual conversation. 'B' is an active member of a sexual abuse activist group who create false profiles where they purport to be children. 'B' alerts other member of the group to their sexual chat with 'A' which prompts 'C', 'D' and 'E' also to engage with 'A' using their false child profiles.

- In these circumstances appropriate age related crimes should be recorded as if 'B', 'C', 'D' and 'E' are individual victims.

Note

In circumstances where a substantive sexual crime(s) is/are committed against the victim where there is evidence of grooming per the provisions of Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, Section 1 both offences should be recorded.

17/002 Public Indecency

General Rule

One crime for each course of conduct

Definition

The paradigm case of public indecency is indecent exposure, but it may extend to other forms of indecency such as sexual intercourse in public view, or the making of indecent actions or gestures in a stage show.

Where a person has intentionally exposed their genitals for the purposes of sexual gratification or causing humiliation, distress or alarm to the complainer, then a crime of sexual exposure will be more appropriate.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Person reports that they were walking in a park with their child who is aged 13 to 15 years, another male deliberately exposed his penis to them in a sexual manner.

- 1 x Sexual Offences (Scotland) Act 2009, S8 Sexual Exposure (there is nothing to indicate the conduct was specifically directed towards the child). If the sexual element did not exist the crime would be one of Public Indecency.

Example 2 A report is received that a group of males dropped their trousers, showing their buttocks to an adult complainer.

- 1 x Public Indecency
- or
- 1 Crime of Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or Abusive Behaviour

Example 3 A male is standing at a bus stop with his hands in his trouser pockets masturbating (no exposure). Two persons nearby observe this and have no doubt that is what he was doing and contact the police.

- 1 x Sexual Offences (Scotland) Act 2009, S5, Cause person to be present during sexual activity

Example 4 During a rugby international fixture a naked male runs across the pitch in full view of thousands of people.

- 1 x Public indecency

Note

It is not relevant to the crime's definition whether or not it is committed for the sexual gratification of the accused however such motivation is likely to constitute an offence of sexual exposure under Sections 8, 25 or 35 the Sexual Offences (Scotland) Act 2009.

Unlike the offence of Sexual Exposure, the offence of public indecency is a public order offence which relates to activities such as nude sunbathing, urinating in public or streaking.

Public indecency is a public order offence, therefore, is recorded per incident, not per victim.

It is sufficient that the conduct should cause public offence with the test being the standards that would be applied by the average citizen in contemporary society.

The crime does not extend to conduct in private that would cause offence merely if certain people were to hear of it, however, conduct falling within the definition could

take place on a private occasion if it occurred in the presence of unwilling witnesses or if it occurred on private premises but was nonetheless visible to the public.

Public Indecency - This can be conduct in private where exposure does not have to be genitals and does not have to be for the purpose of sexual gratification. Sexual conduct in public could be Public Indecency if there are indications there were attempts at being discrete.

Sexual Exposure - This is exposure of genitals in a sexual manner, in private or in public and does not include sexual activity, e.g. masturbation.

Cause to be present during Sexual Activity - There is no requirement for exposure of genitals but there must be a sexual element to the conduct, e.g. masturbation. Can be committed in private or in public. There will be an expectation that the conduct was carried out where it would be reasonable to assume the person(s) would be seen (not discrete).

Repealed Sexual Crimes

The following crimes were repealed as a result of the introduction of the Sexual Offences (Scotland) Act 2009 and accordingly will only be applicable for reported crimes occurring prior to 1 December 2010).

15/000 Attempted Rape/Assault with intent to Rape

General Rule

One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded

Definition

A criminal attack directed to take effect physically on the person of another is assault, whether or not actual injury is inflicted. An assault may be aggravated by intent to gratify lewdness or to ravish.

Assault with Intent to Rape (pre 1 December 2010)

The accused physically and/or sexually assaults the complainer with the intention of penetrating her vagina with his penis without her consent.

Attempted Rape (pre 1 December 2010)

The accused attempts to penetrate the vagina of the complainer with his penis without the complainer's consent and the accused had no reasonable belief that the complainer was consenting.

Victim

Person subject of assault

Locus

Where crime takes place

Examples

- Example 1 'A' attempts to rape 'B', 'C' and 'D' and rapes 'E' (occurs before 1 December 2010).
- 1 x Rape (common law)
 - 3 x Attempted Rape/Assault with intent to Rape (common law)
- Example 2 'A' reports that 'B' spiked their drink and thereafter attempted to rape her (occurs before 1 December 2010).
- 1 x Attempted Rape/Assault with intent to Rape (common law).
A suitable aggravator should be applied to the crime report to allow identification that a drug may have been used to facilitate the crime (see 11/005 - Assault (Drugging) for further guidance).
- Example 3 'A' reports that their drink was spiked by an unknown person and later 'B' has attempted to rape her (occurs before 1 December 2010).
- 1 x Attempted Rape/Assault with intent to Rape (common law).
 - 1 x Assault (with Drugging offence modifier) - these events have occurred at different times, are not a continuous course of conduct and it is unknown if the same offender was responsible for both (see 11/005 Assault (Drugging) for further guidance).
- Example 4 'A' reports that 'B' and 'C' attempted to rape her (occurs before 1 December 2010).
- 1 x Attempted Rape/Assault with intent to Rape (common law).
- Example 5 'A' female reports that on a number of occasions within a three month period 'B' has attempted to rape her. 'A' is unsure of specific dates (occurs before 1 December 2010).

- 1 x Attempted Rape/Assault with intent to Rape (common law). If specific dates, times, loci were provided a crime should be recorded for each occasion.

Note

If a victim is raped by more than one male, count crimes separately unless the males are acting together as a group.

From 1st December, 2010 the rape element will be non-gender specific, therefore will also apply to male victims. The Sexual Offences (Scotland) Act 2010 will apply in terms of the penis insertion into the vagina, anus and mouth.

**18/008 Criminal Law (Consolidation) (Scotland) Act 1995,
Section 3(1)
Person with Custody and Care of Girl or other
Causing her Seduction**

General Rule

One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded

Definition

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.

Victim

Individual against whom the offence was committed

Locus

Where crime takes place

Examples

Example 1 30 year old man has consensual sexual intercourse with his sister's 13 year old daughter (occurs before 1 December 2010).

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S5 (3), Unlawful Sexual Intercourse with girl between 13 and 16 years. Note - there would be no expectation that a 13 year old

would be reported for Incest given the age difference and the potential imbalance of power.

Example 2

30 year old man has intercourse with his wife's sister's 13 year old daughter who lives with them (occurs before 1 December 2010).

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S3, Sexual Intercourse with child under 16 while in position of trust. Note - there would be no expectation that a 13 year old would be reported for Incest given the age difference and the potential imbalance of power.

**18/002 Criminal Law (Consolidation) (Scotland) Act 1995,
Section 5(1)
Sexual Intercourse with Girl under 13**

General Rule

One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded

Definition

Any person who has or attempts to have unlawful sexual intercourse with any girl under the age of 13 years.

Victim

Individual against whom the offence is committed

Locus

Where crime takes place

Examples

Example 1 Two 12 year old girls are invited into a dwelling where a male has consensual sexual intercourse with them (occurs before 1 December 2010).

- 2 x Criminal Law (Consolidation) (Scotland) Act 1995, S5 (1), Unlawful Sexual Intercourse with a girl under 13

Example 2 Male has sexual intercourse with an 11 year old girl (occurs before 1 December 2010).

- 1 x Rape (common law) as the girl is under the age of 12

Example 3 Male has consensual intercourse with a girl who is 12 years old
(occurs before 1 December 2010).

- 1 x Criminal Law (Consolidation) (Scotland Act 1995, S5 (1)
Unlawful Sexual intercourse with a girl under 13

Note

The age of the male is irrelevant.

**18/003 Criminal Law (Consolidation) (Scotland) Act 1995,
Section 5(3)
Sexual Intercourse with a Girl under 16**

General Rule

One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded

Definition

Any person who has or attempts to have unlawful sexual intercourse with any girl who has attained the age of 13 years and is under the age of 16.

Victim

Individual against whom the offence was committed

Locus

Where crime takes place

Examples

Example 1 Male drives 15 year old female drive to a secluded area where they have consensual sexual intercourse (occurs before 1 December 2010).

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S5 (3), Sexual Intercourse with a girl under 16

Note

Time-Bar Provision

No prosecution shall be commenced for an offence under subsection (3) more than one year after the commission of the offence. (Section 15 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act, 2005 removed the time bar provision. This was commenced on 7 October 2005 so the time bar does not apply to offences after this date). It should be noted that the time bar does not apply to subsection (1) – unlawful sexual intercourse with any girl under the age of 13 years. If a time-bar does apply, an offence under Section 5(3) should still be recorded and the SPR updated to the effect that the Procurator Fiscal may instead wish to consider Section 6 (Lewd and Libidinous Practices against girl between 12 and 16).

18/022 **Criminal Law (Consolidation) (Scotland) Act 1995,**
Section 6
Lewd, Indecent and Libidinous Practices (statute)

General Rule

One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded

Definition

Any person who uses towards a girl of or above the age of 12 years and under the age of 16 years any lewd, indecent or libidinous practices 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 guilty of an offence.

Victim

The girl subject of abuse

Locus

Where crime takes place

Examples

- Example 1 Two 14 year old girls invited into dwelling house, accused exposes his penis (occurs before 1 December 2010).
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S6, Lewd and Libidinous Practices (statute)

Example 2 A 13 year old girl is touched between the legs by an adult male (occurs before 1 December 2010).

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S6, Lewd and Libidinous Practices (statute) - due to the age of the victim this should not be recorded as Indecent Assault.

Note

In circumstances where several crimes have occurred over a date range encompassing a period when the victim was aged 12 and under (common law), and also over 12 and under the age of 16 (statute) both crimes (common law and statute) must be recorded.

Lewd, Indecent and Libidinous Practices covers a variety of sexual conduct, with the exception of Rape, and should be recorded when the victim falls into the age group defined by the legislation. Indecent Assault should not be recorded where sexual activity has occurred and the victim falls with the age group protected by this legislation.

**13/001 Criminal Law (Consolidation) (Scotland) Act 1995,
Section 13
Homosexual Acts (Illegal)**

General Rule

One crime for each relationship

Definition

A homosexual act means sodomy or an act of gross indecency, by one male person with another.

A homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of 16 years.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 One male forcing another male to have anal intercourse.

(a) Occurs before 1 December 2010

- 1 x Sodomy (common law)

(b) Occurs after 1 December 2010

- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape

Example 2 One male forcing another male to carry out oral sex upon him.

(a) Occurs before 1 December 2010

- 1 x Assault (with Indecent offence modifier)
- (b) Occurs after 1 December 2010
- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape

Note

'In private' does not extend to a lavatory to which the public have, or are permitted to have access, whether on payment or otherwise.

Prior to 1 December 2010, where the sex is non-consensual the charge of Sodomy (13/003) or Indecent Assault (16/000) will apply.

It should be noted that any reports of non-recent sexual acts between consenting same sex partners, which would if occurring today in the same circumstances no longer be an offence, will not be recorded as crimes regardless of legislation in place at the material time. Any non-consensual acts will continue to be recorded in line with appropriate legislation.

18/012 **Criminal Law (Consolidation) (Scotland) Act 1995,**
Section 13
Procuration of Homosexual Acts

General Rule

One crime for each relationship

Definition

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 16 years.

It shall be an offence to procure the commission of a homosexual act between two other male persons

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 Adult male offering an inducement to male to engage in sodomy in a public toilet (occurs before 1 December 2010).
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S13, Procuration of Homosexual Acts.

18/022 Lewd, Indecent and Libidinous Practices (common law)

General Rule

One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded

Definition

Lewd, indecent and libidinous practices consist of indecent conduct directed against a specific victim who is within the class of persons whom the law protects, i.e. boys under 14 years and girls under 12 years of age.

The essence of the offence is the tendency to corrupt the innocence of the complainant. It is criminal whether committed in public or in private.

Victim

The child who has been the subject of abuse

Locus

Where crime takes place

Examples

Example 1 Victim, now aged 25, reports to the police having been subjected to sexual abuse by his uncle from the age of 9 to 13 (occurred prior to 1 December 2010).

- 1 x Lewd and Libidinous Practices and Behaviour (if times, dates, loci provided separate crimes should be recorded).

Example 2 Two sisters aged 11 and 7 are subjected to watching pornographic films by their 38 year old babysitter, every Friday

night for 6 weeks, before they tell their mother and the police become involved (occurred prior to 1 December 2010).

- 12 x Lewd and Libidinous Practices and Behaviour (six dates are identifiable and there are two victims).

Example 3 Two 12 year old victims report that on 5 December 2010 they were invited into dwelling house, where an adult male exposed his penis.

- 1 x Sexual Offences (Scotland) Act, 2009, S25, Sexual Exposure to a Young Child

Example 4 12 year old boy is indecently assaulted by 3 persons acting together (occurred before 1 December 2010).

- 1 x Lewd and Libidinous Practices and Behaviour

Example 5 An 11 year old girl is touched between the legs by an adult male (occurred before 1 December 2010).

- 1 x Lewd and Libidinous Practices and Behaviour (due to the age of the victim this should not be recorded as Indecent Assault)

Note

The essence of the offence is the tendency to corrupt the innocence of the complainant. It is criminal whether committed in public or private. It may be committed by indecent physical contact with the victim, but it need not.

Below are examples of such conduct:

- Indecent exposure to the victim and the taking of indecent photographs of the victim.
- Non-consensual homosexual conduct with a male under 14 (Over 14 is the crime of Indecent Assault).
- Lewd conversation with the victim whether face to face or by a telephone call or through an Internet chat room.

- Showing of indecent photographs or videos to the victim or by other forms of indecent conduct carried out in the presence of the victim.

Males between the ages of 14 years and 16 years engaging in consensual homosexual acts are not themselves liable but the older male may be guilty of the offence of gross indecency.

Males aged between 14 years and 16 years who engage in consensual homosexual conduct (where the other party is over 16) are protected by Criminal Law (Consolidation) (Scotland) Act 1995, Section 13(5).

Indecent Assault should not be recorded where sexual activity has occurred and the victim falls with the age group protected by this common law crime.

14/000 Rape (Common Law)

General Rule

One crime for each victim and where separate dates and/or loci are identified separate crimes to be recorded

Definition

Rape is the carnal knowledge of a female, by a male person, without her consent
or

Of a girl under 12 years of age, even if she is willing, or with a female who is incapable through mental abnormality, of giving proper consent.

Carnal knowledge means penetration by the penis (not digitally), to the slightest extent, even without emission.

Victim

Person subject of assault

Locus

Where crime takes place

Examples

Example 1 A woman reports having been raped where the alleged offender claims she consented and the woman maintains she didn't.

(a) Occurs before 1 December 2010

- 1 x Rape (common law)

(b) Occurs after 1 December 2010

- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape

Example 2 A woman reports that she was raped by the same man on numerous occasions at the same locus over several years but cannot specify dates.

(a) Occurs before 1 December 2010

- 1 x Rape (common law)

(b) Occurs after 1 December 2010

- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape

Example 3 A woman reports being raped anally by a male.

(a) Occurs before 1 December 2010

- 1 x Assault (with Indecent offence modifier)

(b) Occurs after 1 December 2010

- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape

Example 4 A woman reports being raped by a group of men who were acting together.

(a) Occurs before 1 December 2010

- 1 x Rape (common law)

(b) Occurs after 1 December 2010

- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape

Note

Where persons act individually, even though there is only one victim count each individually.

Where several people act together, this will be recorded as one crime.

The general rule relating to the law of rape is not the use of force but reference to the woman's lack of consent.

Recording/Reporting of Rape

In circumstances where a victim reports a crime of Rape and there is insufficient evidence to corroborate penetration, but sufficient evidence to prove Attempted Rape or Assault with intent to Rape, then a crime of Rape should be recorded.

An SPR2 libelling a charge of Rape should be submitted to the Procurator Fiscal detailing the full circumstances for their consideration. The Rape crime report will be shown as detected in these circumstances. Whilst the accused may be charged with Attempted Rape or Assault with intent Rape due to the evidence available, the "Remarks" section of the SPR should provide an explanation as to why the charge being libelled on the front page of the SPR is one of Rape. The following has been agreed by COPFS and must be added to the "Remarks" section of an SPR2 for cases where Rape is libelled but it is considered there is only a sufficiency of evidence to report Attempted Rape or Assault with intent to Rape:

'A charge of Rape has been libelled within this SPR2 to reflect the crime reported by the victim. The circumstances have been fully investigated and it is considered that, despite significant and sufficient evidence in respect of the other essential evidential elements there is insufficient evidence to prove penetration. On this occasion, the Accused has been charged with Attempted Rape / Assault With Intent to Rape (as appropriate).'

This will allow the Procurator Fiscal to fully consider the evidence presented and enable them to change the charge to that which they intend to proceed with, and thus preserve the victim orientated approach to crime recording required by SCRS.

Husband & Wife

Legal authorities, in the past, held that a husband could not be convicted of rape of his wife. However, it has now been held that a charge alleging that a husband raped his wife is relevant, and that it is not an incident of modern marriage that a wife consents to intercourse, by her husband, in all circumstances, including intercourse obtained by force, and the husband is not immune from prosecution for rape of his wife. (*Stallard v. H.M.A.*, 1989 S.C.C.R. 248). It should be noted that this court decision did not "change the law" as of that date, but decided that the historically

suggested position was not valid based on the crime as it was at the time. Any reported crimes meeting this criteria which occurred prior to 1989 must be recorded.

13/001 Sodomy/Attempted Sodomy

General Rule

One crime for each victim and where specific dates and/or loci are identified separate crime to be recorded

Definition

The common law offence of Sodomy consists of the insertion of the penis into the anus of another male. As with rape, proof of penetration is an indispensable requirement. It is not an offence for two consenting adults over the age of 16 years to engage, in private, in a homosexual act, namely sodomy or an act of gross indecency.

Victim

Person subject of assault

Locus

Where crime takes place

Examples

Example 1 'A' befriends 'B' at a nightclub, both return to a private flat, thereafter 'B' falls asleep and is awoken sometime later by 'A' sodomising him against his will (occurred before 1 December 2010).

- 1 x Sodomy

Example 2 'A' and 'B' enter a cubicle of a public toilet together, whereby 'A' forces himself on 'B' and sodomises him (occurred after 1 December 2010).

- 1 x Sexual Offences (Scotland) Act 2009, S1, Rape

Example 3 'A' and 'B' report being sodomised by 4 members of a group of men acting together (occurred after 1 December 2010).

- 2 x Sodomy

Example 4 A man is sodomised by three persons, acting together during one incident (occurred before 1 December 2010).

- 1 x Sodomy

Note

If a person has been sodomised by more than one other man, count these crimes separately, unless the perpetrators have been acting together as a group.

Where persons act as a group count one crime.

Group 3 – Crimes of Dishonesty

Crime Category	SGJD Code
Civic Government (Scotland) Act 1982, S57	
- In building with intent to steal	21/003
Civic Government (Scotland) Act 1982, S58	
- Convicted thief in possession	21/002
Criminal Justice and Licensing (Scotland) Act 2010, S49	
- Articles for use in Fraud	25/000
Criminal Law (Consolidation) (Scotland) Act 1995, S46A	
- False monetary instruments	25/000
Forgery and Counterfeiting Act 1981	31/001
Forgery and Uttering (excluding currency offences)	25/000
Fraud	
- Breach of Trust/Embezzlement	24/000
- Fraud	25/000
- Bankruptcy	27/000
Housebreaking	19/004 to 19/012
Identity Documents Act 2010	25/000
Open Lockfast Place (excluding motor vehicle)	20/001 to 20/003
Open Lockfast Place (ATM)	25/000
Open Lockfast Place (Motor Vehicle)	20/004 to 20/006
Proceeds of Crime Act 2002	
- Money Laundering	31/004
Reset	23/000

<u>Theft by Shoplifting</u>	22/003
<u>Theft (not elsewhere classified)</u>	22/001
<u>Theft from Motor Vehicle</u>	22/005
<u>Theft of Motor Vehicle including Take and Drive Away</u> and	22/002
<u>Attempted Theft of Motor Vehicle</u>	22/006
<u>Theft of Pedal Cycle</u>	22/004
<u>Trade Marks Act 1994, S92</u>	25/000
<u>Vehicle Excise and Registration Act 1994</u>	
- S44 Fraud	25/000
- S44 Forgery	26/000

Counting Rules

Multiple incidences of the same Crime of Dishonesty committed on the same occasion at the same locus with the same complainer will be recorded as one crime only. Where it would be possible to record multiple types of crimes of dishonesty (e.g. Theft by Housebreaking and opening lockfast place) within the same incident, only one crime type i.e. the most 'serious' will be applied. The term used within this manual for this practice is 'subsume'.

**21/003 Civic Government (Scotland) Act 1982, Section 57
Intended Theft (Curtilage, In / on a Building,
Vehicle/Vessel)**

General Rule

One crime for each separate property not within the same curtilage/building/vehicle/vessel

Definition

Section 57

Any person who, without lawful authority to be there, is found in or on 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 they intended to commit theft.

Victim/Complainer

Owner of the Property/Procurator Fiscal (where no owner identified)

Locus

Where crime takes place

Examples

Example 1 Householder finds a person in their house looking through a kitchen cupboard, person makes off empty handed and is not traced.

- 1 x Civic Government (Scotland) Act 1982, S57

Example 2 Householder sees a hand appearing through the kitchen window, raising the window in an attempt to steal a purse lying just inside.

- 1 x Housebreaking with intent to steal (domestic)

- Example 3 Two persons found within the closed private bar area of a hotel looking through cupboards with no reason for being there.
- 1 x Civic Government (Scotland) Act 1982, S57
- Example 4 An insecure vehicle has been entered with the suspect making off on being disturbed. There are indications that a search has been carried out e.g. property/documents disturbed, the glove box has been searched, but no indication of an attempt to steal the vehicle and no property found to be missing.
- 1 x Civic Government (Scotland) Act 1982, S57
- Example 5 Two persons carrying a large bag are seen by a security guard in a compound with torches, looking in the windows of three portacabins, which are owned by different contractors, access having been gained by climbing over the fence. Both persons make off on the security guard making their presence known. No property identified as having been stolen.
- 1 x Civic Government (Scotland) Act 1982, S57
- Example 6 'A' who has previous convictions for crimes of Theft is found within the curtilage of a building in circumstances where it could reasonably be inferred that they intended to commit Theft. When searched by Police 'A' is found to be in possession of gloves and a crowbar.
- 1 x Civic Government (Scotland) Act 1982, S57 (no requirement to record a separate Section 58 offence in circumstances where the person is found within the curtilage).
- Example 7 Householder on examining CCTV footage sees a person walking up their private driveway during hours of darkness, looking around them, trying each of the door handles of a car parked in the driveway before trying doors of the house and garage.
- 1 x Civic Government (Scotland) Act 1982, S57 (the circumstances clearly indicate an intent to steal. If the

provenance of the CCTV footage can be established the courts will accept such footage as real evidence. If the locus was on a road and the circumstances clearly indicate an intent to steal then an Attempted Theft from a Motor Vehicle could be recorded).

Note

In order to record an undetected crime in this category the person must be found/seen, and, the circumstances must infer theft was intended.

It is not necessary for the person(s) to have been seen by a police officer.

Where the evidence shows a person's intention was to steal, but they are not traced, the crime remains undetected.

A crime must be recorded in circumstances where it appears clear from any visual recording system footage that a crime has occurred and the provenance of the recording can be established.

Impersonating an official attempting to gain entry to a house should be recorded as Attempted Fraud (door to door sales and bogus tradesmen).

21/002 Civic Government (Scotland) Act 1982, Section 58
Possession of Tool/Tools with intent to steal

General Rule

One crime for each accused

Definition

Section 58

Any person who, has two previous convictions for crimes of theft,
(theft includes any aggravation of theft, including robbery) -

(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 not or was not for the purposes of committing theft.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 'A' is found acting suspiciously in an enclosed car park and on being searched is found to have a jemmy in their pocket. It is established they have three convictions for theft.

- 1 x Civic Government (Scotland) Act 1982, S58

25/000 **Criminal Justice and Licencing (Scotland) Act 2010,**
Section 49
Articles for use in fraud

General Rule

One crime for each offence

Definition

Section 49

(1) A person (“A”) commits an offence if A has in A's possession or under A's control an article for use in, or in connection with, the commission of fraud.

(3) A person commits an offence if the person makes, adapts, supplies or offers to supply an article—

(a) knowing that the article is designed or adapted for use in, or in connection with, the commission of fraud, or

(b) intending the article to be used in, or in connection with, the commission of fraud.

(5) In this section, “article” includes a program or data held in electronic form.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 A device is recovered on an ATM and is confirmed to be foreign to its environment. Clarifications with specialists (e.g. Economic Crime Unit) indicate that the device is a Skimmer/Card Trap/Cash

Trap/Eavesdropping Device/Camera Bar/False Keypad. No suspect is immediately identifiable.

- 1 x Attempted Theft (a device has been deployed in order to commit theft but it is not immediately obvious that any theft has occurred).

Example 2

'A' has used their bank card at an ATM where the card has been swallowed. A short time later a suspect is identified as having used 'As' card to make withdrawals at various ATMs. The suspect is traced and found in possession of a card trap and camera bar.

- 1 x Theft (doctrine of recent possession of card)
- 1 x Theft by Opening Lockfast Place (ATM) (recorded as a crime per account)
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S49 (1) - Possess article used in Fraud

Example 3

During a house search a skimming device, a card producing device and 3 cloned bank cards are found.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S49 (1) (for skimming device)
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S46A (2) (b) (for card producing device)
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S46A (2) (a) (for possession of cloned cards)

ATM Skimming/Common Purchase Point

Where the banks or APACS report information to a SPOC that a 'Common Purchase Point' has been used to obtain plastic card details a crime should be recorded.

Example 4

A Financial Institution report to a Police SPOC that after an investigation into a number of fraudulent purchases abroad on various accounts, a garage within the Force area has been identified as the 'common purchase point' where the details from

the cards were obtained. Equipment used to skim and record card details is found at the locus.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S49 (1) and depending on evidence available 1 x Theft (theft of data applies when the equipment is used to obtain the data). The equipment must be seized or evidence must be available to confirm the device was at the locus for a crime to be established.

If a person or a group is shown to be responsible for a number of separate 'Common Purchase Points', count one crime for each separate location.

Example 5

A group of persons are shown to be responsible for obtaining card details from twelve separate retail outlets they own or are employed by and passing the details abroad for use in fraud. Equipment used to skim and record card details is found at each locus.

- 12 x Criminal Justice and Licensing (Scotland) Act 2010, S49 (1) – Articles For Use In Fraud and depending on evidence available 12 x Theft (theft of data applies when the equipment is used to obtain the data). The equipment must be seized or evidence must be available to confirm the device was at the locus, for a crime to be established.

Note

Frauds at cashpoints are commonplace and often involve organised criminal gangs. Skimming occurs when a device is fixed to an Automated Teller Machine (ATM) whereby a PIN number is obtained when being entered on the machine keypad and is associated with track data obtained from the user's card when it is inserted.

Examples of devices found on ATMs deployed in criminality are:

- ATM Card Skimmer - electronic device used to record and steal data from the card.
- ATM Card Trap - non-electronic device used to trap card in order to steal.
- ATM Cash Trap - non-electronic device used to trap cash being dispensed.
- Eavesdropping device - electronic device used to record and steal bank card data from the internal workings of the ATM.
- Camera Bar - electronic device used to record visual images of a PIN number being input.
- False Keypad - electronic device used to record electronic data of PIN number being input.
- Cloned Bank Card - white plastic card holding the data of a genuine bank card.

**25/000 Criminal Law (Consolidation) (Scotland) Act 1995,
Section 46A
False monetary instruments**

General Rule

One crime for each incident (seizure)

Definition

Section 46A

- (1) A person who counterfeits or falsifies a specified monetary instrument with the intention that it be uttered as genuine.
- (2) A person who has in his custody or under his control, without lawful authority or excuse-
 - (a) anything which is, and which he knows or believes to be, a counterfeited or falsified specified monetary instrument; or
 - (b) any machine, implement or computer programme, or any paper or other material, which to his knowledge is specially designed or adapted for the making of a specified monetary instrument.
- (3) For the purposes of subsections (1) and (2) (a) above, it is immaterial that the specified monetary instrument (or purported specified monetary instrument) is not in a fit state to be uttered or that the counterfeiting or falsifying of it has not been finished or perfected.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 'A' is apprehended for making a cloned credit card admits to making five other cards.

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995 S46A (1)

Example 2 'A' is apprehended for making ten cloned credit cards.

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995 S46A (1)

Example 3 'A' is stopped and found to be in possession of twelve cloned credit cards.

- 1 x Criminal Law (Consolidation) (Scotland) Act, 1995 S46A (1)

Where an offender makes an article used in fraud and then uses that article fraudulently only the fraudulent use should be recorded not the Criminal Law (Consolidation) (Scotland) Act 1995, Section 46A - False Monetary Instrument.

Example 4 'A' makes five cloned credit cards and then uses each card at different locations in circumstances amounting to fraud.

- 5 x Fraud - Cheque, Plastic Card and Online Bank Accounts (the Criminal Law (Consolidation) (Scotland) Act 1995, S46A - False Monetary Instruments is subsumed in the fraud)

Actual or attempted frauds by false representation take precedence over crimes of possessing articles for use in frauds.

Example 5 'A' is found in possession of a cloned credit card and admits to just having purchased goods using the cloned card.

(a) The fraud has already been reported.

- No crime recorded in addition to the reported Fraud

(b) The fraud has not yet been reported.

- 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts

Note

Criminal Justice and Licensing (Scotland) Act 2010, Section 49 (Control/possess article for commission of Fraud) should be used where persons are found in possession of or have control of an article for use in, or in connection with, the commission of fraud. Where no one has been found in possession of an article Section 46A should be recorded.

The following monetary instruments are hereby specified for the purposes of Section 46A:

- money orders;
- postal orders;
- United Kingdom postage stamps;
- share certificates;
- cheques and other bills of exchange;
- travellers' cheques;
- bankers' drafts;
- promissory notes;
- cheque cards;
- debit cards; and
- credit cards

31/001 Forgery and Counterfeiting Act 1981

General Rule

- One crime for each incident – making currency
- One crime for each victim/incident – tendering currency

Definition

Section 14(1)

It is an offence for a person to make a counterfeit of a currency note or a protected coin, intending that they or another shall pass or tender it as genuine.

Section 14(2)

It is an offence for a person to make a counterfeit of a currency note or of a protected coin without lawful authority or excuse.

Section 15(1) (a)

It is an offence to tender as genuine a counterfeit currency note or protected coin.

Section 16(1)

It is an offence for a person to have in their custody or under their control anything which is, and which they know or believes to be, a counterfeit of a currency note or of a protected coin, intending either to pass or tender it as genuine or to deliver it to another with the intention that they or another shall pass or tender it as genuine.

Section 16(2)

It is an offence for a person to have in their custody or under their control, without lawful authority or excuse, anything which is, and which they know or believes to be, a counterfeit of a currency note or of a protected coin.

Complainer

Procurator Fiscal

Locus

Where currency is presented

Examples

Example 1 'A' presents £20 note to sales assistant to pay for goods. On sales assistant advising that note is a forgery, person makes off.

- 1 x Forgery and Counterfeiting Act 1981, S15 (1) (a) (due to the actions of the person tendering the currency it can be presumed that the note was tendered knowingly).

Example 2 'A' presents £10 note to sales assistant to pay for goods. The sales assistant advises that the note is a forgery and hands it back and the goods are paid for with further monies.

- No crime should be recorded as the note has not been recovered therefore it cannot be confirmed that the note was in fact counterfeit.

Example 3 'A' is found in possession of ten counterfeit notes from various banks.

- 1 x Forgery and Counterfeiting Act 1981, S16 (2)

Example 4 'A' presents £350 in forged notes in payment for white goods. Notes made up of different denominations and banks.

- 1 x Forgery and Counterfeiting Act 1981, S15 (1) (a)

Example 5 'A' buys a phone from the internet for £340 and on receiving the phone decides it wasn't the one they wanted and advertises it for sale. The next day a buyer offers £430. 'A' meets the buyer, hands over the phone and on returning home finds the cash to be counterfeit.

- 1 x Forgery and Counterfeiting Act 1981, S15 (1) (a)

- Example 6 'A', 'B' and 'C' enter a supermarket and within a short timescale each tenders a counterfeit £50 note while making a low value purchase. The circumstances indicate that they are acting together.
- 3 x Forgery and Counterfeiting Act 1981, S15 (1) (a)
(while the circumstances indicate they were acting together each has entered into a separate transaction and has tendered a different note which would amount to three separate incidents).
- Example 7 'A' enters three separate shops and pays for goods with counterfeit currency where there is clear evidence the currency has been tendered as genuine in the knowledge it was counterfeit.
- 3 x Forgery and Counterfeiting Act 1981, S15 (1) (a)
- Example 8 When cashing up the day's takings a counterfeit note is found and the police are contacted. There is nothing to confirm who tendered the note and if the note was tendered knowingly.
- No crime requires to be recorded
- Example 9 'A' reports that three counterfeit notes were tendered at the same locus all in suspicious circumstances which indicated the suspect(s) were aware that the notes were not genuine:
- (a) occurred on three separate occasions and all notes relate to the same bank.
 - 3 x Forgery and Counterfeiting Act 1981, S15 (1) (a)
 - (b) occurred on one occasion and all notes relate to different banks.
 - 1 x Forgery and Counterfeiting Act 1981, S15 (1) (a)

Note

Arrangements have been made with Banks, Post Offices and Building Societies for counterfeit United Kingdom sterling identified at a branch or processing centre to be forwarded direct to the issuing bank without Police involvement.

This however does not prevent a member of a Bank or Building Society staff from calling the Police following the discovery of counterfeit currency if this is deemed necessary.

Where a crime report has been created and subsequent enquiry cannot establish that the passing of the counterfeit currency was deliberate, the crime report should be updated to 'No Crime'.

Where it is suspected that counterfeit currency was tendered knowingly e.g. due to actions of the suspect, a crime report should be created, and where no accused is traced, this will remain recorded as undetected.

25/000 Forgery and Uttering (excluding currency offences)

General Rule

One crime for each account/victim

Definition

This crime consists in the making and publishing of a writing feloniously intended to represent and pass for the genuine writing of another person.

The forgery may be committed in many ways, such as:

- (a) fabricating a whole document, including signature, or
- (b) adhibiting a false signature to a genuine document, or
- (c) transferring a genuine signature, from the deed to which it is affixed, to a false document, or
- (d) making alterations in a genuine document, so as to change its character or meaning, without the knowledge or consent of the subscriber, or
- (e) placing a writing above a genuine signature without the authority of the subscriber.

Complainer

Person/business who suffers loss

Locus

Where crime takes place

Examples

Example 1 'A' alters drug dosage on a prescription and presents same at chemist.

- 1 x Forgery and Uttering S58

On 'A' being apprehended they admit to five similar crimes.

- 1 x Forgery and Uttering. Forgery of drug prescriptions is the principal crime over Fraud. The victim is the health service provider not the chemist.

Example 2 'A' forges 'B's' signature on a cheque and presents same at post office.

- 1 x Forgery and Uttering

Example 3 'A' adds a zero to a cheque for £100 making it £1000.

- 1 x Forgery and Uttering

Example 4 Five cheques from a previously reported stolen cheque book are used to obtain goods from the same store. They are reported to the police at different times.

- 1 x Forgery and Uttering (they are all from the same account).

Example 5 Steal prescription pad from doctor's surgery, four different chemists report forged prescriptions being used from the stolen pad.

- 1 x Forgery and Uttering
- 1 x Theft

Note

Forgery by itself is not criminal. To complete the crime, the forged document must be put to use or founded on as genuine. The uttering must be made with fraudulent intent and there must be such surrender of possession as to put the document out of control of the accused.

Forgery of drug prescriptions is the principal crime over fraud. The complainer is the health service provider not the chemist.

In respect of cheques, the locus will be where the cheque was presented i.e. uttered.

Fraud

25/000 Fraud (including statutory Fraud)

26/000 Breach of Trust / Embezzlement

27/000 Bankruptcy

Definition

It is impossible to give a succinct definition to embrace all the modes of Fraud but the following elements must be present in each case, viz –

- (a) Falsehood - false representation by word of mouth or writing or false conduct;
- (b) Fraud - intention to deceive and defraud, and
- (c) Wilful Imposition - which the cheat designed had been successful to the extent of gaining benefit or advantage, or of prejudicing, or tending to prejudice, the interests of another person.

Where another reporting agency, e.g. Trading Standards, Benefits Agency etc. have primacy and agree to record and conduct enquiry, no crime(s) should be recorded by the Police.

It is sometimes difficult to decide whether the crime is fraud or attempted fraud. Although the accused need not have derived any gain, there must have been some measure of success before the crime is complete. The fraud must have passed the stage of preparation, and entered a stage of perpetration, tending to prejudice the interests of another person.

Establishing the Locus

The following principles should be used in order to ascertain the locus of the crime where no specific locus rules are outlined and are listed in order of priority. It is only when a principle cannot be achieved or is not known that the next principle will apply.

- 1st The police area covering the location of the fraudulent operation.
- 2nd Suspect's address.
- 3rd The police area with the greatest number of individual usages.
- 4th The police area where the first offence was committed.
- 5th The police area where the victim resides/works or was at the time of the crime.

Cheques

The locus will be where the cheque was presented i.e. uttered.

Goods Ordered Remotely

The delivery address to which the goods were delivered or are to be delivered.

Certain circumstances may require additional information to confirm that this was the locus of the perpetration of the fraud. It should be noted that a public collection point is insufficient to determine a delivery address.

Business Related Fraud

The office address/usual place of work of the suspect or where the circumstances outlined identify where the crime was committed.

Mandate/Safe Account Fraud

The locus will be where the communication was received or victim's address (as appropriate).

Money Transfer Houses

The locus will be as follows:

- If the payment is made to a Money Transfer House e.g. Western Union, in this country then the locus is the address of the suspect used at that Money Transfer office when picking up the money or transferring the money on.
- If the money is transferred to another Money Transfer House then the locus is the address of the suspect at the new Money Transfer office.

- If transferred abroad by the victim using a Money Transfer House then the locus is the victim's address.
- Where the victim sends money from abroad to a Money Transfer office in this country then the locus is the address of the suspect picking up the money if known, or if not known, the Money Transfer office where the money was sent to.

Example 1 'A' transfers money from a Western Union office to a Western Union abroad, which has subsequently been established as part of a fraud.

- 1 x Fraud recorded by the Division where the victim resides.

Example 2 'A' transfers money from a Western Union Office in Division 'A' to Western Union office in Division 'B' (this is just the vehicle to move the money). The person who collects the money gives an address in Division 'C'.

- 1 x Fraud recorded by Division 'C' (if it can be confirmed this person was responsible for the fraud, otherwise record as complainer's home address).

Legal Aid (Scotland) Act 1986, S35 (SGJD - 85/021)

- Section 35(1) (A) - Fail to inform change of circumstances – where this would be a failure to notify an update to circumstances, the solicitor's office should be considered as the locus.
- Section 35(1) (B) - False statement to obtain Legal Aid - where appropriate the solicitor's office should be considered as the locus (even where forms are submitted online, they are most likely directed through the solicitor). If there are any instances where this is not the case the Scottish Legal Aid Board address would apply (completed act of misrepresentation).

Transfer of Crimes where locus is England or Wales

Forces in England and Wales direct reports of fraud to Action Fraud/National Fraud Intelligence Bureau (NFIB). This will not apply to Scotland, however, notwithstanding enquiries will be forwarded to Scotland for further enquiry which have emanated from Action Fraud.

It should be noted that Police Scotland have not signed up to Action Fraud and members of the public reporting Fraud should NOT be advised to report same direct to Action Fraud.

Where the victim is identified as being in Scotland at the time of the crime a crime report should be recorded. Where enquiry identifies the locus to be elsewhere in the UK, a request to transfer the crime should be made to the appropriate Force as a 'call for service'. The receiving Force will, on acceptance, record such allegations directly with Action Fraud and double key onto their crime recording system cross referencing with the NFRC number provided to them by Action Fraud. Where a Force accepts the crime the relevant crime recorded in Scotland can be updated to 'No Crime'. Where a Force refuses to accept a crime transfer the crime must remain recorded.

Crimes Abroad

Where persons who have been victims of crime abroad report fraud in Scotland and there is no connection with Scotland at the time of the fraud occurring, the victim should report it in their own country or the country they were staying when the crime occurred.

In circumstances where a victim is identified as being in Scotland at the time of the crime and it is clear from the outset that the suspect was outwith the UK, a crime must be recorded. Any decision to transfer the enquiry to the respective Country will be determined by Police Scotland protocols. The crime report will not be updated to 'No Crime' and the recorded crime will remain undetected.

Note

As enquiries continue the locus may change which can result in crime reports being updated to no crime and details forwarded for recording and enquiry in another area.

In order to transfer a crime, sufficient enquiry must have taken place to link the suspect/address to the relevant police area. It should be noted that the beneficiary account holder/address is not always sufficient to transfer the crime and further local checks should be carried out to confirm any link.

It is important to consider if there is a specific intended victim. Many communications are sent out as part of a mailshot to no specific intended victim. An individual becomes a specific intended victim where they take action following the contact.

Crimes should not be recorded simply because goods have not arrived or are not what was expected. Additional details are necessary, for example e-mail address no longer available, address unknown or found to be a mail drop, more than one complainant, or payment service provider (PSP) payment stopped.

Fraudulent Scheme

The term fraudulent scheme does not exist in law in terms of offences, but is commonly used to refer to monetary fraud where the offender(s) has devised a pre-meditated, planned course of action/scheme to repeat a series of actions through which sums of money are taken each time. One or more persons can be responsible for, or the victim of, a fraudulent scheme. In the case of a fraudulent scheme where there is more than one victim then only one crime should be recorded.

Phishing

The process of attempting to acquire sensitive information such as usernames, passwords and credit card details by masquerading as a trustworthy entity.

Communications purporting to be from popular social websites, auction sites, online banks, online payment processors, or IT administrators are commonly used to lure the unsuspecting. Phishing is typically carried out by e-mail or instant messaging, and it often directs users to enter details at a fake website whose look and feel are almost identical to the legitimate one.

Ringling the Changes

In exchanging money with another person, deliberately mislead them into giving you more money than you have exchanged with them.

Reimbursed by Financial Institution

Where circumstances indicate a fraud has occurred, a crime report must initially be recorded, whether or not the account holder has been reimbursed and/or if the Financial Institution has advised they will be dealing with the matter. Enquiry must also be made with the Financial Institution in order to confirm if a fraud has occurred or whether the transaction has been as the result of a banking error.

It must be ascertained whether or not the account holder has been reimbursed by the Financial Institution, which must be shown on the crime report.

Computer Viruses/Hacking (Computer Misuse Act 1990)

Where viruses are launched onto the World Wide Web to infect any computer they come across, victim's computers that are infected are not generally specific intended victims. Where police receive reports under these circumstances, that computers have been infected by or received a virus, then a SID entry should be recorded. If however a person is identified for releasing a virus from a location within the UK then a crime should be recorded for each distinct virus released from that location, to be recorded where the person is based.

'Hacking' is the unauthorised modification of the contents of any computer. It is usually committed by unlawful accessing a computer but it can be committed by persons with lawful access as well. It is the deliberate targeting of a specific computer by the offender.

Banking Protocol

The "Banking Protocol" is a multi-agency initiative between trading standards, banking institutions and law enforcement agencies which aim to detect and prevent fraudulent activity on customers' bank accounts. The process requests bank staff to recognise any unusual or out of character withdrawals or transactions and ask further questions to establish whether their customers may be victims of fraud.

It should be noted that the intervention of a banking institution to prevent a crime from occurring does not negate the requirement to record a crime of Attempted Fraud where appropriate.

ATM Skimming (see Articles Used in Fraud

Frauds at cashpoints are commonplace and often involve organised criminal gangs. Skimming occurs when a device is fixed to an Automated Teller Machine (ATM) whereby a pin number is obtained when being entered on the machine keypad and is associated with track data obtained from the user's card when it is inserted.

Identity Theft

The use of another person's identification details (or the use of false identification details), often referred to as identity theft, is not in itself an offence in law. It is the action that is undertaken, using those identification details, that needs to be considered in respect of whether an offence has occurred.

Most instances of 'Identity Theft' come to light when victim's details are used to obtain goods, services or money using credit arrangements or loans. Instances of this should be considered under the relevant Fraud category. Where bank, credit card, or store card accounts are opened using identities to which the individuals are not entitled, and then used to commit fraud, then a crime of Fraud with the relevant Tag should be recorded.

Note: The opening of a bank or other account using other peoples' identities without permission or false details is unlikely to be a crime of fraud per se, and should only be recorded if there is an offence of fraud committed on the account or evidence that fraud was the purpose for the creation of the account.

Remember that if there is no intent to commit fraud and there is evidence that an account has been created using a false, stolen or improperly obtained identity document contained within the Identity Documents Act 2010 then an offence under that legislation should be considered.

Fraud Tags

Definitions and Examples (Tags only to be used on National Crime)

- [Advance Fee Payment Fraud](#)
 - ["419" Advance Fee](#)
 - [Lottery Scams](#)
 - [Counterfeit Cashiers Cheques](#)
 - [Dating Scam](#)
 - [Fraud Recovery Scam](#)
 - [Inheritance](#)
 - [Rental](#)
 - [Other Advance Fee](#)
 - [Lender Loan](#)
- [Financial Investment Fraud](#)
 - [Share Sales or Boiler Room](#)
 - [Pyramid or Ponzi Schemes](#)
 - [Prime Bank Guarantees](#)
 - [Time Shares and Holiday Club](#)
 - [Other Financial Investment](#)
- [Consumer and Retail Fraud](#)
 - [Online Shopping and Auctions](#)
 - [Consumer Phone](#)
 - [Door to Door Sales and Bogus Tradesmen](#)
 - [Other Consumer and Retail](#)
 - [Computer Software Service](#)

- [Ticket](#)
- [Retail](#)
- [Charity Fraud](#)
 - [Charity](#)
 - [Fraudulent Applications for Grants from Charities or Lottery Fund Organisations](#)
- [Banking and Credit Industry Fraud](#)
 - [Cheque, Plastic Card and Online Bank Accounts](#)
 - [Application \(excluding Mortgages\)](#)
 - [Mortgage Related](#)
 - [Mandate](#)
 - [Dishonestly Retaining a Wrongful Credit](#)
- [Insurance Fraud](#)
 - [Insurance Related](#)
 - [Insurance Broker](#)
- [Telecom Industry Fraud \(Misuse of Contracts\)](#)
- [Corporate Employee/Procurement Fraud](#)
 - [Corporate Employee](#)
 - [Corporate Procurement](#)
- [Pension Fraud](#)
 - [Pension Fraud by Pensioners \(or their Estate\)](#)
 - [Pension Fraud committed on Pensioners](#)
 - [Pension Liberation](#)
- [Miscellaneous Fraud](#)
 - [Business Trading Fraud](#)

- [False Accounting Fraud](#)
- [Bankruptcy and Insolvency Fraud](#)
- [Passport Application Fraud](#)
- [Fraudulent Applications for Grants from Government Organisations](#)
- [Other Regulatory Fraud](#)
- [Fraud by Failing to Disclose Information](#)
- [Abuse of Position of Trust \(Including Embezzlement\)](#)
- [DVLA Driver Licence Application Fraud](#)
- [Other Fraud \(Not Covered Elsewhere\)](#)

Advance Fee Payment Fraud

“419” Advance Fee

A communication soliciting money from the victim for a variety of emotive reasons to assist the fraudster.

The name has its origin to a reference to the violation of Section 419 of the Nigerian Criminal Code. The 419 scam combines the threat of impersonation fraud with a variation of an advance fee scheme in which a letter, e-mail, or fax is received by the potential victim. The communication from individuals representing themselves as foreign government officials offers the recipient the "opportunity" to share in a percentage of millions of dollars by helping the fraudster to place large sums of money in an overseas bank account.

Payment of taxes, bribes to government officials, and legal fees are often described in great detail with the promise that all expenses will be reimbursed as soon as the funds are out of the country.

The recipient is sometimes encouraged to send information to the author, such as blank letterhead stationary, bank name and account numbers, and other identifying information using a facsimile number provided in the letter. The scheme relies on convincing a willing victim to send money to the author of the letter in several instalments of increasing amounts for a variety of reasons.

Note

Consideration should be given as to whether the individual has become a specific intended victim. Where someone is cold called or receives global e-mails or are part of a mail shot, they are not generally specific intended victims. People are specific intended victims if they take action following the contact.

Example 1 ‘A’ receives a letter purporting to come from a Government official stating that if they pay £1000 into an account it will facilitate the transfer of £100,000,000 and they will be entitled to £100,000.

(a) ‘A’ ignores the letter and contacts police.

- No crime requires to be recorded
- (b) 'A' on receiving instructions where to send money, sends £1000 and then receives further instructions that a further £1000 is required to be sent to release the money. At this point 'A' contacts police.
- 1 x Fraud – '419' Advance Fee

Lottery Scams

A fraud which involves the victim being informed they have won a non-existent lottery and required to send an advance to release their winnings.

The lottery scheme deals with persons randomly contacting e-mail addresses, postal addresses or faxes advising them they have been selected as the winner of an International lottery. The e-mail message usually reads similar to the following:

"This is to inform you of the release of money winnings to you. Your e-mail was randomly selected as the winner and therefore you have been approved for a lump sum payout of \$500,000.00. To begin your lottery claim, please contact the processing company selected to process your winnings."

An agency name follows this body of text with a point of contact, phone number, fax number, and an e-mail address.

An initial fee ranging from \$100 to \$5,000 is often requested to initiate the process and additional fee requests follow after the process has begun. These emails may also list a United Kingdom, point of contact and address while also indicating the point of contact at a foreign address.

- Example 1
- 'A' receives a letter in the post advising they have won a lottery along with details of what to do in order to claim the prize.
- (a) 'A' takes no action, contacts the police and puts the letter in the bin.
- No crime requires to be recorded
- (b) 'A' contacts the number and obtains details where to send an admin fee to facilitate claiming the win, transfers money to the account and hears nothing else.
- 1 x Fraud – Lottery Scams

- Example 2
- A person notifies police that they have been sent a letter informing them that they have won the Spanish Lottery and if they send £1000 to an address in Madrid they will receive £600,000.
- (a) They pay nothing and bring the letter to the police

- Record an incident.
- (b) They have paid £1000 and received nothing
- 1 x Fraud – Lottery Scams. (The locus being the victim's address).

Counterfeit Cashiers Cheques

Fraudulent cheques or Bankers Drafts are presented as payment for goods or services ordered over the Internet in excess of the actual value. The seller reimburses the purchaser with the excess prior to the cheque or draft being discovered as fraudulent.

This fraud targets individuals that use the Internet to sell merchandise or services. An interested party located in a foreign country contacts a seller. The seller is told that the buyer has an associate in the seller's country that owes him money and that the associate will send a cashiers cheque or bankers draft to pay the seller.

The amount of the cashier's cheque or bankers draft will be far greater than the price of the goods and the seller may be told the excess amount will be used to pay the shipping costs to the buyer. The seller is instructed to deposit the cheque/draft, wait for clearance and wire the excess funds to the buyer or an associate (normally in West Africa).

As a cashier's cheque or bankers draft is used, a bank will typically release the funds immediately, or after a one or two day hold. The seller falsely believes the cheque/draft has cleared and wires the money as instructed. Additionally the seller can be convinced to terminate the sale and refund all the money.

Example 1 'A' advertises goods on a website for sale and receives an e-mail from abroad offering the full purchase price. A cheque is received covering the purchase price and additional shipping fees. 'A' pays the money into their bank account and transfers the shipping fees to a shipping agent account. The cheque is returned unpaid as it is a forgery.

- 1 x Fraud – Counterfeit Cashiers Cheques

Example 2 'A' advertises their car for sale and 'B' attends, views the car and a price is agreed. 'B' hands over a cheque for more than the agreed price, stating they had made a mistake and hadn't brought another cheque with them, asking 'A' to pay it into their account and they would attend the next day to collect the car and over

payment. The next day 'B' attends and collects the car and the over payment. 'A' is then contacted by the bank to advise the cheque is a forgery.

- 1 x Fraud – Counterfeit Cashiers Cheques

Example 3

'A' advertises a boat for sale on a website and received an e-mail from abroad offering the full purchase price. 'A' is sent a bankers draft covering the purchase cost and an additional £5000 for shipping fees. 'A' pays the bankers draft into their account and transfers the £5000 to the shipping agents account in Spain before someone collects the boat. The bankers draft is returned unpaid as it is a forgery and the bank reclaim the funds.

- 1 x Fraud – Counterfeit Cashiers Cheques (Recorded by the Division where the victim resides)

Example 4

'A' advertises a horse for sale on a website and received an e-mail from abroad offering the full purchase price - £2000. 'A' is sent a UK cheque for £5000 with a request to return the difference of £3000. 'A' takes the £5000 cheque to the bank but is advised not to bank it. No monies (or the horse) are sent to the buyer. 'A' reports the incident to the police.

- 1 x Attempted Fraud - Counterfeit Cashiers Cheques (Recorded by the Division where the victim resides)

Dating Scam

The intended victim is befriended on the Internet and eventually convinced to assist their new love financially by sending them money for a variety of emotive reasons.

The intended victim is approached in a chat room or via a social networking site. The fraudster creates a relationship with the victim over the Internet often posting pictures of an attractive person – which is not usually them and may target those of a certain income, if disclosed.

The background may suggest that their partner is deceased and they are bringing up a child/children alone. The fraudster will resist any suggestion to meet, often stating that they are moving to work abroad temporarily. Once the fraudster gains the trust of the victim, they then ask for money.

This is normally via claims that they have been trapped abroad, have unforeseen medical bills, mobile/internet access problems etc. Once the request for money is declined, they cease contact.

Example 1 'A' has been chatting to 'B' over the internet for a few weeks, having joined a dating chat room. 'B' purports to work abroad some of the time on short term contracts. 'B' advises that they are having difficulty with their laptop and asks 'A' for a loan to fix it and they will repay them on return to the UK the following week. 'A' sends the money. 'A' then becomes suspicious as 'B' is no longer contactable and establishes the details provided were false.

- 1 x Fraud – Dating Scam

Example 2 'A' has been chatting to 'B' over the internet for a couple of months, having joined a dating chat room. 'B' claims to work abroad in a specific unit of the military. 'B' asks 'A' for some money to make a trip home to visit their ill mother. 'A' is suspicious and makes enquiry with the military and ascertains that 'B' is not known within the unit and has provided false information.

- 1 x Attempted Fraud – Dating Scam

- Example 3 'A' has been chatting to 'B' over the internet for a couple of months. 'B' contacted 'A' through a dating chat room. 'B' asks 'A' for some money to make an unforeseen trip home as their mother is ill. 'A' is suspicious and refuses to transfer money. 'B' then refuses to talk to 'A' in the chat room.
- There is no crime to record in these circumstances. It cannot be confirmed the intention was to commit fraud.

Fraud Recovery Scam

A fraud targeting fraud victims to gain personal details and additional money, by means of posing as recovery agents.

These frauds target former victims of frauds. The victim is contacted by the fraudster who poses as a legitimate organisation. The organisation claims that they can apprehend the offender and recover any monies lost by the victim, for a cost.

Another tactic used is the fraudster stating a fund has been set up by the Nigerian government to compensate victims of 419 fraud. This is used to gain personal details of the victim and additional money as a fee to release the amount of the claim.

- Example 1 'A' has been the victim of a boiler room fraud. 'A' is contacted by a suspect who states that they work for a company who specialises in helping victims of boiler room fraud and they have traced some of the money that 'A' invested. For a fee they can recover a substantial amount of money.
- (a) 'A' pays the fee into an account and then discovers that they are the victim of another fraud.
 - 1 x Fraud – Boiler Room
 - 1 x Fraud – Fraud Recovery Scam (it cannot be confirmed the same persons are involved in both)
 - (b) 'A' realises this is a further scam and reports the matter to the police.

- 1 x Fraud – Boiler Room
- 1 x Attempted Fraud – Fraud Recovery Scam (it cannot be confirmed the same persons are involved in both and 'A' is a specific intended victim)

Inheritance

Contact is made with victims as part of a mass mailing to people who share the same surname. Each one is told there is cash from inheritances that have been located in their names. The research specialists make money by asserting they've put together an estate report that includes information on where the inheritances are located and how they can be claimed. For a relatively small fee, the report can be provided.

They may also propose to administer any inheritance claim for an additional fee. The fraudsters perpetrating this type of inheritance scam purposefully choose smaller inheritances on the off chance that someone receiving their correspondence turns out to be an actual heir with rights to claim the inheritance assets. Once the funds are claimed, they will probably be less than the fee that was paid to the people promoting this scam.

- Example 1 'A' receives an e-mail through the post informing them that they have inherited money from a distant relative's estate and what they have to do to claim the inheritance.
- (a) 'A' ignores the e-mail
 - No crime requires to be recorded
 - (b) 'A' replies to the e-mail and is given instructions to transfer money to an account to facilitate claiming the inheritance. 'A' takes no further action.
 - 1 x Attempted Fraud – Inheritance Fraud ('A' has become a specific intended victim)
 - (c) 'A' replies to the e-mail, and as per instructions transfers the money, expecting to hear confirmation of receipt of same and facilitate the inheritance being paid. No further communication is received.
 - 1 x Fraud – Inheritance Fraud

Example 2

'A' receives an e-mail informing them they have inherited some money from an estate in America and provides details of what they have to do to claim the inheritance, namely transfer money to an account to facilitate claiming the inheritance. 'A' transfers the money and hears nothing further.

- 1 x Fraud – Inheritance Fraud

Rental

Prospective tenants are tricked into paying advanced fees/rent for the rental of premises which, either don't exist, are not for rent, are already rented or are rented to a multiple of victims at the same time. The consequence is that the accommodation is not available to the victim and they have lost the advance fees paid. This particular fraud is often perpetrated against students looking for university accommodation.

Example 1 'A' books rental accommodation over the internet, paying rent for the first three months. On arrival 'A' ascertains that the accommodation is not for rent. The e-mail address 'A' replied to is no longer available.

- 1 x Fraud – Rental Fraud (locus being where 'A' was at time of booking accommodation, not the rental accommodation).

Example 2 Five students have arrived at a one bedroom apartment to discover that it is not for rent. All five have paid rent in advance having replied to an internet advertisement.

- 1 x Fraudulent Scheme – Rental Fraud

Example 3 An advert on an internet site offers a house for rent in Division 'A', an advanced rental of £500 is requested to be sent via money transfer to an account holder in Division 'B'. The victim who resides in Division 'C' sends £500 by money transfer to the account holder in Division 'B'. Money is subsequently withdrawn and no further contact made. Enquiry reveals the house was never for rent.

- 1 x Fraud – Rental Fraud (recorded by Division 'C')

Example 4 A person resident abroad arrives in Division 'A' after seeing an advert on an internet site offering a house for rent in Division 'A'. Money has been sent by money transfer from overseas to an account holder in Division 'B'. Enquiry reveals the house does not exist.

- 1 x Fraud – Rental Fraud (recorded by Division 'B' only if there is clear evidence the account holder was responsible for the fraud, otherwise the locus would be overseas).

Other Advanced Fee Fraud

Any other MO whereby an accused dishonestly makes a false representation, and intends, by making the representation, to make a gain for themselves or another, or to cause loss to another or to expose another to risk of loss.

Example 1 'A' has advertised their car for sale in a local newspaper and is contacted by someone advising they have a buyer for the car and if they pay them £100 they will put them in touch with the person. 'A' transfers money to an account provided but hears nothing further and is unable to make contact with the person.

- 1 x Fraud - Other Advance Fee

Example 2 A person purchases vouchers to finance a venture which turns out to be fraudulent. Further enquiry shows the vouchers were used on an on-line betting site based in country 'A'.

- 1 x Fraud – Other Advance Fee (the on-line betting site based in country 'A' only shows where the vouchers were spent. The betting site itself is not established as a point of benefit and further enquiries must be conducted to ascertain where the money was transferred from).

Example 3 Unauthorised access has been gained to the e-mail account of 'A' and an e-mail has been sent to all contacts stating they are stranded abroad and urgently need £400 to be sent to a specific account to pay for the airfare home.

(a) No money is sent by any of the contacts.

- 1 x Computer Misuse Act 1990, S2 (unauthorised access as intent to commit further crime(s)).

(b) 2 individuals send money.

- 1 x Computer Misuse Act 1990, S2
- 2 x Fraud – Other Advance Fee (2 victims).

The locus for the Computer Misuse Act will be the home address of the e-mail account holder and initially the frauds will be recorded as location the individuals were when they sent the money.

Example 4

'A' answers an advert offering puppies for sale and is told that there is only one left and if they transfer the money it will secure the purchase and they can pick up the puppy later. 'A' asks to see the puppy first and is advised that unless they pay the money to secure the sale, should someone else come along in the meantime it would be sold. 'A' transfers the money and on attending at the location to uplift the puppy establishes it does not exist.

- 1 x Fraud - Other Advance Fee

Example 5

Police are called to the airport where five passengers have purchased holidays over the internet. On turning up at the airport they discover that the company does not exist and there is no holiday.

- 1 x Fraudulent Scheme - Other Advance Fee

Lender Loan

A fraud which involves the victim being contacted and told that they can have a loan for a fee. The fee is paid and no loan is forthcoming.

Victims are cold called, usually over a mobile phone and told that for a fee, a loan has been agreed for them. They are then asked to transfer a fee electronically or via a money service bureau and the loan money will be transferred to their account within hours of the fee being received. The loan is never transferred.

On occasions they may receive an additional request for a transfer fee or additional fees. This is again paid and no loan ever materialises.

Lender loan fraud is entirely different from application fraud. In application fraud, it is the suspect falsely applying for a genuine loan. This fraud deals with suspects obtaining fees for non-existent loans.

- Example 1
- 'A' receives a call stating that for a fee of £50 they can have a loan of £1000 transferred to their current account immediately, with no credit checks.
 - (a) 'A' agrees and transfers £50 to the account provided and provides details of their current account. No loan is transferred to the account.
 - 1 x Fraud - Lender Loan
 - (b) 'A' hangs up immediately.
 - No crime requires to be recorded ('A' has not acted on the information)
 - (c) 'A' agrees and receives details of an account to transfer the fee to. 'A' then decides against taking the loan and takes no further action.
 - 1 x Attempted Fraud - Lender Loan ('A' has acted on the information by requesting the details even although they have not proceeded with the loan therefore has become a specific intended victim)

Financial Investment Fraud

Share Sales or Boiler Room Fraud

Boiler room fraud is a fraud where victims are cold-called by fake stockbrokers and encouraged or persuaded to buy shares or bonds in worthless, non-existent or near bankrupt companies.

Boiler room is the term used for the illegal offshore dealing rooms that are often located abroad in Spain, Switzerland or the USA. The sales person cold calls potential victims and oppressively sells shares or bonds that are non-existent or worthless enticing victims with the promise of quick, high returns on the investment.

In a bid to appear legitimate, a Boiler room may have a web-site and produce glossy literature and use a telephone number with a London prefix that diverts overseas.

Example 1 'A' is cold called at home and asked if they wish to invest money.

(a) 'A' hangs up

- No crime requires to be recorded.

(b) 'A' shows some interest and provides their contact details.

The next day 'A' is contacted again using the details provided and offered shares. Following some discussion 'A' decides to decline the offer.

- No crime requires to be recorded unless it can be confirmed that this was not a genuine investment. If this is the case 1 x Attempted Fraud – Share Sales or Boiler Room

Example 2 'A' receives a cold call and a follow up e-mail asking them to join an investment company by purchasing Bonds which will double their money in six months. They send £500 by BACS transfer. Nothing is received back and 'A' reports the matter to the police. This method is recognised to be part of a scam. There is no information immediately available to find out where the account or e-mail address is situated.

- 1 x Fraud – Share Sales or Boiler Room (The locus being the victim's address).

Example 3

Police are made aware of four people who have been duped to invest in the same scheme with the shares 'purchased' being non-existent.

- 1 x Fraudulent Scheme – Share Sales or Boiler Room

Pyramid or Ponzi Schemes

A pyramid scheme is a non-sustainable business model using cross-selling. It involves the exchange of money for enrolling other persons into the scheme and PONZI is named after the fraudster Charles Ponzi, the 1920s financier who defrauded people with a get rich scheme.

Pyramid schemes are investment scams in which investors are promised abnormally high profits on their investments. The individual makes a payment for a high return and then attempts to recruit more investors to increase their payments; however no investment is made on their behalf.

Early investors are paid returns with the investment money received from the later investors. Unfortunately, the system usually collapses and later investors do not receive dividends and lose their initial investment. This can be facilitated by email, letter, fax or phone solicitation often involving fake referrals and information.

Example 1 Following the collapse of an investment fund police discover a Ponzi fraud. Thirty individual investors are identified and three syndicate group investments, each syndicate group has ten individual investors.

- 1 x Fraudulent Scheme - Pyramid or Ponzi Schemes

Prime Bank Guarantees

International fraudsters have invented an investment scheme that offers extremely high yields in a relatively short period of time. In this scheme, they purport to have access to "bank guarantees" which they can buy at a discount and sell at a premium. By reselling the "bank guarantees" several times, they claim to be able to produce exceptional returns on investment. For example, if \$10 million worth of "bank guarantees" can be sold at a two percent profit on ten separate occasions, or "tranches," the seller would receive a 20 percent profit. Such a scheme is often referred to as a "roll program."

To make their schemes more enticing, fraudsters often refer to the "guarantees" as being issued by the world's "Prime Banks," hence the term "Prime Bank Guarantees." Other official sounding terms are also used such as "Prime Bank Notes" and "Prime Bank Debentures." Legal documents associated with such schemes often require the victim to enter into nondisclosure and non-circumvention agreements, offer returns on investment in "a year and a day", and claim to use forms required by the International Chamber of Commerce (ICC). In fact, the ICC has issued a warning to all potential investors that no such investments exist.

The purpose of these frauds is generally to encourage the victim to send money to a foreign bank where it is eventually transferred to an off-shore account that is in the control of the fraudster. From there, the victim's money is used for the perpetrator's personal expenses or is laundered in an effort to make it disappear.

- Example 1 'A' is cold called at home by a person selling Prime Bank Guarantees and asks if 'A' wishes to invest with them.
- (a) 'A' hangs up
 - No crime requires to be recorded.
 - (b) 'A' shows some interest and provides their contact details. The next day 'A' is contacted again using the details provided and offered shares. Following some discussion 'A' decides to decline the offer.

- No crime requires to be recorded unless it can be confirmed that this was not a genuine investment. If this is the case 1 x Attempted Fraud – Prime Bank Guarantee

Example 2

'A' purchases three different Prime Bank Guarantees over the last year from the same individual. After a year when trying to cash in the investment, 'A' discovers they have been victim of a fraud.

- 1 x Fraud - Prime Bank Guarantees

Time Shares and Holiday Club

In Timeshare and Holiday Club frauds the Fraudsters will contact you at home, often by phone and tell you that you have won a 'free' holiday. Or whilst you are on holiday they approach you on the street and give you a scratch card which reveals that you have won a 'free' holiday. All you need to do is go to a presentation to collect your prize and learn more about a new holiday venture. You will be told that this is not about timeshare.

You will later find out that the 'free' holiday isn't free, as you must pay for extras, such as flights and other add-ons and go somewhere you don't want to go at a time that doesn't suit you. If you go to the presentation it will more often than not be held in a plush hotel. The brochures will look glossy and convincing. You will be made to feel as if you are joining an exclusive holiday club which will offer exciting and great value holidays all over the world in top class accommodation.

Unlike the law covering timeshare arrangements, you are not necessarily given a chance to cancel if you have second thoughts. Don't believe everything you hear. What the bogus holiday club tells you in the sales pitch and what is in the contract you sign could be two very different things. Where it states 'you will have holidays in fabulous places at times of year that fit in with your needs'. There are in reality no guarantee of dates or destinations and holidays are often not available when and where you want them. You might end up going nowhere.

Note

It is important to establish that there is a fraud in law and not just matters for the Office of Fair Trading or Trading Standards. Each case should be assessed on its own merit.

Example 1 'A' attends at a hotel to obtain a prize in a free draw which they are informed is future luxury hotel accommodation. On attending the presentation they ascertain that the prize is not free and they would be expected to pay a yearly fee to a holiday club which would provide two weeks per year accommodation in five star hotels.

- (a) 'A' leaves the presentation.
 - On the information available, no crime requires to be recorded at this time.
- (b) 'A' thinks this would be a good deal, with a variety of resorts and five star hotels on offer and signs up. On attempting to book holidays it is ascertained that there are no hotels and resorts as advertised in the brochure ever available, with alternatives being lesser three star hotels which could be purchased at half the price of their club subscriptions.
 - 1 x Fraud – Time Shares and Holiday Club

Other Financial Investment

The word "investment" is used in connection with a wide range of schemes offering income, interest or profit in return for a financial investment. "Investment" is often used loosely, and sometimes misleadingly, in order to disguise the true nature of a fraud; e.g. pyramid schemes, chain letters or other types of scheme where a return depends on persuading others to join.

The term "investment" is commonly used in connection with the purchase of something - such as high value or rare goods, stocks and shares, property - in the expectation that what is purchased will increase in value, and even provide an exceptional return compared to other forms of investment.

It is not always understood by potential investors that there is a wide range of so-called investments which are unregulated. This means that they are not traded by authorised investment brokers, who might be expected to operate to professional standards. Nor are they traded on a regulated exchange, which means that their current value and prospects for appreciation are difficult or impossible to assess through any of the normal channels. There is no guarantee that the market will still be functioning when you come to realise your investment and almost no chance of any compensation if the investments have been mis-sold. This all creates opportunities for the unscrupulous to mislead and trap the unwary.

An investment seminar will hook individuals by offering a return which is more attractive than a conventional investment, and so the return on the outlay is always likely to be exaggerated or unrealistic. It follows that the essential message which applies to other scams applies equally to investments. If it looks too good to be true, it probably is!

Example 1 Twelve people are invited to an investment seminar and asked to invest in a good quality product. Three people invest in the scheme. A year later they discover that the product is not of the quality initially described and is worthless.

- 1 x Fraudulent Scheme - Other Financial Investment

Example 2

A receives an e-mail asking them to join an investment company which will double their money in six months. They send away a sum of money to an account. They receive no more communications and are unable to make any contact with anyone related to the said investment company.

- 1 x Fraud - Other Financial Investment

Consumer and Retail Fraud

Online Shopping and Auctions

This involves fraud attributable to the misrepresentation of a product advertised for sale through an Internet auction site or the non-delivery of products purchased through an Internet auction site.

The seller often requests funds to be transferred directly to them via Western Union, Money-Gram, or bank-to-bank money transfer. This ensures the money is virtually unrecoverable with no recourse for the victim.

Equally buyers from a legitimate auction site can commit fraud by requesting a certain method of shipping for tax avoidance or they use fraudulent cards or payment methods to purchase goods.

Note

This is not cheque and credit card fraud as the account holder is responsible for making the transaction. Care must be taken in determining that there is a crime in law and not just undelivered goods or a dispute over the goods purchased. Crimes should not be recorded simply because the goods have not arrived or are not what was expected. Additional details are necessary e.g. e-mail address no longer available, address unknown or found to be a mail drop, more than one complainer or payment service provider (PSP) payment stopped.

Example 1 Three people purchase a camera from the same retailer online. Payment is made over the internet. The goods do not arrive and the site is later found to be bogus.

- 1 x Fraudulent Scheme - Online Shopping and Auctions

Example 2 'A' reports that goods purchased online using a credit card had not arrived.

- There is insufficient information to confirm a crime has occurred at this stage.

'A' sends an e-mail to the seller and is informed by the Internet Service Provider (ISP) that the e-mail address is no longer valid.

- 1 x Fraud - Online Shopping and Auctions (additional details show that on the balance of probability this is a fraud)

Example 3

'A' reports that they sold goods to a suspect following placing the goods on an online auction site. 'A' has not received payment.

- There is insufficient information to confirm a crime has occurred at this stage.

'A' makes further enquiry and establishes whilst payment was made, the following day it was reclaimed as a stolen credit card had been used to make payment.

- 1 x Fraud - Online Shopping and Auctions
- 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts (for use of card)
- 1 x Theft (in respect of stolen credit card if not already recorded)

Example 4

'A' sends goods to a purchaser following advertising on an online auction site. No payment is received and on making enquiries discovers that the address that the goods were sent to was a mail drop used by a number of people.

- 1 x Fraud - Online Shopping and Auctions

Example 5

'A' purchased goods online. On receipt of the goods the quality was far inferior to what was expected.

- No crime requires to be recorded in these circumstances.

Example 6

'A' purchased goods from the internet and transferred money using Western Union to a Western Union Office outwith the UK. The goods do not arrive and 'A' discovers that the address provided does not exist.

- 1 x Fraud - Online Shopping and Auctions

- Example 7 'A' reports that they have ordered a product via a website which has not arrived. Enquiry reveals the site is bogus and it is known to have been set up overseas.
- 1 x Fraud (Although the site has been identified as being overseas, the Division receiving such reports must record as a crime, the locus being the victim's address).
- Example 8 A person in Division 'A' successfully bids for an item of property on an internet auction room. Payment is sent electronically on the internet. The item of property is never delivered. The electronic money transfer took place to an account held in Division 'B'. The account holder resides in Division 'C'. They report the matter to Division 'A'.
- 1 x Fraud - Online Shopping and Auctions (The locus of the crime is Division 'A')
- Example 9 'A' reports that they sold goods to suspect following placing the goods on an on line auction site. 'A' has not received payment. 'A' has established that payment was made using a payment service provider (PSP) e.g. PayPal, into their PSP account but the following day the payment was reclaimed by the PSP as a stolen credit card had been used to make the payment.
- 1 x Fraud - Online Shopping and Auctions
 - 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts (for use of card)
 - 1 x Theft (in respect of stolen credit card if not already recorded)
- Example 10 'A' contacts the police advising that £541 has been taken from their Pay Pal account for no apparent reason. PayPal were contacted and were to make their own investigation. Pay Pal provided the e-mail address of the intended recipient. 'A' advises

that Pay Pal had recovered the money prior to it reaching its destination and money was returned to their account.

- No crime is required to be recorded at this stage as it is unknown whether a fraud has occurred, or whether this has been an error.

Where goods are purchased over the internet and payment is made using a stolen or cloned plastic card the crime should be recorded under Cheque and Credit Card Fraud.

Example 11 Suspect purchases a train ticket over the internet using a cloned card and then obtains the ticket at the station by inserting the cloned card into the ticket machine.

- 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts

Where fraud is perpetrated using PSPs (Payment Service Providers e.g. PayPal, MoneyGram) offences should be recorded under Online Shopping and Auctions, not Cheque and Credit Card. Where PSP accounts have been topped up using stolen credit cards or debit cards then a crime should also be recorded for the credit card fraud.

Example 12 Goods are purchased from an online site and paid for using PayPal. The goods are dispatched and the next day the retailer is informed that the pay pal payment has not gone through because the account was funded by a stolen credit card.

- 1 x Fraud - Online Shopping and Auctions (complainer/victim being the retailer)
- 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts (for the use of the stolen credit card)
- 1 x Theft or appropriate crime in relation to the stolen credit card if not already recorded

Consumer Phone

Missed calls frauds start by ringing your phone and hanging up so quickly that you can't answer the call in time. Your phone registers a missed call and you probably won't recognise the number. People will often then call the number back to find out who it is. Apart from being a nuisance, the missed call can lead to a fraud in two ways:

The number you call back may be redirected to a premium rate service without your knowledge, which means you will be charged a lot of money per minute, often costing up to £15 per call;

- The number may tell you that you have won a prize of some sort, and give you another number to call to 'claim' your prize, but they may not tell you how much the call will cost. This second number may be a premium rate number, again charging you a lot of money to get your 'prize'. Your prize may be nothing more than a ring tone subscription which can also be a fraud!
- Text message frauds work by sending you a text message from a number you may not recognise, but the content of the message could sound like it's from a friend, for instance 'Hi, it's John. I'm back! When do you want to catch up?' or 'Hey big fella, happy birthday!'

Another common tactic is for a text message to sound like someone flirting with you. Many people reply asking who it is, and end up engaging in a lengthy SMS exchange with the fraudster. Only later do they find out that they have been charged a high rate both for messages they sent (sometimes, there are also charges for messages received as well).

Ring Tone Scams are a reverse text scam is where the victim can end up paying to receive texts, such as ring tones and wallpapers, typically from 25p to £1.50 per message. These scams might attract you with an offer for a 'free' or low cost ring tone. What you may not realise is that by accepting the offer, you are actually subscribing to a service that will keep sending you ring tones—and charging you a premium rate for them. There are many legitimate companies selling ring tones, but there are also fraudsters who will try to hide the true cost of taking up the offer.

The fraudsters don't tell you that your request for the first ring tone is actually a subscription to an expensive service. A fraudster will also make it difficult for you to stop the service. You actually have to 'opt out' of the service to stop the ring tones and high charges. Some people have been charged over £100 for what they thought was one ring tone.

An SMS competition or SMS trivia scam usually arrives as a text message and may encourage you to enter a competition for a great prize (like an MP3 player). The message (or sometimes, an advertisement) could also invite you to take part in a trivia competition, with a great prize on offer if you answer a certain number of questions correctly.

The fraudsters make money by charging extremely high rates for the messages you send, and any further messages they send to you. These charges could be as high as £2 for each message sent and/or received.

With trivia scams, the first lot of questions will be very easy. This is meant to encourage you to keep playing. However, the last one or two questions that you need to answer to claim your 'prize' could be very difficult or impossible to answer correctly (and may even require you to guess a random number). A winner, to claim a cash prize, may have to dial a number that begins with say 0906, to collect the prize. This is a premium rate number that lasts several minutes with no prize materialising.

Phone Insurance Scams (not to be confused with false insurance claims by account holders). The fraudsters target people with new phones and make them believe they are getting a call from the shop or the mobile phone network.

After the consumer gives their payment details they end up with poor quality phone insurance or none at all.

Those involved in the scam often buy phones and call numbers similar to their own number until they find someone with a new phone.

Example 1 'A' receives a missed call on their mobile phone and dials the number. 'A' is told by a person answering the call that someone will be with them in a minute, placing them on hold. After a few

minutes 'A' hangs up. On receiving their bill there is a call to a premium rate phone line at a cost of £20.

- 1 x Fraud - Consumer Phone Fraud

Example 2

'A' receives a voice message advising they have won a prize. 'A' dials the number provided to claim the prize which is a premium rate number. After keying in a number of options they are eventually advised they have won one month free ring tone subscription. The call cost £20.

- 1 x Fraud - Consumer Phone

Example 3

'A' receives a missed call on their mobile phone and dials the number. 'A' is told by a person answering the call that someone will be with them in a minute, placing them on hold. After a few minutes 'A' hangs up. Three of 'A's colleagues also receive missed calls from the same number and knowing what has just occurred they ignore the missed call.

- 1 x Fraud - Consumer Phone. The 3 colleagues are not specific intended victims.

Example 4

'A' has purchased a new mobile phone contract with a new number. Shortly after they receive a call selling them insurance for the phone.

'A' hangs up.

- No crime requires to be recorded in these circumstances.

'A' likes the offer and takes out the insurance, paying on his credit card. No policy arrives through the post as promised and on making enquiries discovers the insurance company do not exist.

- 1 x Fraud - Consumer Phone

Door to Door Sales and Bogus Tradespeople

Dishonestly makes a false representation, and intends, by making the representation to make a gain for themselves or another, or to cause loss to another or to expose another to risk of loss.

Crimes should be recorded where it is clear that the circumstances are fraudulent.

Example 1 'A' reports that following a knock on their door from someone offering to check the gas supply was in order to their house for £50, they agreed and payment was made. 'A' later advises a family member of this who informs 'A' they do not have gas, only electricity.

- 1 x Fraud - Door to Door Sales and Bogus Tradespeople

Example 2 Three persons in the same street report that they had agreed to have their front gardens tarmacked, having received a quote with the details of what work was to be carried out. Each paid £2000 for the work. One month later the grass was found to be growing through the tarmac and it was uneven where the vehicles had been parked. It became clear that the work outlined in the quote had not been carried out and was clearly overpriced.

- 1 x Fraudulent Scheme - Door to Door Sales and Bogus Tradespeople

Example 3 Police attend a call where a gardener and a householder are in dispute regarding the quality of work of gardening. The gardener's details are confirmed and there is nothing to infer criminality on the part of the gardener.

- No Crime requires to be recorded in these circumstances. (The householder may be advised to contact their solicitor and trading standards)

Example 4 An individual is traced following a report of persons being deceived as to the condition of their roofs, agreeing to repairs to

invented damage and being charged an excessive price. Enquiry identifies ten victims.

- 10 Crimes of Fraud (or 1 x Fraudulent Scheme depending on the individual circumstances)

Example 5

'A' answers the door to someone selling off cuts of carpet and if they can measure the lounge carpet they will be able to lay it today. 'A' invites them into the front lounge and offers them a cup of tea. 'A' then disturbs them in a separate room searching through a chest of drawers. On seeing 'A' they make off out of the house. Nothing appears to have been stolen.

- 1 x Attempted Theft

Example 6

Caller purports to be from the gas board, stating to the householder that they have come to collect an outstanding amount of £50 owed to the gas board. The householder pays the £50.

- 1 x Fraud - Door to Door Sales and Bogus Tradespeople

Example 7

Caller purports to be from the water board in order to gain access to elderly persons dwelling, but does not gain access; no theft taking place. (Investigation confirms caller is not genuine)

- 1 x Attempted Fraud - Door to Door Sales and Bogus Tradespeople

Example 8

An accused admits to deceiving five persons over a period of two years by carrying out unnecessary repairs to roofs, work proving to be substandard, charging an exorbitant price.

- 5 x Fraud, on confirmation of the victims - Door to Door Sales and Bogus Tradespeople (Insufficient details as presented to confirm a Fraudulent Scheme)

Example 9

An accused admits to deceiving an elderly couple over a period of two years by carrying out unnecessary repairs within their house, work proving to be substandard, charging exorbitant prices.

- 1 x Fraud - Door to Door Sales and Bogus Tradespeople

Example 10

Two persons purport to be collecting for charity, visit 161 private dwellings over a five day period obtaining cash and having each person sign a collections form. One street is targeted each day.

- 1 x Fraudulent Scheme - Door to Door Sales and Bogus Tradespeople (they are acting together)

Example 11

A person is defrauded on three occasions by salesmen purporting to represent different companies, with no evidence of collusion.

- 3 x Fraud – Door to Door Sales and Bogus Tradespeople

Other Consumer and Retail

Dishonestly makes a false representation, and intends, by making the representation to make a gain for himself or another, or to cause loss to another or to expose another to risk of loss.

Example 1 'A' agrees to purchase a product advertised in a local paper and attends a car park where they are shown the advertised goods working. 'A' hands over cash and whilst the product is being placed in a box, 'A' is distracted by an accomplice. 'A' is handed the box and leaves. On arrival home and on opening the box there is only a brick within.

- 1 x Fraud - Other Consumer and Retail

Example 2 'A' purchases a car advertised for sale on a street after a test drive. There is no paperwork and is advised this will be sent on. When no paperwork arrives 'A' makes enquiry and ascertains the vehicle purchased was stolen.

- 1 x Theft of Motor Vehicle
- 1 x Fraud - Other Consumer and Retail

Example 3 'A' is stopped in a car park and is offered a laptop for £200. 'A' checks the laptop and it appears in working order and agrees to buy it for £150. 'A' is distracted when counting out the money from their wallet and is then handed a bag with a box therein. On arriving home 'A' opens the bag to find a box full of stones within.

- 1 x Fraud – Other Consumer and Retail

Computer Software Service

A fraud which involves the victim being contacted and told that there is a problem with their computer and for a fee this can be fixed. No fix actually occurs.

Victims are cold called, usually by phone and told that there is a problem with their computer and for a nominal fee the suspect can fix it. Often the suspects claim that the computer has been infected with a virus or that they are from Microsoft and can offer an update or fix performance. Many reasons can be given, but the victim is persuaded to provide details so the fraudster can gain access to the computer. The victims then often witness the mouse moving and pages displayed.

They then pay a small fee and are told that the problem has been fixed.

This is not the case, nothing has been done. Sometimes programs are also installed that allow the fraudsters unlimited access to the computer without the victims knowledge. This allows further illegal activity to be carried out. Once the initial small payment has been processed, it is not uncommon for additional larger payments to be withdrawn without permission from the victims account.

This fraud should not be viewed as limited to desk or laptop computers. It can include any device using operating software accessible on line, for example games consoles and smart phones.

Example 1 'A' is cold called at home on their house phone. After a short conversation 'A' is persuaded that there is a virus on their computer. 'A' provides details to the caller who gains access to the computer and demonstrates a problem and advises for a fee of £19.99 they can fix it now. 'A' pays the fee and watches a number of things happening on their computer and is then told it has been fixed. On receiving the credit card bill an additional payment of £99 has been taken. Examination of their computer reveals there was no virus and no software downloaded.

- 1 x Fraud - Computer Software Service

Example 2 'A' receives a call at home stating their computer has a virus and that for a fee it can be resolved.

'A' hangs up

- No crime requires to be recorded in these circumstances.

'A' turns on their computer and starts to open up the relevant pages as requested by the caller and on being asked for information which would allow the caller to access their computer, becomes suspicious and hangs up, without providing any money or information to allow them to access their computer.

- 1 x Attempted Fraud - Computer Software Service

Ticket

Ticket fraud involves the victim purchasing tickets remotely e.g. over the phone or internet by victims purchasing any ticket in advance over the phone or internet.

Tickets could be for concerts, events, or flights for example. The tickets are never supplied or turn out not to be valid or worthless.

Note

This is not a cheque and credit card fraud as the account holder is responsible for making the transactions.

Care should be taken to ascertaining a crime has occurred and not just undelivered tickets or a dispute over the tickets purchased. A crime should not be recorded simply because goods have not arrived or are not what was expected. Additional information would be necessary to confirm a crime e.g. e-mail address no longer available, address unknown or found to be mail drop, more than one complainant etc.

Example 1 'A' buys tickets on line for a concert and advised that the tickets would arrive two weeks before the concert.

The tickets do not arrive.

- There is no confirmation of fraud at this point so no crime would be expected to be recorded.

When the tickets did not arrive on checking the website it was ascertained the website no longer exists, the phone number provided was no longer in use and there was a number of forums where persons were stating this was a scam.

- 1 x Fraud – Ticket

Example 2 'A' purchases four airline tickets on line for family to travel abroad on holiday. On arrival at the airport they discover the tickets are not valid.

- 1 x Fraud – Ticket

Example 3

Police are called to the airport where five passengers have independently purchased holidays over the internet. On arriving at the airport with their tickets they have discovered that the company does not exist and there are no flights or holiday.

- 1 x Fraudulent Scheme - Ticket

Retail

Retail fraud is fraud committed against retailers that does not involve on line sales or cheque, or plastic card sales.

Refund Fraud: This is where the suspect attempts or obtains a refund by false representation. For example, refunding goods that have been stolen and not purchased, or goods purchased during a sale and the non-sale price being claimed.

Label Fraud: This is where the label on an expensive product is switched with a cheaper label and an attempt is made to purchase at the cheaper price.

Obtaining Goods or services with no intent to pay: This is where you order food or enjoy entertainment where you have no intention of paying.

Example 1 'B' attends at customer service desk of a shop with a dress that they know has been stolen and asks for a refund stating it is an unwanted gift.

- 1 x Fraud – Retail

Example 2 'B' selects two items of clothing in a shop, one being priced higher than the other. 'B' enters the changing room and swaps the pricing labels over, leaving the cheaper priced dress behind and approaches the till and attempts to pay the cheaper price for the expensive dress. The staff realise what 'B' has done and contact police.

- 1 x Attempted Fraud – Retail

Example 3 A garage reports that 'B' drove up and filled their car with fuel, entered the shop and obtained a cup of coffee and went to the cashier to pay. The cashier asked if they wished to pay for the fuel now as well and 'B' denied having filled up with fuel. The cashier indicated the car at the pump and again 'B' stated again they did not take fuel. 'B' paid for the coffee and drove off. CCTV clearly showed 'B' had filled up with fuel.

- 1 x Theft

- Example 4 Entering store, removing price tags from ten items, replacing with cheaper price tags, paying for same at lesser price.
- 1 x Fraud – Retail
- Example 5 A garage reports a failure to pay for fuel and the details provided appear to be false. The driver advised they had forgotten their wallet and provided their details advising they would return later that day to pay. The garage have attempted to make contact and the address and mobile number provided appear to be false.
- 1 x Fraud – Retail
- Example 6 A mail order company identifies that goods have been fraudulently obtained and reports the matter to the police.
- 1 x Fraud - Retail. (Locus being the delivery address)
- Example 7 'B' enters a shop and buys an item for £1 handing over £20 and asks for change in a specific denominations and then changes their mind, confusing the staff member resulting in them handing over too much money.
- 1 x Fraud – Retail (Ringling the Changes)
- Example 8 A customer hands over 2 x £50 and asks for change requesting 10 x £10. The cashier takes the 2 x £50 and hands over 10 x £10. The customer then says they would prefer 20 x £5 and the cashier agrees to change the notes again. But this time the customer only hands over £80 worth of notes, having skimmed 2 x £10 unseen by the cashier. The cashier hands over 20 x £5 believing that they have been given the original 10 x £10 back. At the end of the transaction the customer is in credit by £20.
- 1 x Fraud – Retail (Ringling the Changes)

Charity Fraud

Charity

Fraudulently soliciting donations to a non-existing charity or the organised fraudulent collection of funds from genuine charities. The fraudster poses as a representative of a charitable organisation soliciting donations to help a number of worthy emotive causes such as a natural disaster, epidemic or conflict. The fraudster requests donations with links to news stories or fraudulent websites to strengthen their cases.

The victims are charitable persons willing to help a good cause and expect nothing in return. Once sent the money is irretrievable and the fraudster disappears.

Example 1 Ten persons report being visited by someone purporting to be from a charity, they complete direct debit mandates and have had three payments taken from their account, before establishing the charity does not exist.

- 1 x Fraudulent Scheme – Charity

Example 2 Fifty persons report being visited by someone purporting to be undertaking a sponsored walk for charity, forty advised they paid money whilst the other ten advised they declined.

- 1 x Fraudulent Scheme – Charity

Example 3 'A' steals a charity box from a shop and stands in the street obtaining money from passers-by. Police are informed by a concerned passer-by and establishes that 'A' stole the charity box. Three persons are identified as having put money into the charity box.

- 1 x Theft
- 1 x Fraudulent Scheme – Charity

Example 4 A charity provides collection bags for householders to put clothing in. The bags are filled and left outside for collection. It is

ascertained that they have been taken by someone who has nothing to do with the charity.

- 1 x Theft for each household who left a filled bag to be uplifted.

Example 5 Collection bags are delivered to householders purporting to be from a registered charity. The bags are filled and left outside for collection. They are then collected. It is established they have nothing to do with the registered charity.

- 1 x Fraudulent Scheme – Charity

Fraudulent Applications for Grants from Charities or Lottery Fund Organisations

Dishonestly makes a false representation, and intends, by making the representation to make a gain for himself or another, or to cause loss to another or to expose another to risk of loss.

This is where Charities have provided grants, based on false representations or where they have received grant applications that contain false representations and so no grant was paid.

Example 1 A registered charity has provided funding for a project as a result of a grant application. The applicant receives the money, pays it into their account and leaves the country.

- 1 x Fraud – Fraudulent Applications for Grants from Charities or Lottery Fund Organisations

Example 2 A charity has received an application for a grant for a project. When checking the application the charity finds that the applicant has used false details and the company who were to undertake the work does not exist

- 1 x Fraud - Fraudulent Applications for Grants from Charities or Lottery Fund Organisations

Example 3

Five applications are identified as having been submitted to various organisations seeking funding for the same project whereby enquiry identifies they have all been submitted by the same individual who has provided false information in the hope of funding being granted.

- 1 x Fraudulent Scheme - Fraudulent Applications for Grants from Charities or Lottery Fund Organisations

Banking and Credit Industry Fraud

Cheque, Plastic Card and Online Bank Accounts (not PSP)

Dishonestly makes a false representation, and intends, by making the representation to make a gain for himself or another, or to cause loss to another or to expose another to risk of loss.

PSP - is a payment service provider for example PayPal and World Pay that are not banks, dealing in electronic money transfers.

Plastic Card - Credit card, Debit card, Prepayment card and Store card.

- Example 1 'A' used a stolen credit card to obtain goods from five separate shops.
- 1 x Theft
 - 1 x Fraud – Cheque, Plastic Card and Online Bank Accounts
- Example 2 'A' uses 'B's bank details to purchase goods from five online suppliers. The money being exchanged electronically.
- 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts (1 account defrauded)
- Example 3 A lost store card is used to obtain goods from three different branches of the same store-chain.
- 1 x Theft by Finding
 - 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts
- Example 4 A stolen cash card is used to obtain money from four cash machines; one inside a supermarket and three outside separate branches of a bank.
- 1 x Theft OLP, and if not already recorded
 - 1 x Theft (depending on circumstances Reset may also be recorded)

Example 5 'A' uses a stolen credit card to obtain goods at a supermarket and then uses the card to obtain fuel at the supermarket filling station.

- 1 x Theft
- 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts

Example 6 'A' uses a stolen bank card to obtain goods at various shops and withdraws money from two cash machines.

- 1 x Theft
- 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts

Example 7 'A' has been caught using a stolen credit card to obtain goods from a shop.

- 1 x Theft
- 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts

During enquiry it is ascertained that forty further transactions have taken place using the same stolen credit card.

- 1 x Theft
- 1 x Fraudulent Scheme - Cheque, Plastic Card and Online Bank Accounts

Example 8 'A' has been caught using two different stolen credit cards to obtain goods from ten different shops.

- 2 x Theft
- 2 x Fraud - Cheque, Plastic Card and Online Bank Accounts

Example 9 A purse is stolen which contains three bank cards from the same bank but different accounts. Two of the bank cards are used to obtain goods.

- 1 x Theft
- 2 x Fraud - Cheque, Plastic Card and Online Bank Accounts

- Example 10 An employee uses the company credit card at a number of locations which is unauthorised by the company and who report the usage to the police.
- 1 x Fraud (Corporate Employee)
- Example 11 An account holder reports that a transaction on a statement was not carried out by them. The bank have reimbursed the monies.
- 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts (known as Card Not Present Transaction)
- Example 12 Credit card stolen in Scotland and used at various locations in England.
- 1 x Theft. (As the card has been used at various locations in England, no fraud requires to be recorded).
- Example 13 Enter shopping centre, using stolen credit card in eight separate shops, gaining goods to the value of £859.
- 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts
 - 1 x Theft (if not already recorded). Depending on circumstances Reset may also be recorded).
- Locus of the fraud being the first shop the card was used.
- Example 14 Personal and security details obtained legitimately from a victim's bank account are subsequently used fraudulently to purchase goods from five on line suppliers. The money is exchanged electronically.
- 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts
- Example 15 Credit card posted to an address but does not arrive. The card is subsequently used fraudulently in the same area.
- 1 x Theft
 - 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts

- Example 16 Stolen credit card used at a supermarket store and filling station situated at the same locus.
- 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts
 - 1 x Theft (if not already recorded). Depending on circumstances Reset may also be recorded).
- Example 17 Person takes credit card details from fifty accounts and uses them to transfer money into accused's own online account using a computer.
- 50 x Fraud - the number of crimes is the number of accounts defrauded unless the circumstances indicate this to be a fraudulent scheme, thereby 1 x Fraud (Fraudulent Scheme) - Cheque, Plastic Card and Online Bank Accounts
- Example 18 A stolen credit card has been used to obtain goods from two shops which reported the incidents separately. During police enquiries fifty seven other transactions are discovered using the same credit card account.
- 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts
 - 1 x Theft (depending on circumstances Reset may also be recorded)
- Example 19 A purse is stolen containing a Bank X debit card, a Bank X credit card and a Bank X savings account card all belonging to the same person. All of them have been used fraudulently.
- 3 x Fraud - Cheque, Plastic Card and Online Bank Accounts (one for each account defrauded)
 - 1 x Theft
- Example 20 A purse is stolen containing a Bank X debit card and a Bank X cheque book for the same account. Cheques are fraudulently cashed, goods purchased using the debit card which is also used to obtain money from four cash machines.

- 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts (one account has been defrauded) (the OLPs at the cash machines are subsumed within the Fraud)
 - 1 x Theft
- Example 21 A stolen credit card is used to obtain pre-paid time on a mobile phone. There is no other usage on the account.
- 1 x Theft
 - 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts
- Example 22 A department store phones police informing them that a suspect is at the till presenting a cloned credit card for payment. Suspect leaves the store prior to police arrival.
- 1 x Attempted Fraud - Cheque, Plastic Card and Online Bank Accounts (Note – either the card or details of the card must be available in order to allow confirmation of an attempted fraud having occurred)
- Example 23 A person is apprehended for manufacturing four forged credit cards and using them to obtain goods from three separate shops.
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S46A (False Monetary Instruments)
 - 3 x Fraud - Cheque, Plastic Card and Online Bank Accounts (one for each account defrauded)
- Example 24 Suspect caught failing to finish their transaction at the self-pay till by pulling their card out too soon, enquiry brought to light five further incidents with the suspect captured on CCTV doing the same thing, times/dates available.
- 1 x Fraudulent Scheme - Cheque, Plastic Card and Online Bank Accounts
- Example 25 'A' receives a call purporting to be from their bank advising that they have evidence of fraudulent use on their bank card. 'A' is

requested to read out the number on the card to confirm the correct details are held and the security code on the reverse. They then state that someone will call shortly with a replacement card. Someone does call a short time later with a replacement card (fake). Prior to doorbell ringing the 'bank' phones back to ask if the card has arrived yet and tells 'A' the new PIN. They ask for the PIN for the original card to ensure "that the bank has not inadvertently issued the same PIN number". Suspect then leaves with the original card and person on the phone has PIN. Card is used fraudulently.

- 1 x Fraud (if no PIN had been given then this would be an Attempted Fraud) - Cheque, Plastic Card and Online Bank Accounts.

Example 26 'A' receives a telephone call where bank details are requested for authentication purposes and refuses to pass on these details causing caller to hang up.

- Record as an incident only.

Example 27 'A' reports their wallet having been lost from their unzipped jacket pocket somewhere within the town centre, at which time lost property details are noted. 'A' re-contacts Police several days later to advise that their bank card, which had been within the wallet, had been used at several locations in the town centre using the "contactless" facility after it had been lost and provided details of these transactions.

- 1 x Theft by Finding
- 1 x Fraud - Cheque, Plastic Card and Online Bank Accounts (for use of card)

Application (excluding Mortgages)

Occurs when fraudsters open an account utilising fake or stolen documents in someone else's name.

The account is usually in respect to Hire Purchase or Loans. Stolen documents may originate from a variety of sources such as theft of utility bills which may contribute along with counterfeit documents to create a verifiable identity.

Example 1 A person obtains a television from a shop on interest free credit using details of another person which were obtained from a bin. No payments are made.

- 1 x Fraud - Application

The same person returns to the same shop and obtains further goods on interest free credit. A new account is created with the same finance company. No payments are made.

- 1 x Fraud – Application

Example 2 A person obtains documents from a dustbin and uses them to obtain goods at three different shops by setting up hire purchase agreements. Three separate accounts are set up, two with the same provider. When payment is due, no payment is made and it is established that the agreements were created using another person's identity.

- 1 x Fraudulent Scheme – Application

Mortgage Related

Where an individual(s) generally involves one or more associates to fraudulently obtain one or more mortgages for profit and/or to assist in money laundering

Mortgage fraud spans a wide spectrum of deceit from simple overstatement of income, through to systemic abuses by Organised Crime Groups. It can involve the work of fraudulent brokers/intermediaries, lawyers and accountants.

A surveyor or valuer can take a variety of actions in order to manipulate or falsely confirm these key areas to perpetrate a mortgage fraud either independently or in conjunction with other professionals and/or parties involved in the mortgage process.

Example 1 Person obtains three mortgages from different providers on three separate properties, failing to disclose the other mortgages and provides false details of employment.

- 1 x Fraudulent Scheme - Mortgage Related

Example 2 Person obtains an additional mortgage loan on their property by providing false employment details.

- 1 x Fraud - Mortgage Related

Example 3 Person applies for an additional mortgage loan on their property by exaggerating the value of their property and overstating their income. The bank discovers this and the application fails.

- 1 x Attempted Fraud - Mortgage Related

Mandate

Mandate fraud is where fraudsters obtain details of direct debits, standing orders or account transfer details and amend them to transfer monies to other accounts.

Where the victim is a business they may pretend to be one of their existing suppliers and claim that they have set up a new bank account and give account details for payment to be made. The suspect may claim to be from the bank and advise that due to a security breach, the victim requires to transfer funds into a "Safe Account".

Example 1 A company is contacted by someone purporting to be from their suppliers and is told that they have changed their bank account and seeking for them to make the necessary amendments to reflect this. The details are amended and payments are made. The genuine supplier makes contact querying non-payment and the fraud is uncovered.

- 1 x Fraud - Mandate Fraud

Example 2 An online account is hacked and ten monthly payment details to different payees are altered so that the payments are transferred to another account. Payments are made to six payees before it is uncovered.

- 1 x Fraud - Mandate Fraud
- 1 x Computer Misuse Act 1990, S2 - Computer Hacking

Example 3 'A' receives a call from a person purporting to be from their bank who advises there had been an attempt to gain access to their bank account and they require to move their money into a "Safe Account". 'A' feels the call is genuine and agrees to transfer their money into two separate bank accounts, details of which were provided by the caller. 'A' later finds out the call was a scam.

- 1 x Fraud – Mandate

(Enquiry may identify that the bank accounts used to transfer the money into were 'mule' accounts. A 'mule' account is where a

person is recruited by other members of the crime network to allow the use of their bank account in order for fraudulently obtained money to be paid into. Thereafter the money is disseminated via withdrawals from ATMs, purchase of high value items, foreign currency etc. where there is evidence that accounts have been used in this manner a Proceeds of Crime Offence (Money Laundering) should be considered).

Dishonestly Retaining a Wrongful Credit

A person is guilty of theft if they dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.

Example 1 'A' receives money into their account knowing it has been wrongfully credited to their account and spends same.

- 1 x Theft

Insurance Fraud

Insurance Related

Insurance fraud is where policy holders obtain money or replacement goods through false insurance claims or obtain policies by furnishing incorrect details.

Typically reported by the insurance company Involves any insurance policy, e.g. car, household, or travel.

Example 1 A householder claims on their home contents insurance that a number of items of property have been stolen during a break-in that was reported to the police.

Following investigation by an insurance assessor the householder admits that it was a false claim, there was no break-in and the window was smashed in order for them to access the house as they forgot their keys.

- 1 x Theft by Housebreaking updated to No Crime and cross referred with
- 1 x Wasting Police time
- 1 x Fraud - Insurance Related

Following investigation by an insurance assessor the householder admits that two of the items claimed for had never been stolen and in fact they had never been owned by the householder.

- 1 x Fraud - Insurance Related

Example 2 A motorist with only third party insurance crashes their vehicle and on realising they will be liable for the damage leaves the scene of the accident and reports to police that the vehicle was stolen. They later claim on their insurance and following enquiry admits the car was not stolen and they were responsible for the accident.

- 1 x Theft of Motor Vehicle (updated to No Crime)
- 1 x Wasting Police Time

- 1 x Fraud - Insurance Related
- 1 x Road Traffic Act 1988, S170 - Fail to Stop
- 1 x Road Traffic Act 1988, S170 - Fail to Report

Example 3

A householder claims on their household, travel and motor insurance policies for the theft of a camera and lenses although they have never owned a camera.

- 3 x Fraud – Insurance Related (3 separate policies)

Insurance Broker

Insurance broker fraud is where victims obtain insurance cover from a broker or someone purporting to be a broker. When a claim is made or the policy checked, they discover that they are not insured, or the cover that they have paid for and thought they had is not what they have.

Example 1 'A' attends a brokers office and obtains insurance for their vehicle which they pay for in cash. Three weeks later following a car accident 'A' claims on their car insurance and discovers that there is no insurance in place and the money was never paid by the broker.

- 1 x Fraud - Insurance Broker

Example 2 Following enquiry into an insurance broker practice, police trace twelve people who all confirm they had obtained insurance policies and paid cash to the broker for them. The insurance certificates they were given relate to a bogus insurance company.

- 1 x Fraudulent Scheme - Insurance Broker

Telecom Industry

Telecom Industry Fraud (Misuse of Contracts)

This is where contracts are obtained by false representation from service providers either by using false details or stolen documents/credit cards or with no intention of paying the contract.

This also includes internet services.

Example 1 Suspect obtains a mobile phone on a twelve month contract using a dormant bank account. The phone is then used for three months with no payments being made before the phone is cut off by the service provider. There were no funds in the account and never any intention to pay the monthly contract.

- 1 x Fraud - Telecom Industry

Example 2 A short stay tenant obtains an internet package from an ISP using false details knowing that they will no longer be there in a month's time when the first bill arrives.

- 1 x Fraud - Telecom Industry

Example 3 Suspect obtains a mobile phone on a twelve month contract using a cloned credit card. The phone is then used for three months before the phone is cut off by the service provider.

- 1 x Fraud - Telecom Industry
- 1 x Fraud - Cheque, Credit Cards and Online Bank Accounts

Example 4 Suspect enters a phone shop and purchases a new handset for their sim card using a cloned credit card.

- 1 x Fraud - Cheque, Credit Cards and Online Bank Accounts

Corporate Employee/Procurement Fraud

Corporate Employee

This is where employees or ex-employees obtain property, or greater remuneration through fraud. It also covers the misuse of corporate cards and expense systems.

- Example 1 After an employee leaves a company, they obtain fuel from a garage by signing the usual documents at the garage as if still employed by the company thereby obtaining fuel on former employer's account.
- 1 x Fraud - Corporate Employee (Locus being first garage petrol obtained)
- Example 2 An employee in accounts creates a false employee within a large company and directs all the wage payments to one of their accounts.
- 1 x Fraud - Corporate Employee
- Example 3 Twelve employees claim overtime for working on a Sunday at the same site. It is established they never work a Sunday but always claim for doing so.
- 12 x Fraud - Corporate Employee
- Example 4 Employee steals a laptop belonging to the company from an office. When interviewed they admit they have been submitting false expenses for the last six months.
- 1 x Theft
 - 1 x Fraud - Corporate Employee
- Example 5 An employee is reported to the police for falsely claiming travelling expenses (no gain has occurred).
- 1 x Attempted Fraud – Corporate Employee (if successful - 1 x Fraud)

Example 6

A store person orders stock by completing 266 requisition slips in order to steal from their employer.

- 1 x Fraud – Corporate Employee (although depending on the circumstances this may be a Fraudulent Scheme or an Embezzlement)

Corporate Procurement

This offence is where excess goods are ordered and then sold on by the offender or goods of an inferior quality are delivered to those paid for with the offenders pocketing the difference.

Example 1 The site foreman orders kitchens for twelve properties when the company is only building ten houses. The two additional kitchens are then sold on by the foreman who keeps the money.

- 1 x Fraud - Corporate Procurement

Example 2 A large company is updating their IT and an order is placed for 150 new desk top computers. 140 desk top computers are replaced with the new machines and the project team of ten each take home a brand new computer for their own use. The company does not supply desk top computers for use at home.

- 10 x Theft

Example 3 An employee of a housing development contacts their friend who runs a garden centre business to arrange delivery of a quantity of shrubs for the development. The employee tells their friend to invoice for the more expensive shrubs as no one will know the difference and both share the difference.

- 1 x Fraud - Corporate Procurement (2 accused)

Pension Fraud

Pension Fraud by Pensioners (or their estate)

This is where the pension provider is defrauded by the pensioner or more usually by the pensioner's estate following their death.

Example 1 A pension provider reports that 'A' failed to inform them of the death of 'B' so 'A' continued to receive full payments from the pension of 'B'.

- 1 x Fraud - Pension Fraud by Pensioners

Example 2 A pension provider reports that 'A' failed to inform them of the death of 'B' so 'A' continued to receive full payments from the pension of 'B'. On making enquiry it is established there is a further pension held with a separate provider and 'A' has also failed to inform them of the death of 'B'.

- 2 x Fraud - Pension Fraud by Pensioners

Example 3 It is discovered that money was illegally drawn each week from two Pension Books, one issued by the Government and one by the Local Authority, the true recipient having died fifteen years earlier. Money was withdrawn on 1560 occasions.

- 2 x Fraud - Pension Fraud by Pensioners. The victims are (1) the Government and (2) the Local Authority.

Pension Fraud Committed on Pensioners

This is where the pensioner is the victim of fraud on their pension. It is usually committed by Trustees or pension funds inappropriately using the pension fund.

Example 1 A trustee of a pension fund moves funds from a trust fund into their own account with little risk of being caught as the pension is not due to mature for another twenty years, falsely completing documents to transfer the money.

- 1 x Forgery and Uttering – Pension Fraud Committed on Pensioners

Pension Liberation

This is where by fraud a pensioner is persuaded to 'liberate' their pension early for a large cash sum. The payment is considerably smaller than they expected because of fees and taxes.

Example 1 'A' is contacted by a company who advise that they can obtain the value of their pension now for a small fee. 'A' is struggling financially and agrees. 'A' receives a cheque for a quarter of its value, the rest going on fees and charges.

- 1 x Fraud - Pension Liberation

Miscellaneous Fraud

Business Trading Fraud

In the case of long/short firm fraud being a fraudulent scheme where there are multiple victims of a single (or team) of perpetrators a crime should be recorded for each victim. Generally, this involves a company being set up, obtaining goods on credit and failing to make payment for the goods. The goods are usually sold for cash and the business closes their premises, moving on, possibly to do the same again. More recently, instances of individuals purporting to be from legitimate companies have obtained goods on credit with enquiry establishing they were not part of the legitimate company, having obtained the goods and moved on.

Long Firm Fraud - normally where an apparently legitimate business is set up with the purpose to defraud its suppliers and customers after a relatively long period of time. The business develops a decent credit history to win the trust of suppliers; this is achieved by placing numerous small orders with wholesalers accompanied by prompt payment. The fraudsters then place several larger orders with the businesses with which they have established a good credit history. Once they receive the goods, the criminals will promptly disappear and sell the goods on from various trading places

Short Firm Fraud - where an apparently legitimate business is set up with the purpose to defraud its suppliers and customers after a relatively short period of time. This is similar in all aspects to long firm fraud, however over a shorter time span with no pattern to establish any form of credit history or creditability. The companies involved have no day-to-day trading activity, not even a cash-generating front. Goods are obtained on credit and delivered to third party addresses, often located at multi occupancy trading estates. The goods are sold on for cash therefore creating no document trail.

Example 1 A company is set up to sell goods. They order a relatively low number of goods from a supplier and on advertising the goods, receive 100 orders and payment to purchase the goods. The director of the company disappears with the money, no goods are

dispatched for the 100 orders/payment received and the supplier of the goods is not paid.

- 101 x Fraud – Business Trading

Example 2

A club treasurer persuades ten people to donate money to the club by making false statement about the club's finances.

- 10 x Fraud – Business Trading

Example 3

Company sets up business, obtains credit over a two month period from two companies and fails to pay for goods received. Enquiry reveals the business has closed their office premises.

- 2 x Fraud – Business Trading

False Accounting Fraud

“Destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose;”

or

“In furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular.”

See Companies Act for relevant offences.

Bankruptcy and Insolvency Fraud (SGJD - 27/000)

It is a crime at Common Law for any person who is insolvent or bankrupt, or on the eve of, or in contemplation of bankruptcy to conceal or remove his assets with intent to defraud his creditors.

Note

The Bankruptcy (Scotland) Act 1985 is concerned with individual insolvency. The Insolvency Act 1986 relates to company insolvency.

Example 1 Failing to disclose relevant financial matters on legal documents when seeking sequestration.

- 1 x Bankruptcy (Scotland) Act, 1985

Passport Application Fraud

Passport fraud occurs where fraudsters obtain or try to obtain a United Kingdom Passport by false representation to the passport Agency.

Example 1 The Passport Office report that they have received a passport application using a forged birth certificate. No passport is issued.

- 1 x Forgery and Uttering - Passport Application

Fraudulent Applications for Grants from Government Organisations

Fraudulent Grant

This is where Government funded Organisations have provided grants, based on false representations or where they have received grant applications that contain false representations and so no grant was paid.

Government Funded Organisations - organisations set up to distribute funding on behalf of the government. They are not charities.

Example 1 An organisation has provided funding for a householder to install solar heating as a result of a grant application. The applicant receives the money and pays it into their account, submitting the receipt for installation. It is then established that the receipts are false and no work was carried out.

- 1 x Fraud - Fraudulent Application for Grants from Government Funded Organisations

Example 2 An organisation has received an application for a grant of £10,000 for a project. In checking the application the organisation establishes that the applicant has used false details and the company who were to undertake the work does not exist. No grant was paid.

- 1 x Fraud - Fraudulent Application for Grants from Government Funded Organisations

Other Regulatory Fraud

This crime type should be used to record regulators fraud not covered elsewhere. Examples would include Land Registry, Insider Dealing at the stock exchange, or the Gambling Commission, etc.

Example 1 The land registry receives a fraudulent application to change the ownership of a plot of land.

- 1 x Forgery and Uttering - Other Regulatory

Fraud by Failing to Disclose Information

Dishonestly fails to disclose to another person information which he is under a legal duty to disclose and intends by failing to disclose the information to make a gain for himself or another, or to cause loss to another or expose another to a risk of loss.

Example 1 A solicitor fails to share information with a client in order to make a gain for another client.

- 1 x Fraud - Fraud by Failing to Disclose Information

Abuse of Position (including Embezzlement)

Occupies a position in which they are expected to safeguard, or not to act against, the financial interests of another person, dishonestly abuses that position and intends, by means of the abuse of that position to make a gain for themselves or another or to cause loss to another or to expose another to risk of loss.

A person may be regarded as having abused their position even though their conduct consisted of an omission rather than an act.

Embezzlement

Definition

The felonious appropriation of property, which has been entrusted to the accused with certain powers of management or control. The accused must have received either a limited ownership of the property, or actual possession of the property under liability to account for it to the owner.

Example 1 Shop manager lodges twenty two false refund transactions through the till point on separate occasions to the value of £815.

- 1 x Embezzlement - Abuse of Position of Trust

Example 2 The financial administrator in a Care Home with sole access to resident's accounts fraudulently obtains monies by adjusting the accounts by £100 per person over a six month period. Twenty-six resident's accounts have been found to have such anomalies.

- 1 x Embezzlement - Abuse of Position of Trust

Example 3 'A', a family member, has power of attorney for 'B' and has full control of their finances. 'A' transfers monies from the various accounts of 'B' into their own account with no justification for doing so.

- 1 x Embezzlement - Abuse of Position of Trust (depending on individual circumstances re the extent of control of finances, theft or fraud can be alternative outcomes).

- Example 4 Two employees, acting together, found to be embezzling monies.
- 1 x Embezzlement - Abuse of Position of Trust - 2 accused
- Example 5 Shop assistant devises a system i.e. short change, in order to steal money from the till over a period of time. Enquiry provides dates for each transaction carried out.
- 1 x Fraudulent Scheme - Corporate Employee
- Example 6 A shop assistant is seen on CCTV on five occasions over a period of one week to steal cash from till, which is confirmed when the till was balanced.
- 1 x Theft
- Example 7 Home care assistant takes bank card from victim's drawer without permission, attending at ATM and withdrawing £50 each day over five days, returning the card after each transaction.
- 1 x Theft
 - 1 x Theft by Opening Lockfast Place ATM (only one account) (Locus of Theft being the victim's home address and the Theft by Opening Lockfast Place being where the first transaction took place)
- Example 8 A coach at the Amateur Football Club collects money from fourteen players to organise a tournament and makes off with the money.
- 1 x Fraudulent Scheme - Other (depending on position held by the culprit and circumstances, this may be considered to be an embezzlement)
- Example 9 Ten work colleagues give money to another colleague who has agreed to book a Christmas lunch. While enquiry has been made with an agreed restaurant and menus provided to attendees, the lunch is not booked and the suspect fails to return the monies.

- 1 x Theft (the monies are treated as being collective and there is nothing to suggest the suspect set up a fraudulent scheme to obtain the monies).

Note

Where a shop assistant with no powers of management or control steals money from a till this should be recorded as Theft or if a scheme has been set in place, record as a Fraudulent Scheme.

DVLA Driver Licence Application Fraud

Driving Licence fraud occurs where fraudsters obtain or try to obtain a United Kingdom driving licence by false representation to the Driver and Vehicle Licensing Agency (DVLA).

Note

This only deals with fraudulent UK driving licence applications. DVLA should be consulted to ensure that the application is false. Forged/counterfeit driving licences should be recorded as Identity Documents Act.

Example 1 DVLA report that they have received a driving licence application using a forged foreign driving licence. No driving licence is issued.

- 1 x Road Traffic Act 1988, S173

Example 2 A suspect is arrested after using a UK driving licence obtained by a fraudulent application to obtain a fraudulent hire purchase agreement on a new car.

- 1 x Road Traffic Act 1988, S173
- 1 x Fraud – Application Fraud (excluding Mortgages) – regarding hire purchase agreement

Other Fraud (not covered elsewhere)

This section should be used for all other fraud by false representation or obtaining services dishonestly, that are not covered elsewhere.

Board and Lodgings

- Example 1 Person books into a guest house for two nights and leaves early morning failing to pay for stay.
- 1 x Fraud – Other
- Example 2 Person books into a guest house for two nights and leaves early morning failing to pay for stay.
- 1 x Fraud – Other
- Example 3 Guests in a boarding house leave without paying and take items of property, e.g. towels, with them.
- 1 x Fraud - Other (As both offences are crimes of dishonesty only the crime of Fraud is required with the theft included in the MO)

Restaurant/Take Away

Example 1 'A' enters a restaurant with their family, and orders a meal without any intention or means to pay for that meal. 'A' states that they have no means of paying when the bill is presented.

- 1 x Fraud – Other

Example 2 A person phones for a take away to be delivered to a specific address. On being delivered the householder takes the food and states they will return to the door with the money due, closing the door. They fail to return to the front door to pay and do not answer the door on the delivery driver knocking.

- 1 x Fraud – Other

Example 3 A person phones for a take away to be delivered to a specific address. On arrival the delivery driver is met outside the premises where a male purports to be the occupier of the said address, takes possession of the food and runs away.

- 1 x Fraud – Other

Taxi Fraud

Example 1 Two persons make off from taxi failing to pay fare. Police trace both accused and payment is made.

- 1 x Fraud - Other (although payment has been made, the actions of the accused indicate intention to deceive). Locus is where journey ends.

Example 2 Person books taxi under their own name requesting to be taken to a specified address and on arrival exits taxi stating they will obtain the monies and return to pay. They fail to return and on taxi driver attending at house, is told there is no intention to pay.

- 1 x Fraud – Other (locus is where journey ends)

Frauds Abroad

Example 1 Victim residing in Spain rents a flat in Edinburgh via the internet, transferring funds via the internet to an account, the locus of which is unknown. On arriving in Edinburgh the victim establishes the address is a shop premises, not for rent and calls at the local police station to report this.

- Only an incident need be recorded. The victim should be advised to report this in Spain.

Example 2 A resident of this country travels to Spain and is defrauded in Spain by a Spanish registered Time Share Company. They return home and report it to local Police.

- Only an incident need be recorded. (Officers may wish to offer advice and may consider noting the details and forwarding to Interpol on behalf of the victim).

Example 3 A Belgian National orders goods over the internet from an American Company. He pays for the goods using pay pal. The goods are never delivered. Enquiries at pay pal show that funds were transferred from Belgium to USA via pay pal account in Edinburgh.

- Only an incident need be recorded. (Officers may wish to offer advice and may consider noting the details and forwarding to Interpol on behalf of the victim).

Other Frauds

Example 1 A person claims to be dying of a terminal illness to two work colleagues, their dying wish being to visit Florida although advise that the cost of this trip is not affordable. The two work colleagues pay for the trip to Florida, later finding out their colleague was not terminally ill.

- 1 x Fraudulent Scheme – Other

Example 2 Frauds are reported separately by two victims. During police enquiries 57 further victims of fraud are discovered.

- 2 x Fraud - initially recorded (after investigation the evidence of other crimes may indicate a fraudulent scheme, therefore the crime would be amended to 1 x Fraudulent Scheme)

Example 3 'A' drives off from a car park and fails to pay the appropriate parking fee by avoiding/ducking under the exit barrier.

- In the majority of cases this will amount to a civil matter between the operators of the car park and the driver.

Example 4 A milk delivery person is reported to the police for repeatedly charging customers for more milk than they have received. Twenty victims are identified.

- 1 x Fraudulent Scheme – Other

Housebreaking

Housebreaking is not a substantive crime; there must be, in addition, a felonious intent. Housebreaking is only associated with theft, either as an aggravation thereof or with the intent to commit that crime.

The term 'house' applies not only to a dwelling house but also to any other roofed building, whether finished or unfinished or to any part of a building used as a separate dwelling, which is secured against intrusion by unauthorised persons. To constitute housebreaking, not merely the sanctity, but the strength or security of the building, must be overcome. It is not essential that actual damage should be caused to the building; the security of the building is overcome whenever entry is affected by what is not the usual, or intended, mode of entrance.

Offence Modifiers

There are three offence modifiers for housebreaking.

Where there is uncertainty as to the appropriate modifier to be applied, consideration should be given as to the use of the building e.g. a barn being used on a farm which is run as a business would be classed as a commercial premise, whereas a barn used on a non-working farm would be classed as a non-dwelling.

Note – Correct application of the modifier is imperative for accurate statistical monitoring.

Dwelling

A house which is being used or fit for residential purposes.

- Caravans used as residential home and touring caravans if used as permanent domicile.
- Houses which are unfinished / under renovation but are capable of being secured against intrusion (e.g. lock on door) which are roofed and have windows and doors fitted are classed as dwelling houses.

- Boarding House – should be classed as a dwelling house when the owner resides permanently on the premises.
- Domestic garage, which is an integral part of a dwelling house (i.e. there is a connecting door between house and garage).
- Occupied bedrooms within hotel.

Non-dwelling

All roofed buildings used for domestic purposes other than dwellings.

- Domestic garages, which are not an integral part of a dwelling house.
- Garden huts / garden sheds / allotment huts (non-commercial).
- Outhouses.

Other

All roofed buildings not used for residential or domestic purposes, e.g. commercial premises

- Portacabins – not used for storage e.g. office (portacabins used for storage and non-static caravans should be classified as a Lockfast Place (OLP))
- Commercial / Business premises
- Factory buildings, Schools
- Park huts
- Show houses (used purely for that purpose)
- Boarding House – should be classed as ‘Other’ when the owner does not reside permanently on the premises
- Ships – unless used as full time domicile
- Barn within a working farm

Note

An Attempted Housebreaking should be recorded when an unsuccessful attempt has been made to break-in. If a break in renders a building insecure and no property is stolen the crime is Housebreaking with Intent to steal.

For the purposes of recording crime, a compound, yard or field secured by a fence and locked gate is not considered to be a lockfast place. Any crimes of this type should be recorded as Theft or subsumed within other substantive crimes such as Theft by Housebreaking as circumstances dictate.

Where damage is reported as having occurred which may indicate an intent to break in to the premises, this should be considered as an Attempted Housebreaking with Intent to Steal unless justification is provided that the damage is more likely to be as a result of Vandalism.

Huts/sheds and garages (roofed buildings) should be considered as houses for recording purposes. While portacabins may be used for the same purpose (storage) this is considered to be a container and should be recorded as a lockfast place when used for this purpose. A portacabin which is being used as an office (internal adjustments made within e.g. electricity, phone etc.) should be recorded as a housebreaking.

Thefts from unoccupied hotel rooms

Points to consider when establishing whether a Theft or a Theft by Housebreaking has occurred:

- Was the door secured properly on occupier leaving e.g. did they check it was secure, was there a possibility that the door did not close properly.
- If a key card is used whether the opening/closing of the door has been recorded at the reception and how this links in with the timeline of the property going missing.
- The opportunity for access to be gained to the room and property stolen while door lying open when room being cleaned.

- The possibility that the person cleaning the room could be responsible.
- The possibility of the key/card having been lost, whether that be by the present or previous occupant and potential for it to be used to gain access.
- Potential for the door to be opened by other means, e.g. faulty lock and by pushing same to allow access with no obvious signs of damage.

19/004 Theft by Housebreaking (Dwelling)

19/005 Theft by Housebreaking (Non Dwelling)

19/006 Theft by Housebreaking (Other)

General Rule

One crime for each household/business

Definition

Theft by housebreaking is constituted whenever the security of the house is violated and some article abstracted or removed for the purpose of being carried off. It is not essential that the thief should have actually entered the building. The theft is complete if, for example, he draws the article towards him with some implement, even although he does not get the article into his hand.

Note: Where a true key left in lock has been used to open the door, this does not constitute a break in.

Victim/Complainer

Property owner/tenant

Locus

Where crime takes place

19/007 Housebreaking with intent to steal (Dwelling)

19/008 Housebreaking with intent to steal (Non Dwelling)

19/009 Housebreaking with intent to steal (Other)

General Rule

One crime for each household/business

Definition

It is a substantive crime to break into any building with intent to steal therefrom. The felonious purpose is inferred from the circumstances in which the building is entered.

Note: If the extent of a break-in renders a building insecure and no property is taken the crime is Housebreaking with intent to steal.

Victim/Complainer

Property owner/tenant

Locus

Where crime takes place

- 19/010 Attempted Housebreaking with intent to steal
(Dwelling)**
- 19/011 Attempted Housebreaking with intent to steal (Non
Dwelling)**
- 19/012 Attempted Housebreaking with intent to steal (Other)**

General Rule

One crime for each household/business

Definition

It is a substantive crime to attempt to break into any building with intent to steal therefrom. The felonious intent is inferred from the circumstances in which the attempt is made to enter the building.

Note: If the extent of a break-in renders a building insecure and no property is taken the crime is Housebreaking with intent to steal.

Victim/Complainer

Property owner/tenant

Locus

Where crime takes place

Housebreaking Examples

Dwelling

- Example 1 Open insecure window from outside and steal property from internal window ledge.
- 1 x Theft by Housebreaking (dwelling)
- Example 2 Enter house through open window, steal items from kitchen and living areas.
- 1 x Theft (if the window was above ground level and the culprit was required to climb up to enter or further open the window to gain entry this would be Housebreaking).
- Example 3 Break into dwelling, steal property, exit house, open insecure garage, steal vehicle owned by the householder.
- 1 x Theft by Housebreaking (dwelling) (note – if the vehicle was not owned by the household then a separate Theft of Motor Vehicle would also be recorded due to the insecurity of the garage).
- Example 4 Break into dwelling, steal car keys, thereafter steal vehicle
Parked in driveway owned by a visitor.
- 1 x Theft by Housebreaking (dwelling)
 - 1 x Theft of Motor Vehicle (due to vehicle being owned by someone other than the household).
- Example 5 Force conservatory doors of house, steal property, no further access to house gained.
- 1 x Theft by Housebreaking (dwelling)
- Example 6 Three students share the rent for a house and each have locked rooms within.

The house is broken into, all three rooms forced open and property stolen from each.

- 1 x Theft by Housebreaking (dwelling) with three victims

The insecure house is entered, all three rooms forced open and property stolen from within.

- 3 x Theft by Housebreaking (dwelling) with three victims.

Example 7 Force open front door of common stair type building and steal pedal cycle stored in common lobby.

- 1 x Theft by Housebreaking (dwelling)

Example 8 Force open front door of common stair type building, break in to two secure flats within building and steal property from each.

- 2 x Theft by Housebreaking (dwelling)

Example 9 Force open three locked rooms occupied by students in a university halls of residence and steal property stolen from within.

- 3 x Theft by Housebreaking (dwelling)

Example 10 Force open integral garage (door connecting garage to house) and stealing therefrom.

- 1 x Theft by Housebreaking (dwelling). (Where there is no connecting door to house record as Theft by Housebreaking (non- dwelling).

Example 11 Force entry to dwelling and steal property, being disturbed and raping householder.

- 1 x Theft by Housebreaking (dwelling)
- 1 x Sexual Offences (Scotland) Act 2009, S1 Rape

Example 12 Break into dwelling, steal property from living room area, being disturbed and assault two occupants.

- 1 x Theft by Housebreaking (dwelling)

- 2 x Assault
- Example 13 Find key beneath flower pot, open front door, stealing property.
- 1 x Theft by Housebreaking (dwelling) (key feloniously obtained)
- Example 14 Enter hotel, break into four occupied hotel rooms and managers living quarters, stealing property.
- 5 x Theft by Housebreaking (dwelling) (Had the culprit entered the hotel and stolen from the managers quarters and four unoccupied rooms then this would be classified as 1 x Theft by Housebreaking (dwelling) and 1 x Theft by Housebreaking (other). If the rooms are occupied, then this becomes the persons domicile and therefore each crime will be counted individually).
- Example 15 Break into garden hut, steal spade, thereafter break into dwelling house owned by same complainer and steal property.
- 1 x Theft by Housebreaking (dwelling)
- Example 16 Break into static caravan and steal therefrom.
- 1 x Theft by Housebreaking (dwelling)
- Example 17 Raise insecure sash window of a ground floor house window, climb through, search rooms, nothing stolen.
- 1 x Housebreaking with Intent to Steal (dwelling)
- (Should it be unknown whether the window was opened further or if the open window was at such a distance from the ground it would require the culprit to at least pull themselves up, the crime should be treated as a Housebreaking).
- Example 18 Smash small window of door of dwelling near to lock although hole big enough to reach through, no entry gained to property.
- 1 x Attempted Housebreaking with Intent to Steal (dwelling)

- Example 19 Insert fishing rod through letter box, hook keys on table within and use same to steal vehicle in driveway.
- or
- Insert fishing rod through letterbox in an effort to hook keys on table within, attempt failing, fishing rod and keys found on floor on householders return.
- Both of the above scenarios would result in a Theft by Housebreaking (dwelling) being recorded.
- Example 20 Postman leaves a package with neighbour, posting a card advising of this through the delivery address letterbox. The neighbour puts a metal rod through the letterbox in an attempt to retrieve the card intending to keep the package. This is unsuccessful with the metal rod having fallen into the house and being found behind the door along with the card.
- 1 x Theft (the attempt to obtain the card from the delivery address is a continuation of the intention to steal the package)
- Example 21 Householder returns home to find front door forced open. No property missing from within and no signs that any person has been in the house.
- 1 x Housebreaking with Intent to Steal (dwelling) (the presumption is Housebreaking until proven otherwise).
- Example 22 Steal set of keys from Locus 1, using same to enter and steal property from Locus 2
- 1 x Theft (Locus 1)
 - 1 x Theft by Housebreaking (dwelling) (Locus 2)
- Example 23 Break into house overnight, no items stolen, break into garage within curtilage of the property and not attached to the house, and steal various items.

- 1 x Theft by Housebreaking (non-dwelling) (the substantive crime here is the Theft by Housebreaking from the garage and the Housebreaking with Intent to Steal from the house may be subsumed).

Example 24 Attempt to break in to dwelling, no access gained, enter insecure shed in garden, and steal property from within.

- 1 x Theft (Attempted Housebreaking with Intent to Steal is subsumed into the Theft which is the completed crime, same locus, same complainer).

Example 25 Householder returns home to find a pane of glass in their front door broken. The broken pane is adjacent to the door lock and handle but no entry was gained.

- 1 x Attempted Housebreaking with Intent to Steal (dwelling). (Since the broken pane was adjacent to the door lock and handle there will be a presumption that this was an attempt to enter the property unless there is clear evidence to the contrary to suggest an act of Vandalism).

Example 26 Tent on camp site, secured by padlock, entered by cutting material and property belonging to two persons stolen.

- 2 x Theft (the tent is not considered to be a lockfast place or a dwelling)

Non-dwelling

- Example 1 Break into garden hut, stealing spade from within.
- 1 x Theft by Housebreaking (non-dwelling)
- Example 2 Break into bicycle shed, stealing three bicycles.
- 1 x Theft Housebreaking (non-dwelling) (If the bicycles were contained within a locked cage or similar this would be an OLP. If this occurred at a school or commercial property the classification would be Theft by Housebreaking (other)).
- Example 3 Break into three garages located at end of street, owned/rented by residents within the street and steal property from each garage.
- 3 x Theft by Housebreaking (non-dwelling)
- Enquiry ascertains that 1 resident works from home and uses the garage as part of their business.
- 2 x Theft by Housebreaking (non-dwelling)
 - 1 x Theft by Housebreaking (other)
- Example 4 Enter secure communal underground car park by means unknown, break into vehicle and steal property. Entry to the car park can be gained by a lift/common stair to the dwellings above, and there are no signs of any forced entry to the car park or common stair area.
- 1 x Theft by Opening Lockfast Motor Vehicle (due to there being no signs of forced entry this would not be considered a housebreaking. If there had been signs of forced entry a housebreaking (dwelling) would be recorded.

Other

- Example 1 Force common stair door, break through wall into shop, force office door and steal safe.
- 1 x Theft by Housebreaking (other)
- Example 2 Break into Sports centre, force open ten lockers and steal property.
- 1 x Theft by Housebreaking (Other). (OLPs subsumed. If the centre had been open to the public and the lockers had been forced, this would be recorded as Theft by Opening Lockfast Place and the number of crimes would be dependent on the number of lockers forced open).
- Example 3 Foam alarm box of factory, no further attempt made to break into premises.
- 1 x Attempted Housebreaking with Intent to Steal (other)
- Example 4 Cut telephone wires connected to alarm system of office premises.
- 1 x Attempted Housebreaking with Intent to Steal (other)
- Example 5 Break into first floor flat, cut hole in floor in order to gain entry into the chemist shop below and steal property.
- 1 x Theft by Housebreaking (other) (the intention appears to be to gain access to the chemist shop. Should property have been stolen from the flat, a further Theft by Housebreaking (dwelling) would be recorded).
- Example 6 Break into secure wooden hut used to store excess tables and chairs at a school, no property stolen.
- 1 x Housebreaking with Intent to Steal (other)
- Example 7 Climb up to first floor window of Care Home, open window, climb in to common room area and steal property.

- 1 x Theft by Housebreaking (other) (due to the main building being a commercial property).
- Example 8 Force padlock, enter compound, break in to portacabin used as an office, steal items including car keys and company owned vehicle parked outside.
- 1 x Theft by Housebreaking (other).
- Example 9 Force padlock, enter compound, enter insecure office, steal items including car keys and company owned vehicle parked outside.
- 1 x Theft of Motor Vehicle
- Example 10 Break into permanent caravan used for fast food and steal property.
- 1 x Theft by Housebreaking (other)
- Example 11 Enter PIN number to gain entry to office premises and steal property.
- 1 x Theft - if established that access has been gained by a member of staff who is permitted access.
 - 1 x Theft by Housebreaking (other) - if it is unknown whether entry was gained by a member of staff who is permitted access, or whether an identified member of staff has gained access however was not permitted to do so.
- Example 12 Break in to shopping centre, break in to three business premises within and steal property from each.
- 1 x Theft by Housebreaking (other)

25/000 Identity Documents Act 2010

General Rule

One crime for each incident

Definition

Section 4 – Possession of false identity documents etc. with improper intention

(1) It is an offence for a person (“P”) with an improper intention to have in P’s possession or under P’s control -

(a) an identity document that is false and that P knows or believes to be false,

(b) an identity document that was improperly obtained and that P knows or believes to have been improperly obtained, or

(c) an identity document that relates to someone else.

(2) Each of the following is an improper intention -

(a) the intention of using the document for establishing personal information about P;

(b) the intention of allowing or inducing another to use it for establishing, ascertaining or verifying personal information about P or anyone else.

(3) In subsection (2) (b) the reference to P or anyone else does not include, in the case of a document within subsection (1) (c), the individual to whom it relates.

Section 5 – Apparatus designed or adapted for the making of false identity documents etc.

(1) It is an offence for a person (“P”) with the prohibited intention to make or to have in P’s possession or under P’s control -

(a) any apparatus which, to P’s knowledge, is or has been specially designed or adapted for the making of false identity documents, or

(b) any article or material which, to P's knowledge, is or has been specially designed or adapted to be used in the making of such documents.

(2) The prohibited intention is the intention -

(a) that P or another will make a false identity document, and

(b) that the document will be used by somebody for establishing, ascertaining or verifying personal information about a person.

Section 6 – Possession of false identity documents etc. without reasonable excuse

(1) It is an offence for a person ("P"), without reasonable excuse, to have in P's possession or under P's control –

(a) an identity document that is false,

(b) an identity document that was improperly obtained,

(c) an identity document that relates to someone else,

(d) any apparatus which, to P's knowledge, is or has been specially designed or adapted for the making of false identity documents, or

(e) any article or material which, to P's knowledge, is or has been specially designed or adapted to be used in the making of such documents.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 'A' is arrested in possession of a false passport, without reasonable excuse.

- 1 x Identity Documents Act 2010, S6

Example 2 'A' is stopped with a false driving licence obtained over the internet attempting to prove their age to enter an over 21 club.

- 1 x Identity Documents Act 2010, S4

Example 3 'A' is stopped in possession of a bank statement belonging to another person. There is no evidence of any intent to commit a crime.

- This is not a crime as bank statements are not an identity document.

Offences of identity theft should only be used where there is no evidence of any intent to commit fraud. Where there is evidence of intent to commit fraud then only the crime of Fraud should be recorded.

Example 4 A passport has been reported stolen and has subsequently been used to commit fraud.

- 1 x Theft
- 1 x Fraud

Example 5 A forged passport is used to commit fraud.

- 1 x Fraud

Example 6 'A', apprehended for forging a passport, admits to five similar crimes.

- 1 x Forgery and Uttering

Note

Meaning – Identity Document

For the purposes of sections 4 to 6 “identity document” means any document that is or purports to be -

- (a) an immigration document,
- (b) a United Kingdom passport (within the meaning of the Immigration Act 1971),

- (c) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom or by or on behalf of an international organisation,
 - (d) a document that can be used (in some or all circumstances) instead of a passport,
 - (e) a licence to drive a motor vehicle granted under Part 3 of the Road Traffic 1988 or under Part 2 of the Road Traffic (Northern Ireland) Order 1981, or
 - (f) a driving licence issued by or on behalf of the authorities of a country or territory outside the United Kingdom.
- (2) In subsection (1) (a) “immigration document” means—
- (a) a document used for confirming the right of a person under the EU Treaties in respect of entry or residence in the United Kingdom,
 - (b) a document that is given in exercise of immigration functions and records information about leave granted to a person to enter or to remain in the United Kingdom, or
 - (c) a registration card (within the meaning of section 26A of the Immigration Act 1971).
- (3) In subsection (2) (b) “immigration functions” means functions under the Immigration Acts (within the meaning of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004).
- (4) References in subsection (1) to the issue of a document include its renewal, replacement or re-issue (with or without modifications).
- (5) In this section “document” includes a stamp or label.

Meaning – Personal Information

For the purposes of sections 4 and 5 “personal information”, in relation to an individual (“A”), means—

- (a) A’s full name,
- (b) other names by which A is or has previously been known,
- (c) A’s gender,

- (d) A's date and place of birth,
- (e) external characteristics of A that are capable of being used for identifying A,
- (f) the address of A's principal place of residence in the United Kingdom,
- (g) the address of every other place in the United Kingdom or elsewhere where A has a place of residence,
- (h) where in the United Kingdom and elsewhere A has previously been resident,
- (i) the times at which A was resident at different places in the United Kingdom or elsewhere,
- (j) A's current residential status,
- (k) residential statuses previously held by A, and
- (l) information about numbers allocated to A for identification purposes and about the documents (including stamps or labels) to which they relate.

Opening Lockfast Places (OLPs)

Opening lockfast places is not a substantive crime; it relates to theft, either as an aggravation, or with intent to commit that crime.

The expression "lockfast places" includes rooms, cupboards, drawers, safes, desks, cash-boxes, showcases, portacabins used for storage, non-static caravans and any other receptacle the contents of which are protected by lock and key or other secure measure.

For the purposes of recording crime, a compound, yard or field secured by a fence and locked gate is not considered to be a lockfast place. Any crimes of this type should be recorded as Theft or subsumed within other substantive crimes such as Theft by Housebreaking as circumstances dictate.

Theft by opening lockfast places is committed whenever the security of the lockfast place is overcome and the contents stolen. It is immaterial whether this was achieved by using violence, or false keys, or the true key unless it was left in the lock.

Frequently, opening lockfast places occurs in combination with housebreaking. However, multiple incidences of the same Crime of Dishonesty committed on the same occasion at the same locus will be recorded as 1 crime only. Where it would be possible to record multiple types of crimes of dishonesty (e.g. theft by housebreaking and OLP) within the same incident, only one crime type, i.e. the most 'serious', will be applied.

Theft OLP (ATMs) will be recorded as one crime per account in line with Fraud counting rules.

Theft OLP (ATMs and Fuel Pumps) will be counted for statistical purposes within the SGJD Code for Fraud (25/000).

Note

Insert card in fuel pump

Theft (other)

Insert card & PIN in fuel pump	Theft by Opening Lockfast Place (included in fraud statistics)
Insert card & PIN in ATM	Theft by Opening Lockfast Place (ATM) (included in fraud statistics)
Hand card to sales assistant and key in PIN	Fraud

20/001 Theft by Opening Lockfast Place (excluding Motor Vehicle)

20/002 Open Lockfast Place with intent (excluding Motor Vehicle)

20/003 Attempted Open Lockfast Place with intent (excluding Motor Vehicles)

25/000 Theft by Opening Lockfast Place – ATM (including fuel pump)

General Rule

One crime for each victim

Definition

Theft by opening lockfast places is committed whenever the security of the lockfast place is overcome and the contents stolen. It is immaterial whether this was achieved by using false keys, or the true key unless it was left in the lock.

The expression “lockfast places” includes rooms, cupboards, drawers, safes, desks, cash-boxes, show-cases, and any other receptacle the contents of which are protected by lock and key.

For the purposes of recording crime, a compound, yard or field secured by a fence and locked gate is not considered to be a lockfast place. Any crimes of this type should be recorded as Theft or subsumed within other substantive crimes such as Theft by Housebreaking as circumstances dictate.

Victim/Complainer

Property owner

Locus

Where crime takes place (for ATM usage see notes)

Examples

- Example 1 Break into non-static caravan or lockfast portacabin used purely for storage purposes, nothing stolen.
- 1 x Open Lockfast Place with Intent
- Example 2 Break into lockfast storage cubicle/cage within an insecure common close and steal pedal cycle.
- 1 x Theft by Opening Lockfast Place
- Example 3 Steal bank card, insert into different ATMs on five occasions using PIN and withdraw cash.
- 1 x Theft
 - 1 x Theft by Opening Lockfast Place (ATM) (one crime per account) (key in form of PIN requires to be entered to cause machine to issue cash)
- Example 4 Steal bank card, insert into fuel pump, input PIN and withdraw fuel.
- 1 x Theft
 - 1 x Theft by Opening Lockfast Place (fuel pump) (key in form of PIN requires to be entered to cause machine to issue fuel)
- Example 5 Enter sports centre, force open ten lockers and steal property from within owned by ten different persons.
- 10 x Theft by Opening Lockfast Place (each locker is considered to be a lockfast place.
- Example 6 Break into locker within sports centre and steal property from within belonging to two persons.

- 1 x Theft by Opening Lockfast Place (both persons will be recorded as victims as it is only one lockfast place).
- Example 7 Force open three non-static caravans and steal property owned by different persons.
- 3 x Theft by Opening Lockfast Place
- Example 8 Force padlock on gate or make a hole in mesh fence, enter compound, nothing stolen.
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S52 Vandalism (for damage to padlock or fence).
- Example 9 Force padlock on gate or make hole in mesh fence or climb over fence, enter compound and steal property.
- 1 x Theft.
- Example 10 Climb over fence, enter compound, nothing stolen.
- 1 x Civic Government (Scotland) Act 1982, S57 could be considered if person(s) seen/found and circumstances indicate theft intended.
- Example 11 Force padlock, enter compound, break into portacabin used as an office, steal items including car keys and company owned vehicle parked outside.
- 1 x Theft by Housebreaking (other).
- Example 12 Force padlock, enter compound, enter insecure office, steal items including car keys and company owned vehicle parked outside.
- 1 x Theft of Motor Vehicle
- Example 13 Force padlock, enter compound, break into portacabin used as an office, steal items including car keys for vehicle privately owned by a member of staff, and use keys to steal vehicle.
- 1 x Theft by Housebreaking (other)
 - 1 x Theft of Motor Vehicle. (there are 2 victims)

- Example 14 Break into permanent caravan used for fast food and steal property.
- 1 x Theft by Housebreaking (other)
- Example 15 Break padlock, enter compound, break into portacabin used as an office, steal items including car keys for vehicle privately owned by a member of staff, and use keys to steal vehicle.
- 1 Crime of Theft by Housebreaking (Other)
 - 1 Crime of Theft of Motor Vehicle (2 victims).
- Example 16 Force padlock, enter compound, break in to 5 containers used for storage and steal from within (all containers owned by same company).
- 1 x Theft by Opening Lockfast Place
- Example 17 Force padlock, enter compound owned by 'A' and rented by 'B', break into portacabin used as an office by 'B' and steal property, break into storage container used by 'C' and steal from within.
- 1 x Theft by Housebreaking (other)
 - 1 x Theft by Opening Lockfast Place (damage to padlock subsumed into Theft by Housebreaking as compound 'under custody/control' of 'B' at time)
- Example 18 Police apprehend a suspect for breaking into two parking meters on the same street. Later same date, local authority report twenty parking meters have been broken into in the surrounding area and money stolen from same. Enquiry reveals a total of eighty eight meters were broken into over a period of four days. The suspect admits to being responsible.
- 1 x Theft by Opening Lockfast Place (whilst the crimes occurred over a period of days, all the property is owned by the same local authority and they were effectively made known around the same period of time. Any Open Lockfast

Place with Intent and Attempts could be subsumed within the Theft by Opening Lockfast Place).

Note

There are various categories of Theft OLPs, which may include:

- Obtaining money or goods (fuel) by inserting stolen or counterfeit card and PIN number into ATM machine
- Forcing open lockfast internal room
- Forcing open lockfast till, safe or cash-box
- Breaking into non-static caravan
- Breaking into portacabin used for storage purposes

Theft by Opening Lockfast Place at ATMs will be recorded as one crime per account, e.g. ninety withdrawals at various ATMs from one account will result in one crime being recorded.

It is not Theft by Opening Lockfast Place to steal a locked receptacle (e.g. a safe) and subsequently remove the contents. In such a case, the relevant crime is Theft of the receptacle and its contents.

20/004 Theft by Opening Lockfast Motor Vehicle

20/005 Open Lockfast Motor Vehicle with Intent

20/006 Attempted Open Lockfast Motor Vehicle with Intent

General Rule

One crime for each vehicle owner

Definition

Theft by opening lockfast places is committed whenever the security of the lockfast place is overcome and the contents stolen.

Victim/Complainer

Vehicle owner

Locus

Where crime takes place

Examples

Example 1 Smash car window and steal property.

- 1 x Theft by Opening Lockfast Motor Vehicle

Example 2 Force car door, rummage through glove compartment, nothing stolen, paint thrown over seats.

- 1 x Open Lockfast Motor Vehicle with Intent (vandalism subsumed)

Example 3 Remove rubber seal from car door, screwdriver marks on surround, no entry gained.

- 1 x Attempted Open Lockfast Motor Vehicle with Intent
- Example 4 Force open storage container permanently attached to the rear of a flatbed lorry and steal property from within.
- 1 x Theft by Opening Lockfast Motor Vehicle
- Example 5 Force open lockable roof rack on motor vehicle and steal property from within.
- 1 x Theft by Opening Lockfast Place (note this is not a Theft by Opening Lockfast Motor Vehicle as this item is not a permanent part of the vehicle).
- Example 6 Force open locked fuel cap on vehicle, siphon fuel from tank and stealing.
- 1 x Theft by Opening Lockfast Motor Vehicle
- Example 7 Fuel pipe on vehicle cut and fuel stolen.
- 1 x Theft by Opening Lockfast Motor Vehicle
- Example 8 Open non-locking fuel cap on vehicle, and steal fuel from tank by siphoning
- 1 x Theft - Theft from a Vehicle Exterior
- Example 9 Cut material covering side of articulated trailer, enter and steal property from within.
- 1 x Theft by Opening Lockfast Motor Vehicle if curtain side physically locked and trailer attached to a vehicle.
 - 1 x Theft from Motor Vehicle if not physically locked (e.g. ropes only) and attached to a vehicle.
 - 1 x Theft by Opening Lockfast Place (not Motor Vehicle) if curtain side physically locked but not attached to a vehicle.
 - 1 x Theft if not physically locked (e.g. ropes only) and not attached to a vehicle.

31/004 **Proceeds of Crime Act 2002**
Money Laundering

General Rule

See examples

Definition

Section 327

A person commits an offence if he:-

- (a) conceals criminal property;
- (b) disguises criminal property;
- (c) converts criminal property;
- (d) transfers criminal property;
- (e) removes criminal property from England and Wales or from Scotland or from Northern Ireland.

Section 328

A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

Section 329

A person commits an offence if he:-

- (a) acquires criminal property
- (b) uses criminal property
- (c) has possession of criminal property

Section 330

Failure to Disclose – Regulated Sector

Section 331

Failure to Disclose – Nominated Officers in Regulated Sector

Section 332

Failure to Disclose – Other Nominated Officers

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Investigation into a crime of Fraud shows that 'A' whilst having no direct involvement into the commission of the fraud has permitted their bank account to be used as a 'mule' account to facilitate the transfer of funds.

- 1 x Proceeds of Crime Act 2002, S329
- 1 x Proceeds of Crime Act 2002, S327

Example 2 Investigation into a crime shows that 'A' has converted the monetary proceeds into foreign currency at numerous money exchange outlets.

- 1 x Proceeds of Crime Act 2002, S329
- 1 x Proceeds of Crime Act 2002, S327

Example 3 'A' receives illegal money into their account and thereafter attends at three currency exchange premises and converts the funds into Euros.

- 1 x Proceeds of Crime Act 2002, S329
- 1 x Proceeds of Crime Act 2002, S327

Example 4 'A' receives illegal money into their account.

- 1 x Proceeds of Crime Act 2002, S329

Note

Property is criminal property if-

- (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and
- (b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

It is immaterial-

- (a) who carried out the conduct;
- (b) who benefited from it;
- (c) whether the conduct occurred before or after the passing of this Act.

When identifying the locus the following should be considered in order,

- The Transaction Location
- Location of Extraction Point
- Address of Branch Where Account Held (if in Scotland)
- Home Address of Suspect

This offence is evidence based and therefore should only be recorded where there is sufficient evidence. Whilst Section 327 and 329 are broken down into various sub-sections, there is no requirement to record separate crimes for each sub section, for

example only 1 x S327 would be recorded even although the circumstances amount to (c) convert and (d) transfer.

Process for dealing with multiple Beneficiary Accounts (Mules) under the Proceeds of Crime Act 2002

In instances where a crime of fraud has been reported and there are multiple beneficiary accounts identified, the process for effective investigation of these beneficiary frauds are as follows;

Victim Within Scotland

- Oversight should be retained by the division which is investigating the fraud.
- Where beneficiary accounts are identified outside of the holding division, a full package should be disseminated to the relevant divisions via their business support unit. This will enable the enquiry to be effectively tracked, allocated and the result fed back to the overseeing division.
- It is the responsibility of both the officer dealing with the fraud enquiry and those allocated the beneficiary to liaise appropriately with relevant updates to the status and outcome of their enquiries, to ensure effective reporting to COPFS.

Victim Outwith Scotland

- Where the victim of fraud is outwith Scotland, this should be reported by the victim via Action Fraud who will allocate it to the relevant force in England, Wales or Northern Ireland for investigation. If there are beneficiary accounts in Scotland Action Fraud may disseminate their report to Police Scotland for intelligence purposes only.
- The investigating force should contact Police Scotland for assistance in investigating the beneficiary account holders, and a full package should be provided for each instance.
- The division with the most instances of beneficiary accounts will retain oversight within Police Scotland. Each package should be disseminated to the relevant divisions via their business support unit. This will enable the enquiry

to be effectively tracked, allocated and the result fed back to the enquiry officer investigating the fraud.

- Where there are the same number of beneficiary accounts across several divisions, the division with the earliest transaction will retain oversight, and liaise with the enquiry officer investigating the fraud.

23/000

Reset

General Rule

One crime for each accused or group of accused if acting together

Definition

Any person, with intent to deprive the owner, receives and keeps property knowing that it has been appropriated by theft, robbery, embezzlement or fraud.

Complainer

Procurator Fiscal

Locus

Where accused found in possession of the property

Examples

Example 1 On searching the dwelling of 'A', ten items of property (credit card, mobile phone etc.) are identified as being the proceeds of a robbery. 'A' provides details of person who sold the items to them.

- 1 x Reset (expectation would be that 1 x Robbery would already be recorded).

Example 2 A house is searched on two different days over a space of a week and stolen property recovered on both occasions.

- 2 x Reset (expectation would be that crimes will already be recorded in respect of the initial Thefts)

Example 3 Two persons are found in possession of a stolen motor cycle in the street. On searching their flat a further stolen motor cycle is discovered. There is an expectation that crimes will already have been recorded for these thefts.

- 1 x Reset (with both accused acting together)

Note

A person, who accepts property in good faith and, subsequently, learns that it was dishonestly acquired, is guilty of reset if he continues to keep it.

A person cannot be reported for the theft and reset of the same articles.

If a person has taken possession of an article they know to have been stolen the previous day, they can be charged with the original crime (e.g. Theft). This would be in place of the crime of Reset.

Reset can only be committed by a person who was not party to the original appropriation. The receiving of property by a person who was so implicated does not constitute reset; such a person is art and part in the original crime.

It is not necessary to the conviction of the resetter that the thief should have been convicted or even discovered.

22/003 Theft by Shoplifting

General Rule

One crime for each incident

Definition

Steal goods for sale, from an open display

Locus

Where crime takes place

Examples

Example 1 'A', 'B' and 'C', acting together, are stopped whilst leaving a shop and 'A' is found in possession of property from that shop which they had not paid for.

- 1 x Theft by Shoplifting (3 accused)

Example 2 'A' and 'B' enter a jewellers shop and ask to try on a ring. The jeweller hands the ring to 'A' to try and both 'A' and 'B' run out of the shop with the ring.

- 1 x Theft

Example 3 'A' steals property from a chemist and two separate newsagents.

- 3 x Theft by Shoplifting

Example 4 A report is received that a customer has used the self-scan checkout and payment has not been made because:

(a) The customer failed to attempt to make any payment, taking the goods

- 1 x Theft by Shoplifting

(b) The customer has removed their bank card prior to the sale being authorised and has taken the goods.

- 1 x Theft by Shoplifting (enquiry should be carried out to establish if this has been an oversight and if a genuine error is confirmed the recorded crime can be updated to 'No Crime').

(c) The customer has attempted to use a bank card which they left behind and has taken the goods. The card is identified as a cloned card.

- 1 x Theft by Shoplifting (as property has been taken).
- 1 x Attempted Fraud (Cheque, Plastic Card and Online Bank Accounts) (Due to the card being declined. While the cloned card has been recovered actual or attempted frauds by false representation take precedence over crimes of possessing articles for use in frauds).

Example 5

'A' is caught stealing property from a shop, the police are called and 'A' offers to attend at the bank to obtain money and pay for the goods, which the complainer is happy to accept.

- 1 x Theft by Shoplifting

Example 6

An anonymous member of the public informs security that someone has just placed items of clothing within a bag and points out the person responsible. On the person being approached, whilst still within the shop, they are found to be in possession of a shopping bag containing a number of items of clothing from the shop with the security tags removed.

- 1 x Theft by Shoplifting.

Example 7

A shop reports that a member of the public has reported to them having seen a person taking goods from the shelf and placing same within their bag, thereafter leaving the shop. No CCTV is available and the shop is unable to confirm if or what has been stolen.

- Record as an incident only as there is no confirmation of what, if anything, has been stolen.

Example 8 'A' enters shop, selects good from display and leaves the shop failing to pay. A short time later 'A' re-enters shop, selects further goods from display and leaves the shop again failing to pay.

- 2 x Theft by Shoplifting (two separate incidents)

Example 9 'A' enters a shop, selects three items from display, removes the tags from two and successfully obtains an exchange at the customer service desk. 'A' then walks out of the shop failing to pay for the third item.

- 1 x Fraud (Retail Fraud) (the theft is subsumed within the Fraud)

Example 10 'A' enters a shop, selects an item from display and walks out of the shop failing to pay for the item. 'A' later returns to the shop and attempts to obtain a refund or exchange for the stolen item.

- 1 x Theft by Shoplifting
- 1 x Attempted Fraud (Retail Fraud)

Example 11 Customer shopping in supermarket opts to use the self-scanning device while going round the shop placing items in their trolley. At the pay-point a spot check undertaken by staff confirms that the customer deliberately failed to scan numerous items.

- 1 x Theft by Shoplifting

Example 12 'A' enters shop and steals several mobile phones which are disabled models for display purposes.

- 1 x Theft by Shoplifting

Note

There must be sufficient evidence to confirm a theft has occurred in order to record a crime of shoplifting. It is not sufficient for someone to have been seen running from the premises without ascertaining that property has been stolen to record a crime.

Where a shop reports that property has been stolen over a period of time following a stock take, this should not be recorded unless there is proof of a crime having occurred.

22/001 Theft (not elsewhere classified)

General Rule

One crime for each victim

Definition

Theft is the taking or appropriating of property without the consent of the rightful owner or other lawful authority. The taking must be with the felonious intent of depriving the owner of his property and appropriating it to the thief's use: it is not theft to take property under a claim of right made in good faith or under the reasonable belief that the owner had granted his permission.

Complainers/Victim

Owner of Property

Locus

Where crime takes place

Family/Friends/Child Thefts

The attending/enquiry officer has to have a degree of discretion in these scenarios. It is difficult to stipulate in what circumstances a crime report should be raised.

The standard sets out to ensure a more victim orientated approach is taken to recording crime. An incident will be recorded as a crime if, on the balance of probability:

- the circumstances amount to a crime defined by Scots Law or an offence under statute, and
- there is no credible evidence to the contrary.

As far as Family/Friends thefts are concerned there is a balance to be struck between the above extracts from the SCRS Manual.

If the matter can be resolved fairly quickly with no serious resource implications for the police and the complainant is satisfied with the resolution, then no crime report should be raised. If this is a child of the complainant then the wishes of the complainant have to be taken into account and no crime report raised. The incident can be concluded by submission of a Vulnerable/Child/Person report. A degree of discretion should be permitted to the officer in these circumstances.

However there will be instances where the crime has been reported and it cannot be concluded rapidly and enquiry or police resources are required to trace the suspect and recover the property.

In these instances where there will be a requirement for the police to investigate, trace a suspect or make enquiry to trace the property then a crime report should be raised. Not only is this complying with the SCRS but also gives an audit trail of enquiry conducted.

If at the conclusion of this enquiry it can be shown that No Crime has taken place then the status should change. Otherwise the crime report should stand and any police report submitted should highlight that the complainant and suspect are related and that the complainant does not wish to pursue the matter further.

Wheelie Bin Thefts

Wheelie bins are no different from any other property with the exception that they can be uplifted by the council on refuse day.

If a bin is in place at one time and is not there at a subsequent time then it has been removed and stolen. A crime report should be raised for theft. A similar scenario to this is the theft or removal of pedal cycles which are left outside. Dependent on recovery of the property which may show that there was no felonious intent to deprive the owner of this property.

If, however, it is shown on enquiry that the bin had been placed out for the council uplift that day and had most likely been removed by the council, then this is not a theft. If this scenario is subsequently established after the creation of a crime report then the status should be updated to 'No Crime'.

Hire Property

This will come to the attention of the police by the hire company telephoning the police to let them know that goods have not been returned at the end of a hire period.

It should be ascertained what enquiry the company have made themselves to recover the items. There is a duty on the company to make initial enquiry in order to ascertain whether the circumstances of non-return indicate a crime has occurred. If they are reporting the non-return of items after a specified loan period has elapsed and there is no reasonable explanation for the failure to return, then a crime has been committed.

It may be established at that stage that a Fraud has been committed, i.e. falsehood, false representation. This can quickly be established if false details have been provided. This should be recorded as Fraud and investigated.

A person may have provided the correct details but has failed to return the items. In this case the person has been granted loan or hire of the property for a limited period and for a specific purpose and has failed to return the goods after the date set. A theft has taken place and should be recorded as such on the crime system. It is not necessary that the specific purpose is stated.

If following enquiry it is established there is a genuine reason for the non-return of the property, then the crime should be updated to 'No Crime'.

Thefts from Occupied Hotel Rooms

Points to consider when establishing whether a Theft or a Theft by Housebreaking has occurred:

- Was the door secured properly on occupier leaving e.g. did they check it was secure, was there a possibility that the door did not close properly.
- If a key card is used whether the opening/closing of the door has been recorded at the reception and how this links in with the timeline of the property going missing.

- The opportunity for access to be gained to the room and property stolen while door lying open when room being cleaned.
- The possibility that the person cleaning the room could be responsible.
- The possibility of the key/card having been lost, whether that be by the present or previous occupant and potential for it to be used to gain access.
- Potential for the door to be opened by other means e.g. faulty lock and by pushing same to allow access with no obvious signs of damage.

Theft of Fuel

All reports of thefts of fuel from filling stations will initially be recorded on an incident. The following should be considered when deciding to record a crime:

- Initial enquiries must be made with the registered keeper/driver in order that an assessment can be made as to whether a criminal act or not.
- If enquiry officer and informant are satisfied that a genuine mistake was made the incident can be closed as a non-crime provided the incident is updated to confirm that payment was made and rationale is provided as to why the matter is considered to have been a genuine mistake.
- If criminality is suspected a crime report must be raised and processed accordingly.

Common Theft of Fuel MOs:

- Obtains fuel, False/No plates on vehicle and drives off – circumstances indicate a crime has occurred and a Theft should be recorded.
- Obtains fuel and drives off (sometimes unknown whether genuine oversight or not) - Enquiry requires to be made with the registered keeper/driver of the vehicle and where they clearly demonstrate that there was an oversight and nothing evident to indicate intention to commit a crime then this must be detailed in the incident/crime report and can be marked 'No Crime'.
- Driver obtains fuel, enters shop, pays for other items but not fuel (sometimes unknown whether genuine oversight or not) - Enquiry requires to be made

with the registered keeper/driver of the vehicle and where they clearly demonstrate that there was an oversight and nothing evident to indicate intention to commit a crime then this must be detailed in the incident/crime report and can be marked 'No Crime'.

- Obtains fuel, enters shop and established no means to pay and signs form agreeing to return and pay - the garage have an initial responsibility to make enquiry with the individual to ascertain if they intend to return and pay in order to assess criminal intent. Where enquiry has been carried out by the garage which indicates it is reasonable to conclude the individual does not intend to return and pay then a crime should be recorded. It should be noted that by signing a form does not automatically result in this being a civil matter.

Theft in Transit

All reports of Theft in Transit (other than by air or sea) will be recorded as a crime at the point of departure unless there is evidence the theft occurred at a specific location.

Thefts from overhead lockers e.g. aeroplane, should be recorded where it can be evidenced the theft occurred e.g. where on arrival at destination property left in an overhead locker is forgotten and not handed in as lost property should be considered as a Theft at point of arrival.

Theft of Mobile Phones

All reports of Theft of mobile telephones will be recorded as a crime where an inference of criminality is made by the victim and there is no credible evidence to the contrary. It is seen as good practice for the victim to provide the telephone's IMEI number but if this is not provided it must not delay the creation of a crime report.

Examples

Example 1 An elderly person drives off from petrol station without paying, attendant contacts police to report this and states in conversation that it is most likely an oversight.

- 1 x Theft (although this may be an oversight, it has still not been confirmed, therefore must be recorded as a crime).

Example 2 'A' fills up vehicle with fuel and claims to have forgotten their wallet. An arrangement is made to return the next day to pay for the fuel and a name and address are left. 'A' fails to return and enquiry reveals a false name and address has been provided.

- 1 x Fraud (Retail Fraud)

Example 3 Insert stolen card in fuel pump which does not require PIN and withdraw fuel.

- 2 x Theft (the lack of PIN security (key) removes OLP element)

Example 4 On twelve occasions over a three week period a shop assistant rings smaller amounts of money for purchases through the till, following each transaction they remove the difference and steals same.

- 1 x Theft (depending on the circumstances this may be classed as a fraudulent scheme)

Example 5 'A' removes and places their rings on sink whilst washing hands within staff toilet area, on returning a short time later finds the property no longer there. Enquiry establishes no property has been handed in.

- 1 x Theft (this should not be recorded as Lost Property)

Example 6 Enter sports centre and stealing property from five jackets owned by different victims.

- 5 x Theft

- Example 7 A flat is rented to tenants and on their departure the owner discovers property missing.
- 1 x Theft (on occasions this may be a civil matter dependant on the inventory, tenancy agreement terms, individual circumstances and the type of property involved, e.g. it items are subject to wear and tear. If a crime of Theft is not being recorded full rationale for this decision must be recorded in the incident log).
- Example 8 Twenty friends regularly give money to 'A', who in turn bets on horses on their behalf. 'A' steals the money, failing to place any bets and failing to return the monies.
- 1 x Theft (the monies are treated as being 'joint ownership')
- Example 9 Enter tent on camp site, secured by padlock, by cutting material and property belonging to two persons stolen.
- 2 x Theft (the tent is not considered to be a lockfast place or a dwelling)
- Example 10 Climb over fence, enter compound and steal items.
- 1 x Theft
- Example 11 Carer working in individual's house uses the telephone to phone high tariff lines. They run up a very large telephone bill, which only comes to light when the phone bill is received.
- 1 x Communications Act 2003, S125
- Example 12 A customer conceals themselves in the toilets of a public house and on closure of premises, alights and steals property from behind the bar area, exiting via the fire escape door.
- 1 x Theft
- Example 13 Enter dwelling house via insecure front door and steal property belonging to four different family members.
- 1 x Theft

- Example 14 Enter unlocked house and steal personal property belonging to various family members and a guest who is living there overnight.
- 1 x Theft (while there are several victims involved this is essentially a Theft from the household which temporarily includes the guest. Similarly, any stolen property which has been borrowed by the occupants of the house would be deemed to be the property of the household).
- Example 15 Enter unlocked office premises and steal personal property belonging to four employees as well as property belonging to the business itself.
- 5 x Theft (this differs from the household type scenario where it is clear that the property taken from a public workplace is separately owned).
- Example 16 'A' steals property and sells same to 'B' who is a pawnbroker.
- 1 x Theft ('A' selling the property to 'B' amounts to the disposal of stolen goods and is not a separate crime. If there was insufficient evidence to confirm that 'A' had committed the Theft then Reset may be applicable).
- Example 17 Enter unlocked rear door of pharmacy and steal controlled drugs. Suspect is apprehended by police a short distance away while still in possession of the controlled drugs.
- 1 x Theft (in these circumstances there is no requirement to record possession of controlled drugs as this is the proceeds of the Theft. If the suspect was traced in possession of controlled drugs at a later date offences under Misuse of Drugs Act 1971 could be considered).
- Example 18 A birthday card is posted at locus 'A' which contains £20 therein, the envelope being sealed when sending. On arrival at locus 'B' the envelope has been cut open and the £20 is missing.
- 1 x Theft should be recorded at locus 'A'.

- Example 19 'A', a family member, has power of attorney for 'B' and has full control of their finances. 'A' transfers monies from various accounts of 'B' into their own account with no justification for doing so.
- 1 x Embezzlement (Abuse of Position of Trust) (depending on individual circumstances re the extent of control of finances, theft or fraud can be alternative outcomes).
- Example 20 Ten work colleagues give money to 'A' who has agreed to book a Christmas lunch. While enquiry has been made with an agreed restaurant and menus provided to the attendees, the lunch is not booked and 'A' fails to return the monies.
- 1 x Crime of Theft (the monies are treated as being collective in this example and there is nothing to suggest the suspect set up a Fraudulent Scheme to obtain the monies).
- Example 21 Enter unlocked hotel room, steal property belonging to the hotel and two work colleagues who are occupying the room.
- 1 x Theft (the room is treated as a household)
- Example 22 'A' reports their wallet having been lost from their unzipped jacket pocket somewhere within the town centre, at which time lost property details are noted. 'A' re-contacts Police several days later to advise that their bank card, which had been within the wallet, had been used at several locations in the town centre using the 'contactless' facility after it had been lost and provided details of these transactions.
- 1 x Theft by Finding
 - 1 x Fraud (Cheque, Plastic Card and Online Bank Accounts)
 - for use of card
- Example 23 Drive off from petrol station, fail to pay for fuel, vehicle established to have false number plates.
- 1 x Theft

- 1 x Vehicle Excise and Registration Act 1994, S44 - Fraud
- Example 24 Building site operated by 'A' is entered and items of plant hired by 'A' from 'B', 'C' and 'D' are stolen.
- 3 x Theft (victims are 'B', 'C' and 'D')
- Example 25 A shop assistant whilst working in a shop at the checkout area steals lottery scratch cards and attends at a different shop to collect any winnings from same.
- 1 x Theft
 - 1 x Fraud (locus being where lottery card winnings obtained)

Note

This crime type could encompass concealment, pickpocket, finding, bag snatch, sneak/slip in, till snatch, fail to return hired property and petrol station drive off.

In circumstances where fuel has been obtained by inserting stolen fuel card/credit card (no PIN required) in petrol pump machine this will be recorded as Theft.

The reported loss of a mobile telephone or other property must be accompanied by an assertion of criminality before a crime report is raised.

Where a report is received that someone has driven off from a petrol station and failed to pay for fuel, the circumstances of which indicate it has most likely been an oversight, should initial enquiry fail to confirm this, a crime report should be recorded until enquiry establishes whether there had been any intention to deprive.

Consideration will be given to updating the crime report to 'No Crime' only where the circumstances clearly indicate there has been no intention to deprive.

22/005 Theft from Motor Vehicle

General Rule

One crime for each vehicle owner

Definition

Stealing from a motor vehicle

Victim/Complainer

Vehicle owner

Locus

Location of vehicle at time of crime

Examples

Example 1 Enter insecure vehicle and remove property from the glove compartment, leaving same lying on the seat.

- 1 x Theft from Motor Vehicle

Example 2 Enter insecure vehicle, steal property from within and smash all vehicle lights.

- 1 x Theft from Motor Vehicle (the vandalism will be subsumed within the Theft from Motor Vehicle).

Example 3 Steal two wheels and roof rack from a vehicle overnight.

- 1 x Theft – Theft from a Vehicle (exterior) – see Note

Example 4 Enter insecure vehicle, remove cowling from under the steering wheel, leaving a number of wires disconnected and steal property from vehicle.

- 1 x Theft from Motor Vehicle (Attempted Theft of Motor Vehicle should be subsumed within the Theft as the Theft is the substantive crime).

Example 5 Enter vehicle by unknown means, steal property from within. Victim is adamant that the vehicle was secure, there are no signs of forced entry.

- 1 x Theft from Motor Vehicle (where additional information confirms that a special tool or other form of technology was used to overcome the security of the vehicle the crime should be amended to that of Theft by Opening Lockfast Motor Vehicle).

Example 6 'A' is seen on CCTV to enter a vehicle and steal property. Police attend and apprehend 'A' who is found in possession of a device which is found to unlock vehicles. The owner of the vehicle advises they locked their vehicle.

- 1 x Theft by Opening Lockfast Motor Vehicle (as it has been ascertained that a device has been used to gain entry).

Note

Where an insecure vehicle is entered and property stolen from within a crime of Theft from Motor Vehicle should be recorded.

Where the Theft is from the exterior of a motor vehicle a crime of Theft (with a 'Theft from a Vehicle (Exterior)' offence modifier) should be recorded.

There is no ISCJIS charge code for Attempted Theft from a Motor Vehicle. In these circumstances a crime of Attempted Theft (with a Theft from a Vehicle offence modifier) should be recorded.

22/002 Theft of Motor Vehicle (including Taking and Driving Away)

22/006 Attempted Theft of Motor Vehicle

General Rule

One crime for each vehicle owner

Definition

Common Law

Taking and driving away a motor vehicle (or attempt to) without having either the consent of the owner or other lawful authority, with the intention to permanently deprive the owner.

Road Traffic Act 1988, S178 Taking and Driving Away

Taking and driving away should be used in instances where there is no intention to permanently deprive the owner of the vehicle (e.g. joy riding).

Motor Vehicle

For the purpose of this crime type the following will be classed as a motor vehicle whether used on the road or not:

- Quad bike, off road trail bike, mini moto, fork lift truck, wheeled digger/excavator, dump truck, agricultural tractor.

For the purpose of this crime type the following will not be classed as a motor vehicle whether used on the road or not:

- Segway, go-ped, children's motorised scooter, Motability scooter, golf buggy, sit-on grass cutter, trailer drawn by motor vehicle, go-kart.

Victim

Vehicle Owner

Locus

Where crime takes place

Examples

- Example 1 Steal keys from jacket pocket hanging on chair in public house, thereafter use keys to steal vehicle parked outside on roadway.
- 1 x Theft of Motor Vehicle
- Example 2 Enter insecure dwelling and steal car keys from table, steal vehicle from driveway.
- 1 x Theft of Motor Vehicle
- Example 3 Steal two vehicles owned by different owners from same locus, over the same period of time.
- 2 x Theft of Motor Vehicle
- Example 4 Steal vehicle which is later found abandoned and property stolen from within.
- 1 x Theft of Motor Vehicle
- Example 5 Steal vehicle from Locus 'A' and seven days later vehicle recovered burnt out at Locus 'B'. A person is traced who admits to buying vehicle from an unnamed person and to setting it on fire but denies stealing the vehicle.
- 1 x Theft of Motor Vehicle (undetected)
 - 1 x Reset (detected) (Fire-raising is subsumed within Reset)
- Example 6 Force open metal box containing vehicle keys located outside hire company premises, remove keys and steal vehicle parked on roadway using true key.
- 1 x Theft by Opening Lockfast Place (the Theft of Motor Vehicle is subsumed)

- Example 7 Enter insecure dwelling, steal keys for motor vehicle, force open safe and steal £20,000 and steal motor vehicle parked outside using true key. Vehicle is valued at £4,000.
- 1 x Theft by Opening Lockfast Place (in this example the relative values of the property taken weigh in favour of the theft from the safe).
- Example 8 Break into motor vehicle and steal property. Indications are that the handbrake had been released resulting in the vehicle rolling forward and coming to rest on a bollard causing no damage.
- 1 x Theft by Opening Lockfast Motor Vehicle (had the vehicle been allowed to travel some distance a crime of Culpable and Reckless Conduct may also be considered).
- Example 9 Enter insecure cab of van, releasing handbrake in order to move it forward away from the wall, attempt to force open rear doors without success.
- 1 x Attempted Open Lockfast Motor Vehicle with Intent (the moving of the vehicle forward indicates this was to allow access to the rear of the vehicle and not an attempt to steal).
- Example 10 'A' takes out a hire purchase agreement for a vehicle and makes two payments before ceasing payments. Enquiry by the finance company (or representatives) reveals 'A' has moved out of their address, the contact number held is no longer available and the vehicle has been taken abroad, there being nothing to indicate their intention to return the vehicle.
- 1 x Theft of Motor Vehicle
- Example 11 Smash car window and remove cowling in an unsuccessful attempt to drive vehicle away.
- 1 x Attempted Theft of Motor Vehicle
- Example 12 Break into vehicle, try to steal vehicle and thereafter steal property from within.

- 1 x Theft by Opening Lockfast Place Motor Vehicle (details of Attempted Theft of Motor Vehicle subsumed within MO).

Example 13 Attempt to steal five vehicles parked in garage forecourt.

(a) All owned by garage.

- 1 x Attempted Theft of Motor Vehicle

(b) Three vehicles owned by different individuals, two owned by the garage.

- 4 x Attempted Theft of Motor Vehicle

Example 14 Attempt to steal two vehicles parked in driveway, one owned by householder and the other being a company vehicle.

- 2 x Attempted Theft of Motor Vehicle

Note

In cases where a stolen vehicle is recovered burnt out a crime report for Theft of Motor Vehicle should be raised. If there is evidence that a different person(s) was responsible for the fire-raising a further crime report for Fire-raising will be recorded.

S178(1)(a) of the Road Traffic Act, 1988 creates the statutory offence of taking and driving a motor vehicle without the consent of the owner or other lawful authority and should generally only be recorded when the culprit is known, such as a family member taking the vehicle without permission or an employee using a company vehicle without permission.

In circumstances where a vehicle has been taken and not recovered, taken and left abandoned, taken and set on fire, or taken and stored elsewhere, all of which suggest a clear intention to deprive the owner of their property, a Theft of Motor Vehicle should be recorded.

Similarly, attempts made to steal motor vehicles should always be recorded as Attempted Theft of Motor Vehicle unless it is clear that there was no intent to deprive the owner.

Where an article is obtained on hire-purchase on the condition that the right of property is not transferred until payment of the last instalment of the price, it is theft if the article is appropriated immediately, or soon after, it is received. But where the article is not appropriated until a considerable time has elapsed and a considerable part of the price has been paid, the crime is embezzlement.

22/004 Theft Pedal Cycle

General Rule

One crime for each owner

Definition

Stealing a Pedal Cycle

Victim/Complainer

Owner of the property

Locus

Where crime takes place

Examples

- Example 1 Steal pedal cycle from common stair belonging to a student.
- 1 x Theft Pedal Cycle
- Later that same day the student finds their pedal cycle has been returned to the common stair undamaged and is of the opinion that one of the other students had borrowed the pedal cycle.
- Update the initial Crime Report to 'No Crime' as there has been no criminal intent.
- Example 2 Steal pedal cycle from garden.
- 1 x Theft Pedal Cycle
- Example 3 Enter an insecure shed and steal three pedal cycles owned by three members of the same family.
- 1 x Theft Pedal Cycle (whilst indoors considered to be a theft from the household)

Example 4 Steal three pedal cycles secured to a cycle rack, which is located under an open-sided plastic canopy, all owned by different complainers.

- 3 x Theft Pedal Cycle

Example 5 Steal two pedal cycles separately owned by 'A' and 'B' who are adults from the same household whilst left unattended in the garden outside their home.

- 2 x Theft Pedal Cycle

Note

Where a pedal cycle reported stolen is recovered within a short period of time nearby and the circumstances suggest there was no intent to deprive, consideration will be given to reclassify the crime to 'No Crime'. It must be noted, however, each circumstance must be assessed on an individual basis e.g. where a pedal cycle is reported stolen from a garden and recovered intact later same day some distance away, this should remain recorded as a crime.

General Rule

One crime for each seizure

Definition

Section 92

(1) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor -

(a) applies to goods or their packaging a sign identical to, or likely to be mistaken for, a registered trade mark, or

(b) sells or lets for hire, offers or exposes for sale or hire or distributes goods which bear, or the packaging of which bears, such a sign, or

(c) has in his possession, custody or control in the course of a business any such goods with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b).

(2) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor -

(a) applies a sign identical to, or likely to be mistaken for, a registered trade mark to material intended to be used -

(i) for labelling or packaging goods,

(ii) as a business paper in relation to goods, or

(iii) for advertising goods, or

(b) uses in the course of a business material bearing such a sign for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods, or

- (c) has in his possession, custody or control in the course of a business any such material with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b).
- (3) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor -
- (a) makes an article specifically designed or adapted for making copies of a sign identical to, or likely to be mistaken for, a registered trade mark, or
 - (b) has such an article in his possession, custody or control in the course of a business, knowing or having reason to believe that it has been, or is to be, used to produce goods, or material for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods.
- (4) A person does not commit an offence under this section unless -
- (a) the goods are goods in respect of which the trade mark is registered, or
 - (b) the trade mark has a reputation in the United Kingdom and the use of the sign takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the trade mark.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Example

Example 1 Person is found in possession of a quantity of digital versatile discs and compact discs with music content with a view to selling,

distributing or letting for hire such property bearing a sign identical to that of a registered trademark.

- 1 x Trade Marks Act 1994, S92 (1) (c)
- 1 x Copyright Designs Patents 1988, S107 (1) (d)
- 1 x Copyright Designs Patents 1988, S107 (1) (c)
- 1 x Copyright Designs Patents 1988, S107 (1) (a)

Note

In the majority of cases this offence will be libelled along with Copyright Designs Patent Act 1988 which will follow the same counting rule.

No matter how many Trade Mark companies are noted on the items, only 1 crime will be recorded with the Procurator Fiscal as the complainer and the companies/representatives as witnesses for each incident.

Vehicle Excise and Registration Act 1994, Section 44 – Fraud and Forgery

25/000 Fraud

26/000 Forgery

General Rule

One crime for each vehicle/document involved

Definition

Section 44

(1) A person is guilty of an offence if he forges, fraudulently alters, fraudulently uses, fraudulently lends or fraudulently allows to be used by another person anything to which subsection (2) applies.

(2) This subsection applies to—

 a registration mark,

 a registration document, and

 a trade plate (including a replacement trade plate).

Complainer

Procurator Fiscal

Locus

Where displayed or presented

Examples

- Example 1 Police discover two vehicles owned by the same person displaying false registration plates. The owner admitted to altering both plates.
- 2 x Vehicle Excise and Registration Act, S44 Fraud
- Example 2 Alter registration document and present as genuine to obtain ownership
- 1 x Vehicle Excise and Registration Act 1994, S44 Forgery
- Example 3 Vehicle drives off from petrol station, failing to pay for fuel, vehicle is established to have false number plates.
- 1 x Theft
 - 1 x Vehicle Excise and Registration Act 1994, S44 Fraud
- Example 4 A vehicle is reported as having been abandoned and enquiry establishes it is bearing false number plates, enquiry fails to trace the 'owner'/'driver' of the vehicle or to link the number plates to any other offence.
- No requirement to record a crime report in this instance unless owner/driver identified.
- Example 5 'A' reports to police in Scotland that they have received a speeding notice from a Force in England however they have never been at that locus and therefore suspects someone has cloned their number plate.
- No requirement to record a crime report in this instance as any locus would not be in Scotland. (see note below)
- Example 6 'A' reports to police in Scotland that they have received a speeding notice, the locus being in Scotland. 'A' states they have never been at the locus and suspects someone has cloned their number plate.

- No requirement to record a crime report unless enquiry concludes that a cloned plate has indeed been used. (The individual should respond to the notice disputing same providing the relevant evidence. See note below).

Note

Cloned Plates - Police Enforcement Camera Offences

Offences relating to fixed penalty notices e.g. fail comply with traffic lights, speeding, issued by a UK Police Force - the Complainer should be advised to conduct any dispute with the force where the incident occurred, if reporting it elsewhere. If they can provide proof that they have been the victim of cloning, the prosecuting force (i.e. where the crime occurred) should undertake due diligence checks. This may include requesting another force to investigate.

Group 4 – Damage and Reckless Behaviour

Crime Category	SGJD Code
<u>Air Navigation Order 2016, A224, A225, A240, A241</u>	
- Endangering aircraft	33/016
<u>Computer Misuse Act 1990, S3</u>	
- Unauthorised operation	33/010
<u>Criminal Law (Consolidation) (Scotland) Act 1995, S52</u>	
- Vandalism	33/012
<u>Culpable and Reckless Conduct (not with firearms)</u>	4/001
	33/011
<u>Fire-raising (excluding Muirburn)</u>	32/001
<u>Fire-raising (Muirburn)</u>	32/003
<u>Laser Misuse (Vehicles) Act 2018</u>	33/011
	33/016
<u>Malicious Mischief</u>	33/014
<u>Reckless Conduct (with firearms)</u>	33/002

33/016

Air Navigation Order 2016

Articles relating to endangerment of an aircraft

General Rule

One crime for each aircraft

Definition

Related offences under Air Navigation Order include:

A224	Lights liable to endanger
A225	Direct or shine a light to dazzle or distract the pilot of an aircraft in flight
A240	Endanger aircraft
A241	Endanger safety of any person or property
A241 (7)	Fail to ensure that the aircraft did not fly when the maintenance of that aircraft had not been performed

Complainer

Airline

Locus

Where crime takes place

Examples

- Example 1 Over a period of 30 minutes a laser light is shone directly at three separate aircraft on approach to an airport.
- 3 x Laser Misuse (Vehicles) Act 2018, S1

Note

In circumstances where a laser beam is shone at an Aircraft or Air Traffic Services crimes should be recorded under Laser Misuse (Vehicles) Act 2018.

The offence under Article 225 of the Air Navigation Order 2016 to "Shine or direct a light at an aircraft which dazzles or distracts the pilot of the aircraft" should continue to be used where lights which are not lasers are shone at an aircraft. Any other conduct which endangers an aircraft should continue to be recorded under the appropriate Articles of the Air Navigation Order 2016.

33/010 Computer Misuse Act 1990, Section 3
Unauthorised act impairing operation of computer
incl. prevent or hinder access or program or data
reliability

General Rule

One crime for each victim/organisation

Definition

Section 3

- (1) A person is guilty of an offence if—
- (a) he does any unauthorised act in relation to a computer;
 - (b) at the time when he does the act he knows that it is unauthorised; and
 - (c) either subsection (2) or subsection (3) below applies.
- (2) this subsection applies if the person intends by doing the act –
- (a) to impair the operation of any computer;
 - (b) to prevent or hinder access to any program or data held in any computer;
 - (c) to impair the operation of any such program or the reliability of any such data; or
 - (d) to enable any of the things mentioned in paras (a) to (c) above to be done.
- (3) This subsection applies if the person is reckless as to whether the act will do any of those mentioned in paragraphs (a) to (d) of subsection (2) above.

Complainer/Victim

Person or organisation

Locus

Where crime takes place

Examples

- Example 1 An employee has been sacked from their high profile job at ABC Media. Before they leave they sends an e-mail with a virus attached to everyone at ABC Media. The next day all of ABC Media's employee's computers have been infected.
- 1 x Computer Misuse Act 1990, S3 (ABC Media are the intended victim)

33/012 **Criminal Law (Consolidation) (Scotland) Act 1982,**
Section 52
Vandalism

General Rule

One crime for each victim

Definition

Section 52

It is an offence for person(s) to wilfully or recklessly destroy or damage the property of another person.

Complainer/Victim

Owner of property

Locus

Where crime takes place

Examples

Example 1 Entering open house, smashing furniture and spray painting walls, thereafter vandalising owner's vehicle in driveway.

- 1 x Criminal Law (Consolidation) (Scotland Act 1995, S52 Vandalism

Example 2 Wilfully damaging four vehicles whilst parked within yard awaiting repairs, all owned by separate victims.

- 4 x Criminal Law (Consolidation) (Scotland Act 1995, S52 Vandalism

- Example 3 Two vehicles, one owned by 'A' and one hired by 'A', have their windscreens smashed while parked in 'A's driveway overnight.
- 2 x Criminal Law (Consolidation) (Scotland Act 1995, S52 Vandalism (there are two victims, 'A' and the owner of the hired vehicle).
- Example 4 Plants pulled out of garden and strewn across grass.
- 1 x Criminal Law (Consolidation) (Scotland Act 1995, S52 Vandalism (it is irrelevant whether the plants are perennial or not)
- Example 5 Wilfully knocking coping stone from wall, smashing same.
- 1 x Criminal Law (Consolidation) (Scotland Act 1995, S52 Vandalism
- Example 6 Witness reports youths seen smashing windows of a derelict building, owner of building cannot be traced.
- 1 x Criminal Law (Consolidation) (Scotland Act 1995, S52 Vandalism
- Example 7 Door of school found to have been written on with permanent marker pen and paint on the door showing scorch marks as if someone had burned it with a cigarette lighter.
- 1 x Criminal Law (Consolidation) (Scotland Act 1995, S52 Vandalism (probable actions resulting in the damage have been part of the same incident. Scorch marks indicate there does not appear to have been any intention to/or likelihood of the property going on fire, therefore, reasonable to assume the purpose was to cause damage rather than to set fire).
- Example 8 A school reports that over two separate weekends three windows and six windows respectively were damaged.

- 2 x Criminal Law (Consolidation) (Scotland Act 1995, S52 Vandalism (where the times/dates are unknown one crime would be sufficient).

Example 9 School subjected to vandalism on 6 separate identified occasions during school holidays by same suspect group of youths.

- 6 x Criminal Law (Consolidation) (Scotland Act 1995, S52 Vandalism

Example 10 Person causes disturbance within a flat placing occupants in a state of fear and alarm. During disturbance suspect deliberately breaks items of furniture.

- 1 x Criminal Law (Consolidation) (Scotland Act 1995, S52 Vandalism
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38 (had the disturbance itself amounted to the breaking of the items of furniture a Vandalism only would be recorded).

Example 11 Overnight two vehicles parked in the driveway outside a private dwelling have their front windscreens smashed with stones. The vehicles are individually owned by the occupants of the dwelling 'A' and 'B'.

- 2 x Criminal Law (Consolidation) (Scotland Act 1995, S52 Vandalism ('A' and 'B' are separate victims)

Note

In order to constitute a vandalism, damage must have occurred e.g. where eggs have been thrown against a wall, causing no damage, this is not a vandalism but an act of anti-social behaviour, whereas if eggs are thrown over a vehicle resulting in discolouration this is a vandalism.

Where the damage is minimal and there is no cost of repair this still constitutes a vandalism.

If a liquid substance can be cleaned off or removed at no cost and with little effort (e.g. bucket of soapy water) there is no requirement for a crime to be recorded. This does not include the use of specialist cleaning material which the complainer may have at home or the use of power tools to clean a substance off. If either are used a crime must be recorded.

In circumstances where a person damages property and also causes a disturbance where it can be shown that persons other than the owner of the damaged property have been placed in a state of fear or alarm both Section 38 and Vandalism should be recorded. If the alarm caused is only suffered by the owner of the damaged property only Vandalism should be recorded.

Where a number of anti-social behaviour incidents occur involving the same complainer, consideration should be given to recording a Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, although this will depend on the circumstances of each report e.g. eggs thrown over vehicle and at house on numerous occasions, although may not constitute a vandalism if no damage, it may be considered that the escalation presents fear, alarm and annoyance.

This crime type can be dealt with by an ASB Fixed Penalty Notice.

Culpable and Reckless Conduct (not with firearms)

33/011 Culpable and Reckless Conduct

4/001 Causing Serious Injury by Culpable and Reckless Conduct

General Rule

One crime for each incident unless this involves a vehicle or train in which case a crime will be recorded for each vehicle or train

Definition

An act, which may or may not cause injury but shows an utter disregard of what the consequences of that act would be.

Complainer/Victim

Procurator Fiscal or named victim

Locus

Where crime takes place

Examples

Example 1 Person throwing stone at moving train, causing damage to window.

- 1 x Culpable and Reckless Conduct

Example 2 Person drops a bottle from a 15th floor flat into a public precinct.

- 1 x Culpable and Reckless Conduct

- Example 3 Person throws a brick at a moving bus resulting in two persons within being injured.
- 1 x Culpable and Reckless Conduct
- Example 4 Persons throw stones at two buses containing passengers, one travelling directly behind the other, resulting in their windows being damaged. Both buses are owned by the same company.
- 2 x Culpable and Reckless Conduct (one for each bus)
- Example 5 A large stone is thrown from a walkway on to the roadway beneath and strikes three passing cars.
- 1 x Culpable and Reckless Conduct (while three vehicles are struck the throwing of the stone is a single reckless act).
- Example 6 Person throws a bottle at a wall within a public house damaging a picture. No persons are in the vicinity of the broken glass.
- 1 x Criminal Law (Consolidation) (Scotland Act 1995, S52 Vandalism (if persons in the area were directly impacted by the conduct Culpable and Reckless Conduct would be relevant).
- Example 7 'A' not knowing that they have the HIV virus has unprotected sexual intercourse with 'B'.
- Since 'A' did not know they were infected with the HIV virus there is no crime as evidence of knowledge of the infection is required before any recklessness can be established.
- Example 8 'A' in the knowledge that they are infected with the HIV virus has unprotected sexual intercourse with 'B' resulting in 'B' contracting the HIV virus.
- 1 x Culpable and Reckless Conduct (there is no evidence of intent to cause harm but evidence that indicates criminal recklessness). Where there is evidence of intent to infect the crime is Serious Assault.

- Example 9 Persons untie a number of boats in a harbour, damaging ropes and causing them to drift.
- 1 x Culpable and Reckless Conduct
- Example 10 Person in police cell urinates and defecates, smearing same across walls and floors.
- 1 x Culpable and Reckless Conduct (takes into account the biological hazards involved in cleaning up the mess. If just deposited on the cell floor a crime of Vandalism should be recorded)
- Example 11 Shopkeeper discovers that human or animal faeces have been smeared across their shop window.
- 1 x Culpable and Reckless Conduct (takes into account the biological hazards involved in cleaning up the mess).
- Example 12 Before being searched by Police 'A' is asked if they have any sharp implements on their person and responds in the negative. On being searched an uncapped needle is found within 'A's' pocket resulting in an officer receiving a prick to the finger. On arrival in custody 'A' is again asked if they have any sharp implements and responds in the negative. On being searched an uncapped needle is found within their shoe and no person is injured on this occasion.
- 2 x Culpable and Reckless Conduct (one for each locus)

Note

Where there is no evidence of intent to cause harm but evidence that indicates criminal recklessness, culpable and reckless conduct should be recorded. With regard to damage to property, culpable and reckless conduct should be recorded where there is evidence of a wilful and/or recklessness which includes an element of endangerment e.g. throwing a brick at a moving vehicle.

This is not victim based as there is no requirement to have a victim, the actions of the person responsible dictates that the offence has been committed.

The Laser Misuse (Vehicles) Act 2018 should be used where a laser beam has been directed towards a vehicle (including aircraft). The Air Navigation Order 2016 (SGJD Code 33/016) should be used where a light, and not a laser, has been used which endangers an aircraft.

Where the act is of a serious nature, e.g. results in serious injury, this will be recorded as a Group 1 crime (SGJD Code 4/001 - Causing serious injury etc. by Culpable and Reckless Conduct). The extent of injury deemed to be "serious" will correspond to that defined as Serious Assault.

32/001 Fire-raising (excluding Muirburn)

General Rule

One crime for each victim if multiple fires, or one crime per incident if single fire.

Definition

Wilful Fire-raising must include a definitive intention to set fire to the property.

Culpable and Reckless Fire-raising must include an act, which showed disregard as to the result.

Complainer/Victim

Owner of property

Locus

Where crime takes place

Examples

Example 1 Person climbs over fence of secure compound, sets fire to vehicle, and smashes window of digger.

- 1 x Fire-raising (vandalism subsumed)

Example 2 Person climbs into compound and wilfully sets fire to 2 vehicles, owned by the same company.

- 1 x Fire-raising

Example 3 Person sets fire to a vehicle which spreads to other vehicles parked alongside.

- 1 x Fire-raising (if there is nothing to suggest that the intention was to set fire to all vehicles). Single fire with multiple victims.

Example 4 Person sets fire to hotel, resulting in no one being injured and circumstances do not indicate there was any intention to kill the persons within.

- 1 x Fire-raising

Note

There are two distinct crimes of Fire-raising: Wilful and Culpable and Reckless. Both crimes can be committed in respect of any form of property.

In cases where a fire has been set, e.g. rubbish, where no damage to property occurs, there is no danger to the general public and there is no victim, a crime report will not be raised. All property damaged by being set on fire wilfully or maliciously should be regarded as Fire-raising e.g. litter bins, vehicles, buildings.

32/003 Fire-raising (Muirburn)

General Rule

One crime for each incident

Definition

It is an offence for any landowner or tenant to set alight to his fields outwith the specified time period. This includes setting fire or burning any heath or muir.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 Farmer sets fire to 2 of their fields outwith specified time period.
- 1 x Fire-raising (with Muirburn offence modifier)

Laser Misuse (Vehicles) Act 2018

33/011 Vehicles other than aircraft

33/016 Aircraft or Air Traffic Services

General Rule

One crime for each vehicle

Definition

Section 1

Offence of shining or directing a laser beam towards a vehicle

(1) A person commits an offence if—

- (a) the person shines or directs a laser beam towards a vehicle which is moving or ready to move, and
- (b) the laser beam dazzles or distracts, or is likely to dazzle or distract, a person with control of the vehicle.

Section 2

Offences relating to air traffic services

(1) A person commits an offence if—

- (a) the person shines or directs a laser beam—
 - (i) towards an air traffic facility, or
 - (ii) towards a person providing air traffic services, and
- (b) the laser beam dazzles or distracts, or is likely to dazzle or distract, a person providing air traffic services.

Section 3

Interpretations

In this Act—

“aircraft” means any vehicle used for travel by air;

“laser beam” means a beam of coherent light produced by a device of any kind;

“vehicle” means any vehicle used for travel by land, water or air;

“vessel” has the meaning given by section 255(1) of Merchant Shipping Act 1995

Complainer/Victim

Vehicle owner

Locus

Where crime takes place

Examples

Example 1 Over a period of 30 minutes a laser light is shone directly at three separate aircraft on approach to an airport.

- 3 x Laser Misuse (Vehicles) Act 2018, S1 (SGJD Code 33/016)

Note

It should be noted that the offence under Article 225 of the Air Navigation Order 2016 to "Shine or direct a light at an aircraft which dazzles or distracts the pilot of the aircraft" should continue to be used where lights which are not lasers are shone at an aircraft. Any other conduct which endangers an aircraft should continue to be recorded under the appropriate Articles of the Air Navigation Order 2016.

33/011 Malicious Mischief

General Rule

One crime for each victim

Definition

Wilful, wanton and malicious destruction of, or damage to the property of another.

Complainer

Person whose property has been destroyed/damaged

Locus

Where crime takes place

Examples

- Example 1 Person damages electricity supply resulting in 5 houses being affected.
- 1 x Malicious Mischief (due to the victim being the electricity company)

Note

Malicious Mischief should only be recorded where widespread damage is caused, where the value of the damage is considerable, or where there is disruption of power supply, flooding or similar. There is no specific monetary amount where Vandalism stops and Malicious Mischief takes over but any value of damage would require to be significant (several £000s) before a crime of Malicious Mischief is recorded.

In assessing value of damage, consideration with regard to reinstatement costs should be taken into account when determining the real cost of any damage caused.

Although this crime type can be disposed of by way of a Fixed Penalty Notice, each circumstance would have to be considered on its own merits.

33/002 Reckless Conduct (with firearms)

General Rule

One crime for each incident

Definition

A reckless act involving a firearm, which may or may not cause injury but shows an utter disregard of what the consequences of that act would be.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Person firing shots with firearm within common stairway.

- 1 x Reckless Discharge of Firearm

Example 2 Whilst car is parked its rear windscreen is broken by a pellet fired from an air gun. No persons within vehicle at the time.

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S52 Vandalism (no evidence that persons were endangered by this action).

Example 3 Whilst car is being driven its rear windscreen is broken by a pellet fired from an air gun.

- 1 x Reckless Discharge of Firearm

Note

The essence of this crime is the wanton disregard for the safety of others e.g. firing a firearm into an inhabited building recklessly discharging a firearm in the street.

Group 5 – Crimes against Society

Crime Category	SGJD Code
<u>Anti-social Behaviour etc. (Scotland) Act 2004, S9</u>	
- Breach of Anti-social Behaviour Order	39/014
<u>Conspiracy</u>	40/000
<u>Contempt of Court</u>	39/001
<u>Criminal Justice Act 1988, S141 (1A)</u>	
Prohibition on possession of offensive weapons in a private place	
- Used in crime	43/018
- Not used in crime	43/020
<u>Criminal Justice and Licensing (Scotland) Act 2010,</u>	40/001
- S28, S30, S31 - Offences relating to Serious Organised Crime	
<u>Criminal Justice (Scotland) Act 2016, Sch 1-1(1)</u>	
- Breach of Undertaking or Investigative Liberty Conditions	39/002
<u>Criminal Law (Consolidation) (Scotland) Act 1995,</u>	
Possession of an Offensive Weapon (where not used in commission of a crime)	
- S47 (1) Public Place	43/001
- S49A (2) School Premises	43/006
- S49C (1) (a) In Prison	43/007
<u>Criminal Law (Consolidation) (Scotland) Act 1995,</u>	
Possession of an Offensive Weapon (where used in commission of a crime)	
- S47 (1) Public Place	43/009

- S49A (2) School Premises 43/011
- S49C (1) (a) In Prison 43/013

[Criminal Law \(Consolidation\) \(Scotland\) Act 1995,](#)

Having an article with a blade or point (where not used in commission of a crime)

- S49 (1) Public Place 43/003
- S49A (1) School Premises 43/004
- S49C (1) (b) In Prison 43/008

[Criminal Law \(Consolidation\) \(Scotland\) Act 1995,](#)

Having an article with a blade or point (where used in commission of a crime)

- S47 (1) Public Place 43/010
- S49A (2) School Premises 43/012
- S49C (1) (a) In Prison 43/014

[Criminal Law \(Consolidation\) \(Scotland\) Act 1995, S48](#)

- Obstructing or concealing weapons 38/013

[Criminal Procedure \(Scotland\) Act 1995, S13 \(6\)](#)

- Failing to give name or to remain with a constable 38/011

[Criminal Procedure \(Scotland\) Act 1995, S27 \(1\) \(a\)](#) 39/005

- Failing to appear for trial having been given court bail

[Criminal Procedure \(Scotland\) Act 1995, S27 \(1\) \(b\)](#)

- Bail offences 39/007

[Criminal Procedure \(Scotland\) Act 1995, S234A](#)

- Breach of Non-harassment Order (criminal court) 39/012

[Customs and Excise Management Act 1979, S50, S170](#)

- Illegal importation of drugs	44/001
<u>Defeat/Pervert the Course/Ends of Justice</u>	38/017
<u>Domestic Abuse (Scotland) Act 2011, S2 (2)</u>	
- Breach of Domestic Abuse Interdict	39/021
<u>Emergency Workers Act 2005, S1, S2, S3, S5</u>	
- Obstruct/Hinder other Emergency Worker	35/005
<u>Explosive Substances Act 1883, S3</u>	
- Attempt to cause explosion	37/001
<u>False Accusation</u>	38/004
Misuse of Drugs Act 1971	
- <u>Bring Drugs into Prison</u>	44/006
- <u>Importation</u>	44/001
- <u>Other offences</u>	44/099
- <u>Possession</u>	44/004
- <u>Production, Manufacture and Cultivation</u>	44/002
- <u>Supply</u>	44/003
- <u>Miscellaneous examples</u>	
<u>Mobbing and Rioting</u>	35/001
<u>Offensive Weapons Act 2019, S6 (1)</u>	
- Possession of corrosive substance (used in crime)	43/015
- Possession of corrosive substance (not used in crime)	43/016
- See <u>Restriction of Offensive Weapons Act 1959</u> for Possessing certain dangerous knives a in a	
- private place	
- See <u>Criminal Justice Act 1988</u> for prohibition on Possessing offensive weapons in a private place	

<u>Perjury and Subornation</u>	39/011
Police and Fire Reform (Scotland) Act 2012, S90 (1), S90 (2)	
- <u>Obstruct/Hinder Constable in pursuance of lawful duty</u>	38/013
- <u>Resist</u>	38/007
<u>Police and Fire Reform (Scotland) Act 2012, S91</u>	
- Escape from custody	38/006
<u>Police and Fire Reform (Scotland) Act 2012, S92</u>	
- Personation of police	38/010
<u>Protection from Harassment Act 1997, S9</u>	
- Breach on Non-harassment Order (civil court)	39/013
Psychoactive Substances Act 2016	
- <u>Production, Import/Export, Supply, Possession</u>	44/007
- <u>Other</u>	44/008
<u>Public Mischief (including Wasting Police Time)</u>	38/003
<u>Restriction of Offensive Weapons Act 1959, S1 (1A)</u>	
Possession of certain dangerous knives in a private place	
- Used in crime	43/017
- Not used in crime	43/019
<u>Sexual Offences Act 2003</u>	
- Notification offences	38/018
<u>Sexual Offences Prevention Orders</u>	39/015
<u>Trespass</u>	35/003

**39/014 Antisocial Behaviour etc. (Scotland) Act 2004,
Section 9
Breach of Antisocial Behaviour Order**

General Rule

One crime for each accused

Definition

A person who is subject to an antisocial behaviour order or an interim order and without reasonable excuse, does anything that the order to which the person is subject prohibits the person from doing.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 Person found to playing loud music in breach of their Antisocial Behaviour Order.
- 1 x Antisocial Behaviour etc. (Scotland) Act 2004, S9 Breach of Antisocial Behaviour Order Civic Government (Scotland) Act 1982, S57
- Example 2 Person arrested for shoplifting and thereafter identifying they had breached an Antisocial Behaviour Order by being at locus.
- 1 x Theft by Shoplifting with the breach of the Antisocial Behaviour Order highlighted as an aggravation.

Example 3 Person playing loud music in breach of a condition of an Antisocial Behaviour Order on six occasions. All breaches are corroborated but accused is not traced by Police until after the sixth breach.

- 1 x Antisocial Behaviour etc. (Scotland) Act 2004, S9 Breach of Antisocial Behaviour Order (once the condition has breached, the accused continues to be in breach until a decision is made by a court).

Note

Section 9(1) of the Antisocial Behaviour etc. (Scotland) Act, 2004 makes it an offence to breach an antisocial behaviour order.

Section 9(3) of the Act provides that where the behaviour constituting the breach amounts to a separate offence, and where a person is charged with that offence, they cannot also be prosecuted for the breach of the order.

However, in relation to Section 9(3), the fact that the separate offence was committed by the accused whilst subject to the antisocial behaviour order will be an aggravating factor in relation to sentencing and therefore this must be highlighted within the police report.

40/000 Conspiracy

General Rule

One crime for each incident

Definition

Conspiring to commit an unlawful act

Complainer

Procurator Fiscal

Locus

Where crime takes place

Example

Example 1 'A' and 'B' conspire to seriously injure 'A's' ex-partner.
 - 1 x Conspiracy

39/001 Contempt of Court

General Rule

One crime for each accused

Definition

All courts are empowered at common law to enforce order and purity of procedure by summarily punishing any act of contempt committed against their authority or dignity. Although punished, it is not a crime, being dealt with at civil law even if the contempt is during a criminal case. Examples of such acts of contempt are –

- (1) an accused person, or a witness, or a juror appearing in court in a state of intoxication;
- (2) a witness refusing to be sworn or to make affirmation;
- (3) any person behaving in an insulting and contemptuous manner;
- (4) any disobedience of an order of the court.

The following is also deemed to be contempt of court,

Any witness who, having been duly cited in accordance with Section 140 of the Criminal Procedure (Scotland) Act, 1995

- (a) fails without reasonable excuse, after receiving at least 48 hours' notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him; or
- (b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which such precognition is taken.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Brought to the attention of the Sheriff in court that someone had been taking photographs during the proceedings. The Sheriff instructs the police to trace the individual and report them for Contempt of Court.

- 1 x Contempt of Court (record as Breach of the Peace – see note below.

Note

Contempt of Court is not a crime within the meaning of Scottish criminal law. The offence of Contempt of Court is an offence sui generis and, where it occurs, it is peculiarly within the province of the court itself, civil or criminal as the case may be, to punish under its power.

There is no ISCJIS charge code specifically for Contempt of Court therefore officers should use Breach of the Peace to record and report.

Criminal Justice Act 1988, Section 141(1A)

Prohibition on the possession of offensive weapons in a private place

43/018 Possession of prohibited offensive weapon in a private place (Used in Crime)

43/020 Possession of prohibited offensive weapon in a private place (Not Used in Crime)

General Rule

One crime for each weapon

Definition

Section 141

(1A) Any person who possesses a weapon to which this section applies in private is guilty of an offence

See Note section below for list of prohibited weapons.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 Police attend a report of a domestic incident. Upon entering the property a knuckleduster is observed to be sitting on a table. 'A' confirmed that the knuckleduster was theirs.
- 1 x Criminal Justice Act 1988, S141 (1A) Possession of prohibited offensive weapon in a private place (not used in crime).
- Example 2 Police search suspect in a public place where suspect is found in possession of a knuckleduster which they state they carry on their person for their own protection.
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S47, Possession of offensive weapon (not used in crime) – public place and admission that weapon was carried with intended use to injure someone.
- Example 3 Police carry out a drugs search on a property and recover a small quantity of diamorphine, along with a butterfly knife and a flick knife, within the bedroom used by the suspect.
- 1 x Misuse of Drugs Act 1971, S5 (2), Possession of a controlled drug.
 - 1 x Criminal Justice Act 1988, S141 (1A), Possession of a prohibited offensive weapon in a private place (not used in crime) – for butterfly knife.
 - 1 x Restriction of Offensive Weapons Act 1959, S1A – Possession of a dangerous knife in a private place (not used in the commission of a crime) – for flick knife.
- Example 4 Police attend at an abandoned property allegedly being used by homeless people. Upon entering the property they observe evidence that people have been living in the building but nothing to identify the inhabitants. They observe a 'police style' extending baton to be within the kitchen area of the property.

- No crime should be recorded as possession/ownership cannot be established. The item should be seized as found property and marked for destruction.

Note

Subsection 1A to Section 141 of 1 of Criminal Justice Act 1988 was introduced following the enactment of Part 4 of the Offensive Weapons Act 2018, Section 46 on 27 March 2023 which amended the 1988 Act.

For the purposes of clarity, the possession of any flick knife or gravity knife in a private setting is an offence under the Restriction of Offensive Weapons Act 1959 (as amended). Possession of any 'prohibited weapon' in a private setting, is an offence under Section 141 of the Criminal Justice Act 1988 (as amended).

Prior to the introduction of this Subsection it was only an offence to possess such prohibited weapons in a public place. For public places these offences are still recordable under Criminal Law (Consolidation) (Scotland) Act 1995, Sections 47/49 with other parts of Section 49 applying to possession in prisons and schools. This will not change and Subsection 1A above will only be used to record possession in private. The sentencing profile is higher for possession in a public place, prison or school.

An extensive list of prohibited offensive weapons as detailed below is contained in Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005, Schedule 2:

- (a) a knuckleduster, that is, a band of metal or other hard material worn on one or more fingers, and designed to cause injury, and any weapon incorporating a knuckleduster;
- (b) a swordstick, that is, a hollow walking stick or cane containing a blade which may be used as a sword;
- (c) the weapon sometimes known as a "handclaw", being a band of metal or other hard material from which a number of sharp spikes protrude, and worn around the hand;

- (d) the weapon sometimes known as a “belt buckle knife”, being a buckle which incorporates or conceals a knife;
- (e) the weapon sometimes known as a “push dagger”, being a knife the handle of which fits within a clenched fist and the blade of which protrudes from between two fingers;
- (f) the weapon sometimes known as a “hollow kubotan”, being a cylindrical container containing a number of sharp spikes;
- (g) the weapon sometimes known as a “footclaw”, being a bar of metal or other hard material from which a number of sharp spikes protrude, and worn strapped to the foot;
- (h) the weapon sometimes known as a “shuriken”, “shaken” or “death star”, being a hard non flexible plate having three or more sharp radiating points and designed to be thrown;
- (i) the weapon sometimes known as a “balisong” or “butterfly knife”, being a blade enclosed by its handle, which is designed to split down the middle, without the operation of a spring or other mechanical means, to reveal the blade;
- (j) the weapon sometimes known as a “telescopic truncheon”, being a truncheon which extends automatically by hand pressure applied to a button, spring or other device in or attached to its handle;
- (k) the weapon sometimes known as a “blowpipe” or “blow gun”, being a hollow tube out of which hard pellets or darts are shot by the use of breath;
- (l) the weapon sometimes known as a “kusari gama”, being a length of rope, cord, wire or chain fastened at one end to a sickle;
- (m) the weapon sometimes known as a “kyoketsu shoge”, being a length of rope, cord, wire or chain fastened at one end to a hooked knife;
- (n) the weapon sometimes known as a “manrikigusari” or “kusari”, being a length of rope, cord, wire or chain fastened at each end to a hard weight or hand grip;

- (o) a disguised knife, that is any knife which has a concealed blade or concealed sharp point and is designed to appear to be an everyday object of a kind commonly carried on the person or in a handbag, briefcase, or other hand luggage (such as a comb, brush, writing instrument, cigarette lighter, key, lipstick or telephone);
- (p) a stealth knife, that is a knife or spike, which has a blade, or sharp point, made from a material that is not readily detectable by apparatus used for detecting metal and which is not designed for domestic use or for use in the processing, preparation or consumption of food or as a toy;
- (q) a straight, side handled or friction lock truncheon (sometimes known as a baton).
- (r) the weapon sometimes known as a “cyclone knife” or “spiral knife” being a weapon with a handle, a blade with two or more cutting edges, each of which forms a helix, and a sharp point at the end of the blade.

**40/001 Criminal Justice and Licensing (Scotland) Act 2010,
Section 28, 30 and 31
Offences relating to Serious Organised Crime**

General Rule

One from for each accused or group of accused if acting together

Definition

Section 28

- (1) A person who agrees with at least one other person to become involved in serious organised crime commits an offence.

Section 30

- (1) A person commits an offence by directing another person—
- (a) to commit a serious offence,
 - (b) to commit an offence aggravated by a connection with serious organised crime under section 29.
- (2) A person commits an offence by directing another person to direct a further person to commit an offence mentioned in subsection (1).

Section 31

- (1) This section applies where—
- (a) a person (“the person”) knows or suspects that another person (“the other person”) has committed—
 - (i) an offence under section 28 or 30, or
 - (ii) an offence which is aggravated by a connection with serious organised crime under section 29, and
 - (b) that knowledge or suspicion originates from information obtained—

- (i) in the course of the person's trade, profession, business or employment, or
- (ii) as a result of a close personal relationship between the person and the other person.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Two persons acting together commit a Fraud which is confirmed as being related to Serious Organised Crime.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S28
- 1 x Fraud

Note

Where another crime has been committed where there is evidence to confirm that crime is related to Serious Organised Crime both the crime committed and the Serious Organised Crime Offence must be recorded.

39/002 **Criminal Justice (Scotland) Act 2016, Schedule 1-
1(1)**
**Breach of Undertaking or Investigative Liberty
Conditions**

General Rule

One crime for each accused

Definition

Offence of breaching condition

- (1) A person commits an offence if, without reasonable excuse, the person breaches a liberation condition by reason of—
- (a) failing to comply with an investigative liberation condition,
 - (b) failing to appear at court as required by the terms of an undertaking, or
 - (c) failing to comply with the terms of an undertaking, other than the requirement to appear at court.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 'A' commits an assault and is released on an undertaking to appear on a specified date, prior to which 'A' again assaults the same victim.
- 1 x Assault in relation to the initial report.

- 1 x Assault in relation to the second report. An aggravation would be added to the second police report as the Conditions of Undertaking were breached.

Note

A Breach of Undertaking or Investigative Liberty Conditions crime should only be recorded where no other crime has occurred. Where another crime has occurred, the Breach of Undertaking or Investigative Liberty Condition will be treated as an aggravation in the report to the Procurator Fiscal.

Criminal Law (Consolidation) (Scotland) Act 1995

Possession of an Offensive Weapon

Where not used in the commission of a crime

43/001 Section 47(1) Public Place

43/007 Section 49A (2) School Premises

43/006 Section 49C (1) (a) In Prison

Where used in the commission of a crime

43/009 Section 47(1) Public Place

43/013 Section 49A (2) School Premises

43/011 Section 49C (1) (a) In Prison

General Rule

One crime for each weapon

Definition

Any person who has with him in any public place, school or prison any offensive weapon shall be guilty of an offence.

An "offensive weapon" means any article made or adapted for use for causing injury to a person, or intended, by the person having the article, for use for causing injury to a person by:

- (i) the person having it, or
- (ii) some other person.

“public place” means any place other than—

- (a) domestic premises,
- (b) school premises (within the meaning of section 49A (6)),
- (c) a prison (within the meaning of section 49C (7)),

“domestic premises” means premises occupied as a private dwelling (including any stair, passage, garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling).

It should be noted that a Children’s Residential Home is not considered to be a public place in terms of this legislation.

It is a defence for a person charged with an offence under subsection (1) to show that the person had a reasonable excuse or lawful authority for having the weapon with the person in the public place.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Where not used in the commission of a crime

- Example 1 A person is found in possession of two offensive weapons.
- 2 x Criminal Law (Consolidation) (Scotland) Act 1995, S47 (1)
- Example 2 Whilst at school, two pupils are each found to be in possession of an offensive weapon.
- 2 x Criminal Law (Consolidation) (Scotland) Act, 1995, S49A (2)

Example 3 'A' reports that on looking out their window they saw a person running down the street waving a baseball bat in the air and shouting, however, could not hear what was being said. On police attendance no person or weapon is traced.

- No crime is required to be recorded as there is no corroboration.

Example 4 While 'A' is within the home of 'B', 'A' produces a baseball bat from inside their jacket and assaults 'B' with it. 'B' confirms that 'A' could not have obtained the baseball bat from within the property.

- 1 x Assault only (while it can be reasonably assumed that 'A' was in possession of the weapon prior to entering the home of 'B' there is no corroborative evidence of this. Since the assault itself was committed on domestic premises where possession of the weapon would not be considered an offence then no weapon offence should be recorded).

Example 5 When 'A' enters the home of 'B' they are seen by 'B' and 'C' to be in possession of a baseball bat as they enter the property. Whilst within the property 'A' assaults 'B' with the bat.

- 1 x Assault
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S47 (1) – not used in crime. (There is corroboration that 'A' was in possession of the weapon when they entered the home of 'B'. Since the assault itself occurred on domestic premises (private dwelling) where possession of the weapon would not be considered an offence the “used in crime” modifier cannot be used).

Where used in the commission of a crime

Example 6 'A' is struck on the arm by 'B' with a baseball bat in a public place, resulting in bruising.

- 1 x Assault

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S47 (1) (possession of offensive weapon used in commission of a crime)

Example 7 'A' approaches 'B' carrying a piece of wood and waves it about threatening to strike 'B' with it, 'B' then runs off.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38 Threatening or Abusive Behaviour
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S47 (1) (possession of offensive weapon used in commission of a crime)

Example 8 'B' uses a baseball bat to smash the windscreen of a motor vehicle belonging to 'A'.

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S52 Vandalism (no requirement to record possession of baseball bat as no evidence it was carried with intent to cause injury).

Note

From 1 April 2017 where an offensive weapon has been used in the commission of a crime (against the person) and it meets the definition as outlined in Section 47 of Criminal Law (Consolidation) (Scotland) Act 1995, possession of the weapon will no longer be subsumed into the substantive crime.

For the purposes of crime recording a screwdriver is not to be considered as an article with a blade or point.

Recording possession of an offensive weapon offence with a “used in crime” variant should only occur where the crime is one against the person (e.g. Section 38) and where the crime is committed in a place where possession of the offensive weapon would be a crime (e.g. public place).

Where no other offence has occurred, however, there is sufficient corroboration to identify the article/circumstances meets the requirements of the Act i.e. two witnesses speaking to the article being an offensive weapon/being used in an

offensive manner, or, one witness and the article being recovered, then a crime should be recorded.

If the weapon used in the commission of a crime has not been recovered however the victim or a witness describes the weapon as fitting the description in line with Section 47 of the above Act, a crime must be recorded (no requirement for corroboration).

In circumstances where a knife is used in crime as an offensive weapon a crime under Section 49 (or school/prison equivalent) should be recorded and not Section 47. However, where there is dubiety in the case of a folding pocket knife as to whether the article meets the Section 49 definition then a Section 47 (or school/prison equivalent) should be recorded.

Possessing an article in a prison which has been deliberately sharpened to a point should be recorded under Criminal Law (Consolidation) (Scotland) Act, 1995, Section 49C (1) (b) – having an article with a blade or point.

Where a Section 38, Criminal Justice and Licensing (Scotland) Act 2009, Threatening or Abusive Behaviour or Breach of the Peace, has occurred which amounts to a weapon being waved about or similar, then a separate crime should be recorded in respect of the weapon.

Where a Robbery has occurred whereby a weapon has been presented then a separate crime should be recorded in respect of the weapon.

Where there is evidence that the use of a weapon was premeditated, the weapon was carried to the locus or fetched for the purpose of committing the crime then a separate crime for possessing the offensive weapon will be recorded. Similarly, the deliberate sourcing of an article and adapting it for use as an offensive weapon will also require a separate crime to be recorded for possessing an offensive weapon. It should be noted that the article in question must be capable of causing injury.

Criminal Law (Consolidation) (Scotland) Act 1995

Having an article with a blade or point

Where not used in the commission of a crime:

43/003 Section 49(1) Public Place

43/004 Section 49A (1) School Premises

43/008 Section 49C (1) (b) In Prison

Where used in the commission of a crime:

43/010 Section 49(1) Public Place

43/012 Section 49A (1) School Premises

43/014 Section 49C (1) (b) In Prison

General Rule

One crime for each weapon

Definition

Any person who has with him in any public place, school or prison any article which has a blade or is sharply pointed shall be guilty of an offence.

This section does not apply to a folding pocket knife if the cutting edge of the blade does not exceed three inches (7.62 centimetres).

“public place” means any place other than—

(a) domestic premises,

(b) school premises (within the meaning of section 49A (6)),

(c) a prison (within the meaning of section 49C (7)),

“domestic premises” means premises occupied as a private dwelling (including any stair, passage, garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling).

It should be noted that a Children’s Residential Home is not considered to be a public place in terms of this legislation.

It is a defence for a person charged with an offence under subsection (1) to show that the person had a reasonable excuse or lawful authority for having the weapon with the person in the public place.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Where not used in the commission of a crime

Example 1 ‘A’ reports that on looking out of their window they saw a person running down the street waving what appeared to be a knife in the air and shouting, however, could not hear what was being said. On police attendance no person or knife is traced.

- No crime is required to be recorded as there is no corroboration.

Example 2 ‘A’ on being searched by Police is found to have two knives in their possession.

- 2 x Criminal Law (Consolidation) (Scotland) Act 1995, S49 (1), possession of knife (not used in crime) (crime per knife)

- Example 3 'A' deliberately punctures the tyres of a neighbour's car which is parked in a public place using a knife which is corroborated.
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S52 Vandalism
 - 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S49 (1) for possession of knife (not used in crime). Note use of the "not used in crime" modifier since the knife was not used to threaten or injure any person.
- Example 4 On being brought into Police custody in 'Z' Division from a public place in 'X' Division suspect is found to be in possession of a knife.
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S49 (1), possession of knife (not used in crime) – to be recorded by 'Z' Division as this is where the knife was found by Police.
- Example 5 Police arrest 'A' on warrant from their home address. When searched on arrival at the cell block 'A' is found to have a knife in their possession.
- No crime to be recorded since Police have caused 'A' to bring the knife from a domestic place into a public place.
- Example 6 Police, on being advised by 'A' that 'A' has no sharp implements in their possession, search 'A' and an officer is injured by a knife concealed within 'A's' clothing.
- 1 x Culpable and Reckless Conduct
 - 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S49 (1) for possession of knife (not used in crime). Note use of the "not used in crime" modifier since the knife was not used to threaten or injure any person.
- Example 7 Witnesses on school premises speak to 'A', 'B' and 'C' all being in possession of the same knife at various points during the lunch break. On being searched 'C' is found in possession of the knife.

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S49 (A) (1), possession of knife on school premises (not used in crime) with three accused.

Example 8

A report is received that 'A' was seen in the street and entering a neighbour's house carrying a large bladed knife. Police attend and it is established that 'A' was providing a large knife to their next door neighbour who did not have a knife sharp enough or big enough to cut a large piece of meat. The knife and meat were lying on the kitchen table.

- A reasonable excuse for having the article in a public place has been provided and should officers be satisfied with this explanation, no crime requires to be recorded. 'A' should be advised against carrying a knife in a public place in future.

Example 9

A report is received that a child was in the school grounds and was seen using a knife to spread cheese on a cracker from their lunchbox. It was established that the knife had been included in the lunchbox by the parent of the child. The teacher confiscated the knife and contacted the police.

- A reasonable excuse for having the article was provided and the child was not using the knife in a manner which would cause concern, therefore no crime requires to be recorded. The child and parent should be advised that a knife should not be provided within a lunchbox on school grounds.

Where used in the commission of a crime:

Example 10

'A' is assaulted by 'B' who stabs 'A' to the arm with a knife. 'B' is traced by Police still in possession of the knife.

- 1 x Assault
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S49 (1), possession of knife used in the commission of a crime

- Example 11 'A' is assaulted by 'B' who stabs 'A' to the arm with a knife. 'B' is traced by Police a short distance away but no weapon is found.
- 1 x Assault
 - 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S49 (1), possession of knife used in the commission of a crime
- Example 12 'A' approaches 'B' carrying a knife and waves it about threatening to strike 'B' with it, 'B' then runs off.
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or Abusive Behaviour
 - 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S49 (1), possession of knife used in the commission of a crime
- Example 13 Victim attends hospital with a stab wound. Victim believes they were stabbed with a knife but didn't see what was used to stab them nor are there any witnesses. The doctor treating the injuries confirms they were likely to have been caused with a knife.
- 1 x Serious Assault/Attempted Murder as appropriate (note no knife was seen so no requirement to record a crime for the weapon used in the commission of the assault).
- Example 14 'A' uses a knife in a public place to assault both 'B' and 'C'.
- 2 x Assault
 - 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S49 (1) (possession of knife used in commission of a crime). Note - no requirement to record a S49 (1) offence for each assault unless there is a radically different locus or time difference between the assaults).

Note

From 1 April 2017 where an article with a blade or point has been used in the commission of a crime (against the person), possession of the weapon will no longer be subsumed into the substantive crime.

For the purposes of crime recording a screwdriver is not to be considered as an article with a blade or point.

Recording possession of an article with a blade or point offence with a “used in crime” modifier should only occur where the crime is one against the person (e.g. Section 38, Assault) and where the crime is committed in a place where possession of the offensive weapon would be a crime (e.g. public place).

Where no other offence has occurred, however, there is sufficient corroboration to identify the article/circumstances meets the requirements of the Act i.e. two witnesses speaking to the article being a blade or pointed article, or, one witness and the article being recovered, then a crime should be recorded.

If the blade or sharply pointed article used in the commission of a crime has not been recovered however the victim or a witness describes the weapon as fitting the description in line with Section 49 of the above Act, a crime must be recorded (no requirement for corroboration). In circumstances where a knife is used in crime as an offensive weapon a crime under Section 49 (or school/prison equivalent) should be recorded and not Section 47. However, where there is dubiety in the case of a folding pocket knife as to whether the article meets the Section 49 definition then a Section 47 (or school/prison equivalent) should be recorded.

Possessing an article in a prison which has been deliberately sharpened to a point should be recorded under Criminal Law (Consolidation) (Scotland) Act, 1995, Section 49C (1) (b) – having an article with a blade or point.

Where a Section 38, Criminal Justice and Licensing (Scotland) Act 2009, Threatening or Abusive Behaviour or Breach of the Peace, has occurred which amounts to a blade or sharply pointed article being waved about or similar, then a separate crime should be recorded in respect of the weapon.

Where a Robbery has occurred whereby a blade or sharply pointed article has been presented then a separate crime should be recorded in respect of the weapon.

38/013 **Criminal Law (Consolidation) (Scotland) Act 1995,**
Section 48
Obstructing or Concealing Weapons

General Rule

One crime for each accused

Definition

Intentionally obstructing or concealing from a constable an offensive weapon.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 'A' having been accused of being in possession of an offensive
weapon, refusing to allow a search to be carried out.

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S48

**38/011 Criminal Procedure (Scotland) Act 1995, Section 13
Failing to Give Name to or Remain with Constable**

General Rule

One crime for each accused

Definition

Failing to provide details or remain with officer when there is reasonable belief an offence has been committed.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 On police attendance following a report of a shoplifting, the suspect refuses to provide their name and address to officers.

- 1 x Criminal Procedure (Scotland) Act 1995, S13 (6)

Note

Where there is reasonable grounds for suspecting that a person has committed or is committing an offence at any place, a constable may require the following information,

- The person's name
- The person's address
- The person's date of birth

- The person's place of birth (as necessary to establish the person's identity),
and
- The person's nationality

39/005 **Criminal Procedure (Scotland) Act 1995, Section 27(1) (a)**
Failing to appear for trial having been given court bail

General Rule

One crime for each accused

Definition

Failing to appear for trial having been given court bail

Complainer

Procurator Fiscal

Locus

Court location

Examples

Example 1 Two accused fail to appear at court for a trial in a case where they had both been charged together and are on bail.

- 1 x Criminal Procedure (Scotland) Act, 1995, S27 (1) (a),
Breach of Bail

Note

In the majority of occasions this would be dealt with by means of a warrant being issued.

39/007 Criminal Procedure (Scotland) Act 1995, Section 27(1) (b)

Bail Offences

General Rule

One crime for each accused

Definition

Failing to comply with conditions of bail

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Conditions of bail state curfew in place, accused seen in street by police officers on three consecutive nights, where accused has made off from officers.

- 1 x Criminal Procedure (Scotland) Act 1995, S27 (1) (b), Breach of bail.

Example 2 Conditions of bail state the accused should not enter a specific street, or approach a specific individual. Witnesses report the accused has breached both conditions.

- 1 x Criminal Procedure (Scotland) Act 1995, S27 (1) (b), Breach of Bail.

- Example 3 A person is in breach of their bail conditions where only one person has witnessed the event.
- No crime report should be recorded and the PF should be advised of the circumstances for consideration of a bail review. (See Note in respect of S28 of the Criminal Procedure (Scotland) Act 1995).
- Example 4 Two persons are found to be in breach of their bail conditions.
- 2 x Criminal Procedure (Scotland) Act 1995, S27 (1) (b), Breach of Bail (one for each accused).
- Example 5 Conditions of bail outline a curfew that a person must be within their home address between 7 pm and 7 am. There is no condition attached that they have to present themselves should Police attend. Officers attend at the home address between these times and receive no response.
- No crime report should be recorded as it cannot be ascertained whether the individual was within the dwelling or not.
- Example 6 Conditions of bail outline a curfew that a person must be within their home address between 7 pm and 7 am. There is a condition attached that they must present themselves should Police attend. Officers attend at the home address between these times and receive no response.
- 1 x Criminal Procedure (Scotland) Act 1995, S27(1)(b), Breach of Bail (it should be noted that officers should take into consideration the time they call at the address and whether or not the individual may be asleep as this would be a factor in evidencing the breach).
- Example 7 A person is arrested for vandalism and it is ascertained they are on bail, with standard bail conditions set.

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S52, Vandalism (no crime report is required to be recorded for the bail offence i.e. committing an offence whilst on bail. An aggravator should be added to the police report highlighting the individual was on bail).

Example 8

There is a condition of bail that 'A' does not approach or contact 'B'. 'A' phones 'B' on 20 occasions and shouts abuse at them over the phone.

- 1 x Communications Act 2003, S127 (1) (with bail aggravator). In order to shout abuse 'B' has had to contact 'A'.

Example 9

There is a condition of bail that 'A' does not approach or contact 'B'. 'A' approaches 'B' and assaults them causing no injury.

- 1 x Common Assault (with bail aggravator). In order to commit the Assault 'A' has had to approach 'B'.

Example 10

Person is released on bail with 3 specific conditions; (a) curfew, (b) not to drink alcohol, and (c) not to be in the company of a named individual. A week later they are found outwith their home address during curfew, intoxicated and in the company of the named individual.

- 1 x Criminal Procedure (Scotland) Act 1995, S27 (1) (b), Breach of Bail (all 3 conditions have been breached at the same time). If conditions were breached at different times then 3 individual charges would be preferred and 3 crimes recorded.

Example 11

There is a condition of bail that 'A' remains within their house between 7pm and 7am. 'A' enters a neighbouring street, smashes a car window and assaults the owner of the vehicle. It is established that this occurred during the curfew time period.

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S52 Vandalism

- 1 x Assault
- 1 x Criminal Procedure (Scotland) Act 1995, S27 (1) (b), Breach of Bail (the condition is breached as soon as 'A' leaves the house. It is immaterial what 'A' then goes on to commit).

Example 12 A remand prisoner 'A' has bail conditions in place not to contact 'B'. Against these conditions they telephone "B" from prison.

- 1 x Criminal Procedure (Scotland) Act 1995, S27 (1) (b), Breach of Bail, where the locus is confirmed as the prison. In similar circumstances if 'B' had been contacted by letter the locus would again be the prison.

Example 13 The same specific condition of bail has been set by two different courts, that the accused should not contact the complainer. The accused contacts the complainer breaching their bail condition.

- 1 x Criminal Procedure (Scotland) Act 1995, S27(1)(b), Breach of Bail (as this refers to the same condition, even though issued by two separate courts only one breach of condition has occurred).

Example 14 It is a condition of bail that 'A' remains within their home address at Locus 1 between 7pm and 7am. At 11pm at Locus 2 'A' causes wilful damage to a car and assaults the owner.

- 1 x Criminal Procedure (Scotland) Act 1995, S27 (1) (b), Breach of Bail (Locus 2)
- 1 x Criminal Law (Consolidation (Scotland) Act 1995, S52 Vandalism (Locus 2)
- 1 x Assault (Locus 2)

Example 15 It is a condition of bail that 'A' remains within their home address in Division X between 7pm and 7am. At 11pm 'A' is found by Police in Y Division.

- 1 x Criminal Procedure (Scotland) Act 1995, S27 (1) (b), Breach of Bail (Locus Y Division).

Example 16 'A' is released on bail where one of the conditions is not to enter the Town Centre. 'A' is seen by witnesses in the Town Centre on Day 1 and the Police are unable to trace 'A' at that time (there being credible witnesses providing sufficient evidence to report). On Day 2 'A' is apprehended for shoplifting in the Town Centre, thereby again breaching bail conditions.

- 1 x Criminal Procedure (Scotland) Act 1995, S27 (1) (b), Breach of Bail
- 1 x Theft by Shoplifting (Breach of Bail shown as an aggravation)

Example 17 'A' has bail conditions not to enter a specific town. 'A' enters the specific town and commits a Theft by Shoplifting.

- 1 x Theft by Shoplifting (Breach of Bail shown as an aggravation)

Example 18 'A' has bail conditions not to contact/approach 'B'. 'A' meets 'B' and others and spends time in their company during which 'A' commits a Section 38 offence by shouting and swearing at 'B'.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or Abusive Behaviour (Breach of Bail shown as aggravation). If there was insufficient evidence to report the Section 38 offence but sufficient witnesses to confirm the Breach of Bail, then a Breach of Bail (detected) would be recorded in addition to an undetected Section 38.

Example 19 'A' has a curfew bail in place and a bail condition not to approach/contact 'B'. 'A' attends at the home address of 'B' outwith their curfew and also vandalises a vehicle outside which belongs to 'C'.

- 1 x Criminal Procedure (Scotland) Act 1995, S27 (1) (b), Breach of Bail
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S52, Vandalism (for 'C')

Example 20 A bail condition and a Non Harassment Order (civil) is in place for 'A' not to approach/contact 'B'. 'A' makes contact with 'B'.

- 1 x Criminal Procedure (Scotland) Act 1995, S27 (1) (b), Breach of Bail (Breach of Non-Harassment Order shown as an aggravation).

Note

Once the condition has been breached, the accused continues to be in breach until a court decision is made.

Section 28 of the Criminal Procedure (Scotland) Act, 1995 states, "A constable may arrest without warrant an accused who has been released on bail where the constable has reasonable grounds for suspecting that the accused has broken, is breaking, or is likely to break any condition imposed on his bail." There does not require to be corroboration of the conduct giving rise to the arrest. In such circumstances, the police will consider whether it is appropriate to invoke this power of arrest and report the accused from custody to the Procurator Fiscal. Where there is not a sufficiency of evidence, powers under Section 28 may be invoked. In these circumstances there is no requirement to raise a crime report and a memo, which should be linked to the original report pertaining to the bail condition for which the accused has been arrested, should be submitted to the Procurator Fiscal. In these circumstances, officers are reporting the suspected non-compliance of a bail condition, with a view to the bail condition being reviewed or amended.

Electronic Monitoring of Bail

Electronic monitoring of bail (EMB) or 'tagging' was introduced in 2022 which removes the need to check compliance with conditions although does not prevent a visit being carried out where it is considered appropriate to do so. The monitoring

company will advise the police of any breach of bail and it will be the responsibility of the police to undertake any necessary enquiry and report the circumstances to the Procurator Fiscal.

Where a unit has been intentionally damaged this should be recorded as a vandalism.

Justice social work services (bail supervision staff) have a responsibility to take reasonable steps to support people to comply with any conditions as part of their bail supervision; and deal with any non-compliance issues swiftly and robustly. Where persons are found to have failed to comply with any conditions of their bail supervision a report will be provided to the police by the Justice social work. The responsibility for reporting a breach to the Procurator Fiscal will then be a matter for the police as the relevant reporting authority.

**39/012 Criminal Procedure (Scotland) Act 1995, Section
234A
Breach of Non Harassment Order (Criminal Court)**

General Rule

One crime for each accused

Definition

Section 234A

Where a person is convicted of an offence involving harassment of a person the prosecutor may apply to the court to make a non-harassment order against the offender requiring him to refrain from such conduct in relation to the victim as may be specified in the order for such period, in addition to any other disposal which may be made in relation to the offence. On an application the court may, if it is satisfied on a balance of probabilities that it is appropriate to do so in order to protect the victim from further harassment, make a non-harassment order. Anyone who is in breach of a non-harassment order shall be guilty of an offence.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Accused found to be in breach on non-harassment order by telephoning the victim.

- 1 x Criminal Procedure (Scotland) Act, 1995, S234A, Breach of Non-harassment Order

Note

Breaches of Non-Harassment Orders that have been imposed as a result of civil proceedings should be recorded as a contravention of Protection from Harassment Act 1997, Section 9(1) (a).

In circumstances where the breach is simultaneous with the commission of a criminal act, only the crime for the criminal act should be recorded and the Breach of Non- Harassment Order shown as an aggravation.

Once the condition has been breached, the accused continues to be in breach until they appear in court.

**44/001 Customs and Excise Management Act 1979,
 Sections 50, 170
 Illegal Importation of Drugs**

General Rule

One crime for each drug type and/or accused

Definition

Section 50

(1) Subsection (2) below applies to goods of the following descriptions, that is to say—

- (a) goods chargeable with a duty which has not been paid; and
- (b) goods the importation, landing or unloading of which is for the time being prohibited or restricted by or under any enactment.

(2) If any person with intent to defraud Her Majesty of any such duty or to evade any such prohibition or restriction as is mentioned in subsection (1) above—

- (a) unships or lands in any port or unloads from any aircraft in the United Kingdom or from any vehicle in Northern Ireland any goods to which this subsection applies, or assists or is otherwise concerned in such unshipping, landing or unloading; or
- (b) removes from their place of importation or from any approved wharf, examination station, transit shed or customs and excise station any goods to which this subsection applies or assists or is otherwise concerned in such removal,

he shall be guilty of an offence under this subsection and may be detained.

(3) If any person imports or is concerned in importing any goods contrary to any prohibition or restriction for the time being in force under or by virtue of any enactment with respect to those goods, whether or not the goods are

unloaded, and does so with intent to evade the prohibition or restriction, he shall be guilty of an offence under this subsection and may be detained.

(6) If any person—

(a) imports or causes to be imported any goods concealed in a container holding goods of a different description; or

(b) directly or indirectly imports or causes to be imported or entered any goods found, whether before or after delivery, not to correspond with the entry made thereof,

he shall be liable on summary conviction to a penalty of three times the value of the goods or level 3 on the standard scale, whichever is the greater.

(7) In any case where a person would, apart from this subsection, be guilty of—

(a) an offence under this section in connection with the importation of goods contrary to a prohibition or restriction; and

(b) a corresponding offence under the enactment or other instrument imposing the prohibition or restriction being an offence for which a fine or other penalty is expressly provided by that enactment or other instrument,

he shall not be guilty of the offences mentioned in paragraph (a) of this subsection.

Section 170

Without prejudice to any other provision of the Customs and Excise Acts 1979, if any person is, in relation to any goods, in any way knowingly concerned in any fraudulent evasion or attempt at evasion

(a) of any duty chargeable on the goods;

(b) of any prohibition or restriction for the time being in force with respect to the goods under or by virtue of any enactment; or

(c) of any provision of the Customs and Excise Act, 1979 applicable to the goods

he shall be guilty of an offence under this section.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 At the main parcel hub at an airport UK Borders Agency staff recover a controlled drug within a package arriving from overseas. The package is seized by Customs officers who alert the Police in the area where the package was intended to be delivered.
- 1 x Customs and Excise Management Act 1979, S170 should be recorded by the Division covering the address where the package was intended to be delivered to. However, an operational decision should be made by the Division concerned as to whether it is proportionate to pursue any level of enquiry. If an enquiry is being pursued a Section 170 offence should be recorded and will remain recorded while an active line of enquiry is being pursued. If at the conclusion of the enquiry there is insufficient evidence to report an offender the recorded crime may be reclassified to 'No Crime'. Similarly, if a decision is made at the outset that it is not proportionate to pursue any further enquiry the incident should be updated appropriately and no crime required to be recorded.

Note

Where the locus is unclear, it should be deemed as the locus identified as the location of the offender at the time of the crime if known, or where the offender would reasonably be expected to be at the time of the crime.

The Violent Crime Reduction Act 2006 refers to the manufacture, modification, selling or bringing into or causes to be brought into Great Britain a realistic imitation firearm, whereas the Customs and Excise Management Act refers to the import of prohibited weapons, e.g. ordered online and confiscated by Customs.

Where a supply quantity of drugs are imported a Drugs Supply offence should also be considered.

38/017 Defeat/Pervert the Course/Ends of Justice

General Rule

One crime for each accused

Definition

Taking steps to destroy in advance evidence which might lead to the detection of a crime, requesting a witness to refrain from giving evidence, deliberately going into hiding to avoid giving evidence. Escaping from custody.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 On being arrested for Robbery escaping from police custody.
- 1 x Attempt to Pervert the Course of Justice (note that running off from police does not amount to Attempt to Pervert the Course of Justice unless the person is under arrest).
- Example 2 Accused providing their sibling's particulars when issued with an ASB Fixed Penalty ticket, which they later admit to.
- 1 x Attempt to Pervert the Course of Justice
- Example 3 Accused commits murder and hides the body, which is later recovered.
- 1 x Murder
 - 1 x Attempt Defeat the Ends of Justice

- Example 4 Contacting a number of witnesses in case, threatening or tricking them into failing to turn up at court to give evidence.
- 1 x Attempt to Pervert the Course of Justice
- Example 5 Person who has provided Police with a statement implicating another in a crime is asked to change their statement. No threats are made and this is corroborated.
- 1 x Attempt to Pervert the Course of Justice (if there is no corroboration there is no requirement to record a crime but a memo should be forwarded to the Procurator Fiscal advising them of the incident).
- Example 6 Two persons loitering in the street, in area which has been designated as a dispersal zone. Officers request them to leave, which they do. A short time later they return and refuse to move on. When questioned, one person provides false details.
- 1 x Antisocial Behaviour etc. (Scotland) Act 2004, S21 (3), 2 accused recorded thereon as acting together
 - 1 x Attempt to Pervert the Course of Justice.

Note

The above crime type applies whereby the accused is arrested then escapes unassisted from custody. In circumstances where an accused is aided in their escape the accused commits the crime of Attempt to Pervert the Course of Justice and the persons assisting him commit an offence under Police & Fire Reform (Scotland) Act, Section 91.

This also covers aiding and abetting someone to break their bail conditions (Criminal Procedure (Scotland) Act 1995, S293 (2)).

Persons who abscond from the lawful custody of the Scottish Prison Service, e.g. abscond from a funeral, fail to return from home leave, parole or from court, should be reported for Attempting to Defeat the Ends of Justice. This will allow officers to

report the circumstances to COPFS with a view to obtaining a warrant to apprehend, with powers to force entry.

**39/021 Domestic Abuse (Scotland) Act 2011, Section 2(2)
Breach of domestic abuse interdict**

General Rule

One crime for each accused

Definition

Section 2(2)

(1) This section applies where -

- (a) on or after the date on which this section comes into force, an interdict is granted against a person,
- (b) a determination has been made under section 3(1) that the interdict is a domestic abuse interdict,
- (c) that determination is in effect,
- (d) a power of arrest is attached to the interdict under section 1(1A) or (2) of the Protection from Abuse (Scotland) Act 2001 (asp 14), and
- (e) that power of arrest is in effect.

(2) A person who breaches an interdict to which this section applies is guilty of an offence.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Person against whom there is a Domestic Abuse Interdict in force that they do not make contact with 'A' attends at the home of 'A' but commits no crime.

- 1 x Domestic Abuse (Scotland) Act 2011, S2 (2), Breach of Domestic Abuse Interdict

Example 2 Person against whom there is a Domestic Abuse Interdict in force that they do not make contact with 'A' attends at the home of 'A', causes a disturbance and assaults 'A' causing no injury.

- 1 x Common Assault (in these circumstances the breach of the interdict should be shown as an aggravator).

Note

This Act came into force on the 20th July, 2011 with two important changes to the current law which will affect the reporting of Domestic Abuse cases, namely:

- The Act introduced a new section into the Protection from Harassment Act 1997 which removed the requirement to show there has been a course of conduct before a non-harassment order can be granted in civil proceedings involving domestic abuse. It is no longer necessary to report two or more incidents to obtain such an order as one incident of harassing behaviour will now be sufficient for an order to be applied for or granted.
- On application, a court will also be able to make the determination that an interdict (applied for or obtained under the Protection from Abuse (Scotland) Act, 2001) is a domestic abuse interdict if satisfied that the interdict is, or is to be, granted for the protection of the applicant against the person who is (or was) the applicant's spouse, the applicant's civil partner, living with the applicant as if they were husband and wife or civil partners, or in an intimate personal relationship with the applicant.

The Act provides that it will be a criminal offence in its own right to breach a domestic abuse interdict where a power of arrest has been attached to it.

The Protection from Abuse (Scotland) Act, 2001 also allows non-domestic interdicts to be granted and these will remain civil interdicts. It is essential that officers verify whether or not an interdict has been classed as domestic by the courts before taking action.

**35/005 Emergency Workers (Scotland) Act 2005, Sections 1,
2, 3 and 5
Obstruct/Hinder Other Emergency Worker**

General Rule

One crime for each incident

Definition

Section 1

A person who assaults, obstructs or hinders another person acting in a capacity of an emergency services worker commits an offence (emergency services workers include police officers, members of the fire service and members of the ambulance service).

Section 2

A person who assaults, obstructs or hinders another person acting in a capacity of an emergency worker who is responding to emergency circumstances commits an offence (emergency workers include prison officers, member of coastguard, member of RNLI, medical practitioner, nurse, midwife, social worker, mental health officer, prisoner custody officer).

Section 3

A person who assaults, obstructs or hinders a person assisting an emergency worker commits an offence.

Section 5

A person who in a hospital or within its grounds assaults, obstructs or hinders another person acting in a capacity of an emergency worker commits an offence (emergency workers include medical practitioner, nurse, midwife and ambulance service personnel).

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Accused obstructing hospital staff from attending to a bleeding
wound to their friend's arm.

- 1 x Emergency Workers (Scotland) Act 2005, S5, Obstruct

**37/001 Explosive Substances Act 1883, Section 3
Attempt to cause explosion**

General Rule

One crime for each accused

Definition

Section 3

Any person who:

(a) does any act with intent to cause, or conspires to cause, by an explosive substance an explosion of a nature likely to endanger life, or cause serious injury to property, or

(b) makes or has in his possession or under his control an explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person so to do,

shall, whether any explosion does or does not take place, and whether any injury to person or property is actually caused or not, be guilty of an offence and the explosive substance shall be forfeited.

Complainer

Procurator Fiscal

Locus

Where crime takes place/where explosive device is found

Examples

Example 1 During a house search a partially made bomb is found, with the remaining component parts found nearby. The intention is to make and then plant the bomb in a public place.

- 1 x Explosive Substances Act 1883, S3

38/004 Falsely Accusing (named) Person of Crime

38/003 Public Mischief (including Wasting Police Time)

General Rule

One crime for each accused

Definition

Wasting Police Time

Any person who maliciously makes a false statement to the police with the intention and effect of causing police investigation.

False Accusation

Any person who makes a false accusation of crime against a named individual commits a crime at common law.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Complainer reports that they were robbed of their benefit money. Enquiry reveals this to be a false report in order to obtain further monies from the Benefits Agency.

- 1 x Wasting Police Time

Example 2 'A' reports to Police that they were assaulted and robbed by a named person 'B'. Subsequent investigation confirms that 'A' was not assaulted and robbed by 'B'.

- 1 x False Allegation/Accusation

Example 3 'A' reports to Police that they were assaulted and robbed by an unknown person. Subsequent investigation confirms that 'A' was not assaulted and robbed by any person.

- 1 x Wasting Police Time

Note

It is not essential that any person should be named in the false statement: the essence of the crime is that damage and injury to the public interest may result from causing the police to devote their time and service to the investigation of the invented story. The essential principle of the charge is not the giving of incorrect information, but the deliberate setting in motion of the police authorities by an invented story.

Recording and dealing with a person for Wasting Police Time will be at the discretion of the reporting officer/supervisor.

44/099 Misuse of Drugs Act 1971 plus others

Drugs – Other offences

General Rule

One crime for each drug type and/or accused

Definition

This crime type covers a variety of offences under the following legislation:

- Criminal Procedure (Scotland) Act 1995, S20A (7) (A) and (B)
- Misuse of Drugs Act 1971, Sections 8(a), 8(b) 8(c), 8(d), 9A (1), 9A (3), 18, 19, 20)
- Police and Public Order and Criminal Justice (Scotland) Act 2006, Section 88(2) (A), (B) & (C))

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 Enquiry reveals the owner of a unit, which had been rented out, and used as a 'cannabis factory', was aware of the purpose of its use.
- 1 x Misuse of Drugs Act 1971, S8 (a) - allow premises to be used to produce controlled drug (other drug offences in relation to the recovery of the 'cannabis factory' would also be recorded as appropriate).

Example 2

'A' sells a number of tablets to 'B'. 'B' is found in possession of the tablets and advises Police it is Ecstasy. 'A' is traced and advises police it is not a drug however advised 'B' it was. Analysis confirmed it was not a controlled drug.

- 1 x Misuse of Drugs Act 1971, S19 & S5 (2) (Attempt to possess what was thought to be a controlled drug but didn't contain a controlled drug. As 'A' was aware the substance was not a controlled drug no crime can be recorded for 'A').

44/004 **Misuse of Drugs Act 1971, Section 5(2)**
Drugs – Possession

General Rule

One crime for each drug type and/or accused

Definition

It is an offence for a person to be found in possession of a controlled drug without reasonable excuse.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 On house being searched under warrant, two persons are found within:
- (a) both found physically in possession of a small quantity of cannabis.
 - 2 x Misuse of Drugs Act 1971, S5 (2), Possession (1 for each accused.)
 - (b) one person found in possession of small quantity of cannabis and small quantity of heroin, whilst the other is found in possession of small quantity of cannabis.
 - 3 x Misuse of Drugs Act 1971, S5(2) for Possession (2 in relation to the person found in possession of the cannabis and

heroin and 1 in relation to the person found in possession of the cannabis).

- Example 2 On a house being searched under warrant, a possession quantity of cannabis is found on the table, three persons are present within who deny, and refuse to disclose, ownership.
- 1 x Misuse of Drugs Act 1971, S5 (2) Possession (with three accused thereon)
- Example 3 On a house being searched under warrant, a possession quantity of cannabis is found on the table, three persons are present within and one person admits ownership of the drugs.
- 1 x Misuse of Drugs Act 1971, S5 (2) Possession (relating to the individual who has admitted ownership of the property).
- Example 4 On a house being searched under warrant the householder being the only person within, three different types of drug are recovered (insufficient quantity to indicate supply).
- 3 x Misuse of Drugs Act 1971, S5 (2) Possession (one for each drug type recovered).
- Example 5 Suspect is taken into Police custody at Locus 'A' and is not searched at that time. Suspect is searched on arrival at Locus 'B' and found to be in possession on a controlled drug.
- 1 x Misuse of Drugs Act 1971, S5 (2) Possession (recorded at Locus 'B').
- Example 6 Whilst cleaning the toilet area a cleaner finds a polythene bag in a toilet cubicle containing a white powder and contacts the police. A field test proves positive for a controlled drug. Fingerprints and DNA being negative.
- No crime requires to be recorded and this should be treated as 'found' drugs, unless there is sufficient evidence to identify ownership of the property. If a crime has already been

recorded, where there is insufficient evidence to identify ownership, this should be updated to 'No Crime'.

- Example 7 The Prison Service contacts the local police to advise 2 prisoners have been found in possession of a small quantity of Class 'B' drugs (possession amount). Both have been dealt with by the Prison Governor.
- In line with the Memorandum of Understanding between the Police, Prison Service and COPFS, where a possession quantity of Class 'B' Drugs or 'C' drugs is recovered, this may be dealt with by the Governor or Controller as a matter of internal discipline, however can be referred to the Police should there be aggravating factors. Where a Class 'A' drug is recovered the police must be informed and a crime report created.
- Example 8 The Prison Service contacts the local police to advise 2 prisoners have been found in possession of a small quantity of Class 'B' drugs (possession amount). Both have been dealt with by the Prison Governor, however, aggravating factors have been outlined providing justification for referral to Police.
- 2 x Misuse of Drugs Act 1971, S5 (2)
- Example 9 The Prison Service contacts the local police to advise they have found a prisoner is possession of a personal quantity of a Class 'A' drug.
- 1 x Misuse of Drugs Act 1971, S5 (2)
- Example 10 On an individual being searched on arrival into police custody, a small piece of what is believed to be cannabis is found within their pocket.
- (a) There is sufficient to carry out a field test, which proves positive for cannabis, but insufficient to thereafter forward the property to the lab for further tests.

- 1 x Misuse of Drugs Act 1971, S5 (2) Possession (Only possession of cannabis can proceed on the basis of a presumptive test. If there is insufficient quantity to send to the Laboratory for a presumptive test - other than cannabis - then there would be insufficient evidence and no crime report is required).
- (b) There is insufficient to carry out a field test and the accused admits the substance was a controlled drug.
 - No Crime to be recorded.

Example 11 A search of a bedroom reveals a small amount of cannabis, the son of the householder admits ownership and there is no evidence to say the householder was aware of the presence of this drug.

- 1 x Misuse of Drugs Act 1971, S5 (2) Possession (for son of householder only)

Example 12 A jacket has been handed in to police as found property whereby a small quantity of a controlled drug is recovered within the pocket. The jacket is claimed several days later and the owner denies knowledge of the substance being present. There is no other evidence available.

- No crime should be recorded if there is insufficient evidence to identify ownership of the drugs.

Example 13 On an individual being searched on arrival into police custody, a small bottle is found within their jacket pocket to contain 35 diazepam tablets, which the accused admits were not prescribed to them and refuses to provide a reason for their possession.

- 1 x Misuse of Drugs Act 1971, S5 (2) Possession

Example 14 During a search an individual is found in possession of herbal cannabis and cannabis resin.

- 2 x Misuse of Drugs Act 1971, S5 (2) Possession (the composition of each drug differs therefore 1 crime for each).

Example 15

During a house search whereby a small quantity of cannabis is recovered (possession quantity) on a table, a 'tick list' with 10 names is found lying on the kitchen table along with a selection of drug paraphernalia, e.g. tinfoil, burnt spoons, scales with traces of powder thereon, clingfilm, small poly bags etc. The named persons on the 'tick list' not being traced. Two persons reside at the dwelling, one of which admits responsibility for the property.

- 1 x Misuse of Drugs Act 1971, S4 (3) (b) Concerned in the Supply – as circumstances infer concerned in supply. (Possession with Intent is more appropriate where no evidence of prior dealing. No charges should be recorded in relation to 'supply to a named person' as per the 'list', unless statements have been obtained confirming they have been supplied drugs by the accused. One crime would then be recorded per named person supplied).

Example 16

After leaving personal effects in a locker and prior to entering a prison visitors' area a person is searched and found to be in possession of a personal quantity of a controlled drug.

- 1 x Prisons (Scotland) Act 1989, S41 (1)

Example 17

A person visiting a prison inmate leaves personal effects in a locker. They are searched before entering the visitors' area with negative result. The locker they are using is searched and a personal quantity of a controlled drug is found.

- 1 x Misuse of Drugs Act 1971, S5 (2) Possession

Example 18

Police execute a warrant where a possession quantity of a controlled drug is found in a property where 'A' and 'B' are present, and a further quantity of the same substance is found on the person of 'A'.

- 2 x Misuse of Drugs Act 1971, S5(2) Possession ('A' and 'B' are accused persons (acting together) for the substance found in the property and 'A' is a separate accused for the substance found on his person).

Example 19 A person searched at Locus 1 is found to be in possession of a personal quantity of a controlled drug. The person is searched again on arrival at a Police station (Locus 2) and a further personal quantity of the same drug is found.

- 2 x Misuse of Drugs Act 1971, S5 (2) Possession (crime for each locus).

Note

Drugs offences are 'evidence' based and should only be recorded where there is sufficient evidence.

Where quantities of non-attributable drugs are recovered, although not in possession of any person, and, there is insufficient evidence to consider reporting anyone for possession, possession with intent to supply or concerned in the supply, this will be treated as 'found' property and no crime report is required to be recorded.

Only one crime should be recorded for each drug type identified regardless of the format in which it is recovered, e.g. Cocaine and Crack Cocaine are the same drug, and MDMA is the same drug whether in crystal or tablet format. However, it should be noted that Cannabis and Cannabis Resin are different drugs types and must be recorded separately.

In circumstances where analysis confirms that a substance is found to contain a number of different drug types a separate offence should be recorded for each controlled drug identified, e.g. two different controlled drug types found in the same tablet format.

In circumstances where a prison inmate is found in possession of a controlled drug which is being reported to the Police this should be dealt with under Misuse of Drugs Act 1971 and not Prisons (Scotland) Act 1989.

Drug offences can be recorded with more than one accused 'whilst acting together' if evidence fails to identify ownership of the drugs to a single accused. There does however require to be evidence to infer knowledge and control.

Where the quantity of drugs recovered is marginal this should be highlighted within any subsequent Police Report. The Procurator Fiscal will decide as to whether a further charge should be libelled.

Where drugs are recovered following a death no offence(s) will be recorded relating to the deceased person and only where there is evidence relating to other persons will any relevant offences be recorded.

Schedule 5, Regulation 3 of the Misuse of Drugs Regulations 2001 provides details of controlled drugs whereby it is not an offence to possess same, although it would be an offence if supply quantities were recovered.

**44/002 Misuse of Drugs Act 1971, Section 4(2) (a) & (b)
Drugs – Production, manufacture and Cultivation**

General Rule

One crime for each drug type/and/or accused

Definition

It is an offence for a person to produce a controlled drug and to be concerned in the production of a controlled drug.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 A house search reveals a cannabis cultivation. No persons are resident at the house and enquiry reveals it had been rented out, with enquiry failing to trace the person(s) responsible.

- 1 x Misuse of Drugs At 1971, S4 (2) (a), Produce a controlled drug (undetected).

Example 2 A house search reveals a cannabis cultivation and the householder is identified as being responsible, no other drugs are found.

- 1 x Misuse of Drugs Act 1971, S4 (2) (a), Produce a controlled drug

Example 3 Police execute warrant at house and discover numerous cannabis plants under cultivation. Due to the quantity involved there is a strong indication of onward supply and sale of cannabis when harvested. There is no physical evidence at the locus to confirm supply.

- 1 x Misuse of Drugs Act 1971, S4 (2) (a) - Produce a controlled

Example 4 Police execute warrant at house and discover numerous cannabis plants under cultivation. Due to the quantity involved there is a strong indication of onward supply of cannabis when harvested. Officers also find a quantity of cannabis in bags sufficient to indicate onward supply.

- 1 x Misuse of Drugs Act 1971, S4 (2) (a), Produce a controlled drug
- 1 x Misuse of Drugs Act 1971, S4 (3) (b), Concerned in the supply of a controlled drug.

Example 5 Police execute warrant at house and discover numerous cannabis plants under cultivation. Due to the quantity involved there is a strong indication of onward supply of cannabis when harvested. There is no physical evidence at the locus to confirm supply. A personal quantity of cannabis is found in the possession of one of the occupants.

- 1 x Misuse of Drugs At 1971, S4 (2) (a), Produce a controlled drug
- 1 x Misuse of Drugs Act 1971, S5 (2), Possession of a controlled drug.

Note

There will be circumstances where there is evidence to show that an offence has been committed although the identity of the offender(s) hasn't been established.

Police Scotland has a drugs expert witness capability in the form of the Statement of Opinion (STOP) Units who are recognised by the courts as 'experts'. The STOP Unit provide advice and assistance and through the examination and assessment of all the evidential elements in a case will be able to advise the enquiry officer whether an individual should be reported for cultivation, supply or possession offences.

Drug offences are 'evidence' based and should only be recorded where there is sufficient evidence.

Drug offences can be recorded with more than one accused 'whilst acting together' if evidence fails to identify ownership of the drugs to a single accused. There does however require to be evidence to infer knowledge and control.

Schedule 5, Regulation 3 of the Misuse of Drugs Regulations 2001 provides details of controlled drugs whereby it is not an offence to possess same, e.g. dihydrocodeine, although it would be an offence if supply quantities were recovered.

**44/003 Misuse of Drugs Act 1971, Sections 4(3) and 5(3)
 Drugs – Supply**

Offences

Section 4(3) (a) Supply or offer to supply to a named person Section 4(3) (b)
 Concerned in the Supply

Section 4(3) (c) Concerned in offer to Supply

Section 5(3) Possession with intent to Supply

General Rule

One crime for each drug type and/or accused

Definition

It is an offence for a person to supply or offer to supply a controlled drug, or, to be concerned in the supply of such a drug to another, or, to be concerned in the making to another.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 One person searched by police and found to be in possession of
 a supply quantity of cannabis.

- 1 x Misuse of Drugs Act 1971, S5 (3) Possession with Intent to Supply or S4 (3) (b) Concerned in the Supply, depending on evidence available.

Example 2

House searched under warrant, whereby a supply quantity of cannabis is recovered lying on the living room table. Four persons are found within, who deny and refuse to disclose ownership.

- 1 x Misuse of Drugs Act 1971, S5 (3) Possession with Intent to Supply or S4 (3) (b) Concerned in the Supply, depending on evidence available (with 4 accused recorded thereon, no one has physically been found in possession of the drugs).

Example 3

House searched under warrant, whereby a supply quantity of cannabis, possession quantity of heroin and possession quantity of ecstasy are recovered, although not physically in possession of anyone. Four persons are found within, who deny and refuse to disclose ownership.

- 1 x Misuse of Drugs Act 1971, S5 (3) Possession with Intent to Supply
or
- S4 (3) (b) Concerned in the Supply, depending on evidence available (cannabis – 4 accused), depending on evidence available
- 2 x Misuse of Drugs Act 1971, S5 (2) Possession (heroin and ecstasy - 4 accused). (No one has physically been found in possession of the drugs).

Example 4

A member of the public out walking their dog reports their dog has dug up a large quantity of drugs which appears to have been hidden having been covered with earth, leaves and branches. Further enquiry fails to identify ownership.

- No crime should be recorded. This should be treated as 'found' drugs and an intelligence entry submitted.

- Example 5 During a house search whereby a supply quantity of cannabis is recovered in a cupboard, a 'tick list' with 10 names is found lying on the kitchen table along with a selection of drug paraphernalia, e.g. scales, tinfoil etc. Two persons reside at the dwelling, one of which admits responsibility for the property.
- 1 x Misuse of Drugs Act 1971, S4 (3) (b), Concerned in the Supply (Only where enquiry results in evidence that the names on the 'tick list' had been supplied drugs by the accused would a crime be recorded for supplying a named person i.e. statements from the named persons on the tick list confirming they were supplied drugs by the accused. One crime would then be recorded per named person supplied. A possession charge should not be libelled in these circumstances. Where there is evidence of prior dealing a Concerned in the Supply charge is more appropriate than a Possession with intent to Supply charge).
- Example 6 Two females report to the police that 5 years ago when they were 14 years old, they had been at a party and were given drink and drugs and whilst one states she had consensual sex with a male at the party the other states she was raped and was unable to defend herself due to both alcohol and drug consumption. Although they identify the locus, they are unable to name the individuals responsible and enquiry fails to identify the persons responsible.
- 1 x Sexual Offences (Scotland) Act 2009, S1 Rape
 - 1 x Sexual Offences (Scotland) Act 2009, S28 Having intercourse with an older child. (Note – no requirement for Misuse of Drugs Act offences as it cannot be confirmed that the substance was in fact a controlled drug).
- Example 7 Suspect under Police surveillance at Locus 1 is witnessed receiving a package. Suspect then gets into vehicle in possession

of the package and drives off. When stopped and searched at Locus 2 the package is found to contain a supply quantity of a controlled drug.

- 1 x Misuse of Drugs Act 1971, S5 (3) Possession with Intent to Supply
- or
- S4 (3) (b) Concerned in the Supply, depending on evidence available.

The locus for the crime is Locus 2 as this is where the package was seized.

Example 8 During a prison visit a visitor passes a controlled drug to a prisoner.

- 1 x Misuse of Drugs Act 1971, S4 (3) (a), Supply a Controlled Drug. (In these circumstances while it is noted that the suspect has introduced a controlled drug into a prison before passing this to the prisoner no offence under Prisons (Scotland) Act 1989, S41 will be recorded).

Example 9 During an enquiry it is established that an accused has personally supplied controlled drugs to 10 different persons ALL of which can be clearly evidenced.

- 10 x Misuse of Drugs Act 1971, S4 (3) (a), Supply to a named person.

Note

Where a supply quantity of a drug is recovered a possession crime should not be recorded. A Possession offence is only appropriate where the quantity of drug is small and there is no inference to be drawn that the accused intended to supply that drug. Possession with Intent to Supply is more appropriate where there is no evidence of prior dealing.

Drug offences are 'evidence' based and should only be recorded where there is sufficient evidence.

Police Scotland has a drugs expert witness capability in the form of the Statement of Opinion (STOP) Units who are recognised by the courts as 'experts'. The STOP Unit provide advice and assistance and through the examination and assessment of all the evidential elements in a case will be able to advise the enquiry officer whether an individual should be reported for supply or possession offences.

Only one crime should be recorded for each drug type identified regardless of the format in which it is recovered, e.g. Cocaine and Crack Cocaine are the same drug, and MDMA is the same drug whether in crystal or tablet format. However, it should be noted that Cannabis and Cannabis Resin are different drugs types and must be recorded separately.

In circumstances where analysis confirms that a substance is found to contain a number of different drug types a separate offence should be recorded for each controlled drug identified, e.g. two different controlled drug types found in the same tablet format.

Where quantities of drugs are recovered, although not in possession of any person, and, there is insufficient evidence to consider reporting anyone for possession, possession with intent to supply or concerned in the supply, this will be treated as 'found' property and no crime should be recorded.

Drug offences can be recorded with more than one accused 'whilst acting together' if evidence fails to identify ownership of the drugs to a single accused. There does however require to be evidence to infer knowledge and control.

Where the quantity of drugs recovered is marginal this should be highlighted within any subsequent Police Report. The Procurator Fiscal will decide as to whether a further charge should be libelled.

Where a test purchase operation involves the supply to police officers, this would be recorded as a concerned in the supply offence per drug type, immaterial how many police officers or number of occasions they were involved in the test purchase.

Where drugs are recovered following a death no offence(s) will be recorded relating to the deceased person and only where there is evidence relating to other persons will any relevant offences be recorded.

Misuse of Drugs Act 1971

Drugs – Miscellaneous Examples

The following examples are miscellaneous to those included within the headed pages relevant to specific Drugs offence types.

Recording of Unidentified Drug Types

Where a search recovers a number of different suspected types of controlled drugs, however, it is unknown as to what they are or suspected to be, only one crime is required to be recorded until analysis has been carried out. Where it is strongly suspected that the substance recovered is in fact a specific drug type then this should be recorded separately.

- Example 1 A search results in the recovery of a quantity of tablets which consist of three different types and are suspected to be controlled drugs. It is strongly suspected that one type is ecstasy with the remaining two types being unknown pending analysis.
- 2 crimes should be recorded (1 for the tablets which are suspected to be ecstasy and 1 for the remaining unknown tablets pending analysis). The offence will be determined by the quantity recovered.

Drugs Searches and Warrant Execution

- Example 2 Police force entry to a house under authority of a drugs search warrant. An occupant of the house is seen to throw a package later confirmed as being controlled drugs out of a window.
- 1 x Misuse of Drugs Act 1971, S23, Obstruct
 - 1 x Misuse of Drugs Act 1971 offence appropriate to quantity of drugs

Example 3 Police attend at house to execute a drugs search warrant. Occupants of the house obstruct entry by barricading the door on learning the purpose of Police visit.

- 1 x Misuse of Drugs Act 1971, S23, Obstruct

Example 4 Having reasonable suspicious that 'A' may be in possession of controlled drugs 'A' is advised they were being detained in terms of Section 23 of Misuse of Drugs Act 1971 for a search. 'A' then runs off.

- 1 x Misuse of Drugs Act 1971, S23(4)(a), Obstruct (in terms of S23 'obstruction' is not limited to physical obstruction but covers any act done with intent to hinder officers in the discharge of their duties').

Drugs - Intercepted in Post

Example 5 Staff at Royal Mail sorting office alert Police to a suspicious package which is later opened and contents found to contain a controlled drug intended for delivery at an address in Division Z.

- To allow enquiry to be undertaken 1 x Misuse of Drugs Act 1971, S19 & S5 (2), Attempt to possess controlled drug, should be recorded by Division Z. The level of enquiry that is conducted is an operational matter for Z Division. If there is insufficient evidence to report an offender at the conclusion of the enquiry the crime report may be reclassified to 'No Crime'. If an operational decision is made not to pursue any enquiry from the outset no crime requires to be recorded but the incident should be updated with the reasons why.

35/001 Mobbing and Rioting

General Rule

One crime for each incident

Definition

When a number of persons assemble and combine for a common purpose to the alarm of the lieges and in breach of the peace. Three elements are therefore necessary to the constitution of this crime:

- (i) concourse;
- (ii) illegal combination; and
- (iii) alarm in the minds of the lieges.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 A large group of persons run up a main street wielding sticks and baseball bats, throwing bottles and shouting threats towards a rival gang, in turn terrorising the public.

- 1 x Mobbing and Rioting

Note

The mob must act to the alarm of the lieges and in breach of the peace, but it is not necessary that the mob should proceed to the execution of the common purpose or

commit acts of actual violence or that there should be noise or tumult or threatening gestures; it is sufficient if the mob assembles for the purpose of intimidating people in the lawful performance of their duties.

The law holds that every member of the mob is guilty art and part of all the acts committed by the mob in pursuance of the common purpose, but separate and independent acts committed outwith the scope of the common purpose are chargeable only against the persons concerned.

Offensive Weapons Act 2019, Section 6(1)

Possession of corrosive substance in a public place

43/015 Possession of corrosive substance (used in crime)

43/016 Possession of corrosive substance (not used in crime)

General Rule

One crime for each corrosive substance

Definition

Section 6 - Having a corrosive substance in a public place without reasonable excuse or lawful authority

- (1) A person commits an offence if they have a corrosive substance with them in a public place.
- (4) It is a defence for a person charged in Scotland with an offence under subsection (1) to show that they had a reasonable excuse or lawful authority for having the corrosive substance with them in a public place.
- (5) Without prejudice to the generality of subsection (4), it is a defence for a person charged in Scotland with an offence under subsection (1) to show that they had the corrosive substance with them for use at work.
- (6) A person is to be taken to have shown a matter mentioned in subsection (4) or (5) if,
 - (a) sufficient evidence of the matter is adduced to raise an issue with respect to it, and
 - (b) the contrary is not proved beyond reasonable doubt.

“corrosive substance” means a substance which is capable of burning human skin by corrosion;

“public place”, in relation to Scotland, means any place other than premises occupied as a private dwelling (including any stair, passage, garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling).

Section 7 – Presumption as to Content of Containers

(2) Where,

- (a) a substance is found in a container (whether open or sealed), and
- (b) there is on the container a description of the contents of the container, the substance found is to be presumed to be a substance of that description.

(3) Subsection (4) applies where,

- (a) an open container is found,
- (b) a substance has been poured out of, or otherwise removed from, the container,
- (c) the container is empty or contains an amount of the substance mentioned in paragraph (b) which is insufficient to allow analysis of it, and
- (d) the container has on it a description of its contents.

(4) The container is to be presumed to have contained, immediately before the action mentioned in paragraph (b) of subsection (3) was taken, a substance of the description mentioned in paragraph (d) of that subsection.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Person found in a public street in possession of plastic bottle containing a substance meeting the definition of a 'corrosive substance' without reasonable excuse.

- 1 x Offensive Weapons Act 2019, S6 (1), Possession of Corrosive Substance (not used in crime).

39/011 Perjury and Subornation

General Rule

One crime for each accused

Definition

Wilfully making a false statement on oath or affirmation equivalent to oath.
Subornation of perjury consists in counselling or inducing a person to give false testimony in a judicial proceeding. It is immaterial what means are used to seduce the witness. But the crime is not complete unless the witness submits to the seduction and gives false evidence. An attempt to suborn is committed as soon as the inducement to give false evidence has been offered to the witness.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Person submits information of application for divorce documentation, swearing to this information on oath before the notary public, signing affidavit, well knowing the information to be false.

- 1 x Perjury and Subornation

Example 2 Two Police Officers gives false evidence under oath against the same case in a court of law.

- 2 x Perjury and Subornation

Note

To constitute perjury the oath or affirmation must be made in a judicial proceeding, either civil or criminal, before a person duly qualified to administer the oath or affirmation. It is immaterial in what form and ceremony the oath is administered if the person taking the oath assents or does not object. The falsehood must be deliberately made on a matter of fact and not of opinion or belief. It is not perjury if the false statement is due to faulty recollection or misapprehension of the facts. The falsehood must be direct and unequivocal. The falsehood must be pertinent and material to the point at issue. Perjury cannot be committed in respect of evidence which is incompetent. In proving perjury it is not sufficient to show a discrepancy between two statements, one of which was made on oath. To secure a conviction it is necessary to prove that the statement was false and that the accused knew that it was false.

38/013 **Police and Fire Reform (Scotland) Act 2012, Section 90(2) (a) and 90(2) (b)**
Obstruct/Hinder Constable in Pursuance Of Lawful Duty

General Rule

One crime for each accused (unless acting together)

Definition

Section 90(2)

(2) It is an offence for a person to resist, obstruct or hinder—

- (a) a person (“A”) acting in a capacity mentioned in subsection (3), or
- (b) a person assisting A while A is acting in such capacity.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 When being requested to allow a search of accused’s person, being obstructive.

- 1 x Police and Fire Reform (Scotland) Act 2012, S90 (2) (a).

Example 2 On police officers advising ‘A’ they are under arrest, ‘A’ runs off.

- 1 x Attempt to Pervert the Course of Justice

- Example 3 2 persons are arrested for the same case and on being searched both obstruct the police from finding drugs which they have concealed on their person.
- 2 x Police and Fire Reform (Scotland) Act 2012, S90 (2) (a), Obstruct Police (if Police were exercising their powers under the Misuse of Drugs Act 1971, S23 at the time the appropriate crimes would be 2 x Misuse of Drugs Act 1971, S23 (4) (a)).
- Example 4 During the search of a public house lavatory, 2 employees obstruct constables from checking cistern where a weapon has been concealed.
- 1 x Police and Fire Reform (Scotland) Act 2012, S90 (2) (a) (both accused acting together).
- Example 5 'A' on being brought into Police custody refuses to leave their cell to provide DNA and fingerprint samples.
- No crime to be recorded. While Criminal Procedure (Scotland) Act 1995, Section 18 gives Police powers to obtain such samples it does not create any criminal offence for failure to comply with these requirements. Per Section 19(B) a constable may use reasonable force to obtain these samples. In circumstances where a suspect has been offered legal advice to the effect that he must comply and then the physical resistance has been so great that even with the exercise of reasonable force it is impossible for Police to obtain the required sample a crime of Attempt to Defeat the Ends of Justice can be considered.

Note

Obstruction of a Police Officer/Staff should be recorded under the Police and Fire Reform (Scotland) Act 2012 and not the Emergency Workers (Scotland Act 2005).

Officers have no powers to stop members of the public filming or taking photographs of them in the course of executing their duties in public places i.e. where the member

of the public has a legal right to be. However, where the conduct is impeding or obstructing an officer in the lawful execution of their duties the individual may be committing an offence in terms of an obstruction (Police and Fire Reform (Scotland) Act 2012 or potentially a Breach of the Peace. Whether such an offence is being committed will depend on the particular nature of the incident and the manner in which the filming is being carried out.

38/007 **Police and Fire Reform (Scotland) Act 2012, Section 90(2) (a) and 90(2) (b)**
Resist

General Rule

One crime for each accused (unless acting together)

Definition

Section 90(2)

(2) It is an offence for a person to resist, obstruct or hinder—

- (a) a person (“A”) acting in a capacity mentioned in subsection (3), or
- (b) a person assisting A while A is acting in such capacity.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 Officers arrest two persons at same locus for assaulting an individual, one of whom struggles with officers in an attempt to resist arrest.
- 1 x Assault
 - 1 x Police and Fire Reform (Scotland) Act 2012, S90 (2) (a), Resist (if both resisted arrest and there was an indication they were acting together only 1 crime would be recorded).

- Example 2 While being arrested a person violently resists Police and two officers are slightly injured by flailing arms during the struggle.
- 1 x Assault
 - 1 x Police and Fire Reform (Scotland) Act 2012, S90 (2) (a), Resist (the injury to the officers occurred during the struggle and not by a physical attack so no requirement to record police assault).
- Example 3 While being arrested a person violently resists police. When handcuffs have been applied the suspect head-butts one officer and kicks another.
- 1 x Police and Fire Reform (Scotland) Act 2012, S90 (2) (a), Resist (if both resisted where acting together only 1 crime would be recorded).
 - 2 x Police and Fire Reform (Scotland) Act 2012, S90 (1) (a) Assault

38/006 **Police and Fire Reform (Scotland) Act 2012, Section 91**
Escape From Custody

General Rule

One crime for each incident

Definition

Section 91

- (1) It is an offence for a person—
- (a) to remove a person from custody, or
 - (b) to assist the escape of a person in custody.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 When 'A' is arrested by police, 'B' and 'C' grab 'A' and attempt to release 'A' from the hold of the officers in an attempt to rescue 'A'.

- 1 x Police and Fire Reform (Scotland) Act 2012, S91 (1) (b), Assist escape of person in custody.

38/010 **Police and Fire Reform (Scotland) Act 2012, Section 92**
Personation of Police

General Rule

One crime for each accused

Definition

Section 92

- (1) It is an offence for a person (not being a constable)—
 - (a) to impersonate a constable with an intent to deceive, or
 - (b) to do anything calculated to suggest that the person is a constable.
- (2) It is an offence for a person (other than a constable) to possess any article of police uniform without the permission of the Authority.
- (3) It is a defence for a person charged under subsection (2) to prove that the article—
 - (a) was obtained lawfully, and
 - (b) is in the person's possession for a lawful purpose.
- (4) It is an offence for a person (other than a constable) to wear, without the prior permission of the Authority, any article of police uniform in circumstances where it gives an appearance so nearly resembling that of a constable as to be calculated to deceive.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1

A report is received that a motorist 'A' was stopped whilst out driving on a quiet road by 'B' a person purporting to be a police officer, driving an unmarked vehicle who produced a card, which 'A' presumed was an ID card, and stated they were a police officer. On another vehicle approaching, 'B' quickly warned 'A' regarding their driving and left. Enquiry reveals it is unlikely that 'B' was a police officer.

- 1 x Police and Fire Reform (Scotland) Act 2012, S92 (1) (a), Personation of police.

Example 2

Two persons claiming to be Police officers show fake ID cards to two tourists asking to see their wallets to examine their money to ensure it was genuine. The suspects then make off with both wallets.

- 2 x Police and Fire Reform (Scotland) Act 2012, S92 (1) (a), Personation of police
- 2 x Theft

**39/013 Protection from Harassment Act 1997, Section 9
Breach of Non-Harassment Order (Civil Court)**

General Rule

One crime for each accused

Definition

Any person who is in breach of a non-harassment order made under Section 9 of the Protection from Harassment Act 1997, is guilty of an offence.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 'A' Breaching Non-Harassment Order (Civil) set at Edinburgh Sheriff Court by making contact with 'B' when previously instructed to make contact through solicitor.

- 1 x Protection from Harassment Act 1997, S9, Breach of Non-Harassment Order (Civil Court)

Note

Breaches of Non-Harassment Orders that have been imposed as a result of criminal proceedings should be recorded as a contravention of Criminal Procedure (Scotland) Act 1995, Section 234A.

In circumstances where the breach is simultaneous with the commission of a criminal act, only the crime for the criminal act should be recorded and the Breach of Non- Harassment Order shown as an aggravation.

Once the condition has been breached, the accused continues to be in breach until they appear in court.

Section 8 of the Protection from Harassment Act, 1997 states:-

- (1) Every individual has a right to be free from harassment and, accordingly, a person must not pursue a course of conduct which amounts to harassment of another and a) is intended to amount to harassment of that person, or b) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person.
- (2) An actual or apprehended breach of subsection (1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question; and any such claim shall be known as an action of harassment.

For the purpose of this section, 'conduct' includes speech; 'harassment' of a person includes causing the person alarm or distress, and a 'course of conduct' must involve conduct on at least two occasions.

**44/007 Psychoactive Substances Act 2016, Sections 4 to 9
Production, Import/Export, Supply, Possession in
Custody**

General Rule

One crime for each drug type and/or accused

Definition

Section 2

- (1) In this Act “psychoactive substance” means any substance which—
- (a) is capable of producing a psychoactive effect in a person who consumes it, and
 - (b) is not an exempted substance (see section 3).
- (2) For the purposes of this Act a substance produces a psychoactive effect in a person if, by stimulating or depressing the person's central nervous system, it affects the person's mental functioning or emotional state; and references to a substance's psychoactive effects are to be read accordingly.
- (3) For the purposes of this Act a person consumes a substance if the person causes or allows the substance, or fumes given off by the substance, to enter the person's body in any way.

Sections to be recorded under SGJD Code 44/007

- S4 Producing a psychoactive substance
- S5 (1) Supplying a psychoactive substance
- S5 (2) Offering to supply a psychoactive substance
- S7 (1) Possession with intent to supply a psychoactive substance
- S8 (1) Import a psychoactive substance
- S8 (2) Export a psychoactive substance

- S9 (1) Possession of a psychoactive substance in a custodial institution

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

No examples

**44/008 Psychoactive Substances Act 2016, Sections 26, 27
and 48
Other offences**

General Rule

One crime for each drug type and/or accused

Definition

Section 2

- (1) In this Act “psychoactive substance” means any substance which—
- (a) is capable of producing a psychoactive effect in a person who consumes it, and
 - (b) is not an exempted substance (see section 3).
- (2) For the purposes of this Act a substance produces a psychoactive effect in a person if, by stimulating or depressing the person's central nervous system, it affects the person's mental functioning or emotional state; and references to a substance's psychoactive effects are to be read accordingly.
- (3) For the purposes of this Act a person consumes a substance if the person causes or allows the substance, or fumes given off by the substance, to enter the person's body in any way.

Sections to be recorded under SGJD Code 44/008

- S26 (1) Failing to comply with a prohibition order or premises order
- S27 (2) Failing to comply with an access prohibition
- S27 (3) Failing to comply with an access prohibition - obstruct
- S48 (1) Obstruction of an enforcement officer
- S48 (2) (a) Fail to comply with a requirement or direction

- S48 (2) (b) Preventing a person from complying with a requirement or direction

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

No examples

Restriction of Offensive Weapons Act 1959, Section 1(1A)
Prohibition on the possession of certain dangerous knives in a private place

43/017 Possession of certain dangerous knives in a private place (Used in Crime)

43/019 Possession of certain dangerous knives in a private place (Not Used in Crime)

General Rule

One crime for each weapon

Definition

Section 1(1A)

- Any person who possesses any knife of a kind described in subsection (1) is guilty of an offence.

Subsection 1 provides the following definitions:

- (a) any knife which has a blade which opens automatically—
 - (i) from the closed position to the fully opened position, or
 - (ii) from a partially opened position to the fully opened position,by manual pressure applied to a button, spring or other device in or attached to the knife, and which is sometimes known as a “flick knife” or “flick gun”; or
- (b) any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever, or other device, sometimes known as a “gravity knife”.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 Police carry out a drugs search on a property and recover a butterfly knife and a flick knife, within the bedroom used by the suspect.
- 2 x Restriction of Offensive Weapons Act 1959, S1 (1A), Possession of a dangerous knife in a private place (not used in the commission of a crime).
- Example 2 Police carry out a drugs search on a property and recover a small quantity of diamorphine, along with a butterfly knife and a flick knife, within the bedroom used by the suspect.
- 1 x Misuse of Drugs Act 1971 S5 (2), Possession of a controlled drug.
 - 1 x Criminal Justice Act 1988, S141 (1A), Possession of a prohibited offensive weapon in a private place (not used in crime) – for butterfly knife.
 - 1 x Restriction of Offensive Weapons Act 1959, S1A – Possession of a dangerous knife in a private place (not used in the commission of a crime) – for flick knife.
- Example 3 Police on searching a suspect in a public place recover a flick knife in their possession.
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S49 (1), possession of knife (not used in the commission of a crime).

Note

Subsection 1A to Section 1 of Restriction of Offensive Weapons Act 1959 was introduced following the enactment of Part 4 of the Offensive Weapons Act 2018, Section 44 on 27 March 2023 which amended the 1959 Act.

For the purposes of clarity, the possession of any flick knife or gravity knife in a private setting is an offence under the Restriction of Offensive Weapons Act 1959 (as amended). Possession of any 'prohibited weapon' in a private setting, is an offence under Section 141 of the Criminal Justice Act 1988 (as amended).

Prior to the introduction of Subsection 1A it was only an offence to possess such dangerous knives in a public place, prison or school. For public places these offences are still recordable under Criminal Law (Consolidation) (Scotland) Act 1995, Section 49 with other parts of Section 49 applying to possession in prisons and schools. This will not change and Section 1A above will only be used to record possession in private. The sentencing profile is higher for possession in a public place, prison or school.

38/018 Sexual Offences Act 2003

Notification Offences

General Rule

One crime for each notification failure

Definition

A person is subject to the notification requirements for a period set out in S82 of this Act if –

- (a) he is convicted of an offence listed in Schedule 3 of this Act;
- (b) he is found guilty of such an offence by reason of insanity;
- (c) he is found to be under a disability and to have done the act charged against him in respect of such an offence; or
- (d) in England and Wales or Northern Ireland, he is cautioned in respect of such an offence.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 An offender fails to notify a change of address and the fact they had gone on holiday to Tunisia for a two week period.
- 1 x Sexual Offences Act 2003 for failure to notify address change

- 1 x Sexual Offences Act 2003 for failure to notify their intention to travel outwith the UK

Note

The following Sections of this Act refer to the various notification requirements.

- Section 83 Initial Notification
- Section 84 Changes
- Section 85 Periodic Notification
- Section 86 Travel outside the United Kingdom
- Section 91 Offences relating to notification –

(1) a person commits an offence if he,

(a) fails without reasonable excuse to comply with S83 (1), 84(1), 84(4) (b), 85(1), 87(5A) or (5B), or 89(2) (b) or any requirement imposed by regulations made under Section 86(1); or

(b) notifies to the police, in purported compliance with S83 (1), 84(1) or 85(1) or any requirement imposed by regulations made under S86 (1), any information which he knows to be false.

A person commits an offence under paragraph (a) of subsection (1) above on the day on which he first fails, without reasonable excuse, to comply with S83 (1), 84(1) or 85(1) or a requirement imposed by regulations made under S86 (1), and continues to commit it throughout any period during which the failure continues; but a person must not be prosecuted under subsection (1) more than once in respect of the same failure.

Contact must be made with Offender Management Units who will provide advice regarding appropriate recording.

39/015 Sexual Offences Prevention Orders (SOPOs)

General Rule

See below

Definition

A person commits an offence if, without reasonable excuse, they does anything which they are prohibited from doing by-

- a sexual offences prevention order;
- an interim sexual offences prevention order;
- an order under Section 5A of the Sex Offenders Act 1997;
- an order under Section 2, 2A or 20 of the Crime and Disorder Act 1998;
- an order under Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998

Complainer

Procurator Fiscal

Locus

Where offence committed

General Rules

The following are the general principles to be followed:

- By committing a substantive crime 'A' is also found to be breaching a condition of their SOPO.
 - o Record substantive crime and show breach of SOPO as an aggravation.

- By committing a substantive crime 'A' is also found to be breaching two conditions of their SOPO.
 - Record crime and show breaches of SOPO as an aggravation.
- 'A' commits no crime but has breached two separate conditions of SOPO at the same time at the same locus.
 - Record 1 x Breach of SOPO
- 'A' commits no crime but has breached the same condition of SOPO at the same locus on different days.
 - Record 1 x Breach of SOPO (continues to be in breach until reported)
- 'A' commits no crime but has breached Condition 1 of SOPO on Day 1 and Condition 2 of SOPO on Day 2.
 - Record 2 x Breach of SOPO
- 'A' commits no crime but has breached the same condition of SOPO at different locations on the same day.
 - Record 1 x Breach of SOPO (continues to be in breach until reported)
- 'A' commits no crime but has breached Condition 1 of SOPO at Locus X and Condition 2 of SOPO at Locus Y.
 - Record 2 x Breach of SOPO
- 'A' commits substantive crime at Locus 1 the circumstances of which are in breach of Condition 1 of SOPO. 'A' then breaches Condition 2 of SOPO at Locus 2.
 - Record substantive crime and 1 x Breach of SOPO
- 'A' commits substantive crime at Locus 1 the circumstances of which are in breach of condition of SOPO. 'A' breaches the same condition of SOPO the following day also at Locus 1.
 - Record substantive crime only and show breach of SOPO as an aggravation (continues to be in breach until reported)

Examples

Example 1 Sex offender breaches condition of Order by entering a swimming pool on nine different days and breaches a further condition by conversing with a child under 16 years.

- 2 x Sexual Offences Act 2003, S103, Breach of Sexual Offences Order (due to there being two separate conditions being breached on different days).

Example 2 Sex Offender breaches condition of Order by entering swimming pool. Whilst there they engage a 14 year old child in non-consensual sexual conversation.

- 1 x Sexual Offences (Scotland) Act 2009, S7 Communicating Indecently (breach of SOPO is an aggravation of the sexual offence committed).

35/003 Trespass

General Rule

One crime for each incident

Definition

A person commits the offence of trespass if he trespasses on land in the open air and, in relation to any lawful activity which persons are engaging in or are about to engage in, does anything which is intended by him to have the effect, of intimidating persons or deter them from engaging in that activity, or obstructing/disrupting that activity.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 A group of persons acting together trespass on land in order to obstruct the felling of woodland.

- 1 x Criminal Justice and Public Order Act 1994, S68 (1),
Obstruct lawful activity.

Group 6 – Anti-social Offences

Crime Category	SGJD Code
<u>Breach of the Peace</u>	47/002
<u>Civic Government (Scotland) Act 1982, S47</u>	47/003
- Urinating/Defecating	
<u>Civic Government (Scotland) Act 1982, S50 (1)</u>	60/001
- Drunk and Incapable	
<u>Civic Government (Scotland) Act 1982, S50 (2)</u>	
- Drunk in Charge of a Child	60/003
<u>Criminal Justice and Licensing (Scotland) Act 2010, S38</u>	
- Threatening or Abusive Behaviour	47/008
<u>Criminal Law (Consolidation) (Scotland) Act 1995, S20 (7)</u>	
- Drunk in, or attempting to enter designated sports ground	60/007
<u>Criminal Law (Consolidation) (Scotland) Act 1995, S50A (1) (a)</u>	
- Racially Aggravated Harassment	47/004
<u>Criminal Law (Consolidation) (Scotland) Act 1995, S50A (1) (b)</u>	
- Racially Aggravated Conduct	47/005
<u>Licensing (Scotland) Act 2005</u>	See Section
<u>Local Government (Scotland) Act 1973, S201, S202, S203</u>	
- Consumption of Alcoholic Liquor in Public Places	72/008
<u>Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) 2021, S1</u>	
- Threatening and abusive behaviour of a Retail Worker	47/013

47/002 Breach of the Peace

General Rule

One crime for each incident

On 6 October 2010, the Scottish Government introduced new legislation to facilitate the prosecution of disorderly conduct which occurs within a private place (e.g. a private dwelling). The new legislation is the Criminal Justice and Licensing (Scotland) Act 2010, Section 38, Threatening or Abusive Behaviour.

Whilst the essential elements of the offence are close to those of the crime of breach of the peace, except that the mens rea of the accused is intention or recklessness regarding the effect of the behaviour; the behaviour itself is restricted to that which is threatening or abusive; and there is no requirement for a public element.

To justify recording Breach of the Peace, the behaviour must threaten serious disturbance to the community and not just threaten irritation or minor alarm

This means that there is a 'public element' to be satisfied. Evidence of actual alarm or that the conduct would be alarming to reasonable person confronted with it is required. This can extend to conduct in private if there is a reasonable likelihood of it being discovered.

Definition

Breach of the peace is a crime at common law and is constituted by one or more persons conducting himself or themselves in a riotous or disorderly manner, where such conduct is severe enough to cause significant alarm to ordinary people and threaten serious disturbance to the community.

Victim/Complainer

Person making complaint or, dependent on circumstances the Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Police receive a call that two persons are fighting with each other within a busy shopping precinct and on attending, separating both parties and enquiry revealing that both are equally responsible for the disturbance.

- 1 x Breach of the Peace (an assault may be recorded if enquiry reveals one of the individuals was responsible and the other was defending themselves).

Example 2 A report is received that over a period on one month eggs and other foodstuffs have been thrown at complainer's property. Although no damage has occurred the complainer is now alarmed and fearful of going out after dark due to the ongoing acts of antisocial behaviour.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or Abusive Behaviour

Note

Insulting or abusive language to or concerning another person does not constitute a breach of the peace unless unduly persisted in or accompanied by threats or violent gestures, but, the use of any threatening, abusive or insulting words or behaviour with intent or calculated to provoke a breach of the peace or whereby a breach of the peace may be occasioned is an offence at Common Law.

Guidance from Crown Office advises "where the evidence provides Police with a choice between charging Section 38, Threatening or Abusive conduct and Breach of the Peace then the Threatening or Abusive conduct should be charged in preference to the common law crime".

Breach of the Peace is a crime which can be dealt with by the issue of an Antisocial Behaviour Fixed Penalty Ticket provided that a public element can be demonstrated which increases the gravity of the offence from Section 38, Threatening or Abusive Behaviour, to Breach of the Peace. This does not extend to conduct committed in the presence of Police officers only.

The offences capable of being included in the ASB FPN process are contained in a defined list within Section 128 of the Antisocial Behaviour etc. (Scotland) Act 2004. This list does not include Section 38 and the ticket process cannot be used for this crime type. The FPN process is still appropriate for minor examples of Breach of the Peace.

Attempts to commit suicide will not normally be prosecuted, however, the exception to the general rule is the situation in which the individual concerned has threatened to cause injury to another during the attempt. In such rare cases, the behaviour may constitute a Breach of the Peace and such cases should be reported to the Procurator Fiscal for consideration.

**47/003 Civic Government (Scotland) Act 1982, Section 47
Urinating/Defecating**

General Rule

One crime for each accused

Definition

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.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Members of the public inform police that they have just seen a person urinating in a shop doorway. On police attending at locus they find the person urinating.

- 1 x Civic Government (Scotland) Act 1982, S47

Example 2 A shopkeeper phones the police stating that their shop doorway appears to be used as a toilet by late night revellers as yet again there appears to be urine over the step.

- Record as an incident only as no one has been found to have been urinating.

Example 3 Two members of the public inform police that they have just seen a person urinating in a shop doorway. On police attending at locus no one can be found although the doorway is wet.

- Record as an incident only as no one has been found to have been urinating.

Example 4 While in Police custody a prisoner deliberately urinates on the floor of their cell.

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S52 Vandalism (due to cost of cleaning) See Culpable and Reckless Conduct pages for circumstances where this presents a biological hazard such as excrement being smeared on walls.

Note

This offence can be dealt with by way of an Anti-Social Behaviour Fixed Penalty Notice (FPN).

**60/001 Civic Government (Scotland) Act 1982, Section 50(1)
Drunk and Incapable**

General Rule

One crime for each accused

Definition

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.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

No examples

Note

Cases of persons being drunk and incapable should under normal circumstances be dealt with as a welfare issue and policed accordingly. Such persons should not be issued with Antisocial Behaviour Fixed Penalty Notices or dealt with by Recorded Police Warnings unless exceptional circumstances exist or the person is being reported by SPR for other related offences.

**60/003 Civic Government (Scotland) Act 1982, Section 50(2)
Drunk in charge of a Child**

General Rule

One crime for each child

Definition

Any person who is drunk in a public place while in charge of a child under the age of 10 years.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

No examples

Note

Although this offence is covered by the antisocial behaviour fixed penalty tickets, a ticket should not be the means of disposal when dealing with this offence.

47/008 **Criminal Justice and Licensing (Scotland) Act 2010,**
Section 38
Threatening or abusive behaviour

General Rule

One crime for each incident

Definition

Section 38

A person commits an offence if,

- (a) they behave in a threatening or abusive manner,
- (b) the behaviour would be likely to cause a reasonable person to suffer fear or alarm, and
- (c) intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm.

This applies to,

- (a) behaviour of any kind including, in particular, things said or otherwise communicated as well as things done, and
- (b) behaviour consisting of—
 - (i) a single act, or
 - (ii) a course of conduct.

Victim/Complainer

Person making complaint or, dependent on circumstances the Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 Police receive a call from 'A' who reports that they are frightened as to what might happen as their partner 'B' has them and has thrown a computer and other items around the room. 'A' has managed to escape from the verbal abuse to phone the police under the pretence of going to the toilet. On arrival the police find 'A' shaking and visibly upset with items of furniture scattered across the floor.
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or abusive behaviour
- Example 2 The complainer reports that on a regular basis when leaving for work in the morning his neighbour threatens him and his property with violence. He feels that this has now escalated with the threat of his property being set on fire, and his bin having been left against his door on his return from work. On each occasion there was no witness to the actions of the neighbour.
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or abusive behaviour
- Example 3 During a domestic incident 'A' is subjected to threatening and abusive behaviour and is assaulted by 'B'. There is a sufficiency of evidence to report 'B' for the threatening and abusive behaviour but insufficient to report for the Assault.
- 1 x Assault (Common) - undetected
 - 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or abusive behaviour - detected
- Example 4 During a domestic incident 'A' is subjected to threatening and abusive behaviour before being assaulted by 'B'. There is insufficient evidence to report 'B' for either crime.
- 1 x Assault (Common) – undetected (as the threatening or abusive behaviour occurred either immediately before, during

or after the assault this may be subsumed into the assault.
Had there been a sufficiency of evidence to report 'B' only the assault should be recorded).

- Example 5 Person causes disturbance within a flat placing occupants in a state of fear and alarm. During the disturbance the suspect deliberately breaks items of furniture.
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S52 Vandalism
 - 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38 (had the disturbance itself amounted to the breaking of the items of furniture a Vandalism only would be recorded).
- Example 6 On attending a call person 'A' subjects the attending officers to threatening and abusive behaviour resulting in 'A' being arrested for an offence under Section 38. Following the arrest 'A' assaults both Police officers.
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38
 - 2 x Police and Fire Reform (Scotland) Act 2021, S90(1)(a), Police assault (since 'A' has already been arrested for the Section 38 this crime is complete and should not be subsumed).
- Example 7 'A' attends at the home address of 'B', kicks the door, shouting and swearing demanding they answer the door. 'B' advises they are phoning the police at which point 'A' kicks the door open to find 'B' standing with a mobile phone in their hand. 'A' grabs hold of 'B' pulling the phone from their hand and leaves the locus with the phone.
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38 (conduct was complete before 'robbery' and nothing to indicate intent was to commit the 'robbery')
 - 1 x Robbery

- Example 8 'A' causes a disturbance within a flat placing the occupants in a state of fear and alarm. A neighbour calls at the flat due to the noise and is verbally abused and assaulted.
- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38 (conduct towards occupants of flat)
 - 1 x Assault (in respect of neighbour, with the verbal abuse against neighbour subsumed within the assault as it has occurred immediately before)
- Example 9 'A' attends at the home address of 'B' and kicks the door in, enters and asks where 'C' is, 'B' advises that 'C' is elsewhere and 'A' leaves.
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S52, Vandalism (as the conduct of damaging the door amounts to the threatening or abusive behaviour, only the vandalism requires to be recorded. Had the conduct towards 'B' been threatening (e.g. demanding where 'C' was or they would assault them, then a S38 would also be required).
- Example 10 'A' is shouting abuse and strikes out at 'B' in the street 'C' and 'D' standing nearby see and hear the conduct and phone the police.
- 1 x Assault (S38 conduct forms part of the assault with 'C' and 'D' seeing and hearing the conduct being witnesses)
- Example 11 'C' and 'D' standing nearby see and hear the conduct and approach 'A' and advise them to desist to which 'A' turns and shouts abuse at both 'C' and 'D' threatening them.
- 1 x Assault (for assault on 'B')
 - 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38 (for the abuse directed towards 'C' and 'D')
- Example 12 'A' is shouting abuse at 'B' in the street when 'C' and 'D' hear the conduct and advises 'A' to desist. 'A' then shouts abuse which is threatening to 'C' and 'D' before walking off.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38 (same incident)

Example 13 'A' is threatened by 'B' in a public place while 'B' is in possession of a knife.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S49, Possession of a Knife (used in crime)

Example 14 'A' witnesses friends 'B' and 'C' being assaulted by a group of persons. No criminal conduct is directed towards 'A' by the suspects but 'A' is placed in a state of fear and alarm by what they have witnessed.

- 2 x Assault (on B and C) – although 'A' is alarmed at what they have witnessed no crime is required to be recorded for the affect this has had on 'A' due to no criminal conduct being directed towards 'A'.

Note

This offence was introduced on 6th October, 2010 due to the difficulty for the Crown in prosecuting disorderly conduct which occurs in a private place.

Whilst the essential element of the offence are close to those of the crime of breach of the peace, except that the mens rea of the accused is intention or recklessness regarding the effect of the behaviour; the behaviour itself is restricted to that which is threatening or abusive; and there is no requirement for a public element.

In *Paterson v Harvie*, 2014 S.L.T. 857 a five judge bench of the High Court decided that the essence of the offence under section 38 is that the accused's conduct is to be judged by an objective test in which the actual effect of the accused's conduct is irrelevant. If elements (a) and (c) under section 38(1) are met then the crime is complete if the behaviour would be likely to cause fear or alarm to the hypothetical reasonable person, i.e. subsection (b). There does not need to be actual fear or alarm caused.

Guidance from Crown Office advises "where the evidence provides Police with a choice between charging Section 38, Threatening or Abusive conduct and Breach of the Peace then the Threatening or Abusive conduct should be charged in preference to the common law crime".

In circumstances where the threatening or abusive conduct is assessed as having occurred immediately before, during or immediately after a crime of Assault the threatening abusive conduct may be subsumed into the recorded Assault.

Under no circumstances should Section 38 be recorded when a victim is subjected to sexual comments or sexual touching which must be recorded under the appropriate section(s) of Sexual Offences (Scotland) Act 2009. The term "sexual" is defined under Section 60 which states that conduct is sexual if a reasonable person would, in all the circumstances of the case, consider it to be sexual.

Where a person is present/observes/witnesses an incident where the conduct of a suspect towards a victim is deemed to be violent/threatening and/or abusive they will be considered as a witness to the conduct and in these circumstances a Section 38 is not required to be recorded for the impact that the conduct may have on them, however, an appropriate crime will require to be recorded for the conduct witnessed against the victim. Where any person finds themselves to be the subject of abuse then the appropriate crime should be recorded e.g. Assault, Section 38. See Domestic Abuse (Scotland) Act 2018 pages for guidance in respect of circumstances where a child has been present during a Domestic Abuse incident.

In circumstances where a person damages property and also causes a disturbance where it can be shown that persons other than the owner of the damaged property have been placed in a state of fear or alarm both Section 38 and Vandalism should be recorded. If the alarm caused is only suffered by the owner of the damaged property only Vandalism should be recorded.

Reference to examples in this Section which amount to domestic incidents relate to "one-off" incidents which do not form part of a course of conduct of domestic abuse and as such cannot be considered under Domestic Abuse (Scotland) Act 2018 introduced from 1 April 2019. In circumstances where there is a course of conduct of domestic abuse all of which occurs after 1 April 2019 reference should be made to

recording guidance listed under the Domestic Abuse (Scotland) Act 2018 pages. Any conduct occurring prior to 1 April 2019 will be recorded under the legislation in place at the material time.

In circumstances where offensive singing occurs at football matches there is an expectation that unless there is a specific complaint from a member of the public which requires to be investigated, or a decision is taken to take action against the offender(s) at the time of the incident, either at the time of the incident or at a later time, there is no requirement for any crime to be recorded.

The offences capable of being included in the ASB FPN process are contained in a defined list within Section 128 of the Antisocial Behaviour etc. (Scotland) Act 2004. This list does not include Section 38 and the ticket process cannot be used for this crime type. The FPN process is still appropriate for minor examples of Breach of the Peace provided that a public element can be demonstrated which increases the gravity of the offence from Section 38, Threatening or Abusive Behaviour, to Breach of the Peace.

60/007 **Criminal Law (Consolidation) (Scotland) Act 1995,
Section 20(7)**
**Drunk In, or While Drunk Attempts to Enter
Designated Sports Ground**

General Rule

One crime for each accused

Definition

Any person who is drunk in; or while drunk, attempts to enter, the relevant area of a designated sports ground at any time during the period of a designated sporting event.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 The complainer notifies police that there is a person urinating against a wall in a football ground. Officers identify and apprehend the offender and identify that they are also drunk.
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S20 (7) for being drunk
 - 1 x Civic Government (Scotland) Act 1982, S47, Urinating (Note – the urinating offence can be dealt with by way of an Anti-Social Behaviour Fixed Penalty Notice (FPN).

**47/004 Criminal Law (Consolidation) (Scotland) Act 1995,
Section 50A (1) (a)
Racially Aggravated Harassment**

General Rule

One crime for each course of conduct

Definition

Section 50A (1) (a)

- (a) Pursues a racially aggravated course of conduct which amounts to harassment of a person and,
 - (i)intended to amount to harassment of that person; or
 - (ii)occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person.

Victim

Person who the conduct is directed towards

Locus

Where crime takes place

Examples

Example 1 'A' reports that for several months items have been thrown into their garden and recently person(s) have been knocking at the door and on answering no-one is present. No damage has occurred. 'A' perceives this is due to their ethnicity and feels threatened that this is escalating, however, there is no corroboration that this is due to 'A's' ethnicity.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38 (it is unknown whether this is due to 'A's ethnicity and whether it is the same person(s) who are responsible and if so whether they were acting together. A hate aggravator would be applied due to 'A's perception).

Example 2

'A' reports having been followed by 'B' on a number of occasions (not previously reported) and when 'A' has confronted 'B', 'B' has shouted at them if they don't like being followed to go back to their own country. There is no corroboration.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38 (with racial aggravator).

Note

A course of conduct must involve conduct on at least two occasions.

There requires to be corroboration of racial motivation to record this offence.

This crime will be recorded in cases whereby 'regular' or 'continuous' harassment takes place.

This section creates an offence for a person to pursue a racially motivated course of conduct. This offence is intended to address cases of racially motivated harassment i.e. two or more related incidents and should be labelled as an offence in its own right.

If there is only one source of evidence of the racial element then the case to the Procurator Fiscal may include notification that a Section 96 aggravation of the Crime and Disorder Act, 1998 may be appropriate and places an onus on the court to take account of any racist element to a crime or offence when determining an appropriate sentence.

47/005 **Criminal Law (Consolidation) (Scotland) Act 1995,**
Section 50A (1) (b)
Racially Aggravated Conduct

General Rule

One crime for each incident (on occasions counter allegations may be received and these should be recorded per victim)

Definition

Section 50A (1) (b)

(b) Acts in a manner which is racially aggravated, and which causes, or is intended to cause, a person alarm or distress.

Victim

Person who the conduct is directed towards

Locus

Where crime takes place

Examples

Example 1 A person reports that children have been knocking at their door and running off which is causing annoyance and is perceived by them to be due to their ethnicity.

- This is a hate incident due to the circumstances not amounting to a crime but being perceived by the complainer as being racially motivated.

Example 2 A person is reported to have racially abused four persons on a bus at the same time.

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995 S50A (1) (b), Racially Aggravated Conduct (crime per incident).

Example 3

Person reports being subjected to racial verbal abuse by youths, no other witnesses present.

- 1 x Criminal Justice Licensing (Scotland) Act 2010, S38 – threatening or abusive behaviour (with a Racial aggravator). Note no crime under Criminal Law (Consolidation) (Scotland) Act) 1995, S50A (1) (b) should be recorded as there is no corroboration.

Example 4

Complainer of ethnic origin reports a brick having been thrown through their living room window and perceives this is due to their ethnicity.

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S52 – Vandalism (with Racial aggravator). Note no requirement to also record a crime under Criminal Law (Consolidation) (Scotland) Act) 1995, S50A (1) (b).

Example 5

A person from an ethnic background is assaulted. Nothing is said by the assailant but the assault is perceived to be racist by the victim.

- 1 x Assault (with a Racial aggravator). Note no requirement to also record a crime under Criminal Law (Consolidation) (Scotland) Act) 1995, Section 50A (1) (b).

Example 6

A person from an ethnic background is assaulted during which racial comments are made by the assailant which are corroborated by a witness.

- 1 x Assault (with a Racial aggravator). Note no requirement to also record a crime under Criminal Law (Consolidation) (Scotland) Act) 1995, Section 50A (1) (b).

Example 7

A shop security officer stops a youth leaving the shop after he was seen to put property into his pocket and leave the shop

without paying. The security officer is subjected to racial abuse by the youth, which is also heard by other members of staff.

- 1 x Theft by Shoplifting
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S50A (1) (b) Racially Aggravated Conduct. There is corroboration of the racial abuse. If no corroboration of the racial abuse a crime of Criminal Justice and Licensing (Scotland) Act 2010, S38 should be recorded (with a Racial aggravator).

Example 8 Complainer reports having been shouted and swore at, with racist comments made.

- (a) No witnesses were present
 - 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, threatening or abusive behaviour (with a Racist aggravator). There is no corroboration of the remarks made at the time of reporting.
- (b) Enquiry is carried out and a witness is traced who advises they heard racist comments being made.
 - The crime above should be changed to 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S50A (1) (b) Racially Aggravated Conduct (corroboration of the crime and racist element has been obtained).

Example 9 Person from ethnic background has racist comments etched into the bodywork of their car.

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S52 – Vandalism (with Racial aggravator). There is no requirement to also record a Racially Aggravated Conduct.

Example 10 Person reports that racial words have been spray painted across a wall in the local park.

- 1 x Criminal Law (Consolidation (Scotland) Act 1995, S52 – Vandalism (with Racial aggravator)

Example 11

Suspect is travelling on a bus when he racially abuses 'A', a passenger on the bus. 'B' boards the bus and suspect subjects this witness to racial abuse.

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S50A (1) (b) Racially Aggravated Conduct. The suspect's behaviour has been a continuous act throughout the bus journey which is viewed as an encompassing event. Although there are two victims both should be noted as being victims of the same crime. This can be likened to Section 38 Threatening or Abusive Behaviour where there can be multiple victims of the same incident.

Example 12

A football supporter shouts racial abuse at a player on the field of play, the player is unaware of this, however, spectators nearby are alarmed by the remarks.

- 1 x Breach of the Peace (with Racial aggravator). The alarm or distress has to be that of the intended victim and as the intended victim did not hear the comments Criminal Law (Consolidation) (Scotland) Act 1995, S50A (1) (b) is not appropriate.

Example 13

As part of the same incident 'A' subjects 'C' to non-racist verbal abuse and 'B' subjects 'C' to racist abuse which is corroborated.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38 (for accused 'A')
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S50A (1) (b), Racially Aggravated Conduct (for accused 'B').

Example 14

As part of the same incident 'C' subjects 'A' to non-racist verbal abuse and subjects 'B' subjects to racial abuse which is corroborated.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38 (for victim 'A')
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S50A (1) (b), Racially Aggravated Conduct (for victim 'B').

Note

This offence should be used for 'one-off' incidents where there is corroborative evidence in respect of racial harassment but where there is no evidence of ongoing harassment.

The actions must be shown to have caused alarm or distress to the complainer(s) (i.e. the person(s) who suffer the racially aggravated action or course of conduct).

Actions can be racially aggravated if directed immediately before, during or immediately after the conduct.

Also see Public Order Act, 1986 Sections 18 and 19 with regards to use of words or behaviour or display of written material or publication or distribution of written material which is threatening, abusive or insulting with intent to stir up racial hatred.

This section creates an offence for a person to act in a manner which is racially aggravated and which causes or is intended to cause a person alarm or distress. This offence may be likened to the offence of Section 38 of the Criminal Justice Licensing (Scotland) Act but with racial motivation.

If there is only one source of evidence of the racial element then the case to the Procurator Fiscal may include notification that a Section 96 aggravation of the Crime and Disorder Act, 1998 may be appropriate and places an onus on the court to take account of any racist element to a crime or offence when determining an appropriate sentence.

Anonymous reports of crime must be supported by corroborative evidence prior to the creation of a crime report. Where a victim's details are withheld from the police, the circumstances will be recorded as an incident only.

Perception

The use of apparently 'hate' language is not sufficient to prove a hate crime. There must also be evidence that an offender's behaviour has been motivated by prejudice and is not simply an inappropriate use of language.

In terms of the perception element consideration must be given to:

Who perceived the circumstances to amount to being a hate incident/crime.

Why it was perceived to be a hate incident/crime.

Licensing (Scotland) Act 2005

General Rule

One crime for each accused and per offence

Complainer

Procurator Fiscal

Locus

Where crime takes place

Offences and SGJD Codes

Relating to Children and Young People

61/001	Section 102 Sale of alcohol to a child or young person
61/001	Section 103 Allowing the sale of alcohol to a child or young person
61/001	Section 104 Sale of liqueur confectionery to a child
62/009	Section 104A Buy/attempt to buy/give alcohol for/to a child
62/009	Section 104B Buy/attempt to buy/give alcohol for/to a young person
62/006	Section 105 Purchase of alcohol by a child or young person
62/006	Section 106 Consumption of alcohol by a child or young person
61/010	Section 107 Unsupervised sale of alcohol by a child or young person
61/099	Section 108 Delivery of alcohol by or to a child or young person
62/009	Section 109 Sending a child or young person to obtain alcohol
61/099	Section 110 Duty to display notice

Drunkenness and Disorderly Conduct

60/004	Section 111 Drunk persons entering or in premises on which alcohol is sold
62/099	Section 112 Obtaining of alcohol by or for a drunk person
61/099	Section 113 Sale of alcohol to a drunk person
61/003	Section 114 Premises manager, staff etc. not to be drunk
60/006	Section 115(1) Disorderly conduct
61/004	Section 115(2) Responsible person allowing drunkenness or disorderly conduct
60/008	Section 116 Refusal to leave premises

Miscellaneous Offences

61/099	Section 117 Offences relating to sale of alcohol to trade
61/099	Section 118 Prohibition of unauthorised sale of alcohol on moving vehicles
61/099	Section 119 Delivery of alcohol from vehicles etc.
61/099	Section 120 Prohibition of late-night deliveries of alcohol
61/099	Section 121 Keeping of smuggled goods
62/002	Section 63(4) Consume/Take away alcohol outwith licensed hours

Examples

Example 1	<p>Person enters shop and buys alcohol for a number of children who are underage. Evidence is obtained that the alcohol was purchased at the shop.</p> <ul style="list-style-type: none">- 1 x Licensing (Scotland) Act 2005, S104A/B (immaterial how many children were provided the alcohol).
Example 2	<p>'A' enters shop, picks up bottle of alcohol and on being advised this cannot be sold due to being outwith licensing hours 'A' leaves</p>

sufficient money on the counter and leaves the premises with the alcohol.

- 1 x Licensing (Scotland) Act 2005, S63 (4).

Example 3

'A' causes a disturbance in a supermarket and refuses to leave. The incident does not relate to the sale of alcohol.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38 (Threatening or Abusive Behaviour).
- Note that if the supermarket sells alcohol and the incident does not relate to the sale of alcohol Licensing (Scotland) Act 2005, S115/116 should not be used.

Note

Sections 115 and 116 can be dealt with by way of an Anti-social Behaviour Fixed Penalty Notice (FPN).

Sections 104A and 104B were introduced from 15 May 2017.

**72/008 Local Government (Scotland) Act 1973, Sections
201, 202, 203
Consumption of Alcoholic Liquor in Designated
Public Places**

General Rule

One crime for each accused

Definition

Local Authorities can apply for enabling powers under this Act to introduce a Local Byelaw prohibiting the consumption of alcoholic liquor in designated public places.

The following are examples of Byelaws granted in some Local Authority areas,

- Any person who consumes alcoholic liquor in a designated place
- Any person is found to be in possession of an open container containing alcoholic liquor in a designated place in circumstances whereby it is reasonable to infer that the person intended to drink from it whilst in a designated place
- Any person who consumes alcoholic liquor in a designated place and fails to desist on being required to do so by a Police Constable

shall be guilty of an offence.

Officers should make themselves familiar with the specific Local Byelaw covered by this legislation in their local area.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 A member of the public contacts the police informing them that there are youths in the park drinking alcohol. On police attending, no youths are found. The locus is covered by Local Byelaws.

- Record as an incident only

Example 2 Police officers find two persons sitting on a park bench, drinking alcohol. The locus is covered by Local Byelaws.

- Where a decision is made to deal with the individuals by using the Local Byelaws – 2 Crimes should be recorded.

Note

These offences can be dealt with by way of an Anti-Social Behaviour Fixed Penalty Notice (FPN), only within the designated areas where the Byelaw is applicable.

The policy intention is to deal with the nuisance caused by people drinking in public places, not to criminalise innocent behaviour, that of being in possession of an open container of alcohol from which there may be no intention of drinking e.g. a person carrying an open bottle of alcohol from his or her house to a party at a neighbour's house.

Presumptions

This byelaw applies for the purposes of any trial for an offence against these byelaws. Any liquid found in a container shall, subject to the provisions of this byelaw, be presumed to conform to the description of the liquid on the container. A container which is found to contain no liquid or insufficient liquid to permit analysis shall, subject to the provisions of this byelaw, be presumed to have contained at the time of the alleged offence liquid which conformed to the description of the liquid on the container.

Dependent on circumstances, officers may apply discretion in dealing with such incidents, resulting in no crime report being recorded.

**47/013 Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, Section 1
Threatening and Abusive Behaviour of Retail Worker**

General Rule

One crime per incident (Threatening or Abusive Behaviour)

Definition

The act aims to increase protection for workers in the retail sector and those applying or enforcing a statutory age-restriction in relation to the sale or supply of goods or services.

Section 1 - Offence of assaulting etc. retail worker

(1) It is an offence for a person to assault, threaten or abuse another person—

(a) who is a retail worker, and

(b) who is engaged, at the time, in retail work.

(2) No offence is committed under subsection (1) unless the person who assaults, threatens or abuses knows or ought to know that the other person—

(a) is a retail worker, and

(b) is engaged, at the time, in retail work.

Evidence from a single source is sufficient to establish, for the purposes of this section—

(a) whether a person is a retail worker, and

(b) whether the person is engaged, at the time, in retail work.

Section 2 - Behaviour which constitutes an offence under Section 1

(1) The offence under section 1 of threatening or abusing a retail worker is committed by a person only if the person -

(a) behaves in a threatening or abusive manner towards the worker, and

(b) intends by the behaviour to cause the worker or any other person fear or alarm or is reckless as to whether the behaviour would cause such fear or alarm.

(2) Subsection (1) applies to -

(a) behaviour of any kind including, in particular, things said or otherwise communicated as well as things done,

(b) behaviour consisting of -

(i) a single act, or

(ii) a course of conduct.

Where the provisions will apply –

- (i) Any person whose usual place of work is retail premises, while working in those premises (whether as employee, owner or agency staff), such as:
- in a shop, the owner and all other staff, while working in the shop (but not, for example, while travelling to or from work), regardless of whether selling goods is part of their job;
 - in a pub, the landlord and all other staff, while working in the pub, regardless of whether selling drinks, food etc. is part of their job;
 - in a charity shop, the paid manager and the volunteer staff, while working in the shop;
- (ii) Any person whose usual place of work is not in retail premises, while selling or supplying goods to the public (whether as employee, owner or agency staff), such as:
- where a shop forms a part of larger non-retail premises (such as gift shop within a visitor attraction), the worker selling goods in the shop, but not other workers on those premises (such as visitor guide);
 - where a bar forms part of larger, mostly non-retail premises (such as a hotel), the worker selling drinks in the bar, but not other hotel workers (such as reception staff or porters);

- in high-street premises that primarily deliver a service, rather than sell or supply goods (such as a hairdressing salon), a worker while selling goods (e.g. hair gel) but not while performing the service (e.g. cutting hair);
 - door-to-door salespersons and street traders (whose retail work is not done in premises);
- (iii) Any person whose usual place of work is not in retail premises, while selling or supplying age-restricted services to the public (whether as employee, owner or agency staff), such as:
- tanning salon workers;
 - tattoo or piercing establishment workers;
 - a person working in an amusement arcade with gambling machines;
 - betting shop (bookmaker) or bingo hall workers;
 - any person who delivers goods from retail premises, while at the delivery location (but not while travelling between the retail premises and that location), such as delivery driver for a supermarket, fulfilling online orders.
- (iv) Where the provisions will not apply –
- tanning salon workers;
 - workers in high-street premises that sell or supply only services rather than goods (e.g. an estate agent, bank or advice centre);
 - wholesale workers (selling goods or services to tradespeople, for onward retail sale);
 - most tradespeople (electricians, plumbers etc.), since their usual place of work is not retail premises and they do not do retail work;
 - bus drivers selling tickets (which are tokens for a service, rather than goods);

- nightclub door staff (who may be enforcing an age-restriction on entry, but do not themselves sell goods or services subject to a statutory age-restriction).

Victim/Complainer

Person to whom behaviour has been directed at, or, dependent on the circumstances the Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 A retail worker is assaulted and threatened and abused by reason of their employment and the assault was at least partly motivated by malice towards the worker by reason of their employment.
- 1 x Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, S1, Assault of Retail Worker (threatening or abusive behaviour is subsumed).
- Example 2 A retail worker is threatened and abused in the course of their employment and the offender either knew or ought to have known that the worker was acting in the course of their employment.
- 1 x Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, S1 Threatening or Abusive Behaviour of Retail Worker
- Example 3 Five retail workers and two customers are threatened and abused within retail premises.
- 1 x Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, S1 Threatening or Abusive Behaviour of Retail Worker

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38, Threatening or Abusive Behaviour (note – requirement to record under both pieces of legislation)

Example 4 Customer directs abusive and threatening comments at one retail worker and assaults another, whilst acting in the course of their employment.

- 1 x Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, S1 Threatening or Abusive Behaviour of Retail Worker

1 x Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, S1 Assault of Retail Worker

Example 5 Customer in shop directs racial abuse at member of staff for refusing to sell them alcohol due to age restriction.

- 1 x Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, S1 Threatening or Abusive Behaviour of Retail Worker (with Racial and Age Restriction aggravators, due to racial element and enforcement of statutory age restriction).

Example 6 Spouse attends partner's retail premises workplace and directs abuse at them, whilst they are conducting their duties as a retail worker. The abuse is not retail related.

- 1 x Criminal Justice and Licensing (Scotland) Act 2010, S38 (better legislative fit as abuse is not retail related)

Note

This offence was introduced on 24 August 2021.

Meaning of Retail Premises

Retail premises includes all high-street shops, supermarkets, department stores, shopping centres etc., and also includes pubs and bars (drinks counting as “goods”)

and petrol stations (fuel also counting as “goods”). A vehicle used wholly or mainly as a shop (such as an ice-cream van) is likely to count as retail premises; but even where a vehicle does not count as retail premises (because it is used primarily to provide a transport service), a person selling goods on the vehicle (e.g. a member of train crew selling drinks from a trolley) would be doing retail work, and so would be protected under the Act.

Meaning of Retail Worker

Anyone whose usual place of work is retail premises counts as a retail worker while working in those premises. This includes when a person is working on land that forms part of those premises (for example, a supermarket worker collecting trolleys in the store car-park).

Enforcing an Age Restriction

A statutory age restriction for the purposes of the Act includes only age restrictions where the age itself is specific in an enactment. This includes, for example, the age-limit of 18 which applies, under the Licensing (Scotland) Act 2005, to the offence of selling alcohol to under-age persons.

The following provides a list of age-restricted goods and services, and the statute or statutory instrument that covers this.

In terms of the perception element consideration must be given to:

- Aerosol spray paint
 - o Antisocial Behaviour etc. (Scotland) Act 2004
- Air weapons and imitation firearms
 - o Firearms Act 1968, Violent Crime Reduction Act 2006
- Alcohol
 - o Licensing (Scotland) Act 2005
- Butane lighter refills
 - o Cigarette Lighter Refill (Safety) Regulations 1999
- Crossbows

- Crossbows Act 1987
- Caps, cracker snaps, party poppers etc.
 - Explosives Act 1875
- Firearms
 - Firearms Act 1968
- Fireworks
 - Fireworks (Safety) Regulations 1997
 - Explosives Act 1875
 - Pyrotechnic Articles (Safety) Regulations 2010
- Gambling
 - Gambling Act 2005
- Knives and articles with a blade or point
 - Criminal Justice Act 1988
- Liqueur confectionery
 - Licensing (Scotland) Act 2005
- National Lottery tickets
 - National Lottery etc. Act 1993
 - National Lottery Regulations 1994
- Petrol
 - Petroleum (Consolidation) Regulations 2014
- Pets
 - Animal Health and Welfare (Scotland) Act 2006
- Solvents
 - Cigarette Lighter Refill (Safety) Regulations 1999
- Sunbeds

- Public Health etc. (Scotland) Act 2008
- Tattooing and piercing
 - Tattooing of Minors Act 1969
 - Licensing of Skin Piercing and Tattooing Order 2006
- Teeth whitening
 - Cosmetic Products (Safety) (Amendment) Regulations 2012
- Tobacco products, nicotine vapour products
 - Tobacco and Primary Medical Services (Scotland) Act 2010
 - Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016

Group 7 – Miscellaneous Offences

Crime Category	SGJD Code
<u>Air Navigation Order 2016</u>	
- Various Articles	85/013
<u>Air Weapons and Licensing (Scotland) Act 2015</u>	55/001
<u>Civic Government (Scotland) Act 1982, S7 (1)</u>	
- Street Traders Licence	72/004
<u>Civic Government (Scotland) Act 1982, S51</u>	
- Handling obscene material	59/001
<u>Civic Government (Scotland) Act 1982, S54 (1)</u>	
- Playing instruments, radios, singing etc.	73/004
<u>Civic Government (Scotland) Act 1982, S119 (1)</u>	
- Charitable collections	85/002
<u>Communications Act 2003, S127 (1)</u>	
- Offensive, Indecent, Obscene, Menacing (Non Sexual)	84/002
<u>Communications Act 2003, S127 (2)</u>	
- False Messages, Persistent Calls	84/002
<u>Computer Misuse Act 1990, S1 and 2</u>	
- Unauthorised access	84/006
<u>Copyright, Designs and Patents Act 1988, S107</u>	
- Copyright offences	83/007
<u>Criminal Law Act 1977, S51</u>	
- Bomb hoaxes	48/002
<u>Criminal Law (Consolidation) (Scotland) Act 1995, S20 (1) to S20 (4)</u>	

- Sports grounds, possessing alcohol, controlled containers	62/013
<u>Customs and Excise Management Act 1979, S50</u>	
- Import prohibited goods	77/000
<u>Dangerous Dogs Act 1991, S3</u>	
- Failure to control	51/012
<u>Data Protection Act 2018, S170</u>	
	84/005
<u>Dogs (Protection of Livestock) Act 1953, S1</u>	
- Worrying livestock on agricultural land	51/008
<u>Electricity Act 1989</u>	
- Tampering with meters	85/008
<u>Emergency Workers (Scotland) Act 2005, S1, S2, S3</u>	
Fire (Scotland) Act 2005, S85 (1)	
- Hoax calls to emergency services	48/001
<u>Firearms Act 1968, S1 and S2</u>	
- Firearms and Shotgun certificates	55/000
<u>Firearms Act 1968, S21</u>	
- Possession of firearms by persons previously convicted	55/000
<u>Fireworks and Pyrotechnic Articles (Scotland) Act 2022, S21, S44</u>	
- Providing fireworks or pyrotechnic articles to children	54/000
- Aggravation of offences against emergency workers	
<u>Fireworks Regulations 2004, R4 (1)</u>	
- Fireworks (Scotland) Regulations 2004, R3 (1)	54/000
<u>Marriage (Scotland) Act 1977, S24</u>	
- Bigamy	76/001
<u>Prisons (Scotland) Act 1989, S41</u>	

- Proscribed articles	85/001
<u>Tobacco and Primary Medical Services (Scotland) Act 2010</u>	
- Sale of tobacco products to persons under 18	50/010
<u>Trespass (Scotland) Act 1865, S3</u>	
- Lighting fires	82/002
- Lodging without consent of owner	82/003
<u>Wildlife Crime</u>	Various
<u>Wireless Telegraphy Act 2006</u>	84/001

85/013

Air Navigation Order 2016

Various articles (excluding endangering an aircraft)

General Rule

One crime for each incident

Definition

Offences under Air Navigation Order 2016 include:

- Article A242 Drunk on board aircraft/enter aircraft drunk
- Article A243 Smoke on board aircraft
- Article A244 Fail to obey command
- Article A245 (a) Use threatening, abusive or insulting words towards aircraft crew members
- Article A245 (b) Behave in a threatening, abusive or insulting manner
- Article A245(c) Interfere with crew member's duties

Victim/Complainer

Person subjected to conduct or airline

Locus

Where crime takes place

Examples

No examples

Note

Offences under aviation legislation which involve endangering an aircraft will be recorded within Group 4 under the relevant legislation coded to 33/016 Culpable and Reckless Conduct against an aircraft.

The Air Navigation (Amendment) Order 2020 introduced amendments to the Air Navigation Order, 2016 on 31 December, 2020. Based on the updated legislation in respect of small unmanned aircraft, on occasions it will be difficult to confirm an offence under the Air Navigation Order has occurred without tracing the pilot and/or aircraft. Where reports are received consideration should be given as to whether the circumstances would amount to an alternative offence, e.g. S38 of Criminal Justice and Licensing (Scotland) Act 2010.

**55/001 Air Weapons and Licensing (Scotland) Act 2015,
Sections 2(1) and 6(4)
Air Weapons Licensing Offences**

General Rule

- Section 2(1) – one crime to cover all air weapons not on certificate
- Section 6(4) – one crime for each condition not complied with

Definition

Section 2 - Use, possess, purchase or acquire air weapon without holding air weapon certificate

- (1) It is an offence for a person to use, possess, purchase or acquire an air weapon without holding an air weapon certificate.

Section 6 - Fail to comply with condition attached to the holder's certificate

- (1) Every air weapon certificate is subject to any prescribed mandatory conditions.
- (2) The chief constable may, when granting or renewing an air weapon certificate, attach conditions to the certificate (and, in the case of a renewal, may attach different conditions from those attached to the certificate prior to its renewal).
- (3) The chief constable may not attach to an air weapon certificate a condition which is inconsistent with—
 - (a) a prescribed mandatory condition which applies to air weapon certificates, or
 - (b) a condition which must be attached to the certificate under this Part.
- (4) It is an offence for a holder of an air weapon certificate to fail to comply with a condition attached to the holder's certificate.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

No examples

Note

In circumstances where a weapon is found in the possession of a person where it is suspected that the weapon is a firearm, shotgun or air weapon but further enquiry or forensic analysis is required to confirm this, a single undetected crime should be recorded in accordance with the weapon type suspected which can be reclassified to 'No Crime' or proceeded to SPR as appropriate at the conclusion of the enquiry.

Finding weapons in a public place where ownership/possession cannot be attributed to any person requires no crime to be recorded.

**72/004 Civic Government (Scotland) Act 1982, Section 7(1)
Street Traders Licence**

General Rule

One crime for each incident

Definition

Any person who without reasonable excuse does anything for which a licence is required under Part II of this Act without having such a licence.

A licence, to be known as a “street trader’s licence”, shall be required for street trading by a person, whether on his own account or as an employee.

“street trading” means doing any of the following things in a public place—

- (a) hawking, selling or offering or exposing for sale any article;
- (b) offering to carry out or carrying out for money or money’s worth any service,

to any person in the public place and includes doing any of these things therein or from a vehicle or in or from a kiosk or moveable stall not entered in the valuation roll except where it is done in conjunction with or as part of a retail business being carried on in premises abutting the public place.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Person found to be attending at various dwellings offering for sale pencil drawings without a licence.

- 1 x Civic Government (Scotland) Act 1982, S7 (1)

Example 2

Person is found standing on a street corner offering for sale a quantity of fake designer brand handbags. They have no licence to trade.

- 1 x Civic Government (Scotland) Act 1982, S7 (1)
- 1 x Trade Marks Act 1994, S92 (1) (c)

Note

The Pedlars Act 1871 could be considered as an alternative to Civic Government (Scotland) Act 1982, S7 (1) depending on the circumstances and Local Authority arrangements.

**59/001 Civic Government (Scotland) Act 1982, Section 51
Handling Obscene Material**

General Rule

One crime for each incident

Definition

Publish, distribute, sell, or expose for sale, any lewd, impure or obscene book, paper, writing, print, picture, drawing or other representation which is devised and intended to corrupt public morals and to create inordinate and lustful desires.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

No examples

Note

Where these offences involve indecent photographs or images of children the crimes are recorded under Group 2 Sexual Crimes. See relevant page relating to SGJD code 18/018 (Civic Government (Scotland) Act 1982, Section 52).

**73/004 Civic Government (Scotland) Act 1982, Section 54(1)
Playing Instruments, Radios, Singing, etc.**

General Rule

One crime for each incident

Definition

Any person who

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

so as to give any other person reasonable cause for annoyance and fails to desist on being required to do so by a constable in uniform, shall be guilty of an offence.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 Police receive a call of loud music and on attending at locus can hear the noise from the pavement. The occupier is requested to either lower the volume or switch the music off and complies.
- No crime requires to be recorded as the person has complied.

A further call is received shortly after the police leave the locus resulting in police re-attending to find the music had been turned on again and was being played loudly.

- 1 x Civic Government (Scotland) Act 1982, S54 (1)

Note

This offence can be dealt with by way of an Antisocial Behaviour Fixed Penalty Notice (FPN).

**85/002 Civic Government (Scotland) Act 1982, Section
119(1)
Charitable Collections**

General Rule

One crime for each incident

Definition

Any person who organises a public charitable collection in respect of which the local authority for the area in which it is to be held have not given their permission. This does not apply to a collection which takes place in the course of a public meeting or to a collection which takes place by means of an unattended receptacle kept in a fixed position in a public place.

Victim/Complainer

Person reporting, or depending on circumstances, the Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 A person is seen on the High Street rattling a can and says they are collecting money for charity. They have no identification from the charity they claim to be collecting on behalf of and no obvious permit from the local authority.

- 1 x Civic Government (Scotland) Act 1982, S119 (1)
- 1 x Fraud (if established not a genuine charity collector)

**84/002 Communications Act 2003, Section 127(1)
Grossly Offensive, Indecent, Obscene, Menacing
Calls/Messages (Non Sexual)**

General Rule

One crime for each victim and continuity of action or per incident (as appropriate)

Definition

A person is guilty of an offence if he:

- (a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character, or
- (b) causes any such message or matter to be sent.

Victim

Person receiving the call/message

Locus

Where made from/sent, if known, otherwise where received.

Examples

Example 1 Person creates website inviting others to place comments of a menacing nature regarding an individual, resulting in numerous persons adding comments of a menacing nature.

- 1 x Communications Act 2003, S127 (1) (Non-Sexual)

Example 2 'A' reports receiving a threatening e-mail and on enquiry it is established this is a spam message which will have been sent to

numerous e-mail addresses, with no one in particular being targeted.

- This would be recorded as an Incident only

Example 3 Conditions of bail are set that 'B' should not contact 'A'. 'B' telephones 'A' and threatens them, breaching 'B's' bail condition.

- 1 x Communications Act 2003, S127 (1) (Non-Sexual) (the Breach of Bail offence is treated as an aggravation of the Communications Act 2003 S127 offence).

Example 4 'A' phoned 'B' and during the call 'A' was subject to menacing abuse from 'B'.

- 1 x Communications Act 2003, S127 (1) (Non-Sexual) the locus being where 'B' is (see note below regarding locus)*.

Example 5 'A' who resides in 'X' Division sends a threatening e-mail to 'B' who resides in 'Z' Division.

- 1 x Communications Act 2003, S127 (1) (Non-Sexual) the locus being 'Z' Division unless there is clear evidence to confirm that the communication was sent from 'X' Division.

Example 6 'A' at home address in 'X' Division reports receiving a threatening telephone call from 'B' who is in prison in 'Z' Division. Prison staff confirm 'B' was in prison at the material time.

- 1 x Communications Act 2003, S127 (1) (Non-Sexual) recorded by Division 'X' (if corroboration that call was made from the prison or an admission by suspect to this effect the locus would be Division 'Z').

Example 7 'A' sends abusive text messages to 'B' and while the comments make some sexual references, the overall content of the messages is deemed to be more abusive than sexual.

- 1 x Communications Act 2003, S127 (1) (Non-Sexual)

Example 8 'A' reports receiving racist abuse on social media.

- 1 x Communications Act 2003, S127 (1) (Non-Sexual) with a Racial aggravator due to the message having been sent electronically. Similar recording principles would apply if abuse was received via telephone or e-mail.

Note

Where a report is received that a number of telephone calls over a period of time have been received from the same person or persons acting together with the same purpose, only one crime should be recorded even if dates and times are available.

SGJD Code 16/041 is applied where the communication is sexual and 84/002 where it is non-sexual.

The Sexual Offences (Scotland) Act, 2009 was introduced on 1 December 2010. As a result of this legislation, circumstances which may have previously been recorded as a Communications Act 2003 offence may now be more suited to an offence of Communicating Indecently under Sections 7, 24 or 34.

Whilst the locus is normally identified as where the call was made from if known, otherwise where call received, Example 4 above would be an exception to this rule. The locus being where the suspect was if this could be confirmed.

**84/002 Communications Act 2003, Section 127(2)
False or Persistent Calls/Messages**

General Rule

One crime for each victim and continuity of action or per incident (as appropriate)

Definition

A person is guilty of an offence if he:

- (a) sends by means of a public electronic communications network a message that is known to be false,
- (b) causes such a message to be sent, or
- (c) persistently makes use of a public electronic communications network.

Victim

Person receiving the call/message

Locus

Where made from/sent, if known, otherwise where received.

Examples

Example 1 'A' reports receiving a number of texts from 'B' and although the content of the texts are not concerning they are starting to cause some problems 'A' and their current partner. 'A' states they have asked 'B' to cease contact but does not feel they are being taken seriously. 'A' asks if the police would advise 'B' to cease from making contact with them.

- Since 'A' has no concerns regarding the content of the messages and is aware of who is sending them, discretion can be applied and the individual advised on their conduct.

Example 2 'A' reports receiving text messages from 'B' seeking to meet up. Police have already advised 'B' at the request of 'A' to cease from making contact, and whilst this stopped for several weeks, 'B' has started sending messages again.

- 1 x Communications Act 2003, S127 (2) (since 'B' has already been advised by police to cease contact, they have failed to heed this advice, therefore, a crime should be recorded).

Example 3 'A' reports having received numerous telephone calls over a period of two weeks, and on answering, no one responds at the other end. They have no thoughts as to who this could be.

- 'A' should make enquiry with the telephone company in the first instance as there is nothing to indicate any criminal intent and this may be a line fault.

Example 4 False e-mail messages sent to numerous addresses from the same sender.

- 1 x Communications Act 2003, S127 (2)

Note

Where false messages have been sent about an individual or group of individuals, the expectation is that this will result in adverse consequences for that individual or group of individuals for a crime to be recorded.

For an offence to be regarded as 'persistent' a series of communications must have an element of frequency and a connecting theme or factor.

Messages must be "for the purpose" of causing annoyance, anxiety or inconvenience rather than it being enough that causing annoyance, anxiety or inconvenience was "a" purpose.

Where a report is received that a number of telephone calls over a period of time have been received from the same person or persons acting together with the same purpose, only one crime should be recorded even if dates and times are available.

For the purposes of Sections 2 and 3 of the Emergency Workers (Scotland) Act 2005, circumstances to which a person is responding are to be taken to be emergency circumstances if the person believes and has reasonable grounds for believing they are or may be emergency circumstances. Emergency circumstances will be taken to exist if the person responding to them has reasonable grounds to believe that there are or will be emergency circumstances. This means that a hoax call will be covered under the Emergency Workers (Scotland) Act 2005 despite the fact that there is no actual emergency.

Such reports should be resolved to the satisfaction of the complainer and police officers should retain discretion in dealing with such matters.

84/006 Computer Misuse Act 1990, Sections 1 and 2
Unauthorised access to computer material
Unauthorised access with intent to commit further
offences.

General Rule

One crime per victim/offence

Definition

Section 1 - Unauthorised access to computer material

- (1) A person is guilty of an offence if—
- (a) he causes a computer to perform any function with intent to secure access to any program or data held in any computer, or to enable any such access to be secured;
 - (b) the access he intends to secure, or to enable to be secured, is unauthorised; and
 - (c) he knows at the time when he causes the computer to perform the function that that is the case.
- (2) The intent a person has to have to commit an offence under this section need not be directed at—
- (a) any particular program or data;
 - (b) a program or data of any particular kind; or
 - (c) a program or data held in any particular computer.

Section 2 - Unauthorised access with intent to commit or facilitate commission of further offences.

- (1) A person is guilty of an offence under this section if he commits an offence under section 1 above (“the unauthorised access offence”) with intent—

- (a) to commit an offence to which this section applies; or
 - (b) to facilitate the commission of such an offence (whether by himself or by any other person); and the offence he intends to commit or facilitate is referred to below in this section as the further offence.
- (3) It is immaterial for the purposes of this section whether the further offence is to be committed on the same occasion as the unauthorised access offence or on any future occasion.
- (4) A person may be guilty of an offence under this section even though the facts are such that the commission of the further offence is impossible.

Victim/Complainer

Person or organisation targeted

Locus

Where crime takes place

Examples

- Example 1 'A' accesses the personal computer of 'B' without authority and gains access to passwords which allows them to access a bank account belonging to 'B'. 'A' transfers £2000 from the bank account of 'B' to their own account.
- 1 x Computer Misuse Act 1990, S2, Unauthorised access with intent to commit further offences
 - 1 x Fraud

**83/007 Copyright, Designs and Patents Act 1988, Section
107**

General Rule

One crime for each seizure

Definition

- (1) A person commits an offence who, without the licence of the copyright owner -
- (a) makes for sale or hire, or
 - (b) imports into the United Kingdom otherwise than for his private and domestic use, or
 - (c) possesses in the course of a business with a view to committing any act infringing the copyright, or
 - (d) in the course of a business-
 - (i) sells or lets for hire, or
 - (ii) offers or exposes for sale or hire, or
 - (iii) exhibits in public, or
 - (iv) distributes, or
 - (e) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright, an article which is, and which he knows or has reason to believe is, an infringing copy of a copyright work.
- (2) A person commits an offence who-
- (a) makes an article specifically designed or adapted for making copies of a particular copyright work, or
 - (b) has such an article in his possession, knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business.

(2A) A person who infringes copyright in a work by communicating the work to the public-

(a) in the course of a business, or

(b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,

commits an offence if he knows or has reason to believe that, by doing so, he is infringing copyright in that work.

(3) Where copyright is infringed (otherwise than by reception of a communication to the public)-

(a) by the public performance of a literary, dramatic or musical work, or

(b) by the playing or showing in public of a sound recording or film, any person who caused the work to be so performed, played or shown is guilty of an offence if he knew or had reason to believe that copyright would be infringed.

Complainer

Procurator Fiscal

Locus

Where crime takes place/seizure made

Examples

Example 1 Person is found in possession of a quantity of digital versatile discs and compact discs with music content with a view to selling, distributing or letting for hire such property bearing a sign identical to that of a registered trademark.

- 1 x Copyright Designs and Patents Act 1988, S107 (1) (d)
- 1 x Copyright Designs and Patents Act 1988, S107 (1) (c)

- 1 x Copyright Designs and Patents Act 1988, S107 (1) (a)
- 1 x Trade Marks Act 1994, S92 (1) (c)

Note

In the majority of cases offences of this type will be libelled along with Trade Marks Act 1994, S92 (1) which will follow the same counting rule. The reference page for this classification is located within Annex 3.

**48/002 Criminal Law Act 1977, Section 51
Bomb Hoaxes**

General Rule

One crime for each continuity of action, or per incident (as appropriate)

Definition

(1) A person who:

(a) places any article in any place whatever; or

(b) dispatches any article by post, rail or any other means whatever of sending things from one place to another, with the intention (in either case) of inducing in some other person a belief that it is likely to explode or ignite and thereby cause personal injury or damage to property is guilty of an offence, and

(2) A person who communicates any information which he knows or believes to be false to another person with the intention of inducing in him or any other person a false belief that a bomb or other thing liable to explode or ignite is present in any place or location whatever is guilty of an offence.

Complainer

Organisation being threatened

Locus

Where call is made from, if known, otherwise where received

Examples

Example 1 Telephoning 999 stating that a bomb had been left in a shopping trolley next to exit of Department Store in the High Street and would be activated by lunchtime.

- 1 x Criminal Law Act 1977, S51 (locus is where 999 call is received)

Note

The crime should be recorded in the Division of origin. However, if the origin of the threat were unknown, the crime would be recorded in the area in which the bomb hoax call was received.

62/013 **Criminal Law (Consolidation) (Scotland) Act 1995,**
Section 20(1) to 20(4)
Sports grounds, possessing alcohol, controlled
containers

General Rule

One crime for each accused

Definition

Section 20(1) Any person who,

- (a) is in possession of a controlled container in; or
- (b) while in possession of a controlled container, attempts to enter
the relevant area of a designated sports ground at any time during the period
of a designated sporting event shall be guilty of an offence

Section 20(2) Any person who

- (a) is in possession of alcohol in; or
- (b) while in possession of alcohol, attempts to enter
the relevant area of a designated sports ground at any time during the period
of a designated sporting event, shall be guilty of an offence

Section 20(3) Any person who has entered the relevant area of a designated sports ground and is in possession of a controlled article or substance at any time during the period of a designated sporting event at the ground shall be guilty of an offence.

Section 20(4) Any person who, while in possession of a controlled article or substance, attempts to enter the relevant area of a designated sports ground at any time during the period of a designated sporting event at the ground shall be guilty of an offence.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 'A' is found in possession of a flare within a sports ground.

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S20 (3), Possess a controlled article or substance within a sports ground.

Example 2 A flare is thrown from the crowd at a football stadium:

(a) No-one is injured and the person responsible is traced but has no flares in their possession

- 1 x Culpable and Reckless Conduct

(b) No-one is injured, the person responsible is traced and is found in possession of an unlit flare.

- 1 x Culpable and Reckless Conduct
- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S20 (3), Possess a controlled article or substance within a sports ground.

(c) One person is struck with the flare and sustains a minor injury. The person responsible is traced but has no flares in their possession.

- 1 x Culpable and Reckless Conduct

(d) No-one is injured and the person responsible is not traced.

- 1 x Culpable and Reckless Conduct (undetected)

Example 3

Person notifies police that there is a drunk man within the football ground. Officers identify and apprehend the offender and identify that he is also in possession of a bottle of whisky.

- 1 x Criminal Law (Consolidation) (Scotland) Act 1995, S20 (7) for being drunk
- 1 x Criminal Law (Consolidation) (Scotland) Act, 1995, Section 20(2) (a) for possessing alcohol

77/000 **Customs and Excise Management Act 1979, Section
50**
Import Prohibited Goods

General Rule

One crime per consignment of goods

Definition

Section 50

(1) Subsection (2) below applies to goods of the following descriptions, that is to say—

- (a) goods chargeable with a duty which has not been paid; and
- (b) goods the importation, landing or unloading of which is for the time being prohibited or restricted by or under any enactment.

(2) If any person with intent to defraud Her Majesty of any such duty or to evade any such prohibition or restriction as is mentioned in subsection (1) above—

- (a) unships or lands in any port or unloads from any aircraft in the United Kingdom or from any vehicle in Northern Ireland any goods to which this subsection applies, or assists or is otherwise concerned in such unshipping, landing or unloading; or
- (b) removes from their place of importation or from any approved wharf, examination station, transit shed or customs and excise station any goods to which this subsection applies or assists or is otherwise concerned in such removal,

he shall be guilty of an offence under this subsection and may be detained.

(3) If any person imports or is concerned in importing any goods contrary to any prohibition or restriction for the time being in force under or by virtue of any enactment with respect to those goods, whether or not the goods are

unloaded, and does so with intent to evade the prohibition or restriction, he shall be guilty of an offence under this subsection and may be detained.

(6) If any person—

- (a) imports or causes to be imported any goods concealed in a container holding goods of a different description; or
- (b) directly or indirectly imports or causes to be imported or entered any goods found, whether before or after delivery, not to correspond with the entry made thereof, he shall be liable on summary conviction to a penalty of three times the value of the goods or level 3 on the standard scale, whichever is the greater.

(7) In any case where a person would, apart from this subsection, be guilty of—

- (a) an offence under this section in connection with the importation of goods contrary to a prohibition or restriction; and
- (b) a corresponding offence under the enactment or other instrument imposing the prohibition or restriction being an offence for which a fine or other penalty is expressly provided by that enactment or other instrument,

he shall not be guilty of the offences mentioned in paragraph (a) of this subsection.

Complainer

Procurator Fiscal

Locus

Where crime takes place or intended delivery destination

Examples

Example 1 Staff at airline goods depot in 'Y' Division contact Police regarding a suspicious package intended for delivery at an address in 'X'

Division. On further inspection the package is found to contain
stun guns, martial arts weapons and hunting knives.

- 1 x Customs and Excise Management Act 1979, S50
recorded by 'X' Division

**51/012 Dangerous Dogs Act 1991, Section 3
 Keeping Under Proper Control**

General Rule

One crime for each accused

Definition

If a dog is dangerously out of control in any place (whether or not a public place)

(a) the owner; and

(b) if different, the person for the time being in charge of the dog,

is guilty of an offence, or, if the dog while so out of control injures any person or assistance dog, an aggravated offence under this subsection.

For the purposes of this Act a dog shall be regarded as dangerously out of control on any occasion on which there are grounds for reasonable apprehension that it will injure any person or assistance dog, whether or not it actually does so, but references to a dog injuring a person or assistance dog or there being grounds for reasonable apprehension that it will do so do not include references to any case in which the dog is being used for a lawful purpose by a constable or a person in the service of the Crown.

Victim

Person making complaint or injured party

Locus

Where crime takes place

Examples

- Example 1 A dog which is tied up on a short lead outside a shop bites a person walking past the shop.
- Since a person has been bitten this should be investigated by police in the first instance to determine whether there was a reasonable apprehension that the dog would injure someone. This will include obtaining evidence from other parties who may be able to speak to the dog previously being aggressive, barking, jumping up or biting. If no such apprehension exists no crime should be recorded but the enquiry officer should report the circumstances to the Local Authority for their consideration under Control of Dogs (Scotland) Act 2010.

Note

Before recording an offence under Dangerous Dogs Act 1991, Section 3 officers should consider the following:

Do we have a sufficiency of evidence to establish both the following factors:

- (i) That the accused is the owner of the dog;

The owner of the dog should always be properly cautioned detained and questioned to provide clear evidence of their ownership of the dog, how the incident arose, what steps they had taken to prevent attacks and whether the dog had ever bitten or been aggressive towards anyone in the past.

- (ii) That there was a reasonable apprehension that the dog would injure someone.

Case law requires that we should be able to either (a) lead evidence from other parties (such as neighbours of the accused or people who have previously reported the dog for similar offences) who can speak to the dog previously being aggressive, barking, jumping up or biting; or (b) by showing that the current incident went on for a sufficient amount of time that parties witnessing it may have formed the impression that the dog was going to injure someone, yet the accused did not take action.

Therefore, officers should always speak to the neighbours about the demeanour of the dog and try to establish whether the dog has ever been aggressive in the past and police systems should be checked for this information.

The Control of Dogs (Scotland) Act 2010 gives an authorised officer (officer appointed by a Local Authority) power to serve a Dog Control Notice requiring the person to bring and keep the dog under control. The Police will have a supporting role to play in upholding the legislation and will require to co-operate and work in partnership with Local Authorities. When Police receive complaints from the public about dogs which are thought to be out of control a judgement should be made as to whether they need to investigate the matter themselves, divert the complainant to the appropriate Local Authority, or alert the Local Authorities themselves.

Police should investigate in the first instance if a person is bitten by a dog.

In circumstances where a Local Authority agree to deal with a dog owner under Control of Dogs (Scotland) Act 2010 there is no requirement for Police to record any crime.

The dog control notice regime is essentially a Local Authority implemented administrative scheme which covers a wide range of individuals and is aimed at improving and educating irresponsible owners to responsible control their dogs. The issue of a dog control notice itself does not establish a criminal offence. Failing to comply with a dog control notice will constitute an offence under Section 5 of the legislation.

For the purposes of the Control of Dogs (Scotland) Act 2010 a dog is out of control if:

- (a) it is not being kept under control effectively and consistently (by whatever means) by the proper person,
- (b) its behaviour gives rise to alarm or apprehensiveness on the part of any individual, and
- (c) the individual's alarm or apprehensiveness is, in all circumstances, reasonable.

The apprehensiveness above may be as to the individual's own safety, the safety of some other person, or the safety of an animal other than the dog in question.

84/005

Data Protection Act 2018, Section 170

General Rule

One crime for each system accessed

Definition

- (1) It is an offence for a person knowingly or recklessly –
 - (a) to obtain or disclose personal data without the consent of the controller,
 - (b) to procure the disclosure of personal data to another person without the consent of the controller, or
 - (c) after obtaining personal data, to retain it without the consent of the person who was the controller in relation to the personal data when it was obtained.
- (4) It is an offence for a person to sell personal data if the person obtained the data in circumstances in which an offence under subsection (1) was committed.
- (5) It is an offence for a person to offer to sell personal data if the person—
 - (a) has obtained the data in circumstances in which an offence under subsection (1) was committed, or
 - (b) subsequently obtains the data in such circumstances.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 Employee accesses personal data from a company database on six occasions in the knowledge that he did not have permission to access this information.
- 1 x Data Protection Act 2018, S170
- Example 2 Employee accesses personal data of others from three separate company databases in the knowledge that he did not have permission to access this information.
- 3 x Data Protection Act 2018, S170
- Example 3 'A' reports that they are of the opinion that their medical records have been altered.
- No crime requires to be recorded unless 'A' can provide sufficient information to confirm or on the balance of probability assess this is the case. Enquiry should be made with the relevant agencies in an effort to either confirm or dispel criminality.

Note

It should be noted that an offence in terms of the Data Protection Act is an evidence based offence and no crime would be expected to be recorded unless there was sufficient information to either confirm or assess on the balance of probability an offence has occurred.

51/008 Dogs (Protection of Livestock) Act 1953, Section 1
Worrying livestock on agricultural land

General Rule

One crime for each accused

Definition

If a dog worries livestock on any agricultural land, the owner of the dog, and, if it is in the charge of a person other than its owner, that person also, shall be guilty of an offence.

Complainer/Victim

Livestock owner

Locus

Where crime takes place

Examples

No examples

Note

In this Act:

“Worrying livestock” means

- chasing livestock in such a way as may reasonably be expected to cause injury or suffering to the livestock or, in the case of females, abortion, or loss of or diminution in their produce, or
- being at large (that is to say not on a lead or otherwise under close control) in a field or enclosure in which there are sheep.

“Agricultural land” means

- land used as arable, meadow or grazing land (including woodland that is used for grazing), or for the purpose of poultry farming, pig farming, the raising of game birds, market gardens, allotments, nursery grounds or orchards;

“Livestock” means

- cattle, sheep, goats, swine, horses, camelids, ostriches, farmed deer, enclosed game birds or poultry, and for the purposes of this definition “cattle” means bulls, cows, oxen, buffalo, heifers or calves, “horses” includes donkeys and mules, “farmed deer” means deer of any species which are on agricultural land enclosed by a deer-proof barrier and kept by way of business for the primary purpose of meat production, “enclosed game birds” means any pheasant, partridge, grouse (or moor game), black (or heath) game or ptarmigan that are being kept enclosed prior to their release for sporting purposes, and “poultry” means domestic fowls, turkeys, geese or ducks.

85/008 Electricity Act 1989
Tampering with meters

General Rule

One crime for each incident

Definition

Schedule 7(11)

An offence is committed:

If any person intentionally or by culpable negligence—

- (a) alters the register of any meter used for measuring the quantity of electricity supplied to any premises by an electricity supplier; or
- (b) prevents any such meter from duly registering the quantity of electricity supplied.

Complainer

Energy supplier

Locus

Where crime takes place

Examples

Example 1 Person deliberately alters electricity meter in order to provide false reading to energy supplier.

- 1 x Electricity Act 1989, S31 (per Schedule 7(11))

Example 2 Person bypasses electricity meter allowing electricity to be used without incurring cost. Meter bypassed in a dangerous manner leaving wires exposed in a public area which presented a real

danger of electrocution and risk of fire. Estimated that £1100 of electricity has been used.

- 1 x Electricity Act 1989, S31 (Per Schedule 7(11)) note theft of electricity is subsumed within the offence of bypassing the meter.
- 1 x Culpable and Reckless Conduct

Note

Offences under this legislation may be dealt with directly by the energy supplier. If this is the case and they have primacy over the investigation there is no requirement for a crime to be recorded.

**48/001 Emergency Workers (Scotland) Act 2005, Sections 1,
2 and 3**

Fire (Scotland) Act 2005, Section 85(1)

Hoax/False calls to Emergency Services

General Rule

One crime for each continuity of action or per incident (as appropriate)

Definition

Emergency Workers Act

Circumstances to which a person is responding are to be taken to be emergency circumstances if the person believes and has reasonable grounds for believing they are or may be emergency circumstances. This means that a hoax call will be covered despite the fact that there is no actual emergency.

Fire (Scotland) Act

A person who knowingly gives or causes to be given to a person acting on behalf of a relevant authority a false alarm of –

- (a) fire;
- (b) a road traffic accident; or
- (c) an emergency of another kind,

shall be guilty of an offence.

Complainer

Emergency service

Locus

Where call made from, if known, otherwise where received

Examples

- Example 1 Fire alarm in school is set off maliciously causing Fire Service to attend.
- 1 x Fire (Scotland) Act 2005, S85, False call to Fire Service
- Example 2 Fire alarm in hotel is set off maliciously. Fire service do not attend.
- This is an occasion where discretion may be used not to record a crime but Breach of the Peace may be considered depending on the scale of any disruption caused.
- Example 3 A hoax call is made causing Fire Service to attend unnecessarily.
- 1 x Fire (Scotland) Act 2005, S85, False call to Fire Service
- Example 4 Persistent hoax calls are made to Police/Ambulance Service by the same person causing officers/paramedics to attend unnecessarily.
- 1 x Emergency Workers (Scotland) Act 2005, S1, Assault, obstruct or hinder emergency worker using Hoax/False calls offence modifier.
- Example 5 Persistent 999 calls are received by Police control room which are not hoax calls but are considered to be non-emergency misuse of 999.
- 1 x Communications Act 2003, S127 (2), Persistent annoyance/inconvenience.
- Example 6 Persistent 101 calls are received by Police control room which are not hoax calls but are considered to amount to persistent annoyance.

- 1 x Communications Act 2003, S127 (2), Persistent annoyance/inconvenience.

Note

There is no requirement to wait for multiple calls to be made to prove a course of action. Where there is sufficient evidence to prove one call a crime report may be raised.

55/000 Firearms Act 1968, Sections 1 and 2

Firearms and Shotgun Certificates

General Rules

- Section 1(1) (a) - Possession of firearms without certificate being in force.
 - o Record - one crime per firearm not on certificate.
- Section 1(1) (b) - Possession of ammunition without certificate being in force.
 - o Record - one crime per type of ammunition not on certificate.
- Section 1(2) - Fail to comply with conditions of firearms certificate.
 - o Record - one crime for each condition not complied with.
- Section 2(1) - Possession of shotgun without certificate being in force.
 - o Record - one crime per shotgun not on certificate.
- Section 2(2) - Fail to comply with conditions of shotgun certificate.
 - o Record - one crime for each condition not complied with.

Definition

Section 1

- (1) Subject to any exemption under this Act, it is an offence for a person—
- (a) to have in his possession, or to purchase or acquire, a firearm to which this section applies without holding a firearm certificate in force at the time, or otherwise than as authorised by such a certificate;
 - (b) to have in his possession, or to purchase or acquire, any ammunition to which this section applies without holding a firearm certificate in force at the time, or otherwise than as authorised by such a certificate, or in quantities in excess of those so authorised.
- (2) It is an offence for a person to fail to comply with a condition subject to which a firearm certificate is held by him.

Section 2

(1) Subject to any exemption under this Act, it is an offence for a person to have in his possession, or to purchase or acquire, a shot gun without holding a certificate under this Act authorising him to possess shot guns.

(2) It is an offence for a person to fail to comply with a condition subject to which a shot gun certificate is held by him.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

No examples

Note

In circumstances where a weapon is found in the possession of a person where it is suspected that the weapon is a firearm, shotgun or air weapon but further enquiry or forensic analysis is required to confirm this, a single undetected crime should be recorded in accordance with the weapon type suspected which can be reclassified to 'No Crime' or proceeded to SPR as appropriate at the conclusion of the enquiry.

Finding weapons in a public place where ownership/possession cannot be attributed to any person requires no crime to be recorded.

55/000 **Firearms Act 1969, Section 21**
Possession of Firearm by Persons Previously
Convicted of Crime

General Rule

One crime for each accused

Definition

A person who has been sentenced to custody for life or to preventive detention, or to imprisonment or to corrective training for a term of three years or more or to youth custody for such a term, or who has been sentenced to be detained for such a term in a young offenders institution in Scotland, shall not at any time have a firearm or ammunition in his possession.

A person who has been sentenced to imprisonment for a term of three months or more but less than three years or to youth custody for such a term, or who has been sentenced to be detained for such a term in a detention centre or in a young offenders institution in Scotland, shall not at any time before the expiration of the period of five years from the date of his release have a firearm or ammunition in his possession.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Example 1 Husband and wife found in possession of 4 firearms, both having previously been released from prison within the last year.

- 2 x Firearms Act 1968, S21, Possession of Firearm by person previously convicted

**54/000 Fireworks and Pyrotechnic Articles (Scotland) Act
2022, Sections 21 and 44**

General Rule

One crime for each incident

Definition

Section 21 – Prohibition on providing fireworks or pyrotechnic articles to children

(1) It is an offence for a person to knowingly –

(a) buy or attempt to buy a firework or other pyrotechnic article to which this section applies for a person under the age of 18, or

(b) give or otherwise make available a firework or other pyrotechnic article to which this section applies to a person under the age of 18.

(3) It is not an offence under subsection (1) for a person to buy a pyrotechnic article for, or otherwise make one available to, a person under the age of 18 if

–

(a) the manufacturer of the pyrotechnic article designed it to be used as a visible distress signal, and

(b) the person intends that the person under the age of 18 will use the pyrotechnic article only in appropriate circumstances.

Section 21 applies to all pyrotechnic articles other than—

(i) category F1 fireworks, and

(ii) percussion caps for toys that are intended for use by children under the age of 14,

Section 44 – Aggravation of offences against emergency workers

(1) An offence is aggravated by the use of a firework or pyrotechnic article if—

- (a) the offence is committed in a manner that involves the use of a firework or pyrotechnic article which is currently lit or ignited (or which has recently been lit or ignited), and
 - (b) a victim (or intended victim) of the offence is an emergency worker.
- (2) For the purpose of subsection (1), an emergency worker is—
- (a) a person—
 - (i) acting in a capacity mentioned in section 1(3) or 2(3) of the Emergency Workers (Scotland) Act 2005,
 - (ii) acting in a capacity mentioned in section 90(3) (a), (c) or (d) of the Police and Fire Reform (Scotland) Act 2012,
 - (iii) who is a constable of the British Transport Police Force and is acting in that capacity,
 - (b) a person who is assisting such a person in responding to an emergency circumstance.
- (3) Evidence from a single source is sufficient to prove that an offence is aggravated by the use of a firework or pyrotechnic article.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

Providing fireworks to children

Example 1 A report is received that children aged under 18 are in a nearby garden with fireworks which are established to be F2 fireworks. A

parent identifies themselves and freely states they purchased the items and gave them to the children.

- 1 x Fireworks and Pyrotechnic Articles (Scotland) Act 2022, S21b, Give firework or other pyrotechnic article to person under 18.
- There is no requirement for a Section 21(a) offence in these circumstances.

Example 2

Officers observe an adult pass an object which is established to be a pyrotechnic article to several children aged under 18 who are all in a group outside a shop.

- 1 x Fireworks and Pyrotechnic Articles (Scotland) Act 2022, S21b, Give firework or other pyrotechnic article to person under 18.

There is no requirement for a Section 21(a) offence in these circumstances.

Example 3

Officers see a group of unidentified children aged under 18 in possession of what appear to be pyrotechnics due to smoke being emitted and as officers approach, the children run off and a number of burned out smoke bombs are found.

- No crime requires to be recorded.

Aggravation of offences against emergency workers

Example 1

Firework or pyrotechnic is set off by one individual and directed at ambulance crew, one of whom is struck and injured as a result.

If thrown directly at a specific member of ambulance crew:

- 1 x Emergency Workers (Scotland) Act 2005, S1 (1), Assault of an emergency worker (with 'Firework/Pyro Emergency Worker' aggravator).

If thrown in the general direction of ambulance crew:

- 1 x Culpable and Reckless Conduct (with 'Firework/Pyro Emergency Worker' aggravator).

Note

Sections 21 and 44 of this legislation commenced from 10 October 2022.

Pyrotechnic Article

“pyrotechnic article” means an article which contains explosive substances or an explosive mixture of substances designed to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions.

Categories of Fireworks

- “category F1 firework” means a firework which presents a very low hazard and negligible noise level and which is intended for use in confined areas, including a firework which is intended for use inside domestic buildings,
- “category F2 firework” means a firework which presents a low hazard and low noise level and which is intended for outdoor use in confined areas,
- “category F3 firework” means a firework which presents a medium hazard, which is intended for outdoor use in large open areas and whose noise level is not harmful to human health,
- “category F4 firework” means a firework which presents a high hazard, which is intended for use only by persons with specialist knowledge and whose noise level is not harmful to human health.

**54/000 Fireworks Regulations 2004, Regulation 4(1)
Fireworks (Scotland) Regulations 2004, Regulation 3**

General Rule

One crime for each incident

Definition

Regulation 4(1)

No person under the age of 18 years shall possess an adult firework in a public place.

Regulation 3

No person shall use an adult firework outside permitted hours (permitted hours means the period beginning 1800 hrs and ending at 2300 hrs, with the exception of 5th November when they can be used from 1800 hrs until midnight; New Year's Eve, the night of Chinese New Year and the night of Diwali when they can be used from 1800 hrs until 0100 hrs).

Regulation 3A

Prohibition of supply of certain fireworks outside permitted hours (permitted hours means the period beginning 0700 hrs and ending at 1800 hrs).

Regulation 3B

Prohibition of supply of certain fireworks in specified circumstances - supply in excess of the permitted quantity (permitted quantity means fireworks with a total mass of explosive substance of 5 kilograms).

There are exemptions to Regulation 3, which includes groups who have a local authority issued public entertainment licence or public liability insurance documents, and professional fireworks operators.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 A report of fireworks being set off after 11 pm at night is received, no one is traced.
- The recording of an incident would suffice. This is an evidence based crime and discretion can be used.
- Example 2 'A' is seen to throw a lit firework in the roadway, there is no vehicle or person nearby.
- 1 x Explosives Act 1875, S80 (where vehicles or persons are in the vicinity, a crime of Culpable and Reckless may be more appropriate).
- Example 3 'A' sets off fireworks on the public beach without local agreement from the local authority.
- 1 x Explosives Act 1875, S80

Note

On 30 June 2021 the Fireworks (Scotland) Amendment Regulations, 2021 introduced amendments to the Fireworks (Scotland) Regulations.

The Pyrotechnic Articles (Safety) Regulations 2015 covers supplying/selling fireworks to someone under 18.

It is an offence to throw or discharge a firework in a public place. The Explosives Act, 1875, Section 80 refers.

76/001 Marriage (Scotland) Act 1977, Section 24
Bigamy

General Rule

One crime for each marriage

Definition

Common Law - Bigamy (prior to 1 September 2014)

Any person who wilfully contracts a second (or subsequent) marriage, during the subsistence of a prior marriage.

Marriage (Scotland) Act 1977, S24 (from 1 September 2014)

(A1) A person (“A”) commits an offence if A purports to enter into a marriage with another person (“B”) knowing that either or both—

- (a) A is already married to or in a civil partnership with a person other than B, or
- (b) B is already married to or in a civil partnership with a person other than A.

(1) A person shall be guilty of an offence if he—

- (a) falsifies or forges any Marriage Schedule, certificate or declaration issued or made, or purporting to be issued or made, under this Act;
- (b) knowingly uses, or gives or sends to any person as genuine, any false or forged marriage Schedule, certificate, declaration or other document issued or made, or purporting to be issued, or made, or required under this Act;
- (c) being an approved celebrant, solemnises a marriage without a Marriage Schedule in respect of the marriage, issued in accordance with this Act, being available to him at the time of the marriage ceremony;

- (d) not being an approved celebrant or an authorised registrar, conducts a marriage ceremony in such a way as to lead the parties to the marriage to believe that he is solemnising a valid marriage;
- (e) being an approved celebrant or an authorised registrar, solemnises a marriage without both parties to the marriage being present; or
- (f) being an authorised registrar, solemnises a marriage in a place otherwise than in accordance with section 18(1) of this Act.

Complainer

Procurator Fiscal

Locus

Where second, or subsequent marriage occurred, if known, otherwise suspect's current or last known address

Examples

Example 1 Enquiry reveals that 'A' having failed to divorce his first wife, has married a further two, who were unaware of previous or subsequent marriages. One marriage occurred in 2010 and another in 2015.

- 1 x Bigamy (common law)
- 1 x Marriage (Scotland) Act 1977, S24

Note

If the second spouse is aware of the subsistence of a prior marriage, he or she is guilty of bigamy, as are the officiating clergyman and witnesses if they have like knowledge.

Section 24 of the Marriage (Scotland) Act 1977 provides for an offence of bigamy for offences committed after the 1st of September 2014.

The common law offence of bigamy applies in relation to:

- (a) any marriages or purported marriages entered into before 1st September 2014, and any prosecution in relation to such marriages or purported marriages where proceedings commence or after that date;
or
- (b) any prosecution for the common law offence of bigamy where proceedings commenced before that date.

If the suspect is a UK national an offence under Section 24 of Marriage (Scotland) Act 1977 applies regardless of where in the World the second marriage takes place provided that the second marriage is a valid marriage.

Prisons (Scotland) Act 1989, Section 41

- 85/001 Proscribed articles**
- 44/006 Bringing drugs into a prison**

Other Prison SGJD Codes (Criminal Law (Consolidation) (Scotland) Act 1995)

- 43/004 Possession or an article with a blade or point in a prison**
- 43/006 Possession of an offensive weapon in a prison**
- 43/011 Possession of an offensive weapon in a prison (used in crime)**
- 43/012 Possession or an article with a blade or point in a prison (used in crime)**

General Rule

One crime for each accused

Definition

A person commits an offence if without reasonable excuse the person,

- (a) brings or otherwise introduces into a prison a proscribed article (or attempts to do so),
- (b) takes out of or otherwise removes from a prison a proscribed article (or attempts to do so).

A “proscribed article” is

- (a) any personal communication device,

- (b) any drug,
- (c) any firearm or ammunition,
- (d) any offensive weapon,
- (e) any article which has a blade or is sharply pointed,
- (f) any article (or other article) which is a prohibited article within the meaning of rules made under section 39.

Complainer

Procurator Fiscal

Locus

Prison where crime takes place

Examples

Example 1 A letter containing a possession quantity of drugs sent to a prison in Division 'A' posted from Division 'B' is intercepted on arrival at the prison, prior to reaching the intended recipient.

- (a) Where the contents of the letter provides details of the sender who resides in Division 'B'.
 - 1 x Prisons (Scotland) Act 1989, S41 (1) (a) & (9A) (b), recorded by Division 'A' and enquiries carried out. Where enquiries in respect of the sender fail to provide sufficient evidence the crime should be update to 'No Crime'.
- (b) Where the letter is post marked outwith Division 'A' but the identity of the sender is not immediately known from the content of the letter.
 - No crime requires to be recorded where an operational decision has been made and there are no positive lines of

enquiry and it is not proportionate to continue. If a crime is recorded it will be by Division 'A'.

Example 2 The Prison Service contacts the local police to advise 2 prisoners have been found in possession of a small quantity of Class 'B' drugs (possession amount). Both have been dealt with by the Prison Governor.

- In line with the Memorandum of Understanding between the Police, Prison Service and COPFS, where a possession quantity of Class 'B' Drugs or 'C' drugs is recovered, this may be dealt with by the Governor or Controller as a matter of internal discipline, however can be referred to the Police should there be aggravating factors. Where a Class 'A' drug is recovered the police must be informed and a crime report created.

Example 3 The Prison Service contacts the local police to advise 2 prisoners have been found in possession of a small quantity of Class 'B' drugs (possession amount). Both have been dealt with by the Prison Governor, however, aggravating factors have been outlined providing justification for referral to Police.

- 2 x Misuse of Drugs Act 1971, S5 (2), Possession of a controlled drug

Example 4 The Prison Service contacts the local police to advise they have found a prisoner is possession of a personal quantity of a Class 'A' drug.

- 1 x Misuse of Drugs Act 1971, S5 (2), Possession of a controlled drug

Example 5 The Prison Service contacts the local police to advise they have recovered a quantity of drugs and a mobile phone, which have been thrown over the perimeter area within a sock, no one has been identified as being responsible.

- Where an operational decision is taken to undertake further enquiry a crime should be recorded. Only the recovery of the controlled drug should be recorded if multiple items are recovered. If the sock contained an offensive weapon and a mobile phone only the offensive weapon should be recorded. If a controlled drug and offensive weapon are recovered only record the controlled drug.

Example 6 After leaving personal effects in a locker and prior to entering the visitors' area a person is searched and found to be in possession of a personal quantity of a controlled drug.

- 1 x Prisons (Scotland) Act 1989, S41 (1) (a) & (9A) b

Example 7 During a prison visit a visitor passes a controlled drug to a prisoner.

- 1 x Misuse of Drugs Act 1971, S4 (3) (a), Supply a Controlled Drug. (In these circumstances while it is noted that the suspect has introduced a controlled drug into a prison before passing this to the prisoner no offence under Prisons (Scotland) Act 1989, Section 41 will be recorded).

Example 8 A person visiting a prison inmate leaves personal effects in a locker. They are searched before entering the visitors' area with negative result. The locker they are using is searched and a personal quantity of a controlled drug is found.

- 1 x Misuse of Drugs Act 1971, S5 (2), Possession of a controlled drug

Example 9 Prison provide prisoner 'A' with a mobile phone fitted with SIM card 'X' for personal use. A later search finds 'A' using the phone provided with an unauthorised SIM card 'Z'.

- 1 x Prisons (Scotland) Act 1989, S41ZA (3) (whilst the phone itself and SIM 'X' provided were authorised, SIM card 'Z' was

not. Per S41 (9) (b) the SIM is a component part/article designed for use with the personal communication device).

Note

Before reporting an incident to the Police, the prison will consider each case to assess whether it can be dealt with by means of the prison adjudication system. Where a prisoner has been dealt with by way of the prison adjudication system, this does not remove the ability for the circumstances to also be reported to the Police to be dealt with as a crime. An informed and balanced decision must be taken in making a referral to the Police, taking into consideration any aggravating factors.

In circumstances where a prison inmate is found in possession of a controlled drug which is not being dealt with by the Prison Governor this should be dealt with under Misuse of Drugs Act 1971 and not Prisons (Scotland) Act 1989.

Any offence within the Prison which involves the offer to supply, being concerned in the supply or possession with intent to supply, any class of controlled drug will be reported to the police by the Prison Service and ultimately the Procurator Fiscal under the Misuse of Drugs Act 1971. The relevant crime reports will be created.

Police Scotland has a drugs expert witness capability in the form of the Statement of Opinion (STOP) Units who are recognised by the courts as 'experts'. The STOP Unit provide advice and assistance and through the examination and assessment of all the evidential elements in a case will be able to advise the enquiry officer whether an individual should be reported for supply or possession offences. If the STOP Unit can speak to the individual circumstances of the introduction of a drug into a prison as amounting to an offence under the Misuse of Drugs Act 1971 then that legislation will be used in preference to Prisons (Scotland) Act 1989.

**50/010 Tobacco and Primary Medical Services (Scotland)
Act 2010, Sections 4 to 7
Sale of tobacco products to persons under 18**

General Rule

- One crime for each sale (Sections 4 to 6)
- One crime for each accused (Section 7)

Definition

Section 4

Any person who sells a tobacco product or cigarette papers to a person under the age of 18 years commits an offence.

Section 5

Any person under the age of 18 who buys or attempts to buy a tobacco product or cigarette papers commits an offence.

Section 6

Any person aged 18 or over who knowingly buys or attempts to buy a tobacco product or cigarette papers on behalf of a person under the age of 18 commits an offence.

Section 7

- (1) Where a constable has reasonable grounds for suspecting that a person in a public place -
- (a) is under the age of 18, and
 - (b) is in possession of a tobacco product or cigarette papers, the constable may require the person to surrender the tobacco product or, as the case may be, the cigarette papers to the constable.

- (2) A constable making a requirement under subsection (1) may also require the person to supply the constable with the person's name and address.
- (3) Where a constable makes a requirement under subsection (1) the constable must inform the person concerned -
- (a) of the constable's suspicion, and
 - (b) of the fact that failure to comply with a requirement made under subsection (1) or (2) is an offence.
- (4) A constable may arrest without warrant any person who fails to comply with a requirement made under subsection (1).
- (5) A person who fails to comply with a requirement made under subsection (1) or (2) commits an offence.

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

- Example 1 Shopkeeper is found selling cigarettes to three school children who enter the shop in their school uniform.
- 3 x Tobacco and Primary Medical Services (Scotland) Act 2010, S4, Sell tobacco products to person under 18

Trespass (Scotland) Act 1865, Section 3

82/002 Lighting Fires

82/003 Lodging without Consent of Owner

General Rule

One crime for each incident

Definition

Every person who lodges in any premises, or occupies or encamps on any land, being private property, without the consent and permission of the owner or legal occupier of such premises or land, and every person who encamps or lights a fire on or near any road or enclosed or cultivated land, or in or near any plantation, without the consent and permission of the owner or legal occupier of such road, land, or plantation.

Victim/Complainer

Owner of premises or land

Locus

Where crime takes place

Examples

No examples

Wildlife Crime

Wildlife crime encompasses any act or omission that is made illegal in Scotland under legislation with regard to certain birds, animals and plants, including their habitats, both on land and at sea, and includes:

- persecution of wildlife, cruelty against wildlife and interference with a wildlife habitat, including the release of non-native species
- poaching
- commercial activity in internationally protected species originating, committed or partly committed within Scotland.

List of relevant legislation, offences and SGJD codes:

1 - Wildlife and Countryside Act 1981

51/004 Offences involving wild birds

General Rule

One crime for each species

- Section 1(1) Kill/injure/take wild bird; damage active nest; take/destroy bird's egg
- Section 1(2) Possess/control live/dead wild bird or part of or anything derived from wild bird, including an egg
- Section 1(5) Disturb nesting Schedule 1 bird or dependent young; cause or permit
- Section 5(1) Prohibited methods of killing/taking wild bird; cause or permit
- Section 6(1) Sell/offer or expose for sale an egg of a bird
- Section 7(1) Keep/possess/control bird included in Schedule 4 that is registered/ringed/marked

51/014 Cruelty to Wild Animals

General Rule

One crime for each species

- Section 9(1) Kill/injure/take wild animal included in Schedule 5
- Section 9(4) Damage/destroy/obstruct or place that animal on Schedule 5 used for shelter or protection, or disturb such animal while using such place
- Section 11G (1) Intentionally or recklessly kill/injure/take a wild animal in Schedule 6A
- Section 11I (1) Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully

General Rule

One crime for each incident

- Section 10A (1) Intentionally or recklessly kill/injure/take a wild hare

General Rule

One crime for snare type

- Section 11(1) Offences with snares

General Rule

One crime for each type of device or poison

- Section 11(2) Offences against Schedule 6 animals
- Section 11(3) Possession, use and checking of snares

51/016 Other Wildlife offences

General Rule

One crime for each species

- Section 9(2) Possess/control live/dead wild animal or part of or anything derived from wild animal on schedule 5
- Section 9(5) Sell/offer/expose for sale live/dead wild animal on Schedule 5; cause or permit

General Rule

One crime for each plant type

- Section 13(1) Picking, uprooting and destruction of wild plants
- Section 13(2) Sale or offer for sale of wild plants

General Rule

One crime for each accused

- Section 15a Possession of prescribed pesticides
- Section 18(1) Attempts to commit offences
- Section 18(2) Possess item capable of being used to commit offence

2 - Protection of Badgers Act 1992

51/015 Offences involving Badgers

General Rule

One crime for each Badger

- Section 1(1) Kill/injure/take badger
- Section 2(1) Cruelty to badger
- Section 4 Sell/possess live badger

General Rule

One crime for each incident

- Section 1(3) Possess/control dead badger or any part of anything derived from badger

General Rule

One crime for each Sett

- Section 3(1) Interfering with badger setts
- Section 3(2) Cause or permit

3 - Conservation (Natural Habitats etc.) Regulations 1994

51/014 Cruelty to Wild Animals

General Rule

One crime for each species

- Regulation 39(1) Protection of certain wild animals
- Regulation 39(2) Protection of cetaceans
- Regulation 41(2) Prohibition of certain methods of taking or killing wild animals

51/016 Other Wildlife offences

General Rule

One crime for each accused

- Regulation 100(1) Attempt to commit offence under part III
- Regulation 100(2) Possess item capable of being used to commit offence under part III

4 - Protection of Wild Mammals (Scotland) Act 2002

51/013 Hunting with Dogs

General Rule

One crime for each species

- Section 1(1) Deliberately hunt a wild mammal with a dog

5 - Wild Mammals (Protection) Act 1996

51/014 Cruelty to Wild Animals

General Rule

One crime for each species

- Section 1 Cruelty to a wild mammal which is not captive

6 - Marine (Scotland) Act 2010

56/002 Sea Fisheries offences

General Rule

One crime for each incident

- Section 107 Intentionally or recklessly kill, injure or take live seal
- Section 117 Harassing a seal at a haul-out site

7 - Control of Trade in Endangered Species Regulations 2018

51/016 Other Wildlife offences

General Rule

One crime for each species

All relevant offences listed within Schedule 1

8 - Deer (Scotland) Act 1996

57/002 Deer (Scotland) Act offences

General Rule

One crime for each species of Deer

- Section 5(5) Take or kill deer outside the designated close season for the particular species
- Section 17(1) Take, kill or injure deer without legal right or permission
- Section 17(2) Remove deer carcass from land
- Section 17(3) Wilfully kill or injure deer otherwise than by shooting
- Section 18(1) Take or wilfully kill or injure deer at night

General Rule

One crime for each incident

- Section 22 Two or more persons acting together
- Section 24 Attempts and preparations

General Rule

One crime for each accused

- Section 23(1) Unlawful possession of deer or firearms

9 - Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003

56/001 Salmon and Freshwater Fisheries offences

General Rule

One crime for each incident

- Section 1(1) Fish for or take salmon other than by rod and line or net and cobble
- Section 1(3) Attempts or preparations
- Section 2(1) Fish for or take freshwater fish other than by rod and line
- Section 2(2) Attempts or preparations
- Section 5(1) Use of explosives and noxious substances
- Section 5(2) Attempts or preparations

- Section 6(1) Fish for salmon without right or permission
- Section 7 Two or more persons acting together to commit offence under Sections 1, 2 or 6 of the Act
- Section 8(1) Taking of dead salmon or trout
- Section 8(2) Attempts or preparations
- Section 9(1) Illegal possession of salmon or trout
- Section 11(1) Fishing in waters where fishing rights owned by one person
- Section 12(1) Fish in contravention of a protection order
- Section 13 Fishing during the weekly close time for salmon
- Section 14(1) Fishing for salmon during annual close time
- Section 16(1) Buying and selling salmon during the close season
- Section 17(1) Annual close time for trout
- Section 18(1) Unclean salmon
- Section 19(1) Salmon roe

56/003 Possession of Salmon or Trout unlawfully obtained

General Rule

One crime for each incident

- Section 20(1) Possessing salmon which have been illegally taken, killed or landed

10 - Conservation of Salmon (Prohibition of Sale) (Scotland) Regulations 2002

56/001 Salmon and Freshwater Fisheries offences

General Rule

One crime for each incident

Regulation 2 Sell, offer or expose for sale salmon taken by rod and line

11 - Agriculture (Scotland) Act 1948

57/001 Poaching and Game Laws

General Rule

One crime for each type of trap

- Section 50(1) Offences with non-approved spring traps
- Section 50(1) Offences with spring traps

12 - Dogs (Protection of Livestock) Act 1953

51/008 Protection of livestock from Dogs

General Rule

One crime for each incident

- Section 1 Offence where dog attacks or worries livestock on agricultural land

84/001 Wireless Telegraphy Act 2006

General Rule

One crime for each incident

Definition

Section 8

No person shall establish or use a wireless telegraphy station or install or use wireless telegraphy apparatus except under the authority of a licence.

Section 36

Keeping available for unauthorised use

Section 37

Allowing premises to be used for unlawful broadcasting

Section 38

Facilitating unauthorised broadcasting

Section 47

Misleading messages

Section 48

Interception and disclosure of messages

Section 68

Deliberate interference

Complainer

Procurator Fiscal

Locus

Location of apparatus

Examples

- Example 1 Two persons in a vehicle are found to be operating a radio scanner tuned into a police radio frequency, allowing them to pick up incidents which they have attended over a two month period to observe.
- 1 x Wireless Telegraphy Act 2006 (continuous course of conduct)

Group 8 – Road Traffic Offences

Offences within Group 8 relate to Road Traffic Offences where the complainer in the main is the Procurator Fiscal. The majority of the offences within this group will be generated by police officers involved in proactive work, although there will be occasions when members of the public will report circumstances which they believe to be a Road Traffic Offence.

The SCRS is more victim orientated in recording crime but a distinction should be made between crimes/offences which are victim based and those that are evidence based, such as Group 8 offences.

On occasions members of the public may contact the police to report a Road Traffic incident where the circumstances are open to interpretation and may not constitute an offence e.g. report of a drunk driver and on police stopping the vehicle establishing the driver had not been drinking. Instances of driving proficiency will also be open to interpretation. With this in mind Road Traffic Offences should only be recorded where there is sufficient evidence of an offence having occurred under the appropriate legislation. The police will determine whether the circumstances as reported amount to a Road Traffic Offence.

In the main Road Traffic Offences will be recorded as detected due to the sufficiency of evidence available to confirm the offence. If a Road Traffic offence is not victim based and there is insufficient evidence to report the offence there is no requirement for the offence to be recorded.

A number of Road Traffic Offences dealt with by way of Conditional Offer or Fixed Penalty Notice may not be recorded on crime recording systems, although the required information will be incorporated within statistical returns.

In respect of offences where the Lord Advocate has issued guidelines e.g. speeding, drink driving, unless the offence meets the Lord Advocate's guidelines, no crime report should be recorded. This would also be the case with local Procurator Fiscal guidelines e.g. careless driving.

Examples of Road Traffic Offences which will always be ultimately recorded as detected are as follows:-

- Speeding
- Drink Driving
- Document Offences e.g. No licence/insurance
- Vehicle Defects and Lighting Offences
- Seat Belt Offences
- Mobile Phone Offences
- Driving of motor vehicles elsewhere than on roads
- Driving while disqualified

The following are the only Road Traffic offences which can be recorded as undetected. Although these offences may be reported to the police and in effect may initially indicate an offence has been committed, what one person may deem to be a poor standard of driving, may be perceived by another as constituting a Road Traffic Offence. With this in mind the onus shall be on the police to determine whether the circumstances amount to a Road Traffic Offence based on evidence and information available.

- Accident Offences (Fail to Stop, Fail to Report)
- Careless Driving
- Dangerous Driving

Where there is sufficient evidence to confirm that one of these offences has been committed, but insufficient evidence to justify criminal proceedings, the crime report should be marked as undetected. In all other circumstances Road Traffic offences should be recorded as detected only.

Where a crime report has initially been recorded and enquiry reveals there is insufficient evidence to confirm a Road Traffic Offence has occurred, the crime report should be updated to 'No Crime' as per agreed procedures.

Notice of intended prosecution

In cases where a road accident has occurred the accused should be warned in terms similar to Section 1 of the Road Traffic Offenders Act, 1988. In reality this is usually given using the standard Section 1 Warning formula. Where there is a Dangerous or Careless Driving offence but no road accident takes place the position is different. If the driver is traced at the time of commission of the offence, they should be warned in terms of Section 1, however if not traced at the time then a Notice of Intended Prosecution must be sent to the keeper of the vehicle within 14 days. This is a requirement and failure to do so will prove fatal to the case.

Road Accident / Careless Driving Reports Guide

- Road Accident where driver traced at the time
 - o Warned in terms similar to Section 1 warning.
- Road Accident where driver not traced at the time but interviewed later
 - o Warned in terms similar to Section 1 warning.
- Road Traffic Act 1988, Section 2 or 3 offence where driver traced at the time
 - o Section 1 warning.
- Road Traffic Act 1988, Section 2 or 3 offence where driver not traced at the time
 - o Notice of Intended Prosecution must be sent within 14 days.

If the Notice of Intended Prosecution procedure is not strictly adhered to and a case cannot be submitted to the Procurator Fiscal due to procedural failure any recorded offence under Road Traffic Act 1988, Section 2 or Section 3 depending on circumstances can be considered for update to 'No Crime'.

Cause and Permit Offences - Driving with No Insurance/Licence

Wheatley's Road Traffic Law in Scotland (6th Edition) states:

- “Permitting” means simply giving permission or allowing a third party to do something. The permission must, however be provided to be something the accused can properly give. In addition, for conviction it must be shown, as in the case of causing, that the accused was aware that what was permitted constituted an offence; actual or constructive knowledge of the offence has to be demonstrated, as well as direct or indirect evidence of permission.
- It further provides that for an accused to be convicted of ‘causing’ a third party to commit an offence, the prosecution will normally have to establish both that the accused directed or controlled the substantive acts complained of, and that he was aware or should have been aware that those acts constituted an offence. In other words, actual or constructive knowledge of the offence must be established, as well as some measure of participation in allowing the offence to take place.

In all circumstances where there is evidence to report any “cause and permit” offence this will be recorded in addition to the offence being reported, e.g. offence for driver and separate offence for owner.

Road Traffic Act 1988, Section 5A, Drug Driving

Section 5A of the Road Traffic Act 1988 was introduced in Scotland on 21 October 2019. For the purposes of crime recording - officers dealing with offences under Section 4, 5 or 5A of the Road Traffic Act 1988 where a blood or urine sample has been obtained, should raise a crime report pending analysis.

The most appropriate crime should be used for example:

- Where there is impairment - a crime report should be recorded for a Road Traffic Act 1988, Section 4 offence.
- Where there is no impairment but there is a positive road side drug test for cannabis / cocaine - a crime report should be recorded for Road Traffic Act 1988, Section 5A - Cannabis / Cocaine.

The following should be noted where there is a presence of multiple drug types or where there is a combination of drugs and alcohol:

- Where tests confirm the presence of more than one drug an offence must be recorded for each drug type.
- Where tests confirm the presence of both drugs and alcohol over the legal limit appropriate offences must be recorded for both drugs and alcohol.

When the result of the analysis is received, the crime report should be updated with the correct offence or marked as 'No Crime' where there is a negative result.

Warnings issued in terms of Antisocial Behaviour etc. (Scotland) Act 2004, Section 126

In circumstances where a constable (in uniform) has reasonable grounds for believing that a motor vehicle is being used or has been used in a manner which contravenes Section 3 or Section 34 of the Road Traffic Act 1988 (careless and inconsiderate driving and prohibition of off-road driving) AND this is causing or likely to cause alarm, distress or annoyance to members of the public a warning notice may be issued in terms of Section 126 of Antisocial Behaviour etc. (Scotland) Act 2004.

On every occasion where a person is given a warning notice under Section 3 or Section 34 of the Road Traffic Act 1988 a crime report must be raised fully outlining the circumstances. In these circumstances either an offence under Section 3 or Section 34 of the Road Traffic Act 1988 should be recorded. The crime report can be disposed of by means of a crime detected warning in respect of the vehicle driver, due to the warning notice in terms of Section 126 of the Antisocial Behaviour etc. (Scotland) Act, 2004 being issued. If the driver is warned in these circumstances no Conditional Offer should be issued under Section 3.

Should the driver/vehicle be stopped for a similar offence as outlined above within 12 months of a warning notice being issued the vehicle can be seized. In these circumstances either an offence under Section 3 or Section 34 of the Road Traffic Act 1988 should be recorded. If no report is being sent to the Procurator Fiscal (e.g. where no other offences are being reported) a Section 126 Warning disposal should be used.

Vehicle Excise & Registration Act 1994 - No Excise Licence

Where an offence of no excise licence is identified, including those with nil duty, officers should complete and submit the Driver and Vehicle Licensing Agency (DVLA) form (CLE 2/6). There is no requirement for the police to record any offence on their crime recording systems or report this offence to the Procurator Fiscal. DVLA will have primacy in dealing with this offence and will be responsible for any further action, including where required progression of a report to the Procurator Fiscal. This will ensure a fair and consistent approach to all reports and allow DVLA to confirm the details held on the vehicle record are up to date and accurate.

Vehicles on Footpaths

To ensure consistent practice Road Traffic Act 1988, Section 34(1)(b) should be used in preference to Roads (Scotland) Act 1984, Section 129(5) with regards to vehicles on footpaths etc. e.g. use of an unregistered e-scooter on a footpath.

Electrically Assisted Pedal Cycles

It should be noted that there may be occasions when an electrically assisted pedal cycle meets the definition of a Motor Vehicle. In these circumstances any offence should be dealt with using the Road Traffic Act 1988.

Mobility Scooters

Whilst a mobility scooter does not meet the definition of a motor vehicle it is considered to be a mechanically propelled vehicle, therefore, where a driver of a mobility scooter is assessed as being unfit to drive through drink or drugs the Road Traffic Act 1988, Section 4 (driving, or being in charge, when under influence of drink or drugs) would be applicable. The Road Traffic Act 1988, Section 5 (driving, or being in charge of, a motor vehicle with alcohol concentration above prescribed limit) refers to motor vehicles therefore is not applicable.

The following guidance illustrates how offences should be recorded in line with the Scottish Government Counting Rules:-

**300/001 Road Traffic Act 1988, Section 2
 Dangerous Driving**

**300/002 Road Traffic Act 1988, Section 3
 Careless Driving**

General Rule

One crime for each course of conduct

Definition

Section 2

A person who drives a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.

Section 3

If a person drives a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, he is guilty of an offence.

Complainer

Procurator Fiscal

Locus

Where vehicle stopped or various as appropriate

Examples

Example 1 Driver is stopped by Police after being recorded driving at excessive speed which would justify reporting an offence under Road Traffic Act 1988, S2.

- 1 x Road Traffic Act 1988, S2 Dangerous Driving (separate speeding offence should not be recorded).

Example 2

A car being driven dangerously during a Police pursuit collides with four vehicles before vehicle is stopped and driver apprehended.

- 1 x Road Traffic Act 1988, S2 - Dangerous Driving
- 1 x Road Traffic Act 1988, S163 - Fail to Stop For Police
- 1 x Road Traffic Act 1988, S170 - Fail to Stop After Accident
- There is no requirement to record a S170 offence for each collision as this is considered to be a continuous course of conduct.

Example 3

Police witnesses observe vehicle being driven in a careless manner, swerving across the road and failing to obey a red light. When stopped the driver is found to have a breath count over the legal limit.

- 1 x Road Traffic Act 1988, S3 - Careless Driving
- 1 x Road Traffic Act 1988, S5 - Drink Driving

Example 4

Witness(es) report erratic driving, the circumstances of which has resulted in no vehicle collision e.g. inconsiderate driving.

- Consideration should be given to the fact that what one person may deem to be a poor standard of driving may be perceived by another as constituting a Road Traffic offence. The circumstances indicate that there may have been an error of judgement and this should be recorded as an incident only with any further enquiry being dependent on local procedures e.g. contact being made with the registered keeper to advise them of the complaint received.

Example 5

Witness(es) report erratic driving, the circumstances of which has resulted in a non-injury vehicle collision, the extent of which does

not require the attendance of police e.g. details exchanged with one party being unhappy with the others standard of driving, which they believed to have resulted in the collision.

- Consideration should be given to the fact that what one person may deem to be a poor standard of driving may be perceived by another as constituting a Road Traffic offence. The circumstances should be considered to determine whether there may have been an error of judgement. This is a non-injury collision where details have been exchanged and should normally only be recorded as an offence if there is sufficient evidence to consider criminal proceedings. Any incident raised should be updated accordingly.

Example 6

Witness(es) report erratic driving, the circumstances of which has resulted in an injury vehicle collision, requiring the attendance of police.

- Consideration should be given to the fact that what one person may deem to be a poor standard of driving may be perceived by another as constituting a Road Traffic offence. Enquiry will determine whether the circumstances and sufficiency of evidence amount to a Road Traffic offence. Where the offending driver has clearly acted carelessly at the higher end of the scale, but is not traced, an undetected Careless Driving or Dangerous Driving should be recorded.

Note

Offences under the Road Traffic Act 1988, Section 3 should be recorded in accordance with Lord Advocate's Guidelines on the Reporting of cases to the Procurator fiscal for Offences under this Section.

In certain circumstances Police may issue an offender with a Conditional Offer of Fixed Penalty Notice for a Road Traffic Act 1988, Section 3 offence. The Police Scotland Standard Operating Procedure for this scheme should be consulted for

details of actions which may justify the issue of a Conditional Offer for a Careless Driving offence.

In circumstances where the use of a vehicle contravenes Road Traffic Act 1988, Section 3 and such use causes, or is likely to cause a member of the public alarm, distress or annoyance the user can be warned in terms of Antisocial Behaviour etc. (Scotland) Act 2004, Section 126. If the user is warned under Section 126 no Conditional Offer should be issued under Section 3.

In circumstances where a Red Light, Pedestrian Crossing, Solid Line or similar offence is committed where a Section 2 offence is being reported these offences should be subsumed within the Section 2 offence as a course of conduct.

In circumstances where an offence has clearly occurred and enquiry has failed to trace the accused, only one undetected Road Traffic Offence should be recorded i.e. Fail to Stop or Careless Driving or Dangerous Driving.

Mobile Devices

An 'interactive communication' may refer to the sending or receiving oral or written messages and where there is sufficient evidence can be dealt with in terms of the Road Traffic Act, 1988 Section 41D(b). Where the conduct falls outwith this e.g. taking a photo, recording a video, accessing music or other content etc. Section 41D (b) is not appropriate and in these circumstances, where there is sufficient evidence, consideration should be given to recording a careless or dangerous driving offence. A conditional offer of fixed penalty ticket for careless driving must not be issued.

313/000 Road Traffic Act 1988, Section 103(1) (a) (b)
Driving whilst disqualified

General Rule

One crime for each continuity of action

Definition

Section 103

(1) A person is guilty of an offence if, while disqualified from holding or obtaining a licence, he—

- (a) obtains a licence, or
- (b) drives a motor vehicle on a road.

Complainer

Procurator Fiscal

Locus

Where vehicle stopped or various as appropriate

Examples

Example 1 A driver is stopped and found to be driving whilst disqualified, further investigation reveals that the driver has been working as a courier, and during the enforcement has driven various vehicles on a number of occasions, which is evidenced by log books and eye witness accounts.

- 1 x Road Traffic Act 1988, S103 (1) (b), Drive while disqualified (continuity of action)

- Example 2 A disqualified driver is stopped and found in possession of a falsified driving licence. During investigation it transpires that they have recently traded in a vehicle and the sales person has given a statement to the effect that they witnessed them driving two separate vehicles.
- 1 x Road Traffic Act 1988, S103 (1) (b), Drive while disqualified
 - 1 x Road Traffic Act 1988, S103 (1) (a), Obtaining licence while disqualified
 - 2 x Road Traffic Act 1988, S143 (1) (a), No insurance (offence per vehicle)
- Example 3 A disqualified driver is witnessed driving on three occasions by three separate police crews none of whom are in a position to stop vehicle.
- 1 x Road Traffic Act 1988, S103 (1) (b), (continuity of action)
- Example 4 A driver is stopped and whilst shown to be a provisional licence holder, is driving with no 'L' plates and unsupervised is also disqualified 'until test passed'.
- 1 x Road Traffic Act 1988, S103 (1) (b), Drive while disqualified
- Example 5 Police stop 'A' driving vehicle owned by 'B'. 'A' is disqualified from driving and has no insurance and there is evidence that 'B' is aware of this.
- 1 x Road Traffic Act 1988, S103 (1) (b), Drive while disqualified
 - 1 x Road Traffic Act 1988, S143 (1) (a), No insurance
 - 1 x Criminal Procedure (Scotland) Act, S293 Aid and Abet (relates to the cause and permit disqualified driving element)

- 1 x Road Traffic Act 1988, S143 (1) (b), Cause and permit no insurance

Note

In circumstances where Officers have obtained further evidence of a disqualified driver driving on previous occasions, this cannot be counted as additional crimes and would be considered as 'Continuity of Action'. A date range would be noted and only one Road Traffic Offence would be recorded on the Crime Report. This does not prevent the officer submitting the full circumstances to the Procurator Fiscal.

The disqualification is against the driver, and is not dependent on the number of vehicles driven; this would be considered a 'continuity of action'. The counting rule for insurance offences is per vehicle, and two charges would apply.

Where a person who is disqualified from driving until he passes a test applies for a provisional licence, drives without a supervisor (where required) and 'L' plates, he is guilty of driving while disqualified in contravention of Section 103 and not merely of failing to comply with the conditions of his provisional licence.

When labelling a Section 103 or a Section 87 offence of the Road Traffic Act 1988, a Section 143, Driving without Insurance may be considered, however this should only be applied where relevant evidence exists.

Retrospective Recording

If a driver has been stopped and found to be a disqualified driver and it is later discovered they have been stopped on previous occasions for other Road Traffic Offences, e.g. mobile phone, seatbelts etc. further disqualification charges cannot be libelled. Those occasions cannot be counted as additional disqualification charges and no additional Crime Reports raised, but information may be added to the SPR to allow the courts to consider the whole circumstances and to ensure the appropriate conviction is achieved.

316/000 Road Traffic Act 1988, Section 143
Driving without insurance

General Rule

One crime for each vehicle

Definition

Section 143

(1) Subject to the provisions of this Part of this Act—

(a) a person must not use a motor vehicle on a road or other public place unless there is in force in relation to the use of the vehicle by that person such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Part of this Act, and

(b) a person must not cause or permit any other person to use a motor vehicle on a road or other public place unless there is in force in relation to the use of the vehicle by that other person such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Part of this Act.

(2) If a person acts in contravention of subsection (1) above he is guilty of an offence.

Complainer

Procurator Fiscal

Locus

Where offence occurs or various as appropriate

Examples

- Example 1 Registered keeper of vehicle is stopped by Police and found to have no valid policy of insurance.
- 1 x Road Traffic Act 1988, S143 - Drive without insurance.
- Example 2 Police stop vehicle being driven by registered keeper who has no insurance. Enquiry confirms that the registered keeper has driven the same vehicle without insurance on four previous occasions.
- 1 x Road Traffic Act 1988, S143 - Drive without insurance (offence per vehicle)
- Example 3 As above where evidence that keeper has driven a second vehicle without a valid policy of insurance.
- 2 x Road Traffic Act 1988, S143 - Drive without insurance (offence per vehicle)
- Example 4 Person is stopped by Police on Day 1 where they are issued with papers requiring them to produce insurance documents at a Police station. Before doing so the same person is stopped by Police driving the same vehicle on Day 2 and issued with similar papers. Further enquiries confirm that the person had no insurance cover in place on either date.
- 2 x Road Traffic Act 1988, S143 - Drive without insurance
- Example 5 A person other than registered keeper is stopped by Police and found to have no valid policy of insurance to drive vehicle and there is no evidence to confirm that that the registered keeper is aware of this.
- 1 x Road Traffic Act 1988, S143 - Drive without insurance.
- Example 6 As above where there is evidence that the registered keeper is aware driver has no valid policy of insurance.
- 1 x Road Traffic Act 1988, S143 - Drive without insurance (driver)

- 1 x Road Traffic Act 1988, S143 - Cause and permit (keeper)

Example 7

As above where there is evidence that the registered keeper is aware the driver has no valid policy of insurance, and the registered keeper is also found to have no valid policy of insurance.

- 1 x Road Traffic Act 1988, S143 - Drive without insurance (driver)
- 1 x Road Traffic Act 1988, S143 - Cause and permit (keeper)
- 1 x Road Traffic Act 1988, S144A - Keep motor vehicle with no insurance (keeper)

Example 8

Police stop a vehicle where the driver "A" is found to have no driving licence. Further enquiry confirms that "A" has an insurance policy in force which covers him for driving that vehicle for third party risks but that a false declaration was made to the insurers in that "A" failed to disclose having no licence.

- 1 x Road Traffic Act 1988, S87 - No licence
- 1 x Road Traffic Act 1988, S174 (5) - Provide false statement to obtain insurance (SGJD Code 25/000).
- Note that the same guidance applies whether or not the insurers confirm that they will honour the policy. In these circumstances there is no requirement to record Road Traffic Act 1988, S143 - No insurance.

Note

Cause and Permit offences should only be recorded where there is evidence to the fact that the accused in the cause or permit was aware that the driver had no insurance and gave them permission to drive.

Road Traffic Act 1988, S144A (1) & (2) - Registered keeper of motor vehicle with no insurance policy in force or security for third party risks

DVLA in association with the Motor Insurance Bureau have the primary responsibility for the enforcement of Section 144A and have a policy in place of providing warning letters prior to enforcement action. Whilst many offences under this section will be dealt with directly by DVLA, the Police may have occasion to do so.

The option of issuing a conditional offer is not applicable in respect of Section 144A. Under normal circumstances if not being dealt with by DVLA, Section 143 would apply if a vehicle is parked on a public road as it is considered as being “used” and as such would require to be insured for a minimum of third party risks. Section 144A would only be expected to be used if DVLA are not dealing, the vehicle is off the road and no statutory off-road SORN declaration has been made. Where an officer has reasonable belief that a vehicle may not be insured they may confirm this via Police National Computer and Motor Insurance Bureau. If no insurance is recorded against the vehicle, officers shall require to make efforts to speak to the registered keeper to confirm no insurance is in force e.g. the vehicle may be insured under a trade policy etc. No crime report is required to be created unless enquiry traces the vehicle owner and it is confirmed no insurance is in force.

**307/000 Road Traffic Act, Section 170(2) & (4)
Fail to stop after accident**

**Road Traffic Act 1988, Section 170(3) & (4)
Fail to report accident**

General Rule

One crime for each offence (see notes)

Definition

Section 170

- (1) This section applies in a case where, owing to the presence of a mechanically propelled vehicle on a road or other public place, an accident occurs by which—
- (a) personal injury is caused to a person other than the driver of that mechanically propelled vehicle, or
 - (b) damage is caused—
 - (i) to a vehicle other than that mechanically propelled vehicle or a trailer drawn by that mechanically propelled vehicle, or
 - (ii) to an animal other than an animal in or on that mechanically propelled vehicle or a trailer drawn by that mechanically propelled vehicle, or
 - (iii) to any other property constructed on, fixed to, growing in or otherwise forming part of the land on which the road or place in question is situated or land adjacent to such land.
- (2) The driver of the mechanically propelled vehicle must stop and, if required to do so by any person having reasonable grounds for so requiring, give his name and address and also the name and address of the owner and the identification marks of the vehicle.

(3) If for any reason the driver of the mechanically propelled vehicle does not give his name and address under subsection (2) above, he must report the accident.

(4) A person who fails to comply with subsection (2) or (3) above is guilty of an offence.

Complainer

Procurator Fiscal

Locus

Where accident occurs or various as appropriate

Examples

Example 1 A car being driven dangerously during a Police pursuit collides with four vehicles before vehicle is stopped and driver apprehended.

- 1 x Road Traffic Act 1988, S2 - Dangerous Driving
- 1 x Road Traffic Act 1988, S163 - Fail to Stop For Police
- 1 x Road Traffic Act 1988, S170 - Fail to Stop After Accident - there is no requirement to record a S170 offence for each collision as this is considered to be a continuous course of conduct.

1 x Road Traffic Act 1988, S143 - Drive without insurance.

Example 2 Vehicle damage discovered, unclear as to the cause of the damage e.g. accidental damage caused by shopping trolley.

- Application of the 'balance of probabilities' suggests accidental damage, with no clear indication this has been the result of a collision with another vehicle or a vandalism. This should be recorded as an incident only.

- Example 3 Vehicle damage discovered which suggests this has been the result of a vehicle collision e.g. paint or other residue found on vehicle, and it is unclear whether the driver of the other vehicle would have been aware.
- Application of the ‘balance of probabilities’ suggests the other vehicle driver may have been unaware of the collision.
- Example 4 Vehicle damage discovered where the extent of damage indicates it is more than likely that the other driver was aware of the collision, or information provided from witnesses to confirm this to be the case.
- Application of the ‘balance of probabilities’ suggests the other vehicle driver would have been aware of the collision. An offence of ‘Fail to Stop’ should initially be recorded pending further enquiry, which may result in further offences being recorded and detected. If enquiry fails to identify the accused this should remain recorded as an undetected ‘Fail to Stop’ offence.

Note

In circumstances where an offence has clearly occurred and enquiry has failed to trace the accused, only one undetected Road Traffic Offence should be recorded i.e. Fail to Stop or Careless Driving or Dangerous Driving.

When circumstances which amount to Hit and Run type collisions are reported incidents are required to be raised and fully updated to dispel any criminality initially inferred (e.g. damage so minor in nature that driver unaware of collision), however if unable to dispel initial criminality a Crime Report must be raised to facilitate any necessary enquiry.

309/000 Road Traffic Act, Section 172
Fail to provide information to identify driver

General Rule

One crime for each offence

Definition

Section 172

(1) Where the driver of a vehicle is alleged to be guilty of an offence to which this section applies—

- (a) the person keeping the vehicle shall give such information as to the identity of the driver as he may be required to give by or on behalf of a chief officer of police, and
- (b) any other person shall if required as stated above give any information which it is in his power to give and may lead to identification of the driver.

Complainer

Procurator Fiscal

Locus

See examples

Examples

Example 1 Vehicle photographed by camera speeding in Division X. The registered keeper does not respond to a Road Traffic Act 1988, Section 172 notice and officer attends at keeper's home address in Division Y to carry out Section 172 requirements. Registered keeper fails/refuses to provide details of the driver and is charged with a Section 172 offence.

- 1 x Road Traffic Act 1988, S172 (Locus is Division X where S172 notice is sent from)

Example 2

Vehicle photographed by camera speeding in Division X. The registered keeper does not respond to a Road Traffic Act 1988, Section 172 notice and officer attends at keeper's home address in Division Y to carry out Section 172 requirements. Registered keeper fails/refuses to provide details of the driver and is charged with a Section 172 offence. Evidence is obtained which confirms the registered keeper was driving the vehicle at the time of the speeding offence.

- 1 x Road Traffic Act 1988, S172 (Locus is Division X where S172 notice is sent from)
- 1 x Speeding offence (locus is Division X)

Example 3

Vehicle is involved in a collision in Division X and fails to stop. The registered keeper resides in Division Y and officer attends at home address requesting details of the driver of vehicle at material time per Road Traffic Act 1988, Section 172 requirements. The person refuses/fails to provide details.

- 1 x Road Traffic Act 1988, S172 (Locus is Division Y where S172 procedure carried out - unlike above examples no letter is sent out)
- 1 x Road Traffic Act 1988, S170 and other relevant Road Traffic offences (Division X)

**78/003 Road Traffic Act 1988, Section 30
 Drunk When Riding a Cycle**

General Rule

One crime for each accused

Definition

A person who, when riding a cycle on a road or other public place, is unfit to ride through drink or drugs (that is to say, is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the cycle).

Complainer

Procurator Fiscal

Locus

Where crime takes place

Examples

No examples

Note

The police are not empowered to require cyclists suspected of contravening Section 30 above, to give breath specimens for a breath test, or specimens of blood or urine, under Sections 6 and 7. Any request to such a cyclist to provide a specimen for laboratory testing must, therefore, be made in terms similar to those used in requesting him to undergo medical examination and tests, namely he must be told that he is entitled to refuse, and that if he agrees, the result of the analysis of the specimen may be used in evidence.

Vehicles (Crime) Act 2001 – Supply of Registration Plate Offences

The following General Rules will be used for offences recorded under Vehicle (Crime) Act 2001, Sections 24 to 29:

Section 24(4)

- Registered supplier of registration plates failing to keep record of sale in accordance with Regulations.
 - o One Crime Per Registered Supplier (if more than one premises the principle place of business should be used) – (Group 8 – SGJD 399/000)

Section 25(3)

- Registered supplier of registration plates failing to obtain information from prospective purchaser.
 - o One Crime Per Purchase Transaction – (Group 8 – SGJD 399/000)

Section 26(7)

- Right to enter and inspect premises – obstruction.
 - o One Crime Per Business Premises (Group 7 – SGJD 72/005)

Section 28(1)

- Selling a plate or other device as a registration plate knowing that it is not a registration plate.
 - o One Crime Per Accused (Group 3 – SGJD 25/000)

Section 28(2)

- Supplying a plate or other device as a registration plate knowing that it is not a registration plate
 - o One Crime Per Business Supplied (Group 3 – SGJD 25/000)

Section 29(1)

- Supplying plates or other device to an unregistered person knowing that it is not a registration plate.
 - o One Crime Per Business Supplied (Group 3 – SGJD 25/000)

Tachograph Offences

Example A HGV driver is stopped and on examination of the vehicle's tachograph recording equipment it is ascertained that they have driven on 5 occasions exceeding the 4 and a half hour rule without observing breaks of at least 45 minutes.

- 5 x Transport Act 1968, S96 (11A), Fail daily rest

Such offences are recorded for each occasion (electronic reading). This practice ensures correct statistical information is supplied to the Transport Department.

Discretion

It should be noted that the majority of Road Traffic Offences are not victim based and SCRS does not remove an officer's power of discretion when dealing with minor Road Traffic violations. In circumstances where discretion has been exercised and the person verbally warned there is no requirement to raise a crime report. Similarly, when a decision is made not to issue a Prohibition Notice there is no requirement for an offence to be recorded.

Vehicle Defect Rectification Scheme

318/000` Registration Plate

319/000 Lighting

320/000 Other than Lighting

General Rule

As outlined by legislation (one offence per defect found)

Where a police officer discovers vehicle defect(s) in respect of which a Vehicle Rectification Form has already been issued, no further Form is to be issued.

Where these defect(s) are of a dangerous nature and it is clear that the driver has continued to use the vehicle without having taken remedial action, he/she must be reported. In these circumstances it is to be made clear to the driver that he/she is still required to provide evidence of rectification in respect of the original defect(s) for which the Form was issued.

Where the driver is not the owner of the vehicle he/she is to be instructed to inform the owner as soon as possible that defect(s) have been detected which come within the scope of the scheme and that the provisions of the scheme have been accepted by the driver.

Officers who are not 'authorised examiners' will only issue Vehicle Rectification Forms in respect of obvious defect(s) to vehicles where no actual inspection is necessary to establish that the defect(s) exists.

In circumstances where it is considered that the nature of a particular defect renders a vehicle to be in a dangerous condition an offence under Road Traffic Act 1988, Section 40A(a) (Vehicle in dangerous condition) will be recorded. Only one Section 40A (a) offence will be recorded to account for all defects which are considered to be dangerous. Defects which are not considered to be dangerous will be recorded as an

offence for each defect found. Similarly, offences relating to illegal modifications not considered to be dangerous will be recorded as an offence for each modification.

Example: Police examine vehicle and find two defects considered to be dangerous, four non-dangerous defects and two illegal modifications.

- 1 x Road Traffic Act 1988, S40A (a), 4 x defect offences, 2 x modification offences.

If the condition of a vehicle being driven is such that it would be obvious to a competent and careful driver that driving the vehicle in this current state would be dangerous then Road Traffic Act 1988, Section 2, Dangerous Driving should be considered. Where sufficient evidence exists this may be recorded in addition to Section 40A (a).

List of Offences to which the Scheme can be applied by all Uniformed Officers

Road Vehicle (Construction and Use) Regulations 1986

Exhaust	Obviously damaged, e.g. hanging down
Obligatory lights	Not maintained
Mirrors	No rear mirror
Mud wings	Not fitted
Parts and accessories	Not maintained
Petrol tank	Cap not fitted
Seat belts	Not maintained
Tyres	Completely devoid of tread
Washers	Not fitted
Wipers	Damaged or missing

Road Vehicle Lighting Regulations 1989

Stop lamps	Not maintained
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Indicators	Not maintained
Obligatory lights	Not showing
Reflectors	Obscured and inefficient
Registration plate	Not illuminated

Vehicle Excise and Registration Act 1994

Registration plate	Obscured or not displayed
	Characters Wrongly spaced

List of Offences to which the Scheme can be applied by Authorised Examiners Only

Road Vehicle (Construction and Use) Regulations 1986

Brakes	Not maintained
Horn	Not fitted or not working
Speedometer	Not maintained
Steering	Not maintained
Tyres	Not properly inflated
	Cut or break in fabric
	Lump or bulge
	Insufficient tread
	Mixture of tyres

Any further guidance relating to the recording of Road Traffic Offences should be directed to the Crime Registrar.



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