

SCOTTISH CRIME RECORDING STANDARD

CRIME RECORDING AND SCOTTISH GOVERNMENT COUNTING RULES

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 Standards (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.

Ongoing consultation on the formulation and development of the policy on crime recording is provided through electronic communication and working groups comprising members of Police Scotland, Scottish Government Justice Analytical Services and the Crown Office and Procurator Fiscal Service (COPFS).

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PART 1

Scottish Crime Recording Standard

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1. 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 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.

Accurate 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.

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 and is supported by the Scottish Government Justice Directorate Counting Rules for Crime.

Crimes and offences are grouped under recognised categories for statistical purposes as defined by the Scottish Government.

All crime records 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.

Any further guidance should be sought from the Police Information Network (Scotland) (PINS) database.

2. 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.

3. 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 statute¹; 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.

¹ The police service will determine this based on their knowledge of the law and counting rules.

SECTION 'B' - Whether and When to Record

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Whether to Record

1. Recording A Crime

An incident will be recorded as a crime 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.

Where children under 8 are reported as having been involved in criminal behaviour, prior to a recording a crime record, the officer involved must determine whether a crime in fact has been committed, or whether it was accidental/unintentional.

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.

Where officers can identify the persons involved from an image and, on the balance of probabilities, the officer believes that a crime has occurred, an investigation should be considered. If enquiry establishes a crime has occurred, a crime record should be raised.

Where a crime type has been amended on a crime record, particularly if a crime is being upgraded or downgraded, the rationale must be noted on the crime record 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.

2. 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. Exceptions to this are:

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- Where duplicate or multiple crime or incident records have been raised, cross-referencing to the master record is necessary;
- When investigation has established that the crime occurred outside the Services' jurisdiction.

Recording on Other Systems (including 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 record. 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 and where 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 a complainer reports an incident which initially indicates a crime may have occurred and where sufficient detail has been recorded on the incident, a crime report must be raised, even though the police have been unable to contact the complainer to obtain further information.

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 record is not being raised, the auditable incident record must be fully updated to explain the circumstances.

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.

Visual Recording Systems (e.g. CCTV)

It is not the intention of the SCRS to record as crimes all incidents that could be construed as crimes when viewed remotely. Incident reports from visual recording systems should be treated as reports by a third party coming to the attention of the police. 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.

Anonymous Reports

Anonymous reports of crime must be supported by corroborative evidence prior to the creation of a crime record. 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.

3. 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. A crime record should be raised for any crime related incident as defined by the SCRS, which is perceived to be a crime by the victim or any other person. No corroborative evidence is required before a crime record 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.

4. Non Co-operative Victims

In circumstances where a person believes that a crime has occurred, but the victim, witness and/or complainer refuses to co-operate with the police, a crime record will be raised and the appropriate 'Non co-operative' aggravator/marker assigned, provided that there is sufficient information to confirm a crime has occurred.

5. 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 antisocial behaviour, minor acts of disorder and 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, there is no requirement for a crime record 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.

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.

6. Incidents on School Premises

When a minor incident 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 incident²;
- 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.

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² 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.

7. Other Agencies

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 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 record to be raised.

Examples of other reporting agencies include:

British Telecom
Department for Transport
Department for Work and Pensions
Fire and Rescue Service
Food Standards Agency
Gangmasters Licensing Authority
Health and Safety Executive
HM Revenue and Customs
Local Authorities
National Health Service
Prison Service
Royal Mail
Trading Standards
UK Border Agency

8. Historical Crimes involving Violence and Sexual Offences

Where specific dates and/or loci are individually identified and can be evidenced, a separate crime record will be recorded for each occasion. If not, between dates will be recorded on a single crime record. 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.

Examples:

Where specific dates are known

- Victim reports being raped on six occasions at same locus. Specific dates are known (all after December 2010).
 6 x SOSA Section 1, Rape
- 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 December 2010).
 6 x SOSA Section 1, Rape and 3 x SOSA Section 3, Sexual Assault
- 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 December 2010).
 3 x SOSA Section 1, Rape (1 for between dates, 2 for specific dates)

Different loci

- Victim reports being raped on six occasions at locus 1 and on three occasions at locus 2. Specific dates are not known (all after December 2010).
 - 2 x SOSA Section 1, Rape (crime for each locus)
- 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 December 2010).
 - 4 x SOSA Section 1, Rape (1 crime for locus 1, 3 crimes for locus 2)

Occurring pre and post Sexual Offences (Scotland) Act 2009 (December 2010)

- 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 SOSA Section 1, Rape and 1 x Rape (Common Law)

Various offences over a period of time

- 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 December 2010). Locus 1 - 1 x Common Assault Locus 2 - 1 x SOSA Section 1 Rape, 1 x Serious Assault, 1 x Common Assault
- 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 and 1 x Common Assault (different crime classifications)
- Victim reports being raped on two occasions and on another occasion digitally penetrated, all at the same locus (all after December 2010).
 1 x SOSA Section 1, Rape and 1 x SOSA Section 2, Sexual Assault by penetration
- 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 SOSA Section 1, Rape and 1 x Common Assault

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.

9. 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 records on every occasion where a counter allegation is made. Where the decision is made not to raise a crime record, this should be clearly explained on the Command and Control Log.

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

Example: Police are called to a domestic incident by an anonymous caller regarding a woman assaulting her partner. On police attending, both parties are very drunk and aggressive. Both make counter allegations of assault, although no injuries are apparent. A third party within the house confirms that they were shouting at each other but no assault took place. The police speak to both parties in isolation and they agree that things got out of hand but neither were assaulted.

No crime records 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 (i.e. establishment of a Disorder type crime - CJ&LS Act 2010 Sec 38). In such a circumstance, it is vital that a Domestic Incident Report be raised and 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.

10. Crime related incidents involving Mental Health Sufferers

In consultation with COPFS and the Scottish Crime Registrars Group, the following guidance should be considered when a crime related incident is reported to the police involving a victim or offender suffering from Dementia or Alzheimer's. 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 record and investigate where appropriate. It is of paramount importance to recognise that the needs and wishes of the victim must be respected and considered at all times.

In all cases where a minor crime is reported, e.g. Common Assault, Theft etc. and following enquiries, it becomes apparent that the alleged offender(s) suffers from Dementia or Alzheimer's, supporting evidence³ should be obtained from a registered medical practitioner (doctor) in writing. This should be to the effect that the alleged person 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 record 'No Crimed'. In all circumstances where a serious crime is reported, e.g. Serious Assault, Sexual Offence etc., and following investigation it becomes apparent that the alleged offender(s) suffers from Dementia or Alzheimer's, a police report (SPR2) will be submitted to the Procurator Fiscal. A decision will then be made based on the medical 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 record will result in a detected crime.

Crime related incidents reported outwith this specific category of mental illness 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 record should be recorded in all cases unless medical evidence obtained from a registered medical practitioner (doctor) in writing is available from the outset which clearly confirms a lack of criminal intent and the incident is fully updated to this effect.

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³ Supporting evidence relates to a signed statement/document which may be recorded in the police officers' notebook/PDA or other related document.

When to Record

In all cases, where a crime is made known to the police, by any means, a crime record must be recorded as soon as reasonably practicable. Recording should not be delayed in order to wait for further details of the case, including the likelihood of obtaining a detection.

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

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.

1 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.

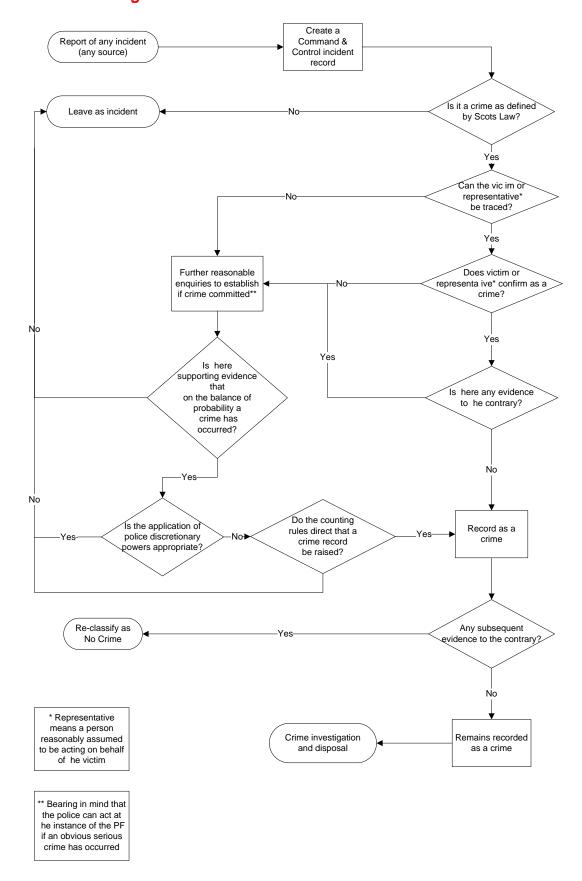
Please see Section 'F' in relation to crimes committed outside jurisdiction of Police Scotland.

2 Reasonably Practicable

The importance of ensuring that crime records 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.

Crime Recording Flowchart



SECTION 'C'

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.
- The Civic Government (Scotland) Act, 1982, Section 47 Urinating or defecating in circumstances causing annoyance to others.
- The Civic Government (Scotland) Act, 1982, Section 50(1) Being drunk and incapable in a public place.
- The 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.
- The Criminal (Consolidation)(Scotland) Act, 1995, Section 52(1) Vandalism
- The Local Government (Scotland) Act, 1973, Sections 201 and 203 Consuming alcoholic liquor in a public place.
- Breach of the Peace
- Offensive Behaviour at Football and Threatening Behaviour (Scotland) Act, 2012, S1. (legislation introduced on 1.3.12. Introduction of FPNs on 23.3.12).

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.

- The 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, 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.

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

but 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.
- 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 NOT PROTECTIVELY MARKED

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 nonserious 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 non-cooperative / un-cooperative with the police and a decision is taken not to investigate the crime, a marker, which is searchable for statistical purposes, must be placed on the crime record to record this fact.

To prevent the abuse of such a policy the decision not to investigate must be made by a Crime Manager. In the case of community sensitive incidents, consultation may need to take place at a more senior level.

EXCERPTS FROM 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.

<u>Uncorroborated allegations and the Moorov Doctrine</u>

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 and Reporting of Drug Offences

In order to provide clarity in regard to types of drugs which can be recorded as detected and reported to the Procurator Fiscal on the strength of a positive presumptive field test, a full list of such drugs are noted below;

- Diamorphine
- Ecstasy
- Cannabis or Cannabis Resin
- Cocaine
- Diazepam

With other drug types, it is not permissible to charge the accused on the basis of a presumptive field test.

At the time of recovery, suspects should be warned that the substance will be subject to laboratory testing and that they may be charged and reported depending on the outcome of the tests. At this point officers must submit an 'Undetected' Crime Report, based on the suspected drug type, with an explanation in the 'Enquiry Log' that the substance is awaiting analysis.

Where a combination of drugs are recovered, any of which fall out with the above criteria, those that can be reported on the strength of a positive presumptive field test or presumptive laboratory test may be reported. It is imperative that the Remarks section of the original report alludes to the fact that other drugs are pending full analysis. Additional charges may be libelled at a later date using a Subject Report if the original report is a CUSTODY and additional charges are reported within six weeks. Otherwise, a new report should be submitted, cross-referenced to the original report number. This reporting procedure is dependent on arrangements with local Procurators Fiscal and may not apply to all Divisions.

SECTION 'D'

SUBSUMING OF CRIMES

1

Prior to December 2010, subsuming of crimes was almost, but not entirely, restricted to crimes within crime groups 3 and 4. The introduction of Sexual Offences (Scotland) Act 2009 has resulted in subsuming now being applicable within Group 2, albeit on a restricted basis.

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	Rationale / Rule	Crime Group
Person A is abducted and sometime later whilst being held against their will, is stabbed.	1 x Abduction and 1 x Serious Assault or Attempt Murder dependant on the evidence.	Group 1
	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	Rationale / Rule	Crime Group
Person A threatens Person B with a knife, demanding their wallet. Person B refuses and a scuffle ensues with Person B being stabbed several times to the abdomen resulting in serious injury. Person removes the wallet from Person B's jacket and makes off.	This would be recorded as a crime of Robbery with the Attempted Murder subsumed. 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.	Group 1
Person A accidentally sustains a broken arm whilst being abducted.	1 crime of Abduction. The injury has been sustained as part of the abduction and is not a deliberate act.	Group 1

Group 2

In Group 2 Sexual Offences, 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.

Group 2 crimes are subsumed in line with the legislation. See Annex 2 for further information.

Where two crimes from Group 2 occur within the same incident, involving the same victim and the same offender, one crime being incident based, it may be subsumed within the victim based crime.

Example	Rationale / Rule	Crime Group
Person A brings older child C into a room to watch Person A and their partner Person B having sexual intercourse. Person A then digitally penetrates older child C.	Penetrative sexual activity is a victim based crime. Causing any child to be present during a sexual activity is an incident based crime. The same victim and offender are involved in both activities within a single incident therefore only the penetrative victim based crime would be recorded.	Both Group 2
Complainer A is assaulted and raped by suspect B. Following the Rape suspect 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 could have been subsumed.	Group 1, Group 2 & Group 6

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

Example	Rationale/Rule	Crime Group
Complainer A and Suspect B were having an argument when suspect B started hitting complainer A. Complainer A left the room and went to bed. The following morning the argument started again. Suspect B hit complainer A again and also sexually assaulted her.	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 be subsumed into the sexual assault.	Group 2 & Group 6

Groups 3 & 4

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

Example	Rationale / Rule	Crime Group
Male comes across a JCB sitting stationary in a wooded area. He finds the keys to the JCB in the battery box to the rear of the vehicle and drives it around, damaging the JCB, before running off	The damage to the JCB would be subsumed into the theft of the vehicle as this is the more serious crime.	Group 3 & Group 4
Person 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.	Both Group 3
Person A drives a moped over a golf course, turning 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 Malicious Mischief Due to the malicious destruction of property and the high value of damage caused.	Group 4
Person 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.	Group 3
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	Both Group 3
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.	Group 3 & Group 4

Example	Rationale / Rule	Crime Group
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.	Group 3 & Group 4
Person A steals a credit card and hands it to Person B. Person B uses the card twice to remove funds at an ATM and then passes the card to Person C who withdraws funds three times at an ATM.	Record 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 Person C's withdrawal of funds is subsumed within that of Person B, and both are named as suspects.	Group 3
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 record is required for Theft Housebreaking Domestic as the buildings are within the same curtilage and owned by the same complainer.	Group 3

Group 6

Example	Rationale / Rule	Crime Group
An argument is taking place in a house and Person A assaults Person B, causing slight redness to the face.	1 x Common Assault. There is no public element to meet the criteria for a Breach of the Peace. There are no witnesses experiencing fear or alarm to merit a Section 38 offence being recorded.	Group 6
In a public place Person A shouts and swears at Person B before punching Person B in the face.	There is no requirement to record a Section 38 offence or Breach of the Peace in addition to the assault.	Group 6

When subsuming is not appropriate:

- Offences committed where there is no victim and the PF 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.

1

SECTION 'E'

'No Crimes'

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.
- The crime was committed in another Police Scotland Division and has been transferred to that Division for recording.
- A procedural error has been made for a non-victim based crime/offence, e.g. Section 1 warning not given for Road Traffic Offence, mistake made on ASBFPN or COFPN.

Note; Where IT capabilities allow such crimes may be recorded although they will not be shown on statistical returns.

The term 'No Crimes' relate to crimes already recorded, and are therefore distinct from incident reports that are <u>not crimed</u>.

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 Crimes'.

The reason for the 'No Crime' must be explained in detail in the crime/incident report along with the details of the requesting and authorising officer.

Examples of crime which should be 'No Crimed'

Example 1: A man reports that he was robbed. The crime is recorded and investigated but the complaint is shown to be false. The complainant is then charged with wasting police time.

'No Crime' the Robbery and record a Crime for Wasting Police Time

Example 2: A report of a sneak in theft of a handbag is reported and recorded. The complainer later telephones the police to say that her husband had placed her handbag within a cupboard without her knowledge and no theft had taken place.

'No Crime' the Theft

Examples of crime which should remain recorded

Example: 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: 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 a non co-operative marker/aggravator should be appended (No complaint does not

necessarily mean no crime)

Recorded in Error/Duplicates

If the crime, as alleged, constitutes part of a crime already recorded. IT Systems may have the ability to differentiate this by recording such crimes as 'Duplicates'. The crime number in respect of the 'live' crime record should be cross-referred on any duplicate crime record, providing an auditable trail.

If the reported incident was recorded as a crime in error. Some IT Systems may have the ability to record such instances as having been 'Recorded in Error'.

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.

1

SECTION 'F'

Crimes outside the jurisdiction of Police Scotland

Thefts from Airport/Port

The locus recorded for the theft of or from baggage/container whilst in transit by air or sea will be the airport/port of departure, unless there is evidence to suggest the theft took place at the airport/port of arrival.

Dependent on IT systems, where the crime occurs outside that area, it may be recorded under a specific code/title in order to obtain statistical and analytical information.

UK Airports Only – Once recorded, a copy of the crime report will be passed to the relevant Airport Police in order that they may record a crime in their area. A crime number should be obtained and cross-referenced on the initial report. International Airports – A crime record will be recorded by the policing area receiving the report and marked accordingly.

Other Forces, British Transport Police (BTP) etc.

In circumstances where a crime is committed within the jurisdiction of another policing area, the receiving Force will record an initial report.

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.

It is good practice for the area recording the crime record to 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 Crime Registrar for review. The Crime Registrar from the original area will review the circumstances and decide, in consultation with the other 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.

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

Ministry of Defence

Crimes committed at locations where a permanent policing presence is maintained by the Ministry of Defence Police (MDP) should be recorded by them. In locations which are MOD property but where the MDP do not maintain a permanent policing presence crimes should be recorded by the Division covering that area.

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 incident e.g. disorder which starts on the jurisdiction of BTP they will record the crime, or,
- If it starts on another police area that other force will record the crime.

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 record (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 send you the crime reference number by Fax or E-mail.



If a crime number is required urgently the BTP Crime Recording Centre can be contacted on

For all other enquiries in relation to crime management issues in Scotland please contact,

British Transport Police
Scottish Area
Crime Management Unit
90 Cowcaddens Road
Glasgow
G4 0LU
Tel No.
Fax.
marked for the attention of Crime Management Unit)
E-mail –

A breakdown of railway stations and the details of car park jurisdiction for Scotland can be provided by BTP.

Crimes out with the United Kingdom

Where it is established the crime occurred out with the UK, a crime record should be recorded. Where there is sufficient information available, consideration should be given for the intelligence to be disseminated to SOCA for their information. The crime record can then be updated to 'No Crime'. Any decision to transfer the enquiry to the respective Country will be determined by relevant protocols.

SECTION 'G'

1

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 on their Crime Recording Systems.

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'

1

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, e-mail, letter, facsimile or in person.

It is not the intention of the SCRS to record as crimes all incidents that could be construed as crimes when viewed remotely. Incident reports from visual recording systems should be treated as reports by a third party coming to the attention of the police, 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.

Where officers can identify the persons involved from an image and, on the balance of probabilities, the officer believes that a crime has occurred, an investigation should be considered. If enquiry establishes a crime has occurred, a crime record should be raised.

Anonymous reports of crime must be supported by corroborative evidence prior to the creation of a crime record. 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'

1

Hate Crime and Aggravators/Markers

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 perceived to be a hate crime 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 Identify

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 victims 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.

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.

Dependent on IT systems the following may have been included in order that statistical information can be sought and analytical work carried out on nominal records.

Ethnicity

Used to record a person's own perception of their ethnic origin whether it be a hate crime or not.

<u>Language</u>

Used to record the most commonly used languages. Where the language used is not listed the 'Other' option will be selected and the relevant details added.

Interpreter Required

Unless English is the preferred language this indicator should be marked appropriately.

Relationship

This facility will record the relationship between the victim/complainer and the suspect/accused.

Note: In circumstances where there are multiple offenders and only one is related their relationship will be described in the crime record.

On Wednesday, 24th 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.

In addition to the aggravators presently used the following aggravators/markers have been introduced in order to provide additional statistical and analytical information. There will be a variation of the terms used in some Divisions, however the definition of each term remains the same i.e. Unco-operative Victim / Unwilling and Vulnerable = Non Co-operative victim.

Football: This will be used when the crime relates to Organised

Football Related Disorder where football hooligans (casuals) are involved, whether offender or victim.

Non Co-operative

Victim:

This will be used where the victim of a crime fails to assist

the police in their investigation e.g. declines to supply

personal details, withdraws complaint etc.

Bogus Crime: This will be used where persons purport to be bona fide

workers e.g. Gas/Electricity/Water Board officials, Social Workers, Health Visitors, Window Cleaner etc. This should also be used in all instances of bogus official/caller

crime.

Hate Crime: A crime motivated by malice or ill-will towards a social

group.

Domestic: Domestic abuse will encompass any form of physical,

sexual or emotional abuse, which takes place within the context of a close relationship i.e. Partners who are married, co-habiting or otherwise, and includes partners of

the same sex and ex-partners.

Note – The definition is relationship and NOT locus based, therefore crimes occurring within and outwith the home shall be recorded with a Domestic aggravator/marker.

Child/Juvenile: Victim under the age of 16

Elderly: Victim aged 65 and over

VulnerableUse for the mentally / physically impaired etc. (exclude

Child/Elderly)

Historical This will primarily be used with Group 2 offences where

the offence reported is 2 or more years old from the time of the incident to it coming to the attention of the police. (Some IT systems are configured appropriately and may

not require to use this aggravator/marker)

E-Crime: Criminal activities where the use of Information and

Communications Technology has been fundamental in their commission or facilitation.

Whilst offences relating to computer misuse and on-line grooming, for example, are more obvious illustrations of E-Crimes, further examples, although not a definitive list, of when the marker should be used would include:

- where a person is concerned in the supply of controlled substances and it is known that the majority of his/her criminal communications are occasioned either by e-mail or by mobile phone;
- threats received by email or text messaging, menacing injury to the recipient or damage to his/her property; or
- a fraudulent scheme or theft carried out using a computer, phone or any other ICT equipment.
- The underlying principle is that the 'E-Crime' marker should be applied where the use of ICT equipment plays an integral part in the commission of the crime, and should not be used for example, where a computer is stolen from a housebreaking.

There will be no requirement to append this marker in respect of Communications Act offences as these are easily retrieved.

Commercial Crime:

Any theft, robbery or attempt thereof of commercial goods from premises or in, or from, a vehicle where the goods have a wholesale value greater than £10k (goods only). Commercial goods being interpreted as bulk quantities of cigarettes, spirits, computer and electrical components, or any other commodity.

Enquiries Concluded:

(Requested by Sexual Crime Working Group for introduction as of 1st April, 2009.)

The crime or offence relates to a serious sexual crime, which potentially may be subject to legal proceedings under Solemn procedure;

The crime relates to an allegation in which there is an identified, definitive suspect;

The crime relates to an allegation which fundamentally hinges on corroboration on the issue of consent/lack of consent on the part of the complainer to participation in the sexual act:

Police enquiries have been exhausted;

The crime will remain undetected.

SECTION 'J'

Weeding Policy

The following is the agreed Police Scotland weeding policy for all documentation, records and productions relative to serious and standard crime enquiries.

Function	Retention Action	Examples of Records	Notes
Description			
The process of Recording and Investigating the incidence of Crimes & Offences made known to the police Serious Crime Enquiry (undetected)	Retain until case is detected	Police Officers Notebook Police and Civilian Statements Crime Report Production Register Voluntary Attendance Forms Arrest / Detention Forms Interview Tapes Q & A Interviews Record of Statement	Unless otherwise directed by Crown Office or Procurator Fiscal Service or subject to an order under the Criminal Procedure Scotland Act 1997 Section 194 in respect of the Scottish Criminal Cases Review
Serious Crime Enquiry (detected)	From date made known to Police, Current Year + 12. Where accused is detected more than 12 months after date made known, retention period to be calculated	Voluntary Statement made by Accused Prisoner Processing Record Police Casualty Surgeon Examination Report Police Reports to Fiscal Scenes of Crime Examination Identity Parade Forms	Commission. In addition, where there is a requirement for a convicted person to register on the Sex Offenders Register, the registration does not take place until after the completion of a
Standard Crime Enquiry (undetected & detected)	from date case is reported to Crown. (Case assessment may initiate further retention) From date made known to Police, Current Year + 6. (Case assessment may initiate further retention)	Surveillance Authorisations / Logs Major Enquiry Forms Major Enquiry HOLMES tapes Witness Protection Authorisations / Files Financial Investigation / Disclosures	custodial sentence. Police forces and law enforcement agencies must ensure that where the custodial sentence exceeds the retention periods (6 and 12 years), appropriate records should be retained to facilitate

NOT PROTECTIVELY MARKED

Section "J" Section 'J'

			Section 'J'
Function Description	Retention Action	Examples of Records	Notes
The process of retaining productions relating to a Crime or Offence made known to the Police:		Productions	See also Police Scotland Policy for Disposal of Crime Records & Productions
Serious Crime Enquiry (undetected)	Retain until case is detected		
Serious Crime Enquiry (detected)	Dispose of at conclusion of criminal proceedings unless instructed otherwise by Court or Crown		
Standard Crime Enquiry (undetected)	From date made known to Police, Current Year + 6. (Case assessment may initiate further retention) In very minor cases, Current Year + 2.		
Standard Crime Enquiry (detected)	Dispose of at conclusion of criminal proceedings unless instructed otherwise by Court or Crown		

SECTION 'K'

1

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
- Resist Arrest

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'

1

Scottish Government Counting Rules

The Scottish Government advise how crimes/offences should be recorded for statistical purposes, otherwise known as the Scottish Government Counting Rules. During an HMICS Inspection on SCRS in 2007 a recommendation was made that the Counting Rules should be reviewed.

As part of this review, following consultation with Crime Registrars, the Scottish Government advised that as of 1st April, 2008 the Counting Rules should be more in line with the SCRS i.e. more victim focused.

In line with the 'more victim focused' approach to crime recording, from 1st April, 2008 changes were made to a number of areas in relation to the counting rules and this should be borne in mind when comparing/reviewing crime records and statistics prior to this date.

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.

Counting Rules - Quick Recording Reference by Group

Group 1 – Crimes of Violence

Crime Type	Recording	Remarks
AbductionMurderAtt Murder	1 crime for each victim	
Culpable HomicideDrugging (Assault)Plagium		
 Serious Assault/Culpable and Reckless 		
C&YP Act, Sect 12	1 crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded	
• Firearms Act, S16-18	1 crime for each offence committed	
• Extortion	1 crime for each victim/business and continuity of action*	3 incidents, same victim, same crime type, same intent, would result in 1 crime being recorded
 Robbery and Ass wi Rob 	1 crime for each victim	2 people robbed at same time would result in 2 crimes being recorded
Threats	1 crime for each victim and continuity of action or per incident (as appropriate)*	2000 threats to same individual by same person or group of people, with the same intent, would result in 1 crime being recorded
Fatal Collisions – Road Traffic Offences	1 crime for each fatal collision	2 vehicles collide, resulting in 2 persons being killed would result in 1 crime being recorded

Points to remember

- Crimes within this Group should not be subsumed* e.g. where someone is abducted and then an attempt is later made to murder them, this would be recorded as two crimes.
- Threats whether verbal or written should only be recorded if they menace some substantial injury to a recipient or property and the threat is perceived as real and deliverable. 'Threats' which do not meet this criteria may be recorded as a Breach of the Peace, Criminal Justice and Licensing (Scotland) Act, 2010 Section 38, Communications Act 2005 or Threatening Communications Act 2012 (under the Offensive Behaviour at Football legislation) depending on the circumstances.
- The crime of Serious Assault is dependent upon the injury sustained.

- The Emergency Workers Act does not affect the specific legislative protection of the police in performance of their functions under Police and Fire Reform) Scotland) Act 2012.
- Injuries and medical outcome should be reflected in the crime record.
- The definition of Serious Assault is provided within Annex 1.
- Depending on the circumstances Culpable and Reckless Conduct may be recorded and counted as a Group 1 crime e.g. transmission of HIV through sexual intercourse. Where this is a deliberate act Serious Assault must be recorded.

*See definitions provided at the beginning of this Section of 'Continuity of Action' and 'Subsume'

Group 2 – Sexual Offences

Repealed Offences Prior to 1st December, 2010

Crime Type	Recording	Remarks
 Rape (Common Law) Lewd, Indecent and Libidinous Practices Seduction Sodomy/Att Sodomy Criminal Law (Consolidation)(Scotland) Act, 1995, S5 (underage sexual intercourse) 	1 crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded	
Homosexual Acts (Illegal)Procuration of Homosexual Acts	1 crime for each relationship	

Offences on or after 1st December, 2010

Crime Type	Recording	Remarks
Rape/Having Intercourse with an Older Child	1 crime for each victim and where specific dates and/or	May be subjected to compound charge rule.
Sexual Assault by Penetration/Engage in Penetrative Sexual Activity (Older Child)	loci are identified separate crimes to be recorded	
Sexual Assault/Engage in Sexual Activity (Older Child)		
Sexual Coercion, Causing a Young Child/Older Child to Participate in a Sexual Activity		
Assault wi Rape		
Assault (Indecent)		
Coercing/Causing a Person/Young Child/Older Child to be Present During a Sexual Activity	1 crime for each incident, or course of conduct	Where mixed age group involved record lowest age group crime.
Coercing/Causing a Person/Young Child/Older Child to Look at a Sexual Image		
Causing a Person to See or Hear an Indecent Communication		
Voyeurism		

Crime Type	Recording	Remarks
Sexual ExposurePublic Indecency	1 crime for each incident, or course of conduct	Where mixed age group involved record lowest age group crime.
Communicating Indecently	1 crime for each victim and continuity of action or per incident (as appropriate)	
Prostitution (relating to person obtaining services of)	1 crime for each incident	
Administering a Substance for Sexual Purposes	1 crime for each victim	
Sexual Abuse of Trust (Children)		
Sexual Abuse of Trust of a Mentally Disordered Person		
Procuration (exc Homosexual Acts)		
Engaging while an Older Child in Sexual Conduct with or Towards Another Older Child	1 crime for each participant	
Engaging while an Older Child in Consensual Sexual Conduct with Another Older Child		
Bestiality	1 crime for each accused	
Prostitution		
Civic Govt (S) Act, S52		
• Incest	1 crime for each relationship	
Prostitution (Public Places) Section 1	1 crime for each accused or course of conduct	

Points to Remember

- The Sexual Offences (Scotland) Act, 2009 was introduced on 1st December, 2010. Offences which have occurred prior to this date should be recorded in line with the relevant legislation in place at that time.
- The Criminal Procedure (Scotland) Act, 1995 Section 294 provides legislation that means that any attempt to commit a crime under the 2009 Act is in itself a crime.

- The 2009 Act provides legislation to cover Adults, Older Children (aged 13-15 years) and Young Children (below 13 years).
- Where conduct falls within that outlined within Sections 1, 2 and 3 of the 2009 Act which relates to adults, and similarly the 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, with the most serious crime being recorded/counted for statistical purposes.
- 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 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.

- A historical modifier/marker should be recorded for statistical purposes and will be applied when a crime is made known to the police two years or more after it occurred. (Some IT systems are configured appropriately and may not require to use this aggravator/marker).
- Where offences of Section 52 of the Civic Government (Scotland) Act have occurred, involving photographs or images of children, the crimes are recorded under Group 2 Sexual Offences (previously recorded as a Group 6 offence under Handling Obscene Material).

Group 3 – Crimes of Dishonesty

Cri	іте Туре	Recording	Remarks
•	Vehicle Crime e.g. Theft MV, OLPWIMV etc. Theft including Theft Pedal Cycle and OLPs	1 crime for each vehicle owner/victim	Where several vehicles owned by different household members are broken into, a crime will be recorded for each vehicle owner Swallets stolen from jacket pockets in locker room – 5 crimes Theft OLPMV and vandalism to same vehicle would result in 1 x Theft OLPMV being recorded with the vandalism subsumed (details of vandalism within modus operandi) Bank card used on 90 occasions to withdraw cash from one account at various ATMs would result in 1 Theft OLP (ATM) being recorded
•	Bankruptcy Forgery and Counterfeiting Act Veh Excise Act – Forgery and Fraud Shoplifting False Monetary Instruments (S46A) Identity Documents Act, 2010	1 crime for each incident*	
•	Forgery and Uttering (ex Currency Offences)	1 crime for each account/victim	
•	Breach of Trust Embezzlement	1 crime for each continuity of action*	
•	Civic Govt Act, S57	1 crime for each separate property not within the same curtilage	
•	Civic Govt Act, S58 Reset	1 crime per accused	
•	Trade Marks Act, S92	1 crime for each seizure	
•	Housebreaking	1 crime for each household/ business	Where household vehicle also stolen – HB recorded only; where visitors vehicle stolen HB and Theft MV to be recorded Crimes can be subsumed if same victim e.g.

		housebreaking and house vandalised – record housebreaking and subsume vandalism, referring to this within the modus operandi Occupied hotel rooms count as housebreakings
Fraud	See section on Fraud, dependent on Fraud type	

Points to Remember

- 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 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. The term used
 for this practice is 'subsume'.
- In respect of housebreaking all acts perpetrated as part of the crime are 'subsumed' within the crime of housebreaking with the exception of crimes committed against the person.
- Modifier codes will be applied to differentiate between housebreakings at each different category of property type,

Domestic dwelling (residential)

Domestic non-dwelling (domestic garages/garden huts or sheds)
Other Property (commercial premises etc.)

- In cases where a single dwelling is separated into individually occupied dwellings e.g. hotel rooms or bedsits, a separate crime of housebreaking will be recorded for each occupied room violated. All unoccupied rooms will be treated as one crime of housebreaking.
- OLPs perpetrated as part of a housebreaking are subsumed within the substantive crime of housebreaking.
- Theft OLPs at ATMs will be recorded as one crime per account (as of 1st April, 2009).
- The reported loss of a mobile phone or other property must be accompanied by an assertion of criminality by the complainer before a crime record is raised.
- Thefts of property where the property is recovered intact with no suspect and subsequently returned to the owner will remain as a crime record and not changed to 'No Crime', unless there is evidence to disprove the crime took place.
- Where a stolen vehicle is recovered burnt out a crime record for Theft MV should be raised. If there is evidence that a different person(s) was responsible for the fire-raising a further crime record for Fire-raising will be recorded.
- A building site/compound secured by fence and padlock is not considered to be a lockfast place.
- Theft OLPs (ATMs and Petrol Pumps) will be counted for statistical purposes under Fraud (SGJD Code 025000) from 1st April, 2010.

*See definitions provided at the beginning of this Section for the definition of 'Subsume' and 'Incident'

Group 4 – Fire-raising, Malicious Mischief etc.

Crime Type	Recording	Remarks
 Vandalism Fire-raising Malicious Mischief Computer Misuse Act, S3 	1 crime for each victim/organisation	
 Culpable and Reckless Conduct (not with firearms) Endangering Rail Passengers Muirburn Reckless Conduct (with firearms) 	1 crime for each incident*	

Points to Remember

- 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 record will not be raised. All property damaged by being
 set on fire wilfully / maliciously should be regarded as fire-raising e.g.
 litterbins, vehicles, buildings.
- Vandalism/malicious mischief perpetrated as part of a housebreaking is 'subsumed'* within the substantive crime of housebreaking.
- Multiple vandalisms/malicious mischief committed within secure premises and one victim, are counted as a single crime.
- Wilful or reckless damage to property should be recorded as vandalism unless there is an element of endangerment e.g. throwing a brick at a moving vehicle. In such cases the crime of Culpable and Reckless Conduct will be applicable.
- Depending on the circumstances Culpable and Reckless Conduct may be recorded and counted as a Group 1 crime e.g. transmission of HIV through sexual intercourse. Where this is a deliberate act Serious Assault must be recorded.

^{*}See definitions provided at the beginning of this Section of 'Subsume' and 'Incident'

Group 5 – Other Crimes

Crime Type	Recording	Remarks
Offensive Weapons and Knives	1 crime per weapon (unless used in the commission of another crime)	Accused arrested for assaulting complainer with a baseball bat and when searched found in possession of another weapon. 1 crime for assault and 1 for the second offensive weapon would be recorded (baseball bat has been used in the assault)
 Bail Offences Breach of Orders inc undertaking Contempt of Court Obstruct/Conceal Weapons Fail to give details to constable Defeat/Pervert Course/Ends of Justice Money Laundering Perjury and Subornation Resist Arrest Personation of Police Wasting Police Time Explosive Substances Act, S3 Domestic Abuse (S) Act 	1 crime for each accused	On police attending on three consecutive days, accused is not within bail address between curfew times which would result in only 1 crime being recorded.
 Conspiracy Obstruct Emergency Worker or Police Mobbing and Rioting Escape and Rescue Trespass 	1 crime for each incident*	
Drug Offences	1 crime for each drug type and/or accused	
Sex Offences Act, 2003 - Notification	1 crime for each notification failure	

Points to Remember

- Mainly evidence based with no direct victim.
- If a weapon is used in the commission of a crime the offensive weapon offence is subsumed* within the main crime and regarded as an aggravator to the main crime.

- When a person is found in possession of weapons, which are not used in the commission of any other crime, then the number of crimes recorded will equate to the number of weapons found.
- If the possession of a folding pocket knife with a cutting edge of less than three inches is accompanied by the intent to use it offensively, the crime applicable is carrying an offensive weapon.
- A standard in the recording of drug offences was introduced from 1st September, 2010.
- As of 28th March, 2011 a Breach of Undertaking offence will only be recorded where no other offence has been committed i.e. a breach of a specific condition of undertaking.

^{*}See definitions provided at the beginning of this Section for the definition of 'Subsume' and 'Incident'

Group 6 - Miscellaneous Offences

Cri	ime Type	Recording	Remarks
•	Common Assault (including Police and Emergency Worker)	1 crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded	2 persons assaulted would result in 2 crimes
•	Drunk in charge of a child	1 crime for each victim	
•	Communications Act 2005 Threatening Comms Act 2012 (under Offensive behaviour at Football legislation.	1 crime for each victim and continuity of action or per incident (as appropriate)	complainer reports 20 nuisance telephone calls received over a period of time from the same person – 1 crime (continuity of action*)
•	False Calls to Emergency Services – incl. bomb hoaxes	1 crime for each *continuity of action and victim or per incident (as appropriate)	
•	Bigamy	1 crime for each marriage	
• • • • • • • • • • • • • • • • • • • •	Breach of the Peace Criminal Justice and Licensing (S) Act, Section 38 Racially Aggravated Conduct Trading without street traders Licence Litter Offences Fireworks Regulations Handling Obscene Material Refuse Disposal Act Trespass Wire Telegraphy Playing Instrument, Radios, Singing etc Asylum & Immigration Act S4 Offensive Behaviour at Football/Threatening Communications Air Navigation Order 2009 Charitable Collections	1 crime for each incident*	
•	Tobacco and Primary Medical Services (Scotland) Act, 2010 S4-6	1 crime for each sale	
•	Drunk/Possess Alcohol – sports ground Dangerous Dogs Act Dog Fouling Dogs (Protection of Livestock) Drunk and Incapable	1 crime for each accused	

Crime Type	Recording	Remarks
 Prisons (Scotland) Act Drunk when Riding a Cycle Urinating/Defecating Local Byelaw – Consuming Alcohol in Public Place Firearms – Possession of Firearm by persons previously convicted of crime Tobacco and Primary Medical Services (Scotland) Act, 2010 S7 		
Licensing Act Offences	1 crime for each accused and offence	
 Racially Aggravated Harassment Criminal Justice and Licensing (S) Act, Section 39 	1 crime for each *course of conduct	
Copyright Designs and Patents Act	1 crime for each seizure	

Points to Remember

- When a crime of disorder is brought to the attention of the police it is necessary to establish that there is an element of alarm, annoyance and disturbance present and that the circumstances amount to a crime under Scots Law before a crime record is created.
- Section 38 of the Criminal Justice and Licensing (Scotland) Act, 2010 Threatening or Abusive Behaviour, was introduced on 6th October, 2010
 due to the difficulty for the Crown in prosecuting disorderly conduct which
 occurs in a private place as a Breach of the Peace.
- Section 39 of the Criminal Justice and Licensing (Scotland) Act, 2010 Stalking, was introduced on 13th December, 2010, again due to the difficulty in prosecuting such circumstances as a Breach of the Peace.
- From 1st April, 2011 Section 50A, Criminal Law (Consolidation) (Scotland)
 Act, 1995 in relation to Racially Aggravated Conduct will only be required
 to be recorded where there is corroboration of the racial conduct,
 otherwise, this will be treated as an aggravation (see relevant section within
 manual for scenarios).
- The Control of Dogs (Scotland) Act, 2010 was introduced on 26th February, 2011 at which time the Dangerous Dogs Act, 1991 was amended in that it now covers private and public places.

^{*}See definitions provided at the beginning of this Section for the definition of 'Continuity of Action', 'Incident' and 'Course of Conduct'

SGJD CRIME CODES/CLASSIFICATIONS (GROUPS) - Effective from 1st April, 2014

Group 2	2	Sexual Offences
Group :	3	Crimes of Dishonesty
Group 4	4	Fire-Raising, Malicious Mischief etc
Group	5	Other Crimes
Group	6	Miscellaneous Offences
Group '	7	Offences Relating to Motor Vehicles
GROUF	1 :	CRIMES OF VIOLENCE etc
1		Murder
2		Attempted Murder
3		Culpable Homicide
	1	Culpable homicide (common law)
	2	Causing death by dangerous driving
	3	Death by careless driving when under influence of drink/drugs
	4	Causing death by careless driving
	5 6	Illegal driver, disqual/unlicensed etc involved in fatal accident Corporate Homicide
4	O	Serious Assault *
4	1	Causing injury etc by culpable and reckless conduct
6	'	Robbery and assault with intent to rob
7		Threats and Extortion
8		Cruel and Unnatural Treatment of Children
	1	Cruelty (neglecting & causing) to & unnatural treat. of children
	2	Child stealing (plagium)
9		Abortion
10		Concealment of Pregnancy
11		Miscellaneous
	1	Possess a firearm w.i to endanger life, commit crime & cause
	2	Abduction
	3	Ill treatment of mental patients
	4	Cruel and unnatural treatment of an adult
	5	Drugging Chamical warms offenses
	6	Chemical weapon offences
	7 8	Female genital mutilation Offences relating to Serious Organised Crime
	0	Onences relating to Senous Organised Chine

GROUP 2: SEXUAL OFFENCES

Group 1

Crimes of Violence etc

	۷.	SEXUAL OF LINGES
12		Incest
13		Unnatural Crimes
	1	Illegal homosexual acts
	3	Assault to commit unnatural crimes
14		Rape (offences prior to 1 December 2010)
	1	Rape of male (16+)
	2	Rape of female (16+)
	3	Rape of older male child (13-15 years)
	4	Rape of older female child (13-15 years)
	5	Rape of young male child (Under 13)
	6	Rape of young female child (Under 13)
15		Attempted rape (offences prior to 1 December 2010)
	1	Attempted rape male (16+)

2	Attempted	rape female	(16+)

- 3 Attempted rape older male child (13-15)
- 4 Attempted rape older female child (13-15)
- 5 Attempted rape young male child (under 13)
- Attempted rape young female child (under 13)

16 Sexual Assault

Contact Sexual Assault (13-15, 16+)

- 1 Sexual assault by penetration of male (16+)
- 2 Sexual assault by penetration of female (16+)
- 3 Sexual assault by penetration of male (13-15 years)
- 4 Sexual assault by penetration of female (13-15 years)
- 5 Sexual assault of male (16+)
- 6 Sexual assault of female (16+)
- 7 Sexual assault of older male child (13-15 years)
- 8 Sexual assault of older female child (13-15 years)
- 9 Sexual coercion of male (16+)
- 10 Sexual coercion of female (16+)
- 11 Sexual coercion of older male child (13-15 years)
- Sexual coercion of older female child (13-15 years)Other Sexually Coersive Conduct (16+)
- 13 Coercing a person into being present/ looking at sexual activity
- 14 Communicating indecently
 - Sexual offences Against Children
 - Physical sexual assault on a child under 13 years
- 15 Assault by penetration of young male child (under 13)
- 16 Assault by penetration of young female child (under 13)
- 17 Sexual assault of young male child (under 13)
- 18 Sexual assault of young female child (under 13)
- 19 Cause young male child (under 13) to participate in sexual activity
- 20 Cause young female child (under 13) to participate in sexual activity Other sexual offences against children under 13 years
- 21 Cause young child to be present/ look at sexual activity (under 13)
- 22 Communicating indecently with young child (under 13)
- 23 Sexual exposure to a young child (under 13)
- Voyeurism young child (under 13)Sexual activity with a child aged 13-15 years
- 25 Intercourse with older male child (13-15)
- 26 Intercourse with older female child (13-15)
- 27 Penetrative sexual activity with older male child (13-15)
- 28 Penetrative sexual activity with older female child (13-15)
- 29 Sexual activity with older male child (13-15)
- 30 Sexual activity with older female child (13-15)
- 31 Cause older male child (13-15) to participate in sexual activity
- 32 Cause older female child (13-15) to participate in sexual activity
- 33 Older male child (13-15) engaging in sexual conduct with another older child
- Older female child (13-15) engaging in sexual conduct with another older child Other sexual offences involving children aged 13-15 years
- 35 Causing an older child (13-15) to be present/ look at sexual activity
- 36 Communicate indecently older child (13-15)
- 37 Sexual exposure older child (13-15)
- 38 Voyeurism older child (13-15)

17 Public Indecency

- 2 Public indecency**
- 3 Sexual exposure
- 4 Voyeurism

18 Other Sexual Offences and Prostitution Procuration (excluding homosexual acts) 2 Sexual intercourse with girl under 13 (offences prior to 1 December 2010) 3 Sexual intercourse with child under 16(offences prior to 1 December 2010) 4 Carnal knowledge of mentally disordered person Householder permitting carnal knowledge of mentally disordrd. 7 Brothel keeping Immoral traffic 9 10 Offences related to prostitution 12 Procuration of Homosexual Acts Commission or conspiracy to commit sexual acts outside U.K. 13 14 Grooming of children for the purposes of sexual offences 15 Procuration of sexual services from children under 18 Procuration of child under 18 for pornography 16 17 Soliciting services of a person engaged in prostitution 18 Taking, distribution, possession etc of indecent photos of children 19 Sexual Abuse of trust of person under 18 20 Sexual Abuse of trust of mentally disordered person 21 Bestiality 22 Lewd and Libidinous practices Administering a substance for sexual purposes Possession of Extreme Pornography **GROUP 3: CRIMES OF DISHONESTY** 19 Housebreaking Theft by housebreaking domestic property (dwell) 5 Theft by housebreaking domestic property (non-dwell) 6 Theft by housebreaking other property 7 Housebreaking with intent to steal dom prop (dwell) 8 Housebreaking with intent to steal dom prop (non-dwell) 9 Housebreaking with intent to steal other property 10 Att hsebrking w.i. to enter & steal dom prop (dwell) 11 Att hsebrking w.i. to enter & steal dom prop (non-dwell) 12 Att hsebrking w.i. to enter & steal other property 20 **Opening Lockfast Places** 1 Theft by opening lockfast places (excl motor vehicle) 2 OLP (excl motor vehicle) with intent to steal 3 Attempted OLP (excl motor vehicle) with intent to steal 4 Theft by OLP from a motor vehicle 5 OLP with intent to steal from a motor vehicle 6 Attempted OLP with intent to steal from a motor vehicle

Prevention of Crimes and Vagrancy

- 1 Prevention of Crimes
- 2 Vagrancy and known thief
- 3 In building with intent to steal

22 Theft

- 1 Theft not elsewhere classified (excl motor vehicle)
- 2 Theft of motor vehicle & contents incl. taking and drvg away
- 3 Theft by shoplifting
- 4 Theft of pedal cycle
- 5 Theft from a motor vehicle not elsewhere classified
- 6 Attempted theft of a motor vehicle

23 Reset

24 Breach of Trust and Embezzlement

25 Fraud

21

26		Forgery (Other)
27		Bankruptcy
30		Corruption
31	4	Other Crimes of Dishonesty
	1	Currency Offences
	2	Other criminal conduct, money laundering related offences
	4	Proceeds of crime
	UP 4: FIR	RE-RAISING, MALICIOUS MISCHIEF etc
32		Fireraising
	1	Fireraising excluding muirburn
	3	Muirburn
33	•	Malicious and Reckless Conduct
	2	Reckless conduct with firearms
	3	Flying aircraft to the danger of life or property
	4	Endangering rail passengers
	6 7	Culpable neglect of duty
	7 10	Endangering ship by breach of duty, obtain ship by misrep
	10	Computer Misuse Act 1990 (causing damage)
	12	Culpable and Reckless Conduct (not with firearms) Vandalism
	13	Reckless Damage (obsolete – do not use)
	14	Malicious Mischief
	15	Expose to danger (obsolete – do not use)
	10	Expose to dariger (obsolicte do not doe)
GRO	UP 5: OT	HER CRIMES
34		Crimes against the state
	3	Official Secrets Acts
	4	United Nations Sanctions Offences
35		Crimes against Public Order
	1	Mobbing and rioting
	2	Public processions etc
	3	Trespass, crimes against public order
	5	Obstruct/hinder other emergency worker in pursuance of duty
36		Prevention of Terrorism Acts
	1	Terrorism, money laundering related offences
	9	Prevention of Terrorism, other offences
37		Explosives
	1	Explosive Substances Legislation
	2	Unlawful use of explosives
38	_	Crimes against Public Justice (non-court)
	2	Election etc offences
	3	Public mischief (including wasting police time)
	4	Falsely accusing (named) person of crime
	6	Escape and rescue (incl escape from police custody/ prison)
	7 10	Resisting arrest
	11	Personation of police Failing to give name to or remain with constable
	13	
	13 17	Obstructing constable in pursuance of lawful duty General attempts to defeat/pervert the course/ends of justice
	18	Failure to notify police or provision of false information
	19	Protection of vulnerable groups
39	10	Crimes against Public Justice (court)
-	1	Contempt of court
	2	Failing to appear after undertaking to police
60		NOT PROTECTIVELY MARKED

	4	Publishing restricted info about person <16 involved in trial
	5	Failing to appear for trial having been given court bail
	7	Bail offences other than absconding or re-offending
	8	Accused failing to appear at trial diet (formerly 38/16)
	9	Defence Witness, offences by (formerly code 38/15)
	10	Prevarication on oath etc (formerly code 38/5)
	11	Perjury and subornation (formerly code 38/1)
	12	Breach of non harassment order (criminal court)
	13	Breach of non harassment order (civil court)
	14	Breach of anti social behaviour order
	15	Breach of sex offender order
	16	Breach of parenting order
	17	Breach of risk of sexual harm order (sho) or interim risk of sho
	18	Breach of football banning order
	19	Breach of adult at risk banning order
	20	Breach of violent offender order
	21	Breach of Domestic Abuse Interdict
	22	Breach of Forced Marriage Order
10		Conspiracy
12		Wrecking Piracy and Hijacking
	1	Wrecking
13		Offensive Weapons
	1	Possession of an offensive weapon
	2	Restriction of offensive weapons
	3	Having in a public place an article with a blade or point
	4	Having in a prison an article with a blade or point
	5	Possession of a firearm in a prison
	6	Possession of an offensive weapon (not elsewhere specified) in a prison
14		Drugs
	1	Illegal importation of drugs
	2	Production, manufacture or cultivation of drugs
	3	Supply, possession w.i. to supply etc of drugs
	4	Possession of drugs
	5	Drugs, money laundering related offences
	6	Bringing drugs into prison
	00	Druge other offences
	99	Drugs, other offences

GROU	JP 6: MI	SCELLANEOUS OFFENCES
45		Aliens and Immigration Offences
46		Betting Gaming and Lotteries
	1	Betting
	2	Gaming
	3	Gaming by means of machines
	4	Lotteries and amusements with prizes
47		Disorderly Conduct
	1	Common assault
	2	Breach of the peace
	3	Urinating etc
	4	Racially aggravated harassment
	5	Racially aggravated conduct
	6	Common assault of an emergency worker
	7	Antisocial behaviour offences
	8	Threatening or abusive behaviour
	9	Offence of stalking
	Ü	Offensive Behaviour at Football (under the Offensive Behaviour at Football and
	10	Threatening Behaviour (Scotland) Act 2012)
		Threatening Communications (under the Offensive Behaviour at Football and
	11	Threatening Behaviour (Scotland) Act 2012)
48		False/Hoax Calls
	1	Hoax calls to emergency services
	2	Bomb hoaxes
49		Brokers (Licensed) and Auction Acts
50		Children
	1	Children & young persons offences (not elsewhere classfd)
	2	Education Acts
	4	Tattooing of Minors Act 1969
	6	Employment of children (non-industrial)
	7	Employment of children (industrial)
	8	Selling loose cigarettes
	9	Not displaying notice cigarettes sold to 16 and over
	10	Selling cigarettes to persons under 16
	11	Offences relating to persons disqualified from working with children
	12	Prevent a person feeding a baby milk in a public place
	13	Offences against selling spray paint to children
51		Offences Involving Animals/Plants***
	1	Cruelty to animals (ex dogs) incl killing and maiming cattle
	2	Rabies Orders
	3	Animals, offences involving (ex dogs, birds else class)
	4	Birds, offences involving
	5	Pet and kept animals
	6	Cruelty to dogs
	8	Protection of livestock from dogs
	9	Guard Dogs Act 1975
	11	Dogs bred for fighting
	12	Keeping dogs under prop ctrl, contrarv of an order
	13	Hunting with Dogs
	14	Cruelty to Wild Animals
	15	Offences involving Badgers
	16	Other Wildlife Offences
	99	Dogs, other offences
52		Crossbow Offences

53		Energy
	1	Petroleum Acts
54		Keeping and Supply of Explosives
55		Firearms, Miscellaneous Offences
56		Fisheries
	1	Salmon and freshwater fisheries offences
	2	Sea fisheries offences
	3	Possession of salmon or trout unlawfully obtained
	4	Possession of salmon or trout as result of offence
57		Game Laws
	1	Poaching and game laws
5 0	2	Deer (S) Offences
58 50		Harbour Acts
59	4	Obscene Material and Sex Shop Offences
	1	Handling obscene material
60	2	Sex shop offences
60	1	Drunkenness Drunk and incorpoble
	1 3	Drunk and incapable
	3 4	Drunk in charge of a child Drunk and attempting to enter licensed premises
	6	Disorderly on licensed premises
	7	Drunk in or attempting to enter designated sports ground
	8	Refusing to quit licensed premises
61	O	Offences by Licensed Persons
0.	1	Sale of drink to person under 18
	3	Licensed person, employee or agent drunk in licensed prems
	4	Permitting riotous behaviour in licensed premises
	10	License holder of offsales permit person < 18 to sell alcohol
	99	Licensed persons, other offences
62		Other Offences Against Liquor Licensing Laws
	4	Club licensing offences
	6	Person under 18 buying excisable liquor or consuming in bar
	9	Purchasing excise liquor for consumption by person under 18
	12	Alcohol offences, travelling to and from sporting event
	13	Sports grounds offences (possessing alcohol etc)
	14	Confiscation of alcohol from person under 18
	99	Liquor licensing laws, other offences
63		Labour Laws
	1	Factories legislation (not elsewhere classfd)
	2	Fire Precautions Acts 1971
	3	Health and Safety at Work Acts
cc	4	Employment and property protection legislation
66 67		Social Security Offences Merchant Shipping Acts (not elsewhere classfd)
68		Naval Military and Air Force Laws
00	1	Absentees and deserters
	99	Naval military and air force, other offences
71	00	Pedlars Act & Off Against Certificates Issued by Local Auth
72		Civic Government (S) Act 1982 & Similar Provisions
	4	Licensing offences, etc.
	5	Obstruction of local official
	6	Common stairs offences
	7	Civic Government (S) Act 1982 (not elsewhere classfd)
	8	Consumption of alcohol in designated places, byelaws proh.
73		Public Health and The Environment
63		NOT PROTECTIVELY MARKED

	1	Litter Offences
	2	Refuse Disposal (Amenity) Act 1978
	3	Oil pollution in navigable waters
	4	Control of pollution
	6	Clean air Acts
	7	Sanitary laws
	8	Food Safety and Food Standards offences
	9	Milk Acts
	11	Water Acts
	12	Town and country planning Acts
	14	Housing (S) Acts
	16	Methylated Spirits (Sale by Retail) (S) Act 1937
	19	Other Environmental Offences
	20	Contravn of sec 6(1) by contng to operate proscribed prcss
	21	Failure to comply with or contravn enfrcemt or prohib notice
	22	Other conservation offences
	23	Dog Fouling
	24	Smoking in public places
74		Medical
	1	Medical Acts
	2	Dentists Acts
	3	Nurses (S) Acts
	7	Medicines Acts 1968
	8	National Health Service (S) Acts
75		Railways
76		Registration Acts
	1	Bigamy
	2	False declarations
	3	Births deaths marriages, registration offences
	4	Marriage (S) Act 1977
77		Revenue and Excise Offences (Excluding Vehicle and Drugs)
78		Bicycles
	1	Dangerously riding a bicycle or tricycle
	2	Carelessly or inconsiderately riding a bicycle or tricycle
	3	Drunk when riding a bicycle
	99	Bicycles, other offences
79		Offences Relating to Pedestrians
	1	Pedestrian traffic offences
	2	Obstruction by pedestrian
	3	Touting
30		Offences relating to roads and road works
31		Stage and Hackney Carriages Regulations
	1	Hackney carriages offences
	2	Public service vehicles offences
32		Trespass Acts etc
	2	Lighting fires without consent of owner
	3	Lodging without consent of owner
33		Consumer Protection
	1	Weights & Measures Acts
	2	Registration of Business Names
	3	Prices Act 1974
	7	Copyright Acts
	8	Fair Trading Act 1973
	10	Consumer Protection Acts & related provisions, etc.
	12	Consumer Credit Act 1974

	13	Trading offences
	16	Registration of care establishments
	18	Rent Acts
84		Post Office, Telecommunications & Data Protection
	1	Wireless Telegraphy Act offences
	2	General post office/telecommunications offences
	3	Disclosure of information
	4	Interception of Communications
	5	Data Protection Act offences
	6	Computer Misuse Act 1990 (unauthorised use only)
85		Other Offences
	1	Prisons (S) Act 1989 (not elsewhere classfd)
	2	Charitable collections offences
	3	Agricultural offences
	4	Investment legislation
	5	Industrial training and statistics of trade offences
	6	Building legislation
	8	Public utilities (gas electricity etc) legislation
	10	Fire services legislation
	12	Solicitors (S) Acts
	13	Aviation legislation
	14	Local Government Legislation
	15	Architects registration offences
	16	Estate agents acts
	19	Census Acts
	20	Race Relations Legislation
	21	Legal aid and advice legislation
	22	Social work and community service offences
	25	Industrial and provident societies offences
	28	Archaeological legislation
	30	Child Support Act 1991
	34	Anti-social behaviour, private landlord offences
	35	Offences relating to working with vulnerable adults
	36	Offences under the Charities and Trustees Investment (Scotland) Ac

GROUP 7: OFFENCES RELATING TO MOTOR VEHICLES

GROUI	P /: OF	FENCES RELATING TO MOTOR VEHICLES
300		Dangerous and careless driving
	1	Dangerous driving offences
	2	Driving carelessly
301		Drunk driving etc
	1	Driving motor vehicle while unfit through drink or drugs
	2	In charge of motor vehicle while unfit through drink/drugs
	3	Driving mv with blood alcohol content above prescribed limit
	4	In charge of mv while blood alcohol content above limit
	5	Failure to provide breath specimen at the roadside
	6	Failure to prov breath, blood or urine specimen at police stat
302		Vehicle Excise Licence Offences
303		Speeding in Restricted Areas
304		Other Speeding Offences
305		Driver's Neglect of Traffic Directions(Not Pedestr Crossing)
306		Driver's contravention of Pedestrian Crossing Regulations
307		Accident Offences
308		Parking Offences
309		Failing to Provide Info to Identify Driver of Motor Vehicle
310		Using Motor Vehicle Without Test Certificate
65		NOT PROTECTIVELY MARKED

311	Motorway Traffic Offences
313	Driving While Disqualified From Holding or Obtaining Licence
314	Driving Without a Licence (including under age)
315	Driving Licence, Other Offences
316	Failure to Insure Against Third Party Risks
317	Insure Against Third Party Risks, Other Offences
318	Registration or Identification Mark Offences (Not Lighting)
319	Lighting Offences, Motor Vehicle
320	Construction & Use Regulations (Other Than Lighting)
321	Motor Vehicle Records of Work (e.g. Tachograph) Offences
323	Seat Belt Offences
324	Mobile Phone Offences
399	Motor Vehicles, Other Offences

- (a) the following domestic animals: cattle, sheep, pigs, goats and horses;
- (b) poultry, domestic birds and domestic rabbits;
- (c) domestic dogs, domestic cats and pets and kept animals;
- (d) captive birds.

^{***} Wild animals (including wild birds) are all those not included in the categories of:

^{**}Includes crimes previously classified as indecent exposure

^{*} Definition of Serious Assault - definition provided within Group 1 of this manual.

NOT PROTECTIVELY MARKED

PART 2

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 and where practical the ISCJIS Codes.

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 Information Network (Scotland) (PINS) 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.

NOT PROTECTIVELY MARKED

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 – CRIMES OF VIOLENCE

	1
	(SGJD Code)
Abduction	011002
Attempted Murder	002000
Causing Death by Dangerous Driving	003002
Causing Death by Careless Driving Where Under Influence of Drink or Drugs	003003
Causing Death by Careless Driving	003004
Causing Death by Driving Without a Licence/Insurance/Disqualified	003005
Cruelty (Neglect) to and Unnatural Treatment of Children	008001
Culpable Homicide	003001
Drugging (Assault)	011005
Extortion	007000
Firearms Act, 1968, S16-18	011001
Murder	001000
<u>Plagium</u>	008002

NOT PROTECTIVELY MARKED

(SGJD Code)

Robbery and Assault with intent to Rob 006000

Serious Assault (inc Emergency Worker 004000

and Police Assault)

Threats 007000

GENERAL RULE: ONE CRIME FOR EACH VICTIM

Definition: Abduction is the crime of carrying off, or confining, any person,

forcibly, and without lawful authority.

Victim/Complainer: Person Abducted

Locus: Where Crime Commenced

Scenario Examples:

Example: 'A' abducts 'B', an adult, and takes him to a remote building where

he is confined for a week and assaulted whilst there until 'C' pays a

drugs debt.

1 Crime of Abduction and 1 Crime of Assault (depending on injuries

either common or serious assault recorded)

Example: 'A' forces 'B', 'C' and 'D' into a bedroom at knifepoint and orders

them not to leave or they will be stabbed.

3 Crimes of Abduction

Example: 'A' and 'B' are forced into vehicle, driven off, held against their will.

2 Crimes of Abduction

Example: 'A' is seriously assaulted whilst being forcibly dragged into a

vehicle and carried off against their will.

1 Crime of Abduction (the assault is considered to be part of the

commission of the crime of abduction)

Example: A bus containing 20 people is hijacked.

20 Crimes of Abduction

Example: 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 Crime of 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.

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.

NOT PROTECTIVELY MARKED

Relevant Crimes/Offences

Attempt Abduction

Child Abduction 1984 S6(I) Take/Send Child Out UK

Child Abduction 1984 S6(1)(A) (II) Take/Send Child Out UK

Child Abduction 1984 S6(1)(B) Take/Send Child Out UK

002000 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/Complainer: Identified Victim of Attempt

Locus: Where Crime Takes Place

Scenario Examples:

Example: Terrorists plant a bomb under a jeep containing 5 soldiers. The

bomb explodes killing 2, seriously injuring 2, and 1 escapes

unharmed.

2 Crimes of Murder and 3 Crimes of Attempted Murder

Example: 'A' deliberately drives a car at speed at 'B' but also knocks down

'C' and 'D'. 'B', 'C' and 'D' all survive.

3 Crimes of Attempted Murder

Example: 'A' presents a gun at 'B' and robs him of money. Before making off

'A' shoots 'B' narrowly missing vital organs. 'A' survives.

1 x Robbery and 1 x Attempted Murder (Attempted Murder has

occurred after the Robbery)

Example: 'A' presents a knife at 'B' demanding money. 'B' refuses and 'A'

stabs 'B' several times to the abdomen and robs him of money.

1 x Robbery (Attempted Murder is subsumed as this is part of the

Robbery).

Example: 'A' threatens to kill 'B' and stabs him to the chest with a knife.

1 x Attempted Murder (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: 'A' threatens to kill 'B' and stabs him once to the arm with a knife

causing a laceration requiring sutures.

1 x Serious Assault (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).

Example: A hotel is set on fire, 25 persons within escape uninjured.

1 Crime of Fireraising, or, if there has been an intent to kill or harm everyone in the building e.g. by securing doors, 25 Crimes of

Attempted Murder

Example:

Door providing only means of entry/exit to high rise flats barricaded and set on fire, all residents rescued with no injury.

1 Crime for each identified victim of Attempted Murder.

NOTES:

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.

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.

Relevant Crimes/Offences

Attempted Murder
Assault with intent to Murder

003002 CAUSING DEATH BY DANGEROUS DRIVING Road Traffic Act 1988, Section 1

GENERAL RULE: ONE CRIME FOR EACH FATAL COLLISION 1

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.

Victim/Complainer: Procurator Fiscal

Locus: Where offence committed

Scenario Examples:

Example: 'A' drives his car in a dangerous manner and collides with car driven

by 'B' who is killed along with passengers 'C' and 'D' and 'A's

passenger 'E'.

1 offence of Causing Death by Dangerous Driving

Example: 'A' drives his car in a dangerous manner and collides with two

vehicles driven by 'B' and 'C'. Both 'B' and 'C' are killed.

1 offence of Causing Death by Dangerous Driving

Example: 'A' drives his 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 offences of Causing Death by Dangerous Driving (plus other

Road Traffic Offences as appropriate)

003003 CAUSING DEATH BY CARELESS DRIVING WHERE UNDER THE INFLUENCE OF DRINK OR DRUGS

Road Traffic Act 1988, Section 3A(1)(a)(b)(c)(d)

GENERAL RULE: ONE CRIME FOR EACH FATAL COLLISION 1

Definition:

- (1) 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,

he is guilty of an offence.

Victim/Complainer: Procurator Fiscal

Locus: Where offence committed

Scenario Examples:

Example: 'A' drives his car in a careless manner and collides with 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 offence of 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)

Relevant Crimes/Offences

Cause death drink driving blood

Cause death drink driving breath

Cause death drink driving urine

Cause death fail to provide blood/urine

Cause death fail to provide breath

Cause death fail to provide permission for lab test

CAUSING DEATH BY CARELESS DRIVING 003004 Road Traffic Act 1988, Section 2b

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.

Victim/Complainer: **Procurator Fiscal**

Where offence committed Locus:

Scenario Examples:

Example: 'A' drives his car in a careless manner and collides with car driven

by 'B' who is killed along with passengers 'C' and 'D' and 'A's

passenger 'E'.

1 offence of Causing Death by Careless Driving

Example: 'A' drives his car in a careless manner and collides with two

vehicles driven by 'B' and 'C'. Both 'B' and 'C' are killed.

1 offence of Causing Death by Careless Driving

Example: 'A' drives his 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 offences of Causing Death by Careless Driving (plus other Road

Traffic Offences as appropriate)

003005

CAUSE DEATH BY DRIVING WHILST ILLEGAL DRIVER, DISQUALIFIED/UNLICENCED etc. INVOLVED IN FATAL ACCIDENT Road Traffic Act 1988, Section 3ZB

1

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).

Victim/Complainer: Procurator Fiscal

Locus: Where offence committed

Scenario Examples:

Example:

'A' drives his 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 offence of Causing Death by Driving whilst Disqualified/No Insurance, 1 offence of Driving whilst Disqualified, 1 offence of 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.

Relevant Crimes/Offences

Cause death by driving whilst disqualified

Cause death by driving whilst uninsured

Cause death by driving without a licence

Cause death by driving whilst disqualified/no insurance

Cause death by driving without a licence/insurance

008001 CRUELTY (NEGLECT) TO AND UNNATURAL TREATMENT OF CHILDREN

Children And Young Persons (Scotland) Act, 1937, Section 12

GENERAL RULE: ONE CRIME FOR EACH CHILD AND WHERE SPECIFIC DATES AND/OR LOCI IDENTIFIED SEPARATE CRIMES TO BE RECORDED

Definition: Section 12 – Relates to exposure in a manner likely to cause moral

or physical danger or unnecessary suffering to a child under the

age of 16.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: A parent leaves 2 children under 10 years old at home, for 48

hours without adequate food or drink and with no responsible adult

in charge.

2 Crimes of Children and Young Persons Act, S12

Example: 17 year old found within house drunk, asleep in bed and in charge

of 2 children, aged 4 and 9 who are playing in the livingroom near

to an open lit fire.

2 Crimes of Children and Young Persons Act, S12

Example: 'A' neglects her 2 pre-school children 'B' and 'C' and they are both

malnourished and sleeping in their excrement.

2 Crimes of Children and Young Persons Act, S12

Example: 'A' abandons 'B', a 2 year old infant, for an afternoon in a car in a

supermarket car park on a warm day.

1 Crime of Children and Young Persons Act, S12

Example: Child minder leaves 3 young children alone in the house for several

hours, resulting in one child becoming injured.

3 Crimes of Children and Young Persons Act, S12.

1

NOTE: Where a child has been assaulted, this should be recorded as a Common Law Assault (as of 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.

Relevant Crimes/Offences

Children/Young Persons, 1937 S12(1) – Wilfully III-treat/Neglect/Abandon Children/Young Persons, 1937 S12(1) Procure – wilfully iII-treat

003001 CULPABLE HOMICIDE

1

GENERAL RULE: ONE CRIME FOR EACH VICTIM

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 blameable, 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.

Victim/Complainer: Deceased

Complainer: Procurator Fiscal

Locus: Where Crime Takes Place (or if unknown, where body is found)

NOTE: No scenarios 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.

Relevant Crimes/Offences

Culpable Homicide

Culpable Homicide Drugs (Controlled Drugs)

Culpable Homicide Drugs (Controlled Drug)(Injection)

Culpable Homicide Drugs (Controlled Drug)(Multiple)

Culpable Homicide Drugs (Controlled Drug)(Multiple + Prevent medical assistance)

Culpable Homicide Drugs (Non Controlled Drug)

Culpable Homicide(Controlled Drug)(Supply and Inject Victim)

Culpable Homicide (Culpable and Recklessly)

011005 DRUGGING (ASSAULT)

1

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/Complainer: Person Drugged

Locus: Where Crime Takes Place (if locus unknown - the crime record

should highlight that the exact locus cannot be established.)

Scenario Examples:

Example: '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 Crimes of Drugging (dependent on IT configuration this may be

recorded as Assault with a Drugging charge variant)

Example: 'A' and 'B' report their drinks having been spiked.

2 Crimes of Drugging (dependent on IT configuration this may be

recorded as Assault with a Drugging charge variant)

Example: 'A' reports they think their drink was spiked a week ago due to

memory loss after two drinks and waking up feeling unwell.

1 Crime of Drugging (dependent on IT configuration this may be

recorded as Assault with a Drugging charge variant).

NOTE: Where a person reports they think or feel they were 'drugged' with

no reference to a sexual act having taken place, a crime record will initially be recorded under the appropriate crime category, whether or not at the time there is uncertainty as to the validity of the report (the crime category will depend on configuration of individual IT

systems).

There may be circumstances where Section 11 of the Sexual Offences (Scotland) Act, 2009 (administering a substance for sexual purposes) will be applicable as opposed to a Drugging

offence being recorded.

Relevant Crimes/Offences

Attempt Drugging

Assault (with a Drugging charge variant)

007000 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/Complainer: Person threatened

Locus: Where Threat is Received

Scenario Examples:

Example: Shop owner being forced to pay monthly payments for 'protection'

of his shop.

1 Crime of Extortion

Example: Female is threatened to pay £10,000 for return of photographs as

failing to do so will result in the publication of the photographs. Paying the money and receiving a further demand for another

£5,000 at which time reporting to the police.

1 Crime of Extortion

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.

Relevant Crimes/Offences

Attempt Extortion by means of Telephone/Letters

Attempt Extortion

011001 FIREARMS ACT, 1968 SECTIONS 16-18

1

GENERAL RULE: ONE CRIME FOR EACH OFFENCE COMMITTED

Definition: Section 16 – Possession of a firearm with intent to injure.

Section 17 – Use of a firearm in order to resist arrest.

Section 18 – Carrying of a firearm with criminal intent.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: 'A' is found in possession of 2 loaded firearms with intent to

endanger life.

2 Crimes of Firearms Act, S16

Example: 'A' is found in possession of 2 loaded guns and 'B' has 1 loaded

gun, with intent to injure.

3 Crimes of Firearms Act, S16

NOTE:

Relevant Crimes/Offences

Firearms 1968 S16 Possess Firearm Intent Endanger Life

Firearms 1968 S16 Possess Firearm Int Other Person Endanger

Firearms 1968 S16A Firearm Another Cause Belief Violence

Firearms 1968 S16A Imitation another cause belief violence

Firearms 1968 S16A Firearm Cause Belief Violence

Firearms 1968 S16A Imitation Cause Belief Violence

Firearms 1968 S17(1) Use Imitation/Firearm Int Resist Arrest

Firearms 1968 S17(2) Possess Firearm When Arrested

Firearms 1968 S17(2)&(5) Possession of Firearm or Imitation

Firearms 1968 S18(1)&(3) Possess Firearm Intent Offence

Firearms 1968 S18(1)&(3) Possess Imitation Firearm Robbery

001000 MURDER

1

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)

Scenario Examples:

Example: 'A' places a bomb in a public house and warns the police. The

bomb explodes before full evacuation, killing 10 people and wounding a further 15, with the remaining 4 people escaping

unhurt.

10 Crimes of Murder and 19 Crimes of Attempted Murder

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

1 Crime of Murder and 1 Crime of Robbery

Example: 'A' rapes 'B' and then causes her death by strangulation.

1 Crime of Murder and 1 Crime of Rape

Example: 'A' deliberately drives a car towards 'B', intending to kill him but

also knocks down 'C' and 'D'. 'B', 'C' and 'D' are killed.

3 Crimes of Murder

Example: 4 persons are discovered murdered at the same address.

4 Crimes of 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 record should be created.

008002 PLAGIUM incl ATTEMPT PLAGIUM

1

GENERAL RULE: ONE CRIME FOR EACH CHILD

Definition: Stealing a child under the age of puberty i.e. 12 years for females

and 14 years for males.

Victim/Complainer: Child / Legal Guardian

Locus: Where Crime Takes Place

Scenario Examples:

Example: 'A' steals 'B', an 11 year old boy, and he is looked after well, living

on a caravan site, but only traced 3 weeks later.

1 Crime of Plagium (note - if he was also neglected or exposed to

moral danger or risk of ill health, a C&YP (S) Act, 1937, S12

offence may also be relevant).

Example: 'A' steals 'B', a day old infant, from a hospital maternity ward.

1 Crime of Plagium

Example: A father takes his 7 year old son away for a weekend and fails to

return him to his mother. There is no court order in place with

regards to parental rights.

This is a civil matter

NOTE: Where the perpetrator is a parent and has not been divested of his

or her parental rights by a court this is a civil matter and the charge

of Plagium would not be competent.

006000 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/Complainer: Person(s) Robbed / Attempted to be Robbed

Locus: Where Crime Takes Place/Instigated

Scenario Examples:

Example: 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 Crime of Robbery

Example: A person presents a weapon to 2 people and threatens violence.

Robs 1 person of clothing and the other of money.

2 Crimes of Robbery

Example: 'A' punches and kicks 'B' demanding money. 'B' resists and fights

off 'A'. 'A' flees empty handed. 'B' has a fractured cheek bone.

1 Crime of Assault with intent to Rob

Example: 'A' enters bank, pointing a gun at the cashier, demands and

receives money from the cash drawer then robs 4 persons in the

bank of personal property.

5 Crimes of Robbery

Example: 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 Crime of 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: 'A' presents a gun at 'B' and robs him of money. Before making off

'A' shoots 'B' narrowly missing vital organs. 'A' survives.

1 x Robbery and 1 x Attempted Murder

Example: Masked and armed offenders enter a dwelling and,

 Threaten the father to obtain the keys to his car. He refuses and is assaulted. Son is then threatened and produces the

keys to the car, which is subsequently stolen. Wife is in the house and is threatened, before jewellery she is wearing is

stolen from her.

1 Crime of Assault with intent to Rob (father) and 2 Crimes of

Robbery (wife and son)

b) As above, but also ransack the house and steal property owned by all family members, but not in their possession.

3 Crimes of Robbery (1 for household items stolen, 2 for items being removed by violence from individual family members)

Example: Shop assistant is walking down the road on her way to the bank to lodge the shop takings. Suspect approaches her and threatens her

with a knife. She hands over the shop takings and the suspect

also takes her handbag and contents.

1 Crime of Robbery (shop owner is additional complainer who own

the shop takings)

Example: '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 crime of Robbery (the shop owners are the additional complainers

for the cigarettes)

Example: '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 Crime of Attempted Robbery (struggle is sufficient violence to

justify recording Attempted Robbery)

Example: 'A' is holding their mobile phone in their hand when 'B' snatches the

phone from their hand and runs off.

1 crime of Theft

Example: While 'A' is being assaulted by 'B' their wallet falls out of their

pocket. 'B' picks up the wallet and runs off.

1 crime of 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).

NOTES:

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. 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.

Relevant Crimes/Offences

Assault and Robbery Assault with intent to Rob Assault to Injury with Intent to Rob Robbery Attempt Robbery

004000 ASSAULT - SERIOUS

1

Includes Police and Fire Reform (Scotland) Act 2012, Section 90(1)(a) and (b) – Police Assault (Serious), and, Emergency Workers Act – Assault (Serious)

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 it is deemed Serious or Non-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

 $\underline{\text{Note:}}\ \ \text{The following are } \textbf{not included}$ 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
- 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
- Bruising or red marks

Victim/Complainer:	Person Assaulted
Locus:	Where Crime Takes Place

Scenario Examples:

Example: 'A' is assaulted by 'B' with a baseball bat, resulting in him being

detained in hospital for his injuries.

1 Crime of Serious Assault (the baseball bat was used in the assault therefore no crime required for possession of an offensive

weapon)

Example: An ambulance worker is seriously assaulted by 'A' who he is

treating for his injuries.

1 Crime of Serious Assault (the crime record should identify the

victim to be an emergency worker)

Example: 'A' assaults 'B' and 'C', both on duty serving police officers, by

punching them on the face when asked to leave a football stadium. 'B' sustains a fractured cheek bone, while 'C' sustains a broken

nose.

2 Crimes of 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: Two persons engage in a stand up fight in a public area where one

is seriously injured.

1 crime of Serious Assault. A Breach of the Peace may be

libelled but this is at the officers discretion.

Example: '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 Crime of Serious Assault.

Example: '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 Crime of Culpable & Reckless Conduct (there is no evidence of

intent to cause harm but evidence that indicates criminal

recklessness).

NOTES: 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.

Support Staff Member – assaults against Police Staff should not be recorded under Police and Fire Reform (Scotland) Act 2012, unless the Police Staff member was assisting a serving police officer in the execution of their duties at the time of the assault e.g.

custody officer.

Multiple Accused – only one crime is recorded in incidents where more than one person has assaulted an officer during the same

incident.

Multiple Assaults within the same incident – in circumstances when an officer is assaulted on more than one occasion, within the

same incident, and by the same offender, one crime only will be recorded. This will be seen as one continuous act rather than separate incidents. The locus in these cases will be where the assault was initiated.

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.

Emergency Workers Act – A serious assault on an emergency worker should also be recorded under this SGJD Code, although Divisions should ensure they are able to clearly identify crimes falling into this category. (A charge of Serious Assault should be libelled as opposed to The Emergency Workers Act when being reported to the Procurator Fiscal.

The Emergency Workers Act does not affect the specific legislative protection of the police in performance of their functions under Section 90(1)(a) of the Police and Fire Reform (Scotland) Act 2012. However, Section 1 of the Emergency Workers Act 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.

- 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).

Relevant Crimes/Offences

Assault to Severe Injury
Assault with 'Serious' Variant
Assault (Police) with 'Serious' Variant
Assault to Injury & Perm Dis & Perm Impairment
Assault to Injury and Perm Impairment

THREATS (Common Law) 007000

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND CONTINUITY OF ACTION OR PER INCIDENT (AS APPROPRIATE)

Definition: Threats, whether verbal of 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.

NOTE: 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, Section 38 -

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 Offences:-

Communications Act, 2003, Section 127 - Send offensive/indecent/obscene/menacing message by public electronic communications.

Offensive Behaviour at Football and Threatening Communications (Scotland) Act, 2012, Section 6 - Communicate threatening material to another to carry out violent or reckless act to cause fear or alarm, or,

Communicate threatening material to another to stir up hatred on religious grounds.

The offence is committed if a person communicates material to at least one other person which:

- Threatens a person or people of a general description with serious violence or death, or incites others to kill or commit a seriously violent act against a person or persons of a particular description, or which implies such a threat and where that communication would cause a reasonable person to suffer fear or alarm and the accused either intended to cause such fear and alarm, or was reckless as to whether the communication of the material would cause such fear and alarm; or,
- Consists of threats made with the intent of stirring up hatred on religious grounds

Person Threatened Victim/Complainer:

Locus: Where threat was made from, if known, otherwise where threat was

received.

Scenario Examples:

Example: 'A' receives 2 letters threatening his life over a drugs debt. The

sender has an extensive history of violence and 'A' believes he is

more than capable of carrying out this threat

1 Crime of Threats

Example: Telephoning complainer and threatening to kill her and her

> children. The suspect has seriously assaulted the complainer on a previous occasion and she believes he is more than capable of

carrying out this threat.

1 Crime of Threats (this should not be recorded under the

Communications Act)

Example: Calling at house, threatening complainer or they will burn her

house down. Complainer knows the suspect and does not believe

they will see this threat through.

1 Crime of Criminal Justice and Licensing (Scotland) Act, 2010,

Section 38 – Threatening or Abusive Behaviour.

Example: 'A' is the estranged husband of 'B'. 'A' sends 'B' a letter saying he

> will kill 'A' and 'C', their 3 year old daughter, if 'A' does not give him weekly access to 'C'. 'A' has seriously assaulted 'B' before and the

threat is considered real.

1 Crime of Threats (daughter was not recipient, she is too young to

identify whether threat is real and deliverable)

Example: Over a one month period 'A' receives a number of threats on her

> life from various members of her family several members of which have extensive history of violence towards other family members

1 Crime of Threats (although received from various members of her family the circumstances indicate they are 'acting together') If no evidence of imminent or grave threat to life record as 1 Crime of Criminal Justice and Licensing (Scotland) Act, 2010, Section 38 -

Threatening or Abusive Behaviour.

Example: A celebrity receives 3 threatening letters from unknown sources

threatening their life.

3 Crimes of Criminal Justice and Licensing (Scotland) Act, 2010, Section 38 – Threatening or Abusive Behaviour as it is not known whether these letters represent an imminent or grave threat to life.

A celebrity receives a number of letters threatening their life.

Letters make reference to the victim's affiliation with a named

football club.

1 Crime of Threatening Communications (letter implies a threat to carry out a seriously violent act and is made against a person of a

particular description).

NOTE: Where the threat is contained in a letter (whether signed or not),

the crime is complete when the letter is despatched, 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.

Example:

Relevant Crimes/Offences

Threats Making Criminal

Alternatives:-

Threatening or abusive behaviour

Send an offensive/indecent/obscene/menacing message by means of public electronic communications non sexual

Engage in behaviour likely to incite public disorder on journey to/from a regulated football match

Engage behaviour likely to incite public disorder at a ground/leaving/entering regulated football match

Engage in behaviour likely to incite public disorder towards another or other at a regulated football match

Engage in behaviour likely to incite public disorder with another at a regulated football match Communicate threatening material to another to carry out violent or reckless act to cause fear or alarm

Communicate threatening material to another to stir up hatred on religious grounds

GROUP 2 – SEXUAL OFFENCES

(WARNING - this section may not be considered suitable for minors.)

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 17th June, 2008, incorporating the majority of recommendations which had been made by the Scottish Law Commission. It was passed on 10th June, 2009 and implemented on 1st 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 is a further offence 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 of 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.

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 the 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 therefore advised that in such cases only the most serious crime should be recorded/counted for statistical purposes. The modus operandi on a crime record outline the full details of the conduct.

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 1st December, 2010 should be recorded in line with the appropriate legislation in place at that time. Should the conduct have occurred prior to <u>and</u> after 1st December, 2010 the appropriate offence(s) under the old <u>and</u> new legislation must 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(1) – 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 Section 30	Covers touching sexually, sexual activity with physical consent, ejaculates semen, emits urine or saliva (sexually), penetrates sexually. Indecent assault, although not repealed, is still available for behaviour falling outwith definition of Sexual Assault. If evidence victim subjected to penile penetration, sexual assault should not be recorded.	One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded
		S3(1) – Adult and Older Child (aged 13- 15 years - where no consent) S20 – Young Child (below 13 years) – irrelevant whether consent given S30 – Older Child (aged 13-15 years) – if no consent S3 will apply	
Sexual Coercion, Causing a Young Child/Older Child to Participate in a Sexual Activity	Section 4 Section 21 Section 31	Intentionally causes person to participate in sexual activity. S4 – Adult or Older Child (aged 13-15 years – where no consent) S21 – Young Child (below 13 years) S31 – Older Child (aged 13-15 years) – if no consent then S4 will apply	One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded

Crime Type	Relevant Section of Act	Description	Counting Rule
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
		S5 – Adult or Older Child (aged 13-15 years – where no consent) S22 – Young Child (below 13 years) S32 – Older Child (aged 13-15 years) – if no consent then S5 will apply	
Coercing/Causing a Person/Young Child/Older Child to Look at a Sexual Image	Section 6 Section 23 Section 33	Intentionally causes a person to look at a sexual image for purpose of obtaining sexual gratification; humiliating, distressing or alarming.	One Crime For Each Incident, Or, Course of Conduct
Sexual illiage		S6 – Adult or Older Child (aged 13-15 years – where no consent) S23 – Young Child (below 13 years) S33 – Older Child (aged 13-15 years) – if no consent then S6 will apply	
Communicating Indecently	Section 7(1) Section 24(1) Section 34(1)	Sexual communication whether written or verbal for purpose of obtaining sexual gratification; humiliating, distressing or alarming.	One Crime For Each Victim and Continuity of Action or Per Incident (as appropriate)
		S7(1) – Adult or Older Child (aged 13- 15 years - where no consent) S24 (1) – Young Child (below 13 years) S34(1) – Older Child (aged 13-15 years) – if no consent S7(1) will apply	
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.	One Crime For Each Incident, Or, Course of Conduct
		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	

Crime Type	Relevant Section of Act	Description	Counting Rule
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 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. S9 – Adult S26 – Young Child (aged below 13 years) S36 – Older Child (aged 13-15 years)	One Crime For Each Incident or Course of Conduct
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(1)	Older child (aged 13-15 years) who engages in sexual conduct with another Older Child (includes penetration and touching). (If non consensual – rape, sexual assault be penetration or sexual assault relevant).	One Crime For Each Participant
Engaging while an Older Child in Consensual Sexual Conduct with Another Older Child	Section 37(4)	Older child (aged 13-15 years) who has consented to sexual conduct with another Older Child (includes penetration and touching).	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 Disordered Person	Section 46(1)	Person, in a position of trust, intentionally engages in sexual activity with or directed towards mentally disordered person.	One Crime For Each Victim

GROUP 2- SEXUAL OFFENCES	1
	(SGJD Code)
Sexual Offences (Scotland) Act, 2009	
Rape (S1(1)) (Attempt)	014001-014004 015001-015004
Rape of a Young Child (S18) (Attempt)	014005-014006 015005-015006
Having Intercourse with an Older Child (S28)	016025-016026
Sexual Assault by Penetration (S2(1))	016001-016004
Sexual Assault on a Young Child by Penetration (S19)	016015-016016
Engaging in Penetrative Sexual Activity with or towards an Older Child (S29)	016027-016028
Sexual Assault (S3(1))	016005-016008
Sexual Assault on a Young Child (S20)	016017-016018
Engaging in Sexual Activity with or towards an Older Child (S30)	016029-016030
Sexual Coercion (S4)	016009-016012
Causing a Young Child to Participate in Sexual Activity (S21)	016019-016020
Causing an Older Child to Participate in a Sexual Activity (S31)	016031-016032

	(SGJD Code)
Coercing a Person into Being Present During a Sexual Activity (S5)	016013
Causing a Young Child to be Present During a Sexual Activity (S22)	016021
Causing an Older Child to be Present During a Sexual Activity (S32)	016035
Coercing a Person into Looking at a Sexual Image (S6)	016013
Causing a Young Child to Look at a Sexual Image (S23)	016021
Causing an Older Child to Look at a Sexual Image (S33)	016035
Communicating Indecently Etc (S7(1))	016014
Communicating Indecently with a Young Child Etc. (S24(1))	016022
Communicating Indecently with an Older Child Etc. (S34(1))	016036
Causing a Person to See or Hear an Indecent Communication (S7(2))	016014
Causing a Young Child to See or Hear an Indecent Communication (S24(2))	016022
Causing an Older Child to See or Hear an Indecent Communication (S34(2))	016036

Sexual Exposure (S8) Sexual Exposure to a Young Child (S25) Sexual Exposure to an Older Child (S35)	(SGJD Code) 017003 016023 016037
Voyeurism (S9) Voyeurism Towards a Young Child (S26) Voyeurism Towards an Older Child (S36)	017004 016024 016038
Administering a Substance for Sexual Purposes (S11)	018023
Engaging While An Older Child in Sexual Conduct with or Towards another Older Child (S37(1))	016033-016034
Engaging While an Older Child in Consensual Sexual Conduct with or towards another Older Child (S37(4))	016033-016034
Sexual Abuse of Trust (Children) (S42)	018019
Sexual Abuse of Trust of a Mentally Disordered Person (S46(1))	018020

	(SGJD Code)
OTHER OFFENCES	
Assault (Indecent)	016000
Assault with Intent to Rape	015000
Bestiality	018021
Civic Government (Scotland) Act, 1982	018018
Section 52	
<u>Incest</u>	012000
Procuration (Exc Homosexual Acts)	018001
Prostitution	018010
Prostitution (Public Place)	018017
Public Indecency	017002

REPEALED OFFENCES

(The following offences 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 1st December, 2010.)

	(SGJD Code)
Homosexual Acts (Illegal)	013001
Lewd, Indecent and Libidinous Practices	018022
Person with Custody & Care of Girl or Other Causing her Seduction	018008
Procuration of Homosexual Acts	018012
<u>Rape</u>	014000
Sexual Intercourse with Girl Under 13	018002
Sexual Intercourse with Girl Under 16	018003
Sodomy/Attempt Sodomy	013001

SCOTTISH GOVERNMENT CODING BREAKDOWN – Sexual Offences (Scotland) Act, 2009

Description	Coding	Section of Act
Rape – Male (16+)	014001	1
Rape – Female (16+)	014002	1
Rape – Male (13-15)	014003	1
Rape – Female (13-15)	014004	1
Rape – Male (under 13)	014005	18
Rape – Female (under 13)	014006	18
Assault wi Rape – Male (16+)	015001	1
Assault wi Rape – Female (16+)	015002	1
Assault wi Rape – Male (13-15)	015003	1
Assault wi Rape – Female (13-15)	015004	1
Assault wi Rape – Male (under 13)	015005	18
Assault wi Rape – Female (under 13)	015006	18
Intercourse with Older Child – Male (13-15) (Consensual)	016025	28
Intercourse with Older Child – Female (13-15) (Consensual)	016026	28
Sexual Assault by Penetration – Male (16+)	016001	2
Sexual Assault by Penetration – Female (16+)	016001	2
Sexual Assault by Penetration – Male (13-15)	016002	2
	016003	2
Sexual Assault by Penetration – Female (13-15)		<u>∠</u> 19
Sexual Assault by Penetration – Male (under 13)	016015	
Sexual Assault by Penetration – Female (under 13)	016016	19
Penetrative Sexual Activity – Male (13-15) (Consensual)	016027	29
Penetrative Sexual Activity – Female 13-15) (Consensual)	016028	29
Sexual Assault – Male (16+)	016005	3
Sexual Assault – Female (16+)	016006	3
Sexual Assault – Male (13-15)	016007	3
Sexual Assault – Female (13-15)	016008	3
Sexual Assault – Male (under 13)	016017	20
Sexual Assault – Female (under 13)	016018	20
Sexual Activity – Male (13-15) (Consensual)	016029	30
Sexual Activity – Female (13-15) (Consensual)	016030	30
Sexual Coercion – Male (16+)	016009	4
Sexual Coercion – Female (16+)	016010	4
Sexual Coercion – Male (13-15)	016011	4
Sexual Coercion – Female (13-15)	016012	4
Cause to Participate Sexual Activity – Male (under 13)	016019	21
Cause to Participate Sexual Activity – Female (under 13)	016020	21
Cause to Participate Sexual Activity – Male (13-15) (Consensual)	016031	31
Cause to Participate Sexual Activity – Female (13-15) (Consensual)	016032	31
Coerce into Being Present Sexual Activity – Male&Female (16+)	016013	5
Coerce into Being Present Sexual Activity – Male&Female (13-15)	016013	5
Cause to be Present Sexual Activity – Male&Female (under 13)	016021	22
Cause to be Present Sexual Activity – Male&Female (13-15) (Consensual)	016035	32
Coerce to Look at Sexual Image – Male&Female (16+)	016013	6
Coerce to Look at Sexual Image – Male&Female (13-15)	016013	6
Cause to Look at Sexual Image – Male&Female (under 13)	016021	23
Cause to Look at Sexual Image – Male&Female (13-15) (Consensual)	016035	33
Communicating Indecently – Male&Female (16+)	016014	7(1)
Communicating Indecently – Male&Female (13-15)	016014	7(1)
Communicating Indecently – Male&Female (under 13)	016022	24(1)
Communicating Indecently – Male&Female (13-15) (Consensual)	016036	34(1)
Commenceding indecentity maleur emale (10 10) (Contortional)	0.0000	O T(1)

Description	Coding	Section of Act
Cause See/Hear Indecent Communication – Male&Female (16+)	016014	7(2)
Cause See/Hear Indecent Communication – Male&Female (13-15)	016014	7(2)
Cause See/Hear Indecent Communication – Male&Female (under 13)	016022	24(2)
Cause See/Hear Indecent Communication – Male&Female (13-15) (Consensual)	016036	34(2)
Sexual Exposure – Male&Female (16+)	017003	8
Sexual Exposure – Male&Female (under 13)	016023	25
Sexual Exposure – Male&Female (13-15)	016037	35
Voyeurism – Male&Female (16+)	017004	9
Voyeurism – Male&Female (below 13)	016024	26
Voyeurism – Male&Female (13-15)	016038	36
Administering a Substance for Sexual Purposes	018023	11
Engaging while an Older Child in Sexual Conduct – Male	016033	37(1)
Engaging while an Older Child in Sexual Conduct – Female	016034	37(1)
Engaging while an Older Child in Consensual Sexual Conduct – Male	016033	37(4)
Engaging while an Older Child in Consensual Sexual Conduct – Female	016034	37(4)
Sexual Abuse of Trust (Children)	018019	42
Sexual Abuse of Trust of a Mentally Disordered Person	018020	46(1)

RAPE (Including Attempt) Sexual Offences (Scotland) Act 2009, Section 1(1)

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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 –

(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.

Victim/Complainer: Person who has been raped

Locus: Where crime takes place

Scenario Examples:

Example: A complainer reports having been raped. The offender insists that

the complainer consented although the complainer insists that this

was not the case.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 1 - Rape.

Example: A person reports being anally penetrated by a male without

Consent.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 1 - Rape.

Example: A male reports being anally penetrated by another male in 2008

without consent.

1 Crime of Sodomy

Example: A female falls asleep at a party and wakes to find that a male

has placed his penis in her mouth.

After 1st December 2010

1 Crime of Sexual Offences (Scotland) Act 2009, Section 1 - Rape.

Prior to 1st December 2010 1 Crime of Assault (Indecent)

Example: A female reports that she has been raped by the same

male on numerous occasions over several years and cannot specify dates although the last time was on or after 1st December

2010.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 1 - Rape.

and

1 Crime of Rape Common Law for historic incidents

Example: A female reports that she has been raped on **specific dates** by the

same male twice prior to 1st December 2010 and three times after.

2 Crimes of Rape (Common Law)

and

3 Crime of Sexual Offences (Scotland) Act 2009, Section 1 - Rape.

Example: A female reports that she was forced into carrying out oral sex,

thereafter anally penetrated and vaginally penetrated by the same

male during the one incident all without her consent.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 1- Rape

Example: Whilst asleep a female is digitally penetrated by a male. She

awakes and protests creating distance between them. She falls back to sleep and is later awoken by the same male who has removed her underwear and his own and attempts to lie of top of

her and insert his penis into her vagina.

1 Attempt Rape SOSA Section 1(1)

1 Sexual Assault by Penetration SOSA Section 2(1)

Compound Crimes:

Example: A female reports that she was sexually assaulted, her anus was

digitally penetrated and she was raped.

1 Crime of Sexual Offences (Scotland) Act 2009 – 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 loci 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 locus in Fife would result in two crimes.

Relevant Crimes/Offences

SOSA 2009 S1 - Attempted rape

(variants required to identify if Male or Female, 16+ or 13-15)

RAPE OF A YOUNG CHILD (Including Attempt) Sexual Offences (Scotland) Act 2009, Section 18

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND WHERE

SPECIFIC DATES AND/OR LOCI ARE IDENTIFIED SEPARATE CRIMES TO BE

RECORDED

1

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/Complainer: Child who has been raped

Locus: Where crime takes place

Scenario Examples:

Example: 2 young children who are under 13 years old enter a dwelling

where a male has sexual intercourse with both.

2 Crimes of Sexual Offences (Scotland) Act 2009, Section 18 Rape

of a Young Child.

Example: A young child under 13 years old has reported that a male

penetrated the child's anus with his penis

1 Crime of Sexual Offences (Scotland) Act 2009, Section 18 Rape

of a Young Child.

Example: A young child under 13 years old reports that a male penetrated

the child's mouth with his penis

1 Crime of Sexual Offences (Scotland) Act 2009, Section 18 Rape

of a Young Child.

Example: A person reports that in 2001 when, under the age of puberty, the

stepfather forced the person to perform oral sex on him.

1 Crime of Lewd and Libidinous Practices.

Compound Crimes:

Example: A young child who is under 13 years old reports that she was

sexually assaulted, her anus was digitally penetrated and she was

raped.

1 Crime of Sexual Offences (Scotland) Act 2009 – Section 18 Rape (incorporating conduct including sexual assault, penetration and

rape within 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.

(variants required to identify if Male or Female)

HAVING INTERCOURSE WITH AN OLDER CHILD

Sexual Offences (Scotland) Act 2009, Section 28

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND WHERE

SPECIFIC DATES AND/OR LOCI ARE IDENTIFIED SEPARATE CRIMES TO BE

RECORDED

1

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/Complainer: Child who has been penetrated

Locus: Where crime takes place

Scenario Examples:

Example: 2 older children aged 13 to 15 are invited into a dwelling where an

adult male has consensual sexual intercourse with them.

2 Crimes of Sexual Offences (Scotland) Act 2009, Section 28

Having Intercourse with an Older Child

Example: An older child aged between 13 and 15 reports that an adult male

had sexual intercourse with them without any consent being given.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 1

Rape

Example: 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 Crime of Sexual Offences (Scotland) Act 2009, Section 28

Having Intercourse with an Older Child

Example: An older child aged 13 to 15 years discloses that they had

consensual sexual intercourse with a partner also an older child

aged 13 to 15 years.

2 Crimes of Sexual Offences (Scotland) Act 2009, Section 37(1) and 37(4) Older children engaging in consensual sexual conduct

with each other. (both parties guilty of contravening the Act.)

Example: 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 Crime of Sexual Offences (Scotland) Act, 2009 Section 28 Having Intercourse with an Older Child (due to the indications being this has been a continuity of action, only 1 crime should be recorded.)

Compound Crimes:

Example:

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 Crime of Sexual Offences (Scotland) Act 2009 – Section 28 Having Intercourse with an 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 <u>any</u> 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.

Relevant Crimes/Offences

SOSA 2009 S28 - Attempted intercourse with an older child

(variants required to identify if Male or Female)

SEXUAL ASSAULT BY PENETRATION Sexual Offences (Scotland) Act 2009, Section 2(1)

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND WHERE

SPECIFIC DATES AND/OR LOCI ARE IDENTIFIED SEPARATE CRIMES TO BE

RECORDED

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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/Complainer: Person who has been sexually assaulted

Locus: Where crime takes place

Scenario Examples:

Example: 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 Crime of Sexual Offences (Scotland) Act 2009 Section 2(1)

Sexual Assault by Penetration

Example: 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 Crime of Sexual Offences (Scotland) Act 2009 Section 2(1)

Sexual Assault by Penetration

Example: A female makes a historical report that in 2008, a male digitally

penetrated her vagina without her consent.

1 Crime of Assault(indecent) at Common Law

Example: Whilst asleep a female is digitally penetrated by a male. She

awakes and protests creating distance between them. She falls back to sleep and is later awoken by the same male who has removed her underwear and his own and attempts to lie of top of

her and insert his penis into her vagina.

1 Attempt Rape SOSA Section 1(1)

1 Sexual Assault by Penetration SOSA Section 2(1)

Compound Crimes:

Example: 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 Crime of Sexual Offences (Scotland) Act 2009 – Section 2(1) 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 eg. 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.

Relevant Crimes/Offences

SOSA 2009 S2 - Penetrate sexually the vagina/anus of another without consent SOSA 2009 S2 - Attempted sexual penetration

(variants required to identify if Male or Female, 16+ or 13-15)

SEXUAL ASSAULT ON A YOUNG CHILD BY PENETRATION

Sexual Offences (Scotland) Act 2009, Section 19

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND WHERE

SPECIFIC DATES AND/OR LOCI ARE IDENTIFIED SEPARATE CRIMES TO BE

RECORDED

1

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/Complainer: Child who has been sexually assaulted

Locus: Where crime takes place

Scenario Examples:

Example: 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 Crime of Sexual Offences (Scotland) Act 2009, Section 19

Sexual Assault on a Young Child by Penetration

Example: A young child under 13 years old reports that an adult carried out

digital penetration of their anus.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 19

Sexual Assault on a Young Child by Penetration

Example: A young child under 13 years old has allowed her 13 year old

boyfriend to penetrate her vagina with an object.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 19

Sexual Assault on a Young Child by Penetration.

Compound Crimes:

Example: 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 Crime of Sexual Offences (Scotland) Act 2009 – Section 19 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".

Relevant Crimes/Offences

SOSA 2009 S19 – Assault by Penetration Young Child

SOSA 2009 S19 - Common law assault/sexual assault penetration under 13

SOSA 2009 S18&19 - Rape and sexual penetration of a young child

SOSA 2009 S18, 19&20 - Rape, sexual penetration and sexual assault of a young child

SOSA 2009 S19&20 - Sexual penetration and sexual assault of a young child Assault, rape and sexual penetration of a young child

SOSA 2009 S18, 19&20 - Assault, Rape, sexual penetration and sexual assault of a young

child

SOSA 2009 S18&20 - Assault, sexual penetration and sexual assault of a young child

SOSA 2009 S19 - Attempted sexual penetration of young child

SOSA 2009 S19 - Assault and attempted sexual penetration of young child

(variants will be required to identify if Male or Female)

ENGAGING IN PENETRATIVE SEXUAL ACTIVITY WITH OR TOWARDS AN OLDER CHILD

Sexual Offences (Scotland) Act 2009, Section 29

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND WHERE

SPECIFIC DATES AND/OR LOCI ARE IDENTIFIED SEPARATE CRIMES TO BE

RECORDED

1

Definition:

- (1) 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/Complainer:

Child who has been penetrated

Locus:

Where crime takes place

Scenario Examples:

Example:

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

1 Crime of Sexual Offences (Scotland) Act 2009, Section 29 Engaging in Penetrative Sexual Activity with or towards an Older Child

Example:

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 Crime of Sexual Offences (Scotland) Act 2009 Section 2(1) Sexual Assault by Penetration

Compound Crimes:

Example:

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 Crime of Sexual Offences (Scotland) Act 2009 – Section 29 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 <u>any</u> 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.

Relevant Crimes/Offences

SOSA 2009 S29 – Penetrative Sexual Activity Older Child

SOSA 2009 S28&29 - Intercourse and sexual penetration with an older child

SOSA 2009 S28,29&30 - Intercourse, sexual penetration and sexual activity with an older

child

SOSA 2009 S29&30 - Sexual penetration and sexual activity with an older child

SOSA 2009 S29 - Attempt to engage in penetrative sexual activity with an older child

(variants will be required to identify if Male or Female)

SEXUAL ASSAULT Sexual Offences (Scotland) Act 2009, Section 3(1)

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND WHERE

SPECIFIC DATES AND/OR LOCI ARE IDENTIFIED SEPARATE CRIMES TO BE

RECORDED

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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/Complainer: Person who has been sexually assaulted

Locus: Where crime takes place

Scenario Examples:

Example: A female is grabbed from behind by a male when out walking. He

fondles her breasts and her private parts over her clothing.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 3(1)

Sexual Assault

Example: 2 adults lying asleep awake to find a male ejaculating semen over

them.

2 Crimes of Sexual Offences (Scotland) Act 2009, Section 3(1)

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.

Relevant Crimes/Offences

SOSA 2009 S3 - Sexual Assault

SOSA 2009 S1,2&3 - Rape sexual penetration and sexual assault

SOSA 2009 S1&3 - Rape and sexual assault

SOSA 2009 S2&3 - Sexual penetration and sexual assault

SOSA 2009 S1,2&3 - Assault, rape, sexual penetration and sexual assault

SOSA 2009 S1&3 - Assault, rape and sexual assault

SOSA 2009 S2&3 - Assault, sexual penetration and sexual assault

(variants will be required to identify if Male or Female, 16+ or 13-15)

SEXUAL ASSAULT ON A YOUNG CHILD Sexual Offences (Scotland) Act 2009, Section 20

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") 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/Complainer:

Child who has been sexually assaulted

Locus:

Where crime takes place

Scenario Examples:

Example: A young child under 13 years old is approached by an unknown

person who touches the young child's private parts over their

clothina.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 20

Sexual Assault on a Young Child

Example: 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 Crime of Sexual Offences (Scotland) Act 2009, Section 20

Sexual Assault on a Young Child

Example: 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 naked private parts.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 20

Sexual Assault on a Young Child (this would be treated as a single

course of conduct)

Example: A 13 year old female has consensual sexual intercourse with a 12

vear old male.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 20 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.

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.

Relevant Crimes/Offences

SOSA 2009 S20 Sexual Assault Young Child

SOSA 2009 S18,19&20 - Rape, sexual penetration and sexual assault of a young child

SOSA 2009 S18&20- Rape and sexual assault of a young child

SOSA 2009 S19&20 - Sexual penetration and sexual assault of a young child

SOSA 2009 S18,19&20 - Assault, Rape, sexual penetration and sexual assault of a young

child

SOSA 2009 S18&20 - Assault, rape and sexual assault of a young child

SOSA 2009 S19&20 - Assault, sexual penetration and sexual assault of a young child

(variants will be required to identify if Male or Female)

ENGAGING IN SEXUAL ACTIVITY WITH OR TOWARDS AN OLDER CHILD

Sexual Offences (Scotland) Act 2009, Section 30

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND WHERE SPECIFIC DATES AND/OR LOCI ARE IDENTIFIED SEPARATE CRIMES TO BE

RECORDED

1

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/Complainer: Child who has been engaged in sexual activity

Locus: Where crime takes place

Scenario Examples:

Example: 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 Crime of Sexual Offences (Scotland) Act 2009, Section 30 Engaging in Sexual Activity with or towards an Older Child

Example: An older child aged 13 to 15 is approached by an unknown adult

and touched by this person on the private parts over clothing

without consent.

1 Crime of Sexual Offences (Scotland) Act 2009 Section 3(1)

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.

variants will be required to identify if Male or Female

SEXUAL COERCION Sexual Offences (Scotland) Act 2009, Section 4

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND WHERE SPECIFIC DATES AND/OR LOCI ARE IDENTIFIED SEPARATE CRIMES TO BE

RECORDED

1

Definition: If	a	person	("A")-
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- (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/Complainer:	Person who has been sexually coerced.
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Locus: Where crime takes place

Scenario Examples:

Example: An adult is forced by another to touch him/herself in a sexual

manner.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 4

Sexual Coercion

Example: An adult (A) is forced by an Adult (B) to touch another (C) in a

sexual manner. (A) and (C) are non-consenting.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 4

Sexual Coercion in respect of Adult (A)

and

1 Crime of Sexual Offences (Scotland) Act 2009, Section 3(1)

Sexual Assault in respect of Adult (C).

NOTE: The offence of sexual coercion is designed to criminalise behaviour,

which compels the complainer 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.

This section applies to offences occurring on or after 1st December, 2010. If the offence occurred prior to this date and where the coercive sexual conduct involves physical contact between the perpetrator and the complainer, the old common law rules of

assault (indecent) will apply.

Variants will be required to identify if Male or Female, 16+ or 13-15

CAUSING A YOUNG CHILD TO PARTICIPATE IN A SEXUAL ACTIVITY Sexual Offences (Scotland) Act 2009, Section 21

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND WHERE

SPECIFIC DATES AND/OR LOCI ARE IDENTIFIED SEPARATE CRIMES TO BE

RECORDED

1

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/Complainer: Child who has participated in the sexual activity

Locus: Where crime takes place

Scenario Examples:

Example: A young child under 13 years old is forced by a person (A) to touch

the private member of another person (B)

1 Crime of Sexual Offences (Scotland) Act 2009, Section 21 Causing a Young Child to Participate in a Sexual Activity

Example: Two young children under 13 years old are asked by a person to

touch themselves in a sexual manner, which they do.

2 Crimes of Sexual Offences (Scotland) Act 2009, Section 21 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 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".

Variants will be required to identify if Male or Female

CAUSING AN OLDER CHILD TO PARTICIPATE IN A SEXUAL ACTIVITY

Sexual Offences (Scotland) Act 2009, Section 31

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND WHERE

SPECIFIC DATES AND/OR LOCI ARE IDENTIFIED SEPARATE CRIMES TO BE

RECORDED

1

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/Complainer:	Child who has been	present during the sexual activity
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Locus: Where crime takes place

Scenario Examples:

Example: An older child aged 13 to 15 is encouraged by a person over the

age of 16 to touch themself in a sexual manner and they carry this

out.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 31 Causing an Older Child to Participate in a Sexual Activity

Example: An older child aged 13 to 15 is forced by a person over the age of

16 to touch themself in a sexual manner.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 4

Sexual Coercion

Example: An older child aged 13 to 15 years is forced by person (A) who is

over 16 years, to touch person (B) in a sexual manner.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 4

Sexual Coercion

and

1 Crime of Sexual Offences (Scotland) Act 2009, Section 3(1) 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.

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.

variants will be required to identify if Male or Female

COERCING A PERSON INTO BEING PRESENT DURING A SEXUAL ACTIVITY Sexual Offences (Scotland) Act 2009, Section 5

GENERAL RULE: ONE CRIME FOR EACH INCIDENT, OR, COURSE OF CONDUCT

1

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/Complainer:

Person who has been coerced into being present during a sexual

activity.

Locus:

Where crime takes place

Scenario Examples:

Example:

A female is at a party when she receives a call from her friend asking her to come upstairs to the bedroom. When she enters the room she finds her friend lying on the bed having sexual intercourse with another.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 5 -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.

Relevant Crimes/Offences

SOSA 2009 S5 - Coerce Into Being Present Sexual Activity SOSA 2009 S5 - Coerce Into Being Present 3rd Party Sex. Act

CAUSING A YOUNG CHILD TO BE PRESENT DURING A SEXUAL ACTIVITY Sexual Offences (Scotland) Act 2009, Section 22

GENERAL RULE: ONE CRIME FOR EACH INCIDENT, OR, COURSE OF CONDUCT

1

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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/Complainer:

Child/Children who has/have been present during the sexual

activity

Locus:

Where crime takes place

Scenario Examples:

Example:

A male and female engage in sexual intercourse whilst asking their 2 young children who are under 13 years old to sit and watch.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 22. Causing a Young Child to be Present During a Sexual Activity

Example:

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 Crime of Sexual Offences (Scotland) Act 2009, Section 22. 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.

Relevant Crimes/Offences

SOSA 2009 S22 - Cause Young Child To Be Present Sexual Activity SOSA 2009 S22 - Cause Young Child Present 3rd Party Sex. Activity

CAUSING AN OLDER CHILD TO BE PRESENT DURING A SEXUAL ACTIVITY Sexual Offences (Scotland) Act 2009, Section 32

GENERAL RULE: ONE CRIME FOR EACH INCIDENT, OR, COURSE OF CONDUCT

1

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/Complainer:

Child who has been present during the sexual activity

Locus:

Where crime takes place

Scenario Examples:

Example:

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 Crime of Sexual Offences (Scotland) Act 2009, Section 32 Causing an Older Child to be Present During a Sexual Activity

Example:

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 Crime of Sexual Offences (Scotland) Act 2009, Section 5 -Coercing a Person into Being Present During a Sexual Activity

Example:

An adult is seen in a public place apparently masturbating under a towel, although is not exposing himself. An adult with an older child aged 13 to 15 witnesses this act.

1 Crime of Public Indecency as the genitals are not on display.

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.

Relevant Crimes/Offences

SOSA 2009 S32 - Cause Older Child To Be Present Sexual Activity SOSA 2009 S32 - Cause Older Child Present 3rd Party Sex Activity

COERCING A PERSON INTO LOOKING AT A SEXUAL IMAGE

Sexual Offences (Scotland) Act 2009, Section 6

GENERAL RULE: ONE CRIME FOR EACH INCIDENT, OR, COURSE OF CONDUCT

1

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/Complainer:

Person who has been coerced into looking at the sexual image.

Locus:

Where sent from if known, otherwise where received.

Scenario Examples:

Example:

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 Crime of Sexual Offences (Scotland) Act 2009, Section 6 Coercing a Person to look at a Sexual Image

Example:

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 Crime of Communications Act, Section 127(1) - Indecent or Obscene Messages, may be appropriate, this is due to the absence of the intent to humiliate, distress or alarm or for obtaining sexual gratification.

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) A engaging in a sexual activity or of a third person or imaginary person so engaging,
- (b) A's genitals or the genitals of a third person or imaginary person.

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).

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.

CAUSING A YOUNG CHILD TO LOOK AT A **SEXUAL IMAGE**

Sexual Offences (Scotland) Act 2009, Section 23

GENERAL RULE: ONE CRIME FOR EACH INCIDENT, OR, COURSE OF CONDUCT

1

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/Complainer:

Child who has looked at the sexual image

Locus:

Where sent from if known, otherwise where received.

Scenario Examples:

Example:

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 Crime of Sexual Offences (Scotland) Act 2009, Section 23

Causing a Young Child to Look at a Sexual Image

Example:

Two young children under 13 years old are subjected to watching pornographic films by their babysitter, every Friday night for 6

weeks.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 23

Causing a Young Child to Look at a Sexual Image. (Indications are this has been a course of conduct)

Example:

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 Crimes of Sexual Offences (Scotland) Act 2009, Section 23

Causing a Young Child to Look at a Sexual Image

Example:

12 year old girl has been corresponding separately by e-mail with two adult males (two males do not know each other and neither is aware of the others existence). The relationship with the two males has been building to the point where they ask her to send them a photo of her naked in exchange for which they will send her a photo of themselves naked. She sends them photos of a naked female (head not in the photos) and in return she receives naked photos of the males (heads not in the photos). The photos of the girl sent are not of herself naked, but are photos she found on the internet of an anonymous adult female. Throughout the correspondence and on the girl's chat room profile she claims to be 16 years old.

2 Crimes of Sexual Offences (Scotland) Act 2009, Section 23 – Cause to Look at Sexual Image and 2 Crimes of Sexual Offences (Scotland) Act, 2009, Section 24 - Communicating Indecently. (cannot consent as 12 years old)

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.

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.

CAUSING AN OLDER CHILD TO LOOK AT A SEXUAL IMAGE Sexual Offences (Scotland) Act 2009, Section 33

GENERAL RULE: ONE CRIME FOR EACH INCIDENT, OR, COURSE OF CONDUCT

1

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/Complainer:

Child who has looked at the sexual image

Locus:

Where sent from if known, otherwise where received.

Scenario Examples:

Example:

An older child aged 13 to 15 years reports that an adult has convinced/encouraged 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 Crime of Sexual Offences (Scotland) Act 2009, Section 33 Causing an Older Child to look at a Sexual Image.

Example:

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 Crime of Sexual Offences (Scotland) Act 2009, Section 6 Coercing a Person to look at a Sexual Image

Example:

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 and genitalia by an adult babysitter for sexual gratification every Friday night for 6 weeks. The children watch the films although they are not made to and can leave at any point.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 23
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:

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 and genitalia by an adult babysitter for sexual gratification, on a number of occasions, specific dates unknown.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 23 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 will 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 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.

COMMUNICATING INDECENTLY ETC. Sexual Offences (Scotland) Act 2009, Section 7(1)

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND

CONTINUITY OF ACTION OR PER INCIDENT

(AS APPROPRIATE)

NOTE: If the purpose is not to obtain sexual

gratification or to humiliate, distress or alarm,

the Communications Act, 2003 may be

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/Complainer: Person who has received the indecent communication.

Locus: Where communication made from if known, otherwise where communication received.

Scenario Examples:

Example: 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 Crime of Sexual Offences (S) Act 2009 Section 7(1)

Communicating Indecently etc.

Example: 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

recipient.

1 Crime of Sexual Offences (S) Act 2009 Section 7(1) Communicating Indecently etc. (Continuity of action.)

Example: Male sits down beside female (aged over 16 years) on a bus and

makes sexual comments to her. She is frightened and says nothing, she eventually arrives at her stop and he lets her off.

1 Crime of Sexual Offences (S) Act 2009 Section 7(1)

Communicating Indecently etc.

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) a communication which comprises sounds of sexual activity (whether actual or simulated), and
- (b) 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.

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 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.

COMMUNICATING INDECENTLY WITH A YOUNG CHILD ETC.

Sexual Offences (Scotland) Act 2009, Section 24(1)

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND

CONTINUITY OF ACTION OR PER INCIDENT

(AS APPROPRIATE)

NOTE: If the purpose is not to obtain sexual

gratification or to humiliate, distress or alarm,

the Communications Act, 2003 may be

appropriate.

1

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/Complainer:

Child who has received the indecent communication

Locus:

Where communication made from if known, otherwise where received

Scenario Examples:

Example:

A young child under 13 years of age receives sexually explicit messages on a Social Networking Site from a known person with a view to distressing or eleming the shild.

view to distressing or alarming the child.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 24(1)

Communicating Indecently with a Young Child

Example:

A Mother and her 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 mother and the child.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 24(1) Communicating Indecently with a Young Child (due to the Young

Child offence being the most serious)

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) a communication which comprises sounds of sexual activity (whether actual or simulated), and
- (b) 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.

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 an offence under the Communications Act.

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.

COMMUNICATING INDECENTLY WITH AN OLDER CHILD ETC Sexual Offences (Scotland) Act 2009, Section 34(1)

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND

CONTINUITY OF ACTION OR PER INCIDENT

(AS APPROPRIATE)

NOTE: If the purpose is not to obtain sexual

gratification or to humiliate, distress or alarm,

the Communications Act, 2003 may be

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.

Locus: Where communication made from otherwise where communication received

Scenario Examples:

Example: The parents of an older child aged 13 to 15 years, find a sexually

explicit text message on the 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 Crime of Sexual Offences (Scotland) Act 2009, Section 34(1)

Communicating Indecently with an Older Child

Example: An older child aged 13 to 15 years, receives an unwanted sexually

explicit text message on the mobile phone from an adult who intend the child as the recipient for the purposes of causing

distress.

1 Crime of Sexual Offences (S) Act 2009 Section 7(1)

Communicating Indecently etc.

Example: 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 Crime of Sexual Offences (S) Act 2009 Section 7(1)

Example:

An older child aged 13 to 15 years receives sexually explicit messages on their Social Networking Site 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 Crime of Sexual Offences (Scotland) Act 2009, Section 7(1) Communicating Indecently etc.

Example:

Mother and her 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 Crime of Sexual Offences (Scotland) Act 2009, Section 7(1) Communicating Indecently etc. (indicates sent with same purpose)

Example:

4 persons acting together send indecent messages to an older child aged 13 to 15 years for the purposes of causing distress and humiliation

1 Crime of Sexual Offences (S) Act 2009 Section 7(1) Communicating Indecently etc.

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) a communication which comprises sounds of sexual activity (whether actual or simulated), and
- (b) 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.

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 or an offence under the Communications Act 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.

CAUSING A PERSON TO SEE OR HEAR AN INDECENT COMMUNICATION Sexual Offences (Scotland) Act 2009, Section 7(2)

GENERAL RULE: ONE CRIME FOR EACH INCIDENT, OR, COURSE OF CONDUCT

1

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/Complainer:

Person who has seen or heard the sexual communication.

Locus:

Where the indecent communication was seen or heard

Scenario Examples:

Example:

A female reports that she is sitting on a bus when without her consent a male for the purpose of distressing or alarming the female, shows her a sexual text message on his phone.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 7(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-

- (c) a communication which comprises sounds of sexual activity (whether actual or simulated), and
- (d) 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 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.

CAUSING A YOUNG CHILD TO SEE OR HEAR AN INDECENT COMMUNICATION Sexual Offences (Scotland) Act 2009, Section 24(2)

GENERAL RULE: ONE CRIME FOR EACH INCIDENT, OR, COURSE OF CONDUCT

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/Complainer:

Child who has seen or heard the indecent communication

Locus

Where the indecent communication was seen or heard

Scenario Examples:

Example:

An older pupil talks loudly to another older pupil 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 Crime of Sexual Offences (Scotland) Act 2009, Section 24(2) Causing a Young Child to See or Hear an Indecent Communication.

Example:

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 Crime of Sexual Offences (Scotland) Act 2009, Section 24(1)

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) a communication which comprises sounds of sexual activity (whether actual or simulated), and
- (b) 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 old common law 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.

CAUSING AN OLDER CHILD TO SEE OR HEAR AN INDECENT COMMUNICATION Sexual Offences (Scotland) Act 2009, Section 34(2)

GENERAL RULE: ONE CRIME FOR EACH INCIDENT, OR,
COURSE OF CONDUCT

1

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/Complainer:

Child who has seen or heard the indecent communication

Locus:

Where indecent communication was seen or heard

Scenario Examples:

Example:

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 Crime of Sexual Offences (Scotland) Act 2009, S34 (2) Causing An Older Child to See or Hear an Indecent Communication

Example:

An older child aged 13 to 15 years is in a library when an adult intentionally causes the child to open a book where he has placed a sexually explicit piece of text to alarm her.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 7(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) a communication which comprises sounds of sexual activity (whether actual or simulated), and
- (b) 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 old common law 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 EXPOSURE Sexual Offences (Scotland) Act 2009, Section 8

GENERAL RULE: ONE CRIME FOR EACH INCIDENT OR

COURSE OF CONDUCT

NOTE: Where a mixed age group is present, and

conduct has not been directed towards a specific age group, the section of the Act relating to the lowest age group present

should be recorded.

1

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/Complainer: Person who has seen the sexual exposure

Locus: Where crime takes place

Scenario Examples:

Example: A report is received that a naked male is standing at a window of a

house watching passers by.

1 Crime of Public Indecency.

Example: A report is received that a naked male is standing at a window of a

house masturbating in full view of adult passers by.

1 Crime of Sexual Offences (Scotland) Act 2009 Section 8

Sexual Exposure

Example: A male reports that he was in the park with his older child aged 13

to 15 years when another male exposed his private member to

them and started masturbating.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 35 Sexual Exposure. (There is nothing to indicate the conduct was directed towards a specific age group i.e. Adult or Older Child)

Example: A male sits next to an adult female on a park bench, exposes his

private member and starts masturbating.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 8 Sexual

Exposure.

Example:

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 Crime of Sexual Offences (Scotland) Act, 2009, Section 8 – Sexual Exposure and 1 Crime of Sexual Offences (Scotland) Act 2009.. Section 3(1) – Sexual Assault.

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.

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.

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 EXPOSURE TO A YOUNG CHILD Sexual Offences (Scotland) Act 2009, Section 25

GENERAL RULE: ONE CRIME FOR EACH INCIDENT OR

COURSE OF CONDUCT

NOTE: Where a mixed age group is present, and

conduct has not been directed towards a specific age group, the section of the Act relating to the lowest age group present

should be recorded.

1

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/Complainer:

Child who has seen the sexual exposure

Locus:

Where crime takes place

Scenario Examples:

Example: Two young children under 13 years of age are invited into a

dwelling house, where an adult exposes his/her genitals for the

purpose of sexual gratification.

1 Crimes of Sexual Offences (Scotland) Act 2009, Section 25

Sexual Exposure to a Young Child (2 Victims)

Example: An adult intentionally exposes his/her 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 Crimes of Sexual Offences (Scotland) Act 2009, Section 25

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 1 Crime of Public Indecency

Example: A young child under 13 years of age disturbs a male urinating in a

nearby street, exposing his naked private member 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 streaking across a

football pitch. The exposure must also be intentional.

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 a crime of public indecency will apply.

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 EXPOSURE TO AN OLDER CHILD Sexual Offences (Scotland) Act 2009, Section 35

GENERAL RULE: ONE CRIME FOR EACH INCIDENT OR

COURSE OF CONDUCT

NOTE: Where a mixed age group is present, and

conduct has not been directed towards a specific age group, the section of the Act relating to the lowest age group present

should be recorded.

1

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/Complainer: Child who has seen the sexual exposure

Locus: Where Crime Takes Place

Scenario Examples:

Example: 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 Crime of Sexual Offences (Scotland) Act 2009, Section 35

Sexual Exposure to an Older Child

Example: An older child aged 13 to 15 years reports that they disturbed an

adult male urinating in the street, exposing his naked private

member and clearly in a drunken state.

There is no intention to act in a sexual manner or for gratification.

Example: Two older children aged 13 to 15 report that they were sitting in the

park when an adult male exposed his private member to them and

caused them alarm.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 35 Sexual Exposure to an Older Child (One crime, two victims).

Example: 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 Crime of Sexual Offences (Scotland) Act 2009, Section 35 Sexual Exposure (There is nothing to indicate the conduct was

directed towards a specific age group i.e. adult or older child)

Example:

Male corresponds with 14 year old female by message board (e.g. MSN, facebook etc) 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 Crime of Sexual Offences (Scotland) Act 2009, Section 35 Sexual Exposure and 1 Crime of Sexual Offences (Scotland) Act, 2009, Section 34(1) Communicating Indecently (if consensual).

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 may be appropriate.

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.

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.

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.

VOYEURISM Sexual Offences (Scotland) Act 2009, Section 9

GENERAL RULE: ONE CRIME FOR EACH INCIDENT, OR COURSE OF CONDUCT

Definition:

A person ("A") commits an offence of voyuerism if A does any of the following things for a purpose mentioned in subsection (2), without B consenting and without any reasonable belief that B consents:

Observes B doing a private act.

Operates equipment with the intention of enabling A or another person ("C"), to observe B doing a private act.

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.

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.

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.

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.

The purposes are:

- (a) obtaining sexual gratification,
- (b) humiliating, distressing or alarming B.

Victim/Complainer: Person who has been observed

Locus: Where crime takes place

Scenario Examples:

Example: A person enters a public toilet and by looking underneath a toilet

cubicle, observes another adult using the lavatory.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 9

Voyeurism

Example: A person installs a camera in public changing rooms, which allows

the person to view three adults in cubicles getting dressed.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 9

Voyeurism.

1

Example: 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 Crime of Sexual Offences (Scotland) Act 2009, Section 9

Voyeurism.

Example: A person (A) drills a hole in a flatmate's (B) bedroom wall which A

uses to record video footage allowing a friend (C) to view B

engaging in sexual intercourse with their partner.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 9

Voyeurism

Example: 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 Crime of Sexual Offences (Scotland) Act 2009, Section 9

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 or an indecent 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.

Relevant Crimes/Offences

SOSA 2009 S9(1)&(2) Voyeurism Observe Another

SOSA 2009 S9(1)&(3) Voyeurism Operate Equipment

SOSA 2009 S9(1)&(4) Voyeurism Record Another

SOSA 2009 S9(1)&(4A) Voyeurism Equipment Under Clothing

SOSA 2009 S9(1)&(4B) Voyeurism Record Image Under Clothing

SOSA 2009 S9(1)&(5) Voyeurism Install/Construct/Adapt

VOYEURISM TOWARDS A YOUNG CHILD Sexual Offences (Scotland) Act 2009, Section 26

GENERAL RULE: ONE CRIME FOR EACH INCIDENT, OR, **COURSE OF CONDUCT**

1

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 (2) in relation to a child ("B") who has not attained the age of 13 years:

Observes B doing a private act.

Operates equipment with the intention of enabling A or another person ("C") to observe B doing a private act.

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.

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.

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.

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.

The purposes are:

- (a) obtaining sexual gratification
- (b) humiliating, distressing or alarming B

Victim/Complainer: Young child who has been observed

Where crime takes place Locus:

Scenario Examples:

Example: 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 teachers sexual gratification.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 26 Voyeurism towards a Young Child, with 30 victims.

Example: 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 Crime of Sexual Offences (Scotland) Act 2009, Section 26

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.

Relevant Crimes/Offences

SOSA 2009 S26(1)&(2) - Voyeurism Observe Young Child Private Act

SOSA 2009 S26(1)&(3) - Voyeurism Young Child Operate Equipment

SOSA 2009 S26(1)&(4) - Voyeurism Young Child Record Private Act

SOSA 2009 26(1)&(4A) - Voyeurism Young Child Equipment Under Clothes

SOSA 2009 S26(1)&(4B) - Voyeurism Young Child Record Under Clothing

SOSA 2009 S26(1)&(5) - Voyeurism Young Child Install/Construct/Adapt

VOYEURISM TOWARDS AN OLDER CHILD Sexual Offences (Scotland) Act 2009, Section 36

GENERAL RULE: ONE CRIME FOR EACH INCIDENT, OR, COURSE OF CONDUCT

1

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 (2) 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;

Observes B doing a private act.

Operates equipment with the intention of enabling A or another person ("C") to observe B doing a private act.

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.

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.

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.

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

The purposes are-

- (a) obtaining sexual gratification,
- (b) humiliating, distressing or alarming B.

Victim/Complainer: Child(ren) who have been observed

Locus: Where crime takes place

Scenario Examples:

Example:

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 children, all older children aged 13 to 15 years have been filmed in their underwear.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 36 Voyeurism towards an Older Child.

Example: 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 Crime Sexual Offences (Scotland) Act 2009, Section 36 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.

Relevant Crimes/Offences

SOSA 2009 36(1)&(2) - Voyeurism Observe Older Child Private Act

SOSA 2009 S36(1)&(3) - Voyeurism Older Child Operate Equipment

SOSA 2009 S36(1)&(4) - Voyeurism Older Child Record Private Act

SOSA 2009 36(1)&(4A) - Older Child Operate Equipment Under Clothing

SOSA 2009 36(1)&(4B) - Voyeurism Older Child Record Under Clothing

SOSA 2009 36(1)&(5) - Voyeurism Older Child Install/Construct/Adapt

ADMINISTERING A SUBSTANCE FOR SEXUAL PURPOSES

Sexual Offences (Scotland) Act 2009, Section 11

GENERAL RULE: ONE CRIME FOR EACH VICTIM

1

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/Complainer: Person who has taken the substance

Locus: Where substance is administered

Scenario Examples:

Example: A female is in a bar drinking with her friends when another person

adds a drug to her drink, helps her out the premises into a nearby alleyway where he intends to have sexual intercourse with her. He

is stopped before he carries out any sexual assault.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 11

Administering a Substance for Sexual Purposes.

Example: A female is in a bar drinking with her friends when another person

adds a drug to her drink, helps her out the premises into a nearby

alleyway where he has sexual intercourse with her..

1 Crime of Sexual Offences (Scotland) Act 2009 Section 1 Rape

and

1 Crime of Sexual Offences (Scotland) Act 2009, Section 11

Administering a Substance for Sexual Purposes.

Example: A female is in a bar drinking with her friends when she suddenly

feels very ill and has to be taken home. Her friend phones the police who take a urine sample which is tested positive for GHB.

This should be recorded as a DRUGGING, 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 1 st 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.

ENGAGING WHILE AN OLDER CHILD IN **SEXUAL CONDUCT WITH OR TOWARDS** ANOTHER OLDER CHILD Sexual Offences (Scotland) Act 2009, Section 37(1)

GENERAL RULE: ONE CRIME FOR EACH PARTICIPANT

1

Definition:

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.

Victim/Complainer:

Procurator Fiscal ('Participant' can be recorded as a witness, however, some Divisions may prefer the 'Participant' to be recorded as the Victim/Complainer for research purposes)

Locus:

Where crime takes place

Scenario Examples:

Example:

An older child (A) aged 13 to 15 years discloses that he had consensual sexual intercourse on a number of occasions with his partner (B), who is also aged 13 to 15 years.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 37(1) Engaging while an Older Child in Sexual Conduct with or towards another Older Child (Male)

and.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 37(4) Engaging while an Older Child in Consensual Sexual Conduct with

an Older Child. (Female)

Example:

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 Crime of Sexual Offences (Scotland) Act 2009, Section 37(1) Engaging while an Older Child in Sexual Conduct with or towards

another Older Child

and,

1 Crime of Sexual Offences (Scotland) Act 2009, Section 37(4) Engaging while an Older Child in Consensual Sexual Conduct with

an Older Child.

Example:

15 year old female confirms having consensual intercourse with her boyfriend before and after 1st December, 2010, which he

confirms was consensual.

1 Crime of Criminal Law (Consolidation)(Scotland) Act, 1995, Section 5 (prior to 1st December, 2010) and

1 Crime of Sexual Offences (Scotland) Act 2009, Section 37(1) Engaging while an Older Child in Sexual Conduct with or towards another Older Child (after 1st December, 2010)

1 Crime of Sexual Offences (Scotland) Act 2009, Section 37(4) Engaging while an Older Child in Consensual Sexual Conduct with an Older Child. (after 1st December, 2010)

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 old common law 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.

Relevant Crimes/Offences

SOSA 2009 S37(1)&(3)(A) - Penetrate Another Older Child SOSA 2009 S37(1)&(3)(B) - Sexually Touch Another Older Child

(variants will require to be added to identify if Male or Female)

ENGAGING WHILE AN OLDER CHILD IN CONSENSUAL SEXUAL CONDUCT WITH OR TOWARDS ANOTHER OLDER CHILD Sexual Offences (Scotland) Act 2009, Section 37(4)

GENERAL RULE: ONE CRIME FOR EACH PARTICIPANT

1

Definition:

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, and B consents to engaging in the conduct, then B commits the offence of engaging with an older child in consensual sexual conduct with 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.

In the circumstances specified in subsection (1) of the Act, if B engages by consent in the conduct in question, then B commits an offence, to be known as the offence of engaging while an older child in consensual sexual conduct with another older child.

Victim/Complainer:

Procurator Fiscal ('Participant' can be recorded as a witness, however, some Divisions may prefer the 'Participant' to be recorded as the Victim/Complainer for research purposes)

Locus:

Where crime takes place

Scenario Examples:

Example:

A 14 year old boy discloses that he had consensual sexual intercourse with his 13 year old girlfriend.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 37(1) Engaging while an Older Child in Sexual Conduct with or towards another Older Child (Male)

and

1 Crime of Sexual Offences (Scotland) Act 2009, Section 37(4) Engaging while an Older Child in Consensual Sexual Conduct with an Older Child. (Female).

Example:

A 15 year old girl discloses that she performed oral sex on her 14 year old boyfriend and that he consented to it.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 37(1) Engaging while an Older Child in Sexual Conduct with or towards another Older Child (Female)

and

1 Crime of Sexual Offences (Scotland) Act 2009, Section 37(4) Engaging while an Older Child in Consensual Sexual Conduct with an Older Child. (Male).

NOTE:

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.

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.

Variants will require to be added to identify if Male or Female

SEXUAL ABUSE OF TRUST (CHILDREN) Sexual Offences (Scotland) Act 2009, Section 42

GENERAL RULE: ONE CRIME FOR EACH VICTIM

NOTE: This section of the legislation is aimed at

children aged 16 or 17 years of age.

1

Definition:	If a person	("A") who	has attained th	e age of 18 years	; –
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(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

Victim/Complainer: Child who the person had a position of trust over

Locus: Where crime takes place

Scenario Examples:

Example: 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 Crime of Sexual Offences (Scotland) Act 2009, Section 42 -

Sexual Abuse of Trust

Example: A school teacher touches a pupil who is under 18 years of age, in a

sexual manner, to which the pupil consented,

1 Crime of Sexual Offences (Scotland) Act 2009, Section 42 -

Sexual Abuse of Trust

Example: A child aged 13 to 15 years stated that their stepfather had sexual

intercourse with them without consent.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 1 (1)

Rape.

NOTE:

This new 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.

SEXUAL ABUSE OF TRUST OF A MENTALLY DISORDERED PERSON Sexual Offences (Scotland) Act 2009, Section 46(1)

GENERAL RULE: ONE CRIME FOR EACH VICTIM

1

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/Complainer:

Mentally disordered person who the accused/suspect had a

position of trust over

Locus:

Where crime takes place

Scenario Examples:

Example:

A mentally disordered person discloses to the social worker that they have engaged in sexual activity with their care worker who is employed by an independent health care service.

1 Crime of Sexual Offences (Scotland) Act 2009, Section 46(1) Sexual Abuse of Trust of a Mentally Disordered Person.

Example:

A mentally disordered female who due to her disorder is not capable of giving consent to sexual activities, discloses to the social worker that the male care worker had vaginal sexual intercourse with her

intercourse with her.

1 Crime of Sexual Offences (Scotland) Act 2009 - 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 persons 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.

Relevant Crimes/Offences

SOSA 2009 S46(1)&(2)(A) - Sexual Abuse Trust Mentally Disordered SOSA 2009 S46(1)&(2)(B) - Sexual Abuse Trust Mentally Disordered

OTHER OFFENCES

016000 ASSAULT (INDECENT)

1

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/Complainer: Person subject of assault

Locus: Where Crime Takes Place

Scenario Examples:

Example:

NOTE: With the introduction of the Sexual Offences (Scotland) Act,

2009, Sexual Assault will most likely be recorded, as opposed to

assault - indecent

015000 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

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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.

Victim/Complainer: Person Subject of Assault

Locus: Where Crime Takes Place

Scenario Examples:

Example: A man attempts to rape three women and succeeds with a fourth.

1 Crime of Rape and 3 of Assault wi to Rape

Example: A female reports a male spiked her drink and thereafter

attempted

to rape her.

1 Crime of Assault wi to Rape (a suitable aggravator/marker should

be applied to the crime record to allow identification that a drug

may have been used to facilitate the crime) (see 011005 Drugging for further guidance)

Example: A female alleges her drink was spiked by an unknown person and

later a man has attempted to rape her. (prior to 1st December,

2010)

1 Crime of Assault wi to Rape and 1 Crime of Assault

(Drugging) (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 011005 Drugging for further guidance)

Example: A female reports two males attempted to rape her.

1 Crime of Assault wi to Rape

Example: A female reports that on a number of occasions within a three

month period her neighbour has attempted to rape her, she is

unsure of specific dates.

1 Crime of Assault wi to Rape (if specific dates, times, loci were

provided a crime should be recorded for each occasion)

NOTE: If a female 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 apply to males. The new Act will apply in terms of the penis insertion into the vagina, anus and

mouth.

Relevant Crimes/Offences

Assault with intent to Rape Attempt Rape

018021 BESTIALITY

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

1

Definition: A human being having carnal connection with any of the lower

animals.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: A man is found in a field having sex with a sheep

1 Crime of 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

CIVIC GOVERNMENT (SCOTLAND) ACT 1982, 018018 Section 52 (Taking, distribution, possession, publish etc. indecent photos of children)

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

Definition:

It is an offence for a person to have any indecent photograph or

pseudo-photograph of a child in his possession.

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.

Victim/Complainer:

Procurator Fiscal

Locus:

Where Crime Takes Place

Scenario Examples:

Example: A person is found to be in possession of three photos of young

children who are naked

1 Crime of Civic Government (Scotland) Act 1982, Section 52(1)(c)

Example: A 19-year old male is found to be in possession of three photos of

a 16-year old female who is naked. 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 Section 52B of the Act.

Example: 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 Crime of Civic Government (Scotland) Act 1982, Section 52(1)(b)

- 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.

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.

Section 52B of this legislation provides exceptions in specific circumstances where the photograph is of a child aged 16 or 17.

The term "make" covers an activity whereby a computer is used to bring into existence data stored on a computer disc. A person who downloads images is making photographs.

Where these offences do not involve photos or images of children, the crimes are recorded under Group 6 - Handling Obscene Material. See page relating to SGJD code 059001

Relevant Crimes/Offences

Civic Govt 1982, S52(1)(b) - Distribute Indecent Photograph of Child/Children

Civic Govt 1982, S52(1)(c) - Possess indecent photograph of a child with a view to distribute

Civic Govt 1982, S52(1)(d) – Publish Indecent Photograph of a Child/Children

Civic Govt 1982, S52(1)(a) - Take or make indecent photograph of a child

Civic Govt 1982, S52A(1) - Possess indecent photograph of a child/children

012000 INCEST

Criminal Law (Consolidation)(Scotland) Act, 1995, Section 1

GENERAL RULE: ONE CRIME FOR EACH RELATIONSHIP

1

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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: 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

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.

Victim/Complainer: Procurator Fiscal

Locus: Where crime takes place

Scenario Examples:

Example: A brother and sister have consensual intercourse

1 Crime of Incest

Example: 2 brothers have consensual intercourse with their sister

2 Crimes of Incest (1 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.

Relevant Crimes/Offences

Crim Law Consolid 1995 S1(1) Intercourse with Daughter Crim Law Consolid 1995 S1(1) Intercourse with a person related

018001 PROCURATION (EXCLUDING HOMOSEXUAL ACTS) Criminal Law (Consolidation)(Scotland) Act, 1995, Section 7(1)

GENERAL RULE: ONE CRIME FOR EACH VICTIM

1

Definition:	Any person who procures or attempts to procure:
	^

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

Any woman or girl to become a common prostitute in any part of

the world; or

Any woman or girl to leave the United Kingdom, with intent that she

may become an inmate of or frequent a brothel elsewhere; or

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/Complainer: Individual against whom the offence was committed.

Locus: Where Procurement Takes Place.

Scenario Examples:

Example: Male invites 3 females from the Philippines to work in UK as

nannies, but on their arrival deploys them as prostitutes in a sauna

3 Crimes of 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 S.22 of the Criminal Justice Scotland) Act 2003 or Section 11 Criminal Law Consolidation (Scotland) Act 1995, depending on circumstances. The above scenario is

to illustrate it would be 3 crimes.

Relevant Crimes/Offences

Crim Law Consolid 1995 S7(1)(B) Procure Woman Prostitute

Crim Law Consolid 1995 S7(1)(A) Procure Woman U21 have Inter

Crim Law Consolid 1995 S7(1)(D) Procure Woman for Brothel

018010 PROSTITUTION Civic Government (Scotland) Act, 1982, Section 46

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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: A known prostitute is found soliciting in a public area.

1 Crime of Civic Government (Scotland) Act, 1982, Section 46

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 prerequisite 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."

Relevant Crimes/Offences

Loiter Solicit

Importune Person

183

018017 PROSTITUTION (PUBLIC PLACES) (SCOTLAND) ACT, 2007, SECTION 1

1

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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: Male seen to be driving slowly, stopping and offering money to

three prostitutes individually in the street for sex.

1 Crime of Prostitution (Public Places) (Scotland) Act, 2007,

Section 1

Example: 2 males in a car stop a prostitute in the street and ask for sex.

1 Crime of Prostitution (Public Place)(Scotland) Act, 2007, Section

1. (2 Crimes if accused acting independantly).

NOTE: Offence provisions introduced on Monday, 15th October, 2007.

Section 1 creates two offences:-

 Soliciting in a relevant place for the purpose of obtaining the services of someone engaged in prostitution, and

services of someone engaged in prostitution, and

 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.

Relevant Crimes/Offences

Prost (Pub Plcs) Act, 2007 S1(1) Pers Obt Serv Prost Solicit

Prost (Pub Plcs) Act, 2007 S1(3) Pers Inf Obt Serv Prost Loiter

GENERAL RULE: ONE CRIME FOR EACH INCIDENT OR 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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: A male reports that he was playing football in the park with his child

who is aged 13 to 15 years, when another male deliberately exposed his private member to them in a sexual manner.

If the sexual element did not exist, then the crime would be one of

public indecency, otherwise

1 Crime of Sexual Offences (Scotland) Act 2009 Section 8 Sexual Exposure (there is nothing to indicate the conduct was specifically

directed towards the child)

Example: A report is received that a group of males dropped their trousers,

showing their buttocks to an adult complainer.

Public indecency or Criminal Justice and Licensing (Scotland) Act,

Section 38.

Example: A male is standing at a bus stop with his hands in his trouser

pockets masturbating (no exposure). Two people in a nearby café observe this and have no doubt that is what he was doing and

phone the police.

1 Crime of 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

REPEALED OFFENCES

This will only apply to reported crimes occurring prior to 1st December 2010.

013001 HOMOSEXUAL ACTS (ILLEGAL) Criminal Law (Consolidation)(Scotland) Act, 1995, Section 13

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

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: Two men having consensual sexual Intercourse in a public toilet

1 Crime of Criminal Law (Consolidation)(Scotland) Act, 1995,

Section 13 Homosexual Acts (Illegal)

Example: One male forcing another male to have anal intercourse

Prior to 1st December 2010 - 1 Crime of Sodomy

After 1st December 2010 - 1 Crime of Sexual Offences (Scotland)

Act 2009, Section 1 Rape

Example: One male forcing another male to carry out oral sex upon him

Prior to 1st December 2010 - 1 Crime of Indecent Assault

After 1st December 2010 - 1 Crime of Sexual Offences (Scotland)

Act 2009, Section 1 Rape

Example: Two public toilet cubicles found to contain two men in each, having

sexual intercourse, prior to 1st December, 2010.

2 Crimes of Criminal Law (Consolidation)(Scotland) Act, 1995,

Section 13 Homosexual Acts (Illegal)

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 1st December, 2010, where the sex is non-consensual the charge of Sodomy (013003) or Indecent Assault (016000) will

apply

Relevant Crimes/Offences

Crim Law Consolid 1995 S13(4)&5(a) Commit/Procure H/Sex Act

Crim Law Consolid 1995 S13(4)&5(a) Party to commission

Crim Law Consolid 1995 S13(4)&5(b) Commit/Procure H/Sex Act

Crim Law Consolid 1995 S13(4)&5(b) Party to commission

Crim Law Consolid 1995 S13(4)&(c) Commit/procure H/Sex Act

Crim Law Consolid 1995 S13(4)&5(c) Party to commission

This will only apply to reported crimes occurring prior to 1st December 2010.

018022 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

1

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 complainer. It is criminal whether committed in public or in private.

Victim/Complainer:

The underage boy/girl subject of abuse

Locus:

Where Crime Takes Place

Scenario Examples:

Example: The victim, now aged 25, reports to the police having been

subjected to sexual abuse by his uncle from the age of 9 to 14

when the abuse stopped he moved to another area.

1 Crime of Lewd and Libidinous Practices and Behaviour should be

recorded (if times, dates, loci provided separate crimes should be

recorded)

Example: 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. This

happened prior to 1st December 2010

12 Crimes of Lewd and Libidinous Practices and Behaviour should

be recorded as six dates are identifiable and there are two victims.

Example: Two 12 year old victims report that on 5th December 2010, they

were invited into dwelling house, where an adult male exposed his

private member

2 Crimes of Sexual Exposure to a Young Child

Example: 12 year old boy is indecently assaulted by 3 persons acting

together

1 Crime of Lewd and Libidinous Practices and Behaviour

NOTE: The essence of the offence is the tendency to corrupt the

innocence of the complainer. 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 S. 13(5) of the Criminal Law (Consolidation) (Scotland) Act, 1995.

This will only apply to reported crimes occurring prior to 1st December 2010.

018022 LEWD, INDECENT AND LIBIDINOUS PRACTICES – STATUTE Criminal Law (Consolidation)(Scotland) Act, 1995 Section 6

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND WHERE

SPECIFIC DATES AND/OR LOCI ARE IDENTIFIED SEPARATE CRIMES TO BE

RECORDED

1

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/Complainer: The girl subject of abuse

Locus: Where Crime Takes Place

Scenario Examples:

Example: Two 14 year old girls invited into dwelling house, accused exposes

private member

2 Lewd and Libidinous Practices (statute)

Note

In circumstances where the crime date range encompasses 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.

This will only apply to reported crimes occurring prior to 1st December 2010.

018008 PERSON WITH CUSTODY & CARE OF GIRL OR OTHER CAUSING HER SEDUCTION Criminal Law (Consolidation)(Scotland) Act, 1995, Section 3(1)

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND WHERE

SPECIFIC DATES AND/OR LOCI ARE IDENTIFIED SEPARATE CRIMES TO BE

RECORDED

1

Definition: Any person of or over the age of 16 years who:

has sexual intercourse with a child under the age of 16 years; is a member of the same household as that child; and is in a position of trust or authority in relation to that child.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: 30 year old man has intercourse with his sister's 13 year old

daughter.

1 Crime of Incest

Example: 30 year old man has intercourse with his wife's sister's 13 year old

daughter who lives with them.

1 Crime of Seduction

This will only apply to reported crimes occurring prior to 1st December 2010.

018012 PROCURATION OF HOMOSEXUAL ACTS Criminal Law (Consolidation) (Scotland) Act, 1995, Section 13

GENERAL RULE: ONE CRIME FOR EACH RELATIONSHIP

1

Definition	
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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:

- otherwise than in private;
- without the consent of the parties to the act; or
- 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

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: Adult male offering an inducement to male to engage in sodomy in

a public toilet

1 Crime of Procuration of Homosexual Acts

Relevant Crimes/Offences

Crim Law Consolid 1995 S13(4)&5(a) Att Procure Commission

Crim Law Consolid 1995 S13(4)&5(b) Att Procure Commission

Crim Law Consolid 1995 S13(4)&5(c) Att Procure Commission

Crim Law Consolid 1995 S13(4)&5(c) Procure Commission

Crim Law Consolid 1995 S13(4)&5(c) Att Proc Com (Sodomy)

Crim Law Consolid 1995 S13(4)&5(c) Commit/Procure H/Sex Act

Crim Law Consolid 1995 S13(4)&5(c) Party to Comm (Sodomy)

This will only apply to reported crimes occurring prior to 1st December 2010.

014000 RAPE - COMMON LAW

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND WHERE

SPECIFIC DATES AND/OR LOCI ARE IDENTIFIED SEPARATE CRIMES TO BE

1

RECORDED

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/Complainer: Person Subject of Assault

Locus: Where Crime Takes Place

Scenario Examples:

Definition:

Example: A woman reports having been raped, but the alleged offender

insists that she consented although the woman insists she didn't.

Prior to 1st December 2010 - 1 Crime of Rape

After 1st December 2010 - 1 Crime of Sexual Offences (Scotland)

Act 2009, Section 1 - Rape

Example: A woman reports that she has been raped by the same man on

numerous occasions over several years and cannot specify dates.

Prior to 1st December 2010 - 1 Crime of Rape

After 1st December 2010 - 1 Crime of Sexual Offences (Scotland)

Act 2009, Section 1 - Rape.

Example: A woman reports being raped anally by a male.

Prior to 1st December 2010 - 1 Crime of Indecent Assault

After 1st December 2010 - 1 Crime of Sexual Offences (Scotland)

Act 2009, Section 1 - Rape.

Example: A woman reports being raped by a group of men, who were acting

together.

Prior to 1st December 2010 - 1 Crime of Rape

After 1st December 2010 - 1 Crime of Sexual Offences (Scotland)

Act 2009, Section 1 - 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.

This will only apply to reported crimes occurring prior to 1st December 2010.

018002 SEXUAL INTERCOURSE WITH GIRL UNDER 13 Criminal Law (Consolidation)(Scotland) Act, 1995, Section 5

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND WHERE

SPECIFIC DATES AND/OR LOCI ARE IDENTIFIED SEPARATE CRIMES TO BE

RECORDED

1

Definition:	Any person who has or attempts to have unlawful sexual
	intercourse with any girl under the age of 13 years.

Victim/Complainer: Individual against whom the offence was committed

Locus: Where Crime Takes Place

Scenario Examples:

Example: 2 girls of 12 years old are invited into a dwelling where a male has

consensual intercourse with them.

2 Crimes of Sexual Intercourse with Girl under 13.

Example: Social Worker advises a girl of 11 years old is pregnant.

1 Crime of Rape (as the girl is under the age of 12)

Example: Social Worker advises a girl of 13 years old is pregnant, having had

consensual intercourse.

1 Crime of Sexual Intercourse with Girl under 16

Example: Male has consensual intercourse with female who is 12 years old

1 Crime of Sexual Intercourse with Girl under 13

NOTE: The age of the male is irrelevant.

Relevant Crimes/Offences

Crim Law Consolid 1995 S5(1) Intercourse girl under 13 Crim Law Consolid 1995 S5(2) Att Intercourse girl under 13

This will only apply to reported crimes occurring prior to 1st December 2010.

018003 SEXUAL INTERCOURSE WITH GIRL UNDER 16 Criminal Law (Consolidation)(Scotland) Act, 1995, Section 5

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/Complainer: Individual against whom the offence was committed

Locus: Where Crime Takes Place

Scenario Examples:

Example: Male and 15 year old female drive to a secluded area where they

have consensual sexual intercourse.

1 Crime of Sexual Intercourse with a Girl under 16

Example: Male and female, aged 14 years old, have consensual sexual

intercourse on 5 different dates over a period of 1 month.

5 Crimes of Sexual Intercourse with a Girl under 16

Example: Male and female, both 15 years, attend a party, enter a bedroom

and engage in consensual sexual intercourse.

1 Crime of Sexual Intercourse with a Girl under 16

Example: A social worker informs the police of a girl of 14 years old who is

pregnant, having had consensual sexual intercourse.

1 Crime of Sexual Intercourse with a Girl under 16

Example: 15 year old female has consensual intercourse with her boyfriend

1 Crime of Sexual Intercourse with a Girl under 16

Relevant Crimes/Offences

Crim Law Consolid 1995 S5(3) Intercourse girl 13 & 16 house Crim Law Consolid 1995 S5(3) Att Intercourse girl 13 & 16 house Crim Law Consolid 1995 S5(3) Intercourse girl 13 & 16 locus 1

This will only apply to reported crimes occurring prior to 1st December 2010.

013001 SODOMY/ATTEMPT SODOMY

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND WHERE SPECIFIC DATES AND/OR LOCI ARE **IDENTIFIED SEPARATE CRIMES TO BE**

RECORDED

Definition: Sodomy is the unnatural connection between human males. 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/Complainer: Person Subject of Assault

Where Crime Takes Place Locus:

Scenario Examples:

Example: '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.

1 Crime of Sodomy

Example: 'A' and 'B' enter a cubicle of a public toilet together, whereby 'A'

forces himself on 'B' and sodomises him. This happens after 1st

December 2010.

1 Crime of SOSA (S1)

Example: 'A' and 'B' report being sodomised by 4 members of a group

acting together.

2 Crimes of Sodomy

Example: A man is sodomised by three persons, acting together during one

incident

1 Crime of 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.

Where persons act individually, even though there is only one

victim count each individually.

Relevant Crimes/Offences

Sodomy Att Sodomy

GROUP 3 – CRIMES OF DISHONESTY

1

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Attempted Theft of a Motor Vehicle	022006
Bankruptcy	027000
Breach of Trust Embezzlement	024000
Civic Government (Scotland) Act, 1982, Section 57 – In Building with Intent to Steal	021003
Civic Government (Scotland) Act, 1982, Section 58 – Convicted Thief in Possession	021002
Criminal Law (Consolidation)(Scotland) Act, 1995, Section 46A – False Monetary Instruments	031001
Forgery and Counterfeiting Act, 1981	031001
Forgery and Uttering (excluding Currency Offences)	025000
Fraud (Including Statutory Offences)	025000
<u>Housebreaking</u>	019004- 019012

	(SGJD Code)
Identity Documents Act, 2010	025000
Opening Lockfast Place (excluding Motor Vehicle) Opening Lockfast Place (ATM)	020001- 020003 025000
Opening Lockfast Place (Motor Vehicle)	020004- 020006
Reset	023000
Shoplifting	022003
Theft (not elsewhere Classified)	022001
Theft from a Motor Vehicle	022005
Theft of Motor Vehicle & Contents including Taking and Driving Away	022002
Theft of Pedal Cycle	022004
Trade Marks Act 1994, Section 92	025000
Vehicle Excise & Registration Act, 1994 Section 44 – Forgery	026000
Vehicle Excise & Registration Act, 1994 Section 44 – Fraud	025000

Group 3 - Crimes of Dishonesty

1

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 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. The term used within this manual for this practice is 'subsume'.

022006 ATTEMPTED THEFT OF A MOTOR VEHICLE

GENERAL RULE: ONE CRIME FOR EACH VEHICLE OWNER

Definition: Attempting to steal a motor vehicle.

Victim/Complainer: Vehicle Owner

Locus: Where Vehicle Violated (where crime takes place)

Scenario Examples:

Example: Attempt made to hotwire 2 vehicles owned by different

complainers, parked in the same driveway.

2 Crimes of Attempted Theft of a Motor Vehicle

Example: Car window broken and cowling removed in an unsuccessful

attempt to drive vehicle away.

1 Crime of Attempted Theft of a Motor Vehicle

Example: Break into vehicle, try to steal unsuccessfully, steal stereo from

Vehicle.

1 Crime of Theft OLP (MV) (details of Att Theft MV subsumed

within MO)

Example: Attempt made to hotwire 5 vehicles parked in garage forecourt

(a) all owned by garage.

1 Crime of Attempted Theft of a Motor Vehicle

(b) 3 vehicles owned by different individuals, 2 owned by the

garage.

4 Crimes of Attempted Theft of a Motor Vehicle

Example: Attempt made to hotwire 2 vehicles parked in driveway, one owned

by householder and the other being a company vehicle.

2 Crimes of Attempted Theft of a Motor Vehicle

Relevant Crimes/Offences

Attempted Theft of Motor Vehicle

Road Traffic Act 1988, S178(1)(a) - Attempt to take and drive away

1

027000 BANKRUPTCY

1

GENERAL RULE: ONE CRIME FOR EACH INCIDENT OF BANKRUPTCY

Definition: 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.

Victim/Complainer: Accountant or Insolvency Trustee

Locus: Where the Crime Takes Place

Scenario Examples:

Example: Failing to disclose relevant financial matters on legal documents

when seeking sequestration.

1 Crime of Bankruptcy (Scotland) Act, 1995

024000 BREACH OF TRUST AND EMBEZZLEMENT

GENERAL RULE: ONE CRIME FOR EACH CONTINUITY OF ACTION

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.

Victim/Complainer: Owner of the Property

Locus: Where the Crime Takes Place

Scenario Examples:

Example: Shop manager lodging 22 separate false refund transactions on 22

occasions through the till point to the value of £815.

1 Crime of Embezzlement

Example: 2 employees, acting together, found to be embezzling monies.

1 Crime of Embezzlement (2 accused)

Example; 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 6 month period. 26 resident's

accounts have been found to have such anomalies.

1 Crime of Embezzlement.

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 fraudulent scheme has been set in place, record as fraud.

Relevant Crimes/Offences

Attempt Embezzlement

Breach of Trust

1

021003 CIVIC GOVERNMENT (SCOTLAND) ACT, 1982, SECTION 57 In Building with Intent to Steal

1

GENERAL RULE: ONE CRIME FOR EACH SEPARATE PROPERTY NOT WITHIN THE SAME CURTILAGE

Definition: 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: Procurator Fiscal / Owner of the Property

Location of Crime

Scenario Examples:

Example: Complainer finds a person in the house looking through a kitchen

cupboard, person makes off empty handed and is not traced.

1 Crime of Civic Government Act, Section 57 (undetected)

Example: A hand appears through the kitchen window, raising the window in

an attempt to steal a purse lying just inside.

1 Crime of Housebreaking with Intent (domestic)

Example: Two persons found within the closed private bar area

of a hotel looking through cupboards with no reason for being

there.

1 Crime of Civic Government Act, Section 57

Example: 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 Crime of Civic Government Act, Section 57

Example: 2 persons carrying a large bag seen by security guard in a

compound with torches, looking in the windows of 3 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 his presence known. No property identified

as having been stolen.

1 Crime of Civic Government Act, Section 57

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.

Impersonating an official attempting to gain entry to a house should be recorded as attempt fraud ('bogus workman').

Relevant Crimes/Offences

Intended Theft - in/on a building

Intended Theft – curtilage Intended Theft – vehicle/vessel

021002 CIVIC GOVERNMENT (SCOTLAND) ACT, 1982, SECTION 58 Convicted Thief In Possession

1

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

Definition: Any person who, has 2 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, shall be guilty of an offence.

Victim/Complainer: Procurator Fiscal

Location of Crime

Scenario Examples:

Example: Male with three convictions for theft is found loitering in enclosed

car park. On being searched is found to have a jemmy in his

pocket.

1 Crime of Civic Govt Act, Section 58

Example: Female with three convictions for Theft by Shoplifting is found in a

department store with a shopping bag lined with aluminium foil, to

overcome the sensor equipment at the exit.

1 Crime of Civic Govt Act, Section 58

031001 CRIMINAL LAW (CONSOLIDATION)(SCOTLAND) ACT, 1995, Section 46A – False Monetary Instruments

GENERAL RULE: ONE CRIME FOR EACH INCIDENT (Seizure)

(1) A person who counterfeits or falsifies a specified monetary instrument with the intention that it be uttered as genuine is guilty of an offence.
(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,
is guilty of an offence.
(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.

Victim/Complainer: Procurator Fiscal	
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Locus:	Location of Crime	

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Example: A person apprehended for making a cloned credit card admits to

making five other cards.

1 Crime of Criminal Law (Consolidation)(Scotland) Act, 1995 S46

Example: A person is apprehended for making ten cloned credit cards.

1 Crime of Criminal Law (Consolidation)(Scotland) Act, 1995 S46

Example: A person is stopped and found to be in possession of twelve

cloned credit cards.

1 Crime of Criminal Law (Consolidation)(Scotland) Act, 1995 S46

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 - False Monetary Instrument.

Example:

An offender makes five cloned credit cards and then uses each card at different loci in circumstances amounting to fraud.

5 Crimes of Fraud (the Criminal Law (Consolidation)(Scotland) Act - False Monetary Instrument is subsumed in the fraud)

Actual or attempted frauds by false representation take precedence over crimes of possessing articles for use in frauds.

Example:

A man is found in possession of a cloned credit card. He 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 Crime of Fraud

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:

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 cards details were obtained.

1 Crime of Criminal Law (Consolidation)(Scotland) Act, 1995, S46A - False Monetary Instruments and depending on evidence available 1 Crime of 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 an offender or group of offenders is shown to be responsible for a number of separate 'Common Purchase Points', count one crime for each separate location.

Example:

A group of offenders 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.

12 Crimes of Criminal Law (Consolidation)(Scotland) Act, 1995, S46A - False Monetary Instruments and depending on evidence available 12 Crimes of 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:

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

Relevant Crimes/Offences

Counterfeit or falsify a specified monetary instrument with intent Have in custody or under control a counterfeit or falsified monetary instrument Possess equipment designed/adapted to make monetary instrument

031001 FORGERY AND COUNTERFEITING ACT, 1981 1

GENERAL RULE: ONE CRIME FOR EACH INCIDENT - MAKING CURRENCY ONE CRIME FOR EACH VICTIM - TENDERING CURRENCY

Definition: It is an offence for a person to make a counterfeit of a currency note

or a protected coin, intending that he or another shall pass or tender

it as genuine.

It is an offence to tender as genuine a counterfeit currency note or

protected coin

Victim/Complainer: Issuing Bank/Business/Person/Procurator Fiscal, as appropriate

Locus: Where the Currency is Presented

Scenario Examples:

Example: Person presents a forged £20 note to sales assistant to pay for

goods. On sales assistant bringing this to person's attention they

make off.

1 Crime of Forgery and Counterfeiting Act (due to the actions of

the person tendering the currency it can be presumed that the

note was tendered knowingly.)

Example: Person presents a forged £10 note to sales assistant to pay for

goods. On sales assistant bringing this to person's attention the money is handed back and the goods 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: 'A' is found in possession of 10 counterfeit notes.

1 Crime of Forgery and Counterfeiting Act.

Example: Male presents £350 in forged notes in payment for white goods.

Notes made up of different denominations and banks.

1 Crime of Forgery and Counterfeiting Act.

Example: Victim buys an phone from the Internet for £340 and on receiving

this decides it wasn't the one they wanted, therefore puts it back on for sale. The next day a buyer offers £430. He meets the buyer, hands over the phone and on returning home finds the cash

to be counterfeit.

1 Crime of Forgery and Counterfeiting Act

Example: Suspect enters three separate shops and pays for goods with

counterfeit currency where there is clear evidence the suspect

knowingly tendered this currency as genuine..

3 Crimes of Forgery and Counterfeiting Act

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 record has been created and subsequent enquiry cannot establish the passing of the counterfeit currency was deliberate, the crime record 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 record should be created, and where no accused is traced, this will remain recorded as undetected.

Relevant Crimes/Offences

Without lawful authority or excuse have in your custody an item which you knew or believed to be false

Make a counterfeit of a currency note or protected coin intending to tender as genuine Make a counterfeit of a currency note or protected coin

Without lawful authority or excuse deliver monies which you knew or believed to be false Tender as genuine counterfeit currency - Deliver counterfeit currency to another Have in custody or control counterfeit money

Have in custody & control counterfeit currency

Make/have in custody/have under control a counterfeit currency note/coin with intention of passing as genuine

Make/have in custody/have under control counterfeiting materials and implements Without consent produce British currency note(s)

025000 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

 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.

Victim/Complainer: Person/Business Who Suffers Loss

Locus: Where Crime Takes Place

Scenario Examples:

Example: 'A' alters drug dosage on a prescription and presents same at

chemist.

1 Crime of Forgery and Uttering

Example: 'A' forges 'B's' signature on a giro cheque and presents same at

post office.

1 Crime of Forgery and Uttering

Example: 'A' adds a zero to a cheque for £100 making it £1000

1 Crime of Forgery and Uttering

Example: Forging signature on two documents, on same date and locus.

1 Crime of Forgery and Uttering

Example: 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 Crime of Forgery and Uttering (they are all from the same

account).

1

Example: A stolen benefit cheque issued by the Benefits Agency is altered

and cashed at the Post Office.

1 Crime of Theft and 1 Crime of Forgery and Uttering.

Example: A person steals a prescription pad when visiting a doctor's

surgery. Four different chemists report forged prescriptions being

used from the stolen pad.

1 Crime of Theft and 1 Crime of Forgery and Uttering

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

victim is the health service provider not the chemist.

In respect of cheques, the locus will be where the cheque was

presented i.e. uttered.

Relevant Crimes/Offences

Aid & Abet Forgery & Uttering Forgery and Uttering Uttering – Falsify Uttering – Deception Attempted Uttering

025000 FRAUD (INCLUDING STATUTORY FRAUD)

1

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 he need not have derived any gain, the accused must have had 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

Plastic Card or Online Bank Accounts (see note below re England and Wales and outwith UK) The following principles will be used in order to ascertain the locus of the crime 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 force area covering the location of the fraudulent operation.
- 2nd Suspect's address.
- 3rd The delivery address.
- 4th The police force area with the greatest number of individual usages.
- 5th The police force area where the first offence was committed.
- 6th The police force area where the victim is located.

Cheques

The locus will be where the cheque was presented i.e. uttered.

Other Frauds

For all other frauds the following principles will apply. The principles are listed in order of priority and it is only when a principle cannot be achieved or is not known that the next principle will apply:-

- 1st The police force area covering the location of the fraudulent operation.
- 2nd Suspect's address.
- 3rd The police force area covering the locus where the false representation was made,

or

Goods Ordered Remotely: The delivery address to which the fraudulently ordered goods were delivered or are to be delivered. For services e.g. mobile phone airtime the registered user address if known,

or

Money Transfers: The address of the account holder receiving the money or if not known following enquiries with the branch, at the account branch address. If the money is transferred abroad and no address is known for the suspect then the locus is the victim's address.

or

Fraudulent Applications: The location from which the fraudulent application is sent shall be deemed to be the locus. However if, as is commonly the case, the fraudster has arranged for a mail re-direction from the first address, then the 're-direct' address shall be deemed to be the locus,

or

Goods Ordered Over the Internet: If goods ordered over the internet (or by phone, mail etc) do not arrive due to a fraudulent operation, then the following rules apply in order of priority:

- 1st If the locus of the suspect(s) is unknown, then the crime should be recorded in the Force in whose area the victim is located when they place the order.
- 2nd If the locus of the suspect(s) becomes known, then record in the Force area covering that location.
- 3rd If payment is made electronically then the locus will be the address of the account holder into which the money is transferred or if unknown the address of the victim.

If none of the above applies, then the victim's address will be the locus.

Transfer of Crimes where locus is England or Wales

From 1st April, 2010 Forces in England and Wales will be directing reports of fraud to the Action Fraud/National Fraud Intelligence Bureau (NFIB). **This will not apply to Scotland.**

Where the locus is established as being in England or Wales, a crime record should continue to be recorded and a SID entry raised where appropriate.

A forwarding report should continue to be sent for the information of the appropriate Force advising this is "for their information and any action they deem necessary." Where it is clear that no crime has occurred in Scotland and the identified Force for transfer is not accepting the report, the officer involved should contact Action Fraud on Tele No. 03001232040 or www.actionfraud.police.uk. If a Fraud which occurred in Scotland is reported to Action Fraud prior to Police Scotland being advised, a crime must be recorded by the owning Police Scotland Division.

The crime record should refer to the transfer of the crime(s) and be updated to 'No Crime' (excluded from statistics).

Outwith United Kingdom

In circumstances where it is clear from the outset that the crime occurred outwith the UK there is no requirement to record a crime provided that the incident log is fully updated as to the action taken. When a crime has been recorded and it is later established the crime occurred outwith the UK, where there is sufficient information available, consideration should be given for the intelligence to be disseminated to SOCA for their information. The crime record can then be updated to 'No Crime'. Any decision to transfer the enquiry to the respective Country will be determined by Force protocols.

Multiple Victims

Where a Division becomes aware of a number of victims of the same accused or group of accused, during the course of an investigation, who have not yet reported their crime to police, the investigating Division will liaise with other Divisions to record crime(s) as required.

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.

1. **Definitions**

- 1.1 Advance Fee/Spanish/Canadian Lottery
- 1.2 ATM Skimming
- 1.3 Board and Lodgings
- 1.4 Boiler Room
- 1.5 Embezzlement (Breach of Trust and Embezzlement)
- 1.6 False Monetary Instruments (Criminal Law (Consolidation)(Scotland) Act, 1995)
- 1.7 Fraudulent Scheme
- 1.8 Long Firm Fraud
- 1.9 Gumtree
- 1.10 Identity Documents Identity Documents Act, 2010
- 1.11 Phishing
- 1.12 Ringing the Changes
- 1.13 419
- 2. Abuse of Position/Employee/Ex-employee
- 3. Board and Lodgings
- 4. **Bogus Workman**
- 5. Company Director/Sole Trader etc. (including Long Firm Fraud)
- 6. <u>Debit/Credit Cards, Online Bank Accounts (Not eBay Or Pay Pal) including ATM</u>
 Skimming / Common Purchase Point
- 7. Goods Ordered Over The Internet (Including eBay)
- 8. Phishing, Lottery Scams etc Advance Fee
- 9. Restaurant/Take Away
- 10. Taxi
- 11. Money Transfer Houses
- 12. <u>Miscellaneous Frauds</u> (including Frauds Abroad)
- 13. <u>Miscellaneous Other</u> (including Forgery & Uttering, Computer Viruses, Identity Theft, False Monetary Instruments)

1. **DEFINITIONS**

1.1 Advance Fee/Spanish/Canadian Lottery

Letters, e-mails and faxes requesting 'assistance to remove millions of pounds from bank accounts'; offers of a variety of goods for sale; websites offering to host your CV; being advised of a large lottery prize; provision of cheque/bankers drafts which are later found to be fraudulent or over payment for a purchase requesting the excess to be refunded resulting in the bank reclaiming the monies from the 'victim', to name but a few.

These communications historically originate from West Africa, particularly Nigeria, but are now also being distributed from a number of other countries.

The objective of the perpetrators in this fraud is to obtain monies from the person by convincing them that 'up front' payments (hence Advance Fee Fraud) are required to allow the 'funds', goods or services to be released or provided.

The funds, goods or services do not exist and the perpetrators will continually seek further payments.

1.2 ATM Skimming (see False Monetary Instruments)

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.

1.3 Board and Lodgings

It is a crime to order and obtain goods or board and lodgings, without paying or intending to pay for them, on the pretext of being a bona fide purchaser, or customer of good credit, who is able, and willing, to pay for what he receives.

1.4 Boiler Room

Boiler Room Fraud is the term given to a crime where investors in shares are duped into purchasing worthless or over-priced stock in companies with little or no value.

In general, cold calls are made to potential investors using high-pressure telephone sales tactics supported by brochures, documents and well-designed websites that support their claims of a high yield in return for their investment.

1.5 Embezzlement (Breach Of Trust & Embezzlement)

Embezzlement is the felonious appropriation of property which has been entrusted to an accused who has 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.

It is essential that the offender has been given some powers of management or control.

1.6 False Monetary Instruments (Criminal Law (Consolidation)(Scotland) Act, 1995)

- (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, details of which are contained on PINS.

1.7 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.

1.8 Long Firm Fraud

In the case of long firm fraud being a fraudulent scheme where there are multiple victims of a single (or team) of perpetrators a crime record 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.

1.9 Gumtree

This is the term given to a crime, which involves primarily the Gumtree web site. Properties are advertised at low rents and payments are requested in advance via money transfer agencies. When the victim arrives to take up residence at the property the property does not exist or is not as advertised.

1.10 Identity Documents - Identity Documents Act, 2010

A list of documents classed as legal identity documents can be found on PINS.

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.

It is an offence to be in possession of the documents with the intention of using the document for establishing registrable facts about himself/herself; or the intention of allowing or inducing another to use it for establishing, ascertaining or verifying registrable facts about himself/herself or about any other person. It is also an offence to make such documents and to be in possession of apparatus for making such documents.

If someone uses an identity document to open or abuse an account then the offence becomes one of fraud.

1.11 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 web sites, 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.

1.12 Ringing the Changes

In exchanging money with another person, deliberately mislead them into giving you more money than you have exchanged with them.

1.13 419

There are many types of fraud, which now come under the banner of 419 frauds (419 is the penal code for fraud in Nigeria, where these schemes originated from).

Most of the frauds are mass marketing based on the assumption that, enough people will respond to make it worthwhile sending out thousands of messages.

A common theme is the sending of an e-mail or letter offering a share of a huge windfall of cash in return for a fee needed to unlock the account where it is being held.

Usually the recipient of the e-mail/letter is asked to provide details of their bank account.

An alternative way of obtaining funds is the establishment of a relationship with an individual through an internet dating website. After establishing the relationship, the conman then begins to request money for medical care, to help a friend/relative etc.

2. ABUSE OF POSITION/EMPLOYEE/EX-EMPLOYEE

1

GENERAL RULE: SEE SCENARIOS

Victim/Complainer: Company or Person Disadvantaged

Locus: See 'Establishing the Locus' Section

Scenario Examples:

Example: Employee, after leaving company, continued to obtain petrol from

garage by signing usual documents at garage as if still employed by company thereby obtaining petrol on former employer's account.

1 Crime of Fraud (one per account defrauded)

Example: 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 Crime of a Fraud (Fraudulent Scheme)

Example: A shop assistant 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 Crime of Theft

Example: Home care assistant takes bank card from victim's drawer without

his permission, attending at ATM and withdrawing £50 each day

over five days, returning the card after each transaction.

1 Crime of Theft and 1 Crime of Theft OLP (only one account) (Locus of Theft being the victim's home address and the Theft OLP

being where the first transaction took place)

Example: Shop assistant lodging 22 separate false refund transactions on 22

occasions through the till point to the value of £815.

1 Crime of Theft (although in a position of trust, this activity is not

part of the managerial responsibility)

Example: An employee is reported to the police for falsely claiming travelling

expenses (no gain has occurred).

1 Crime of Attempt Fraud (if successful - 1 Crime of Fraud)

Example: A milkman is reported to the police for repeatedly charging his

customers for more milk than they have received. Twenty victims

are identified.

1 Crime of Fraud (Fraudulent Scheme)

Example: A coach at the Amateur Football Club collects money from 14

players to organise a tournament and makes off with the money.

1 Crime of Fraud (Fraudulent Scheme) (depending on position held by the culprit and circumstances, this may also be considered to be

an embezzlement)

Example: 10 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 Crime of 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).

Relevant Crimes/Offences

Fraud

Fraudulent Scheme

Fraudulent Scheme (Version 2)

Attempt Fraud

3. BOARD AND LODGINGS

1

GENERAL RULE: ONE CRIME FOR EACH VICTIM

Victim/Complainer: Person/Company Being Disadvantaged

Locus: Location of where the person obtained lodgings

Scenario Example:

Example: Person books into a guest house for 2 nights and leaves early

morning failing to pay for stay.

1 Crime of Fraud

Example; Guests in a boarding house leave without paying and take items of

property i.e. towels, with them.

1 Crime of Fraud (As both offences are crimes of dishonesty only the

crime of Fraud is required with the theft included in the MO)

4. BOGUS WORKMAN

1

GENERAL RULE: ONE CRIME FOR EACH VICTIM/INTENDED VICTIM/HOUSEHOLD

Victim/Complainer: Person(s) Defrauded/Attempt Made

Locus: See 'Establishing the Locus' Section

Scenario Examples:

Example: 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 Crime of Fraud (Bogus Workman)

Example: 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 Crime of Civic Government (Scotland) Act, 1982, Section 57

Example: 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 Crimes of Fraud, on confirmation of the victims (Bogus Workman)

Example: An accused admits to deceiving an elderly couple over a period of 2

years by carrying out unnecessary repairs within their house, work

proving to be substandard, charging exorbitant prices.

1 Crime of Fraud(Bogus workman)

Example: 2 youths purport to be collecting for charity, visit 161 private

dwellings over a 5 day period obtaining cash and having each person sign a collections form. 1 street is targeted each day.

1 Crime of Fraud (Fraudulent Scheme) (they are working together)

Relevant Crimes/Offences

Fraud

Fraudulent Scheme

Fraudulent Scheme (Version 2)

Attempt Fraud

5. COMPANY DIRECTOR, SOLE TRADER ETC

1

GENERAL RULE: ONE CRIME FOR EACH SPECIFIC, INTENDED OR IDENTIFIABLE CREDITOR DEFRAUDED

Victim/Complainer: Company Being Disadvantaged

Locus: Location of Suspect Company

Scenario Example:

Example: Company sets up business, obtains credit over a two month period

from 2 companies and fails to pay for the goods received. Enquiry

reveals the business has closed their office premises.

2 Crimes of Fraud

Relevant Crimes/Offences

Fraud

Fraudulent Scheme

Fraudulent Scheme (Version 2)

Attempt Fraud

Banking 1987 S35(1)(b)Induce money false promise

Companies 1985 S242(1)&(2)&244(1) Fail Reg Copy Ann Accounts

Companies 1985 S363(1)(2)(3)&(4) Fail del ann ret - Chap III

Companies 1985 S458 Intent to defraud

Companies 1985 S458 Business for fraudulent purpose

6. DEBIT/CREDIT CARDS, ONLINE BANK ACCOUNTS (NOT eBAY OR PAY PAL)

1

GENERAL RULE: ONE CRIME FOR EACH ACCOUNT

Victim/Complainer: Account Holder

Locus: See 'Establishing the Locus' Section

Scenario Examples:

Example: An account holder reports that a transaction on a statement was not

carried out by him. The bank have re-imbursed the monies.

1 Crime of Fraud (known as Card Not Present Transaction)

Example: Credit card stolen in Scotland and used at various locations in

England.

1 Crime of Theft. Any crime of fraud recorded can be updated to no crime as it has been established that the locus is outwith Force area. A forwarding report should be sent to the appropriate Force

for their attention and any action they deem necessary.

Example: Entering shopping centre, using stolen credit card in 8 separate

shops, gaining goods to the value of £859.

1 Crime of Fraud and if not already recorded 1 Crime of Theft (depending on circumstances Reset may also be recorded). Locus

of the fraud being the first shop the card was used.

Example: 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 Crime of Fraud

Example: A lost store card is used to obtain goods from three different

branches of the same store-chain.

1 Crime of Fraud and 1 Crime of Theft by Finding

Example: Credit card posted to an address but does not arrive. The card is

subsequently used fraudulently in the same Force area.

1 Crime of Theft and 1 Crime of Fraud

Example: 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 Crime of Theft OLP and if not already recorded 1 Crime of Theft.

(depending on circumstances Reset may also be recorded)

Example: Stolen credit card used at a supermarket store and filling station situated at the same locus.

1 Crime of Fraud and if not already recorded 1 Crime of Theft.

(depending on circumstances Reset may also be recorded)

Example: Person takes credit card details from 50 accounts and uses them to

transfer money into accused's own online account using a

computer.

50 Crimes of Fraud - the number of crimes is the number of accounts defrauded unless the circumstances indicate this to be a fraudulent scheme, thereby 1 Crime of Fraud (Fraudulent Scheme)

Example: A stolen credit card has been used to obtain goods from two shops

which reported the incidents separately. During police enquiries 57 other transactions are discovered using the same credit card

account.

1 Crime of Fraud and 1 Crime of Theft (depending on

circumstances Reset may also be recorded)

Example: A ladies purse is stolen containing a Nationwide Flex account card,

a Nationwide Credit Card and a Nationwide Cashbuilder account card all in her name. All of them have been used fraudulently.

3 Crimes of Fraud (one for each account defrauded) and 1 Crime of

Theft

Example: A ladies purse is stolen containing a Nationwide debit card and a

Nationwide cheque book for the same account. Cheques are fraudulently cashed, goods purchased using the debit card which is

also used to obtain money from 4 cash machines.

1 Crime of Fraud (one account has been defrauded) and 1 Crime of

Theft (The OLPs at the cash machines are subsumed within the

Fraud)

Example: A stolen credit card is used to obtain pre-paid time on a mobile

phone. There is no other usage on the account.

1 Crime of Theft and 1 Crime of Fraud.

Example: 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 Crime of Attempt Fraud (Note - either the card or details of the

card must be available in order to allow confirmation of an attempt

fraud having occurred)

Example: A person is apprehended for manufacturing four forged credit cards

and using them to obtain goods from three separate shops.

4 Crimes of Fraud (one for each account defrauded)

Example: Suspect caught failing to finish her transaction at the self pay till by

pulling her 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 Crime of Fraudulent Scheme

Example:

Complainer receives a call purporting to be from her bank advising that they have evidence of fraudulent use on the complainer's bank card. The complainer is requested to read out the 16 digit number on the card to confirm the correct details are held and the 3 digit 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 the complainer 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 Crime of Fraud (if no PIN had been given then this would be an Att Fraud).

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:

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 cards details were obtained.

1 Crime of Criminal Law (Consolidation)(Scotland) Act, 1995, S46A - False Monetary Instruments and depending on evidence available 1 Crime of 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 an offender or group of offenders is shown to be responsible for a number of separate 'Common Purchase Points', count one crime for each separate location.

Example:

A group of offenders 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.

12 Crimes of Criminal Law (Consolidation)(Scotland) Act, 1995, S46A - False Monetary Instruments and depending on evidence available 12 Crimes of 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:

Where circumstances indicate a fraud has occurred, a crime record MUST initially be recorded, whether or not the account holder has been re-imbursed 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.

(See information regarding Transfer of Crimes within the 'Establishing the Locus' section.)

It must be ascertained whether or not the account holder has been re-imbursed by the Financial Institution, which must be shown on the crime record.

Due to the introduction of the NFIB from April, 2010, it may be difficult to obtain the required information from the financial institutions.

Relevant Crimes/Offences

Fraud

Fraudulent Scheme

Fraudulent Scheme (Version 2)

Attempt Fraud

Fraud (Debit/Credit) Card

Fraud (Debit/Credit) Card Automated Checkout

Fraud (Electronic Means)

Attempt Fraud (Debit/Credit) Card

Attempt Fraud (Debit/Credit) Card

Attempt Fraud (Debit/Credit) Card Automated Checkout

Attempt Fraud (Electronic Means)

Criminal Law (Consolidation) (Scotland) Act 1995, S46A(1) - Counterfeit or falsify a specified monetary instrument with intent

Criminal Law (Consolidation)(Scotland) Act 1995, S46A(2)(a) - Have in custody or under control a counterfeit or falsified monetary instrument

Criminal Law (Consolidation)(Scotland) Act 1995, S46A(2)(b) - Possess equipment

designed/adapted to make monetary instrument

7. GOODS ORDERED OVER THE INTERNET (INCLUDING eBAY)

GENERAL RULE: ONE CRIME FOR EACH TRANSACTION

1

Victim/Complainer:	Account Holder/Person Disadvantaged	
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Locus: See 'Establishing the Locus' Section

Scenario Examples:

Example: A person 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 Crime of Fraud (Although the locus has been identified as being overseas, the Division receiving such reports MUST initially record as a crime, the locus being the victim's address. Where appropriate a SID entry should be raised for dissemination to Interpol. The

crime record can then be updated to No Crime.)

Example: 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. He reports the matter to

Division A.

1 Crime of Fraud. (The locus of the crime is in Division C, the address of the beneficiary/account holder). A SID entry must be

recorded.

Example: Mr A reports that he has sold goods to a suspect following placing

the goods on an on line auction site to Suspect B. He has not received payment. Following further enquiries Mr A has established that payment was made using a payment service provider (PSP) e.g. paypal, into his PSP account but the following day the payment was reclaimed by the PSP as a stolen credit card

was used to make the payment.

1 Crime of Fraud.

Example: Mrs A contacts the police advising that £541 has been taken from

her husband's Pay Pal account for no apparent reason. Pay Pal were contacted and were to make their own investigation. Pay Pal provided the e-mail address of the intended recipient. Mrs A advises that Pay Pal had recovered the money prior to it reaching its destination and money was returned to her husband's 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.

Mail Order

Example: A mail order company identifies that goods have been fraudulently

obtained and reports the matter to the police.

1 Crime of Fraud. (Locus being the delivery address)

NOTE: This is not a cheque or credit card fraud as the account holder is responsible for making the transaction.

Relevant Crimes/Offences

Fraud
Fraudulent Scheme
Fraudulent Scheme (Version 2)
Attempt Fraud
Fraud (Electronic Means)
Attempt Fraud (Electronic Means)

8. PHISHING, LOTTERY SCAMS ETC. – ADVANCE FEE (PAYING MONEY UP FRONT)

1

GENERAL RULE: ONE CRIME FOR EACH PERSON DEFRAUDED/ ACCOUNT HOLDER

Victim/Complainer:	Account Holder/Person Disadvantaged	
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Locus: See 'Establishing the Locus' Section

Scenario Examples:

Example: 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.

They pay nothing and bring the letter to the police

Record an incident and submit a SID entry.

They have paid £1000 and received nothing

1 Crime of Fraud initially recorded. The locus being the victim's address. Where appropriate, a SID entry should be raised and the

crime record updated to No Crime.

Example: A person receives an e-mail asking them to join an investment

company which will double their money in 6 months. They send £500 by BACS transfer to an e-mail account. Nothing is received back and the victim 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 Crime of Fraud. The locus being the victim's address.

Example: A person advertises a boat for sale on a website and received an e-

mail from abroad offering the full purchase price. They are sent a bankers draft covering the purchase cost and an additional £5000 for shipping fees. They pay the bankers draft into their account and transfer the £5000 to the shipping agents account in Spain before a man collects the boat. The bankers draft is returned unpaid as it is

a forgery and the bank reclaims the funds.

1 Crime of Fraud initially recorded. Recorded by the Division where the victim resides. Where appropriate a SID entry should be raised (for dissemination to Interpol). The crime record can then be

updated to 'No Crime'.

Example: A person advertised a horse for sale on a website and received an

e-mail from abroad offering the full purchase price - £2000. They are sent a UK cheque for £5000 with a request to return the difference of £3000. The seller takes the £5000 cheque to the bank but is advised not to bank it. No monies (or the horse) are sent to

the buyer. The seller reports the incident to the police.

1 Crime of Attempt Fraud. Recorded by the Division where the victim resides. (althouh the e-mail is sent from abroad, the cheque is a UK cheque, therefore it is not confirmed that the crime has occurred abroad and the crime record must remain recorded).

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NOTE: The important aspect to consider is the victim. Where e-mails or

letters are sent out to all people contained on a mail list (notifying people that they have won the Spanish lottery for example) they are

not specific intended victims.

Where people have received letters or e-mails, taking no action, and notify police, there is no need to record a crime of attempted fraud. However, an incident and a SID entry must be created.

Where people have become victims by paying money, provided they were resident in Scotland when making the payment, then a crime must initially be recorded.

Where the entire transaction has occurred abroad (see Section 12 – Frauds Abroad), no crime record is required to be recorded.

Relevant Crimes/Offences

Fraud

Attempt Fraud

Fraud (Electronic Means)

Attempt Fraud (Electronic Means)

9. RESTAURANT/TAKE AWAY

↑

GENERAL RULE: ONE CRIME FOR EACH VICTIM

Victim/Complainer: Restaurant/Take Away being disadvantaged

Locus: Location of where food consumed/delivered to

Scenario Examples:

Example: Father enters a restaurant with his family, and orders a meal

without any intention or means to pay for that meal. He states that

he has no means of paying when the bill is presented.

1 Crime of Fraud

Example: 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 Crime of Fraud

Example: 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 Crime of Fraud

10. TAXI FRAUD

GENERAL RULE: ONE CRIME FOR EACH HIRE

Victim/Complainer: Person/Company Being Disadvantaged

Locus: Where journey ends

Scenario Examples:

Example: Two persons make off from taxi failing to pay fare. Police trace

both accused and payment is made.

1 Crime of Fraud (although payment has been made, the actions of

the accused indicate intention to deceive).

Example: Person books taxi under name John Smith requesting to be taken

to 123 High Street and on arrival exits taxi stating he will obtain the monies and return to pay. He fails to return and on taxi driver

attending at house, is told there is no intention to pay.

1 Crime of Fraud

11. MONEY TRANSFER HOUSES

1

Victim/Complainer: The person who has lost money/ been defrauded

Locus: 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 no address known for the suspect then the locus will be the Money Transfer office where payment was made.
- 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.

Scenario Examples:

Example: A victim transfers money from a Western Union office to a Western

Union abroad, which has subsequently been established as part of

a fraud.

1 Crime of Fraud initially recorded by the Division where the victim resides. Where appropriate a SID entry should be raised (for dissemination to Interpol). The crime record can then be updated

to No Crime.

Example: A victim transfers money from 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 Crime of Fraud recorded by Division C.

Example: A victim transfers money from Division A to Western Union office in

Division B. The money is then forwarded to another Western Union office in Division C. The person who collects the money gives an

address in Division B.

1 Crime of Fraud recorded by Division B.

Example: An advert on GUMTREE offers a house for rent in Division A, an

advanced rental of £500 is requested to be sent via money transfer to Division B. The victim who resides in Division C sends £500 by money transfer to Division B. Money is subsequently withdrawn

and no further contact made.

1 Crime of Fraud recorded by Division B

Example: A victim places an advert on GUMTREE offering a house for rent.

Person offers to send 6 months rent plus additional funding which when received, the cheque should be cashed and the remainder returned to the Western Union Bank, Nigeria. Cheque received and remainder sent by money transfer. Bank subsequently contact

victim informing them that the cheque is fraudulent.

1 Crime of Fraud initially recorded (the locus being the victim's address). Where the locus is established as being outwith the UK, where appropriate a SID entry should be raised (for dissemination

to Interpol). The crime record can then be updated to 'No Crime'.

Example: A person resident abroad arrives in Division A after seeing an

advert on GUMTREE offering a house for rent in Division A. Money has been sent by money transfer from overseas to Division B.

Enquiry reveals the house does not exist.

1 Crime of Fraud recorded by Division B

Relevant Crimes/Offences

Fraud (Electronic Means)

Attempt Fraud (Electronic Means)

12. MISCELLANEOUS - FRAUD

1

FRAUDS ABROAD

There is an increasing trend for persons who have been victims of crime abroad to report fraud in this country. Where there is no connection with this country the victim is to be told to report it in the country where the crime occurred.

Scenario Examples:

Example: 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. A SID entry must be recorded. (See Gumtree

definition)

Example: A resident of this country travels to Spain and is defrauded in Spain

by Spanish registered Time Share Company. He returns home and

reports 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: 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).

OTHERS

Scenario Examples:

Example: 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 Crime of Fraud (Ringing the Changes)

Example: A person claims to be dying of a terminal illness to two work

colleagues, their dying wish being to visit Florida although advise 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 Crime of Fraud (Fraudulent Scheme)

Example: A storeman orders stock by completing 266 requisition slips in order

to steal from his employer.

1 Crime of Fraud, although depending on the circumstances this

may be a fraudulent scheme or an embezzlement.

If an individual or organisation is the victim of fraud by more than one person, count separately only if the suspects are acting independently

Example: A person is defrauded on three occasions by salesmen purporting

to represent different companies, with no evidence of collusion.

3 Crimes of Fraud

Example: Frauds are reported separately by two victims. During police

enquiries 57 further victims of fraud are discovered.

2 Crimes of Fraud initially recorded (after investigation the evidence of other crimes may indicate a fraudulent scheme, therefore the crime would be amended to 1 Crime of Fraud (Fraudulent Scheme)

Example: Entering store, removing price tags from 10 items, replacing with

cheaper price tags, paying for same at lesser price.

1 Crime of Fraud

Example: It is discovered that money was illegally drawn each week from two

Pension Books, one issued by the Department of Health and Social Security (DHSS) and one by the Local Council, the true recipient having died 15 years earlier. Money was withdrawn on 1560

occasions.

2 Crimes of Fraud. The victims are DHSS and the Local Council.

Relevant Crimes/Offences

Fraud

Fraudulent Scheme

Fraudulent Scheme (Version 2)

Attempt Fraud

Fraud (Debit/Credit) Card

Fraud (Debit/Credit) Card Automated Checkout

Fraud (Electronic Means)

Attempt Fraud (Debit/Credit) Card Attempt Fraud (Debit/Credit) Card

Attempt Fraud (Debit/Credit) Card Automated Checkout

Attempt Fraud (Electronic Means)

13. MISCELLANEOUS - OTHER

1

FORGERY AND UTTERING (SGJD - 025000)

See Forgery and Uttering elsewhere in the manual

Scenario Examples:

Example: A person amends the details on a cheque and attempts to pay this

into their account.

1 Crime of Forgery and Uttering.

Example: A person, apprehended for forging a prescription for Drugs admits

to five similar crimes.

1 Crime for Forgery and Uttering

NOTE: Forgery of drug prescriptions is the principal crime over fraud. The

victim is the health service provider not the chemist.

From 1st April, 2010 the SGJD Code for Forgery and Uttering

changed from 026000 to 025000

COMPUTER VIRUSES (Recorded under Computer Misuse Act 1990) (SGJD - 084006)

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 an offender 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 offender is based.

Scenario Example:

Example: Susan has been sacked from her high profile job at ABC Media.

Before she leaves she 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 Crime of Computer Misuse Act, Section 3 (ABC Media are the

intended victim).

IDENTITY THEFT - IDENTITY DOCUMENTS ACT, 2010 (SGJD - 025000)

See details elsewhere in the manual.

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.

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 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 or 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. It is essential that a SID log is raised as the intelligence may prove vital in linking incidents, at a later date.

Where people are found in possession of any identity documents or items containing identify details, intent to commit fraud then a crime under the Identity Documents Act, 2010 should be considered.

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 should be considered under this Act.

FALSE MONETARY INSTRUMENTS (CRIMINAL LAW (CONSOLIDATION) (SCOTLAND) ACT, 1995 (SGJD - 031001)

- (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.

is guilty of an offence.

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.

Scenario Examples:

Example: A person apprehended for making a cloned credit card admits to

making five other cards.

1 Crime of Criminal Law (Consolidation)(Scotland) Act, 1995 S46

Example: A person is apprehended for making ten cloned credit cards.

1 Crime of Criminal Law (Consolidation)(Scotland) Act, 1995 S46

Example: A person is stopped and found to be in possession of twelve cloned

credit cards.

1 Crime of Criminal Law (Consolidation)(Scotland) Act, 1995 S46

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 - False Monetary Instrument.

Example: An offender makes five cloned credit cards and then uses each

card at different loci in circumstances amounting to fraud.

5 Crimes of Fraud (the Criminal Law (Consolidation)(Scotland) Act -

False Monetary Instrument is subsumed in the fraud)

Actual or attempted frauds by false representation take precedence over crimes of possessing articles for use in frauds.

Example: A man is found in possession of a cloned credit card. He 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 Crime of Fraud

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.

There are 3 modifiers for housebreaking related crime and a table is provided giving examples of each category.

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.

Domestic 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 (ie. there is a connecting door between house and garage).
	Occupied bedrooms within hotel.

All roofed buildings used for domestic purposes other than dw	
Domestic Non Dwelling	Domestic garages, which are not an integral part of a dwelling house.
	Garden huts / garden sheds / allotment huts (non-commercial)
	Outhouses

	All roofed buildings not used for residential or domestic purposes i.e. commercial premises
	Portacabins – not used for storage e.g office Note: portacabins used for storage and non-static caravans should be classified as a Lockfast Place (OLP)
Other	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

019004	THEFT BY HOUSEBREAKING (DWELLING)
019005	THEFT BY HOUSEBREAKING (NON DWELLING)
019006	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.

019007	HOUSEBREAKING WITH INTENT TO STEAL	1
	(DWELLING)	
019008	HOUSEBREAKING WITH INTENT TO STEAL	
	(NON DWELLING)	
019009	HOUSEBREAKING WITH INTENT TO STEAL	
	(OTHER)	

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.

019010 ATTEMPTED HOUSEBREAKING WITH INTENT ↑
 TO STEAL (DWELLING)
 019011 ATTEMPTED HOUSEBREAKING WITH INTENT TO STEAL (NON DWELLING)
 019012 ATTEMPTED HOUSEBREAKING WITH INTENT TO STEAL (OTHER)

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.
	circumstances in which the attempt is made to enter the building.

Victim/Complainer:	Property Owner or Tenant

Location of the Crime

Locus:

Scenario Examples:

DOMESTIC - DWELLING

Example: Insecure window opened from outside and property stolen from

internal window ledge.

1 Crime of Theft by Housebreaking (dwelling)

Example: Breaking into dwelling, stealing property including garage keys,

thereafter exiting house, opening garage with true key, stealing

vehicle from within which is owned by the householder.

1 Crime of Theft by Housebreaking (dwelling)

Example: Breaking into dwelling, stealing property, exiting house, opening

insecure garage, stealing vehicle owned by the complainer.

1 Crime of Theft by Housebreaking (dwelling) (note – if the vehicle was not owned by the household then a separate Theft of the MV would also be recorded due to the insecurity of the garage)

Example: Breaking into dwelling, stealing car keys, thereafter stealing vehicle

parked in driveway owned by a visitor.

1 Crime of Theft by Housebreaking (dwelling) and 1 Crime of Theft

MV (due to vehicle being owned by someone other than the

household)

Example: Forcing conservatory doors of house, stealing, no further access to

house gained.

1 Crime of Theft by Housebreaking (dwelling)

Example: Three students share the rent for a house and each have locking

rooms within. The house is broken into, all three rooms forced open

and property stolen from each..

1 Crime of Theft by Housebreaking (dwelling) with three complainers

Example: Three students share the rent for a house and each have locking

rooms within. The insecure house is entered, all three rooms forced

open and property stolen from within.

3 Crimes of Theft by Housebreaking (dwelling)

Example: Front door of a common stair type building is forced open and a

pedal cycle stored in common lobby is stolen.

1 Crime of Theft by Housebreaking (dwelling)

Example: Front door of a common stair type building is forced open, two secure

flats within building are broken into and property stolen from each.

2 Crimes of Theft by Housebreaking (dwelling)

Example: Three locked rooms occupied by students in a university halls of

residence and broken into and property stolen from within.

3 Crimes of Theft by Housebreaking (dwelling)

Example: Forcing open integral garage (door connecting garage to house) and

stealing therefrom.

1 Crime of Theft by Housebreaking (dwelling). (Where there is no connecting door to house record as Theft by HB (non-dwelling)

Example: A person commits housebreaking and steals property, while on

property is disturbed and then rapes complainer.

1 Crime of Theft by Housebreaking (dwelling) and 1 Crime of

Sexual Offences (S) Act 2009 Sec 1

Example: Breaking into dwelling, stealing from living room area, being

disturbed and assaulting 2 occupants.

1 Crime of Theft by Housebreaking (dwelling) and 2 Crimes of

Assault

Example: Finding key beneath flower pot, opening front door, stealing

1 Crime of Theft by Housebreaking (dwelling) (key feloniously

obtained)

Example: Enter hotel, break into 4 occupied hotel rooms and managers living

quarters, stealing property.

5 Crimes of Theft by Housebreaking (dwelling) (Had the culprit entered the hotel and stolen from the managers quarters and 4 unoccupied rooms then this would be classified as 1 Crime of Theft HB – Domestic and 1 Crime of Theft HB – Other. If the rooms are occupied, then this becomes the persons domicile and therefore

each crime will be counted individually).

Example: Breaking into garden hut, stealing spade, thereafter breaking into

dwelling house owned by same complainer and stealing.

1 Crime of Theft by Housebreaking (Dwelling)

Example: Break into static caravan and steal therefrom.

1 Crime of Theft by Housebreaking (Dwelling)

Example: Raising insecure sash window of a ground floor house window,

climbing through, searching rooms, nothing stolen.

1 Crime of Housebreaking with Intent (dwelling)

Example: Smash small window of door of dwelling near to lock, although hole

big enough to reach through, no entry gained to property.

1 Crime of Attempted Housebreaking with Intent (dwelling)

Example: A fishing rod is put through the letter box, keys on table within are

hooked and used to steal vehicle in driveway.

A fishing rod is put through the letterbox in an effort to hook keys on table within, however this has been unsuccessful with fishing rod and

keys found on floor on householders return.

Both of the above scenarios would result in a Crime of Theft by

Housebreaking (dwelling) being recorded.

DOMESTIC - NON-DWELLING

Example: Breaking into garden hut, stealing spade.

1 Crime of Theft by Housebreaking (Non-dwelling)

Example: Breaking into bike shed, stealing 3 bicycles

1 Crime of Theft Housebreaking (Non dwelling) If the bikes were contained within a locked bike cage or similar this would be an OLP. If this occurred at a school or commercial property the classification

would be HB (other).

Example: 3 garages located at the end of the street, and are owned/rented by

residents within the street, are broken into and property stolen from

each.

3 Crimes of Theft by Housebreaking (non-dwelling)

Example: 3 garages located at the end of the street, and are owned/rented by

residents within the street, are broken into and property stolen from each. Enquiry ascertains that 1 of the residents works from home

and uses the garage as part of his business.

2 Crimes of Theft by Housebreaking (non-dwelling) and 1 Crime of

Theft by Housebreaking (other)

OTHER

Example: Common stair door forced, thereafter breaking through wall into

shop, forcing office door and stealing safe.

1 Crime of Theft by Housebreaking (Other)

Example: Sports centre broken into, 10 lockers forced and property stolen.

1 Crime of Theft by Housebreaking (Other). (OLPs subsumed within the same crime. If the centre had been open to the public and the lockers had been forced, this would be recorded as Theft OLP and the number of crimes would be dependent on the number of

victim's there were who had suffered a loss).

Example: Foam alarm box on factory, no further attempt made to break into

premises.

1 Crime of Attempt Housebreaking with Intent (Other)

Example: Cut telephone wires wired to alarm system of office premises.

1 Crime of Attempt Housebreaking with intent (Other)

Example: First floor flat broken into and a hole cut in the floor in order to gain

entry into the chemist shop below where property is stolen.

1 Crime of 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 HB (dwelling) would be

recorded).

Example: A secure wooden hut used to store excess tables and chairs at a

school is broken into and no property stolen.

1 Crime of Housebreaking with Intent (other)

Example: Climbing to first floor window of Care Home, opening window,

climbing in to common room area, stealing from units, egress as

entry.

1 Crime of Theft Housebreaking (Other) due to the main building being a commercial property. If the culprits had entered residents rooms then this would be Theft Housebreaking (Dwelling) x number

of rooms.

Example: 3 garages located at the end of the street, and are owned/rented by

residents within the street, are broken into and property stolen from each. Enquiry ascertains that 1 of the residents works from home

and uses the garage as part of his business.

2 Crimes of Theft by Housebreaking (non-dwelling) and 1 Crime of

Theft by Housebreaking (other)

Example: Break padlock, enter compound, break in to portacabin used as an

office, steal items including car keys and steal company owned

vehicle parked outside.

1 Crime of Theft by Housebreaking (other).

Example: A permanent caravan used for fast food is broken into and property

stolen.

1 Crime of Theft by Housebreaking (other)

OTHER CRIME TYPES

Example: Whilst at a camp site complainer reports that his tent, which was

secured by padlock, had been entered by cutting the material, entering and stealing property belonging to himself and a friend.

2 Crimes of Theft (the tent is not considered to be a lockfast place

or a dwelling)

Example; Entering house through open window, stealing items from kitchen

and living areas, egress by front door

1 Crime of Theft unless the window was above ground level and the

culprit was required to climb up to enter, which would be

Housebreaking.

Example: Break padlock, enter compound, enter insecure office, steal items

including car keys and steal company owned vehicle parked

outside.

1 Crime of Theft of Motor Vehicle

Example: 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 Crime of Theft (the attempt to obtain the card from the delivery address is a continuation of the intention to steal the package)

NOTES: An Attempt Housebreaking should be recorded when no entry has

been gained and a Housebreaking with Intent recorded when entry

has been gained although no property stolen.

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.

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 eg. 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 eg. faulty lock and by pushing same to allow access with no obvious signs of damage.

Relevant Crimes/Offences

Housebreaking with Intent to Steal Theft by Housebreaking Attempted Housebreaking with intent to steal

025000 IDENTITY DOCUMENTS ACT, 2010

1

GENERAL RULE: ONE CRIME FOR EACH INCIDENT

Definition: Section 4

- (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
 - the intention of using the document for establishing personal information about P;
 - 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

- (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

- (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

 (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.

Victim/Complainer: Procurator Fiscal

Locus: Where crime takes place

Scenario Examples:

Example: A person is arrested in possession of a false passport, without

reasonable excuse.

1 Crime of Identity Documents Act, 2010

Example: A youth is stopped with a false driving licence obtained over the

internet attempting to prove his age to enter an over 21 club.

1 Crime of Identity Documents Act, 2010.

Example: A person 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: A passport has been reported stolen and has subsequently been

used to commit fraud.

1 Crime of Theft and 1 Crime of Fraud

Example: A forged passport is used to commit fraud.

1 Crime of Fraud

Example: A person, apprehended for forging a passport, admits to five similar

crimes.

1 Crime of 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
- (I) information about numbers allocated to A for identification purposes and about the documents (including stamps or labels) to which they relate.

Relevant Crimes/Offences

- S4 Possession or control with intention, identity document known or believed to be false
- S4 Possession or control with intention, improperly obtained ID doc
- S4 Possession or control with intention, other persons ID Doc
- S5 Make/ have in possession/ control apparatus for making false ID docs
- S5 Make/have in possession/under control article or material designed or adapted for making false ID docs
- S6 Possession/control false ID doc
- S6 Possess/control improperly obtained ID doc
- S6 Possess/someone elses ID doc
- S6 Possession or control apparatus used in the making of false ID docs
- S6 Possession or control article or material used or adapted to be used in the making of false ID docs

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, show-cases, 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.

As of 1st April, 2009 Theft OLP (ATMs) will be recorded as one crime per account in line with new Fraud counting rules.

As of 1st April, 2010 Theft OLP (ATMs and Fuel Pumps) will be counted for statistical purposes within the SGJD Code for Fraud i.e. 025000.

Note:

Insert card in fuel pump = Theft (other)

Insert card & PIN in fuel pump = Theft by OLP (Fuel Pump)

(from April, 2010 included in fraud statistics)

Insert card & PIN in ATM = Theft by OLP (ATM)

(from April, 2010 included in fraud statistics)

Hand card to sales assistant and key in PIN = Fraud

020001 THEFT BY OPENING LOCKFAST PLACE
(Excluding Motor Vehicle)
020002 OPENING LOCKFAST PLACE WITH INTENT
TO STEAL (Excluding Motor Vehicle)
020003 ATTEMPT TO OPEN LOCKFAST PLACE WITH
INTENT TO STEAL (Excluding Motor Vehicles)
025000 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. And it is immaterial whether this was achieved by using violence, or 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 (where multiple loci (e.g. ATM usage) refer to Fraud guidance).

Scenario Examples	<u>:</u>
Example:	Break into non-static caravan used purely for storage purposes, nothing stolen.
	1 Crime of Opening Lockfast Place with Intent to Steal
Example:	Break into lockfast portacabin used purely for storage purposes, nothing stolen.
	1 Crime of Opening Lockfast Place with Intent to Steal
Example:	Break into lockfast storage cubicle/cage within an insecure common close and steal pedal cycle.
	1 Crime of Theft by Opening Lockfast Place
Example:	Steal and use stolen or counterfeit card in ATM, input PIN and withdraw cash.
	1 Crime of Theft and 1 Crime of Theft by Opening Lockfast Place (ATM) (key in form of PIN requires to be entered to cause machine to issue cash)

Example: 5 separate withdrawals from different ATMs using PIN.

1 Crime of Theft OLP (ATM)

Example: Steal and use stolen or counterfeit card in fuel pump, input PIN and

withdraw fuel.

1 Crime of Theft (or reset depending on circumstances) and 1 Crime of Theft by Opening Lockfast Place (fuel pump) (key in form of PIN requires to be entered to cause machine to issue fuel)

Example: Walk into a sports centre, force open 10 lockers and steal property

owned by 10 different complainers.

10 Crimes of Theft by Opening Lockfast Place (each locker is

considered to be a lockfast place).

Example: Three non static caravans forced open and property stolen,

owned by different complainers.

3 Crimes of Theft By Opening Lockfast Place

Example: Locker within sports centre broken into whereby property belonging

to two individuals was stolen from within.

1 Crime of Theft by Opening Lockfast Place (both victims will be

recorded as complainers as it is only 1 lockfast place)

Example: Break padlock on gate or make hole in mesh fence, enter

compound and steal nothing.

1 Crime of Vandalism for damage to padlock or fence. (Crime under Civic Govt (Scot) Act 1982 S57 could be considered if indications

are there was intent to commit theft).

Example: Break padlock on gate or make hole in mesh fence, enter

compound and steal items.

1 Crime of Theft.

Example: Climb over fence, enter compound and steal nothing.

1 Crime under Civic Govt (Scot) Act 1982 S57 could be considered

if indications are there was intent to commit theft.

Example: Climb over fence, enter compound and steal items.

1 Crime of Theft.

Example: Break padlock, enter compound, break in to portacabin used as an

office, steal items including car keys and steal company owned

vehicle parked outside.

1 Crime of Theft by Housebreaking (Other).

Example: Break padlock, enter compound, enter insecure office, steal items

including car keys and steal company owned vehicle parked

outside.

1 Crime of Theft of Motor Vehicle

Example: A permanent caravan used for fast food is broken into and property

stolen.

1 Crime of Theft by Housebreaking (other)

Example: 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: Break padlock, enter compound, break in to five containers used for

storage and steal from within (all containers owned by same

company).

1 Crime of Theft by Opening Lockfast Place.

Example: Break padlock enter compound owned by 'A' and rented by 'B'.

> break into a portacabin used as an office by 'B' and steal property. break in to container used by 'C' for storage and steal from within.

1 Crime of Theft by Housebreaking (Other), 1 Crime of Theft by

Opening Lockfast Place (damage to padlock subsumed into HB as

compound 'under custody/control' of 'B' at time)

Example: Police apprehend a suspect for breaking into two parking meters

> on the same street. Later same date, local authority report 20 parking meters have been broken into in the surrounding area and money stolen from same. Enquiry reveals a total of 88 meters were broken into over a period of 4 days. The suspect admits to

being responsible.

1 Crime of Theft by Opening Lockfast Place (whilst the crimes occurred over a period of days, all the property is owned by the same authority and they were effectively made known around the

same period of time. Any OLPWI and Attempts would be

subsumed within the Theft OLP)

NOTE: There are various categories of Theft OLP's, 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

As of 1st April, 2009 Theft OLP at ATMs will be recorded as one crime per account e.g. 90 withdrawals at various ATMs from one account will result in one crime being recorded.

It is not theft by opening lockfast places to steal a locked receptacle (e.g. a safe) and subsequently remove the contents. In such a case, the relevant charge is theft of the receptacle and its contents.

From 1st April, 2010 Theft OLPs (ATMs and fuel pumps) should be recorded under SGJD Code 025000 (Fraud) for statistical purposes.

Relevant Crimes/Offences

Theft by Opening Lockfast Place – ATM (SGJD Code 025000) Theft by Opening Lockfast Place Attempted Open Lockfast Place with intent Open Lockfast Place with intent 020004 THEFT BY OPENING LOCKFAST PLACE

(Motor Vehicle)

020005 OPENING LOCKFAST PLACE WITH INTENT

TO STEAL (Motor Vehicle)

020006 ATTEMPT TO OPEN LOCKFAST PLACE

WITH INTENT TO STEAL (Motor Vehicle)

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. And it is immaterial whether this was achieved by using violence, or false keys, or the true key unless it was left in the lock.

Victim/Complainer: Vehicle Owner

Locus: Vehicle Violated And Where Crime Takes Place

Scenario Examples:

Example: Car window smashed and CD player stolen.

1 Crime of Theft by Opening Lockfast Place (Motor Vehicle)

Example: Car door forced, glove compartment rummaged through, nothing

stolen, paint thrown over seats.

1 Crime of Opening Lockfast Place with Intent to Steal (Motor

Vehicle) - vandalism subsumed within OLPWIMV

Example: Rubber seal from car door removed and screwdriver marks on

surround but no entry gained.

1 Crime of Attempt to Open Lockfast Place with Intent to Steal

(Motor Vehicle)

Example: Locked fuel cap on vehicle forced open, fuel siphoned from tank

and stolen

1 Crime of Theft by Opening Lockfast Place (Motor Vehicle)

Example: Non locking fuel cap on vehicle opened, fuel siphoned from tank

and stolen.

1 Crime of Theft from a Motor Vehicle (exterior)

Example: Articulated curtain sider trailer is broken into after material slashed

and property stolen from within.

1 Crime of Theft by OLP (MV) if curtain side physically locked and

trailer attached to a vehicle.

1 Crime of Theft from MV if not physically locked (eg. ropes only)

and attached to a vehicle.

1 Crime of Theft by OLP (not MV) if curtain side physically locked

1

but not attached to a vehicle
1 Crime of Theft if not physically locked (eg. ropes only)and not attached to a vehicle.

Relevant Crimes/Offences

Theft by Opening Lockfast Motor Vehicle OLM/Vehicle with Intent Attempt OLM/Vehicle Intent

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.

Victim/Complainer: Procurator Fiscal

Locus: Where accused found in possession of the property

Scenario Examples:

Example: When searching the dwelling of 'A', 10 items of property (credit

card, mobile phone, etc) are identified as being the proceeds of a

robbery. 'A' provides details of who sold the items to him.

1 Crime of Reset

Example: A house is searched on two different days over a space of a week

with stolen property recovered on both occasions.

2 Crimes of Reset

Example: 2 persons are found in possession of a stolen motor cycle in the

street. On searching their flat a further stolen motor cycle is

recovered.

1 Crime of 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 (eg Theft). This would be in place of the charge 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.

GENERAL RULE: ONE CRIME FOR EACH INCIDENT

Definition: Steal goods for sale, from an open display

Victim/Complainer: Owner of goods stolen

Locus: Where crime takes place

Scenario Examples:

Example: '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 Crime of Shoplifting (3 accused)

Example: '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 Crime of Theft Not Elsewhere Classified (excl Motor Vehicles)

Example: 'A' steals property from a chemist and 2 separate newsagent

outlets.

3 Crimes of Shoplifting

Example: '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 Crime of Shoplifting

Example: An anonymous member of the public informs security that a

female has just placed items of clothing within her bag and points out the female. On the female being approached, whilst still within the shop, she is found to be in possession of a shopping bag lined with aluminium foil containing a number of items of clothing with

the security tags attached.

1 Crime of Attempt Theft or Shoplifting.

Example: A shop reports that a member of the public has reported to them

having seen a female taking goods from the shelf and placing same within her 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.

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 stocktake, this should not be recorded unless there is proof of a crime having occurred.

022001 THEFT (Not Elsewhere Classified)

GENERAL RULE: ONE CRIME FOR EACH VICTIM

FAMILY/FRIENDS/CHILD THEFTS

The attending/enquiry officer has to have a degree of discretion in these scenarios. It is difficult to stipulate at 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 complainer is satisfied with the resolution, then no crime record should be raised. If this is a child of the complainer then the wishes of the complainer 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 complainer and suspect are related and that the complainer 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 changed 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.

CATALOGUE COMPANY THEFTS

A likely scenario is that a person makes a complaint to the police that a catalogue company has asked them for money for goods but they have never opened an account with the company. On contacting the company they explain that they are making their own investigations and will contact the police should they wish to make a complaint.

In this scenario there is no necessity to raise a crime report as the company would be the complainer and they have indicated that they are making their own enquiries to establish if a crime has been committed. It is unknown at the stage when the member of the public reports this to police if any crime has been committed. It could be an administration error on the part of the company and until information has been provided to evidence a crime has occurred, there is no requirement to record a crime report.

It should be noted that it is not an offence to open an account in another person's name, unless the intention in doing so was to commit fraud.

Should a catalogue company contact the police regarding a fraud/theft and can supply information to confirm a crime has occurred then a crime report should be raised.

If the complaint is a bad debt then this is not a police matter and should be referred back to the company.

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 eg. 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 eg. faulty lock and by pushing same to allow access with no obvious signs of damage.

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.
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Victim/Complainer:	Owner of Property
Locus:	Where Crime Takes Place

Scenario Examples:	
Example:	An elderly man 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 Crime of Theft (although this may be an oversight, it has not yet been confirmed, therefore must be recorded as a crime)
Example:	'A' fills up vehicle with fuel and claims to have forgotten his wallet. An arrangement is made to return the next day to pay for the fuel and a name and address are left. He fails to return and enquiry reveals a false name and address has been provided.
	1 crime of Fraud
Example:	Insert stolen or counterfeit card in fuel pump which does not require PIN and withdraw fuel.
262	NOT PROTECTIVELY MARKED

1 Crime of Theft (the lack of PIN security (key) removes OLP element)

Example: On 12 occasions over a 3 week period a shop assistant rings larger

amounts of money for purchases through the till, following each transaction she removes the difference and steals same.

1 Crime of Theft (depending on the circumstances this may be

classed as a fraudulent scheme)

Example: Female removes and places her 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 Crime of Theft (this should not be recorded as Lost Property)

Example: Enter sports centre and stealing property from 5 jackets owned by

different complainers.

5 Crimes of Theft

Example: A flat is rented to tenants and on their departure the owner discovers

property missing.

1 Crime of Theft (this may be a civil matter dependant on the

inventory and tenancy agreement)

Example: Twenty friends regularly give money to the culprit, who in turn bets

on horses on their behalf. The culprit steals the money, failing to

place any bets and failing to return the monies.

1 Crime of Theft (the monies are treated as being 'joint ownership')

Example: Whilst at a camp site complainer reports that his tent, which was

secured by padlock, had been entered by cutting the material, entering and stealing property belonging to himself and a friend.

2 Crimes of Theft (the tent is not considered to be a lockfast place

or a dwelling)

Example: Climb over fence, enter compound and steal items.

1 Crime of Theft.

Example: Carer working in gentleman's house uses the telephone to phone

high tariff lines. He runs up a very large telephone bill, which only

comes to light when the phone bill is received.

1 Crime of Communications Act, S125

Example: 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 Crime of Theft

Example; A dwelling house in entered by insecure front door and steals the

property of 4 different family members.

1 Crime of Theft

Example: 10 work colleagues give money to another 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 the suspect fails to return the monies.

1 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:

Person enters unlocked hotel room, enters and steals property belonging to the hotel and the two residents who are occupying the room. The two occupants are work colleagues.

1 Crime of Theft (the room is treated as a household)

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 / credit card (no PIN required) in petrol pump machine this will be recorded as Theft (other).

The reported loss of a mobile telephone or other property must be accompanied by an assertion of criminality before a crime record 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, a crime record must be recorded until enquiry establishes whether there had been any intention to deprive. Consideration will be given to updating the crime record to 'No Crime' only where the circumstances clearly indicate there has been no intention to deprive.

Relevant Crimes/Offences

Theft (Charge Variant may be applied to identify type of Theft e.g. Other, Pedal Cycle, Vehicle (exterior))

veriicie (exterior))

Theft by appropriation

Theft by finding

Theft from person

Attempt Theft

Civic Govt 1982 S67(1)&(6) Theft finding

022005 THEFT FROM A 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

Scenario Examples:

Example: Insecure vehicle is entered and property removed from the glove

compartment and left lying on the seat.

1 Crime of Theft from a Motor Vehicle

Example: CD player stolen from insecure vehicle and all vehicle lights

smashed.

1 Crime of Theft from a Motor Vehicle (the vandalism will be

subsumed within the Theft from a Motor Vehicle)

Example: Two wheels and roof rack are stolen from a vehicle overnight.

1 Crime of Theft from a Motor Vehicle (see note)

Example: Insecure vehicle entered, cowling removed from under the steering

wheel and a number of wires disconnected. Items also missing from

inside the vehicle.

1 Crime of Theft from a Motor Vehicle (Att Theft MV should be

subsumed within the Theft as the Theft is the substantive crime.)

Example: A report is received that a vehicle has been entered and property

stolen from within, whilst the complainer is adamant that the vehicle

was secured, there are no signs of forced entry.

1 Crime of Theft from a Motor Vehicle

Example: A male is seen on CCTV to have entered a vehicle, stealing property.

Police attend and apprehend the male who is found in possession of a device which is found to unlock vehicles. The owner of the vehicle

advises he locked his vehicle.

1 Crime of Theft OLPMV (as it has been ascertained that a device

has been used to gain entry.)

NOTE: For Divisions who record crime by ISCJIS codes, the Theft from

Motor Vehicle charge code should only be used for thefts from the **interior** of a motor vehicle. For thefts from the **exterior** of a motor vehicle the Theft charge code should be applied with the relevant modifier applied to indicate the theft is from the 'exterior' of the

vehicle. Both should be linked to SGJD Code 022005.

There are no ISCJIS Codes for Attempt Theft from a Motor Vehicle and the code for Attempted Theft should be used with the

appropriate modifier (vehicle) to allow statistical collation i.e. SGJD

Code for Att Theft from a MV is 022005 whilst Att Theft (not motor vehicle) would be 022001.

Relevant Crimes/Offences

Theft from Motor Vehicle (interior only)
Theft (with 'exterior' modifier applied)
Att Theft (with 'vehicle' modifier applied)

THEFT OF MOTOR VEHICLE AND CONTENTS 022002 INCLUDING TAKING AND DRIVING AWAY

GENERAL RULE: ONE CRIME FOR EACH VEHICLE OWNER

Definition: Common Law

> Taking and driving away a motor vehicle 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 (joy riding).

Victim/Complainer: Vehicle Owner

Locus: Where Crime Takes Place

Scenario Examples:

Example: Stealing keys from jacket pocket hanging on chair in public house,

thereafter using keys to steal vehicle parked outside on roadway.

1 Crime of Theft MV

Example: Enter insecure dwelling and steal car keys from table, steal vehicle

from driveway.

1 Crime of Theft MV

Example: Two vehicles owned by different people stolen from same locus

over the same period of time.

2 Crimes of Theft MV

Example: Motor vehicle stolen, found abandoned minus the CD player.

1 Crime of Theft MV

Example: Motor vehicle is stolen from Locus A and 7 days later the same

vehicle is found burnt out at Locus B. An accused is traced who admits to buying vehicle from an unnamed person and to setting it

on fire. Accused denies stealing vehicle.

1 Crime of Theft MV (undetected)

1 Crime of Reset (detected) Fireraising is subsumed within Reset

Example: Vehicle parked on the road on return to hire company which is

closed. Keys for vehicle posted through metal box outside

premises. Box is broken into, keys are removed and vehicle stolen

using true key.

1 Crime of Theft by OLP (excl MV) (the Theft of MV is subsumed)

Example: Insecure house is entered, safe broken into, £20,000 stolen from

safe, keys for motor vehicle taken and vehicle stolen from outside

house. Vehicle is valued at £4000.

1 Crime of Theft by OLP (ex MV) - in this example the relative

values of the property taken weigh in favour of the theft from the safe

NOTE: In cases where a stolen vehicle is recovered burnt out a crime record for Theft MV should be raised. If there is evidence that a different person(s) was responsible for the fire-raising a further crime record 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 be recorded when the culprit is known, such as a son taking his father's car without permission or an employee using a company vehicle without permission. This crime should only be recorded where it is clear that the culprit has the intention of returning the vehicle.

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 Attempt Theft of Motor Vehicle unless it is clear that there was no intent to deprive the owner.

Relevant Crimes/Offences

Theft of Motor Vehicle RTA 1988 S178(1)(a) Take/attempt to take and drive away

022004 THEFT OF PEDAL CYCLE

1

GENERAL RULE: ONE CRIME FOR EACH VICTIM

Definition: Stealing a Pedal Cycle

Victim/Complainer: Owner of the property

Locus: Where crime takes place

Scenario Examples:

Example: Student reports her bicycle stolen from common stair.

1 Crime of Theft Pedal Cycle

Later that same day the student finds her bicycle has been

returned to the common stair undamaged and is of the opinion that

one of the other students had borrowed the bicycle.

Update the initial Crime Report to 'No Crime' as there has been no

criminal intent.

Example: A pedal cycle is reported stolen from the garden.

1 Crime of Theft Pedal Cycle

Example: Enter an insecure shed and steal 3 pedal cycles owned by three

members of the same family.

1 Crime of Theft Pedal Cycle

Example: Steal 3 pedal cycles secured to a cycle rack, which is located

under an open-sided, plastic canopy, owned by different

complainers.

3 Crimes of 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 bicycle is reported stolen from a garden and recovered intact later same day some

distance away, this should remain recorded as a crime.

025000 TRADE MARKS ACT 1994, SECTION 92

GENERAL RULE: ONE CRIME FOR EACH SEIZURE

Definition:

- (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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: 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 Crime of Trade Marks Act, 1994 S92(1)(C), 1 Crime of Copyright Designs Patents 1988 S107(1)(D), 1Crime of Copyright Designs Patents 1988 S107(1)(c) and 1 Crime of 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 PF as the

victim/complainer and the companies/representatives as witnesses

for each incident.

Relevant Crimes/Offences

S92(1)(a) - With a view to gain apply to goods or their packaging a sign identical to a registered trade mark

S92(1)(b) - Offer for sale or hire/let/distribute goods that may be mistaken for a registered trade mark

S92(2)(a)(i/ii) - With a view to gain apply a sign to material when said sign was identical to a registered trade mark

S92(2)(b) - With a view to gain use in course of business material which bore a sign identical to a registered trade mark

S92(2)(c) - Have in your possession, custody or control material which bore a sign identical to a registered trade mark

S92(3)(a) - Make an article specifically designed for making copies of a sign identical to a registered trade mark

SS92(3)(b) - Have in possession/custody/control an article that was designed or adapted for making copies of reg trade mark

026000 VEHICLE EXCISE AND REGISTRATION ACT, 1994 SECTION 44 – FORGERY

1

GENERAL RULE: ONE CRIME FOR EACH VEHICLE/DOCUMENT INVOLVED

Definition: A person fraudulently alters, uses, lends or allows to be used: a

vehicle licence, trade licence, a document in the form of a licence, a registration mark, a registration document, a trade

plate (including a replacement trade plate).

Victim/Complainer: DVLA

Locus: Where excise licence is displayed or presented

Scenario Examples:

Example: Displaying fraudulently altered number plates on 2 vehicles

discovered in haulage yard

2 Crimes of Vehicle Excise and Registration Act 1994 S44

Example: Fraudulently altering registration document and presenting as

genuine to obtain ownership

1 Crime of Vehicle Excise and Registration Act 1994 S44

Relevant Crimes/Offences

Veh Exc 1994 S44(1) Fraudulently Use/Alter Reg Mark Veh Exc 1994 S44(1) Fraudulently Use/Alter Licence

025000 VEHICLE EXCISE AND REGISTRATION ACT, 1994 SECTION 44 – FRAUD

1

GENERAL RULE: ONE CRIME FOR EACH VEHICLE/DOCUMENT INVOLVED

Definition: Displaying of a photocopy or laser copy of an Excise Licence.

Presentation of a photocopy or laser copy of a vehicle document i.e. Registration Document or MOT certificate and obtaining a

vehicle excise licence

Fraudulently displaying a vehicle excise licence.

Victim/Complainer: DVLA

Locus: Where the excise licence is displayed or presented

Scenario Examples:

Example: Displaying photocopied vehicle excise licence on silver Ford

Mondeo Reg No. P123ABC pertaining to Ford Focus Reg No

P125CAB

1 Crime of Vehicle Excise and Registration Act 1994 S44 - Fraud

Relevant Crimes/Offences

Veh Exc 1994 S44(1) Fraudulently Lend Trade Plate

Veh Exc 1994 S44(1) Fraudulently Use Licence

Veh Exc 1994 S44(1) Fraudulently Use Reg No.

Veh Exc 1994 S44(1) Use False Vehicle Licence Disk

Veh Exc 1994 S44(1) Fraudulently Lend Vehicle Licence

Veh Exc 1994 S44(1) Fraudulently Use Trade Plate

GROUP 4 – FIRE-RAISING, MALICIOUS MISCHIEF ETC.

1

(SGJD Code)

Computer Misuse Act, 1990, S3	033010
Criminal Law (Consolidation) (Scotland) Act, 1995, S52 – Vandalism	033012
Culpable and Reckless Conduct (not with firearms)	033011
Endangering Rail Passengers	033004
Fire-raising (excluding Muirburn)	032001
Malicious Mischief	033014
<u>Muirburn</u>	032003
Reckless Conduct (with Firearms)	033002

033010 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: (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 an 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.

Victim/Complainer:	Person or Organisation	

Locus:	Where Crime Takes Place	

Scenario Examples:

Example: An employee has been sacked from her high profile job at

ABC Media. Before she leaves she 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 Crime of Computer Misuse Act, Section 3 (ABC Media are the intended victim)

1

033012 CRIMINAL LAW (CONSOLIDATION) (SCOTLAND) ACT, 1995, S52 – VANDALISM

1

GENERAL RULE: ONE CRIME FOR EACH VICTIM

Definition: It is an offence for person(s) to wilfully or recklessly destroy or

damage the property of another person.

Victim/Complainer: Owner of Property

Locus: Where Crime Takes Place

Scenario Examples:

Example: Entering open house, smashing furniture and spray painting walls,

thereafter vandalising owner's vehicle in driveway.

1 Crime of Vandalism

Example: Vandalising 4 vehicles whilst parked within yard awaiting repairs,

all owned by separate victims.

4 Crimes of Vandalism

Example: Plants pulled out of garden and strewn across grass.

1 Crime of Vandalism (it is irrelevant whether the plants are

perennial or not)

Example: Wilfully knocking coping stone from wall, smashing same.

1 Crime of Vandalism

Example: Witness reports youths seen smashing windows of a derelict

building, owner of building cannot be traced.

1 Crime of Vandalism

Example: 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 Crime of 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: A school reports that over two separate weekends three windows

and six windows respectively were damaged.

2 Crimes of Vandalism (where the times/dates are unknown one

crime would be sufficient)

Example: School subjected to vandalism on 6 separate identified occasions

during school holidays by same suspect group of youths.

6 Crimes of Vandalism

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 (eg. 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.

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.

033011/ CULPABLE AND RECKLESS CONDUCT 004001 (NOT WITH FIREARMS)

1

GENERAL RULE: ONE CRIME FOR EACH INCIDENT

Definition: An act, which may or may not cause injury but shows an utter

disregard of what the consequences of that act would be.

Victim/Complainer: Procurator Fiscal or Named Victim

Locus: Where Crime Takes Place

Scenario Examples:

Example: Person throwing stone at moving train, causing damage to window.

1 Crime of Culpable and Reckless Conduct

Example: Person drops a bottle from a 15th floor flat into a public precinct.

1 Crime of Culpable and Reckless Conduct

Example: Person throws a brick at a moving bus resulting in two persons

within being injured.

1 Crime of Culpable and Reckless Conduct

Example: A report is received that a laser is being directed into the sky in the

line of vision of a pilot.

1 Crime of Air Navigation Order, 2009, A222 (Direct or shine a light

so as to dazzle or distract the pilot of an aircraft in flight)

Example: '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: '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 Crime of Culpable & 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: Persons until a number of boats in a harbour, damaging ropes

and causing them to drift.

1 Crime of Culpable and Reckless Conduct

NOTE:

Wilful or reckless damage to property should be recorded as vandalism unless there is an element of endangerment e.g. throwing a brick at a moving vehicle. In such cases the crime of Culpable and Reckless Conduct will be applicable.

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 Air Navigation Order, 2009 should only be used when the circumstances refer to an aircraft, otherwise, Culpable and Reckless Conduct is the appropriate crime.

From 1st April, 2011 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 040001).

033004 ENDANGERING RAIL PASSENGERS

1

GENERAL RULE: ONE CRIME FOR EACH INCIDENT

Definition: Although this is not a substantive crime, this SGJD code is used to

allow separate recording of crimes such as malicious mischief, vandalism and culpable and reckless conduct whereby the conduct is likely to endanger the safety of any rail passengers e.g. objects placed on railway lines which could have caused damage or

derailed a train etc.

Victim/Complainer: Network Operator

Locus: Where Crime Takes Place

Scenario Examples:

Example: Person placing wooden batons across railway line.

1 Crime of Endangering Rail Passengers

NOTE: It should be noted that British Transport Police (BTP) has various

legislation available to them, which is not available to Police Scotland, and any crimes occurring within their jurisdiction should be recorded and counted by BTP. There may be occasions when Police Scotland report crimes, which have occurred on BTP property, to the Procurator Fiscal, again, these crimes should be counted by BTP and not Police Scotland. Section 'E' contains

information on how to contact BTP.

032001 FIRE-RAISING (EXCLUDING MUIRBURN)

GENERAL RULE: ONE CRIME FOR EACH VICTIM

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.

Victim/Complainer: Owner of the Property

Locus: Where Crime Takes Place

Scenario Examples:

Example: Person climbs over fence of secure compound, sets fire to vehicle,

and smashes window of JCB.

1 Crime of Fire-raising (vandalism subsumed within same crime)

Example: Person climbs into compound and wilfully sets fire to 2 vehicles,

owned by the same company.

1 Crime of Fire-raising

Example: Person sets fire to a vehicle which spreads to other vehicles parked

alongside.

1 Crime of Fire-raising (if there is nothing to suggest that the

intention was to set fire to all vehicles).

Example: 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 Crime of 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 record will not be raised. All property damaged by being set on fire wilfully / maliciously should be

regarded as fire-raising e.g. litterbins, vehicles, buildings.

Relevant Crimes/Offences

Culpable and Reckless Fireraising (not muirburn)

Fireraising (not muirburn)

Reckless Fireraising (not muirburn)

Wilful Fireraising (not muirburn)

Attempted Fireraising (not muirburn)

1

033014 MALICIOUS MISCHIEF including Attempt

1

GENERAL RULE: ONE CRIME FOR EACH VICTIM

Definition: Wilful, wanton and malicious destruction of, or damage to the

property of another.

Victim/Complainer: Person(s) whose property has been destroyed or damaged

Locus: Where Crime Takes Place

Scenario Examples:

Example: Person damages electricity supply resulting in 5 houses being

affected.

1 Crime of Malicious Mischief (due to the victim being the electricity

company)

NOTE: 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.

032003 MUIRBURN

1

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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: Farmer sets fire to 2 of his fields outwith specified time period.

1 Crime of Muirburn

Relevant Crimes/Offences

Fireraising (muirburn)

Reckless Fireraising (muirburn)

Wilful Fireraising (muirburn)

Attempted Fireraising (muirburn)

Hill Farming 1946 S23 Make Muirburn outwith Lawful Dates

Hill Farming 1946 S25 Fail to Provide Sufficient Staff

Hill Farming 1946 S25 Fail to Provide Proper Notice - Owner

Hill Farming 1946 S25 Fail to Provide Proper Notice - Tenant

Hill Farming 1946 S25 Fail to Prevent Damage

033002 RECKLESS CONDUCT (WITH FIREARMS)

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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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: Person firing shots within common stairway.

1 Crime of Reckless Conduct (with 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 – OTHER CRIMES

1

	(SGJD Code)
Bail Offences other than Absconding or Re-offending	039007
Breach of Anti Social Behaviour Order	039014
Breach of Non-Harassment Order (Civil Court)	039013
Breach of Sexual Offences Prevention Orders	039015
Conspiracy	040000
Contempt of Court	039001
Criminal Law (Consolidation)(Scotland) Act, 1995, S47(1) (Public Place) or 49A(2) (School Premises) or 49C(1)(a) In Prison	
Criminal Law (Consolidation)(Scotland) Act, 1995, S48 - Obstructing or Concealing Weapons	038013
Criminal Law (Consolidation)(Scotland) Act, 1995, S49(1) (Public Place) or 49A(1) (School Premises) or 49C(1)(b) In Prison	<i>'</i>
Criminal Procedure (Scotland) Act, 1995 S27 – Failing to Appear for Trial Having Been Given Court Bail	039005

	(SGJD Code)
Criminal Procedure (Scotland) Act, 1995 S22 – Breach of Undertaking	039002
Criminal Procedure (Scotland) Act, 1995 S13(6) – Failing to Give Name to or Remain with Constable	038011
Criminal Procedure (Scotland) Act, 1995, S234A – Breach of Non Harrassment Order (Criminal Court)	039012
Defeat/Pervert the Course/Ends of Justice	038017
Domestic Abuse (Scotland) Act	039021
Drugs – Importation Money Laundering Other Offences Possession Production, Manufacturing and Cultivation Supply	044001 044004 044099 044004 044002
Emergency Workers (Scotland) Act, 2005 - Obstruct/Hinder other Emergency Worker	- 035005
Explosive Substances Act, 1883, Section 3 - Attempt to Cause Explosion	037001
Mobbing and Rioting	035001
Perjury and Subornation	039011
Police and Fire Reform (Scotland) Act 2012 S90(1) and 90(2) - Obstruct/Hinder Constable in Pursuance of Lawful Duty	2_038013

(SGJD Code)

Police and Fire Reform (Scotland) Act 2012 S90(1) and 90(2) - Resist Arrest	038007
Police and Fire Reform (Scotland) Act 2012 S91 - Escape from custody	038006
Police and Fire Reform (Scotland) Act 2012 S92 - Personation of Police	038010
Public Mischief (including Wasting Police Time)	038003
Offences relating to Serious Organised Crime - Criminal Justice and Licensing (Scotland) Act 2010 - S28, 30, 31	038TBA
Sexual Offences Act, 2003 - Notification	038018
<u>Trespass</u>	035003

039007 BAIL OFFENCES OTHER THAN ABSCONDING OR RE-OFFENDING

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

Definition: Failing to observe specific conditions of court bail.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: Conditions of Bail state curfew in place, accused seen in street by

police officers on three consecutive nights, where he has made off

from them.

1 Crime of Breach of Bail

Example: 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 Crime of Criminal Procedure (Scotland) Act, 1995, S27(1)(b) -

Breach of Bail

Example: A person is in breach of their bail conditions where only one person

has witnessed the event.

No crime record 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: Two persons are found to be in breach of their bail conditions.

2 Crimes of Criminal Procedure (Scotland) Act, 1995

S27(1)(b) - one for each accused.

Example: Conditions of bail outline a curfew that a person must be within their

home address between 7pm and 7am. Officers attend at the home

address between these times and receive no response.

No crime record should be recorded as it cannot be ascertained whether the individual was within the dwelling or not. However, should the bail condition outline that they must present themselves

if required, then a crime record would be recorded.

Example: A person is arrested for vandalism and it is ascertained they are on

bail, with standard bail conditions set.

1 Crime of Vandalism (no crime record 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:

Conditions of bail are set that the accused should not contact the complainer. Accused telephones complainer and threatens her,

breaching her bail condition.

1 Communications Act, Section 127(1) (the breach of bail condition becomes an aggravation of the Communications Act

offence)

Example:

Person is released on bail with 3 specific conditions a) curfew b) not to drink alcohol c) not to be in company of named individual. A week later they are found outwith their home address during curfew, intoxicated and in the company of the named individual.

1 Crime of 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 crime records

recorded.

Example:

A person has curfew conditions not to leave their domicile between 7pm and 7am. They are later found shoplifting at a local shopping mall at 9pm.

1 Crime of Criminal Procedure (Scotland) Act, 1995, S27(1)(b) – Breach of Bail and 1 Theft Shoplifting (breach of curfew is a separate act from the crime committed)

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 record 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.

Relevant Crimes/Offences

Crim Procedure 1995 S25 (2C) Breach Bail Domicile of Citation Crim Procedure 1995 S27(1)(B) Fail Com Conditions

039014 BREACH OF ANTI SOCIAL 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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: Accused found to playing loud music in breach of his ASB Order.

1 Crime of Breach of ASB Order

Example: Accused arrested for shoplifting and thereafter identifying he had

breached an ASB Order by being at locus.

1 Crime of Shoplifting with the breach of the ASB Order highlighted

as an aggravation.

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.

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039013 BREACH OF NON-HARASSMENT ORDER (CIVIL COURT) PROTECTION AND HARASSMENT ACT 1997

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

1

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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: Breaching Non Harassment Order set at Edinburgh Sheriff Court

by making contact with the complainer when previously instructed

to make contact through solicitor.

1 Crime of Breach of Non Harrassment Order (Civil Court)

NOTE:

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.

Relevant Crimes/Offences

Protection Harassment 1997 S9(1)(a) Breach Harassment Order Protection Harassment 1997 S9(1)(b) Breach Harassment Order

BREACH OF SEXUAL OFFENCES PREVENTION 039015 **ORDERS (SOPOS)**

GENERAL RULE: ONE CRIME PER OFFENCE

1

Definition:	A persor	comm	its an	offence	if,	withou	t rea	ason	able excuse	, he

does anything which he is prohibited from doing by-

(a) a sexual offences prevention order;

(b) an interim sexual offences prevention order;

(c) an order under Section 5A of the Sex Offenders Act 1997;

(d) an order under Section 2, 2A or 20 of the Crime and Disorder Act, 1998;

(e) an order under Article 6 or 6A of the Criminal Justice (Northern

Ireland) Order 1998

Victim/Complainer: Procurator Fiscal

Locus: Police Station within Division being reported

Scenario Examples:

Example: Sex Offender breaches condition of Order by entering swimming

pool on 9 different days and breaches a further condition by

conversing with a child under 16 years.

2 Crimes for Breach of Sexual Offences Order (due to there being

two separate conditions having been breached)

Example: Sex Offender breaches condition of Order by entering swimming

pool. Whilst there he engages a 14 year old child in non-

consensual sexual conversation.

1 Crimes of Sexual Offences (Scotland) Act 2009, Section 7

Communicating Indecently (breach of SOPO is an aggravation of

the sexual offence committed).

NOTE: Contact MUST be made with Offender Management Units who will

provide advice regarding appropriate recording.

Relevant Crimes/Offences

Crime Disorder 1998 S22(1) Breach Sex Order

Sex Offences 2003 S113(1)(A) Breach Sex Offences Order

040000 CONSPIRACY

GENERAL RULE: ONE CRIME FOR EACH INCIDENT

Definition: Conspiring to commit an unlawful act

Victim/Complainer: Procurator Fiscal

Locus: Where Incident Takes Place

Scenario Examples:

Example: 'A' and 'B' conspire to seriously injure 'A's' ex-husband.

1 Crime of Conspiracy

039001 CONTEMPT OF COURT

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

1

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 —

- 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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: Brought to the attention of the Sheriff in court that someone had

been taking photographs during the proceedings. The Sheriff instructs the police to the trace the individual and report them for

Contempt of Court.

1 Crime of Contempt of Court

NOTE: There is no ISCJIS code specifically for Contempt of Court

therefore Divisions using ISCJIS Codes will most likely use Breach

of the Peace to record and report.

043001 CRIMINAL LAW (CONSOLIDATION) (SCOTLAND)

ACT, 1995,

SECTION 47(1) (Public Place);

SECTION 49A (2) (School Premises);

043006 SECTION 49C(1)(a) (In Prison)

Possession Of An Offensive Weapon

GENERAL RULE: ONE CRIME FOR EACH WEAPON

Definition: Any person who without lawful authority or reasonable excuse, the

proof whereof shall lie on him, has with him in any public place/school premises/prison an offensive weapon.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: A person is found in possession of two offensive weapons.

2 Crimes of Criminal Law (Consolidation)(Scotland) Act, 1995,

S47(1)

Example: Whilst at school, two pupils are both found in possession of an

offensive weapon.

2 Crimes of Criminal Law (Consolidation)(Scotland) Act, 1995,

S49A(2)

Example: '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.

NOTE:

If a weapon is used in the commission of a crime the offensive weapon is subsumed within the main crime e.g. person assaulted with a baseball bat, only the assault would be recorded and the

weapon identified as an aggravation.

On 12th December, 2010 the legislation was updated to include the definition of a public place. This removes the anomaly that allows people carrying offensive weapons on stairs or common landings such as those found in tenement blocks or high rise flats to escape prosecution.

prosecution.

"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).

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 witnesss 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. (Agreed recording practice as of 1st July, 2011)

Relevant Crimes/Offences

Criminal Law (Consolidation) (Scotland) Act 1995, S47(1) - Offensive weapon

Criminal Law (Consolidation) (Scotland) Act 1995, S49A(2) - Carry an offensive weapon in school premises

Criminal Law (Consolidation) (Scotland) Act 1995, S49C(1)(A) - Have an offensive weapon in prison

038013 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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: 'A' having been accused of being in possession of an offensive

weapon, refusing to allow a search to be carried out.

1 Crime of Criminal Law (Consolidation)(Scotland) Act, 1995, S48

043003 CRIMINAL LAW (CONSOLIDATION) (SCOTLAND)

ACT, 1995,

SECTION 49(1) (Public Place);

SECTION 49A(1) (School Premises);

043004 SECTION 49C(1)(b) (In Prison)

Having an Article with a Blade or Point

GENERAL RULE: ONE CRIME FOR EACH WEAPON

Definition: Having in a public place/school premises/prison any article, which

has a blade or is sharply pointed. This does not apply to a folding pocket knife if the cutting edge of its blade does not exceed three

inches (7.62 centimetres).

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: On being arrested for assault within the town centre, the assault

already having been recorded as a crime, person found in

possession of a kitchen knife.

1 Crime of Criminal Law (Consolidation)(Scotland) Act, 1995 S49(1)

Example: 'A' reports that on looking out 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.

NOTE:

If a knife/blade/pointed weapon is used in the commission of a crime the weapon is subsumed within the main crime e.g. person assaulted with a knife, only the assault would be recorded.

On 12th December, 2010 the legislation was updated to include the definition of a public place. This removes the anomaly that allows people carrying knives on stairs or common landings such as those found in tenement blocks or high rise flats to escape prosecution.

"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).

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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 witnesss speaking to the article being a knife, or, one witness and the article being recovered, then a crime should be recorded. (Agreed recording practice as of 1st July, 2011)

Relevant Crimes/Offences

Criminal Law (Consolidation) (Scotland) Act 1995, S49(1) - Carry a knife Criminal Law (Consolidation) (Scotland) Act 1995, S49A(1) - Carry a knife in school premises Criminal Law (Consolidation) (Scotland) Act 1995, S49C(1)(B) - Have article which has blade/sharply pointed in prison

039005 CRIMINAL PROCEDURE (SCOTLAND) ACT, 1995 SECTION 27 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.

Victim/Complainer: Procurator Fiscal

Locus: Court Location

Scenario Examples:

Example: Two accused fail to appear at court for a trial in a case where they

have both been charged with acting together and are on bail.

2 Crimes of Criminal Procedure (Scotland) Act, 1995 S27

NOTE: On the majority of occasions this would be dealt with by way of a

warrant being issued.

Relevant Crimes/Offences

Crim Procedure 1995 S27(7) Fail att solemn Proc Sher/High Ct

Crim Procedure 1995 S27(1)(a) Fail to attend diet

039002 CRIMINAL PROCEDURE (SCOTLAND) ACT, 1995, SECTION 22 Breach of Conditions of Undertaking

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

Definition: A breach of written undertaking conditions.

Victim/Complainer: Procurator Fiscal

Locus: Police Station

Scenario Examples:

Example: 'A' released on an undertaking to appear on a specified date, fails

to appear.

This would be dealt with by the courts and a crime would not be recorded by the Police i.e. added to the complaint by the PF.

Example: 'A' is released on an undertaking to appear on a specified date,

prior to which he breaches two specific conditions of the bail set.

1 Crime of Criminal Procedure (Scotland) Act, 1995 Section 22

Example: '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 Crime of Assault in relation to the initial report then a further Crime of 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:

Following the issue of guidelines by the Lord Advocate persons in custody who would, in normal circumstances, be released for report by summons and who have been charged with a crime specified within the guidelines should be released on an undertaking to appear at court within 28 days as opposed to being released for summons. Persons who would normally be expected to appear at court from custody continue to do so.

Conditions can be attached to the individual's release on an undertaking over and above the requirement to appear at court on a set date. There are three standard conditions although there should be a clear and identifiable benefit if applying same. The conditions are identical to the standard bail conditions a court would attach:

- does not commit an offence while released on undertaking;
- does not interfere with witnesses;
- does not behave in a manner to cause alarm or distress to a witness.

From 28th March, 2011 a Breach of Undertaking crime should only be recorded where no other offence has occurred. Where another offence has occurred, the Breach of Undertaken will be treated as an aggravation in the report to the Procurator Fiscal.

038011 CRIMINAL PROCEDURE (SCOTLAND) ACT, 1995 SECTION 13 Failing to Give Name to or Remain with Constable

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

Definition: Failure to provide details or remain with officer when there is

reasonable belief an offence has been committed.

Victim/Complainer: Procurator Fiscal

Locus: Where Crimes Takes Place

Scenario Examples:

Example: On police attendance following a report of a shoplifting, the

suspect refuses to provide his name and address to officers.

1 Crime of 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

Relevant Crimes/Offences

Crim Proc 1995 S13(1)(A)&13(6) Accused fail to provide details

Crim Proc 1995 S13(1)(B) Witness fail to provide details

Crim Proc 1995 S13(2)&13(6)(A)(II) Fail to remain with constable while name and address

verified

Crim Proc 1995 S13(1)&13(6)(a)(i) – Fail provide name and address Crim Proc 1995 S13(6)(b) – Witness fail give name and address

039012 CRIMINAL PROCEDURE (SCOTLAND) ACT, 1995, SECTION 234A Breach of Non Harassment Order (Criminal Court)

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

1

Definition:

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 or 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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: Accused found to be in breach of a non-harassment order by

telephoning the victim.

1 Crime of Criminal Procedure Act, 1995 S234A

Relevant Crimes/Offences

Crim Procedure 1995 S234A – Fail Comply Conditions not to approach Crim Procedure 1995 S234A(4) – Breach Non-Harassment Order

038017 DEFEAT/PERVERT THE COURSE/ENDS OF JUSTICE

1

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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: On being arrested for robbery escaping from police custody.

1 Crime of Perverting the Course of Justice

Example: Accused providing his brother's particulars when issued with an

ASB Fixed Penalty ticket, which he later admitted.

1 Crime of Attempt to Pervert the Course of Justice

Example: Accused commits murder and hides the body, which is later

recovered.

1 Crime of Murder and 1 Crime of Attempt Defeat the Ends of

Justice

Example: Contacting a number of witnesses in case, threatening or tricking

them into failing to turn up at court to give evidence.

1 Crime of Attempt to Pervert the Course of Justice.

Example: Two teenagers 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 youth provides false details.

1 Crime of Antisocial Behaviour etc (Scotland) Act, 2004 S21(3) -

2 accused recorded thereon as acting together and 1 Crime of

Attempt to Pervert the Course of Justice.

NOTE: The above crime type applies whereby the accused is arrested

then escapes by himself from custody. In circumstances where an

accused is aided in his escape an offence under the Police

(Scotland) Act, 1967 Section 41(1)(b) will apply.

This also covers aiding and abetting someone to break their bail conditions (Criminal Procedure (Scotland) Act, 1995 S293(2).

039021

DOMESTIC ABUSE (SCOTLAND) ACT, 2011 S2(2) - Breach of domestic abuse interdict

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

1

Definition:

- (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.

Victim/Complainer:

Procurator Fiscal

Locus:

Where Crime Takes Place

NOTE:

This Act came into force on the 20th July, 2011 with two important changes to the current law which will effect the reporting of Domestic Abuse cases, namely

- 1. 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.
- 2. 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.

044001 DRUGS - IMPORTATION

Customs and Excise Management Act, 1979, - 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.

Victim/Complainer: Procurator Fiscal

Locus: Where the Crime Takes Place

Scenario Examples:

Example:

Suspect orders valium tablets from abroad. It is not known how payment was made. The drugs were sent by mail arriving at the main parcel hub at an airport, where a member of the UK Borders Agency staff identified the drugs. Customs officers seized the drugs and alerted the Division area they were intended to be delivered to, who attended and collected the drugs. An attempted controlled delivery of the package failed as the address appears to be used merely as a postal address and no one is living there.

1 Crime Customs and Excise Act, Section 50 recorded by the Division covering the address where the package was intended to be delivered to.

NOTE:

As of 26th January, 2009 Cannabis was re-classified from a Class C to a Class B drug.

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 know, or where the offender would reasonably be expected to be at the time of the crime.

Relevant Crimes/Offences

Cust & Exc Man 1979 S170(2) - Importation controlled drugs Cust & Exc Man 1979 S50(3) - Import restricted or prohibited goods

044005

DRUGS - PROCEEDS OF CRIME ACT - MONEY LAUNDERING

1

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

Definition:

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 – A person commits an offence if each of the following four conditions is satisfied,

- 1. (a) he knows or suspects, or
 - (b) has reasonable grounds for knowing or suspecting,

that another person is engaged in money laundering.

- 2. That the information or other matter,
 - (a) on which his knowledge or suspicion is based, or
 - (b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of a business in the regulated sector.

- (a) that he can identify the other person mentioned in (1) above or the whereabouts of any of the laundered property, or
 - (b) that he believes, or it is reasonable to expect him to believe, that the information or other matter mentioned in(2) above will or may assist in identifying that other person or the whereabouts of any of the laundered property.
- 4. He does not make the required disclosure to,
 - (a) a nominated officer, or
 - (b) a person authorised for the purposes of this Part by the Director General of the Serious Organised Crime Agency, as soon as is practicable after the information or other matter mentioned in (2) above comes to him.

Victim/Complainer:

Procurator Fiscal

Locus:

Where Crime Takes Place

Scenario Examples:

Example:

A person facilitates transfer of funds to purchase shares to the value of £19,000, which is identified as proceeds of crime, for a person charged with drugs trafficking offences, deliberately concealing said transactions from the police.

1 Crime of Money Laundering

NOTE:

As of 26th January, 2009 Cannabis was re-classified from a Class

C to a Class B drug.

Relevant Crimes/Offences

Proceeds Crime 2002 S329(1)(A/B/C) Acquire/Use criminal property (Drugs) Proceeds Crime 2002 S330(1) Fail disclose money laundering (Drugs)

044099 DRUGS - OTHER OFFENCES

1

GENERAL RULE: ONE CRIME FOR EACH DRUG TYPE AND/OR ACCUSED

Definition: This Crime Type covers a variety of offences under the following

Acts:-

Criminal Procedure (Scotland) Act, 1995 (Section 20A(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); and

Police and Public Order and Criminal Justice (Scotland) Act, 2006

(Section 88(2)(A), (B) & (C))

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: 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 Crime of Misuse of Drugs Act, 1971 Section 8(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)

NOTE: As of 26th January, 2009 Cannabis was re-classified from a Class

C to a Class B drug.

044004 DRUGS – POSSESSION

Misuse of Drugs Act, 1971 Section 5(2)

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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: On house being searched under warrant, 2 persons found within,

 a) both found physically in possession of a small quantity of cannabis.

2 Crimes for Possession (1 for each accused)

 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 Crimes 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: 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 Crime for Possession (with three accused thereon)

Example: 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 Crime for Possession (relating to the individual who has

admitted ownership of the property).

Example: 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 Crimes for Possession (one for each drug type recovered).

Example: 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'. SID entry should be submitted.

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Example:

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. There is no requirement to record a crime in these circumstances. Where a Class 'A' drug is recovered the police must be informed and a crime record created.

Example:

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 Crime of Misuse of Drugs Act 1971 Section 5(2)

Example:

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 Crime for 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 record 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. SID entry only required.

Example:

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 Crime for Possession (for son of householder only)

Example:

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:

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 him and refuses to provide a reason for his possession.

1 Crime for Possession.

Example: During a search an individual is found in possession of herbal cannabis and cannabis resin

2 Crimes of Possession (the composition of each drug differs

therefore 1 crime for each.)

Example:

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 Crime of 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.)

NOTE:

As of 26th January, 2009 Cannabis was re-classified from a Class C to a Class B drug.

Drug offences are 'evidence' based and should only be recorded where there is sufficient evidence.

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 record is required to be recorded. (Except where the Prisons (Scotland) Act is applicable).

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.

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.

Cases involving cannabis and its derivatives can proceed to trial on the basis of positive field presumptive or laboratory presumptive tests alone.

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.

Relevant Crimes/Offences

Possession of controlled drug - Class A Possession of controlled drug - Class B

Possession of controlled drug - Class C

Possession of class B controlled drug namely methylone Misuse Drugs 1971 S5(2) Possess Controlled Drug – Ecstasy

Attempt to have in possession a class A drug

Possession Class C drug TFMPP

Possession of controlled drug class B commonly known as Mephedrone

Possession of Class B controlled drug- Cathinone derivative

044002 DRUGS – PRODUCTION, MANUFACTURING AND CULTIVATION

Misuse of Drugs Act, 1971, Section 4(2)(a) & (b)

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 such a drug.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: 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 Crime for Cultivation (undetected).

Example: A house search reveals a cannabis cultivation and the householder

is identified as being responsible, no other drugs are found.

1 Crime for Cultivation.

Example: A house search reveals a cannabis cultivation and the

householder, who is present, is identified as being responsible. A search of his person reveals a small quantity of cannabis within his

trouser pocket.

1 Crime for Cultivation and 1 Crime for Possession (Possession

offence refers to the cannabis found in pocket.)

NOTE: As of 26th January, 2009 Cannabis was re-classified from a Class

C to a Class B drug.

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.

Where a cannabis cultivation has been found, the decision to libel a further charge for Possession in respect of the cultivation will be

taken by the Procurator Fiscal on receipt of the Police Report.

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.

Relevant Crimes/Offences

Misuse Drugs 1971 S4(2)(a) Produce Controlled Drug
Misuse Drugs 1971 S4(2)(b) Concerned in Production of Drug
Misuse Drugs Act 1971 S4(2)(a) Produce a drug under temporary class drug order
Misuse of Drugs Act 1971 S4(2)(b) Concerned in the production of a drug under temporary
class drug order

044003 DRUGS - SUPPLY

Misuse of Drugs Act, 1971, Section 4(3)(a) – Supply or Offer to Supply to a Named Person Misuse of Drugs Act, 1971, Section 4(3)(b) – Concerned in the Supply Misuse of Drugs Act, 1971, Section 4(3)(c) – Concerned in offer to Supply Misuse or Drugs Act,1971, 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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: One person searched by police and found to be in possession of a

supply quantity of cannabis.

1 Crime for Possession with Intent to Supply or Concerned in the

Supply, depending on evidence available.

Example: House searched under warrant, whereby a supply quantity of

cannabis is recovered lying on the livingroom table. Four persons

are found within, who deny and refuse to disclose ownership.

1 Crime of Possession with Intent to Supply **or** 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: 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 Crime of Possession with Intent to Supply **or** Concerned in the Supply (cannabis)(4 accused), depending on evidence available, and, 2 Crimes of Possession (heroin and ecstasy)(4 accused). (No

one has physically been found in possession of the drugs).

Example: 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 a SID entry submitted.

Example:

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 Crime of 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:

Two females report to the police that some 5 years ago (prior to 1st December, 2010) while 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 Crime of Rape and 1 Crime of Underage Sex (Undetected) (it cannot be confirmed that the substance was in fact a controlled drug).

Example:

Suspect under Police surveillance at Locus 1 is witnessed receiving a package. Suspect then gets into vehicle in possession of 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 Crime for Possession with Intent to Supply **or** Concerned in the Supply, depending on evidence available. The locus for the crime is Locus 2 as this is where the package was seized.

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

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. (Except where the Prisons (Scotland) Act is applicable).

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.

As of 26th January, 2009 Cannabis was re-classified from a Class C to a Class B drug.

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.

Relevant Crimes/Offences

Misuse Drugs 1971 S4(3)(a) Supply ecstasy

Supply a controlled drug

Offer to supply a controlled drug

Concerned in the supplying of a controlled drug commonly known as ecstasy

Concerned in the supplying of a controlled drug commonly known as ecstasy to a named person/persons

Attempt to be concerned in supplying a class A drug

Concerned in the supplying of a controlled drug

Concerned in the supplying of a controlled drug to named person(s)

Attempt to be concerned in supplying what was believed to be a controlled drug

Concerned in the supplying of a class B controlled drug namely methylenedioxypyrovalerone.

Concerned in the supplying of a class B controlled drug namely methylenedioxypyrovalerone

Concerned in offering to supply a controlled drug

Possession of a controlled drug commonly known as Ecstasy with intent to supply

Possession of a controlled drug with intent to supply

Possess substance which you thought was a controlled drug but didn't contain a controlled drug with intent supply

Possess subs which you thought was controlled drug but didn't contain controlled drug with intent supply - named person

Possession of a controlled drug commonly known as Mephedrone with intent to supply

Concerned in the supplying of a class B controlled drug namely methylenedioxypyrovalerone

Did supply a compound or compounds commonly known as Mephedrone

Supply of class C drug TFMPP

Concerned in the supply of a controlled class B drug Mephedrone to a named person

Concerned in the supply of class B controlled drug Mephedrone

Possess with intent to supply TFMPP

Possession of controlled class B drug Mephedrone with intent to supply

Did supply a compound or compounds commonly known as Mephedrone

Did supply a compound or compounds of Cathinone derivative

Offer to supply a drug subject to a temporary class drug order

Supply a drug subject to a temporary class drug order

Concerned in the supply of class B controlled drug Cathinone derivative

Concerned in the supply of a drug subject to a temporary class drug order Cathinone derivative- Possess with intent to supply

Possession of a drug subject to a temporary class drug order with intent to supply

035005 EMERGENCY WORKERS (SCOTLAND) ACT, 2005

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).

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: Accused obstructing hospital staff from attending to a bleeding

wound to his friend's arm.

1 Crime of Emergency Workers (Scotland) Act, 2005 – Obstruct.

037001 EXPLOSIVE SUBSTANCES ACT, 1883, SECTION 3 – Attempt to cause explosion

1

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

Definition: 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.

Victim/Complainer The Procurator Fiscal

Locus: Where Crime Takes Place / Where the explosive device is found

Scenario Examples:

Example: 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 Crime of Explosive Substances Act 1883 Section 3

Relevant Crimes/Offences

Explosive Substances Act 1883 S3 Make/Possession explosive substances

Explosive Substances Act 1883 S3 (1)(A) Cause an explosion

Explosive Substances Act 1883 S3 (1)(B) Make /Possess explosive substances

035001 MOBBING AND RIOTING

GENERAL RULE: ONE CRIME FOR EACH INCIDENT

1

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.

Victim/Complainer:

Procurator Fiscal

Locus:

Where Crime Takes Place

Scenario Examples:

Example:

A large group of persons run up the High Street wielding sticks and baseball bats, throwing bottles and shouting threats towards a rival gang, in turn terrorising the public

1 Crime of Mobbing and Rioting Common Law

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.

TBA OFFENCES RELATING TO SERIOUS ORGANISED CRIME

Criminal Justice and Licensing (Scotland) Act 2010, Section 28, 30 and 31

GENERAL RULE - ONE CRIME FOR EACH ACCUSED OR GROUP OF ACCUSED IF ACTING TOGETHER

1

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.

Victim/Complainer:	Procurator Fiscal			
Locus:	Where crime takes place			

Scenario Examples:

Example: Two persons acting together commit a Fraud which is confirmed as

being related to Serious Organised Crime

1 Crimes of CJLSA 2010, Section 28

1 Crime of 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.

Relevant Crimes/Offences

CJLSA 2010 S28 Involvement in serious organised crime

CJLSA 2010 S30 Direct another person to commit a serious offence

CJLSA 2010 S30 Direct another person to direct a further person to commit a serious offence CJLSA 2010 S30 Direct another person to commit an offence aggravated by a connection with serious organised crime

CJLSA 2010 S30 Direct another person to direct further person to commit off aggravated by connection with serious organised crime

CJLSA 2010 S31 Failure to report serious organised crime where another person has committed an offence under S28 or S30

CJLSA 2010 S31 Failure to report serious organised crime where another person has committed an offence under S29

039011 PERJURY AND SUBORNATION

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

1

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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: 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 Crime of Perjury and Subornation

Example; 2 Police Officers gives false evidence under oath against the same

case in a court of law

2 Crimes of 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.

Relevant Crimes/Offences

Perjury Criminal Case Witness Perjury Civil Cause Witness Perjury Civil Cause Pursuer Subornation of Perjury

Perjury Accused
Perjury Criminal Case Accused
Attempt Subornation of Perjury
Attempt Suborn

Crim Law Consolid 1995 S44(1) on oath make false statement

038013 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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: When being requested to allow a search of accused's person,

being obstructive.

1 Crime of Police and Fire Reform (Scotland) Act 2012, S90(2)(a).

Example: 2 person 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 Crimes of Police and Fire Reform (Scotland) Act 2012, S90(2)(a).

Example: During the search of a public house lavatory, 2 employees obstruct

constables from checking cistern where a weapon has been

concealed.

1 Crime of Police and Fire Reform (Scotland) Act 2012, S90(2)(a).

(both accused acting together).

NOTE: Obstruction of a Police Officer/Staff should be recorded under the

Police and Fire Reform (Scotland) Act 2012 and not the

Emergency Workers Act.

Relevant Crimes/Offences

Police and Fire Reform (S) Act 2012

S90(2)(a) - Resist, obstruct or hinder officer

S90(2)(b) - Resist or obstruct person assisting constable

038007 POLICE AND FIRE REFORM (SCOTLAND) ACT 2012

SECTION 90(2)(a) and 90(2)(b) Resist Arrest

1

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.

Victim/Complainer: Procurator Fiscal

Locus: Where crime takes place

Scenario Examples:

Example: Officers arrest two persons at same locus for assaulting an

individual, one of whom struggles with officers in an attempt to

resist arrest.

1 Crime of Police and Fire Reform (Scotland) Act, 2012, S90(2)(a) and 1 Crime of Assault. (If both resisted arrest and there was an

indication they were acting together only 1 crime would be

recorded).

Relevant Crimes/Offences

Police and Fire Reform (S) Act 2012

S90(2)(a) - Resist, obstruct or hinder officer

S90(2)(b) - Resist or obstruct person assisting constable

038006 POLICE AND FIRE REFORM (SCOTLAND) ACT 2012, SECTION 91 Escape From Custody

GENERAL RULE: ONE CRIME FOR EACH INCIDENT

1

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.

Victim/Complainer: Procurator Fiscal

Locus: Where crime takes place

Scenario Examples:

Example: 'A' arrested, 'B' and 'C' grab 'A' and attempt to release him from

the hold of the officers in an attempt to rescue him.

1 Crime of Police and Fire Reform (Scotland) Act 2012, S91(1)(b)

Relevant Crimes/Offences

Police and Fire Reform (S) Act 2012

S91(1)(a) - Remove person from custody

S91(1)(b) - Assist escape of person in custody

038010 POLICE AND FIRE REFORM (SCOTLAND) ACT 2012, SECTION 92 Personation Of Police

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

1

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.
- (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.

Victim/Complainer: Procurator Fiscal

Locus: Where crimes takes place

Scenario Examples:

Example: A report is received that a female was stopped whilst out driving

on a quiet road by a male purporting to be a police officer, driving an unmarked vehicle who produced a card which she presumed was an ID card and stated he was a police officer. On another vehicle approaching, he quickly warned her regarding her driving and left. Enquiry reveals it is unlikely that this was a police officer.

1 Crime of Police and Fire Reform (Scotland) Act,2012, S92(1)(a).

Relevant Crimes/Offences

Police and Fire Reform (S) Act 2012

S92(1)(a) - Impersonate a constable with intent to deceive

S92(1)(b) - Act in a calculated way to suggest that person is a constable

S92(2) - Possess item of Police uniform

S92(4) - Wear item of Police uniform

038003 PUBLIC MISCHIEF (INCLUDING WASTING POLICE TIME)

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

Definition: Any person who maliciously makes a false statement to the police

with the intention and effect of causing police investigation.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: Complainer reports that he was robbed of his benefit money,

enquiry reveals this to be a false report in order to obtain further

monies from the Benefits Agency.

1 Crime of 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.

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038018 SEXUAL OFFENCES ACT, 2003 - Notification

GENERAL RULE: ONE CRIME FOR EACH NOTIFICATION FAILURE

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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Definition:

Example: An offender fails to notify a change of address and the fact he has

gone on holiday to Tunisia for a two week period.

2 Crimes under the Sexual Offences Act, 2003 (1 for the failure to notify the address change and 1 for the 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.

Relevant Crimes/Offences

Sex Offences 2003 S83(1)&(5) Fail Notify Police within 3 days

Sex Offences 2003 S84(1) Fail Notify Police within 3 days

Sex Offences 2003 S85(1)& (2) Fail Notify Police Within 1 year

Sex Offences 2003 S86(2) Fail Notify Travel Less 7 days

Sex Offences 2003 S87(4) Fail Allow Take Fingerprints

Sex Offences 2003 S91(1)(B) Notify Police with False Details

Sex Offences 2003 R5(1)&5(3) - Fail to give notification of travel - Not less than 24 hours before travel

Sex Offences 2003 R8(1)&8(2) - Fail to give notification on return from travel - within 3 days

035003 TRESPASS

1

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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: A group of persons, acting together trespass on land in order to

obstruct the felling of woodland

1 Crime of Criminal Justice & Public Order 1994 S68(1) Obstruct

Lawful Activity

Relevant Crimes/Offences

Crim Justice & Pub Order 1994 S61(4)(a/b) Fail to adhere directions given by police officer Crim Justice & Pub Order 1994 S68(1) – Trespass on land where a lawful activity was taking place and obstruct/disrupt that activity

Serious Organised Crime & Police 2005 S129(1) Enter Designated Site

Serious Organised Crime & Police 2005 S77(1) Fail to Comply with Financial Order

GROUP 6 - MISCELLANEOUS

	(SGJD Code)
Air Navigation Order, 2009 A222	085013
Assault (Common)	047001
Assault (Common) - Police	047006
Assault (Common) - Emergency Worker	047006
Asylum and Immigration (Treatment of Claimants etc) Act 2004, Section 4 – Trafficking People for Exploitation	045000
Bigamy	076001
Breach of the Peace	047002
Civic Government (Scotland) Act, 1982 Section 119(1) – Charitable Collections	085002
Civic Government (Scotland) Act, 1982 Section 7(1) – Street Traders Licence	072004
Civic Government (Scotland) Act, 1982 Section 47 – Urinating/Defecating	047003
Civic Government Act, 1982, Section 50(1) - Drunk and Incapable	060001
Civic Government Act, 1982, Section 50(2) - Drunk in Charge of a Chi	060003 ld
Civic Government Act, 1982, Section 54(1) – Playing Instruments, Radios, Singing etc.	073004

	(SGJD Code)
Communications Act, 2003 Section 127(1)	059001 084002
Communications Act, 2003, Section 127(2)	084002
Copyright, Designs and Patents Act, 1988 Section 107	083007
Criminal Justice and Licensing (Scotland) Act, 2010, Section 38 – Threatening or Abusive Behaviour	047008
Criminal Justice and Licensing (Scotland) Act, 2010, Section 39 - Stalking	047009
Criminal Law (Consolidation)(Scotland) Act, 1995, Section 20(7) – Drunk in, or Attempting To Enter Designated Sports Ground	060007
Criminal Law (Consolidation)(Scotland) Act, 1995, Section 20(1-4) - Sports Ground Offences (Possessing Alcohol etc)	062013 I
Criminal Law (Consolidation)(Scotland) Act, 1995, Section 50(A)(1A) – Racially Aggravated Harassment	047004
Criminal Law (Consolidation)(Scotland) Act, 1995, Section 50(A)(1B) – Racially Aggravated Conduct	047005
Criminal Law Act, 1977, Section 51 - False Calls to Emergency Services – Bomb Hoaxes	048002

(SGJ	D Co	de)
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<u>Dangerous Dogs Act, 1991, Section 3</u> – Failure to Control	051012
Data Protection Act 1998	084005
Dog Fouling (Scotland) Act, 2003, Section 1	073023
Dogs (Protection of Livestock) Act, 1953, Section 1	051008
Electricity Act 1989	085008
Environmental Protection Act, 1990 Section 87 – Litter Offences	073001
<u>Firearms – Possession of Firearm by</u> Persons Previously Convicted of Crime	055000
Fireworks Regulations, 2004, Regulation 4(1) and Fireworks (Scotland) Regulations, 2004 Regulation 3(1)	054000
Handling Obscene Material	059001
Hoax Calls to Emergency Services - Fire (Scotland) Act, 2005 Section 85(1) and Emergency Workers (Scotland) Act, 2005	048001
Licensing (Scotland) Act, 2005	See Section
Local Government (Scotland) Act, 1973, Sections 201, 202, 203 – Consumption of Alcoholic Liquor in Designated Public Places	072008

Offensive Behaviour at Football and Threatening Communications (Scotland) Act, 2012	047010 047011
	(SGJD Code)
Prisons (Scotland) Act, 1989, Section	085001
41(1)	043001
	044006
	043006
Refuse Disposal (Amenity) Act, 1978	073002
Road Traffic Act, 1988, Section 30 – Drunk when Riding a Cycle	078003
The Trespass (Scotland) Act, 1865,	082002
Section 3 – Lighting Fires and Lodging	082003
Without Consent of Owner	
Tobacco and Primary Medical Services (Scotland) Act, 2010	050010
Wildlife Crime Various	
Wire Telegraphy Act, 2006	084001

085013 AIR NAVIGATION ORDER, 2009, A222 Endangering Safety of an Aircraft

GENERAL RULE: ONE CRIME FOR EACH INCIDENT

Definition:	A person shall not recklessly or negligently act in a manner likely to
	endanger an aircraft, or any person therein

Victim/Complainer: Airline

Locus: Where Crime Takes Place

Scenario Examples:

Example: A report is received that a laser is being directed into the sky in the

line of vision of a pilot.

1 Crime of Air Navigation Order, 2009, A222 (Direct or shine a light

so as to dazzle or distract the pilot of an aircraft in flight)

NOTE: This legislation only covers aircraft, for other areas e.g. train drivers,

Culpable and Reckless Conduct should be recorded. The Air Navigation Order, 2009 replaced the 2005 Act on 1st January,

2010.

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047001 ASSAULT (COMMON)

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. There must be criminal intent: an accidental injury, even although caused

by a mischievous act, does not amount to assault.

Victim/Complainer: Individual Assaulted

Locus: Where Crime Takes Place

Scenario Examples:

Example: 'A' confirms having been assaulted but wishes no police

involvement.

1 Crime of Assault with non-cooperative aggravator/marker

Example: 'A' advises his friend 'B' has been assaulted, but he doesn't know

when or by whom. 'B' is extremely drunk and has a bruise on his face, but states that he fell and has not been assaulted. He

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

record should be raised.

Example: Complainer reports to police that they have been assaulted on two

specific occasions over the last two weeks resulting in minor injury.

Dates provided.

2 Crimes of Assault (Common)

Example: Complainer 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 Crime of Assault (Common)

Example: Complainer 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 Crimes of Assault (Common) - one for each locus

Example: 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) wish to warn both parties of their actions, using discretion, or dependant on circumstances and whether the public were present during the altercation they may

wish to libel a Section 38 offence or Breach of the Peace against

both parties

NOTE:

There is a distinction between Common and Serious Assault i.e. serious assault is dependent on injuries sustained and is recorded as a Group 1 crime – SGJD Code 004000

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.

Common assault where the victim is a police officer in the execution of their duty is recorded as a contravention of the Police and Fire Reform (Scotland) Act 2012, Section 90(1)(a)..

Where a child has been assaulted, this should be recorded as a Common Law Assault (as of 2003) 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 crimes 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.

047006 ASSAULT (COMMON) Police and Fire Reform (Scotland) Act, 2012, Section 90(1)(a) and (b)

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND WHERE

SPECIFIC DATES AND/OR LOCI ARE IDENTIFIED SEPARATE CRIMES TO BE

RECORDED

1

Definition:

Section 90(1)

- (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.

Victim/Complainer: Police Officer assaulted

Locus: Where Crime Takes Place

Scenario Examples:

Example: Two police officers are assaulted by kicking and punching both to

the head and body.

2 Crimes of Police and Fire Reform (Scotland) Act 2012,S90(1)(a)

Example: On accused being placed within the rear of the police vehicle, he

kicks a police officer and then on being removed from the police vehicle to be taken into the custody suite he further kicks and spits

on the same police officer.

1 Crime of Police and Fire Reform (Scotland) Act 2012, S90(1)(a)

(treated as a continuous act)

NOTE:

There is a distinction between Common and Serious Assault i.e. serious assault is dependent on injuries sustained and is recorded

as a Group 1 crime - SGJD Code 004000.

Multiple Crimes - 1 crime will be recorded per officer assaulted.

Support Staff Member – assaults against Police Staff should not be recorded under Police and Fire Reform (Scotland) Act 2012, unless the Police Staff member was assisting a serving police officer in the execution of their duties at the time of the assault e.g.

custody officer.

Multiple Accused – only one crime is recorded in incidents where more than one person has assaulted an officer during the same

incident.

Multiple Assaults within the same incident – in circumstances when an officer is assaulted on more than one occasion, within the same incident, and by the same offender, one crime only will be recorded. This will be seen as one continuous act rather than

separate incidents. The locus in these cases will be where the assault was initiated.

Emergency Workers Act – The Emergency Workers Act 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 Act 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.

As of 1st April, 2009 the SGJD Code for Police Assault (common) was changed from 047001 to 047006 at the request of the Scottish Government.

047006 ASSAULT (COMMON) Emergency Workers (Scotland) Act, 2005

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND WHERE

SPECIFIC DATES AND/OR LOCI ARE IDENTIFIED SEPARATE CRIMES TO BE

RECORDED

1

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).

Victim/Complainer:

Person subject to assault

Locus:

Where Crime Takes Place

Scenario Examples:

Example:

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

arm.

1 Crime of Assault (Emergency Workers (Scotland) Act, 2005)

Example:

On being brought into hospital to receive treatment for an injury, the patient punches a nurse, who is tending to his wound, to the arm. When the police arrive he kicks officer 'A'. After being conveyed to the police office, he punches Officer 'A' the arresting officer.

1 Crime of Assault - Emergency Workers (Scotland) Act, 2005 and 1 Crime of Police and Fire Reform (Scotland) Act 2012, Section 90(1)(a) – treated as a continuous act.

NOTE:

There is a distinction between Common and Serious Assault i.e. serious assault is dependent on injuries sustained and is recorded as a Group 1 crime - SGJD Code 004000. Serious Assault on an emergency worker should be recorded as a Common Law Assault (Serious) and not under the Emergency Workers Act.

Nothing within this act affects Section 90(1)(a) of the Police and Fire Reform (Scotland) Act 2012 i.e. assault etc. of a constable in execution of duty or of person assisting a constable.

Relevant Crimes/Offences

Emergency Workers (S) 2005 S1(1) - Emergency Worker

Emergency Workers (S) 2005 S2(1) - Emergency Services

Emergency Workers (S) 2005 S2(1) - Social Worker while taking action to emergency circumstances

Emergency Workers (S) 2005 S3(1) – Assistance to Emergency Services Emergency Workers (S) 2005 S5(1) – On hospital land an emergency services.

045000 ASYLUM AND IMMIGRATION (TREATMENT OF CLAIMANTS, ETC) ACT 2004, SECTION 4 (1)(A) – Trafficking people for exploitation

GENERAL RULE: ONE CRIME FOR EACH INCIDENT

Definition:	A person commits an offence if he arranges or facilitates the arrival or the entry into, the United Kingdom of an individual (the "passenger") and -
	(a) he intends to exploit the passenger in the United Kingdom or elsewhere,
	or
	(b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.

Victim/Complainer: Procurator Fiscal

Locus: Where the immigrant is found or the locus of last address they were taken to.

Scenario Examples:

Example: 'A' arrives in the UK on the promise of work. He is taken to his

accommodation by 'X' who takes £400 introduction fee from him and then advises him there is no job. 'X' disappears leaving 'A' with no job and no money. Two months later 'B' and 'C' arrive together into the UK and are also duped in the same way. Enquiry reveals that 'X' is responsible and also has two accomplices working with

him.

2 Crimes of Asylum & Immigration (Treatment of Claimants) Act

2004 Section 4(1)(A) (with 3 accused)

Example: 'A' arrives in the UK at Dover and is driven to an address in

Division 'B' where he is left. The promised job does not materialise

and there is no further contact from the UK contact.

1 Crime of Asylum & Immigration (Treatment of Claimants) Act

2004 Section 4(1)(A).

(locus is the address the complainer was taken to)

Example: 'A' arrives in the UK at Southampton and is taken to an address in

London. One week later is moved to an address in Birmingham and one week later is taken to an address in Glasgow, where they are found. No explanation is given and no work materialises in any

location.

1 crime of Asylum & Immigration (Treatment of Claimants) Act

2004 Section 4(1)(A). (locus will be Glasgow)

NOTE: See PINS for a full definition of the legislation

076001 BIGAMY

GENERAL RULE: ONE CRIME FOR EACH MARRIAGE

1

Definition:	Any person who wilfully contracts a second (or subsequent)
	marriage during the subsistence of a prior marriage

Victim/Complainer: Procurator Fiscal

Locus: Where second, or subsequent marriage occurred

Scenario Examples:

Example: Enquiry reveals that 'A' having failed to divorce his first wife, has

married a further two, who were unaware of previous or

subsequent marriages.

2 Crimes of Bigamy

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.

047002 BREACH OF THE PEACE

GENERAL RULE: ONE CRIME FOR EACH INCIDENT

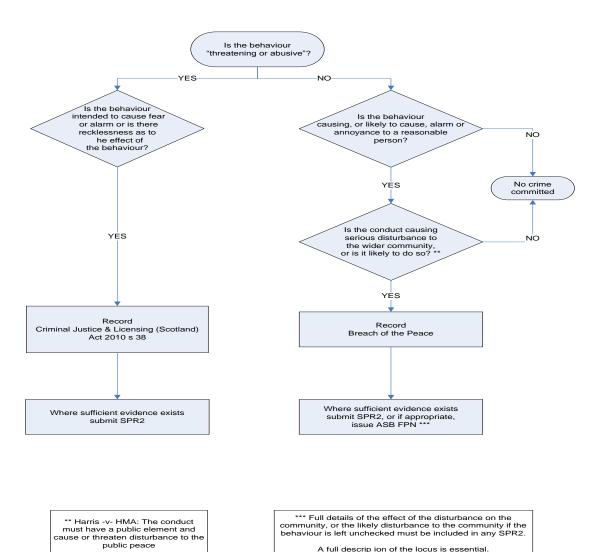
On 6th October 2010, the Crown introduced new legislation to facilitate the prosecution of disorderly conduct which occurs within a private place (e.g. a private dwelling). The new legislation is the Criminal Justice and Licensing (Scotland) Act 2010 Section 38 – threatening or abusive behaviour.

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 <u>serious disturbance</u> 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.

The following flow chart clarifies when it is appropriate to use either Breach of the Peace or Criminal Justice and Licensing (Scotland) Act 2010 Section 38.



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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

Scenario Examples:

Example:

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 Crime of Breach of the Peace (an assault may be recorded if enquiry reveals one of the individuals was responsible and the other was defending himself)

Example:

A report is received that over a period of one month eggs and other food stuffs have been thrown at the 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 Crime of Criminal Justice and Licensing (Scotland) Act, Section 38.

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".

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.

On 13th December, 2010 Section 39 of the Criminal Justice and Licensing (Scotland) Act, 2010 (stalking) was introduced due to the difficulty for the Crown in prosecuting such circumstances as a Breach of the Peace.

085002 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 dependent on circumstances the Procurator

Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: A man is seen on the High Street rattling a can and says he is

collecting money for charity. He has no identification from the charity he says he is collecting on behalf of and no obvious permit

from the local authority.

1 Crime of Civic Government (Scotland) Act, 1982, Section 119(1)

and 1 Crime of Fraud (if established that he is not a genuine charity

collector)

Relevant Crimes/Offences

Civic Govt 1982 S119(1) – Charitable Collection without permission

Civic Govt 1982 S119(13) - Act as a collector without a certificate of authority

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072004 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.

Victim/Complainer: Procurator Fiscal

Locus:

Where Crime Takes Place

Scenario Examples:

Example:

Person found to be attending at various dwellings offering for sale pencil drawings without a licence.

1 Crime of Civic Government (Scotland) Act, Section 7(1)

Example:

Person is found standing on a street corner offering for sale a quantity of fake Gucci handbags. He has no licence to trade.

1 Crime of Civic Government (Scotland) Act, Section 7(1) and 1 Crime of Trade Marks Act, 1994, Section 92(1)(c).

NOTE:

The Pedlars Act, 1871, although also deals with this offence, has fallen into disuse and the Civic Government Act (Street Traders Licences granted by the Local Authority) should be considered. It should be noted that unlike the Pedlars Act, 1871 there is no power of arrest although Section 13 of the Criminal Procedure (Scotland) Act, 1995 applies i.e. officers have the power to require a person reasonably suspected of an offence to provide their name and address and an explanation of the circumstances. Failure to comply constitutes an offence, which does provide a power of arrest. The Street Traders Offence is not punishable by imprisonment therefore persons cannot be detained in terms of Section 14 of the Criminal Procedure (Scotland) Act, 1995 for this offence.

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Any person who has been granted a Pedlars Licence may continue to use it without the need to apply for a Street Traders Licence.

047003 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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: Members of the public inform police that they have just seen a male

urinating in the shop doorway. On police attending at locus they

find the male urinating.

1 Crime of Civic Government (Scotland) Act, 1982, Section 47

Example: A shopkeeper phones the police stating that his 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: Two members of the public inform police that they have just seen a

male urinating in the 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.

NOTE: This offence can be dealt with by way of an Anti Social Behaviour

Fixed Penalty Notice (FPN).

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060001 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.
Victim/Complainer:	Procurator Fiscal
Locus:	Where Crime Takes Place
NOTE:	This can be dealt with by way of an anti social behaviour fixed penalty ticket.

060003 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.
Victim/Complainer:	Procurator Fiscal
Locus:	Where Crime Takes Place
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.

073004 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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: 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 it off, with the music being turned

off.

No crime requires to be recorded as the person has complied.

A further call is received shortly after police leave locus resulting in the police re-attending to find the music had again been turned on

and was again playing loudly.

1 Crime of Civic Government (Scotland) Act, 1982, Section 54(1).

NOTE: This offence can be dealt with by way of an Anti Social Behaviour

Fixed Penalty Notice (FPN).

Relevant Crimes/Offences

Sound musical instrument – S54(1)(a)

Sing or perform - S54(1)(b)

Operate radio etc to annoyance - S54(1)(c)

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COMMUNICATIONS ACT, 2003 SECTION 127(1) 059001 Indecent, Obscene, Menacing Telephone 084002 Call/Message

GENERAL RULE: ONE CRIME FOR EACH VICTIM AND

CONTINUITY OF ACTION OR PER INCIDENT

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(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 call

Locus: Where call made from if known, otherwise where call received.

Scenario Examples:

Example: 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 Crime of Communications Act, Section 127(1).

Example: Complainer 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: Conditions of bail are set that the accused should not contact the

complainer. Accused telephones complainer and threatens her,

breaching her bail condition.

1 Crime of Communications Act, Section 127(1) (the Breach of Bail

offence is treated as an aggravation to the Communications Act

offence)

Person 'A' phoned Person 'B' and during the conversation Person Example:

'A' was subject to menacing abuse by Person 'B'.

1 Crime of Communications Act, Section 127(1) the locus being

where Person 'B' is. (see note regarding locus)*

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 059001 is applied where the communication is sexual

and 084002 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)).

*Whilst the locus is normally identified as where the call was made from if known, otherwise where call received, the scenario outlined above would be an exception to this rule. The locus being where the suspect was.

Relevant Crimes/Offences

Send offensive/indecent/obscene/menacing message by means of public electronic communications – non sexual

Send offensive/indecent/obscene/menacing message by means of public electronic communications – sexual

Cause to be sent offensive/indecent/obscene/menacing message by means of public electronic communications – sexual

Cause to be sent offensive/indecent/obscene/menacing message by means of public electronic communications – non sexual

084002 COMMUNICATIONS ACT, 2003, SECTION 127(2) False Or Persistent Telephone Call/Message

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/Complainer: Person receiving call

Locus: Where call made from if known, otherwise where call received

Scenario Examples:

Example: Complainer reports receiving a number of texts from a female and

although the content of the texts are not concerning they are starting to cause some problems between him and his girlfriend. He states he has text the female asking her to stop contacting him and does not feel she is taking him serious. He therefore asks if the police would advise her to cease from making contact with him.

As the victim has no concerns regards the content of the messages and is aware of who is sending the messages, discretion can be applied and the individual advised on their conduct, however, other alternatives may be considered e.g. record a crime and deal by way of adult warning scheme or submission of a police report,

depending on the circumstances.

Example: Complainer reports receiving text messages from her ex-boyfriend

seeking to meet up with her again and at her request the police had already advised him to cease from making contact, and whilst this stopped for several weeks, he has started texting her again.

1 Crime of Communications Act, S127(2) (As the individual has already been advised at the request of the complainer to cease, he has failed to heed this advice, therefore, a crime record should be

recorded).

Example: Complainer reports having received numerous telephone calls over

a period of two weeks, and on answering, no one responds at the

other end. She has no thoughts as to who this could be.

Enquiry should be made by the complainer 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: False e-mail messages sent to numerous loci from the same

sender.

1 Crime of Communications Act, S127(2).

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.

For the purposes of sections 2 and 3 of the 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. 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 Act 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.

Relevant Crimes/Offences

Comms Act, 2003 – Send false message to cause annoyance/inconvenience/needless anxiety

Comms Act, 2003 – Cause to be sent – False message to cause annoyance/inconvenience/needless anxiety

Comms Act, 2003 – Persistently use a public electronic communications network for the purpose of causing annoyance/inconvenience

083007 COPYRIGHT, DESIGNS AND PATENTS ACT 1988 SECTION 107

GENERAL RULE: ONE CRIME FOR EACH SEIZURE

GENERAL ROLL. ONE CRIME FOR EACH SEIZORE

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,

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- (c) possesses in the course of a business with a view to committing any act infringing the copyright,
- (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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place / Where the seizure was made

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Scenario Examples:

Example: 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 Crime of Copyright Designs Patents 1988 S107(1)(D), 1Crime of Copyright Designs Patents 1988 S107(1)(c), 1 Crime of Copyright Designs Patents 1988 S107(1)(A), and 1 Crime of Trade Marks

Act, 1994 S92(1)(C),

NOTE: In the majority of cases this offence will be libelled along with

Trade Marks Act, 1994 Section 92(1) which will follow the same counting rule. The reference page for this classification is located

within Annex 3.

Relevant Crimes/Offences

COPYRIGHT DESIGNS PATENTS 1998 S107(2)(A/B) - Make/poss copies

COPYRIGHT DESIGNS PATENTS 1998 S107(1)(A) - Sell/hire article

COPYRIGHT DESIGNS PATENTS 1998 S107(1)(C) – Possess copy/s

COPYRIGHT DESIGNS PATENTS 1998 S107(1)(D) – (I/II/III/IV) Artcl

COPYRIGHT DESIGNS PATENTS 1998 S107(1)(E) - Distribute

047008 CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT, 2010, SECTION 38 - THREATENING OR ABUSIVE BEHAVIOUR

GENERAL RULE: ONE CRIME FOR EACH INCIDENT

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Definition:

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

Scenario Examples:

Example:

Police receive a call from a female who reports that she is frightened as to what might happen as her husband has verbally threatened her and has thrown a computer and other items around the room, she 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 the complainer shaking and visibly upset with items of furniture scattered across the floor.

1 Crime of Criminal Justice and Licensing (Scotland) Act, 2010, Section 38 – Threatening or abusive behaviour.

Example:

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 Crime of Criminal Justice and Licensing (Scotland) Act, 2010, Section 38 – Threatening or abusive behaviour.

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.

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".

This offence cannot, at this time, be dealt with by way of an Anti-Social Behaviour Fixed Penalty Notice (FPN).

047009 CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT, 2010, SECTION 39 - STALKING

GENERAL RULE: ONE CRIME FOR EACH COURSE OF CONDUCT

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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,
 - 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.

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Locus: Where Crime Takes Place

Scenario Examples:

Example: A person reports being followed home each night from work by

the same individual, over a one week period.

1 Crime of Criminal Justice and Licensing (Scotland) Act, 2010,

Section 39.

Example: A woman is followed around a shopping centre in Division 'A' on

day 1 and on day 2 sees the same man standing near to her house

in Division 'B' watching it for over an hour.

1 Crime of Criminal Justice and Licensing (Scotland) Act, 2010,

Section 39.

NOTE: This offence was introduced on 13th December, 2010.

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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.

Victim/Complainer:

Procurator Fiscal

Locus:

Where Crime Takes Place

Scenario Examples:

Example:

The complainer notifies police that there is a man urinating against a wall in a football ground. Officers identify and apprehend the offender and identify that he is also drunk.

1 Crime of Criminal Law (Consolidation)(Scotland) Act, 1995, Section 20(7) and 1 Crime of Civic Government (Scotland) Act, 1982, Section 47 (Urinating). (Note – the urinating offence can be dealt with by way of an Anti Social Behaviour Fixed Penalty Notice (FPN).

Relevant Crimes/Offences

Crim Law (C) (S) Act, 1995 S20(7)(a) – Drunk in Ground Crim Law (C) (S) Act, 1995 S20(7)(b) – Attempt to Enter Drunk

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062013 CRIMINAL LAW (CONSOLIDATION) (SCOTLAND) ACT, 1995, SECTION 20 (1-4) Sports Ground Offences (Possess Alcohol Etc)

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

Definition: S20(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

S20(2) Any person who

(a) is in possession of alcohol in; or

(b) while in possession of alcohol, attempts to enter

\$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.

\$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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: The complainer 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 Crime of Criminal Law (Consolidation)(Scotland) Act, 1995,

Section 20(7) and 1 Crime of Criminal Law

(Consolidation)(Scotland) Act, 1995, Section 20(1-4).

NOTE:

Relevant Crimes/Offences

Criminal Law (C) (S) Act, 1995, S20(3) – Possess a controlled article or substance within a sports ground

Criminal Law (C) (S) Act, 1995, S20(1)(a) – Sports Ground – in possession of container Criminal Law (C) (S) Act, 1995, S20(1)(b) – Sports Ground – attempt to enter with container

Criminal Law (C) (S) Act, 1995, S20(2)(a) – Sports Ground – possession of alcohol Criminal Law (C) (S) Act, 1995, S20(2)(b) – Sports Ground – attempt to enter with alcohol

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047004 CRIMINAL LAW (CONSOLIDATION) (SCOTLAND) ACT, 1995, SECTION 50A(1a) Racially Aggravated Harassment

GENERAL RULE: ONE CRIME FOR EACH COURSE OF CONDUCT

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- (1) 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/Complainer:

Person who perceives the crime to be racially motivated

Locus:

Where Crime Takes Place

Scenario Examples:

Example:

NOTE:

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

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 libelled 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.

047005 CRIMINAL LAW (CONSOLIDATION) (SCOTLAND) ACT, 1995, SECTION 50(A)(1B) Racially Aggravated Conduct

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GENERAL RULE: ONE CRIME FOR EACH INCIDENT

(On occasions counter allegations may be received and these should be recorded per victim)

Definition: Acts in a manner which is racially aggravated, and which causes,

or is intended to cause, a person alarm or distress.

Victim/Complainer: Person who perceives the crime to be racially motivated

Locus: Where Crime Takes Place

Scenario Examples:

Example: A person is reported to have entered a store and racially abused

four shop assistants working there at the same time.

1 Crime of Criminal Law (Consolidation)(Scotland) Act, 1995

Section 50 (A)(1B) Racially Aggravated Conduct.

Example: Shopkeeper reports being subjected to racial verbal abuse by

youths, no other witnesses present.

1 Crime of S38 Criminal Justice Licensing (Scotland) Act, 2010.

(As there is no corroborative evidence a Racial Aggravated

Conduct should not be recorded, however, a Race marker/aggravator should be appended to the crime record.)

Example: Complainer of ethnic origin reports a brick having been thrown

through his living room window and perceives this is due to his

ethnicity.

1 Crime of Vandalism with a marker appended to identify this to be perceived as a racial incident. (no requirement to also record a S50

Criminal Law (Canadidation) (Spotland) Act)

Criminal Law (Consolidation)(Scotland) Act).

Example: 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 Crime of Assault with a marker appended to identify this to be perceived as a racial incident. (no requirement to also record a S50

Criminal Law (Consolidation)(Scotland) Act).

Example: A person from an ethnic background is assaulted during which

racial comments are made by the assailant which are corroborated

by a witness.

1 Crime of Assault with a marker appended to identify this as a racial incident. (no requirement to also record a S50 Criminal Law

(Consolidation)(Scotland) Act).

Example:

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 Crime of Shoplifting and 1 Crime for Racial Aggravated Conduct as there is corroboration of the racial abuse. If no corroboration of the racial abuse a Section 38 Criminal Justice Licensing (Scotland) Act should be recorded.

Example:

Complainer reports having been shouted and swore at, with racist comments made.

(a) No witnesses were present

Record as a Section 38 Criminal Justice Licensing (Scotland) Act, with a racial aggravator/marker. (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 should be changed to Racial Aggravated Conduct. (Corroboration of the crime and racist element has been obtained)

Example:

Person from ethnic background has racist comments etched into the bodywork of their car.

Record as a vandalism with a race aggravator/marker. (There is no requirement to also record a Racial Aggravated Conduct).

Example:

Person reports that racial words have been spray painted across a wall in the local park.

Record as a vandalism with a race aggravator/marker.

Example:

Suspect is travelling on a bus when he racially abuses Witness 1, a passenger on the bus. Witness 2 boards the bus and suspect subjects this witness to racial abuse.

1 Crime of 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/complainers 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.

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.

In circumstances where further crimes have been committed e.g. vandalism or assault these additional crimes will be recorded. The offence of Section 38 of the Criminal Justice and Licensing (Scotland) Act, 2010 may be recorded in addition to racially aggravated conduct/harassment dependent on the circumstances.

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 <u>Section 96 aggravation of the Crime and Disorder Act, 1998</u> 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 record. Where a victim's details are withheld from the police, the circumstances will be recorded as an incident only.

048002 CRIMINAL LAW ACT, 1977, SECTION 51 False Calls To Emergency Services - Bomb Hoaxes

GENERAL RULE: ONE CRIME FOR EACH CONTINUITY OF ACTION OR PER INCIDENT (AS APPROPRIATE)

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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.

Victim/Complainer: Organisation being threatened

Locus: Where call was made from if known, otherwise where call was

received

Scenario Examples:

Example: 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 Crime for Criminal Law Act 1977, S51 locus is where 999 call was

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.

False calls to emergency services (Hoax '999' calls) will be recorded under the Emergency Workers Act or Fire (Scotland) Act

and counted under the SGJD Code 48001.

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.

Relevant Crimes/Offences

Criminal Law 1977 S51(2)&(4) - Hoax Bomb Threat - Telephone

Criminal Law 1977 S51(1)(a)&(4) - Leave Hoax Bomb in a Public Place

Criminal Law 1977 S51(1)(b)&(4) – Dispatch a Hoax Bomb

051012 DANGEROUS DOGS ACT, 1991 SECTION 3 - Keeping Under Proper Control

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

Definition: (1) 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.

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, whether or not it actually does so, but references to a dog injuring a person 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/Complainer: Person making complaint or injured

Locus: Where Crime Takes Place

NOTE:

On 26th February, 2011 the **Control of Dogs (Scotland) Act 2010** was introduced. This piece of legislation 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 S5 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.

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On 26th February, 2011 the Dangerous Dogs Act 1991 was amended to include any place, rather than only a public place or private place where a dog is not permitted to be.

Relevant Crimes/Offences

Dangerous Dogs Act 1991, S3(1) - Dog dangerously out of control in any place Control of Dogs (Scotland) Act 2010, S5(1) - Failure to comply with a dog control notice

084005 DATA PROTECTION ACT 1998

GENERAL RULE: ONE CRIME FOR SYSTEM ACCESSED

Definition: Data Protection Act 1998, Section 55(1)

- (1) A person must not knowingly or recklessly, without the consent of the data controller-
- (a) obtain or disclose personal data or the information contained in personal data, or
- (b) procure the disclosure to another person of the information contained in personal data.

Victim/Complainer: Procurator Fiscal

Locus: Where data is accessed

Scenario Examples:

Example: 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 Crime of Data Protection Act 1998, Section 55

Example: 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 Crimes of Data Protection Act 1998, Section 55

NOTE

Relevant Crimes/Offences

Data Protection Act 1998, S55 - Knowingly or recklessly and without consent obtain or disclose/procure the disclosure of personal data.

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051008 DOGS (PROTECTION OF LIVESTOCK) ACT, 1953, SECTION 1

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.

Victim/Complainer: Livestock Owner

Locus: Where Crime Takes Place

Relevant Crimes/Offences

Dogs Protect Livestock 1953 S1(1)&(6) –Worry livestock on a farm – attack/be at large/chase

1

085008 ELECTRICITY ACT 1989

GENERAL RULE: ONE CRIME FOR EACH METER

Definition: Electricity Act 1989, Schedule 7(11)

11(1) 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.

Victim/Complainer: Energy Supplier

Locus: Where Crime Takes Place

Scenario Examples:

Example: Person deliberately alters electricity meter in order to provide false

reading to energy supplier.

1 Crime of Electricity Act 1989, Schedule 7(11)

Example: Person bypasses electricity meter allowing electricity to be used

free of charge. 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 free of charge.

1 Crime of Electricity Act 1989, Schedule 7(11) (note theft of electricity is subsumed within the offence of bypassing the meter)

1 Crime of 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.

Relevant Crimes/Offences

Electricity Act 1989 Damage line/meter by culpable negligence

Electricity Act 1989 Damage line/meter intentionally

Electricity Act 1989 Restore supply

Electricity Act 1989 Alter registering of meter by culpable negligence

Electricity Act 1989 Alter registering of meter intentionally

Electricity Act 1989 Prevent meter registering by culpable negligence

Electricity Act 1989 Prevent meter registering intentionally

1

055000 FIREARMS ACT 1968, SECTION 21 Possession Of Firearm By Persons Previously Convicted Of Crime

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

1

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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: Husband and wife found in possession of 4 firearms, both having

previously been released from prison within the last year.

2 Crimes of Firearms Act, Section 21

Relevant Crimes/Offences

Possess Firearm or Ammunition after prison sentence of >3 years

Possess Firearm or Ammunition within 5 years of prison sentence >3 Months <3 Years

054000 FIREWORKS REGULATIONS, 2004, REG 4(1) AND FIREWORKS (SCOTLAND) REGULATIONS, 2004, R3(1)

GENERAL RULE: ONE CRIME FOR EACH INCIDENT

1

Definition:

Reg 4(1) - No person under the age of 18 years shall possess an adult firework in a public place.

Reg 3(1) – No person shall use an adult firework during night hours although this shall not prohibit the use of a firework during a permitted fireworks night, by any person who is employed by a local authority and who uses the firework in question for the purposes of putting on a firework display by the local authority; or at a national public celebration or a national commemorative event; or in accordance with a dispensation granted by the local authority.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: A report of fireworks being set off after 9pm at night is received, no

one is traced.

The recording of an incident would suffice. (This is an evidence

based crime, discretion can be used).

NOTE: 'Night hours' means the period beginning 2100 hours and ending at

0700 hours.

Relevant Crimes/Offences

Fireworks Regs, 2004 R4(1) – Possess Adult Fireworks – Under 18 Fireworks (S) Regs, 2004 R3(1) – Use adult firework during night hours

059001 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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example:

NOTE: Civic Government (Scotland) Act, 1982, Sections 51, 52 and 52(a)

should be considered in such instances.

Where these offences involve photographs or images of children the crimes are recorded under Group 2 Sexual Offences. See relevant page relating to SGJD code 018018 (Civic Government

(Scotland) Act, 1982, Section 52)

Relevant Crimes/Offences

Civic Govt 1982, S51(1) Display Obscene Material

Civic Govt 1982, S51(2) Distribute Obscene Material

Civic Govt 1982, S51(2)&(3) – Have/Keep Obscene Material with a view to sale or distribute Postal Services 2000, S85(3) – Send Postal Packet which contained an Indecent or Obscene

Article

Postal Services 2000, S85(4) – Send Postal Packet which had on the packet/cover words, marks or designs which were indecent or obscene

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048001 HOAX CALLS TO EMERGENCY SERVICES Fire (Scotland) Act, 2005, Section 85(1) & Emergency Workers (Scotland) Act, 2005, Sections 1, 2 and 3

1

GENERAL RULE: ONE CRIME FOR EACH CONTINUITY OF ACTION OR PER INCIDENT (AS APPROPRIATE)

Definition:

Fire 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.

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.

Victim/Complainer: Fire/Police Service

Locus: Where call was made from if known, or otherwise where call was received.

Scenario Examples:

Example:

NOTE: This section of the Fire (Scotland) Act supersedes S31 of the Fire

Services Act, 1947 (now repealed).

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.

Relevant Crimes/Offences

Fire (Scotland) Act, 2005 S85(1) – False alarm call to emergency services.

Emergency Workers (S) Act S1(1) – Obstruct or hinder emergency worker (Hoax)

Emergency Workers (S) Act S2(1) – Obstruct or hinder a member of the emergency services. (Hoax)

Emergency Workers (S) Act S3(1) - Assault, obstruct or hinder assistance to emergency circumstances (Hoax)

LICENSING (SCOTLAND) ACT, 2005

GENERAL RULE: ONE CRIME FOR EACH ACCUSED AND PER

OFFENCE

Relating to Children and Young People

061001	Section 102 - Sale of alcohol to a child or young person
	,
061001	Section 103 - Allowing the sale of alcohol to a child or young person
	, <u>, , , , , , , , , , , , , , , , , , </u>
061001	Section 104 - Sale of liqueur confectionery to a child
062006/062009	Section 105 - Purchase of alcohol by or for a child or
	young person
061001/062006	Section 106 - Consumption of alcohol by a child or young person
	•
061010	Section 107 - Unsupervised sale of alcohol by a child or young person
064000/064004	, , ,
061099/061001	Section 108 - Delivery of alcohol by or to a child or young person
062009	Section 109 - Sending a child or young person to obtain
002003	alcohol

Section 110 - Duty to display notice

Drunkenness and Disorderly Conduct

060004	Section 111 - Drunk persons entering or in premises on which alcohol is sold
062099	Section 112 - Obtaining of alcohol by or for a drunk person
061099	Section 113 - Sale of alcohol to a drunk person
061003	Section 114 - Premises manager, staff etc. not to be drunk
060006/061004	Section 115 - Disorderly conduct
060008	Section 116 - Refusal to leave premises

Miscellaneous Offences

061099

99	Section 117 - Offences relating to sale of alcohol to trade
061099	Section 118 - Prohibition of unauthorised sale of alcohol
	on moving vehicles
061099	Section 119 - Delivery of alcohol from vehicles etc.
061099	Section 120 - Prohibition of late-night deliveries of alcohol
061099	Section 121 - Keeping of smuggled goods

Victim/Complainer:	Procurator Fiscal	
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Locus:	Where Crime Takes Place	
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Scenario Examples:

Example: Male enters shop and buys alcohol for a number of children who

are underage. Evidence is obtained that the alcohol was bought

at the shop.

1 Crime of Licensing (Scotland) Act, 2005 Section 105 (immaterial

how many children were provided the alcohol).

NOTE: The Licensing (Scotland) Act 2005 was introduced on 1st

September, 2009, superseding the Licensing (Scotland) Act 1976.

Sections 115 and 116 can be dealt with by way of an Anti Social

Behaviour Fixed Penalty Notice (FPN).

Relevant Crimes/Offences

Licensing (Scotland) Act 2005, S102(1) - Sale of alcohol to a child or a young person

Licensing (Scotland) Act 2005, S103(1) - Responsible person allowing the sale of alcohol to a child from a relevant premises

Licensing (Scotland) Act 2005, S104(1) - Selling liqueur confectionery to child under 16

Licensing (Scotland) Act 2005, S105(1) - Person under 18 buy or attempt to buy alcohol

Licensing (Scotland) Act 2005, S105(4)(a) - buy or attempt to buy alcohol for a child or young person

Licensing (Scotland) Act 2005, S105(4)(b) - buy or attempt to buy alcohol for consumption on relevant premises by a child/young person

Licensing (Scotland) Act 2005, S106(1) - Consumption of alcohol by a child or young person on relevant premises

Licensing (Scotland) Act 2005, S106(2) - Responsible person knowingly allow alcohol to be consumed by child or young person in relevant premises

Licensing (Scotland) Act 2005, S107(1) - Responsible person allowing alcohol to be sold, supplied or served by a child/young person on relevant premise

Licensing (Scotland) Act 2005, S108(2) - Responsible person allowing alcohol to be delivered by a child/young person.

Licensing (Scotland) Act 2005, S108(3)(a) -Responsible person deliver alcohol to child Licensing Scotland Act 2005, S108(3)(b) - Responsible person allowing alcohol to de delivered to a child

Licensing (Scotland) Act 2005, S109(1) - Sending a child/young person to obtain alcohol sold/to be sold on any relevant premises for consumption off premises

Licensing (Scotland) Act 2005, S110(4) - Failure to display required notice

Licensing (Scotland) Act 2005, S111(1) - Attempt to enter relevant premises while drunk.

Licensing (Scotland) Act 2005, S111(2) - Drunk and incapable of taking care of himself/herself

Licensing (Scotland) Act 2005, S112(1) - Attempt to obtain alcohol on relevant premises for consumption on premises, for a drunk person.

Licensing (Scotland) Act 2005, S112(2) - Help drunk person obtain or consume alcohol

Licensing (Scotland) Act 2005, S113(1) - Responsible person selling alcohol to a person who is drunk

Licensing (Scotland) Act 2005, S114(1) - Responsible person drunk whilst on relevant premises

Licensing (Scotland) Act 2005, S114(1) & 141B - Holding Licence holder vicariously liable for responsible person being drunk on relevant premises

Licensing (Scotland) Act 2005, S115(2) - Responsible person allowing breach of the peace, drunkenness or other disorderly conduct

Licensing (Scotland) Act 2005, S115(1)(a) - A person on relevant premises, while drunk, behaving in a disorderly manner

Licensing (Scotland) Act 2005, S115(1)(b) - A person on relevant premises, while drunk, using obscene or indecent language

Licensing (Scotland) Act 2005, S116(1) - A person behaves in a disorderly manner and

refuses/fails to leave premises on being asked

Licensing (Scotland) Act 2005, S116(2) - Refuse to leave after end of licensed hours when asked to do so

Licensing (Scotland) Act 2005, S118(1) - Knowingly sell alcohol on/from a vehicle which is not parked without being authorised to do so

Licensing (Scotland) Act 2005, S119(1) - Failure to record information prior to delivery of alcohol by vehicle or receptacle

Licensing (Scotland) Act 2005, S119(4) - Deliver alcohol to an address not recorded in a day book and delivery book or invoice

Licensing (Scotland) Act 2005, S120(2) - Responsible person deliver alcohol to unlicensed premises between midnight and 6am

Licensing (Scotland) Act 2005, S120(3) - Responsible person allow the delivery of alcohol to unlicensed premises between midnight and 6am

072008 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.

Victim/Complainer: Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example: 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: 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 record being recorded.

Relevant Crimes/Offences

Consume alcohol in a designated public place - Local Order
Consume alcohol in a designated public place - Local Order (assumption)
Found to be in possession of an open container containing alcoholic liquor
Consume alcohol in designated place and fail to desist when required by Police Constable
Consume alcohol in a designated place and fail to desist when required to do so by Police
Constable

047010 OFFENSIVE BEHAVIOUR AT FOOTBALL AND 047011 THREATENING COMMUNICATIONS (SCOTLAND) ACT, 2012

GENERAL RULE: ONE CRIME FOR EACH INCIDENT

1

Definition:

Offensive Behaviour at Regulated Football Matches

- (1) A person commits an offence if, in relation to a regulated football match
- (a) the person engages in behaviour of a kind described in subsection (2) and
- (b) the behaviour
 - (i) is likely to incite public disorder, or
 - (ii) would be likely to incite public disorder.
- (2) The behaviour is
- (a) expressing hatred of, or stirring up hatred against, a group of persons based on their membership (or presumed membership) of
 - (i) a religious group
 - (ii) a social or cultural group with a perceived religious affiliation
 - (iii) a group defined by reference to a thing mentioned in subsection (4)
- (b) expressing hatred of, or stirring up hatred against, an individual based on the individual's membership (or presumed membership) of a group mentioned in any of sub-paragraphs (i) to (iii) of paragraph (a),
- (c) behaviour that is motivated (wholly or partly) by hatred of a group mentioned in any of those sub-paragraphs,
- (d) behaviour that is threatening, or
- (e) other behaviour that a reasonable person would be likely to consider offensive.
- (3) For the purpose of subsection (2)(a) and (b) it is irrelevant whether the hatred is also based (to any extent) on any other factor.
- (4) The things referred to in subsection (2)(a)(iii) are (a) colour,
- (b) race, (c) nationality (including citizenship), (d) ethnic or national origins, (e) sexual orientation (f) transgender identity, (g) disability.
- (5) For the purposes of subsection (1)(b)(ii), behaviour would be likely to incite public disorder if public disorder would be likely to occur but for the fact that
- (a) measures are in place to prevent public disorder, or
- (b) persons likely to be incited to public disorder are not present or are not present in sufficient numbers.

Threatening Communications

- (1) A person commits an offence if
- (a) the person communicates material to another person, and
- (b) either Condition A or Condition B is satisfied.

Condition A is that,

- (a) the material consists of, contains or implies a threat, or an incitement, to carry out a seriously violent act against a person or against persons of a particular description,
- (b) the material or the communication of it would be likely to cause a reasonable person to suffer fear or alarm, and
- (c) the person communicating the material,
- (i) intends by doing so to cause fear or alarm, or
- (ii is reckless as to whether the communication of the material would cause fear or alarm.

For the purposes of Condition A, where the material consists of or includes an image (whether still or moving), the image is taken to imply a threat or incitement such as is mentioned in paragraph (a) of subsection (2) if

- (a) the image depicts or implies the carrying out of a seriously violent act (whether actual or fictitious) against a person or against persons of a particular description(whether the person or persons depicted are living or dead or actual or fictitious), and
- (b) a reasonable person would be likely to consider that the image implies the carrying out of a seriously violent act against an actual person or against actual persons of a particular description.

Condition B is that

- (a) the material is threatening, and
- (b) the person communicating it intends by doing so to stir up hatred on religious grounds.

Victim/Complainer: Person making complaint or, dependent on circumstances the Procurator Fiscal

Locus: Where Crime Takes Place

Scenario Examples:

Example Whilst acting together travelling on a journey from a regulated

football match, behaving in a manner that was motivated by hatred

singing a recognised sectarian song.

1 Crime of Offensive Behaviour at Football 2012 S1(1) on Journey

Example Shouting sectarian abuse at opposition supporters whilst in a

designed sports ground

1 Crime of Offensive Behaviour at Football & Threatening Comms

2012 S6(1)&(5) Stir up religious hatred

Example Sending offensive message to football player via a social

networking site stating I wish death upon your family and your team mates, I'll cut you when we meet, showing a photograph of a large

bladed knife

1 Crime of Offensive Behaviour at Football & Threatening Comms

2012 S6(1)&(2) Carry out Violent or Reckless Act

NOTE:	This Act was effective from 1 st March, 2012. A Fixed Penalty Ticket can be issued for an offence under Section 1 only.
	The Lord Advocate has issued guidelines on this legislation, which includes relevant definitions.
	Modifiers are also applicable in reporting to the PF covering Colour, Disability, Ethnic, Nationality, Race, Religion, Sexual Orientation, Transgender Identity.

Relevant Crimes/Offences

- S1(1) Engage in behaviour likely to incite public disorder on journey to/from a regulated football match
- S1(1) Engage behaviour likely to incite public disorder at a ground/leaving/entering regulated football match
- S1(1) Engage in behaviour likely to incite public disorder towards another or other at a regulated football match
- S1(1) Engage in behaviour likely to incite public disorder with another at a regulated football match
- S6 Communicate threatening material to another to carry out violent or reckless act to cause fear or alarm
- S6(1)&(5) Communicate threatening material to another to stir up hatred on religious grounds

PRISONS (SCOTLAND) ACT, 1989, SECTION 41(1)

043004 - Blade or Sharply Pointed Article

043006 - Offensive Weapon

044006 - Drugs

085001 - Other

1

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

Definition:	(1) 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.

Victim/Complainer:	Procurator Fiscal

Locus: Prison

Scenario Examples:

Example:

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.

There is no evidence gathered to identify who sent the drugs.

1 Crime of Prisons (Scotland) Act, 1989, Section 41(1) recorded by Division 'A'.

The contents of the letter provides details of the sender who resides in Division 'B'.

1 Crime of Prisons (Scotland) Act, 1989, Section 41(1) recorded by Division 'B'.

The letter is post marked outwith Division 'A' but the identity of the sender is not immediately known from the content of the letter.

1 Crime of Prisons (Scotland) Act, 1989, Section 41(1) recorded by Division 'A'.

Example: The Prison Service contacts the

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. There is no requirement to record a crime in these circumstances. Where a Class 'A' drug is recovered the police must be informed and a crime record created.

and a crime record created.

Example: The Prison Service contact the local police to advise they have

found a prisoner in possession of a personal quantity of a Class A

drug.

1 Crime of Misuse of Drugs Act 1971 Section 5(2).

Example: 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.

1 Crime of Prisons (Scotland) Act, 1989, Section 41(1).

Example: The Prison Service contacts the local police to advise they have

recovered a quantity of drugs concealed within the goal posts on the Playing fields within the break out area of the prison, no one

has been identified as being responsible.

No crime report is required as this is classed as Found property.

Example: The Prison Service contacts the local police to advise they have

recovered a quantity of different drugs, which have been thrown across the perimeter fence, no one has been identified as being

responsible.

1 Crime of Prisons (Scotland) Act, 1989, Section 41(1) immaterial

of how many drug types found.

NOTE:

For the purposes of this subsection a person shall be deemed to introduce an article into a prison if he conveys it to a prisoner outside the prison or places it anywhere outside the prison with intent that it shall come into the possession of a prisoner.

Class B Drugs include Cannabis, Cannabis Resin, Amphetamine, Mephedrone, Barbiturates and Dihydrocodeine. Cases involving the possession of small amounts of Class B drugs, in the absence of any factor indicating supply; being concerned in the supplying or possession with intent to supply may be dealt with by Governors/Controllers as a matter of internal discipline. Where a

prisoner is found in simple possession of 5 grams or more of cannabis or cannabis resin or in simple possession of more than 5 tablets of any Class B drug, the case must be reported to the

police.

Class C Drugs include Temgesic, Temazepam and Diazepam.

Cases involving the possession of small amounts of Class C drugs

(less than 5 tablets) may be dealt with by Governors/Controllers as a matter of internal discipline, and need not be reported to the police.

Where the nature of the substance is unknown.

the case must be

reported to the Police.

• All drugs in liquid form must be reported to the Police.

Where a Class 'A' drug is recovered the police **must** be informed and a crime record created.

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.

SUPPLY: 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 records will be created.

Relevant Crimes/Offences

Prisons (Scotland) Act 1989, S41(1)(a) - Take a drug into prison

Prisons (Scotland) Act 1989, S41(1)(c) - Take offensive weapon into prison

Prisons (Scotland) Act 1989, S41(1)(e) - Take a prohibited article under section 39 of the Act into prison

Prisons (Scotland) Act 1989, S41(1)(b)&(9A)f - Take out /remove or attempt take out /remove from prison a prohibited article under section 39 of the Act

Prisons (Scotland) Act 1989, S41(1)(b)&(9A)b - Take out /remove or attempt to take out /remove controlled drug from prison

Prisons (Scotland) Act 1989, S41(1)(b)&(9A)a - Take out /remove or attempt take out /remove personal communication device from prison

Prisons (Scotland) Act 1989, SS41(1)(b)&(9A)e - Take out /remove or attempt to take out /remove bladed or sharply pointed article from prison

Prisons (Scotland) Act 1989, S41(1)(b)&(9A)c - Take out /remove or attempt take out /remove firearm or ammunition from prison

Prisons (Scotland) Act 1989, S41ZA(3)&41(9B) - Any person who is not prisoner in possession of a personal communication device while in prison

Prisons (Scotland) Act 1989, S41ZA(2)(b) - Intentionally receive a communication of any kind from inside a prison

Prisons (Scotland) Act 1989, S41ZA(2)(a) - Transmit a communication of any kind from inside a prison

Prisons (Scotland) Act 1989, S41ZA(1) - Knowingly give a personal communication device to a prisoner

Prisons (Scotland) Act 1989, S41ZA(3) - Prisoner in possession of a personal communication device while in prison

Prisons (Scotland) Act 1989, S41(1)(a)&(9A)a - Bring/introduce or attempt bring/introduce personal communication device into prison

Prisons (Scotland) Act 1989, S41(1)(a)&(9A)c - Bring or introduce/attempt to bring or introduce firearm or ammunition into a prison

078003 ROAD TRAFFIC ACT, 1988, SECTION 30 Drunk When Riding A Cycle

GENERAL RULE: ONE CRIME FOR EACH ACCUSED

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		on	

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).

Victim/Complainer: Procurator Fiscal

Where Crime Takes Place

NOTE:

Locus:

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.

082002 THE TRESPASS (SCOTLAND) ACT, 082003 1865, SECTION 3

Lighting Fires And 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

Relevant Crimes/Offences

Trespass (S) 1865 S3 – Lodge on Premises

Trespass (S) 1865 S3 - Occupy Land

Trespass (S) 1865 S3 - Encamp/Light a fire on land without consent/permission from owner

1

050010 TOBACCO AND PRIMARY MEDICAL SERVICES (SCOTLAND) ACT, 2010, Sections 4-7

1

GENERAL RULE: ONE CRIME FOR EACH SALE (S4-6) ONE CRIME FOR EACH ACCUSED (S7)

ection 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.

Victim/Complainer: Procurator Fiscal

Where Crime Takes Place Locus:

Scenario Examples:

Example: The local shopkeeper is found selling cigarettes to 3 school

children, who enter his shop in their school uniform.

3 Crimes of Tobacco and Primary Medical Services (Scotland) Act,

2010, Section 4.

NOTE:	From October, 2007 the age limit rose from 16 to 18 years.
	On 1 st April, 2011 this legislation replaced Section 18 of the Children and Young Persons (Scotland) Act, 1937, which referred to the sale of cigarettes/tobacco to persons under 18.

Relevant Crimes/Offences

Tobacco and Primary Medical Services (Scotland) Act 2010, S4(1) - Sale of tobacco to person under 18 years

Tobacco and Primary Medical Services (Scotland) Act 2010, S5(1) - Person under 18 buying or attempting to buy tobacco or cigarette papers

Tobacco and Primary Medical Services (Scotland) Act 2010, S6(1) - Buying or attempting to buy tobacco or cigarette papers for person under 18 years old

Tobacco and Primary Medical Services (Scotland) Act 2010, S7(1) - Person under the age of 18 failing to surrender a tobacco product or cigarette paper when require to do so.

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 OFFENCES

1 - Wildlife and Countryside Act 1981

051/004 OFFENCES INVOLVING BIRDS

General Rule - One crime for each species

Sec 1(1) – Kill/injure/take wild bird; damage active nest; take/destroy bird's egg

Sec 1(2) – Possess/control live/dead wild bird or part of or anything derived from wild bird, including an egg

Sec 1(5) – Disturb nesting Schedule 1 bird or dependent young; cause or permit

Sec 5(1) – Prohibited methods of killing/taking wild bird; cause or permit

Sec 6(1) – Sell/offer or expose for sale an egg of a bird

Sec 7(1) – Keep/possess/control bird included in Schedule 4 that is registered/ringed/marked

051/014 CRUELTY TO WILD ANIMALS

General Rule - One crime for each species

Sec 9(1) - Kill/injure/take wild animal included in Schedule 5

Sec 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

Sec 11G(1) - Intentionally or recklessly kill/injure/take a wild animal in Schedule 6A

Sec 11I(1) - Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully

General Rule - One crime for each incident

Sec 10A(1) - Intentionally or recklessly kill/injure/take a wild hare

General Rule – One crime for snare type

Sec 11(1) – Offences with snares

General Rule – One crime for each type of device or poison NOT PROTECTIVELY MARKED

↑

Sec 11(2) – Offences against Schedule 6 animals

Sec 11(3) - Possession, use and checking of snares

051/016 OTHER WILDLIFE OFFENCES

General Rule - One crime for each species

Sec 9(2) – Possess/control live/dead wild animal or part of or anything derived from wild animal on schedule 5

Sec 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

Sec 13(1) – Picking, uprooting and destruction of wild plants

Sec 13(2) – Sale or offer for sale of wild plants

General Rule - One crime for each accused

Sec 15a - Possession of prescribed pesticides

Sec 18(1) – Attempts to commit offences

Sec 18(2) – Possess item capable of being used to commit offence

2 - Protection of Badgers Act 1992

051/015 OFFENCES INVOLVING BADGERS

General Rule - One crime for each Badger

Sec 1(1) – Kill/injure/take badger

Sec 2(1) – Cruelty to badger

Sec 4 – Sell/possess live badger

General Rule - One crime for each incident

Sec 1(3) – Possess/control dead badger or any part of anything derived from badger

General Rule - One crime for each Sett

Sec 3(1) – Interfering with badger setts

Sec 3(2) – Cause or permit

3 - Conservation (Natural Habitats etc.) Regulations 1994

051/014 CRUELTY TO WILD ANIMALS

General Rule - One crime for each species

Reg 39(1) – Protection of certain wild animals

Reg 39(2) – Protection of cetaceans

Reg 41(2) – Prohibition of certain methods of taking or killing wild animals

400 NOT PROTECTIVELY MARKED

DIECTIVELY MARKED

051/016 OTHER WILDLIFE OFFENCES

General Rule - One crime for each accused

Reg 100(1) – Attempt to commit offence under part III

Reg 100(2) – Possess item capable of being used to commit offence under part III

4 - Protection of Wild Mammals (Scotland) Act 2002

051/014 CRUELTY TO WILD ANIMALS

General Rule - One crime for each species

Sec 1(1) – Deliberately hunt a wild mammal with a dog

5 - Wild Mammals (Protection) Act 1996

051/014 CRUELTY TO WILD ANIMALS

General Rule - One crime for each species

Sec 1 – Cruelty to a wild mammal which is not captive

6 - Conservation of Seals Act 1970

056/002 SEA FISHERIES OFFENCES

General Rule - One crime for each method

Sec 1 – Prohibited methods of killing seals

General Rule - One crime for each incident

Sec 2(2) – Wilfully kill, injure or take a seal during the close season

<u>7 - Control of Trade in Endangered Species (Enforcement)</u> Regulations 1997

051/016 OTHER WILDLIFE OFFENCES

General Rule - One crime for each species

Reg 8(1) – Purchase or sale of Annex A specimen without Article 10 certificate

Reg 8(2) - Purchase/Sell/Acquire etc. a specimen listed in Annex B

8 - Deer (Scotland) Act 1996

057/002 DEER (SCOTLAND) ACT OFFENCES

General Rule - One crime for each species of Deer

Sec 5(5) – Take or kill deer outside the designated close season for the particular species

Sec 17(1) – Take, kill or injure deer without legal right or permission

Sec 17(2) – Remove deer carcass from land

Sec 17(3) – Wilfully kill or injure deer otherwise than by shooting

Sec 18(1) – Take or wilfully kill or injure deer at night

General Rule - One crime for each incident

Sec 22 – Two or more persons acting together

Sec 24 – Attempts and preparations

General Rule - One crime for each accused

Sec 23(1) – Unlawful possession of deer or firearms

9 - Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003

056/001 SALMON AND FRESHWATER FISHERIES OFFENCES

General Rule - One crime for each incident

Sec 1(1) – Fish for or take salmon other than by rod and line or net and cobble

Sec 1(3) – Attempts or preparations

Sec 2(1) – Fish for or take freshwater fish other than by rod and line

Sec 2(2) -Attempts or preparations

Sec 5(1) – Use of explosives and noxious substances

Sec 5(2) – Attempts or preparations

Fish for salmon without right or permission Sec 6(1) -

Sec 7 -Two or more persons acting together to commit offence under

Sections 1, 2 or 6 of the Act

Sec 8(1) – Taking of dead salmon or trout

Sec 8(2) -Attempts or preparations

Sec 9(1) – Illegal possession of salmon or trout

Sec 11(1) – Fishing in waters where fishing rights owned by one person

Sec 12(1) – Fish in contravention of a protection order

Fishing during the weekly close time for salmon Sec 13 –

Sec 14(1) – Fishing for salmon during annual close time

Sec 16(1) – Buying and selling salmon during the close season

Sec 17(1) – Annual close time for trout

Sec 18(1) – Unclean salmon

Sec 19(1) - Salmon roe

056/003 POSSESSION OF SALMON AND TROUT UNLAWFULLY OBTAINED General Rule – One crime for each incident

Sec 20(1) – Possessing salmon which have been illegally taken, killed or landed

10 - Conservation of Salmon (Prohibition of Sale)(Scotland) Regulations 2002

056/001 SALMON AND FRESHWATER FISHERIES OFFENCES

General Rule - One crime for each incident

Reg 2 – Sell, offer or expose for sale salmon taken by rod and line

11 - Agriculture (Scotland) Act 1948

057/001 POACHING AND GAME LAWS

General Rule – One crime for each type of trap

Sec 50(1) – Offences with non-approved spring traps Sec 50(1) – Offences with spring traps

12 - Dogs (Protection of Livestock) Act 1953

051/008 PROTECTION OF LIVESTOCK FROM DOGS

General Rule - One crime for each incident

Sec 1 - Own or be in charge of a dog that worries livestock on any agricultural land

084/001 WIRE 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

Victim/Complainer: Procurator Fiscal

Locus: Location of apparatus

Scenario Examples:

Example: 2 persons in a vehicle are found to be operating a radio scanner

> tuned into police frequency, allowing them to pick up incidents which they have attended over a 2 month period to observe.

1 Crime of Wireless Telegraphy Act 2006 (as this is a

continuous course of conduct)

Relevant Crimes/Offences

Wire Telegraphy 2006 S8(1)(A) - Establish/Use Station

Wire Telegraphy 2006 S8(1)(B) - Install/Use Apparatus

Wire Telegraphy 2006 S36 - Possession & Intent to Use

Wire Telegraphy 2006 S37(1)(A) – Cause/Permit unlawful B'cast

Wire Telegraphy 2006 S37(1)(B) - Fail to Stop Use Premises

Wire Telegraphy 2006 S37(1)(A) - Cause/Permit Send Signals

Wire Telegraphy 2006 S37(1)(B) - Fail to Stop Send Signals

Wire Telegraphy 2006 S38(2)(C) - Render Service Unauth B'cast

Wire Telegraphy 2006 S38(2)(A) - Participate Unauth B'cast

Wire Telegraphy 2006 S38(2)(B) - Supply/Install Apparatus

Wire Telegraphy 2006 S38(2)(D) - Supply Film/Sound Recording

Wire Telegraphy 2006 S38(2)(G) - Participate Unauth B'cast

Wire Telegraphy 2006 S38(2)(H) - Advertise Unauth B'cast

Wire Telegraphy 2006 S38(2)(1) - Publish Detail Unauth B'cast

Wire Telegraphy 2006 S38(2)(E/F) - Artistic Work Unauth B'cast

Wire Telegraphy 2006 S47(1)&(2) - False Msg Safety of Life

Wire Telegraphy 2006 S47(1)&(2) – False Msg Endanger Safety

Wire Telegraphy 2006 S47(3) - False Message Distress/Assist

Wire Telegraphy 2006 S48(1)(A) – Use With Intent Obtain Info Wire Telegraphy 2006 S60(1)(A) – Obstruct Officers

Wire Telegraphy 2006 S68(1) – Deliberate Interference

1

GROUP 7 – OFFENCES RELATING TO MOTOR VEHICLES

1

Offences within Group 7 relate to Road Traffic Offences where the complainer/victim 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 7 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 record 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 405

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 record should be marked as undetected. In all other circumstances Road Traffic offences should be recorded as detected only.

Where a crime record has initially been recorded and enquiry reveals there is insufficient evidence to confirm a Road Traffic Offence has occurred, the crime record should be updated to 'No Crime' as per agreed procedures.

Where an offence has been recorded on a Crime Recording System in connection with a vehicle accident this should not detract from recording the details as required on individual Vehicle Accident Systems.

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.

Victim/Complainer: Procurator Fiscal

Locus: Where vehicle stopped or various as appropriate

Scenario Examples:

Example: Driver is stopped by Police after being recorded driving at excessive speed

which would justify reporting an offence under RTA 1988 Section 2.

1 x RTA 1988 S2 Dangerous Driving (separate speeding offence should

NOT be recorded).

Example: A car being driven dangerously during a Police pursuit collides with four

vehicles before vehicle is stopped and driver apprehended.

1 x RTA 1988 S2 - Dangerous Driving 1 x RTA 1988 S163 - Fail to Stop For Police 1 x RTA 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: 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. Also consider local Procurator Fiscal guidelines. (see example of Procurator Fiscal guidelines below). 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 of the complaint received.

Example: 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. Also consider local Procurator Fiscal guidelines. (see example of Procurator Fiscal guidelines below). The

circumstances should be considered to determine whether there may have been an error of judgement which may fall within Procurator Fiscal reporting guidelines. 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:

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 to a degree which meets with Procurator Fiscal guidelines, but is not traced, an undetected Careless Driving or Dangerous Driving should be recorded.

Example:

Police witnesses stop a vehicle which, on further examination, is found to have numerous defects including serious defects to three tyres, badly corroded exhaust section allowing gas to escape and battery not secured to engine compartment.

While each of these defects could be recorded and reported as separate offence, in circumstances where several serious defects are found consideration should be given to establishing if it would be obvious to a competent and careful driver that the vehicle they were driving in its current state would be dangerous. If so a single offence of Dangerous Driving should be considered.

Notes

Example of Procurator Fiscal Guidelines for reporting Careless Driving:

In most areas Procurators Fiscal will not normally proceed against persons for careless driving unless there is significant carelessness and not merely an error of judgement. Seriousness of damage to vehicles or property is not in itself a yardstick since severe damage may result from a collision where carelessness has not been significant. Conversely, acts of extreme carelessness bordering on dangerousness may not result in any damage. Taking this into account, offences under Section 3 of the Road Traffic Act, 1988, will normally only be recorded if one or more of the following criteria apply:

- The degree of carelessness is on the upper end of the scale.
- Injury has resulted other than the most trivial injury.
- Other offences are involved such as vehicle defects, document offences or failure to stop/report collision.
- The driver is young (under 25 years) or is inexperienced and affected by the provisions of the Road Traffic (New Drivers) Act, 1995.
- The driver is elderly (over 70 years) or infirm and a court may consider requiring a resit of the driving test.
- The driver is a persistent offender including not only those with 9 current penalty points on their driving licence but also those with a number of similar cases pending.
- The incident involves a PCV which is carrying passengers, particularly school buses.
- The incident involves left hand drive vehicles or foreign drivers and either of these factors have contributed to the collision.
- Where particular local circumstances have been agreed with the Procurator Fiscal.

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 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.

313/000 ROAD TRAFFIC ACT 1988, Section 103(1)(a)(b) DRIVING WHILE DISQUALIFIED

GENERAL RULE: ONE CRIME FOR EACH CONTINUITY OF ACTION

Definition:

- (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.

Victim/Complainer: Procurator Fiscal

Locus: Where vehicle stopped or various as appropriate

Scenario Examples:

Example: 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 Driving While Disqualified (continuity of action)

Example: A disqualified driver is stopped and found in possession of a falsified driving

licence. During investigation it transpires that he has recently traded in a vehicle and the sales person has given a statement to the effect that they

witnessed him driving two separate vehicles.

1 x Driving While Disqualified

1 x Obtaining licence while disqualified

2 x Driving without insurance (offence per vehicle)

Example: 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 Driving While Disqualified (continuity of action)

Example: 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 Driving While Disqualified

Notes

In circumstances where Officers have obtained further evidence of a disqualified driver driving on previous occasions, this cannot be counted as additional crimes. This 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 libelling a S103 or a S87 of the Road Traffic Act, a Section143 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 i.e. 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 Police Report 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 - DRIVE WITHOUT INSURANCE

GENERAL RULE: ONE CRIME FOR EACH OFFENCE/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.

Victim/Complainer: Procurator Fiscal

Locus: Where offence occurs or various as appropriate

Scenario Examples:

Example: Registered keeper of vehicle is stopped by Police and found to have no valid

policy of insurance.

1 x RTA 1988 S143 - Drive without insurance.

Example: As above where evidence that keeper has driven a second vehicle with a

valid policy of insurance.

2 x RTA 1988 S143 - Drive without insurance (offence per vehicle)

Example: 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 RTA 1988 S143 - Drive without insurance.

Example: As above where there is evidence that the registered keeper is aware

driver has no valid policy of insurance.

1 x RTA 1988 S143 - Drive without insurance (driver) 1 x RTA 1988 S143 - Cause and permit (keeper)

Example: 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 RTA 1988 S143 - Drive without insurance (driver) 1 x RTA 1988 S143 - Cause and permit (keeper)

1 x RTA 1988 S144A - Keep motor vehicle with no insurance (keeper)

Notes

Most offences under Section 144A (Keep motor vehicle with no insurance) will be dealt with directly by DVLA.

307/000 ACCIDENT OFFENCES ROAD TRAFFIC ACT 1988, Sect. 170 (2) and (4) - FAIL TO STOP AFTER ACCIDENT ROAD TRAFFIC ACT 1988, Sect. 170 (3) and (4)

- FAIL TO REPORT ACCIDENT

GENERAL RULE: ONE CRIME FOR EACH OFFENCE (SEE NOTES)

Definition:

- (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.

Victim/Complainer: Procurator Fiscal

Locus: Where accident occurs or various as appropriate

Scenario Examples:

Example: A car being driven dangerously during a Police collides with four vehicles

before vehicle is stopped and driver apprehended.

1 x RTA 1988 S2 - Dangerous Driving

1 x RTA 1988 S170 - Fail to Stop After Accident 1 x RTA 1988 S170 - Fail to Report 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: 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: 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, therefore, record details on vehicle accident system and update incident to this effect.

Example:

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. A vehicle accident record will also be required.

Notes

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.

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 Crime Reports for 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 record.

Antisocial Behaviour (Scotland) Act, 2004, Section 126

A warning under the above section is only applicable where an offence in relation to Section 3 or Section 34 of the Road Traffic Act has occurred, AND, it is causing or is likely to cause alarm, distress or annoyance to members of the public. Without the antisocial behaviour aspect, a warning under this Section is not applicable.

Any further guidance relating to the recording of Road Traffic Offences should be directed to the Crime Registrar.

VEHICLE DEFECT RECTIFICATION SCHEME

318000 - Registration Plate

319000 - Lighting

320000 - Other than Lighting

GENERAL RULE: AS PER LEGISLATION OUTLINES (ONE PER CHARGE)

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.

List of Offences to which the Scheme can be applied by all Uniformed Officers

Road Vehicle (Construction and Use) Regulations

Exhaust	Obviously damaged e.g. hanging down
Obligatory Lights	Not maintained
Mirrors	No rear view mirror
Mud wings	Not fitted
Parts & 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

Stop Lamps	Not maintained
Indicators	Not maintained
Obligatory Lights	Not showing
Reflectors	Obscured and inefficient
Registration Plate	Not illuminated

Vehicle Excise and Registration Act

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

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