

Group 1 – Non-Sexual Crimes of Violence

Crime	SGJD Code
Abduction (including Plagium)	11/002
Attempted Murder	2/000
Care Worker - Ill Treatment of Patients Health (Tobacco, Nicotine etc., Care) (Scotland) Act 2016, Sections 26, 27	11/003
Causing Death by Dangerous Driving	3/002
Causing Death by Careless Driving Where Under Influence of Drink or Drugs	3/003
Causing Death by Careless Driving	3/004
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Corporate Manslaughter and Corporate Homicide Act 2007, Section 1	3/006
Cruelty and Unnatural Treatment of Children	8/001
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Domestic Abuse (Scotland) Act 2018 (Male Victim)	11/012
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Crime	SGJD Code
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Threats	7/000

11/002 Abduction

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 example(s)

Example 1

'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.

Record 1 crime of Abduction.

Record 1 crime of Assault (depending on injuries either common or serious assault recorded).

Example 2

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

Record 3 crimes of Abduction.

Example 3

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

Record 2 crimes of Abduction.

Example 4

'A' is seriously assaulted whilst being forcibly dragged into a vehicle and carried off against their will.

Record 1 crime of Abduction (the assault is considered to be part of the commission of the crime of abduction).

Example 5

A bus containing 20 people is hijacked.

Record 20 crimes of Abduction.

Example 6

Three persons enter an unlocked dwelling armed with baseball bats. One rounds up the occupants and temporarily confines them to the kitchen area while the others ransack the house and steal property belonging to all occupants of the household. The confinement ends when the suspects leave the house with the stolen property. No person is injured.

Record 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.

Example 7

During an argument 'A' assaults 'B' resulting in 'B' stating they are leaving the house. 'A' locks the door and refuses to allow them to leave. 'B' makes no effort to leave by any other means, is not unduly alarmed and goes to bed. On waking the next morning 'A' makes no attempt to confine 'B' within the house and 'B' leaves.

Record 1 crime of Common Assault (no requirement to record Abduction unless there were circumstances which indicated the complainant had tried to continually leave by other means but was unable to, or was in fear as to what might happen to them should they attempt to leave/obtain assistance). An assessment should be made on a case by case basis as to whether an Abduction is appropriate.

Example 8

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

Record 1 crime of Abduction.

Record 1 crime of Serious Assault.

Note(s)

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

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

Plagium

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

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

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

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

2/000 Attempted Murder

General rule: One crime for each identified victim

Definition

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

Victim/Complainer

Identified victim of attempt.

Locus

Where crime takes place.

Scenario example(s)

Example 1

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

Record 2 crimes of Murder.

Record 3 crimes of Attempted Murder.

Example 2

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

Record 3 crimes of Attempted Murder.

Example 3

'A' presents a gun at 'B' and robs him of money. Before making off 'A' shoots 'B' narrowly missing vital organs. 'A' survives.

Record 1 crime of Robbery.

Record 1 crime of Attempted Murder (occurred after the Robbery).

Record 1 crime of Firearms Act 1968, Section 17(2) and (5) (possess firearm while committing offence in Schedule 2).

Example 4

'A' presents a knife at 'B' demanding money. 'B' refuses and 'A' stabs 'B' several times to the abdomen and robs him of money.

Record 1 crime of Robbery (Attempted Murder is subsumed as this is part of the Robbery).

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 47 or Section 49 (Possession of offensive weapon/bladed article used in commission of a crime if committed in a public place, school or prison).

Example 5

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

Record 1 crime of Attempted Murder.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 47 or Section 49 (Possession of offensive weapon/bladed article used in commission of a crime if committed in a public place, school or prison). In most cases this will be recorded as Attempted Murder unless the stabbing was of so little force to penetrate the skin or the weapon used had a very small blade which could not cause a fatal injury.

Example 6

'A' threatens to kill 'B' and stabs him once to the arm with a knife causing a laceration requiring sutures.

Record 1 crime of Serious Assault.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 47 or Section 49 (Possession of offensive weapon/bladed article used in commission of a crime if committed in a public place, school or prison).

Despite the threat to kill, the stab wound is unlikely to present a threat to life and therefore unlikely to be recorded as an Attempted Murder unless there are extenuating circumstances present such as the knife being directed at a vital area and the victim evades the blow.

Example 7

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

Record 1 crime of Fireraising (or 25 crimes of Attempted Murder, if there has been an intent to kill or harm everyone in the building e.g. by securing doors).

Example 8

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

Record 1 crime for each identified victim of Attempted Murder.

Note(s)

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; and
- level of force used

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

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

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

Each case needs to be considered on its own merit and must be confirmed by a statement from a medical practitioner as to the extent of the injury. The rationale for this is that every injury, including relatively minor wounds might, if untreated, result in death and therefore the key element is that without immediate and urgent treatment death was a likely consequence.

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

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

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

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

General rule: One crime for each course of conduct identified against each victim

Definition

Section 26 - Care Worker

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

Section 27 - Care Provider Offence

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

A "care worker" means:

- an employee who provides adult health care or adult social care;
- a volunteer who provides adult health care or adult social care;
- an individual who supervises or manages employees or volunteers providing adult health care or adult social care; or
- a director or similar officer of an organisation whose employees or volunteers provide adult health care or adult social care

An "employee" means:

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

A "volunteer" means:

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

A "care provider" means:

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

"Adult health care" means:

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

"Adult social care" means:

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

Victim/Complainer

Person who has been ill-treated or neglected.

Locus

Where crime takes place.

Scenario example(s)

Example 1

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

Record 1 crime of Cruel and Unnatural Treatment (common law).

Example 2

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

Record 1 crime of Health (Tobacco, Nicotine etc. Care) (Scotland) Act 2016, Section 26.

Example 3

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

Record 1 crime of Health (Tobacco, Nicotine etc. Care) (Scotland) Act 2016, Section 26 (Persons acting together).

Example 4

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

Record 2 crimes of Health (Tobacco, Nicotine etc. Care) (Scotland) Act 2016, Section 26.

Example 5

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

Record 1 crime of Health (Tobacco, Nicotine etc. Care) (Scotland) Act 2016, Section 26.

Example 6

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

Record 1 crime of Health (Tobacco, Nicotine etc. Care) (Scotland) Act 2016, Section 26.

Record 1 crime of Assault.

Example 7

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

Record 2 crimes of Assault.

3/002 Causing Death By Dangerous Driving Road Traffic Act 1988, Section 1

General rule: One crime for each fatal collision

Definition

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

Victim/Complainer

Deceased (Victim)/Procurator Fiscal (Complainer).

Locus

Where crime takes place.

Scenario example(s)

Example 1

'A' drives their 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'.

Record 1 offence of Road Traffic Act 1988, Section 1 Causing Death by Dangerous Driving.

Example 2

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

Record 1 offence of Road Traffic Act 1988, Section 1 Causing Death by Dangerous Driving.

Example 3

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

Record 2 offences of Road Traffic Act 1988, Section 1 Causing Death by Dangerous Driving (plus other Road Traffic Offences as appropriate).

Note(s)

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

3/003 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

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

Deceased (victim)/Procurator Fiscal (complainer).

Locus

Where crime takes place.

Scenario example(s)

Example 1

'A' drives their 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.

Record 1 offence of Road Traffic Act 1988, Section 2A Causing Death by Careless Driving where under the influence of drink or drugs (no requirement to record a separate offence for driving where under the influence of drink or drugs).

3/004 Causing Death By Careless Driving 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

Deceased (victim)/Procurator Fiscal (complainer).

Locus

Where crime takes place.

Scenario example(s)

Example 1

'A' drives their 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'.

Record 1 offence of Road Traffic Act 1988, Section 2B Causing Death by Careless Driving.

Example 2

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

Record 1 offence of Road Traffic Act 1988, Section 2B Causing Death by Careless Driving.

Example 3

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

Record 2 offences of Road Traffic Act 1988, Section 2B Causing Death by Careless Driving (plus other Road Traffic Offences as appropriate).

3/005 Cause Death By Driving Whilst Illegal Driver, Disqualified/Unlicensed etc. Involved In Fatal Accident Road Traffic Act 1988, Section 3ZB↑

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

Deceased (victim)/Procurator Fiscal (complainer).

Locus

Where crime takes place.

Scenario example(s)

Example 1

'A' drives their car and collides with car driven by 'B' who is killed along with passengers 'C' and 'D'. 'A' is found to be currently serving a driving ban and is uninsured.

Record 1 offence of Road Traffic Act 1988, Section 3ZB Causing Death by Driving whilst Disqualified/No Insurance.

Record 1 offence of Road Traffic Act 1988, Section 103 Driving whilst Disqualified.

Record 1 offence of Road Traffic Act 1988, Section 143 No Insurance.

Note(s)

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, Section 87, Section 103 and Section 143 as appropriate.

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

General rule: One crime for each person killed

Definition

- (1) An organisation to which this section applies is guilty of an offence if the way in which its activities are managed or organised:
 - (a) causes a person's death, and
 - (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.
- (2) The organisations to which this section applies are:
 - (a) a corporation;
 - (b) a department or other body listed in Schedule 1;
 - (c) a police force;
 - (d) a partnership, or a trade union or employers' association, that is an employer.
- (3) An organisation is guilty of an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in subsection (1).
- (4) For the purposes of this Act:
 - (a) "relevant duty of care" has the meaning given by section 2, read with sections 3 to 7;
 - (b) a breach of a duty of care by an organisation is a "gross" breach if the conduct alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances;
 - (c) "senior management", in relation to an organisation, means the persons who play significant roles in—
 - (i) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or
 - (ii) the actual managing or organising of the whole or a substantial part of those activities.
- (5) The offence under this section is called—
 - (d) corporate manslaughter, in so far as it is an offence under the law of England and Wales or Northern Ireland;
 - (e) corporate homicide, in so far as it is an offence under the law of Scotland.
- (6) An organisation that is guilty of corporate manslaughter or corporate homicide is liable on conviction on indictment to a fine.
- (7) The offence of corporate homicide is indictable only in the High Court of Justiciary.

Victim/Complainer

Deceased (victim)/Procurator Fiscal (complainer),

Locus

Where crime takes place.

Scenario example(s)

Example 1

As a managing director of a corporation fail to adequately manage and repair the maintenance of a mobile elevated platform in a way that amounted to a gross breach of relevant duty of care causing death of two persons.

Record 2 crimes of Corporate Manslaughter and Corporate Homicide Act 2007, Section 1.

Example 2

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

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

Notes

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

**8/001 Cruelty 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 crime to be
recorded**

Definition

Section 12 (1) makes it an offence to wilfully ill-treat, neglect, abandon or expose a child in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement).

12(2) (a) For the purposes of this section if a parent or other person legally liable to maintain a child or young person or the legal guardian of a child or young person shall be deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him, or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, he has failed to take steps to procure it to be provided under the enactments applicable in that behalf;

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

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

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

A parent leaves two children under 10 years old at home, for 48 hours without adequate food or drink and with no responsible adult in charge.

Record 2 crimes of Children and Young Persons Act 1937, Section 12.

Example 2

Seventeen year old found within house drunk, asleep in bed and in charge of two children, aged four and nine who are playing in the living room near to an open lit fire.

Record 2 crimes of Children and Young Persons Act 1937, Section 12.

Example 3

'A' neglects her 2 pre-school children 'B' and 'C' and they are both malnourished and sleeping in their excrement.

Record 2 crimes of Children and Young Persons Act 1937, Section 12.

Example 4

'A' abandons 'B', a two year old infant, for an afternoon in a car in a supermarket car park on a warm day.

Record 1 crime of Children and Young Persons Act 1937, Section 12.

Example 5

Child minder leaves three young children alone in the house for several hours, resulting in one child becoming injured.

Record 3 crimes of Children and Young Persons Act 1937, Section 12.

Example 6

'A' leaves their 8 year old child in bed asleep while going to the shops. On Police attending at the house the child is found within, watching television, and there are no concerns around the conditions within the house. 'A' returns shortly after Police arrival.

The circumstances fail to meet the proof required for a Section 12, a partner agency referral should be considered.

Example 7

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

Record 1 crime of Road Traffic Act 1988, Section 5 (should the driver's erratic driving result in an accident or the erratic driving was such that there was a significant risk of an accident then this would be sufficient to evidence risk presented to the child and a Section 12 would be appropriate).

Example 8

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

Insufficient justification for recording a Section 12 Children and Young Persons Act. Had the child been sleeping within the same room as the cannabis plants further information may determine whether a Section 12 would be relevant, e.g. a medical opinion sought as to any impact on the child, social work/school assessment as to whether a decline has been noticed in the child's behaviour.

Note(s)

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

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

Proof

The courts have taken a very strict interpretation of this legislation. Essentially the crown is required to prove three things:

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

“Ill-treatment, “Abandonment”, “Exposure” or “Neglect”

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

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

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

Where ‘A’ is found to be drunk and has sole responsibility of looking after a child, it must be shown that this would likely cause the child unnecessary suffering or injury to health e.g. if child required feeding, changed prior to ‘A’ becoming sober and was unable to do so.

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

“Wilfully”

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

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

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

3/001 Culpable homicide

General rule: One crime for each victim

Definition

Culpable Homicide may be committed in the following three 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 (victim)/Procurator Fiscal (complainer).

Locus

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

Note(s)

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.

11/012 Abusive behaviour towards partner or ex-partner (Male Victim) Domestic Abuse (Scotland) Act 2018, Section 1(1)

11/013 Abusive behaviour towards partner or ex-partner (Female Victim) Domestic Abuse (Scotland) Act 2018, Section 1(1)

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

Definition

Section 1 - Abusive behaviour towards partner or ex-partner

- (1) A person commits an offence if:
 - (a) the person A engages in a course of behaviour which is abusive of A's partner or ex-partner B, and
 - (b) both of the further conditions are met
- (2) The further conditions are:
 - (a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm,
 - (b) that either
 - (i) A intends by the course of behaviour to cause B to suffer physical or psychological harm, or
 - (ii) A is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.
- (3) In the further conditions, the references to psychological harm include fear, alarm and distress.

Section 2 - What constitutes abusive behaviour

- (1) Subsections (2) to (4) elaborate on Section 1(1) as to A's behaviour
- (2) Behaviour which is abusive of B includes (in particular):
 - (a) behaviour directed at B that is violent, threatening or intimidating,
 - (b) behaviour directed at B, at a child of B or at another person that either:
 - (i) has as its purpose (or among its purposes) one or more of the relevant effects set out in subsection (3), or
 - (ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects set out in subsection (3).
- (3) The relevant effects are of:
 - (a) making B dependent on, or subordinate to, A
 - (b) isolating B from friends, relatives or other sources of support
 - (c) controlling, regulating or monitoring B's day-to-day activities
 - (d) depriving B of, or restricting B's, freedom of action
 - (e) frightening, humiliating, degrading or punishing B.
- (4) In subsection (2):
 - (a) in paragraph (a), the reference to violent behaviour includes sexual violence as well as physical violence,
 - (b) in paragraph (b), the reference to a child is to a person who is under 18 years of age.

Section 5 - Aggravation in relation to a child

- (1) This subsection applies where it is, in proceedings for an offence under 1(1)—
 - (a) specified in the complaint or libelled in the indictment that the offence is aggravated by reason of involving a child, and
 - (b) proved that the offence is so aggravated.
- (2) The offence is so aggravated if, at any time in the commission of the offence—
 - (a) A directs behaviour at a child, or
 - (b) A makes use of a child in directing behaviour at B.
- (3) The offence is so aggravated if a child sees or hears, or is present during, an of behaviour that A directs at B as part of the course of behaviour.
- (4) The offence is so aggravated if a reasonable person would consider the course of behaviour, or an incident of A's behaviour that forms part of the course of behaviour, to be likely to adversely affect a child usually residing with A or B (or both).
- (5) Evidence from a single source is sufficient to prove that the offence is so aggravated.
- (11) In this section, the references to a child are to a person who—
 - (a) is not A or B, and
 - (b) is under 18 years of age.

Victim/Complainer

Person subjected to abusive behaviour.

Locus

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

General Points of Note

Course of Behaviour

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

While a 'course of behaviour' is defined in the Act as involving behaviour on at least 2 occasions, it will not always be appropriate to use this offence simply because there have been 2 incidents. This is particularly so when the time period between incidents is lengthy, and more reflective of discrete abusive acts than a course of conduct, or where there have been 2 incidents within a very short space of time but no evidence that these incidents are part of a pattern or course of abusive behaviour.

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

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

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

Examples:

- Where there are a small number of abusive incidents which have occurred over a short period of time e.g. repeated calls/texts over a period of 3 or 4 days and where there is no indication of an underlying dynamic or history of controlling or abusive behaviours within the relationship, it may be more appropriate to use a Communications Act 2003, Section 127 offence; conversely a DASA Section 1 charge will likely be appropriate even for 2 instances of abuse, where there is an underlying dynamic or history of controlling or abusive behaviours within the relationship, provided the statutory requirements of DASA are met.
- Where there has been an incident of aggressive verbal abuse behaviour towards a complainer which is followed at a later time by an assault on the complainer, in the absence of a history of controlling and abusive behaviour and where these incidents are the only matters to be reported, it may be more appropriate to treat these as separate offences as opposed to a course of conduct and report them separately as a Section 38 and an Assault instead of a DASA Section 1 offence.

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

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

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

The following crimes should not be included within the Section 1(1) offence and should instead be reported separately using existing statutory and common law charges. These crimes will require to be evidenced separately from the Section 1(1) course of conduct.

- Sexual Offences (Scotland) Act 2009, Section 1 - Rape (and attempted rape);

- Sexual Offences (Scotland) Act 2009, Section 2 - Sexual assault by penetration (and attempted sexual assault by penetration);
- Murder; and
- Attempted murder

For all other offending behaviour, where it appears part of a course of abusive behaviour and meets the statutory requirements of the Domestic Abuse (Scotland) Act 2018, it should be reported within a DASA Section 1 charge rather than as a separate alternative charge.

Aggravation Involving A Child

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

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

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

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

- In circumstances where the behaviour spans a time period before and after the introduction of the legislation appropriate crime(s) will be recorded to account for the period before the introduction of the legislation, provided that the conduct would have amounted to a crime at that time.
- In circumstances where a course of conduct is reported where there is insufficient evidence to report to the Procurator Fiscal (needs two or more corroborated incidents) an undetected Domestic Abuse offence will be recorded.
- In circumstances where there is a course of conduct of behaviour which constitutes a Domestic Abuse Section 1 offence which includes individual elements of conduct which would amount to Section 38 (Threatening or Abusive Behaviour), Section 39 (Stalking) or Communications Act 2003, Section 127, only the Domestic Abuse offence will be recorded to account for the course of conduct.
- The inclusion of conduct amounting to Section 39, Stalking within a Domestic Abuse Section 1 offence is dependent on there being a sufficient history of abusive behaviour to justify a Section 1 offence; if there is insufficient to justify a Section 1 offence but sufficient for Section 39, Stalking in terms of two or more incidents which cause fear or alarm a Section 39 offence should be recorded.
- Where there is a course of conduct of behaviour which includes crimes of assault, the crimes of assault will be recorded in accordance with existing Scottish Crime Recording Standard (SCRS) rules in addition to the Domestic Abuse offence.
- Where there is a course of conduct of behaviour which amounts to crimes of assault only, the crimes of assault will be recorded in accordance with existing SCRS rules in addition to a Domestic Abuse offence.

- Where there is a course of conduct of behaviour which includes crimes of a sexual nature, the sexual crimes will be recorded in accordance with existing SCRS rules in addition to the Domestic Abuse offence.
- Where there is a course of conduct of behaviour which includes a Communications Act 2003, Section 127 offence of a sexual nature, this should be recorded in addition to any Domestic Abuse offence.
- Where there is a course of conduct of behaviour which amounts to crimes of a sexual nature only, the sexual crimes will be recorded in accordance with existing SCRS rules in addition to the Domestic Abuse offence.
- Where there is a course of conduct of behaviour which includes crimes of dishonesty, the crimes of dishonesty will be recorded in accordance with existing SCRS rules in addition to the Domestic Abuse offence.
- Where there is a course of conduct of behaviour which amounts to crimes of dishonesty only, the crimes of dishonesty will be recorded in accordance with existing SCRS rules in addition to the Domestic Abuse offence.
- Where there is a course of conduct of behaviour which includes crimes of damage to property, the crimes against property will be recorded in accordance with existing SCRS rules in addition to the Domestic Abuse offence.
- Where there is a course of conduct of behaviour which amounts to crimes of damage to property only, the crimes against property will be recorded in accordance with existing SCRS rules in addition to the Domestic Abuse offence.
- Reference to property above would exclude items deemed to be jointly owned as part of a relationship.
- Other crimes which sit in isolation as crimes in their own right will continue to be recorded as that crime per existing SCRS rules but in circumstances where there is also a course of conduct of abusive behaviour the substantive crime and the Domestic Abuse offence will be recorded.

Scenario example(s)

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

Example 1

'A' and 'B' are ex-partners. 'B' reports being confronted by 'A' in the street and being shouted and sworn at. No other conduct is disclosed.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38, Threatening or Abusive Behaviour (single incident).

Example 2

'A' and 'B' are partners. 'B' reports being shouted and sworn at by 'A' immediately before being assaulted. No other conduct is disclosed.

Record 1 crime of Assault (subsumes Section 38, Threatening or Abusive Behaviour) (single incident).

Example 3

'A' and 'B' are partners. 'B' reports being assaulted by 'A' on three occasions at their home address where the dates of these assaults are not known. No other conduct is disclosed.

Record 1 crime of Domestic Abuse (Scotland) Act 2018, Section 1(1).
Record 1 crime of Assault (only one required as dates not known).

Example 4

'A' and 'B' are ex-partners. 'B' reports being subjected to abusive behaviour by 'A' on several occasions which includes two crimes of assault where the dates of these assaults are known.

Record 1 crime of Domestic Abuse (Scotland) Act 2018, Section 1(1).
Record 2 crimes of Assault (two required as dates are known).

Example 5

'A' and 'B' are partners. 'B' reports having been assaulted by 'A' on unknown dates on two occasions at separate locations and sexually assaulted on another occasion.

Record 1 crime of Domestic Abuse (Scotland) Act 2018, Section 1(1).
Record 2 crimes of Assault (dates unknown but crime required for each locus).
Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 3, Sexual Assault.

Example 6

'A' and 'B' are ex-partners. 'B' reports receiving a threatening telephone call from 'A'. No other conduct is disclosed.

Record 1 crime of Communications Act 2003, Section 127(1) (single incident).

Example 7

'A' and 'B' are ex-partners. 'B' reports receiving several threatening telephone calls from 'A', 'A' loitering outside 'B's workplace and being followed by 'A'.

Record 1 crime of Domestic Abuse (Scotland) Act 2018, Section 1(1).

Example 8

'A' and 'B' are partners. 'B' reports that 'A' prevents 'B' from meeting up with friends, controls their finances and regularly humiliates then in public.

Record 1 crime of Domestic Abuse (Scotland) Act 2018, Section 1(1).

Example 9

'A' and 'B' are ex-partners. 'B' reports being followed by 'A', receiving abusive text messages and 'A' loitering near 'B's place of work on several occasions. A crime under Domestic Abuse (Scotland) Act 2018, Section 1(1) of Abusive Behaviour is

recorded and 'A' is charged and reported to the Procurator Fiscal. Prior to their court appearance 'A' subjects 'B' to further abuse by telephone.

Record 1 crime of Communications Act 2003, Section 127 (once initial report has gone to the Procurator Fiscal any additional conduct should be recorded separately and cross referred to the initial report).

Example 10

'A' and 'B' are ex-partners. 'B' reports being followed by 'A', receiving abusive text messages and 'A' loitering near 'B's workplace on several occasions. A crime under Domestic Abuse (Scotland) Act 2018, Section 1(1) of Abusive Behaviour was recorded and reported to the Procurator Fiscal. Two days later 'A' attends at the home of 'B' and makes various threats which cause 'B' alarm.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38, Threatening or Abusive Behaviour (since the earlier course of conduct was reported to the Procurator Fiscal this new report from 'B' amounts to a single crime and would not amount to a new course of conduct unless it involved conduct on at least two occasions).

Example 11

'A' and 'B' are partners. 'B' has previously reported being threatened by 'A' and a crime under Section 38, Threatening or Abusive Behaviour is recorded. While this crime is being investigated 'B' received a number of abusive telephone calls from 'A'.

This additional report combined with the earlier Section 38 could elevate the behaviour to a course of conduct. If a pattern of abusive behaviour can be evidenced the earlier recorded Section 38 should be updated to "No Crime" or reclassified (depending on local IT systems) to 1 crime of Domestic Abuse (Scotland) Act 2018, Section 1(1) to account for what is now a course of conduct. If any offence under Communications Act 2003 was recorded for the abusive calls it should be updated to 'No Crime' with rationale that this is included within a course of conduct cross referenced to the earlier crime report. If a pattern of abusive behaviour cannot be evidenced an additional crime under Communications Act 2003, Section 127 should be recorded.

Example 12

'A' and 'B' are ex-partners. 'B' reports having been assaulted by 'A', having property stolen by 'A' and having property willfully damaged by 'A'. Dates of these crimes are not known.

Record 1 crime of Domestic Abuse (Scotland) Act 2018, Section 1(1).
 Record 1 crime of Assault.
 Record 1 crime of Theft.
 Record 1 crime of Vandalism.

Example 13

'A' is released on Bail following a course of conduct amounting to Domestic Abuse (Scotland) Act 2018, Section 1(1) against 'B'. 'A' later contacts 'B' in breach of these conditions of bail. No other criminal conduct is disclosed.

Record 1 crime of Breach of Bail.

Example 14

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

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38, Threatening or Abusive Behaviour (with Bail aggravation) (since a course of conduct under Section 1(1) has already been reported to the Procurator Fiscal any additional conduct should be recorded separately and cross referred to the initial report).

Example 15

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

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

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

Example 16

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

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

Example 17

'A' and 'B' are ex-partners. 'B' reports being confronted by 'A' in the street and being shouted and sworn at on date 1 (pre legislation) and on date 2 (post legislation). 'B' also reports receiving abusive text messages from 'A' (post legislation).

Record 1 criminal Justice and Licensing (Scotland) Act 2010, Section 38, Threatening or Abusive Behaviour (pre legislation).

Record 1 Domestic Abuse (Scotland) Act 2018, Section 1(1), (post legislation). Note that conduct occurring prior to the introduction of Domestic Abuse (Scotland) Act 2018 cannot be included within a Section 1(1) course of conduct.

Note(s)

- All three conditions under Section 1 must be met for the offence to have been committed.
- A course of behaviour must involve behaviour on at least two occasions so single incidents of abuse are not covered but may be under other legislation.
- The commission of an offence under Section 1(1) does not depend on the course of behaviour actually causing B to suffer harm of the sort mentioned in section 1(2).

- Behaviour which is not "directed at" a person is not covered by this provision; this ensures that where e.g. a person has an affair with a third party, which may cause their partner to be humiliated, this does not directly fall within the scope of the offence.
- In circumstances where an accused who has been reported to the Procurator Fiscal for a course of conduct of Domestic Abuse commits a further crime against the same victim, this amounts to a separate crime and should not be included within the course of conduct already reported; should more than one crime be committed this will amount to a second course of conduct.
- If conditions of Bail/Undertaking etc. are breached where no criminality occurs, a breach of Bail/Undertaking etc. should be recorded; if a crime is committed while breaching these conditions the substantive crime will be recorded and the breach of the condition shown as an aggravation.

11/005 Assault (Drugging)

General rule: One crime for each victim

Definition

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

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

Victim/Complainer

Person drugged.

Locus

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

Scenario example(s)

Example 1

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

Record 2 crimes of Assault (with Drugging offence modifier).

Example 2

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

Record 2 crimes of Assault (with Drugging offence modifier).

Example 3

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

Record 1 crime of Assault (with Drugging offence modifier).

Example 4

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

Record 1 crime of Assault (with Drugging offence modifier).

Example 5

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

Record 1 crime of Common Assault.

Note(s)

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

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

7/000 Extortion

General rule: One crime for each victim/business and continuity of action

Definition

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

Victim/Complainer

Person threatened.

Locus

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

Scenario example(s)

Example 1

Shop owner being forced to pay monthly payments for 'protection' of his shop.

Record 1 crime of Extortion.

Example 2

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

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

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 34, Communicating indecently with an older child.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 33, Causing an Older Child to look at a Sexual Image.

Record 1 crime of Abusive Behaviour and Sexual Harm, Section 2 – threat to disclose an intimate image.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 4, Sexual Coercion (no consent).

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

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 34, Communicating indecently with an older child.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 4 (Sexual Coercion if non-consensual, otherwise Section 31).

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 36, Voyeurism (in respect of the taking of the photographs without consent).

Record 1 crime of Abusive Behaviour and Sexual Harm, Section 2 – threat to disclose an intimate image.

Example 3

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

Record 1 crime of Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 – Threat to disclose an intimate image.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Rape.

Example 4

Two adults ('A' and 'B') engage in consensual sexual conversation over social media during which each willingly sends the other naked images of themselves. The following week 'A' receives a message from 'B' threatening to circulate the naked images if 'A' does not send money to a specified bank account. 'A' sends the money.

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

Example 5

'A' contacts 'B' on social media stating that they will disclose certain information from 'B's past unless 'B' performs a sexual act on webcam. 'B' complies and 'A' records the act outwith the knowledge of 'B'. 'A' later distributes the image of 'B' on social media.

Record 1 crime of Extortion (which incorporates 'B' being caused to participate in a sexual act).

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 9, Voyeurism (for recording the act).

Record 1 crime of Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 for distributing the intimate image.

Example 6

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

Record 1 crime of Communications Act 2003, Section 127 (Sexual) – if no explicit communication content; Sexual Offences (Scotland) Act 2009, Section 7 – if explicit communication (as the threat is not real and deliverable and the complainer does not think there is any real likelihood the threat would or could be carried out, an Attempt Extortion would not be applicable).

Note(s)

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

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

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

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

11/001 Firearms Act 1968, Sections 16-18[↑]

General rule: One crime for each firearm

Definition

Section 16 – Possession of a Firearm with Intent to Injure

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

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

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

- (a) by means thereof to cause, or
- (b) to enable another person by means thereof to cause,

any person to believe that unlawful violence will be used against him or another person.

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

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

Section 18 – Carrying a Firearm with Criminal Intent

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

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

'A' is found in possession of two loaded firearms with intent to endanger life.

Record 2 crimes of Firearms Act 1968, Section 16,

Example 2

'A' is found in possession of two loaded guns and 'B' has one loaded gun, with intent to injure.

Record 3 crimes of Firearms Act 1968, Section 16.

Example 3

Person enters a shop with a firearm and makes off with the shop takings.

Record 1 crime of Robbery.

Record 1 crime of Firearms Act 1968, Section 17(2) and (5) - Possess firearm while committing offence in Schedule 2 (see Notes).

Example 4

Person enters a taxi with a firearm, points the weapon at the driver and demands to be taken to a specified locus which the driver complies with.

Record 1 crime of Abduction.

Record 1 crime of Firearms Act 1968, Section 17(2) and (5) - Possess firearm while committing offence in Schedule 2.

Example 5

Person armed with a shotgun aims and fires the weapon at a moving motor vehicle which has one occupant.

Record 1 crime of Attempted Murder.

Record 1 crime of Firearms Act 1968, Section 17(2) and (5) - Possess firearm while committing offence in Schedule 2.

Note(s)

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

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

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

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

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

**11/009 Forced Marriage
Antisocial Behaviour, Crime And Policing Act 2
014, Section 122[↑]**

**General rule: One crime for each accused or
group of accused if acting together**

Definition

Section 122 - Offence of Forced Marriage: Scotland

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

Victim/Complainer

Person who suffers violence, threats or other coercion.

Locus

Where violence, threats or coercion takes place.

Scenario example(s)

Example 1

Person is threatened on two occasions by telephone, on another two occasions in person, and is assaulted (minor injury) for the purpose of coercing them to enter into a marriage.

Record 1 crime of Anti-social Behaviour, Crime and Policing Act 2014,
Section 122 Forced Marriage.

Record 1 crime of Common Assault.

Note(s)

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

**11/010 Slavery Or Forced Labour
Human Trafficking and Exploitation (Scotland)
Act 2015, Sections 1 and 4[↑]**

**General rule: Section 1 – one crime for each
accused (unless acting together),
Section 4 – one crime for each
victim**

Definition

Section 1 - Offence of Human Trafficking

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

Section 4 - Slavery, servitude and forced or compulsory labour

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

Victim/Complainer

Procurator Fiscal.

Locus

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

Crime recording principles

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

- Person trafficked for purpose of prostitution - record Human Trafficking offence only;
- Person trafficked for the purpose of prostitution and evidence of actual procurement - record Human Trafficking offence plus Criminal Law (Consolidation) (Scotland) Act 1995, Section 7, Procure;
- Person trafficked for the purpose of prostitution, procured and evidence of sexual offences - record Human Trafficking offence plus Criminal Law (Consolidation) (Scotland) Act 1995, Section 7, Procure and relevant offence(s) under Sexual Offences (Scotland) Act 2009;
- Person trafficked for purpose of being a victim of a sexual offence where no sexual offence occurs - record Human Trafficking offence only; and
- Person trafficked for purpose of being a victim of a sexual offence where sexual offences occur - Human Trafficking offence plus relevant offences(s) under Sexual Offences (Scotland) Act 2009.

Scenario example(s)

Example 1

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

Record 1 crime of Human Trafficking and Exploitation (Scotland) Act 2015, Section 1.

Example 2

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

Record 1 crime of Human Trafficking and Exploitation (Scotland) Act 2015, Section 1.

Example 3

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

Record 2 crimes of Human Trafficking and Exploitation (Scotland) Act 2015, Section 1 (one crime for each victim).

Example 4

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

Record 1 crime of Human Trafficking and Exploitation (Scotland) Act 2015, Section 1.

Example 5

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

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

Example 6

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

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

Example 7

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

Record crime with a locus within Division 'Z'.

Note(s)

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

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

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

Example 8

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

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

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

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

General rule: One crime for each victim

Definition

Section 1 - Offence of Human Trafficking

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

Victim/Complainer

Procurator Fiscal.

Locus

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

Note(s)

None.

1/000 Murder**General rule: One crime for each victim****Definition**

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

Victim

Deceased (victim)/Procurator Fiscal (complainer).

Locus

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

Scenario example(s)**Example 1**

'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 four people escaping unhurt.

Record 10 crimes of Murder.
Record 19 crimes of Attempted Murder.

Example 2

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

Record 1 crime of Murder.
Record 1 crime of Robbery.
Record 1 crime of Firearms Act 1968, Section 17(2) and (5) for possessing a firearm while committing an offence in Schedule 2.

Example 3

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

Record 1 crime of Murder.
Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1 Rape.

Example 4

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

Record 3 crimes of Murder.

Example 5

Four persons are discovered murdered at the same address.

.Record 4 crimes of Murder.

Note(s)

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.

6/000 Robbery And Assault With Intent To Rob

General rule: One crime for each victim

Definition

When person(s) has/have been physically assaulted, or verbally threatened or weapons have been presented or used, in order to gain or attempt to gain property.

Victim/Complainer

Person(s) robbed/attempted to be robbed.

Locus

Where crime takes place or where instigated.

Scenario example(s)

Example 1

Person enters a shop in possession of a weapon and presents it at the members of staff and other customers and demands money, which is handed over by staff.

Record 1 crime of Robbery.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 47 or Section 49 (Possession of offensive weapon/bladed article used in commission of a crime if committed in a public place, school or prison).

Example 2

A person presents a weapon to two people and threatens violence. Robs one person of clothing and the other of money.

Record 2 crimes of Robbery.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 47 or Section 49 (Possession of offensive weapon/bladed article used in commission of a crime if committed in a public place, school or prison).

Example 3

'A' punches and kicks 'B' demanding money. 'B' resists and fights off 'A'. 'A' flees empty handed. 'B' has a fractured cheek bone.

Record 1 crime of Assault with intent to Rob.

Example 4

'A' enters bank, pointing a gun at the cashier, demands and receives money from the cash drawer then robs four persons in the bank of personal property.

Record 5 crimes of Robbery.

Record 1 crime of Firearms Act 1968, Section 17(2) and (5) - Possess firearm while committing offence in Schedule 2.

Example 5

Three persons enter unlocked dwelling armed with baseball bats, One rounds up the occupants and temporarily confines them to the kitchen area while the others ransack the house and steal property belonging to all occupants of the household.

The confinement ends when the suspects leave the house with the stolen property. No person is injured.

Record 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 6

'A' presents a gun at 'B' and robs him of money. Before making off 'A' shoots 'B' narrowly missing vital organs. 'A' survives.

Record 1 crime of Robbery.

Record 1 crime of Attempted Murder.

Record 1 crime of Firearms Act 1968, Section 17(2) and (5) - Possess firearm while committing offence in Schedule 2.

Example 7

Masked and armed offenders enter a dwelling and,

(a) 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.

Record 1 crime of Assault with intent to Rob (father).

Record 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.

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

Example 8

Shop assistant is walking down the road on 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.

Record 1 crime of Robbery (shop owner is additional complainer who own the shop takings).

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 47 or Section 49 (Possession of offensive weapon/bladed article used in commission of a crime if committed in a public place, school or prison).

Example 9

'A' enters shop and threatens shop assistant with broken bottle, thereafter reaches behind counter and steals cigarettes owned by the shop and a mobile phone owned by the shop assistant.

Record 1 crime of Robbery (the shop owners are the additional complainers for the cigarettes).

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 47 or Section 49 (Possession of offensive weapon/bladed article used in commission of a crime if committed in a public place, school or prison).

Example 10

'A' grabs handbag from shoulder of 'B', 'B' holds on to the straps pulling the handbag back towards them while 'A' continues to pull on the handbag. 'B' screams loudly and 'A' runs off without the handbag.

Record 1 crime of Attempted Robbery (struggle is sufficient violence to justify recording Attempted Robbery).

Example 11

'A' is holding their mobile phone in their hand when 'B' snatches the phone from their hand and runs off.

Record 1 crime of Theft.

Example 12

'A' is holding their mobile phone in their hand when 'B' snatches the phone from their hand and runs off. 'A' runs after 'B' and is assaulted in an attempt to regain his mobile phone.

Record 1 crime of Theft.

Record 1 crime of Assault (in this example the Theft is complete before the Assault occurs).

Example 13

While 'A' is being assaulted by 'B' their wallet falls out of their pocket.

(a) 'B' stops the attack on seeing the wallet, picks up the wallet and runs off.

Record 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).

(b) 'B' stops the attack and runs off, returns shortly thereafter, picking up the wallet from the ground and makes off.

Record 1 crime of Assault.

Record 1 crime of Theft (the circumstances indicate the attack on 'A' was complete and the theft occurred as an afterthought). Where it is unclear at which point property was stolen, when no other reason can be established for the assault, then Robbery must be recorded.

Example 14

'A' deliberately knocks 'B' off his pedal cycle and while 'B' is lying on the ground 'A' makes off with the pedal cycle.

Record 1 crime of Robbery.

Example 15

'A' approaches 'B' late at night in a dark alley and is asked to hand over their mobile phone without any specific threat of violence being made. 'A' hands over their phone to 'B' who runs off.

Record 1 crime of Robbery. (In these circumstances a refusal to comply is likely to be met with violence so that the threat of it can be readily implied.

The behaviour of the suspect has given rise to fear or alarm in the victim as to the consequences of refusing to comply.)

Example 16

'A' and 'B' are partners who reside together. Whilst within their home 'A' assaults 'B'. 'A' then forces mobile phone out of 'B's' hand when 'B' tries to call police. The mobile phone does not leave the property and is returned to 'B' when the situation has calmed down.

Record 1 crime of Assault. (In circumstances which might otherwise amount to Robbery, in a domestic situation such as where a mobile phone is taken by force in the home for the sole purpose of preventing it's owner from contacting police or for examining its contents, where the phone is returned to the owner a short time later never having left the home, it should be taken into consideration that taking possession of the phone for these or similar purposes amounts to behaviour of a controlling nature which may form part of a course of conduct of Domestic Abuse. If the mobile phone was not returned to the owner or was taken outwith the home this would amount to Robbery. This example is included as a guide only and each circumstance must be assessed on its own merit.)

Example 17

'A' steals property belonging to 'B'. 'B' later assaults 'A' and retrieves their property.

Record 1 crime of Theft (against complainer 'B').
Record 1 crime of Assault (against complainer 'A').

Note that whilst the property was obtained from 'A' following an act of violence this was not obtained feloniously since 'B' was the rightful owner.

Example 18

'A' attends at the home address of 'B', kicks the door, shouting and swearing demanding they answer the door. 'B' advises they are phoning the police at which point 'A' kicks the door open to find 'B' standing with a mobile phone in their hand. 'A' grabs hold of 'B' pulling the phone from their hand and leaves the locus with the phone.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 (conduct was complete before 'robbery' and nothing to indicate intent was to commit the 'robbery').
Record 1 crime of Robbery.

Note(s)

Violence is an essential accompaniment of robbery but the violence may be constructive and need not take the form of actual physical assault. It is sufficient if the owner is compelled to submit to the appropriation of his property under fear of immediate personal injury. Thus, the mere display of force, whether by weapons, menaces or threats, reasonably calculated to intimidate and overawe, is violence within the meaning of the law.

Behaviour which alarms or intimidates an individual for the personal and immediate consequences of resistance or refusal is sufficient to amount to robbery.

If the violence consists of menaces only, the threat must be of present personal injury: the crime is not robbery if the threat is of some future evil which may possibly be averted.

The felonious appropriation of property, by violence or threats of violence within the victim's home, or by a mob to the alarm of the lieges, is an aggravation of robbery.

If articles are moved from the position in which they are ordinarily placed, and the owner is either forcibly restrained or intimidated from interfering, the crime is robbery, although the articles are not taken out of the room or place where they are kept.

The appropriation of an article, by a sudden snatch or pull, constitutes robbery, when it is accomplished by personal violence.

If, during an assault, not perpetrated from any dishonest motive, the assailant forms the intent of appropriating the property of his victim and does so, or where violence is not intended by a thief, but results from the resistance put up by the owner endeavouring to retain his property, robbery is committed. It is not robbery for a thief, with the stolen property in his possession, forcibly to prevent the owner from regaining (recovering) it.

For ease of reference, where the thief is already in possession of the property and the complainant is assaulted when trying to REGAIN their property, theft and assault is relevant. Where the complainant is trying to RETAIN their property and is assaulted/threatened, Robbery is relevant.

If no other motive for committing an assault can be established, and property is taken, the default crime will be Robbery.

**4/000 Assault – Serious
Common Law, 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 - meaning the breaking or cracking of a bone (note: the 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; or
- any other injury which may lead to impairment or disfigurement.

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

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

Note(s)

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

The term "sutures or equivalent" includes any surgical body tissue closure technique such as stitches, staples, glue. If a laceration is closed using such a technique there will be a presumption of resultant permanent scarring unless a

medical practitioner confirms otherwise. If it is considered that a laceration requiring a skin closure technique does not amount to disfigurement the full rationale must be updated on the crime report together with details of the medical practitioner who confirms that the laceration is unlikely to lead to permanent scarring.

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

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

Victim/Complainer

Person assaulted.

Locus

Where crime takes place.

Scenario example(s)

Example 1

'A' is assaulted by 'B' with a baseball bat, resulting in him being detained in hospital for his injuries.

Record 1 crime of Serious Assault.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 47 for possession of an offensive weapon used in the commission of a crime if occurring in a public place, school (Section 49) or prison.

Example 2

An ambulance worker is seriously assaulted by 'A' who they are treating for their injuries.

Record 1 crime of Serious Assault (the crime record should identify the victim to be an emergency worker).

Example 3

'A' assaults 'B' and 'C', both on duty serving police officers, by punching them on the face. 'B' sustains a fractured cheek bone, while 'C' sustains a broken nose.

Record 2 crimes of Police and Fire Reform (Scotland) Act 2012, Section 90(1) (a) – one for Serious Assault (fractured cheek bone) and one for Common Assault (broken nose).

Example 4

Two persons engage in a stand up fight in where one is seriously injured.

Record 1 crime of Serious Assault. (If no person sustains serious injury recording Section 38 (Threatening or Abusive Behaviour) could be considered if it can be shown that persons were caused fear or alarm as a result of the conduct.)

Example 5

'A' knowing that they have tested positive for HIV, has unprotected sexual intercourse with 'B' with the intention of infecting 'B', and 'B' becomes infected.

Record 1 crime of Serious Assault.

Example 6

'A' reports being assaulted on numerous occasions at the same locus by the same suspect and sustained injuries from one of the assaults which amounted to Serious Assault although specific dates of these attacks are not known.

Record 1 crime of Serious Assault.

Record 1 crime of Common Assault (different crime classifications).

Example 7

'A' in the knowledge that they have tested positive for HIV has unprotected sexual intercourse with 'B' resulting in 'B' contracting the HIV virus.

Record 1 crime of Culpable and Reckless Conduct (no evidence of intent to cause harm but evidence that indicates criminal recklessness).

Example 8

A pregnant female is kicked to the stomach during an assault resulting in a miscarriage. A doctor confirms the miscarriage was caused by the assault.

Record 1 crime of Serious Assault.

Note(s)

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

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

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

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

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

Hamesucken

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

Emergency Workers Act

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

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

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

7/000 Threats (Common Law)

General rule: One crime for each victim and continuity of action or per incident (as appropriate)

Definition

Threats, whether verbal or written, are criminal if they menace some substantial injury to the recipient or to his property and the threat is perceived as real and deliverable.

Note(s)

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 Offence:-

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

Victim/Complainer

Person threatened.

Locus

Where threat was made from, if known, otherwise where threat was received.

Scenario example(s)

Example 1

'A' receives two letters threatening their 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.

Record 1 crime of Threats.

Example 2

Telephoning complainer and threatening to kill them and their children. The suspect has seriously assaulted the complainer on a previous occasion and she believes he is more than capable of carrying out this threat.

Record 1 crime of Threats (this should not be recorded under the Communications Act 2003, Section 127).

Example 3

Calling at house, threatening complainer or they will burn their house down. Complainer knows the suspect and does not believe they will see this threat through.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 – Threatening or Abusive Behaviour.

Example 4

'A' is the estranged husband of 'B'. 'A' sends 'B' a letter saying he will kill 'A' and 'C', their 3 year old child, if 'A' does not give him weekly access to 'C'. 'A' has seriously assaulted 'B' before and the threat is considered real.

Record 1 crime of Threats (child was not recipient, she is too young to identify whether threat is real and deliverable).

Example 5

Over a one month period 'A' receives a number of threats on their life from various members of their family, several members of which have extensive history of violence towards other family members.

Record 1 crime of Threats (although received from various members of their family the circumstances indicate they are 'acting together'). If no evidence of imminent or grave threat to life record as 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 – Threatening or Abusive Behaviour.

Example 6

A celebrity receives three threatening letters from unknown sources threatening their life.

Record 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.

Note(s)

Where the threat is contained in a letter (whether signed or not), the crime is complete when the letter is dispatched, even although it does not reach the person for whom it is intended.

There is no requirement to wait for multiple calls to be made to prove a course of action. Where there is sufficient evidence to prove one call a crime record may be raised.

Group 2 – Sexual Crimes

Introduction

Sexual Offences (Scotland) Act 2009

The Sexual Offences (Scotland) Act 2009 has come about as the result of widespread media and academic criticism of the current law in Scotland surrounding rape and other sexual offences, particularly the gender specific nature of the common law offence of rape.

The Bill was introduced to the Scottish Parliament on 17 June 2008, incorporating the majority of recommendations which had been made by the Scottish Law Commission. It was passed on 10 June 2009 and implemented on 1 December 2010.

The Act repeals a number of common law crimes including rape, clandestine injury to women and sodomy. It also creates a number of new statutory sexual offences. The Act provides a statutory description of consent, which is defined as 'free agreement' and provides a non-exhaustive list of factual circumstances during which consent will be deemed to be absent.

The Act creates a number of new 'protective' offences, which criminalise sexual activity with children and mentally disordered persons. Protective offences are placed into categories concerning young children (under 13) and older children (13-15).

There are offences of 'abuse of position of trust' for a person in such a position over a child or person with a mental disorder, to participate in sexual activity with that person. Whilst the Scottish Law Commission recognised that there are currently statutory offences in place, it recommended that they be consolidated into a single Act on sexual offences rather than continuing in the current rather piecemeal fashion. In doing this, it has also been possible to address inconsistencies with the current law.

Consent

The Act now provides that consent is to be defined as 'free agreement'. The reason for this definition is that it captures those circumstances where consent may be given but because of violence or threat, consent in these circumstances would not be freely given.

In addition to this definition, the Act provides a non-exhaustive list of situations or 'statutory indicators' where consent or 'free agreement' will be deemed to be absent. It does not imply that there will be consent in those situations which are not listed.

If the prosecution provide that one of these factual situations apply then this will suffice to prove that consent was not given.

Circumstances in which conduct takes place without free agreement:

- where the conduct occurs at a time when B is incapable of consenting to it because of the effect of alcohol or any other substance;
- where B agrees or submits to the conduct because of violence used against B or any other person, or because of threats of violence made against B or any other person;

- where B agrees or submits to the conduct because B is unlawfully detained by A;
- where B agrees or submits to the conduct because B is mistaken, as a result of deception by A, as to the nature or purpose of the conduct;
- where B agrees or submits to the conduct because A induces B to agree to submit to the conduct by impersonating a person known personally to B;
- where the only expression or indication of agreement to the conduct is from a person other than B; or
- where B is asleep or unconscious.

Section 15 of the Act also clarifies the position where consent is given then subsequently withdrawn. It states the following:-

- Consent to conduct does not itself imply consent to any other conduct.
- Consent to conduct may be withdrawn at any time before, or in the case of continuing conduct, during the conduct.
- If the conduct takes place, or continues to take place, after consent has been withdrawn, it takes place, or continues to take place, without consent.

Stealthing

Non-consensual condom removal, or "stealthing", is the practice of a man covertly removing or damaging a condom during sexual intercourse, when his sex partner has only consented to condom-protected sex. These reports should initially be recorded as Rape (Sexual Offences (Scotland) Act 2009, Section 1) pending further enquiry

Attempt at Crime - Criminal Procedure (Scotland) Act 1995, Section 294

The above means that any attempt to commit a crime under the 2009 Act is in itself a crime.

Compound crimes

The Crown Office has advised that where conduct falls within that outlined within Sections 1, 2 and 3 of the Sexual Offences (Scotland) Act 2009 which relates to adults and, similarly 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 must outline the full details of the conduct.

Interpretation

Section 60 of the Sexual Offences (Scotland) Act 2009 provides that:

For the purposes of this Act:

- (a) penetration, touching, or any other activity,
- (b) a communication,
- (c) a manner of exposure, or
- (d) a relationship,

is sexual if a reasonable person would, in all the circumstances of the case, consider it to be sexual.

Incidents involving mixed age groups

Where a mixed age group is present in relation to,

- Coercing/Causing a Person/Young Child/Older Child to Look at a Sexual Image
- Causing a Person to See or Hear an Indecent Communication
- Communicating Indecently

the offence relating to the lowest age group present only should be recorded, as this is the most serious.

Where a mixed age group is present in relation to,

- Sexual Exposure
- Voyeurism

if it cannot be evidenced that the conduct was directed towards a specific age group, then the offence relating to the lowest age group present should be recorded.

Counting rules

Any offence, which has occurred prior to 1 December 2010 should be recorded in line with the appropriate legislation in place at that time. Should the conduct have occurred prior to and after 1 December 2010 the appropriate offence(s) under the old and new legislation must be recorded.

Acting for purposes of Sexual Gratification or to Humiliate, Alarm or Distress

There is no requirement to prove someone was in fact humiliated, distressed or alarmed or provide corroboration. If it can reasonably be inferred that the accused acted so as to obtain sexual gratification, or to humiliate, distress or alarm the person that is sufficient. Whether the person was in fact humiliated, distressed or alarmed is irrelevant.

Recording/reporting of rape

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

A Standard Prosecution Report 2 (SPR2) libelling a charge of Rape should be submitted to the Procurator Fiscal detailing the full circumstances for their consideration. The Rape crime report will be shown as detected in these circumstances. Whilst the accused may be charged with Attempted Rape or Assault with intent to Rape due to the evidence available, the "Remarks" section of the Standard Prosecution Report should provide an explanation as to why the charge being libelled on the front page of the Standard Prosecution Report is one of Rape. The following has been agreed by Crown Office and Procurator Fiscal Service and must be added to the "Remarks" section of an SPR2 for cases where Rape is libelled but it is considered there is only a sufficiency of evidence to report Attempted Rape or Assault with intent to Rape:

“A charge of Rape has been libelled within this SPR2 to reflect the crime reported by the victim. The circumstances have been fully investigated and it is considered that, despite significant and sufficient evidence in respect of the other essential evidential elements there is insufficient evidence to prove

penetration. On this occasion, the Accused has been charged with Attempted Rape/Assault With Intent to Rape (as appropriate).”

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

Medical Updates/No Crime

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

Sexual Activity involving Children

Where parties involved in sexual activity are children (i.e. below the age of 16 years), whilst partner agency liaison may be the chosen route to address the behaviour, this does not negate the requirement to record the appropriate crime(s).

Persons Purporting to be Older/Younger

Where a young child/older child purports to be older/younger than they are, the appropriate Section of the Act should relate to the actual age of the child and not the age they purport to be.

Where someone purports to be a young/older child for the purpose of enticing someone to carry out sexual activity and the individual being enticed believes they are doing so with a young/older child, this is sufficient to record an attempt to commit the relevant offence with the appropriate Section being the age the person purports to be.

Offences committed outside the United Kingdom

Section 55(1) of Sexual Offences (Scotland) Act 2009 (SOSA) provides that if a UK national does an act in a country outside the United Kingdom which would, if it had been done in Scotland, constitute a "listed offence" then the UK national commits that offence.

Part 2 of Schedule 4 of SOSA defines a "listed offence" as:

- an offence under Part 1 of SOSA against a person under the age of 18 (SOSA Sections 1 to 11);
- an offence under Part 4 of SOSA (SOSA Sections 18 to 26 committed against young children);
- sexual abuse of trust (SOSA Section 42);
- sexual abuse of trust of a mentally disordered person (SOSA Section 46) where the mentally disordered person is under the age of 18;
- indecent assault of a person under the age of 18;
- an offence under Section 52 or 52A of Civic Government (Scotland) Act 1982;
- an offence under Sections 9 to 12 of Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005;
- conspiracy or incitement to commit any offence specified above; or

- an offence under Section 293(2) of Criminal Procedure (Scotland) Act 1995 (aiding and abetting the commission of a statutory offence) relating to any statutory offence specified above.

In these circumstances a crime should be recorded and marked as being external to Police Scotland.

Legislation effective dates

The following table provides details of historic statutory sexual crimes and crimes at common law and the effective dates of the relevant legislation:

Act	Section	Applicable From	Applicable To
Criminal Law Amendment Act 1885 - intercourse girl under 13	4	Passed 14/8/1885	14/12/1976
Criminal Law Amendment Act 1885 - intercourse with girl under 16	5	Passed 14/8/1886	14/12/1976
Sexual Offences (Scotland) Act 1976 - intercourse with girl under 13	3(1)	15/12/1976	30/03/1996
Sexual Offences (Scotland) Act 1976 - attempt intercourse with girl under 13	3(2)	15/12/1976	30/03/1996
Sexual Offences (Scotland) Act 1976 - intercourse with girl 13-16	4(1)	15/12/1976	30/03/1996
Criminal Law (Consolidation) (Scotland) Act 1995 - intercourse girl under 13	5(1)	01/04/1996	30/11/2010
Criminal Law (Consolidation) (Scotland) Act 1995 - Attempt intercourse girl under 13	5(2)	01/04/1996	30/11/2010
Criminal Law (Consolidation) (Scotland) Act 1995 - intercourse with girl 13-16	5(3)	01/04/1996	30/11/2010
Sodomy			30/11/2010
Rape			30/11/2010
Criminal Law (Amendment) Act 1922 - lewd and lib girl between 12-16	4	04/08/1922	14/12/1976
Sexual Offences (Scotland) Act 1976 - lewd and lib girl between 12 and 16	5	15/12/1976	01/04/1996
Lewd, Indecent and Libidinous Practices and Behaviour - Boys under 14 and girls under 12 years of age			30/11/2010
Criminal Law (Consolidation) (Scotland) Act 1995 - Girl between 12 and 16	6	01/04/1996	30/11/2010

Rules for recording non recent crimes

Where specific dates and/or loci are individually identified and can be evidenced, a separate crime 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. If crimes are committed against a child they will be recorded in accordance with any age specific legislation relevant to the age of the child at given points during the time period specified.

Scenario example(s)

Where specific dates are known

Example 1

Victim reports being raped on six occasions at same locus. Specific dates are known (all after December 2010).

Record 6 crimes of Sexual Offences (Scotland) Act 2009, Section 1, Rape.

Example 2

Victim reports being raped on six occasions and on three separate occasions had been subjected to sexual assaults, all at the same locus. Specific dates are known (all after December 2010).

Record 6 crimes of Sexual Offences (Scotland) Act 2009, Section 1, Rape.
Record 3 crimes of Sexual Offences (Scotland) Act 2009, Section 3, Sexual Assault.

Example 3

Victim reports being raped on six occasions, all at the same locus. Dates of four of the rapes are not known but the victim can be specific about two of the dates (all after December 2010).

Record 3 crimes of Sexual Offences (Scotland) Act 2009, Section 1, Rape (1 crime for between dates, 2 crimes for specific dates).

Different loci

Example 4

Victim reports being raped on six occasions at locus 1 and on three occasions at locus 2. Specific dates are not known (all after December 2010).

Record 2 crimes of Sexual Offences (Scotland) Act 2009, Section 1, Rape (crime for each locus).

Example 5

Victim reports being raped on three occasions at locus 1 and on three occasions at locus 2. Specific dates are known for the rapes at locus 2 (all after December 2010).

Record 4 crimes of Sexual Offences (Scotland) Act 2009, Section 1, Rape (1 crime for locus 1, 3 crimes for locus 2).

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

Example 6

Victim reports being raped on six occasions at the same locus. Specific dates are not known but the victim advises three of the rapes occurred prior to 1 December 2010.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Rape.
Record 1 crime of Rape (Common Law).

Various offences over a period of time**Example 7**

Victim reports being assaulted on numerous occasions at locus 1, raped on two occasions and assaulted on numerous occasions at locus 2. During one of the assaults at locus 2 the victim sustained a broken arm which is confirmed by medical records. No rape occurred on this occasion. Other than the broken arm specific dates are not known (all after December 2010).

Record 1 crime of Common Assault (Locus 1).
Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1 Rape (Locus 2).
Record 1 crime of Serious Assault (Locus 2).
Record 1 crime of Common Assault (Locus 2).

Example 8

Victim reports being assaulted on numerous occasions at the same locus and sustained injuries from one of the assaults which amounted to Serious Assault although specific dates of these attacks are not known.

Record 1 crime of Serious Assault.
Record 1 crime of Common Assault (different crime classifications).

Example 9

Victim reports being raped on two occasions and on another occasion digitally penetrated, all at the same locus (all after December 2010).

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Rape.
Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 2, Sexual Assault by penetration.

Example 10

Victim reports being assaulted on numerous occasions, and raped once over a period of time encompassing a date range both before and after 1 December 2010. All crimes occurred at the same locus but no specific dates are known.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Rape.
Record 1 crime of Common Assault.

Single crime occurs during time period covered by different legislation**Example 11**

Female reports being raped on a single occasion where she is unsure of the date but advises that it was sometime between 2009 and 2012. The victim turned 13 in November 2011.

Had this been a course of conduct where the victim was raped on several occasions between date one and date two we would have recorded:

- January 2009 to December 2010 – 1 Common Law Rape.
- December 2010 to November 2011 (13th birthday) – 1 Sexual Offences (Scotland) Act 2009, Section 18, Rape of Young Child.
- November 2011 to December 2012 – 1 Sexual Offences (Scotland) Act 2009, Section 1, Rape.

Given that the victim was raped only once, only one crime should be recorded. This should be based on the legislation/common law in place when "on the balance of probability" the crime is more likely to have occurred. If still unable to determine using the "balance of probability" record on the basis of the legislation/common law pertaining to the youngest age. In the example above if unable to determine a timeframe a Common Law Rape should be recorded.

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.

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	<p>Includes Male and Female</p> <p>Covers penetration of Vagina, Anus and Mouth</p> <p>Section 1(1) – Adult and Older Child (aged 13-15 years – where no consent)</p> <p>Section 18 – Young Child (below 13 years) – irrelevant whether consent given</p> <p>Section 28 – Older Child (aged 13-15 years) – if no consent Section 1(1) will apply.</p>	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	<p>Includes Male and Female</p> <p>Covers penetration of Vagina and Anus</p> <p>This will cover situations where the complainer knows they have been penetrated however they cannot say what penetrated them.</p> <p>Section 2(1) – Adult and Older Child (aged 13-15 years - where no consent)</p> <p>Section 19 – Young Child (below 13 years) – irrelevant whether consent given</p> <p>Section 29 – Older Child (aged 13-15 years) – if no consent Section 2 will apply</p>	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
Sexual Assault	Section 3(1) Section 20 Section 30	<p>Covers touching sexually, sexual activity with physical consent, ejaculates semen, emits urine or saliva (sexually), penetrates sexually.</p> <p>Indecent assault, although not repealed, is still available for behaviour falling outwith definition of Sexual Assault.</p> <p>If evidence victim subjected to penile penetration, sexual assault should not be recorded.</p> <p>Section 3(1) – Adult and Older Child (aged 13-15 years - where no consent)</p> <p>Section 20 – Young Child (below 13 years) – irrelevant whether consent given</p> <p>Section 30 – Older Child (aged 13-15 years) – if no consent Section 3 will apply</p>	One crime for each victim and where specific dates and/or loci are identified separate crimes to be recorded.
Sexual Coercion, Causing a Young Child/Older Child to Participate in a Sexual Activity	Section 4 Section 21 Section 31	<p>Intentionally causes person to participate in sexual activity.</p> <p>Section 4 – Adult or Older Child (aged 13-15 years – where no consent)</p> <p>Section 21 – Young Child (below 13 years)</p> <p>Section 31 – Older Child (aged 13-15 years) – if no consent then Section 4 will apply</p>	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	<p>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.</p> <p>Section 5 – Adult or Older Child (aged 13-15 years – where no consent)</p> <p>Section 22 – Young Child (below 13 years)</p> <p>Section 32 – Older Child (aged 13-15 years) – if no consent then Section 5 will apply</p>	One Crime For Each Incident, Or, Course of Conduct.
Coercing/Causing a Person/Young Child/Older Child to Look at a Sexual Image	Section 6 Section 23 Section 33	<p>Intentionally causes a person to look at a sexual image for purpose of obtaining sexual gratification; humiliating, distressing or alarming.</p> <p>Section 6 – Adult or Older Child (aged 13-15 years – where no consent)</p> <p>Section 23 – Young Child (below 13 years)</p> <p>Section 33 – Older Child (aged 13-15 years) – if no consent then Section 6 will apply</p>	One Crime For Each Incident, Or, Course of Conduct.

Crime Type	Relevant Section of Act	Description	Counting Rule
Communicating Indecently	Section 7(1) Section 24(1) Section 34(1)	<p>Sexual communication whether written or verbal for purpose of obtaining sexual gratification; humiliating, distressing or alarming.</p> <p>Section 7(1) – Adult or Older Child (aged 13-15 years - where no consent)</p> <p>Section 24 (1) – Young Child (below 13 years)</p> <p>Section 34(1) – Older Child (aged 13-15 years) – if no consent Section 7(1) will apply</p>	One Crime For Each Victim and Continuity of Action or Per Incident (as appropriate).
Causing a Person to See or Hear an Indecent Communication	Section 7(2) Section 24(2) Section 34(2)	<p>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.</p> <p>Section 7(2) – Adult or Older Child (aged 13-15 years – where no consent)</p> <p>Section 24(2) – Young Child (below 13 years)</p> <p>Section 34(2) – Older Child (aged 13-15 years) – if no consent Section 7(2) will apply</p>	One Crime For Each Victim and Continuity of Action or Per Incident (as appropriate).

Crime Type	Relevant Section of Act	Description	Counting Rule
Sexual Exposure	Section 8 Section 25 Section 35	<p>Exposure of genitals, intentionally, in a sexual manner for obtaining sexual gratification; humiliating, distressing or alarming.</p> <p>Can be committed in private.</p> <p>Public Indecency remains. Where circumstances meet definition of Sexual Exposure, public indecency should not be recorded.</p> <p>Section 8 – Adult</p> <p>Section 25 – Young Child (below 13 years)</p> <p>Section 35 – Older Child (aged 13-15 years)</p>	One Crime For Each Incident or Course Of Conduct.
Voyeurism	Section 9 Section 26 Section 36	<p>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.</p> <p>Section 9 – Adult</p> <p>Section 26 – Young Child (aged below 13 years)</p> <p>Section 36 – Older Child (aged 13-15 years)</p>	One Crime For Each Incident or Course of Conduct.

Crime Type	Relevant Section of Act	Description	Counting Rule
Administering a Substance for Sexual Purposes	Section 11	Intentionally administers a substance to or causes a substance to be taken with purpose of stupefying or overpowering, to enable person to engage in a sexual activity.	One Crime for Each Victim.
Engaging while an Older Child in Sexual Conduct with or Towards Another Older Child	Section 37	Older child (aged 13-15 years) who engages in sexual conduct with another Older Child and Older Child who has consented to sexual conduct with another Older Child (includes penetration and touching). (If non consensual – rape, sexual assault by penetration or sexual assault relevant).	One Crime For Each Participant.
Sexual Abuse of Trust (Children)	Section 42	Person over 18 years, in a position of trust, intentionally engages in sexual activity with or directed towards person under 18 years.	One Crime For Each Victim.
Sexual Abuse of Trust of a Mentally 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 Crimes
Sexual Offences (Scotland) Act 2009

Crime	SGJD Code
Rape (Section 1(1))	14/001 to 14/004
Rape (Section 1(1)) (Attempt)	15/001 to 15/004
Rape of a Young Child (Section 18)	14/005 to 14/006
Rape of a Young Child (Section 18) (Attempt)	15/005 to 15/006
Having Intercourse with an Older Child (Section 28)	16/025 to 16/026
Sexual Assault by Penetration (Section 2(1))	16/001 to 16/004
Sexual Assault on a Young Child by Penetration (Section 19)	16/015 to 16/016
Engaging in Penetrative Sexual Activity with or towards an Older Child (Section 29)	16/027 to 16/028
Sexual Assault (Section 3(1))	16/005 to 16/008
Sexual Assault on a Young Child (Section 20)	16/017 to 16/018
Engaging in Sexual Activity with or towards an Older Child (Section 30)	16/029 to 16/030
Sexual Coercion (Section 4)	16/009 to 16/012
Causing a Young Child to Participate in Sexual Activity (Section 21)	16/019 to 16/020
Causing an Older Child to Participate in a Sexual Activity (Section 31)	16/031 to 16/032

Crime	SGJD Code
Coercing a Person into Being Present During a Sexual Activity (Section 5)	16/013
Causing a Young Child to be Present During a Sexual Activity (Section 22)	16/021
Causing an Older Child to be Present During a Sexual Activity (Section 32)	16/035
Coercing a Person into Looking at a Sexual Image (Section 6)	16/013
Causing a Young Child to Look at a Sexual Image (Section 23)	16/021
Causing an Older Child to Look at a Sexual Image (Section 33)	16/035
Communicating Indecently Etc. (Section 7(1))	16/014
Communicating Indecently with a Young Child Etc. (Section 24(1))	16/022
Communicating Indecently with an Older Child Etc. (Section 34(1))	16/036
Causing a Person to See or Hear an Indecent Communication (Section 7(2))	16/014
Causing a Young Child to See or Hear an Indecent Communication (Section 24(2))	16/022
Causing an Older Child to See or Hear an Indecent Communication (Section 34(2))	16/036
Sexual Exposure (Section 8)	17/003
Sexual Exposure to a Young Child (Section 25)	16/023

Crime	SGJD Code
Sexual Exposure to an Older Child (Section 35)	16/037
Voyeurism (Section 9)	17/004
Voyeurism Towards a Young Child (Section 26)	16/024
Voyeurism Towards an Older Child (Section 36)	16/038
Administering a Substance for Sexual Purposes (Section 11)	18/023
Engaging While An Older Child in Sexual Conduct with or Towards another Older Child (Section 37)	16/033 to 16/034
Sexual Abuse of Trust (Children) (Section 42)	18/019
Sexual Abuse of Trust of a Mentally Disordered Person (Section 46(1))	18/020

Other Sexual Crimes

Crime	SGJD Code
Abusive Behaviour and Sexual harm (Scotland) Act 2016 – Disclose or threaten to disclose intimate image or film	16/039 16/040
Assault (Indecent)	16/000
Bestiality	18/021
Civic Government (Scotland) Act 1982, Section 52 - Indecent images of children	18/018
Communications Act 2003, Section 127 (Sexual)	16/041
Incest	12/000
Procuration (Excluding Homosexual Acts)	18/001
Prostitution	18/010
Prostitution (Public Place)	18/017
Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005	18/014
Public Indecency	17/002

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 1 December 2010.)

Crime	SGJD Code
Assault with Intent to Rape	15/000
Homosexual Acts (Illegal)	13/001
Lewd, Indecent and Libidinous Practices	18/022
Person with Custody and Care of Girl or Other Causing her Seduction	18/008
Procuration of Homosexual Acts	18/012
Rape	14/000
Sexual Intercourse with Girl Under 13	18/002
Sexual Intercourse with Girl Under 16	18/003
Sodomy/Attempt Sodomy	13/001

Crime Code Breakdown – Sexual Offences (Scotland) Act 2009

Description	Coding	Section of Act
Rape – Male (16+)	14/001	1
Rape – Female (16+)	14/002	1
Rape – Male (13-15)	14/003	1
Rape – Female (13-15)	14/004	1
Rape – Male (under 13)	14/005	18
Rape – Female (under 13)	14/006	18
Assault with intent to Rape – Male (16+)	15/001	1
Assault with intent to Rape – Female (16+)	15/002	1
Assault with intent to Rape – Male (13-15)	15/003	1
Assault with intent to Rape – Female (13-15)	15/004	1
Assault with intent to Rape – Male (under 13)	15/005	18
Assault with intent to Rape – Female (under 13)	15/006	18
Intercourse with Older Child – Male (13-15) (Consensual)	16/025	28
Intercourse with Older Child – Female (13-15) (Consensual)	16/026	28
Sexual Assault by Penetration – Male (16+)	16/001	2
Sexual Assault by Penetration – Female (16+)	16/002	2
Sexual Assault by Penetration – Male (13-15)	16/003	2
Sexual Assault by Penetration – Female (13-15)	16/004	2
Sexual Assault by Penetration – Male (under 13)	16/015	19
Sexual Assault by Penetration – Female (under 13)	16/016	19
Penetrative Sexual Activity – Male (13-15) (Consensual)	16/027	29
Penetrative Sexual Activity – Female 13-15) (Consensual)	16/028	29
Sexual Assault – Male (16+)	16/005	3
Sexual Assault – Female (16+)	16/006	3
Sexual Assault – Male (13-15)	16/007	3
Sexual Assault – Female (13-15)	16/008	3
Sexual Assault – Male (under 13)	16/017	20
Sexual Assault – Female (under 13)	16/018	20
Sexual Activity – Male (13-15) (Consensual)	16/029	30
Sexual Activity – Female (13-15) (Consensual)	16/030	30

Description	Coding	Section of Act
Sexual Coercion – Male (16+)	16/009	4
Sexual Coercion – Female (16+)	16/010	4
Sexual Coercion – Male (13-15)	16/011	4
Sexual Coercion – Female (13-15)	16/012	4
Cause to Participate Sexual Activity – Male (under 13)	16/019	21
Cause to Participate Sexual Activity – Female (under 13)	16/020	21
Cause to Participate Sexual Activity – Male (13-15) (Consensual)	16/031	31
Cause to Participate Sexual Activity – Female (13-15) (Consensual)	16/032	31
Coerce into Being Present Sexual Activity – Male and Female (16+)	16/013	5
Coerce into Being Present Sexual Activity – Male and Female (13-15)	16/013	5
Cause to be Present Sexual Activity – Male and Female (under 13)	16/021	22
Cause to be Present Sexual Activity – Male and Female (13-15) (Consensual)	16/035	32
Coerce to Look at Sexual Image – Male and Female (16+)	16/013	6
Coerce to Look at Sexual Image – Male and Female (13-15)	16/013	6
Cause to Look at Sexual Image – Male and Female (under 13)	16/021	23
Cause to Look at Sexual Image – Male and Female (13-15) (Consensual)	16/035	33
Communicating Indecently – Male and Female (16+)	16/014	7(1)
Communicating Indecently – Male and Female (13-15)	16/014	7(1)
Communicating Indecently – Male and Female (under 13)	16/022	24(1)
Communicating Indecently – Male and Female (13-15) (Consensual)	16/036	34(1)
Cause See/Hear Indecent Communication – Male and Female (16+)	16/014	7(2)
Cause See/Hear Indecent Communication – Male and Female (13-15)	16/014	7(2)
Cause See/Hear Indecent Communication – Male and Female (under 13)	16/022	24(2)

Description	Coding	Section of Act
Cause See/Hear Indecent Communication – Male and Female (13-15) (Consensual)	16/036	34(2)
Sexual Exposure – Male and Female (16+)	17/003	8
Sexual Exposure – Male and Female (under 13)	16/023	25
Sexual Exposure – Male and Female (13-15)	16/037	35
Voyeurism – Male and Female (16+)	17/004	9
Voyeurism – Male and Female (below 13)	16/024	26
Voyeurism – Male and Female (13-15)	16/038	36
Administering a Substance for Sexual Purposes	18/023	11
Engaging while an Older Child in Sexual Conduct – Male	16/033	37(1)
Engaging while an Older Child in Sexual Conduct – Female	16/034	37(1)
Engaging while an Older Child in Consensual Sexual Conduct – Male	16/033	37(4)
Engaging while an Older Child in Consensual Sexual Conduct – Female	16/034	37(4)
Sexual Abuse of Trust (Children)	18/019	42
Sexual Abuse of Trust of a Mentally Disordered Person	18/020	46(1)

**Rape (Including Attempted Rape and Assault with Intent to Rape)
Sexual Offences (Scotland) Act 2009, Section 1(1)**

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.

Assault with Intent to Rape (Sexual Offences (Scotland) Act Section 1)

The accused physically and/or sexually assaults the complainer with the intention of penetrating his or her mouth/vagina/anus with his penis without his/her consent.

Attempted Rape (Sexual Offences (Scotland) Act Section 1)

The accused attempts to penetrate the vagina/anus/mouth of the complainer with his penis without the complainer’s consent and the accused had no reasonable belief that the complainer was consenting.

Victim/Complainer

Person who has been raped.

Locus

Where crime takes place.

Scenario example(s)

Example 1

‘A’ reports having been raped. The offender insists that ‘A’ consented although ‘A’ insists that this was not the case.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Rape.

Example 2

A person reports being anally penetrated by a male without consent.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Rape.

Example 3

A male reports being anally penetrated by another male in 2008 without consent.

Record 1 crime of Sodomy.

Example 4

'A' falls asleep at a party and wakes to find that a male has placed his penis in 'A's' mouth.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Rape.

Example 5

'A' reports that they have been raped by the same person on numerous occasions over several years and cannot specify dates although the last time was on or after 1 December 2010.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Rape.
Record 1 crime of Rape (Common Law).

Example 6

'A' reports that they have been raped on specific dates by the same person twice prior to 1 December 2010 and three times after.

Record 2 crimes of Rape (Common Law).
Record 3 crimes of Sexual Offences (Scotland) Act 2009, Section 1, Rape.

Example 7

'A' reports that they were forced into carrying out oral sex, thereafter anally penetrated and vaginally penetrated by the same person during the one incident all without consent.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Rape.

Example 8

Whilst asleep 'A' is digitally penetrated by 'B'. 'A' awakes and protests creating distance between them. 'A' then falls back to sleep and is later awoken by 'B' who has removed 'A's' underwear and attempts to lie on top of 'A' and insert his penis into her vagina.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1(1), Attempted Rape.
Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 2(1), Sexual Assault by Penetration.

Example 9

Victim reports having been raped by the same perpetrator on several occasions and also disclosed attempts to rape on separate occasions. All occurred at the same locus where dates are not known but all occurred after 1 December 2010.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Rape.
Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Attempted Rape.

Example 10

'A' reports having been raped on several occasions by the same suspect over the past three months. During this period the suspect has penetrated the victim's vagina, mouth and anus with his penis where clear indications were given by the victim that these actions were without consent. All rapes occurred at the same locus and specific dates are not known.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Rape.

Example 11

'A' reports that she has been raped on several occasions by the same suspect over the past three months. During this period the victim advises that on separate occasions they were subjected to sexual assault and digital penetration against their will. All crimes occurred at the same locus and specific dates are not known.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Rape.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 2, Sexual Assault by Penetration.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 3, Sexual Assault.

(Requirement to record each different crime type if committed on separate occasions.)

Compound crimes

Example 12

'A' reports that they were sexually assaulted, their anus was digitally penetrated and they were raped.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Rape (incorporating conduct including sexual assault, penetration and rape within modus operandi).

Note(s)

This section applies to offences occurring on or after 1 December 2010. If the offence occurred prior to this date, the old common law rules of rape, sodomy or assault (indecent) will apply.

Where persons act individually, even though there is only one victim, count each individually.

Where several people act together, this will be recorded as one crime.

The rule relating to the law of rape is not the use of force but reference to the victim's lack of consent, which is defined by the Act as "free agreement". The Act also contains a non-exhaustive list of situations in Section 13 where consent will be deemed to be absent.

Where more than one location has been identified a crime should be recorded for each e.g. a victim reporting having been raped at a locus in Tayside and at locus in Fife would result in two crimes.

Recording/reporting of rape

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

A Standard Prosecution Report 2 (SPR2) libelling a charge of Rape should be submitted to the Procurator Fiscal detailing the full circumstances for their consideration. The Rape crime report will be shown as detected in these circumstances. Whilst the accused may be charged with Attempted Rape or Assault with intent to Rape due to the evidence available, the "Remarks" section of the Standard Prosecution Report should provide an explanation as to why the

charge being libelled on the front page of the Standard Prosecution Report is one of Rape. The following has been agreed by Crown Office and Procurator Fiscal Service and must be added to the "Remarks" section of an SPR2 for cases where Rape is libelled but it is considered there is only a sufficiency of evidence to report Attempted Rape or Assault with intent to Rape:

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

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

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

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 example(s)

Example 1

Two young children who are under 13 years old enter a dwelling where a male has sexual intercourse with both.

Record 2 crimes of Sexual Offences (Scotland) Act 2009, Section 18 Rape of a Young Child.

Example 2

A young child under 13 years old has reported that a male penetrated the child’s anus with his penis.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 18 Rape of a Young Child.

Example 3

A young child under 13 years old reports that a male penetrated the child’s mouth with his penis.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 18 Rape of a Young Child.

Example 4

‘A’ reports that in 2001 when, under the age of puberty, they were forced to perform oral sex on adult ‘B’.

Record 1 crime of Lewd and Libidinous Practices.

Example 5

Victim reports having been raped on numerous occasions over a six year period between the ages of 11 and 17 by the same perpetrator at the same locus where specific dates are not known. All crimes occurred after 1 December 2010.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 18, Rape of a Young Child (to account for ages 11 to 12).

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Rape (to account for ages 13 to 17 - use "older child" offence modifier).

Compound crimes**Example 6**

A young child who is under 13 years old reports that they were sexually assaulted, their anus was digitally penetrated and they were raped.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 18 Rape of a Young Child (incorporating conduct including sexual assault, penetration and rape within modus operandi).

Note(s)

This section applies to all offences occurring on or after 1 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 1 December 2010. If the offence occurred prior to this date, the old common law rules of rape or lewd and libidinous practices may be appropriate.

Recording/Reporting of Rape

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

A Standard Prosecution Report 2 (SPR2) libelling a charge of Rape should be submitted to the Procurator Fiscal detailing the full circumstances for their consideration. The Rape crime report will be shown as detected in these circumstances. Whilst the accused may be charged with Attempted Rape or Assault with intent Rape due to the evidence available, the "Remarks" section of the Standard Prosecution Report should provide an explanation as to why the charge being libelled on the front page of the Standard Prosecution Report is one of Rape. The following has been agreed by Crown Office and Procurator Fiscal Service and must be added to the "Remarks" section of an SPR2 for cases where Rape is libelled but it is considered there is only a sufficiency of evidence to report Attempted Rape or Assault with intent to Rape:

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

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

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**

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 example(s)

Example 1

Two older children aged 13 to 15 are invited into a dwelling where an adult male has consensual sexual intercourse with them.

Record 2 crimes of Sexual Offences (Scotland) Act 2009, Section 28 Having Intercourse with an Older Child.

Example 2

An older child aged between 13 and 15 reports that an adult male had sexual intercourse with them without any consent being given.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1 Rape.

Example 3

A report is received that an older child aged 13 to 15 years has willingly performed oral sex on a male person over the age of 16 years.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 28 Having Intercourse with an Older Child.

Example 4

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

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 37(1) – male.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 37(4) – female.

Note – If only one participant requires to be jointly reported per Lord Advocate's Guidelines, only one crime should be recorded. If neither participant is to be reported no crimes should be recorded.

Example 5

An older child aged 13 to 15 years discloses that they had consensual sexual intercourse with an adult male most Fridays over a period of time.

Record 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).

Example 6

A female 'A' who is aged 15 has consensual sexual intercourse with a male 'B' aged 17. 'B' later inserts his penis into 'A's mouth without her consent.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 28, Sexual Intercourse with Older Child.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Rape.

Example 7

A female 'A' who is aged 15 has consensual sexual intercourse with a male 'B' aged 17. During intercourse 'A' tells 'B' to stop and he continues.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Rape (no requirement to record Section 28 as this is a continuous act which develops into a rape).

Example 8

A female 'A' who is aged 15 reports having been raped by a male 'B' aged 17. 'A' also discloses that on previous occasions she has engaged in consensual sexual intercourse with 'B' where dates are unknown.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1, Rape.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 28, Sexual Intercourse with Older Child.

Compound crimes

Example 9

An older child aged 13 to 15 years discloses that she had willingly allowed her boyfriend, who is over 16 years of age, to digitally penetrate her vagina, fondle her breasts and that they had consensual sexual intercourse.

Record 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(s)

Where the intercourse has not been consensual, a crime of rape should be recorded.

Although there is some overlap between the older child offences and the non-consensual offences, this means that any instances of sexual activity between an adult and an older child can be prosecuted as an older child offence, even where it cannot be proved beyond reasonable doubt that the activity took place without the consent of the child.

This section applies to all offences occurring on or after 1 December 2010. This section applies to all offences occurring on or after 1 December 2010. If the offence occurred prior to this date, the old common law of Lewd and Libidinous Practices will apply or the offence of Sexual Intercourse with Girl over 13 but under 16.

Sexual 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**

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 example(s)

Example 1

An adult reports being drunk at a party and falling asleep in a friend’s bed. Another adult takes advantage of the situation, removes complainer’s lower clothing and digitally penetrates the anus.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 2(1) Sexual Assault by Penetration.

Example 2

A female is grabbed from behind by a male when out walking. He penetrates her vagina although she is unable to say what with.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 2(1) Sexual Assault by Penetration.

Example 3

A female reports that in 2008, a male digitally penetrated her vagina without her consent.

Record 1 crime of Assault (indecent) at Common Law.

Example 4

Whilst asleep ‘A’ is digitally penetrated by ‘B’. ‘A’ awakes and protests creating distance between them. ‘A’ falls back to sleep and is later awoken by ‘B’ who has

removed her underwear and his own and attempts to lie of top of 'A' and insert his penis into her vagina.

Record 1 crime of Attempted Rape Sexual Offences (Scotland) Act 2009, Section 1(1).

Record 1 crime of Sexual Assault by Penetration Sexual Offences (Scotland) Act 2009, Section 2(1).

Example 5

'A' in the belief that female 'B' is concealing property belonging to 'A' internally subjects 'B' to a non-consensual search of her vagina.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 2(1) Sexual Assault by Penetration.

Compound crimes

Example 6

A female reports that she was grabbed from behind whereby her breasts were fondled, she fell to the ground whereby the male placed his hand up her skirt and digitally penetrated her anus.

Record 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(s)

This offence will tackle situations where the complainant knows that they have been penetrated however they cannot say what penetrated them e.g. because they were blindfolded.

There is an element of overlap between this section, rape and sexual assault, however where the Crown has evidence that the victim was subjected to penile penetration, a charge of Rape (Section 1) would be recorded.

This section applies to offences occurring on or after 1 December 2010. If the offence occurred prior to this date, the old common law rules of rape, sodomy or assault (indecent) will apply.

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

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 example(s)

Example 1

A young child under 13 years old reports that her vagina was penetrated by a male however she does not know what penetrated her because she had her eyes closed.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 19 Sexual Assault on a Young Child by Penetration.

Example 2

A young child under 13 years old reports that an adult carried out digital penetration of their anus.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 19 Sexual Assault on a Young Child by Penetration.

Example 3

A young child under 13 years old has allowed her 13 year old boyfriend to penetrate her vagina with an object.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 19 Sexual Assault on a Young Child by Penetration.

Compound crimes

Example 4

A young child under 13 years old reports that she was grabbed from behind whereby her breasts were fondled, she fell to the ground whereby the male placed his hand up her skirt and digitally penetrated her anus.

Record 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(s)

This section applies to all offences occurring on or after 1 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".

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

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 example(s)

Example 1

An older child aged 13 to 15 discloses that she has allowed her partner who is over 16 years of age, to digitally penetrate her vagina.

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

Example 2

An older child aged 13 to 15 discloses that her partner who is over 16 years of age, digitally penetrated her vagina without her consent.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 2(1) Sexual Assault by Penetration.

Compound crimes

Example 3

An older child aged 13 to 15 discloses that she allowed her partner, who is over 16 years of age, to fondle her breasts and digitally penetrated her vagina.

Record 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(s)

Although there is some overlap between the older child offences and the non-consensual offences, this means that any instances of sexual activity between an adult and an older child can be prosecuted as an older child offence, even where it cannot be proved beyond reasonable doubt that the activity took place without the consent of the child.

This section applies to all offences occurring on or after 1 December 2010. If the offence occurred prior to this date, the old common law of Lewd and Libidinous Practices will apply or the offence of Sexual Intercourse with Girl over 13 but under 16.

In this section concerning 'Older Children', if the child consents to participate in the activities, it should be charged under the 'Older Children' section of the legislation. However if there is no consent to this at all, then Section 2 of the legislation should apply, as the penalties are greater.

Sexual Assault Sexual Offences (Scotland) Act 2009, Section 3↑

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

Definition

If a person (“A”)-

- (a) without another person (“B”) consenting, and
- (b) without any reasonable belief that B consents,

does any of the things mentioned below, then A commits the offence of sexual assault.

Those things are, that A-

- (a) penetrates sexually, by any means and to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B,
- (b) intentionally or recklessly touches B sexually,
- (c) engages in any other form of sexual activity in which A, intentionally or recklessly, has physical contact (whether bodily contact or contact by means of an implement, and whether or not through clothing) with B,
- (d) intentionally or recklessly ejaculates semen onto B,
- (e) intentionally or recklessly emits urine or saliva onto B sexually.

Victim/Complainer

Person who has been sexually assaulted.

Locus

Where crime takes place.

Scenario example(s)

Example 1

A female is grabbed from behind by a male when out walking. He fondles her breasts and her private parts over her clothing.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 3 Sexual Assault.

Example 2

Two adults lying asleep awake to find a male ejaculating semen over them.

Record 2 crimes of Sexual Offences (Scotland) Act 2009, Section 3 Sexual Assault.

Example 3

Person penetrates female's vagina with an object without her consent.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 2 Sexual Assault by penetration.

Example 4

'A' is forced by 'B' to masturbate 'B'. 'A' and 'B' are both adults.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 3 Sexual Assault.

Note(s)

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 1 December 2010. If the offence occurred prior to this date, the old common law rules of assault (indecent) will apply.

Where offences occur which encompass a combination of Sections 1, 2 and 3, only the most serious should be counted/recorded for statistical purposes and a compound charge used to report.

Sexual 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 example(s)

Example 1

A young child under 13 years old is approached by an unknown person who touches the young child’s private parts over their clothing.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 20 Sexual Assault on a Young Child.

Example 2

A young child under 13 years old allows their friend who is an older child aged 13 to 15, to touch them in a sexual manner.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 20 Sexual Assault on a Young Child.

Example 3

Whilst looking after young female child a male exposes himself and thereafter engages her in sexual activity by placing her hand on his penis and touching her vagina.

Record 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 4

A 13 year old female has consensual sexual intercourse with a 12 year old male.

Record 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.)

Example 5

Victim reports having been sexually assaulted on numerous occasions over an eight year period between the ages of 9 and 17 by the same perpetrator between 2008 and 2016 at the same locus where specific dates are not known.

Record 1 crime of Lewd and Libidinous Practices (common law) to account for 2008 to 2010 when victim was 9 up to age 11 when Sexual Offences (Scotland) Act (SOSA) was introduced in 2010.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 20, Sexual Assault of a Young Child, to account for period when victim was aged 12 (Post 2010).

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 3, Sexual Assault, to account for ages 13 to 17 (use "older child" offence modifier).

Note(s)

This section applies to offences occurring on or after 1 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.

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

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 example(s)

Example 1

An older child aged 13 to 15 reports that he allowed his partner who is over 16 years of age to touch his penis.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 30 Engaging in Sexual Activity with or towards an Older Child.

Example 2

An older child aged 13 to 15 is approached by an unknown adult and touched by this person on the his penis over clothing without consent.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 3 Sexual Assault.

Note(s)

This section applies to all offences occurring on or after 1 December 2010.

In this section concerning 'Older Children', if the child consents to participate in the activities, it should be charged under the 'Older Children' section of the legislation. However if there is no consent to this at all, then Section 3 of the legislation should apply, as the penalties are greater.

Where offences occur which encompass a combination of Sections 28, 29 and 30 only the most serious should be counted/recorded for statistical purposes and a compound charge used to report.

Sexual 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

Definition

If a person ("A")-

- (a) without another person ("B") consenting to participate in a sexual activity, and
- (b) without any reasonable belief that B consents to participating in that activity

intentionally caused B to participate in that activity, then A commits the offence of sexual coercion.

Victim/Complainer

Person who has been sexually coerced.

Locus

Where crime takes place.

Scenario example(s)

Example 1

An adult is forced by another to touch themselves in a sexual manner.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 4 Sexual Coercion.

Example 2

An adult (A) is forced by an Adult (B) to touch another (C) in a sexual manner. (A) and (C) are non-consenting.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 4 Sexual Coercion in respect of Adult (A).

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 3 Sexual Assault in respect of Adult (C).

Example 3

'A' is forced by 'B' to masturbate 'B'. 'A' and 'B' are both adults.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 3 Sexual Assault.

Example 4

An adult 'A' engages in consensual sexual communication with 'B' over social media. 'A' believes 'B' is of the opposite sex. 'A' agrees to film themselves undertaking a sexual act and sends the recording to 'B'. 'B' discloses they are not the person they purported to be.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 4 (Cause person to participate in sexual activity).

Note(s)

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.

There is an overlap to a certain extent with the offence of sexual assault in cases where the perpetrator compelled the victim to engage in conduct which involved physical contact with the perpetrator. However, this offence is primarily intended to capture coercive sexual conduct which does not involve physical conduct between the perpetrator and the victim.

In circumstances where a person is caused to take a naked image of themselves this amounts to causing that person to participate in a sexual act, unless this forms part of an extortion.

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

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 example(s)

Example 1

A young child under 13 years old is forced by a person (A) to touch the penis of another person (B).

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

Example 2

Two young children under 13 years old are asked by a person to touch themselves in a sexual manner, which they do.

Record 2 crimes of Sexual Offences (Scotland) Act 2009, Section 21 Causing a Young Child to Participate in a Sexual Activity.

Note(s)

This section applies to all offences occurring on or after 1 December 2010. If the offence occurred prior to this date, the old common law crime of Lewd and Libidinous Practices will apply.

Young children are not considered capable in law of giving consent to sexual activity and accordingly it is irrelevant to the offence whether or not the young child has “consented”.

There is an overlap to a certain extent with the offence of sexual assault in cases where the perpetrator compelled the victim to engage in conduct which involved physical contact with the perpetrator. However, this offence is primarily intended to capture coercive sexual conduct which does not involve physical conduct between the perpetrator and the victim.

In circumstances where a person is caused to take a naked image of themselves this amounts to causing that person to participate in a sexual act, unless this forms part of an extortion.

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

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.

Locus

Where crime takes place.

Scenario example(s)

Example 1

An older child aged 13 to 15 is encouraged by a person over the age of 16 to touch themselves in a sexual manner and they carry this out.

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

Example 2

An older child aged 13 to 15 is forced by a person over the age of 16 to touch themselves in a sexual manner.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 4 Sexual Coercion.

Example 3

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.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 4 Sexual Coercion.

Record 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(s)

This section applies to all offences occurring on or after 1 December 2010.

There is an overlap to a certain extent with the offence of sexual assault in cases where the perpetrator compelled the victim to engage in conduct which involved physical contact with the perpetrator. However, this offence is primarily intended to capture coercive sexual conduct which does not involve physical conduct between the perpetrator and the victim.

In circumstances where a person is caused to take a naked image of themselves this amounts to causing that person to participate in a sexual act, unless this forms part of an extortion.

In this section concerning 'Older Children', if the child consents to participate in the activities, it should be charged under the 'Older Children' section of the legislation. However if there is no consent to this at all, then Section 4 of the legislation should apply, as the penalties are greater.

16/013 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

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 example(s)

Example 1

'A' is at a party when they receive a call from 'B' asking them to come upstairs to the bedroom. When 'A' enters the room they find 'B' having sexual intercourse with another.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 5 -Coercing a Person into Being Present During a Sexual Activity.

Example 2

On three separate occasions on the same day at the same locus 'A' says "excuse me" to three females and when they turn round 'A' is masturbating.

Record 3 crimes of Sexual Offences (Scotland) Act 2009, Section 5 - Coercing a Person into Being Present During a Sexual Activity.

Note(s)

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 1 December 2010. It will not apply for relevant activity occurring before this date. Depending on the circumstances, a breach of the peace or an assault (indecent) may be the appropriate charge in this case.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, the Young Child offence should be recorded.

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application should be recorded as a crime of "Cause to view sexual image" and not one of "Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

**16/021 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

Definition

If a person (“A”) either-

- (a) intentionally engages in a sexual activity and for a purpose mentioned in subsection (2) does so in the presence of a child (“B”) who has not attained the age of 13 years, or
- (b) intentionally and for a purpose mentioned in that subsection causes B to be present while a third person engaged in such an activity

then A commits an offence of causing a young child to be present during a sexual activity.

The purposes in subsection (2) are-

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

Victim/Complainer

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

Locus

Where crime takes place.

Scenario example(s)

Example 1

‘A’ and ‘B’ engage in sexual intercourse whilst asking their two young children who are under 13 years old to sit and watch.

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

Example 2

An adult takes a relative who is a young child under 13 years old, to a sex show where other adults are performing sexual intercourse with each other.

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

Note(s)

This section applies to all offences occurring on or after 1 December 2010. If the offence occurred prior to this date, the old common law of Lewd and Libidinous Practices will apply.

It is not essential to prove that the young child actually observed the activity; it is enough that the activity was in a place where it was capable of being observed by the young child.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, the Young Child offence should be recorded.

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application should be recorded as a crime of "Cause to view sexual image" and not one of "Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

**16/035 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

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 example(s)

Example 1

For their own sexual gratification, two adults encourage an older child aged 13 to 15 into a bedroom in order that the older child can watch the adults engage in sexual intercourse with each other. The child attends and adults carry out sexual indulgences in full view of the older child.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 32 Causing an Older Child to be Present During a Sexual Activity.

Example 2

Two adults against the will of the child, force/coerce an older child aged 13 to 15, into a bedroom in order that the older child can watch the adults engage in sexual intercourse with each other.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 5 -Coercing a Person into Being Present During a Sexual Activity.

Example 3

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

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 5, Cause to be Present During Sexual Activity (the suspect was in a public place and was not being discrete - while the child is aged 13 to 15 there was clearly no consent).

Note(s)

This section applies to all offences occurring on or after 1 December 2010. It is not essential to prove that the older child actually observed the activity; it is enough that the activity was in a place where it was capable of being observed by the older child.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, the Young Child offence should be recorded.

In this section concerning 'Older Children', if the child consents to participate in the activities, it should be charged under the 'Older Children' section of the legislation. However if there is no consent to this at all, then Section 5 of the legislation should apply, as the penalties are greater.

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application should be recorded as a crime of "Cause to view sexual image" and not one of "Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

16/013 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

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 example(s)

Example 1

An adult reports receiving an e-mail with a video attachment from a known person. The text of the e-mail suggests that the recipient should open the video attachment to view footage of an innocuous event. Upon opening the attachment it is an explicit sexual video.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 6 Coercing a Person to look at a Sexual Image.

Example 2

An adult reports receiving a sexual image via email. It is established during investigation that the email was not intended to be sent to the complainer and was in fact intended for the sender’s partner.

Record 1 crime of Communications Act 2003, Section 127(1) - Indecent or Messages, may be appropriate, this is due to the absence of the intent to humiliate, distress or alarm or for obtaining sexual gratification.

Example 3

‘A’ approaches a camera attached to the house of ‘B’ and indecently exposes themselves in front of the camera knowing that ‘B’ will review the content.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 6 Coercing a Person to look at a Sexual Image.

Note(s)

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.

A 'topless' pin-up would not be considered a sexual image as the subject's genitals are not visible.

The offence of coercing a person into looking at a sexual image is only committed if the victim did not consent to looking at the image and the accused had no reasonable belief that the victim so consented. Furthermore, the accused does not commit the offence if he or she had intended to direct or send the image to someone other than the victim (i.e. by email).

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application should be recorded as a crime of "Cause to view sexual image" and not one of "Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

If a victim receives an intimate image of themselves this does not constitute any offence under Abusive Behaviour and Sexual Harm (Scotland) Act 2016 or Sexual Offences (Scotland) Act 2009. However, if alarm is caused to the recipient Communications Act 2003, Section 127 (sexual) should be recorded.

This section applies to offences occurring on or after 1 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.

16/021 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

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 example(s)

Example 1

A young child under 13 reports receiving a sexual image on their mobile phone. The image has been sent to them intentionally by an adult to cause alarm.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 23 Causing a Young Child to Look at a Sexual Image.

Example 2

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

Record 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 3

A report is received that two young children under 13 years old have independently been shown indecent photos showing genitals on a mobile phone by an older child.

Record 2 crimes of Sexual Offences (Scotland) Act 2009, Section 23 Causing a Young Child to Look at a Sexual Image.

Example 4

12 year old child has been corresponding separately by e-mail with two adults who do not know each other and are not aware of each other. The relationship with the two adults has been building to the point where the communication becomes sexual and they ask the child to send them a naked photo in exchange for naked

images of themselves. The child sends them photos of a naked person (head not in the photos) and in return she receives naked photos of the adults (heads not in the photos). The photos sent by the child are those of an anonymous person found on the internet. Throughout the correspondence the child claims to be 16 years old.

Record 2 crimes of Sexual Offences (Scotland) Act 2009, Section 23 Causing a Young Child to Look at Sexual Image.

Record 2 crimes of Sexual Offences (Scotland) Act 2009, Section 24 Communicating Indecently with a Young Child.

Note(s)

This section applies to all offences occurring on or after 1 December 2010. If the offence occurred prior to this date, the old common law of Lewd and Libidinous Practices will apply.

For the purposes of this section, a sexual image is defined by the act as an image (produced by whatever means and whether or not a moving image) of-

- (a) 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.

A 'topless' pin-up would not be considered a sexual image as the subject's genitals are not visible.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, the Young Child offence should be recorded.

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application should be recorded as a crime of "Cause to view sexual image" and not one of "Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

If a victim receives an intimate image of themselves this does not constitute any offence under Abusive Behaviour and Sexual Harm (Scotland) Act 2016 or Sexual Offences (Scotland) Act 2009. However, if alarm is caused to the recipient Communications Act 2003, Section 127 (sexual) should be recorded.

**16/035 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

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 example(s)

Example 1

An older child aged 13 to 15 years reports that an adult has convinced/encouraged them to look at a number of photographs, all of which show the adult engaged in various sexual acts with another adult person. The older child looks through all the photographs.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 33 Causing an Older Child to look at a Sexual Image.

Example 2

An older child aged 13 to 15 years reports that an adult has forced her to look at a number of photographs, all of which show the adult engaged in various sexual acts with another adult person. The older child looks through all the photographs.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 6 Coercing a Person to look at a Sexual Image.

Example 3

Two children, one a young child aged under 13 years, the other an older child aged 13 to 15 are encouraged to sit and watch pornographic films showing full sexual intercourse by an adult babysitter every Friday night for six weeks. The children watch the films although they are not made to and can leave at any point.

Record 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 4

Two children, one a young child aged under 13 years, the other an older child aged 13 to 15 are forced to sit and watch pornographic films showing full sexual intercourse by an adult babysitter on a number of occasions where specific dates are unknown.

Record 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(s)

This section applies to all offences occurring on or after 1 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.

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.

A 'topless' pin-up would not be considered a sexual image as the subject's genitals are not visible.

In this section concerning 'Older Children', if the child consents to participate in the activities, it should be charged under the 'Older Children' section of the legislation. However if there is no consent to this at all, then Section 6 of the legislation should apply, as the penalties are greater.

Where there is a mixed age group e.g. young children and older children, subjected to the conduct, the Young Child offence should be recorded.

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application should be recorded as a crime of "Cause to view sexual image" and not one of "Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

If a victim receives an intimate image of themselves this does not constitute any offence under Abusive Behaviour and Sexual Harm (Scotland) Act 2016 or Sexual Offences (Scotland) Act 2009. However, if alarm is caused to the recipient Communications Act 2003, Section 127 (sexual) should be recorded.

**16/014 Communicating Indecently
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, 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 example(s)

Example 1

A person for the purposes of obtaining sexual gratification intentionally sends a sexually explicit text message to another adult on their mobile phone without the consent of the recipient.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 7(1)
Communicating Indecently.

Example 2

A person for the purposes of obtaining sexual gratification intentionally sends a sexually explicit text message to multiple recipients on their mobile phones without the consent of the recipient.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 7(1)
Communicating Indecently (Continuity of action).

Example 3

'A' sits down 'B' female (aged over 16 years) on a bus and makes sexual comments to 'B'. 'B' is frightened and says nothing, 'B' eventually arrives at their stop and 'A' lets her off.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 7(1)
Communicating Indecently.

Example 4

'A' sits down besides 'B' (aged over 16 years) on a bus and makes a series of sexual comments to 'B' throughout the journey. As 'B' gets up to get off the bus they are sexually assaulted by 'B'.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 3, Sexual Assault.
Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 7(1)
Communicating Indecently.

Example 5

'A' sits down beside 'B' (aged over 16 years) on a bus and makes sexual comments to 'B' just before sexually assaulting them.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 3, Sexual Assault (since sexual comments were made in the immediate lead up to the sexual assault there is no requirement to record a separate offence of communicating indecently).

Example 6

Person 'A' who resides in 'X' Division sends sexually explicit text messages to 'B' who resides in 'Z' Division.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 7(1)
Communicating Indecently the locus being 'X' Division unless there is clear evidence that 'A' was in a specific location in 'X' Division at the time the communication was sent.

Note(s)

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.

In circumstances where a victim is subjected to indecent communication which occurs in the immediate lead up to, during or immediately after a sexual crime such as Rape, Sexual Assault or Sexual Coercion there is no requirement to record a separate crime of Communicating Indecently.

This section applies to offences occurring on or after 1 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.

16/022 Communicating Indecently With A Young Child 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.

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 example(s)

Example 1

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 alarming the child.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 24(1) Communicating Indecently with a Young Child.

Example 2

A parent and their young child under 13 years have each received the same text message of an indecent nature on their mobile phones. The messages have been sent by the same person, directly to the parent and the child.

Record 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).

Purporting to be older-younger

Where a young child/older child purports to be older/younger than they are, the appropriate Section of the Act should relate to the actual age of the child and not the age they purport to be.

Example 3

A young child purports to be an adult and communicates over social media with an adult who believes the person they are communicating with is an adult, the communication being of a sexual nature.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 24(1)
(Communicating Indecently with a Young Child).

Where someone purports to be a young/older child for the purpose of enticing someone to carry out sexual activity and the individual being enticed believes they are doing so with a young/older child, this is sufficient to record an attempt to commit the relevant offence with the appropriate Section applicable being the age the person purports to be.

Example 4

An adult purports to be 12 year old and communicates over social media with an adult who believes the person they are communicating with is 12 years old, the communication being of a sexual nature.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 24(1)
Communicating Indecently with a Young Child - Attempt.

Note(s)

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.

In circumstances where a victim is subjected to indecent communication which occurs in the immediate lead up to, during or immediately after a sexual crime such as Rape, Sexual Assault or Sexual Coercion there is no requirement to record a separate crime of Communicating Indecently.

This section applies to all offences occurring on or after 1 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.

16/036 Communicating Indecently With An Older Child 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.

Victim/Complainer

Child who has received the indecent communication.

Locus

Where communication made from otherwise where communication received.

Scenario example(s)

Example 1

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.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 34(1) Communicating Indecently with an Older Child.

Example 2

An older child aged 13 to 15 years, receives an unwanted sexually explicit text message on the mobile phone from an adult who intended the child as the recipient for the purposes of causing distress.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 7(1)
Communicating Indecently.

Example 3

An older child aged 13 to 15 years receives unwanted sexually explicit messages on their Social Networking Site from an adult intended to cause humiliation.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 7(1)
Communicating Indecently.

Example 4

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.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 7(1)
Communicating Indecently.

Example 5

Parent and their child, aged 13 to 15 years, have been receiving unwanted text messages of an indecent nature on their mobile phones. The messages have been sent by the same adult to the adult's and child's phones for the purpose of causing distress and humiliation.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 7(1)
Communicating Indecently (indicates sent with same purpose).

Example 6

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

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 7(1)
Communicating Indecently.

Note(s)

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.

In circumstances where a victim is subjected to indecent communication which occurs in the immediate lead up to, during or immediately after a sexual crime such

as Rape, Sexual Assault or Sexual Coercion there is no requirement to record a separate crime of Communicating Indecently.

This section applies to all offences occurring on or after 1 December 2010. This section applies to all offences occurring on or after 1 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.

16/014 Causing A Person To See Or Hear An Indecent Communication
Sexual Offences (Scotland) Act 2009, Section 7(2)↑

General rule: One crime for each victim and continuity of action or per incident (as appropriate)

Definition

If, in circumstances other than are as mentioned in subsection (1), a person (“A”), intentionally and for a purpose mentioned in subsection (3) causes another person (“B”) to see or hear, by whatever means, a sexual written communication or sexual verbal communication-

- (a) without B consenting to seeing or as the case may be hearing it, and
- (b) without any reasonable belief that B consents to seeing as the case may be hearing it,

then A commits the offence of causing a person to see or hear an indecent communication.

The purposes in subsection (3) are-

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

Victim/Complainer

Person who has seen or heard the sexual communication.

Locus

Where the indecent communication was seen or heard.

Scenario example(s)

Example 1

‘A’ reports that while sitting on a bus they are shown by a sexually explicit text message by ‘B’ for the purpose of alarming or distressing ‘A’.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 7(2) - Causing Another Person to See or Hear an Indecent Communication.

Note(s)

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 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 1 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.

16/022 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 victim and continuity of action or per incident (as appropriate)

Definition

If, in circumstances other than are as mentioned in subsection (1), a person (“A”), intentionally and for a purpose mentioned in subsection (3) causes a child (“B”) who has not attained the age of 13 years to see or hear, by whatever means, a sexual written communication or sexual verbal communication then A commits an offence of causing a young child to see or hear an indecent communication.

The purposes in subsection (3) are-

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

Victim/Complainer

Child who has seen or heard the indecent communication.

Locus

Where the indecent communication was seen or heard.

Scenario example(s)

Example 1

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.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 24(2)
Causing a Young Child to See or Hear an Indecent Communication.

Example 2

A young child under 13 years is shown a letter containing a sexual written communication by an older pupil at school to cause distress.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 24(1)
Causing a Young Child to See or Hear an Indecent Communication.

Note(s)

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 1 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.

16/036 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 victim and continuity of action or per incident (as appropriate)

Definition

If, in circumstances other than are as mentioned in subsection (1), a person (“A”), who has attained the age of 16 years, intentionally and for a purpose mentioned in subsection (3) causes a child (“B”) who has attained the age of 13 years but not the age of 16 years, a sexual written communication or sexual verbal communication then A commits an offence of causing a young child to see or hear an indecent communication.

The purposes in subsection (3) are-

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

Victim/Complainer

Child who has seen or heard the indecent communication.

Locus

Where indecent communication was seen or heard.

Scenario example(s)

Example 1

An older child aged 13 to 15 years is in a library sitting next to an adult where the adult writes sexually explicit poems in a notepad that can be seen by the child. The child communicates with the adult and the adult continues to write sexually explicit notes for sexual gratification.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 34(2)
Causing An Older Child to See or Hear an Indecent Communication.

Example 2

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

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 7(2) -
Causing Another Person to See or Hear an Indecent Communication.

Note(s)

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 1 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.

**17/003 Sexual Exposure
Sexual Offences (Scotland) Act 2009, Section 8↑**

General rule: One crime for 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.

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 example(s)

Example 1

A report is received that a naked person is standing at a window of a house watching passers-by.

Record 1 crime of Public Indecency.

Example 2

A report is received that a naked person is standing at a window of a house in full view of adult passers-by knowing they are being watched.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 8 Sexual Exposure.

Example 3

Person reports that they were in a park with their older child aged 13 to 15 years when a male exposed his penis to them and started masturbating.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 5 (Coerce person to be present during sexual activity). (Suspect has intentionally engaged in a sexual activity in the presence of both victims who have been caused to view this activity without their consent.)

Example 4

A male sits next to an adult female on a park bench, exposes his penis and starts masturbating.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 5 Coerce person to be present during sexual activity. (Suspect has intentionally engaged in a sexual activity in the presence of the victim who has been caused to view this activity without their consent.)

Example 5

A male sits next to a young female (over 16 years) on a bus. During the journey the male exposes his penis and starts masturbating, he then grabs the female's hand and forces her to touch his penis and after she draws her hand away he touches her breasts over her clothing. The girl is scared and makes no mention of this to any other passenger or the bus driver. The matter is reported to police when she arrives home.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 5 Coerce person to be present during sexual activity.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 3 Sexual Assault.

Example 6

During the course of an afternoon male exposes his genitals to three different people at three different locations.

Record 3 crimes of Sexual Offences (Scotland) Act 2009, Section 8 Sexual Exposure (three separate incidents).

Note(s)

There must be exposure "in a sexual manner" for this offence. This is different from public indecency which is concerned with "public order" actions such as urinating in the street or sunbathing in the nude. The exposure must also be intentional. If the exposure by the suspect includes behaviour where the suspect intentionally engages in a sexual act in the presence of another person e.g. masturbating, without their consent this amounts to a crime of "Causing a person into being present during a sexual activity" which is recordable under Sections 5 or 22 (depending on the age of the victim) and not a crime of Sexual Exposure. The Section 32 (older child) crime is not applicable if the conduct was non-consensual.

Unlike the offence of public indecency, which requires that the conduct takes place in, or can be seen from, a public place, the offence of sexual exposure can be committed in a private place, providing that the perpetrator's intention in exposing his or her genitals is either for obtaining sexual gratification or distress, humiliate or cause alarm to their victim.

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application should be recorded as a crime of "Cause to view sexual image" and not one of

"Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

This section applies to offences occurring on or after 1 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.

16/023 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.

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 example(s)

Example 1

Two young children under 13 years of age are invited into a dwelling house, where an adult exposes their genitals for the purpose of sexual gratification.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 25 Sexual Exposure to a Young Child (one crime, two victims).

Example 2

An adult intentionally exposes their genitals for the purpose of sexual gratification to a large number of young children aged under 13 years who are together in a play park.

Record 1 crime 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 one crime of Public Indecency.

Example 3

A young child under 13 years of age disturbs a male urinating in a nearby street, exposing his penis and clearly in a drunken state.

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

Note(s)

There must be exposure "in a sexual manner" for this offence. This is different from public indecency which is concerned with "public order" actions such as urinating in the street or sunbathing in the nude. The exposure must also be intentional. If the exposure by the suspect includes behaviour where the suspect intentionally engages in a sexual act in the presence of another person e.g. masturbating, without their consent this amounts to a crime of "Causing a person into being present during a sexual activity" which is recordable under Sections 5 or 22 (depending on the age of the victim) and not a crime of Sexual Exposure. The Section 32 (older child) crime is not applicable if the conduct was non-consensual.

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application should be recorded as a crime of "Cause to view sexual image" and not one of "Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

This section applies to all offences occurring on or after 1 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.

16/037 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.

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 example(s)

Example 1

An older child aged 13 to 15 walks along a path when an adult male jumps out exposing his genitals and starts masturbating in front of the child.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 5 Coerce person to be present during sexual activity. (Suspect has intentionally engaged in a sexual activity in the presence of the victim who has been caused to view this activity without consent.)

Example 2

An older child aged 13 to 15 years reports that they disturbed an adult male urinating in the street, exposing his penis and clearly in a drunken state.

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

Example 3

Two older children aged 13 to 15 report that they were sitting in the park when an adult male exposed his penis to them and caused them alarm.

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

Example 4

A parent and an older child aged 13 to 15 walk along a path when an adult male jumps out exposing his genitals and starts masturbating in front of the parent and older child.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 5 Coerce person to be present during sexual activity. (Suspect has intentionally engaged in a sexual activity in the presence of both victims who have been caused to view this activity without their consent.)

Example 5

Adult male corresponds with 14 year old female by social media and builds up a conversation, eventually working up to speaking to her direct. During the chat he persuades her to switch on her camera so that he can see her. He engages in flirtatious conversation, eventually escalating to asking her to undress for him, which she refuses to do. He then moves his camera down to show her his erect penis and he masturbates in front of her. She switches off the computer.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 33 (Cause an older child to look at a sexual image - if consensual).

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 34(1) Communicating Indecently (if consensual).

If neither were consensual Sections 6 and 7 would apply.

Note(s)

This section applies to all offences occurring on or after 1 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. If the exposure by the suspect includes behaviour where the suspect intentionally engages in a sexual act in the presence of another person e.g. masturbating, without their consent this amounts to a crime of "Causing a person into being present during a sexual activity" which is recordable under Sections 5 or 22 (depending on the age of the victim) and not a crime of Sexual Exposure. The Section 32 (older child) crime is not applicable if the conduct was non-consensual.

Unlike the offence of public indecency, which requires that the conduct takes place in, or can be seen from, a public place, the offence of sexual exposure can be committed in a private place, providing that the perpetrator's intention in exposing his or her genitals is either for obtaining sexual gratification or distress, humiliate or cause alarm to their victim.

A person being caused to view someone sexually exposing themselves or performing a sexual act remotely via webcam or other social media application

should be recorded as a crime of "Cause to view sexual image" and not one of "Sexual exposure" or "Cause to be present during sexual activity" both of which require the victim and suspect to be in the physical presence of each other.

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.

17/004 Voyeurism Sexual Offences (Scotland) Act 2009, Section 9↑

General rule: One crime for each incident or course of conduct

Definition

- (1) A person (“A”) commits an offence of voyeurism if A does any of the following things for a purpose mentioned in subsection (6), without B consenting and without any reasonable belief that B consents;
- (2) Observes B doing a private act.
- (3) Operates equipment with the intention of enabling A or another person (“C”), to observe B doing a private act.
- (4) 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.
 - (a) 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.
 - (b) Records an image beneath B's clothing of B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person (“C”), will look at the image.
- (5) Installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to do any of the above acts.
- (6) The purposes are:
 - (a) obtaining sexual gratification,
 - (b) humiliating, distressing or alarming B.

Victim/Complainer

Person who has been observed.

Locus

Where crime takes place.

Scenario example(s)

Example 1

A person enters a public toilet and by looking underneath a toilet cubicle, observes another adult using the lavatory.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 9
Voyeurism.

Example 2

A person installs a camera in public changing rooms, which allows the person to view three adults in cubicles getting dressed.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 9
Voyeurism.

Example 3

A person installs three 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.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 9
Voyeurism.

Example 4

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.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 9
Voyeurism.

Example 5

A person walks along a High Street in a busy city centre, recording images up the skirts of any passing person and captures multiple images of 'up skirt' footage.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 9
Voyeurism.

Example 6

'A' and 'B' have sexual intercourse in private which is recorded by a video camera set up by 'A' without the knowledge of 'B'.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 9
Voyeurism.

Note(s)

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 1 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.

16/024 Voyeurism Towards A Young Child Sexual Offences (Scotland) Act 2009, Section 26[↑]

General rule: One crime for each incident or course of conduct

Definition

- (1) A person (“A”) commits the offence of voyeurism towards a young child if A does any of the following things for a purpose mentioned in subsection (6) in relation to a child (“B”) who has not attained the age of 13 years:
 - (2) Observes B doing a private act.
 - (3) Operates equipment with the intention of enabling A or another person (“C”) to observe B doing a private act.
 - (4) 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.
 - (a) 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.
 - (b) 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.
 - (6) 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.
 - (7) The purposes are:
 - (a) obtaining sexual gratification
 - (b) humiliating, distressing or alarming B

Victim/Complainer

Young child who has been observed.

Locus

Where crime takes place.

Scenario example(s)

Example 1

A teacher at a primary school installs a camera in the changing rooms, which allows them to view young children getting changed. It is established that 30 children have been filmed in their underwear, for the purpose of the teacher's sexual gratification.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 26 Voyeurism towards a Young Child, with 30 victims (there is no requirement to record a separate Civic Government (Scotland) Act 1982, Section 52 offence in relation to this conduct unless further criminality is identified e.g. search of home computer reveals indecent photographs of children indicating the

images have been downloaded on to a separate device, or that the images have been distributed).

Example 2

An adult enters a public toilet within a shopping centre and by looking over the toilet cubicle, observes a young child under the age of 13 years using the lavatory.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 26
Voyeurism towards a Young Child.

Note(s)

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 1 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.

16/038 Voyeurism Towards An Older Child Sexual Offences (Scotland) Act 2009, Section 36[↑]

General rule: One crime for each incident or course of conduct

Definition

- (1) If a person (“A”) who has attained the age of 16 years, does any of the following things for a purpose mentioned in subsection (6) in relation to a child (“B”) who-
 - (a) has attained the age of 13 years, but
 - (b) has not attained the age of 16 years,

then A commits the offence of voyeurism towards an older child.

Those things are;

- (2) Observes B doing a private act.
- (3) Operates equipment with the intention of enabling A or another person (“C”) to observe B doing a private act.
- (4) 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.
 - (a) 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.
 - (b) Records an image beneath B's clothing of B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person (“C”), will look at the image.
- (5) Installs equipment or constructs or adapts a structure or part of a structure with the intention of enabling A or another person to do any of the above acts
- (6) The purposes are-
 - (a) obtaining sexual gratification,
 - (b) humiliating, distressing or alarming B.

Victim/Complainer

Child(ren) who have been observed.

Locus

Where crime takes place.

Scenario example(s)

Example 1

An employee at a secondary school installs a camera in the changing rooms, which allows them to view children getting changed. It is established that a number of children, all older children aged 13 to 15 years have been filmed in their underwear.

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

Example 2

An adult enters a public toilet within a shopping centre and by looking over the toilet cubicle, observes an older child aged 13 to 15 years using the lavatory.

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

Note(s)

This section applies to all offences occurring on or after 1 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.

18/023 Administering A Substance For Sexual Purposes

Sexual Offences (Scotland) Act 2009, Section 11↑

General rule: One crime for each victim

Definition

If a person (“A”) intentionally administers a substance to, or causes a substance to be taken by, another person (“B”)-

- (a) Without B knowing, and
- (b) Without any reasonable belief that B knows,

And does so for the purpose of stupefying or overpowering B, so as to enable any person to engage in a sexual activity which involves B, then A commits the offence of administering a substance for sexual purposes.

Victim/Complainer

Person who has taken the substance.

Locus

Where substance is administered.

Scenario example(s)

Example 1

‘A’ is in a bar drinking with friends when ‘B’ adds a drug to their drink, helps ‘A’ out the premises into a nearby alleyway where ‘B’ intends to have sexual intercourse with ‘A’. ‘B’ is stopped before any sexual assault occurs.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 11
Administering a Substance for Sexual Purposes.

Example 2

‘A’ is in a bar drinking with friends when ‘B’ adds a drug to her drink, helps ‘A’ out the premises into a nearby alleyway where ‘B’ has sexual intercourse with ‘A’.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1 Rape.
Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 11
Administering a Substance for Sexual Purposes.

Example 3

‘A’ is in a bar drinking with friends when they suddenly feel very ill and have to be taken home. A friend phones the police who take a urine sample which is tested positive for GHB.

Record 1 crime of Assault (with Drugging offence modifier). Unless it can be inferred that the drugs were administered for the purpose of stupefying or overpowering for a sexual purpose.

Note(s)

This section applies to offences occurring on or after 1 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) and 37(4)↑

General rule: One crime for each participant

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.

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

Victim/Complainer

Procurator Fiscal. ('Participant' can be recorded as a witness.)

Locus

Where crime takes place.

Scenario example(s)

Example 1

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

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 37(1) – male.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 37(4) – female.

Note - If only one participant requires to be jointly reported per Lord Advocate's Guidelines, only one crime should be recorded. If neither participant is to be reported no crimes should be recorded.

Example 2

An older child aged 13 to 15 years discloses that they performed oral sex on their partner who is also an older child aged 13 to 15 years, both of which consented fully.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 37(1) – male.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 37(4) – female.

Note - If only one participant requires to be jointly reported per Lord Advocate's Guidelines, only one crime should be recorded. If neither participant is to be reported no crimes should be recorded.

Example 3

An older female child aged 13 to 15 years discloses that they had consensual sexual intercourse with a 16 year old male.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 28 - Sexual intercourse with an older child.

Example 4

'A' and 'B', both 12 years old enter into a consensual sexual relationship resulting in sexual intercourse taking place on a number of occasions. Enquiry concludes that there are no concerns that either has been the dominant party.

The provisions of Sexual Offences (Scotland) Act 2009, Section 37 do not apply to "younger children". Whilst children under 12 cannot consent, as both parties are 12 years old and enquiry has not identified any specific concerns such as imbalance of power, no dominant party etc. that would suggest that one party is responsible, no crime would require to be recorded. Where there are concerns then an appropriate Sexual Offences (Scotland) Act 2009 offence should be recorded.

Note(s)

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 1 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.

18/019 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.

Definition

If a person (“A”) who has attained the age of 18 years-

- (a) Intentionally engages in a sexual activity with or directed towards another person (“B”) who is under 18, and
- (b) Is in a position of trust in relation to B,

Then A commits the offence of sexual abuse of trust.

Victim/Complainer

Child who the person had a position of trust over.

Locus

Where crime takes place.

Scenario example(s)

Example 1

An employee at a secure accommodation facility has consensual sexual intercourse with a resident who is aged 16. The employee has regular sole charge for the resident and is responsible for their care.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 42 Sexual Abuse of Trust.

Example 2

A teacher touches a 17 year old student in a sexual manner, to which the student consented.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 42 Sexual Abuse of Trust.

Example 3

A child aged 13 to 15 years stated that their stepfather had sexual intercourse with them without consent.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1 Rape.

Example 4

A teacher has consensual sexual intercourse with a 16 year old student.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 42 Sexual Abuse of Trust.

Example 5

A teacher has sexual intercourse with a 16 year old student which is non-consensual.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1 Rape.

Example 6

A teacher has sexual intercourse with a 14 year old student which is consensual.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 28 Sexual Intercourse with Older Child (while Section 42 covers all persons under 18, it is principally designed to protect young people aged 16 and 17 who, even though they are over the age of consent for sexual activity, are vulnerable to sexual exploitation from particular classes of people who hold a position of trust or authority in relation to them. Since the victim is aged 14 and Section 28 is an offence in its own right there is no requirement to record a separate Section 42).

Note(s)

This offence covers both circumstances where a sexual abuse of trust occurs in a family setting and where it is committed by a person who has a position of trust over a child in their care i.e. a school, residential institution or a hospital.

A person ("A") is deemed to be in a position of trust in relation to another person ("B") if any of the following five conditions are fulfilled:

- (1) B is detained by virtue of a court or under an enactment in an institution and A looks after persons under 18 in that institution.
- (2) B is resident in a home or other place in which accommodation is provided by a local authority under Section 26(1) of the Children (Scotland) Act 1995 and A looks after persons under 18 in that place.
- (3) B is accommodated and cared for in-
 - (a) a hospital,
 - (b) accommodation provided by an independent health care service
 - (c) accommodation provided by a care home service
 - (d) a residential establishment, or
 - (e) accommodation provided by a school care accommodation service or a secure accommodation service,

and A looks after persons in that place.

- (4) B is receiving education at-
 - (a) a school and A looks after persons under 18 in that school, or
 - (b) a further or higher education institution and A looks after B in that institution
- (5) The fourth condition is that A-
 - (a) has any parental responsibilities or parental rights in respect of B,
 - (b) fulfils any such responsibilities or exercises any such rights under arrangement with a person who has such responsibilities or rights,
 - (c) had any such responsibilities or rights but no longer has such responsibilities or right, or
 - (d) treats B as a child of A's family.

A looks after a person for the purposes of this section if A regularly cares for, teaches, trains, supervises or is in sole charge of the person.

This section applies to all offences occurring on or after 1 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.

18/020 Sexual Abuse Of Trust Of A Mentally Disordered Person

Sexual Offences (Scotland) Act 2009, Section 46(1)↑

General rule: One crime for each victim

Definition

- (1) If a person (“A”) –
- (a) intentionally engages in sexual activity with or directed towards a mentally disordered person (“B”), and
 - (b) is a person mentioned in subsection (2),

then A commits the offence of sexual abuse of trust of a mentally disordered person.

- (7) 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 example(s)

Example 1

A care worker 'A' provides a car service for 'B' who has learning difficulties. 'A' has sexual intercourse with 'B' which is consensual and to which 'B' has the capacity to consent.

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

Example 2

A mentally disordered person who due to their disorder is not capable of giving consent to sexual activities, discloses to a social worker that their care worker had sexual intercourse with them.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1 Rape.

Note(s)

This offence applies to persons with a mental disorder, regardless of whether that mental disorder negates their ability to consent to sexual conduct.

Where a person's mental disorder negates the ability to consent, then this would be an offence under Sections 1, 2 or 3 of the Act, or one of the Younger Children Offences.

This section applies to all offences occurring on or after 1 December 2010. If the offence occurred prior to this date, an offence under Section 313 of the Mental Health (Care and Treatment) (Scotland) Act 2003 or Section 3 of the Sexual Offences (Amendment) (Scotland) Act 2000, may apply.

Other Offences

Disclosing, or threatening to disclose, an intimate photograph or film

Abusive Behaviour And Sexual Harm (Scotland) Act 2016, Section 2↑

16/039 Threatening to disclose an intimate image

16/040 Disclosure of an intimate image

General rule: One crime for each victim and continuity of action or per incident (as appropriate)

Definition

Section 2 - Disclosing, or threatening to disclose, an intimate photograph or film

- (1) A person (“A”) commits an offence if—
 - (a) A discloses, or threatens to disclose, a photograph or film which shows, or appears to show, another person (“B”) in an intimate situation,
 - (b) by doing so, A intends to cause B fear, alarm or distress or A is reckless as to whether B will be caused fear, alarm or distress, and
 - (c) the photograph or film has not previously been disclosed to the public at large, or any section of the public, by B or with B’s consent.
- (2) For the purposes of this section, a photograph or film is disclosed if it, or any data or other thing which is capable of being converted into it, is given, shown or made available to a person other than B.

Section 3 - Interpretation of section 2

- (1) For the purposes of section 2, a person is in an “intimate situation” if—
 - (a) the person is engaging or participating in, or present during, an act which—
 - (i) a reasonable person would consider to be a sexual act, and
 - (ii) is not of a kind ordinarily done in public, or
 - (b) the person’s genitals, buttocks or breasts are exposed or covered only with underwear.
- (2) In section 2—
 - “film” means a moving image in any form, whether or not the image has been altered in any way, that was originally captured by making a recording, on any medium, from which a moving image may be produced, and includes a copy of the image,
 - “photograph” means a still image in any form, whether or not the image has been altered in any way, that was originally captured by photography, and includes a copy of the image.

Victim/Complainer

Person who has received threat or whose intimate photo has been disclosed.

Locus**Threats**

Where threat made (if known) otherwise where received.

Disclosure

Where image disclosed (if known) otherwise victim's home address.

Scenario example(s)**Example 2**

Intimate images are exchanged consensually between 'A' and 'B' who are both aged 14. 'B' sends the images to 'C' (also 14) causing alarm to 'A' and causing 'C' to be alarmed when the images are received.

Record 1 crime of Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 (disclose intimate image).

Record 1 crime of Civic Government (Scotland) Act 1982, Section 52(1) (b) Distribute indecent image of a child.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 6 (if images meet criteria for "sexual") for sending the images.

Example 3

Intimate images are exchanged consensually between 'A' and 'B' who are both adults. 'B' threatens to expose the images of 'A' on social media if further images are not sent. 'A' complies and sends further images to 'B'.

Record 1 crime of Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 (threat to disclose intimate image).

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 4 Cause to participate in a Sexual Act (for causing 'A' to participate in a sexual act by taking naked photographs of themselves).

Example 4

Intimate images are exchanged consensually between 'A' and 'B' who are both adults. 'B' threatens to expose the images of 'A' on social media if further images are not sent. 'A' complies and sends further images to 'B' which 'B' discloses on social media.

Record 1 crime of Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 (threat to disclose intimate image).

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 4 Cause to participate in a sexual act (for causing 'A' to participate in a sexual act by taking naked photographs of themselves).

Record 1 crime of Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 (disclose intimate image).

Example 5

'A' and 'B' who are both adults engage in a sexual act which is filmed by 'C' without their permission and is later disclosed by 'C' on social media.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 9 Voyeurism.

Record 1 crime of Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 (disclose intimate image).

Example 6

Intimate images are exchanged consensually between 'A' and 'B' who are both adults. 'B' shows the images of 'A' to 'C'. 'C' advises 'A' that they have seen the images which causes alarm to 'A'.

Record 1 crime of Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 (disclose intimate image).

Example 1

Intimate images are exchanged consensually between 'A' and 'B' who are both adults. 'B' sends the images to 'C' causing alarm to 'A' and causing 'C' to be alarmed when images are received.

Record 1 crime of Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 (disclose intimate image).

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 6 (if images meet criteria for “sexual”) for sending the images.

Example 7

Intimate images are exchanged consensually between 'A' and 'B'. 'B' threatens to expose the images of 'A' on social media if 'A' does not agree to have sexual intercourse with 'B'. 'A' succumbs to the threat and has sexual intercourse with 'B'.

Record 1 crime of Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 (threat to disclose intimate image).

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1 Rape.

Example 8

Female 'A' is sunbathing topless in their enclosed garden when 'B' leans over the fence and takes a photograph of 'A' without their knowledge. 'B' shouts over to 'A' that they are going to post the image on social media. Police confirm that photograph was taken by 'B'.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 9 Voyeurism.

Record 1 crime of Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 (threat to disclose intimate image).

Example 9

'B' sends a request (visual) to 'A' (both adults) over social media which 'A' accepts. When 'B' appears on the screen they are seen to be naked and masturbating and encourages 'A' to do likewise which 'A' does. 'B' then terminates the visual contact and sends a message to 'A' with a link to a recording of 'A' masturbating stating that unless they send them money the recording will be distributed to 'A's friends and family. 'A' sends money and the recording is not distributed.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 9 Voyeurism.

Record 1 crime of Extortion (due to demand for money).

Example 10

'A' logs into their Facebook account and finds someone has gained access and posted a number of indecent photographs of them which were not previously in the public domain.

Record 1 crime of Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 (disclose intimate image).

Record 1 crime of Computer Misuse Act 1990, Section 2 (unauthorised access with intent to commit further offences).

Example 11

'A' receives 'friend request' on social media from 'B' who they do not know and accepts. 'B' threatens to circulate indecent images of 'A' if they do not send indecent photos. 'A' knows there are no indecent images to be circulated and blocks 'B'.

Record 1 crime of Communications Act 2003, Section 127 (Sexual) – (as 'A' is aware there are no indecent images the threat cannot be followed through therefore an offence under Abusive Behaviour and Sexual Harm (Scotland) Act 2016 or Attempted Extortion would not be relevant).

Example 12

'A' receives a message from 'B' that they are going to post indecent images of them on social media, no demand is made and 'A' is aware that previous partners may well have indecent images of them.

Record 1 crime of Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 (threat to disclose an intimate image).

Example 13

'A' obtains an indecent image of an unknown person from the internet onto which they superimpose the head of 'B' before distributing to others.

Record 1 crime of Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 (disclose intimate image) – legislation covers photos which have been altered.

Note(s)

It is recognised that any threat to disclose an intimate image which is accompanied by an element of person gain on the part of the person making the threat could be considered as a crime of Extortion. The following guidelines should be considered:

- a threat to disclose is made where the demand is for money or valuables - record Extortion;
- a threat to disclose is made where the demand is of a physical sexual nature - record Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 plus any relevant physical sexual crime if the victim complies with the demand; and

- a threat to disclose is made where the demand is for further sexual images - record Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2 plus any relevant sexual crime if the victim complies with the demand.

If a victim receives an intimate image of themselves this does not constitute any offence under Abusive Behaviour and Sexual Harm (Scotland) Act 2016 or Sexual Offences (Scotland) Act 2009. In these circumstances an offence under Communications Act 2003, Section 127 (sexual) should be recorded.

16/000 Assault (Indecent)↑

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

Definition

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

Indecent assault is not a specific crime, it is assault accompanied by indecency.

Victim/Complainer

Person subject of assault.

Locus

Where Crime Takes Place.

Scenario example(s)**Example 1**

An 11 year old girl is touched between the legs by an adult male. This occurred prior to 1 December 2010.

Record 1 crime of Lewd and Libidinous Practices and Behaviour (due to the age of the victim this should not be recorded as Indecent Assault).

Note(s)

With the introduction of the Sexual Offences (Scotland) Act 2009, Sexual Assault will most likely be recorded, as opposed to assault - indecent.

Sexual activity (excluding Rape) where the victim is a girl of or above the age of 12 years and under the age of 16 years should be recorded as a crime of Lewd, Indecent and Libidinous Practices per Criminal Law (Consolidation) (Scotland) Act 1995, Section 6.

Sexual activity (excluding Rape/Sodomy) where the victim is a boy under 14 years and a girl under 12 years of age should be recorded as Lewd, Indecent and Libidinous Practices (Common Law).

18/021 Bestiality↑

General rule: One crime for each accused

Definition

A human being having carnal connection with any of the lower animals.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

A man is found in a field having sex with a sheep.

Record 1 crime of Bestiality.

Note(s)

The lower animals include: cattle, sheep, pigs, goats, horses, poultry, domestic birds, domestic rabbits, domestic dogs, domestic cats, pets and kept animals, captive birds.

**18/018 Taking, distribution, possession, publish etc. indecent photos of children
Civic Government (Scotland) Act 1982, Section 52↑**

General rule: One crime for each accused or group of accused where appropriate

Definition

Section 52A(1)

It is an offence for a person to have any indecent photograph or pseudo-photograph of a child in his possession.

Section 52

Any person who -

- (a) takes, or permits to be taken or makes, any indecent photograph or pseudo-photograph of a child;
- (b) distributes or shows such an indecent photograph or pseudo-photograph;
- (c) has in his possession such an indecent photograph or pseudo-photograph with a view to its being distributed or shown by himself or others; or
- (d) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such an indecent photograph or pseudo-photograph, or intends to do so,

shall be guilty of an offence.

Victim/Complainer:

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Examination of a person's computer finds a number of indecent photographs of children. There is evidence to confirm that these photographs were downloaded from the internet and saved within a file on the computer.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 52(1) (a) for taking/making the images - there is only a requirement for the "take/make" offence to be recorded.

Example 2

On examination, a person's computer is found to contain indecent images of children downloaded from the internet and evidence shows they have been aware of what they were looking at via identified search criteria, however, these images are not physically saved within a file/drive on the computer. A USB stick is also recovered with indecent images thereon, however, it cannot be evidenced that these were made/taken.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 52(1) (a) for taking/making the image.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 52A(1) for Possession (in respect of the USB stick).

Example 3

A number of indecent photographs of children are found on a computer used by two persons. Both parties refuse to acknowledge they were responsible and there is sufficient evidence that the photographs could have been downloaded by one or both parties.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 52(1) (a) for taking/making images (two accused - there is only a requirement for the take/make offence to be recorded).

Example 4

A person is found to be in possession of a number of indecent photographs of children. There is evidence to confirm that these photographs were downloaded from the internet and saved within a file on the computer. There is also evidence to confirm that the images were distributed to others.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 52(1) (a) for taking/making the images.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 52(1) (b) for distributing the images.

Example 5

A person is found to be in possession of three indecent photos of young children. There is no evidence to show how these came into their possession.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 52A(1) Possession of indecent images.

Example 6

Examination of a computer reveals several indecent images of children some of which show children involved in acts of extreme pornography. There is no evidence to show how these images were obtained.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 52A(1) for taking/making the images (this accounts for all images since all involve children).

Example 7

A 19-year old male is found to be in possession of three indecent photos of a 16-year old female. The male and the female are in an established relationship.

This would be recorded as an Incident Only, as the male would be exempt under Civic Government (Scotland) Act 1982, Section 52B.

Example 8

A 13 year old female sends her 14 year old boyfriend a naked photograph of herself via mobile phone. When the relationship breaks up the male distributes the naked photograph to his friends.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 52(1) (b) – for distributing the images (while it is noted the female has committed an offence by taking and distributing an indecent image of herself it is unlikely any crime would be recorded in these circumstances).

Record 1 crime of Abusive Behaviour and Sexual harm (Scotland) Act 2016, Section 2 (disclose intimate image).

Example 9

A teacher at a primary school installs a camera in the changing rooms, which allows the teacher to view the young children getting changed. It is established that 30 children have been filmed in their underwear, for the purpose of the teacher's sexual gratification.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 26 Voyeurism towards a Young Child, with 30 victims (there is no requirement to record a separate Civic Government (Scotland) Act 1982, Section 52 offence in relation to this conduct unless further criminality is identified e.g. search of home computer reveals indecent photographs of children indicating the images have been downloaded on to a separate device, or that the images have been distributed).

Example 10

A portable digital storage device is found in a public place and handed in to Police. When the contents are examined indecent images of children are found. There is no evidence to link any individual with making these images or possessing the storage device.

Record as an incident only. If a crime has been recorded to document progression of the enquiry it can be updated to 'No Crime'.

Note(s)

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.

Under normal circumstances when recording crimes under Section 52 of Civic Government (Scotland) Act 1982 both taking and possessing will not be recorded together unless it can be shown that indecent images were taken and then stored on alternative media e.g. USB stick, therefore presenting justification to record both taking and possessing. Where indecent images have been distributed a further crime will be recorded.

Possession

For the offence of possession to be complete the person has to have knowledge or control of the child abuse content. If the images or videos are recovered from user controlled areas of the hard drive e.g. my documents, desktop, downloads etc. then the charge is complete.

Making/Taking

Relates to bringing a child abuse image or video into existence by, for example, downloading it from Peer2Peer network, downloading it from the internet, copying it from a peripheral device. The person is actively making a copy of a child abuse

image or video that never previously existed. If the images or videos are found within unallocated space or internet cache then this is an area of the hard drive that the person does not control and might not have any knowledge that the images or videos are even there. In this instance for the charge to be complete then you would need to show that the person went actively looking for child abuse material e.g. child abuse search terms via search engines e.g. Google or Peer2Peer search terms thus their presence is a result of user action.

**16/041 Indecent, Obscene, Menacing Telephone
Call/Message of a Sexual Nature
Communications Act 2003, Section 127(1)↑**

**General rule: One crime for each victim and
continuity of action or per incident
(as appropriate)**

Definition

A person is guilty of an offence if he:

- (a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character, or
- (b) causes any such message or matter to be sent.

Victim/Complainer

Person receiving call, Procurator Fiscal as appropriate.

Locus

Where call made from if known, otherwise where call received.

Scenario example(s)

Example 1

Sexual comments/images not directly sent to any individual are posted in a general page on social media.

Record 1 crime of Communications Act 2003, Section 127(1) (Sexual).

Example 2

During a relationship a person consents to their partner making a video of them performing sexual acts in the belief that this would not be shared. When the relationship breaks up the former partner posts a sexual video of the victim on a pornographic internet site. No person has been physically caused to view the video but it can be freely viewed by any person accessing the site.

Record 1 crime of Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Section 2(1) - Disclose intimate image.

Example 3

'A' sends abusive text messages to 'B' and while the comments make some sexual references, the overall content of the messages is deemed to be more abusive than sexual.

Record 1 crime of Communications Act 2003, Section 127(1) (Non-Sexual).

Example 4

While 'A' and 'B' were in a relationship they took naked photographs of each other which was consensual. Several months after the relationship broke up 'A' sent 'B' some naked photos of 'B'.

Record 1 crime of Communications Act 2003, Section 127(1) (Sexual) - note - sending a personal sexual or intimate photograph of themselves is not provided for by Sexual Offences (Scotland) Act 2009 or Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

Example 5

'A' allows 'B' to borrow their mobile phone. A notification appears on the mobile phone that a message has been received which 'B' opens. The content of the message is clearly intended for 'A' and outlines a conversation between 'A' and 'C' of a sexual nature outlining what they have done and would like to do to young children.

Record 1 crime of Communications Act 2003, Section 127(1) – sexual (the offence under Section 127(1) is complete once the message is sent and the criminality of the conduct does not depend on the message being received by someone resulting in it causing offence).

Note(s)

Where a report is received that a number of telephone calls over a period of time have been received from the same person or persons acting together with the same purpose, only one crime should be recorded even if dates and times are available.

SGJD Code 16/041 is applied where the communication is sexual and 84/002 where it is non-sexual.

The Sexual Offences (Scotland) Act 2009 was introduced on 1 December 2010. As a result of this new legislation, circumstances which may have previously been recorded as a Communications Act offence may now be more suited to an offence of Communicating Indecently (Sections 7(1), 24(1), 34(1)).

12/000 Incest

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

1↑

General rule: One crime for each relationship

Definition

Any male person who has intercourse with a person related to him (within forbidden degrees) or any female person who has sexual intercourse with a person related to her (within forbidden degrees) shall be guilty of incest, unless the accused proves that he or she:

- 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 example(s)

Example 1

A brother and sister have consensual intercourse.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 1 Incest.

Example 2

Two brothers have consensual intercourse with their sister.

Record 2 crimes of Criminal Law (Consolidation) (Scotland) Act 1995, Section 1 Incest (one crime for each relationship).

Note(s)

In a case involving consenting adults, it would be admissible to charge both parties with the crime (1 crime with 2 accused).

See relevant statute for Forbidden Degrees of Relationship.

Section 2 of the above Act relates to a step-child.

18/001 Procuration (Excluding Homosexual Acts) Criminal Law (Consolidation) (Scotland) Act 1995, Section 7(1)↑

General rule: One crime for each victim

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;
- Any woman or girl to become a common prostitute in any part of the world;
- 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 example(s)

Example 1

Male invites three females from the Philippines to work in UK as nannies, but on their arrival deploys them as prostitutes in a sauna.

Record 3 crimes of Criminal Law (Consolidation) (Scotland) Act 1995, Section 7 Procuration.

Note(s)

Subsections (2) and (3) have now been repealed so relevant references have been removed. Subsection (1) still stands.

A number of other charges may be relevant depending on the circumstances, such as Human Trafficking and Exploitation (Scotland) Act 2015, Criminal Justice (Scotland) Act 2003, Section 22 or Criminal Law (Consolidation) (Scotland) Act 1995, Section 11 depending on circumstances. The above example is to illustrate the counting rule under Section 7 that three crimes must be recorded.

18/010 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 example(s)

Example 1

A known prostitute (having previously been warned on two occasions or reported to Procurator Fiscal) is found soliciting in a public area.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 46.

Example 2

Person found loitering in a public place for the purpose of prostitution. Checks confirm that this is the first time the suspect has come to the attention of Police for this type of behaviour.

Note as a First Street Warning - no crime should be recorded.

Note(s)

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."

A crime will only be recorded in circumstances where a person is reported to the Procurator Fiscal. If a person is warned no crime will be recorded.

18/017 Prostitution (Public Places) (Scotland) Act 2007, Section 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 example(s)

Example 1

Person seen to be driving slowly, stopping and offering money to three prostitutes individually in the street for sex.

Record 1 crime of Prostitution (Public Places) (Scotland) Act 2007, Section 1.

Example 2

Two persons in a car stop a prostitute in the street and ask for sex.

Record 1 crime of Prostitution (Public Place) (Scotland) Act 2007, Section 1.
(Record two crimes if accused acting independently.)

Note(s)

Offence provisions introduced on 15 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
- Loitering in a relevant place in circumstances from which it may reasonably be inferred that the person loitering was doing so for the purpose of obtaining the services of a person engaged in prostitution.

Section 2 of the Act provides that where a constable reasonably believes that a person is committing, or has committed an offence under Section 1, the constable may arrest that person without warrant.

18/014 Grooming of Children for the Purpose of Sexual Offences
Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, Section 1↑

General rule: One crime for each victim

Definition

- (1) A person ("A") commits an offence if-
- (a) having met or communicated with another person ("B") on at least one earlier occasion, "A"
 - (i) intentionally meets B;
 - (ii) travels, in any part of the world, with the intention of meeting B in any part of the world; or
 - (iii) makes arrangements, in any part of the world, with the intention of meeting B in any part of the world, for B to travel in any part of the world;
 - (b) at the time, A intends to engage in unlawful sexual activity involving B or in the presence of B-
 - (i) during or after the meeting; and
 - (ii) in any part of the world;
 - (c) B is-
 - (i) aged under 16; or
 - (ii) a constable;
 - (d) A does not reasonably believe that B is 16 or over; and
 - (e) at least one of the following is the case-
 - (i) the meeting or communication on an earlier occasion referred to in paragraph (a) (or, if there is more than one, one of them) has a relevant Scottish connection;
 - (ii) the meeting referred to in sub-paragraph (i) of that paragraph or, as the case may be, the travelling referred to in sub-paragraph (ii) of that paragraph or the making of arrangements referred to in sub-paragraph (iii) of that paragraph, has a relevant Scottish connection;
 - (iii) A is a British citizen or resident in the United Kingdom.

Victim/Complainer

Child being groomed.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Adult male engages a 13 year old female in conversation over social media. Over a period of time the conversation becomes sexual and arrangements are made for them to meet where it is clear that this is for a sexual purpose.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 34
 Communicating Indecently with an Older Child.

Record 1 crime of Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, Section 1.

Example 2

Adult 'A' engages 'B' (also an adult purporting to be 14 years old) in sexual conversation on social media during which they arrange to meet for the purpose of sexual intercourse.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 34 Attempt to Communicate Indecently with older child.

Record 1 crime of Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, Section 1 for attempting to meet with a child for the purpose of sexual intercourse.

Example 3

'A', an adult, engages with 'B' (an adult using the false profile of a 14 year old female) on social media which later develops into sexual conversation. 'B' is an active member of a sexual abuse activist group who create false profiles where they purport to be children. 'B' alerts other member of the group to their sexual chat with 'A' which prompts 'C', 'D' and 'E' also to engage with 'A' using their false child profiles.

In these circumstances appropriate age related crimes should be recorded as if 'B', 'C', 'D' and 'E' are individual victims.

Note(s)

In circumstances where a substantive sexual crime(s) is/are committed against the victim where there is evidence of grooming per Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, Section 1 both offences should be recorded.

17/002 Public Indecency↑**General rule: One crime for each 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 example(s)**Example 1**

Person reports that they were walking in a park with their child who is aged 13 to 15 years, another male deliberately exposed his penis to them in a sexual manner.

Record 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). If the sexual element did not exist the crime would be one of Public Indecency.

Example 2

A report is received that a group of males dropped their trousers, showing their buttocks to an adult complainer.

Record 1 crime of Public indecency or 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38.

Example 3

A male is standing at a bus stop with his hands in his trouser pockets masturbating (no exposure). Two persons nearby observe this and have no doubt that is what he was doing and contact the police.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 5 Cause persons to be present during sexual activity.

Example 4

During a rugby international fixture a naked male runs across the pitch in full view of thousands of people.

Record 1 crime of Public indecency.

Note(s)

It is not relevant to the crime's definition whether or not it is committed for the sexual gratification of the accused however such motivation is likely to constitute an offence of sexual exposure under Sections 8, 25 or 35 the Sexual Offences (Scotland) Act 2009.

Unlike the offence of Sexual Exposure, the offence of public indecency is a public order offence which relates to activities such as nude sunbathing, urinating in public or streaking.

Public indecency is a public order offence, therefore, is recorded per incident, not per victim.

It is sufficient that the conduct should cause public offence with the test being the standards that would be applied by the average citizen in contemporary society.

The crime does not extend to conduct in private that would cause offence merely if certain people were to hear of it, however, conduct falling within the definition could take place on a private occasion if it occurred in the presence of unwilling witnesses or if it occurred on private premises but was nonetheless visible to the public.

Public Indecency

This can be conduct in private where exposure does not have to be genitals and does not have to be for the purpose of sexual gratification. Sexual conduct in public could be Public Indecency if there are indications there were attempts at being discrete.

Sexual Exposure

This is exposure of genitals in a sexual manner, in private or in public and does not include sexual activity e.g. masturbation.

Cause to be Present During Sexual Activity

There is no requirement for exposure of genitals but there must be a sexual element to the conduct e.g. masturbation. Can be committed in private or in public. There will be an expectation that the conduct was carried out where it would be reasonable to assume the person(s) would be seen (not discrete).

Repealed Crimes

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

15/000 Attempted Rape and Assault with Intent to Rape↑

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

Definition

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

An assault may be aggravated by intent to gratify lewdness or to ravish.

Assault with Intent to Rape (pre 1 December 2010)

The accused physically and/or sexually assaults the complainer with the intention of penetrating her vagina with his penis without her consent.

Attempted Rape (pre 1 December 2010)

The accused attempts to penetrate the vagina of the complainer with his penis without the complainer's consent and the accused had no reasonable belief that the complainer was consenting.

Victim/Complainer

Person subject of assault.

Locus

Where crime takes place.

Scenario example(s)

Example 1

'A' attempts to rape 'B', 'C' and 'D' and rapes 'E'.

Record 1 crime of Rape.

Record 3 crimes of Assault with Intent to Rape.

Example 2

'A' reports that 'B' spiked their drink and thereafter attempted to rape them.

Record 1 crime of Assault with Intent to Rape (a suitable aggravator should be applied to the crime report to allow identification that a drug may have been used to facilitate the crime). (See 11/005 Assault (Drugging) for further guidance.)

Example 3

'A' reports that their drink was spiked by an unknown person and later 'B' has attempted to rape her. (Prior to 1 December 2010.)

Record 1 crime of Assault with Intent to Rape.

Record 1 crime of Assault (with Drugging offence modifier) - these events have occurred at different times, are not a continuous course of conduct and it is unknown if the same offender was responsible for both. (See 11/005 Assault (Drugging) for further guidance.)

Example 4

'A' reports that 'B' and 'C' attempted to rape her.

Record 1 crime of Attempted Rape/Assault with Intent to Rape.

Example 5

'A' reports that on a number of occasions within a three month period 'B' has attempted to rape her, 'A' is unsure of specific dates.

Record 1 crime of Attempted Rape/Assault with Intent to Rape (if specific dates, times, loci were provided a crime should be recorded for each occasion).

Note(s)

If a victim is raped by more than one male, count crimes separately unless the males are acting together as a group.

From 1 December 2010 the rape element will be non-gender specific, therefore will apply to male victims. The new Act will apply in terms of the penis insertion into the vagina, anus and mouth.

**13/001 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 example(s)

Example 1

One male forcing another male to have anal intercourse.

Prior to 1 December 2010 – Record 1 crime of Sodomy.

After 1 December 2010 – Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1 Rape.

Example 2

One male forcing another male to carry out oral sex upon him.

Prior to 1 December 2010 – Record 1 crime of Assault (with Indecent offence modifier).

After 1 December 2010 – Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1 Rape.

See Notes section for guidance on recording of historic consensual acts.

Note(s)

'In private' does not extend to a lavatory to which the public have, or are permitted to have access, whether on payment or otherwise.

Prior to 1 December 2010, where the sex is non-consensual the charge of Sodomy (13/003) or Indecent Assault (16/000) will apply.

It should be noted that any reports of historic sexual acts between consenting same sex partners, which would if occurring today in the same circumstances no longer be an offence, will not be recorded as crimes regardless of legislation in place at the material time. Any non-consensual acts will continue to be recorded in line with appropriate legislation.

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

18/022 Lewd, Indecent And Libidinous Practices – Common Law[↑]

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

Definition

Lewd, indecent and libidinous practices consist of indecent conduct directed against a specific victim who is within the class of persons whom the law protects, i.e. boys under 14 years and girls under 12 years of age.

The essence of the offence is the tendency to corrupt the innocence of the 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 example(s)

Example 1

The victim, now aged 25, reports to the police having been subjected to sexual abuse by his uncle from the age of 9 to 13.

Record 1 crime of Lewd and Libidinous Practices and Behaviour should be recorded (if times, dates, loci provided separate crimes should be recorded).

Example 2

Two sisters aged 11 and 7 are subjected to watching pornographic films by their 38 year old babysitter, every Friday night for six weeks, before they tell their mother and the police become involved. This happened prior to 1 December 2010.

Record 12 crimes of Lewd and Libidinous Practices and Behaviour (six dates are identifiable and there are two victims).

Example 3

Two 12 year old victims report that on 5 December 2010, they were invited into dwelling house, where an adult male exposed his penis.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 5, Sexual Exposure to a Young Child.

Example 4

12 year old boy is indecently assaulted by 3 persons acting together.

Record 1 crime of Lewd and Libidinous Practices and Behaviour.

Example 5

An 11 year old girl is touched between the legs by an adult male. This occurred prior to 1 December 2010.

Record 1 crime of Lewd and Libidinous Practices and Behaviour (due to the age of the victim this should not be recorded as Indecent Assault).

Note(s)

The essence of the offence is the tendency to corrupt the innocence of the complainant. It is criminal whether committed in public or private. It may be committed by indecent physical contact with the victim, but it need not.

Below are examples of such conduct:

- Indecent exposure to the victim and the taking of indecent photographs of the victim;
- Non-consensual homosexual conduct with a male under 14 (Over 14 is the crime of Indecent Assault);
- Lewd conversation with the victim whether face to face or by a telephone call or through an Internet chat room; and
- Showing of indecent photographs or videos to the victim or by other forms of indecent conduct carried out in the presence of the victim.

Males between the ages of 14 years and 16 years engaging in consensual homosexual acts are not themselves liable but the older male may be guilty of the offence of gross indecency.

Males aged between 14 years and 16 years who engage in consensual homosexual conduct (where the other party is over 16) are protected by Criminal Law (Consolidation) (Scotland) Act 1995, Section 13(5).

Indecent Assault should not be recorded where sexual activity has occurred and the victim falls within the age group protected by this common law crime.

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

18/022 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

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 example(s)

Example 1

Two 14 year old girls invited into dwelling house, accused exposes his penis.

Record 2 crimes of Criminal Law (Consolidation) (Scotland) Act 1995, Section 6 Lewd and Libidinous Practices (statute).

Example 2

A 13 year old girl is touched between the legs by an adult male. This occurred prior to 1 December 2010.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 6 Lewd and Libidinous Practices (statute) - due to the age of the victim this should not be recorded as Indecent Assault.

Note(s)

In circumstances where several crimes have occurred over a date range encompassing a period when the victim was aged 12 and under (common law), and also over 12 and under the age of 16 (statute) both crimes (common law and statute) must be recorded.

Lewd, Indecent and Libidinous Practices covers a variety of sexual conduct, with the exception of Rape, and should be recorded when the victim falls into the age group defined by the legislation. Indecent Assault should not be recorded where sexual activity has occurred and the victim falls with the age group protected by this legislation.

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

**18/008 Person With Custody And 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

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 example(s)

Example 1

30 year old man has intercourse with his sister's 13 year old daughter.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 5(3) Unlawful intercourse with girl between 13 and 16 year at locus

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 1(1) Incest.

Example 2

30 year old man has intercourse with his wife's sister's 13 year old daughter who lives with them.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 3 Intercourse with child under 16 while in position of trust.

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

**18/012 Procuration Of Homosexual Acts
Criminal Law (Consolidation) (Scotland) Act 1995, Section
13↑**

General rule: One crime for each relationship

Definition

It shall be an offence to commit or to be party to the commission of, or to procure or attempt to procure the commission of a homosexual act:

- 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 example(s)

Example 1

Adult male offering an inducement to male to engage in sodomy in a public toilet.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 13 Procuration of Homosexual Acts.

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

14/000 Rape - Common Law[↑]

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

Definition

Rape is the carnal knowledge of a female, by a male person, without her consent or of a girl under 12 years of age, even if she is willing, or with a female who is incapable through mental abnormality, of giving proper consent.

Carnal knowledge means penetration by the penis (not digitally), to the slightest extent, even without emission.

Victim/Complainer

Person subject of assault.

Locus

Where crime takes place.

Scenario example(s)

Example 1

A woman reports having been raped, but the alleged offender insists that she consented although the woman insists she didn't.

Prior to 1 December 2010 – Record 1 crime of Rape.

After 1 December 2010 – Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1 – Rape.

Example 2

A woman reports that she has been raped by the same man on numerous occasions over several years and cannot specify dates.

Prior to 1 December 2010 – Record 1 crime of Rape.

After 1 December 2010 – Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1 – Rape.

Example 3

A woman reports being raped anally by a male.

Prior to 1 December 2010 – Record 1 crime of Assault (with Indecent offence modifier).

After 1 December 2010 – Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1 – Rape.

Example 4

A woman reports being raped by a group of men, who were acting together.

Prior to 1 December 2010 – Record 1 crime of Rape.

After 1 December 2010 – Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1 – Rape.

Note(s)

Where persons act individually, even though there is only one victim count each individually.

Where several people act together, this will be recorded as one crime.

The general rule relating to the law of rape is not the use of force but reference to the woman's lack of consent.

Recording/Reporting of Rape

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

A Standard Prosecution Report 2 (SPR2) libelling a charge of Rape should be submitted to the Procurator Fiscal detailing the full circumstances for their consideration. The Rape crime report will be shown as detected in these circumstances. Whilst the accused may be charged with Attempted Rape or Assault with intent to Rape due to the evidence available, the "Remarks" section of the Standard Prosecution Report should provide an explanation as to why the charge being libelled on the front page of the Standard Prosecution Report is one of Rape. The following has been agreed by Crown Office and Procurator Fiscal Service and must be added to the "Remarks" section of an SPR2 for cases where Rape is libelled but it is considered there is only a sufficiency of evidence to report Attempted Rape or Assault with intent to Rape:

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

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

Husband and Wife

Legal authorities, in the past, held that a husband could not be convicted of rape of his wife. However, it has now been held that a charge alleging that a husband raped his wife is relevant, and that it is not an incident of modern marriage that a wife consents to intercourse, by her husband, in all circumstances, including intercourse obtained by force, and the husband is not immune from prosecution for rape of his wife. (*Stallard v. H.M.A.*, 1989 S.C.C.R. 248). It should be noted that this court decision did not "change the law" as of that date, but decided that the historically suggested position was not valid based on the crime as it was at the time. Any reported crimes meeting this criteria which occurred prior to 1989 must be recorded.

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

**18/002 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**

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 example(s)

Example 1

Two 12 year old girls are invited into a dwelling where a male has consensual sexual intercourse with them.

Record 2 crimes of Criminal Law (Consolidation) (Scotland) Act 1995, Section 5(1) Unlawful intercourse with a girl under 13.

Example 2

Social Worker advises a girl of 11 years old is pregnant.

Record 1 crime of Rape (as the girl is under the age of 12).

Example 3

Social Worker advises a girl of 13 years old is pregnant, having had consensual intercourse.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 5(1) Unlawful intercourse with a girl under 16.

Example 4

Male has consensual intercourse with female who is 12 years old.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 5(1) Unlawful intercourse with a girl under 13.

Note(s)

The age of the male is irrelevant.

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

**18/003 Sexual Intercourse With Girl Under 16
Criminal Law (Consolidation) (Scotland) Act 1995, Section
5(3)↑**

**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 example(s)

Example 1

Male and 15 year old female drive to a secluded area where they have consensual sexual intercourse.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 5(3) Unlawful intercourse with a girl under 16.

Example 2

Male and female, aged 14 years old, have consensual sexual intercourse on five different known dates over a period of one month.

Record 5 crimes of Criminal Law (Consolidation) (Scotland) Act 1995, Section 5(3) Unlawful intercourse with a girl under 16.

Example 3

Male and female, both 15 years, attend a party, enter a bedroom and engage in consensual sexual intercourse.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 5(3) Unlawful intercourse with a girl under 16.

Example 4

A social worker informs the police of a girl of 14 years old who is pregnant, having had consensual sexual intercourse.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 5(3) Unlawful intercourse with a girl under 16.

Example 5

15 year old female has consensual intercourse with her boyfriend.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 5(3) Unlawful intercourse with a girl under 16.

Note(s)

Time Bar Provision – No prosecution shall be commenced for an offence under subsection (3) more than one year after the commission of the offence. (Section 15 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 removed the time bar provision. This was commenced on 7 October 2005 so the time bar does not apply to offences after this date). It should be noted that the time bar does not apply to subsection (1) – unlawful sexual intercourse with any girl under the age of 13 years. If a time-bar does apply, an offence under Section 5(3) should still be recorded and the SPR updated to the effect that the Procurator Fiscal may instead wish to consider Section 6 (Lewd and Libidinous Practices against girl between 12 and 16).

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

13/001 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

The common law offence of Sodomy consists of the insertion of the penis into the anus of another male. As with rape, proof of penetration is an indispensable requirement. It is not an offence for two consenting adults over the age of 16 years to engage, in private, in a homosexual act, namely sodomy or an act of gross indecency.

Victim/Complainer

Person subject of assault.

Locus

Where crime takes place.

Scenario example(s)

Example 1

'A' befriends 'B' at a nightclub, both return to a private flat, thereafter 'B' falls asleep and is awoken sometime later by 'A' sodomising him against his will.

Record 1 crime of Sodomy.

Example 2

'A' and 'B' enter a cubicle of a public toilet together, whereby 'A' forces himself on 'B' and sodomises him. This happens after 1 December 2010.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1 Rape.

Example 3

'A' and 'B' report being sodomised by four members of a group acting together.

Record 2 crimes of Sodomy.

Example 4

A man is sodomised by three persons, acting together during one incident.

Record 1 crime of Sodomy.

Note(s)

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.

Group 3 – Crimes of Dishonesty↑

Crime	SGJD Code
Civic Government (Scotland) Act 1982, Section 57 – In Building with Intent to Steal	21/003
Civic Government (Scotland) Act 1982, Section 58 – Convicted Thief in Possession	21/002
Criminal Justice and Licensing (Scotland) Act 2010, Section 49 - Articles For Use In Fraud	25/000
Criminal Law (Consolidation) (Scotland) Act 1995, Section 46A – False Monetary Instruments	25/000
Forgery and Counterfeiting Act,,1981	31/001
Forgery and Uttering (excluding Currency Offences)	25/000
Fraud - Breach of Trust/Embezzlement	24/000
Fraud - Fraud (including Statutory Fraud)	25/000
Fraud - Bankruptcy	27/000
Housebreaking	19/004 to 19/012
Identity Documents Act 2010	25/000
Opening Lockfast Place (excluding Motor Vehicle)	20/001 to 20/003
Opening Lockfast Place (ATM)	25/000
Opening Lockfast Motor Vehicle	20/004 to 20/006
Proceeds of Crime Act 2002 - Money Laundering	31/004

Crime	SGJD Code
Reset	23/000
Theft by Shoplifting	22/003
Theft (not elsewhere Classified)	22/001
Theft from a Motor Vehicle	22/005
Theft of Motor Vehicle including Taking and Driving Away	22/002
Attempted Theft of Motor Vehicle	22/006
Theft of Pedal Cycle	22/004
Trade Marks Act 1994, Section 92	25/000
Vehicle Excise and Registration Act 1994, Section 44 Fraud	25/000
Vehicle Excise and Registration Act 1994, Section 44 Forgery	26/000

Group 3 - Crimes of Dishonesty[↑](#)

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 Opening Lockfast Place) within the same incident, only one crime type i.e. the most 'serious' will be applied. The term used within this manual for this practice is 'subsume'.

**21/003 Intended Theft (Curtilage, In/On a Building, Vehicle/Vessel)
Civic Government (Scotland) Act 1982, Section 57↑**

General rule: One crime for each separate property not within the same curtilage/building/vehicle/vessel

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

Owner of the Property/Procurator Fiscal (where no owner identified).

Locus

Where crime takes place.

Scenario example(s)

Example 1

Householder finds a person in their house looking through a kitchen cupboard, person makes off empty handed and is not traced.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 57.

Example 2

Householder sees a hand appearing through the kitchen window, raising the window in an attempt to steal a purse lying just inside.

Record 1 crime of Housebreaking with Intent (domestic).

Example 3

Two persons found within the closed private bar area of a hotel looking through cupboards with no reason for being there.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 57.

Example 4

An insecure vehicle has been entered with the suspect making off on being disturbed. There are indications that a search has been carried out e.g. property/documents disturbed, the glove box has been searched, but no indication of an attempt to steal the vehicle and no property found to be missing.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 57.

Example 5

Two persons carrying a large bag seen by a security guard in a compound with torches, looking in the windows of three portacabins, which are owned by different contractors, access having been gained by climbing over the fence. Both persons make off on the security guard making his presence known. No property identified as having been stolen.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 57.

Example 6

'A' who has previous convictions for crimes of Theft is found within the curtilage of a building in circumstances where it could reasonably be inferred that they intended to commit Theft. When searched by Police 'A' is found to be in possession of gloves and a crowbar.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 57. (No requirement to record a separate Section 58 offence in circumstances where the person is found within the curtilage.)

Example 7

Householder on examining CCTV footage sees a person walking up their private driveway during hours of darkness, looking around them, trying each of the door handles of a car parked in the driveway before trying doors of the house and garage.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 57. (The circumstances clearly indicate an intent to steal. If the provenance of the CCTV footage can be established the courts will accept such footage as real evidence. If the locus was on a road and the circumstances clearly indicate an intent to steal then an Attempted Theft from a Motor Vehicle could be recorded.)

Note(s)

In order to record an undetected crime in this category the person must be found/seen, and, the circumstances must infer theft was intended.

It is not necessary for the person(s) to have been seen by a police officer.

Where the evidence shows a person's intention was to steal, but they are not traced, the crime remains undetected.

A crime must be recorded in circumstances where it appears clear from any Visual recording System footage that a crime has occurred and the provenance of the recording can be established.

Impersonating an official attempting to gain entry to a house should be recorded as Attempted Fraud (door to door sales and bogus tradespeople).

**21/002 Possession of Tool/Tools With Intent to Steal
Civic Government (Scotland) Act 1982, Section
58↑**

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.

Locus

Where crime takes place.

Scenario example(s)

Example 1

'A' is found acting suspiciously in an enclosed car park and on being searched is found to have a jemmy in their pocket. Is it established they have three convictions for theft.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 58.

25/000 Articles for use in Fraud Criminal Justice and Licensing (Scotland) Act 2010, Section 49

General rule: One crime for each offence

Definition

Section 49 - Articles for use in Fraud

- (1) A person (“A”) commits an offence if A has in A's possession or under A's control an article for use in, or in connection with, the commission of fraud.
- (3) A person commits an offence if the person makes, adapts, supplies or offers to supply an article—
 - (a) knowing that the article is designed or adapted for use in, or in connection with, the commission of fraud, or
 - (b) intending the article to be used in, or in connection with, the commission of fraud.
- (5) In this section, “article” includes a program or data held in electronic form.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

A device is recovered on an ATM and is confirmed to be foreign to its environment. Clarifications with specialists (e.g. Economic Crime Unit) indicate that the device is a Skimmer/Card Trap/Cash Trap/Eavesdropping Device/Camera Bar/False Keypad. No suspect is immediately identifiable.

Record 1 crime of Attempted Theft. (A device has been deployed in order to commit theft but it is not immediately obvious that any theft has occurred.)

Example 2

'A' has used their bank card at an ATM where the card has been swallowed. A short time later a suspect is identified as having used 'A's card to make withdrawals at various ATMs. The suspect is traced and found in possession of a card trap and camera bar.

Record 1 crime of Theft (doctrine of recent possession of card).

Record 1 crime of Theft by Opening Lockfast Place (ATM) (recorded as a crime per account).

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 49(1) - Possess article used in Fraud.

Example 3

During a house search a skimming device, a card producing device and three cloned bank cards are found.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 49(1) (for skimming device).

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 46A(2) (b) (for card producing device).

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 46A(2) (a) (for possession of cloned cards).

ATM Skimming/Common Purchase Point

Where the banks or the Association for Payment Clearing Services (APACS) report information to a Single Point of Contact (SPOC) that a 'Common Purchase Point' has been used to obtain plastic card details a crime should be recorded.

Example 4

A Financial Institution report to a Police SPOC that after an investigation into a number of fraudulent purchases abroad on various accounts, a garage within the Force area has been identified as the 'common purchase point' where the details from the card were obtained. Equipment used to skim and record card details is found at the locus.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 49(1) 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 a person or group of a group is shown to be responsible for a number of separate 'Common Purchase Points', count one crime for each separate location.

Example 5

A group of persons are shown to be responsible for obtaining card details from twelve separate retail outlets they own or are employed by and passing the details abroad for use in fraud. Equipment used to skim and record card details is found at each locus.

Record 12 crimes of Criminal Justice and Licensing (Scotland) Act 2010, Section 49(1) - Articles For Use In Fraud and depending on evidence available record 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(s)

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 is obtained when being entered on the machine keypad and is associated with track data obtained from the user's card when it is inserted.

Examples of devices found on ATMs deployed in criminality are:

- ATM Card Skimmer - electronic device used to record and steal data from the card;
- ATM Card Trap - non-electronic device used to trap card in order to steal;
- ATM Cash Trap - non-electronic device used to trap cash being dispensed;

- Eavesdropping device - electronic device used to record and steal bank card data from the internal workings of the ATM;
- Camera Bar - electronic device used to record visual images of a PIN being input;
- False Keypad - electronic device used to record electronic data of PIN being input; and
- Cloned Bank Card - white plastic card holding the data of a genuine bank card.

**25/000 False Monetary Instruments
Criminal Law (Consolidation) (Scotland) Act
1995, Section 46A[↑]**

**General rule: One crime for each incident
(seizure)**

Definition

- (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.

Locus

Where crime takes place.

Scenario example(s)

Example 1

A person apprehended for making a cloned credit card admits to making five other cards.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 46A(1).

Example 2

'A' is apprehended for making 10 cloned credit cards.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 46A(1).

Example 3

'A' is stopped and found to be in possession of 12 cloned credit cards.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 46A(1).

Where an offender makes an article used in fraud and then uses that article fraudulently only the fraudulent use should be recorded not the Criminal Law (Consolidation) (Scotland) Act 1995, Section 46A - False Monetary Instrument.

Example 4

'A' makes five cloned credit cards and then uses each card at different loci in circumstances amounting to fraud.

Record 5 crimes of Fraud – Cheque, Plastic Card and Online Bank Accounts (the Criminal Law (Consolidation) (Scotland) Act 1995, Section 46A - False Monetary Instruments is subsumed in the fraud).

Actual or attempted frauds by false representation take precedence over crimes of possessing articles for use in frauds.

Example 5

'A' is found in possession of a cloned credit card and admits to just having purchased goods using the cloned card.

(a) The fraud has already been reported.

No crime recorded in addition to the reported Fraud.

(b) The fraud has not yet been reported.

Record 1 crime of Fraud – Cheque, Plastic Card and Online Bank Accounts.

Note(s)

Criminal Justice and Licensing (Scotland) Act 2010, Section 49 (Control/possess article for commission of Fraud) should be used where persons are found in possession of or have control of an article for use in, or in connection with, the commission of fraud. Where no one has been found in possession of an article Section 46A should be recorded.

The following monetary instruments are hereby specified for the purposes of Section 46A:

- money orders;
- postal orders;
- United Kingdom postage stamps;
- share certificates;
- cheques and other bills of exchange;
- travellers' cheques;
- bankers' drafts;
- promissory notes;
- cheque cards;
- debit cards; and
- credit cards.

31/001 Forgery And Counterfeiting Act 1981↑

**General rule: One crime for each incident –
making currency
One crime for each victim/incident
– tendering currency**

Definition

Section 14(1) - It is an offence for a person to make a counterfeit of a currency note or a protected coin, intending that they or another shall pass or tender it as genuine.

Section 14(2) - It is an offence for a person to make a counterfeit of a currency note or of a protected coin without lawful authority or excuse.

Section 15(1)(a) - It is an offence to tender as genuine a counterfeit currency note or protected coin.

Section 16(1) - It is an offence for a person to have in their custody or under their control anything which is, and which they know or believes to be, a counterfeit of a currency note or of a protected coin, intending either to pass or tender it as genuine or to deliver it to another with the intention that they or another shall pass or tender it as genuine.

Section 16(2) - It is an offence for a person to have in their custody or under their control, without lawful authority or excuse, anything which is, and which they know or believes to be, a counterfeit of a currency note or of a protected coin.

Victim/Complainer

Procurator Fiscal.

Locus

Where the currency is presented.

Scenario example(s)**Example 1**

'A' presents £20 note to sales assistant to pay for goods. On sales assistant advising that note is a forgery, 'A' makes off.

Record 1 crime of Forgery and Counterfeiting Act 1981, Section 15(1) (a) (due to the actions of the person tendering the currency it can be presumed that the note was tendered knowingly).

Example 2

'A' presents £10 note to sales assistant to pay for goods. The sales assistant advises that the note is a forgery hands it back and the goods are paid for with further monies.

No crime should be recorded as the note has not been recovered therefore it cannot be confirmed that the note was in fact counterfeit.

Example 3

'A' is found in possession of 10 counterfeit notes from various banks.

Record 1 crime of Forgery and Counterfeiting Act 1981, Section 16(2).

Example 4

'A' presents £350 in forged notes in payment for white goods. Notes made up of different denominations and banks.

Record 1 crime of Forgery and Counterfeiting Act 1981, Section 15(1) (a).

Example 5

'A' buys a phone from the Internet for £340 and on receiving same decides it wasn't the one they wanted and advertises it for sale. The next day a buyer offers £430. 'A' meets the buyer, hands over the phone and on returning home finds the cash to be counterfeit.

Record 1 crime of Forgery and Counterfeiting Act 1981, Section 15(1) (a).

Example 6

'A', 'B' and 'C' enter a supermarket and within a short timescale each tenders a counterfeit £50 note while making a low value purchase. The circumstances indicate that they are acting together.

Record 3 crimes of Forgery and Counterfeiting Act 1981, Section 15(1) (a) (while the circumstances indicate they were acting together each has entered into a separate transaction and has tendered a different note which would amount to three separate incidents).

Example 7

'A' enters three separate shops and pays for goods with counterfeit currency where there is clear evidence the currency has been tendered in the knowledge it was counterfeit.

Record 3 crimes of Forgery and Counterfeiting Act 1981, Section 15(1) (a).

Example 8

When cashing up the days takings a counterfeit note is found and the Police are contacted. There is nothing to confirm who tendered the note and if the note was tendered knowingly.

No crime requires to be recorded.

Example 9

'A' reports that three counterfeit notes were tendered at the same locus all in suspicious circumstances which indicated the suspect(s) were aware that the notes were not genuine:

(a) occurred on three separate occasion and all notes relates to the same bank.

Record 3 crimes of Forgery and Counterfeiting Act 1981, Section 15(1) (a).

(b) occurred on one occasion and all notes related to different banks.

Record 1 crime of of Forgery and Counterfeiting Act 1981, Section 15(1) (a).

Note(s)

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 that 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.

25/000 Forgery And Uttering (Excluding Currency Offences)↑

General rule: One crime for each account/victim

Definition

This crime consists in the making and publishing of a writing feloniously intended to represent and pass for the genuine writing of another person.

The forgery may be committed in many ways, such as:

- (a) fabricating a whole document, including signature, or
- (b) adhibiting a false signature to a genuine document, or
- (c) transferring a genuine signature, from the deed to which it is affixed, to a false document, or
- (d) making alterations in a genuine document, so as to change its character or meaning, without the knowledge or consent of the subscriber, or
- (e) placing a writing above a genuine signature without the authority of the subscriber.

Victim/Complainer

Person/business who suffers loss.

Locus

Where crime takes place.

Scenario example(s)

Example 1

'A' alters drug dosage on a prescription and presents same at chemist.

Record 1 crime of Forgery and Uttering.

On 'A' being apprehended they admit to five similar crimes.

Record 1 crime of Forgery and Uttering. Forgery of drug prescriptions is the principal crime over Fraud. The victim is the health service provider not the chemist.

Example 2

'A' forges 'B's' signature on a giro cheque and presents same at post office.

Record 1 crime of Forgery and Uttering.

Example 3

'A' adds a zero to a cheque for £100 making it £1,000.

Record 1 crime of Forgery and Uttering.

Example 4

Five cheques from a previously reported stolen cheque book are used to obtain goods from the same store. They are reported to the police at different times.

Record 1 crime of Forgery and Uttering (they are all from the same account).

Example 5

Steal prescription pad from doctor's surgery, four different chemists report forged prescriptions being used from the stolen pad.

Record 1 crime of Theft.

Record 1 crime of Forgery and Uttering.

Note(s)

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.

- 25/000 Fraud (Including Statutory Fraud)**
24/000 Breach Of Trust and Embezzlement
27/000 Bankruptcy↑

Definition

It is impossible to give a succinct definition to embrace all the modes of Fraud but the following elements must be present in each case, viz–

- (a) Falsehood – false representation by word of mouth or writing or false conduct;
- (b) Fraud – intention to deceive and defraud; and
- (c) Wilful imposition – which the cheat designed had been successful to the extent of gaining benefit or advantage, or of prejudicing, or tending to prejudice, the interests of another person.

Where another reporting agency e.g. Trading Standards, Benefits Agency etc. have primacy and agree to record and conduct enquiry, no crime(s) should be recorded by the Police.

It is sometimes difficult to decide whether the crime is fraud or attempted fraud. Although the accused need not have derived any gain, there must have been some measure of success before the crime is complete. The fraud must have passed the stage of preparation, and entered a stage of perpetration, tending to prejudice the interests of another person.

Establishing the Locus

The following principles should be used in order to ascertain the locus of the crime where no specific locus rules are outlined and are listed in order of priority. It is only when a principle cannot be achieved or is not known that the next principle will apply.

- (1) First, the police area covering the location of the fraudulent operation;
- (2) Second, suspect's address;
- (3) Third, the police area with the greatest number of individual usages;
- (4) Fourth, the police area where the first offence was committed; then
- (5) Fifth, the police area where the victim resides/works or was at the time of the crime.

Cheques

The locus will be where the cheque was presented i.e. uttered.

Goods Ordered Remotely

The delivery address to which the goods were delivered or are to be delivered. It should be noted that a public collection point is insufficient to determine a delivery address.

Business Related Fraud

The office address/usual place of work of the suspect or where the circumstances outlined identify where the crime was committed.

Mandate/Safe Account Fraud

The locus will be where the communication was received or victim's address (as appropriate).

Money Transfer Houses

The locus will be as follows,

If the payment is made to a Money Transfer House e.g. Western Union, in this country then the locus is the address of the suspect used at that Money Transfer office when picking up the money or transferring the money on.

If the money is transferred to another Money Transfer House then the locus is the address of the suspect at the new Money Transfer office.

If transferred abroad by the victim using a Money Transfer House then the locus is the victim's address.

Where the victim sends money from abroad to a Money Transfer office in this country then the locus is the address of the suspect picking up the money if known, or if not known, the Money Transfer office where the money was sent to.

Locus Examples

'A' transfers money from a Western Union office to a Western Union abroad, which has subsequently been established as part of a fraud.

One crime of Fraud recorded by the Division where the victim resides.

'A' transfers money from a Western Union Office in Division 'A' to Western Union office in Division 'B' (this is just the vehicle to move the money). The person who collects the money gives an address in Division 'C'.

One crime of Fraud recorded by Division 'C' (if it can be confirmed this person was responsible for the fraud, otherwise record as complainer's home address).

Legal Aid (Scotland) Act 1986, Section 35 (SGJD - 85/021)

Section 35(1) (A) - Fail to inform change of circumstances

Locus: where this would be a failure to notify an update to circumstances, the solicitor's office should be considered as the locus.

Section 35(1) (B) - False statement to obtain Legal Aid

Locus: where appropriate the solicitor's office should be considered as the locus (even where forms are submitted online, they are most likely directed through the solicitor). If there are any instances where this is not the case the Scottish Legal Aid Board address would apply (completed act of misrepresentation).

Transfer of Crimes where locus is England or Wales

Forces in England and Wales direct reports of fraud to Action Fraud/National Fraud Intelligence Bureau. This will not apply to Scotland, however, notwithstanding enquiries will be forwarded to Scotland for further enquiry which have emanated from Action Fraud.

It should be noted that Police Scotland have not signed up to Action Fraud and members of the public reporting Fraud should not be advised to report same direct to Action Fraud.

Where the victim is identified as being in Scotland at the time of the crime a crime record should be recorded. Where enquiry identifies the locus to be elsewhere in the UK, a request to transfer the crime should be made to the appropriate Force as a 'call for service'. The receiving Force will, on acceptance, record such allegations

directly with Action Fraud and double key onto their crime recording system cross referencing with the National Fraud Reporting Centre number provided to them by Action Fraud. Where a Force accepts the crime the relevant crime recorded in Scotland can be updated to 'No Crime'. Where a Force refuses to accept a crime transfer the crime must remain recorded.

Crimes Abroad

Where persons who have been victims of crime abroad report fraud in Scotland and there is no connection with Scotland at the time of the fraud occurring, the victim should report it in their own country or the country they were staying when the crime occurred.

In circumstances where a victim is identified as being in Scotland at the time of the crime and it is clear from the outset that the suspect was outwith the UK, a crime must be recorded. Any decision to transfer the enquiry to the respective Country will be determined by Police Scotland protocols. The crime record will not be updated to 'No Crime' and the relevant marker/aggravator identifying the suspect as being 'Outwith UK' must be appended to the crime record.

Note(s)

As enquiries continue the locus may change which can result in crime reports being updated to no crime and details forwarded for recording and enquiry in another area.

In order to transfer a crime, sufficient enquiry must have taken place to link the suspect/address to the relevant police area. It should be noted that the beneficiary account holder/address is not always sufficient to transfer the crime and further local checks should be carried out to confirm any link.

It is important to consider if there is a specific intended victim. Many communications are sent out as part of a mailshot to no specific intended victim. An individual becomes a specific intended victim where they take action following the contact.

Crimes should not be recorded simply because goods have not arrived or are not what was expected. Additional details are necessary, for example e-mail address no longer available, address unknown or found to be a mail drop, more than one complainant, or Payment Service Provider (PSP) payment stopped.

Fraudulent Scheme

The term fraudulent scheme does not exist in law in terms of offences, but is commonly used to refer to monetary fraud where the offender(s) has devised a pre-meditated, planned course of action/scheme to repeat a series of actions through which sums of money are taken each time. One or more persons can be responsible for, or the victim of, a fraudulent scheme. In the case of a fraudulent scheme where there is more than one victim then only one crime should be recorded.

Phishing

The process of attempting to acquire sensitive information such as usernames, passwords and credit card details by masquerading as a trustworthy entity. Communications purporting to be from popular social websites, auction sites, online banks, online payment processors, or IT administrators are commonly used to lure the unsuspecting. Phishing is typically carried out by e-mail or instant messaging, and it often directs users to enter details at a fake website whose look and feel are almost identical to the legitimate one.

Ringling the Changes

In exchanging money with another person, deliberately mislead them into giving you more money than you have exchanged with them.

Reimbursed by Financial Institution

Where circumstances indicate a fraud has occurred, a crime report must initially be recorded, whether or not the account holder has been reimbursed and/or if the Financial Institution has advised they will be dealing with the matter. Enquiry must also be made with the Financial Institution in order to confirm if a fraud has occurred or whether the transaction has been as the result of a banking error.

It must be ascertained whether or not the account holder has been reimbursed by the Financial Institution, which must be shown on the crime report.

Computer Viruses/Hacking (Computer Misuse Act 1990)

Where viruses are launched onto the World Wide Web to infect any computer they come across, victim's computers that are infected are not generally specific intended victims. Where police receive reports under these circumstances, that computers have been infected by or received a virus, then a SID entry should be recorded. If however a person is identified for releasing a virus from a location within the UK then a crime should be recorded for each distinct virus released from that location, to be recorded where the person is based.

'Hacking' is the unauthorised modification of the contents of any computer. It is usually committed by unlawful accessing a computer but it can be committed by persons with lawful access as well. It is the deliberate targeting of a specific computer by the offender.

Banking Protocol

The "Banking Protocol" is a multi-agency initiative between trading standards, banking institutions and law enforcement agencies which aim to detect and prevent fraudulent activity on customers' bank accounts. The process requests bank staff to recognise any unusual or out of character withdrawals or transactions and ask further questions to establish whether their customers may be victims of fraud.

It should be noted that the intervention of a banking institution to prevent a crime from occurring does not negate the requirement to record a crime of Attempted Fraud where appropriate.

ATM Skimming (see Articles Used in Fraud)

Frauds at cashpoints are commonplace and often involve organised criminal gangs. Skimming occurs when a device is fixed to an Automated Teller Machine (ATM) whereby a pin number is obtained when being entered on the machine keypad and is associated with track data obtained from the user's card when it is inserted.

Unifi Tags

Definitions and Examples (Tags only to be used on new UNIFI).

Advance Fee Payment Fraud

“419” Advance Fee
Lottery Scams
Counterfeit Cashiers Cheques
Dating Scam
Fraud Recovery Scam
Inheritance
Rental
Other Advance Fee
Lender Loan

Financial Investment Fraud

Share Sales or Boiler Room
Pyramid or Ponzi Schemes
Prime Bank Guarantees
Time Shares and Holiday Club
Other Financial Investment

Consumer And Retail Fraud

Online Shopping and Auctions
Consumer Phone
Door to Door Sales and Bogus Tradespeople
Other Consumer and Retail
Computer Software Service
Ticket
Retail

Charity Fraud

Charity
Fraudulent Applications for Grants from Charities or Lottery Fund
Organisations

Banking And Credit Industry Fraud

Cheque, Plastic Card and Online Bank Accounts
Application (excluding Mortgages)
Mortgage Related
Mandate
Dishonestly Retaining a Wrongful Credit

Insurance Fraud

Insurance Related
Insurance Broker
Telecom Industry Fraud (Misuse of Contracts)

Corporate Employee/Procurement Fraud

Corporate Employee

Corporate Procurement

Business Trading Fraud

False Accounting Fraud

Bankruptcy and Insolvency Fraud

Passport Application Fraud

Fraudulent Applications for Grants from Government Organisations

Pension Fraud

Pension Fraud by Pensioners (or their Estate)

Pension Fraud Committed on Pensioners

Pension Liberation

Other Regulatory Fraud

Fraud by Failing to Disclose Information

Abuse of Position of Trust (Including Embezzlement)

DVLA Driver Licence Application Fraud

Other Fraud (Not Covered Elsewhere)

Advance Fee Payment Fraud

"419" Advance Fee

A communication soliciting money from the victim for a variety of emotive reasons to assist the fraudster.

The name has its origin to a reference to the violation of Section 419 of the Nigerian Criminal Code. The 419 scam combines the threat of impersonation fraud with a variation of an advance fee scheme in which a letter, e-mail, or fax is received by the potential victim. The communication from individuals representing themselves as foreign government officials offers the recipient the "opportunity" to share in a percentage of millions of dollars by helping the fraudster to place large sums of money in an overseas bank account.

Payment of taxes, bribes to government officials, and legal fees are often described in great detail with the promise that all expenses will be reimbursed as soon as the funds are out of the country.

The recipient is sometimes encouraged to send information to the author, such as blank letterhead stationary, bank name and account numbers, and other identifying information using a facsimile number provided in the letter. The scheme relies on convincing a willing victim to send money to the author of the letter in several instalments of increasing amounts for a variety of reasons.

Note: - Consideration should be given as to whether the individual has become a specific intended victim. Where someone is cold called or receives global e-mails or are part of a mail shot, they are not generally specific intended victims. People are specific intended victims if they take action following the contact.

Example 1

'A' receives a letter purporting to come from a Government official stating that if they pay £1,000 into an account it will facilitate the transfer of £100,000,000 and they will be entitled to £100,000.

a) 'A' ignores the letter and contacts police.

No crime requires to be recorded.

b) 'A' on receiving instructions where to send money, sends £1,000 and then receives further instructions that a further £1,000 is required to be sent to release the money. At this point 'A' contacts police.

Record 1 crime of Fraud – '419' Advance Fee.

Lottery Scams

A fraud which involves the victim being informed they have won a non-existent lottery and required to send an advance to release their winnings.

The lottery scheme deals with persons randomly contacting e-mail addresses, postal addresses or faxes advising them they have been selected as the winner of an International lottery. The e-mail message usually reads similar to the following:

"This is to inform you of the release of money winnings to you. Your e-mail was randomly selected as the winner and therefore you have been approved for a lump sum payout of \$500,000.00. To begin your lottery claim, please contact the processing company selected to process your winnings."

An agency name follows this body of text with a point of contact, phone number, fax number, and an e-mail address.

An initial fee ranging from \$100 to \$5,000 is often requested to initiate the process and additional fee requests follow after the process has begun. These emails may also list a United Kingdom, point of contact and address while also indicating the point of contact at a foreign address.

Example 2

'A' receives a letter in the post advising they have won a lottery along with details of what to do in order to claim the prize.

(a) 'A' takes no action, contacts the police and puts the letter in the bin.

No crime requires to be recorded.

(b) 'A' contacts the number and obtains details where to send an admin fee to facilitate claiming the win, transfers money to the account and hears nothing else.

Record 1 crime of Fraud – Lottery Scams.

Example 3

A person notifies police that they have been sent a letter informing them that they have won the Spanish Lottery and if they send £1,000 to an address in Madrid they will receive £600,000.

(a) They pay nothing and bring the letter to the police.

Record an incident.

(b) They have paid £1,000 and received nothing.

Record 1 crime of Fraud – Lottery Scams. (The locus being the victim's address.)

Counterfeit Cashiers Cheques

Fraudulent cheques or Bankers Drafts are presented as payment for goods or services ordered over the Internet in excess of the actual value. The seller reimburses the purchaser with the excess prior to the cheque or draft being discovered as fraudulent.

This fraud targets individuals that use the Internet to sell merchandise or services. An interested party located in a foreign country contacts a seller. The seller is told that the buyer has an associate in the seller's country that owes him money and that the associate will send a cashiers cheque or bankers draft to pay the seller.

The amount of the cashier's cheque or bankers draft will be far greater than the price of the goods and the seller may be told the excess amount will be used to pay the shipping costs to the buyer. The seller is instructed to deposit the cheque/draft, wait for clearance and wire the excess funds to the buyer or an associate (normally in West Africa).

As a cashier's cheque or bankers draft is used, a bank will typically release the funds immediately, or after a one or two day hold. The seller falsely believes the cheque/draft has cleared and wires the money as instructed. Additionally the seller can be convinced to terminate the sale and refund all the money.

Example 4

'A' advertises goods on a website for sale and receives an e-mail from abroad offering the full purchase price. A cheque is received covering the purchase price and additional shipping fees. 'A' pays the money into their bank account and transfers the shipping fees to a shipping agent account. The cheque is returned unpaid as it is a forgery.

Record 1 crime of Fraud – Counterfeit Cashiers Cheques.

Example 5

'A' advertises their car for sale and 'B' attends, views the car and a price is agreed. 'B' hands over a cheque for more than the agreed price, stating they had made a mistake and hadn't brought another cheque with them, asking 'A' to pay it into their account and they would attend the next day to collect the car and over payment. The next day 'B' attends and collects the car and the over payment. 'A' is then contacted by the bank to advise the cheque is a forgery.

Record 1 crime of Fraud - Counterfeit Cashiers Cheques.

Example 6

'A' advertises a boat for sale on a website and received an e-mail from abroad offering the full purchase price. 'A' is sent a bankers draft covering the purchase cost and an additional £5,000 for shipping fees. 'A' pays the bankers draft into their account and transfers the £5,000 to the shipping agents account in Spain before someone collects the boat. The bankers draft is returned unpaid as it is a forgery and the bank reclaim the funds.

Record 1 crime of Fraud – Counterfeit Cashiers Cheques (recorded by the Division where the victim resides).

Example 7

'A' advertises a horse for sale on a website and received an e-mail from abroad offering the full purchase price - £2,000. 'A' is sent a UK cheque for £5,000 with a request to return the difference of £3,000. 'A' takes the £5,000 cheque to the bank but is advised not to bank it. No monies (or the horse) are sent to the buyer. 'A' reports the incident to the police.

Record 1 crime of Attempted Fraud - Counterfeit Cashiers Cheques (recorded by the Division where the victim resides).

Dating Scam

The intended victim is befriended on the Internet and eventually convinced to assist their new love financially by sending them money for a variety of emotive reasons.

The intended victim is approached in a chat room or via a social networking site. The fraudster creates a relationship with the victim over the Internet often posting pictures of an attractive person – which is not usually them and may target those of a certain income, if disclosed.

The background may suggest that their partner is deceased and they are bringing up a child/children alone. The fraudster will resist any suggestion to meet, often stating that they are moving to work abroad temporarily. Once the fraudster gains the trust of the victim, they then ask for money.

This is normally via claims that they have been trapped abroad, have unforeseen medical bills, mobile/internet access problems etc. Once the request for money is declined, they cease contact.

Example 8

'A' has been chatting to 'B' over the internet for a few weeks, having joined a dating chat room. 'B' purports to work abroad some of the time on short term contracts. 'B' advises that they are having difficulty with their laptop and asks 'A' for a loan to fix it and they will repay them on return to the UK the following week. 'A' sends the money. 'A' then becomes suspicious as 'B' is no longer contactable and establishes the details provided were false.

Record 1 crime of Fraud – Dating Scam.

Example 9

'A' has been chatting to 'B' over the internet for a couple of months, having joined a dating chat room. 'B' claims to work abroad in a specific unit of the military. 'B' asks 'A' for some money to make a trip home to visit their ill mother. 'A' is suspicious and makes enquiry with the military and ascertains that 'B' is not known within the unit and has provided false information.

Record 1 crime of Attempted Fraud – Dating Scam.

Example 10

'A' has been chatting to 'B' over the internet for a couple of months. 'B' contacted 'A' through a dating chat room. 'B' asks 'A' for some money to make an unforeseen trip home as their mother is ill. 'A' is suspicious and refuses to transfer money. 'B' then refuses to talk to 'A' in the chat room.

There is no crime to record in these circumstances. It cannot be confirmed the intention was to commit fraud.

Fraud Recovery Scam

A fraud targeting fraud victims to gain personal details and additional money, by means of posing as recovery agents.

These frauds target former victims of frauds. The victim is contacted by the fraudster who poses as a legitimate organisation. The organisation claims that they can apprehend the offender and recover any monies lost by the victim, for a cost. Another tactic used is the fraudster stating a fund has been set up by the Nigerian government to compensate victims of 419 fraud. This is used to gain personal details of the victim and additional money as a fee to release the amount of the claim.

Example 11

'A' has been the victim of a boiler room fraud. 'A' is contacted by a suspect who states that they work for a company who specialises in helping victims of boiler room fraud and they have traced some of the money that 'A' invested. For a fee they can recover a substantial amount of money.

(a) 'A' pays the fee into an account and then discovers that they are the victim of another fraud.

Record 1 crime of Fraud – Boiler Room.

Record 1 crime of Fraud – Fraud Recovery Scam.

(It cannot be confirmed the same persons are involved in both.)

(b) 'A' realises this is a further scam and reports the matter to the police.

Record 1 crime of Fraud – Boiler Room.

Record 1 crime of Attempted Fraud – Fraud Recovery Scam.

(It cannot be confirmed the same persons are involved in both and 'A' is a specific intended victim.)

Inheritance

Contact is made with victims as part of a mass mailing to people who share the same surname. Each one is told there is cash from inheritances that have been located in their names. The research specialists make money by asserting they've put together an estate report that includes information on where the inheritances are located and how they can be claimed. For a relatively small fee, the report can be provided.

They may also propose to administer any inheritance claim for an additional fee. The fraudsters perpetrating this type of inheritance scam purposefully choose smaller inheritances on the off chance that someone receiving their correspondence turns out to be an actual heir with rights to claim the inheritance assets. Once the funds are claimed, they will probably be less than the fee that was paid to the people promoting this scam.

Example 12

'A' receives an e-mail through the post informing them that they have inherited money from a distant relative's estate and what they have to do to claim the inheritance.

(a) 'A' ignores the e-mail.

No crime requires to be recorded.

(b) 'A' replies to the e-mail and is given instructions to transfer money to an account to facilitate claiming the inheritance. 'A' takes no further action.

1 x Attempted Fraud – Inheritance Fraud ('A' has become a specific intended victim).

(c) 'A' replies to the e-mail, and as per instructions transfers money, expecting to hear confirmation of receipt of same and facilitate the inheritance being paid. No further communication is received.

Record 1 crime of Fraud – Inheritance Fraud.

Example 13

'A' receives an e-mail informing them they have inherited some money from an estate in America and provides details of what they have to do to claim the inheritance, namely transfer money to an account to facilitate claiming the inheritance. 'A' transfers the money and hears nothing further.

Record 1 crime of Fraud – Inheritance Fraud.

Rental

Prospective tenants are tricked into paying advanced fees/rent for the rental of premises which, either don't exist, are not for rent, are already rented or are rented to a multiple of victims at the same time. The consequence is that the accommodation is not available to the victim and they have lost the advance fees paid. This particular fraud is often perpetrated against students looking for university accommodation.

Example 14

'A' books rental accommodation over the internet, paying rent for the first three months. On arrival 'A' ascertains that the accommodation is not for rent. The e-mail address replied to is no longer available.

Record 1 crime of Fraud – Rental Fraud (locus being where 'A' was at time of booking accommodation, not the rental accommodation).

Example 15

Five students have arrived at a one bedroom apartment to discover that it is not for rent. All five have paid rent in advance having replied to an internet advertisement.

Record 1 crime of Fraudulent Scheme – Rental Fraud.

Example 16

An advert on an internet site offers a house for rent in Division 'A', an advanced rental of £500 is requested to be sent via money transfer to an account holder in Division 'B'. The victim who resides in Division 'C' sends £500 by money transfer to the account holder in Division 'B'. Money is subsequently withdrawn and no further contact made. Enquiry reveals the house was never for rent.

Record 1 crime of Fraud – Rental Fraud (recorded by Division 'C').

Example 17

A person resident abroad arrives in Division 'A' after seeing an advert on an internet site offering a house for rent in Division 'A'. Money has been sent by money transfer from overseas to an account holder in Division 'B'. Enquiry reveals the house does not exist.

Record 1 crime of Fraud – Rental Fraud (recorded by Division 'B' only if there is clear evidence the account holder was responsible for the fraud, otherwise the locus would be overseas).

Other Advance Fee

Any other MO whereby an accused dishonestly makes a false representation, and intends, by making the representation, to make a gain for themselves or another, or to cause loss to another or to expose another to risk of loss.

Example 18

'A' has advertised their car for sale in a local newspaper and is contacted by someone advising they have a buyer for the car and if they pay them £100 they will put them in touch with the person. 'A' transfers money to an account provided but hears nothing further and is unable to make contact with the person.

Record 1 crime of Fraud - Other Advance Fee.

Example 19

A person purchases vouchers to finance a venture which turns out to be fraudulent. Further enquiry shows the vouchers were used on an on-line betting site based in country 'A'.

Record 1 crime of Fraud – Other Advance Fee. (The on-line betting site based in country 'A' only shows where the vouchers were spent. The betting site itself is not established as a point of benefit and further enquiries must be conducted to ascertain where the money was transferred from.)

Example 20

Unauthorised access has been gained to the e-mail account of 'A' and an e-mail has been sent to all contacts stating they are stranded abroad and urgently need £400 to be sent to a specific account to pay for the airfare home.

(a) No money is sent by any of the contacts.

Record 1 crime of Computer Misuse Act 1990, Section 2 (unauthorised access as intent to commit further crime(s)).

(b) Two individuals send money.

Record 1 crime of Computer Misuse Act 1990, Section 2.
Record 2 crimes of Fraud – Other Advance Fee (two victims).

The locus for the Computer Misuse Act will be the home address of the e-mail account holder and initially the frauds will be recorded as location the individuals were when they sent the money.

Example 21

'A' answers an advert offering puppies for sale and is told that there is only one left and if they transfer the money it will secure the purchase and they can pick up the puppy later. 'A' asks to see the puppy first and is advised that unless they pay the money to secure the sale, should someone else come along in the meantime it would be sold. 'A' transfers the money and on attending at the location to uplift the puppy establishes it does not exist.

Record 1 crime of Fraud - Other Advance Fee.

Example 22

Police are called to the airport where five passengers have purchased holidays over the internet. On turning up at the airport they discover that the company does not exist and there is no holiday.

Record 1 crime of Fraudulent Scheme – Other Advance Fee.

Lender Loan

A fraud which involves the victim being contacted and told that they can have a loan for a fee. The fee is paid and no loan is forthcoming.

Victims are cold called, usually over a mobile phone and told that for a fee, a loan has been agreed for them. They are then asked to transfer a fee electronically or via a money service bureau and the loan money will be transferred to their account within hours of the fee being received. The loan is never transferred.

On occasions they may receive an additional request for a transfer fee or additional fees. This is again paid and no loan ever materialises.

Lender loan fraud is entirely different from application fraud. In application fraud, it is the suspect falsely applying for a genuine loan. This fraud deals with suspects obtaining fees for non-existent loans.

Example 23

'A' receives a call stating that for a fee of £50 they can have a loan of £1,000 transferred to their current account immediately, with no credit checks.

(a) 'A' agrees and transfers £50 to the account provided and provides details of their current account. No loan is transferred to the account.

Record 1 crime of Fraud - Lender Loan.

(b) 'A' hangs up immediately.

No crime requires to be recorded ('A' has not acted on the information).

(c) 'A' agrees and receives details of an account to transfer the fee to. 'A' then decides against taking the loan and takes no further action.

Record 1 crime of Attempted Fraud - Lender Loan. ('A' has acted on the information by requesting the details even although they have not proceeded with the loan therefore has become a specific intended victim.)

Financial Investment Fraud

Share Sales Or Boiler Room

Boiler room fraud is a fraud where victims are cold-called by fake stockbrokers and encouraged or persuaded to buy shares or bonds in worthless, non-existent or near bankrupt companies.

Boiler room is the term used for the illegal offshore dealing rooms that are often located abroad in Spain, Switzerland or the USA. The sales person cold calls potential victims and oppressively sells shares or bonds that are non-existent or worthless enticing victims with the promise of quick, high returns on the investment.

In a bid to appear legitimate, a Boiler room may have a web-site and produce glossy literature and use a telephone number with a London prefix that diverts overseas.

Example 24

'A' is cold called at home and asked if they wish to invest money.

(a) 'A' hangs up

No crime requires to be recorded.

(b) 'A' shows some interest and provides their contact details. The next day 'A' is contacted again using the details provided and offered shares. Following some discussion 'A' decides to decline the offer.

No crime requires to be recorded unless it can be confirmed that this was not a genuine investment. If this is the case, record 1 crime of Attempted Fraud – Share Sales or Boiler Room.

Example 25

'A' receives a cold call and a follow up e-mail asking them to join an investment company by purchasing Bonds which will double their money in six months. They send £500 by BACS transfer. Nothing is received back and 'A' reports the matter to the police. This method is recognised to be part of a scam. There is no information immediately available to find out where the account or e-mail address is situated.

Record 1 crime of Fraud – Share Sales or Boiler Room. (The locus being the victim's address.)

Example 26

Police are made aware of four people who have been duped to invest in the same scheme with the shares 'purchased' being non-existent.

Record 1 crime of Fraudulent Scheme – Share Sales or Boiler Room.

Pyramid Or Ponzi Schemes

A pyramid scheme is a non-sustainable business model using cross-selling. It involves the exchange of money for enrolling other persons into the scheme and Ponzi is named after the fraudster Charles Ponzi the 1920's financier who defrauded people with a get rich scheme.

Pyramid schemes are investment scams in which investors are promised abnormally high profits on their investments. The individual makes a payment for a high return and then attempts to recruit more investors to increase their payments; however no investment is made on their behalf.

Early investors are paid returns with the investment money received from the later investors. Unfortunately, the system usually collapses and later investors do not receive dividends and lose their initial investment. This can be facilitated by email, letter, fax or phone solicitation often involving fake referrals and information.

Example 27

Following the collapse of an investment fund police discover a Ponzi fraud. Thirty individual investors are identified and three syndicate group investments, each syndicate group has ten individual investors.

Record 1 crime of Fraudulent Scheme - Pyramid or Ponzi Schemes.

Prime Bank Guarantees

International fraudsters have invented an investment scheme that offers extremely high yields in a relatively short period of time. In this scheme, they purport to have access to "bank guarantees" which they can buy at a discount and sell at a premium. By reselling the "bank guarantees" several times, they claim to be able to produce exceptional returns on investment. For example, if \$10 million worth of "bank guarantees" can be sold at a two percent profit on ten separate occasions, or "tranches," the seller would receive a 20 percent profit. Such a scheme is often referred to as a "roll program."

To make their schemes more enticing, fraudsters often refer to the "guarantees" as being issued by the world's "Prime Banks," hence the term "Prime Bank Guarantees." Other official sounding terms are also used such as "Prime Bank Notes" and "Prime Bank Debentures." Legal documents associated with such schemes often require the victim to enter into nondisclosure and non-

circumvention agreements, offer returns on investment in "a year and a day", and claim to use forms required by the International Chamber of Commerce (ICC). In fact, the ICC has issued a warning to all potential investors that no such investments exist.

The purpose of these frauds is generally to encourage the victim to send money to a foreign bank where it is eventually transferred to an off-shore account that is in the control of the fraudster. From there, the victim's money is used for the perpetrator's personal expenses or is laundered in an effort to make it disappear.

Example 28

'A' is cold called at home by a person selling Prime Bank Guarantees and asks if 'A' wishes to invest with them.

(a) 'A' hangs up

No crime requires to be recorded.

(b) 'A' shows some interest and provides their contact details. The next day 'A' is contacted again using the details provided and offered shares. Following some discussion 'A' decides to decline the offer.

No crime requires to be recorded unless it can be confirmed that this was not a genuine investment. If this is the case, record 1 crime of Attempted Fraud – Prime Bank Guarantee.

Example 29

'A' purchases three different Prime Bank Guarantees over the last year from the same individual. After a year when trying to cash in the investment, 'A' discovers they have been victim of a fraud.

Record 1 crime of Fraud - Prime Bank Guarantees.

Time Shares And Holiday Club

In Timeshare and Holiday Club frauds the Fraudsters will contact you at home, often by phone and tell you that you have won a 'free' holiday. Or whilst you are on holiday they approach you on the street and give you a scratch card which reveals that you have won a 'free' holiday. All you need to do is go to a presentation to collect your prize and learn more about a new holiday venture. You will be told that this is not about timeshare.

You will later find out that the 'free' holiday isn't free, as you must pay for extras, such as flights and other add-ons and go somewhere you don't want to go at a time that doesn't suit you. If you go to the presentation it will more often than not be held in a plush hotel. The brochures will look glossy and convincing. You will be made to feel as if you are joining an exclusive holiday club which will offer exciting and great value holidays all over the world in top class accommodation.

Unlike the law covering timeshare arrangements, you are not necessarily given a chance to cancel if you have second thoughts. Don't believe everything you hear. What the bogus holiday club tells you in the sales pitch and what is in the contract you sign could be two very different things. Where it states 'You will have holidays in fabulous places at times of year that fit in with your needs.' There are in reality no guarantee of dates or destinations and holidays are often not available when and where you want them. You might end up going nowhere.

Note: It is important to establish that there is a fraud in law and not just matters for the Office of Fair Trading or Trading Standards. Each case should be assessed on its own merit.

Example 30

'A' attends at a hotel to obtain a prize in a free draw which they are informed is future luxury hotel accommodation. On attending the presentation they ascertain that the prize is not free and they would be expected to pay a yearly fee to a holiday club which would provide two weeks per year accommodation in five star hotels.

(a) 'A' leaves the presentation.

On the information available, no crime requires to be recorded at this time.

(b) 'A' thinks this would be a good deal, with a variety of resorts and five star hotels on offer and signs up. On attempting to book holidays it is ascertained that there are no hotels and resorts as advertised in the brochure ever available, with alternatives being lesser three star hotels which could be purchased at half the price of their club subscriptions.

Record 1 crime of Fraud – Time Shares and Holiday Club.

Other Financial Investment

The word "investment" is used in connection with a wide range of schemes offering income, interest or profit in return for a financial investment. "Investment" is often used loosely, and sometimes misleadingly, in order to disguise the true nature of a fraud; e.g. pyramid schemes, chain letters or other types of scheme where a return depends on persuading others to join.

The term "investment" is commonly used in connection with the purchase of something - such as high value or rare goods, stocks and shares, property - in the expectation that what is purchased will increase in value, and even provide an exceptional return compared to other forms of investment.

It is not always understood by potential investors that there is a wide range of so-called investments which are unregulated. This means that they are not traded by authorised investment brokers, who might be expected to operate to professional standards. Nor are they traded on a regulated exchange, which means that their current value and prospects for appreciation are difficult or impossible to assess through any of the normal channels. There is no guarantee that the market will still be functioning when you come to realise your investment and almost no chance of any compensation if the investments have been mis-sold. This all creates opportunities for the unscrupulous to mislead and trap the unwary.

An investment seminar will hook individuals by offering a return which is more attractive than a conventional investment, and so the return on the outlay is always likely to be exaggerated or unrealistic. It follows that the essential message which applies to other scams applies equally to investments. If it looks too good to be true, it probably is!

Example 31

Twelve people are invited to an investment seminar and asked to invest in a good quality product. Three people invest in the scheme. A year later they discover that the product is not of the quality initially described and is worthless.

Record 1 crime of Fraudulent Scheme - Other Financial Investment.

Example 32

A receives an e-mail asking them to join an investment company which will double their money in six months. They send away a sum of money to an account. They receive no more communications and are unable to make any contact with anyone related to the said investment company.

Record 1 crime of Fraud - Other Financial Investment.

Consumer And Retail Fraud**Online Shopping And Auctions**

This involves fraud attributable to the misrepresentation of a product advertised for sale through an Internet auction site or the non-delivery of products purchased through an Internet auction site.

The seller often requests funds to be transferred directly to them via Western Union, Money-Gram, or bank-to-bank money transfer. This ensures the money is virtually unrecoverable with no recourse for the victim.

Equally buyers from a legitimate auction site can commit fraud by requesting a certain method of shipping for tax avoidance or they use fraudulent cards or payment methods to purchase goods.

Note: This is not cheque and credit card fraud as the account holder is responsible for making the transaction. Care must be taken in determining that there is a crime in law and not just undelivered goods or a dispute over the goods purchased. Crimes should not be recorded simply because the goods have not arrived or are not what was expected. Additional details are necessary e.g. e-mail address no longer available, address unknown or found to be a mail drop, more than one complainer or payment service provider (PSP) payment stopped.

Example 33

Three people purchase a camera from the same retailer online. Payment is made over the internet. The goods do not arrive and the site is later found to be bogus.

Record 1 crime of Fraudulent Scheme - Online Shopping and Auctions.

Example 34

(a) 'A' reports that goods purchased online using a credit card had not arrived.

There is insufficient information to confirm a crime has occurred at this stage.

(b) 'A' sends an e-mail to the seller and is informed by the Internet Service Provider (ISP) that the e-mail address is no longer valid.

Record 1 crime of Fraud - Online Shopping and Auctions (additional details show that on the balance of probability this is a fraud).

Example 35

(a) 'A' reports that they sold goods to a suspect following placing the goods on an online auction site. 'A' has not received payment.

There is insufficient information to confirm a crime has occurred at this stage.

(b) 'A' makes further enquiry and establishes whilst payment was made, the following day it was reclaimed as a stolen credit card had been used to make payment.

Record 1 crime of Fraud - Online Shopping and Auctions.

Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts (for use of card).

Record 1 crime of Theft (in respect of stolen credit card if not already recorded).

Example 36

'A' sends goods to a purchaser following advertising on an online auction site. No payment is received and on making enquiries discovers that the address that the goods were sent to was a mail drop used by a number of people.

Record 1 crime of Fraud - Online Shopping and Auctions.

Example 37

'A' purchased goods online. On receipt of the goods the quality was far inferior to what was expected.

No crime requires to be recorded in these circumstances.

Example 38

'A' purchased goods from the internet and transferred money using Western Union to a Western Union Office outwith the UK. The goods do not arrive and 'A' discovers that the address provided does not exist.

Record 1 crime of Fraud - Online Shopping and Auctions.

Example 39

'A' reports that they have ordered a product via a website which has not arrived. Enquiry reveals the site is bogus and it is known to have been set up overseas.

Record 1 crime of Fraud. (Although the site has been identified as being overseas, the Division receiving such reports must record as a crime, the locus being the victim's address.)

Example 40

A person in Division 'A' successfully bids for an item of property on an internet auction room. Payment is sent electronically on the internet. The item of property is never delivered. The electronic money transfer took place to an account held in Division 'B'. The account holder resides in Division 'C'. They report the matter to Division 'A'.

Record 1 crime of Fraud - Online Shopping and Auctions. (The locus of the crime is Division 'A'.)

Example 41

'A' reports that they sold goods to suspect following placing the goods on an online auction site. 'A' has not received payment. 'A' has established that payment was made using a payment service provider (PSP) e.g. paypal, into their PSP account but the following day the payment was reclaimed by the PSP as a stolen credit card had been used to make the payment.

Record 1 crime of Fraud - Online Shopping and Auctions.
 Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts (for use of card).
 Record 1 crime of Theft (in respect of stolen credit card if not already recorded).

Example 42

'A' contacts the police advising that £541 has been taken from their PayPal account for no apparent reason. PayPal were contacted and were to make their own investigation. PayPal provided the e-mail address of the intended recipient. 'A' advises that PayPal had recovered the money prior to it reaching its destination and money was returned to their account.

No crime is required to be recorded at this stage as it is unknown whether a fraud has occurred, or whether this has been an error.

Where goods are purchased over the internet and payment is made using a stolen or cloned plastic card the crime should be recorded under Cheque and Credit Card Fraud.

Example 43

Suspect purchases a train ticket over the internet using a cloned card and then obtains the ticket at the station by inserting the cloned card into the ticket machine.

Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts.

Where fraud is perpetrated using PSPs (Payment Service Providers e.g. PayPal, MoneyGram) offences should be recorded under Online Shopping and Auctions, not Cheque and Credit Card. Where PSP accounts have been topped up using stolen credit cards or debit cards then a crime should also be recorded for the credit card fraud.

Example 44

Goods are purchased from an online site and paid for using PayPal. The goods are dispatched and the next day the retailer is informed that the PayPal payment has not gone through because the account was funded by a stolen credit card.

Record 1 crime of Fraud - Online Shopping and Auctions (complainer/victim being the retailer).

Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts (for the use of the stolen credit card).

Record 1 crime of Theft or appropriate crime in relation to the stolen credit card if not already recorded.

Consumer Phone

Missed calls

Missed calls frauds start by ringing your phone and hanging up so quickly that you can't answer the call in time. Your phone registers a missed call and you probably won't recognise the number. People will often then call the number back to find out who it is. Apart from being a nuisance, the missed call can lead to a fraud in two ways:

- The number you call back may be redirected to a premium rate service without your knowledge, which means you will be charged a lot of money per minute, often costing up to £15 per call;
- The number may tell you that you have won a prize of some sort, and give you another number to call to 'claim' your prize, but they may not tell you how much the call will cost. This second number may be a premium rate number, again charging you a lot of money to get your 'prize'. Your prize may be nothing more than a ring tone subscription which can also be a fraud!

Text message

Text message frauds work by sending you a text message from a number you may not recognise, but the content of the message could sound like it's from a friend, for instance 'Hi, it's John. I'm back! When do you want to catch up?' or 'Hey big fella, happy birthday!'

Another common tactic is for a text message to sound like someone flirting with you. Many people reply asking who it is, and end up engaging in a lengthy SMS exchange with the fraudster. Only later do they find out that they have been charged a high rate both for messages they sent (sometimes, there are also charges for messages received as well).

Ring Tone Scams

A reverse text scam is where the victim can end up paying to receive texts, such as ring tones and wallpapers, typically from 25p to £1.50 per message. These scams might attract you with an offer for a 'free' or low cost ring tone. What you may not realise is that by accepting the offer, you are actually subscribing to a service that will keep sending you ring tones—and charging you a premium rate for them. There are many legitimate companies selling ring tones, but there are also fraudsters who will try to hide the true cost of taking up the offer.

The fraudsters don't tell you that your request for the first ring tone is actually a subscription to an expensive service. A fraudster will also make it difficult for you to stop the service. You actually have to 'opt out' of the service to stop the ring tones and high charges. Some people have been charged over £100 for what they thought was one ring tone.

SMS competition or SMS trivia scam

An SMS competition or SMS trivia scam usually arrives as a text message and may encourage you to enter a competition for a great prize (like an mp3 player). The message (or sometimes, an advertisement) could also invite you to take part in a trivia competition, with a great prize on offer if you answer a certain number of questions correctly.

The fraudsters make money by charging extremely high rates for the messages you send, and any further messages they send to you. These charges could be as high as £2 for each message sent and/or received.

With trivia scams, the first lot of questions will be very easy. This is meant to encourage you to keep playing. However, the last one or two questions that you need to answer to claim your 'prize' could be very difficult or impossible to answer correctly (and may even require you to guess a random number). A winner, to claim a cash prize, may have to dial a number that begins with say 0906, to collect the prize. This is a premium rate number that lasts several minutes with no prize materialising.

Phone Insurance Scams

(Not to be confused with false insurance claims by account holders.) The fraudsters target people with new phones and make them believe they are getting a call from the shop or the mobile phone network.

After the consumer gives their payment details they end up with poor quality phone insurance or none at all.

Those involved in the scam often buy phones and call numbers similar to their own number until they find someone with a new phone.

Example 45

'A' receives a missed call on their mobile phone and dials the number. 'A' is told by a person answering the call that someone will be with them in a minute, placing them on hold. After a few minutes 'A' hangs up. On receiving their bill there is a call to a premium rate phone line at a cost of £20.

Record 1 crime of Fraud - Consumer Phone Fraud.

Example 46

'A' receives a voice message advising they have won a prize. 'A' dials the number provided to claim the prize which is a premium rate number. After keying in a number of options they are eventually advised they have won one month free ring tone subscription. The call cost £20.

Record 1 crime of Fraud - Consumer Phone.

Example 47

'A' receives a missed call on their mobile phone and dials the number. 'A' is told by a person answering the call that someone will be with them in a minute, placing them on hold. After a few minutes 'A' hangs up. Three of 'A's' colleagues also receive missed calls from the same number and knowing what has just occurred they ignore the missed call.

Record 1 crime of Fraud - Consumer Phone. The 3 colleagues are not specific intended victims.

Example 48

'A' has purchased a new mobile phone contract with a new number. Shortly after they receive a call selling them insurance for the phone.

(a) A hangs up.

No crime requires to be recorded in these circumstances.

(b) A likes the offer and takes out the insurance, paying on his credit card. No policy arrives through the post as promised and on making enquiries discovers the insurance company do not exist.

Record 1 crime of Fraud - Consumer Phone.

Door To Door Sales And Bogus Tradespeople

Dishonestly makes a false representation, and intends, by making the representation to make a gain for themselves or another, or to cause loss to another or to expose another to risk of loss.

Crimes should be recorded where it is clear that the circumstances are fraudulent.

Example 49

'A' reports that following a knock on their door from someone offering to check the gas supply was in order to their house for £50, they agreed and payment was made. 'A' later advises a family member of this who informs 'A' they do not have gas, only electricity.

Record 1 crime of Fraud - Door to Door Sales and Bogus Tradespeople.

Example 50

Three persons in the same street report that they had agreed to have their front gardens tarmacked, having received a quote with the details of what work was to be carried out. Each paid £2,000 for the work. One month later the grass was found to be growing through the tarmac and it was uneven where the vehicles had been parked. It became clear that the work outlined in the quote had not been carried out and was clearly overpriced.

Record 1 crime of Fraudulent Scheme - Door to Door Sales and Bogus Tradespeople.

Example 51

Police attend a call where a gardener and a householder are in dispute regarding the quality of work of gardening. The gardener's details are confirmed and there is nothing to infer criminality on the part of the gardener.

No Crime requires to be recorded in these circumstances. (The householder may be advised to contact their solicitor and trading standards.)

Example 52

An individual is traced following a report of persons being deceived as to the condition of their roofs, agreeing to repairs to invented damage and being charged an excessive price. Enquiry identifies ten victims.

Record 10 crimes of Fraud (or 1 crime of Fraudulent Scheme depending on the individual circumstances).

Example 53

'A' answers the door to someone selling off cuts of carpet and if they can measure the lounge carpet they will be able to lay it today. 'A' invites them into the front lounge and offers them a cup of tea. 'A' then disturbs them in a separate room searching through a chest of drawers. On seeing 'A' they make off out of the house. Nothing appears to have been stolen.

Record 1 crime of Attempted Theft.

Example 54

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.

Record 1 crime of Fraud - Door to Door Sales and Bogus Tradespeople.

Example 55

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.)

Record 1 crime of Attempted Fraud - Door to Door Sales and Bogus Tradespeople.

Example 56

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.

Record 5 crimes of Fraud, on confirmation of the victims - Door to Door Sales and Bogus Tradespeople. (Insufficient details as presented to confirm a Fraudulent Scheme.)

Example 57

An accused admits to deceiving an elderly couple over a period of two years by carrying out unnecessary repairs within their house, work proving to be substandard, charging exorbitant prices.

Record 1 crime of Fraud - Door to Door Sales and Bogus Tradespeople.

Example 58

Two youths purport to be collecting for charity, visit 161 private dwellings over a five day period obtaining cash and having each person sign a collections form. One street is targeted each day.

Record 1 crime of Fraudulent Scheme - Door to Door Sales and Bogus Tradespeople (they are acting together).

Example 59

A person is defrauded on three occasions by salesmen purporting to represent different companies, with no evidence of collusion.

Record 3 crimes of Fraud – Door to Door Sales and Bogus Tradespeople.

Other Consumer And Retail

Dishonestly makes a false representation, and intends, by making the representation to make a gain for himself or another, or to cause loss to another or to expose another to risk of loss.

Example 60

'A' agrees to purchase a product advertised in a local paper and attends a car park where they are shown the advertised goods working. 'A' hands over cash and whilst the product is being placed in a box, 'A' is distracted by an accomplice. 'A' is handed the box and leaves. On arrival home and on opening the box there is only a brick within.

Record 1 crime of Fraud - Other Consumer and Retail.

Example 61

'A' purchases a car advertised for sale on a street after a test drive. There is no paperwork and is advised this will be sent on. When no paperwork arrives 'A' makes enquiry and ascertains the vehicle purchased was stolen.

Record 1 crime of Theft of Motor Vehicle.

Record 1 crime of Fraud - Other Consumer and Retail.

Example 62

'A' is stopped in a car park and is offered a laptop for £200. 'A' checks the laptop and it appears in working order and agrees to buy it for £150. 'A' is distracted when counting out the money from their wallet and is then handed a bag with a box therein. On arriving home 'A' opens the bag to find a box full of stones within.

Record 1 crime of Fraud – Other Consumer and Retail.

Computer Software Service

A fraud which involves the victim being contacted and told that there is a problem with their computer and for a fee this can be fixed. No fix actually occurs.

Victims are cold called, usually by phone and told that there is a problem with their computer and for a nominal fee the suspect can fix it. Often the suspects claim that the computer has been infected with a virus or that they are from Microsoft and can offer an update or fix performance. Many reasons can be given, but the victim is persuaded to provide details so the fraudster can gain access to the computer. The victims then often witness the mouse moving and pages displayed.

They then pay a small fee and are told that the problem has been fixed.

This is not the case, nothing has been done. Sometimes programs are also installed that allow the fraudsters unlimited access to the computer without the victims knowledge. This allows further illegal activity to be carried out. Once the initial small payment has been processed, it is not uncommon for additional larger payments to be withdrawn without permission from the victims account.

This fraud should not be viewed as limited to desk or laptop computers. It can include any device using operating software accessible on line, for example games consoles and smart phones.

Example 63

'A' is cold called at home on their house phone. After a short conversation 'A' is persuaded that there is a virus on their computer. 'A' provides details to the caller who gains access to the computer and demonstrates a problem and advises for a fee of £19.99 they can fix it now. 'A' pays the fee and watches a number of things happening on their computer and is then told it has been fixed. On receiving the credit card bill an additional payment of £99 has been taken. Examination of their computer reveals there was no virus and no software downloaded.

Record 1 crime of Fraud - Computer Software Service.

Example 64

'A' receives a call at home stating their computer has a virus and that for a fee it can be resolved.

(a) 'A' hangs up

No crime requires to be recorded in these circumstances.

(b) 'A' turns on their computer and starts to open up the relevant pages as requested by the caller and on being asked for information which would allow the caller to access their computer, becomes suspicious and hangs up, without providing any money or information to allow them to access their computer.

Record 1 crime of Attempted Fraud - Computer Software Service.

Ticket

Ticket fraud involves the victim purchasing tickets remotely e.g. over the phone or internet.

By victims purchasing any ticket in advance over the phone or internet. Tickets could be for concerts, events, or flights for example. The tickets are never supplied or turn out not to be valid or worthless.

Note: This is not a cheque and credit card fraud as the account holder is responsible for making the transactions.

Care should be taken to ascertaining a crime has occurred and not just undelivered tickets or a dispute over the tickets purchased. A crime should not be recorded simply because goods have not arrived or are not what was expected. Additional information would be necessary to confirm a crime e.g. e-mail address no longer available, address unknown or found to be mail drop, more than one complainant etc.

Example 65

'A' buys tickets on line for a concert and advised that the tickets would arrive two weeks before the concert.

(a) The tickets do not arrive.

There is no confirmation of fraud at this point so no crime would be expected to be recorded.

(b) When the tickets did not arrive on checking the website it was ascertained the website no longer exists, the phone number provided was no longer in use and there was a number of forums where persons were stating this was a scam.

Record 1 crime of Fraud – Ticket.

Example 66

'A' purchases four airline tickets on line for family to travel abroad on holiday. On arrival at the airport they discover the tickets are not valid.

Record 1 crime of Fraud – Ticket.

Example 67

Police are called to the airport where five passengers have independently purchased holidays over the internet. On arriving at the airport with their tickets they have discovered that the company does not exist and there are no flights or holiday.

Record 1 crime of Fraudulent Scheme – Ticket.

Retail

Retail fraud

Retail fraud is fraud committed against retailers that does not involve on line sales or cheque, or plastic card sales.

Refund Fraud

This is where the suspect attempts or obtains a refund by false representation. For example, refunding goods that have been stolen and not purchased, or goods purchased during a sale and the non-sale price being claimed.

Label Fraud

This is where the label on an expensive product is switched with a cheaper label and an attempt is made to purchase at the cheaper price.

Obtaining Goods or services with no intent to pay

This is where you order food or enjoy entertainment where you have no intention of paying.

Example 68

'B' attends at customer service desk of a shop with a dress that they know has been stolen and asks for a refund stating it is an unwanted gift.

Record 1 crime of Fraud – Retail.

Example 69

'B' selects two items of clothing in a shop, one being priced higher than the other. 'B' enters the changing room and swaps the pricing labels over, leaving the cheaper priced dress behind and approaches the till and attempts to pay the cheaper price for the expensive dress. The staff realise what 'B' has done and contact police.

Record 1 crime of Attempted Fraud – Retail.

Example 70

A garage reports that 'B' drove up and filled their car with fuel, entered the shop and obtained a cup of coffee and went to the cashier to pay. The cashier asked if they wished to pay for the fuel now as well and 'B' denied having filled up with fuel. The cashier indicated the car at the pump and again 'B' stated again they did not take fuel. 'B' paid for the coffee and drove off. CCTV clearly showed 'B' had filled up with fuel.

Record 1 crime of Theft.

Example 71

Entering store, removing price tags from ten items, replacing with cheaper price tags, paying for same at lesser price.

Record 1 crime of Fraud – Retail.

Example 72

A garage reports a failure to pay for fuel and the details provided appear to be false. The driver advised they had forgotten their wallet and provided their details

advising they would return later that day to pay. The garage have attempted to make contact and the address and mobile number provided appear to be false.

Record 1 crime of Fraud – Retail.

Example 73

A mail order company identifies that goods have been fraudulently obtained and reports the matter to the police.

Record 1 crime of Fraud - Retail. (Locus being the delivery address.)

Example 74

'B' enters a shop and buys an item for £1 handing over £20 and asks for change in a specific denominations and then changes their mind, confusing the staff member resulting in them handing over too much money.

Record 1 crime of Fraud – Retail (Ringing the Changes).

Example 75

A customer hands over two £50 notes and asks for change requesting 10 £10 notes. The cashier takes the two £50 notes and hands over 10 £10 notes. The customer then says they would prefer 20 £5 notes and the cashier agrees to change the notes again. But this time the customer only hands over £80 worth of notes, having skimmed two £10 notes unseen by the cashier. The cashier hands over 20 £5 notes believing that they have been given the original 10 £10 notes back. At the end of the transaction the customer is in credit by £20.

Record 1 crime of Fraud – Retail (Ringing the Changes).

Charity Fraud

Charity

Fraudulently soliciting donations to a non-existing charity or the organised fraudulent collection of funds from genuine charities. The fraudster poses as a representative of a charitable organisation soliciting donations to help a number of worthy emotive causes such as a natural disaster, epidemic or conflict. The fraudster requests donations with links to news stories or fraudulent websites to strengthen their cases. The victims are charitable persons willing to help a good cause and expect nothing in return. Once sent the money is irretrievable and the fraudster disappears.

Example 76

Ten persons report being visited by someone purporting to be from a charity, they complete direct debit mandates and have had three payments taken from their account, before establishing the charity does not exist.

Record 1 crime of Fraudulent Scheme – Charity.

Example 77

Fifty persons report being visited by someone purporting to be undertaking a sponsored walk for charity, forty advised they paid money whilst the other ten advised they declined.

Record 1 crime of Fraudulent Scheme – Charity.

Example 78

'A' steals a charity box from a shop and stands in the street obtaining money from passers-by. Police are informed by a concerned passer-by and establishes that 'A' stole the charity box. Three persons are identified as having put money into the charity box.

Record 1 crime of Theft.

Record 1 crime of Fraudulent Scheme – Charity

Example 79

A charity provides collection bags for householders to put clothing in. The bags are filled and left outside for collection. It is ascertained that they have been taken by someone who has nothing to do with the charity.

Record 1 crime of Theft for each household who left a filled bag to be uplifted.

Example 80

Collection bags are delivered to householders purporting to be from a registered charity. The bags are filled and left outside for collection. They are then collected. It is established they have nothing to do with the registered charity.

Record 1 crime of Fraudulent Scheme – Charity.

Fraudulent Applications For Grants From Charities Or Lottery Fund Organisations

Dishonestly makes a false representation, and intends, by making the representation to make a gain for himself or another, or to cause loss to another or to expose another to risk of loss.

This is where Charities have provided grants, based on false representations or where they have received grant applications that contain false representations and so no grant was paid.

Example 81

A registered charity has provided funding for a project as a result of a grant application. The applicant receives the money, pays it into their account and leaves the country.

Record 1 crime of Fraud – Fraudulent Applications for Grants from Charities or Lottery Fund Organisations.

Example 82

A charity has received an application for a grant for a project. When checking the application the charity finds that the applicant has used false details and the company who were to undertake the work does not exist.

Record 1 crime of Fraud - Fraudulent Applications for Grants from Charities or Lottery Fund Organisations.

Example 83

Five applications are identified as having been submitted to various organisations seeking funding for the same project whereby enquiry identifies they have all been submitted by the same individual who has provided false information in the hope of funding being granted.

Record 1 crime of Fraudulent Scheme - Fraudulent Applications for Grants from Charities or Lottery Fund Organisations.

Banking And Credit Industry Fraud

Cheque, Plastic Card And Online Bank Accounts (not PSP)

Dishonestly makes a false representation, and intends, by making the representation to make a gain for himself or another, or to cause loss to another or to expose another to risk of loss.

PSP - is a payment service provider for example PayPal and World Pay that are not banks, dealing in electronic money transfers.

Plastic Card

Credit card, Debit card, Prepayment card and Store card.

Example 84

'A' used a stolen credit card to obtain goods from five separate shops.

Record 1 crime of Theft.

Record 1 crime of Fraud – Cheque, Plastic Card and Online Bank Accounts.

Example 85

'A' uses 'B's bank details to purchase goods from five online suppliers. The money being exchanged electronically.

Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts (1 account defrauded).

Example 86

A lost store card is used to obtain goods from three different branches of the same store-chain.

Record 1 crime of Theft by Finding.

Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts.

Example 87

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.

Record 1 crime of Theft OLP, and if not already recorded.

Record 1 crime of Theft (depending on circumstances Reset may also be recorded).

Example 88

'A' uses a stolen credit card to obtain goods at a supermarket and then uses the card to obtain fuel at the supermarket filling station.

Record 1 crime of Theft.

Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts.

Example 89

'A' uses a stolen bank card to obtain goods at various shops and withdraws money from two cash machines.

Record 1 crime of Theft.

Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts.

Example 90

'A' has been caught using a stolen credit card to obtain goods from a shop.

Record 1 crime of Theft.

Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts.

During enquiry it is ascertained that forty further transactions have taken place using the same stolen credit card.

Record 1 crime of Theft.

Record 1 crime of Fraudulent Scheme - Cheque, Plastic Card and Online Bank Accounts.

Example 91

'A' has been caught using two different stolen credit cards to obtain goods from ten different shops.

Record 2 crimes of Theft.

Record 2 crimes of Fraud - Cheque, Plastic Card and Online Bank Accounts.

Example 92

A purse is stolen which contains three bank cards from the same bank but different accounts. Two of the bank cards are used to obtain goods.

Record 1 crime of Theft.

Record 2 crimes of Fraud - Cheque, Plastic Card and Online Bank Accounts.

Example 93

An employee uses the company credit card at a number of locations which is unauthorised by the company and who report the usage to the police.

Record 1 crime of Fraud (Corporate Employee).

Example 94

An account holder reports that a transaction on a statement was not carried out by them. The bank have reimbursed the monies.

Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts (known as Card Not Present Transaction).

Example 95

Credit card stolen in Scotland and used at various locations in England.

Record 1 crime of Theft. (As the card has been used at various locations in England, no fraud requires to be recorded.)

Example 96

Enter shopping centre, using stolen credit card in eight separate shops, gaining goods to the value of £859.

Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts.

and if not already recorded

Record 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 97

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.

Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts.

Example 98

Credit card posted to an address but does not arrive. The card is subsequently used fraudulently in the same area.

Record 1 crime of Theft.

Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts.

Example 99

Stolen credit card used at a supermarket store and filling station situated at the same locus.

Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts.

and if not already recorded.

Record 1 crime of Theft (depending on circumstances Reset may also be recorded).

Example 100

Person takes credit card details from fifty accounts and uses them to transfer money into accused's own online account using a computer.

Record 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 record 1 crime of Fraud (Fraudulent Scheme) - Cheque, Plastic Card and Online Bank Accounts.

Example 101

A stolen credit card has been used to obtain goods from two shops which reported the incidents separately. During police enquiries fifty seven other transactions are discovered using the same credit card account.

Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts.

Record 1 crime of Theft (depending on circumstances Reset may also be recorded).

Example 102

A purse is stolen containing a Bank X debit card, a Bank X credit card and a Bank X savings account card all belonging to the same person. All of them have been used fraudulently.

Record 3 crimes of Fraud - Cheque, Plastic Card and Online Bank Accounts (one for each account defrauded).

Record 1 crime of Theft.

Example 103

A purse is stolen containing a Bank X debit card and a Bank X cheque book for the same account. Cheques are fraudulently cashed, goods purchased using the debit card which is also used to obtain money from four cash machines.

Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts (one account has been defrauded) (the OLPs at the cash machines are subsumed within the Fraud).

Record 1 crime of Theft.

Example 104

A stolen credit card is used to obtain pre-paid time on a mobile phone. There is no other usage on the account.

Record 1 crime of Theft.

Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts.

Example 105

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.

Record 1 crime of Attempted Fraud - Cheque, Plastic Card and Online Bank Accounts. (Note – either the card or details of the card must be available in order to allow confirmation of an attempted fraud having occurred.)

Example 106

A person is apprehended for manufacturing four forged credit cards and using them to obtain goods from three separate shops.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 46A (False Monetary Instruments).

Record 3 crimes of Fraud - Cheque, Plastic Card and Online Bank Accounts (one for each account defrauded).

Example 107

Suspect caught failing to finish their transaction at the self-pay till by pulling their card out too soon, enquiry brought to light five further incidents with the suspect captured on CCTV doing the same thing, times/dates available.

Record 1 crime of Fraudulent Scheme - Cheque, Plastic Card and Online Bank Accounts.

Example 108

'A' receives a call purporting to be from their bank advising that they have evidence of fraudulent use on their bank card. 'A' is requested to read out the number on the card to confirm the correct details are held and the security code on the reverse. They then state that someone will call shortly with a replacement card. Someone does call a short time later with a replacement card (fake). Prior to doorbell ringing the 'bank' phones back to ask if the card has arrived yet and tells 'A' the new PIN. They ask for the PIN for the original card to ensure "that the bank has not inadvertently issued the same PIN number". Suspect then leaves with the original card and person on the phone has PIN. Card is used fraudulently.

Record 1 crime of Fraud (if no PIN had been given then this would be an Attempted Fraud) - Cheque, Plastic Card and Online Bank Accounts.

Example 109

'A' receives a telephone call where bank details are requested for authentication purposes and refuses to pass on these details causing caller to hang up.

Record as an incident only.

Example 110

'A' reports their wallet having been lost from their unzipped jacket pocket somewhere within the town centre, at which time lost property details are noted. 'A' re-contacts Police several days later to advise that their bank card, which had been within the wallet, had been used at several locations in the town centre using the "contactless" facility after it had been lost and provided details of these transactions.

Record 1 crime of Theft by Finding.

Record 1 crime of Fraud - Cheque, Plastic Card and Online Bank Accounts (for use of card).

Application (Excluding Mortgages)

Occurs when fraudsters open an account utilising fake or stolen documents in someone else's name.

The account is usually in respect to Hire Purchase or Loans. Stolen documents may originate from a variety of sources such as theft of utility bills which may contribute along with counterfeit documents to create a verifiable identity.

Example 111

A person obtains a television from a shop on interest free credit using details of another person which were obtained from a bin. No payments are made.

Record 1 crime of Fraud – Application.

The same person returns to the same shop and obtains further goods on interest free credit. A new account is created with the same finance company. No payments are made.

Record 1 crime of Fraud – Application.

Example 112

A person obtains documents from a dustbin and uses them to obtain goods at three different shops by setting up hire purchase agreements. Three separate accounts are set up, two with the same provider. When payment is due, no payment is made and it is established that the agreements were created using another person's identity.

Record 1 crime of Fraudulent Scheme – Application.

Mortgage Related

Where an individual(s) generally involves one or more associates to fraudulently obtain one or more mortgages for profit and/or to assist in money laundering.

Mortgage fraud spans a wide spectrum of deceit from simple overstatement of income, through to systemic abuses by Organised Crime Groups. It can involve the work of fraudulent brokers/intermediaries, lawyers and accountants.

A surveyor or valuer can take a variety of actions in order to manipulate or falsely confirm these key areas to perpetrate a mortgage fraud either independently or in conjunction with other professionals and/or parties involved in the mortgage process.

Example 113

Person obtains three mortgages from different providers on three separate properties, failing to disclose the other mortgages and provides false details of employment.

Record 1 crime of Fraudulent Scheme - Mortgage Related.

Example 114

Person obtains an additional mortgage loan on their property by providing false employment details.

Record 1 crime of Fraud - Mortgage Related.

Example 115

Person applies for an additional mortgage loan on their property by exaggerating the value of their property and overstating their income. The bank discovers this and the application fails.

Record 1 crime of Attempted Fraud - Mortgage Related.

Mandate

Mandate fraud is where fraudsters obtain details of direct debits, standing orders or account transfer details and amend them to transfer monies to other accounts. Where the victim is a business they may pretend to be one of their existing suppliers and claim that they have set up a new bank account and give account details for payment to be made. The suspect may claim to be from the bank and advise that due to a security breach, the victim requires to transfer funds into a "Safe Account".

Example 116

A company is contacted by someone purporting to be from their suppliers and is told that they have changed their bank account and seeking for them to make the

necessary amendments to reflect this. The details are amended and payments are made. The genuine supplier makes contact querying non-payment and the fraud is uncovered.

Record 1 crime of Fraud - Mandate Fraud.

Example 117

An online account is hacked and ten monthly payment details to different payees are altered so that the payments are transferred to another account. Payments are made to six payees before it is uncovered.

Record 1 crime of Fraud - Mandate Fraud.

Record 1 crime of Computer Misuse Act 1990, Section 2 - Computer Hacking.

Example 118

'A' receives a call from a person purporting to be from their bank who advises there had been an attempt to gain access to their bank account and they require to move their money into a "Safe Account". 'A' feels the call is genuine and agrees to transfer their money into two separate bank accounts, details of which were provided by the caller. 'A' later finds out the call was a scam.

Record 1 crime of Fraud –Mandate.

(Enquiry may identify that the bank accounts used to transfer the money into were 'mule' accounts. A 'mule' account is where a person is recruited by other members of the crime network to allow the use of their bank account in order for fraudulently obtained money to be paid into. Thereafter the money is disseminated via withdrawals from ATMs, purchase of high value items, foreign currency etc. Where there is evidence that accounts have been used in this manner a Proceeds of Crime Offence (Money Laundering) should be considered.)

Dishonestly Retaining A Wrongful Credit

A person is guilty of theft if they dishonestly appropriate property belonging to another with the intention of permanently depriving the other of it.

Example 119

'A' receives money into their account knowing it has been wrongfully credited to their account and spends same.

Record 1 crime of Theft.

Insurance Fraud

Insurance Related

Insurance fraud is where policy holders obtain money or replacement goods through false insurance claims or obtain policies by furnishing incorrect details.

Typically reported by the insurance company Involves any insurance policy, e.g. car, household, or travel.

Example 120

A householder claims on their home contents insurance that a number of items of property have been stolen during a break-in that was reported to the police.

(a) Following investigation by an insurance assessor the householder admits that it was a false claim, there was no break-in and the window was smashed in order for them to access the house as they forgot their keys.

Record 1 crime of Theft by Housebreaking updated to No Crime and cross referred with.

Record 1 crime of Wasting Police Time.

Record 1 crime of Fraud - Insurance Related.

(b) Following investigation by an insurance assessor the householder admits that two of the items claimed for had never been stolen and in fact they had never been owned by the householder.

Record 1 crime of Fraud - Insurance Related.

Example 121

A motorist with only third party insurance crashes their vehicle and on realising they will be liable for the damage leaves the scene of the accident and reports to police that the vehicle was stolen. They later claim on their insurance and following enquiry admits the car was not stolen and they were responsible for the accident.

Record 1 crime of Theft of Motor Vehicle (updated to No Crime).

Record 1 crime of Wasting Police Time.

Record 1 crime of Fraud - Insurance Related.

Record 1 crime of Road Traffic Act 1988, Section 170 - Fail to Stop.

Record 1 crime of Road Traffic Act 1988, Section 170 - Fail to Report.

Example 122

A householder claims on their household, travel and motor insurance policies for the theft of a camera and lenses although they have never owned a camera.

Record 3 crimes of Fraud – Insurance Related (three separate policies).

Insurance Broker

Insurance broker fraud is where victims obtain insurance cover from a broker or someone purporting to be a broker. When a claim is made or the policy checked, they discover that they are not insured, or the cover that they have paid for and thought they had is not what they have.

Example 123

'A' attends a brokers office and obtains insurance for their vehicle which they pay for in cash. Three weeks later following a car accident 'A' claims on their car insurance and discovers that there is no insurance in place and the money was never paid by the broker.

Record 1 crime of Fraud - Insurance Broker.

Example 124

Following enquiry into an insurance broker practice, police trace twelve people who all confirm they had obtained insurance policies and paid cash to the broker for them. The insurance certificates they were given relate to a bogus insurance company.

Record 1 crime of Fraudulent Scheme - Insurance Broker

Telecom Industry Fraud (Misuse Of Contracts)

This is where contracts are obtained by false representation from service providers either by using false details or stolen documents/credit cards or with no intention of paying the contract.

This also includes internet services.

Example 125

Suspect obtains a mobile phone on a twelve month contract using a dormant bank account. The phone is then used for three months with no payments being made before the phone is cut off by the service provider. There were no funds in the account and never any intention to pay the monthly contract.

Record 1 crime of Fraud - Telecom Industry.

Example 126

A short stay tenant obtains an internet package from an ISP using false details knowing that they will no longer be there in a month's time when the first bill arrives.

Record 1 crime of Fraud - Telecom Industry.

Example 126

Suspect obtains a mobile phone on a twelve month contract using a cloned credit card. The phone is then used for three months before the phone is cut off by the service provider.

Record 1 crime of Fraud - Telecom Industry.

Record 1 crime of Fraud - Cheque, Credit Cards and Online Bank Accounts.

Example 127

Suspect enters a phone shop and purchases a new handset for their sim card using a cloned credit card.

Record 1 crime of Fraud - Cheque, Credit Cards and Online Bank Accounts.

Corporate Employee/Procurement Fraud

Corporate Employee

This is where employees or ex-employees obtain property, or greater remuneration through fraud. It also covers the misuse of corporate cards and expense systems.

Example 128

After an employee leaves a company, they obtain fuel from a garage by signing the usual documents at the garage as if still employed by the company thereby obtaining fuel on former employer's account.

Record 1 crime of Fraud - Corporate Employee. (Locus being first garage petrol obtained.)

Example 129

An employee in accounts creates a false employee within a large company and directs all the wage payments to one of their accounts.

Record 1 crime of Fraud - Corporate Employee.

Example 130

Twelve employees claim overtime for working on a Sunday at the same site. It is established they never work a Sunday but always claim for doing so.

Record 12 crimes of Fraud - Corporate Employee.

Example 131

Employee steals a laptop belonging to the company from an office. When interviewed they admit they have been submitting false expenses for the last six months.

Record 1 crime of Theft.

Record 1 crime of Fraud - Corporate Employee.

Example 132

An employee is reported to the police for falsely claiming travelling expenses (no gain has occurred).

Record 1 crime of Attempted Fraud – Corporate Employee (if successful – record 1 crime of Fraud).

Example 133

A store person orders stock by completing 266 requisition slips in order to steal from their employer.

Record 1 crime of Fraud – Corporate Employee (although depending on the circumstances this may be a Fraudulent Scheme or an Embezzlement).

Corporate Procurement

This offence is where excess goods are ordered and then sold on by the offender or goods of an inferior quality are delivered to those paid for with the offenders pocketing the difference.

Example 134

The site foreman orders kitchens for twelve properties when the company is only building ten houses. The two additional kitchens are then sold on by the foreman who keeps the money.

Record 1 crime of Fraud - Corporate Procurement.

Example 135

A large company is updating their IT and an order is placed for 150 new desk top computers. 140 desk top computers are replaced with the new machines and the project team of ten each take home a brand new computer for their own use. The company does not supply desk top computers for use at home.

Record 10 crimes of Theft.

Example 136

An employee of a housing development contacts their friend who runs a garden centre business to arrange delivery of a quantity of shrubs for the development. The employee tells their friend to invoice for the more expensive shrubs as no one will know the difference and both share the difference.

Record 1 crime of Fraud - Corporate Procurement (two accused).

Business Trading Fraud

In the case of long/short firm fraud being a fraudulent scheme where there are multiple victims of a single (or team) of perpetrators a crime should be recorded for each victim. Generally, this involves a company being set up, obtaining goods on credit and failing to make payment for the goods. The goods are usually sold for cash and the business closes their premises, moving on, possibly to do the same again. More recently, instances of individuals purporting to be from legitimate companies have obtained goods on credit with enquiry establishing they were not part of the legitimate company, having obtained the goods and moved on.

Long Firm Fraud

Normally where an apparently legitimate business is set up with the purpose to defraud its suppliers and customers after a relatively long period of time. The business develops a decent credit history to win the trust of suppliers; this is achieved by placing numerous small orders with wholesalers accompanied by prompt payment. The fraudsters then place several larger orders with the businesses with which they have established a good credit history. Once they receive the goods, the criminals will promptly disappear and sell the goods on from various trading places.

Short Firm Fraud

Where an apparently legitimate business is set up with the purpose to defraud its suppliers and customers after a relatively short period of time. This is similar in all aspects to long firm fraud, however over a shorter time span with no pattern to establish any form of credit history or creditability. The companies involved have no day-to-day trading activity, not even a cash-generating front. Goods are obtained on credit and delivered to third party addresses, often located at multi occupancy trading estates. The goods are sold on for cash therefore creating no document trail.

Example 137

A company is set up to sell goods. They order a relatively low number of goods from a supplier and on advertising the goods, receive 100 orders and payment to purchase the goods. The director of the company disappears with the money, no goods are dispatched for the 100 orders/payment received and the supplier of the goods is not paid.

Record 101 crimes of Fraud – Business Trading.

Example 138

A club treasurer persuades 10 people to donate money to the club by making false statement about the club's finances.

Record 10 crimes of Fraud – Business Trading.

Example 139

Company sets up business, obtains credit over a two month period from two companies and fails to pay for the goods received. Enquiry reveals the business has closed their office premises.

Record 2 crimes of Fraud – Business Trading.

False Accounting Fraud

Destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose;

or

In furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular..."

See Companies Act for relevant offences.

Bankruptcy And Insolvency Fraud (SGJD - 27/000)

It is a crime at Common Law for any person who is insolvent or bankrupt, or on the eve of, or in contemplation of bankruptcy to conceal or remove his assets with intent to defraud his creditors.

Note: The Bankruptcy (Scotland) Act 1985 is concerned with individual insolvency. The Insolvency Act 1986 relates to company insolvency.

Example 140

Failing to disclose relevant financial matters on legal documents when seeking sequestration.

Record 1 crime of Bankruptcy (Scotland) Act 1985.

Passport Application Fraud

Passport fraud occurs where fraudsters obtain or try to obtain a United Kingdom Passport by false representation to the passport Agency.

Example 141

The Passport Office report that they have received a passport application using a forged birth certificate. No passport is issued.

Record 1 crime of Forgery and Uttering - Passport Application.

Fraudulent Applications For Grants From Government Organisations

Fraudulent Grants

This is where Government funded Organisations have provided grants, based on false representations or where they have received grant applications that contain false representations and so no grant was paid.

Government Funded Organisations

Organisations set up to distribute funding on behalf of the government.

They are not charities.

Example 142

An organisation has provided funding for a householder to install solar heating as a result of a grant application. The applicant receives the money and pays it into their account, submitting the receipt for installation. It is then established that the receipts are false and no work was carried out.

Record 1 crime of Fraud - Fraudulent Application for Grants from Government Funded Organisations.

Example 143

An organisation has received an application for a grant of £10,000 for a project. In checking the application the organisation establishes that the applicant has used false details and the company who were to undertake the work does not exist. No grant was paid.

Record 1 crime of Fraud - Fraudulent Application for Grants from Government Funded Organisations.

Pension Fraud

Pension Fraud By Pensioners (Or Their Estate)

This is where the pension provider is defrauded by the pensioner or more usually by the pensioner's estate following their death.

Example 144

A pension provider reports that 'A' failed to inform them of the death of 'B' so 'A' continued to receive full payments from the pension of 'B'.

Record 1 crime of Fraud - Pension Fraud by Pensioners.

Example 145

A pension provider reports that 'A' failed to inform them of the death of 'B' so 'A' continued to receive full payments from the pension of 'B'. On making enquiry it is established there is a further pension held with a separate provider and 'A' has also failed to inform them of the death of 'B'.

Record 2 crimes of Fraud - Pension Fraud by Pensioners.

Example 146

It is discovered that money was illegally drawn each week from two Pension Books, one issued by the Government and one by the Local Authority, the true recipient having died fifteen years earlier. Money was withdrawn on 1560 occasions.

Record 2 crimes of Fraud - Pension Fraud by Pensioners. The victims are (1) the Government and (2) the Local Authority.

Pension Fraud Committed on Pensioners

This is where the pensioner is the victim of fraud on their pension. It is usually committed by Trustees or pension funds inappropriately using the pension fund.

Example 147

A trustee of a pension fund moves funds from a trust fund into their own account with little risk of being caught as the pension is not due to mature for another twenty years, falsely completing documents to transfer the money.

Record 1 crime of Forgery and Uttering – Pension Fraud Committed on Pensioners.

Pension Liberation

This is where by fraud a pensioner is persuaded to 'liberate' their pension early for a large cash sum. The payment is considerably smaller than they expected because of fees and taxes.

Example 148

'A' is contacted by a company who advise that they can obtain the value of their pension now for a small fee. 'A' is struggling financially and agrees. 'A' receives a cheque for a quarter of its value, the rest going on fees and charges.

Record 1 crime of Fraud - Pension Liberation.

Other Regulatory Fraud

This crime type should be used to record regulators fraud not covered elsewhere. Examples would include Land Registry, Insider Dealing at the stock exchange, or the Gambling Commission, etc.

Example 149

The land registry receives a fraudulent application to change the ownership of a plot of land.

Record 1 crime of Forgery and Uttering - Other Regulatory.

Fraud By Failing To Disclose Information

Dishonestly fails to disclose to another person information which he is under a legal duty to disclose and intends by failing to disclose the information to make a gain for himself or another, or to cause loss to another or expose another to a risk of loss.

Example 150

A solicitor fails to share information with a client in order to make a gain for another client.

Record 1 crime of Fraud - Fraud by Failing to Disclose Information.

Abuse Of Position Of Trust (Including Embezzlement)

Occupies a position in which they are expected to safeguard, or not to act against, the financial interests of another person, dishonestly abuses that position and intends, by means of the abuse of that position to make a gain for themselves or another or to cause loss to another or to expose another to risk of loss.

A person may be regarded as having abused their position even though their conduct consisted of an omission rather than an act.

Embezzlement

Definition

The felonious appropriation of property, which has been entrusted to the accused with certain powers of management or control. The accused must have received either a limited ownership of the property, or actual possession of the property under liability to account for it to the owner.

Example 151

Shop manager lodges twenty two false refund transactions through the till point on separate occasions to the value of £815.

Record 1 crime of Embezzlement - Abuse of Position of Trust.

Example 152

The financial administrator in a Care Home with sole access to resident's accounts fraudulently obtains monies by adjusting the accounts by £100 per person over a six month period. Twenty-six resident's accounts have been found to have such anomalies.

Record 1 crime of Embezzlement - Abuse of Position of Trust.

Example 153

'A', a family member, has power of attorney for 'B' and has full control of their finances. 'A' transfers monies from the various accounts of 'B' into their own account with no justification for doing so.

Record 1 crime of Embezzlement - Abuse of Position of Trust. (Depending on individual circumstances re the extent of control of finances, theft or fraud can be alternative outcomes.)

Example 154

Two employees, acting together, found to be embezzling monies.

Record 1 crime of Embezzlement - Abuse of Position of Trust – two accused.

Example 155

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.

Record 1 crime of Fraudulent Scheme - Corporate Employee.

Example 156

A shop assistant is seen on CCTV on five occasions over a period of one week to steal cash from till, which is confirmed when the till was balanced.

Record 1 crime of Theft.

Example 157

Home care assistant takes bank card from victim's drawer without permission, attending at ATM and withdrawing £50 each day over five days, returning the card after each transaction.

Record 1 crime of Theft.

Record 1 crime of Theft by Opening Lockfast Place ATM (only one account). (Locus of Theft being the victim's home address and the Theft by Opening Lockfast Place being where the first transaction took place.)

Example 158

A coach at the Amateur Football Club collects money from fourteen players to organise a tournament and makes off with the money.

Record 1 crime of Fraudulent Scheme - Other (depending on position held by the culprit and circumstances, this may be considered to be an embezzlement).

Example 159

Ten work colleagues give money to another colleague who has agreed to book a Christmas lunch. While enquiry has been made with an agreed restaurant and menus provided to attendees, the lunch is not booked and the suspect fails to return the monies.

Record 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).

Note: Where a shop assistant with no powers of management or control steals money from a till this should be recorded as Theft or if a scheme has been set in place, record as a Fraudulent Scheme.

DVLA Driver Licence Application Fraud

Driving Licence fraud occurs where fraudsters obtain or try to obtain a United Kingdom driving licence by false representation to the Driver and Vehicle Licensing Agency (DVLA).

Note: This only deals with fraudulent UK driving licence applications. DVLA should be consulted to ensure that the application is false. Forged/counterfeit driving licences should be recorded as Identity Documents Act.

Example 160

DVLA report that they have received a driving licence application using a forged foreign driving licence. No driving licence is issued.

Record 1 crime of Road Traffic Act 1988, Section 173.

Example 161

A suspect is arrested after using a UK driving licence obtained by a fraudulent application to obtain a fraudulent hire purchase agreement on a new car.

Record 1 crime of Road Traffic Act 1988, Section 173.

Record 1 crime of Fraud – Application Fraud (excluding Mortgages) – regarding hire purchase agreement.

Other Fraud (Not Covered Elsewhere)

This section should be used for all other fraud by false representation or obtaining services dishonestly, that are not covered elsewhere.

Board and Lodgings

Example 162

Person books into a guest house for two nights and leaves early morning failing to pay for stay.

Record 1 crime of Fraud – Other.

Example 163

Guests in a boarding house leave without paying and take items of property e.g. towels, with them.

Record 1 crime of Fraud – Other. (As both offences are crimes of dishonesty only the crime of Fraud is required with the theft included in the MO.)

Restaurant/Take Away**Example 164**

'A' enters a restaurant with their family, and orders a meal without any intention or means to pay for that meal. 'A' states that they have no means of paying when the bill is presented.

Record 1 crime of Fraud – Other.

Example 165

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.

Record 1 crime of Fraud – Other.

Example 166

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.

Record 1 crime of Fraud – Other.

Taxi Fraud**Example 167**

Two persons make off from taxi failing to pay fare. Police trace both accused and payment is made.

Record 1 crime of Fraud - Other (although payment has been made, the actions of the accused indicate intention to deceive).

Example 168

Person books taxi under their own name requesting to be taken to a specified address and on arrival exits taxi stating they will obtain the monies and return to pay. They fail to return and on taxi driver attending at house, is told there is no intention to pay.

Record 1 crime of Fraud – Other.

Frauds Abroad**Example 169**

Victim residing in Spain rents a flat in Edinburgh via the internet, transferring funds via the internet to an account, the locus of which is unknown. On arriving in Edinburgh the victim establishes the address is a shop premises, not for rent and calls at the local police station to report this.

Only an incident need be recorded. The victim should be advised to report this in Spain.

Example 170

A resident of this country travels to Spain and is defrauded in Spain by a Spanish registered Time Share Company. They return home and report it to local Police.

Only an incident need be recorded. (Officers may wish to offer advice and may consider noting the details and forwarding to Interpol on behalf of the victim.)

Example 171

A Belgian National orders goods over the internet from an American Company. He pays for the goods using PayPal. The goods are never delivered. Enquiries at PayPal show that funds were transferred from Belgium to USA via PayPal 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.)

Miscellaneous Frauds

Example 172

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.

Record 1 crime of Fraudulent Scheme – Other.

Example 173

Frauds are reported separately by two victims. During police enquiries 57 further victims of fraud are discovered.

Record 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 record 1 crime of Fraudulent Scheme.)

Example 174

'A' drives off from a car park and fails to pay the appropriate parking fee by avoiding/ducking under the exit barrier.

In the majority of cases this will amount to a civil matter between the operators of the car park and the driver.

Example 175

A milk delivery person is reported to the police for repeatedly charging customers for more milk than they have received. Twenty victims are identified.

Record 1 crime of Fraudulent Scheme – Other.

Housebreaking↑

Housebreaking is not a substantive crime; there must be, in addition, a felonious intent. Housebreaking is only associated with theft, either as an aggravation thereof or with the intent to commit that crime.

The term 'house' applies not only to a dwelling house but also to any other roofed building, whether finished or unfinished or to any part of a building used as a separate dwelling, which is secured against intrusion by unauthorised persons. To constitute housebreaking, not merely the sanctity, but the strength or security of the building, must be overcome. It is not essential that actual damage should be caused to the building; the security of the building is overcome whenever entry is affected by what is not the usual, or intended, mode of entrance.

There are three 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(s)

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 (i.e. there is a connecting door between house and garage).
- Occupied bedrooms within hotel.

Domestic Non Dwelling

All roofed buildings used for domestic purposes other than dwellings:

- Domestic garages, which are not an integral part of a dwelling house.
- Garden huts/garden sheds/allotment huts (non-commercial)
- Outhouses

Other

All roofed buildings not used for residential or domestic purposes 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 (Opening Lockfast Place)

- 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

- 19/004 Theft By Housebreaking (Dwelling)**
19/005 Theft By Housebreaking (Non-Dwelling)
19/006 Theft By Housebreaking (Other)↑

General rule: One crime for each household/business

Definition

Theft by housebreaking is constituted whenever the security of the house is violated and some article abstracted or removed for the purpose of being carried off. It is not essential that the thief should have actually entered the building. The theft is complete if, for example, he draws the article towards him with some implement, even although he does not get the article into his hand.

Note(s)

Where a true key left in lock has been used to open the door, this does not constitute a break in.

- 19/007 Housebreaking With Intent To Steal (Dwelling)**
19/008 Housebreaking With Intent To Steal (Non-Dwelling)
19/009 Housebreaking With Intent To Steal (Other)↑

Definition

It is a substantive crime to break into any building with intent to steal therefrom. The felonious purpose is inferred from the circumstances in which the building is entered.

Note(s)

If the extent of a break-in renders a building insecure and no property is taken the crime is Housebreaking with intent to steal.

- 19/010 Attempted Housebreaking With Intent To Steal (Dwelling)**
19/011 Attempted Housebreaking With Intent To Steal (Non-Dwelling)
19/012 Attempted Housebreaking With Intent To Steal (Other)↑

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.

Victim/Complainer

Property owner or tenant.

Locus

Location of the crime.

Scenario example(s)

Dwelling

Example 1

Open insecure window from outside and steal property from internal window ledge.

Record 1 crime of Theft by Housebreaking (dwelling).

Example 2

Enter house through open window, steal items from kitchen and living areas.

Record 1 crime of Theft. (If the window was above ground level and the culprit was required to climb up to enter or further open the window to gain entry this would be Housebreaking.)

Example 3

Break into dwelling, steal property, exit house, open insecure garage, steal vehicle owned by the householder.

Record 1 crime of Theft by Housebreaking (dwelling). (Note – if the vehicle was not owned by the household then a separate Theft of the Motor Vehicle would also be recorded due to the insecurity of the garage.)

Example 4

Break into dwelling, steal car keys, thereafter steal vehicle parked in driveway owned by a visitor.

Record 1 crime of Theft by Housebreaking (dwelling).

Record 1 crime of Theft of Motor Vehicle (due to vehicle being owned by someone other than the household).

Example 5

Force conservatory doors of house, steal property, no further access to house gained.

Record 1 crime of Theft by Housebreaking (dwelling).

Example 6

Three students share the rent for a house and each have locked rooms within.

(a) The house is broken into, all three rooms forced open and property stolen from each.

Record 1 crime of Theft by Housebreaking (dwelling) with three victims.

(b) The insecure house is entered, all three rooms forced open and property stolen from within.

Record 3 crimes of Theft by Housebreaking (dwelling) with three victims.

Example 7

Force open front door of common stair type building and steal pedal cycle stored in common lobby.

Record 1 crime of Theft by Housebreaking (dwelling).

Example 8

Force open front door of common stair type building, break in to two secure flats within building and steal property from each.

Record 2 crimes of Theft by Housebreaking (dwelling).

Example 9

Force open three locked rooms occupied by students in a university halls of residence and steal property stolen from within.

Record 3 crimes of Theft by Housebreaking (dwelling).

Example 10

Force open integral garage (door connecting garage to house) and stealing therefrom.

Record 1 crime of Theft by Housebreaking (dwelling). (Where there is no connecting door to house record as Theft by Housebreaking (non-dwelling).)

Example 11

Force entry to dwelling and steal property, being disturbed and raping householder.

Record 1 crime of Theft by Housebreaking (dwelling).

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1 Rape.

Example 12

Break into dwelling, steal property from living room area, being disturbed and assault two occupants.

Record 1 crime of Theft by Housebreaking (dwelling).

Record 2 crimes of Assault.

Example 13

Find key beneath flower pot, open front door, stealing property.

Record 1 crime of Theft by Housebreaking (dwelling) (key feloniously obtained).

Example 14

Enter hotel, break into four occupied hotel rooms and managers living quarters, stealing property.

Record 5 crimes of Theft by Housebreaking (dwelling). (Had the culprit entered the hotel and stolen from the managers quarters and four unoccupied rooms then this would be classified as 1 crime of Theft by Housebreaking (dwelling) and 1 crime of Theft by Housebreaking (other). If the rooms are occupied, then this becomes the persons domicile and therefore each crime will be counted individually.)

Example 15

Break into garden hut, steal spade, thereafter break into dwelling house owned by same complainer and steal property.

Record 1 crime of Theft by Housebreaking (dwelling).

Example 16

Break into static caravan and steal therefrom.

Record 1 crime of Theft by Housebreaking (dwelling).

Example 17

Raise insecure sash window of a ground floor house window, climb through, search rooms, nothing stolen.

Record 1 crime of Housebreaking with Intent to Steal (dwelling). (Should it be unknown whether the window was opened further or if the open window was at such a distance from the ground it would require the culprit to at least pull themselves up, the crime should be treated as a Housebreaking.)

Example 18

Smash small window of door of dwelling near to lock, although hole big enough to reach through, no entry gained to property.

Record 1 crime of Attempted Housebreaking with Intent to Steal (dwelling).

Example 19

Insert fishing rod through letter box, hook keys on table within and use same to steal vehicle in driveway.

Insert fishing rod through letterbox in an effort to hook keys on table within, attempt failing, fishing rod and keys found on floor on householders return.

Both of the above scenarios would result in a Theft by Housebreaking (dwelling) being recorded.

Example 20

Postman leaves a package with neighbour, posting a card advising of this through the delivery address letterbox. The neighbour puts a metal rod through the letterbox in an attempt to retrieve the card intending to keep the package. This is unsuccessful with the metal rod having fallen into the house and being found behind the door along with the card.

Record 1 crime of Theft (the attempt to obtain the card from the delivery address is a continuation of the intention to steal the package).

Example 21

Householder returns home to find front door forced open. No property missing from within and no signs that any person has been in the house.

Record 1 crime of Housebreaking with Intent to Steal (dwelling) (the presumption is Housebreaking until proven otherwise).

Example 22

Steal set of keys from Locus 1, using same to enter and steal property from dwelling at Locus 2.

Record 1 crime of Theft (Locus 1).

Record 1 crime of Theft by Housebreaking (dwelling) (Locus 2).

Example 23

Break into house overnight, no items stolen, break into garage within curtilage of the property and not attached to the house, and steal various items.

Record 1 crime of Theft by Housebreaking (non-dwelling). (The substantive crime here is the Theft by Housebreaking from the garage and the Housebreaking with Intent to steal from the house may be subsumed.)

Example 24

Attempt to break in to dwelling, no access gained, enter insecure shed in garden, steal property from within.

Record 1 crime of Theft. (Attempted Housebreaking with Intent to Steal is subsumed into the Theft which is the completed crime, same locus, same complainer.)

Example 25

Householder returns home to find a pane of glass in their front door broken. The broken pane is adjacent to the door lock and handle but no entry was gained.

Record 1 crime of Attempted Housebreaking with Intent to Steal (dwelling). (Since the broken pane was adjacent to the door lock and handle there will be a presumption that this was an attempt to enter the property unless there is clear evidence to the contrary to suggest an act of Vandalism.)

Example 26

Tent on camp site, secured by padlock, entered by cutting material and property belonging to two persons stolen.

Record 2 crimes of Theft (the tent is not considered to be a lockfast place or a dwelling).

Non Dwelling**Example 27**

Break into garden hut, stealing spade.

Record 1 crime of Theft by Housebreaking (non dwelling).

Example 28

Break into bicycle shed, stealing three bicycles.

Record 1 crime of Theft by Housebreaking (non dwelling). (If the bicycles were contained within a locked cage or similar this would be an Opening Lockfast Place. If this occurred at a school or commercial property the classification would be Theft by Housebreaking (other).)

Example 29

Break into three garages located at end of street, owned/rented by residents within the street and steal property from each garage.

Record 3 crimes of Theft by Housebreaking (non dwelling).

Enquiry ascertains that one resident works from home and uses the garage as part of their business.

Record 2 crimes of Theft by Housebreaking (non dwelling).

Record 1 crime of Theft by Housebreaking (other).

Example 30

Enter secure communal underground car park by means unknown, break into vehicle and steal property. Entry to the car park can be gained by a lift/common stair to the dwellings above, and there are no signs of any forced entry to the car park or common stair area.

Record 1 crime of Theft by Opening Lockfast Motor Vehicle. (Due to there being no signs of forced entry this would not be considered a housebreaking. If there had been signs of forced entry a housebreaking (dwelling) should be recorded.)

Other

Example 31

Force common stair door, break through wall into shop, force office door and steal safe.

Record 1 crime of Theft by Housebreaking (other).

Example 32

Break into Sports centre, force open ten lockers and steal property.

Record 1 crime of Theft by Housebreaking (Other). (Opening Lockfast Places subsumed. If the centre had been open to the public and the lockers had been forced, this would be recorded as Theft by Opening Lockfast Place and the number of crimes would be dependent on the number of lockers forced open.)

Example 33

Foam alarm box of factory, no further attempt made to break into premises.

Record 1 crime of Attempted Housebreaking with Intent to Steal (other).

Example 34

Cut telephone wires connected to alarm system of office premises.

Record 1 crime of Attempted Housebreaking with Intent to Steal (other).

Example 35

Break into first floor flat, cut hole in floor in order to gain entry into the chemist shop below and steal property.

Record 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 by Housebreaking (dwelling) would be recorded.)

Example 36

Break into secure wooden hut used to store excess tables and chairs at a school, no property stolen.

Record 1 crime of Housebreaking with Intent to Steal (other).

Example 37

Climb up to first floor window of Care Home, open window, climb in to common room area and steal property.

Record 1 crime of Theft by Housebreaking (other) (due to the main building being a commercial property).

Example 38

Force padlock, enter compound, break in to portacabin used as an office, steal items including car keys and company owned vehicle parked outside.

Record 1 crime of Theft by Housebreaking (other).

Example 39

Force padlock, enter compound, enter insecure office, steal items including car keys and company owned vehicle parked outside.

Record 1 crime of Theft of Motor Vehicle.

Example 40

Break into permanent caravan used for fast food and steal property.

Record 1 crime of Theft by Housebreaking (other).

Example 41

Enter PIN to gain entry to office premises and steal property.

Record 1 crime of Theft - if established that access has been gained by a member of staff who is permitted access.

Record 1 crime of Theft by Housebreaking (other) - if it is unknown whether entry was gained by a member of staff who is permitted access, or whether an identified member of staff has gained access however was not permitted to do so.

Example 42

Break in to shopping centre, break in to three business premises within and steal property from each.

Record 1 crime of Theft by Housebreaking (other).

Note(s)

An Attempt Housebreaking should be recorded when an unsuccessful attempt has been made to break-in. If a break-in renders a building insecure and no property is stolen the crime is Housebreaking with intent to steal.

For the purposes of recording crime, a compound, yard or field secured by a fence and locked gate is not considered to be a lockfast place. Any crimes of this type should be recorded as Theft or subsumed within other substantive crimes such as Theft by Housebreaking as circumstances dictate.

Where damage is reported as having occurred which may indicate an intent to break in the premises, this should be considered as an Attempted Housebreaking with intent to Steal unless justification is provided that the damage is more likely to be as a result of Vandalism.

Huts/sheds and garages (roofed buildings) should be considered as houses for recording purposes. While portacabins may be used for the same purpose (storage) this is considered to be a container and should be recorded as a lockfast place when used for this purpose. A portacabin which is being used as an office (internal adjustments made within e.g. electricity, phone etc.) this should be recorded as a housebreaking.

Thefts From Unoccupied Hotel Rooms

Points to consider when establishing whether a Theft or a Theft by Housebreaking has occurred:

Was the door secured properly on occupier leaving e.g. did they check it was secure, was there a possibility that the door did not close properly.

If a key card is used whether the opening/closing of the door has been recorded at the reception and how this links in with the timeline of the property going missing.

The opportunity for access to be gained to the room and property stolen while door lying open when room being cleaned.

The possibility that the person cleaning the room could be responsible.

The possibility of the key/card having been lost, whether that be by the present or previous occupant and potential for it to be used to gain access.

Potential for the door to be opened by other means e.g. faulty lock and by pushing same to allow access with no obvious signs of damage.

25/000 Identity Documents Act 2010[↑]

General rule: One crime for each incident

Definition

Section 4 - Possession of false identity documents etc with improper intention

- (1) It is an offence for a person ("P") with an improper intention to have in P's possession or under P's control -
 - (a) an identity document that is false and that P knows or believes to be false,
 - (b) an identity document that was improperly obtained and that P knows or believes to have been improperly obtained, or
 - (c) an identity document that relates to someone else.
- (2) Each of the following is an improper intention -
 - (a) the intention of using the document for establishing personal information about P;
 - (b) the intention of allowing or inducing another to use it for establishing, ascertaining or verifying personal information about P or anyone else.
- (3) In subsection (2) (b) the reference to P or anyone else does not include, in the case of a document within subsection (1) (c), the individual to whom it relates.

Section 5 - Apparatus designed or adapted for the making of false identity documents etc.

- (1) It is an offence for a person ("P") with the prohibited intention to make or to have in P's possession or under P's control –
 - (a) any apparatus which, to P's knowledge, is or has been specially designed or adapted for the making of false identity documents, or
 - (b) any article or material which, to P's knowledge, is or has been specially designed or adapted to be used in the making of such documents.
- (2) The prohibited intention is the intention -
 - (a) that P or another will make a false identity document, and
 - (b) that the document will be used by somebody for establishing, ascertaining or verifying personal information about a person.

Section 6 - Possession of false identity documents etc. without reasonable excuse

- (1) It is an offence for a person ("P"), without reasonable excuse, to have in P's possession or under P's control -
 - (a) an identity document that is false,
 - (b) an identity document that was improperly obtained,
 - (c) an identity document that relates to someone else,
 - (d) any apparatus which, to P's knowledge, is or has been specially designed or adapted for the making of false identity documents, or
 - (e) any article or material which, to P's knowledge, is or has been specially designed or adapted to be used in the making of such documents.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

'A' is arrested in possession of a false passport, without reasonable excuse.

Record 1 crime of Identity Documents Act 2010, Section 6.

Example 2

'A' is stopped with a false driving licence obtained over the internet attempting to prove his age to enter an over 21 club.

Record 1 crime of Identity Documents Act 2010, Section 4.

Example 3

'A' is stopped in possession of a bank statement belonging to another person. There is no evidence of any intent to commit a crime.

This is not a crime as bank statements are not an identity document.

Offences of identity theft should only be used where there is no evidence of any intent to commit fraud. Where there is evidence of intent to commit fraud then only the crime of Fraud should be recorded.

Example 4

A passport has been reported stolen and has subsequently been used to commit fraud.

Record 1 crime of Theft.
Record 1 crime of Fraud.

Example 5

A forged passport is used to commit fraud.

Record 1 crime of Fraud.

Example 6

A person, apprehended for forging a passport, admits to five similar crimes.

Record 1 crime of Forgery and Uttering.

Note(s)

Meaning – Identity Document

For the purposes of sections 4 to 6 “identity document” means any document that is or purports to be -

- (a) an immigration document,
- (b) a United Kingdom passport (within the meaning of the Immigration Act 1971),
- (c) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom or by or on behalf of an international organisation,

- (d) a document that can be used (in some or all circumstances) instead of a passport,
 - (e) a licence to drive a motor vehicle granted under Part 3 of the Road Traffic 1988 or under Part 2 of the Road Traffic (Northern Ireland) Order 1981, or
 - (f) a driving licence issued by or on behalf of the authorities of a country or territory outside the United Kingdom.
- (2) In subsection (1) (a) “immigration document” means—
- (a) a document used for confirming the right of a person under the EU Treaties in respect of entry or residence in the United Kingdom,
 - (b) a document that is given in exercise of immigration functions and records information about leave granted to a person to enter or to remain in the United Kingdom, or
 - (c) a registration card (within the meaning of section 26A of the Immigration Act 1971).
- (3) In subsection (2) (b) “immigration functions” means functions under the Immigration Acts (within the meaning of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004).
- (4) References in subsection (1) to the issue of a document include its renewal, replacement or re-issue (with or without modifications).
- (5) In this section “document” includes a stamp or label.

Meaning – Personal Information

For the purposes of sections 4 and 5 “personal information”, in relation to an individual (“A”), means—

- (a) A’s full name,
- (b) other names by which A is or has previously been known,
- (c) A’s gender,
- (d) A’s date and place of birth,
- (e) external characteristics of A that are capable of being used for identifying A,
- (f) the address of A’s principal place of residence in the United Kingdom,
- (g) the address of every other place in the United Kingdom or elsewhere where A has a place of residence,
- (h) where in the United Kingdom and elsewhere A has previously been resident,
- (i) the times at which A was resident at different places in the United Kingdom or elsewhere,
- (j) A’s current residential status,
- (k) residential statuses previously held by A, and
- (l) information about numbers allocated to A for identification purposes and about the documents (including stamps or labels) to which they relate.

Opening Lockfast Places (OLPs)↑

Opening lockfast places is not a substantive crime; it relates to theft, either as an aggravation, or with intent to commit that crime.

The expression “lockfast places” includes rooms, cupboards, drawers, safes, desks, cash-boxes, 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 1 April 2009 Theft OLP (ATMs) will be recorded as one crime per account in line with Fraud counting rules.

As of 1 April 2010 Theft OLP (ATMs and Fuel Pumps) will be counted for statistical purposes within the SGJD Code for Fraud.

Note(s)

Insert card in fuel pump = Theft (other).

Insert card and PIN in fuel pump = Theft by OLP (Fuel Pump) (from April 2010 included in fraud statistics).

Insert card and PIN in ATM = Theft by OLP (ATM) (from April 2010 included in fraud statistics).

Hand card to sales assistant and key in PIN = Fraud.

20/001 Theft By Opening Lockfast Place (Excluding Motor Vehicle)

20/002 Opening Lockfast Place With Intent To Steal (Excluding Motor Vehicle)

20/003 Attempt To Open Lockfast Place With Intent To Steal (Excluding Motor Vehicles)

25/000 Theft By Opening Lockfast Place – ATM (including fuel pump)↑

General rule: One crime for each victim

Definition

Theft by opening lockfast places is committed whenever the security of the lockfast place is overcome and the contents stolen. 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 (for ATM usage, see Note(s)).

Scenario example(s)

Example 1

Break into non-static caravan used purely for storage purposes, nothing stolen.

Record 1 Crime of Opening Lockfast Place with Intent to Steal.

Example 2

Break into lockfast storage cubicle/cage within an insecure common close and steal pedal cycle.

Record 1 crime of Theft by Opening Lockfast Place.

Example 3

Steal bank card, insert into different ATMs on five occasions, inputting PIN and withdraw cash.

Record 1 crime of Theft.

Record 1 crime of Theft by Opening Lockfast Place (ATM) (one crime per

account) (key in form of PIN requires to be entered to cause machine to issue cash).

Example 4

Steal bank card, insert into fuel pump, insert PIN and withdraw fuel.

Record 1 crime of Theft (or reset depending on circumstances).

Record 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 5

Enter sports centre, force open 10 lockers and steal property from within owned by 10 different persons.

Record 10 crimes of Theft by Opening Lockfast Place (each locker is considered to be a lockfast place).

Example 6

Break into locker within sports centre and steal property from within belonging to two persons.

Record 1 crime of Theft by Opening Lockfast Place (both persons will be recorded as victims as it is only one lockfast place).

Example 7

Force open three non static caravans and steal property owned by different persons.

Record 3 crimes of Theft By Opening Lockfast Place.

Example 8

Force padlock on gate or make hole in mesh fence, enter compound, nothing stolen.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism (for damage to padlock or fence).

Example 9

Force padlock on gate or make hole in mesh fence or climb over fence, enter compound and steal property.

Record 1 crime of Theft.

Example 10

Climb over fence, enter compound, nothing stolen.

Civic Government (Scotland) Act 1982, Section 57 could be considered if person(s) seen/found and circumstances indicate theft intended.

Example 11

Force padlock, enter compound, break into portacabin used as an office, steal items including car keys and company owned vehicle parked outside.

Record 1 crime of Theft by Housebreaking (Other).

Example 12

Force padlock, enter compound, enter insecure office, steal items including car keys and company owned vehicle parked outside.

Record 1 crime of Theft of Motor Vehicle.

Example 13

Force padlock, enter compound, break into portacabin used as an office, steal items including car keys for vehicle privately owned by a member of staff, and use keys to steal vehicle.

Record 1 crime of Theft by Housebreaking (other).

Record 1 crime of Theft of Motor Vehicle (there are two victims).

Example 14

Break into permanent caravan used for fast food and steal property.

Record 1 crime of Theft by Housebreaking (other).

Example 15

Force padlock, enter compound, break in to five containers used for storage and steal from within (all containers owned by same company).

Record 1 crime of Theft by Opening Lockfast Place.

Example 16

Force padlock, enter compound owned by 'A' and rented by 'B', break into portacabin used as an office by 'B' and steal property, break into storage container used by 'C' for storage and steal from within.

Record 1 crime of Theft by Housebreaking (other).

Record 1 crime of Theft by Opening Lockfast Place (damage to padlock subsumed into Theft by Housebreaking as compound 'under custody/control' of 'B' at time).

Example 17

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 four days. The suspect admits to being responsible.

Record 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 Opening Lockfast Place with Intent to Steal and Attempts would be subsumed within the Theft by Opening Lockfast Place.)

Note(s)

There are various categories of Theft by Opening Lockfast Place, which may include:

- Obtaining money or goods (fuel) by inserting stolen or counterfeit card and PIN into ATM machine;

- Forcing open lockfast internal room;
- Forcing open lockfast till, safe or cash-box;
- Breaking into non-static caravan; and
- Breaking into portacabin used for storage purposes.

As of 1 April 2009 Theft by Opening Lockfast Place 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.

- 20/004 Theft By Opening Lockfast Motor Vehicle**
- 20/005 Opening Lockfast Motor Vehicle With Intent To Steal**
- 20/006 Attempt To Open Lockfast Motor Vehicle With Intent To Steal↑**

General rule: One crime for each vehicle owner

Definition

Theft by opening lockfast places is committed whenever the security of the lockfast place is overcome and the contents stolen.

Victim/Complainer

Vehicle Owner.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Smash car window and steal property.

Record 1 crime of Theft by Opening Lockfast Motor Vehicle.

Example 2

Force car door, rummage through glove compartment, nothing stolen, paint thrown over seats.

Record 1 crime of Opening Lockfast Motor Vehicle with Intent to Steal (vandalism subsumed).

Example 3

Remove rubber seal from car door, screwdriver marks on surround, no entry gained.

Record 1 crime of Attempted Open Lockfast Motor Vehicle with Intent to Steal.

Example 4

Force open storage container permanently attached to rear of flatbed lorry and steal property from within.

Record 1 crime of Theft by Opening Lockfast Motor Vehicle.

Example 5

Force open lockable roof rack on motor vehicle and steal property from within.

Record 1 crime of Theft by Opening Lockfast Place (note this is not a Theft by Opening Lockfast Motor Vehicle as this item is not a permanent part of the vehicle).

Example 6

Force open locked fuel cap on vehicle, siphon fuel from tank and stealing.

Record 1 crime of Theft by Opening Lockfast Motor Vehicle.

Example 7

Cut fuel pipe on vehicle and fuel stolen.

Record 1 crime of Theft by Opening Lockfast Motor Vehicle.

Example 8

Open non locking fuel cap on vehicle, siphon fuel from tank and stealing.

Record 1 crime of Theft – Theft from a Vehicle (exterior).

Example 9

Cut material covering side of articulated trailer, gain entry and steal property from within.

Record 1 crime of Theft by Opening Lockfast Motor Vehicle if curtain side physically locked and trailer attached to a vehicle.

Record 1 crime of Theft from Motor Vehicle if not physically locked (e.g. ropes only) and attached to a vehicle.

Record 1 crime of Theft by Opening Lockfast Place (not Motor Vehicle) if curtain side physically locked but not attached to a vehicle.

Record 1 crime of Theft if not physically locked (e.g. ropes only) and not attached to a vehicle.

31/004 Money Laundering Proceeds Of Crime Act 2002↑

General rule: See examples

Definition

Section 327

A person commits an offence if he:-

- (a) conceals criminal property;
- (b) disguises criminal property;
- (c) converts criminal property;
- (d) transfers criminal property;
- (e) removes criminal property from England and Wales or from Scotland or from Northern Ireland.

Section 328

A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

Section 329

A person commits an offence if he:-

- (a) acquires criminal property
- (b) uses criminal property
- (c) has possession of criminal property

Section 330

Failure to Disclose – Regulated Sector.

Section 331

Failure to Disclose – Nominated Officers in Regulated Sector.

Section 332

Failure to Disclose – Other Nominated Officers.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Investigation into a crime of Fraud shows that 'A' whilst having no direct involvement into the commission of the fraud has permitted their bank account to be used as a 'mule' account to facilitate the transfer of funds.

Record 1 crime of Proceeds of Crime Act 2002, Section 329.

Record 1 crime of Proceeds of Crime Act 2002, Section 327.

Example 2

Investigation into a crime shows that 'A' has converted the monetary proceeds into foreign currency at numerous money exchange outlets.

Record 1 crime of Proceeds of Crime Act 2002, Section 329.

Record 1 crime of Proceeds of Crime Act 2002, Section 327.

Example 3

'A' receives illegal money into their account and thereafter attends at three currency exchange premises and converts the funds into Euros.

Record 1 crime of Proceeds of Crime Act 2002, Section 327.

Record 1 crime of Proceeds of Crime Act 2002, Section 329.

Example 4

'A' receives illegal money into their account.

Record 1 crime of Proceeds of Crime Act 2002, Section 329.

Note(s)

Property is criminal property if-

- (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and
- (b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

It is immaterial-

- (a) who carried out the conduct;
- (b) who benefited from it;
- (c) whether the conduct occurred before or after the passing of this Act.

When identifying the locus the following should be considered in order,

- The transaction location;
- Location of extraction point;
- Address of branch where account held (if in Scotland); and
- Home address of suspect.

This offence is evidence based and therefore should only be recorded where there is sufficient evidence. Whilst Section 327 and 329 are broken down into various subsections, there is no requirement to record separate crimes for each subsection, for example only 1 Section 327 would be recorded even although the circumstances amount to c) convert and d) transfer.

Process for dealing with multiple Beneficiary Accounts (Mules) under the Proceeds of Crime Act 2002

In instances where a crime of fraud has been reported and there are multiple beneficiary accounts identified, the process for effective investigation of these beneficiary frauds are as follows;

Victim Within Scotland

- (1) Oversight should be retained by the division which is investigating the fraud.

- (2) Where beneficiary accounts are identified outside of the holding division, a full package should be disseminated to the relevant divisions via their business support unit. This will enable the enquiry to be effectively tracked, allocated and the result fed back to the overseeing division.
- (3) It is the responsibility of both the officer dealing with the fraud enquiry and those allocated the beneficiary to liaise appropriately with relevant updates to the status and outcome of their enquiries, to ensure effective reporting to Crown Office and Procurator Fiscal Service.

Victim Outwith Scotland

- (1) Where the victim of fraud is outwith Scotland, this should be reported by the victim via Action Fraud who will allocate it to the relevant force in England, Wales or Northern Ireland for investigation. If there are beneficiary accounts in Scotland Action Fraud may disseminate their report to Police Scotland for intelligence purposes only.
- (2) The investigating force should contact Police Scotland for assistance in investigating the beneficiary account holders, and a full package should be provided for each instance.
- (3) The division with the most instances of beneficiary accounts will retain oversight within Police Scotland. Each package should be disseminated to the relevant divisions via their business support unit. This will enable the enquiry to be effectively tracked, allocated and the result fed back to the enquiry officer investigating the fraud.
- (4) Where there are the same number of beneficiary accounts across several divisions, the division with the earliest transaction will retain oversight, and liaise with the enquiry officer investigating the fraud.

23/000 Reset↑**General rule: One crime for each accused or group of accused if acting together****Definition**

Any person, with intent to deprive the owner, receives and keeps property knowing that it has been appropriated by theft, robbery, embezzlement or fraud.

Victim/Complainer

Procurator Fiscal.

Locus

Where accused found in possession of the property.

Scenario example(s)**Example 1**

On 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.

Record 1 crime of Reset (expectation would be that 1 crime of Robbery will already be recorded).

Example 2

A house is searched on two different days over a space of a week with stolen property recovered on both occasions.

Record 2 crimes of Reset (expectation would be that crimes will already be recorded in respect of the initial Thefts).

Example 3

Two persons are found in possession of a stolen motor cycle in the street. On searching their flat a further stolen motor cycle is recovered. (Expectation would be that crimes will already be recorded in respect of the initial Thefts.)

Record 1 crime of Reset (with both accused acting together).

Note(s)

A person, who accepts property in good faith and, subsequently, learns that it was dishonestly acquired, is guilty of reset if he continues to keep it.

A person cannot be reported for the theft and reset of the same articles.

If a person has taken possession of an article they know to have been stolen the previous day, they can be charged with the original crime (e.g. Theft). This would be in place of the 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.

22/003 Shoplifting↑**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 example(s)**Example 1**

'A', 'B' and 'C', acting together, are stopped whilst leaving a shop and 'A' is found in possession of property from that shop which they had not paid for.

Record 1 crime of Theft by Shoplifting (three accused).

Example 2

'A' and 'B' enter a jewellers shop and ask to try on a ring. The jeweller hands the ring to 'A' to try and both 'A' and 'B' run out of the shop with the ring.

Record 1 crime of Theft.

Example 3

'A' steals property from a chemist and two separate newsagent outlets.

Record 3 crimes of Theft by Shoplifting.

Example 4

A report is received that a customer has used the self-scan checkout and payment has not been made because:

(a) The customer failed to attempt to make any payment, taking the goods

Record 1 crime of Theft by Shoplifting.

(b) The customer has removed their bank card prior to the sale being authorised and has taken the goods.

Record 1 crime of Theft by Shoplifting (enquiry should be carried out to establish if this has been an oversight and if a genuine error is confirmed the recorded crime can be updated to 'No Crime').

(c) The customer has attempted to use a bank card which they left behind and has taken the goods. The card is identified as a cloned card.

Record 1 crime of Attempted Fraud (Cheque, Plastic Card and Online Bank Accounts). (Due to the card being declined. While the cloned card has been recovered actual or attempted frauds by false representation take precedence over crimes of possessing articles for use in frauds.)

Record 1 crime of Theft by Shoplifting (as property has been taken).

Example 5

'A' is caught stealing property from a shop, the police are called and 'A' offers to attend at the bank to obtain money and pay for the goods, which the complainer is happy to accept.

Record 1 crime of Theft by Shoplifting.

Example 6

An anonymous member of the public informs security that a female has just placed items of clothing within her bag and points out the person responsible. On the person being approached, whilst still within the shop, they are found to be in possession of a shopping bag lined containing a number of items of clothing from the shop with the security tags removed.

Record 1 crime of Theft by Shoplifting.

Example 7

A shop reports that a member of the public has reported to them having seen a person taking goods from the shelf and placing same within their bag, thereafter leaving the shop. No CCTV is available and the shop is unable to confirm if or what has been stolen.

Record as an incident only as there is no confirmation of what, if anything, has been stolen.

Example 8

'A' enters shop, selects goods from display and leaves the shop failing to pay. A short time later 'A' re-enters the shop, selects further goods from display and leaves the shop again failing to pay.

Record 2 crimes of Theft by Shoplifting (two separate incidents).

Example 9

'A' enters a shop, selects three items from display, removes the tags from two and successfully obtains an exchange at the customer services desk. 'A' then walks out of the shop failing to pay for the third item.

Record 1 crime of Fraud (Retail Fraud) (the theft is subsumed within the Fraud).

Example 10

'A' enters a shop, selects an item from display and walks out of the shop failing to pay for the item. 'A' later returns to the shop and attempts to obtain a refund or exchange for the stolen item.

Record 1 crime of Theft by Shoplifting.
Record 1 crime of Attempted Fraud (Retail Fraud).

Example 11

Customer shopping in supermarket opts to use the self-scanning device while going round the shop placing items in their trolley. At the pay-point a spot check undertaken by staff confirms that the customer deliberately failed to scan numerous items.

Record 1 crime of Theft by Shoplifting.

Example 12

'A' enters shop and steals several mobile phones which are disabled models for display purposes.

Record 1 crime of Theft by Shoplifting.

Note(s)

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.

22/001 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 Scottish Crime Recording Standard (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 updated to 'No Crime'.

Hire property

This will come to the attention of the police by the hire company telephoning the police to let them know that goods have not been returned at the end of a hire period.

It should be ascertained what enquiry the company have made themselves to recover the items. There is a duty on the company to make initial enquiry in order to ascertain whether the circumstances of non-return indicate a crime has occurred. If they are reporting the non-return of items after a specified loan period has elapsed and there is no reasonable explanation for the failure to return, then a crime has been committed.

It may be established at that stage that a Fraud has been committed, i.e. falsehood, false representation. This can quickly be established if false details have been provided. This should be recorded as Fraud and investigated.

A person may have provided the correct details but has failed to return the items. In this case the person has been granted loan or hire of the property for a limited period and for a specific purpose and has failed to return the goods after the date set. A theft has taken place and should be recorded as such on the crime system. It is not necessary that the specific purpose is stated.

If following enquiry it is established there is a genuine reason for the non-return of the property, then the crime should be updated to 'No Crime'.

Thefts from occupied hotel rooms

Points to consider when establishing whether a Theft or a Theft by Housebreaking has occurred:

- Was the door secured properly on occupier leaving e.g. did they check it was secure, was there a possibility that the door did not close properly;
- If a key card is used whether the opening/closing of the door has been recorded at the reception and how this links in with the timeline of the property going missing;
- The opportunity for access to be gained to the room and property stolen while door lying open when room being cleaned;
- The possibility that the person cleaning the room could be responsible;
- The possibility of the key/card having been lost, whether that be by the present or previous occupant and potential for it to be used to gain access; and
- Potential for the door to be opened by other means e.g. faulty lock and by pushing same to allow access with no obvious signs of damage.

Theft of fuel

All reports of thefts of fuel from filling stations will initially be recorded on an incident. The following should be considered when deciding to record a crime:

- Initial enquiries must be made with the registered keeper/driver in order that an assessment can be made as to whether a criminal act or not.
- If enquiry officer and informant are satisfied that a genuine mistake was made the incident can be closed as a non-crime provided the incident is updated to

confirm that payment was made and rationale is provided as to why the matter is considered to have been a genuine mistake.

- If criminality is suspected a crime record must be raised and processed accordingly.

Common theft of fuel MOs

Obtains fuel, False/No plates on vehicle and drives off

Circumstances indicate a crime has occurred and a Theft should be recorded.

Obtains fuel and drives off (sometimes unknown whether genuine oversight or not)

Enquiry requires to be made with the registered keeper/driver of the vehicle and where they clearly demonstrate that there was an oversight and nothing evident to indicate intention to commit a crime then this must be detailed in the incident/crime report and can be marked 'No Crime'.

Driver obtains fuel, enters shop, pays for other items but not fuel (sometimes unknown whether genuine oversight or not)

Enquiry requires to be made with the registered keeper/driver of the vehicle and where they clearly demonstrate that there was an oversight and nothing evident to indicate intention to commit a crime then this must be detailed in the incident/crime report and can be marked 'No Crime'.

Obtains fuel, enters shop and established no means to pay and signs form agreeing to return and pay

The garage have an initial responsibility to make enquiry with the individual to ascertain if they intend to return and pay in order to assess criminal intent. Where enquiry has been carried out by the garage which indicates it is reasonable to conclude the individual does not intend to return and pay then a crime should be recorded. It should be noted that by signing a form does not automatically result in this being a civil matter.

Theft in transit

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

Thefts from overhead lockers e.g. aeroplane, should be recorded where it can be evidenced the theft occurred e.g. where on arrival at destination property left in an overhead locker is forgotten and not handed in as lost property should be considered as a Theft at point of arrival.

Theft of mobile phones

All reports of Theft of mobile telephones will be recorded as a crime where an inference of criminality is made by the victim and there is no credible evidence to the contrary. It is seen as good practice for the victim to provide the telephone's International Mobile Equipment Identity (IMEI) number but if this is not provided it must not delay the creation of a crime record.

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.

Victim/Complainer

Owner of Property.

Locus

Where crime takes place.

Scenario example(s)

Example 1

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.

Record 1 crime of Theft (although this may be an oversight, it has not yet been confirmed, therefore it must be recorded as a crime).

Example 2

'A' fills up vehicle with fuel and claims to have forgotten their wallet. An arrangement is made to return the next day to pay for the fuel and a name and address are left. 'A' fails to return and enquiry reveals a false name and address has been provided.

Record 1 crime of Fraud (Retail Fraud).

Example 3

Insert stolen card in fuel pump which does not require PIN and withdraw fuel.

Record 2 crimes of Theft (the lack of PIN security (key) removes Opening Lockfast Place element).

Example 4

On 12 occasions over a three week period a shop assistant rings smaller amounts of money for purchases through the till, following each transaction they remove the difference and steals same.

Record 1 crime of Theft (depending on the circumstances this may be classed as a fraudulent scheme).

Example 5

'A' removes and places their rings on sink whilst washing hands within staff toilet area, on returning a short time later finds the property no longer there. Enquiry establishes no property has been handed in.

Record 1 crime of Theft (this should not be recorded as Lost Property).

Example 6

Enter sports centre and stealing property from five jackets owned by different victims.

Record 5 crimes of Theft.

Example 7

A flat is rented to tenants and on their departure the owner discovers property missing.

Record 1 crime of Theft. (On occasions this may be a civil matter dependant on the inventory, tenancy agreement terms, individual circumstances and type of property involved e.g. if items are subject to wear and tear. If a crime of Theft is not being recorded full rationale for this decision must be recorded in the incident log.)

Example 8

Twenty friends regularly give money to 'A', who in turn bets on horses on their behalf. 'A' steals the money, failing to place any bets and failing to return the monies.

Record 1 crime of Theft (the monies are treated as being 'joint ownership').

Example 9

Enter tent on camp site, secured by padlock, by cutting material, property belonging to two persons stolen.

Record 2 crimes of Theft (the tent is not considered to be a lockfast place or a dwelling).

Example 10

Climb over fence, enter compound and steal items.

Record 1 crime of Theft.

Example 11

Carer working in individual's house uses the telephone to phone high tariff lines. They run up a very large telephone bill, which only comes to light when the phone bill is received.

Record 1 crime of Communications Act 2003, Section 125.

Example 12

A customer conceals themselves in the toilets of a public house and on closure of premises, alights and steals property from behind the bar area, exiting via the fire escape door.

Record 1 crime of Theft.

Example 13

Enter dwelling house via insecure front door and steal property belonging to four different family members.

Record 1 crime of Theft.

Example 14

Enter unlocked house and steal personal property belonging to various members and a guest who is living there overnight.

Record 1 crime of Theft. (While there are several victims involved this is essentially a Theft from the household which temporarily includes the guest. Similarly, any stolen property which has been borrowed by the occupants of the house would be deemed to be the property of the household.)

Example 15

Enter unlocked office premises and steal personal property belonging to four employees as well as property belonging to the business itself.

Record 5 crimes of Theft. (This differs from the household type scenario where it is clear that the property taken from a public workplace is separately owned.)

Example 16

'A' steals property and sells same to 'B' who is a pawnbroker.

Record 1 crime of Theft. ('A' selling the property to 'B' amounts to the disposal of stolen goods and is not a separate crime. If there was insufficient evidence to confirm that 'A' had committed the Theft then Reset may be applicable.)

Example 17

Enter unlocked rear door of pharmacy and steal controlled drugs. Suspect is apprehended by police a short distance away while still in possession of the controlled drugs.

Record 1 crime of Theft. (In these circumstances there is no requirement to record possession of controlled drugs as this is the proceeds of the Theft. If the suspect was traced in possession of controlled drugs at a later date offences under Misuse of Drugs Act 1971 could be considered.)

Example 18

A birthday card is posted at locus 'A' which contains £20 therein, the envelope being sealed when sending. On arrival at locus 'B' the envelope has been cut open and the £20 is missing.

Record 1 crime of Theft at locus 'A'.

Example 19

'A', a family member, has power of attorney for 'B' and has full control of their finances. 'A' transfers monies from various accounts of 'B' into their own account with no justification for doing so.

Record 1 crime of Embezzlement (depending on individual circumstances re the extent of control of finances, theft or fraud can be alternative outcomes).

Example 20

Ten work colleagues give money to 'A' who has agreed to book a Christmas lunch. While enquiry has been made with an agreed restaurant and menus provided to the attendees, the lunch is not booked and 'A' fails to return the monies.

Record 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 21

Enter unlocked hotel room, steal property belonging to the hotel and two work colleagues who are occupying the room.

Record 1 crime of Theft. (The room is treated as a household.)

Example 22

'A' reports their wallet having been lost from their unzipped jacket pocket somewhere within the town centre, at which time lost property details are noted. 'A' re-contacts Police several days later to advise that their bank card, which had been within the wallet, had been used at several locations in the town centre using the "contactless" facility after it had been lost and provided details of these transactions.

Record 1 crime of Theft by Finding.

Record 1 crime of Fraud (Cheque, Plastic Card and Online Bank Accounts) - for use of card.

Example 23

Drive off from petrol station, fail to pay for fuel, vehicle established to have false number plates.

Record 1 crime of Theft.

Record 1 crime of Vehicle Excise and Registration Act 1994, Section 44 – Fraud.

Example 24

Building site operated by 'A' is entered and items of plant hired by 'A' from 'B', 'C' and 'D' are stolen.

Record 3 crimes of Theft (victims are 'B', 'C' and 'D').

Note(s)

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.

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, should initial enquiry fail to confirm this, a crime record should 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.

22/005 Theft From Motor Vehicle↑**General rule: One crime for each vehicle owner****Definition**

Stealing from a motor vehicle.

Victim/Complainer

Vehicle Owner.

Locus

Location of vehicle at time of crime.

Scenario example(s)**Example 1**

Enter insecure vehicle and remove property from the glove compartment, leaving same lying on the seat.

Record 1 crime of Theft from Motor Vehicle.

Example 2

Enter insecure vehicle, steal property from within and smash all vehicle lights.

Record 1 crime of Theft from Motor Vehicle. (The vandalism will be subsumed within the Theft from a Motor Vehicle.)

Example 3

Steal two wheels and roof rack from a vehicle overnight.

Record 1 crime of Theft from Vehicle (exterior) - see Note(s).

Example 4

Enter insecure vehicle, remove cowling from under the steering wheel, leaving a number of wires disconnected and steal property from vehicle.

Record 1 crime of Theft from Motor Vehicle. (Attempted Theft of Motor Vehicle should be subsumed within the Theft as the Theft is the substantive crime.)

Example 5

Enter vehicle by unknown means, steal property from within. Victim adamant that the vehicle was secure, there are no signs of forced entry.

Record 1 crime of Theft from a Motor Vehicle (where additional information confirms that a special tool or other form of technology was used to overcome the security of the vehicle the crime should be amended to that of Theft by Opening Lockfast Motor Vehicle).

Example 6

'A' is seen on CCTV to have entered a vehicle and steal property. Police attend and apprehend 'A' who is found in possession of a device which is found to unlock vehicles. The owner of the vehicle advises they locked their vehicle.

Record 1 crime of Theft by Opening Lockfast Motor Vehicle (as it has been ascertained that a device has been used to gain entry).

Note(s)

Where an insecure vehicle is entered and property stolen from within a crime of Theft from Motor Vehicle should be recorded.

Where the Theft is from the exterior of a motor vehicle a crime of Theft (with a Theft from a Vehicle (Exterior) offence modifier) should be recorded.

There is no Integration of Scottish Criminal Justice Information Systems charge code for Attempted Theft from a Motor Vehicle. In these circumstances a crime of Attempted Theft (with a Theft from a Vehicle offence modifier) should be recorded.

22/002 Theft Of Motor Vehicle (Including Taking And Driving Away)

22/006 Attempted Theft Of Motor Vehicle↑

General rule: One crime for each vehicle owner

Definition

Common Law

Taking and driving away a motor vehicle without having either the consent of the owner or other lawful authority, with the intention to permanently deprive the owner.

Road Traffic Act 1988, Section 178 - 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).

Motor Vehicle

For the purpose of this crime type the following will be classed as a motor vehicle whether used on the road or not:

Quad bike, off road trail bike, mini moto, fork lift truck, wheeled digger/excavator, dump truck, agricultural tractor.

For the purpose of this crime type the following will not be classed as a motor vehicle whether used on the road or not:

Segway, go-ped, children's motorised scooter, motability scooter, golf buggy, sit-on grass cutter, trailer drawn by motor vehicle, go-kart.

Victim/Complainer

Vehicle owner.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Steal keys from jacket pocket hanging on chair in public house, thereafter use keys to steal vehicle parked outside on roadway.

Record 1 crime of Theft of Motor Vehicle.

Example 2

Enter insecure dwelling and steal car keys from table, steal vehicle from driveway.

Record 1 crime of Theft of Motor Vehicle.

Example 3

Steal two vehicles owned by different owners from same locus, over the same period of time.

Record 2 crimes of Theft of Motor Vehicle.

Example 4

Steal vehicle which is later found abandoned and property stolen from within.

Record 1 crime of Theft of Motor Vehicle.

Example 5

Steal vehicle from Locus 'A' and seven days later vehicle recovered burnt out at Locus 'B'. A person is traced who admits to buying vehicle from an unnamed person and to setting it on fire but denies stealing the vehicle.

Record 1 crime of Theft of Motor Vehicle (undetected).

Record 1 crime of Reset (detected). (Fireraising is subsumed within Reset.)

Example 6

Force open metal box containing vehicle keys located outside hire company premises, remove keys and steal vehicle parked on roadway using true key.

Record 1 crime of Theft by Opening Lockfast Place. (The Theft of Motor Vehicle is subsumed.)

Example 7

Enter insecure dwelling, steal keys for motor vehicle, force open safe and steal £20,000 and steal motor vehicle parked outside using true key. Vehicle is valued at £4,000.

Record 1 crime of Theft by Opening Lockfast Place. (In this example the relative values of the property taken weigh in favour of the theft from the safe.)

Example 8

Break into motor vehicle and steal property. Indications are that the handbrake had been released resulting in the vehicle rolling forward and coming to rest on a bollard causing no damage.

Record 1 crime of Theft by Opening Lockfast Motor Vehicle. (Had the vehicle been allowed to travel some distance crime of Culpable and Reckless Conduct may also be considered.)

Example 9

Enter insecure cab of van, releasing handbrake in order to move it forward away from the wall, attempt to force open rear doors without success.

Record 1 crime of Attempted Theft by Opening Lockfast Motor Vehicle with Intent to Steal. (The moving of the vehicle forward indicates this was to allow access to the rear of the vehicle and not an attempt to steal.)

Example 10

'A' takes out a hire-purchase agreement for a vehicle and makes two payments before ceasing payments. Enquiry by the finance company (or representatives) reveals 'A' has moved out of their address, the contact number held is no longer available and the vehicle has been taken abroad, there being nothing to indicate their intention to return the vehicle.

Record 1 crime of Theft of Motor Vehicle.

Example 11

A' takes out a hire purchase agreement for a vehicle and makes two payments before ceasing payments. Enquiry by the finance company (or representatives) reveals 'A' has moved out of their address, the contact number held is no longer available and the vehicle has been taken abroad, there being nothing to indicate their intention to return the vehicle.

Record 1 crime of Theft of Motor Vehicle.

Example 12

Smash car window and remove cowling in an unsuccessful attempt to drive vehicle away.

Record 1 crime of Attempted Theft of Motor Vehicle.

Example 13

Break into vehicle, try to steal vehicle and thereafter steal property from within.

Record 1 crime of Theft by Opening Lockfast Motor Vehicle (details of Attempted Theft of Motor Vehicle subsumed within MO).

Example 14

Attempt to steal five vehicles parked in garage forecourt.

(a) All owned by garage.

Record 1 crime of Attempted Theft of Motor Vehicle.

(b) Three vehicles owned by different individuals, two owned by the garage.

Record 4 crimes of Attempted Theft of Motor Vehicle.

Example 15

Attempt to steal two vehicles parked in driveway, one owned by householder and the other being a company vehicle.

Record 2 crimes of Attempted Theft of Motor Vehicle.

Note(s)

In cases where a stolen vehicle is recovered burnt out a crime record for Theft of Motor Vehicle should be raised. If there is evidence that a different person(s) was responsible for the fireraising a further crime record for Fireraising will be recorded.

Section 178(1) (a) of the Road Traffic Act 1988 creates the statutory offence of taking and driving a motor vehicle without the consent of the owner or other lawful authority and should generally only be recorded when the culprit is known, such as a family member taking the vehicle without permission or an employee using a company vehicle without permission.

In circumstances where a vehicle has been taken and not recovered, taken and left abandoned, taken and set on fire, or taken and stored elsewhere, all of which suggest a clear intention to deprive the owner of their property, a Theft of Motor Vehicle should be recorded.

Similarly, attempts made to steal motor vehicles should always be recorded as Attempted Theft of Motor Vehicle unless it is clear that there was no intent to deprive the owner.

Where an article is obtained on hire-purchase on the condition that the right of property is not transferred until payment of the last instalment of the price, it is theft if the article is appropriated immediately, or soon after, it is received. But where the article is not appropriated until a considerable time has elapsed and a considerable part of the price has been paid, the crime is embezzlement.

22/004 Theft of Pedal Cycle↑

General rule: One crime for each victim/owner

Definition

Stealing a Pedal Cycle.

Victim/Complainer

Owner of the property.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Steal bicycle from common stair belonging to student.

Record 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 pedal cycle.

Update the initial Crime Report to 'No Crime' as there has been no criminal intent.

Example 2

Steal pedal cycle from garden.

Record 1 crime of Theft Pedal Cycle.

Example 3

Enter an insecure shed and steal three pedal cycles owned by three members of the same family.

Record 1 crime of Theft Pedal Cycle. (Whilst indoors considered to be a theft from the household.)

Example 4

Steal three pedal cycles secured to a cycle rack, which is located under an open-sided plastic canopy, all owned by different complainers.

Record 3 Crimes of Theft Pedal Cycle.

Example 5

Steal two pedal cycles separately owned by 'A' and 'B' who are adults from the same household whilst left unattended in the garden outside their home.

Record 2 crimes of Theft Pedal Cycle.

Note(s)

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.

25/000 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 example(s)

Example 1

Person is found in possession of a quantity of digital versatile discs and compact discs with music content with a view to selling, distributing or letting for hire such property bearing a sign identical to that of a registered trademark.

Record 1 crime of Trade Marks Act 1994, Section 92(1) (c).

Record 1 crime of Copyright Designs Patents Act 1988, Section 107(1) (d).

Record 1 crime of Copyright Designs Patents Act 1988, Section 107(1) (c).

Record 1 crime of Copyright Designs Patents Act 1988, Section 107(1) (a).

Note(s)

In the majority of cases this offence will be libeled 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 one crime will be recorded with the Procurator Fiscal as the victim/complainer and the companies/representatives as witnesses for each incident.

Fraud - Vehicle Excise And Registration Act 1994, Section 44 – Fraud and Forgery

25/000 Fraud

26/000 Forgery↑

General rule: One crime for each vehicle/document involved

Definition

- (1) A person is guilty of an offence if he forges, fraudulently alters, fraudulently uses, fraudulently lends or fraudulently allows to be used by another person anything to which subsection (2) applies.
- (2) This subsection applies to—
 - (d) a registration mark,
 - (e) a registration document, and
 - (f) a trade plate (including a replacement trade plate).

Victim/Complainer

Procurator Fiscal.

Locus

Where displayed or presented.

Scenario example(s)

Example 1

Police discover two vehicles owned by the same person displaying false registration plates. The owner admitted to altering both plates.

Record 2 crimes of Vehicle Excise and Registration Act 1994, Section 44 – Fraud.

Example 2

Alter registration document and present as genuine to obtain ownership.

Record 1 crime of Vehicle Excise and Registration Act 1994, Section 44 - Forgery.

Example 3

Vehicle drives off from petrol station, failing to pay for fuel, vehicle is established to have false number plates.

Record 1 crime of Theft.

Record 1 crime of Vehicle Excise and Registration Act 1994, Section 44 – Fraud.

Example 4

A vehicle is reported as having been abandoned and enquiry establishes it is bearing false number plates, enquiry fails to trace the 'owner'/'driver' of the vehicle or to link the number plates to any other offence.

No requirement to record a crime report in this instance unless owner/driver identified.

Example 5

'A' reports to police in Scotland that they have received a speeding notice from a Force in England however they have never been at that locus and therefore suspects someone has cloned their number plate.

No requirement to record a crime report in this instance as any locus would not be in Scotland. (See note below.)

Example 6

'A' reports to police in Scotland that they have received a speeding notice, the locus being in Scotland. 'A' states they have never been at the locus and suspects someone has cloned their number plate.

No requirement to record a crime report unless enquiry concludes that a cloned plate has indeed been used. (The individual should respond to the notice disputing same providing the relevant evidence. See note below.)

Note(s)

Cloned Plates - Police Enforcement Camera Offences

Offences relating to fixed penalty notices e.g. fail comply with traffic lights, speeding, issued by a UK Police Force - the Complainer should be advised to conduct any dispute with the force where the incident occurred, if reporting it elsewhere. If they can provide proof that they have been the victim of cloning, the prosecuting force (i.e. where the crime occurred) should undertake due diligence checks. This may include requesting another force to investigate.

Group 4 – Damage and Reckless Behaviour[↑]

Crime	SGJD Code
Air Navigation Order, 2016 – Articles 224, 225, 240 and 241 - Endangering aircraft	33/016
Computer Misuse Act 1990, Section 3	33/010
Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 – Vandalism	33/012
Culpable and Reckless Conduct (not with firearms)	33/011
Fireraising (excluding Muirburn)	32/001
Laser Misuse (Vehicles) Act 2018	33/011 and 33/016
Malicious Mischief	33/014
Muirburn	32/003
Reckless Conduct (with Firearms)	33/002

33/016 Articles relating to endangerment of an aircraft Air Navigation Order 2016↑

General rule: One crime for each aircraft

Definition

Offences under Air Navigation Order 2016 include:

- Article 224 Lights liable to endanger.
- Article 225 Direct or shine a light to dazzle or distract the pilot of an aircraft in flight.
- Article 240 Endanger aircraft.
- Article 241 Endanger safety of any person or property.
- Article 241(7) Fail to ensure that the aircraft did not fly when the maintenance of that aircraft had not been performed.

Victim/Complainer

Airline.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Over a period of 30 minutes a laser light is shone directly at three separate aircraft on approach to an airport.

Record 3 crimes of Laser Misuse (Vehicles) Act 2018, Section 1.

Note(s)

In circumstances where a laser beam is shone at an Aircraft or Air Traffic Services crimes should be recorded under Laser Misuse (Vehicles) Act 2018.

The offence under Article 225 of the Air Navigation Order 2016 to "Shine or direct a light at an aircraft which dazzles or distracts the pilot of the aircraft" should continue to be used where lights which are not lasers are shone at an aircraft. Any other conduct which endangers an aircraft should continue to be recorded under the appropriate Articles of the Air Navigation Order 2016.

33/010 Unauthorised act impairing operation of computer including prevent or hinder access or program or data reliability

Computer Misuse Act 1990, Section 3[↑]

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 any of the things mentioned in paras (a) to (c) above to be done.
- (3) This subsection applies if the person is reckless as to whether the act will do any of those mentioned in paragraphs (a) to (d) of subsection (2) above.

Victim/Complainer

Person or Organisation.

Locus

Where crime takes place.

Scenario example(s)

Example 1

An employee has been sacked from their high profile job at ABC Media. Before they leave they send 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.

Record 1 crime of Computer Misuse Act 1990, Section 3 (ABC Media are the intended victim).

33/012 Vandalism Criminal Law (Consolidation) (Scotland) Act 1995, Section 52↑

General rule: One crime for each victim

Definition

It is an offence for person(s) to willfully or recklessly destroy or damage the property of another person.

Victim/Complainer

Owner of property.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Entering open house, smashing furniture and spray painting walls, thereafter vandalising owner's vehicle in driveway.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism.

Example 2

Willfully damaging four vehicles whilst parked within yard awaiting repairs, all owned by separate victims.

Record 4 crimes of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism.

Example 3

Two vehicles, one owned by 'A' and one hired by 'A', have their windscreens smashed while parked in 'A's driveway overnight.

Record 2 crimes of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism (there are two victims, 'A' and the owner of the hired vehicle).

Example 4

Plants pulled out of garden and strewn across grass.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism (it is irrelevant whether the plants are perennial or not).

Example 5

Willfully knocking coping stone from wall, smashing same.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism.

Example 6

Witness reports youths seen smashing windows of a derelict building, owner of building cannot be traced.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism.

Example 7

Door of school found to have been written on with permanent marker pen and paint on the door showing scorch marks as if someone had burned it with a cigarette lighter.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism. (Probable actions resulting in the damage have been part of the same incident. Scorch marks indicate there does not appear to have been any intention to/or likelihood of the property going on fire, therefore, reasonable to assume the purpose was to cause damage rather than to set fire.)

Example 8

A school reports that over two separate weekends three windows and six windows respectively were damaged.

Record 2 crimes of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism (where the times/dates are unknown one crime would be sufficient).

Example 9

School subjected to vandalism on six separate identified occasions during school holidays by same suspect group of youths.

Record 6 crimes of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism.

Example 10

Person causes disturbance within a flat placing occupants in a state of fear and alarm. During disturbance suspect deliberately breaks items of furniture.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 (had the disturbance itself amounted to the breaking of the items of furniture a Vandalism only would be recorded).

Example 11

Overnight two vehicles parked in the driveway outside a private dwelling have their front windscreens smashed with stones. The vehicles are individually owned by the occupants of the dwelling 'A' and 'B'.

Record 2 crimes of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism ('A' and 'B' are separate victims).

Note(s)

In order to constitute a vandalism, damage must have occurred e.g. where eggs have been thrown against a wall, causing no damage, this is not a vandalism but an act of anti-social behaviour, whereas if eggs are thrown over a vehicle resulting in discolouration this is a vandalism.

Where the damage is minimal and there is no cost of repair this still constitutes a vandalism.

If a liquid substance can be cleaned off or removed at no cost and with little effort (e.g. bucket of soapy water) there is no requirement for a crime to be recorded. This does not include the use of specialist cleaning material which the complainer may have at home or the use of power tools to clean a substance off. If either are used a crime must be recorded.

In circumstances where a person damages property and also causes a disturbance where it can be shown that persons other than the owner of the damaged property have been placed in a state of fear or alarm both Section 38 and Vandalism should be recorded. If the alarm caused only amounts to the person causing damage, only Vandalism should be recorded.

Where a number of Anti-Social Behaviour (ASB) 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.

33/011 Culpable and Reckless Conduct

4/001 Culpable and Reckless Conduct (not with firearms)↑

General rule: One crime for each incident unless this involves a vehicle or train in which case a crime will be recorded for each vehicle or train

Definition

An act, which may or may not cause injury but shows an utter disregard of what the consequences of that act would be.

Victim/Complainer

Procurator Fiscal or named victim.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Person throwing stone at moving train, causing damage to window.

Record 1 crime of Culpable and Reckless Conduct.

Example 2

Person drops a bottle from a 15th floor flat into a public precinct.

Record 1 crime of Culpable and Reckless Conduct.

Example 3

Person throws a brick at a moving bus resulting in two persons within being injured.

Record 1 crime of Culpable and Reckless Conduct.

Example 4

Persons throw stones at two buses containing passengers, one travelling directly behind the other, resulting in their windows being damaged. Both buses are owned by the same company.

Record 2 crimes of Culpable and Reckless Conduct (one for each bus).

Example 5

A large stone is thrown from a walkway on to the roadway beneath and strikes three passing cars.

Record 1 crime of Culpable and Reckless Conduct (while three vehicles are struck the throwing of the stone is a single reckless act).

Example 6

Person throws a bottle at a wall within a public house damaging a picture. No persons are in the vicinity of the broken glass.

Record 1 Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism (if persons in the area were directly impacted by the conduct then Culpable and Reckless would be relevant).

Example 7

'A' not knowing that they have the HIV virus has unprotected sexual intercourse with 'B'.

Since 'A' did not know they were infected with the HIV virus there is no crime as evidence of knowledge of the infection is required before any recklessness can be established.

Example 8

'A' in the knowledge that they are infected with the HIV virus has unprotected sexual intercourse with 'B' resulting in 'B' contracting the HIV virus.

Record 1 crime of Culpable and Reckless Conduct (there is no evidence of intent to cause harm but evidence that indicates criminal recklessness). Where there is evidence of intent to infect the crime is Serious Assault.

Example 9

Persons untie a number of boats in a harbour, damaging ropes and causing them to drift.

Record 1 crime of Culpable and Reckless Conduct.

Example 10

Person in police cell urinates and defecates, smearing same across walls and floors.

Record 1 crime of Culpable and Reckless Conduct. (Takes into account the biological hazards involved in cleaning up the mess. If just deposited on the cell floor a crime of Vandalism should be recorded.)

Example 11

Shopkeeper discovers that human or animal faeces have been smeared across their shop window.

Record 1 crime of Culpable and Reckless Conduct (takes into account the biological hazards involved in cleaning up the mess).

Example 12

Before being searched by Police 'A' is asked if they have any sharp implements on their person and responds in the negative. On being searched an uncapped needle is found within 'A's' pocket resulting in an officer receiving a prick to the finger. On arrival in custody 'A' is again asked if they have any sharp implements and responds in the negative. On being searched an uncapped needle is found within their shoe and no person is injured on this occasion.

Record 2 crimes of Culpable and Reckless Conduct (one for each locus).

Note(s)

Where there is no evidence of intent to cause harm but evidence that indicates criminal recklessness, culpable and reckless conduct should be recorded. With regard to damage to property, culpable and reckless conduct should be recorded where there is evidence of a wilful and/or recklessness which includes an element of endangerment e.g. throwing a brick at a moving vehicle.

This is not victim based as there is no requirement to have a victim, the actions of the person responsible dictates that the offence has been committed.

The Laser Misuse (Vehicles) Act 2018 should be used where a laser beam has been directed towards a vehicle (including aircraft). The Air Navigation Order, 2016 (SGJD Code 33/016) should be used where a light, and not a laser, has been used which endangers an aircraft.

From 1 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 4/001 - Causing serious injury etc. by culpable and reckless conduct). The extent of injury deemed to be "serious" will correspond to that defined as Serious Assault.

32/001 Fireraising (excluding Muirburn)↑

General rule: One crime for each victim if multiple fires, or one crime per incident if single fire

Definition

Wilful fireraising must include a definitive intention to set fire to the property.

Culpable and Reckless Fireraising must include an act, which showed disregard as to the result.

Victim/Complainer

Owner of the property.

Locus

Where crime takes place.

Scenario example(s)**Example 1**

Person climbs over fence of secure compound, sets fire to vehicle, and smashes window of digger.

Record 1 crime of Fireraising (vandalism subsumed within same crime).

Example 2

Person climbs into compound and willfully sets fire to two vehicles, owned by the same company.

Record 1 crime of Fireraising.

Example 3

Person sets fire to a vehicle which spreads to other vehicles parked alongside.

Record 1 crime of Fireraising (if there is nothing to suggest that the intention was to set fire to all vehicles). Single fire with multiple victims.

Example 4

Person sets fire to hotel, resulting in no one being injured and circumstances do not indicate there was any intention to kill the persons within.

Record 1 crime of Fireraising.

Note(s)

There are two distinct crimes of fireraising: 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 willfully/maliciously should be regarded as fireraising e.g. litterbins, vehicles, buildings.

33/011 Laser Misuse (Vehicles) Act 2018 (Vehicles other than Aircraft)

33/016 Laser Misuse (Vehicles) Act 2018 (Aircraft or Air Traffic Service)

General rule: Once crime for each vehicle[↑](#)

Definition

Section 1 - Offence of shining or directing a laser beam towards a vehicle

- (1) A person commits an offence if—
 - (a) the person shines or directs a laser beam towards a vehicle which is moving or ready to move, and
 - (b) the laser beam dazzles or distracts, or is likely to dazzle or distract, a person with control of the vehicle.

Section 2 - Offences relating to air traffic services

- (1) A person commits an offence if—
 - (a) the person shines or directs a laser beam—
 - (i) towards an air traffic facility, or
 - (ii) towards a person providing air traffic services, and
 - (b) the laser beam dazzles or distracts, or is likely to dazzle or distract, a person providing air traffic services.

Section 3 - Interpretations

In this Act—

- “aircraft” means any vehicle used for travel by air;
- “laser beam” means a beam of coherent light produced by a device of any kind;
- “vehicle” means any vehicle used for travel by land, water or air; and
- “vessel” has the meaning given by section 255(1) of Merchant Shipping Act 1995.

Victim/Complainer

Vehicle owner.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Over a period of 30 minutes a laser light is shone directly at three separate aircraft on approach to an airport.

Record 3 crimes of Laser Misuse (Vehicles) Act 2018, Section 1 (SGJD Code 33/016).

Note(s)

It should be noted that the offence under Article 225 of the Air Navigation Order 2016 to "Shine or direct a light at an aircraft which dazzles or distracts the pilot of the aircraft" should continue to be used where lights which are not lasers are shone at an aircraft. Any other conduct which endangers an aircraft should continue to be recorded under the appropriate Articles of the Air Navigation Order 2016.

33/014 Malicious Mischief including Attempt↑

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 example(s)

Example 1

Person damages electricity supply resulting in five houses being affected.

Record 1 crime of Malicious Mischief (due to the victim being the electricity company).

Note(s)

Malicious Mischief should only be recorded where widespread damage is caused, where the value of the damage is considerable, or where there is disruption of power supply, flooding or similar. There is no specific monetary amount where Vandalism stops and Malicious Mischief takes over but any value of damage would require to be significant (several £000s) before a crime of Malicious Mischief is recorded.

In assessing value of damage, consideration with regard to reinstatement costs should be taken into account when determining the real cost of any damage caused.

Although this crime type can be disposed of by way of a Fixed Penalty Notice, each circumstance would have to be considered on its own merits.

32/003 Fireraising (Muirburn)↑

General rule: One crime for each incident

Definition

It is an offence for any landowner or tenant to set alight to his fields outwith the specified time period. This includes setting fire or burning any heath or muir.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Farmer sets fire to two of his fields outwith specified time period.

Record 1 crime of Fireraising (with Muirburn modifier).

33/002 Reckless Conduct (with firearms)↑

General rule: One crime for each incident.

Definition

A reckless act involving a firearm, which may or may not cause injury but shows an utter disregard of what the consequences of that act would be.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Person firing shots within common stairway.

Record 1 crime of Reckless Discharge of Firearm.

Example 2

Whilst car is parked its rear windscreen is broken by a pellet fired from an air gun. No persons within vehicle at the time.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism (no evidence that persons were endangered by this action).

Example 3

Whilst car is being driven its rear windscreen is broken by a pellet fired from an air gun.

Record 1 crime of Reckless Discharge of Firearm.

Note(s)

The essence of this crime is the wanton disregard for the safety of others e.g. firing a firearm into an inhabited building recklessly discharging a firearm in the street.

Group 5 – Crimes Against Society↑

Crime	SGJD Code
Bail Offences other than Absconding or Re-offending	39/007
Breach of Anti Social Behaviour Order	39/014
Breach of Non-Harassment Order (Civil Court)	39/013
Breach of Sexual Offences Prevention Orders	39/015
Conspiracy	40/000
Contempt of Court	39/001
Criminal Justice and Licensing (Scotland) Act 2010, Sections 28, 30, 31 – Offences Relating to Serious Organised Crime	40/001
Criminal Justice (Scotland) Act 2016, Schedule 1 - 1(1) Breach of Undertaking or Investigative Liberty Conditions	39/002
Criminal Law (Consolidation) (Scotland) Act 1995, Section 47(1) Possession Of An Offensive Weapon where not used in commission of a crime (Public Place)	43/001
Criminal Law (Consolidation) (Scotland) Act 1995, Section 49A(2) Possession Of An Offensive Weapon where not used in commission of a crime (School Premises)	43/007
Criminal Law (Consolidation) (Scotland) Act 1995, Section 49C(1) (a) Possession Of An Offensive Weapon where not used in commission of a crime (In Prison)	43/006

Crime	SGJD Code
Criminal Law (Consolidation) (Scotland) Act 1995, Section 47(1) Possession Of An Offensive Weapon where used in commission of a crime (Public Place)	43/009
Criminal Law (Consolidation) (Scotland) Act 1995, Section 49A(2) Possession Of An Offensive Weapon where used in commission of a crime (School Premises)	43/0013
Criminal Law (Consolidation) (Scotland) Act 1995, Section 49C(1) (a) Possession Of An Offensive Weapon where used in commission of a crime (In Prison)	43/011
Criminal Law (Consolidation) (Scotland) Act 1995, Section 48 - Obstructing or Concealing Weapons	38/013
Criminal Law (Consolidation) (Scotland) Act 1995, Section 49(1) Having an Article with a Blade or Point where not used in commission of a crime (Public Place)	43/003
Criminal Law (Consolidation) (Scotland) Act 1995, Section 49A(1) Having an Article with a Blade or Point where not used in commission of a crime (School Premises)	43/008
Criminal Law (Consolidation) (Scotland) Act 1995, Section 49C(1) (b) Having an Article with a Blade or Point where not used in commission of a crime (In Prison)	43/004
Criminal Law (Consolidation) (Scotland) Act 1995, Section 49(1) Having an Article with a Blade or Point where used in commission of a crime (Public Place)	43/010

Crime	SGJD Code
Criminal Law (Consolidation) (Scotland) Act 1995, Section 49A(1) Having an Article with a Blade or Point where used in commission of a crime (School Premises)	43/014
Criminal Law (Consolidation) (Scotland) Act 1995, Section 49C(1) (b) Having an Article with a Blade or Point where used in commission of a crime (In Prison)	43/012
Criminal Procedure (Scotland) Act 1995, Section 27 – Failing to Appear for Trial Having Been Given Court Bail	39/005
Criminal Procedure (Scotland) Act 1995, Section 13(6) – Failing to Give Name to or Remain with Constable	38/011
Criminal Procedure (Scotland) Act 1995, Section 234A – Breach of Non Harrassment Order (Criminal Court)	39/012
Defeat/Pervert the Course/Ends of Justice	38/017
Domestic Abuse (Scotland) Act	39/021
Drugs – Importation	44/001
Drugs – Other Offences	44/099
Drugs – Possession	44/004
Drugs – Production, Manufacturing and Cultivation	44/002
Drugs – Supply	44/003
Drugs – Bring Drugs into Prison	44/006

Crime	SGJD Code
Psychoactive Substances - Production, Import/Export, Supply, Possession	44/007
Psychoactive Substances – Other	44/008
Emergency Workers (Scotland) Act 2005, Obstruct/Hinder other Emergency Worker	35/005
Explosive Substances Act 1883, Section 3 - Attempt to Cause Explosion	37/001
False Accusation	38/004
Mobbing and Rioting	35/001
Perjury and Subornation	39/011
Police and Fire Reform (Scotland) Act 2012, Section 90(1) and 90(2) - Obstruct/Hinder Constable in Pursuance of Lawful Duty	38/013
Police and Fire Reform (Scotland) Act 2012, Section 90(1) and 90(2) - Resist Arrest	38/007
Police and Fire Reform (Scotland) Act 2012, Section 91 - Escape from custody	38/006
Police and Fire Reform (Scotland) Act 2012, Section 92 - Personation of Police	38/010
Public Mischief (including Wasting Police Time)	38/003
Sexual Offences Act 2003 - Notification	38/018
Trespass	35/003

39/007 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 example(s)

Example 1

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.

Record 1 crime of Criminal Procedure (Scotland) Act 1995, Section 27(1) (b)
– Breach of Bail.

Example 2

Conditions of Bail state the accused should not enter a specific street, or approach a specific individual. Witnesses report the accused has breached both conditions.

Record 1 crime of Criminal Procedure (Scotland) Act 1995, Section 27(1) (b)
– Breach of Bail.

Example 3

A person is in breach of their bail conditions where only one person has witnessed the event.

No crime record should be recorded and the Procurator Fiscal should be advised of the circumstances for consideration of a bail review. (See Note in respect of Section 28 of the Criminal Procedure (Scotland) Act 1995.)

Example 4

Two persons are found to be in breach of their bail conditions.

Record 2 crimes of Criminal Procedure (Scotland) Act 1995, Section 27(1) (b)
- one for each accused.

Example 5

(1) Conditions of bail outline a curfew that a person must be within their home address between 7pm and 7am. There is no condition attached that they have to present themselves should Police attend.

Officers attend at the home address between these times and receive no response.

No crime record should be recorded as it cannot be ascertained whether the individual was within the dwelling or not.

Example 6

(2) Conditions of bail outline a curfew that a person must be within their home address between 7pm and 7am. There is a condition attached that must present themselves should Police attend.

Officers attend at the home address between these times and receive no response.

Record 1 crime of Criminal Procedure (Scotland) Act 1995, Section 27(1) (b) - Breach of Bail (it should be noted that officers should take into consideration the time they call at the address and whether or not the individual may be asleep as this would be a factor in evidencing the breach).

Example 7

A person is arrested for vandalism and it is ascertained they are on bail, with standard bail conditions set.

Record 1 crime of Criminal Law (Consolidation) (Scotland) 1995, Section 52 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 8

There is a condition of bail that 'A' does not approach or contact 'B'. 'A' phones 'B' on 20 occasions and shouts abuse at them over the phone.

Record 1 crime of Communications Act 2003, Section 127(1) (with bail aggravation). In order to shout abuse 'B' has had to contact 'A'.

Example 9

There is a condition of bail that 'A' does not approach or contact 'B'. 'A' approaches 'B' and assaults them causing no injury.

Record 1 crime of Common Assault (with bail aggravation). In order to commit the Assault 'A' has had to approach 'B'.

Example 10

Person is released on bail with three 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.

Record 1 crime of Criminal Procedure (Scotland) Act 1995, Section 27(1) (b) – Breach of Bail (all three conditions have been breached at the same time). If conditions were breached at different times then three individual charges would be preferred and three crime records recorded.

Example 11

There is a condition of bail that 'A' remains within their house between 7pm and 7am. 'A' enters a neighbouring street, smashes a car window and assaults the owner of the vehicle. It is established that this occurred during the curfew time period.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism.

Record 1 crime of Assault.

Record 1 Criminal Procedure (Scotland) Act 1995, Section 27(1) (b) - Breach of Bail (the condition is breached as soon as 'A' leaves the house. It is immaterial what 'A' then goes on to commit).

Example 12

A remand prisoner "A" has bail conditions in place not to contact "B". Against these conditions they telephone "B" from prison.

Record 1 crime of Criminal Procedure (Scotland) Act 1995, Section 27(1) (b)
– Breach of Bail where the locus is confirmed as the prison. In similar circumstances if "A" had been contacted by letter the locus would again be the prison.

Example 13

The same specific condition of bail has been set by two different courts, that the accused should not contact the complainer. The accused contacts the complainer breaching their bail condition.

Record 1 crime of Criminal Procedure (Scotland) Act 1995, Section 27(1) (b)
– Breach of Bail (as this refers to the same condition, even though issued by two separate courts only one breach of condition has occurred).

Example 14

It is a condition of bail that 'A' remains within their home address at Locus 1 between 7pm and 7am. At 11pm at Locus 2 'A' causes wilful damage to a car and assaults the owner.

Record 1 crime of Criminal Procedure (Scotland) Act 1995, Section 27(1) (b)
– Breach of Bail (Locus 2).
Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism (Locus 2).
Record 1 crime of Assault (Locus 2).

Example 15

It is a condition of bail that 'A' remains within their home address in Division X between 7pm and 7am. At 11pm 'A' is found by Police in Y Division.

Record 1 crime of Criminal Procedure (Scotland) Act 1995, Section 27(1) (b)
– Breach of Bail (Locus Y Division).

Example 16

'A' is released on bail where one of the conditions is not to enter the Town Centre. 'A' is seen by witnesses in the Town Centre on Day 1 and the Police are unable to trace 'A' at that time (there being credible witnesses providing sufficient evidence to report). On Day 2 'A' is apprehended for shoplifting in the Town Centre, thereby again breaching bail conditions.

Record 1 crime of Criminal Procedure (Scotland) Act 1995, Section 27(1) (b)
– Breach of Bail.
Record 1 crime of Theft by Shoplifting (Breach of Bail shown as an aggravation).

Example 17

'A' has bail conditions not to enter a specific town. 'A' enters the specific town and commits a Theft by Shoplifting.

Record 1 crime of Theft by Shoplifting (Breach of Bail shown as an aggravation).

Example 18

'A' has bail conditions not to contact/approach 'B'. 'A' meets 'B' and others and spends time in their company during which 'A' commits a Section 38 offence by shouting and swearing at 'B'.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 Threatening or Abusive Behaviour (Breach of Bail shown as aggravation). (If there was insufficient evidence to report the Section 38 offence but sufficient witnesses to confirm the Breach of Bail, then a Breach of Bail (detected) would be recorded in addition to an undetected Section 38.)

Example 19

'A' has a curfew bail in place and a bail condition not to approach/contact 'B'. 'A' attends at the home address of 'B' outwith their curfew and also vandalises a vehicle outside which belongs to 'C'.

Record 1 crime of Criminal Procedure (Scotland) Act 1995, Section 27(1) (b) – Breach of Bail.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism (for 'C').

Example 20

A bail condition and a Non Harassment Order (civil) is in place for 'A' not to approach/contact 'B'. 'A' makes contact with 'B'.

Record 1 crime of Criminal Procedure (Scotland) Act 1995, Section 27(1) (b) – Breach of Bail (Breach of Non-Harassment Order shown as an aggravation).

Note(s)

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.

39/014 Breach Of Anti Social Behaviour Order↑

General rule: One crime for each accused

Definition

A person who is subject to an antisocial behaviour (ASB) 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 example(s)

Example 1

Accused found playing loud music in breach of their Antisocial Behaviour Order.

Record 1 crime of Antisocial Behaviour etc. (Scotland) Act 2004, Section 9 Breach of Antisocial Behaviour Order.

Example 2

Accused arrested for shoplifting and thereafter identifying they had breached an Antisocial Behaviour Order by being at locus.

Record 1 crime of Theft by Shoplifting with the breach of the Antisocial Behaviour Order highlighted as an aggravation.

Example 3

Accused playing loud music in breach of a condition of an Antisocial Behaviour Order on six occasions. All breaches are corroborated but accused is not traced by Police until after the sixth breach.

Record 1 crime of Antisocial Behaviour etc. (Scotland) Act 2004, Section 9 Breach of Antisocial Behaviour Order (once the condition has breached, the accused continues to be in breach until a decision is made by a court).

Note(s)

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.

39/013 Breach Of Non-Harassment Order (Civil Court) Protection From Harassment Act 1997↑

General rule: One crime for each accused

Definition

Any person who is in breach of a non-harassment order made under Section 9 of the Protection from Harassment Act 1997, is guilty of an offence.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Breaching Non Harassment Order set at Edinburgh Sheriff Court by making contact with the complainer when previously instructed to make contact through solicitor.

Record 1 crime of Protection From Harassment Act 1997, Section 9 Breach of Non Harrassment Order (Civil Court).

Note(s)

Breaches of Non-Harassment Orders that have been imposed as a result of criminal proceedings should be recorded as a contravention of Criminal Procedure (Scotland) Act 1995, Section 234A.

In circumstances where the breach is simultaneous with the commission of a criminal act, only the crime for the criminal act should be recorded and the Breach of Non-Harassment Order shown as an aggravation.

Once the condition has been breached, the accused continues to be in breach until they appear in court.

Section 8 of the Protection from Harassment Act 1997 states:-

- (1) Every individual has a right to be free from harassment and, accordingly, a person must not pursue a course of conduct which amounts to harassment of another and a) is intended to amount to harassment of that person, or b) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person.
- (2) An actual or apprehended breach of subsection (1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question; and any such claim shall be known as an action of harassment.

For the purpose of this section, 'conduct' includes speech; 'harassment' of a person includes causing the person alarm or distress, and a 'course of conduct' must involve conduct on at least two occasions.

39/015 Breach Of Sexual Offences Prevention Orders (SOPOs)

Sexual Offences Act 2003[↑]

General rule: See below

Definition

A person commits an offence if, without reasonable 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

Where offence committed.

General rules

The following are the general principles to be followed:

- By committing a substantive crime 'A' is also found to be breaching a condition of their SOPO.
Record substantive crime and show breach of SOPO as an aggravation.
- By committing a substantive crime 'A' is also found to be breaching two conditions of their SOPO.
Record crime and show breaches of SOPO as an aggravation.
- 'A' commits no crime but has breached two separate conditions of SOPO at the same time at the same locus.
Record 1 Breach of SOPO.
- 'A' commits no crime but has breached the same condition of SOPO at the same locus on different days.
Record 1 Breach of SOPO (continues to be in breach until reported).
- 'A' commits no crime but has breached Condition 1 of SOPO on Day 1 and Condition 2 of SOPO on Day 2.
Record 2 Breach of SOPO.
- 'A' commits no crime but has breached the same condition of SOPO at different locations on the same day.
Record 1 Breach of SOPO (continues to be in breach until reported).

- 'A' commits no crime but has breached Condition 1 of SOPO at Locus X and Condition 2 of SOPO at Locus Y.

Record 2 Breach of SOPO.

- 'A' commits substantive crime at Locus 1 the circumstances of which are in breach of Condition 1 of SOPO. 'A' then breaches Condition 2 of SOPO at Locus 2.

Record substantive crime and 1 Breach of SOPO.

- 'A' commits substantive crime at Locus 1 the circumstances of which are in breach of condition of SOPO. 'A' breaches the same condition of SOPO the following day also at Locus 1.

Record substantive crime only and show breach of SOPO as an aggravation (continues to be in breach until reported).

Scenario example(s)

Example 1

Sex Offender breaches condition of Order by entering swimming pool on nine different days and breaches a further condition by conversing with a child under 16 years.

Record 2 crimes of Sexual Offences Act 2003, Section 103 Breach of Sexual Offences Order (due to there being two separate conditions having been breached on different days).

Example 2

Sex Offender breaches condition of Order by entering swimming pool. Whilst there he engages a 14 year old child in non-consensual sexual conversation.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 7 Communicating Indecently (breach of SOPO is an aggravation of the sexual offence committed).

40/000 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 example(s)

Example 1

'A' and 'B' conspire to seriously injure 'A's' ex-partner.

Record 1 crime of Conspiracy.

39/001 Contempt Of Court↑

General rule: One crime for each accused

Definition

All courts are empowered at common law to enforce order and purity of procedure by summarily punishing any act of contempt committed against their authority or dignity. Although punished, it is not a crime, being dealt with at civil law even if the contempt is during a criminal case. Examples of such acts of contempt are –

- (1) an accused person, or a witness, or a juror appearing in court in a state of intoxication;
- (2) a witness refusing to be sworn or to make affirmation;
- (3) any person behaving in an insulting and contemptuous manner;
- (4) any disobedience of an order of the court.

The following is also deemed to be contempt of court,

Any witness who, having been duly cited in accordance with Section 140 of the Criminal Procedure (Scotland) Act 1995:

- (a) fails without reasonable excuse, after receiving at least 48 hours' notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him; or
- (b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which such precognition is taken.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Brought to the attention of the Sheriff in court that someone had been taking photographs during the proceedings. The Sheriff instructs the police to trace the individual and report them for Contempt of Court.

Record 1 crime of Contempt of Court (record as Breach of the Peace – see note below).

Note(s)

Contempt of Court is not a crime within the meaning of Scottish criminal law. The offence of Contempt of Court is an offence sui generis and, where it occurs, it is peculiarly within the province of the court itself, civil or criminal as the case may be, to punish under its power.

There is no Integration of Scottish Criminal Justice Information Systems (ISCJIS) code specifically for Contempt of Court therefore Divisions using ISCJIS Codes will most likely use Breach of the Peace to record and report.

40/001 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

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 example(s)

Example 1

Two persons acting together commit a Fraud which is confirmed as being related to Serious Organised Crime.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 28.

Record 1 crime of Fraud.

Note(s)

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.

Possession Of An Offensive Weapon Criminal Law (Consolidation) (Scotland) Act 1995

Where not used in the commission of a crime:

- 43/001 Section 47(1) (Public Place);**
- 43/007 Section 49A(2) (School Premises);**
- 43/006 Section 49C(1) (a) (In Prison)**

Where used in the commission of a crime:

- 43/009 Section 47(1) (Public Place);**
- 43/013 Section 49A(2) (School Premises);**
- 43/011 Section 49C(1) (a) (In Prison)↑**

General rule: One crime for each weapon

Definition

Any person who has with him in any public place, school or prison any offensive weapon shall be guilty of an offence.

An "offensive weapon" means any article:

- (a) made or adapted for use for causing injury to a person, or
- (b) intended, by the person having the article, for use for causing injury to a person by: (i) the person having it, or (ii) some other person.

"public place" means any place other than—

- (a) domestic premises,
- (b) school premises (within the meaning of section 49A(6)),
- (c) a prison (within the meaning of section 49C(7)),

"domestic premises" means premises occupied as a private dwelling (including any stair, passage, garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling).

It is a defence for a person charged with an offence under subsection (1) to show that the person had a reasonable excuse or lawful authority for having the weapon with the person in the public place.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Where not used in the commission of a crime:

Example 1

A person is found in possession of two offensive weapons.

Record 2 crimes of Criminal Law (Consolidation) (Scotland) Act 1995, Section 47(1).

Example 2

Whilst at school, two pupils are each found to be in possession of an offensive weapon.

Record 2 crimes of Criminal Law (Consolidation) (Scotland) Act 1995, Section 49A(2).

Example 3

'A' reports that on looking out their window they saw a person running down the street waving a baseball bat in the air and shouting, however, could not hear what was being said. On police attendance no person or weapon is traced.

No crime is required to be recorded as there is no corroboration.

Example 4

While 'A' is within the home of 'B', 'A' produces a baseball bat from inside their jacket and assaults 'B' with it. 'B' confirms that 'A' could not have obtained the baseball bat from within the property.

Record 1 crime of Assault only. (While it can be reasonably assumed that 'A' was in possession of the weapon prior to entering the home 'B' there is no corroborative evidence of this. Since the assault itself was committed on domestic premises where possession of the weapon would not be considered an offence then no weapon offence should be recorded.)

Example 5

When 'A' enters the home of 'B' they are seen by 'B' and 'C' to be in possession of a baseball bat as they enter the property. Whilst within the property 'A' assaults 'B' with the bat.

Record 1 crime of Assault.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 47(1) - not used in crime. (There is corroboration that 'A' was in possession of the weapon when they entered the home of 'B'. Since the assault itself occurred on domestic premises (private dwelling) where possession of the weapon would not be considered an offence the "used in crime" variant cannot be used.)

Where used in the commission of a crime:

Example 6

'A' is struck on the arm by 'B' with a baseball bat in a public place, resulting in bruising.

Record 1 crime of Common Assault.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 47(1) (possession of offensive weapon used in commission of a crime).

Example 7

'A' approaches 'B' carrying a piece of wood and waves it about threatening to strike 'B' with it, 'B' then runs off.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2009, Section 38 Threatening or Abusive Behaviour.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 47(1) (possession of offensive weapon used in commission of a crime).

Example 8

'B' uses a baseball bat to smash the windscreen of a motor vehicle belonging to 'A'.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism (no requirement to record possession of baseball bat as no evidence it was carried with intent to cause injury).

Note(s)

From 1 April 2017 where an offensive weapon has been used in the commission of a crime (against the person) and it meets the definition as outlined in Section 47 of Criminal Law (Consolidation) (Scotland) Act 1995, possession of the weapon will no longer be subsumed into the substantive crime.

For the purposes of crime recording a screwdriver is not to be considered as an article with a blade or point.

Recording possession of an offensive weapon offence with a "used in crime" variant should only occur where the crime is one against the person (e.g. Section 38) and where the crime is committed in a place where possession of the offensive weapon would be a crime (e.g. public place).

Where no other offence has occurred, however, there is sufficient corroboration to identify the article/circumstances meets the requirements of the Act i.e. two witnesses speaking to the article being an offensive weapon/being used in an offensive manner, or, one witness and the article being recovered, then a crime should be recorded.

If the weapon used in the commission of a crime has not been recovered however the victim or a witness describes the weapon as fitting the description in line with Section 47 of the above Act, a crime must be recorded (no requirement for corroboration).

In circumstances where a knife is used in crime as an offensive weapon a crime under Section 49 (or school/prison equivalent) should be recorded and not Section 47. However, where there is dubiety in the case of a folding pocket knife as to whether the article meets the Section 49 definition then a Section 47 (or school/prison equivalent) should be recorded.

Where a Section 38, Criminal Justice and Licensing (Scotland) Act 2009, Threatening or Abusive Behaviour or Breach of the Peace, has occurred which amounts to a weapon being waved about or similar, then a separate crime should be recorded in respect of the weapon.

Where a Robbery has occurred whereby a weapon has been presented then a separate crime should be recorded in respect of the weapon.

Where there is evidence that the use of a weapon was premeditated, the weapon was carried to the locus or fetched for the purpose of committing the crime then a separate crime for possessing the offensive weapon will be recorded. Similarly, the deliberate sourcing of an article and adapting it for use as an offensive weapon will also require a separate crime to be recorded for possessing an offensive weapon. It should be noted that the article in question must be capable of causing injury.

**38/013 Obstructing or Concealing Weapons
Criminal Law (Consolidation) (Scotland) Act
1995, Section 48[↑]**

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 example(s)

Example 1

'A' having been accused of being in possession of an offensive weapon, refusing to allow a search to be carried out.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 48.

Having an Article with a Blade or Point Criminal Law (Consolidation) (Scotland) Act 1995

Where not used in the commission of a crime:

- 43/003 Section 49(1) (Public Place);**
- 43/008 Section 49A(1) (School Premises);**
- 43/004 Section 49C(1) (b) (In Prison)**

Where used in the commission of a crime:

- 43/010 Section 49(1) (Public Place);**
- 43/014 Section 49A(1) (School Premises);**
- 43/012 Section 49C(1) (b) (In Prison)↑**

General rule: One crime for each weapon

Definition

Any person who has with him in any public place, school or prison any article which has a blade or is sharply pointed shall be guilty of an offence.

This section does not apply to a folding pocket knife if the cutting edge of the blade does not exceed three inches (7.62 centimetres).

“public place” means any place other than—

- (a) domestic premises,
- (b) school premises (within the meaning of section 49A(6)),
- (c) a prison (within the meaning of section 49C(7)),

“domestic premises” means premises occupied as a private dwelling (including any stair, passage, garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling).

It shall be a defence for a person charged with an offence under subsection (1) above to show that the person had a reasonable excuse or lawful authority for having the article with him in the public place.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Where not used in the commission of a crime:

Example 1

'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.

Example 2

'A' on being searched by Police is found to have two knives in their possession.

Record 2 crimes of Criminal Law (Consolidation) (Scotland) Act 1995, Section 49(1), possession of knife (not used in crime) (crime per knife).

Example 3

'A' deliberately punctures the tyres of a neighbour's car which is parked in a public place using a knife which is corroborated.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 49(1) for possession of knife (not used in crime). Note use of the "not used in crime" variant since the knife was not used to threaten or injure any person.

Example 4

On being brought into Police custody in 'Z' Division from a public place in 'X' Division suspect is found to be in possession of a knife.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 49(1), possession of knife (not used in crime) – to be recorded by 'Z' Division as this is where the knife was found by Police.

Example 5

Police arrest 'A' on warrant from their home address. When searched on arrival at the cell block 'A' is found to have a knife in their possession.

No crime to be recorded since Police have caused 'A' to bring the knife from a domestic place into a public place.

Example 6

Police, on being advised by 'A' that 'A' has no sharp implements in their possession, search 'A' and an officer is injured by a knife concealed within 'A's' clothing.

Record 1 crime of Culpable and Reckless Conduct.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 49(1) for possession of knife (not used in crime). Note use of the "not used in crime" modifier since the knife was not used to threaten or injure any person.

Example 7

Witnesses on school premises speak to 'A', 'B' and 'C' all being in possession of the same knife at various points during the lunch break. On being searched 'C' is found in possession of the knife.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 49(A) (1), Possession of a knife on school premises (not used in crime) with three accused.

Where used in the commission of a crime:

Example 8

'A' is assaulted by 'B' who stabs him to the arm with a knife. 'B' is traced by Police still in possession of the knife.

Record 1 crime of Assault.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 49(1), possession of knife used in the commission of a crime.

Example 9

'A' is assaulted by 'B' who stabs him to the arm with a knife. 'B' is traced by Police a short distance away but no weapon is found.

Record 1 crime of Assault.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 49(1), possession of knife used in the commission of a crime.

Example 10

'A' approaches 'B' carrying a knife and waves it about threatening to strike 'B' with it, 'B' then runs off.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 Threatening or Abusive Behaviour.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 49(1) (possession of knife used in commission of a crime).

Example 11

Victim attends hospital with a stab wound. Victim believes they were stabbed with a knife but didn't see what was used to stab them nor are there any witnesses. The doctor treating their injuries confirms they were likely to have been caused with a knife.

Record 1 crime of Serious Assault/Attempted Murder as appropriate (note no knife was seen so no requirement to record a crime for the weapon used in the commission of the assault).

Example 12

'A' uses a knife in a public place to assault both 'B' and 'C'.

Record 2 crimes of Assault.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 49(1) (possession of knife used in commission of a crime).

Note - no requirement to record a Section 49(1) offence for each assault unless there is a radically different locus or time difference between the assaults.

Note(s)

From 1 April 2017 where an article with a blade or point has been used in the commission of a crime (against the person), possession of the weapon will no longer be subsumed into the substantive crime.

For the purposes of crime recording a screwdriver is not to be considered as an article with a blade or point.

Recording possession of an article with a blade or point offence with a “used in crime” variant should only occur where the crime is one against the person (e.g. Section 38, Assault) and where the crime is committed in a place where possession of the offensive weapon would be a crime (e.g. public place).

Where no other offence has occurred, however, there is sufficient corroboration to identify the article/circumstances meets the requirements of the Act i.e. two witnesses speaking to the article being a blade or pointed article, or, one witness and the article being recovered, then a crime should be recorded.

If the blade or sharply pointed article used in the commission of a crime has not been recovered however the victim or a witness describes the weapon as fitting the description in line with Section 49 of the above Act, a crime must be recorded (no requirement for corroboration). In circumstances where a knife is used in crime as an offensive weapon a crime under Section 49 (or school/prison equivalent) should be recorded and not Section 47. However, where there is dubiety in the case of a folding pocket knife as to whether the article meets the Section 49 definition then a Section 47 (or school/prison equivalent) should be recorded.

Where a Section 38, Criminal Justice and Licensing (Scotland) Act 2009, Threatening or Abusive Behaviour or Breach of the Peace, has occurred which amounts to a blade or sharply pointed article being waved about or similar, then a separate crime should be recorded in respect of the weapon.

Where a Robbery has occurred whereby a blade or sharply pointed article has been presented then a separate crime should be recorded in respect of the weapon.

39/005 Failing to Appear for Trial Having Been Given Court Bail
Criminal Procedure (Scotland) Act 1995, Section 27↑

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 example(s)

Example 1

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.

Record 2 crimes of Criminal Procedure (Scotland) Act 1995, Section 27.

Note(s)

On the majority of occasions this would be dealt with by way of a warrant being issued.

39/002 Breach of Undertaking or Investigative Liberty Conditions
Criminal Justice (Scotland) Act 2016, Schedule 1 - 1(1)↑

General rule: One crime for each accused

Definition

Offence of breaching condition

1(1) A person commits an offence if, without reasonable excuse, the person breaches a liberation condition by reason of—

- (a) failing to comply with an investigative liberation condition,
- (b) failing to appear at court as required by the terms of an undertaking, or
- (c) failing to comply with the terms of an undertaking, other than the requirement to appear at court.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

'A' commits an assault and is released on an undertaking to appear on a specified date, prior to which 'A' again assaults the same victim.

Record 1 crime of Assault in relation to the initial report.

Record 1 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(s)

A Breach of Undertaking or Investigative Liberty Conditions crime should only be recorded where no other crime has occurred. Where another crime has occurred, the Breach of Undertaking or Investigative Liberty Condition will be treated as an aggravation in the report to the Procurator Fiscal.

**38/011 Failing to Give Name to or Remain with Constable
Criminal Procedure (Scotland) Act 1995, Section 13[↑]**

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 example(s)

Example 1

On police attendance following a report of a shoplifting, the suspect refuses to provide his name and address to officers.

Record 1 crime of Criminal Procedure (Scotland) Act 1995, Section 13(6).

Note(s)

Where there is reasonable grounds for suspecting that a person has committed or is committing an offence at any place, a constable may require the following information,

- The person's name;
- The person's address;
- The person's date of birth;
- The person's place of birth (as necessary to establish the person's identity);
and
- The person's nationality.

**39/012 Breach of Non Harassment Order (Criminal Court)
Criminal Procedure (Scotland) Act 1995, Section 234A↑**

General rule: One crime for each accused

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 of probabilities that it is appropriate to do so in order to protect the victim from further harassment, make a non-harassment order. Anyone who is in breach of a non-harassment order shall be guilty of an offence.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Accused found to be in breach of a non-harassment order by telephoning the victim.

Record 1 crime of Criminal Procedure Act 1995, Section 234A.

Note(s)

Breaches of Non-Harassment Orders that have been imposed as a result of civil proceedings should be recorded as a contravention of Protection from Harassment Act 1997, Section 9(1) (a).

In circumstances where the breach is simultaneous with the commission of a criminal act, only the crime for the criminal act should be recorded and the Breach of Non- Harassment Order shown as an aggravation.

Once the condition has been breached, the accused continues to be in breach until they appear in court.

38/017 Defeat/Pervert The Course/Ends Of Justice↑**General rule: One crime for each accused****Definition**

Taking steps to destroy in advance evidence which might lead to the detection of a crime, requesting a witness to refrain from giving evidence, deliberately going into hiding to avoid giving evidence. Escaping from custody.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)**Example 1**

On being arrested for robbery escaping from police custody.

Record 1 crime of Attempt to Pervert the Course of Justice. (Note – running off from police does not amount to attempt to pervert the course of justice unless the person is under arrest.)

Example 2

Accused providing their sibling's particulars when issued with an Antisocial Behaviour Fixed Penalty ticket, which they later admit to.

Record 1 crime of Attempt to Pervert the Course of Justice.

Example 3

Accused commits murder and hides the body, which is later recovered.

Record 1 crime of Murder.

Record 1 crime of Attempt to Defeat the Ends of Justice.

Example 4

Contacting a number of witnesses in case, threatening or tricking them into failing to turn up at court to give evidence.

Record 1 crime of Attempt to Pervert the Course of Justice.

Example 5

Person who has provided Police with a statement implicating another in a crime is asked to change their statement. No threats are made and this is corroborated.

Record 1 crime of Attempt to Pervert the Course of Justice (if there is no corroboration there is no requirement to record a crime but a memo should be forwarded to the Procurator Fiscal advising them of the incident).

Example 6

Two persons loitering in the street, in area which has been designated as a dispersal zone. Officers request them to leave, which they do. A short time later

they return and refuse to move on. When questioned one person provides false details.

Record 1 crime of Antisocial Behaviour etc. (Scotland) Act 2004, Section 21(3) – two accused recorded thereon as acting together.

Record 1 crime of Attempt to Pervert the Course of Justice.

Note(s)

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 the accused commits the crime of Attempt to Pervert the Course of Justice and the persons assisting him commit an offence under Police and Fire Reform (Scotland) Act 2012, Section 91.

This also covers aiding and abetting someone to break their bail conditions (Criminal Procedure (Scotland) Act 1995, Section 293(2)).

Persons who abscond from the lawful custody of the Scottish Prison Service e.g. abscond from a funeral, fail to return from home leave, parole or from court, should be reported for Attempting to Defeat the Ends of Justice. This will allow officers to report the circumstances to Crown Office and Procurator Fiscal Service with a view to obtaining a warrant to apprehend, with powers to force entry.

39/021 Breach Of Domestic Abuse Interdict Domestic Abuse (Scotland) Act 2011, Section 2(2)↑

General rule: One crime for each accused

Definition

- (5) 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.
- (6) 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.

Scenario example(s)

Example 1

Person against whom there is a Domestic Abuse Interdict in force that they do not make contact with 'A' attends at the home of 'A' but commits no crime.

Record 1 crime of Domestic Abuse (Scotland) Act 2011, Section 2(2) Breach of Domestic Abuse Interdict.

Example 2

Person against whom there is a Domestic Abuse Interdict in force that they do not make contact with 'A' attends at the home of 'A', causes a disturbance and assaults 'A' causing no injury.

Record 1 crime of Common Assault (in these circumstances the breach of the interdict should be shown as an aggravator).

Note(s)

This Act came into force on the 20 July 2011 with two important changes to the current law which will affect 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.

**44/001 Drugs – Importation
Customs and Excise Management Act 1979
Illegal Importation of Drugs[↑]**

**General rule: One crime for 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.

- (4) 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 Act 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 example(s)**Example 1**

At the main parcel hub at an airport UK Borders Agency staff recover a controlled drug within a package arriving from overseas. The package is seized by Customs officers who alert the Police in the area where the package was intended to be delivered.

Record 1 crime of Customs and Excise Act 1979, Section 170. This should be recorded by the Division covering the address where the package was intended to be delivered to. However, an operational decision should be made by the Division concerned as to whether it is proportionate to pursue any level of enquiry. If an enquiry is being pursued a Section 170 offence should be recorded and will remain recorded while an active line of enquiry is being pursued. If at the conclusion of the enquiry there is insufficient evidence to report an offender the recorded crime may be reclassified to 'No Crime'. Similarly, if a decision is made at the outset that it is not proportionate to pursue any further enquiry the incident should be updated appropriately and no crime requires to be recorded.

Note(s)

Where the locus is unclear, it should be deemed as the locus identified as the location of the offender at the time of the crime if known, or where the offender would reasonably be expected to be at the time of the crime.

The Violent Crime Reduction Act 2006 refers to the manufacture, modification, selling or bringing into or causes to be brought into Great Britain a realistic imitation firearm, whereas the Customs and Excise Management Act refers to the import of prohibited weapons e.g. ordered online and confiscated by Customs.

Where a supply quantity of drugs are imported a Drugs Supply offence should also be considered.

44/099 Drugs – Other Offences↑

General rule: One crime for each drug type and/or accused

Definition

This Crime Type covers a variety of offences under the following 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) and (C).

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Enquiry reveals the owner of a unit, which had been rented out, and used as a 'cannabis factory', was aware of the purpose of its use.

Record 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).

Example 2

'A' sells a number of tablets to 'B'. 'B' is found in possession of the tablets and advises Police it is Ecstasy. 'A' is traced and advises Police it is not a drug however advised 'B' it was. Analysis confirmed it was not a controlled drug.

Record 1 crime of Misuse of Drugs Act 1971, Section 19. (Attempt to possess what was thought to be a controlled drug but didn't contain a controlled drug. As 'A' was aware the substance was not a controlled drug no crime can be recorded for 'A'.)

Note(s)

As of 26 January 2009 Cannabis was re-classified from a Class C to a Class B drug.

**44/004 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 example(s)

Example 1

On house being searched under warrant, two persons found within,

(a) both found physically in possession of a small quantity of cannabis.

Record 2 crimes of Misuse of Drugs Act 1971, Section 5(2) Possession (one for each accused).

(b) one person found in possession of small quantity of cannabis and small quantity of heroin, whilst the other is found in possession of small quantity of cannabis.

Record 3 crimes of Misuse of Drugs Act 1971, Section 5(2) Possession (two in relation to the person found in possession of the cannabis and heroin and one in relation to the person found in possession of the cannabis).

Example 2

On a house being searched under warrant, a possession quantity of cannabis is found on the table, three persons are present within who deny, and refuse to disclose, ownership.

Record 1 crime of Misuse of Drugs Act 1971, Section 5(2) Possession (with three accused thereon).

Example 3

On a house being searched under warrant, a possession quantity of cannabis is found on the table, three persons are present within and one person admits ownership of the drugs.

Record 1 crime of Misuse of Drugs Act 1971, Section 5(2) Possession (relating to the individual who has admitted ownership of the property).

Example 4

On a house being searched under warrant the householder being the only person within, three different types of drug are recovered (insufficient quantity to indicate supply).

Record 3 crimes of Misuse of Drugs Act 1971, Section 5(2) Possession (one for each drug type recovered).

Example 5

Suspect is taken into Police custody at Locus 'A' and is not searched at that time. Suspect is searched on arrival at Locus 'B' and found to be in possession on a controlled drug.

Record 1 crime of Misuse of Drugs Act 1971, Section 5(2) Possession (recorded at Locus 'B').

Example 6

Whilst cleaning the toilet area a cleaner finds a polythene bag in a toilet cubicle containing a white powder and contacts the police. A field test proves positive for a controlled drug. Fingerprints and DNA being negative.

No crime requires to be recorded and this should be treated as 'found' drugs, unless there is sufficient evidence to identify ownership of the property. If a crime has already been recorded, where there is insufficient evidence to identify ownership, this should be updated to 'No Crime'.

Example 7

The Prison Service contacts the local police to advise two 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 Crown Office and Procurator Fiscal Service, where a possession quantity of Class 'B' Drugs or 'C' drugs is recovered, this may be dealt with by the Governor or Controller as a matter of internal discipline, however can be referred to the Police should there be aggravating factors. Where a Class 'A' drug is recovered the police must be informed and a crime record created.

Example 8

The Prison Service contacts the local police to advise 2 prisoners have been found in possession of a small quantity of Class 'B' drugs (possession amount). Both have been dealt with by the Prison Governor, however, aggravating factors have been outlined providing justification for referral to Police.

Record 2 crimes of Misuse of Drugs Act 1971, Section 5(2).

Example 9

The Prison Service contacts the local police to advise they have found a prisoner is possession of a personal quantity of a Class 'A' drug.

Record 1 crime of Misuse of Drugs Act 1971, Section 5(2).

Example 10

On an individual being searched on arrival into police custody, a small piece of what is believed to be cannabis is found within their pocket.

(a) There is sufficient to carry out a field test, which proves positive for cannabis, but insufficient to thereafter forward the property to the lab for further tests.

Record 1 crime of Misuse of Drugs Act 1971, Section 5(2) Possession. (Only possession of cannabis can proceed on the basis of a presumptive test. If there is insufficient quantity to send to the Laboratory for a presumptive test - other than cannabis - then there would be insufficient evidence and no crime 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.

Example 11

A search of a bedroom reveals a small amount of cannabis, the son of the householder admits ownership and there is no evidence to say the householder was aware of the presence of this drug.

Record 1 crime of Misuse of Drugs Act 1971, Section 5(2) Possession (for son of householder only).

Example 12

A jacket has been handed in to police as found property whereby a small quantity of a controlled drug is recovered within the pocket. The jacket is claimed several days later and the owner denies knowledge of the substance being present. There is no other evidence available.

No crime should be recorded if there is insufficient evidence to identify ownership of the drugs.

Example 13

On an individual being searched on arrival into police custody, a small bottle is found within their jacket pocket to contain 35 diazepam tablets, which the accused admits were not prescribed to him and refuses to provide a reason for his possession.

Record 1 crime of Misuse of Drugs Act 1971, Section 5(2) Possession.

Example 14

During a search an individual is found in possession of herbal cannabis and cannabis resin.

Record 2 crimes of Misuse of Drugs Act 1971, Section 5(2) Possession (the composition of each drug differs therefore one crime for each).

Example 15

During a house search whereby a small quantity of cannabis is recovered (possession quantity) on a table, a 'tick list' with 10 names is found lying on the kitchen table along with a selection of drug paraphernalia e.g. tinfoil, burnt spoons, scales with traces of powder thereon, clingfilm, small poly bags etc. The named

persons on the 'tick list' not being traced. Two persons reside at the dwelling, one of which admits responsibility for the property.

Record 1 crime of Misuse of Drugs Act 1971, Section 4(3) (b) Concerned in the Supply – as circumstances infer concerned in supply. (Possession with Intent is more appropriate where no evidence of prior dealing. No charges should be recorded in relation to 'supply to a named person' as per the 'list', unless statements have been obtained confirming they have been supplied drugs by the accused. One crime would then be recorded per named person supplied.)

Example 16

After leaving personal effects in a locker and prior to entering the visitors' area a person is searched and found to be in possession of a personal quantity of a controlled drug.

Record 1 crime of Prisons (Scotland) Act 1989, Section 41(1).

Example 17

A person visiting a prison inmate leaves personal effects in a locker. They are searched before entering the visitors' area with negative result. The locker they are using is searched and a personal quantity of a controlled drug is found.

Record 1 crime of Misuse of Drugs Act 1971, Section 5(2) Possession.

Example 18

Police execute a warrant where a possession quantity of a controlled drug is found in a property where 'A' and 'B' are present, and a further quantity of the same substance is found on the person of 'A'.

Record 2 crimes of Misuse of Drugs Act 1971, Section 5(2) Possession. ('A' and 'B' are accused persons (acting together) for the substance found in the property and 'A' is a separate accused for the substance found on his person.)

Example 19

A person searched at Locus 1 is found to be in possession of a personal quantity of a controlled drug. The person is searched again on arrival at a Police station (Locus 2) and a further personal quantity of the same drug is found.

Record 2 crimes of Misuse of Drugs Act 1971, Section 5(2) Possession (crime for each locus).

Note(s)

As of 26 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 unattributable 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.

Only one crime should be recorded for each drug type identified regardless of the format in which it is recovered, e.g. Cocaine and Crack Cocaine are the same drug, and MDMA is the same drug whether in crystal or tablet format. However, it should be noted that Cannabis and Cannabis Resin are different drug types and must be recorded separately.

In circumstances where analysis confirms that a substance is found to contain a number of different drug types a separate offence should be recorded for each controlled drug identified, e.g. two different controlled drug types found in the same tablet format.

In circumstances where a prison inmate is found in possession of a controlled drug which is being reported to the Police this should be dealt with under Misuse of Drugs Act 1971 and not Prisons (Scotland) Act 1989.

Drug offences can be recorded with more than one accused 'whilst acting together' if evidence fails to identify ownership of the drugs to a single accused. There does however require to be evidence to infer knowledge and control.

Where the quantity of drugs recovered is marginal this should be highlighted within any subsequent Police Report. The Procurator Fiscal will decide as to whether a further charge should be libelled.

Where drugs are recovered following a death no offence(s) will be recorded relating to the deceased person and only where there is evidence relating to other persons will any relevant offences be recorded.

Schedule 5, Regulation 3 of the Misuse of Drugs Regulations 2001 provides details of controlled drugs whereby it is not an offence to possess same, although it would be an offence if supply quantities were recovered.

44/002 Drugs – Production, Manufacturing And Cultivation
Misuse of Drugs Act 1971, Section 4(2) (a) and (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 example(s)

Example 1

A house search reveals a cannabis cultivation. No persons are resident at the house and enquiry reveals it had been rented out, with enquiry failing to trace the person(s) responsible.

Record 1 crime of Misuse of Drugs Act 1971, Section 4(2) (a) - Produce a controlled drug (undetected).

Example 2

A house search reveals a cannabis cultivation and the householder is identified as being responsible, no other drugs are found.

Record 1 crime of Misuse of Drugs Act 1971, Section 4(2) (a) - Produce a controlled drug.

Example 3

Police execute warrant at house and discover numerous cannabis plants under cultivation. Due to the quantity involved there is a strong indication of onward supply and sale of cannabis when harvested. There is no physical evidence at the locus to confirm supply.

Record 1 crime of Misuse of Drugs Act 1971, Section 4(2) (a) - Produce a controlled drug.

Example 4

Police execute warrant at house and discover numerous cannabis plants under cultivation. Due to the quantity involved there is a strong indication of onward supply of cannabis when harvested. Officers also find a quantity of cannabis in bags sufficient to indicate onward supply.

Record 1 crime of Misuse of Drugs Act 1971, Section 4(2) (a) - Produce a controlled drug.

Record 1 crime of Misuse of Drugs Act 1971, Section 4(3) (b) – Concerned in supply of a controlled drug.

Example 5

Police execute warrant at house and discover numerous cannabis plants under cultivation. Due to the quantity involved there is a strong indication of onward supply of cannabis when harvested.

There is no physical evidence at the locus to confirm supply. A personal quantity of cannabis is found in the possession of one of the occupants.

Record 1 crime of Misuse of Drugs Act 1971, Section 4(2) (a) - Produce a controlled drug.

Record 1 crime of Misuse of Drugs Act 1971, Section 5(2) - Possession of a controlled drug.

Note(s)

As of 26 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.

Police Scotland has a drugs expert witness capability in the form of the Statement of Opinion (STOP) Units who are recognised by the courts as 'experts'. The STOP Unit provide advice and assistance and through the examination and assessment of all the evidential elements in a case will be able to advise the enquiry officer whether an individual should be reported for cultivation, supply or possession offences.

Drug offences are 'evidence' based and should only be recorded where there is sufficient evidence.

Drug offences can be recorded with more than one accused 'whilst acting together' if evidence fails to identify ownership of the drugs to a single accused. There does however require to be evidence to infer knowledge and control.

Schedule 5, Regulation 3 of the Misuse of Drugs Regulations 2001 provides details of controlled drugs whereby it is not an offence to possess same e.g. dihydrocodeine, although it would be an offence if supply quantities were recovered.

44/003 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 of 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 example(s)

Example 1

One person searched by police and found to be in possession of a supply quantity of cannabis.

Record 1 crime for Misuse of Drugs Act 1971, Section 5(3) Possession with Intent to Supply or Section 4(3) (b) Concerned in the Supply, depending on evidence available.

Example 2

House searched under warrant, whereby a supply quantity of cannabis is recovered lying on the living room table. Four persons are found within, who deny and refuse to disclose ownership.

Record 1 crime of Misuse of Drugs Act 1971, Section 5(3) Possession with Intent to Supply or Section 4(3) (b) Concerned in the Supply, depending on evidence available (with four accused recorded thereon, no one has physically been found in possession of the drugs).

Example 3

House searched under warrant, whereby a supply quantity of cannabis, possession quantity of heroin and possession quantity of ecstasy are recovered, although not physically in possession of anyone. Four persons are found within, who deny and refuse to disclose ownership.

Record 1 crime of Misuse of Drugs Act 1971, Section 5(3) Possession with Intent to Supply or Section 4(3) (b) Concerned in the Supply (cannabis - four accused), depending on evidence available.

Record 2 crimes of Misuse of Drugs Act 1971, Section 5(2) Possession (heroin and ecstasy - four accused). (No one has physically been found in possession of the drugs.)

Example 4

A member of the public out walking their dog reports their dog has dug up a large quantity of drugs which appears to have been hidden having been covered with earth, leaves and branches. Further enquiry fails to identify ownership.

No crime should be recorded. This should be treated as 'found' drugs and a Scottish Intelligence Database (SID) entry submitted.

Example 5

During a house search whereby a supply quantity of cannabis is recovered in a cupboard, a 'tick list' with 10 names is found lying on the kitchen table along with a selection of drug paraphernalia e.g. scales, tinfoil etc. Two persons reside at the dwelling, one of which admits responsibility for the property.

Record 1 crime of Concerned in the Misuse of Drugs Act 1971, Section 4(3) (b) Concerned in the Supply. (Only where enquiry results in evidence that the names on the 'tick list' had been supplied drugs by the accused would a crime be recorded for supplying a named person i.e. statements from the named persons on the tick list confirming they were supplied drugs by the accused. One crime would then be recorded per named person supplied. A possession charge should not be labelled in these circumstances. Where there is evidence of prior dealing a Concerned in the Supply charge is more appropriate than a Possession with intent to Supply charge.)

Example 6

Two females report to the police that some 5 years ago 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.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 1 Rape.
Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 28 Having intercourse with an older child. (Note – no requirement for Misuse of Drugs Act offences as it cannot be confirmed that the substance was in fact a controlled drug).

Example 7

Suspect under Police surveillance at Locus 1 is witnessed receiving a package. Suspect then gets into vehicle in possession of package and drives off. When stopped and searched at Locus 2 the package is found to contain a supply quantity of a controlled drug.

Record 1 crime for Misuse of Drugs Act 1971, Section 5(3) Possession with Intent to Supply or Misuse of Drugs Act 1971, Section 4(3) (b) Concerned in

the Supply, depending on evidence available. The locus for the crime is Locus 2 as this is where the package was seized.

Example 8

During a prison visit a visitor passes a controlled drug to a prisoner.

Record 1 crime of Misuse of Drugs Act 1971, Section 4(3) (a) Supply a Controlled Drug. (In these circumstances while it is noted that the suspect has introduced a controlled drug into a prison before passing this to the prisoner no offence under Prisons (Scotland) Act 1989, Section 41 will be recorded).

Example 9

During an enquiry it is established that an accused has personally supplied controlled drugs to 10 different persons all of which can be clearly evidenced.

Record 10 crimes of Misuse of Drugs Act 1971, Section 4(3) (a) Supply to a named person.

Note(s)

Where a supply quantity of a drug is recovered a possession crime should not be recorded. A Possession offence is only appropriate where the quantity of drug is small and there is no inference to be drawn that the accused intended to supply that drug. Possession with Intent to Supply is more appropriate where there is no evidence of prior dealing.

Drug offences are 'evidence' based and should only be recorded where there is sufficient evidence.

Police Scotland has a drugs expert witness capability in the form of the Statement of Opinion (STOP) Units who are recognised by the courts as 'experts'. The STOP Unit provide advice and assistance and through the examination and assessment of all the evidential elements in a case will be able to advise the enquiry officer whether an individual should be reported for supply or possession offences.

Only one crime should be recorded for each drug type identified regardless of the format in which it is recovered, e.g. Cocaine and Crack Cocaine are the same drug, and MDMA is the same drug whether in crystal or tablet format. However, it should be noted that Cannabis and Cannabis Resin are different drugs types and must be recorded separately.

In circumstances where analysis confirms that a substance is found to contain a number of different drug types a separate offence should be recorded for each controlled drug identified, e.g. two different controlled drug types found in the same tablet format.

Where quantities of drugs are recovered, although not in possession of any person, and, there is insufficient evidence to consider reporting anyone for possession, possession with intent to supply or concerned in the supply, this will be treated as 'found' property and no crime should be recorded.

Drug offences can be recorded with more than one accused 'whilst acting together' if evidence fails to identify ownership of the drugs to a single accused. There does however require to be evidence to infer knowledge and control.

Where the quantity of drugs recovered is marginal this should be highlighted within any subsequent Police Report. The Procurator Fiscal will decide as to whether a further charge should be libelled.

As of 26 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.

Where drugs are recovered following a death no offence(s) will be recorded relating to the deceased person and only where there is evidence relating to other persons will any relevant offences be recorded.

Drugs - Miscellaneous Examples

The following examples are miscellaneous to those included within the headed pages relevant to specific Drugs offence types.

Recording of Unidentified Drug Types

Where a search recovers a number of different suspected types of controlled drugs, however, it is unknown as to what they are or suspected to be, only one crime is required to be recorded until analysis has been carried out. Where it is strongly suspected that the substance recovered is in fact a specific drug type then this should be recorded separately.

Example 1

A search results in the recovery of a quantity of tablets which consist of three different types and are suspected to be controlled drugs. It is strongly suspected that one type is ecstasy with the remaining two types being unknown pending analysis.

Record 2 crimes (one for the tablets which are suspected to be ecstasy and one for the remaining unknown tablets - pending analysis).

Drugs Searches and Warrant Execution

Example 1

Police force entry to a house under authority of a drugs search warrant. An occupant of the house is seen to throw a package later confirmed as being controlled drugs out of a window.

Record 1 crime of Misuse of Drugs Act 1971, Section 23 – Obstruct.
Record 1 crime of Misuse of Drugs Act offence appropriate to quantity of drugs.

Example 2

Police attend at house to execute a drugs search warrant. Occupants of the house obstruct entry by barricading the door on learning the purpose of Police visit.

Record 1 crime of Misuse of Drugs Act 1971, Section 23 – Obstruct.

Example 3

Having reasonable suspicious that 'A' may be in possession of controlled drugs 'A' is advised they were being detained in terms of Section 23 of Misuse of Drugs Act 1971 for a search. 'A' then runs off.

Record 1 crime of Misuse of Drugs Act 1971, Section 23(4) (a) – Obstruct. (In terms of Section 23 – 'obstruction' is not limited to physical obstruction but covers any act done with intent to hinder officers in the discharge of their duties'.)

Drugs - Intercepted in Post

Example 1

Staff at Royal Mail sorting office alert Police to a suspicious package which is later opened and contents found to contain a controlled drug intended for delivery at an address in Division Z.

To allow enquiry to be undertaken record 1 crime of Misuse of Drugs Act 1971, Section 19 (Attempt to possess controlled drug) by Division Z. The level of enquiry that is conducted is an operational matter for Z Division. If there is insufficient evidence to report an offender at the conclusion of the enquiry the crime record may be reclassified to No Crime. If an operational decision is made not to pursue any enquiry from the outset no crime requires to be recorded but the incident should be updated with the reasons why.

44/007 Psychoactive Substances - Production, Import/Export, Supply, Possession in Custody Psychoactive Substances Act 2016[↑]

General rule: One crime for each drug type and/or accused

Definition

Section 2

- (1) In this Act “psychoactive substance” means any substance which—
 - (a) is capable of producing a psychoactive effect in a person who consumes it, and
 - (b) is not an exempted substance (see section 3).
- (2) For the purposes of this Act a substance produces a psychoactive effect in a person if, by stimulating or depressing the person's central nervous system, it affects the person's mental functioning or emotional state; and references to a substance's psychoactive effects are to be read accordingly.
- (3) For the purposes of this Act a person consumes a substance if the person causes or allows the substance, or fumes given off by the substance, to enter the person's body in any way.

Sections of the Psychoactive Substances Act 2016 to be recorded under SGJD Code 44/007 are:

- Section 4 Producing a psychoactive substance;
- Section 5(1) Supplying a psychoactive substance;
- Section 5(2) Offering to supply a psychoactive substance;
- Section 7(1) Possession with intent to supply a psychoactive substance;
- Section 8(1) Import a psychoactive substance;
- Section 8(2) Export a psychoactive substance; and
- Section 9(1) Possession of a psychoactive substance in a custodial institution.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

**44/008 Psychoactive Substances - Other offences
Psychoactive Substances Act 2016↑**

**General rule: One crime for each drug type
and/or accused**

**Sections of the Psychoactive Substances Act 2016 to be recorded under
SGJD Code 44/008 are:**

- Section 26(1) Failing to comply with a prohibition order or premises order
- Section 27(2) Failing to comply with an access prohibition
- Section 27(3) Failing to comply with an access prohibition - obstruct
- Section 48(1) Obstruction of an enforcement officer
- Section 48(2) (a) Fail to comply with a requirement or direction
- Section 48(2) (b) Preventing a person from complying with a requirement or direction

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

35/005 Obstruct/Hinder Other Emergency Worker Emergency Workers (Scotland) Act 2005[↑]

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 example(s)

Example 1

Accused obstructing hospital staff from attending to a bleeding wound to their friend's arm.

Record 1 crime of Emergency Workers (Scotland) Act 2005, Section 5 – Obstruct.

**37/001 Attempt to Cause Explosion
Explosive Substances Act 1883, Section 3[↑]**

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

Procurator Fiscal.

Locus

Where crime takes place/Where the explosive device is found.

Scenario example(s)

Example 1

During a house search a partially made bomb is found, with the remaining component parts found nearby. The intention is to make and then plant the bomb in a public place.

Record 1 crime of Explosive Substances Act 1883, Section 3.

35/001 Mobbing And Rioting↑

General rule: One crime for each incident

Definition

When a number of persons assemble and combine for a common purpose to the alarm of the lieges and in breach of the peace. Three elements are therefore necessary to the constitution of this crime: (i) concourse; (ii) illegal combination; and (iii) alarm in the minds of the lieges.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

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.

Record 1 crime of Mobbing and Rioting.

Note(s)

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.

39/011 Perjury And Subornation↑

General rule: One crime for each accused

Definition

Willfully 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 example(s)

Example 1

Person submits information of application for divorce documentation, swearing to this information on oath before the notary public, signing affidavit, well knowing the information to be false.

Record 1 crime of Perjury and Subornation.

Example 2

Two Police Officers gives false evidence under oath against the same case in a court of law.

Record 2 crimes of Perjury and Subornation.

Note(s)

To constitute perjury the oath or affirmation must be made in a judicial proceeding, either civil or criminal, before a person duly qualified to administer the oath or affirmation. It is immaterial in what form and ceremony the oath is administered if the person taking the oath assents or does not object. The falsehood must be deliberately made on a matter of fact and not of opinion or belief. It is not perjury if the false statement is due to faulty recollection or misapprehension of the facts. The falsehood must be direct and unequivocal. The falsehood must be pertinent and material to the point at issue. Perjury cannot be committed in respect of evidence which is incompetent. In proving perjury it is not sufficient to show a discrepancy between two statements, one of which was made on oath. To secure a conviction it is necessary to prove that the statement was false and that the accused knew that it was false.

**38/013 Obstruct/Hinder Constable In Pursuance Of Lawful Duty
Police And Fire Reform (Scotland) Act 2012,
Sections 90(2) (a) and 90(2) (b)↑**

**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 example(s)

Example 1

When being requested to allow a search of accused’s person, being obstructive.

Record 1 crime of Police and Fire Reform (Scotland) Act 2012, Section 90(2) (a).

Example 2

On police officers advising ‘A’ they are under arrest, ‘A’ runs off.

Record 1 crime of Attempt to Pervert the Course of Justice.

Example 3

Two persons are arrested for the same case and on being searched both obstruct the police from finding drugs which they have concealed on their person.

Record 2 crimes of Police and Fire Reform (Scotland) Act 2012, Section 90(2) (a), Obstruct Police. (If Police were exercising their powers under the Misuse of Drugs Act 1971, Section 23 at the time the appropriate crimes would be 2 Misuse of Drugs Act 1971, Section 23(4) (a).)

Example 4

During the search of a public house lavatory, two employees obstruct constables from checking cistern where a weapon has been concealed.

Record 1 crime of Police and Fire Reform (Scotland) Act 2012, Section 90(2) (a). (both accused acting together).

Example 5

'A' on being brought into Police custody refuses to leave their cell to provide DNA and fingerprint samples.

No crime to be recorded. While Criminal Procedure (Scotland) Act 1995, Section 18 gives Police powers to obtain such samples it does not create any criminal offence for failure to comply with these requirements. Per Section 19(B) a constable may use reasonable force to obtain these samples. In circumstances where a suspect has been offered legal advice to the effect that he must comply and then the physical resistance has been so great that even with the exercise of reasonable force it is impossible for Police to obtain the required sample a crime of Attempt to Defeat the Ends of Justice can be considered.

Note(s)

Obstruction of a Police Officer/Staff should be recorded under the Police and Fire Reform (Scotland) Act 2012 and not the Emergency Workers Act.

38/007 Resist
Police And Fire Reform (Scotland) Act 2012,
Sections 90(2) (a) and 90(2) (b)↑

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 example(s)

Example 1

Officers arrest two persons at same locus for assaulting an individual, one of whom struggles with officers in an attempt to resist arrest.

Record 1 crime of Assault.

Record 1 crime of Police and Fire Reform (Scotland) Act 2012, Section 90(2)

- (a). (If both resisted arrest and there was an indication they were acting together only one crime would be recorded.)

Example 2

While being arrested a person violently resists Police and two officers are slightly injured by flailing arms during the struggle.

Record 1 crime of Police and Fire Reform (Scotland) Act 2012, Section 90(2)

- (a) Resist Arrest (the injury to the officers occurred during the struggle and not by a physical attack so no requirement to record Police Assault).

Example 3

While being arrested a person violently resists Police. When handcuffs have been applied the suspect head-butts one officer and kicks another.

Record 1 crime of Police and Fire Reform (Scotland) Act 2012, Section 90(2)

- (a) Resist Arrest.

Record 2 crimes of Police and Fire Reform (Scotland) Act 2012, Section 90(1) (a) Assault.

**38/006 Escape From Custody
Police And Fire Reform (Scotland) Act 2012,
Section 91↑**

General rule: One crime for each incident

Definition

Section 91

- (1) It is an offence for a person—
 - (a) to remove a person from custody, or
 - (b) to assist the escape of a person in custody.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

'A' is arrested by police, 'B' and 'C' grab 'A' and attempt to release 'A' from the hold of the officers in an attempt to rescue 'A'.

Record 1 crime of Police and Fire Reform (Scotland) Act 2012, Section 91(1)
(b) Assist Escape of Person in Custody.

**38/010 Personation Of Police
Police And Fire Reform (Scotland) Act 2012,
Section 92[↑]**

General rule: One crime for each accused

Definition

Section 92

- (1) It is an offence for a person (not being a constable)—
 - (a) to impersonate a constable with an intent to deceive, or
 - (b) to do anything calculated to suggest that the person is a constable.
- (2) It is an offence for a person (other than a constable) to possess any article of police uniform without the permission of the Authority.
- (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 example(s)

Example 1

A report is received that a motorist 'A' was stopped whilst out driving on a quiet road by 'B' a person purporting to be a police officer, driving an unmarked vehicle who produced a card which 'A' presumed was an ID card, and stated they were a police officer. On another vehicle approaching, 'B' quickly warned 'A' regarding their driving and left. Enquiry reveals it is unlikely that 'B' was a police officer.

Record 1 crime of Police and Fire Reform (Scotland) Act 2012, Section 92(1) (a).

Example 2

Two persons claiming to be Police officers show fake ID cards to two tourists asking to see their wallets to examine their money to ensure it was genuine. The suspects then make off with both wallets.

Record 2 crimes of Police and Fire Reform (Scotland) Act 2012, Section 92(1) (a).

Record 2 crimes of Theft.

38/003 Public Mischief (Including Wasting Police Time)

38/004 Falsely Accusing (Named) Person Of Crime[↑]

General rule: One crime for each accused

Definition

Wasting Police Time

Any person who maliciously makes a false statement to the police with the intention and effect of causing police investigation.

False Accusation

Any person who makes a false accusation of crime against a named individual commits a crime at common law.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Complainer reports that they were robbed of their benefit money. Enquiry reveals this to be a false report in order to obtain further monies from the Benefits Agency.

Record 1 crime of Wasting Police Time.

Example 2

'A' reports to Police that they were assaulted and robbed by a named person 'B'. Subsequent investigation confirms that 'A' was not assaulted or robbed by 'B'.

Record 1 crime of False Allegation/Accusation.

Example 3

'A' reports to Police that they were assaulted and robbed by an unknown person. Subsequent investigation confirms that 'A' was not assaulted and robbed by any person.

Record 1 crime of Wasting Police Time.

Note(s)

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.

**38/018 Notification
Sexual Offences Act 2003[↑]**

**General rule: One crime for each notification
failure**

Definition

A person is subject to the notification requirements for a period set out in Section 82 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 example(s)

Example 1

An offender fails to notify a change of address and the fact they had gone on holiday to Tunisia for a two week period.

Record 1 crime of Sexual Offences Act 2003 for failure to notify the address change.

Record 1 crime of Sexual Offences Act 2003 for failure to notify their intention to travel outwith the UK.

Note(s)

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 Sections 83(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 Sections 83(1), 84(1) or 85(1) or any requirement imposed by regulations made under Section 86(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 Sections 83(1), 84(1) or 85(1) or a requirement imposed by regulations made under Section 86(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.

35/003 Trespass[↑]

General rule: One crime for each incident

Definition

A person commits the offence of trespass if he trespasses on land in the open air and, in relation to any lawful activity which persons are engaging in or are about to engage in, does anything which is intended by him to have the effect, of intimidating persons or deter them from engaging in that activity, or obstructing/disrupting that activity.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

A group of persons, acting together trespass on land in order to obstruct the felling of woodland.

Record 1 crime of Criminal Justice and Public Order 1994, Section 68(1)
Obstruct Lawful Activity.

Group 6 – Antisocial and Miscellaneous Offences↑

Crime	SGJD Code
Air Navigation Order 2016	85/013
Air Weapons and Licensing (Scotland) Act 2015	55/001
Assault (Common)	47/001
Assault (Common) - Police	47/006
Assault (Common) - Emergency Worker	47/006
Asylum and Immigration (Treatment of Claimants etc.) Act 2004, Section 4 – Trafficking People for Exploitation	45/000
Bigamy	76/001
Breach of the Peace	47/002
Civic Government (Scotland) Act 1982, Section 119(1) – Charitable Collections	85/002
Civic Government (Scotland) Act 1982, Section 7(1) – Street Traders Licence	72/004
Civic Government (Scotland) Act 1982, Section 47 – Urinating/Defecating	47/003
Civic Government (Scotland) Act 1982, Section 50(1) - Drunk and Incapable	60/001
Civic Government (Scotland) Act 1982, Section 50(2) - Drunk in Charge of a Child	60/003
Civic Government (Scotland) Act 1982, Section 54(1) – Playing Instruments, Radios, Singing etc.	73/004
Communications Act 2003, Section 127(1) - Non Sexual	84/002

Crime	SGJD Code
Communications Act 2003, Section 127(2)	84/002
Computer Misuse Act 1990, Sections 1 and 2	84/006
Copyright, Designs and Patents Act 1988, Section 107	83/007
Criminal Justice and Licensing (Scotland) Act 2010, Section 38 – Threatening or Abusive Behaviour	47/008
Criminal Justice and Licensing (Scotland) Act 2010, Section 39 - Stalking	47/009
Criminal Law (Consolidation) (Scotland) Act 1995, Section 20(7) – Drunk in, or Attempting To Enter Designated Sports Ground	60/007
Criminal Law (Consolidation) (Scotland) Act 1995, Section 20(1-4) - Sports Ground Offences (Possessing Alcohol etc.)	62/013
Criminal Law (Consolidation) (Scotland) Act 1995, Section 50(A) (1A) – Racially Aggravated Harassment	47/004
Criminal Law (Consolidation) (Scotland) Act 1995, Section 50(A) (1B) – Racially Aggravated Conduct	47/005
Criminal Law Act 1977, Section 51 False Calls to Emergency Services – Bomb Hoaxes	48/002
Customs and Excise Management 1979, Section 50 - Import Prohibited Goods Act	77/000
Dangerous Dogs Act 1991, Section 3 - Failure to Control	51/012
Data Protection Act 2018	84/005

Crime	SGJD Code
Dogs (Protection of Livestock) Act 1953, Section 1	51/008
Electricity Act 1989	85/008
Firearms Act 1968, Sections 1 and 2	55/000
Firearms Act 1968, Section 21 - Possession of firearm by Persons Previously Convicted of Crime	55/000
Fireworks Regulations 2004, Regulation 4(1) and Fireworks (Scotland) Regulations 2004, Regulation 3(1)	54/000
Handling Obscene Material	59/001
Hoax Calls to Emergency Services Fire (Scotland) Act 2005, Section 85(1) and Emergency Workers (Scotland) Act 2005	48/001
Licensing (Scotland) Act 2005	See Section
Local Government (Scotland) Act 1973, Sections 201, 202, 203 – Consumption of Alcoholic Liquor in Public Places	72/008
Prisons (Scotland) Act 1989, Section 41(1) - Blade or Sharply Pointed Article	43/004
Prisons (Scotland) Act 1989, Section 41(1) - Offensive Weapon	43/006
Prisons (Scotland) Act 1989, Section 41(1) - Drugs	44/006
Prisons (Scotland) Act 1989, Section 41(1) - Other	85/001

Crime	SGJD Code
Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, Section 1 - Serious Assault	4/003
Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, Section 1 - Common Assault	47/012
Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, Section 1 - Threatening or Abusive Behaviour	47/013
Road Traffic Act 1988, Section 30 - Drunk when Riding a Cycle	78/003
The Trespass (Scotland) Act 1865, Section 3 – Lighting Fires and Lodging Without Consent of Owner	82/002 and 82/003
Tobacco and Primary Medical Services (Scotland) Act 2010	50/010
Wildlife Crime	Various
Wire Telegraphy Act 2006	84/001

85/013 Various Articles Excluding Endangering an Aircraft Air Navigation Order 2016[↑]

General rule: One crime for each incident

Definition

Offences under Air Navigation Order 2016 include:

- Article 242 - Drunk on board aircraft/enter aircraft drunk
- Article 243 - Smoke on board aircraft
- Article 244 - Fail to obey command
- Article 245(a) - Use threatening, abusive or insulting words towards aircraft crew members
- Article 245(b) - Behave in a threatening, abusive or insulting manner
- Article 245(c) - Interfere with crew member's duties

Victim/Complainer

Airline or person subjected to conduct.

Locus

Where crime takes place.

Note(s)

Offences under aviation legislation which involve endangering an aircraft will be recorded within Group 4 under the relevant legislation coded to 33/016 Culpable and Reckless Conduct against an aircraft.

The Air Navigation (Amendment) Order 2020 introduced amendments to the Air Navigation Order, 2016 on 31 December 2020. Based on the updated legislation in respect of small unmanned aircraft, on occasions it will be difficult to confirm an offence under the Air Navigation Order has occurred without tracing the pilot and/or aircraft. Where reports are received consideration should be given as to whether the circumstances would amount to an alternative offence e.g. Section 38 Criminal Justice and Licensing (Scotland) Act 2010.

47/001 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 example(s)**Example 1**

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

Record 1 crime of Assault with uncooperative tag.

Example 2

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

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

Example 2

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

Record 2 crimes of Assault (Common).

Example 3

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

Record 2 crimes of Assault (Common).

Example 4

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

Record 1 crime of Assault (Common).

Example 5

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

Record 2 crimes of Assault (Common) - one for each locus.

Example 6

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 dependent on circumstances and whether the public were present during the altercation they may wish to libel a Criminal and Justice Licensing (Scotland) Act 2010, Section 38 offence or Breach of the Peace against both parties.

Example 7

During a domestic incident 'A' is subjected to threatening and abusive behaviour and is assaulted by 'B'. There is a sufficiency of evidence to report 'B' for the threatening and abusive behaviour but insufficient to report for the Assault. No other conduct is disclosed.

Record 1 crime of Assault (Common) – undetected.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010 - Section 38 – detected.

Example 8

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

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

Example 9

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

Record 1 crime of Assault (Common).

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 47(1) Possession of an Offensive Weapon – used in crime.

Note(s)

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 4/000.

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

Full details of any medical treatment received and prognosis must be included. If no injury has been sustained by the victim this must also be confirmed.

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

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

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) 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 if the assault occurs at the victim's home address, however, if the assault occurs elsewhere any damage caused to property in the process of gaining entry should be recorded as a separate crime.

**47/006 Assault (Common)
Police and Fire Reform (Scotland) Act 2012,
Sections 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**

Definition

Section 90

- (1) It is an offence for a person to assault—
 - (a) a person (“A”) acting in a capacity mentioned in subsection (3), or
 - (b) a person assisting A while A is acting in such capacity.
- (3) The capacities are—
 - (a) that of a constable,
 - (b) that of a member of police staff,
 - (c) that of a member of a relevant police force when such member is executing a warrant or is otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,
 - (d) that of a person who—
 - (i) is a member of an international joint investigation team that is led by a person acting in a capacity mentioned in paragraph (a) or (c), and
 - (ii) is carrying out functions as a member of that team.

Victim/Complainer

Police Officer assaulted.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Two police officers are assaulted by kicking and punching both to the head and body.

Record 2 crimes of Police and Fire Reform (Scotland) Act 2012, Section 90(1) (a).

Example 2

On accused being placed within the rear of the police vehicle at Locus 1, he kicks a police officer and then on being removed from the police vehicle to be taken into the custody suite at Locus 2 he further kicks and spits on the same police officer.

Record 2 crimes of Police and Fire Reform (Scotland) Act 2012, Section 90(1) (a) (two separate incidents with clear break between both).

Example 3

A visitor to a Police station assaults a member of Police Staff on duty within the public office.

Record 1 crime of Police and Fire Reform (Scotland) Act 2012, Section 90(1) (a).

Note(s)

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 4/000.

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

Full details of any medical treatment received and prognosis must be included. If no injury has been sustained by the victim this must also be confirmed.

Multiple Crimes

One crime will be recorded per officer assaulted.

Police Staff

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

Multiple Accused

Only one crime is recorded in incidents where more than one person has assaulted an officer during the same incident.

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.

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

An assault on an on duty police officer or member of police staff should be recorded under the Police and Fire Reform (Scotland) Act 2012.

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

**47/006 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

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).

Note - For Section 1 to apply, it does not require to be in a hospital. Section 5 applies to incidents in hospital or within its grounds.

Section 2

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

Section 3

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

Section 5

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

Victim/Complainer

Person subject to assault.

Locus

Where crime takes place.

Scenario example(s)

Example 1

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

Record 1 crime of Emergency Workers (Scotland) Act 2005, Section 5 – Assault.

Example 2

On being brought into hospital to receive treatment for an injury, the patient punches a nurse, who is tending to his wound. When the police arrive he kicks Officer 'A'. After being conveyed to the police office, he punches Officer 'A' the arresting officer.

Record 1 crime of Emergency Workers (Scotland) Act 2005, Section 5 Assault.

Record 2 crimes of Police and Fire Reform (Scotland) Act 2012, Section 90(1) (a).

Example 3

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

Record 1 crime of Common Assault (Emergency Workers (Scotland) Act 2005 does not apply as the Prison Officer was not responding to emergency circumstances at the time).

Example 4

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

Record 1 crime of Emergency Workers (Scotland) Act 2005, Section 5 Assault.

Example 5

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

Record 1 crime of Emergency Workers (Scotland) Act 2005, Section 1 Assault.

Note(s)

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

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

Full details of any medical treatment received and prognosis must be included. If no injury has been sustained by the victim this must also be confirmed.

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

An assault on an on duty police officer or member of police staff should be recorded under the Police and Fire Reform (Scotland) Act 2012.

76/001 Bigamy↑**General rule: One crime for each marriage****Definition****Common Law - Bigamy (prior to 1 September 2014)**

Any person who willfully contracts a second (or subsequent) marriage, during the subsistence of a prior marriage.

Statutory - Marriage (Scotland) Act 1977, Section 24 (from 1 September 2014)

(A1) A person (“A”) commits an offence if A purports to enter into a marriage with another person (“B”) knowing that either or both—

- (a) A is already married to or in a civil partnership with a person other than B,
or
 - (e) B is already married to or in a civil partnership with a person other than A.
- (1) A person shall be guilty of an offence if he—
- (a) falsifies or forges any Marriage Schedule, certificate or declaration issued or made, or purporting to be issued or made, under this Act;
 - (b) knowingly uses, or gives or sends to any person as genuine, any false or forged marriage Schedule, certificate, declaration or other document issued or made, or purporting to be issued, or made, or required under this Act;
 - (c) being an approved celebrant, solemnises a marriage without a Marriage Schedule in respect of the marriage, issued in accordance with this Act, being available to him at the time of the marriage ceremony;
 - (d) not being an approved celebrant or an authorised registrar, conducts a marriage ceremony in such a way as to lead the parties to the marriage to believe that he is solemnising a valid marriage;
 - (e) being an approved celebrant or an authorised registrar, solemnises a marriage without both parties to the marriage being present; or
 - (f) being an authorised registrar, solemnises a marriage in a place otherwise than in accordance with section 18(1) of this Act.

Victim/Complainer

Procurator Fiscal.

Locus

Where second, or subsequent marriage occurred. If unknown, suspect's current or last known address.

Scenario example(s)**Example 1**

Enquiry reveals that ‘A’ having failed to divorce his first wife, has married a further two, who were unaware of previous or subsequent marriages. One marriage occurred in 2010 and another in 2015.

Record 1 crime of Bigamy.

Record 1 crime of Marriage (Scotland) Act 1977, Section 24.

Note(s)

If the second spouse is aware of the subsistence of a prior marriage, he or she is guilty of bigamy, as are the officiating clergyman and witnesses if they have like knowledge. Section 24 of the Marriage (Scotland) Act 1977 provides for an offence of bigamy for offences committed after 1 September 2014.

The common law offence of bigamy applies in relation to: (a) any marriages or purported marriages entered into before 1 September 2014, and any prosecution in relation to such marriages or purported marriages where proceedings commence or after that date; or (b) any prosecution for the common law offence of bigamy where proceedings commenced before that date.

If the suspect is a UK national an offence under Section 24 applies regardless of where in the World the second marriage takes place provided that the second marriage is a valid marriage.

47/002 Breach Of The Peace↑

General rule: One crime for each incident

On 6 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 “serious disturbance” to the community and not just threaten irritation or minor alarm

This means that there is a 'public element' to be satisfied. Evidence of actual alarm or that the conduct would be alarming to reasonable person confronted with it is required. This can extend to conduct in private if there is a reasonable likelihood of it being discovered.

Definition

Breach of the peace is a crime at common law and is constituted by one or more persons conducting himself or themselves in a riotous or disorderly manner, where such conduct is severe enough to cause significant alarm to ordinary people and threaten serious disturbance to the community.

Victim/Complainer

Person making complaint or, dependent on circumstances, the Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Police receive a call that two persons are fighting with each other within a busy shopping precinct and on attending, separating both parties and enquiry revealing that both are equally responsible for the disturbance.

Record 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 2

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.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38.

Note(s)

Insulting or abusive language to or concerning another person does not constitute a breach of the peace unless unduly persisted in or accompanied by threats or violent gestures, but, the use of any threatening, abusive or insulting words or behaviour with intent or calculated to provoke a breach of the peace or whereby a breach of the peace may be occasioned is an offence at Common Law.

Guidance from Crown Office advises "where the evidence provides Police with a choice between charging Section 38, Threatening or Abusive conduct and Breach of the Peace then the Threatening or Abusive conduct should be charged in preference to the common law crime".

Breach of the Peace is a crime which can be dealt with by the issue of an Antisocial Behaviour Fixed Penalty Ticket provided that a public element can be demonstrated which increases the gravity of the offence from Section 38, Threatening or Abusive Behaviour, to Breach of the Peace. This does not extend to conduct committed in the presence of Police officers only.

The offences capable of being included in the Antisocial Behaviour FPN process are contained in a defined list within Section 128 of the Antisocial Behaviour etc. (Scotland) Act 2004. This list does not include Section 38 and the ticket process cannot be used for this crime type. The FPN process is still appropriate for minor examples of Breach of the Peace.

Attempts to commit suicide will not normally be prosecuted, however, the exception to the general rule is the situation in which the individual concerned has threatened to cause injury to another during the attempt. In such rare cases, the behaviour may constitute a Breach of the Peace and such cases should be reported to the Procurator Fiscal for consideration.

On 13 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.

**85/002 Charitable Collections
Civic Government (Scotland) Act 1982, Section
119(1)↑**

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 example(s)

Example 1

A man is seen on the High Street rattling a can and says they are collecting money for charity. They have no identification from the charity they claim to be collecting on behalf of and no obvious permit from the local authority.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 119(1).
Record 1 crime of Fraud (if established that he is not a genuine charity collector).

**72/004 Street Traders Licence
Civic Government (Scotland) Act 1982, Section
7(1)↑**

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 example(s)

Example 1

Person found to be attending at various dwellings offering for sale pencil drawings without a licence.

Record 1 Crime of Civic Government (Scotland) Act 1982, Section 7(1).

Example 2

Person is found standing on a street corner offering for sale a quantity of fake Gucci handbags. He has no licence to trade.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 7(1)
Record 1 crime of Trade Marks Act 1994, Section 92(1) (c).

Note(s)

The Pedlars Act 1871 could be considered as an alternative to Civic Government (Scotland) Act 1982, Section 7(1) depending on the circumstances and Local Authority arrangements.

**47/003 Urinating/Defecating
Civic Government (Scotland) Act 1982, Section
47↑**

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 example(s)

Example 1

Members of the public inform police that they have just seen a person urinating in the shop doorway. On police attending at locus they find the person urinating.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 47.

Example 2

A shopkeeper phones the police stating that their shop doorway appears to be used as a toilet by late night revellers as yet again there appears to be urine over the step.

Record as an incident only as no one has been found to have been urinating.

Example 3

Two members of the public inform police that they have just seen a person urinating in 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.

Example 4

While in Police custody a prisoner deliberately urinates on the floor of their cell.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism (due to cost of cleaning). See Culpable and Reckless Conduct pages for circumstances where this presents a biological hazard such as excrement being smeared on walls.

Note(s)

This offence can be dealt with by way of an Anti-Social Behaviour Fixed Penalty Notice (FPN).

**60/001 Drunk And Incapable
Civic Government (Scotland) Act 1982, Section
50(1)↑**

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(s)

Cases of persons being drunk and incapable should under normal circumstances be dealt with as a welfare issue and policed accordingly. Such persons should not be issued with Antisocial Behaviour Fixed Penalty Notices or dealt with by Recorded Police Warnings unless exceptional circumstances exist or the person is being reported by Standard Prosecution Report for other related offences.

**60/003 Drunk In Charge Of A Child
Civic Government (Scotland) Act 1982, Section
50(2)↑**

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(s)

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.

**73/004 Playing Instruments, Radios, Singing, etc.
Civic Government (Scotland) Act 1982, Section
54(1)↑**

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 example(s)

Example 1

Police receive a call of loud music and on attending at locus can hear the noise from the pavement. The occupier is requested to either lower the volume or switch 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.

Record 1 crime of Civic Government (Scotland) Act 1982, Section 54(1).

Note(s)

This offence can be dealt with by way of an Anti Social Behaviour Fixed Penalty Notice (FPN).

**84/002 Grossly Offensive, Indecent, Obscene,
Menacing Telephone Call/Message (Non Sexual)
Communications Act 2003, Section 127(1)↑**

**General rule: One crime for each victim and
continuity of action or per incident
(as appropriate)**

Definition

A person is guilty of an offence if he:

- (a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character, or
- (b) causes any such message or matter to be sent.

Victim/Complainer

Person receiving call.

Locus

Where call made from if known, otherwise where call received.

Scenario example(s)

Example 1

Person creates website inviting others to place comments of a menacing nature regarding an individual, resulting in numerous persons adding comments of a menacing nature.

Record 1 crime of Communications Act 2003, Section 127(1) (Non-Sexual).

Example 2

'A' reports receiving a threatening e-mail and on enquiry it is established this is a spam message which will have been sent to numerous e-mail addresses, with no one in particular being targeted.

This would be recorded as an Incident only.

Example 3

Conditions of bail are set that 'B' should not contact 'A'. 'B' telephones 'A' and threatens them, breaching 'B's bail condition.

Record 1 crime of Communications Act 2003, Section 127(1) (Non-Sexual).
(The Breach of Bail offence is treated as an aggravation to the
Communications Act 2003 offence.)

Example 4

Person 'A' phoned Person 'B' and during the conversation 'A' was subject to menacing abuse by 'B'.

Record 1 crime of Communications Act 2003, Section 127(1) (Non-Sexual)
the locus being where Person 'B' is. (See note regarding locus*.)

Example 5

Person 'A' who resides in 'X' Division sends a threatening e-mail to 'B' who resides in 'Z' Division.

Record 1 crime of Communications Act 2003, Section 127(1) (Non-Sexual) the locus being 'Z' Division unless there is clear evidence to confirm that the communication was sent from 'X' Division.

Example 6

Person 'A' at home address in 'X' Division reports receiving a threatening telephone call from 'B' who is in prison in 'Z' Division. Prison staff confirm 'B' was in prison at the material time.

Record 1 crime of Communications Act 2003, Section 127(1) (Non-Sexual) recorded by Division 'X' (if corroboration that call was made from the prison or an admission by suspect to this effect the locus would be Division 'Z').

Example 7

'A' sends abusive text messages to 'B' and while the comments make some sexual references, the overall content of the messages is deemed to be more abusive than sexual.

Record 1 crime of Communications Act 2003, Section 127(1) (Non-Sexual).

Example 8

'A' reports receiving racist abuse on social media.

Record 1 crime of Communications Act 2003, Section 127(1) (Non-Sexual) with Racial aggravator due to the message having been sent electronically. Similar recording principles would apply if abuse was received via telephone or e-mail.

Note(s)

Where a report is received that a number of telephone calls over a period of time have been received from the same person or persons acting together with the same purpose, only one crime should be recorded even if dates and times are available.

SGJD Code 16/041 is applied where the communication is sexual and 84/002 where it is non-sexual.

The Sexual Offences (Scotland) Act 2009 was introduced on 1 December 2010. As a result of this 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.

84/002 False Or Persistent Telephone Call/Message Communications Act 2003, Section 127(2)↑

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 example(s)

Example 1

'A' reports receiving a number of texts from 'B' and although the content of the texts are not concerning they are starting to cause some problems between 'A' and their current partner. 'A' states they have asked 'B' to cease contact but does not feel they are being taken seriously. 'A' asks if the police would advise 'B' to cease from making contact with them.

As 'A' 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.

Example 2

'A' reports receiving text messages from 'B' seeking to meet up. Police had already advised 'B' at the request of 'A' to cease from making contact, and whilst this stopped for several weeks. 'B' has started sending messages again.

Record 1 crime of Communications Act 2003, Section 127(2). (As 'B' has already been advised by police to cease contact, they have failed to heed this advice, therefore, a crime record should be recorded.)

Example 3

Person reports having received numerous telephone calls over a period of two weeks, and on answering, no one responds at the other end. They have no thoughts as to who this could be.

Person should make enquiry with the telephone company in the first instance as there is nothing to indicate any criminal intent and this may be a line fault.

Example 4

False e-mail messages sent to numerous addresses from the same sender.

Record 1 crime of Communications Act 2003, Section 127(2).

Note(s)

Where false messages have been sent about an individual or group of individuals, the expectation is that this will result in adverse consequences for that individual or group of individuals for a crime to be recorded.

For an offence to be regarded as 'persistent' a series of communications must have an element of frequency and a connecting theme or factor.

Messages must be "for the purpose" of causing annoyance, anxiety or inconvenience rather than it being enough that causing annoyance, anxiety or inconvenience was "a" purpose.

Where a report is received that a number of telephone calls over a period of time have been received from the same person or persons acting together with the same purpose, only one crime should be recorded even if dates and times are available.

For the purposes of Sections 2 and 3 of the Emergency Workers (Scotland) Act 2005, circumstances to which a person is responding are to be taken to be emergency circumstances if the person believes and has reasonable grounds for believing they are or may be emergency circumstances. Emergency circumstances will be taken to exist if the person responding to them has reasonable grounds to believe that there are or will be emergency circumstances. This means that a hoax call will be covered under the Emergency Workers (Scotland) Act 2005 despite the fact that there is no actual emergency.

Such reports should be resolved to the satisfaction of the complainer and police officers should retain discretion in dealing with such matters.

**84/006 Unauthorised access to computer material
Unauthorised access with intent to commit or
facilitate commission of further offences
Computer Misuse Act 1990, Sections 1 and 2[↑]**

General rule: One crime per victim/per offence

Definition

1. Unauthorised access to computer material.

- (1) A person is guilty of an offence if—
 - (a) he causes a computer to perform any function with intent to secure access to any program or data held in any computer, or to enable any such access to be secured ;
 - (b) the access he intends to secure , or to enable to be secured, is unauthorised; and
 - (c) he knows at the time when he causes the computer to perform the function that that is the case.
- (5) The intent a person has to have to commit an offence under this section need not be directed at—
 - (a) any particular program or data;
 - (b) a program or data of any particular kind; or
 - (c) a program or data held in any particular computer.

2. Unauthorised access with intent to commit or facilitate commission of further offences.

- (1) A person is guilty of an offence under this section if he commits an offence under section 1 above (“the unauthorised access offence”) with intent—
 - (a) to commit an offence to which this section applies; or
 - (b) to facilitate the commission of such an offence (whether by himself or by any other person); and the offence he intends to commit or facilitate is referred to below in this section as the further offence.
- (3) It is immaterial for the purposes of this section whether the further offence is to be committed on the same occasion as the unauthorised access offence or on any future occasion.
- (4) A person may be guilty of an offence under this section even though the facts are such that the commission of the further offence is impossible.

Victim/Complainer

Person or Organisation.

Locus

Where crime takes place.

Scenario example(s)

Example 1

‘A’ accesses the personal computer of ‘B’ without authority and gains access to passwords etc. to allow them to access a bank account belonging to ‘B’. ‘A’ transfers £2,000 from the bank account of ‘B’ to their own account.

Record 1 crime of Computer Misuse Act 1990, Section 2.
Record 1 crime of Fraud.

83/007 Copyright, Designs And Patents Act 1988, Section 107↑

General rule: One crime for each seizure

Definition

- (1) A person commits an offence who, without the licence of the copyright owner -
 - (a) makes for sale or hire, or
 - (b) imports into the United Kingdom otherwise than for his private and domestic use, or
 - (c) possesses in the course of a business with a view to committing any act infringing the copyright, or
 - (d) in the course of a business-
 - (i) sells or lets for hire, or
 - (ii) offers or exposes for sale or hire, or
 - (iii) exhibits in public, or
 - (iv) distributes, or
 - (e) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright, an article which is, and which he knows or has reason to believe is, an infringing copy of a copyright work.
- (2) A person commits an offence who-
 - (a) makes an article specifically designed or adapted for making copies of a particular copyright work, or
 - (b) has such an article in his possession, knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business.
- (2) (A) 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.

Scenario example(s)

Example 1

Person is found in possession of a quantity of digital versatile discs and compact discs with music content with a view to selling, distributing or letting for hire such property bearing a sign identical to that of a registered trademark.

Record 1 crime of Copyright Designs Patents Act 1988, Section 107(1) (d).

Record 1 crime of Copyright Designs Patents Act 1988, Section 107(1) (c).

Record 1 crime of Copyright Designs Patents Act 1988, Section 107(1) (a).

Record 1 crime of Trade Marks Act 1994, Section 92(1) (c).

Note(s)

In the majority of cases this offence will be labelled 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.

**47/008 Threatening Or Abusive Behaviour
Criminal Justice And Licensing (Scotland) Act
2010, Section 38[↑]**

General rule: One crime for each incident

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 example(s)

Example 1

Police receive a call from 'A' who reports that they are frightened as to what might happen as their partner 'B' has verbally threatened them and has thrown a computer and other items around the room. 'A' has managed to escape from the verbal abuse to phone the police under the pretence of going to the toilet. On arrival the police find 'A' shaking and visibly upset with items of furniture scattered across the floor.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 – Threatening or abusive behaviour.

Example 2

The complainer reports that on a regular basis when leaving for work in the morning his neighbour threatens him and his property with violence. He feels that this has now escalated with the threat of his property being set on fire, and his bin having been left against his door on his return from work. On each occasion there was no witness to the actions of the neighbour.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 – Threatening or abusive behaviour.

Example 3

During a domestic incident 'A' is subjected to threatening and abusive behaviour and is assaulted by 'B'. There is a sufficiency of evidence to report 'B' for the threatening and abusive behaviour but insufficient to report for the Assault.

Record 1 crime of Assault (Common) – undetected.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38, Threatening or abusive behaviour – detected.

Example 4

During a domestic incident 'A' is subjected to threatening and abusive behaviour before being assaulted by 'B'. There is insufficient evidence to report 'B' for either crime.

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

Example 5

Person causes disturbance within a flat placing occupants in a state of fear and alarm. During the disturbance the suspect deliberately breaks items of furniture.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 (had the disturbance itself amounted to the breaking of the items of furniture a Vandalism only would be recorded).

Example 6

On attending a call person 'A' subjects the attending officers to threatening and abusive behaviour resulting in 'A' being arrested for an offence under Section 38. Following the arrest 'A' assaults both Police officers.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38.

Record 2 crimes of Police and Fire reform (Scotland) Act 2021, Section 90(1) (a), Police assault (since 'A' has already been arrested for the Section 38 this crime is complete and should not be subsumed).

Example 7

'A' attends at the home address of 'B', kicks the door, shouting and swearing demanding they answer the door. 'B' advises they are phoning the police at which point 'A' kicks the door open to find 'B' standing with a mobile phone in their hand. 'A' grabs hold of 'B' pulling the phone from their hand and leaves the locus with the phone.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 (conduct was complete before 'robbery' and nothing to indicate intent was to commit the 'robbery').

Record 1 crime of Robbery.

Example 8

'A' causes a disturbance within a flat placing the occupants in a state of fear and alarm. A neighbour calls at the flat due to the noise and is verbally abused and assaulted.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 (conduct towards occupants of flat).

Record 1 crime of Assault (in respect of neighbour, with the verbal abuse against neighbour subsumed within the assault as it has occurred immediately before).

Example 9

'A' attends at the home address of 'B' and kicks the door in, enters and asks where 'C' is, 'B' advises that 'C' is elsewhere and 'A' leaves.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism. (As the conduct of damaging the door amounts to the threatening and abusive behaviour, only the vandalism requires to be recorded. Had the conduct towards 'B' been threatening (e.g. demanding where 'C' was or they'd assault them) then a Section 38 would also be required.)

Example 10

'A' is shouting abuse and strikes out at 'B' in the street.

(a) 'C' and 'D' standing nearby see and hear the conduct and phone the police.

Record 1 crime of Assault (Section 38 conduct forms part of the assault with 'C' and 'D' seeing and hearing the conduct being witnesses).

(b) 'C' and 'D' standing nearby see and hear the conduct and approach 'A' and advise them to desist to which 'A' turns and shouts abuse at both 'C' and 'D' threatening them.

Record 1 crime of Assault (for assault on 'B').

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 (for abuse directed towards 'C' and 'D').

Example 11

'A' is shouting abuse at 'B' in the street when 'C' and 'D' hear the conduct and advises 'A' to desist. 'A' then shouts abuse threatening 'C' and 'D' before walking off.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 (same incident).

Example 12

'A' is threatened by 'B' in a public place while 'B' is in possession of a knife.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 49, Possession of a Knife (used in crime).

Example 13

'A' witnesses friends 'B' and 'C' being assaulted by a group of persons. No criminal conduct is directed towards 'A' by the suspects but 'A' is placed in a state of fear and alarm by what they have witnessed.

Record 2 crimes of Assault (on B and C) – although 'A' is alarmed at what they have witnessed no crime is required to be recorded for the affect this had had on 'A' due to no criminal conduct being directed towards 'A'.

Note(s)

This offence was introduced on 6 October 2010 due to the difficulty for the Crown in prosecuting disorderly conduct which occurs in a private place.

Whilst the essential element of the offence are close to those of the crime of breach of the peace, except that the mens rea of the accused is intention or recklessness regarding the effect of the behaviour; the behaviour itself is restricted to that which is threatening or abusive; and there is no requirement for a public element.

In *Paterson v Harvie* 2014 S.L.T. 857 a five judge bench of the High Court decided that the essence of the offence under section 38 is that the accused's conduct is to be judged by an objective test in which the actual effect of the accused's conduct is irrelevant. If elements (a) and (c) under section 38(1) are met then the crime is complete if the behaviour would be likely to cause fear or alarm to the hypothetical reasonable person, i.e. subsection (b). There does not need to be actual fear or alarm caused.

Guidance from Crown Office advises "where the evidence provides Police with a choice between charging Section 38, Threatening or Abusive conduct and Breach of the Peace then the Threatening or Abusive conduct should be charged in preference to the common law crime".

In circumstances where the threatening or abusive conduct is assessed as having occurred immediately before, during or immediately after a crime of Assault the threatening abusive conduct may be subsumed into the recorded Assault.

Under no circumstances should Section 38 be recorded when a victim is subjected to sexual comments or sexual touching which must be recorded under the appropriate section(s) of Sexual Offences (Scotland) Act 2009. The term "sexual" is defined under Section 60 which states that conduct is sexual if a reasonable person would, in all the circumstances of the case, consider it to be sexual.

Where a person is present/observes/witnesses an incident where the conduct of a suspect towards a victim is deemed to be violent/threatening and/or abusive they will be considered as a witness to the conduct and in these circumstances a Section 38 is not required to be recorded for the impact that the conduct may have on them, however, an appropriate crime will require to be recorded for the conduct witnessed against the victim. Where any person finds themselves to be the subject of abuse then the appropriate crime should be recorded e.g., Assault, Section 38. See Domestic Abuse (Scotland) Act 2018 pages for guidance in respect of circumstances where a child has been present during a Domestic Abuse incident.

In circumstances where a person damages property and also causes a disturbance where it can be shown that persons other than the owner of the damaged property have been placed in a state of fear or alarm both Section 38

and Vandalism should be recorded. If the alarm caused only amounts to the person causing damage, only Vandalism should be recorded.

Reference to examples in this Section which amount to domestic incidents relate to "one-off" incidents which do not form part of a course of conduct of domestic abuse and as such cannot be considered under Domestic Abuse (Scotland) Act 2018 introduced from 1 April 2019. In circumstances where there is a course of conduct of domestic abuse all of which occurs after 1 April 2019 reference should be made to recording guidance listed under the Domestic Abuse (Scotland) Act 2018 pages. Any conduct occurring prior to 1 April 2019 will be recorded under the legislation in place at the material time.

In circumstances where offensive singing occurs at football matches there is an expectation that unless there is a specific complaint from a member of the public which requires to be investigated, or a decision is taken to take action against the offender(s) at the time of the incident there is no requirement for any crime to be recorded.

The offences capable of being included in the Antisocial Behaviour FPN process are contained in a defined list within Section 128 of the Antisocial Behaviour etc. (Scotland) Act 2004. This list does not include Section 38 and the ticket process cannot be used for this crime type. The FPN process is still appropriate for minor examples of Breach of the Peace provided that a public element can be demonstrated which increases the gravity of the offence from Section 38, Threatening or Abusive Behaviour, to Breach of the Peace.

**47/009 Stalking
Criminal Justice And Licensing (Scotland) Act
2010, Section 39[↑]**

**General rule: One crime for each course of
conduct**

Definition

- (1) A person (“A”) commits an offence, to be known as the offence of stalking, where A stalks another person (“B”).
- (2) For the purposes of subsection (1), A stalks B where—
 - (a) A engages in a course of conduct,
 - (b) subsection (3) or (4) applies, and
 - (c) A's course of conduct causes B to suffer fear or alarm.
- (3) This subsection applies where A engages in the course of conduct with the intention of causing B to suffer fear or alarm.
- (4) This subsection applies where A knows, or ought in all the circumstances to have known, that engaging in the course of conduct would be likely to cause B to suffer fear or alarm.
- (5) It is a defence for a person charged with an offence under this section to show that the course of conduct—
 - (a) was authorised by virtue of any enactment or rule of law,
 - (b) was engaged in for the purpose of preventing or detecting crime, or
 - (c) was, in the particular circumstances, reasonable.
- (6) In this section “conduct” means—
 - (a) following B or any other person,
 - (b) contacting, or attempting to contact, B or any other person by any means,
 - (c) publishing any statement or other material—
 - (i) relating or purporting to relate to B or to any other person,
 - (ii) purporting to originate from B or from any other person,
 - (d) monitoring the use by B or by any other person of the internet, email or any other form of electronic communication,
 - (e) entering any premises,
 - (f) loitering in any place (whether public or private),
 - (g) interfering with any property in the possession of B or of any other person,
 - (h) giving anything to B or to any other person or leaving anything where it may be found by, given to or brought to the attention of B or any other person,
 - (i) watching or spying on B or any other person,
 - (j) acting in any other way that a reasonable person would expect would cause B to suffer fear or alarm, and “course of conduct” involves conduct on at least two occasions.

Victim/Complainer

Person making complaint.

Locus

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

Scenario example(s)

Example 1

A person reports being followed home each night from work by the same individual, over a one week period.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 39 Stalking.

Example 2

A person is followed around a shopping centre in Division 'A' on day 1 and on day 2 sees the same suspect standing near to their house in Division 'B' watching it for over an hour.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 39 Stalking.

Example 3

Person reports receiving unwanted telephone calls from the suspect on landline and mobile, the suspect hanging about outside their place of work, and being followed by the suspect at various locations.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 39 Stalking (recorded at victim's home address).

Example 4

'A' reports that 'B' has:- been waiting outside their place of employment and attempting to engage in conversation even though 'A' has requested 'B' to cease from this course of conduct; sent flowers to 'A' at their place of work; sent letters seeking to start a relationship. Circumstances now being report due to 'B' touching 'A's' breast at which point 'A' pushed 'B's' hand away and ran off.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 39 Stalking.

Record 1 crime of Sexual Offences (Scotland) Act 2009, Section 3 Sexual Assault.

(Where incidents on their own may not result in behaviour amounting to Section 38, or where the conduct is reported as a course of conduct which together may amount to a Section 39, there is no requirement to record each incident as a Section 38. Where a separate crime has occurred e.g. Assault, Sexual Crime or damage to property, then this should be recorded, even though considered as part of the course of conduct of the Section 39 Stalking.)

Example 5

Victim reports being followed by the suspect, receiving unwanted text messages and the suspect loitering near their place of work on several occasions. A crime under Section 39 Stalking is recorded and the suspect charged and reported to the Procurator Fiscal (PF). Prior to their court appearance the suspect subjects the victim to further abuse by telephone.

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

Example 6

Victim reports being followed by the suspect, receiving unwanted text messages and the suspect loitering near their place of work on several occasions. A crime under Criminal Justice and Licensing (Scotland) Act 2010, Section 39 Stalking is recorded, the suspect is reported to the PF and dealt with by a court. Two weeks after sentencing by the court the suspect follows the victim to their home address causing them fear and alarm.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 Threatening or Abusive Behaviour (since the earlier course of conduct was dealt with by a court the report from the victim amounts to a single crime and would not amount to a new course of conduct unless it involved conduct on at least two occasions).

Example 7

Victim reports being followed by the suspect causing fear and alarm and a crime under Criminal Justice and Licensing (Scotland) Act 2010, Section 38, Threatening or Abusive Behaviour is recorded. While this crime is being investigated the victim receives a number of abusive telephone calls from the suspect and a separate Communications Act 2003, Section 127 is recorded.

This additional report combined with the earlier Section 38 elevates the behaviour to a course of conduct. The Section 38 should be reclassified to a Criminal Justice and Licensing (Scotland) Act 2010, Section 39 Stalking and the recorded Section 127 updated to 'No Crime' with rationale that this is included within a course of conduct cross referenced to the earlier crime report.

Example 8

Victim reports receiving several abusive text messages and telephone calls from the same suspect.

Record 1 Communications Act 2003, Section 127 (non-sexual). (While the number of calls received amounts to a course of conduct this is adequately covered by Communications Act 2003 and under normal circumstances should not be considered as a crime of Stalking unless other criminal elements contribute towards the course of conduct. However it should be noted that the crime of Stalking provides for behaviour which may cause a particular individual fear or alarm which might not cause the average member of the public fear or alarm. Should a course of conduct which causes fear or alarm include communications of a benign nature which would not meet the provisions of Communications Act 2003, Section 127 a crime of Stalking should be considered.)

Note(s)

This offence was introduced on 13 December 2010.

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

**60/007 Drunk In, Or While Drunk Attempts To Enter Designated Sports Ground
Criminal Law (Consolidation) (Scotland) Act 1995, Section 20(7)↑**

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 example(s)

Example 1

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.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 20(7) for being drunk.

Record 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).)

**62/013 Sports Ground Offences (Possess Alcohol Etc.)
Criminal Law (Consolidation) (Scotland) Act
1995, Section 20 (1-4)↑**

General rule: One crime for each accused

Definition

Section 20(1)

Any person who,

- (a) is in possession of a controlled container in; or
- (b) while in possession of a controlled container, attempts to enter

Section 20(2)

Any person who

- (a) is in possession of alcohol in; or
- (b) while in possession of alcohol, attempts to enter

Section 20(3)

Any person who has entered the relevant area of a designated sports ground and is in possession of a controlled article or substance.

Section 20(4)

Any person who, while in possession of a controlled article or substance, attempts to enter, the relevant area of a designated sports ground at any time during the period of a designated sporting event.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

'A' is found in possession of a flare within a sports ground.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 20(3) - Possess a controlled article or substance within a sports ground.

Example 2

A flare is thrown from the crowd at a football stadium:

(a) No-one is injured and the person responsible is traced but has no flares in his possession.

Record 1 crime of Culpable and Reckless Conduct.

(b) No-one is injured, the person responsible is traced and is found in possession of an unlit flare.

Record 1 crime of Culpable and Reckless Conduct.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 20(3) - Possess a controlled article or substance within a sports ground.

(c) One person is struck with the flare and sustains a minor injury. The person responsible is traced but has no flares in his possession.

Record 1 crime of Culpable and Reckless Conduct.

(d) No-one is injured and the person responsible is not traced.

Record 1 crime of Culpable and Reckless Conduct (undetected).

Example 3

Person notifies police that there is a drunk man within the football ground. Officers identify and apprehend the offender and identify that he is also in possession of a bottle of whisky.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 20(7) for being drunk.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 20(2) (a) for possessing alcohol.

**47/004 Racially Aggravated Harassment
Criminal Law (Consolidation) (Scotland) Act
1995, Section 50A(1a)↑**

**General rule: One crime for each course of
conduct**

Definition

- (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 the conduct is directed towards.

Locus

Where crime takes place.

Scenario example(s)

Example 1

'A' reports that for several months items have been thrown into their garden and recently person(s) have been knocking at the door and on answering no-one is present. No damage has occurred. 'A' perceives this is due to their ethnicity and feels threatened that this is escalating, however, there is no corroboration that this is due to 'A's' ethnicity.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38. (It is unknown whether this is due to 'A's' ethnicity and whether it is the same person(s) who are responsible and if so whether they were acting together. A hate/modifier/aggravator would be applied due to 'A's' perception.)

Example 2

'A' reports having been followed by 'B' on a number of occasions (not previously reported) and when 'A' has confronted 'B', 'B' has shouted at them if they don't like being followed to go back to their own country. There is no corroboration.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 (with Racial aggravator).

Note(s)

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

There requires to be corroboration of racial motivation to record this offence.

This crime will be recorded in cases whereby 'regular' or 'continuous' harassment takes place.

This section creates an offence for a person to pursue a racially motivated course of conduct. This offence is intended to address cases of racially motivated

harassment i.e. two or more related incidents and should be 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.

**47/005 Racially Aggravated Conduct
Criminal Law (Consolidation) (Scotland) Act
1995, Section 50A(1B)↑**

**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 the conduct is directed towards.

Locus

Where crime takes place.

Scenario example(s)

Example 1

A person reports that children have been knocking at their door and running off which is causing annoyance and is perceived by them to be due to their ethnicity.

This is a hate incident due to the circumstances not amounting to a crime but being perceived by the complainer as being racially motivated.

Example 2

A person is reported to have entered a store and racially abused four shop assistants working there at the same time.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 50(A) (1b) Racially Aggravated Conduct.

Example 3

Person reports being subjected to racial verbal abuse by youths, no other witnesses present.

Record 1 crime of Criminal Justice Licensing (Scotland) Act 2010. Section 38 – Threatening or abusive behaviour (with a Racial aggravator). Note no crime under Criminal Law (Consolidation) (Scotland) Act 1995, Section 50(1) (b) should be recorded as there is no corroboration.

Example 4

Complainer of ethnic origin reports a brick having been thrown through his living room window and perceives this is due to his ethnicity.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism (with Racial aggravator). Note no requirement to also record a crime under Criminal Law (Consolidation) (Scotland) Act 1995, Section 50(1) (b).

Example 5

A person from an ethnic background is assaulted. Nothing is said by the assailant but the assault is perceived to be racist by the victim.

Record 1 crime of Assault (with a Racial aggravator). Note no requirement to also record a crime under Criminal Law (Consolidation) (Scotland) Act 1995, Section 50(1) (b)

Example 6

A person from an ethnic background is assaulted during which racial comments are made by the assailant which are corroborated by a witness.

Record 1 crime of Assault (with a Racial aggravator). Note no requirement to also record a crime under Criminal Law (Consolidation) (Scotland) Act 1995, Section 50(1) (b).

Example 7

A shop security officer stops a youth leaving the shop after he was seen to put property into his pocket and leave the shop without paying. The security officer is subjected to racial abuse by the youth, which is also heard by other members of staff.

Record 1 crime of Theft by Shoplifting.

Record 1 crime of Criminal Justice Licensing (Scotland) Act 1995, Section 50A(1) (b) Racial Aggravated Conduct. There is corroboration of the racial abuse. If no corroboration of the racial abuse a crime of Criminal Justice Licensing (Scotland) Act 2010, Section 38 should be recorded (with a Racial aggravator).

Example 8

Complainer reports having been shouted and swore at, with racist comments made.

(a) No witnesses were present.

Record 1 crime of Criminal Justice Licensing (Scotland) Act 2010, Section 38 – Threatening or abusive behaviour (with a Racist aggravator). There is no corroboration of the remarks made at the time of reporting.

(b) Enquiry is carried out and a witness is traced who advises they heard racist comments being made.

The crime above should be changed to 1 of Criminal Law (Consolidation) (Scotland) Act 1995, Section 50A(1) (b) Racial Aggravated Conduct. (Corroboration of the crime and racist element has been obtained.)

Example 9

Person from ethnic background has racist comments etched into the bodywork of their car.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism (with Racial aggravator). There is no requirement to also record a Racial Aggravated Conduct.

Example 10

Person reports that racial words have been spray painted across a wall in the local park.

Record as a Criminal Law (Consolidation) (Scotland) Act 1995, Section 52 Vandalism (with Racial aggravator).

Example 11

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.

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 50A(1) (b) Racially Aggravated Conduct. The suspect's behaviour has been a continuous act throughout the bus journey which is viewed as an encompassing event. Although there are two victims/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.

Example 12

A football supporter shouts racial abuse at a player on the field of play, the player is unaware of this, however, spectators nearby are alarmed by the remarks.

Record 1 crime of Breach of the Peace (with Racial aggravator). The alarm or distress has to be that of the intended victim and as the intended victim did not hear the comments Criminal Law (Consolidation) (Scotland) Act 1995, Section 50A(1) (b) is not appropriate.

Example 13

As part of the same incident 'A' subjects 'C' to non-racist verbal abuse and 'B' subjects 'C' to racist abuse which is corroborated.

Record 1 crime of Criminal Justice Licensing (Scotland) Act 2010, Section 38 (for accused 'A').

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 50(A) (1B) Racially Aggravated Conduct (for accused 'B').

Example 14

As part of the same incident 'C' subjects 'A' to non-racist verbal abuse and subjects 'B' to racial abuse which is corroborated.

Record 1 crime of Criminal Justice Licensing (Scotland) Act 2010, Section 38 (for victim 'A').

Record 1 crime of Criminal Law (Consolidation) (Scotland) Act 1995, Section 50(A) (1B) Racially Aggravated Conduct (for victim 'B').

Note(s)

This offence should be used for 'one-off' incidents where there is corroborative evidence in respect of racial harassment but where there is no evidence of ongoing harassment.

The actions must be shown to have caused alarm or distress to the complainer(s) (i.e. the person(s) who suffer the racially aggravated action or course of conduct).

Actions can be racially aggravated if directed immediately before, during or immediately after the conduct.

Also see Public Order Act 1986, Sections 18 and 19 with regards to use of words or behaviour or display of written material or publication or distribution of written material which is threatening, abusive or insulting with intent to stir up racial hatred.

This section creates an offence for a person to act in a manner which is racially aggravated and which causes or is intended to cause a person alarm or distress. This offence may be likened to the offence of Section 38 of the Criminal Justice Licensing (Scotland) Act but with racial motivation.

If there is only one source of evidence of the racial element then the case to the Procurator Fiscal may include notification that a Section 96 aggravation of the Crime and Disorder Act 1998 may be appropriate and places an onus on the court to take account of any racist element to a crime or offence when determining an appropriate sentence.

Anonymous reports of crime must be supported by corroborative evidence prior to the creation of a crime record. Where a victim's details are withheld from the police, the circumstances will be recorded as an incident only.

Perception

The use of apparently 'hate' language is not sufficient to prove a hate crime. There must also be evidence that an offender's behaviour has been motivated by prejudice and is not simply an inappropriate use of language.

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

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

48/002 False Calls To Emergency Services - Bomb Hoaxes
Criminal Law Act 1977, Section 51↑

General rule: One crime for each continuity of action or per incident (as appropriate)

Definition

- (1) A person who
 - (a) places any article in any place whatever; or
 - (b) dispatches any article by post, rail or any other means whatever of sending things from one place to another, with the intention (in either case) of inducing in some other person a belief that it is likely to explode or ignite and thereby cause personal injury or damage to property is guilty of an offence, and
- (2) A person who communicates any information which he knows or believes to be false to another person with the intention of inducing in him or any other person a false belief that a bomb or other thing liable to explode or ignite is present in any place or location whatever is guilty of an offence.

Victim/Complainer

Organisation being threatened.

Locus

Where call was made from if known, otherwise where call was received.

Scenario example(s)

Example 1

Telephoning 999 stating that a bomb had been left in a shopping trolley next to exit of Department Store in the High Street and would be activated by lunchtime.

Record 1 crime of Criminal Law Act 1977, Section 51 - locus is where 999 call was received.

Note(s)

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 48/001.

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.

**77/000 Import Prohibited Goods
Customs and Excise Management Act 1979,
Section 50[↑]**

**General rule: One crime per consignment of
goods**

Definition

Section 50

- (1) Subsection (2) below applies to goods of the following descriptions, that is to say—
- (a) goods chargeable with a duty which has not been paid; and
 - (b) goods the importation, landing or unloading of which is for the time being prohibited or restricted by or under any enactment.
- (2) If any person with intent to defraud Her Majesty of any such duty or to evade any such prohibition or restriction as is mentioned in subsection (1) above—
- (a) unships or lands in any port or unloads from any aircraft in the United Kingdom or from any vehicle in Northern Ireland any goods to which this subsection applies, or assists or is otherwise concerned in such unshipping, landing or unloading; or
 - (b) removes from their place of importation or from any approved wharf, examination station, transit shed or customs and excise station any goods to which this subsection applies or assists or is otherwise concerned in such removal,

he shall be guilty of an offence under this subsection and may be detained.

- (3) If any person imports or is concerned in importing any goods contrary to any prohibition or restriction for the time being in force under or by virtue of any enactment with respect to those goods, whether or not the goods are unloaded, and does so with intent to evade the prohibition or restriction, he shall be guilty of an offence under this subsection and may be detained.
- (6) If any person—
- (a) imports or causes to be imported any goods concealed in a container holding goods of a different description; or
 - (b) directly or indirectly imports or causes to be imported or entered any goods found, whether before or after delivery, not to correspond with the entry made thereof,

he shall be liable on summary conviction to a penalty of three times the value of the goods or level 3 on the standard scale, whichever is the greater.

- (7) In any case where a person would, apart from this subsection, be guilty of—
- (a) an offence under this section in connection with the importation of goods contrary to a prohibition or restriction; and
 - (b) a corresponding offence under the enactment or other instrument imposing the prohibition or restriction being an offence for which a fine or other penalty is expressly provided by that enactment or other instrument,

he shall not be guilty of the offences mentioned in paragraph (a) of this subsection.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place or intended delivery destination.

Scenario example(s)

Example 1

Staff at airline goods depot in "Y" Division contact Police regarding a suspicious package intended for delivery at an address in "X" Division. On further inspection the package is found to contain stun guns, martial arts weapons and hunting knives.

Record 1 crime of Customs and Excise Management Act 1979, Section 50 recorded by "X" Division.

51/012 Keeping Dogs Under Proper Control Dangerous Dogs Act 1991, Section 3[↑]

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 or assistance dog.

For the purposes of this Act a dog shall be regarded as dangerously out of control on any occasion on which there are grounds for reasonable apprehension that it will injure any person or assistance dog, whether or not it actually does so, but references to a dog injuring a person or assistance dog or there being grounds for reasonable apprehension that it will do so do not include references to any case in which the dog is being used for a lawful purpose by a constable or a person in the service of the Crown.

Victim/Complainer

Person making complaint or injured.

Locus

Where crime takes place.

Scenario example(s)

Example 1

A dog which is tied up on a short lead outside a shop bites a person walking past the shop.

Since a person has been bitten this should be investigated by Police in the first instance to determine whether there was a reasonable apprehension that the dog would injure someone. This will include obtaining evidence from other parties who may be able to speak to the dog previously being aggressive, barking, jumping up or biting. If no such apprehension exists no crime should be recorded but the enquiry officer should report the circumstances to the Local Authority for their consideration under Control of Dogs (Scotland) Act 2010.

Note(s)

Before recording an offence under Dangerous Dogs Act 1991, Section 3 officers should consider the following:

Do we have a sufficiency of evidence to establish both the following factors:

- (i) That the accused is the owner of the dog;

The owner of the dog should always be properly cautioned detained and questioned to provide clear evidence of their ownership of the dog, how the incident arose, what steps they had taken to prevent attacks and whether the dog had ever bitten or been aggressive towards anyone in the past.

- (ii) That there was a reasonable apprehension that the dog would injure someone.

Case law requires that we should be able to either (a) lead evidence from other parties (such as neighbours of the accused or people who have previously reported the dog for similar offences) who can speak to the dog previously being aggressive, barking, jumping up or biting; or (b) by showing that the current incident went on for a sufficient amount of time that parties witnessing it may have formed the impression that the dog was going to injure someone, yet the accused did not take action. Therefore, officers should always speak to the neighbours about the demeanour of the dog and try to establish whether the dog has ever been aggressive in the past and police systems should be checked for this information.

The Control of Dogs (Scotland) Act 2010 gives an authorised officer (officer appointed by a Local Authority) power to serve a Dog Control Notice requiring the person to bring and keep the dog under control. The Police will have a supporting role to play in upholding the legislation and will require to co-operate and work in partnership with Local Authorities. When Police receive complaints from the public about dogs which are thought to be out of control a judgement should be made as to whether they need to investigate the matter themselves, divert the complainant to the appropriate Local Authority, or alert the Local Authorities themselves.

Police should investigate in the first instance if a person is bitten by a dog.

In circumstances where a Local Authority agree to deal with a dog owner under Control of Dogs (Scotland) Act 2010 there is no requirement for Police to record any crime.

The dog control notice regime is essentially a Local Authority implemented administrative scheme which covers a wide range of individuals and is aimed at improving and educating irresponsible owners to responsible control their dogs. The issue of a dog control notice itself does not establish a criminal offence. Failing to comply with a dog control notice will constitute an offence under Section 5 of the legislation.

For the purposes of the Control of Dogs (Scotland) Act 2010 a dog is out of control if:

- (a) it is not being kept under control effectively and consistently (by whatever means) by the proper person,
- (b) its behaviour gives rise to alarm or apprehensiveness on the part of any individual, and
- (c) the individual's alarm or apprehensiveness is, in all circumstances, reasonable.

The apprehensiveness above may be as to the individual's own safety, the safety of some other person, or the safety of an animal other than the dog in question.

84/005 Data Protection Act 2018, Section 170↑

General rule: One crime for each system accessed

Definition

- (1) It is an offence for a person knowingly or recklessly –
 - (a) to obtain or disclose personal data without the consent of the controller,
 - (b) to procure the disclosure of personal data to another person without the consent of the controller, or
 - (c) after obtaining personal data, to retain it without the consent of the person who was the controller in relation to the personal data when it was obtained.
- (4) It is an offence for a person to sell personal data if the person obtained the data in circumstances in which an offence under subsection (1) was committed.
- (5) It is an offence for a person to offer to sell personal data if the person—
 - (a) has obtained the data in circumstances in which an offence under subsection (1) was committed, or
 - (b) subsequently obtains the data in such circumstances.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Employee accesses personal data from a company database on six occasions in the knowledge that he did not have permission to access this information.

Record 1 crime of Data Protection Act 2018, Section 170.

Example 2

Employee accesses personal data of others from three separate company databases in the knowledge that he did not have permission to access this information.

Record 3 crimes of Data Protection Act 2018, Section 170.

51/008 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.

Note(s)

In this Act:

“worrying livestock” means:

chasing livestock in such a way as may reasonably be expected to cause injury or suffering to the livestock or, in the case of females, abortion, or loss of or diminution in their produce, or

being at large (that is to say not on a lead or otherwise under close control) in a field or enclosure in which there are sheep.

“agricultural land” means land used as arable, meadow or grazing land (including woodland that is used for grazing), or for the purpose of poultry farming, pig farming, the raising of game birds, market gardens, allotments, nursery grounds or orchards;

“livestock” means cattle, sheep, goats, swine, horses, camelids, ostriches, farmed deer, enclosed game birds or poultry, and for the purposes of this definition “cattle” means bulls, cows, oxen, buffalo, heifers or calves, “horses” includes donkeys and mules, “farmed deer” means deer of any species which are on agricultural land enclosed by a deer-proof barrier and kept by way of business for the primary purpose of meat production, “enclosed game birds” means any pheasant, partridge, grouse (or moor game), black (or heath) game or ptarmigan that are being kept enclosed prior to their release for sporting purposes, and “poultry” means domestic fowls, turkeys, geese or ducks;.

85/008 Electricity Act 1989[↑]

General rule: One crime for each incident

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 example(s)

Example 1

Person deliberately alters electricity meter in order to provide false reading to energy supplier.

Record 1 crime of Electricity Act 1989, Section 31 (Per Schedule 7(11)).

Example 2

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 £1,100 of electricity has been used free of charge.

Record 1 crime of Electricity Act 1989, Section 31 (Per Schedule 7(11)) (note theft of electricity is subsumed within the offence of bypassing the meter).

Record 1 crime of Culpable and Reckless Conduct.

Note(s)

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.

55/000 Firearms and Shotgun Certificates Firearms Act 1968, Sections 1 and 2↑

General rule: See below

Definitions

Section 1

- (1) Subject to any exemption under this Act, it is an offence for a person—
 - (a) to have in his possession, or to purchase or acquire, a firearm to which this section applies without holding a firearm certificate in force at the time, or otherwise than as authorised by such a certificate;
 - (b) to have in his possession, or to purchase or acquire, any ammunition to which this section applies without holding a firearm certificate in force at the time, or otherwise than as authorised by such a certificate, or in quantities in excess of those so authorised.
- (2) It is an offence for a person to fail to comply with a condition subject to which a firearm certificate is held by him.

Section 2

- (1) Subject to any exemption under this Act, it is an offence for a person to have in his possession, or to purchase or acquire, a shot gun without holding a certificate under this Act authorising him to possess shot guns.
- (2) It is an offence for a person to fail to comply with a condition subject to which a shot gun certificate is held by him.

General rules

Section 1(1) (a) - Possession of firearms without certificate being in force.

Record 1 crime per firearm not on certificate.

Section 1(1) (b) - Possession of ammunition without certificate being in force.

Record 1 crime per type of ammunition not on certificate.

Section 1(2) - Fail to comply with conditions of firearms certificate.

Record 1 crime for each condition not complied with.

Section 2(1) - Possession of shotgun without certificate being in force.

Record 1 crime per shotgun not on certificate.

Section 2(2) - Fail to comply with conditions of shotgun certificate.

Record 1 crime for each condition not complied with.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Note(s)

In circumstances where a weapon is found in the possession of a person where it is suspected that the weapon is a firearm, shotgun or air weapon but further enquiry or forensic analysis is required to confirm this, a single undetected crime should be recorded in accordance with the weapon type suspected which can be reclassified to 'No Crime' or proceeded to Standard Prosecution Report as appropriate at the conclusion of the enquiry.

Finding weapons in a public place where ownership/possession cannot be attributed to any person requires no crime to be recorded.

**55/001 Air Weapons Licencing Offences
Air Weapons And Licensing (Scotland) Act
2015, Sections 2(1) and 6(4)↑**

General rule: See below

Definition

Section 2

- (1) It is an offence for a person to use, possess, purchase or acquire an air weapon without holding an air weapon certificate.

Section 6

- (1) Every air weapon certificate is subject to any prescribed mandatory conditions.
- (2) The chief constable may, when granting or renewing an air weapon certificate, attach conditions to the certificate (and, in the case of a renewal, may attach different conditions from those attached to the certificate prior to its renewal).
- (3) The chief constable may not attach to an air weapon certificate a condition which is inconsistent with—
 - (a) a prescribed mandatory condition which applies to air weapon certificates, or
 - (b) a condition which must be attached to the certificate under this Part.
- (4) It is an offence for a holder of an air weapon certificate to fail to comply with a condition attached to the holder's certificate.

General Rules

Section 2(1) - Use, possess, purchase or acquire air weapon without holding air weapon certificate.

Record 2 crime to cover all air weapons not on certificate.

Section 6(4) - Fail to comply with condition attached to the holder's certificate.

Record 1 crime for each condition not complied with.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Note(s)

In circumstances where a weapon is found in the possession of a person where it is suspected that the weapon is a firearm, shotgun or air weapon but further enquiry or forensic analysis is required to confirm this, a single undetected crime should be recorded in accordance with the weapon type suspected which can be reclassified to 'No Crime' or proceeded to Standard Prosecution Report as appropriate at the conclusion of the enquiry.

Finding weapons in a public place where ownership/possession cannot be attributed to any person requires no crime to be recorded.

**55/000 Possession Of Firearm By Persons Previously
Convicted Of Crime
Firearms Act 1968, Section 21 ↑**

General rule: One crime for each accused

Definition

A person who has been sentenced to custody for life or to preventive detention, or to imprisonment or to corrective training for a term of three years or more or to youth custody for such a term, or who has been sentenced to be detained for such a term in a young offenders institution in Scotland, shall not at any time have a firearm or ammunition in his possession.

A person who has been sentenced to imprisonment for a term of three months or more but less than three years or to youth custody for such a term, or who has been sentenced to be detained for such a term in a detention centre or in a young offenders institution in Scotland, shall not at any time before the expiration of the period of five years from the date of his release have a firearm or ammunition in his possession.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Husband and wife found in possession of four firearms, both having previously been released from prison within the last year.

Record 2 crimes of Firearms Act 1968, Section 21.

54/000 Fireworks Regulations 2004, Regulation 4(1) and Fireworks (Scotland) Regulations 2004, Regulation 3↑

General rule: One crime for each incident

Definition

Regulation 4(1)

No person under the age of 18 years shall possess an adult firework in a public place.

Regulation 3

No person shall use an adult firework outside permitted hours (permitted hours means the period beginning 1800hrs and ending at 2300hrs, with the exception of 5 November when they can be used from 1800hrs until midnight; New Year's Eve, the night of Chinese New Year and the night of Diwali when they can be used from 1800hrs until 0100 hrs).

Regulation 3A - Prohibition of Supply of Certain Fireworks Outside

Permitted Hours (permitted hours means the period beginning 0700hrs and ending at 1800hrs).

Regulation 3B - Prohibition of Supply of Certain Fireworks in Specified Circumstances

Supply in excess of the permitted quantity (permitted quantity means fireworks with a total mass of explosive substance of 5 kilograms).

There are exemptions to Regulation 3, which includes groups who have a local authority issued public entertainment licence or public liability insurance documents, and professional fireworks operators.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

A report of fireworks being set off after 11pm 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).

Example 2

'A' is seen to throw a lit firework in the roadway, there is no vehicle or person nearby.

Record 1 crime of Explosives Act 1875, Section 80 (where vehicles or persons are in the vicinity, a Culpable and Reckless may be more appropriate).

Example 3

'A' sets off fireworks on the public beach without local agreement from the council.

Record 1 crime of Explosives Act 1875, Section 80.

Note(s)

On 30 June 2021 the Fireworks (Scotland) Amendment Regulations, 2021 introduced amendments to the Fireworks (Scotland) Regulations.

The Pyrotechnic Articles (Safety) Regulations 2015 covers supplying/selling fireworks to someone under 18.

It is an offence to throw or discharge a firework in a public place – The Explosives Act 1875, Section 80 refers.

**59/001 Handling Obscene Material
Civic Government (Scotland) Act 1982, Section
51↑**

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.

Note(s)

Where these offences involve indecent photographs or images of children the crimes are recorded under Group 2 Sexual Offences. See relevant page relating to SGJD code 18/018 (Civic Government (Scotland) Act 1982, Section 52).

**48/001 Hoax/False Calls To Emergency Services
Fire (Scotland) Act 2005, Section 85(1) And
Emergency Workers (Scotland) Act 2005,
Sections 1, 2 and 3↑**

**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 example(s)

Example 1

Fire alarm in school is set off maliciously causing Fire Service to attend.

Record 1 crime of Fire (Scotland) Act 2005, Section 85 (False call to Fire Service).

Example 2

Fire alarm in hotel is set off maliciously. Fire service do not attend.

This is an occasion where discretion may be used not to record a crime but Breach of the Peace may be considered depending on the scale of any disruption caused.

Example 3

A hoax call is made causing Fire Service to attend unnecessarily.

Record 1 crime of Fire (Scotland) Act 2005, Section 85 (False call to Fire Service).

Example 4

Persistent hoax calls are made to Police/Ambulance Service by the same person causing officers/paramedics to attend unnecessarily.

Record 1 crime of Emergency Workers Act 2005, Section 1 (Assault, obstruct or hinder emergency worker using hoax/false calls modifier).

Example 5

Persistent 999 calls are received by Police control room which are not hoax calls but are considered to be non-emergency misuse of 999.

Record 1 crime of Communications Act 2003, Section 127(2) - persistent annoyance/inconvenience.

Example 6

Persistent 101 calls are received by Police control room which are not hoax calls but are considered to amount to persistent annoyance.

Record 1 crime of Communications Act 2003, Section 127(2) - persistent annoyance/inconvenience.

Note(s)

There is no requirement to wait for multiple calls to be made to prove a course of action. Where there is sufficient evidence to prove one call a crime report may be raised.

Licensing (Scotland) Act 2005↑

General rule: Once crime for each accused and per offence

Relating to Children and Young People

- 61/001 - Section 102 - Sale of alcohol to a child or young person
- 61/001 - Section 103 - Allowing the sale of alcohol to a child or young person
- 61/001 - Section 104 - Sale of liqueur confectionery to a child
- 62/009 - Section 104A - Buy/attempt to buy/give alcohol for/to a child
- 62/009 - Section 104B - Buy/attempt to buy/give alcohol for/to a young person
- 62/006 - Section 105 - Purchase of alcohol by a child or young person
- 62/006 - Section 106 - Consumption of alcohol by a child or young person
- 61/010 - Section 107 - Unsupervised sale of alcohol by a child or young person
- 61/099 - Section 108 - Delivery of alcohol by or to a child or young person
- 62/009 - Section 109 - Sending a child or young person to obtain alcohol
- 61/099 - Section 110 - Duty to display notice

Drunkenness and Disorderly Conduct

- 60/004 - Section 111 - Drunk persons entering or in premises on which alcohol is sold
- 62/099 - Section 112 - Obtaining of alcohol by or for a drunk person
- 61/099 - Section 113 - Sale of alcohol to a drunk person
- 61/003 - Section 114 - Premises manager, staff etc. not to be drunk
- 60/006 and 61/004 - Section 115 - Disorderly conduct
- 60/008 - Section 116 - Refusal to leave premises

Miscellaneous Offences

- 61/099 - Section 117 - Offences relating to sale of alcohol to trade
- 61/099 - Section 118 - Prohibition of unauthorised sale of alcohol on moving vehicles
- 61/099 - Section 119 - Delivery of alcohol from vehicles etc.
- 61/099 - Section 120 - Prohibition of late-night deliveries of alcohol
- 61/099 - Section 121 - Keeping of smuggled goods
- 62/002 - Section 63(4) - Consume/Take away alcohol outwith licensed hours

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

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.

Record 1 crime of Licensing (Scotland) Act 2005, Section 104A/B (immaterial how many children were provided the alcohol).

Example 2

'A' enters shop, picks up bottle of alcohol and on being advised this cannot be sold due to being outwith licensing hours 'A' leaves sufficient money on the counter and leaves the premises with the alcohol.

Record 1 crime of Licensing (Scotland) Act 2005, Section 63(4).

Example 3

'A' causes a disturbance in a supermarket and refuses to leave. The incident does not relate to the sale of alcohol.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 (Threatening or Abusive Behaviour). Note that if the supermarket sells alcohol and the incident does not relate to the sale of alcohol Licensing (Scotland) Act 2005, Section 115/116 should not be used.

Note(s)

Sections 115 and 116 can be dealt with by way of an Anti Social Behaviour Fixed Penalty Notice (FPN).

Sections 104A and 104B became effective from 15 May 2017.

72/008 Consumption of Alcoholic Liquor in Designated Public Places
Local Government (Scotland) Act 1973, Sections 101, 202 and 203[↑]

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; or
- 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 example(s)

Example 1

A member of the public contacts the police informing them that there are youths in the park drinking alcohol. On police attending, no youths are found. The locus is covered by Local Byelaws.

Record as an incident only.

Example 2

Police officers find two persons sitting on a park bench, drinking alcohol. The locus is covered by Local Byelaws.

Where a decision is made to deal with the individuals by using the Local Byelaws – 2 crimes should be recorded.

Note(s)

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.

Prisons (Scotland) Act 1989, Section 41(1)

43/004 Blade or Sharply Pointed Article

43/006 Offensive Weapon

44/006 Drugs

85/001 Other↑

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 example(s)

Example 1

A letter containing a possession quantity of drugs sent to a prison in Division 'A' posted from Division 'B' is intercepted on arrival at the prison, prior to reaching the intended recipient.

- (a) Where the contents of the letter provides details of the sender who resides in Division 'B'.

Record 1 crime of Prisons (Scotland) Act 1989, Section 41(1) (a) and (9A) b recorded by Division 'A' and enquiries carried out'. Where enquiries in respect of the sender fail to provide sufficient evidence, the crime should be updated to 'No Crime'.

- (b) Where the letter is post marked outwith Division 'A' but the identity of the sender is not immediately known from the content of the letter.

No crime requires to be recorded where an operational decision has been made and there are no positive lines of enquiry and it is not proportionate to continue. If a crime is recorded it will be by Division 'A'.

Example 2

The Prison Service contacts the local police to advise two 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 Crown Office and Procurator Fiscal Service, where a possession quantity of Class 'B' Drugs or 'C' drugs is recovered, this may be dealt with by the Governor or Controller as a matter of internal discipline, however can be referred to the Police should there be aggravating factors. Where a Class 'A' drug is recovered the police must be informed and a crime record created.

Example 3

The Prison Service contacts the local police to advise two prisoners have been found in possession of a small quantity of Class 'B' drugs (possession amount). Both have been dealt with by the Prison Governor, however, aggravating factors have been outlined providing justification for referral to Police.

Record 2 crimes of Misuse of Drugs Act 1971, Section 5(2).

Example 4

The Prison Service contacts the local police to advise they have found a prisoner in possession of a personal quantity of a Class 'A' drug.

Record 1 crime of Misuse of Drugs Act 1971, Section 5(2).

Example 5

The Prison Service contacts the local police to advise they have recovered a quantity of drugs and a mobile phone, which have been thrown over the perimeter area within a sock, no one has been identified as being responsible.

Where an operational decision is taken to undertake further enquiry a crime should be recorded. Only the recovery of the controlled drug should be recorded if multiple items are recovered. If the sock contained an offensive weapon and a mobile phone only the offensive weapon should be recorded. If a controlled drug and offensive weapon are recovered only record the controlled drug.

Example 6

After leaving personal effects in a locker and prior to entering the visitors' area a person is searched and found to be in possession of a personal quantity of a controlled drug.

Record 1 crime of Prisons (Scotland) Act 1989, Section 41(1) (a) and (9A) b.

Example 7

During a prison visit a visitor passes a controlled drug to a prisoner.

Record 1 crime of Misuse of Drugs Act 1971, Section 4(3) (a), Supply a Controlled Drug. (In these circumstances while it is noted that the suspect has introduced a controlled drug into a prison before passing this to the prisoner no offence under Prisons (Scotland) Act 1989, Section 41 will be recorded).

Example 8

A person visiting a prison inmate leaves personal effects in a locker. They are searched before entering the visitors' area with negative result. The locker they are using is searched and a personal quantity of a controlled drug is found.

Record 1 crime of Misuse of Drugs Act 1971, Section 5(2).

Example 9

Prison provide prisoner 'A' with a mobile phone fitted with SIM card 'X' for personal use. A later search finds 'A' using the phone provided with an unauthorised SIM card 'Z'.

Record 1 crime of Prisons (Scotland) Act 1989, Section 41ZA(3). (Whilst the phone itself and SIM 'X' provided were authorised, SIM card 'Z' was not. Per Section 41(9) (b) the SIM is a component part/article designed for use with the personal communication device.)

Note(s)

Before reporting an incident to the Police, the prison will consider each case to assess whether it can be dealt with by means of the prison adjudication system. Where a prisoner has been dealt with by way of the prison adjudication system, this does not remove the ability for the circumstances to also be reported to the Police to be dealt with as a crime. An informed and balanced decision must be taken in making a referral to the Police, taking into consideration any aggravating factors.

In circumstances where a prison inmate is found in possession of a controlled drug which is not being dealt with by the Prison Governor this should be dealt with under Misuse of Drugs Act 1971 and not Prisons (Scotland) Act 1989.

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.

Police Scotland has a drugs expert witness capability in the form of the Statement of Opinion (STOP) Units who are recognised by the courts as 'experts'. The STOP Unit provide advice and assistance and through the examination and assessment of all the evidential elements in a case will be able to advise the enquiry officer whether an individual should be reported for supply or possession offences. If the STOP Unit can speak to the individual circumstances of the introduction of a drug into a prison as amounting to an offence under the Misuse of Drugs Act 1971 then that legislation will be used in preference to Prisons (Scotland) Act 1989.

Assault, Threaten or Abuse Retail Worker Engaged in Retail Work

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

4/003 Serious Assault

47/012 Common Assault

47/013 Threatening or Abusive Behaviour

**General rule: One crime for each victim
(Assault)**

**General rule: One crime per incident
(Threatening or Abusive
Behaviour)**

Definition

The act aims to increase protection for workers in the retail sector and those applying or enforcing a statutory age-restriction in relation to the sale or supply of goods or services.

Section 1 - Offence of assaulting etc. retail worker

- (1) It is an offence for a person to assault, threaten or abuse another person—
 - (a) who is a retail worker, and
 - (b) who is engaged, at the time, in retail work.
- (2) No offence is committed under subsection (1) unless the person who assaults, threatens or abuses knows or ought to know that the other person—
 - (a) is a retail worker, and
 - (b) is engaged, at the time, in retail work.

Evidence from a single source is sufficient to establish, for the purposes of this section—

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

Section 2 - Behaviour constituting an offence under section 1

- (1) The offence under section 1 of threatening or abusing a retail worker is committed by a person only if the person -
 - (a) behaves in a threatening or abusive manner towards the worker, and
 - (b) intends by the behaviour to cause the worker or any other person fear or alarm or is reckless as to whether the behaviour would cause such fear or alarm.
- (2) Subsection (1) applies to -
 - (a) behaviour of any kind including, in particular, things said or otherwise communicated as well as things done,
 - (b) behaviour consisting of -
 - (i) a single act, or
 - (ii) a course of conduct.

Where the provisions will apply –

i. Any person whose usual place of work is retail premises, while working in those premises (whether as employee, owner or agency staff), such as:

- in a shop, the owner and all other staff, while working in the shop (but not, for example, while travelling to or from work), regardless of whether selling goods is part of their job;
- in a pub, the landlord and all other staff, while working in the pub, regardless of whether selling drinks, food etc. is part of their job; or
- in a charity shop, the paid manager and the volunteer staff, while working in the shop.

ii. Any person whose usual place of work is not in retail premises, while selling or supplying goods to the public (whether as employee, owner or agency staff), such as:

- where a shop forms a part of larger non-retail premises (such as gift shop within a visitor attraction), the worker selling goods in the shop, but not other workers on those premises (such as visitor guide);
- where a bar forms part of larger, mostly non-retail premises (such as a hotel), the worker selling drinks in the bar, but not other hotel workers (such as reception staff or porters);
- in high-street premises that primarily deliver a service, rather than sell or supply goods (such as a hairdressing salon), a worker while selling goods (e.g. hair gel) but not while performing the service (e.g. cutting hair); or
- door-to-door salespersons and street traders (whose retail work is not done in premises).

iii. Any person whose usual place of work is not in retail premises, while selling or supplying age-restricted services to the public (whether as employee, owner or agency staff), such as:

- tanning salon workers;
- tattoo or piercing establishment workers;
- a person working in an amusement arcade with gambling machines; or
- betting shop (bookmaker) or bingo hall workers.

iv. Any person who delivers goods from retail premises, while at the delivery location (but not while travelling between the retail premises and that location), such as a delivery driver for a supermarket, fulfilling online orders.

Where the provisions will not apply –

- workers in high-street premises that sell or supply only services rather than goods (e.g. an estate agent, bank or advice centre);
- wholesale workers (selling goods or services to tradespeople, for onward retail sale);
- most tradespeople (electricians, plumbers etc.), since their usual place of work is not retail premises and they do not do retail work;
- bus drivers selling tickets (which are tokens for a service, rather than goods); and

- nightclub door staff (who may be enforcing an age-restriction on entry, but do not themselves sell goods or services subject to a statutory age-restriction).

Victim/Complainer

Person assaulted, person making complaint, or, dependent on circumstances the Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

A retail worker is assaulted in the course of their employment and the offender either knew or ought to have known that the worker was acting in the course of their employment.

Record 1 crime of Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, Section 1 Assault of Retail Worker.

Example 2

A retail worker is assaulted and threatened and abused by reason of their employment and the assault was at least partly motivated by malice towards the worker by reason of their employment.

Record 1 crime of Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, Section 1 Assault of Retail Worker (threatening or abusive behaviour is subsumed).

Example 3

A retail worker is threatened and abused in the course of their employment and the offender either knew or ought to have known that the worker was acting in the course of their employment.

Record 1 crime of Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, Section 1 Threatening or Abusive Behaviour of Retail Worker.

Example 4

Five retail workers and two customers are threatened and abused within retail premises.

Record 1 crime of Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, Section 1 Threatening or Abusive Behaviour of Retail Worker.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 Threatening or Abusive Behaviour (note – requirement to record under both pieces of legislation).

Example 5

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

Record 1 crime of Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, Section 1 Threatening or Abusive

Behaviour of Retail Worker.

Record 1 crime of Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, Section 1 Assault of Retail Worker.

Example 6

Customer in shop directs racial abuse at member of staff for refusing to sell them alcohol due to age restriction.

Record 1 crime of Protection of Workers (Retail and Age Restricted Goods and Services) (Scotland) Act 2021, Section 1 Threatening or Abusive Behaviour of Retail Worker (with Racial and Age Restriction aggravators, due to racial element and enforcement of statutory age restriction).

Example 7

Spouse attends partner's retail premises workplace and directs abuse at them, whilst they are conducting their duties as a retail worker. The abuse is not retail related.

Record 1 crime of Criminal Justice and Licensing (Scotland) Act 2010, Section 38 (better legislative fit as abuse is not retail related).

Note(s)

This offence was introduced on 24 August 2021.

Meaning of “Retail Premises”

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

Meaning of “Retail Worker”

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

Enforcing an Age Restriction

A statutory age restriction for the purposes of the Act includes only age restrictions where the age itself is specific in an enactment. This includes, for example, the age-limit of 18 which applies, under the Licensing (Scotland) Act 2005, to the offence of selling alcohol to under-age persons.

The following table provides a summary of age-restricted goods and services, and the statute or statutory instrument that covers this.

Product/Service	Statute (or other source of law)
Aerosol spray paint	Antisocial Behaviour etc. (Scotland) Act 2004
Air weapons and imitation firearms	The Firearms Act 1968, Violent Crime Reduction Act 2006
Alcohol	Licensing (Scotland) Act 2005
Butane lighter refills	Cigarette Lighter Refill (Safety) Regulations 1999
Crossbows	Crossbows Act 1987
Caps, cracker snaps, party poppers etc.	Explosives Act 1875
Firearms	The Firearms Act 1968
Fireworks	Fireworks (Safety) Regulations 1997
Fireworks	Explosives Acts 1875
Fireworks	Pyrotechnic Articles (Safety) Regulations 2010
Gambling	Gambling Act 2005
Knives and articles with a blade or point	Criminal Justice Act 1988
Liqueur confectionery	Licensing (Scotland) Act 2005
National lottery tickets	National Lottery etc. Act 1993
National lottery tickets	National Lottery Regulations 1994
Petrol	Petroleum (Consolidation) Regulations 2014
Pets	Animal Health and Welfare (Scotland) Act 2006
Solvents	Cigarette Lighter Refill (Safety) Regulations 1999
Sunbeds	Public Health etc. (Scotland) Act 2008
Tattooing and Piercing	Tattooing of Minor Act 1969
Tattooing and Piercing	Licensing of Skin Piercing and Tattooing Order 2006
Teeth whitening	Cosmetic Products (Safety) (Amendment) Regulations 2012
Tobacco products, nicotine vapour products	Tobacco and Primary Medical Service (Scotland) Act 2010
Tobacco products, nicotine vapour products	Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016

**78/003 Drunk When Riding A Cycle
Road Traffic Act 1988, Section 30[↑]**

General rule: One crime for each accused

Definition

A person who, when riding a cycle on a road or other public place, is unfit to ride through drink or drugs (that is to say, is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the cycle).

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Note(s)

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.

The Trespass (Scotland) Act 1865, Section 3

82/002 Lighting Fires

82/003 Lodging Without Consent Of Owner↑

General rule: One crime for each incident

Definition

Every person who lodges in any premises, or occupies or encamps on any land, being private property, without the consent and permission of the owner or legal occupier of such premises or land, and every person who encamps or lights a fire on or near any road or enclosed or cultivated land, or in or near any plantation, without the consent and permission of the owner or legal occupier of such road, land, or plantation.

Victim/Complainer

Owner of premises or land.

Locus

Where crime takes place.

50/010 Tobacco And Primary Medical Services (Scotland) Act 2010, Sections 4-7↑

**General rule: One crime for each sale (Sections
4-6)
One crime for each accused
(Section 7)**

Definition

Section 4

Any person who sells a tobacco product or cigarette papers to a person under the age of 18 years commits an offence.

Section 5

Any person under the age of 18 who buys or attempts to buy a tobacco product or cigarette papers commits an offence.

Section 6

Any person aged 18 or over who knowingly buys or attempts to buy a tobacco product or cigarette papers on behalf of a person under the age of 18 commits an offence.

Section 7

- (1) Where a constable has reasonable grounds for suspecting that a person in a public place -
 - (a) is under the age of 18, and
 - (b) is in possession of a tobacco product or cigarette papers,

the constable may require the person to surrender the tobacco product or, as the case may be, the cigarette papers to the constable.

- (2) A constable making a requirement under subsection (1) may also require the person to supply the constable with the person's name and address.
- (3) Where a constable makes a requirement under subsection (1) the constable must inform the person concerned -
 - (a) of the constable's suspicion, and
 - (b) of the fact that failure to comply with a requirement made under subsection (1) or (2) is an offence.
- (4) A constable may arrest without warrant any person who fails to comply with a requirement made under subsection (1).
- (5) A person who fails to comply with a requirement made under subsection (1) or (2) commits an offence.

Victim/Complainer

Procurator Fiscal.

Locus

Where crime takes place.

Scenario example(s)

Example 1

Shopkeeper is found selling cigarettes to three school children, who enter his shop in their school uniform.

Record 3 crimes of Tobacco and Primary Medical Services (Scotland) Act 2010, Section 4.

Note(s)

From October 2007 the age limit rose from 16 to 18 years.

On 1 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.

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; and
- commercial activity in internationally protected species originating, committed or partly committed within Scotland.

List of offences

1 - Wildlife and Countryside Act 1981

51/004 Offences Involving Birds

General Rule – One crime for each species

- Section 1(1) – Kill/injure/take wild bird; damage active nest; take/destroy bird's egg.
- Section 1(2) – Possess/control live/dead wild bird or part of or anything derived from wild bird, including an egg.
- Section 1(5) – Disturb nesting Schedule 1 bird or dependent young; cause or permit.
- Section 5(1) – Prohibited methods of killing/taking wild bird; cause or permit.
- Section 6(1) – Sell/offer or expose for sale an egg of a bird.
- Section 7(1) – Keep/possess/control bird included in Schedule 4 that is registered/ringed/marked.

51/014 Cruelty To Wild Animals

General Rule – One crime for each species

- Section 9(1) - Kill/injure/take wild animal included in Schedule 5.
- Section 9(4) – Damage/destroy/obstruct or place that animal on Schedule 5 used for shelter or protection, or disturb such animal while using such place.
- Section 11G(1) - Intentionally or recklessly kill/injure/take a wild animal in Schedule 6A.
- Section 11I(1) - Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully.

General Rule – One crime for each incident

- Section 10A(1) - Intentionally or recklessly kill/injure/take a wild hare.

General Rule – One crime for snare type

- Section 11(1) – Offences with snares.

General Rule – One crime for each type of device or poison

- Section 11(2) – Offences against Schedule 6 animals.
- Section 11(3) – Possession, use and checking of snares.

51/016 Other Wildlife Offences

General Rule – One crime for each species

- Section 9(2) – Possess/control live/dead wild animal or part of or anything derived from wild animal on schedule 5.
- Section 9(5) – Sell/offer/expose for sale live/dead wild animal on Schedule 5; cause or permit.

General Rule – One crime for each plant type

- Section 13(1) – Picking, uprooting and destruction of wild plants.
- Section 13(2) – Sale or offer for sale of wild plants.

General Rule – One crime for each accused

- Section 15a – Possession of prescribed pesticides.
- Section 18(1) – Attempts to commit offences.
- Section 18(2) – Possess item capable of being used to commit offence.

2 - Protection of Badgers Act 1992

51/015 Offences Involving Badgers

General Rule – One crime for each Badger

- Section 1(1) – Kill/injure/take badger.
- Section 2(1) – Cruelty to badger.
- Section 4 – Sell/possess live badger.

General Rule – One crime for each incident

- Section 1(3) – Possess/control dead badger or any part of anything derived from badger.

General Rule – One crime for each Sett

- Section 3(1) – Interfering with badger setts.
- Section 3(2) – Cause or permit.

3 - Conservation (Natural Habitats etc.) Regulations 1994

51/014 Cruelty To Wild Animals

General Rule – One crime for each species

- Regulation 39(1) – Protection of certain wild animals.
- Regulation 39(2) – Protection of cetaceans.
- Regulation 41(2) – Prohibition of certain methods of taking or killing wild animals,

51/016 Other Wildlife Offences

General Rule – One crime for each accused

- Regulation 100(1) – Attempt to commit offence under part III.
- Regulation 100(2) – Possess item capable of being used to commit offence under part III.

4 - Protection of Wild Mammals (Scotland) Act 2002

51/013 Hunting With Dogs

General Rule – One crime for each species

- Section 1(1) – Deliberately hunt a wild mammal with a dog.

5 - Wild Mammals (Protection) Act 1996

51/014 Cruelty To Wild Animals

General Rule – One crime for each species

- Section 1 – Cruelty to a wild mammal which is not captive.

6 - Marine (Scotland) Act 2010

56/002 Sea Fisheries Offences

General Rule – One crime for each incident

- Section 107 – Intentionally or recklessly kill, injure or take live seal.
- Section 117 – Harassing a seal at a haul-out site.

7 - Control of Trade in Endangered Species (Enforcement) Regulations 1997

51/016 Other Wildlife Offences

General Rule – One crime for each species

- Regulation 8(1) – Purchase or sale of Annex A specimen without Article 10 certificate.
- Regulation 8(2) – Purchase/Sell/Acquire etc. a specimen listed in Annex B.

8 - Deer (Scotland) Act 1996

57/002 Deer (Scotland) Act Offences

General Rule – One crime for each species of Deer

- Section 5(5) – Take or kill deer outside the designated close season for the particular species.
- Section 17(1) – Take, kill or injure deer without legal right or permission.
- Section 17(2) – Remove deer carcass from land.
- Section 17(3) – Wilfully kill or injure deer otherwise than by shooting.
- Section 18(1) – Take or wilfully kill or injure deer at night.

General Rule – One crime for each incident

- Section 22 – Two or more persons acting together.
- Section 24 – Attempts and preparations.

General Rule – One crime for each accused

- Section 23(1) – Unlawful possession of deer or firearms.

9 - Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003

56/001 Salmon And Freshwater Fisheries Offences

General Rule – One crime for each incident

- Section 1(1) – Fish for or take salmon other than by rod and line or net and cobble.
- Section 1(3) – Attempts or preparations.
- Section 2(1) – Fish for or take freshwater fish other than by rod and line.
- Section 2(2) – Attempts or preparations.
- Section 5(1) – Use of explosives and noxious substances.
- Section 5(2) – Attempts or preparations.
- Section 6(1) – Fish for salmon without right or permission.
- Section 7 – Two or more persons acting together to commit offence under Sections 1, 2 or 6 of the Act.
- Section 8(1) – Taking of dead salmon or trout.
- Section 8(2) – Attempts or preparations.
- Section 9(1) – Illegal possession of salmon or trout.
- Section 11(1) – Fishing in waters where fishing rights owned by one person.

- Section 12(1) – Fish in contravention of a protection order.
- Section 13 – Fishing during the weekly close time for salmon.
- Section 14(1) – Fishing for salmon during annual close time.
- Section 16(1) – Buying and selling salmon during the close season.
- Section 17(1) – Annual close time for trout.
- Section 18(1) – Unclean salmon.
- Section 19(1) – Salmon roe.

56/003 Possession Of Salmon And Trout Unlawfully Obtained

General Rule – One crime for each incident

- Section 20(1) – Possessing salmon which have been illegally taken, killed or landed.

10 - Conservation of Salmon (Prohibition of Sale) (Scotland) Regulations 2002

56/001 Salmon And Freshwater Fisheries Offences

General Rule – One crime for each incident

- Regulation 2 – Sell, offer or expose for sale salmon taken by rod and line.

11 - Agriculture (Scotland) Act 1948

57/001 Poaching And Game Laws

General Rule – One crime for each type of trap

- Section 50(1) – Offences with non-approved spring traps.
- Section 50(1) – Offences with spring traps.

12 - Dogs (Protection of Livestock) Act 1953

51/008 Protection Of Livestock From Dogs

General Rule – One crime for each incident

- Section 1 – Own or be in charge of a dog that worries livestock on any agricultural land.

84/001 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 example(s)

Example 1

Two 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 two month period to observe.

Record 1 crime of Wireless Telegraphy Act 2006 (as this is a continuous course of conduct).

Group 7 – Road Traffic Offences↑

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 Scottish Crime Recording Standard 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; and
- Driving while disqualified.

The following are the only Road Traffic offences which can be recorded as undetected. Although these offences may be reported to the police and in effect may initially indicate an offence has been committed, what one person may deem to be a poor standard of driving, may be perceived by another as constituting a Road Traffic Offence. With this in mind the onus shall be on the police to determine whether the circumstances amount to a Road Traffic Offence based on evidence and information available.

- Accident Offences (Fail to Stop, Fail to Report);
- Careless Driving; and
- 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.

Notice of Intended Prosecution

In cases where a road accident has occurred the accused should be warned in terms similar to Section 1 of the Road Traffic Offenders Act 1988. In reality this is usually given using the standard Section 1 Warning formula. Where there is a Dangerous or Careless Driving offence but no road accident takes place the position is different. If the driver is traced at the time of commission of the offence, they should be warned in terms of Section 1, however if not traced at the time then a Notice of Intended Prosecution must be sent to the keeper of the vehicle within 14 days. This is a requirement and failure to do so will prove fatal to the case.

Road Accident/Careless Driving Reports

Road Accident	Driver traced	Warning
Road Accident	Driver traced at the time	Warned in terms similar to Section 1 Warning
Road Accident	Driver not traced at the time but interviewed later	Warned in terms similar to Section 1 Warning
Section 2 or 3 – No Road Accident	Driver traced at the time	Section 1 Warning
Section 2 or 3 – No Road Accident	Driver not traced at the time	Notice of Intended Prosecution must be sent within 14 days.

Notice of Intended Prosecution

If the Notice of Intended Prosecution procedure is not strictly adhered to and a case cannot be submitted to the Procurator Fiscal due to procedural failure any recorded offence under Road Traffic Act 1988, Section 2 or Section 3 depending on circumstances can be considered for update to 'No Crime'.

Cause and Permit Offences - Driving with No Insurance/Licence

Wheatley's Road Traffic Law in Scotland (Sixth Edition) states:

- "Permitting" means simply giving permission or allowing a third party to do something; the permission must, however be provided to be something the accused can properly give; in addition, for conviction it must be shown, as in the case of causing, that the accused was aware that what was permitted constituted an offence; actual or constructive knowledge of the offence has to be demonstrated, as well as direct or indirect evidence of permission.

- It further provides that for an accused to be convicted of 'causing' a third party to commit an offence, the prosecution will normally have to establish both that the accused directed or controlled the substantive acts complained of, and that he was aware or should have been aware that those acts constituted an offence; in other words, actual or constructive knowledge of the offence must be established, as well as some measure of participation in allowing the offence to take place.

In all circumstances where there is evidence to report any "cause and permit" offence this will be recorded in addition to the offence being reported, e.g. offence for driver and separate offence for owner.

Road Traffic Act 1988, Section 5A, Drug Driving

Section 5A of the Road Traffic Act 1988 was introduced in Scotland on 21 October 2019. For the purposes of crime recording - officers dealing with offences under Section 4, 5 or 5A of the Road Traffic Act 1988 where a blood or urine sample has been obtained, should raise a crime report pending analysis.

The most appropriate crime should be used for example:

- Where there is impairment - a crime report should be recorded for a Section 4 Road Traffic Act 1988 offence.
- Where there is no impairment but there is a positive road side drug test for cannabis/cocaine - a crime report should be recorded for Section 5A Road Traffic Act 1988 - Cannabis/Cocaine.

The following should be noted where there is a presence of multiple drug types or where there is a combination of drugs and alcohol:

- Where tests confirm the presence of more than one drug an offence must be recorded for each drug type.
- Where tests confirm the presence of both drugs and alcohol over the legal limit appropriate offences must be recorded for both drugs and alcohol.

When the result of the analysis is received, the crime report should be updated with the correct offence or marked as 'No Crime' where there is a negative result.

Warnings issued in terms of Antisocial Behaviour etc. (Scotland) Act 2004, Section 126

In circumstances where a constable (in uniform) has reasonable grounds for believing that a motor vehicle is being used or has been used in a manner which contravenes Section 3 or Section 34 of the Road Traffic Act 1988 (careless and inconsiderate driving and prohibition of off-road driving) and this is causing or likely to cause alarm, distress or annoyance to members of the public a warning notice may be issued in terms of Section 126 of Antisocial Behaviour etc. (Scotland) Act 2004.

On every occasion where a person is given a warning notice under Section 3 or Section 34 of the Road Traffic Act 1988 a crime report must be raised fully outlining the circumstances. In these circumstances either an offence under Section 3 or Section 34 of the Road Traffic Act 1988 should be recorded. The crime report can be disposed of by means of a crime detected warning in respect of the vehicle driver, due to the warning notice in terms of Section 126 of the Antisocial Behaviour etc. (Scotland) Act 2004 being issued. If the driver is warned in these circumstances no Conditional Offer should be issued under Section 3.

Should the driver/vehicle be stopped for a similar offence as outlined above within 12 months of a warning notice being issued the vehicle can be seized. In these circumstances either an offence under Section 3 or Section 34 of the Road Traffic Act 1988 should be recorded. If no report is being sent to the Procurator Fiscal (e.g. where no other offences are being reported) a Section 126 Warning disposal should be used.

Vehicle Excise and Registration Act 1994 - No Excise Licence

Where an offence of no excise licence is identified, including those with nil duty, officers should complete and submit the Driver and Vehicle Licensing Agency (DVLA) form (CLE 2/6). There is no requirement for the police to record the above offence on their crime recording systems or report this offence to the Procurator Fiscal. DVLA will have primacy in dealing with this offence and will be responsible for any further action, including where required progression of a report to the Procurator Fiscal. This will ensure a fair and consistent approach to all reports and allow DVLA to confirm the details held on the vehicle record are up to date and accurate.

Vehicles on Footpaths

To ensure consistent practice, Section 34(1) (b), Road Traffic Act 1988 should be used in preference to Section 129(5) Roads (Scotland) Act 1984 with regards to vehicles on footpaths etc. e.g. use of an unregistered e-scooter on a footpath.

Electrically Assisted Pedal Cycles

It should be noted that there may be occasions when an electrically assisted pedal cycle meets the definition of a Motor Vehicle. In these circumstances any offence should be dealt with using the Road Traffic Act 1988.

The following guidance illustrates how offences should be recorded in line with the Scottish Government Counting Rules:-

**300/001 Dangerous Driving
Road Traffic Act 1988, Section 2**

**300/002 Careless Driving
Road Traffic Act 1988, Section 3**

**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 example(s)

Example 1

Driver is stopped by Police after being recorded driving at excessive speed which would justify reporting an offence under Road Traffic Act 1988, Section 2.

Record 1 crime of Road Traffic Act 1988, Section 2 Dangerous Driving (separate speeding offence should not be recorded).

Example 2

A car being driven dangerously during a Police pursuit collides with four vehicles before vehicle is stopped and driver apprehended.

Record 1 crime of Road Traffic Act 1988, Section 2 - Dangerous Driving.
Record 1 crime of Road Traffic Act 1988, Section 163 - Fail to Stop For Police.

Record 1 crime of Road Traffic Act 1988, Section 170 - Fail to Stop After Accident.

There is no requirement to record a Section 170 offence for each collision as this is considered to be a continuous course of conduct.

Example 3

Police witnesses observe vehicle being driven in a careless manner, swerving across the road and failing to obey a red light. When stopped the driver is found to have a breath count over the legal limit.

Record 1 crime of Road Traffic Act 1988, Section 3 - Careless Driving.
Record 1 crime of Road Traffic Act 1988, Section 5 - Drink Driving.

Example 4

Witness(es) report erratic driving, the circumstances of which has resulted in no vehicle collision e.g. inconsiderate driving.

Consideration should be given to the fact that what one person may deem to be a poor standard of driving may be perceived by another as constituting a Road Traffic offence. The circumstances indicate that there may have been an error of judgement and this should be recorded as an incident only with any further enquiry being dependent on local procedures e.g. contact being made with the registered keeper to advise of the complaint received.

Example 5

Witness(es) report erratic driving, the circumstances of which has resulted in a non-injury vehicle collision, the extent of which does not require the attendance of police e.g. details exchanged with one party being unhappy with the others standard of driving, which they believed to have resulted in the collision.

Consideration should be given to the fact that what one person may deem to be a poor standard of driving may be perceived by another as constituting a Road Traffic offence. The circumstances should be considered to determine whether there may have been an error of judgement. This is a non-injury collision where details have been exchanged and should normally only be recorded as an offence if there is sufficient evidence to consider criminal proceedings. Any incident raised should be updated accordingly.

Example 6

Witness(es) report erratic driving, the circumstances of which has resulted in an injury vehicle collision, requiring the attendance of police.

Consideration should be given to the fact that what one person may deem to be a poor standard of driving may be perceived by another as constituting a Road Traffic offence. Enquiry will determine whether the circumstances and sufficiency of evidence amount to a Road Traffic offence. Where the offending driver has clearly acted carelessly at the higher end of the scale, but is not traced, an undetected Careless Driving or Dangerous Driving should be recorded.

Note(s)

Offences under Section 3 of the Road Traffic Act 1988 should be recorded in accordance with Lord Advocate's Guidelines on the Reporting of cases to the Procurator fiscal for Offences under this Section.

In certain circumstances Police may issue an offender with a Conditional Offer of Fixed Penalty Notice for a Road Traffic Act 1988, Section 3 offence. The Police Scotland Standard Operating Procedure for this scheme should be consulted for details of actions which may justify the issue of a Conditional Offer for a Careless Driving offence.

In circumstances where the use of a vehicle contravenes Road Traffic Act 1988, Section 3 and such use causes, or is likely to cause a member of the public alarm, distress or annoyance the user can be warned in terms of Antisocial Behaviour etc.

(Scotland) Act 2004, Section 126. If the user is warned under Section 126 no Conditional Offer should be issued under Section 3.

In circumstances where a Red Light, Pedestrian Crossing, Solid Line or similar offence is committed where a Section 2 offence is being reported these offences should be subsumed within the Section 2 offence as a course of conduct.

In circumstances where an offence has clearly occurred and enquiry has failed to trace the accused, only one undetected Road Traffic Offence should be recorded i.e. Fail to Stop or Careless Driving or Dangerous Driving.

Mobile Devices

An 'interactive communication' may refer to the sending or receiving oral or written messages and where there is sufficient evidence can be dealt with in terms of the Road Traffic Act 1988, Section 41D(b). Where the conduct falls outwith this e.g. taking a photo, recording a video, accessing music or other content etc. Section 41D(b) is not appropriate and in these circumstances, where there is sufficient evidence, consideration should be given to recording a careless or dangerous driving offence. A conditional offer of fixed penalty ticket for careless driving must not be issued.

313/000 Driving While Disqualified Road Traffic Act 1988, Section 103(1) (a) (b)

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 example(s)

Example 1

A driver is stopped and found to be driving whilst disqualified, further investigation reveals that the driver has been working as a courier, and during the enforcement has driven various vehicles on a number of occasions, which is evidenced by log books and eye witness accounts.

Record 1 crime of Road Traffic Act 1988, Section 103(1) (b), Drive while disqualified (continuity of action).

Example 2

A disqualified driver is stopped and found in possession of a falsified driving licence. During investigation it transpires that 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.

Record 1 crime of Road Traffic Act 1988, Section 103(1) (b), Drive while disqualified.

Record 1 crime of Road Traffic Act 1988, Section 103(1) (a), Obtaining licence while disqualified.

Record 1 crime of Road Traffic Act 1988, Section 143(1) (a), No insurance (offence per vehicle).

Example 3

A disqualified driver is witnessed driving on three occasions by three separate police crews none of whom are in a position to stop vehicle.

Record 1 crime of Road Traffic Act 1988, Section 103(1) (b) (continuity of action).

Example 4

A driver is stopped and whilst shown to be a provisional licence holder, is driving with no 'L' plates and unsupervised is also disqualified 'until test passed'.

Record 1 crime of Road Traffic Act 1988, Section 103(1) (b), Drive while disqualified.

Example 5

Police stop 'A' driving vehicle owned by 'B'. 'A' is disqualified from driving and has no insurance and there is evidence that 'B' is aware of this.

Record 1 crime of Road Traffic Act 1988, Section 103(1) (b), Drive while disqualified.

Record 1 crime of Road Traffic Act 1988, Section 143(1) (a), No insurance.

Record 1 crime of Criminal Procedure (Scotland) Act 1995, Section 293 Aid and Abet (this refers to the cause and permit disqualified driving element).

Record 1 crime of Road Traffic Act 1988, Section 143(1) (b), Cause and permit no insurance.

Note(s)

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 Section 103 or a Section 87 of the Road Traffic Act 1988, a Section 143 Driving without Insurance may be considered, however this should only be applied where relevant evidence exists.

Retrospective Recording

If a driver has been stopped and found to be a disqualified driver and it is later discovered they have been stopped on previous occasions for other Road Traffic Offences 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 Drive Without Insurance Road Traffic Act 1988, Section 143

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 example(s)

Example 1

Registered keeper of vehicle is stopped by Police and found to have no valid policy of insurance.

Record 1 crime of Road Traffic Act 1988, Section 143 - Drive without Insurance.

Example 2

Police stop vehicle being driven by registered keeper who has no insurance. Enquiry confirms that the registered keeper has driven the same vehicle without insurance on four previous occasions.

Record 1 crime of Road Traffic Act 1988, Section 143 - Drive without Insurance (offence per vehicle).

Example 3

As above where evidence that keeper has driven a second vehicle without a valid policy of insurance.

Record 2 crimes of Road Traffic Act 1988, Section 143 - Drive without Insurance (offence per vehicle).

Example 4

Person is stopped by Police on Day 1 where they are issued with papers requiring them to produce insurance documents at a Police station. Before doing so the same person is stopped by Police driving the same vehicle on Day 2 and issued with similar papers. Further enquiries confirm that the person had no insurance cover in place on either date.

Record 2 crimes of Road Traffic Act 1988, Section 143 - Drive without Insurance.

Example 5

A person other than registered keeper is stopped by Police and found to have no valid policy of insurance to drive vehicle and there is no evidence to confirm that that the registered keeper is aware of this.

Record 1 crime of Road Traffic Act 1988, Section 143 - Drive without Insurance.

Example 6

As above where there is evidence that the registered keeper is aware driver has no valid policy of insurance.

Record 1 crime of Road Traffic Act 1988, Section 143 - Drive without Insurance (driver).

Record 1 crime of Road Traffic Act 1988, Section 143 - Cause and permit (keeper).

Example 7

As above where there is evidence that the registered keeper is aware the driver has no valid policy of insurance, and the registered keeper is also found to have no valid policy of insurance.

Record 1 crime of Road Traffic Act 1988, Section 143 - Drive without Insurance (driver).

Record 1 crime of Road Traffic Act 1988, Section 143 - Cause and permit (keeper).

Record 1 crime of Road Traffic Act 1988, Section 144A - Keep motor vehicle with no insurance (keeper).

Example 8

Police stop a vehicle where the driver "A" is found to have no driving licence. Further enquiry confirms that "A" has an insurance policy in force which covers him for driving that vehicle for third party risks but that a false declaration was made to the insurers in that "A" failed to disclose having no licence.

Record 1 crime of Road Traffic Act 1988, Section 87 - No licence.

Record 1 crime of Road Traffic Act 1988, Section 174(5) - Provide false statement to obtain insurance (SGJD Code 25/000).

Note that the same guidance applies whether or not the insurers confirm that they will honour the policy. In these circumstances there is no requirement to record Section 143 - No insurance.

Note(s)

Cause and Permit offences should only be recorded where there is evidence to the fact that the accused in the cause or permit was aware that the driver had no insurance and gave them permission to drive.

Road Traffic Act 1988, Section 144A(1) and (2) - Registered keeper of motor vehicle with no insurance policy in force or security for third party risks

DVLA in association with the Motor Insurance Bureau have the primary responsibility for the enforcement of S.144A and have a policy in place of providing warning letters prior to enforcement action. Whilst many offences under this section will be dealt with directly by DVLA, the Police may have occasion to do so.

The option of issuing a conditional offer is not applicable in respect of Section 144A. Under normal circumstances if not being dealt with by DVLA, Section 143 would apply if a vehicle is parked on a public road as it is considered as being "used" and as such would require to be insured for a minimum of third party risks. Section 144A would only be expected to be used if DVLA are not dealing, the vehicle is off the road and no Statutory Off-Road Notification (SORN) declaration has been made. Where an officer has reasonable belief that a vehicle may not be insured they may confirm this via Police National Computer and Motor Insurance Bureau. If no insurance is recorded against the vehicle, officers shall require to make efforts to speak to the registered keeper to confirm no insurance is in force e.g. the vehicle may be insured under a trade policy etc. No crime report is required to be created unless enquiry traces the vehicle owner and it is confirmed no insurance is in force.

**307/000 Accident Offences
Road Traffic Act 1988, Section 170 (2) and
(4) - Fail To Stop After Accident
Road Traffic Act 1988, Section 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 example(s)

Example 1

A car being driven dangerously during a Police pursuit collides with four vehicles before vehicle is stopped and driver apprehended.

Record 1 Road Traffic Act 1988, Section 2 - Dangerous Driving.

Record 1 Road Traffic Act 1988, Section 163 - Fail to Stop For Police.

Record 1 Road Traffic Act 1988, Section 170 - Fail to Stop After Accident.

There is no requirement to record a Section 170 offence for each collision as this is considered to be a continuous course of conduct.

Example 2

Vehicle damage discovered, unclear as to the cause of the damage e.g. accidental damage caused by shopping trolley.

Application of the 'balance of probabilities' suggests accidental damage, with no clear indication this has been the result of a collision with another vehicle or a vandalism. This should be recorded as an incident only.

Example 3

Vehicle damage discovered which suggests this has been the result of a vehicle collision e.g. paint or other residue found on vehicle, and it is unclear whether the driver of the other vehicle would have been aware.

Application of the 'balance of probabilities' suggests the other vehicle driver may have been unaware of the collision.

Example 4

Vehicle damage discovered where the extent of damage indicates it is more than likely that the other driver was aware of the collision, or information provided from witnesses to confirm this to be the case.

Application of the 'balance of probabilities' suggests the other vehicle driver would have been aware of the collision. An offence of 'Fail to Stop' should initially be recorded pending further enquiry, which may result in further offences being recorded and detected. If enquiry fails to identify the accused this should remain recorded as an undetected 'Fail to Stop' offence.

Note(s)

In circumstances where an offence has clearly occurred and enquiry has failed to trace the accused, only one undetected Road Traffic Offence should be recorded i.e. Fail to Stop or Careless Driving or Dangerous Driving.

When circumstances which amount to Hit and Run type collisions are reported incidents are required to be raised and fully updated to dispel any criminality initially inferred (e.g. damage so minor in nature that driver unaware of collision), however if unable to dispel initial criminality a Crime Report must be raised to facilitate any necessary enquiry.

309/000 Fail To Provide Information To Identify Driver Road Traffic Act 1988, Section 172

General rule: One crime for each offence

Definition

Section 172

- (2) Where the driver of a vehicle is alleged to be guilty of an offence to which this section applies—
- (a) the person keeping the vehicle shall give such information as to the identity of the driver as he may be required to give by or on behalf of a chief officer of police, and
 - (b) any other person shall if required as stated above give any information which it is in his power to give and may lead to identification of the driver.

Victim/Complainer

Procurator Fiscal.

Locus

See examples.

Scenario example(s)

Example 1

Vehicle photographed by camera speeding in Division X. The registered keeper does not respond to a Road Traffic Act 1988, Section 172 notice and officer attends at keeper's home address in Division Y to carry out Section 172 requirements. Registered keeper fails/refuses to provide details of the driver and charged with Section 172 offence.

Record 1 crime of Road Traffic Act 1988, Section 172 (locus is Division X where Section 172 notice sent from).

Example 2

Vehicle photographed by camera speeding in Division X. The registered keeper does not respond to a Road Traffic Act 1988, Section 172 notice and officer attends at keeper's home address in Division Y to carry out Section 172 requirements. Registered keeper fails/refuses to provide details of the driver and charged with Section 172 offence. Evidence is obtained which confirms the registered keeper was driving the vehicle at the time of the speeding offence.

Record 1 crime of Road Traffic Act 1988, Section 172 (locus is Division X where Section 172 notice sent from).

Record 1 crime of Speeding offence (locus is Division X).

Example 3

Vehicle is involved in a collision in Division X and fails to stop. The registered keeper resides in Division Y and officer attends at home address requesting details of the driver of vehicle at material time per Road Traffic Act 1988, Section 172 requirements. The person refuses/fails to provide details.

Record 1 crime of Road Traffic Act 1988, Section 172 (locus is Division Y where Section 172 procedure carried out - unlike above examples no letter is sent out).

Record 1 crime of Road Traffic Act 1988, Section 170 and other relevant Road Traffic offences (Division X).

Vehicles (Crime) Act 2001 – Supply of Registration Plate Offences

The following General Rules will be used for offences recorded under Vehicle (Crime) Act 2001, Sections 24 to 29:

Section 24(4)

Registered supplier of registration plates failing to keep record of sale in accordance with Regulations.

Record 1 crime per Registered Supplier (if more than one premises the principle place of business should be used) – (Group 7 – SGJD 399/000).

Section 25(3)

Registered supplier of registration plates failing to obtain information from prospective purchaser.

Record 1 crime per Purchase Transaction – (Group 7 – SGJD 399/000).

Section 26(7)

Right to enter and inspect premises – obstruction.

Record 1 crime per Business Premises (Group 6 – SGJD 72/005).

Section 28(1)

Selling a plate or other device as a registration plate knowing that it is not a registration plate.

Record 1 crime per Accused (Group 3 – SGJD 25/000).

Section 28(2)

Supplying a plate or other device as a registration plate knowing that it is not a registration plate.

Record 1 crime per Business Supplied (Group 3 – SGJD 25/000).

Section 29(1)

Supplying plates or other device to an unregistered person knowing that it is not a registration plate.

Record 1 crime per Business Supplied (Group 3 – SGJD 25/000).

Tachograph Offences

Example 1

A HGV driver is stopped and on examination of the vehicle's tachograph recording equipment it is ascertained that they have driven on five occasions exceeding the four and a half hour rule without observing breaks of at least 45 minutes.

Record 5 crimes of Transport Act 1968, Section 96(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 the Scottish Crime Recording Standard 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. Similarly, when a decision is made not to issue a Prohibition Notice there is no requirement for an offence to be recorded.

Vehicle Defect Rectification Scheme

318/000 Registration Plate

319/000 Lighting

320/000 Other than Lighting

General rule: As per legislation outlines (one offence per defect found)

Where a police officer discovers vehicle defect(s) in respect of which a Vehicle Rectification Form has already been issued, no further Form is to be issued.

Where these defect(s) are of a dangerous nature and it is clear that the driver has continued to use the vehicle without having taken remedial action, he/she must be reported. In these circumstances it is to be made clear to the driver that he/she is still required to provide evidence of rectification in respect of the original defect(s) for which the Form was issued.

Where the driver is not the owner of the vehicle he/she is to be instructed to inform the owner as soon as possible that defect(s) have been detected which come within the scope of the scheme and that the provisions of the scheme have been accepted by the driver.

Officers who are not 'authorised examiners' will only issue Vehicle Rectification Forms in respect of obvious defect(s) to vehicles where no actual inspection is necessary to establish that the defect(s) exists.

In circumstances where it is considered that the nature of a particular defect renders a vehicle to be in a dangerous condition an offence under Road Traffic Act 1988, Section 40A(a) (Vehicle in dangerous condition) will be recorded. Only one Section 40A(a) offence will be recorded to account for all defects which are considered to be dangerous. Defects which are not considered to be dangerous will be recorded as an offence for each defect found. Similarly, offences relating to illegal modifications not considered to be dangerous will be recorded as an offence for each modification.

Scenario example(s)

Example 1

Police examine vehicle and find two defects considered to be dangerous, four non-dangerous defects and two illegal modifications.

Record 1 crime of Road Traffic Act 1988, Section 40A(a), four defect offences, two modification offences.

If the condition of a vehicle being driven is such that it would be obvious to a competent and careful driver that driving the vehicle in this current state would be dangerous then Road Traffic Act 1988, Section 2 Dangerous Driving should be considered. Where sufficient evidence exists this may be recorded in addition to Section 40A(a).

List of Offences to which the Scheme can be applied by all Uniformed Officers

Road Vehicle (Construction and Use) Regulations

Exhaust - Obviously damaged e.g. hanging down

Obligatory Lights - Not maintained

Mirrors - No rear view mirror

Mud wings - Not fitted

Parts and Accessories - Not maintained

Petrol Tank - Cap not fitted

Seat Belts - Not maintained

Tyres - Completely devoid of tread

Washers - Not fitted

Wipers - Damaged or missing

Road Vehicle Lighting Regulations

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

Registration Plate - 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

Tyres - Cut or break in fabric

Tyres - Lump or bulge

Tyres - Insufficient tread

Tyres - Mixture of tyres

Any further guidance relating to the recording of Road Traffic Offences should be directed to the Crime Registrar.