



Sexual Offences (Scotland) Act 2009

2009 asp 9

SEXUAL OFFENCES (SCOTLAND) ACT 2009

PART 1

RAPE ETC.

Rape

1 Rape

Sexual assault by penetration

2 Sexual assault by penetration

Sexual assault and other sexual offences

3 Sexual assault

4 Sexual coercion

5 Coercing a person into being present during a sexual activity

6 Coercing a person into looking at a sexual image

7 Communicating indecently etc.

8 Sexual exposure

9 Voyeurism

10 Interpretation of section 9

11 Administering a substance for sexual purposes

PART 2

CONSENT AND REASONABLE BELIEF

Consent

12 Meaning of “consent” and related expressions

13 Circumstances in which conduct takes place without free agreement

14 Consent: capacity while asleep or unconscious

15 Consent: scope and withdrawal

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Reasonable belief

- 16 Reasonable belief

PART 3

MENTALLY DISORDERED PERSONS

Mentally disordered persons

- 17 Capacity to consent

PART 4

CHILDREN

Young children

- 18 Rape of a young child
19 Sexual assault on a young child by penetration
20 Sexual assault on a young child
21 Causing a young child to participate in a sexual activity
22 Causing a young child to be present during a sexual activity
23 Causing a young child to look at a sexual image
24 Communicating indecently with a young child etc.
25 Sexual exposure to a young child
26 Voyeurism towards a young child
27 Belief that child had attained the age of 13 years

Older children

- 28 Having intercourse with an older child
29 Engaging in penetrative sexual activity with or towards an older child
30 Engaging in sexual activity with or towards an older child
31 Causing an older child to participate in a sexual activity
32 Causing an older child to be present during a sexual activity
33 Causing an older child to look at a sexual image
34 Communicating indecently with an older child etc.
35 Sexual exposure to an older child
36 Voyeurism towards an older child
37 Older children engaging in sexual conduct with each other
38 Penetration and consent for the purposes of section 37
39 Defences in relation to offences against older children

General

- 40 Special provision as regards failure to establish whether child has or has not attained certain ages
41 Special provision as regards age: deeming provisions

PART 5

ABUSE OF POSITION OF TRUST

Children

- 42 Sexual abuse of trust
43 Positions of trust
44 Interpretation of section 43

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45 Sexual abuse of trust: defences

Mentally disordered persons

46 Sexual abuse of trust of a mentally disordered person

47 Sexual abuse of trust of a mentally disordered person: defences

PART 6

PENALTIES

Penalties

48 Penalties

PART 7

MISCELLANEOUS AND GENERAL

Miscellaneous

49 Establishment of purpose for the purposes of sections 5 to 9, 22 to 26 and 32 to 36

50 Power to convict for offence other than that charged

51 Exceptions to inciting or being involved art and part in offences under Part 4 or 5

52 Common law offences

53 Continuity of law on sexual offences

54 Incitement to commit certain sexual acts outside the United Kingdom

55 Offences committed outside the United Kingdom

56 Continuity of law on sexual offences committed outside the United Kingdom

General provisions

57 Offences by bodies corporate etc.

58 Ancillary provision

59 Orders

60 Interpretation

61 Modification of enactments

62 Short title and commencement

SCHEDULE 1 — Relevant sexual offences

Part 1 — OFFENCES THAT MAY CURRENTLY BE COMMITTED

- 1 Any of the following offences under this Act—
- 2 An offence under any of the following provisions of the...
- 3 An offence under any of the following provisions of that...
- 4 An offence under any of the following provisions of the...
- 5 An offence under any of the following provisions of the...
- 6 An offence under any of the following provisions of that...
- 7 Any of the following offences under the Criminal Law (Consolidation)...
- 8 An offence under section 160 of the Criminal Justice Act...
- 9 An offence under article 15 of the Criminal Justice (Evidence,...
- 10 An offence under the following provisions of the Civic Government...

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- 11 An offence under section 1 of the Protection of Children...
- 12 An offence under article 3 of the Protection of Children...
- 13 An attempt, conspiracy or incitement to commit an offence in...
- 14 An offence under section 293(2) of the Criminal Procedure (Scotland)...
- Part 2 — OFFENCES REPLACED BY AN OFFENCE IN PART 1 OR THIS PART
- 15 The following common law offences against a person under the...
- 16 Rape under the common law of Northern Ireland of a...
- 17 Any of the following offences under the Sexual Offences Act...
- 18 An offence under article 18, 19, 20 or 21 of...
- 19 An offence under section 3 of the Sexual Offences (Amendment)...
- 20 An offence under section 3, 5, 6 or 13(5)(c) of...
- 21 An offence under article 123 of the Mental Health (Northern...
- 22 An offence under article 9 of the Criminal Justice (Northern...
- 23 An offence under section 54 of the Criminal Law Act...
- 24 Any of the following offences under the Sexual Offences (Scotland)...
- 25 An offence under section 21 or 22 of the Children...
- 26 An offence under section 1 of the Indecency with Children...
- 27 An offence under section 2 of the Attempted Rape, etc.,...
- 28 An offence under section 1, 10, 11, 12, 14, 15...
- 29 An offence under section 5, 6 or 28 of that...
- 30 An offence under section 1 of the Punishment of Incest...
- 31 Any of the following offences under the Criminal Law Amendment...
- 32 Any of the following offences under the Offences Against the...
- 33 An attempt, conspiracy or incitement to commit an offence in...
- 34 An offence under section 293(2) of the Criminal Procedure (Scotland)...

SCHEDULE 2 — Penalties

SCHEDULE 3 — Alternative verdicts

SCHEDULE 4 — Listed offences

Part 1 — INCITEMENT TO COMMIT CERTAIN SEXUAL ACTS OUTSIDE UK

- 1 An offence under Part 1 of this Act against a...
- 2 An offence under Part 4 of this Act.
- 3 Sexual abuse of trust (section 42 of this Act).
- 4 Sexual abuse of trust of a mentally disordered person (section...
- 5 Indecent assault of a person under the age of 18....

Part 2 — OFFENCES COMMITTED OUTSIDE UK

- 6 An offence under Part 1 of this Act against a...
- 7 An offence under Part 4 of this Act.
- 8 Sexual abuse of trust (section 42 of this Act).
- 9 Sexual abuse of trust of a mentally disordered person (section...
- 10 Indecent assault of a person under the age of 18....
- 11 An offence under section 52 of the Civic Government (Scotland)...
- 12 An offence under section 52A of that Act (possession of...
- 13 An offence under section 9 of the Protection of Children...
- 14 An offence under section 10 of that Act (causing or...
- 15 An offence under section 11 of that Act (controlling a...
- 16 An offence under section 12 of that Act (arranging or...
- 17 Conspiracy or incitement to commit any offence specified in paragraphs...
- 18 An offence under section 293(2) of the Criminal Procedure (Scotland)...

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SCHEDULE 5 — Minor and consequential amendments

The Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)

- 1 (1) The Criminal Law (Consolidation) (Scotland) Act 1995 is amended...

The Criminal Procedure (Scotland) Act 1995 (c. 46)

- 2 (1) The Criminal Procedure (Scotland) Act 1995 is amended as...

The Criminal Injuries Compensation Act 1995 (c. 53)

- 3 In section 11(9) of the Criminal Injuries Compensation Act 1995...

The Protection of Children (Scotland) Act 2003 (asp 5)

- 4 (1) Schedule 1 to the Protection of Children (Scotland) Act...

The Sexual Offences Act 2003 (c. 42)

- 5 In Schedule 3 to the Sexual Offences Act 2003 (sexual...

The Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)

- 6 In section 326(4)(c) of the Mental Health (Care and Treatment)...

The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9)

- 7 In section 1(5) of the Protection of Children and Prevention...

SCHEDULE 6 — Repeals

Changes to legislation:

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Changes and effects yet to be applied to :

- s. 9(4A)(4B) inserted by 2010 asp 13 s. 43(2)(a)
- s. 9(5) text amended by 2010 asp 13 s. 43(2)(b)(i)
- s. 9(5)(b) substituted by 2010 asp 13 s. 43(2)(b)(ii)
- s. 9(7) text amended by 2010 asp 13 s. 43(2)(c)
- s. 10(2) text amended by 2010 asp 13 s. 43(3)
- s. 26(4A)(4B) inserted by 2010 asp 13 s. 43(4)(a)
- s. 26(5) text amended by 2010 asp 13 s. 43(4)(b)(i)
- s. 26(5)(b) substituted by 2010 asp 13 s. 43(4)(b)(ii)
- s. 26(7) text amended by 2010 asp 13 s. 43(4)(c)
- s. 26(8) text amended by 2010 asp 13 s. 43(4)(d)
- s. 36(4A)(4B) inserted by 2010 asp 13 s. 43(5)(a)
- s. 36(5) text amended by 2010 asp 13 s. 43(5)(b)(i)
- s. 36(5)(b) substituted by 2010 asp 13 s. 43(5)(b)(ii)
- s. 36(7) text amended by 2010 asp 13 s. 43(5)(c)
- s. 36(8) text amended by 2010 asp 13 s. 43(5)(d)
- s. 39(2)(a)(ia) inserted by 2010 asp 13 Sch. 4 para. 13(2)(a)(ii)
- s. 39(2)(a) text amended by 2010 asp 13 Sch. 4 para. 13(2)(a)(i)
- s. 39(2)(b)(ia) inserted by 2010 asp 13 Sch. 4 para. 13(2)(b)(ii)
- s. 39(2)(b) text amended by 2010 asp 13 Sch. 4 para. 13(2)(b)(i)
- s. 39(4)(c) text amended by 2010 asp 13 s. 44
- s. 39(5)(aa) inserted by 2010 asp 13 Sch. 4 para. 13(3)
- s. 39(5A)(5B) inserted by 2010 asp 13 Sch. 4 para. 13(4)
- s. 44 text amended by S.S.I. 2011/211 Sch. 1 para. 20(2)
- s. 44 text amended by S.S.I. 2011/211 Sch. 2 para. 11
- s. 46(4) text amended by S.S.I. 2011/211 Sch. 1 para. 20(3)
- s. 55(7) text amended by 2010 asp 13 Sch. 7 para. 86
- Sch. 3 text amended by S.S.I. 2010/421 Sch. para. 4

Commencement Orders yet to be applied to the Sexual Offences (Scotland) Act 2009:

Commencement Orders bringing provisions within this Act into force:

- S.S.I. 2010/357 art. 2 commences (2009 asp 9)

Commencement Orders bringing legislation that affects this Act into force:

- S.S.I. 2010/357 art. 2 commences (2010 asp 13)
- S.S.I. 2010/413 art. 2 Sch. commences (2010 asp 13)