

EXPLANATORY NOTES

SEXUAL OFFENCES (SCOTLAND) ACT 2009

INTRODUCTION

THE ACT – AN OVERVIEW

COMMENTARY ON SECTIONS

PART ONE – RAPE ETC

Section 1 – Rape

Section 2 – Sexual assault by penetration

Section 3 – Sexual assault

Section 4 – Sexual coercion

Section 5 – Coercing a person into being present during a sexual activity

Section 6 - Coercing a person into looking at a sexual image

Section 7 – Communicating indecently etc.

Section 8 – Sexual exposure

Section 9 – Voyeurism

Section 10 – Interpretation of section 9

Section 11 – Administering a substance for sexual purposes

PART 2 – CONSENT AND REASONABLE BELIEF

Section 12 – Meaning of “consent” and related expressions

Section 13 – Circumstances in which conduct takes place without free agreement

Section 14 – Consent: capacity while asleep or unconscious

Section 15 – Consent: scope and withdrawal

Section 16 – Reasonable belief

PART 3 – MENTALLY DISORDERED PERSONS

Section 17 – Capacity to consent

PART 4 – CHILDREN

Young Children

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

Older Children

- Section 28 – Having intercourse with an older child
- Section 29 – Engaging in penetrative sexual activity with or towards an older child
- Section 30 – Engaging in sexual activity with or towards an older child
- Section 31 – Causing an older child to participate in a sexual activity
- Section 32 – Causing an older child to be present during a sexual activity
- Section 33 – Causing an older child to look at a sexual image
- Section 34 – Communicating indecently with an older child etc.
- Section 35 – Sexual exposure to an older child
- Section 36 – Voyeurism towards an older child
- Section 37 – Older children engaging in sexual conduct with each other
- Section 38 – Penetration and consent for the purposes of section 37
- Section 39 – Defences in relation to offences against older children
- Section 40 – Special provision as regards failure to establish whether child has or has not attained certain ages
- Section 41 – Special provision as regards age: deeming provisions

PART 5 – ABUSE OF POSITION OF TRUST

These notes relate to the Sexual Offences (Scotland) Act 2009 (asp 9)

Section 42 – Sexual abuse of trust

Section 43 – Positions of trust

Section 44 – Interpretation of section 43

Section 45 – Sexual abuse of trust: defences

Section 46 – Sexual abuse of trust of a mentally disordered person

Section 47 - Sexual abuse of a mentally disordered person: defences

PART 6 – PENALTIES

Section 48 – Penalties

PART 7 – MISCELLANEOUS AND GENERAL

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

Section 50 – Power to convict for offence other than that charged

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

Section 52 – Common law offences

Section 53– Continuity of law on sexual offences

Section 54 – Incitement to commit certain sexual acts outside the United Kingdom

Section 55 – Offences committed outside the United Kingdom

Section 56 – Continuity of sexual offences committed abroad

Section 57 – Offences by bodies corporate etc.

Section 58 – Ancillary provision

Section 59 – Orders

Section 60 – Interpretation

Section 61 – Modification of enactments

Section 62 – Short title and commencement

Parliamentary Stages