



# Sexual Offences (Scotland) Act 2009

## 2009 asp 9

### PART 1

#### RAPE ETC.

##### *Rape*

## 1 Rape

- (1) 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 an offence, to be known as the offence of rape.
- (2) For the purposes of this section, penetration is a continuing act from entry until withdrawal of the penis; but this subsection is subject to subsection (3).
- (3) In a case where penetration is initially consented to but at some point of time the consent is withdrawn, subsection (2) is to be construed as if the reference in it to a continuing act from entry were a reference to a continuing act from that point of time.
- (4) In this Act—

“penis” includes a surgically constructed penis if it forms part of A, having been created in the course of surgical treatment, and

“vagina” includes—

  - (a) the vulva, and
  - (b) a surgically constructed vagina (together with any surgically constructed vulva), if it forms part of B, having been created in the course of such treatment.

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*Changes to legislation:* There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009, Part 1 . (See end of Document for details)

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#### Annotations:

#### Commencement Information

- II** S. 1 wholly in force; s. 1(4) in force at Royal Assent see s. 62(2); s. 1 otherwise in force at 1.12.2010 by S.S.I. 2010/357, art. 2(a)

### *Sexual assault by penetration*

## 2 Sexual assault by penetration

- (1) 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 an offence, to be known as the offence of sexual assault by penetration.
- (2) For the purposes of this section, penetration is a continuing act from entry to withdrawal of whatever is intruded; but this subsection is subject to subsection (3).
- (3) In a case where penetration is initially consented to but at some point of time the consent is withdrawn, subsection (2) is to be construed as if the reference in it to a continuing act from entry were a reference to a continuing act from that point of time.
- (4) Without prejudice to the generality of subsection (1), the reference in that subsection to penetration with any part of A's body is to be construed as including a reference to penetration with A's penis.

### *Sexual assault and other sexual offences*

## 3 Sexual assault

- (1) 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 in subsection (2), then A commits an offence, to be known as the offence of sexual assault.
- (2) 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.

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- (3) For the purposes of paragraph (a) of subsection (2), penetration is a continuing act from entry until withdrawal of whatever is intruded; but this subsection is subject to subsection (4).
- (4) In a case where penetration is initially consented to but at some point of time the consent is withdrawn, subsection (3) is to be construed as if the reference in it to a continuing act from entry were a reference to a continuing act from that point of time.
- (5) Without prejudice to the generality of paragraph (a) of subsection (2), the reference in the paragraph to penetration by any means is to be construed as including a reference to penetration with A's penis.

#### **4 Sexual coercion**

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 causes B to participate in that activity, then A commits an offence, to be known as the offence of sexual coercion.

#### **5 Coercing a person into being present during a sexual activity**

(1) 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 an offence, to be known as the offence of coercing a person into being present during a sexual activity.

(2) The purposes are—

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

(3) Without prejudice to the generality of subsection (1), the reference in that subsection—

- (a) to A engaging in a sexual activity in the presence of B, includes a reference to A engaging in it in a place in which A can be observed by B other than by B looking at an image, and
- (b) to B being present while a third person engages in such an activity, includes a reference to B being in a place from which the third person can be so observed by B.

#### **6 Coercing a person into looking at a sexual image**

(1) If a person (“A”) intentionally and for a purpose mentioned in subsection (2) 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 an offence, to be known as the offence of coercing a person into looking at a sexual image.

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- (2) The purposes are—
  - (a) obtaining sexual gratification,
  - (b) humiliating, distressing or alarming B.
- (3) For the purposes of subsection (1), a sexual image is 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.

## 7 **Communicating indecently etc.**

- (1) 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 an offence, to be known as the offence of communicating indecently.
- (2) 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 or as the case may be hearing it,
 then A commits an offence, to be known as the offence of causing a person to see or hear an indecent communication.
- (3) The purposes are—
  - (a) obtaining sexual gratification,
  - (b) humiliating, distressing or alarming B.
- (4) In this section—
  - “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.

## 8 **Sexual exposure**

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

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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 an offence, to be known as the offence of sexual exposure.

- (2) The purposes are—
- (a) obtaining sexual gratification,
  - (b) humiliating, distressing or alarming B.

## 9 Voyeurism

(1) A person (“A”) commits an offence, to be known as the offence of voyeurism, if A does any of the things mentioned in subsections (2) to (5).

(2) The first thing is that A—

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

for a purpose mentioned in subsection (6) observes B doing a private act.

(3) The second thing is that A—

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

operates equipment with the intention of enabling A or another person (“C”), for a purpose mentioned in subsection (7), to observe B doing a private act.

(4) The third thing is that A—

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

records B doing a private act with the intention that A or another person (“C”), for a purpose mentioned in subsection (7), will look at an image of B doing the act.

[<sup>F1</sup>(4A) The fourth thing is that A—

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

operates equipment beneath B's clothing with the intention of enabling A or another person (“C”), for a purpose mentioned in subsection (7), to observe B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible.

(4B) The fifth thing is that A—

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

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”), for a purpose mentioned in subsection (7), will look at the image.]

(5) The [<sup>F2</sup>sixth] thing is that A—

- (a) installs equipment, or

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[<sup>F3</sup>(b) constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to do an act referred to in subsection (2), (3), (4), (4A) or (4B).]

(6) The purposes referred to in subsection (2) are—

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

(7) The purposes referred to in subsections (3) [<sup>F4</sup>, (4), (4A) and (4B)] are—

- (a) obtaining sexual gratification (whether for A or C),
- (b) humiliating, distressing or alarming B.

#### Annotations:

##### Amendments (Textual)

- F1** S. 9(4A)(4B) inserted (1.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 43\(2\)\(a\)](#), 206; [S.S.I. 2010/357](#), [art. 2\(b\)](#)
- F2** Word in s. 9(5) substituted (1.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 43\(2\)\(b\)\(i\)](#), 206; [S.S.I. 2010/357](#), [art. 2\(b\)](#)
- F3** S. 9(5)(b) substituted (1.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 43\(2\)\(b\)\(ii\)](#), 206; [S.S.I. 2010/357](#), [art. 2\(b\)](#)
- F4** Words in s. 9(7) substituted (1.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 43\(2\)\(c\)](#), 206; [S.S.I. 2010/357](#), [art. 2\(b\)](#)

## 10 Interpretation of section 9

(1) For the purposes of section 9, a person is 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.

(2) For the purposes of section 9(3) [<sup>F5</sup> and (4A)], operating equipment includes enabling or securing its activation by another person without that person's knowledge.

(3) In section 9(5), “structure” includes a tent, vehicle or vessel or other temporary or movable structure.

#### Annotations:

##### Amendments (Textual)

- F5** Words in s. 10(2) inserted (1.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 43\(3\)](#), 206; [S.S.I. 2010/357](#), [art. 2\(b\)](#)

## 11 Administering a substance for sexual purposes

(1) 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

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- (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 an offence, to be known as the offence of administering a substance for sexual purposes.
- (2) For the purposes of subsection (1), 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.

**Changes to legislation:**

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