



# Sexual Offences (Scotland) Act 2009

## 2009 asp 9

### PART 7

#### MISCELLANEOUS AND GENERAL

##### *General provisions*

#### **57 Offences by bodies corporate etc.**

(1) Where—

- (a) an offence under this Act has been committed by—
  - (i) a body corporate,
  - (ii) a Scottish partnership, or
  - (iii) an unincorporated association other than a Scottish partnership, and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
  - (i) a relevant individual, or
  - (ii) an individual purporting to act in the capacity of a relevant individual,

that individual (as well as the body corporate, partnership or, as the case may be, unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant individual” means—

- (a) in relation to a body corporate (other than a limited liability partnership)—
  - (i) a director, manager, secretary or other similar officer of the body,
  - (ii) where the affairs of the body are managed by its members, a member,
- (b) in relation to a limited liability partnership, a member,
- (c) in relation to a Scottish partnership, a partner,
- (d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

## **58 Ancillary provision**

- (1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, or for giving full effect to, this Act or any provision of it.
- (2) An order under this section may modify any enactment, instrument or document.

## **59 Orders**

- (1) Any power of the Scottish Ministers to make orders under this Act—
  - (a) must be exercised by statutory instrument,
  - (b) may be exercised so as to make different provision for different purposes,
  - (c) includes power to make incidental, supplemental, consequential, transitional, transitory or saving provision.
- (2) A statutory instrument containing an order made under this Act (except an order made under section 62(2)) is, subject to subsection (3), subject to annulment in pursuance of a resolution of the Parliament.
- (3) A statutory instrument containing—
  - (a) an order under section 39(6) or section 43(8), or
  - (b) an order under section 58 containing incidental, supplemental or consequential provision,
 is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

## **60 Interpretation**

- (1) In this Act—
  - “mental disorder” has the meaning given by section 17(3),
  - “penis” and “vagina” have the meanings given by section 1(4).
- (2) 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.

## **61 Modification of enactments**

- (1) Schedule 5 (which contains modifications of enactments) has effect.
- (2) The enactments mentioned in the first column of schedule 6 are repealed to the extent specified in the second column of that schedule.

## **62 Short title and commencement**

- (1) This Act may be cited as the Sexual Offences (Scotland) Act 2009.

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*Status: This is the original version (as it was originally enacted).*

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- (2) This Act (other than sections 1(4), 17(3), 58 to 60 and this section) comes into force in accordance with provision made by the Scottish Ministers by order.