



# Sexual Offences (Scotland) Act 2009

## 2009 asp 9

### PART 4

#### CHILDREN

##### *General*

#### **40 Special provision as regards failure to establish whether child has or has not attained certain ages**

- (1) Deeming provision 1 applies to a trial where—
  - (a) A is charged with an offence under any of sections 28 to 36 or 37(1),
  - (b) there is a failure to establish beyond reasonable doubt that B was a child who had attained the age of 13 years at the relevant time, and
  - (c) the court or, in the case of a trial of an indictment, the jury is satisfied it is established beyond reasonable doubt that B had not attained the age of 16 years at the time.
- (2) Deeming provision 2 applies to a trial where—
  - (a) B is charged with an offence under section 37(4),
  - (b) there is a failure to establish beyond reasonable doubt that A was a child who had attained the age of 13 years at the relevant time, and
  - (c) the court or, in the case of a trial of an indictment, the jury is satisfied it is established beyond reasonable doubt that A had not attained the age of 16 years at the time.
- (3) Deeming provision 3 applies to a trial where—
  - (a) A is charged with an offence under section 37(1),
  - (b) there is a failure to establish beyond reasonable doubt that A was a child who had not attained the age of 16 years at the relevant time, and
  - (c) the court or, in the case of a trial of an indictment, the jury is satisfied it is established beyond reasonable doubt that A had attained the age of 13 years at the time.
- (4) Deeming provision 4 applies to a trial where—
  - (a) B is charged with an offence under section 37(4),

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**Changes to legislation:** There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009, Section 40. (See end of Document for details)

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- (b) there is a failure to establish beyond reasonable doubt that B was a child who had not attained the age of 16 years at the relevant time, and
  - (c) the court or, in the case of a trial of an indictment, the jury is satisfied it is established beyond reasonable doubt that B had attained the age of 13 years at the time.
- (5) Where any of the deeming provisions apply, references in sections 28 to 37 to A or B having or not having attained a particular age are to be construed in accordance with this section and section 41.
- (6) In this section and section 41, the “relevant time” is when the conduct to which the proceedings relate occurred.

**Changes to legislation:**

There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009, Section 40.