



# Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

## 2005 asp 9

### *Meeting a child following certain preliminary contact*

#### **1 Meeting a child following certain preliminary contact** **S**

- (1) A person (“A”) commits an offence if—
- (a) having met or communicated with another person (“B”) on at least one earlier occasion, A—
    - (i) intentionally meets B;
    - (ii) travels, in any part of the world, with the intention of meeting B in any part of the world; or
    - (iii) makes arrangements, in any part of the world, with the intention of meeting B in any part of the world, for B to travel in any part of the world;
  - (b) at the time, A intends to engage in unlawful sexual activity involving B or in the presence of B—
    - (i) during or after the meeting; and
    - (ii) in any part of the world;
  - (c) B is—
    - (i) aged under 16; or
    - (ii) a constable;
  - (d) A does not reasonably believe that B is 16 or over; and
  - (e) at least one of the following is the case—
    - (i) the meeting or communication on an earlier occasion referred to in paragraph (a) (or, if there is more than one, one of them) has a relevant Scottish connection;
    - (ii) the meeting referred to in sub-paragraph (i) of that paragraph or, as the case may be, the travelling referred to in sub-paragraph (ii) of that paragraph or the making of arrangements referred to in sub-paragraph (iii) of that paragraph, has a relevant Scottish connection;
    - (iii) A is a British citizen or resident in the United Kingdom.
- (2) In subsection (1) above—

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**Changes to legislation:** There are currently no known outstanding effects for the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. (See end of Document for details)

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- (a) the reference to A's having met or communicated with B is a reference to A's having met B in any part of the world or having communicated with B by any means from or in any part of the world (and irrespective of where B is in the world); and
  - (b) a meeting or travelling or making of arrangements has a relevant Scottish connection if it, or any part of it, takes place in Scotland; and a communication has such a connection if it is made from or to or takes place in Scotland.
- (3) For the purposes of subsection (1)(b) above, it is not necessary to allege or prove that A intended to engage in a specific activity.
- (4) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or a fine or both.
- (5) <sup>F1</sup>Subsection (7) of section 55 of the Sexual Offences (Scotland) Act 2009 (asp 9) (which determines the sheriff court district in which proceedings against persons committing certain sexual acts outside the United Kingdom are to be taken) apply in relation to proceedings for an offence under this section as they apply to an offence to which that section applies.

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**Textual Amendments**

- F1** Words in s. 1(5) substituted (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#), s. 62(2), [Sch. 5 para. 7](#); [S.S.I. 2010/357](#), art. 2(a)

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**Commencement Information**

- I1** S. 1 in force at 7.10.2005 by [S.S.I. 2005/480](#), art. 2

*Risk of sexual harm orders*

**F22 Risk of sexual harm orders: applications, grounds and effect** **S**

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**Textual Amendments**

- F2** [Ss. 2-8](#) repealed (31.3.2023) by [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016 \(asp 22\)](#), [ss. 39\(2\)](#), [45\(2\)\(3\)](#) (with s. 44); [S.S.I. 2023/51](#), reg. 2 (with reg. 3)

**F23 Interpretation of section 2** **S**

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**Textual Amendments**

- F2** [Ss. 2-8](#) repealed (31.3.2023) by [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016 \(asp 22\)](#), [ss. 39\(2\)](#), [45\(2\)\(3\)](#) (with s. 44); [S.S.I. 2023/51](#), reg. 2 (with reg. 3)

*Changes to legislation:* There are currently no known outstanding effects for the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. (See end of Document for details)

**F24 RSHOs: variations, renewals and discharges** **S**

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**Textual Amendments**

**F2** Ss. 2-8 repealed (31.3.2023) by Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (asp 22), ss. 39(2), 45(2)(3) (with s. 44); S.S.I. 2023/51, reg. 2 (with reg. 3)

**F25 Interim RSHOs** **S**

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**Textual Amendments**

**F2** Ss. 2-8 repealed (31.3.2023) by Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (asp 22), ss. 39(2), 45(2)(3) (with s. 44); S.S.I. 2023/51, reg. 2 (with reg. 3)

**F26 Appeals** **S**

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**Textual Amendments**

**F2** Ss. 2-8 repealed (31.3.2023) by Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (asp 22), ss. 39(2), 45(2)(3) (with s. 44); S.S.I. 2023/51, reg. 2 (with reg. 3)

**F27 Offence: breach of RSHO or interim RSHO etc** **S**

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**Textual Amendments**

**F2** Ss. 2-8 repealed (31.3.2023) by Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (asp 22), ss. 39(2), 45(2)(3) (with s. 44); S.S.I. 2023/51, reg. 2 (with reg. 3)

**F28 Effect of conviction etc. under section 7 above or section 122H or 128 of Sexual Offences Act 2003** **S**

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**Textual Amendments**

**F2** Ss. 2-8 repealed (31.3.2023) by Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (asp 22), ss. 39(2), 45(2)(3) (with s. 44); S.S.I. 2023/51, reg. 2 (with reg. 3)

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**Changes to legislation:** There are currently no known outstanding effects for the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. (See end of Document for details)

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### *Sexual services of children and child pornography*

## 9 Paying for sexual services of a child S

- (1) A person (“A”) commits an offence if—
- (a) A intentionally obtains for himself or herself the sexual services of another person (“B”);
  - (b) before obtaining those services, A—
    - (i) makes or promises payment for those services to B or to a third person; or
    - (ii) knows that another person has made or promised such a payment; and
  - (c) either—
    - (i) B is aged under 18, and A does not reasonably believe that B is aged 18 or over; or
    - (ii) B is aged under 13.
- (2) In subsection (1)(b) above, “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.
- (3) For the purposes of subsections (1) and (2) above, “sexual services” are—
- (a) the performance of sexual activity; or
  - (b) the performance of any other activity that a reasonable person would, in all the circumstances, consider to be for the purpose of providing sexual gratification, and a person's sexual services are obtained where what is obtained is the performance of such an activity by the person.
- (4) A person guilty of an offence under this section in respect of a person aged 16 or over is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years [<sup>F3</sup>or a fine or both].
- (5) A person guilty of an offence under this section in respect of a person aged under 16 is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years [<sup>F4</sup>or a fine or both].

#### Textual Amendments

- F3** Words in s. 9(4)(b) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), ss. 40\(2\)\(a\), 206\(1\); S.S.I. 2010/413, art. 2, Sch. \(with art. 4\)](#)
- F4** Words in s. 9(5)(b) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), ss. 40\(2\)\(a\), 206\(1\); S.S.I. 2010/413, art. 2, Sch. \(with art. 4\)](#)

#### Commencement Information

- I2** S. 9 in force at 7.10.2005 by [S.S.I. 2005/480, art. 2](#)

**Changes to legislation:** There are currently no known outstanding effects for the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. (See end of Document for details)

## 10 Causing or inciting provision by child of sexual services or child pornography **S**

- (1) A person (“A”) commits an offence if—
- (a) A intentionally causes or incites another person (“B”) to become a provider of sexual services, or to be involved in pornography, in any part of the world; and
  - (b) either—
    - (i) B is aged under 18, and A does not reasonably believe that B is aged 18 or over; or
    - (ii) B is aged under 13.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years [<sup>F5</sup>or a fine or both].

### Textual Amendments

**F5** Words in s. 10(2)(b) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 40(2)(b)**, 206(1); [S.S.I. 2010/413](#), art. 2, Sch. (with art. 4)

### Commencement Information

**I3** S. 10 in force at 7.10.2005 by [S.S.I. 2005/480](#), **art. 2**

## 11 Controlling a child providing sexual services or involved in pornography **S**

- (1) A person (“A”) commits an offence if—
- (a) A intentionally controls any of the activities of another person (“B”) relating to B's provision of sexual services or involvement in pornography in any part of the world; and
  - (b) either—
    - (i) B is aged under 18, and A does not reasonably believe that B is aged 18 or over; or
    - (ii) B is aged under 13.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years [<sup>F6</sup>or a fine or both].

### Textual Amendments

**F6** Words in s. 11(2)(b) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 40(2)(c)**, 206(1); [S.S.I. 2010/413](#), art. 2, Sch. (with art. 4)

### Commencement Information

**I4** S. 11 in force at 7.10.2005 by [S.S.I. 2005/480](#), **art. 2**

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*Changes to legislation:* There are currently no known outstanding effects for the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. (See end of Document for details)

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## 12 Arranging or facilitating provision by child of sexual services or child pornography **S**

- (1) A person (“A”) commits an offence if—
- (a) A intentionally arranges or facilitates the—
    - (i) provision of sexual services in any part of the world by; or
    - (ii) involvement in pornography in any part of the world of, another person (“B”); and
  - (b) either—
    - (i) B is aged under 18, and A does not reasonably believe that B is aged 18 or over; or
    - (ii) B is aged under 13.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years [<sup>F7</sup> or a fine or both].

### Textual Amendments

**F7** Words in s. 12(2)(b) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 40\(2\)\(d\)](#), 206(1); [S.S.I. 2010/413](#), [art. 2](#), Sch. (with [art. 4](#))

### Commencement Information

**I5** S. 12 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

## 13 Sections 10 to 12: supplementary **S**

- (1) For the purpose of sections 10 to 12 above, a person is involved in pornography if an indecent image of that person is recorded; and similar expressions, and “pornography”, are to be construed accordingly.
- (2) In those sections, “provider of sexual services” means a person (“B”) who, on at least one occasion and whether or not compelled to do so, offers or provides B's sexual services to another person in return for payment or a promise of payment to B or a third party; and “provision of sexual services” is to be construed accordingly.
- (3) In subsection (2) above, “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.
- (4) For the purpose of subsections (2) and (3) above, “sexual services” are—
  - (a) the performance of sexual activity; or
  - (b) the performance of any other activity that a reasonable person would, in all the circumstances, consider to be for the purpose of providing sexual gratification, and a person's sexual services are offered or provided to another person where such an activity is offered to be performed or performed with or for the other person.
- (5) A person does not commit an offence under section 10, 11 or 12 above by reason only of doing something within section 52(1) or 52A(1) of the Civic Government (Scotland) Act 1982 (c. 45).

*Changes to legislation:* There are currently no known outstanding effects for the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. (See end of Document for details)

#### Commencement Information

**I6** S. 13 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

### **14**      **Liability to other criminal proceedings** **S**

- (1) Sections 9 to 12 above do not exempt any person from any proceedings for an offence which is punishable at common law or under any enactment other than those sections.
- (2) But nothing in those sections or this section enables a person to be punished twice for the same offence.

#### Commencement Information

**I7** S. 14 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

### **[<sup>F8</sup>14A**      **Offences by bodies corporate etc.** **S**

- (1) Subsection (2) applies where an offence under sections 10 to 12 committed—
  - (a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is a director, manager, secretary or other similar officer of the body corporate, or
    - (ii) purports to act in any such capacity,
  - (b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is a partner, or
    - (ii) purports to act in that capacity,
  - (c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is concerned in the management or control of the association, or
    - (ii) purports to act in the capacity of a person so concerned.
- (2) The individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.
- (3) Where the affairs of a body corporate are managed by its members, this section applies in relation to acts and defaults of a member in connection with the member's function of management as if the member were a director of the body corporate.]

#### Textual Amendments

**F8** S. 14A inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 40\(3\)](#), [206\(1\)](#); [S.S.I. 2010/413](#), [art. 2](#), [Sch.](#) (with [art. 4](#))

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**Changes to legislation:** There are currently no known outstanding effects for the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. (See end of Document for details)

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*Unlawful intercourse with girl between 13 and 16*

**15 Removal of time limit for prosecution of offence** **S**

Subsections (4) and (7) of section 5 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (unlawful intercourse with a girl under 16) are repealed.

**Commencement Information**

**18** S. 15 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

*Indecent images of children*

**16 Indecent photographs of 16 and 17 year olds** **S**

- (1) The Civic Government (Scotland) Act 1982 (c. 45) is amended as follows.
- (2) In section 52 (which makes certain conduct in relation to indecent photographs of persons under 16 an offence), in subsection (2), for “16” in both places where it occurs there is substituted “ 18 ”.
- (3) After section 52A (which makes possession of indecent photographs of persons under 16 an offence) there is inserted—

**“52B Sections 52 and 52A: exceptions for photographs of 16 and 17 year olds**

- (1) If subsection (2) below applies, the accused is not guilty of an offence under section 52(1)(a) of this Act of taking or making an indecent photograph of a child.
- (2) This subsection applies if—
  - (a) either—
    - (i) the photograph was of the child aged 16 or over; or
    - (ii) the accused reasonably believed that to be so;
  - (b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
    - (i) married to or civil partners of each other; or
    - (ii) partners in an established relationship; and
  - (c) either—
    - (i) the child consented to the photograph being taken or made; or
    - (ii) the accused reasonably believed that to be so.
- (3) If subsection (4) below applies, the accused is not guilty of an offence under section 52(1)(b) of this Act relating to an indecent photograph of a child.
- (4) This subsection applies if—
  - (a) either—
    - (i) the photograph was of the child aged 16 or over; or
    - (ii) the accused reasonably believed that to be so;



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**Changes to legislation:** There are currently no known outstanding effects for the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. (See end of Document for details)

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- (b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
    - (i) married to or civil partners of each other; or
    - (ii) partners in an established relationship;
  - (c) either—
    - (i) the child consented to the photograph's being taken or made; or
    - (ii) the accused reasonably believed that to be so; and
  - (d) the showing or distributing of the photograph was only to the child.
- (5) If subsection (6) below applies, the accused is not guilty of an offence under section 52(1)(c) of this Act relating to an indecent photograph of a child.
- (6) This subsection applies if—
- (a) either—
    - (i) the photograph was of the child aged 16 or over; or
    - (ii) the accused reasonably believed that to be so;
  - (b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
    - (i) married to or civil partners of each other; or
    - (ii) partners in an established relationship;
  - (c) either—
    - (i) the child consented to the photograph's being in the accused's possession; or
    - (ii) the accused reasonably believed that to be so; and
  - (d) the accused had the photograph in his possession with a view to its being distributed or shown only to the child.
- (7) If subsection (8) below applies, the accused is not guilty of an offence under section 52A of this Act relating to an indecent photograph of a child.
- (8) This subsection applies if—
- (a) either—
    - (i) the photograph was of the child aged 16 or over; or
    - (ii) the accused reasonably believed that to be so;
  - (b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
    - (i) married to or civil partners of each other; or
    - (ii) partners in an established relationship; and
  - (c) either—
    - (i) the child consented to the photograph's being in the accused's possession; or
    - (ii) the accused reasonably believed that to be so.
- (9) Subsections (2), (4), (6) and (8) above apply whether the photograph showed the child alone or with the accused, but not if it showed any other person.

**Changes to legislation:** There are currently no known outstanding effects for the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. (See end of Document for details)

### 52C Section 52B: proof of exceptions

- (1) This section applies for the purpose of determining whether a matter within a paragraph of section 52B(2), (4), (6) or (8) of this Act is the case.
- (2) If sufficient evidence is adduced to raise an issue as to whether the matter is the case, it shall be held to be the case, except where subsection (3) below applies.
- (3) This subsection applies where the prosecution proves beyond reasonable doubt that the matter is not the case.
- (4) Otherwise, the matter shall be held not to be the case.”.

#### Commencement Information

**I9** S. 16 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

### *Sexual offences prevention orders*

## 17 Prevention of sexual offences: further provision **U.K.**

- <sup>F9</sup>(1) .....
- <sup>F9</sup>(2) .....
- <sup>F9</sup>(3) .....
- <sup>F9</sup>(4) .....
- <sup>F9</sup>(5) .....

(6) In section 142(3) of that Act (its Scottish extent) after “93” there is inserted “, 110”.

#### Textual Amendments

**F9** S. 17(1)-(5) repealed (31.3.2023) by [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#) (asp 22), s. 45(2)(3), [sch. 2 para. 4](#) (with s. 44); [S.S.I. 2023/51](#), [reg. 2](#) (with [regs. 3, 4\(3\)](#))

#### Modifications etc. (not altering text)

**C1** S. 17 extended (E.W.N.I.) (8.11.2006) by [Violent Crime Reduction Act 2006](#) (c. 38), [s. 56\(1\)\(a\)](#)

#### Commencement Information

**I10** S. 17 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#) (with [art. 3\(1\)\(2\)](#))

### *General*

## 18 Minor and consequential amendments **U.K.**

The schedule to this Act, which contains minor amendments and amendments consequential on this Act, has effect.

**Changes to legislation:** There are currently no known outstanding effects for the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. (See end of Document for details)

**Modifications etc. (not altering text)**

**C2** S. 18 extended (E.W.N.I.) in part (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\), s. 56\(1\)\(b\)](#)

**Commencement Information**

**I11** S. 18 in force at 7.10.2005 by [S.S.I. 2005/480, art. 2](#)

**19 Interpretation** **S**

In this Act—

“the 2003 Act” means the Sexual Offences Act 2003 (c. 42);

“sexual activity” means an activity that a reasonable person would, in all the circumstances, consider to be sexual; and a reference to engaging in sexual activity includes (other than in section 2(5)(b) above)—

- (a) a reference to an attempt or conspiracy to engage in such activity; and
- (b) a reference to aiding, abetting, counselling, procuring or inciting another person to engage in such activity.

**Commencement Information**

**I12** S. 19 in force at 7.10.2005 by [S.S.I. 2005/480, art. 2](#)

**20 Citation and commencement** **S**

- (1) This Act may be cited as the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.
- (2) This Act, except this section, comes into force on such day as the Scottish Ministers may by order made by statutory instrument appoint and different days may be so appointed for different purposes.
- (3) An order under subsection (2) above may contain transitional, transitory or saving provision.

**Changes to legislation:**

There are currently no known outstanding effects for the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.