

# **PROTECTION OF CHILDREN AND PREVENTION OF SEXUAL OFFENCES (SCOTLAND) ACT 2005**

---

## **EXPLANATORY NOTES**

### **THE ACT – COMMENTARY ON SECTIONS**

#### ***Section 9 – Paying for sexual services of a child***

28. **Section 9** of the Act makes it an offence for a person (A) to purchase sexual services from another person (B) where B is under 18. The offence can be committed whether A makes the payment direct to B or to someone else, or knows that someone else has made such a payment.
29. Subsection (2) defines payment as any financial advantage, including the discharge of an obligation to pay or the provision of goods or services gratuitously or at a discount. The payment does not need to involve money actually changing hands, but could instead involve the discharge of an obligation to pay – such as the waiving of a debt – or provision of goods or services free of charge or at a reduced cost – for example providing food or accommodation, or supplying illegal drugs free or for less than street value.
30. Subsection (3) defines “sexual services” as the performance of sexual activity or 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. Subsection (3) also sets out that a person’s sexual services are obtained where what is obtained is the performance of such an activity by the person. It is intended that “sexual services” should cover activities such as prostitution, lap dancing, stripping and telephone sex chat lines.
31. In cases where B is 13 or over, the Crown must prove that A did not reasonably believe that B was 18 or over. Where B is under 13, the offence is committed regardless of A’s belief as to B’s age.
32. Subsections (4) and (5) set out the penalties in relation to the offence. On summary conviction, the maximum penalty available is 6 months imprisonment or a fine not exceeding the statutory maximum or both. The penalties available for conviction on indictment are determined by the age of B. Where B was aged 16 or over, the maximum penalty on indictment is 7 years imprisonment. Where B was aged under 16, the maximum penalty on indictment is 14 years imprisonment.