

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

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

Section 1 – Meeting a child following certain preliminary contact

4. Subsection (1) makes it an offence for a person (A) intentionally to meet, travel with the intention of meeting, or make arrangements with the intention of meeting another person (B) in any part of the world, if A has met or communicated with B on at least one earlier occasion, and intends to engage in unlawful sexual activity involving B or in the presence of B either at the time of the meeting or after the meeting. B must be aged under 16 or a police constable. An offence is not committed if A reasonably believes B to be 16 or over.
5. The offence is intended to cover situations where A establishes contact with B through, for example, meetings, telephone conversations or communications on the internet, and gains B's trust and confidence so that A can arrange to meet B for the purpose of engaging in unlawful sexual activity involving, or in the presence of, him or her. The course of conduct prior to the meeting that triggers the offence may, but need not, have an explicitly sexual content.
6. The offence would be complete when, following the earlier contact, A meets or travels to meet B, or makes arrangements for B to travel to meet A with the intent to engage in unlawful sexual activity involving or in the presence of B. The intended unlawful sexual activity does not have to take place. One or more of the necessary elements of the offence, namely the preliminary meeting or communication(s), the subsequent intentional meeting, any part of the travelling to meet with B, or the making of arrangements for B to meet with A must have a "relevant Scottish connection" (defined in subsection (2)(b)), unless the accused is a British citizen or UK resident, in which case all of these elements may take place entirely outwith Scotland.
7. The evidence of A's intention to engage in unlawful sexual activity may be drawn from the communications between A and B prior to the meeting, or may be drawn from other circumstances, for example if A travels to the meeting with condoms and lubricants.
8. The offence may be complete if A is communicating with and making arrangements with a police constable rather than with a child, as long as A believes that s/he is communicating with a child. This provides for circumstances where suspicious online communication between a potential offender and a child is identified and police officers assume the role of the child in order to continue the communication with the potential offender.

*These notes relate to the Protection of Children and Prevention of Sexual Offences
(Scotland) Act 2005 (asp 9) which received Royal Assent on 12 July 2005*

9. Subsection (2)(a) provides that references in subsection (1) to meetings or communications with B include meetings or communications that take place in or across any part of the world.
10. Subsection (3) provides that it will not be necessary for the Crown to allege or prove that A intended to engage in specific sexual activity. The term “sexual activity” is defined in section 19.
11. Subsection (4) provides that the offence can be prosecuted summarily or on indictment. Anyone found guilty of the offence is liable to punishment of six months imprisonment and/or a fine not exceeding the statutory maximum (currently £5,000) under summary procedure or to an unlimited fine and/or 10 years imprisonment on indictment.
12. Subsection (5) applies subsections (6A) and (6B) of section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 to proceedings for an offence under section 1 of the Act. The effect of this is that where acts leading to the apprehension of an accused person have taken place outside the UK, the person may be proceeded against in the sheriff court district in which the person was apprehended or is in custody or in such other sheriff court district as the Lord Advocate may determine.