



# Sexual Offences (Scotland) Act 2009

## 2009 asp 9

### SEXUAL OFFENCES (SCOTLAND) ACT 2009

#### **PART 1**

#### RAPE ETC.

##### *Rape*

1 Rape

##### *Sexual assault by penetration*

2 Sexual assault by penetration

##### *Sexual assault and other sexual offences*

3 Sexual assault

4 Sexual coercion

5 Coercing a person into being present during a sexual activity

6 Coercing a person into looking at a sexual image

7 Communicating indecently etc.

8 Sexual exposure

9 Voyeurism

10 Interpretation of section 9

11 Administering a substance for sexual purposes

#### **PART 2**

#### CONSENT AND REASONABLE BELIEF

##### *Consent*

12 Meaning of “consent” and related expressions

13 Circumstances in which conduct takes place without free agreement

14 Consent: capacity while asleep or unconscious

15 Consent: scope and withdrawal

*Status: Point in time view as at 01/12/2010.*

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

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*Reasonable belief*

16 Reasonable belief

**PART 3**

MENTALLY DISORDERED PERSONS

*Mentally disordered persons*

17 Capacity to consent

**PART 4**

CHILDREN

*Young children*

- 18 Rape of a young child
- 19 Sexual assault on a young child by penetration
- 20 Sexual assault on a young child
- 21 Causing a young child to participate in a sexual activity
- 22 Causing a young child to be present during a sexual activity
- 23 Causing a young child to look at a sexual image
- 24 Communicating indecently with a young child etc.
- 25 Sexual exposure to a young child
- 26 Voyeurism towards a young child
- 27 Belief that child had attained the age of 13 years

*Older children*

- 28 Having intercourse with an older child
- 29 Engaging in penetrative sexual activity with or towards an older child
- 30 Engaging in sexual activity with or towards an older child
- 31 Causing an older child to participate in a sexual activity
- 32 Causing an older child to be present during a sexual activity
- 33 Causing an older child to look at a sexual image
- 34 Communicating indecently with an older child etc.
- 35 Sexual exposure to an older child
- 36 Voyeurism towards an older child
- 37 Older children engaging in sexual conduct with each other
- 38 Penetration and consent for the purposes of section 37
- 39 Defences in relation to offences against older children

*General*

- 40 Special provision as regards failure to establish whether child has or has not attained certain ages
- 41 Special provision as regards age: deeming provisions

**PART 5**

ABUSE OF POSITION OF TRUST

*Children*

- 42 Sexual abuse of trust
- 43 Positions of trust
- 44 Interpretation of section 43

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45 Sexual abuse of trust: defences

*Mentally disordered persons*

46 Sexual abuse of trust of a mentally disordered person

47 Sexual abuse of trust of a mentally disordered person: defences

**PART 6**

PENALTIES

*Penalties*

48 Penalties

**PART 7**

MISCELLANEOUS AND GENERAL

*Miscellaneous*

49 Establishment of purpose for the purposes of sections 5 to 9, 22 to 26 and 32 to 36

50 Power to convict for offence other than that charged

51 Exceptions to inciting or being involved art and part in offences under Part 4 or 5

52 Common law offences

53 Continuity of law on sexual offences

54 Incitement to commit certain sexual acts outside the United Kingdom

55 Offences committed outside the United Kingdom

56 Continuity of law on sexual offences committed outside the United Kingdom

*General provisions*

57 Offences by bodies corporate etc.

58 Ancillary provision

59 Orders

60 Interpretation

61 Modification of enactments

62 Short title and commencement

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SCHEDULE 1 — Relevant sexual offences

Part 1 — OFFENCES THAT MAY CURRENTLY BE COMMITTED

- 1 Any of the following offences under this Act—
- 2 An offence under any of the following provisions of the...
- 3 An offence under any of the following provisions of that...
- 4 An offence under any of the following provisions of the...
- 5 An offence under any of the following provisions of the...
- 6 An offence under any of the following provisions of that...
- 7 Any of the following offences under the Criminal Law (Consolidation)...
- 8 An offence under section 160 of the Criminal Justice Act...
- 9 An offence under article 15 of the Criminal Justice (Evidence,...
- 10 An offence under the following provisions of the Civic Government...

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- 11 An offence under section 1 of the Protection of Children...
- 12 An offence under article 3 of the Protection of Children...
- 13 An attempt, conspiracy or incitement to commit an offence in...
- 14 An offence under section 293(2) of the Criminal Procedure (Scotland)...
- Part 2 — OFFENCES REPLACED BY AN OFFENCE IN PART 1 OR THIS PART
- 15 The following common law offences against a person under the...
- 16 Rape under the common law of Northern Ireland of a...
- 17 Any of the following offences under the Sexual Offences Act...
- 18 An offence under article 18, 19, 20 or 21 of...
- 19 An offence under section 3 of the Sexual Offences (Amendment)...
- 20 An offence under section 3, 5, 6 or 13(5)(c) of...
- 21 An offence under article 123 of the Mental Health (Northern...
- 22 An offence under article 9 of the Criminal Justice (Northern...
- 23 An offence under section 54 of the Criminal Law Act...
- 24 Any of the following offences under the Sexual Offences (Scotland)...
- 25 An offence under section 21 or 22 of the Children...
- 26 An offence under section 1 of the Indecency with Children...
- 27 An offence under section 2 of the Attempted Rape, etc.,...
- 28 An offence under section 1, 10, 11, 12, 14, 15...
- 29 An offence under section 5, 6 or 28 of that...
- 30 An offence under section 1 of the Punishment of Incest...
- 31 Any of the following offences under the Criminal Law Amendment...
- 32 Any of the following offences under the Offences Against the...
- 33 An attempt, conspiracy or incitement to commit an offence in...
- 34 An offence under section 293(2) of the Criminal Procedure (Scotland)...

#### SCHEDULE 2 — Penalties

#### SCHEDULE 3 — Alternative verdicts

#### SCHEDULE 4 — Listed offences

##### Part 1 — INCITEMENT TO COMMIT CERTAIN SEXUAL ACTS OUTSIDE UK

- 1 An offence under Part 1 of this Act against a...
- 2 An offence under Part 4 of this Act.
- 3 Sexual abuse of trust (section 42 of this Act).
- 4 Sexual abuse of trust of a mentally disordered person (section...
- 5 Indecent assault of a person under the age of 18....

##### Part 2 — OFFENCES COMMITTED OUTSIDE UK

- 6 An offence under Part 1 of this Act against a...
- 7 An offence under Part 4 of this Act.
- 8 Sexual abuse of trust (section 42 of this Act).
- 9 Sexual abuse of trust of a mentally disordered person (section...
- 10 Indecent assault of a person under the age of 18....
- 11 An offence under section 52 of the Civic Government (Scotland)...
- 12 An offence under section 52A of that Act (possession of...
- 13 An offence under section 9 of the Protection of Children...
- 14 An offence under section 10 of that Act (causing or...
- 15 An offence under section 11 of that Act (controlling a...
- 16 An offence under section 12 of that Act (arranging or...
- 17 Conspiracy or incitement to commit any offence specified in paragraphs...
- 18 An offence under section 293(2) of the Criminal Procedure (Scotland)...

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## SCHEDULE 5 — Minor and consequential amendments

*The Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)*

- 1 (1) The Criminal Law (Consolidation) (Scotland) Act 1995 is amended...

*The Criminal Procedure (Scotland) Act 1995 (c. 46)*

- 2 (1) The Criminal Procedure (Scotland) Act 1995 is amended as...

*The Criminal Injuries Compensation Act 1995 (c. 53)*

- 3 In section 11(9) of the Criminal Injuries Compensation Act 1995...

*The Protection of Children (Scotland) Act 2003 (asp 5)*

- 4 (1) Schedule 1 to the Protection of Children (Scotland) Act...

*The Sexual Offences Act 2003 (c. 42)*

- 5 In Schedule 3 to the Sexual Offences Act 2003 (sexual...

*The Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)*

- 6 In section 326(4)(c) of the Mental Health (Care and Treatment)...

*The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9)*

- 7 In section 1(5) of the Protection of Children and Prevention...

## SCHEDULE 6 — Repeals

**Status:**

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**Changes to legislation:**

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