

SEXUAL OFFENCES (SCOTLAND) ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Children

Older Children

Section 29 – Engaging in penetrative sexual activity with or towards an older child

80. This section creates the offence of “engaging in penetrative sexual activity with or towards an older child.”. Subsection (1) provides that a person commits this offence by intentionally or recklessly sexually penetrating to any extent, with any part of his or her body, or anything else (i.e. an object), the vagina or anus of an older child. The offence may only be committed by a person aged 16 or over.
81. Subsection (2) provides that penetration “by any part of A’s body” in subsection (1) includes with the perpetrator’s penis. This means there is an overlap between the conduct which constitutes engaging in penetrative sexual activity with an older child, that which constitutes having intercourse with an older child under section 21 and that which constitutes engaging in sexual activity with an older child. This is necessary for the same reasons as specified for the overlap between the offences at sections 1, 2 and 3 of the Bill (see paragraph 12 above).