

Sexual Offences (Scotland) Act 2009

2009 asp 9

PART 2

CONSENT AND REASONABLE BELIEF

Consent

12 Meaning of “consent” and related expressions

In Parts 1 and 3, “consent” means free agreement (and related expressions are to be construed accordingly).

13 Circumstances in which conduct takes place without free agreement

- (1) For the purposes of section 12, but without prejudice to the generality of that section, free agreement to conduct is absent in the circumstances set out in subsection (2).
- (2) Those circumstances are—
 - (a) where the conduct occurs at a time when B is incapable because of the effect of alcohol or any other substance of consenting to it,
 - (b) where B agrees or submits to the conduct because of violence used against B or any other person, or because of threats of violence made against B or any other person,
 - (c) where B agrees or submits to the conduct because B is unlawfully detained by A,
 - (d) where B agrees or submits to the conduct because B is mistaken, as a result of deception by A, as to the nature or purpose of the conduct,
 - (e) where B agrees or submits to the conduct because A induces B to agree or submit to the conduct by impersonating a person known personally to B, or
 - (f) where the only expression or indication of agreement to the conduct is from a person other than B.
- (3) References in this section to A and to B are to be construed in accordance with sections 1 to 9.

Changes to legislation: Sexual Offences (Scotland) Act 2009, Cross Heading: Consent is up to date with all changes known to be in force on or before 16 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

14 Consent: capacity while asleep or unconscious

- (1) This section applies in relation to sections 1 to 9.
- (2) A person is incapable, while asleep or unconscious, of consenting to any conduct.

15 Consent: scope and withdrawal

- (1) This section applies in relation to sections 1 to 9.
- (2) Consent to conduct does not of itself imply consent to any other conduct.
- (3) Consent to conduct may be withdrawn at any time before, or in the case of continuing conduct, during, the conduct.
- (4) If the conduct takes place, or continues to take place, after consent has been withdrawn, it takes place, or continues to take place, without consent.

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 39(2)(a)(ia) words inserted by [S.S.I. 2020/339 reg. 14\(a\)](#)
- s. 39(2)(b)(ia) words inserted by [S.S.I. 2020/339 reg. 14\(a\)](#)