

# 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.

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**Changes to legislation:** *Sexual Offences (Scotland) Act 2009, Part 2 is up to date with all changes known to be in force on or before 13 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*

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**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- (3) Consent to conduct may be withdrawn at any time before, or in the case of continuing conduct, during, the conduct.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.

*Reasonable belief*

**16      Reasonable belief**

In determining, for the purposes of Part 1, whether a person's belief as to consent or knowledge was reasonable, regard is to be had to whether the person took any steps to ascertain whether there was consent or, as the case may be, knowledge; and if so, to what those steps were.

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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\(a\)](#)