



# Sexual Offences (Scotland) Act 2009

## 2009 asp 9

### PART 3

#### MENTALLY DISORDERED PERSONS

##### *Mentally disordered persons*

#### 17 Capacity to consent

- (1) This section applies in relation to sections 1 to 9.
- (2) A mentally disordered person is incapable of consenting to conduct where, by reason of mental disorder, the person is unable to do one or more of the following—
  - (a) understand what the conduct is,
  - (b) form a decision as to whether to engage in the conduct (or as to whether the conduct should take place),
  - (c) communicate any such decision.
- (3) In this Act, “mental disorder” has the same meaning as in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (and related expressions are to be construed accordingly).

#### Commencement Information

- II** S. 17 wholly in force; s. 17(3) in force at Royal Assent see s. 62(2); s. 1 otherwise in force at 1.12.2010 by S.S.I. 2010/357, art. 2(a)

**Changes to legislation:**

There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009, Part 3.