



# Sexual Offences (Scotland) Act 2009

## 2009 asp 9

### PART 4

#### CHILDREN

##### *Young children*

#### **18 Rape of a young child**

If a person (“A”), with A’s penis, penetrates to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of a child (“B”) who has not attained the age of 13 years, then A commits an offence, to be known as the offence of rape of a young child.

#### **19 Sexual assault on a young child by penetration**

- (1) If a person (“A”), with any part of A’s body or anything else, penetrates sexually to any extent, either intending to do so or reckless as to whether there is penetration, the vagina or anus of a child (“B”) who has not attained the age of 13 years, then A commits an offence, to be known as the offence of sexual assault on a young child by penetration.
- (2) Without prejudice to the generality of subsection (1), the reference in that subsection to penetration with any part of A’s body is to be construed as including a reference to penetration with A’s penis.

#### **20 Sexual assault on a young child**

- (1) If a person (“A”) does any of the things mentioned in subsection (2) (“B” being in each case a child who has not attained the age of 13 years), then A commits an offence, to be known as the offence of sexual assault on a young child.
- (2) Those things are, that A—
  - (a) penetrates sexually, by any means and to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B,
  - (b) intentionally or recklessly touches B sexually,

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- (c) engages in any other form of sexual activity in which A, intentionally or recklessly, has physical contact (whether bodily contact or contact by means of an implement and whether or not through clothing) with B,
  - (d) intentionally or recklessly ejaculates semen onto B,
  - (e) intentionally or recklessly emits urine or saliva onto B sexually.
- (3) Without prejudice to the generality of paragraph (a) of subsection (2), the reference in the paragraph to penetration by any means is to be construed as including a reference to penetration with A's penis.

## **21 Causing a young child to participate in a sexual activity**

If a person (“A”) intentionally causes a child (“B”) who has not attained the age of 13 years to participate in a sexual activity, then A commits an offence, to be known as the offence of causing a young child to participate in a sexual activity.

## **22 Causing a young child to be present during a sexual activity**

- (1) If a person (“A”) either—
- (a) intentionally engages in a sexual activity and for a purpose mentioned in subsection (2) does so in the presence of a child (“B”) who has not attained the age of 13 years, or
  - (b) intentionally and for a purpose mentioned in subsection (2) causes B to be present while a third person engages in such an activity,
- then A commits an offence, to be known as the offence of causing a young child to be present during a sexual activity.
- (2) The purposes are—
- (a) obtaining sexual gratification,
  - (b) humiliating, distressing or alarming B.
- (3) Without prejudice to the generality of subsection (1), the reference—
- (a) in paragraph (a) of that subsection to A engaging in a sexual activity in the presence of B, includes a reference to A engaging in it in a place in which A can be observed by B other than by B looking at an image, and
  - (b) in paragraph (b) of that subsection to B being present while a third person engages in such an activity, includes a reference to B being in a place from which the third person can be so observed by B.

## **23 Causing a young child to look at a sexual image**

- (1) If a person (“A”) intentionally and for a purpose mentioned in subsection (2) causes a child (“B”) who has not attained the age of 13 years to look at a sexual image, then A commits an offence, to be known as the offence of causing a young child to look at a sexual image.
- (2) The purposes are—
- (a) obtaining sexual gratification,
  - (b) humiliating, distressing or alarming B.
- (3) For the purposes of subsection (1), a sexual image is an image (produced by whatever means and whether or not a moving image) of—

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- (a) A engaging in a sexual activity or of a third person or imaginary person so engaging,
- (b) A's genitals or the genitals of a third person or imaginary person.

## **24 Communicating indecently with a young child etc.**

- (1) If a person (“A”), intentionally and for a purpose mentioned in subsection (3)—
  - (a) sends, by whatever means, a sexual written communication to, or
  - (b) directs, by whatever means, a sexual verbal communication at,a child (“B”) who has not attained the age of 13 years, then A commits an offence, to be known as the offence of communicating indecently with a young child.
- (2) If, in circumstances other than are as mentioned in subsection (1), a person (“A”), intentionally and for a purpose mentioned in subsection (3) causes a child (“B”) who has not attained the age of 13 years to see or hear, by whatever means, a sexual written communication or sexual verbal communication, then A commits an offence, to be known as the offence of causing a young child to see or hear an indecent communication.
- (3) The purposes are—
  - (a) obtaining sexual gratification,
  - (b) humiliating, distressing or alarming B.
- (4) In this section—
  - “written communication” means a communication in whatever written form, and without prejudice to that generality includes a communication which comprises writings of a person other than A (as for example a passage in a book or magazine), and
  - “verbal communication” means a communication in whatever verbal form, and without prejudice to that generality includes—
    - (a) a communication which comprises sounds of sexual activity (whether actual or simulated), and
    - (b) a communication by means of sign language.

## **25 Sexual exposure to a young child**

- (1) If a person (“A”) intentionally and for a purpose mentioned in subsection (2) exposes A's genitals in a sexual manner to a child (“B”) who has not attained the age of 13 years, with the intention that B will see them, then A commits an offence, to be known as the offence of sexual exposure to a young child.
- (2) The purposes are—
  - (a) obtaining sexual gratification,
  - (b) humiliating, distressing or alarming B.

## **26 Voyeurism towards a young child**

- (1) If a person (“A”) does any of the things mentioned in subsections (2) to (5) in relation to a child (“B”) who has not attained the age of 13 years, then A commits an offence, to be known as the offence of voyeurism towards a young child.

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- (2) The first thing is that A, for a purpose mentioned in subsection (6), observes B doing a private act.
- (3) The second thing is that A operates equipment with the intention of enabling A or another person (“C”), for a purpose mentioned in subsection (7), to observe B doing a private act.
- (4) The third thing is that A records B doing a private act with the intention that A or another person (“C”), for a purpose mentioned in subsection (7), will look at an image of B doing the act.
- [<sup>F1</sup>(4A) The fourth thing is that A operates equipment beneath B's clothing with the intention of enabling A or another person (“C”), for a purpose mentioned in subsection (7), to observe—
- (a) B's genitals or buttocks (whether exposed or covered with underwear), or
  - (b) the underwear covering B's genitals or buttocks,
- in circumstances where the genitals, buttocks or underwear would not otherwise be visible.
- (4B) The fifth thing is that A records an image beneath B's clothing of—
- (a) B's genitals or buttocks (whether exposed or covered with underwear), or
  - (b) the underwear covering B's genitals or buttocks,
- in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person (“C”), for a purpose mentioned in subsection (7), will look at the image.]
- (5) The [<sup>F2</sup>sixth] thing is that A—
- (a) installs equipment, or
  - [<sup>F3</sup>(b) constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to do an act referred to in subsection (2), (3), (4), (4A) or (4B).]
- (6) The purposes referred to in subsection (2) are—
- (a) obtaining sexual gratification,
  - (b) humiliating, distressing or alarming B.
- (7) The purposes referred to in subsections (3) [<sup>F4</sup>, (4), (4A) and (4B)] are—
- (a) obtaining sexual gratification (whether for A or C),
  - (b) humiliating, distressing or alarming B.
- (8) Section 10 applies for the purposes of this section as it applies for the purposes of section 9 (the references in that section to section 9(3) [<sup>F5</sup>, (4A)] and (5) being construed as references to subsections (3) [<sup>F6</sup>, (4A)] and (5) of this section).

#### Textual Amendments

- F1** S. 26(4A)(4B) inserted (1.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 43(4)(a), 206; S.S.I. 2010/357, art. 2(b)
- F2** Word in s. 26(5) substituted (1.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 43(4)(b)(i), 206; S.S.I. 2010/357, art. 2(b)
- F3** S. 26(5)(b) substituted (1.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 43(4)(b)(ii), 206; S.S.I. 2010/357, art. 2(b)

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- F4** Words in s. 26(7) substituted (1.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 43(4)(c)**, 206; S.S.I. 2010/357, **art. 2(b)**
- F5** Word in s. 26(8) inserted (1.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 43(4)(d)**, 206; S.S.I. 2010/357, **art. 2(b)**
- F6** Word in s. 26(8) inserted (1.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 43(4)(d)**, 206; S.S.I. 2010/357, **art. 2(b)**

**27 Belief that child had attained the age of 13 years**

It is not a defence to a charge in proceedings under any of sections 18 to 26 that A believed that B had attained the age of 13 years.

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