

# **SEXUAL OFFENCES (SCOTLAND) ACT 2009**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE ACT – AN OVERVIEW**

3. The Sexual Offences (Scotland) Act provides for a statutory framework for sexual offences in Scots law. The Act repeals the common law offences of rape, sodomy and clandestine injury to women and a number of statutory sexual offences in addition to creating new statutory offences relating to sexual conduct, in particular where that takes place without consent. It provides a general definition of consent as “*free agreement*” and supplements this with a non-exhaustive list of factual circumstances in which free agreement, and therefore consent, is not present.
4. The Act creates new statutory offences of rape, sexual assault by penetration, sexual assault, sexual coercion, coercing a person to be present during sexual activity, coercing a person to look at an image of sexual activity, communicating indecently, sexual exposure, voyeurism and administering a substance for a sexual purpose. The Act also creates new “protective offences” which criminalise sexual activity with a person whose capacity to consent to sexual activity is either entirely absent or not fully formed either because of their age or because of a mental disorder. Separate “protective” offences are provided for in respect of sexual activity with young children (under the age of 13) and older children (from age 13 to age 15). In addition, the Act makes it an offence of “abuse of position of trust” for a person in a position of trust (over a child or person with a mental disorder) to engage in sexual activity with that child or person.

## **COMMENTARY ON SECTIONS**

### **PART ONE – RAPE ETC**

#### **Section 1 – Rape**

5. This section creates a statutory offence of “rape”. Subsection (1) provides that a person will commit the offence of rape by intentionally or recklessly penetrating, with their penis, the victim’s vagina, anus or mouth, in circumstances where the victim does not consent, and the accused has no reasonable belief that the victim is consenting to the penetration.

6. Subsection (2) defines “penetration” for the purposes of this section. It is defined as a continuing act from entry of the penis until its withdrawal.

7. Subsection (3) provides that there may be circumstances where penetration is initially consented to but consent is subsequently withdrawn. In these circumstances, a person will have committed rape only if the penetration of the victim’s vagina, anus or mouth takes place (or continues to take place) after the point at which consent is withdrawn.

8. Subsection (4) defines the terms “penis” and “vagina”.

#### **Section 2 – Sexual assault by penetration**

9. This section creates a statutory offence of “sexual assault by penetration”. Subsection (1) provides that a person commits the offence of sexual assault by penetration by intentionally or recklessly sexually penetrating the victim’s vagina or anus, in circumstances where the victim does not consent, and the accused has no reasonable belief that the victim is consenting to the penetration.

10. Subsection (2) defines “penetration” for the purposes of this section. It is defined as a continuing act from entry of whatever is intruded until it is withdrawn.

11. Subsection (3) caters for the scenario where penetration is initially consented to but consent is subsequently withdrawn. It modifies the definition of penetration in subsection (2) to a person will have committed the offence if the penetration of the victim’s vagina or anus takes place (or continues to take place) after the point at which consent is withdrawn.

12. Subsection (4) provides that the reference in subsection (1) to penetration “with any part of A’s body” includes penetration with A’s penis. This means that there is an overlap between the conduct which constitutes sexual assault by penetration under this section, that which constitutes rape under section 1 and that which constitutes sexual assault at section 3. This is deliberate and intended to cover circumstances where the victim knows that he or she was penetrated, but is unable to say whether penetration was penile or not (for example, due to being blindfolded).

### **Section 3 – Sexual assault**

13. This section creates a statutory offence of “sexual assault”. The constituent elements of the offence are set out in subsections (1) and (2).

14. Subsection (1) provides that such an offence is committed only if the victim did not consent to the sexual conduct in question and the perpetrator had no reasonable belief that the victim was consenting.

15. Subsection (2) sets out five separate sexual acts, each of which constitute the offence of sexual assault. It also provides that, in each case, in order to commit an offence the perpetrator must either act intentionally or recklessly when carrying out one of these sexual acts. The five sexual acts are:

- (a) penetrating the victim’s vagina, anus or mouth by any means in a sexual way;
- (b) touching the victim in a sexual way;
- (c) having any other sexual physical contact with the victim, whether directly or through clothing and whether with a body part or implement;
- (d) ejaculating semen onto the victim; and
- (e) emitting urine or saliva onto the victim sexually.

16. Subsections (3), (4) and (5) deal with penetration. Subsections (3) and (4) define penetration as a continuing activity and provide for circumstances where penetration is initially consented to but consent is then withdrawn before penetration has ended. This is similar to section 1(2) and (3) (see paragraphs 6 and 7 above). Subsection (5) provides that penetration “by any means” in subsection (2) includes with the perpetrator’s penis. This means there is an overlap between the conduct which constitutes sexual assault under this section, that which constitutes rape under section 1 and that which constitutes sexual assault by penetration at section 2. This is deliberate and is intended to cover circumstances where the victim knows that he or she was penetrated, but is unable to say whether penetration was penile or not (for example due to being blindfolded).

### **Section 4 – Sexual coercion**

17. This section creates the offence of “sexual coercion”. Subsection (1) provides that the offence is committed if the perpetrator intentionally causes the victim to participate in a sexual activity without the victim’s consent and without any reasonable belief that the victim was consenting.

### **Section 5 – Coercing a person into being present during a sexual activity**

18. This section creates the offence of “coercing a person into being present during a sexual activity”. Subsection (1) provides that there are two circumstances in which the offence is committed. These are first, that the perpetrator intentionally engaged in a sexual activity in the presence of the victim or, secondly, that the perpetrator intentionally caused the victim to be present while a third person engaged in a sexual activity. In either instance, the offence is committed only if the victim did not consent to being present

during the sexual activity and the perpetrator did not have any reasonable belief that the victim consented.

19. Subsection (2) provides that an offence is committed only where the perpetrator has acted for the purpose of obtaining sexual gratification or humiliating, distressing or alarming the victim

20. Subsection (3) provides that, for the purposes of this offence, the requirement that the victim is present, or that an activity is carried out in his or her presence, includes situations other than in which the person engaging in the sexual activity can be observed by means of an image (such as an image on a screen which is generated by a webcam). It is not essential that it be proved that the victim can be proved to have actually observed the activity; it is enough that the activity was in a place where it was capable of being observed by the victim.

### **Section 6 - Coercing a person into looking at a sexual image**

21. This section creates the offence of “coercing a person into looking at a sexual image”. Subsections (1) and (2) provide that an offence is committed if a person intentionally (and for the purpose of obtaining sexual gratification or for the purpose of humiliating, distressing or alarming the victim) causes the victim to look at a sexual image. The offence is only committed if the victim did not consent to looking at the image and the accused had no reasonable belief that the victim so consented. Furthermore, the accused does not commit the offence if he or she had intended to direct or send the image to someone other than the victim (e.g. by email).

22. Subsection (3) defines a “sexual image” for the purposes of this section. A “sexual image” is an image of a person, whether real or imaginary, engaging in a sexual activity or an image of the genitals of a person, whether real or imaginary.

### **Section 7 – Communicating indecently etc.**

23. This section creates two offences, each relating to unwanted sexual communication. Both subsections (1) and (2) provide that the offences are committed only where the victim did not consent to the activity and the perpetrator had no reasonable belief that the victim consented. For an offence to be committed, the accused must intend to communicate with the victim.

24. Subsection (1) creates the offence of “communicating indecently”. It is committed if a person, in the circumstances set out in paragraph 23 above, intentionally sends the victim a sexual written communication by whatever means, or directs a sexual verbal communication at the victim, by whatever means.

25. Subsection (2) creates the offence of “causing a person to see or hear an indecent communication”. It is committed if, in circumstances other than specified in subsection (1), a person causes the victim to see a sexual written communication or to hear a sexual verbal communication, in each case by whatever means and in the circumstances described in paragraph 23 above.

26. Subsection (3) provides that an offence under subsection (1) or (2) is committed only where the perpetrator's purpose is to obtain sexual gratification, or to humiliate, distress or alarm the victim.

27. Subsection (4) defines "written communication" and "verbal communication" for the purpose of this section.

### **Section 8 – Sexual exposure**

28. This section creates the offence of 'sexual exposure'. Subsection (1) provides that the offence of sexual exposure is committed if a person intentionally exposes his or her genitals in a sexual manner to another person with the intention that the person will see them without that person's consent and without any reasonable belief that the person consented.

29. Subsection (2) provides that an offence under subsection (1) is committed only where the accused's purpose is to obtain sexual gratification or to humiliate, distress or alarm the victim.

### **Section 9 – Voyeurism**

30. Section 9 creates the offence of "voyeurism". It is committed if a person does any of the things mentioned in subsections (2) to (5).

31. Subsection (2) provides that a person commits an offence if that person observes the victim engaging in a private act. Subsection (3) provides that a person commits an offence if that person operates equipment with the intention of enabling himself or another person to observe the victim engaging in a private act. Subsection (4) provides that a person commits an offence if that person records the victim engaging in a private act with the intention that he or another person will look at an image of the victim doing the act. Subsection (5) provides that a person commits an offence if that person installs equipment (such as a video camera) or constructs, or adapts a structure or part of a structure (e.g. by drilling a "peep hole") with the intention of enabling himself, or a third person, to commit any of the offences in subsections (2) to (4). In all cases, the offences are committed where the victim does not consent and the accused has no reasonable belief that the victim consented.

32. Subsections (6) and (7) provide that an offence under subsections (2) to (4) is committed only where the perpetrator's purpose is to obtain sexual gratification (whether for himself or a third person in the case of the offences at subsections (3) and (4)) or to cause humiliation, distress or alarm to the victim.

### **Section 10 – Interpretation of section 9**

33. Section 10 defines the meaning of certain terms for the purposes of section 9. Subsection (1) provides a definition of a "private act". Subsection (2) provides that the reference to "operating equipment" in section 9(3) includes enabling or securing its activation by another person without that person's knowledge (so the offence would be

committed if a person used a camera designed to be activated automatically by the presence of another person in the room). Subsection (3) provides that the reference to a “structure” in section 9(5) includes tents, vehicles, vessels and other temporary or movable structures.

### **Section 11 – Administering a substance for sexual purposes**

34. This section creates the offence of “administering a substance for a sexual purpose” where a person intentionally gives a victim an intoxicant, or otherwise causes an intoxicant to be taken by the victim without the victim knowing, and without reasonable belief that the victim knows, for the purpose of stupefying or overpowering the victim in order that the perpetrator, or any other person, may engage in a sexual activity with the victim. It is immaterial whether or not any sexual activity actually takes place.

35. Subsection (2) extends the offence to apply to certain situations in which the victim does in fact know that he or she is taking the intoxicating substance. In such a situation, a person will commit an offence if he or she intentionally induces in the victim a reasonable belief that the substance is either substantially weaker than it really is, or is of a substantially smaller quantity than it really is. The fact that the victim knows that he or she is taking an intoxicant is to be disregarded.

## **PART 2 – CONSENT AND REASONABLE BELIEF**

### **Section 12 – Meaning of “consent” and related expressions**

36. This section defines consent as “free agreement”. The definition applies to Parts 1 and 3 of the Act.

### **Section 13 – Circumstances in which conduct takes place without free agreement**

37. This section builds on the general definition of consent in section 12. It provides that, in the particular situations which are set out in subsection (2), there is no free agreement to sexual activity by a victim, and hence no consent. It is a non-exhaustive list and therefore *does not* imply that in situations which are not listed in subsection (2) there *is* free agreement.

38. Subsection (2)(a) provides that there is no consent if the victim is so intoxicated through alcohol or any other substance that he or she is incapable of giving consent. The exact point at which the victim reaches this level of intoxication will be a matter to be decided by the court but once it has been reached then any acting by the victim will not amount to consent.

39. Subsection (2)(b) provides that there is no consent in situations in which the victim agrees or submits to sexual activity because of violence used against him or her or another person, or because of threats of violence against him or her or another person.

40. Subsection (2)(c) provides that there is no consent if the victim agrees or submits to sexual activity because he or she is unlawfully detained by the accused. The detention need not necessarily involve the use of direct force or violence.

41. Subsection (2)(d) provides that the victim does not consent to sexual activity when the accused has deceived him or her and, as a result, the victim is mistaken as to the nature or the purpose of the activity.

42. Subsection (2)(e) provides that there is no consent if the victim agrees or submits to sexual activity with the perpetrator as a result of the perpetrator impersonating someone whom the victim knows personally.

43. Subsection (2)(f) provides that there is no consent if the only expression or indication of the victim's consent to sexual activity is from someone other than the victim.

44. Subsection (3) provides that in each of the paragraphs of subsection (2), the references to "A" and "B" are to be read in the same way as they are read in sections 1 to 9. Therefore, "A" is the person accused of the offence and "B" is the victim or complainer.

#### **Section 14 – Consent: capacity while asleep or unconscious**

45. Section 14 provides that a person is incapable, while asleep or unconscious, of giving consent to any conduct.

#### **Section 15 – Consent: scope and withdrawal**

46. This section makes further provision as to the meaning of consent for sections 1 to 9 of the Bill. It deals with two separate aspects of consent.

47. Subsection (2) provides that consent given to particular sexual conduct does not, of itself, imply consent to any other type of sexual conduct.

48. Subsections (3) and (4) deal with the withdrawal of consent. Subsection (3) provides that consent may be withdrawn at any time before or during that sexual activity. Consent may therefore be withdrawn before the activity begins or while the sexual activity is taking place. Subsection (4) provides that, if consent is withdrawn, the activity takes place without consent.

#### **Section 16 – Reasonable belief**

49. This section makes further provision in respect of determining, for the purposes of Part 1 of the Bill, whether a person's belief as to consent or knowledge, in relation to the sexual activity that has taken place, was reasonable.

50. It will be for a court or the jury to determine in each particular case what amounts to reasonable belief but this section provides that, in determining whether such belief is reasonable, regard is to be had to whether the accused took any steps to ascertain whether there was consent, or, as the case may be, knowledge, and if so, to what those steps were.

### **PART 3 – MENTALLY DISORDERED PERSONS**

#### **Section 17 – Capacity to consent**

51. This section deals with the capacity of those with a mental disorder to consent to sexual activity. Subsection (1) provides that it relates to the offences in sections 1 to 9, where lack of consent is an essential element.

52. Subsection (2) states that a mentally disordered person is incapable of consenting to conduct (i.e. any conduct which falls within sections 1 to 9) where, by reason of the mental disorder, he or she is unable to do any of the things listed in sub-paragraphs (a) to (c). This test for capacity mirrors the one set out in section 311(4) of the Mental Health (Care and Treatment) (Scotland) Act 2003.

### **PART 4 – CHILDREN**

53. Part 4 of the Bill provides for a range of “protective offences”, which prohibit sexual contact with children. It makes separate provision for offences involving sexual activity with “young” and “older” children.

#### ***YOUNG CHILDREN***

54. Sections 18 to 27 of the Bill make provision in relation to sexual conduct involving “young children”. The Bill uses the term “young child” to refer to a child who is under the age of 13 at the time the offence was committed. Therefore, each of the offences under sections 18 to 26 can be committed only against a child who is aged under 13.

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

55. This section creates the statutory offence of “rape of a young child”. It provides that a person will commit this offence by intentionally or recklessly penetrating, with their penis, the vagina, anus or mouth of a young child. There is no reference to consent of the victim in this section. An offence will be committed irrespective of whether a young child apparently ‘consented’ to the penetration.

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

56. This section creates the offence of “sexual assault on a young child by penetration”. Subsection (1) provides that a person commits this offence by intentionally or recklessly sexually penetrating, with any part of his or her body, or anything else (i.e. an object) the vagina or anus of a young child.



57. 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 sexual assault on a young child by penetration, that which constitutes rape of a young child and that which constitutes sexual assault on a young 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).

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

58. This section creates the offence of “sexual assault on a young child”. Subsection (2) sets out five separate sexual acts, each of which constitute an offence. It also provides that, in each case, in order to commit an offence the perpetrator must either act intentionally or recklessly when carrying out one of these sexual acts. The five sexual acts are:

- (a) penetrating a young child’s vagina, anus or mouth by any means in a sexual way;
- (b) touching a young child in a sexual way;
- (c) having any other sexual physical contact with a young child, whether directly or through clothing and whether with a body part or with an implement;
- (d) ejaculating semen onto a young child; and
- (e) intentionally or recklessly emitting urine or saliva onto a young child in a sexual way.

59. Subsection (3) provides that penetration “by any means” in subsection (2) includes with the perpetrator’s penis. This means that there is an overlap between the conduct which constitutes sexual assault on a young child, that which constitutes sexual assault by penetration on a young child and that which constitutes rape of a young 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).

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

60. This section creates the offence of “causing a young child to participate in a sexual activity”. Subsection (1) provides that the offence is committed if the perpetrator intentionally causes the young child to participate in a sexual activity.

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

61. This section creates the offence of “causing a young child to be present during a sexual activity”. Subsection (1) provides that there are two circumstances in which the offence is committed. These are first, that the perpetrator intentionally engaged in a sexual activity in the presence of a young child or, secondly, that the perpetrator intentionally caused a young child to be present while a third person engaged in a sexual activity.

62. Subsection (2) provides that an offence is committed only where the perpetrator's purpose in having a young child present is to obtain sexual gratification or to humiliate, distress or alarm the young child.

63. Subsection (3) provides that, for the purposes of subsection (1), the requirement that the young child is present or that the activity is carried out in his or her presence, includes situations in which the person engaging in the sexual activity can be observed by the young child (other than by means of an image). It is not essential that it be proved that the young child actually observed the activity; it is sufficient that the young child was in a place where the sexual activity was capable of being observed from.

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

64. Section 23 creates the offence of “causing a young child to look at a sexual image”. Subsection (1) provides that the offence is committed if a person intentionally causes a young child to look at a sexual image.

65. Subsection (2) provides that an offence is committed only if the perpetrator acts for the purpose of obtaining sexual gratification or to humiliate, distress or alarm the young child.

66. Subsection (3) provides a definition of a “sexual image”. It is the same as that used in the offence at section 6 (see paragraph 22).

### **Section 24 – Communicating indecently with a young child etc**

67. This section creates two offences, each relating to sexual communication with a young child. There are some common features shared by both offences.

68. Subsection (1) creates the offence of “communicating indecently with a young child”. It is committed if a person intentionally sends a young child a sexual written communication by whatever means or directs a sexual verbal communication at a young child, by whatever means.

69. Subsection (2) creates the offence of “causing a young child to see or hear an indecent communication”. It is committed if a person causes the young child to see a sexual written communication or to hear a sexual verbal communication in circumstances other than as described in subsection (1).

70. Subsection (3) provides that an offence is committed only where the perpetrator acts for the purpose of obtaining sexual gratification or to humiliate, distress or alarm the young child.

71. Subsection (4) defines “written communication” and “verbal communication” for the purposes of this section.

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

72. This section creates the offence of “sexual exposure to a young child”. Subsection (1) provides that the offence is committed if a person intentionally exposes his or her genitals in a sexual manner to a child who has not attained the age of 13 years.

73. Subsection (2) provides that an offence is committed only where the perpetrator acts for the purpose of obtaining sexual gratification or to humiliate, distress or alarm the young child.

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

74. This section creates the offence of “voyeurism towards a young child”. Subsection (1) provides that it is committed if a person does any of the things mentioned in subsections (2) to (5) in relation to a child who has not attained the age of 13 years.

75. Subsection (2) provides that a person commits an offence if that person observes a young child engaging in a private act. Subsection (3) provides that a person commits an offence if that person operates equipment with the intention of enabling himself or another person to observe a young child engaging in a private act. Subsection (4) provides that a person commits an offence if that person records a young child engaging in a private act with the intention that he or another person will look at an image of the young child doing the act. Subsection (5) provides that a person commits an offence if that person installs equipment (such as a video camera) or constructs, or adapts a structure or part of a structure (e.g. by drilling a “peep hole”) with the intention of enabling himself, or a third person, to commit any of the offences in subsections (2) to (4).

76. Subsections (6) and (7) provide that an offence under subsections (2) to (4) is committed only where the perpetrator’s purpose is to obtain sexual gratification (whether for himself or a third person in the case of the offences at subsections (3) and (4)) or to cause humiliation, distress or alarm to the child. Subsection (8) provides that the definitions of various terms at section 10 apply to this section as they apply to the offence at section 9.

### **Section 27 – Belief that a child has attained the age of 13 years**

77. Section 27 provides that it shall not be defence to a charge of a sexual offence against a young child, under sections 18 to 26 of the Bill, that the accused believed that the young child was aged 13 years or over.

### ***OLDER CHILDREN***

78. Sections 28 to 39 of the Bill make provision in relation to sexual conduct involving “older children”. The Bill uses the term “older child” to refer to a child who is aged 13, 14 or 15 at the time the offence was committed. Therefore, each of the offences under sections 28 to 37 can be committed only against an older child of those ages.

### **Section 28 – Having intercourse with an older child**

79. This section creates the offence of “having intercourse with an older child”. It provides that the offence may be committed only by a person aged 16 or over. A person will commit an offence under this section by intentionally or recklessly penetrating, with their penis, the vagina, anus or mouth of an older child.

### **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).

### **Section 30 – Engaging in sexual activity with or towards an older child**

82. This section creates the offence of “engaging in sexual activity with or towards an older child”. Subsection (1) provides that the offence may be committed only by a person aged 16 or over.

83. Subsection (2) sets out five separate sexual acts, each of which constitute an offence. It also provides that, in each case, in order to commit an offence the perpetrator must either act intentionally or recklessly when carrying out one of these sexual acts. The five sexual acts are:

- (a) penetrating an older child’s vagina, anus or mouth by any means in a sexual way;
- (b) touching an older child in a sexual way;
- (c) having any other sexual physical contact with an older child, whether directly or through clothing and whether with a body part or with an implement;
- (d) ejaculating semen onto an older child, and
- (e) intentionally or recklessly emitting urine or saliva onto a young child in a sexual way.

84. Subsection (3) provides that penetration “by any part of A’s body” for the purposes of subsection (2) includes with the perpetrator’s penis. This means that there is an overlap between the conduct which constitutes the offence of engaging in sexual activity with an older child, that of having intercourse with an older child at section 28 and that of engaging in penetrative sexual activity with an older child at section 29. This is necessary

for the same reasons as specified for the overlap between the offences at section 1, 2 and 3 of the Bill (see paragraph 12 above).

### **Section 31 – Causing an older child to participate in a sexual activity**

85. This section creates the offence of “causing an older child to participate in a sexual activity”. Subsection (1) provides that the offence may be committed only by a person aged 16 or over. Further, it provides that the offence is committed only where the perpetrator intentionally causes an older child to participate in a sexual activity.

### **Section 32 – Causing an older child to be present during a sexual activity**

86. This section creates the offence of “causing an older child to be present during a sexual activity”. Subsection (1) provides that the offence may be committed only by a person aged 16 or over. It provides that the two circumstances in which this offence is committed are, first, where the perpetrator intentionally engages in a sexual activity in the presence of an older child or, secondly, where the perpetrator causes an older child to be present while a third party engages in a sexual activity.

87. Subsection (2) provides that the activities at subsection (1) are a crime only where the perpetrator acts for the purpose of obtaining sexual gratification or to humiliate, distress or alarm the older child.

88. Subsection (3) provides that, for the purposes of this offence, the requirement that an older child is present when the perpetrator or a third person carried out sexual activity includes situations in which the person engaging in the sexual activity can be observed by an older child (other than by means of an image). It is not essential to prove that the older child actually observed the activity; so long as the older child was in a place where the sexual activity was capable of being observed from.

### **Section 33 – Causing an older child to look at a sexual image**

89. This section creates the offence of “causing an older child to look at a sexual image”. Subsection (1) provides that the offence is committed where a person over the age of 16 intentionally causes an older child to look at a sexual image.

90. Subsection (2) provides that it is an offence only where the perpetrator acts for the purpose of obtaining sexual gratification or to humiliate, distress or alarm the older child

91. Subsection (3) provides a definition of a “sexual image” for the purposes of this section. It is the same as that used in the offence at section 6 (see paragraph 22).

### **Section 34 – Communicating indecently with an older child etc.**

92. This section creates two offences, each relating to sexual communication with an older child by a person aged 16 or over.

93. Subsection (1) creates the offence of “communicating indecently with an older child”. It provides that the offence is committed if a person intentionally sends an older child a sexual written communication by whatever means, or directs a sexual verbal communication at an older child, by whatever means.

94. Subsection (2) creates the offence of “causing an older child to see or hear an indecent communication”. It provides that an offence is committed where a person causes an older child to see a sexual written communication or to hear a sexual verbal communication by whatever means in any circumstances other than those specified in subsection (1).

95. Subsection (3) provides that an offence is committed only where the perpetrator acts for the purpose of obtaining sexual gratification or to humiliate, distress or alarm the older child.

96. Subsection (4) defines “written communication” and “verbal communication” for the purposes of this section.

### **Section 35 – Sexual exposure to an older child**

97. This section creates the offence of “sexual exposure to an older child”. Subsection (1) provides that the offence is committed if a person intentionally and for a purpose mentioned in subsection (2), exposes his or her genitals in a sexual manner to an older child. The offence may only be committed by a person who is 16 years or over.

98. Subsection (2) provides that an offence is committed only where the accused acts for the purpose of obtaining sexual gratification or to humiliate, distress or alarm the victim.

### **Section 36 – Voyeurism towards an older child**

99. This section creates the offence of “voyeurism towards an older child”. Subsection (1) provides that the offence is committed if a person does any of the things mentioned in subsections (2) to (5) in relation to an older child. The offence may only be committed by a person who is 16 years or over.

100. Subsection (2) provides that a person commits an offence if that person observes an older child engaging in a private act. Subsection (3) provides that a person commits an offence if that person operates equipment with the intention of enabling himself or another person to observe an older child engaging in a private act. Subsection (4) provides that a person commits an offence if that person records an older child engaging in a private act with the intention that he or another person will look at an image of the older child doing the act. Subsection (5) provides that a person commits an offence if that person installs equipment (such as a video camera) or constructs, or adapts a structure or part of a structure (e.g. by drilling a “peep hole”) with the intention of enabling himself, or a third person, to commit any of the offences in subsections (2) to (4).

101. Subsections (6) and (7) provide that an offence under subsections (2) to (4) is committed only where the perpetrator's purpose is to obtain sexual gratification (whether for himself or a third person in the case of the offences at subsections (3) and (4)) or to cause humiliation, distress or alarm to the child. Subsection (8) provides that the definitions of various terms at section 10 apply to this section as they apply to the offence at section 9.

### **Section 37 – Older children engaging in sexual conduct with each other**

102. Section 37 provides that an older child who participates in certain sexual conduct with another older child commits an offence.

103. Subsections (1), (2) and (3) provide that an older child who intentionally or recklessly penetrates sexually another older child's vagina, anus or mouth with his penis or intentionally or recklessly touches another older child's vagina, anus or penis with his or her mouth commits the offence of "engaging while an older child in sexual conduct with or towards another older child".

104. Subsection (4) provides that an older child who consents to engaging in the sexual conduct at subsection (3) will also be guilty of an offence; that offence being "engaging while an older child in consensual sexual conduct with another older child".

### **Section 38 – Penetration and consent for the purposes of section 37**

105. This section makes further provision as to the meaning of penetration and consent for the purposes of section 37.

106. Subsections (3) to (8) mirror the approach taken in Part 1 of the Bill. Subsections (3) and (4) provide that for the purposes of section 37 "consent" means "free agreement" (as defined in section 12) and that free agreement to sexual conduct is absent in the circumstances specified in section 13(2). Subsection (5) provides that a person is incapable, while asleep or unconscious, of consenting to any conduct (as with section 14).

107. Subsection (6) (like section 15) provides that consent given to particular sexual conduct does not, of itself, imply consent to any other type of sexual conduct.

108. Subsections (7) and (8) (like section 15) deal with the withdrawal of consent. Subsection (7) provides that consent to the sexual conduct may be withdrawn at any time before or during that conduct. Subsection (8) reinforces this by providing that any sexual conduct which takes place after consent is withdrawn takes place without consent.

### **Section 39 – Defences in relation to offences against older children**

109. This section provides that a defence can be invoked by a person who has criminal proceedings brought against them for an offence against an older child.

110. Subsection (1) provides that an accused person, who has criminal proceedings brought against them for an offence under sections 28 to 37 may make use of a defence in those proceedings that he or she reasonably believed that the older child had attained the age of 16 years at the time the conduct took place.

111. Subsection (2) provides that an accused may not use the defence set out in subsection (1) if he or she has previously been charged by the police with a relevant sexual offence or if there is in force in respect of the accused a Risk of Sexual Harm Order. Subsection (5) provides that a relevant sexual offence is one which is listed in schedule 1. This subsection also defines the term “Risk of Sexual Harm Order.” This definition means that if there is a Risk of Sexual Harm Order in force against a person in Scotland, England, Wales or Northern Ireland, and such a person is charged by the police in Scotland with an offence under sections 28 to 37, the defence of reasonable mistaken belief of age cannot be invoked by that person.

112. Subsections (3) and (4) provide that it shall be a defence to any criminal proceedings relating to the offences in sections 30 to 36 that the difference between the accused’s age and that of the older child did not exceed 2 years. However, this defence is not available to the offences under section 30 where the conduct would constitute an offence under section 37 if both parties were aged 13 to 15.

113. Subsection (6) provides the Scottish Ministers with a power to modify Schedule 1 so as to add an offence against a child which involves sexual conduct, or delete an offence listed there.

114. Subsection (7) provides that a belief that the child was in fact a young child is not a defence to a charge of any of the offences in sections 28 to 37.

#### **Section 40 – Special provision as regards failure to establish whether child has or has not attained certain ages**

115. The offences in Part 4 of the Bill divide into two distinct groups: those concerning sexual activity with a young child (where the child is under the age of 13 at the time of the conduct - sections 18 to 26), and those concerning sexual activity with an older child (where, at the time of the conduct, the child has attained the age of 13 but is not yet the age of 16 (sections 28 to 37)). The question of which offence is appropriate in any particular case is determined solely by the age of the child accused or victim at the time when the offence is said to have been committed, and not by the accused’s belief as to the child’s age. Section 40 provides for “deeming of age” provisions in circumstances where it is not possible to establish the age of a child.

116. Subsection (1) provides that “deeming provision 1” applies where the accused is charged with an offence against an older child at sections 28 to 37(1) and it is not possible to establish beyond reasonable doubt that the child had attained the age of 13 at the time the offence is alleged to have been committed, but it is possible to establish that the child had not attained the age of 16 at that time.



117. Subsection (2) provides that “deeming provision 2” applies where the accused is charged with an offence under section 37(4) and there is a failure to establish beyond reasonable doubt that the other child involved in the sexual activity had attained the age of 13 years at the time the offence is alleged to have been committed, but the court is satisfied that that child had not attained the age of 16 at that time.

118. Subsection (3) provides that “deeming provision 3” applies where the accused is charged with an offence under section 37(1) and there is a failure to establish beyond reasonable doubt that the accused was a child who had not attained the age of 16 years at the time the offence is alleged to have been committed, but the court is satisfied that the accused had attained the age of 13 years.

119. Subsection (4) provides that “deeming provision 4” applies where the accused is charged with an offence under section 37(4) and there is a failure to establish beyond reasonable doubt that the accused was a child who had not attained the age of 16 years at the time the offence is alleged to have been committed, but the court is satisfied that the accused had attained the age of 13 years.

#### **Section 41 – Special provision as regards age: deeming provisions**

120. Section 41 provides for the “deeming of age” provisions in consequence of section 40. Deeming provision 1 provides that in the circumstances set out in section 40(1), the child is deemed to be a person who has attained the age of 13 years at the relevant time. Deeming provision 2 provides that, in the circumstances set out in section 40(2), the child is deemed to be a person who had attained the age of 13 years at the relevant time. Deeming provision 3 provides that, in the circumstances set out in section 40(3), the accused is deemed to be a child who has not attained the age of 16 years at the relevant time. Deeming provision 4 provides that, in the circumstances set out in section 40(4), the accused is deemed to be a child who has not attained the age of 16 years at the relevant time.

### **PART 5 – ABUSE OF POSITION OF TRUST**

#### **Section 42 – Sexual abuse of trust**

121. Section 42 creates the offence of “sexual abuse of trust”. Subsection (1) provides that a person commits the offence of sexual abuse of trust if he or she is aged 18 years or older and intentionally engage in a sexual activity with, or directed at, a person who is under 18 and in respect of whom the perpetrator is in a position of trust. Section 43 defines what is meant by “a position of trust.”

#### **Section 43 – Positions of trust**

122. This section defines “position of trust” for the purposes of the offence of sexual abuse of trust in section 42. Definitions of the terms used in this section are provided in section 44.

123. Subsection (1) states that person A is in a position of trust in relation to person B if any of the five conditions set out in the remainder of the section are fulfilled.

124. Subsection (2) provides that a position of trust is constituted where B is detained in an institution by virtue of an order of a court or under an enactment and A looks after persons under 18 in that institution.

125. Subsection (3) provides that a position of trust is constituted where B resides in accommodation provided by a local authority under section 26(1) of the Children (Scotland) Act 1995 and A looks after persons under 18 in that place.

126. Subsection (4) provides that a position of trust is constituted where B is accommodated in any of the places described in paragraphs (a) to (e) of this subsection and A looks after persons under the age of 18 in that place.

127. Subsection (5) provides that a position of trust is constituted where B is receiving education at a school and A looks after persons under the age of 18 in that school or where B is receiving education in a further or higher education institution and A looks after B in that institution.

128. Subsection (6) provides that a position of trust is constituted if A and B are members of the same household and A has (or had, or fulfils) parental rights or parental responsibilities in respect of B, or if A treats B as a child of A's family.

129. Subsection (7) provides that A "looks after" a person for the purposes of this section if A cares for, teaches, trains, supervises or is in sole charge of the person, so long as A does so regularly.

#### **Section 44 – Interpretation of section 43**

130. This section defines the meaning of certain terms for the purposes of section 43.

#### **Section 45 – Sexual abuse of trust: defences**

131. This section provides for the defences which can be invoked by a person who is charged with an offence under section 42 (sexual abuse of trust).

132. Subsection (1)(a) provides that it is a defence if the accused reasonably believed that, at the time the sexual conduct took place, the person with whom it took place (or towards whom it was directed) was aged 18 or over.

133. Subsection (1)(b) provides that it is a defence if the accused reasonably believed, at the time of the sexual conduct, that the person with whom it took place (or towards whom it was directed) was not a person in relation to whom the accused was in a position of trust.

134. Subsection (2)(a) provides that it is a defence for the accused to show that the other party was his or her spouse or civil partner at the time of the conduct they are charged with.

135. Subsection (2)(b) provides that it is a defence for the accused to show that a sexual relationship with the victim was in existence immediately before the particular position of trust with the victim was established. This defence has been provided in order that those who were already in a sexual relationship (but who are not married to, or in civil partnership with, each other) at the time that a position of trust arises should be free to continue that relationship while a position of trust persists without committing a criminal offence.

136. Subsection (3) provides that the defences under subsection (2) do not apply where the position of trust is as described in section 32(6). In other words, they do not apply where the position of trust is within a family setting.

#### **Section 46 – Sexual abuse of trust of a mentally disordered person**

137. This section creates the offence of “sexual abuse of trust of a mentally disordered person”. The definition of “mental disorder” is provided at section 60. It is the same definition as in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

138. Subsection (1) states that a person commits an offence under this section if they fall within the class of persons specified in subsection (2) and intentionally engage in a sexual activity with, or directed at, a mentally disordered person.

139. Subsection (2) defines those classes of person who are subject to the offence provisions in subsection (1). It provides that they are those who provide a care service to a mentally disordered person and those who are employed in (or contracted to provide services in, or who manage), a hospital in which a mentally disordered person is receiving medical treatment.

140. Subsection (3) defines the meaning of “providing care services” for the purpose of subsection (2) and provides that the Scottish Ministers may set out further circumstances which fall within this term by order (subject to negative resolution procedure).

141. Subsection (4) defines certain terms used elsewhere in this section.

#### **Section 47 - Sexual abuse of a mentally disordered person: defences**

142. This section provides for the defences which can be invoked by a person who is charged with an offence under section 46 (sexual abuse of trust of a mentally disordered person).

143. Subsection (1)(a) provides that it is a defence that the accused reasonably believed, at the time of the sexual conduct, that the person with whom that conduct took place (or towards whom it was directed) did not have a mental disorder.

144. Subsection (1)(b) provides that it is a defence that the accused reasonably believed, at the time of the sexual conduct, that he or she was not a person who fell within any of the classes of person specified in section 46(2).

145. Subsection (2)(a) provides that it is a defence for the accused to show that the victim was his or her spouse or civil partner at the time the sexual conduct in the charge was said to have taken place.

146. Subsection (2)(b) provides that it is a defence for the accused to show that a sexual relationship with the victim existed immediately before the time when the accused is considered to have fallen within either of the classes of person specified in section 46(2).

## **PART 6 – PENALTIES**

### **Section 48 – Penalties**

147. Subsection (1) introduces schedule 2, which sets out the maximum penalties which may be imposed for each of the offences created by the Bill. For those offences which may be tried under either summary or solemn procedure the maximum penalties are as specified in the third and fourth column of schedule 2 respectively. Four offences, rape, sexual assault by penetration, rape of a young child and sexual assault on a young child by penetration, may only be tried under solemn procedure.

148. Subsection (2) provides that where a person is convicted on indictment of rape, sexual assault by penetration, rape of a young child or sexual assault on a young child by penetration, a fine cannot be imposed as a sole penalty.

149. Subsection (3) provides that a fine may be imposed as a sole penalty on a body corporate, a Scottish partnership or an other unincorporated association when convicted of an offence under subsection (2) for which a fine could not otherwise be imposed as a sole penalty.

## **PART 7 – MISCELLANEOUS AND GENERAL**

### **Section 49 – Establishment of purpose for the purposes of sections 5 to 9, 22 to 26 and 32 to 36**

150. Section 49 makes provision with regard to the “purpose test” used in the offences at sections 5 to 9, 22 to 26 and 32 to 36. Subsection (1) provides that where it is required to prove that the accused acted for the purpose of obtaining sexual gratification, or of humiliating, alarming or distressing the victim, this requirement is satisfied if, in all the circumstances, it may reasonably be inferred that the accused acted for such a purpose. Subsection (2) provides that it is irrelevant whether or not the victim was in fact humiliated, alarmed or distressed by the accused’s act.

### **Section 50 – Power to convict for offence other than that charged**

151. This section provides that, where a charge is brought under certain provisions in the Bill but the court or the jury are not satisfied that the accused committed the offence in the charge, it may be open to convict the accused of a specified alternative offence. Schedule 3 specifies the available alternatives.

152. Subsection (1) provides that this power may be used where the court or jury are not satisfied that the accused committed or attempted to commit the offence which is charged but are satisfied (to the normal criminal standard of proof) that the accused committed or attempted to commit another offence (where the other offence is specified, in schedule 3 to the Bill, as being an available alternative to the offence charged). If these conditions are met, then the court or jury may acquit the accused of the offence charged but may find him or her guilty of the alternative offence.

153. Subsections (2) to (5) provide for circumstances where the accused is charged with an offence against a child and doubt as to the age of either the accused or the victim opens up the possibility of the accused being found guilty of an alternative offence to the offence charged. Subsection (2) provides that where either of conditions 1 or 2 apply, the court or jury may acquit the accused of the charge but find the accused guilty of one of the alternative older child offences listed in subsections (3) and (4).

154. Subsection (3) provides for condition 1 which is that the accused is charged with an offence at sections 18 to 26 against a young child and, but for a failure to establish beyond reasonable doubt that the child victim had attained the age of 13 years at the relevant time, a court or jury would be entitled to find that the accused had committed one of the alternative older child offences set out at section 50(3)(b)(i) to (xii).

155. Subsection (4) provides for condition 2, which is that the accused is charged with an offence under sections 28-30 and, but for a failure to establish beyond reasonable doubt that the accused had not attained the age of 16 at the relevant time, a court or jury would be entitled to find that the accused had one of the alternative older child offences set out at section 50(4)(b)(i) or (ii).

156. Subsection (5) provides that for the purposes of this section, “relevant time” is the time when the conduct to which the proceedings relate took place.

157. Subsection (6) provides that references to an offence in section 50 includes attempting, inciting, counselling or procuring the commission of that offence or being involved in and part in that offence.

### **Section 51 – Exceptions to inciting or being involved in and part in offences under Part 4 or 5**

158. This section provides that a person who acts for any of the purposes specified in paragraph (a) will not be guilty of any of the offences contained in Part 4 and Part 5 of the Bill providing that they are not also acting for any of the purposes in paragraph (b).

159. Paragraph (a) of this section specifies purposes including protecting others from sexually transmitted infection or from physical harm, the prevention of pregnancy or promoting their emotional wellbeing.

160. Paragraph (b) of this section specifies the purposes as including obtaining sexual gratification, humiliating, distressing or alarming a person or causing or encouraging the activity which constitutes an offence or a person's participation in such conduct.

### **Section 52 – Common law offences**

161. This section provides that the common law offences listed in paragraph (a) are abolished (other than in respect of offences committed before this section is commenced).

162. This means that, where conduct which would otherwise have constituted one of those common-law offences is committed on or after this section has been commenced, that common law offence will not have been committed. Instead, the conduct will fall under one of the offences in the Bill. The particular common law offences which are to be abolished are rape, clandestine injury to women, lewd, indecent and libidinous practice or behaviour, and sodomy. All other common law crimes remain in place.

163. Paragraph (b) qualifies this by providing that any conduct which constitutes an offence under one of the provisions of the Bill and which takes place after the commencement of this section must be charged as an offence under the Bill. This means that it will not be competent to bring a charge under the common law nor under any other statutory offence in respect of that sexual conduct. Thus, for example, conduct falling within section 3 must be charged as sexual assault and not as a common law assault aggravated by indecency.

### **Section 53– Continuity of law on sexual offences**

164. This section is intended to provide a smooth transition between the current law in respect of sexual offences and the new offences contained in the Bill. The main purpose of this section is to make allowance for cases in which the sexual conduct in the charge takes place around the time that the offences contained in the Bill come into force. It may not always be possible to prove exactly when the sexual conduct took place and hence whether this occurred before or after the relevant offence in the Bill was commenced.

165. Subsection (1) provides that this section applies where a person is charged, in respect of the same conduct, with an existing offence specified in subsection (2) and with an offence under the Bill. It provides that the court or jury must be satisfied in all respects that the accused committed the offences charged, other than as to the time on which the sexual conduct took place.

166. Subsection (3) provides that the accused may be found guilty, where the conditions in subsection (1) apply, of whichever of the offences they are charged with has the lower maximum penalty (as defined by subsection (4)). Where the penalties are the same, it provides that the accused may be found guilty of the new offence.

167. Subsection (5) provides that a reference to an offence in this section includes an attempt to commit the offence, inciting its commission, and being involved in part and to an offence as modified by section 16A or 16B of the Criminal Law (Consolidation) (Scotland) Act 1995..

#### **Section 54 – Incitement to commit certain sexual acts outside the United Kingdom**

168. Section 54 removes the dual criminality requirement in respect of UK nationals. Therefore, a UK national will commit an offence under this section if he or she incites a sexual act (which is intended to take place outside the UK) that would constitute an offence in Scotland. It is no longer necessary to show that the sexual act which was incited was an offence in the country in which it was intended to take place. This follows, but goes beyond, the requirements of the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Abuse which was signed by the UK Government on 8 May 2008. That Convention requires the removal of the dual criminality requirements in relation to offences of child abuse, child pornography and child prostitution. Dual criminality is retained for UK residents and persons other than UK nationals.

169. The section applies to the offences which are listed in part 1 of schedule 4. These include inciting offences under Part 1 of the Act (rape etc.) which are committed against a person under the age of 18, the offences against children in Part 4 and the sexual abuse of trust offences in sections 42 and 46.

170. By way of example, incitement in Scotland to commit rape in Scotland would be an offence by virtue of section 293 of the Criminal Procedure (Scotland) Act 1995. The effect of section 54 is that incitement in Scotland to commit rape in another country is also an offence in Scotland, for non-UK nationals if rape is an offence in that other country. It will be an offence for UK nationals to incite rape (which is an offence in Scotland) outside the UK regardless of whether it is an offence in that other country.

#### **Section 55 – Offences committed outside the United Kingdom**

171. As with section 54, this dual criminality requirement is removed in respect of UK nationals, in line with the Council of Europe Convention. Therefore, a UK national will commit an offence under this section if he or she carries out a sexual act outside the UK that would constitute an offence in Scotland. It is no longer necessary to show that the sexual act that was committed is also an offence in the country in which it was intended to take place. The dual criminality test is retained in relation to UK residents.

#### **Section 56 – Continuity of sexual offences committed abroad**

172. Section 56 ensures the continuity of the extraterritorial sexual offences provisions in section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 (“the 1995 Act”) which are replaced by section 55 of the Bill. It deals with cases where it cannot be proved precisely when the offence occurred, i.e. before or after section 16B of the 1995 Act is repealed.

173. Subsection (1) provides that this section applies where a person is charged, in respect of the same conduct, with an existing offence as modified by section 16B of the 1995 Act and with the offence as modified by section 55 of the Bill. As with section 53, it provides that the court or jury must be satisfied in all respects that the accused committed the offences charged, other than as to the time on which the sexual conduct took place.

174. Subsection (3) provides that where this section applies the accused may be found guilty, of the offence as modified by section 16B of the 1995 Act.

#### **Section 57 – Offences by bodies corporate etc.**

175. Section 57 provides that where an offence is committed by a corporate body, Scottish partnership or an unincorporated body other than a Scottish partnership and it is proven that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of a director, manager, secretary, member of partner of such a body, or any person purporting to act in such a role, that individual also commits the offence and is liable to be proceeded against and punished accordingly.

#### **Section 58 – Ancillary provision**

176. This section enables Scottish Ministers to make ancillary provision by statutory instrument which is necessary or expedient, or in consequence of, giving full effect to the Bill.

#### **Section 59 – Orders**

177. This section sets out the order making powers which can be exercised by the Scottish Ministers in the Bill and the applicable parliamentary procedure.

#### **Section 60 – Interpretation**

178. This section provides definitions of various terms used in the Bill. Subsection (2) provides a definition of the term “sexual” where it is used in the Bill. It provides that a penetration, touching, activity, communication, manner of exposure or relationship is sexual if in all the circumstances of the case, a reasonable person would consider it to be so.

#### **Section 61 – Modification of enactments**

179. This section provides for the modification of existing enactments. Subsection (1) introduces schedule 5 to the Bill which provides for modifications of existing enactments in consequence of the Bill. Subsection (2) introduces schedule 6 to the Bill which provides for repeal of certain existing enactments in consequence of the Bill.



## **Section 62 – Short title and commencement**

180. This section provides that the Bill will come into force on a day or days decided by order by Scottish Ministers. Such orders may make different provision for different purposes.

### **Parliamentary Stages**

<b><u>Bill Stage</u></b>	<b><u>Date</u></b>	<b><u>Official report</u></b>
<b>Stage 1:</b> Finance Committee – approach to Financial Memorandum	24 June 2008	<a href="http://www.scottish.parliament.uk/s3/committees/equal/or-08/eo08-1302.htm#Col609">http://www.scottish.parliament.uk/s3/committees/equal/or-08/eo08-1302.htm#Col609</a>
<b>Stage 1:</b> Subordinate Legislation Committee - consideration of the Bill	9 September 2008	<a href="http://www.scottish.parliament.uk/s3/committees/subleg/or-08/su08-2402.htm#Col345">http://www.scottish.parliament.uk/s3/committees/subleg/or-08/su08-2402.htm#Col345</a>
<b>Stage 1:</b> Equal Opportunities Committee – consideration of the Bill at stage 1	30 September 2008	<a href="http://www.scottish.parliament.uk/s3/committees/equal/or-08/eo08-1302.htm#Col609">http://www.scottish.parliament.uk/s3/committees/equal/or-08/eo08-1302.htm#Col609</a>
<b>Stage 1:</b> Subordinate Legislation Committee - consideration of the Bill	7 October 2008	<a href="http://www.scottish.parliament.uk/s3/committees/subleg/or-08/su08-2802.htm#Col377">http://www.scottish.parliament.uk/s3/committees/subleg/or-08/su08-2802.htm#Col377</a>
<b>Stage 1:</b> Justice Committee evidence session	28 October 2008	<a href="http://www.scottish.parliament.uk/s3/committees/justice/or-08/ju08-2502.htm#Col1221">http://www.scottish.parliament.uk/s3/committees/justice/or-08/ju08-2502.htm#Col1221</a>
<b>Stage 1:</b> Subordinate Legislation Committee - consideration of the Bill	28 October 2008	<a href="http://www.scottish.parliament.uk/s3/committees/subleg/or-08/su08-2902.htm#Col391">http://www.scottish.parliament.uk/s3/committees/subleg/or-08/su08-2902.htm#Col391</a>
<b>Stage 1:</b> Justice Committee evidence session	4 November 2008	<a href="http://www.scottish.parliament.uk/s3/committees/justice/or-08/ju08-2602.htm#Col1252">http://www.scottish.parliament.uk/s3/committees/justice/or-08/ju08-2602.htm#Col1252</a>
<b>Stage 1:</b> Subordinate Legislation Committee - consideration of the Bill	4 November 2008	<a href="http://www.scottish.parliament.uk/s3/committees/subleg/or-08/su08-3002.htm#Col402">http://www.scottish.parliament.uk/s3/committees/subleg/or-08/su08-3002.htm#Col402</a>
<b>Stage 1:</b> Justice Committee evidence session	11 November 2008	<a href="http://www.scottish.parliament.uk/s3/committees/justice/or-08/ju08-2702.htm#Col1299">http://www.scottish.parliament.uk/s3/committees/justice/or-08/ju08-2702.htm#Col1299</a>

*These notes relate to the Sexual Offences (Scotland) Act 2009 (asp 9)  
which received Royal Assent on 14 July 2009*

<b>Stage 1:</b> Justice Committee evidence session	18 November 2008	<a href="http://www.scottish.parliament.uk/s3/committees/justice/or-08/ju08-2802.htm#Col1333">http://www.scottish.parliament.uk/s3/committees/justice/or-08/ju08-2802.htm#Col1333</a>
<b>Stage 1:</b> Justice Committee evidence session	25 November 2008	<a href="http://www.scottish.parliament.uk/s3/committees/justice/or-08/ju08-2902.htm#Col1403">http://www.scottish.parliament.uk/s3/committees/justice/or-08/ju08-2902.htm#Col1403</a>
<b>Stage 1:</b> Justice Committee Report		<a href="http://www.scottish.parliament.uk/s3/committees/justice/reports-09/jur09-01.htm">http://www.scottish.parliament.uk/s3/committees/justice/reports-09/jur09-01.htm</a>
<b>Stage 1:</b> Debate	12 February 2009	<a href="http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0212-02.htm#Col15048">http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0212-02.htm#Col15048</a>
<b>After Stage 1:</b> Subordinate Legislation Committee consideration of Scottish Government response to Stage 1 Report	3 March 2009	<a href="http://www.scottish.parliament.uk/s3/committees/subleg/or-09/su09-0802.htm#Col510">http://www.scottish.parliament.uk/s3/committees/subleg/or-09/su09-0802.htm#Col510</a>
<b>Stage 2:</b> Justice Committee session 1	17 March 2009	<a href="http://www.scottish.parliament.uk/s3/committees/justice/or-09/ju09-0902.htm#Col1646">http://www.scottish.parliament.uk/s3/committees/justice/or-09/ju09-0902.htm#Col1646</a>
<b>Stage 2:</b> Justice Committee session 2	24 March 2009	<a href="http://www.scottish.parliament.uk/s3/committees/justice/or-09/ju09-1002.htm#Col1662">http://www.scottish.parliament.uk/s3/committees/justice/or-09/ju09-1002.htm#Col1662</a>
<b>Stage 2:</b> Justice Committee session 3	31 March 2009	<a href="http://www.scottish.parliament.uk/s3/committees/justice/or-09/ju09-1102.htm#Col1675">http://www.scottish.parliament.uk/s3/committees/justice/or-09/ju09-1102.htm#Col1675</a>
<b>After Stage 2:</b> Subordinate Legislation Committee consideration of Bill as amended at Stage 2	2 June 2009	<a href="http://www.scottish.parliament.uk/s3/committees/subleg/or-09/su09-1902.htm#Col607">http://www.scottish.parliament.uk/s3/committees/subleg/or-09/su09-1902.htm#Col607</a>
<b>Stage 3:</b> debate	10 June 2009	<a href="http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0610-02.htm#Col18165">http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0610-02.htm#Col18165</a>
<b>Royal Assent</b>	14 July 2009	

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