



# Sexual Offences (Scotland) Act 2009

## 2009 asp 9

### PART 7

#### MISCELLANEOUS AND GENERAL

##### *Miscellaneous*

#### 54 [F<sup>1</sup>Incitement to commit certain sexual acts outside Scotland]

- (1) If a person does an act in Scotland which would amount to the offence of incitement to commit a listed offence but for the fact that what the person had in view (referred to in this section as “the relevant conduct”) is intended to occur in a country outside [F<sup>2</sup>Scotland], then—
- the relevant conduct is to be treated as the listed offence, and
  - the person accordingly commits the offence of incitement to commit the listed offence.

[F<sup>3</sup>(2) However—

- a person who is not a habitual resident of Scotland commits an offence by virtue of subsection (1) in respect of relevant conduct intended to occur elsewhere in the United Kingdom only if, and
  - a person who is not a UK national commits an offence by virtue of subsection (1) in respect of relevant conduct intended to occur outside the United Kingdom only if,  
the condition in subsection (2A) is met.
- (2A) That condition is that the relevant conduct would also involve the commission of an offence under the law in force in the country where the whole or any part of it was intended to take place.]
- Conduct punishable under the law in force in the country is an offence under that law for the purposes of subsection [F<sup>4</sup>(2A)] however it is described in that law.
  - The condition specified in subsection [F<sup>5</sup>(2A)] is to be taken as satisfied unless, not later than such time as may be prescribed by Act of Adjournment, the accused serves on the prosecutor a notice—

*Status: Point in time view as at 24/04/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009, Section 54. (See end of Document for details)*

- (a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in the accused's opinion satisfied,
  - (b) setting out the grounds for the accused's opinion, and
  - (c) requiring the prosecutor to prove that the condition is satisfied.
- (5) But the court, if it thinks fit, may permit the accused to require the prosecutor to prove that the condition is satisfied without the prior service of a notice under that subsection.
- (6) In proceedings on indictment, the question whether the condition is satisfied is to be determined by the judge alone.
- (7) Any act of incitement by means of a message (however communicated) is to be treated as done in Scotland if the message is sent or received in Scotland.
- (8) In this section—
- “country” includes territory,
  - “listed offence” means an offence listed in Part 1 of schedule 4,
  - [<sup>F6</sup>“habitual resident of Scotland” means an individual who was at the time the act mentioned in subsection (1) took place habitually resident in Scotland,]
  - “UK national” means an individual who was at the time the [<sup>F7</sup>act mentioned in subsection (1)] took place<sup>F8</sup> ...—
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 is a British subject, or
  - (c) a British protected person within the meaning of that Act.

#### Textual Amendments

- F1** S. 54 heading substituted (24.4.2017) by [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#) (asp 22), **ss. 7(7), 45(2)(3)** (with s. 44); S.S.I. 2017/93, reg. 2
- F2** Word in s. 54(1) substituted (24.4.2017) by [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#) (asp 22), **ss. 7(2), 45(2)(3)** (with s. 44); S.S.I. 2017/93, reg. 2
- F3** S. 54(2)(2A) substituted for s. 54(2) (24.4.2017) by [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#) (asp 22), **ss. 7(3), 45(2)(3)** (with s. 44); S.S.I. 2017/93, reg. 2
- F4** Word in s. 54(3) substituted (24.4.2017) by [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#) (asp 22), **ss. 7(4), 45(2)(3)** (with s. 44); S.S.I. 2017/93, reg. 2
- F5** Word in s. 54(4) substituted (24.4.2017) by [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#) (asp 22), **ss. 7(5), 45(2)(3)** (with s. 44); S.S.I. 2017/93, reg. 2
- F6** Words in s. 54(8) inserted (24.4.2017) by [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#) (asp 22), **ss. 7(6)(a), 45(2)(3)** (with s. 44); S.S.I. 2017/93, reg. 2
- F7** Words in s. 54(8) substituted (24.4.2017) by [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#) (asp 22), s. 45(2)(3), **sch. 2 para. 6** (with s. 44); S.S.I. 2017/93, reg. 2
- F8** Words in s. 54(8) omitted (24.4.2017) by virtue of [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#) (asp 22), **ss. 7(6)(b), 45(2)(3)** (with s. 44); S.S.I. 2017/93, reg. 2

**Status:**

Point in time view as at 24/04/2017.

**Changes to legislation:**

There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009, Section 54.