



# Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

2005 asp 9

## *Meeting a child following certain preliminary contact*

### **1 Meeting a child following certain preliminary contact**

- (1) A person (“A”) commits an offence if—
- (a) having met or communicated with another person (“B”) on at least one earlier occasion, A—
    - (i) intentionally meets B;
    - (ii) travels, in any part of the world, with the intention of meeting B in any part of the world; or
    - (iii) makes arrangements, in any part of the world, with the intention of meeting B in any part of the world, for B to travel in any part of the world;
  - (b) at the time, A intends to engage in unlawful sexual activity involving B or in the presence of B—
    - (i) during or after the meeting; and
    - (ii) in any part of the world;
  - (c) B is—
    - (i) aged under 16; or
    - (ii) a constable;
  - (d) A does not reasonably believe that B is 16 or over; and
  - (e) at least one of the following is the case—
    - (i) the meeting or communication on an earlier occasion referred to in paragraph (a) (or, if there is more than one, one of them) has a relevant Scottish connection;
    - (ii) the meeting referred to in sub-paragraph (i) of that paragraph or, as the case may be, the travelling referred to in sub-paragraph (ii) of that paragraph or the making of arrangements referred to in sub-paragraph (iii) of that paragraph, has a relevant Scottish connection;
    - (iii) A is a British citizen or resident in the United Kingdom.
- (2) In subsection (1) above—

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- (a) the reference to A's having met or communicated with B is a reference to A's having met B in any part of the world or having communicated with B by any means from or in any part of the world (and irrespective of where B is in the world); and
  - (b) a meeting or travelling or making of arrangements has a relevant Scottish connection if it, or any part of it, takes place in Scotland; and a communication has such a connection if it is made from or to or takes place in Scotland.
- (3) For the purposes of subsection (1)(b) above, it is not necessary to allege or prove that A intended to engage in a specific activity.
- (4) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or a fine or both.
- (5) <sup>F1</sup>Subsection (7) of section 55 of the Sexual Offences (Scotland) Act 2009 (asp 9) (which determines the sheriff court district in which proceedings against persons committing certain sexual acts outside the United Kingdom are to be taken) apply in relation to proceedings for an offence under this section as they apply to an offence to which that section applies.

#### Textual Amendments

- F1** Words in s. 1(5) substituted (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\), s. 62\(2\), Sch. 5 para. 7; S.S.I. 2010/357, art. 2\(a\)](#)

#### Commencement Information

- II** S. 1 in force at 7.10.2005 by [S.S.I. 2005/480, art. 2](#)

### *Risk of sexual harm orders*

## 2 Risk of sexual harm orders: applications, grounds and effect

- (1) The chief constable of a police force may apply for an order under this section (a “risk of sexual harm order”) in respect of a person who resides in the area of the police force or who the chief constable believes is in, or is intending to come to, that area if it appears to the chief constable that—
- (a) the person has on at least two occasions, whether before or after the commencement of this section, done an act within subsection (5) below; and
  - (b) as a result of those acts, there is reasonable cause to believe that it is necessary for such an order to be made.
- (2) An application under subsection (1) above may be made to any sheriff—
- (a) in whose sheriffdom the person against whom the order is sought resides;
  - (b) in whose sheriffdom that person is believed by the applicant to be;
  - (c) to whose sheriffdom that person is believed by the applicant to be intending to come; or
  - (d) whose sheriffdom includes any place where it is alleged that that person did an act within subsection (5) below.

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- (3) An application under subsection (1) above shall be made by summary application.
- (4) Such an application shall be made within—
  - (a) the period of 3 months beginning with the date on which the matter mentioned in subsection (1)(a) above appears to the applicant to be the case; or
  - (b) such longer period as the sheriff considers equitable having regard to all the circumstances.
- (5) The acts referred to in subsections (1) and (2) above are—
  - (a) engaging in sexual activity involving a child or in the presence of a child;
  - (b) causing or inciting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual;
  - (c) giving a child anything that relates to sexual activity or contains a reference to such activity;
  - (d) communicating with a child, where any part of the communication is sexual.
- (6) On the application, the sheriff may make a risk of sexual harm order if satisfied that—
  - (a) the person against whom the order is sought has on at least two occasions, whether before or after the commencement of this section, done an act within subsection (5) above; and
  - (b) it is necessary to make such an order for the purpose of protecting children generally or any child from harm from that person.
- (7) Such an order—
  - (a) prohibits the person against whom the order has effect from doing [<sup>F2</sup>, or requires that person to do,] anything described in the order;
  - (b) subject to subsection below, has effect for a fixed period (not less than 2 years) specified in the order.
- (8) The only prohibitions [<sup>F3</sup>or requirements] that may be imposed by virtue of subsection (7) above are those necessary for the purpose of protecting children generally or any child from harm from the person against whom the order has effect.
- (9) Where a sheriff makes a risk of sexual harm order in relation to a person already subject to such an order (whether made by that sheriff or another), the earlier order ceases to have effect.

#### Textual Amendments

**F2** Words in s. 2(7)(a) inserted (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 103\(2\)\(a\)](#), 206(1); [S.S.I. 2011/354](#), [art. 2](#), Sch.

**F3** Words in s. 2(8) inserted (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 103\(2\)\(b\)](#), 206(1); [S.S.I. 2011/354](#), [art. 2](#), Sch.

#### Commencement Information

**I2** S. 2 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

### 3 Interpretation of section 2

For the purposes of section 2 above—

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- (a) the references in that section to protecting children generally or any child from harm from a person are references to protecting them or it from physical or psychological harm caused by that person doing any of the acts within subsection (5) of that section;
- (b) “child” means a person aged under 16;
- (c) “image” means an image produced by any means and whether of a real or imaginary subject;
- (d) a communication is sexual if—
  - (i) any part of it relates to sexual activity; or
  - (ii) a reasonable person would, in all the circumstances, consider any part of the communication to be sexual;
- (e) an image is sexual if—
  - (i) any part of it relates to sexual activity; or
  - (ii) a reasonable person would, in all the circumstances, consider any part of the image to be sexual.

#### Commencement Information

**I3** S. 3 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

#### 4 RSHOs: variations, renewals and discharges

- (1) Any of the persons within subsection (2) below may apply to the appropriate sheriff for an order varying, renewing or discharging a risk of sexual harm order.
- (2) Those persons are—
  - (a) the person against whom the order has effect;
  - (b) the chief constable on whose application the order was made;
  - (c) the chief constable of the police force in the area of which the person against whom the order has effect resides;
  - (d) a chief constable who believes that that person is in, or is intending to come to, the area of the chief constable's police force.
- (3) Subject to subsection (4) below, the sheriff—
  - (a) if satisfied, except where the application is made by the chief constable mentioned in subsection (2)(c) above, that the application has been intimated to that chief constable; and
  - (b) after hearing the person making the application and (if wishing to be heard) any of the other persons mentioned in subsection (2) above,
 may make any order varying, renewing or discharging the risk of sexual harm order that the sheriff considers appropriate.
- (4) A risk of sexual harm order may be renewed or varied so as to impose additional prohibitions [<sup>F4</sup>or requirements] only if it is necessary to do so for the purpose of protecting children generally or any child from harm from the person against whom the order has effect (and any renewed or varied order may contain only such prohibitions [<sup>F4</sup>or requirements] as are necessary for that purpose).
- (5) Section 3 above applies for the purposes of this section.
- (6) In this section, “the appropriate sheriff” means a sheriff—

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- (a) for the sheriffdom of the sheriff who made the risk of sexual harm order;
- (b) in whose sheriffdom the person against whom the order has effect resides;
- (c) in whose sheriffdom that person is believed by the applicant to be; or
- (d) to whose sheriffdom that person is believed by the applicant to be intending to come.

#### Textual Amendments

- F4** Words in s. 4(4) inserted (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 103\(3\)](#), 206(1); [S.S.I. 2011/354](#), [art. 2](#), Sch.

#### Commencement Information

- I4** S. 4 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

## 5 Interim RSHOs

- (1) This section applies where an application for a risk of sexual harm order (“the main application”) has been intimated to the person against whom the application is made but has not been determined.
- (2) An application for an order under this section (“an interim risk of sexual harm order”)—
  - (a) may be made by way of the main application; or
  - (b) if the main application has been made, may be made, by application to a sheriff for the sheriffdom of the sheriff to whom the main application was made, by the person who made that application.
- (3) The sheriff may, if subsection (4) below applies, make an interim risk of sexual harm order prohibiting the person against whom the main application was made from doing <sup>[F5]</sup>, or requiring that person to do,] anything described in the order.
- (4) This subsection applies if the sheriff is satisfied—
  - (a) except where the application is made by way of the main application, that it has been intimated to the person against whom it is made;
  - (b) that *prima facie* the person against whom the order is sought has on at least two occasions, whether before or after the commencement of section 2 above, done an act within subsection (5) of that section; and
  - (c) that it is just to make the order.
- (5) Such an order—
  - (a) has effect only for a fixed period specified in the order;
  - (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (6) The applicant or the person against whom an interim risk of sexual harm order has effect may apply to a sheriff for the sheriffdom of the sheriff who made the interim risk of sexual harm order for the order to be varied, renewed or discharged.

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#### Textual Amendments

- F5** Words in s. 5(3) inserted (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 103\(4\)](#), 206(1); [S.S.I. 2011/354](#), [art. 2](#), Sch.

#### Commencement Information

- I5** S. 5 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

## 6 Appeals

- (1) An interlocutor granting, refusing, varying, renewing or discharging a risk of sexual harm order or an interim risk of sexual harm order is an appealable interlocutor.
- (2) Where an appeal is taken against an interlocutor granting, varying or renewing such an order, the court may, in the appeal proceedings, suspend the interlocutor appealed against pending the disposal of the appeal.

#### Commencement Information

- I6** S. 6 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

## 7 Offence: breach of RSHO or interim RSHO

- (1) A person, who without reasonable excuse, does anything which the person is prohibited from doing [<sup>F6</sup>, or fails to do anything which the person is required to do,] by—
  - (a) a risk of sexual harm order; or
  - (b) an interim risk of sexual harm order,
 commits an offence.
- (2) Where an order made under section 123 or 126 of the 2003 Act (which make provision for England and Wales and Northern Ireland corresponding to that made by sections 2 and 5 above) prohibits a person from doing a thing throughout the relevant place, the person commits an offence if the person, without reasonable excuse, does the thing in Scotland.
- (3) For the purpose of subsection (2) above, the “relevant place” is—
  - (a) where the order was made in England and Wales, England and Wales;
  - (b) where the order was made in Northern Ireland, Northern Ireland.
- (4) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both.

#### Textual Amendments

- F6** Words in s. 7(1) inserted (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 103\(5\)](#), 206(1); [S.S.I. 2011/354](#), [art. 2](#), Sch.

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#### **Commencement Information**

**I7** S. 7 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

### **8 Effect of conviction etc. under section 7 above or section 128 of Sexual Offences Act 2003**

- (1) This section applies to a person who—
  - (a) is convicted of an offence under section 7 above or section 128 of the 2003 Act (breach of RSHO or interim RSHO in England and Wales or Northern Ireland);
  - (b) is, in England and Wales or Northern Ireland, cautioned in respect of an offence under section 128 of that Act;
  - (c) is found not guilty of one of those offences on the grounds or by reason of insanity; or
  - (d) is found to be under a disability and to have done the act charged against the person in respect of one of those offences.
- (2) Where the person—
  - (a) was a relevant offender immediately before this section applied to the person; and
  - (b) would (apart from this subsection) cease to be subject to the notification requirements of Part 2 of the 2003 Act while the relevant order (as renewed from time to time) has effect,the person remains subject to those notification requirements.
- (3) Where the person was not a relevant offender immediately before this section applied to the person—
  - (a) the person, by virtue of this section, becomes subject to the notification requirements of Part 2 of the 2003 Act from the time this section first applies to the person and remains so subject until the relevant order (as renewed from time to time) ceases to have effect; and
  - (b) that Part of that Act applies to the person subject to the modification set out in subsection (4) below.
- (4) In that application, “relevant date” means the date on which this section first applies to the person referred to in it.
- (5) In this section—

“relevant offender” has the meaning given by section 80(2) of the 2003 Act;

“relevant order” means—

  - (a) where the conviction or finding referred to in subsection (1)(a), (c) or (d) above is in respect of a breach of a risk of sexual harm order under section 2 above or section 123 of the 2003 Act, that order;
  - (b) where the caution referred to in subsection (1)(b) above is in respect of a breach of a risk of sexual harm order under section 123 of the 2003 Act, that order;
  - (c) where the conviction or finding referred to in subsection (1)(a), (c) or (d) above is in respect of a breach of an interim risk of harm order under section 5 above or section 126 of the 2003 Act—

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- (i) any risk of sexual harm order made upon the application to which the interim risk of sexual harm order relates; or
- (ii) if no such risk of sexual harm order has been made, the interim risk of sexual harm order;
- (d) where the caution referred to in subsection (1)(b) above is in respect of a breach of an interim risk of sexual harm order under section 126 of the 2003 Act—
  - (i) any risk of sexual harm order under section 123 of that Act made on the hearing of the application to which the interim risk of sexual harm order relates; or
  - (ii) if no such risk of sexual harm order has been made, the interim risk of sexual harm order.

#### Commencement Information

**18** S. 8 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

### *Sexual services of children and child pornography*

## 9 Paying for sexual services of a child

- (1) A person (“A”) commits an offence if—
  - (a) A intentionally obtains for himself or herself the sexual services of another person (“B”);
  - (b) before obtaining those services, A—
    - (i) makes or promises payment for those services to B or to a third person; or
    - (ii) knows that another person has made or promised such a payment; and
  - (c) either—
    - (i) B is aged under 18, and A does not reasonably believe that B is aged 18 or over; or
    - (ii) B is aged under 13.
- (2) In subsection (1)(b) above, “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.
- (3) For the purposes of subsections (1) and (2) above, “sexual services” are—
  - (a) the performance of sexual activity; or
  - (b) the performance of any other activity that a reasonable person would, in all the circumstances, consider to be for the purpose of providing sexual gratification, and a person's sexual services are obtained where what is obtained is the performance of such an activity by the person.
- (4) A person guilty of an offence under this section in respect of a person aged 16 or over is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;



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- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years [<sup>F7</sup>or a fine or both].
- (5) A person guilty of an offence under this section in respect of a person aged under 16 is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years [<sup>F8</sup>or a fine or both].

#### Textual Amendments

- F7** Words in s. 9(4)(b) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 40(2)(a)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 4)
- F8** Words in s. 9(5)(b) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 40(2)(a)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 4)

#### Commencement Information

- I9** S. 9 in force at 7.10.2005 by [S.S.I. 2005/480](#), **art. 2**

## 10 Causing or inciting provision by child of sexual services or child pornography

- (1) A person (“A”) commits an offence if—
- (a) A intentionally causes or incites another person (“B”) to become a provider of sexual services, or to be involved in pornography, in any part of the world; and
  - (b) either—
    - (i) B is aged under 18, and A does not reasonably believe that B is aged 18 or over; or
    - (ii) B is aged under 13.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years [<sup>F9</sup>or a fine or both].

#### Textual Amendments

- F9** Words in s. 10(2)(b) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 40(2)(b)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 4)

#### Commencement Information

- I10** S. 10 in force at 7.10.2005 by [S.S.I. 2005/480](#), **art. 2**

## 11 Controlling a child providing sexual services or involved in pornography

- (1) A person (“A”) commits an offence if—
- (a) A intentionally controls any of the activities of another person (“B”) relating to B's provision of sexual services or involvement in pornography in any part of the world; and

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- (b) either—
  - (i) B is aged under 18, and A does not reasonably believe that B is aged 18 or over; or
  - (ii) B is aged under 13.
- (2) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years [<sup>F10</sup> or a fine or both].

#### Textual Amendments

**F10** Words in s. 11(2)(b) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 40\(2\)\(c\)](#), 206(1); [S.S.I. 2010/413](#), [art. 2](#), [Sch.](#) (with [art. 4](#))

#### Commencement Information

**I11** S. 11 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

## 12 Arranging or facilitating provision by child of sexual services or child pornography

- (1) A person (“A”) commits an offence if—
  - (a) A intentionally arranges or facilitates the—
    - (i) provision of sexual services in any part of the world by; or
    - (ii) involvement in pornography in any part of the world of, another person (“B”); and
  - (b) either—
    - (i) B is aged under 18, and A does not reasonably believe that B is aged 18 or over; or
    - (ii) B is aged under 13.
- (2) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years [<sup>F11</sup> or a fine or both].

#### Textual Amendments

**F11** Words in s. 12(2)(b) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 40\(2\)\(d\)](#), 206(1); [S.S.I. 2010/413](#), [art. 2](#), [Sch.](#) (with [art. 4](#))

#### Commencement Information

**I12** S. 12 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

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### 13 Sections 10 to 12: supplementary

- (1) For the purpose of sections 10 to 12 above, a person is involved in pornography if an indecent image of that person is recorded; and similar expressions, and “pornography”, are to be construed accordingly.
- (2) In those sections, “provider of sexual services” means a person (“B”) who, on at least one occasion and whether or not compelled to do so, offers or provides B's sexual services to another person in return for payment or a promise of payment to B or a third party; and “provision of sexual services” is to be construed accordingly.
- (3) In subsection (2) above, “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.
- (4) For the purpose of subsections (2) and (3) above, “sexual services” are—
  - (a) the performance of sexual activity; or
  - (b) the performance of any other activity that a reasonable person would, in all the circumstances, consider to be for the purpose of providing sexual gratification, and a person's sexual services are offered or provided to another person where such an activity is offered to be performed or performed with or for the other person.
- (5) A person does not commit an offence under section 10, 11 or 12 above by reason only of doing something within section 52(1) or 52A(1) of the Civic Government (Scotland) Act 1982 (c. 45).

#### Commencement Information

**I13** S. 13 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

### 14 Liability to other criminal proceedings

- (1) Sections 9 to 12 above do not exempt any person from any proceedings for an offence which is punishable at common law or under any enactment other than those sections.
- (2) But nothing in those sections or this section enables a person to be punished twice for the same offence.

#### Commencement Information

**I14** S. 14 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

### [<sup>F12</sup>14A Offences by bodies corporate etc.

- (1) Subsection (2) applies where an offence under sections 10 to 12 committed—
  - (a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is a director, manager, secretary or other similar officer of the body corporate, or
    - (ii) purports to act in any such capacity,
  - (b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

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- (i) is a partner, or
- (ii) purports to act in that capacity,
- (c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
  - (i) is concerned in the management or control of the association, or
  - (ii) purports to act in the capacity of a person so concerned.
- (2) The individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.
- (3) Where the affairs of a body corporate are managed by its members, this section applies in relation to acts and defaults of a member in connection with the member's function of management as if the member were a director of the body corporate.]

#### Textual Amendments

**F12** S. 14A inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. **40(3)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 4)

### *Unlawful intercourse with girl between 13 and 16*

#### **15 Removal of time limit for prosecution of offence**

Subsections (4) and (7) of section 5 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (unlawful intercourse with a girl under 16) are repealed.

#### Commencement Information

**I15** S. 15 in force at 7.10.2005 by [S.S.I. 2005/480](#), art. 2

### *Indecent images of children*

#### **16 Indecent photographs of 16 and 17 year olds**

- (1) The Civic Government (Scotland) Act 1982 (c. 45) is amended as follows.
- (2) In section 52 (which makes certain conduct in relation to indecent photographs of persons under 16 an offence), in subsection (2), for “16” in both places where it occurs there is substituted “ 18 ”.
- (3) After section 52A (which makes possession of indecent photographs of persons under 16 an offence) there is inserted—

*Status: Point in time view as at 01/11/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. (See end of Document for details)*

**“52B Sections 52 and 52A: exceptions for photographs of 16 and 17 year olds**

- (1) If subsection (2) below applies, the accused is not guilty of an offence under section 52(1)(a) of this Act of taking or making an indecent photograph of a child.
- (2) This subsection applies if—
  - (a) either—
    - (i) the photograph was of the child aged 16 or over; or
    - (ii) the accused reasonably believed that to be so;
  - (b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
    - (i) married to or civil partners of each other; or
    - (ii) partners in an established relationship; and
  - (c) either—
    - (i) the child consented to the photograph being taken or made; or
    - (ii) the accused reasonably believed that to be so.
- (3) If subsection (4) below applies, the accused is not guilty of an offence under section 52(1)(b) of this Act relating to an indecent photograph of a child.
- (4) This subsection applies if—
  - (a) either—
    - (i) the photograph was of the child aged 16 or over; or
    - (ii) the accused reasonably believed that to be so;
  - (b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
    - (i) married to or civil partners of each other; or
    - (ii) partners in an established relationship;
  - (c) either—
    - (i) the child consented to the photograph's being taken or made;  
or
    - (ii) the accused reasonably believed that to be so; and
  - (d) the showing or distributing of the photograph was only to the child.
- (5) If subsection (6) below applies, the accused is not guilty of an offence under section 52(1)(c) of this Act relating to an indecent photograph of a child.
- (6) This subsection applies if—
  - (a) either—
    - (i) the photograph was of the child aged 16 or over; or
    - (ii) the accused reasonably believed that to be so;
  - (b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
    - (i) married to or civil partners of each other; or
    - (ii) partners in an established relationship;
  - (c) either—

*Status: Point in time view as at 01/11/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. (See end of Document for details)*

- (i) the child consented to the photograph's being in the accused's possession; or
  - (ii) the accused reasonably believed that to be so; and
  - (d) the accused had the photograph in his possession with a view to its being distributed or shown only to the child.
- (7) If subsection (8) below applies, the accused is not guilty of an offence under section 52A of this Act relating to an indecent photograph of a child.
- (8) This subsection applies if—
- (a) either—
    - (i) the photograph was of the child aged 16 or over; or
    - (ii) the accused reasonably believed that to be so;
  - (b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
    - (i) married to or civil partners of each other; or
    - (ii) partners in an established relationship; and
  - (c) either—
    - (i) the child consented to the photograph's being in the accused's possession; or
    - (ii) the accused reasonably believed that to be so.
- (9) Subsections (2), (4), (6) and (8) above apply whether the photograph showed the child alone or with the accused, but not if it showed any other person.

### **52C Section 52B: proof of exceptions**

- (1) This section applies for the purpose of determining whether a matter within a paragraph of section 52B(2), (4), (6) or (8) of this Act is the case.
- (2) If sufficient evidence is adduced to raise an issue as to whether the matter is the case, it shall be held to be the case, except where subsection (3) below applies.
- (3) This subsection applies where the prosecution proves beyond reasonable doubt that the matter is not the case.
- (4) Otherwise, the matter shall be held not to be the case.”.

#### **Commencement Information**

**I16** S. 16 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

### *Sexual offences prevention orders*

#### **17 Prevention of sexual offences: further provision**

- (1) In section 105 of the 2003 Act (further provision as to sexual offences prevention orders)—
  - (a) in subsection (2)—

*Status: Point in time view as at 01/11/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. (See end of Document for details)*

- (i) for the words from “within” to the end of paragraph (a) there is substituted—
    - “(aa) within whose sheriffdom the person in respect of whom the order is sought resides;
    - (ab) within whose sheriffdom the person is believed by the applicant to be;
    - (ac) to whose sheriffdom the person is believed by the applicant to be intending to come;”;
  - (ii) at the beginning of paragraph (b) there is inserted “ within whose sheriffdom lies ”; and
  - (b) in subsection (4), for “(1)(g)” there is substituted “ (1)(e) ”.
- (2) In section 111 of that Act (appeals in relation to sexual offences prevention orders)—
- (a) in paragraph (a)—
    - (i) the words “refusing, varying, renewing or discharging” are repealed;
    - (ii) after “order” where first occurring there is inserted “ on an application under section 104(5) or 105(1) ”;
    - (iii) after “order” where secondly occurring there is inserted “ or refusing, varying, renewing or discharging either such order ”;
  - (b) the word “and” immediately following that paragraph is repealed; and
  - (c) there is added at the end—
    - “(c) a sexual offences prevention order made in any other case and any order granting or refusing a variation, renewal or discharge of such a sexual offences prevention order are, for the purposes of appeal, to be regarded—
      - (i) in the case of solemn proceedings, as if they were orders of the kind referred to in section 106(1)(d) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (appeal against probation and community service orders);
      - (ii) in the case of summary proceedings, as if they were orders of the kind referred to in section 175(2)(c) of that Act (appeal against probation, community service and other orders); and
    - (d) where an appeal is taken by virtue of paragraph (c) above, the High Court of Justiciary may, in the appeal proceedings, suspend the order appealed against pending the disposal of the appeal.”.
- (3) Section 112 of that Act (which provides for the application, with modifications, to Scotland of certain provisions of the Act relating to sexual offences prevention orders) is amended in accordance with subsections (4) and (5) below.
- (4) In subsection (1)—
- (a) paragraph (a) is repealed;
  - (b) in its place there is inserted—
    - “(aa) the references in subsection (2) and (3)(a) of section 104 to an offence listed in Schedule 3 or 5 shall be read as references to an offence listed at paragraphs 36 to 60 of Schedule 3;”;
  - (c) in paragraph (e)—

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*Changes to legislation: There are currently no known outstanding effects for the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. (See end of Document for details)*

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- (i) the words “or interim sexual offences prevention order” are omitted;
- (ii) for the words from “within” to the end of sub-paragraph (i) there is substituted—
  - “(ia) within whose sheriffdom the person in respect of whom the order is sought resides;
  - (ib) within whose sheriffdom that person is believed by the applicant to be;
  - (ic) to whose sheriffdom that person is believed by the applicant to be intending to come;”;
- (iii) at the beginning of sub-paragraph (ii) there is inserted “ within whose sheriffdom lies ”;
- (iv) in that sub-paragraph, for “the person in respect of whom the order is sought or has effect” there is substituted “ that person ”; and
- (v) for “references to “the court” being” there is substituted “ and, in relation to such an order, references to a court or the court shall be ”;
- (d) after that paragraph there is inserted—
  - “(ea) an application for an interim sexual offences prevention order—
    - (i) is made by way of the main application; or
    - (ii) if the main application has been made, is made, by application to a sheriff for the sheriffdom of the sheriff to whom the main application was made, by the person who made that application,
 (and, in relation to such an order, references to a court or the court shall be construed accordingly),”;
- (e) in paragraph (f)—
  - (i) for “either such order” there is substituted “ a sexual offences prevention order which was made on an application under section 104(5) or 105(1) or an interim sexual offences prevention order ”;
  - (ii) the word “or” immediately following sub-paragraph (i) is repealed;
  - (iii) for sub-paragraph (ii) there is substituted—
    - “(iia) within whose sheriffdom that person is believed by the applicant to be; or
    - (iib) to whose sheriffdom that person is believed by the applicant to be intending to come;”;
  - (iv) for “references to “the court” being” there is substituted “ and, in relation to an application made by virtue of this paragraph, references to a court or the court shall be ”;
- (f) after paragraph (f) there is inserted—
  - “(g) an application for the variation, renewal or discharge of a sexual offences prevention order which was made where subsection (2) or (3) of section 104 applies may be made only by the person in respect of whom the order has effect or the prosecutor;
  - (h) such an application is made—
    - (i) where the sexual offences prevention order sought to be varied, renewed or discharged was made by the High Court of Justiciary, to that court;



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(ii) where that order was made by the sheriff, to the appropriate sheriff.”.

(5) After that subsection there is inserted—

“(1A) In subsection (1)(h)(ii), the “appropriate sheriff” is—

- (a) in a case where the person in respect of whom the order has effect is, at the time of the application for its variation, renewal or discharge, resident in a sheriffdom other than the sheriffdom of the sheriff who made the order, any sheriff exercising criminal jurisdiction in the sheriffdom in which the person is resident;
- (b) in any other case, any sheriff exercising criminal jurisdiction in the sheriff court district of the sheriff who made the order.”.

(6) In section 142(3) of that Act (its Scottish extent) after “93” there is inserted “, 110”.

**Modifications etc. (not altering text)**

**C1** S. 17 extended (E.W.N.I.) (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\), s. 56\(1\)\(a\)](#)

**Commencement Information**

**I17** S. 17 in force at 7.10.2005 by [S.S.I. 2005/480, art. 2](#) (with [art. 3\(1\)\(2\)](#))

*General*

**18 Minor and consequential amendments**

The schedule to this Act, which contains minor amendments and amendments consequential on this Act, has effect.

**Modifications etc. (not altering text)**

**C2** S. 18 extended (E.W.N.I.) in part (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\), s. 56\(1\)\(b\)](#)

**Commencement Information**

**I18** S. 18 in force at 7.10.2005 by [S.S.I. 2005/480, art. 2](#)

**19 Interpretation**

In this Act—

“the 2003 Act” means the Sexual Offences Act 2003 (c. 42);

“sexual activity” means an activity that a reasonable person would, in all the circumstances, consider to be sexual; and a reference to engaging in sexual activity includes (other than in section 2(5)(b) above)—

- (a) a reference to an attempt or conspiracy to engage in such activity; and
- (b) a reference to aiding, abetting, counselling, procuring or inciting another person to engage in such activity.

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**Status:** Point in time view as at 01/11/2011.

**Changes to legislation:** There are currently no known outstanding effects for the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. (See end of Document for details)

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#### Commencement Information

**I19** S. 19 in force at 7.10.2005 by [S.S.I. 2005/480](#), **art. 2**

## 20 Citation and commencement

- (1) This Act may be cited as the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.
- (2) This Act, except this section, comes into force on such day as the Scottish Ministers may by order made by statutory instrument appoint and different days may be so appointed for different purposes.
- (3) An order under subsection (2) above may contain transitional, transitory or saving provision.

**Status:**

Point in time view as at 01/11/2011.

**Changes to legislation:**

There are currently no known outstanding effects for the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.