



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

## 2005 asp 9

### *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;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years [F1 or a fine or both].

*Status: Point in time view as at 13/12/2010.*

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

- (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>F2</sup> or a fine or both].

#### Textual Amendments

- F1** 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)
- F2** 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

- I1** 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>F3</sup> or a fine or both].

#### Textual Amendments

- F3** 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

- I2** 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
  - (b) either—

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- (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>F4</sup>or a fine or both].

#### Textual Amendments

**F4** 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

**I3** 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>F5</sup>or a fine or both].

#### Textual Amendments

**F5** 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

**I4** 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

**I5** 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

**I6** S. 14 in force at 7.10.2005 by [S.S.I. 2005/480](#), [art. 2](#)

### <sup>F6</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**

- F6** 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)

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