

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

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### **EXPLANATORY NOTES**

#### **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.