

SEXUAL OFFENCES (SCOTLAND) ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part One – Rape Etc

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.