

SEXUAL OFFENCES (SCOTLAND) ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Children

Young Children

Section 20 – Sexual assault on a young child

58. This section creates the offence of “sexual assault on a young child”. Subsection (2) sets out five separate sexual acts, each of which constitute an offence. It also provides that, in each case, in order to commit an offence the perpetrator must either act intentionally or recklessly when carrying out one of these sexual acts. The five sexual acts are:
- (a) penetrating a young child’s vagina, anus or mouth by any means in a sexual way;
 - (b) touching a young child in a sexual way;
 - (c) having any other sexual physical contact with a young child, whether directly or through clothing and whether with a body part or with an implement;
 - (d) ejaculating semen onto a young child; and
 - (e) intentionally or recklessly emitting urine or saliva onto a young child in a sexual way.
59. Subsection (3) provides that penetration “by any means” in subsection (2) includes with the perpetrator’s penis. This means that there is an overlap between the conduct which constitutes sexual assault on a young child, that which constitutes sexual assault by penetration on a young child and that which constitutes rape of a young child. This is necessary for the same reasons as specified for the overlap between the offences at sections 1, 2 and 3 of the Bill (see paragraph 12 above).