

SEXUAL OFFENCES (SCOTLAND) ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Children

Older Children

Section 32 – Causing an older child to be present during a sexual activity

86. This section creates the offence of “causing an older child to be present during a sexual activity”. Subsection (1) provides that the offence may be committed only by a person aged 16 or over. It provides that the two circumstances in which this offence is committed are, first, where the perpetrator intentionally engages in a sexual activity in the presence of an older child or, secondly, where the perpetrator causes an older child to be present while a third party engages in a sexual activity.
87. Subsection (2) provides that the activities at subsection (1) are a crime only where the perpetrator acts for the purpose of obtaining sexual gratification or to humiliate, distress or alarm the older child.
88. Subsection (3) provides that, for the purposes of this offence, the requirement that an older child is present when the perpetrator or a third person carried out sexual activity includes situations in which the person engaging in the sexual activity can be observed by an older child (other than by means of an image). It is not essential to prove that the older child actually observed the activity; so long as the older child was in a place where the sexual activity was capable of being observed from.