

SEXUAL OFFENCES (SCOTLAND) ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Miscellaneous and General

Section 54 – Incitement to commit certain sexual acts outside the United Kingdom

168. **Section 54** removes the dual criminality requirement in respect of UK nationals. Therefore, a UK national will commit an offence under this section if he or she incites a sexual act (which is intended to take place outside the UK) that would constitute an offence in Scotland. It is no longer necessary to show that the sexual act which was incited was an offence in the country in which it was intended to take place. This follows, but goes beyond, the requirements of the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Abuse which was signed by the UK Government on 8 May 2008. That Convention requires the removal of the dual criminality requirements in relation to offences of child abuse, child pornography and child prostitution. Dual criminality is retained for UK residents and persons other than UK nationals.
169. The section applies to the offences which are listed in part 1 of schedule 4. These include inciting offences under Part 1 of the Act (rape etc.) which are committed against a person under the age of 18, the offences against children in Part 4 and the sexual abuse of trust offences in sections 42 and 46.
170. By way of example, incitement in Scotland to commit rape in Scotland would be an offence by virtue of section 293 of the Criminal Procedure (Scotland) Act 1995. The effect of section 54 is that incitement in Scotland to commit rape in another country is also an offence in Scotland, for non-UK nationals if rape is an offence in that other country. It will be an offence for UK nationals to incite rape (which is an offence in Scotland) outside the UK regardless of whether it is an offence in that other country.