



# Sexual Offences (Scotland) Act 2009

## 2009 asp 9

### PART 4

#### CHILDREN

##### *Older children*

#### **38 Penetration and consent for the purposes of section 37**

- (1) This section applies for the purposes of section 37.
- (2) Penetration is a continuing act from entry until withdrawal of whatever is intruded.
- (3) “Consent” means free agreement (and related expressions are to be construed accordingly).
- (4) Without prejudice to the generality of subsection (3), free agreement to conduct is absent in the circumstances set out in section 13(2) (references in that section to A and B being construed in accordance with section 37).
- (5) A person is incapable, while asleep or unconscious, of consenting to any conduct.
- (6) Consent to conduct does not of itself imply consent to any other conduct.
- (7) Consent to conduct may be withdrawn at any time before, or in the case of continuing conduct, during, the conduct.
- (8) If the conduct takes place, or continues to take place, after consent has been withdrawn, it takes place, or continues to take place, without consent.