

SEXUAL OFFENCES (SCOTLAND) ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Children

Young Children

Section 22 – Causing a young child to be present during a sexual activity

61. This section creates the offence of “causing a young child to be 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 a young child or, secondly, that the perpetrator intentionally caused a young child to be present while a third person engaged in a sexual activity.
62. Subsection (2) provides that an offence is committed only where the perpetrator’s purpose in having a young child present is to obtain sexual gratification or to humiliate, distress or alarm the young child.
63. Subsection (3) provides that, for the purposes of subsection (1), the requirement that the young child is present or that the activity is carried out in his or her presence, includes situations in which the person engaging in the sexual activity can be observed by the young child (other than by means of an image). It is not essential that it be proved that the young child actually observed the activity; it is sufficient that the young child was in a place where the sexual activity was capable of being observed from.