

# Sexual activity with a child law general essay

Law



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The offence covers intentionally to touch a person B, where the touching is sexual as B is under the age of 16 and A being the offender does not reasonably believe that B is 16 or over. The Actus Reus for the offence covers the elements of touching and sexual keeping in mind that there is no requirement for B to consent to the sexual act. Passionate embracing and kissing suffices as a sexual activity.[1]The offence can also be committed by women on young boys.[2]Intentional touching suffices as the Mens Rea of this offence, whereas if B is under 13 there is no other element of mens rea. Offenders plea of honest and reasonable belief s in consent or age are irrelevant. The offence under S9 can be committed by a person aged 18 or above, consequently the maximum sentence is 14 years' imprisonment. Referring to the case of R v Shelton (Kyran) (2012) the appellant was 24 years old when this offence took place. The complainant was 14 years old at the time. She first had sexual intercourse with the appellant at a New Year's Eve party. She then sent him text messages informing him of her true age. She met him again in early January and once more they had sexual intercourse. The jury's verdicts confirmed that on the first occasion the appellant might have had a reasonable belief she was over 16 but on the second occasion he knew perfectly well she was just 14. Appellant was convicted of an offence of sexual activity with a child, contrary to section 9 of the Sexual Offences Act 2003. He was sentenced to a term of five and a half years' imprisonment. Causing or inciting a child to engage in sexual activity S10There are two versions of the offence, an act causing B to engage, or conduct inciting B to engage in the activity. A, 18, who convinces his 15 year old girlfriend to strip naked for him commits the offence regardless of the fact if she declines or willingly assents. Example of inciting

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sexual activity might include the conduct in DPP v B where the defendant invited the girl to give him 'a shiner' (oral sex). Following the decision in Walker, incitement is construed so broadly as to include circumstances in which A has no intention that the act will be carried out. A must intend to incite, in this context intention extends to oblique intention. B being under 13 provides that there is no other element of mens rea, moreover belief in consent remains irrelevant in such a case. This offence also stands a maximum penalty of 14 years and is triable on indictment only. These offences can be committed by a person under the age of 18, in which case the sentence is of six months summarily, five years on indictment[3].

*R v Evans* The defendant had been a swimming coach for a swimming club to which the complainants, Z and S, had attended. The defendant had never been a personal coach of the complainants. At the relevant time, Z had been 14 years' old and S had been 13 years' old. The defendant sent messages of a sexual nature to the complainants from his mobile. Following a contested trial, the defendant was convicted with two counts of causing or inciting a child to engage in sexual activity contrary to s 10(1) of the Sexual Offences Act 2003. The defendant, who had no previous convictions, was sentenced to 18 months' imprisonment on each count, to run concurrently.

Engaging in sexual activity in the presence of a child S11A must engage in a sexual activity when a person under 16 is present or is in a place from which A can be observed. There is no requirement that B is actually witnessing the act, merely that B is present or in a position from which A can be observed. Since observation includes viewing directly or viewing an image,[4] the offence can be committed via a web cam. Sexual thrill seekers who have sex in public places might commit the offence by having sex in a park visible from the

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nearby children's play area[5]. Four elements are needed to be satisfied for establishing mens rea for this offence. Firstly A must intentionally engage in the sexual activity, secondly A must have as his purpose to derive sexual gratification from B's presence. A couple will not be convicted of committing this offence if their child walks in while they having sexual intercourse. Thirdly A must know or believe that b is aware or intend that B should be aware of the activity and lastly B being under 16, A must be shown not to have had a reasonable belief that B is 16 or older. This is an entirely novel offence, covering much of the activity that might previously have been charged as gross indecency. Maximum sentence is 10 years indictment, six months summarily. Moreover the offence can be committed by a person under 18, for which the sentence is one of six months summarily, indictment making it five years.[6]

### **R v Teeder (Richard Ian) (2010)**

The appellant was driving his work's van in a street in Gloucester when he saw a schoolgirl. He followed her. He stopped the van close to her, caught her eye and masturbated in her sight. Three days later, he saw five schoolgirls near Cheltenham. He got out of his van, he followed them, approached them and again masturbated, directing his actions towards them. The applicant was sentenced by His Honour Judge Picton as follows: for two offences of engaging in sexual activity in the presence of a child, contrary to section 11 of the Sexual Offences Act 2003 with a minimum term of 18 months. Causing a child to watch a sexual act S12. Research suggests that paedophiles often diminish the sexual inhibitions of children by exposing them to explicit pornography to facilitate subsequent sexual acts.

The act consists of intentionally to cause a person under 16 to watch a third person involved in sexual activity, where A acts for the purpose of sexual gratification and is fully aware that B is under 16 years of age. A aged 18 who shows his willing 15 year old girlfriend a pornographic movie for their mutual sexual enjoyment commits the offence. It will apply to causing a child to read explicit text messages.[7]A must cause B to watch the activity. In Abdullahi (2006) the Court of Appeal held that the act must be done for the purpose of obtaining sexual gratification, but the gratification need not be contemporaneous so A is guilty if this is done in order to 'groom' a child with a view to sexual activity later. A must intend to cause b to watch the sexual act and for the purpose of sexual gratification. These requirements fulfill the criteria of *mens rea* for this offence.

### **\*R v Abdullahi**

The complainant, aged 13, attended his friend's home, at which the defendant, aged in his 30s, also lived. During the visit, the complainant was given alcohol and cannabis and at one stage the defendant played a pornographic film depicting heterosexual and homosexual sexual activity. When subsequently alone in the room, the defendant touched the complainant's penis. At his trial for, *inter alia*, causing a child to watch sexual activity, contrary to s 12 of the Sexual Offences Act 2003 and sexual activity with a child, contrary to s 9 of the Act. The judge directed the jury, in relation to causing a child to watch sexual activity that, *inter alia*, they would have to be satisfied that the defendant had showed the images for the purpose of obtaining sexual gratification, In the event the defendant was convicted of causing a child to watch a sexual act and sexual activity with a child. He was

sentenced to six months and 18 months' imprisonment on each count to run consecutively. Arranging or facilitating commission of a child sex offence

S14It is an offence for A intentionally to arrange or facilitate something that A intends to do, intends another person to do, or believes that another person will do, in any part of the world, and doing it will involve the commission of an offence.[8]The element of 'arranging' is not defined, whereas an example provided by the Home Office states that if A approaches an agency and requests a 15 year old girl for sex.[9]' Facilitating is also not defined. It is intended to cover the case where A lets his room to C so that C can have sex with B aged 15, this is also an overbroad offence as it applies also to suppliers of pornography. It would seem that oblique intention would be sufficient. RVRIn essence, the question is whether the mere request by the Respondent to someone to look for a young girl of 12 or 13 with whom he could indulge in sexual activity or whom could be persuaded to have sexual activity with a dog amounts to an offence under s 14 of the Sexual Offences Act 2003 or an attempt to commit such an offence. The evidence, as the judge recorded it in giving his clear ruling, was that the Respondent was a client of a prostitute who was the main prosecution witness. In March 2007, the Respondent asked that lady if she knew of any young girls, 12 or 13 years old, who were working as prostitutes. He also asked the lady whether she would "go with a dog". That allegation founded a second count in the indictment, with which we are not concerned, of inciting the lady to have intercourse with an animal. The response from the prostitute was that she did not know any young girls but the Respondent persisted, saying that he would keep in contact with her by means of text communications on his mobile phone, the number of which she knew. He

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was going to text, so he said, to see if she could find such a young girl. She did not say that she would do so and she gave him no reason to believe that that was what she would do. She in fact made no enquiries and it is greatly to her credit, whatever the outcome of this matter, that subsequently she reported the matter to the police.[4] But she reported it after two further text messages were received by her from the Respondent, the first on 7 March 2007 which read, " Heard owt of 12 lass, let me know", and in similar terms a text the following day, " you got the 12 year old sorted yet?" These two communications had been formally admitted.