

SEXUAL OFFENCES (SCOTLAND) ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Miscellaneous and General

Section 50 – Power to convict for offence other than that charged

151. This section provides that, where a charge is brought under certain provisions in the Bill but the court or the jury are not satisfied that the accused committed the offence in the charge, it may be open to convict the accused of a specified alternative offence. Schedule 3 specifies the available alternatives.
152. Subsection (1) provides that this power may be used where the court or jury are not satisfied that the accused committed or attempted to commit the offence which is charged but are satisfied (to the normal criminal standard of proof) that the accused committed or attempted to commit another offence (where the other offence is specified, in schedule 3 to the Bill, as being an available alternative to the offence charged). If these conditions are met, then the court or jury may acquit the accused of the offence charged but may find him or her guilty of the alternative offence.
153. Subsections (2) to (5) provide for circumstances where the accused is charged with an offence against a child and doubt as to the age of either the accused or the victim opens up the possibility of the accused being found guilty of an alternative offence to the offence charged. Subsection (2) provides that where either of conditions 1 or 2 apply, the court or jury may acquit the accused of the charge but find the accused guilty of one of the alternative older child offences listed in subsections (3) and (4).
154. Subsection (3) provides for condition 1 which is that the accused is charged with an offence at sections 18 to 26 against a young child and, but for a failure to establish beyond reasonable doubt that the child victim had attained the age of 13 years at the relevant time, a court or jury would be entitled to find that the accused had committed one of the alternative older child offences set out at section 50(3)(b)(i) to (xii).
155. Subsection (4) provides for condition 2, which is that the accused is charged with an offence under sections 28-30 and, but for a failure to establish beyond reasonable doubt that the accused had not attained the age of 16 at the relevant time, a court or jury would be entitled to find that the accused had one of the alternative older child offences set out at section 50(4)(b)(i) or (ii).
156. Subsection (5) provides that for the purposes of this section, “relevant time” is the time when the conduct to which the proceedings relate took place.
157. Subsection (6) provides that references to an offence in section 50 includes attempting, inciting, counselling or procuring the commission of that offence or being involved art and part in that offence.