

SEXUAL OFFENCES (SCOTLAND) ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Miscellaneous and General

Section 52 – Common law offences

161. This section provides that the common law offences listed in paragraph (a) are abolished (other than in respect of offences committed before this section is commenced).
162. This means that, where conduct which would otherwise have constituted one of those common-law offences is committed on or after this section has been commenced, that common law offence will not have been committed. Instead, the conduct will fall under one of the offences in the Bill. The particular common law offences which are to be abolished are rape, clandestine injury to women, lewd, indecent and libidinous practice or behaviour, and sodomy. All other common law crimes remain in place.
163. Paragraph (b) qualifies this by providing that any conduct which constitutes an offence under one of the provisions of the Bill and which takes place after the commencement of this section must be charged as an offence under the Bill. This means that it will not be competent to bring a charge under the common law nor under any other statutory offence in respect of that sexual conduct. Thus, for example, conduct falling within section 3 must be charged as sexual assault and not as a common law assault aggravated by indecency.