

SEXUAL OFFENCES (SCOTLAND) ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Miscellaneous and General

Section 53– Continuity of law on sexual offences

164. This section is intended to provide a smooth transition between the current law in respect of sexual offences and the new offences contained in the Bill. The main purpose of this section is to make allowance for cases in which the sexual conduct in the charge takes place around the time that the offences contained in the Bill come into force. It may not always be possible to prove exactly when the sexual conduct took place and hence whether this occurred before or after the relevant offence in the Bill was commenced.
165. Subsection (1) provides that this section applies where a person is charged, in respect of the same conduct, with an existing offence specified in subsection (2) and with an offence under the Bill. It provides that the court or jury must be satisfied in all respects that the accused committed the offences charged, other than as to the time on which the sexual conduct took place.
166. Subsection (3) provides that the accused may be found guilty, where the conditions in subsection (1) apply, of whichever of the offences they are charged with has the lower maximum penalty (as defined by subsection (4)). Where the penalties are the same, it provides that the accused may be found guilty of the new offence.
167. Subsection (5) provides that a reference to an offence in this section includes an attempt to commit the offence, inciting its commission, and being involved art and part in it and to an offence as modified by section 16A or 16B of the Criminal Law (Consolidation) (Scotland) Act 1995..