



Sexual Offences (Scotland) Act 2009

2009 asp 9

PART 7

MISCELLANEOUS AND GENERAL

Miscellaneous

53 Continuity of law on sexual offences

- (1) This section applies where, in any trial—
- (a) the accused is charged in respect of the same conduct both with an offence under this Act (“the new offence”) and with an offence specified in subsection (2) (“the existing offence”),
 - (b) there is a failure to establish beyond reasonable doubt that—
 - (i) the time when the conduct took place was after the coming into force of the provision providing for the new offence, and
 - (ii) the time when the conduct took place was before the abolishment or replacement of or, as the case may be, the coming into force of the repeal of the enactment providing for, the existing offence, and
 - (c) the court (or, in the case of a trial of an indictment, the jury) is satisfied in every other respect that the accused committed the offences charged.
- (2) The offences referred to in subsection (1)(a) are—
- (a) rape (at common law),
 - (b) clandestine injury to women,
 - (c) lewd, indecent or libidinous practice or behaviour,
 - (d) any other common law offence which is replaced by an offence under this Act,
 - (e) an offence under section 3 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (intercourse of person in position of trust with child under 16),
 - (f) an offence under section 5(1), (2) or (3) (intercourse with girl under 16) or 6 (indecent behaviour towards girl between 12 and 16) of that Act,
 - (g) an offence under section 3 of the Sexual Offences (Amendment) Act 2000 (c. 44) (abuse of position of trust).
- (3) Where this section applies, the accused may be found guilty—

Status: This is the original version (as it was originally enacted).

- (a) if the maximum penalty for the existing offence is less than the maximum penalty for the new offence, of the existing offence,
 - (b) in any other case, of the new offence.
- (4) In subsection (3) the reference, in relation to an offence, to the maximum penalty is a reference to the maximum penalty by way of imprisonment or other detention that could be imposed on the accused on conviction of the offence in the proceedings in question.
- (5) A reference in this section to an offence includes a reference to—
- (a) an attempt to commit an offence,
 - (b) incitement to commit an offence,
 - (c) counselling or procuring the commission of an offence,
 - (d) involvement art and part in an offence, and
 - (e) an offence as modified by section 16A or 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39).