

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Criminal Procedure

Section 60 - Prosecution on indictment: Scottish Law Officers

272. This section amends the procedures contained in the 1995 Act for the raising of indictments in name of the Lord Advocate.
273. Section 287 of the 1995 Act sets out transitional arrangements concerning the raising of prosecutions on indictment for the situation where a Lord Advocate resigns or dies and where there is a gap in time before a new Lord Advocate is appointed. In this case indictments are raised in the name of the Solicitor General. Section 287 makes provision for circumstances where both offices of the Lord Advocate and Solicitor General are vacant, to include where both Law Officers demit office on the same day.
274. Section 64 of the 1995 Act, as existing prior to amendment by this Act, provides that all prosecutions before the High Court of Justiciary or before the Sheriff sitting with a jury shall proceed in name of Her Majesty's Advocate.
275. Subsection (2) amends section 64 of the 1995 Act (and subsection (5) amends Schedule 2 to the 1995 Act) to provide that indictments are to be libelled at the instance of "Her Majesty's Advocate", removing any requirement for the individual Lord Advocate to be named, personally. Subsection (4)(a)(i) makes a consequential amendment to section 287(1) of the 1995 Act in relation to the continuation of indictments raised by the Lord Advocate during any period where there is no Lord Advocate in office.
276. Subsection (4)(b) makes a similar amendment to subsection 287(2) of the 1995 Act with regard to indictments raised, where there is no Lord Advocate in office. It allows indictments to be raised at the instance of the Lord Advocate or the Solicitor General where that office is vacant.
277. Subsection (4)(a)(ii) makes clear that section 287(1) of the 1995 Act applies where the holder of the office of Lord Advocate has died or demitted office and subsection (4)(a)(iii) makes clear that indictments raised by a Lord Advocate can, where the circumstances set out in section 287(1) of the 1995 Act apply, be taken up by the Solicitor General. This is to ensure the continuity of criminal proceedings in Scotland where there is a vacancy in office of the Scottish Law Officer/s.
278. Subsection (4)(c), where it inserts new subsection (2A) in section 287, provides that indictments raised by the Solicitor General may be signed by that Law Officer. It also provides, by the insertion of new subsections (2C) and (2D) in that section, that during any period where both offices of the Scottish Law Officers are vacant, regardless of the cause of those vacancies, that it shall be lawful for indictments to be raised at the

*These notes relate to the Criminal Justice and Licensing (Scotland)
Act 2010 (asp 13) which received Royal Assent on 6 August 2010*

instance of Her Majesty's Advocate. It provides, by the insertion of subsection (2B) in that section, that where an indictment is raised at the instance of the Solicitor General, that indictment continues to be valid even if that person has since died or left office, and ensures that such indictments can continue to be taken up and proceeded with by either the person's successor as Solicitor General or by the Lord Advocate. This mirrors existing provision in section 287(1) of the 1995 Act. Subsection (4)(d) makes provision that ensures that indictments raised by a Solicitor General can be taken up and proceeded with by advocates depute and procurators fiscal, notwithstanding any vacancy in the office of the Solicitor General. Subsection (4)(d) also includes provision allowing indictments which have been raised at the instance of the Lord Advocate where there is no Lord Advocate or Solicitor General in post to be taken up and proceeded with by advocates depute or procurators fiscal.