

2010 No. 357 (C. 21)

CRIMINAL LAW

**The Sexual Offences (Scotland) Act 2009 (Commencement
No. 1) and the Criminal Justice and Licensing (Scotland)
Act 2010 (Commencement No. 4) Order 2010**

Made - - - -

7th October 2010

The Scottish Ministers make the following Order in exercise of the powers conferred by section 62(2) of the Sexual Offences (Scotland) Act 2009(a) and section 206(1) of the Criminal Justice and Licensing (Scotland) Act 2010(b).

Citation and interpretation

1.—(1) This Order may be cited as the Sexual Offences (Scotland) Act 2009 (Commencement No. 1) and the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 4) Order 2010.

(2) In this Order—

- (a) “the 2009 Act” means the Sexual Offences (Scotland) Act 2009; and
- (b) “the 2010 Act” means the Criminal Justice and Licensing (Scotland) Act 2010.

Commencement

2. The following provisions come into force on 1st December 2010—

- (a) the provisions of the 2009 Act, insofar as not already in force, other than—
 - (i) section 52; and
 - (ii) section 53(2)(a) to (d); and
- (b) sections 43, 44 and 63 of the 2010 Act.

KENNY MACASKILL

A member of the Scottish Executive

St Andrew’s House,
Edinburgh
7th October 2010

(a) 2009 asp 9. Sections 9, 10, 26, 36 and 39 of this Act have been amended by the Criminal Justice and Licensing (Scotland) Act 2010, sections 43 and 44.
(b) 2010 asp 13.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force on 1st December 2010 the provisions of the Sexual Offences (Scotland) Act 2009 (“the 2009 Act”) that did not come into force when the Act received Royal Assent, except sections 52 and 53(2)(a) to (d).

Section 52 will, when brought into force, abolish the common law offences of rape, clandestine injury to women, lewd, indecent or libidinous practice or behaviour and sodomy. In addition, it will ensure that any other rule of law regulating conduct which is regulated by the provisions of the 2009 Act is replaced by those provisions.

Section 53(2)(a) to (d) of the 2009 Act makes transitional provision in connection with the abolition of common law offences by section 52 and does not, therefore, require to be brought into force until section 52 itself is brought into force.

This Order also brings into force on 1st December 2010 sections 43, 44 and 63 of the Criminal Justice and Licensing (Scotland) Act 2010.

Section 43 amends sections 9, 10, 26 and 36 of the 2009 Act which create offences in relation to voyeurism. These amendments expand the types of conduct which will constitute an offence of voyeurism, voyeurism towards a young child and voyeurism towards an older child.

Section 44 makes a minor typographical amendment to section 39 (defences in relation to offences against older children) of the 2009 Act.

Section 63 inserts 3 new sections into the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) in relation to aspects of criminal procedure in proceedings involving sexual offences. Section 288BA of the 1995 Act permits an indictment or complaint to include a docket specifying acts or omissions in connection with a sexual offence charged in that indictment or complaint. Where such a docket is included, evidence of the act or omission mentioned in the docket will be admissible as relevant.

Section 288BB of the 1995 Act permits an indictment or complaint to be framed by reference to more than one offence under the 2009 Act, or by reference to an offence under that Act and any other act or omission (except by way of reference to another statutory offence).

Section 288C of the 1995 Act provides that any specification in a charge that an offence is committed with intent to rape may be given by reference to the offence of rape under section 1 of the 2009 Act or rape of a young child under section 18 of that Act.

**NOTE AS TO EARLIER COMMENCEMENT ORDERS UNDER THE CRIMINAL
JUSTICE AND LICENSING (SCOTLAND) ACT 2010**

(This note is not part of the Order)

The Criminal Justice and Licensing (Scotland) Act 2010 received Royal Assent on 6th August 2010 and sections 201, 202, 204, 205 and 206 came into force on that day. The first commencement order, the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 1) Order 2010 (S.S.I. 2010/297) was made on 12th August 2010. The second commencement order, the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 2) Order 2010 (S.S.I. 2010/339) was made on 22nd September 2010. The third commencement order, the Protection of Vulnerable Groups (Scotland) Act 2007 (Commencement No. 4) and the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 3) Order 2010 (S.S.I. 2010/344) was made on 23rd September 2010.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 178(3)(e) (partially)	16th August 2010	2010/297
Sections 38 and 97	6th October 2010	2010/339
Section 108(1) and (4) (partially)	12th October 2010	2010/344

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