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## 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.