

2010 No. 421

CRIMINAL LAW

**The Sexual Offences (Scotland) Act 2009 (Supplemental and
Consequential Provisions) Order 2010**

Made - - - - - *24th November 2010*

Coming into force - - - - - *1st December 2010*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 58 of the Sexual Offences (Scotland) Act 2009(a) and all other powers enabling them to do so.

In accordance with section 59(3) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Sexual Offences (Scotland) Act 2009 (Supplemental and Consequential Provisions) Order 2010 and comes into force on 1st December 2010.

Supplemental and consequential provisions

2. The Schedule, which amends certain enactments, has effect.

KENNY MACASKILL
A member of the Scottish Executive

St Andrew's House,
Edinburgh
24th November 2010

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

PART 1

Amendment of Public General Acts

The Criminal Procedure (Scotland) Act 1995

- 1.—(1) The Criminal Procedure (Scotland) Act 1995^(a) is amended as follows.
- (2) In section 19A (samples etc. from persons convicted of sexual and violent offences)^(b)—
- (a) in subsection (6), in the definition of “relevant sexual offence”—
- (i) after paragraph (c) insert—
- “(ca) abduction with intent to commit the statutory offence of rape;” and
- (ii) after paragraph (d) insert—
- “(da) assault with intent to commit the statutory offence of rape;” and
- (b) after subsection (6) insert—
- “(6A) In subsection (6)—
- (a) the references to “rape” in paragraphs (c) and (d) of the definition of “relevant sexual offence” are to the offence of rape at common law; and
- (b) the references in paragraphs (ca) and (da) of that subsection to “the statutory offence of rape” are (as the case may be) to—
- (i) the offence of rape under section 1 of the Sexual Offences (Scotland) Act 2009, or
- (ii) the offence of rape of a young child under section 18 of that Act.”.
- (3) In section 210A (extended sentences for sex and violent offenders)^(c)—
- (a) in subsection (10), in the definition of “sexual offence”—
- (i) after paragraph (iii) insert—
- “(iiia) abduction with intent to commit the statutory offence of rape;” and
- (ii) after paragraph (iv) insert—
- “(iva) assault with intent to commit the statutory offence of rape;” and
- (b) for subsection (11) substitute—
- “(11) In subsection (10)—
- (a) any reference to a “sexual offence” includes—
- (i) a reference to any attempt, conspiracy or incitement to commit that offence; and

(a) 1995 c.46.

(b) Section 19A was inserted by the Crime and Punishment (Scotland) Act 1997 (c.48), section 48 and has been amended by the Criminal Justice (Scotland) Act 2003 (asp 7), section 55(3); the Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), Schedule 1, paragraph 27(2); the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), section 77(4) and schedule 6, paragraph 4; and the Sexual Offences (Scotland) Act 2009, schedule 5, paragraph 2(4).

(c) Section 210A was inserted by the Crime and Disorder Act 1998 (c.37), section 86 and has been amended by the Sexual Offences (Amendment) Act 2000 (c.44), section 6(2); the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), section 312; the Extended Sentences for Violent Offenders (Scotland) Order 2003 (S.S.I. 2003/48), article 2; the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), section 21; the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), schedule, paragraph 19; the Sexual Offences (Scotland) Act 2009, schedule 5, paragraph 2(6) and schedule 6; and, prospectively, by the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17), schedule 4, paragraph 3.

- (ii) except in the case of an offence under paragraphs (i) to (viii) of the definition of “sexual offence” in that subsection, a reference to aiding and abetting, counselling or procuring the commission of that offence;
- (b) the references to “rape” in paragraphs (iii) and (iv) of the definition of “sexual offence” are to the offence of rape at common law; and
- (c) the references to “the statutory offence of rape” in paragraphs (iiia) and (iva) of that definition are (as the case may be) to—
 - (i) the offence of rape under section 1 of the Sexual Offences (Scotland) Act 2009, or
 - (ii) the offence of rape of a young child under section 18 of that Act.”.

(4) In section 288C (prohibition of personal conduct of defence in cases of certain sexual offences)(a)—

- (a) in subsection (2)—
 - (i) after paragraph (d) insert—
 - “(da) abduction with intent to commit the statutory offence of rape;”;
 - (ii) after paragraph (e) insert—
 - “(ea) assault with intent to commit the statutory offence of rape;”;
- (b) after subsection (8) insert—
 - “(9) In subsection (2)—
 - (a) the references to “rape” in paragraphs (d) and (e) are to the offence of rape at common law; and
 - (b) the references to “the statutory offence of rape” in paragraphs (da) and (ea) are (as the case may be) to—
 - (i) the offence of rape under section 1 of the Sexual Offences (Scotland) Act 2009, or
 - (ii) the offence of rape of a young child under section 18 of that Act.”.

The Protection of Children (Scotland) Act 2003

2.—(1) Schedule 1 (offences against a child) to the Protection of Children (Scotland) Act 2003(b) is amended as follows.

- (2) At the end of paragraph 1 insert—
 - “(zi) assault with intent to commit an offence under section 18 (rape of a young child) of that Act;
 - (zj) abduction with intent to commit an offence under section 18 (rape of a young child) of that Act”.
- (3) At the end of paragraph 2(dk) insert—
 - “(dl) commits the offence of assault with intent to commit an offence under section 1 (rape) of that Act in relation to a child;
 - (dm) commits the offence of abduction with intent to commit an offence under section 1 (rape) of that Act in relation to a child;”.

(a) Section 288C was inserted by the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), section 1 and has been amended by the Criminal Procedure (Amendment) (Scotland) Act 2004, section 4(1) and schedule, paragraph 55(b); the Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005, Schedule 1, paragraph 27(5); and the Sexual Offences (Scotland) Act 2009, schedule 5, paragraph 2(7).

(b) 2003 asp 5. Schedule 1 has been amended by the Sexual Offences (Scotland) Act 2009, schedule 5, paragraph 4.

The Sexual Offences Act 2003

3. In Schedule 3 (sexual offences for the purposes of Part 2) to the Sexual Offences Act 2003(a)—

(a) after paragraph 38 insert—

“**38A.** Abduction with intent to commit rape under section 1 (rape) of the Sexual Offences (Scotland) Act 2009 (asp 9).

38B. Abduction with intent to commit rape under section 18 (rape of a young child) of that Act.”, and

(b) after paragraph 39 insert—

“**39A.** Assault with intent to commit rape under section 1 (rape) of the Sexual Offences (Scotland) Act 2009.

39B. Assault with intent to commit rape under section 18 (rape of a young child) of that Act.”.

The Sexual Offences (Scotland) Act 2009

4. In the Sexual Offences (Scotland) Act 2009, in the third column of schedule 3 (alternative verdicts)—

(a) in the entry for rape, after “Assault at common law” insert—

“Assault with intent to commit rape at common law

Assault with intent to commit the offence of rape under section 1 of this Act

Assault with intent to commit the offence of rape of a young child

Abduction with intent to commit rape at common law

Abduction with intent to commit the offence of rape under section 1 of this Act

Abduction with intent to commit the offence of rape of a young child

An offence under section 1 (incest) of the Criminal Law (Consolidation) (Scotland) Act 1995

An offence under section 2 (intercourse with step-child) of that Act”; and

(b) in each of the entries for sexual assault by penetration, sexual assault, sexual coercion, rape of a young child, sexual assault on a young child by penetration, sexual assault on a young child and causing a young child to participate in a sexual activity after “Assault at common law” insert—

“Assault with intent to commit rape at common law

Assault with intent to commit the offence of rape under section 1 of this Act

Assault with intent to commit the offence of rape of a young child

Abduction with intent to commit rape at common law

Abduction with intent to commit the offence of rape under section 1 of this Act

Abduction with intent to commit the offence of rape of a young child”.

(a) 2003 c.42. Schedule 3 has been amended by the Sexual Offences Act 2003 (Amendment of Schedules 3 and 5) Order 2007 (S.I. 2007/296), article 2(2) and (3); the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), schedule 1, paragraph 3(a) to (d); the Armed Forces Act 2006 (c.52), Schedule 16, paragraph 212(2)(b) and (3), Schedule 17, paragraph 1; the Serious Crime Act 2007 (c.27), Schedule 5, paragraph 4(2) and Schedule 6, paragraph 63(2); the Criminal Justice and Immigration Act 2008 (c.4), Schedule 26, paragraph 58(2) and (3); the Coroners and Justice Act 2009 (c.25), Schedule 21, paragraph 62(2) and (5); the Sexual Offences (Scotland) Act 2009, schedule 5, paragraph 5 and schedule 6, paragraph 1.

PART 2

Amendment of Scottish statutory instruments

The Victim Notification (Prescribed Offences) (Scotland) Order 2004

5. In the Schedule to the Victim Notification (Prescribed Offences) (Scotland) Order 2004^(a)—

- (a) in paragraph 9, after “Rape” insert “at common law”;
- (b) in paragraph 11, after “rape” insert “(at common law)”;
- (c) after paragraph 11 insert—

“**11A.** Abduction with intent to commit the offence of rape under section 1 of the Sexual Offences (Scotland) Act 2009 (asp 9).

11B. Abduction with intent to commit the offence of rape of a young child under section 18 of that Act.”;

- (d) in paragraph 12, after “rape” insert “(at common law)”;
- (e) after paragraph 12 insert—

“**12A.** Assault with intent to commit the offence of rape under section 1 of the Sexual Offences (Scotland) Act 2009.

12B. Assault with intent to commit the offence of rape under section 18 of that Act.”; and

- (f) after paragraph 22 insert—

“**22A.** An offence under the Sexual Offences (Scotland) Act 2009.”.

The Victim Statements (Prescribed Offences) (No. 2) (Scotland) Order 2009

6. In the Schedule (offences prescribed for the purposes of section 14(2) of the Criminal Justice (Scotland) Act 2003) to the Victim Statements (Prescribed Offences) (No. 2) (Scotland) Order 2009^(b)—

- (a) in paragraph 9, after “Rape” insert “at common law”;
- (b) in paragraph 11, after “rape” insert “(at common law)”;
- (c) after paragraph 11, insert—

“**11A.** Abduction with intent to commit the offence of rape under section 1 of the Sexual Offences (Scotland) Act 2009 (asp 9).

11B. Abduction with intent to commit the offence of rape of a young child under section 18 of that Act.”;

- (d) in paragraph 12, after “rape” insert “(at common law)”;
- (e) after paragraph 12, insert—

“**12A.** Assault with intent to commit the offence of rape under section 1 of the Sexual Offences (Scotland) Act 2009.

12B. Assault with intent to commit the offence of rape of a young child under section 18 of that Act.”; and

- (f) after paragraph 17, insert—

“**17A.** An offence under the Sexual Offences (Scotland) Act 2009.”.

(a) S.S.I. 2004/411, amended by S.S.I. 2005/445 and 2009/142.

(b) S.S.I. 2009/71.

The Adoptions with a Foreign Element (Scotland) Regulations 2009

7. In Schedule 1 (specified offences) to the Adoptions with a Foreign Element (Scotland) Regulations 2009^(a)—

- (a) in paragraph 1, after “rape” insert “(whether at common law or under section 1 of the Sexual Offences (Scotland) Act 2009 (asp 9))”;
- (b) in paragraph 2—
 - (i) omit “and” where it appears at the end of sub-paragraph (b); and
 - (ii) at the end of sub-paragraph (c) insert—
 - “; and
 - (d) an offence under section 37 of the Sexual Offences (Scotland) Act 2009 (older children engaging in sexual conduct with each other)”;
- (c) in paragraph 3—
 - (i) omit “and” where it appears at the end of sub-paragraph (b); and
 - (ii) at the end of sub-paragraph (c) insert—
 - “; and
 - (d) an offence under any of the following provisions of the Sexual Offences (Scotland) Act 2009—
 - (i) section 28 (having intercourse with an older child);
 - (ii) section 29 (engaging in penetrative sexual activity with or towards an older child);
 - (iii) section 30 (engaging in sexual activity with or towards an older child);
 - (iv) section 31 (causing an older child to participate in a sexual activity);
 - (v) section 32 (causing an older child to be present during a sexual activity);
 - (vi) section 33 (causing an older child to look at a sexual image);
 - (vii) section 34 (communicating indecently with an older child etc.);
 - (viii) section 35 (sexual exposure to an older child); and
 - (ix) section 36 (voyeurism towards an older child)”.

^(a) S.S.I. 2009/182, amended by S.S.I. 2010/173.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to primary and secondary legislation relating to sexual offences. The amendments are supplemental and consequential to the Sexual Offences (Scotland) Act 2009 (“the 2009 Act”).

The Schedule sets out the amendments to both primary and secondary legislation. Part 1 of the Schedule contains the amendments to primary legislation. These are primarily to update statutory references to the offences of assault and abduction with intent to rape to ensure that references to “rape” include the new statutory offences of rape and rape of a young child. In addition, Part 1 amends the 2009 Act by adding assault and abduction with intent to the lists of alternative verdicts set out in schedule 3 to that Act.

Part 2 of the Schedule makes similar amendments to references in secondary legislation to assault and abduction with intent to rape. That Part also makes further amendments to certain Scottish statutory instruments as a consequence of the creation of new statutory sexual offences.

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