

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Criminal Procedure

Section 63 – Dockets and charges in sex cases

289. This section inserts three new sections, 288BA, 288BB and 288BC into the Criminal Procedure (Scotland) Act 1995.
290. New section 288BA provides a statutory basis for the use by the prosecution of a ‘docket’ to inform the defence of the prosecution’s intention to lead evidence in sexual offence cases of an offence not charged.
291. Subsection (1) provides that an indictment or complaint may include a docket which specifies an act or omission connected with a sexual offence charged in the indictment or complaint. Subsection (2) provides that an act or omission is connected with the offence if it is specifiable by way of reference to a sexual offence and relates to the same event as the offence, or a series of events of which that offence is also part.
292. Subsection (3) provides that the docket is to be in the form of a note apart from the offence charged.
293. Subsection (4) provides that a docket may specify an act or omission even where, if it were instead charged as an offence, it could not competently be dealt with by the court in which the indictment or complaint is proceeding (e.g. a docket which states that evidence will be led that the accused raped the complainer, though the indictment is not being tried in the High Court).
294. Subsection (5) provides that where such a docket is included in an indictment or complaint, the accused is deemed to have been given fair notice of the intention to lead evidence of the act or omission specified in the docket, and the evidence is admissible as relevant.
295. Subsection (6) provides that any offence under the Sexual Offences (Scotland) Act 2009 and any other offence involving a significant sexual element shall be considered to be a ‘sexual offence’ for the purpose of this section.
296. New subsection 288BB provides that it shall be competent for the Crown to libel more than one statutory sexual offence under the Sexual Offences (Scotland) Act 2009 in a single charge (e.g. rape at section 1 of the 2009 Act and sexual assault at section 3 of that Act), and to libel one or more statutory offences under that Act and one or more common law offences together in a single charge (e.g. assault at common law and rape at section 1 of the 2009 Act).
297. Subsection (1) provides that an indictment or complaint may include a charge framed in the manner set out in subsections (2) or (3) or both.

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

298. Subsection (2) provides that a charge may be framed so as to comprise the specification of more than one sexual offence. Subsection (3) provides that it may specify in addition to a sexual offence, any other act or omission and may do so in any manner except by way of reference to a statutory offence.
299. Subsection (4) provides that, where an indictment or complaint is framed as mentioned in subsection (2) or (3) or both, it is to be regarded as a single, yet cumulative charge. Subsection (5) provides that the references to a 'sexual offence' in this section are to an offence under the Sexual Offences (Scotland) Act 2009.
300. New subsection 288BC provides that it shall be competent for the Crown to libel the charges of 'assault with intent to rape' and 'abduction with intent to rape' by reference to the statutory offence of rape at section 1 of the Sexual Offences (Scotland) Act 2009 or, as the case may be, rape of a young child under section 18 of that Act.
301. Subsections (1) and (2) provide that any specification in the charge that the offence is with intent to rape may be given by reference to the statutory offence of rape as respects a qualifying offence charged in an indictment or complaint.
302. Subsection (3)(a) provides that the reference to 'qualifying offences' in subsection (1) is to an offence of assault or abduction, and includes attempt, conspiracy or incitement to commit these offences. Subsection (3)(b) provides that the reference to the statutory offence of rape is to the offence of rape at section 1 of the Sexual Offences (Scotland) Act 2009 or, as the case may be, to the offence of rape of a young child at section 18 of the Act.