



# Sexual Offences (Scotland) Act 2009

## 2009 asp 9

### PART 7

#### MISCELLANEOUS AND GENERAL

##### *Miscellaneous*

#### **50 Power to convict for offence other than that charged**

(1) If, in a trial—

- (a) on an indictment for an offence mentioned in the first column of schedule 3 the jury are not satisfied that the accused committed the offence charged but are satisfied that the accused committed the alternative offence (or as the case may be one of the alternative offences) mentioned in the third column, they may, or
- (b) in summary proceedings for an offence mentioned in the first column of that schedule the court is not satisfied that the accused committed the offence charged but is satisfied that the accused committed the alternative offence (or as the case may be one of the alternative offences) mentioned in the third column, it may,

acquit the accused of the charge but find the accused guilty of the alternative offence in respect of which so satisfied (the accused then being liable to be punished accordingly).

(2) Where either of conditions 1 or 2 apply in a trial, the court or jury may acquit the accused of the charge but find the accused guilty of the alternative older child offence (the accused then being liable to be punished accordingly).

(3) Condition 1 is that—

- (a) A is charged with an offence under sections 18 to 26, and
- (b) but for a failure to establish beyond reasonable doubt that B had attained the age of 13 years at the relevant time, a court or jury would, by virtue of subsection (1), find that A committed an offence (“the alternative older child offence”) of—
  - (i) having intercourse with an older child,
  - (ii) engaging in penetrative sexual activity with or towards an older child,

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*Changes to legislation: There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009, Section 50. (See end of Document for details)*

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- (iii) engaging in sexual activity with or towards an older child,
- (iv) causing an older child to participate in a sexual activity,
- (v) causing an older child to be present during a sexual activity,
- (vi) causing an older child to look at a sexual image,
- (vii) communicating indecently with an older child,
- (viii) causing an older child to see or hear an indecent communication,
- (ix) sexual exposure to an older child,
- (x) voyeurism towards an older child,
- (xi) engaging while an older child in sexual conduct with or towards another older child,
- (xii) engaging while an older child in consensual sexual conduct with another older child.

(4) Condition 2 is that—

- (a) A is charged with an offence under section 28, 29 or 30, and
- (b) but for a failure to establish beyond reasonable doubt that A had not attained the age of 16 years at the relevant time, a court or jury would, by virtue of subsection (1), find that A committed an offence (“the alternative older child offence”) of—
  - (i) engaging while an older child in sexual conduct with or towards another older child,
  - (ii) engaging while an older child in consensual sexual conduct with another older child.

(5) In this section, the “relevant time” is when the conduct to which the proceedings relate occurred.

(6) A reference in this section to an offence includes a reference to—

- (a) an attempt to commit,
  - (b) incitement to commit,
  - (c) counselling or procuring the commission of, and
  - (d) involvement art and part in,
- an offence.

**Changes to legislation:**

There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009, Section 50.