



Sexual Offences (Procedure and Evidence) (Scotland) Act 2002

2002 asp 9

Prohibition of personal conduct of defence by alleged sex offender

1 Prohibition of personal conduct of defence in cases of certain sexual offences

After section 288B of the Criminal Procedure (Scotland) Act 1995 (c. 46) (the “1995 Act”) there is inserted—

“Trials for sexual offences

288C Prohibition of personal conduct of defence in cases of certain sexual offences

- (1) An accused charged with a sexual offence to which this section applies is prohibited from conducting his defence in person at the trial.
- (2) This section applies to the following sexual offences—
 - (a) rape;
 - (b) sodomy;
 - (c) clandestine injury to women;
 - (d) abduction of a woman or girl with intent to rape;
 - (e) assault with intent to rape;
 - (f) indecent assault;
 - (g) indecent behaviour (including any lewd, indecent or libidinous practice or behaviour);
 - (h) an offence under section 106(1)(a) or 107 of the Mental Health (Scotland) Act 1984 (c. 36) (unlawful sexual intercourse with mentally handicapped female or with patient);
 - (i) an offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)—
 - (i) sections 1 to 3 (incest and related offences);
 - (ii) section 5 (unlawful sexual intercourse with girl under 13 or 16);

- (iii) section 6 (indecent behaviour toward girl between 12 and 16);
 - (iv) section 7(2) and (3) (procuring by threats etc.);
 - (v) section 8 (abduction and unlawful detention);
 - (vi) section 10 (seduction, prostitution, etc. of girl under 16);
 - (vii) section 13(5)(b) or (c) (homosexual offences);
 - (j) attempting to commit any of the offences set out in paragraphs (a) to (i) above.
- (3) This section applies also to an offence in respect of which a court having jurisdiction to try that offence has made an order under subsection (4) below.
- (4) Where, in the case of any offence, other than one set out in subsection (2) above, that court is satisfied that there appears to be such a substantial sexual element in the alleged commission of the offence that it ought to be treated, for the purposes of this section, in the same way as an offence set out in that subsection, the court shall, either on the application of the prosecutor or *ex proprio motu*, make an order under this subsection.
- (5) The making of such an order does not affect the validity of anything which—
- (a) was done in relation to the alleged offence to which the order relates; and
 - (b) was done before the order was made.
- (6) The Scottish Ministers may by order made by statutory instrument vary the sexual offences to which this section applies by virtue of subsection (2) above by modifying that subsection.
- (7) No such statutory instrument shall be made, however, unless a draft of it has been laid before and approved by resolution of the Scottish Parliament.”.

2 Appointment of solicitor by court in such cases and availability of legal aid

- (1) After section 288C of the 1995 Act (as inserted by section 1 above) there is inserted—

“288D Appointment of solicitor by court in such cases

- (1) This section applies in the case of proceedings in respect of a sexual offence to which section 288C above applies.
- (2) Where the court ascertains that—
- (a) the accused has not engaged a solicitor for the purposes of his defence at the trial; or
 - (b) having engaged a solicitor for those purposes, the accused has dismissed him; or
 - (c) the accused’s solicitor has withdrawn,
- then, where the court is not satisfied that the accused intends to engage a solicitor or, as the case may be, another solicitor for those purposes, it shall, at its own hand, appoint a solicitor for those purposes.
- (3) A solicitor so appointed is not susceptible to dismissal by the accused or obliged to comply with any instruction by the accused to dismiss counsel.
- (4) Subject to subsection (3) above, it is the duty of a solicitor so appointed—

- (a) to ascertain and act upon the instructions of the accused; and
 - (b) where the accused gives no instructions or inadequate or perverse instructions, to act in the best interests of the accused.
 - (5) In all other respects, a solicitor so appointed has, and may be made subject to, the same obligations and has, and may be given, the same authority as if engaged by the accused; and any employment of and instructions given to counsel by the solicitor shall proceed and be treated accordingly.
 - (6) Where the court is satisfied that a solicitor so appointed is no longer able to act upon the instructions, or in the best interests, of the accused, the court may relieve that solicitor of his appointment and appoint another solicitor for the purposes of the accused's defence at the trial.
 - (7) The references in subsections (3) to (6) above to "a solicitor so appointed" include references to a solicitor appointed under subsection (6) above.
 - (8) In this section "counsel" includes a solicitor who has right of audience in the High Court of Justiciary under section 25A (rights of audience in various courts including the High Court of Justiciary) of the Solicitors (Scotland) Act 1980 (c. 46).".
- (2) In section 22 (automatic availability of criminal legal aid) of the Legal Aid (Scotland) Act 1986 (c. 47), in subsection (1), after paragraph (dc) there is inserted—
- "(dd) where a solicitor has been appointed under section 288D of the Criminal Procedure (Scotland) Act 1995 (c. 46) (appointment by court of solicitor for person accused of sexual offence and thereby prohibited from conducting defence in person) to act on his instructions or in his interests;".
- (3) In section 31 of that Act of 1986, in subsection (1A) (exceptions to provision entitling person receiving legal aid or advice and assistance to select a solicitor and counsel)—
- (a) the word "and" immediately preceding paragraph (e) is repealed; and
 - (b) after that paragraph there is inserted "
 - (f) section 288D of the Criminal Procedure (Scotland) Act 1995 (c. 46)".

3 Notice to accused about effect of sections 288C and 288D of 1995 Act and special pre-trial court procedures

The schedule to this Act has effect.