

SEXUAL OFFENCES (PROCEDURE AND EVIDENCE) (SCOTLAND) ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 10: Disclosure of accused's convictions

37. Section 10 inserts a new section 275A into the 1995 Act. Subsections (1)-(3) of section 10 make consequential amendments to the 1995 Act, to reflect the content of the new section 275A.
38. Subsection (4) contains the new section 275A. Section 275A(1) states that, when the accused makes an application under section 275 which is at least partially successful, the prosecutor will require to place before the judge a list of the accused's previous relevant convictions. Under section 275A(10), these are convictions for sexual offences which have been notified to the accused in advance of the trial. If the conviction is for an offence listed in section 288C(2) (see paragraph 7 above), all that is required is that the conviction has been included in the notice of previous convictions which must already be served on the accused under section 69(2) or 166(2) of the 1995 Act. Where the conviction is not for an offence listed in section 288C(2), section 275A(11) requires the prosecutor in addition to serve on the accused an extract of the conviction disclosing the alleged sexual element in it. If this is not done, that previous conviction is not a relevant conviction and thus cannot be placed before the judge under section 275A(1).
39. Section 275A(2) provides that, once the relevant convictions are before the judge, they will automatically be admitted as part of the evidence in the case unless the accused objects. The grounds on which he or she may do so are set out in section 275A(4). Grounds (c) and (d) relate to the accuracy of the prosecution's record of the accused's convictions. The accused is already required to lodge any objection to the accuracy of the notice of previous convictions in advance of trial in jury cases, and section 275A(8) preserves this procedure. Where the ground of objection is that disclosure would be contrary to the interests of justice, section 275A(7) places the onus on the accused to show that to be the case.
40. Section 275A(3),(5) and (6) make additional provision in relation to extract convictions, which may disclose the detailed wording of the charge against the accused. In general, an extract can only be introduced if it has been served on the accused in advance of trial, along with the notice of previous convictions. However, an extract may be introduced by the prosecutor without notice in order to counter a defence objection to a previous conviction being admitted in evidence. If an extract is introduced for such a purpose, it will be shown to the judge only, not to any jury. If the judge is deciding the case without a jury, he or she must use such an extract only to assist in ruling on the defence objection, and must leave it out of account in arriving at his or her overall verdict in the case.