



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

2002 asp 9

Restrictions on evidence

8 Exception to restrictions under section 274 of 1995 Act

- (1) For section 275 (exception to restrictions under section 274) of the 1995 Act there is substituted—

“275 Exception to restrictions under section 274

- (1) The court may, on application made to it, admit such evidence or allow such questioning as is referred to in subsection (1) of section 274 of this Act if satisfied that—
- (a) the evidence or questioning will relate only to a specific occurrence or occurrences of sexual or other behaviour or to specific facts demonstrating—
 - (i) the complainer’s character; or
 - (ii) any condition or predisposition to which the complainer is or has been subject;
 - (b) that occurrence or those occurrences of behaviour or facts are relevant to establishing whether the accused is guilty of the offence with which he is charged; and
 - (c) the probative value of the evidence sought to be admitted or elicited is significant and is likely to outweigh any risk of prejudice to the proper administration of justice arising from its being admitted or elicited.
- (2) In subsection (1) above—
- (a) the reference to an occurrence or occurrences of sexual behaviour includes a reference to undergoing or being made subject to any experience of a sexual nature;
 - (b) “the proper administration of justice” includes—
 - (i) appropriate protection of a complainer’s dignity and privacy;
 - and

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(ii) ensuring that the facts and circumstances of which a jury is made aware are, in cases of offences to which section 288C of this Act applies, relevant to an issue which is to be put before the jury and commensurate to the importance of that issue to the jury's verdict,

and, in that subsection and in sub-paragraph (i) of paragraph (b) above, "complainer" has the same meaning as in section 274 of this Act.

- (3) An application for the purposes of subsection (1) above shall be in writing and shall set out—
- (a) the evidence sought to be admitted or elicited;
 - (b) the nature of any questioning proposed;
 - (c) the issues at the trial to which that evidence is considered to be relevant;
 - (d) the reasons why that evidence is considered relevant to those issues;
 - (e) the inferences which the applicant proposes to submit to the court that it should draw from that evidence; and
 - (f) such other information as is of a kind specified for the purposes of this paragraph in Act of Adjournal.
- (4) The party making such an application shall, when making it, send a copy of it—
- (a) when that party is the prosecutor, to the accused; and
 - (b) when that party is the accused, to the prosecutor and any co-accused.
- (5) The court may reach a decision under subsection (1) above without considering any evidence; but, where it takes evidence for the purposes of reaching that decision, it shall do so as if determining the admissibility of evidence.
- (6) The court shall state its reasons for its decision under subsection (1) above, and may make that decision subject to conditions which may include compliance with directions issued by it.
- (7) Where a court admits evidence or allows questioning under subsection (1) above, its decision to do so shall include a statement—
- (a) of what items of evidence it is admitting or lines of questioning it is allowing;
 - (b) of the reasons for its conclusion that the evidence to be admitted or to be elicited by the questioning is admissible;
 - (c) of the issues at the trial to which it considers that that evidence is relevant.
- (8) A condition under subsection (6) above may consist of a limitation on the extent to which evidence—
- (a) to be admitted; or
 - (b) to be elicited by questioning to be allowed,
- may be argued to support a particular inference specified in the condition.
- (9) Where evidence is admitted or questioning allowed under this section, the court at any time may—

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- (a) as it thinks fit; and
 - (b) notwithstanding the terms of its decision under subsection (1) above or any condition under subsection (6) above,
limit the extent of evidence to be admitted or questioning to be allowed.”.
- (2) In section 71 (first diet of proceedings on indictment in sheriff court) of the 1995 Act—
 - (a) after subsection (2) there is inserted—

“(2A) At a first diet the court may consider an application for the purposes of subsection (1) of section 275 of this Act.”;

and
 - (b) in subsection (3), after “above” there is inserted “ or which is relevant to an application for the purposes of subsection (1) of the said section 275 ”.
- (3) In section 72 (preliminary diet of proceedings on indictment in High Court) of the 1995 Act—
 - (a) in subsection (1), after “subsection” there is inserted “ or subsection (2A) below ”;
 - (b) after subsection (2) there is inserted—

“(2A) The court may order that there shall be a diet before the trial diet for the purpose of considering an application for the purposes of subsection (1) of section 275 of this Act.”;
 - (c) in subsection (3)—
 - (i) after “ordered” there is inserted “ under subsection (2A) above or ”;
 - (ii) for “any other” there is substituted “ any, or any other, ”; and
 - (iii) for “that subsection” there is substituted “ subsection (1) above ”.
- (4) In section 73 (procedure at preliminary diet of proceedings on indictment in High Court) of the 1995 Act—
 - (a) in subsection (3), after “section” where secondly occurring there is inserted “ or to considering an application for the purposes of subsection (1) of section 275 of this Act ”; and
 - (b) in subsection (4), after “section” where secondly occurring there is inserted “ or which is relevant to an application for the purposes of subsection (1) of the said section 275 ”.
- (5) In section 148 (intermediate diet of summary proceedings) of the 1995 Act—
 - (a) after subsection (3) there is inserted—

“(3A) At an intermediate diet, the court may consider an application for the purposes of subsection (1) of section 275 of this Act; and, notwithstanding subsection (1) above, the court may fix a diet under that subsection for the purpose only of considering such an application.

(3B) Subsection (3A) above shall not operate so as to relieve any court prescribed by order under subsection (7) below of its duty, which arises by virtue of the operation of that subsection, to fix an intermediate diet for the purpose mentioned in subsection (1) above.”;

and
 - (b) in subsection (4), after “(1)” there is inserted “ or (3A) ”.

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- (6) In section 157 (record of summary proceedings) of the 1995 Act—
- (a) in subsection (2) after “or”, where last occurring, there is inserted “ (subject to subsection (3) below) ”; and
 - (b) after subsection (2) there is inserted—
 - “(3) An application for the purposes of subsection (1) of section 275 of this Act, together with the court’s decision on it, the reasons stated therefor and any conditions imposed and directions issued under subsection (7) of that section shall be entered in the record of the proceedings.”.

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