
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 443 (C. 24)

CRIMINAL LAW

The Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (Commencement and Transitional Provisions) Order 2002

Made - - - - 25th September 2002

The Scottish Ministers, in exercise of the powers conferred by section 11(2) and (3) of the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002(1) hereby make the following Order:

Citation

1. This Order may be cited as the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (Commencement and Transitional Provisions) Order 2002.

Interpretation

2. In this Order—

“the Act” means the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002; and

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(2).

Commencement of provisions

3. The provisions of the Act, so far as not already in force, shall come into force on 1st November 2002.

Transitional and savings provisions

4.—(1) The amendments to the 1995 Act effected by section 1 (prohibition of personal conduct of defence in cases of certain sexual offences) and section 2 (appointment of solicitor by court in such cases and availability of legal aid) of the Act and the schedule to the Act shall not apply in relation to any proceedings where the indictment or complaint, as the case may be, has been served on the accused before 1st November 2002.

(2) In any case where the provisions of paragraph (1) of this Article apply, and a second or further indictment or complaint as the case may be is served on the accused on or after 1st November 2002,

(1) 2002 asp 9.

(2) 1995 c. 46.

the amendments effected by sections 1 and 2 of the Act and the schedule to the Act shall apply, but only in respect of any charges to which the second or further indictment or complaint relates.

(3) The amendments to the 1995 Act effected by—

- (a) paragraph 2 of the schedule to the Act shall not apply in relation to any proceedings where the arrest of the accused has taken place prior to 1st November 2002; and
- (b) paragraph 3 of the schedule to the Act shall not apply in relation to any proceedings where the judicial examination of the accused has taken place prior to 1st November 2002.

(4) The amendments to the 1995 Act effected by section 6 (accused to give notice of defence of consent) of the Act shall not apply in relation to any proceedings where, at 1st November 2002, the trial diet has already commenced or, at that date, there are less than 14 days until the date fixed for the commencement of the trial diet, unless subsequently the trial diet is adjourned and there are at least 14 days from the date of the adjournment until the date of commencement of the new trial diet.

(5) The amendments to the 1995 Act effected by section 7 (restrictions on evidence relating to sexual offences), section 8 (exception to restrictions under section 274 of 1995 Act) and section 10 (disclosure of accused's previous convictions where court allows questioning or evidence under section 275 of the 1995 Act) of the Act shall not apply in relation to any proceedings where, at 1st November 2002, the trial diet has already commenced or there are less than 21 days until the date fixed for the commencement of the trial diet, unless subsequently the date fixed for the trial diet is adjourned and there are at least 21 days from the date of the adjournment until the date of commencement of the new trial diet.

St Andrew's House,
Edinburgh
25th September 2002

R.J. SIMPSON
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This Note is not part of the Order)

This Order brings into force the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (“the Act”) on 1st November 2002. All provisions of the Act come into force on that date. Sections 1, 2, 6 to 8 and 10 and the schedule are subject to transitional and saving provisions.

Article 4 makes transitional and saving provisions. Article 4(1) provides that the provisions of the Act which deal with prohibition of personal conduct of the case by the accused and related matters (sections 1 and 2) only apply to sexual offence cases where the indictment or complaint is served on or after 1st November 2002. Article 4(2) clarifies that if an indictment or complaint is re-served after that date then the provisions of sections 1 and 2 will apply, but only in respect of any charges to which the second or further indictment or complaint relates.

Article 4(3) clarifies that the pre-trial provisions as set out in paragraphs 2 and 3 of the schedule to the Act will not apply in specified circumstances to cases where the indictment or complaint is served on or after 1st November 2002. The relevant pre-trial provisions are (a) the requirement for an accused to be told on arrest that his defence must be conducted by a lawyer; and (b) the requirement for a similar notice at judicial examination. These pre-trial provisions will not apply in cases where the indictment is served on or after 1st November 2002 but the arrest or judicial examination, as the case may be, has already occurred.

Article 4(4) provides a transitional provision to ensure that there is sufficient time for the new notices required by section 6 to be served in cases coming to trial soon after 1st November 2002. An accused will not have to give notice of the defence of consent if on 1st November 2002 the trial diet has already commenced or is due to commence within 14 days. However if such a trial is subsequently adjourned for at least 14 days then the accused is required to give this notice.

Article 4(5) provides a transitional provision to ensure that there is sufficient time for the new applications to lead sexual history evidence required by sections 8 and 10 of the Act to be made in cases coming to trial soon after 1st November 2002. The provisions will not apply to cases where, on 1st November 2002, the trial diet has already commenced or is due to commence within 21 days. However if such a trial is subsequently adjourned for at least 21 days then these provisions will apply.