



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XII

#### EVIDENCE

##### *Evidence relating to sexual offences*

#### **[<sup>F1</sup>274 Restrictions on evidence relating to sexual offences.**

- (1) In the trial of a person charged with an offence to which section 288C of this Act applies, the court shall not admit, or allow questioning designed to elicit, evidence which shows or tends to show that the complainer—
- (a) is not of good character (whether in relation to sexual matters or otherwise);
  - (b) has, at any time, engaged in sexual behaviour not forming part of the subject matter of the charge;
  - (c) has, at any time (other than shortly before, at the same time as or shortly after the acts which form part of the subject matter of the charge), engaged in such behaviour, not being sexual behaviour, as might found the inference that the complainer—
    - (i) is likely to have consented to those acts; or
    - (ii) is not a credible or reliable witness; or
  - (d) has, at any time, been subject to any such condition or predisposition as might found the inference referred to in sub-paragraph (c) above.
- (2) In subsection (1) above—
- “complainer” means the person against whom the offence referred to in that subsection is alleged to have been committed; and
  - the reference to engaging in sexual behaviour includes a reference to undergoing or being made subject to any experience of a sexual nature.]

*Status: Point in time view as at 23/04/2007.*

**Changes to legislation:** Criminal Procedure (Scotland) Act 1995, Cross Heading: Evidence relating to sexual offences is up to date with all changes known to be in force on or before 30 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### Textual Amendments

**F1** S. 274 substituted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 7; S.S.I. 2002/443, [art. 3](#) (with art. 4(5))

### [<sup>F2</sup>275] Exceptions 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
    - (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.

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- (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—
  - (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.]

#### Textual Amendments

- F2** S. 275 substituted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), [s. 8\(1\)](#); [S.S.I. 2002/443](#), [art. 3](#) (with [art. 4\(5\)](#))

#### [<sup>F3</sup>275A Disclosure of accused's previous convictions where court allows questioning or evidence under section 275

- (1) Where, under section 275 of this Act, a court [<sup>F4</sup>(or, in proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act, a commissioner)] on the application of the accused allows such questioning or admits such evidence as is referred to in section 274(1) of this Act, the prosecutor shall forthwith place before the presiding judge any previous relevant conviction of the accused.
- (2) Any conviction placed before the judge under subsection (1) above shall, unless the accused objects, be—
  - (a) in proceedings on indictment, laid before the jury;
  - (b) in summary proceedings, taken into consideration by the judge.
- (3) An extract of such a conviction may not be laid before the jury or taken into consideration by the judge unless such an extract was appended to the notice, served

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on the accused under section 69(2) or, as the case may be, 166(2) of this Act, which specified that conviction.

(4) An objection under subsection (2) above may be made only on one or more of the following grounds—

- (a) where the conviction bears to be a relevant conviction by virtue only of paragraph (b) of subsection (10) below, that there was not a substantial sexual element present in the commission of the offence for which the accused has been convicted;
- (b) that the disclosure or, as the case may be, the taking into consideration of the conviction would be contrary to the interests of justice;
- (c) in proceedings on indictment, that the conviction does not apply to the accused or is otherwise inadmissible;
- (d) in summary proceedings, that the accused does not admit the conviction.

(5) Where—

- (a) an objection is made on one or more of the grounds mentioned in paragraphs (b) to (d) of subsection (4) above; and
- (b) an extract of the conviction in respect of which the objection is made was not appended to the notice, served on the accused under section 69(2) or, as the case may be, 166(2) above, which specified that conviction,

the prosecutor may, notwithstanding subsection (3) above, place such an extract conviction before the judge.

(6) In summary proceedings, the judge may, notwithstanding subsection (2)(b) above, take into consideration any extract placed before him under subsection (5) above for the purposes only of considering the objection in respect of which the extract is disclosed.

(7) In entertaining an objection on the ground mentioned in paragraph (b) of subsection (4) above, the court shall, unless the contrary is shown, presume that the disclosure, or, as the case may be, the taking into consideration, of a conviction is in the interests of justice.

(8) An objection on the ground mentioned in paragraph (c) of subsection (4) above shall not be entertained unless the accused has, under subsection (2) of section 69 of this Act, given intimation of the objection in accordance with subsection (3) of that section.

(9) In entertaining an objection on the ground mentioned in paragraph (d) of subsection (4) above, the court shall require the prosecutor to withdraw the conviction or adduce evidence in proof thereof.

(10) For the purposes of this section a “relevant conviction” is, subject to subsection (11) below—

- (a) a conviction for an offence to which section 288C of this Act applies by virtue of subsection (2) thereof; or
- (b) where a substantial sexual element was present in the commission of any other offence in respect of which the accused has previously been convicted, a conviction for that offence,

which is specified in a notice served on the accused under section 69(2) or, as the case may be, 166(2) of this Act.

(11) A conviction for an offence other than an offence to which section 288C of this Act applies by virtue of subsection (2) thereof is not a relevant conviction for the purposes of this section unless an extract of that conviction containing information

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which indicates that a sexual element was present in the commission of the offence was appended to the notice, served on the accused under section 69(2) or, as the case may be, 166(2) of this Act, which specified that conviction.]

#### Textual Amendments

- F3** Ss. 275A, 275B inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), [s. 10\(4\)](#); [S.S.I. 2002/443](#), [art. 3](#) (with [art. 4\(5\)](#))
- F4** Words in s. 275A(1) inserted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 35\(5\)](#), 84; [S.S.I. 2007/250](#), [art. 3\(a\)](#)

### [<sup>F3</sup>275B Provisions supplementary to sections 275 and 275A

- (1) An application for the purposes of subsection (1) of section 275 of this Act shall not, unless on special cause shown, be considered by the court unless made
- [ in the case of proceedings in the High Court, not less than 7 clear days before
- <sup>F5</sup>(a) the preliminary hearing; or
- (b) in any other case,]
- not less than 14 clear days before the trial diet.
- (2) Where—
- (a) such an application is considered; or
- (b) any objection under subsection (2) of section 275A of this Act is entertained, during the course of the trial, the court shall consider that application or, as the case may be, entertain that objection in the absence of the jury, the complainer, any person cited as a witness and the public.]

#### Textual Amendments

- F3** Ss. 275A, 275B inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), [s. 10\(4\)](#); [S.S.I. 2002/443](#), [art. 3](#) (with [art. 4\(5\)](#))
- F5** Words in s. 275B inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 25](#), 27(1), [Sch. para. 45](#); [S.S.I. 2004/405](#), [art. 2](#), [Sch. 1](#) (with savings in [arts. 3-5](#))

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