



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XII

EVIDENCE

Evidence relating to sexual offences

274 Restrictions on evidence relating to sexual offences

- (1) In any trial of a person on any charge to which this section applies, subject to section 275 of this Act, 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 in relation to sexual matters;
 - (b) is a prostitute or an associate of prostitutes; or
 - (c) has at any time engaged with any person in sexual behaviour not forming part of the subject matter of the charge.
- (2) This section applies to a charge of committing or attempting to commit any of the following offences, that is to say—
 - (a) rape;
 - (b) sodomy;
 - (c) clandestine injury to women;
 - (d) assault with intent to rape;
 - (e) indecent assault;
 - (f) indecent behaviour (including any lewd, indecent or libidinous practice or behaviour);
 - (g) an offence under section 106(1)(a) or 107 of the Mental Health (Scotland) Act 1984 (unlawful sexual intercourse with mentally handicapped female or with patient); or
 - (h) an offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995—
 - (i) sections 1 to 3 (incest and related offences);

Status: This is the original version (as it was originally enacted).

- (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 13(5) (homosexual offences).
- (3) In this section “complainer” means the person against whom the offence referred to in subsection (2) above is alleged to have been committed.
- (4) This section does not apply to questioning, or evidence being adduced, by the Crown.

275 Exceptions to restrictions under section 274

- (1) Notwithstanding section 274 of this Act, in any trial of an accused on any charge to which that section applies, where the court is satisfied on an application by the accused—
- (a) that the questioning or evidence referred to in subsection (1) of that section is designed to explain or rebut evidence adduced, or to be adduced, otherwise than by or on behalf of the accused;
 - (b) that the questioning or evidence referred to in paragraph (c) of that subsection—
 - (i) is questioning or evidence as to sexual behaviour which took place on the same occasion as the sexual behaviour forming the subject matter of the charge; or
 - (ii) is relevant to the defence of incrimination; or
 - (c) that it would be contrary to the interests of justice to exclude the questioning or evidence referred to in that subsection,
- the court shall allow the questioning or, as the case may be, admit the evidence.
- (2) Where questioning or evidence is or has been allowed or admitted under this section, the court may at any time limit as it thinks fit the extent of that questioning or evidence.
- (3) Any application under this section shall be made in the course of the trial but in the absence of the jury, the complainer, any person cited as a witness and the public.