



# Abusive Behaviour and Sexual Harm (Scotland) Act 2016

2016 asp 22

## PART 2

### SEXUAL HARM

#### CHAPTER 1

##### JURY DIRECTIONS RELATING TO SEXUAL OFFENCES

#### 6 Jury directions relating to sexual offences

In the 1995 Act, after section 288D insert—

*“Jury directions relating to sexual offences*

##### **288DA Jury direction relating to lack of communication about offence**

- (1) Subsection (2) applies where, in a trial on indictment for a sexual offence—
  - (a) evidence is given which suggests that the person against whom the offence is alleged to have been committed—
    - (i) did not tell, or delayed in telling, anyone, or a particular person, about the offence, or
    - (ii) did not report, or delayed in reporting, the offence to any investigating agency, or a particular investigating agency, or
  - (b) a question is asked, or a statement is made, with a view to eliciting, or drawing attention to, evidence of that nature.
- (2) In charging the jury, the judge must advise that—
  - (a) there can be good reasons why a person against whom a sexual offence is committed may not tell others about it or report it to an investigating agency, or may delay in doing either of those things, and
  - (b) this does not, therefore, necessarily indicate that an allegation is false.

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*Status: This is the original version (as it was originally enacted).*

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- (3) Subsection (2) does not apply if the judge considers that, in the circumstances of the case, no reasonable jury could consider the evidence, question or statement by reason of which subsection (2) would otherwise apply to be material to the question of whether the alleged offence is proved.
- (4) For the purposes of this section—
- “investigating agency” means—
- (a) a police force maintained for the area where the offence is alleged to have been committed,
  - (b) any other person who has functions (to any extent) of investigating crime in the area where the offence is alleged to have been committed,
- “sexual offence” has the same meaning as in section 210A, except that it does not include—
- (a) an offence under section 170 of the Customs and Excise Management Act 1979, or
  - (b) an offence under section 52A of the Civic Government (Scotland) Act 1982.

**288DB Jury direction relating to absence of physical resistance or physical force**

- (1) Subsection (2) applies where, in a trial on indictment for a sexual offence—
- (a) evidence is given which suggests that the sexual activity took place without physical resistance on the part of the person against whom the offence is alleged to have been committed, or
  - (b) a question is asked, or a statement is made, with a view to eliciting, or drawing attention to, evidence of that nature.
- (2) In charging the jury, the judge must advise that—
- (a) there can be good reasons why a person against whom a sexual offence is committed might not physically resist the sexual activity, and
  - (b) an absence of physical resistance does not, therefore, necessarily indicate that an allegation is false.
- (3) Subsection (2) does not apply if the judge considers that, in the circumstances of the case, no reasonable jury could consider the evidence, question or statement by reason of which subsection (2) would otherwise apply to be material to the question of whether the alleged offence is proved.
- (4) Subsection (5) applies where, in a trial on indictment for a sexual offence—
- (a) evidence is given which suggests that the sexual activity took place without the accused using physical force to overcome the will of the person against whom the offence is alleged to have been committed, or
  - (b) a question is asked, or a statement is made, with a view to eliciting, or drawing attention to, evidence of that nature.
- (5) In charging the jury, the judge must advise that—
- (a) there can be good reasons why a person may, in committing a sexual offence, not need to use physical force to overcome the will of the person against whom the offence is committed, and

- (b) an absence of physical force does not, therefore, necessarily indicate that an allegation is false.
- (6) Subsection (5) does not apply if the judge considers that, in the circumstances of the case, no reasonable jury could consider the evidence, question or statement by reason of which subsection (5) would otherwise apply to be material to the question of whether the alleged offence is proved.
- (7) For the purposes of this section—
  - “sexual activity” means the sexual activity which is the subject of the alleged sexual offence,
  - “sexual offence” means—
    - (a) rape (whether at common law or under section 1(1) of the Sexual Offences (Scotland) Act 2009),
    - (b) indecent assault,
    - (c) sodomy,
    - (d) clandestine injury to women,
    - (e) an offence under section 2 of the Sexual Offences (Scotland) Act 2009 (sexual assault by penetration),
    - (f) an offence under section 3 of that Act (sexual assault),
    - (g) an offence under section 4 of that Act (sexual coercion).”.