



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

2002 asp 9

Disclosure of accused's convictions

10 Disclosure of accused's previous convictions where court allows questioning or evidence under section 275 of 1995 Act

(1) In section 101 (disclosure of accused's previous convictions in solemn proceedings) of the 1995 Act—

- (a) in subsection (1), after “not” there is inserted “, subject to subsection (2) below and section 275A(2) of this Act,”; and
- (b) in subsection (3), after “not” there is inserted “, subject to section 275A(1) of this Act,”.

(2) In subsection (3) (accused's previous convictions not to be disclosed in summary proceedings until judge is satisfied that charge is proved) of section 166 of the 1995 Act, after “not” there is inserted “, subject to section 275A(1) of this Act,”.

(3) In section 266 (which, amongst other things, prohibits the asking of questions relating to offences other than that with which an accused is charged) of the 1995 Act, after subsection (5) there is inserted—

“(5A) Nothing in subsections (4) and (5) above shall prevent the accused from being asked, or from being required to answer, any question tending to show that he has been convicted of an offence other than that with which he is charged if his conviction for that other offence has been disclosed to the jury, or is to be taken into consideration by the judge, under section 275A(2) of this Act.”.

(4) After section 275 of the 1995 Act there is inserted—

“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 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 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 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.

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 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.”.