

# **SEXUAL OFFENCES (PROCEDURE AND EVIDENCE) (SCOTLAND) ACT 2002**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 8: Exceptions to restrictions under section 274 of 1995 Act***

27. Section 8(1) substitutes a new section 275 for that currently contained in the 1995 Act.
28. Subsection (1) of the new section 275 allows the court, on application made to it, to admit evidence or allow questioning falling within the general prohibition if it passes the tests set out in paragraphs (a) to (c).
29. The effect of subsection (2)(b) of the new section is to require the court, in considering the criterion of the proper administration of justice (section 275(1)(c)), to take account of the need to protect the privacy and dignity of the complainer and to prevent any jury from becoming potentially side-tracked from consideration of the key issues at trial.
30. Subsections (3) and (4) of the new section deal with procedural aspects of making an application under section 275. Subsection (3) requires applications to be in writing and to contain the information specified in paragraphs (a) to (f). Subsection (4) requires a copy of the application to be sent to every other party to the case (so in a case with several co-accused, a defence application would require to be copied to each other co-accused and the prosecutor).
31. Subsection (5) of the new section simply provides, for the avoidance of doubt, that the court may determine admissibility of any evidence or questioning using any method open to it at common law. The court may, if it wishes, hear some or all of the evidence in question before reaching a decision on admissibility.
32. Subsections (6) and (7) of the new section state that the court's decision on admissibility shall set out its reasons, and in particular shall address the matters specified in paragraphs (a) to (c) of subsection (7). The decision of the court (for example, to admit certain evidence) may be made subject to conditions. These may include compliance with any directions issued by the court. Subsection (8) provides that such conditions may include limitations on the use which can be made of evidence to support particular inferences. Subsection (9) confers on the court an additional power to limit questioning or evidence as the trial proceeds, notwithstanding the content of a decision on admissibility under section 275, or any condition attached to it.
33. Subsections (2), (3), (4) and (5) of section 8 allow existing pre-trial hearings to be used to consider any application to introduce character or sexual history evidence under new section 275. These hearings are known as first diets in sheriff and jury cases, preliminary diets in High Court cases and intermediate diets in non-jury cases. At present, a preliminary diet can only be fixed by the court on the application of the prosecution or defence. Section 8(3) will permit the court to fix a preliminary diet of its own accord to deal with a character or sexual history evidence application.

*These notes relate to the Sexual Offences (Procedure and Evidence)  
(Scotland) Act 2002 (asp 9) which received Royal Assent on 11 April 2002*

34. Section 8(6) amends section 157 of the 1995 Act, which deals with the content of the official record of proceedings in a non-jury trial. At present, any objection to the competency or relevancy of evidence need only be entered in the record if either party desires it. Apart from this, nothing needs to be recorded except the complaint (or a copy of it), the accused's plea (guilty or not guilty), any documentary evidence produced and the conviction and sentence or other finding of the court.
35. Section 8(6) will require the record of proceedings to include any application under section 275, the court's decision on it, the reasons for the decision and any conditions imposed and directions issued under the new section 275(6). This will be done whether or not a party requests these matters to be recorded.