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**Changes to legislation:** There are currently no known outstanding effects for the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002, SCHEDULE. (See end of Document for details)

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## SCHEDULE

(introduced by section 3)

### NOTICE TO ACCUSED ABOUT EFFECT OF SECTIONS 288C AND 288D OF 1995 ACT AND SPECIAL PRE-TRIAL PROCEDURES: AMENDMENT OF 1995 ACT

#### General

1 The 1995 Act is amended as follows.

#### Notice of restriction on conduct of defence: arrest

<sup>F12</sup> .....

#### Textual Amendments

**F1** Sch. para. 2 repealed (25.1.2018) by Criminal Justice (Scotland) Act 2016 (asp 1), s. 117(2), sch. 2 para. 38; S.S.I. 2017/345, art. 3, sch.

#### Notice of restriction on conduct of defence: judicial examination

3 In section 35 (judicial examination of accused), after subsection (4) there is inserted—

“(4A) An accused charged with a sexual offence to which section 288C of this Act applies shall, as soon as he is brought before the sheriff for examination on the charge, be told—

- (a) that, if he is tried for the offence, his defence may be conducted only by a lawyer;
- (b) that it is, therefore, in his interests, if he has not already done so, to get the professional assistance of a solicitor; and
- (c) that, if he does not engage a solicitor for the purposes of his defence at the trial, the court will do so.

(4B) A failure to comply with subsection (4A) above does not affect the validity or lawfulness of the examination or of any other element of the proceedings against the accused.”.

#### Notice of restriction on conduct of defence: citation and service of indictment

4 In section 66 (which includes provision about the citation of and service of the indictment upon the accused) after subsection (6) there is inserted—

“(6A) Where the charge in the indictment is of committing a sexual offence to which section 288C of this Act applies, the notice served under subsection (6) above shall—

- (a) contain intimation to the accused—
  - (i) that, if he is tried for the offence, his defence may be conducted only by a lawyer;
  - (ii) that it is, therefore, in his interests, if he has not already done so, to get the professional assistance of a solicitor; and

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- (iii) that if he does not engage a solicitor for the purposes of his defence at the trial, the court will do so; and
  - (b) where the case is to be tried in the High Court, call upon him to appear and answer to the indictment also at a diet under section 72A of this Act.
- (6B) A failure to comply with subsection (6A) above does not affect the validity or lawfulness of any such notice or any other element of the proceedings against the accused.”.

*Procedure on indictment in sheriff court*

- 5 In section 71 (first diet of proceedings on indictment in sheriff court)—
- (a) at the beginning there is inserted—
    - “(A1) At a first diet, the court shall, where the accused is charged with a sexual offence to which section 288C of this Act applies, ascertain whether he has engaged a solicitor for the purposes of his defence at the trial.”;
  - (b) after subsection (5) there is inserted—
    - “(5A) Where, however—
      - (a) the accused is charged with a sexual offence to which section 288C of this Act applies; and
      - (b) the court has not ascertained (whether at that diet or earlier) that he has engaged a solicitor for the purposes of his defence at the trial,
 a first diet may not proceed in his absence; and, in such a case, the court shall adjourn the diet and ordain the accused then to attend.”;
- and
- (c) after subsection (8) there is inserted—
    - “(8A) Where the court adjourns a first diet under subsection (8) above by reason only that, following inquiries for the purposes of subsection (A1) above, it appears to the court that the accused has not engaged a solicitor for the purposes of his defence at his trial, that adjournment shall be for a period of not more than 48 hours and the accused shall be ordained to then attend.”.

- 6 After section 71 there is inserted—

**“71A Further pre-trial diet: dismissal or withdrawal of solicitor representing accused in case of sexual offence**

- (1) It is the duty of a solicitor who—
    - (a) was engaged for the purposes of the defence of an accused charged with a sexual offence to which section 288C of this Act applies—
      - (i) at the time of a first diet,
      - (ii) at the time of a diet under this section, or
      - (iii) in the case of a diet which, under subsection (7) below, is dispensed with, at the time when it was so dispensed with;
- and

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- (b) after that time but before the trial diet—
  - (i) is dismissed by the accused; or
  - (ii) withdraws,forthwith to inform the court in writing of those facts.
- (2) On being so informed, the court shall order that, before the trial diet, there shall be a further pre-trial diet under this section and ordain the accused then to attend.
- (3) At a diet under this section, the court shall ascertain whether or not the accused has engaged another solicitor for the purposes of his defence at the trial.
- (4) Where, following inquiries for the purposes of subsection (3) above, it appears to the court that the accused has not engaged another solicitor for the purposes of his defence at his trial, it may adjourn the diet under this section for a period of not more than 48 hours and ordain the accused then to attend.
- (5) A diet under this section shall be not less than 10 clear days before the trial diet.
- (6) A court may, at a diet under this section, postpone the trial diet.
- (7) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing—
  - (a) confirmed his engagement for that purpose; and
  - (b) requested that the diet be dispensed with.
- (8) Where—
  - (a) a solicitor has requested, under subsection (7) above, that a diet under this section be dispensed with; and
  - (b) before that diet has been held or dispensed with, the solicitor—
    - (i) is dismissed by the accused; or
    - (ii) withdraws,the solicitor shall forthwith inform the court in writing of those facts.”.

*Pre-trial High Court diet: inquiry about legal representation of accused in cases of sexual offences*

7 After section 72 there is inserted—

**“72A Pre-trial diet: inquiry about legal representation of accused in cases of sexual offences**

- (1) Where a case to be tried in the High Court is in respect of a sexual offence to which section 288C of this Act applies, the court shall order that, before the trial diet, there shall be a diet under this section and ordain the accused then to attend.
- (2) At a diet under this section, the court shall ascertain whether or not the accused has engaged a solicitor for the purposes of his defence at the trial.

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- (3) Where, following inquiries for the purposes of subsection (2) above, it appears to the court that the accused has not engaged a solicitor for the purposes of his defence at his trial, it may adjourn the diet under this section for a period of not more than 48 hours and ordain the accused then to attend.
- (4) A diet under this section shall be not less than 15 clear days after the service of the indictment and not less than 10 clear days before the trial diet.
- (5) A diet under this section may be conjoined with a preliminary diet.
- (6) A court may, at a diet under this section, postpone the trial diet.
- (7) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing—
- (a) confirmed his engagement for that purpose; and
  - (b) requested that the diet be dispensed with.
- (8) Where—
- (a) a solicitor has requested, under subsection (7) above, that a diet under this section be dispensed with; and
  - (b) before that diet has been held or dispensed with, the solicitor—
    - (i) is dismissed by the accused; or
    - (ii) withdraws,
 the solicitor shall forthwith inform the court in writing of those facts.
- (9) It is the duty of a solicitor who—
- (a) was engaged for the purposes of the defence of the accused at the trial—
    - (i) at the time of a diet under this section; or
    - (ii) in the case of a diet which, under subsection (7) above, is dispensed with, at the time when it was so dispensed with; and
  - (b) after that time but before the trial diet—
    - (i) is dismissed by the accused; or
    - (ii) withdraws,
 forthwith to inform the court in writing of those facts.
- (10) On being so informed, the court shall order a further diet under this section.”.

*Notice of restriction on conduct of defence: citation and complaint*

8 In section 140 (citation of accused in summary prosecution), after subsection (2) there is inserted—

- “(2A) Where the charge in the complaint in respect of which an accused is cited is of committing a sexual offence to which section 288C of this Act applies, the citation shall include or be accompanied by notice to the accused—
- (a) that, if he is tried for the offence, his defence may be conducted only by a lawyer;
  - (b) that it is, therefore, in his interests, if he has not already done so, to get the professional assistance of a solicitor; and

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(c) that, if he does not engage a solicitor for the purposes of his defence at the trial, the court will do so.

(2B) A failure to comply with subsection (2A) above does not affect the validity or lawfulness of any such citation or any other element of the proceedings against the accused.”.

*Notice of restriction on conduct of defence: first calling in summary prosecution*

9 In section 144 (procedure at first summary diet), after subsection (3) there is inserted—

“(3A) Where an accused charged with a sexual offence to which section 288C of this Act applies is present, whether or not with a solicitor, at a calling of the case in a summary prosecution, he shall be told—

- (a) that if he is tried for the offence, his defence at his trial may be conducted only by a lawyer;
- (b) that it is, therefore, in his interests, if he has not already done so, to get the professional assistance of a solicitor; and
- (c) that if he does not engage a solicitor for the purposes of his defence at the trial, the court will do so.

(3B) A failure to comply with subsection (3A) above does not affect the validity or lawfulness of anything done at the calling of the case or any other element of the proceedings against the accused.”.

*Notice of restriction on conduct of defence: copy complaint*

10 In section 146 (procedure in summary prosecution following not guilty plea), after subsection (3) there is inserted—

“(3A) Where, under subsection (3) above, the prosecutor furnishes an accused charged with a sexual offence to which section 288C of this Act applies with a copy of the complaint, it shall be accompanied by a notice to the accused—

- (a) that, if he is tried for the offence, his defence at his trial may be conducted only by a lawyer;
- (b) that it is, therefore, in his interests, if he has not already done so, to get the professional assistance of a solicitor; and
- (c) that, if he does not engage a solicitor for the purposes of his defence at the trial, the court will do so.

(3B) A failure to comply with subsection (3A) above does not affect the validity or lawfulness of any such copy complaint or any other element of the proceedings against the accused.”.

*Summary procedure: interim diet: inquiry about legal representation of accused in cases of sexual offences*

11 After section 148 there is inserted—

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**“148A Interim diet: sexual offence to which section 288C of this Act applies**

- (1) Where, in a case which is adjourned for trial, the charge is of committing a sexual offence to which section 288C of this Act applies, the court shall order that, before the trial diet, there shall be a diet under this section and ordain the accused then to attend.
- (2) At a diet under this section, the court shall ascertain whether or not the accused has engaged a solicitor for the purposes of his defence at the trial.
- (3) Where, following inquiries for the purposes of subsection (2) above, it appears to the court that the accused has not engaged a solicitor for the purposes of his defence at his trial, it may adjourn the diet under this section for a period of not more than 48 hours and ordain the accused then to attend.
- (4) A diet under this section may be conjoined with an intermediate diet.
- (5) A court may, at a diet under this section, postpone the trial diet.
- (6) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing—
  - (a) confirmed his engagement for that purpose; and
  - (b) requested that the diet be dispensed with.
- (7) Where—
  - (a) a solicitor has requested, under subsection (6) above, that a diet under this section be dispensed with; and
  - (b) before that diet has been held or dispensed with, the solicitor—
    - (i) is dismissed by the accused; or
    - (ii) withdraws,
 the solicitor shall forthwith inform the court in writing of those facts.
- (8) It is the duty of a solicitor who—
  - (a) was engaged for the purposes of the defence of the accused at the trial—
    - (i) at the time of a diet under this section; or
    - (ii) in the case of a diet which, under subsection (6) above, is dispensed with, at the time when it was so dispensed with; and
  - (b) after that time but before the trial diet—
    - (i) is dismissed by the accused; or
    - (ii) withdraws,
 forthwith to inform the court in writing of those facts.
- (9) On being so informed, the court shall order a further diet under this section.”.

In subsection (3A) (which provides that the grant of a warrant to apprehend an accused who fails to appear at an intermediate diet has the effect of discharging the trial diet) of section 150, after “diet”, where first occurring, there is inserted “ or a diet under section 148A of this Act ”.

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