



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

2002 asp 9

Prohibition of personal conduct of defence by alleged sex offender

1 Prohibition of personal conduct of defence in cases of certain sexual offences

After section 288B of the Criminal Procedure (Scotland) Act 1995 (c. 46) (the “1995 Act”) there is inserted—

“Trials for sexual offences

288C Prohibition of personal conduct of defence in cases of certain sexual offences

- (1) An accused charged with a sexual offence to which this section applies is prohibited from conducting his defence in person at the trial.
- (2) This section applies to the following sexual offences—
 - (a) rape;
 - (b) sodomy;
 - (c) clandestine injury to women;
 - (d) abduction of a woman or girl with intent to rape;
 - (e) assault with intent to rape;
 - (f) indecent assault;
 - (g) indecent behaviour (including any lewd, indecent or libidinous practice or behaviour);
 - (h) an offence under section 106(1)(a) or 107 of the Mental Health (Scotland) Act 1984 (c. 36) (unlawful sexual intercourse with mentally handicapped female or with patient);
 - (i) an offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)—
 - (i) sections 1 to 3 (incest and related offences);
 - (ii) section 5 (unlawful sexual intercourse with girl under 13 or 16);

Status: This is the original version (as it was originally enacted).

- (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 10 (seduction, prostitution, etc. of girl under 16);
 - (vii) section 13(5)(b) or (c) (homosexual offences);
- (j) attempting to commit any of the offences set out in paragraphs (a) to (i) above.
- (3) This section applies also to an offence in respect of which a court having jurisdiction to try that offence has made an order under subsection (4) below.
- (4) Where, in the case of any offence, other than one set out in subsection (2) above, that court is satisfied that there appears to be such a substantial sexual element in the alleged commission of the offence that it ought to be treated, for the purposes of this section, in the same way as an offence set out in that subsection, the court shall, either on the application of the prosecutor or *ex proprio motu*, make an order under this subsection.
- (5) The making of such an order does not affect the validity of anything which—
- (a) was done in relation to the alleged offence to which the order relates; and
 - (b) was done before the order was made.
- (6) The Scottish Ministers may by order made by statutory instrument vary the sexual offences to which this section applies by virtue of subsection (2) above by modifying that subsection.
- (7) No such statutory instrument shall be made, however, unless a draft of it has been laid before and approved by resolution of the Scottish Parliament.”.