



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XIII

MISCELLANEOUS

[^{F1}Jury directions relating to sexual offences

Textual Amendments

F1 Ss. 288DA, 288DB and cross-heading inserted (24.4.2017) by [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016 \(asp 22\), ss. 6, 45\(2\)\(3\)](#) (with s. 44); [S.S.I. 2017/93, reg. 2](#) (with [reg. 5](#))

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.
- (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

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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

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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).]

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by [2010 asp 13 Sch. 7 para. 26](#)
- s. 13(1B)(1C) inserted by [2006 asp 10 s. 82\(2\)](#)
- s. 13(2)(aa) inserted by [2006 asp 10 s. 82\(3\)\(b\)](#)
- s. 13(3A) inserted by [2006 asp 10 s. 82\(4\)](#)
- s. 13(5)(ba) inserted by [2006 asp 10 s. 82\(5\)\(a\)](#)
- s. 13(6)(a)(iii) and word inserted by [2006 asp 10 s. 82\(6\)\(b\)](#)
- s. 13(8) inserted by [2006 asp 10 s. 82\(7\)](#)
- s. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 167(7D)(7E) inserted by [2007 asp 17 sch. 4 para. 1\(3\)](#)
- s. 167(7D) words substituted by [2010 asp 13 Sch. 3 para. 16\(2\)](#)
- s. 167(7E) words substituted by [2010 asp 13 Sch. 3 para. 16\(3\)](#)
- s. 194ZA repealed by [2014 asp 18 sch. 3 para. 25](#)
- s. 200A inserted by [2016 asp 1 s. 85](#)
- s. 205A added by [1997 c. 48 s. 1\(1\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)
- s. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- s. 288AB288AC inserted by [2024 asp 1 s. 32\(3\)](#)
- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)