

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

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 4: Precognition on oath by person accused of sexual offence

17. A precognition is a witness statement made in advance of the trial, which is then transformed into a written report of what the witness said by the person taking the statement. Normally, this is done by an agent or solicitor for one of the parties in the case. However, it would be possible for an accused to take a defence precognition personally.
18. There is no general legal requirement on a witness to supply a defence precognition. However, where a witness declines to do so, a sheriff can require him or her to give a precognition on oath before the sheriff. Such a requirement does have to be complied with. Section 291 of the 1995 Act contains penalties for failure to do so.
19. Section 4 amends section 291 to make it clear that, in line with the ban on conduct of the defence in person, a complainer in a sexual offence case is under no obligation to submit to precognition on oath by the accused in person.