

*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 6: Accused to give notice of defence of consent

22. An accused currently requires to give the court prior notice of special defences (alibi, incrimination, etc.) where the case is to be tried by jury (1995 Act, section 78). Corresponding notice requires to be given of a plea of alibi in non-jury cases (section 149).
23. Section 6 amends section 78 and inserts a new section 149A. The effect is to require the accused in a sexual offence case to give prior notice in the same way if his or her defence is to include a plea of consent on the part of the complainer. This is defined to incorporate both actual consent and the accused's belief that such consent existed. The notice should be given at least 10 clear days in advance of trial (at or before the first diet in sheriff and jury cases - see paragraph 33 below) although the court can extend this on cause shown.