

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

6. Section 1 inserts a new section 288C into Part XIII (Miscellaneous) of the 1995 Act. Subsection (1) of this new section sets down the rule that an accused in a sexual offence case (as defined) is not permitted to carry out his or her defence in person.
7. Subsection (2) of the new section lists the offences to which the prohibition applies.
8. Subsections (3), (4) and (5) of the new section allow a court having jurisdiction to try an alleged offence to make an order applying section 288C even though the offence is not listed in subsection (2). The court is directed to do this where satisfied that there is a sufficiently substantial sexual element involved in the particular circumstances of the case. It could do so, for example, in cases charged as breach of the peace, if the libel disclosed a sufficient sexual element. Such an order may be made either on a prosecution application or on the court's own motion ("*ex proprio motu*"). The order is not retrospective, so the prosecution will not be invalidated by prior failure to comply with any of the procedural requirements set out in the Bill (see also paragraph 59 of these Notes).
9. Subsections (6) and (7) of the new section confer on the Scottish Ministers a power to vary the list in subsection (2) by statutory instrument, subject to the affirmative resolution procedure. This could, for example, be used in the event of any changes in the common law definitions of offences.
10. Section 288C sets out the offences to which the Act applies. Anyone wishing to find out if the provisions of the Act applied to a particular case would first look at Section 288C.