



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

2002 asp 9

Notice of defence of consent

6 Accused to give notice of defence of consent

(1) In section 78 (which provides for, amongst other things, prior notice of special defences in proceedings on indictment) of the 1995 Act—

- (a) in subsection (2), for “or coercion” there is substituted “, coercion or, in a prosecution for an offence to which section 288C of this Act applies, consent”;
- (b) after that subsection there is inserted—

“(2A) In subsection (2) above, the reference to a defence of consent is a reference to the defence which is stated by reference to the complainer’s consent to the act which is the subject matter of the charge or the accused’s belief as to that consent.

(2B) In subsection (2A) above, “complainer” has the same meaning as in section 274 of this Act.”.

(2) After section 149 of the 1995 Act there is inserted—

“149A Notice of defence plea of consent

- (1) It shall not be competent for the accused in a summary prosecution for an offence to which section 288C of this Act applies to found on a defence of consent unless, not less than 10 clear days before the trial diet, he gives notice to the prosecutor of the defence and of the witnesses by whom he proposes to maintain it.
- (2) The court may, however, on cause shown, allow the accused to maintain such a defence after giving such notice although given after the time limit specified in subsection (1) above.
- (3) In subsection (1) above, the reference to a defence of consent is a reference to the defence which is stated by reference to the complainer’s consent to the

act which is the subject matter of the charge or the accused's belief as to that consent.

- (4) In subsection (3) above, "complainer" has the same meaning as in section 274 of this Act."