

# **CRIMINAL PROCEEDINGS ETC. (REFORM) (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

#### **Part 2 - Proceedings**

#### **Preparation for summary trial**

#### ***Section 19: Notice of defences***

128. This section makes new provision in relation to the notification by the accused of a special defence or a notice calculated to exculpate the accused by incriminating a co-accused. The section substitutes the existing sections 149 (Alibi) and 149A (Notice of defence plea of consent) of the 1995 Act with a new section 149B.

#### **New Section 149B**

129. Subsections (1) & (2) provide that where the accused intends to insist on a special defence, a defence which incriminates a co-accused, a defence of automatism or coercion or a defence of consent in certain sexual offences, the accused must intimate that intention to the prosecutor in advance. Failure to so intimate will make it incompetent to found on that defence in court unless the court, on cause shown, allows the accused so to do. Currently, under the provisions of section 149, a defence of alibi may be founded upon at any time up until the first witness is sworn. A plea of consent in relation to certain sexual offences requires to be notified no less than 10 days prior to the trial diet.
130. Subsection (3) explains the meaning of consent for the purposes of subsection (2)(d).
131. Subsection (5) provides that intimation of any such defence must be given before an intermediate diet where such a diet is to be held or, where no such diet is to be held, no later than 10 days before the trial diet.
132. Subsection (6) sets out the particulars that must be provided when intimating such a defence. Details of any witnesses to be called to speak to it must be given. Additionally, if a defence of alibi is to be relied upon details as to time and place must also be given.
133. Subsections (7) & (8) provide that where a notice of defence is intimated to the prosecutor, the prosecutor is entitled to an adjournment of the case whether or not the notice was given timeously and whether or not the adjournment could have been requested at an earlier diet.