



# Vulnerable Witnesses (Scotland) Act 2004

## 2004 asp 3

### PART 1

#### CRIMINAL PROCEEDINGS

##### *Prohibition of personal conduct of defence in cases involving vulnerable witnesses*

#### **6 Prohibition of personal conduct of defence in cases involving vulnerable witnesses**

After section 288D of the 1995 Act there is inserted—

##### *“Trials involving vulnerable witnesses*

#### **288E Prohibition of personal conduct of defence in certain cases involving child witnesses under the age of 12**

- (1) In proceedings to which this section applies, the accused is prohibited from conducting his defence in person at the trial and in any victim statement proof relating to any offence to which the trial relates.
- (2) This section applies to any proceedings (other than proceedings in the district court)—
  - (a) in respect of any offence specified in subsection (3) below, and
  - (b) in which a child witness who is under the age of 12 on the date of commencement of the proceedings is to give evidence at or for the purposes of the trial.
- (3) The offences referred to in subsection (2)(a) above are—
  - (a) murder,
  - (b) culpable homicide,
  - (c) any offence which—
    - (i) involves an assault on, or injury or threat of injury to, any person (including any offence involving neglect or ill-treatment of, or other cruelty to, a child), but

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*Changes to legislation: Vulnerable Witnesses (Scotland) Act 2004, Cross Heading: Prohibition of personal conduct of defence in cases involving vulnerable witnesses is up to date with all changes known to be in force on or before 26 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (ii) is not an offence to which section 288C of this Act applies,
  - (d) abduction, and
  - (e) plagium.
- (4) Section 288D of this Act applies in the case of proceedings to which this section applies as it applies in the case of proceedings in respect of a sexual offence to which section 288C of this Act applies.
- (5) In proceedings to which this section applies, the prosecutor shall, at the same time as intimating to the accused under section 271A(13) of this Act a child witness notice in respect of a child witness referred to in subsection (2)(b) above, serve on the accused a notice under subsection (6).
- (6) A notice under this subsection shall contain intimation to the accused—
- (a) that if he is tried for the offence, his defence may be conducted only by a lawyer,
  - (b) that it is therefore in his interests, if he has not already done so, to get the professional assistance of a solicitor, and
  - (c) that if he does not engage a solicitor for the purposes of his defence at the trial, the court will do so.
- (7) A failure to comply with subsection (5) or (6) above does not affect the validity or lawfulness of any child witness notice or any other element of the proceedings against the accused.
- (8) In subsection (1) above, “victim statement proof” means any proof ordered in relation to—
- (a) a victim statement made by virtue of subsection (2) (or by virtue of that subsection and subsection (6)) of section 14 of the Criminal Justice (Scotland) Act 2003 (asp 7), or
  - (b) a statement made by virtue of subsection (3) of that section in relation to such a victim statement.
- (9) For the purposes of subsection (2)(b) above, proceedings shall be taken to have commenced when the indictment or, as the case may be, the complaint is served on the accused.

**288F Power to prohibit personal conduct of defence in other cases involving vulnerable witnesses**

- (1) This section applies in the case of proceedings in respect of any offence, other than proceedings—
- (a) in the district court,
  - (b) in respect of a sexual offence to which section 288C of this Act applies, or
  - (c) to which section 288E of this Act applies,
- where a vulnerable witness is to give evidence at, or for the purposes of, the trial.
- (2) If satisfied that it is in the interests of the vulnerable witness to do so, the court may—
- (a) on the application of the prosecutor, or
  - (b) of its own motion,

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make an order prohibiting the accused from conducting his defence in person at the trial and in any victim statement proof relating to any offence to which the trial relates.

- (3) However, the court shall not make an order under subsection (2) above if it considers that—
- (a) the order would give rise to a significant risk of prejudice to the fairness of the trial or otherwise to the interests of justice, and
  - (b) that risk significantly outweighs any risk of prejudice to the interests of the vulnerable witness if the order is not made.
- (4) The court may make an order under subsection (2) above after, as well as before, proceedings at the trial have commenced.
- (5) Section 288D of this Act applies in the case of proceedings in respect of which an order is made under this section as it applies in the case of proceedings in respect of a sexual offence to which section 288C of this Act applies.
- (6) In subsection (2) above, “victim statement proof” means any proof ordered in relation to—
- (a) a victim statement made by virtue of subsection (2) (or by virtue of that subsection and subsection (6)) of section 14 of the Criminal Justice (Scotland) Act 2003 (asp 7), or
  - (b) a statement made by virtue of subsection (3) of that section in relation to such a victim statement.”.

#### Commencement Information

- I1** S. 6 in force at 1.4.2005 for specified purposes by S.S.I. 2005/168, art. 2, Sch. (with art. 4)
- I2** S. 6 in force at 1.4.2006 for specified purposes by S.S.I. 2006/59, art. 2, Sch. (with art. 4)
- I3** S. 6 in force at 1.4.2007 for specified purposes by S.S.I. 2007/101, art. 2, Sch. (with art. 4)
- I4** S. 6 in force at 1.4.2008 in so far as not already in force by S.S.I. 2008/57, art. 2 (with art. 3)

## 7 Special pre-trial procedures for ascertaining in such cases whether accused has engaged a solicitor

- (1) In section 71 (first diet) of the 1995 Act—
- (a) in subsection (A1)—
    - (i) after “diet” there is inserted “ in proceedings to which subsection (B1) below applies ”,
    - (ii) the words from “where” to “applies” are repealed, and
    - (iii) for “he” substitute “ the accused ”,
  - (b) after that subsection there is inserted—

“(B1) This subsection applies to proceedings—

    - (a) in which the accused is charged with a sexual offence to which section 288C of this Act applies,
    - (b) to which section 288E of this Act applies, or
    - (c) in which an order under section 288F(2) of this Act has been made before the trial diet.”,
  - (c) in subsection (5A), for paragraph (a) there is substituted—

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**Changes to legislation:** *Vulnerable Witnesses (Scotland) Act 2004, Cross Heading: Prohibition of personal conduct of defence in cases involving vulnerable witnesses is up to date with all changes known to be in force on or before 26 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- “(a) the proceedings in which the first diet is being held are proceedings to which subsection (B1) above applies;”.
- (2) In section 71A (further pre-trial diet in sheriff court solemn proceedings: dismissal or withdrawal of solicitor representing accused in case of sexual offence) of the 1995 Act, in subsection (1)(a), for the words “charged with a sexual offence to which section 288C” there is substituted “ in proceedings to which subsection (B1) of section 71 ”.
- (3) In section 72A (pre-trial diet in High Court proceedings: inquiry about legal representation of accused in cases of sexual offences) of the 1995 Act—
- (a) in subsection (1), for the words from the beginning to “Act” there is substituted “ In proceedings to which this section ”,
- (b) after that subsection there is inserted—
- “(1A) This section applies to proceedings in the High Court—
- (a) in which the accused is charged with a sexual offence to which section 288C of this Act applies,
- (b) to which section 288E of this Act applies, or
- (c) in which an order under section 288F(2) of this Act has been made before the trial diet.”.

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**Commencement Information**

- I5** S. 7(1)(3) in force at 1.4.2005 for specified purposes by S.S.I. 2005/168, art. 2, **Sch.** (with art. 4)
- I6** S. 7(1)(3) in force at 1.4.2006 for specified purposes by S.S.I. 2006/59, art. 2, **Sch.** (with art. 4)

**Changes to legislation:**

Vulnerable Witnesses (Scotland) Act 2004, Cross Heading: Prohibition of personal conduct of defence in cases involving vulnerable witnesses is up to date with all changes known to be in force on or before 26 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 11A11B inserted by [2020 asp 16 s. 4\(3\)](#)
- s. 12(3A) inserted by [2020 asp 16 s. 4\(4\)](#)
- s. 12(6A) inserted by [2020 asp 16 s. 5\(2\)](#)
- s. 22B-22D inserted by [2020 asp 16 s. 4\(5\)](#)