

DOMESTIC ABUSE (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE STRUCTURE AND A SUMMARY OF THE ACT

Part 2 – Further and Final Matters

The schedule – details

Part 1 – rules of criminal procedure

Chapter 2 - conduct of precognition and defence

Bail condition concerning precognition

65. Section 24 of the 1995 Act provides for the rules governing bail and imposition of bail conditions. Section 24(5)(e) provides that where a person is accused of any of the sexual offences listed in section 288C of the 1995 Act, a standard condition of bail applies which prohibits the accused from seeking any precognition of or statement from the complainer in relation to the subject matter of the offence other than via a solicitor.
66. Paragraph 2(2) of the schedule adjusts section 24 of the 1995 Act so the prohibition in section 24 operates, in addition to section 288C cases, also in relation to persons being granted bail in respect an offence under section 1(1) of this Act or an offence aggravated under section 1(1)(a) of the 2016 Act.

Prohibition on conduct of own defence

67. Section 288C of the 1995 Act prohibits an accused person from conducting his or her own case in person, without representation by a lawyer, where the offence charged is among the sexual offences listed at section 288C(2), though only in respect of hearings where a witness is to give evidence. In consequence of this prohibition a number of sections of the 1995 Act set out procedure in such cases.
68. Paragraph 4(14) of the schedule inserts a new section 288DC into the 1995 Act to create a similar prohibition on an accused conducting his or her own case in respect of both the domestic abuse offence as defined by this Act, and where the domestic abuse aggravator described in section 1(1)(a) of the 2016 Act apply. Once again the prohibition applies only to hearings where a witness is to give evidence.
69. New section 288DC(3) applies section 288D of the 1995 Act, which provides for the appointment of a solicitor by the court where the accused has not engaged his or her own, or where any solicitor appointed by the accused has been dismissed or has withdrawn.
70. Paragraph 4(2) to (13), (15) and (16) amend various sections of the 1995 Act to deal with the procedural consequences of new section 288DC, principally to ensure that the accused is repeatedly reminded, in notices served and at preliminary hearings, of the need to engage a solicitor to conduct his or her defence.

*These notes relate to the Domestic Abuse (Scotland) Act
2018 (asp 5) which received Royal Assent on 9 March 2018*

71. Paragraph 3(2) of the schedule amends section 22(1)(dd) of the Legal Aid (Scotland) Act to take account of legal aid being available automatically where a solicitor is appointed by the court as a result of the accused being prevented from conducting his or her own defence under new section 288DC.
72. Paragraph 5 of the schedule amends section 20 of the Criminal Justice (Scotland) Act 2016 to provide that, where a person has been arrested for a domestic abuse offence covered by new section 288DC, or has been charged with such an offence, he or she is to be advised as soon as possible of the prohibition on conducting one's own defence in hearings where a witness is to give evidence, and that consequently a solicitor should be engaged, or the court will provide one.