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PROSPECTIVE

SCHEDULE MODIFICATION OF ENACTMENTS

PART 1

RULES OF CRIMINAL PROCEDURE

CHAPTER 1

RESTRICTION ON BAIL IN SOLEMN CASES

- 1 (1) The 1995 Act is amended as follows.
- (2) In section 23D—
- (a) in subsection (2)—
- (i) in paragraph (a), for the words “a violent or sexual offence” there is substituted “an offence falling within subsection (3A)”,
- (ii) in paragraph (b), for the words “a violent or sexual offence” there is substituted “an offence falling within subsection (3A)”,
- (b) after subsection (3) there is inserted—
- “(3A) An offence falls within this subsection if it is—
- (a) a violent offence,
- (b) a sexual offence, or
- (c) a domestic abuse offence.”
- (c) in subsection (4), after the first definition there is inserted—
- ““domestic abuse offence” means—
- (a) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018, or
- (b) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016;”
- (d) in subsection (5), for the words “a violent or sexual offence or a drug trafficking offence” there is substituted “a type of offence”.

CHAPTER 2

CONDUCT OF PRECOGNITION AND DEFENCE

Bail condition concerning precognition

- 2 (1) The 1995 Act is amended as follows.
- (2) In section 24—

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- (a) in paragraph (e) of subsection (5), for the words “to which section 288C of this Act applies” there is substituted “ listed in subsection (7A)(b) ”,
- (b) for subsection (7A) there is substituted—

“(7A) For the purpose of subsection (5)(e)—

- (a) “complainer” means the person against whom the offence is alleged to have been committed,
- (b) the list is—
 - (i) an offence to which section 288C applies (certain sexual offending),
 - (ii) an offence to which section 288DC applies (domestic abuse cases).”.

Prohibition on conduct of own defence

- 3 (1) The Legal Aid (Scotland) Act 1986 is amended as follows.
- (2) In section 22, in subsection (1)(dd), for the words “sexual offence” there is substituted “ certain offences ”.
- 4 (1) The 1995 Act is amended as follows.
- (2) In section 35—
 - (a) in the opening text of subsection (4A), for the words “a sexual offence to which section 288C of this Act applies” there is substituted “ an offence listed in subsection (4AA)(b) ”,
 - (b) in paragraph (a) of subsection (4A), the words “(within the meaning of section 288C(1A))” are repealed,
 - (c) after subsection (4A) there is inserted—

“(4AA) For the purposes of subsection (4A)—

 - (a) “relevant hearing” is to be construed in accordance with section 288C(1A) or (as the case may be) 288DC(4),
 - (b) the list is—
 - (i) an offence to which section 288C applies (certain sexual offending),
 - (ii) an offence to which section 288DC applies (domestic abuse cases).”.
- (3) In section 66—
 - (a) in paragraph (b) of subsection (4C), for the words “a sexual offence to which section 288C of this Act applies” there is substituted “ an offence listed in subsection (14A)(b) ”,
 - (b) in subsection (6A)—
 - (i) in the opening text, for the words “a sexual offence to which section 288C of this Act applies” there is substituted “ an offence listed in subsection (14A)(b) ”,
 - (ii) in paragraph (a)(i), the words “(within the meaning of section 288C(1A))” are repealed,
 - (c) after subsection (14) there is inserted—

“(14A) For the purposes of subsections (4C) and (6A)—

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- (a) “relevant hearing” is to be construed in accordance with section 288C(1A) or (as the case may be) 288DC(4),
 - (b) the list is—
 - (i) an offence to which section 288C applies (certain sexual offending),
 - (ii) an offence to which section 288DC applies (domestic abuse cases).”.
- (4) In section 71, after paragraph (a) of subsection (B1) there is inserted—
- “(aa) in respect of an offence to which section 288DC of this Act applies (domestic abuse cases),”.
- (5) In section 72, in each of—
- (a) paragraph (a) of subsection (2), and
 - (b) paragraph (a)(i) of subsection (6),
- after the words “section 288C” there is inserted “ or 288DC ”.
- (6) In section 72F, in paragraph (a) of subsection (6), after the words “section 288C” there is inserted “ or 288DC ”.
- (7) In section 92, after paragraph (a) of subsection (2F) there is inserted—
- “(aa) in respect of an offence to which section 288DC of this Act applies,”.
- (8) In section 140—
- (a) in subsection (2A)—
 - (i) in the opening text, for the words “a sexual offence to which section 288C of this Act applies” there is substituted “ an offence listed in subsection (2C)(c) ”,
 - (ii) in paragraph (a), the words “(within the meaning of section 288C(1A))” are repealed,
 - (b) for subsection (2C) there is substituted—

“(2C) For the purposes of subsection (2A)—

 - (a) “commissioner proceedings” means proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b),
 - (b) “relevant hearing” is to be construed in accordance with section 288C(1A) or (as the case may be) 288DC(4),
 - (c) the list is—
 - (i) an offence to which section 288C applies (certain sexual offending),
 - (ii) an offence to which section 288DC applies (domestic abuse cases).”.
- (9) In section 144—
- (a) in subsection (3A)—
 - (i) in the opening text, for the words “a sexual offence to which section 288C of this Act applies” there is substituted “ an offence listed in subsection (3AA)(b) ”,
 - (ii) in paragraph (a), the words “(within the meaning of section 288C(1A))” are repealed,

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(b) after subsection (3A) there is inserted—

“(3AA) For the purposes of subsection (3A)—

- (a) “relevant hearing” is to be construed in accordance with section 288C(1A) or (as the case may be) 288DC(4),
- (b) the list is—
 - (i) an offence to which section 288C applies (certain sexual offending),
 - (ii) an offence to which section 288DC applies (domestic abuse cases).”.

(10) In section 146—

(a) in subsection (3A)—

- (i) in the opening text, for the words “a sexual offence to which section 288C of this Act applies” there is substituted “ an offence listed in subsection (3AA)(b) ”,
- (ii) in paragraph (a), the words “(within the meaning of section 288C(1A))” are repealed,

(b) after subsection (3A) there is inserted—

“(3AA) For the purposes of subsection (3A)—

- (a) “relevant hearing” is to be construed in accordance with section 288C(1A) or (as the case may be) 288DC(4),
- (b) the list is—
 - (i) an offence to which section 288C applies,
 - (ii) an offence to which section 288DC applies.”.

(11) In section 148A—

- (a) in subsection (1), for the words “a sexual offence to which section 288C of this Act applies” there is substituted “ an offence listed in subsection (10) ”,
- (b) after subsection (9) there is inserted—

“(10) For the purposes of this section, the list is—

- (a) an offence to which section 288C applies,
- (b) an offence to which section 288DC applies.”.

(12) The title of section 148A becomes “ Interim diet required in certain sexual or domestic abuse cases ”.

(13) In section 150A, after paragraph (a) of subsection (8), there is inserted—

“(aa) in respect of an offence to which section 288DC of this Act applies;”.

(14) Before section 288E (and after the italic heading immediately preceding that section) there is inserted—

“288DC **Prohibition of personal conduct of defence in domestic abuse cases**

(1) This section applies to—

- (a) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
- (b) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

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- (2) An accused in proceedings for an offence to which this section applies is prohibited from conducting the accused's case in person at, or for the purposes of, any relevant hearing in the course of the proceedings.
- (3) Section 288D applies in the case of proceedings in respect of an offence to which this section applies as it does in the case of proceedings in respect of an offence to which section 288C applies (and a reference in section 288D to a relevant hearing is to be read accordingly).
- (4) In subsection (2), “relevant hearing” means a hearing at, or for the purposes of, which a witness is to give evidence.”.
- (15) In section 288E, in paragraph (c)(ii) of subsection (3), after the words “section 288C” there is inserted “ or 288DC ”.
- (16) In section 288F, after paragraph (b) of subsection (1) there is inserted—
“(ba) in respect of an offence to which section 288DC of this Act applies,”.
- 5 (1) The Criminal Justice (Scotland) Act 2016 is amended as follows.
- (2) In section 20—
- (a) in subsection (1), in each of paragraphs (a) and (b)(ii), for the words “a sexual offence to which section 288C of the 1995 Act applies” there is substituted “ an offence listed in subsection (3)(b) ”,
- (b) in paragraph (a) of subsection (2), the words “(within the meaning of section 288C(1A) of the 1995 Act)” are repealed,
- (c) after subsection (2) there is inserted—
- “(3) For the purposes of subsections (1) and (2)—
- (a) “relevant hearing” is to be construed in accordance with section 288C(1A) or (as the case may be) 288DC(4) of the 1995 Act,
- (b) the list is—
- (i) an offence to which section 288C of the 1995 Act applies (certain sexual offending),
- (ii) an offence to which section 288DC of the 1995 Act applies (domestic abuse cases).”.
- (3) The title of section 20 becomes “ Information to be given in particular cases ”.

CHAPTER 3

VULNERABLE WITNESSES AND EXPERT EVIDENCE

Special measures for vulnerable witnesses

- 6 (1) The 1995 Act is amended as follows.
- (2) In section 271B, in subsection (2)—
- (a) paragraph (c) is repealed (as is the word “and” immediately preceding paragraph (f)),
- (b) after paragraph (f) there is inserted—

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- “(g) an offence to which section 288C applies (certain sexual offending),
- (h) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
- (i) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.”.

Presentation of certain expert evidence

- 7 (1) The 1995 Act is amended as follows.
- (2) In section 275C—
- (a) in subsection (1)—
 - (i) the words from “any” to the end become paragraph (a),
 - (ii) after that paragraph (as so numbered) there is inserted—
 - “(b) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
 - (c) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.”,
 - (b) after subsection (3) there is inserted—
 - “(3A) Where the offence is as referred to in subsection (1)(b) above, the reference in the last definition in subsection (3) above to any behaviour or statement subsequent to the offence includes any behaviour or statement subsequent to a particular part of the course of behaviour of which the offence consists.”,

CHAPTER 4

VICTIM SAFETY AND NON-HARASSMENT

Victim safety in relation to sentencing

- 8 (1) The 1995 Act is amended as follows.
- (2) After section 210AA there is inserted—

“Approach in domestic abuse cases

210AB Particular factor as to victim safety

- (1) When sentencing a person convicted of an offence listed in subsection (2)(b), the court must have particular regard to the aim of ensuring that the victim is not the subject of a further such offence committed by the convicted person.
- (2) For the purpose of subsection (1)—
 - (a) “victim” means the person against whom the offence was committed,
 - (b) the list is—

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- (i) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
- (ii) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.”.

Consideration of non-harassment order

9 (1) The 1995 Act is amended as follows.

(2) After section 234A there is inserted—

“234AZA Non-harassment orders: domestic abuse cases

- (1) Section 234A applies subject to this section if an offence referred to in subsection (1) of that section is one listed in subsection (2)(c).
- (2) For the purposes of this section—
 - (a) “victim” has the same meaning as it has in section 234A,
 - (b) “child” has the same meaning as given by section 5(11) of the Domestic Abuse (Scotland) Act 2018,
 - (c) the list is—
 - (i) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
 - (ii) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.
- (3) A non-harassment order in the person's case may include provision for the order to apply in favour of any of the following, in addition to the victim—
 - (a) in any circumstances, a child usually residing with the person or a child usually residing with the victim (or a child usually residing with both the person and the victim),
 - (b) where the offence is one under section 1(1) of the Domestic Abuse (Scotland) Act 2018, and is aggravated as described in section 5(1)(a) of that Act, a child to whom the aggravation relates,if the court is satisfied that it is appropriate for the child to be protected by the order.
- (4) The court must—
 - (a) without an application by the prosecutor, consider whether to make a non-harassment order in the person's case,
 - (b) after hearing the prosecutor as well as the person, make such an order unless of a negative conclusion on the question,
 - (c) if of a negative conclusion on the question, explain the basis for this.
- (5) Here, a negative conclusion on the question is the conclusion by the court that there is no need for—
 - (a) the victim, or
 - (b) the children (if any) in mind by virtue of subsection (3),to be protected by such an order.

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- (6) In the operation of section 234A along with subsection (4)—
- (a) subsection (1A) of that section is of no effect (and the reference in subsection (2) of that section to an application under subsection (1A) of that section is to be ignored),
 - (b) further—
 - (i) the references in subsections (2A), (2BA) and (2C) of that section to the person against whom the order is sought are to be read as being to the person in whose case the making of a non-harassment order is being considered,
 - (ii) the reference in subsection (2C) of that section to representations in response to the application is to be read as being to representations on the question of whether to make a non-harassment order,
 - (iii) the reference in subsection (6) of that section to the prosecutor at whose instance the order is made is to be read as being to the prosecutor in the case in which the non-harassment order is made.
- (7) For the avoidance of doubt, nothing in this section affects the ability to make a non-harassment order in the case instead of or in addition to dealing with the person in any other way.”.

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