

*Changes to legislation: There are currently no known outstanding effects for the Domestic Abuse (Scotland) Act 2018, Cross Heading: Prohibition on conduct of own defence. (See end of Document for details)*

## SCHEDULE MODIFICATION OF ENACTMENTS

### PART 1

#### RULES OF CRIMINAL PROCEDURE

### CHAPTER 2

#### CONDUCT OF PRECOGNITION AND DEFENCE

##### *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”.

##### **Commencement Information**

- II** Sch. para. 3 in force at 1.4.2019 by S.S.I. 2018/387, reg. 2 (with reg. 7)

- 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  - (b) in paragraph (a) of subsection (4A), the words “(within the meaning of section 288C(1A))” are repealed,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)”,

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- (ii) in paragraph (a)(i), the words “(within the meaning of section 288C(1A))” are repealed,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)—
    - (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)—

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- (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 (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—

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### **Prohibition of personal conduct of defence in domestic abuse cases**

“288D(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.
- (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,”.

#### **Commencement Information**

**I2** Sch. para. 4 in force at 1.4.2019 by S.S.I. 2018/387, reg. 2 (with reg. 7)

- 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 ”.

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**Commencement Information**

**I3** Sch. para. 5 in force at 1.4.2019 by S.S.I. 2018/387, reg. 2 (with reg. 7)

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