

*This draft Order replaces the one laid on 2nd November and is being issued free of charge to all known recipients of that draft Order.*

*Draft Order laid before the Scottish Parliament under section 288G(3) of the Criminal Procedure (Scotland) Act 1995, for approval by resolution of the Scottish Parliament.*

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## DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2015 No.**

# **CRIMINAL PROCEDURE**

## **EVIDENCE**

### **The Justice of the Peace Courts (Special Measures) (Scotland) Order 2015**

*Made - - - - 2015*

*Coming into force in accordance with article 1*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 288G of the Criminal Procedure (Scotland) Act 1995(1) and all other powers enabling them to do so.

#### **Citation, commencement and transitional provisions**

1.—(1) This Order may be cited as the Justice of the Peace Courts (Special Measures) (Scotland) Order 2015 and comes into force in accordance with paragraph (2).

(2) This Order comes into force six days after the day on which it is made.

(3) This Order applies only to criminal proceedings commenced on or after the day on which this Order comes into force.

(4) For the purposes of paragraph (3), criminal proceedings are to be taken as commenced on the day on which a report of the case has been received by the procurator fiscal.

#### **Interpretation**

2. In this Order—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995; and

“JP Court” means Justice of the Peace Court.

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(1) 1995 c.46. Section 288G was added by the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) section 10. Section 288G was amended by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) Schedule 1, paragraph 26(s) and should be read with paragraph 33 of Schedule 1 to that Act.

### **Application of sections 271 to 271M of the 1995 Act to JP Courts**

**3.—**(1) Sections 271 to 271M of the 1995 Act apply to proceedings in JP Courts subject to the following modifications.

- (2) In section 271(5) (vulnerable witnesses: definitions)—
  - (a) in the definition of “court”, after “sheriff court”, insert “or a JP court”, and
  - (b) in the definition of “hearing in relevant criminal proceedings”, after “sheriff court”, insert “or a JP court”.
- (3) For section 271I(8) (taking of evidence by a commissioner), substitute—
 

“(8) The person is a justice of the peace appointed under section 67 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007(2).”.
- (4) For section 271J(4) (live television link), substitute—
 

“(4) Where—

  - (a) the live television link is to be used in proceedings in a JP court, but
  - (b) that court lacks accommodation or equipment necessary for the purpose of receiving such a link,

the justice of the peace may by order transfer the proceedings to another JP court in the same sheriffdom which has such accommodation or equipment available.”.

### **Application of section 288E of the 1995 Act to JP Courts**

**4.—**(1) Section 288E (prohibition of personal conduct of defence in certain cases involving child witnesses under the age of 12) of the 1995 Act applies to proceedings in JP Courts subject to the modifications in paragraphs (2) and (3).

- (2) In subsection (2), omit “(other than proceedings in the JP court)”.
- (3) For subsection (4), substitute—
 

“(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 applies subject to the following modifications—

  - (a) in section 288D(1), omit “(other than proceedings in a JP court)”, and
  - (b) in section 288D(2)(a)(i), construe the reference to a relevant hearing as a reference to a hearing referred to in section 288E(2A).”.

### **Application of section 288F of the 1995 Act to JP Courts**

**5.—**(1) Section 288F (power to prohibit personal conduct of defence in other cases involving vulnerable witnesses) of the 1995 Act applies to proceedings in JP Courts subject to the modifications in paragraphs (2) and (3).

- (2) In subsection (1), omit paragraph (a).
- (3) For subsection (5), substitute—
 

“(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 applies subject to the following modifications—

  - (a) in section 288D(1), omit “(other than proceedings in a JP court)”, and

- (b) in section 288D(2)(a)(i), construe the reference to a relevant hearing as a reference to a hearing in respect of which an order is made under section 288F.”.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order applies sections 271 to 271M, 288E and 288F of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) to proceedings in justice of the peace courts (“JP Courts”) subject to certain modifications. This Order comes into force only in relation to criminal proceedings which are commenced on or after the date on which the Order comes into force and, for this purpose, criminal proceedings are taken as commenced on the date on which a report of the case has been received by the procurator fiscal.

Sections 271 to 271M of the 1995 Act make provision for the use of special measures in criminal proceedings in the high court or sheriff court. These procedures are not currently available in JP courts as JP Courts are not included in the definition of “court” in section 271(5). By applying sections 271 to 271M of the 1995 Act to JP Courts, Article 3 provides that special measures can be applied for and granted in JP courts. Article 3 also makes modifications of sections 271, 271I and 271J for this purpose.

Section 288E of the 1995 Act prohibits the accused from conducting his or her defence in person where the offence in question is one of the offences listed in subsection (3) and a child witness under the age of 12 is to give evidence at any hearing in the proceedings. Section 288E(2) provides that this rule does not apply to JP courts. By applying section 288E to JP Courts, Article 4 ensures that the accused in criminal proceedings in a JP Court cannot, in certain circumstances, conduct his or her defence in person. Article 4 also makes modifications of section 288E for this purpose. These modifications of section 288E ensure, amongst other things, that a JP court can appoint a solicitor for an accused who is prohibited from conducting his or her defence and has not instructed a solicitor.

Section 288F of the 1995 Act allows the court to prohibit the accused from conducting his or her defence in person at any hearing at, or for the purposes of which, a vulnerable witness is to give evidence. Section 288F(1) provides that this rule does not apply to JP courts. By applying section 288F to JP Courts, Article 5 ensures that JP Courts can prohibit the accused, in certain circumstances, from conducting his or her defence in person. Article 5 also makes modifications of section 288F for this purpose. These modifications of section 288F ensure, amongst other things, that a JP court can appoint a solicitor for an accused who is prohibited from conducting his or her defence and has not instructed a solicitor.

A Business Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from Criminal Justice Division, St. Andrews House, Regent Road, Edinburgh EH1 3DG.