



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XIII

#### MISCELLANEOUS

*[<sup>F1</sup>/<sup>F2</sup>Convention rights and EU law compatibility issues, and devolution issues]*

#### Textual Amendments

- F1** Ss. 288A, 288B and cross-heading inserted (20.5.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 32(2)** (with s. 126(3)-(11)); S.I. 1998/3178, art. 2(2), **Sch. 4**
- F2** Cross-heading substituted (22.4.2013) by Scotland Act 2012 (c. 11), **ss. 34(2)**, 44(5); S.I. 2013/6, art. 2(a)

#### **288ZA** **Right of Advocate General to take part in proceedings**

- (1) The Advocate General for Scotland may take part as a party in criminal proceedings so far as they relate to a compatibility issue.
- (2) In this section “compatibility issue” means a question, arising in criminal proceedings, as to—
- whether a public authority has acted (or proposes to act)—
    - in a way which is made unlawful by section 6(1) of the Human Rights Act 1998, or
    - in a way which is incompatible with EU law, or
  - whether an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament is incompatible with any of the Convention rights or with EU law.
- (3) In subsection (2)—
- “public authority” has the same meaning as in section 6 of the Human Rights Act 1998;

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- (b) references to acting include failing to act;
- (c) “EU law” has the meaning given by section 126(9) of the Scotland Act 1998.]

#### Textual Amendments

**F3** S. 288ZA inserted (22.4.2013) by [Scotland Act 2012 \(c. 11\)](#), **ss. 34(3), 44(5)**; S.I. 2013/6, art. 2(a)

#### Modifications etc. (not altering text)

**C1** S. 288ZA(1) modified (22.4.2013) by [The Scotland Act 2012 \(Transitional and Consequential Provisions\) Order 2013 \(S.I. 2013/7\)](#), arts. 1(1), **8**

### **I<sup>F4</sup> 288ZB** References of compatibility issues to the High Court or Supreme Court

- (1) Where a compatibility issue has arisen in criminal proceedings before a court, other than a court consisting of two or more judges of the High Court, the court may, instead of determining it, refer the issue to the High Court.
- (2) The Lord Advocate or the Advocate General for Scotland, if a party to criminal proceedings before a court, other than a court consisting of two or more judges of the High Court, may require the court to refer to the High Court any compatibility issue which has arisen in the proceedings.
- (3) The High Court may, instead of determining a compatibility issue referred to it under subsection (2), refer it to the Supreme Court.
- (4) Where a compatibility issue has arisen in criminal proceedings before a court consisting of two or more judges of the High Court, otherwise than on a reference, the court may, instead of determining it, refer it to the Supreme Court.
- (5) The Lord Advocate or the Advocate General for Scotland, if a party to criminal proceedings before a court consisting of two or more judges of the High Court, may require the court to refer to the Supreme Court any compatibility issue which has arisen in the proceedings otherwise than on a reference.
- (6) On a reference to the Supreme Court under this section—
  - (a) the powers of the Supreme Court are exercisable only for the purpose of determining the compatibility issue;
  - (b) for that purpose the Court may make any change in the formulation of that issue that it thinks necessary in the interests of justice.
- (7) When it has determined a compatibility issue on a reference under this section, the Supreme Court must remit the proceedings to the High Court.
- (8) An issue referred to the High Court or the Supreme Court under this section is referred to it for determination.
- (9) In this section “compatibility issue” has the meaning given by section 288ZA.]

#### Textual Amendments

**F4** S. 288ZB inserted (22.4.2013) by [Scotland Act 2012 \(c. 11\)](#), **ss. 35, 44(5)**; S.I. 2013/6, art. 2(b)

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#### Modifications etc. (not altering text)

- C2** S. 288ZB(1)(4)(5)(7) modified (22.4.2013) by [The Scotland Act 2012 \(Transitional and Consequential Provisions\) Order 2013 \(S.I. 2013/7\)](#), arts. 1(1), 6

### **288A** <sup>F5</sup> **Rights of appeal for Advocate General: [<sup>F6</sup>compatibility issues and] devolution issues.**

- (1) This section applies where—
- a person is acquitted or convicted of a charge (whether on indictment or in summary proceedings), and
  - the Advocate General for Scotland was a party to the proceedings <sup>F7</sup>....

[<sup>F8</sup>(2) Where the Advocate General for Scotland was a party in pursuance of paragraph 6 of Schedule 6 to the Scotland Act 1998 (devolution issues), the Advocate General may refer to the High Court for their opinion any devolution issue which has arisen in the proceedings.

(2A) Where the Advocate General for Scotland was a party in pursuance of section 288ZA, the Advocate General may refer to the High Court for their opinion any compatibility issue (within the meaning of that section) which has arisen in the proceedings.

(2B) If a reference is made under subsection (2) or (2A) the Clerk of Justiciary shall send to the person acquitted or convicted and to any solicitor who acted for that person at the trial a copy of the reference and intimation of the date fixed by the Court for a hearing.]

- (3) The person may, not later than seven days before the date so fixed, intimate in writing to the Clerk of Justiciary and to the Advocate General for Scotland either—
- that he elects to appear personally at the hearing, or
  - that he elects to be represented by counsel at the hearing,

but, except by leave of the Court on cause shown, and without prejudice to his right to attend, he shall not appear or be represented at the hearing other than by and in conformity with an election under this subsection.

(4) Where there is no intimation under subsection (3)(b), the High Court shall appoint counsel to act at the hearing as amicus curiae.

(5) The costs of representation elected under subsection (3)(b) or of an appointment under subsection (4) shall, after being taxed by the Auditor of the Court of Session, be paid by the Advocate General for Scotland out of money provided by Parliament.

(6) The opinion on the point referred under subsection (2) [<sup>F9</sup>or (2A)] shall not affect the acquittal or (as the case may be) conviction in the trial.

#### Textual Amendments

**F5** Ss. 288A-288B and preceding cross-heading inserted (20.5.1999) by [1998 c. 46, s. 125, Sch. 8 para. 32\(2\)](#) (with [s. 126\(3\)-\(11\)](#)); [S.I. 1998/3178, art. 2\(2\)](#), [Sch. 4](#)

**F6** Words in s. 288A heading inserted (22.4.2013) by [Scotland Act 2012 \(c. 11\), ss. 34\(5\)](#), 44(5); [S.I. 2013/6, art. 2\(a\)](#)

**F7** Words in s. 288A(1) omitted (22.4.2013) by virtue of [Scotland Act 2012 \(c. 11\), ss. 34\(6\)](#), 44(5); [S.I. 2013/6, art. 2\(a\)](#)

**F8** S. 288A(2)-(2B) substituted for s. 288A(2) (22.4.2013) by [Scotland Act 2012 \(c. 11\), ss. 34\(7\)](#), 44(5); [S.I. 2013/6, art. 2\(a\)](#)

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- F9** Words in s. 288A(6) inserted (22.4.2013) by [Scotland Act 2012 \(c. 11\)](#), **ss. 34(8)**, 44(5); S.I. 2013/6, art. 2(a)

## **288AA** Appeals to the Supreme Court: compatibility issues

- F10** (1) For the purpose of determining any compatibility issue an appeal lies to the Supreme Court against a determination in criminal proceedings by a court of two or more judges of the High Court.
- (2) On an appeal under this section—
- (a) the powers of the Supreme Court are exercisable only for the purpose of determining the compatibility issue;
  - (b) for that purpose the Court may make any change in the formulation of that issue that it thinks necessary in the interests of justice.
- (3) When it has determined the compatibility issue the Supreme Court must remit the proceedings to the High Court.
- (4) In this section “compatibility issue” has the same meaning as in section 288ZA.
- (5) An appeal under this section against a determination lies only with the permission of the High Court or, failing that permission, with the permission of the Supreme Court.
- (6) Subsection (5) does not apply if it is an appeal by the Lord Advocate or the Advocate General for Scotland against a determination by the High Court of a compatibility issue referred to it under section 288ZB(2).
- (7) An application to the High Court for permission under subsection (5) must be made—
- (a) within 28 days of the date of the determination against which the appeal lies, or
  - (b) within such longer period as the High Court considers equitable having regard to all the circumstances.
- (8) An application to the Supreme Court for permission under subsection (5) must be made—
- (a) within 28 days of the date on which the High Court refused permission under that subsection, or
  - (b) within such longer period as the Supreme Court considers equitable having regard to all the circumstances.]

### **Textual Amendments**

- F10** S. 288AA inserted (22.4.2013) by [Scotland Act 2012 \(c. 11\)](#), **ss. 36(6)**, 44(5); S.I. 2013/6, art. 2(c)

### **Modifications etc. (not altering text)**

- C3** S. 288AA(1)(5) modified (22.4.2013) by [The Scotland Act 2012 \(Transitional and Consequential Provisions\) Order 2013 \(S.I. 2013/7\)](#), arts. 1(1), 7
- C4** S. 288AA(7) modified (22.4.2013) by [The Scotland Act 2012 \(Transitional and Consequential Provisions\) Order 2013 \(S.I. 2013/7\)](#), arts. 1(1), 9
- C5** S. 288AA applied (22.4.2013) by [The Scotland Act 2012 \(Transitional and Consequential Provisions\) Order 2013 \(S.I. 2013/7\)](#), arts. 1(1), 14

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**<sup>F12</sup>288B [<sup>F11</sup>Appeals to the Supreme Court: general].**

- (1) This section applies where the [<sup>F13</sup>Supreme Court] determines an appeal under [<sup>F14</sup>section 288AA of this Act or] paragraph 13(a) of Schedule 6 to the Scotland Act 1998 against a determination <sup>F15</sup>... by the High Court in the ordinary course of proceedings.
- (2) The determination of the appeal shall not affect any earlier acquittal or earlier quashing of any conviction in the proceedings.
- (3) Subject to subsection (2) above, the High Court shall have the same powers in relation to the proceedings when remitted to it by the [<sup>F16</sup>Supreme Court] as it would have if it were considering the proceedings otherwise than as a trial court.]

**Textual Amendments**

- F11** S. 288B heading substituted (22.4.2013) by [Scotland Act 2012 \(c. 11\)](#), **ss. 36(8)**, 44(5); S.I. 2013/6, art. 2(c)
- F12** Ss. 288A-288B and preceding cross-heading inserted (20.5.1999) by [1998 c. 46](#), s. 125, **Sch. 8 para. 32(2)** (with [s. 126\(3\)-\(11\)](#)); S.I. 1998/3178, art. 2(2), **Sch. 4**
- F13** Words in s. 288B(1) and in sidenote substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, **Sch. 9 para. 86(a)**; S.I. 2009/1604, **art. 2(d)**
- F14** Words in s. 288B(1) inserted (22.4.2013) by [Scotland Act 2012 \(c. 11\)](#), **ss. 36(9)(a)**, 44(5); S.I. 2013/6, art. 2(c)
- F15** Words in s. 288B(1) omitted (22.4.2013) by virtue of [Scotland Act 2012 \(c. 11\)](#), **ss. 36(9)(b)**, 44(5); S.I. 2013/6, art. 2(c)
- F16** Words in s. 288B(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, **Sch. 9 para. 86(b)**; S.I. 2009/1604, **art. 2(d)**

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