



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XIII

MISCELLANEOUS

[^{F1}Trials involving vulnerable witnesses

Textual Amendments

- F1** Ss. 288E, 288F and preceding cross-heading inserted (1.4.2005, 1.4.2006 and 1.4.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\), ss. 6, 25; S.S.I. 2005/168, art. 2, Sch.](#) (with savings in art. 4); [S.S.I. 2006/59, art. 2, Sch.](#) (with art. 4); [S.S.I. 2007/101, art. 2, Sch.](#) (with art. 4); [S.S.I. 2008/57, art. 2](#) (with art. 3)

288E Prohibition of personal conduct of defence in certain cases involving child witnesses under the age of 12

- (1) In proceedings to which this section applies, the accused is prohibited from conducting
- ^{F2}(a) his case in person at or for the purposes of a preliminary hearing; and
 - (b) his defence in person at the trial and in any victim statement proof relating to any offence to which the trial relates.
- (2) This section applies to any proceedings (other than proceedings in the district court)—
- (a) in respect of any offence specified in subsection (3) below, and
 - (b) in which a child witness who is under the age of 12 on the date of commencement of the proceedings is to give evidence at or for the purposes of the trial.
- (3) The offences referred to in subsection (2)(a) above are—
- (a) murder,
 - (b) culpable homicide,
 - (c) any offence which—

Status: Point in time view as at 01/04/2005.

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- (i) involves an assault on, or injury or threat of injury to, any person (including any offence involving neglect or ill-treatment of, or other cruelty to, a child), but
 - (ii) is not an offence to which section 288C of this Act applies,
 - (d) abduction, and
 - (e) plagiarism.
- (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 of this Act applies.
- (5) In proceedings to which this section applies, the prosecutor shall, at the same time as intimating to the accused under section 271A(13) of this Act a child witness notice in respect of a child witness referred to in subsection (2)(b) above, serve on the accused a notice under subsection (6).
- (6) A notice under this subsection shall contain intimation to the accused—
- [^{F3}(za) where he is indicted to the High Court in respect of the offence, that his case at or for the purposes of the preliminary hearing may be conducted only by a lawyer,]
 - (a) that if he is tried for the offence, his defence may be conducted only by a lawyer,
 - (b) that it is therefore in his interests, if he has not already done so, to get the professional assistance of a solicitor, and
 - (c) that if he does not engage a solicitor for the purposes of [^{F4}the conduct of his case at or for the purposes of the preliminary hearing (if he is indicted to the High Court in respect of the offence) or] his defence at the trial, the court will do so.
- (7) A failure to comply with subsection (5) or (6) above does not affect the validity or lawfulness of any child witness notice or any other element of the proceedings against the accused.
- (8) In subsection (1) above, “victim statement proof” means any proof ordered in relation to—
- (a) a victim statement made by virtue of subsection (2) (or by virtue of that subsection and subsection (6)) of section 14 of the Criminal Justice (Scotland) Act 2003 (asp 7), or
 - (b) a statement made by virtue of subsection (3) of that section in relation to such a victim statement.
- (9) For the purposes of subsection (2)(b) above, proceedings shall be taken to have commenced when the indictment or, as the case may be, the complaint is served on the accused.

Textual Amendments

- F2** Words in s. 288E(1) inserted (1.4.2005, 1.4.2006 and 1.4.2007 for certain purposes and otherwise prosp.) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 4(3)(a)**, 27(1); S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4)
- F3** S. 288E(6)(za) inserted (1.4.2005, 1.4.2006 and 1.4.2007 for certain purposes and otherwise prosp.) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 4(3)(b)(i)**, 27(1); S.S.I. 2004/405,

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- F4** **art. 2(2), Sch. 2** (with savings in arts. 3-5); S.S.I. 2005/168, **art. 2, Sch.** (with savings in art. 4); S.S.I. 2006/59, **art. 2, Sch.** (with art. 4(1)); S.S.I. 2007/101, **art. 2, Sch.** (with art. 4)
- Words in s. 288E(6)(c) inserted (1.4.2005, 1.4.2006 and 1.4.2007 for certain purposes and otherwise prosp.) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 4(3)(b)(ii), 27(1)**; S.S.I. 2004/405, **art. 2(2), Sch. 2** (with savings in arts. 3-5); S.S.I. 2005/168, **art. 2, Sch.** (with savings in art. 4); S.S.I. 2006/59, **art. 2, Sch.** (with art. 4(1)); S.S.I. 2007/101, **art. 2, Sch.** (with art. 4)

288F Power to prohibit personal conduct of defence in other cases involving vulnerable witnesses

- (1) This section applies in the case of proceedings in respect of any offence, other than proceedings—
 - (a) in the district court,
 - (b) in respect of a sexual offence to which section 288C of this Act applies, or
 - (c) to which section 288E of this Act applies,where a vulnerable witness is to give evidence at, or for the purposes of, the trial.
- (2) If satisfied that it is in the interests of the vulnerable witness to do so, the court may—
 - (a) on the application of the prosecutor, or
 - (b) of its own motion,make an order prohibiting the accused from conducting his defence in person at the trial and in any victim statement proof relating to any offence to which the trial relates.
- (3) However, the court shall not make an order under subsection (2) above if it considers that—
 - (a) the order would give rise to a significant risk of prejudice to the fairness of the trial or otherwise to the interests of justice, and
 - (b) that risk significantly outweighs any risk of prejudice to the interests of the vulnerable witness if the order is not made.
- (4) The court may make an order under subsection (2) above after, as well as before, proceedings at the trial have commenced.]
- [^{F5}(4A) Where, in any proceedings in the High Court, an order is made under subsection (2) above before or at the preliminary hearing, the accused is also prohibited from conducting or, as the case may be, continuing to conduct, his case in person at or for the purposes of the preliminary hearing.]
- (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 of this Act applies.
- (6) In subsection (2) above, “victim statement proof” means any proof ordered in relation to—
 - (a) a victim statement made by virtue of subsection (2) (or by virtue of that subsection and subsection (6)) of section 14 of the Criminal Justice (Scotland) Act 2003 (asp 7), or
 - (b) a statement made by virtue of subsection (3) of that section in relation to such a victim statement.

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Textual Amendments

- F5** S. 288F(4A) inserted (1.4.2005, 1.4.2006 and 1.4.2007 for certain purposes and otherwise prosp.) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 4(4), 27(1)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4)

Status:

Point in time view as at 01/04/2005.

Changes to legislation:

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