



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XIII

#### MISCELLANEOUS

##### *Trials involving vulnerable witnesses*

#### **[<sup>F1</sup>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.
- (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.]

#### **Textual Amendments**

- F1** S. 288DC inserted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), [sch. para. 4\(14\)](#); [S.S.I. 2018/387](#), reg. 2 (with [reg. 7](#))

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*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Trials involving vulnerable witnesses is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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

<sup>F2</sup>(1) .....

- (2) This section applies to any proceedings (other than proceedings in the [<sup>F3</sup>JP 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 [<sup>F4</sup>any hearing in the course of the proceedings].

[<sup>F5</sup>(2A) The accused is prohibited from conducting his case in person at, or for the purposes of, any hearing at, or for the purposes of, which the child witness is to give evidence.]

- (3) The offences referred to in subsection (2)(a) above are—
  - (a) murder,
  - (b) culpable homicide,
  - (c) any offence which—
    - (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 [<sup>F6</sup>or 288DC] of this Act applies,
  - (d) abduction, and
  - (e) plagium.

(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 [<sup>F7</sup>and as if references to a relevant hearing were references to a hearing referred to in subsection (2A) above].

(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 [<sup>F8</sup>vulnerable] witness notice in respect of [<sup>F9</sup>the trial], serve on the accused a notice under subsection (6).

- (6) A notice under this subsection shall contain intimation to the accused—
  - [<sup>F10</sup>(a) that his case at, or for the purposes of, any hearing in the course of the proceedings at, or for the purposes of, which the child witness is to give evidence 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 [<sup>F11</sup>the conduct of his case at or for the purposes of the][<sup>F12</sup>hearing], 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 [<sup>F13</sup>vulnerable] witness notice or any other element of the proceedings against the accused.

<sup>F14</sup>(8) .....

(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.

**Changes to legislation:** *Criminal Procedure (Scotland) Act 1995, Cross Heading: Trials involving vulnerable witnesses is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

### Textual Amendments

- F2** S. 288E(1) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 69\(4\)\(a\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), [sch.](#)
- F3** Words in s. 288E substituted (10.3.2008, 2.6.2008, 8.12.2008, 23.2.2009 and 14.12.2009 for certain purposes, otherwise 22.2.2010) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 80, 84](#), [Sch. para. 26\(q\)](#); S.S.I. 2008/42, [art. 3](#), [Sch.](#); S.S.I. 2008/192, [art. 3](#), [Sch.](#); S.S.I. 2008/329, [art. 3](#), [Sch.](#); S.S.I. 2008/362, [art. 3](#), [Sch.](#); S.S.I. 2009/432, [art. 3](#), [Schs. 1, 2](#)
- F4** Words in s. 288E(2)(b) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 69\(4\)\(b\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), [sch.](#)
- F5** S. 288E(2A) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 69\(4\)\(c\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), [sch.](#)
- F6** Words in s. 288E(3)(c)(ii) inserted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), [s. 15\(2\)](#), [sch. para. 4\(15\)](#); S.S.I. 2018/387, [reg. 2](#) (with [reg. 7](#))
- F7** Words in s. 288E(4) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 69\(4\)\(d\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), [sch.](#)
- F8** Word in s. 288E(5) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), [ss. 11\(9\)](#), 34; S.S.I. 2015/200, [art. 2\(2\)](#), [sch.](#) (with [arts. 1\(3\), 4](#))
- F9** Words in s. 288E(5) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 87\(10\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), [sch.](#)
- F10** S. 288E(6)(a) substituted for s. 288E(6)(za)(a) (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 69\(4\)\(e\)\(i\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), [sch.](#)
- F11** Words in s. 288E(6)(c) inserted (1.4.2005, 1.4.2006 and 1.4.2007 for certain purposes, otherwise 1.4.2008) 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](#)); S.S.I. 2008/57, [art. 2](#) (with [art. 3](#))
- F12** Word in s. 288E(6)(c) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 69\(4\)\(e\)\(ii\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), [sch.](#)
- F13** Word in s. 288E(7) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), [ss. 11\(9\)](#), 34; S.S.I. 2015/200, [art. 2\(2\)](#), [sch.](#) (with [arts. 1\(3\), 4](#))
- F14** S. 288E(8) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 69\(4\)\(f\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), [sch.](#)

### Modifications etc. (not altering text)

- C1** S. 288E applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), [arts. 1\(2\), 4](#) (with [art. 1\(3\)](#))

## 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—
- in the [<sup>F15</sup>JP court],
  - in respect of a sexual offence to which section 288C of this Act applies, or
  - [<sup>F16</sup>(ba) in respect of an offence to which section 288DC of this Act applies,]
- (c) to which section 288E of this Act applies,
- where a vulnerable witness is to give evidence at, or for the purposes of, [<sup>F17</sup>any hearing in the course of the proceedings].
- (2) If satisfied that it is in the interests of the vulnerable witness to do so, the court may—

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- (a) on the application of the prosecutor, or  
 (b) of its own motion,  
 make an order prohibiting the accused from conducting his [<sup>F18</sup>case in person at any hearing at, or for the purposes of, which the vulnerable witness is to give evidence.]
- (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 [<sup>F19</sup>hearing] 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 [<sup>F20</sup>in relation to a hearing after, as well as before, the hearing has commenced.]
- <sup>F21</sup>(4A) . . . . .
- (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 [<sup>F22</sup> and as if references to a relevant hearing were references to any hearing in respect of which an order is made under this section].
- <sup>F23</sup>(6) . . . . .

#### Textual Amendments

- F15** Words in s. 288F(1)(a) substituted (10.3.2008, 2.6.2008, 8.12.2008, 23.2.2009 and 14.12.2009 for certain purposes, otherwise 22.2.2010) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), ss. 80, 84, **Sch. para. 26(r)**; S.S.I. 2008/42, **art. 3**, Sch.; S.S.I. 2008/192, **art. 3**, Sch.; S.S.I. 2008/329, **art. 3**, Sch.; S.S.I. 2008/362, **art. 3**, Sch.; S.S.I. 2009/432, **art. 3**, Schs. 1, 2
- F16** S. 288F(1)(ba) inserted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018](#) (asp 5), s. 15(2), **sch. para. 4(16)**; S.S.I. 2018/387, reg. 2 (with reg. 7)
- F17** Words in s. 288F(1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), **ss. 69(5)(a)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F18** Words in s. 288F(2) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), **ss. 69(5)(b)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F19** Word in s. 288F(3)(a) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), **ss. 69(5)(c)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F20** Words in s. 288F(4) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), **ss. 69(5)(d)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F21** S. 288F(4A) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), **ss. 69(5)(e)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F22** Words in s. 288F(5) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), **ss. 69(5)(f)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F23** S. 288F(6) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), **ss. 69(5)(g)**, 206(1); S.S.I. 2011/178, art. 2, sch.

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

- C2** S. 288F applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015](#) (S.S.I. 2015/447), arts. 1(2), **5** (with art. 1(3))

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by [2010 asp 13 Sch. 7 para. 26](#)
- s. 13(1B)(1C) inserted by [2006 asp 10 s. 82\(2\)](#)
- s. 13(2)(aa) inserted by [2006 asp 10 s. 82\(3\)\(b\)](#)
- s. 13(3A) inserted by [2006 asp 10 s. 82\(4\)](#)
- s. 13(5)(ba) inserted by [2006 asp 10 s. 82\(5\)\(a\)](#)
- s. 13(6)(a)(iii) and word inserted by [2006 asp 10 s. 82\(6\)\(b\)](#)
- s. 13(8) inserted by [2006 asp 10 s. 82\(7\)](#)
- s. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 167(7D)(7E) inserted by [2007 asp 17 sch. 4 para. 1\(3\)](#)
- s. 167(7D) words substituted by [2010 asp 13 Sch. 3 para. 16\(2\)](#)
- s. 167(7E) words substituted by [2010 asp 13 Sch. 3 para. 16\(3\)](#)
- s. 194ZA repealed by [2014 asp 18 sch. 3 para. 25](#)
- s. 200A inserted by [2016 asp 1 s. 85](#)
- s. 205A added by [1997 c. 48 s. 1\(1\)](#) (This amendment not applied to [legislation.gov.uk. 1997 c. 48, s. 1 repealed \(27.6.2003\)](#) without ever being in force by [2003 asp 7, s. 19\(3\)](#); [S.S.I. 2003/288, art. 2, Sch.](#))
- s. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- s. 288AB288AC inserted by [2024 asp 1 s. 32\(3\)](#)
- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to [legislation.gov.uk. 1997 c. 48, s. 1 repealed \(27.6.2003\)](#) without ever being in force by [2003 asp 7, s. 19\(3\)](#); [S.S.I. 2003/288, art. 2, Sch.](#))