



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XIII

MISCELLANEOUS

Convention rights^{F1}... compatibility issues, and devolution issues

288A ^{F1} **Rights of appeal for Advocate General: [^{F2}compatibility issues and] devolution issues.**

- (1) This section applies where—
 - (a) a person is acquitted or convicted of a charge (whether on indictment or in summary proceedings), and
 - (b) the Advocate General for Scotland was a party to the proceedings ^{F3}....
- [^{F4}(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—
 - (a) that he elects to appear personally at the hearing, or
 - (b) that he elects to be represented by counsel at the hearing,

Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 288A is up to date with all changes known to be in force on or before 23 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

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) [^{F5}or (2A)] shall not affect the acquittal or (as the case may be) conviction in the trial.

Textual Amendments

- F1** 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**
- F2** 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)
- F3** 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)
- F4** 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)
- F5** 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)

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.)