



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XIII

MISCELLANEOUS

[^{F1}Trials for sexual offences]

[^{F1}288D Appointment of solicitor by court in such cases

- (1) This section applies in the case of proceedings [^{F2}(other than proceedings in a JP court)] in respect of a sexual offence to which section 288C above applies.
- (2) Where the court ascertains that—
 - (a) the accused has not engaged a solicitor for the purposes of [^{F3}(i) the conduct of his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the proceedings; or] [^{F4}(iii) the conduct of his case at any commissioner proceedings; or]
 - (b) having engaged a solicitor for those purposes, the accused has dismissed him; or
 - (c) the accused's solicitor has withdrawn,then, where the court is not satisfied that the accused intends to engage a solicitor or, as the case may be, another solicitor for those purposes, it shall, at its own hand, appoint a solicitor for those purposes.
- (3) A solicitor so appointed is not susceptible to dismissal by the accused or obliged to comply with any instruction by the accused to dismiss counsel.
- (4) Subject to subsection (3) above, it is the duty of a solicitor so appointed—
 - (a) to ascertain and act upon the instructions of the accused; and
 - (b) where the accused gives no instructions or inadequate or perverse instructions, to act in the best interests of the accused.

Status: Point in time view as at 24/04/2017.

Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 288D is up to date with all changes known to be in force on or before 18 May 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)

- (5) In all other respects, a solicitor so appointed has, and may be made subject to, the same obligations and has, and may be given, the same authority as if engaged by the accused; and any employment of and instructions given to counsel by the solicitor shall proceed and be treated accordingly.
- (6) Where the court is satisfied that a solicitor so appointed is no longer able to act upon the instructions, or in the best interests, of the accused, the court may relieve that solicitor of his appointment and appoint another solicitor for the purposes [^{F5}referred to in subsection (2)(a) above.]
- [Where, in relation to commissioner proceedings, the commissioner is satisfied that ^{F6}(6A) a solicitor so appointed is no longer able to act upon the instructions, or in the best interests, of the accused, the commissioner is (for the purpose of the application of subsection (6) above) to refer the case to the court.]
- (7) The references in subsections (3) to [^{F7}(6A)] above to “a solicitor so appointed” include references to a solicitor appointed under subsection (6) above.
- (8) In this section “counsel” includes a solicitor who has right of audience in the High Court of Justiciary under section 25A (rights of audience in various courts including the High Court of Justiciary) of the Solicitors (Scotland) Act 1980 (c.46).
- [In this section, “commissioner proceedings” means proceedings before a ^{F8}(9) commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act.]]

Textual Amendments

- F1** S. 288D inserted (S.) (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002](#) (asp 9), [s. 2\(1\)](#); S.S.I. 2002/443, [art. 3](#) (with art. 4(1)(2))
- F2** Words in s. 288D(1) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), [ss. 69\(3\)\(a\)](#), 206(1); S.S.I. 2011/178, art. 2, sch.
- F3** S. 288D(2)(a)(i) substituted for s. 288D(2)(a)(i)(ii) (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), [ss. 69\(3\)\(b\)](#), 206(1); S.S.I. 2011/178, art. 2, sch.
- F4** S. 288D(2)(a)(iii) inserted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 35\(6\)\(a\)](#), 84; S.S.I. 2007/250, [art. 3\(a\)](#)
- F5** Words in s. 288D(6) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), [ss. 69\(3\)\(c\)](#), 206(1); S.S.I. 2011/178, art. 2, sch.
- F6** S. 288D(6A) inserted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 35\(6\)\(c\)](#), 84; S.S.I. 2007/250, [art. 3\(a\)](#)
- F7** Word in s. 288D(7) substituted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 35\(6\)\(d\)](#), 84; S.S.I. 2007/250, [art. 3\(a\)](#)
- F8** S. 288D(9) added (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 35\(6\)\(e\)](#), 84; S.S.I. 2007/250, [art. 3\(a\)](#)

Status:

Point in time view as at 24/04/2017.

Changes to legislation:

Criminal Procedure (Scotland) Act 1995, Section 288D is up to date with all changes known to be in force on or before 18 May 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.