



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XIII

#### MISCELLANEOUS

##### *[<sup>F1</sup>Trials involving vulnerable witnesses*

#### **[<sup>F1</sup>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
  - <sup>F2</sup>(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 [<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 the trial.
- (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 of this Act applies,
  - (d) abduction, and
  - (e) plagium.

*Status: Point in time view as at 10/03/2008. This version of this provision has been superseded.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 288E is up to date with all changes known to be in force on or before 13 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)*

- (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—
- [ where he is indicted to the High Court in respect of the offence, that his case  
<sup>F4</sup>(za) 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 [<sup>F5</sup>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

- 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)
- F2** Words in s. 288E(1) 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)(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); [S.S.I. 2008/57](#), **art. 2** (with art. 3)
- 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

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- F4** S. 288E(6)(za) 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)(i)**, 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)
- F5** 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)

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