



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XIII

MISCELLANEOUS

[^{F1}Trials involving vulnerable witnesses

[^{F1}288E Prohibition of personal conduct of defence in certain cases involving child witnesses under the age of 12

^{F2}(1)

- (2) This section applies to any proceedings (other than proceedings in the [^{F3}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 [^{F4}any hearing in the course of the proceedings].

[The accused is prohibited from conducting his case in person at, or for the purposes ^{F5}(2A) 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 of this Act applies,
 - (d) abduction, and
 - (e) plagium.

Status: Point in time view as at 16/08/2013. This version of this provision has been superseded.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 08 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 [^{F6}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 child witness notice in respect of [^{F7}the trial], serve on the accused a notice under subsection (6).
- (6) A notice under this subsection shall contain intimation to the accused—
- ^{F8}(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 [^{F9}the conduct of his case at or for the purposes of the][^{F10}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 child witness notice or any other element of the proceedings against the accused.
- ^{F11}(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.]

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** 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(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.
- F7** 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.
- F8** 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.
- F9** 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

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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)

F10 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.

F11 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.

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