



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XIII

#### MISCELLANEOUS

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

#### **[<sup>F1</sup>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—
  - (a) in the [<sup>F2</sup>JP court] ,
  - (b) in respect of a sexual offence to which section 288C of this Act applies, or
  - (c) to which section 288E of this Act applies,where a vulnerable witness is to give evidence at, or for the purposes of, [<sup>F3</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—
  - (a) on the application of the prosecutor, or
  - (b) of its own motion,make an order prohibiting the accused from conducting his [<sup>F4</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>F5</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>F6</sup>in relation to a hearing after, as well as before, the hearing has commenced.]

*Status: Point in time view as at 11/07/2014. This version of this provision has been superseded.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 288F is up to date with all changes known to be in force on or before 17 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)*

<sup>F7</sup>(4A) [ <sup>F8</sup>..... ]

- (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>F9</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>F10</sup>(6)..... ]

### 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. 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](#)
- F3** 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.](#)
- F4** 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.](#)
- F5** 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.](#)
- F6** 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.](#)
- F7** S. 288F(4A) inserted (1.4.2005, 1.4.2006 and 1.4.2007 for certain purposes and otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 4\(4\), 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 \(with art. 3\)](#)
- F8** 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.](#)
- F9** 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.](#)
- F10** 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.](#)

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