

VULNERABLE WITNESSES (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Criminal Proceedings

Section 6 – Prohibition of personal conduct of defence in cases involving vulnerable witnesses

50. [Section 6](#) inserts new sections 288E and 288F into the Criminal Procedure (Scotland) Act 1995. Section 288E prohibits a person from conducting their own defence in certain types of offence involving a child witness under the age of 12 who is to give evidence in the trial. The prohibition applies to the trial and any proof relating to a victim statement.
51. Subsection (3) specifies that this provision relates to cases of abduction, plagium and violent offences.
52. Subsection (4) provides that the same procedure as set down in section 288D of the Criminal Procedure (Scotland) Act 1995 applies. That section provides for the appointment of a solicitor by the court for the accused.
53. Subsection (5) requires the prosecutor, in cases to which the prohibition applies, to serve a notice on the accused under subsection (6) at the same time as the child witness notice is served. Subsection (6) specifies what information the notice must contain.
54. Inserted section 288F provides a power for the court to prohibit a person from conducting their own defence in any case other than a sexual offence case or a case to which section 288E applies (where there is already an automatic prohibition) if a vulnerable witness is giving evidence in the trial.
55. Subsection (2) enables the court to make an order prohibiting the accused from conducting their own defence where it is satisfied that this is in the interests of the vulnerable witness.
56. Subsection (3) prevents the court from making such an order where there is a significant risk of prejudice to the fairness of the trial, which outweighs any prejudice to the interests of the vulnerable witness which may arise from allowing the accused to conduct their own defence.
57. Subsection (5) provides that once the court has decided that a person will be prohibited from conducting their own defence the same procedure as set down in section 288D of the 1995 Act applies. That section provides for the appointment of a solicitor by the court for the accused.
58. Where a person is prohibited under section 288E or 288F from conducting his own defence at the trial he is also prohibited from conducting his own defence at any subsequent victim statement proof.