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VALID FROM 01/04/2019

SCHEDULE

(introduced by section 12)

MODIFICATION OF ENACTMENTS

PART 1

RULES OF CRIMINAL PROCEDURE

CHAPTER 1

RESTRICTION ON BAIL IN SOLEMN CASES

(1) The 1995 Act is amended as follows.

(2) In section 23D—

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- (a) in subsection (2)—
 - (i) in paragraph (a), for the words "a violent or sexual offence" there is substituted "an offence falling within subsection (3A)",
 - (ii) in paragraph (b), for the words "a violent or sexual offence" there is substituted " an offence falling within subsection (3A) ",
- (b) after subsection (3) there is inserted—

"(3A) An offence falls within this subsection if it is-

- (a) a violent offence,
- (b) a sexual offence, or
- (c) a domestic abuse offence."
- (c) in subsection (4), after the first definition there is inserted—

""domestic abuse offence" means-

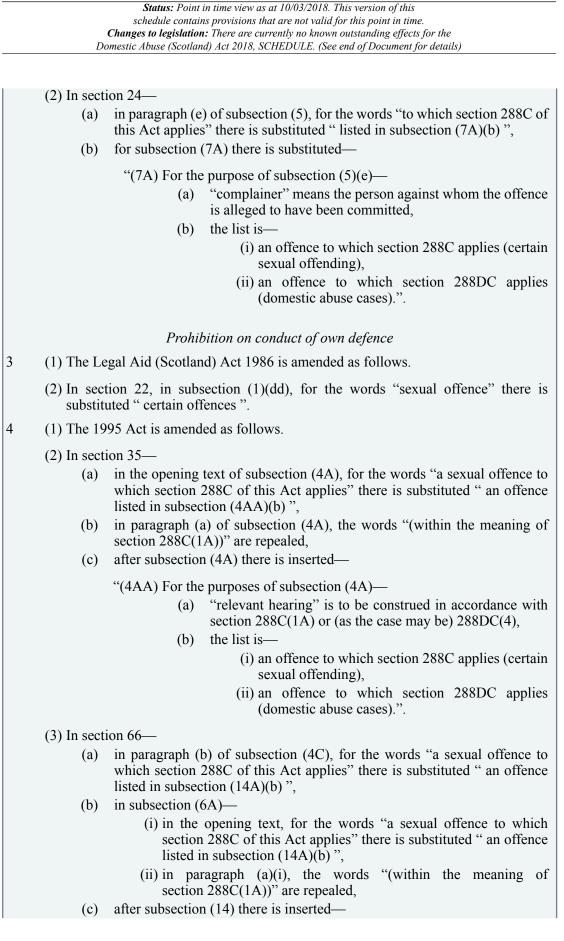
- (a) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018, or
- (b) an offence that is aggravated as described in section 1(1)
 (a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016;"
- (d) in subsection (5), for the words "a violent or sexual offence or a drug trafficking offence" there is substituted "a type of offence".

CHAPTER 2

CONDUCT OF PRECOGNITION AND DEFENCE

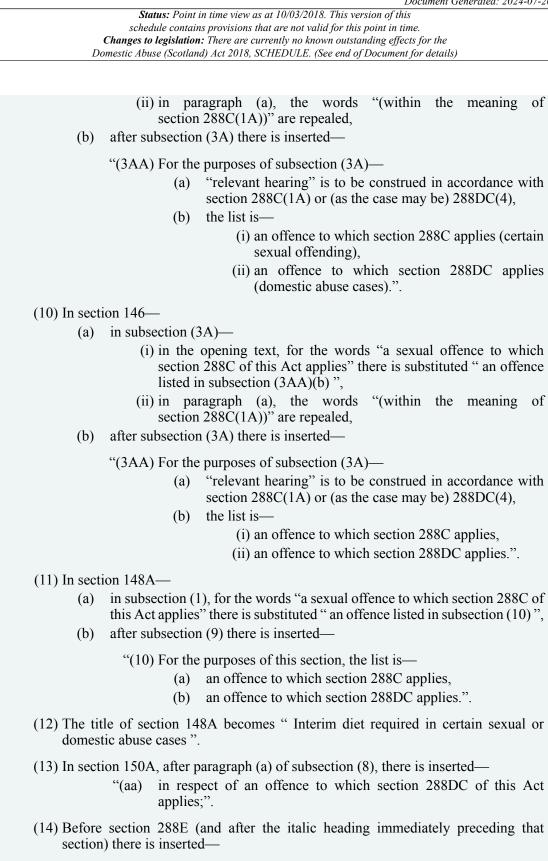
Bail condition concerning precognition

(1) The 1995 Act is amended as follows.



(a) (b) (4) In section 71, after para "(aa) in respo (domes	 section 288C(1A) or (as the case may be) 288DC(4), the list is— (i) an offence to which section 288C applies (certain sexual offending), (ii) an offence to which section 288DC applies (domestic abuse cases).". agraph (a) of subsection (B1) there is inserted— ect of an offence to which section 288DC of this Act applies stic abuse cases),".
(6) In section 72F, in paragethere is inserted " or 28	graph (a) of subsection (6), after the words "section 288C" 8DC ".
· / · · ·	ngraph (a) of subsection (2F) there is inserted— beet of an offence to which section 288DC of this Act
section listed i (ii) in par section	2A)— opening text, for the words "a sexual offence to which 288C of this Act applies" there is substituted "an offence n subsection (2C)(c)", ragraph (a), the words "(within the meaning of 288C(1A))" are repealed, (2C) there is substituted—
	 purposes of subsection (2A)— "commissioner proceedings" means proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b), "relevant hearing" is to be construed in accordance with section 288C(1A) or (as the case may be) 288DC(4), the list is— (i) an offence to which section 288C applies (certain sexual offending), (ii) an offence to which section 288DC applies (domestic abuse cases).".
(9) In section 144—	
(a) in subsection (3)	3A)—

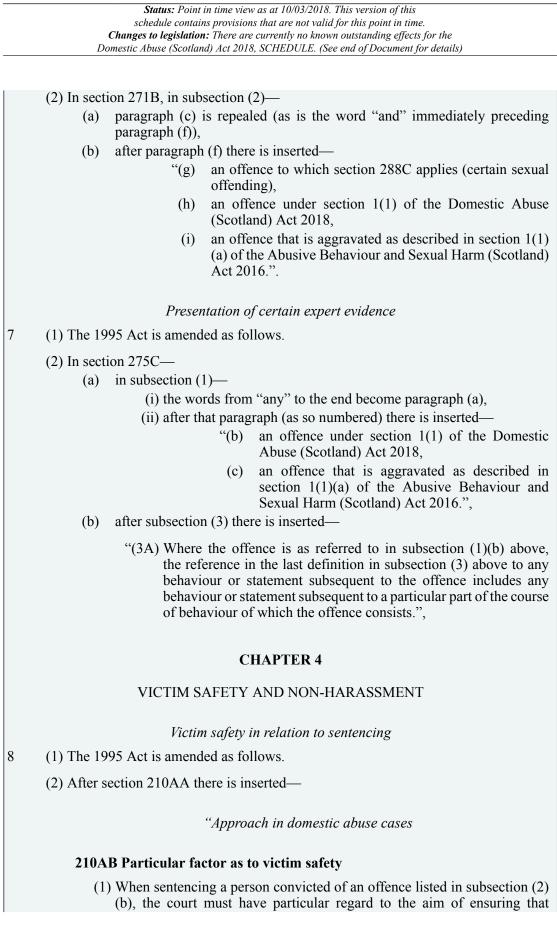
 (i) in the opening text, for the words "a sexual offence to which section 288C of this Act applies" there is substituted "an offence listed in subsection (3AA)(b) ",



Prohibition of personal conduct of defence in domestic abuse cases

"288DQ) This section applies to-

	(a) an offence under section 1(1) of the Domestic Abuse (Act 2018,	(Scotland)
	(b) an offence that is aggravated as described in section 1(1 Abusive Behaviour and Sexual Harm (Scotland) Act 20	
	(2) An accused in proceedings for an offence to which this section is prohibited from conducting the accused's case in person at, purposes of, any relevant hearing in the course of the proceeding	or for the
	(3) Section 288D applies in the case of proceedings in respect of an which this section applies as it does in the case of proceedings in an offence to which section 288C applies (and a reference in sec to a relevant hearing is to be read accordingly).	respect of
	(4) In subsection (2), "relevant hearing" means a hearing at, or for the of, which a witness is to give evidence.".	e purposes
	(15) In section 288E, in paragraph (c)(ii) of subsection (3), after the "section 288C" there is inserted " or 288DC".	he words
	 (16) In section 288F, after paragraph (b) of subsection (1) there is inserted— "(ba) in respect of an offence to which section 288DC of applies,". 	this Act
5	(1) The Criminal Justice (Scotland) Act 2016 is amended as follows.	
	(2) In section 20—	
	 (a) in subsection (1), in each of paragraphs (a) and (b)(ii), for the sexual offence to which section 288C of the 1995 Act applies substituted " an offence listed in subsection (3)(b) ", 	
	 (b) in paragraph (a) of subsection (2), the words "(within the m section 288C(1A) of the 1995 Act)" are repealed, (c) after subsection (2) there is inserted— 	eaning of
	 "(3) For the purposes of subsections (1) and (2)— (a) "relevant hearing" is to be construed in accord section 288C(1A) or (as the case may be) 288DC 1995 Act, (b) the list is— 	
	 (i) an offence to which section 288C of the applies (certain sexual offending), (ii) an offence to which section 288DC of Act applies (domestic abuse cases).". 	
	(3) The title of section 20 becomes "Information to be given in particular ca	ases ".
	CHAPTER 3	
	VULNERABLE WITNESSES AND EXPERT EVIDENCE	
	Special measures for vulnerable witnesses	
6	(1) The 1995 Act is amended as follows.	



the victim is not the subject of a further such offence committed by the convicted person.

- (2) For the purpose of subsection (1)—
 - (a) "victim" means the person against whom the offence was committed,
 - (b) the list is—
 - (i) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
 - (ii) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.".

Consideration of non-harassment order

(1) The 1995 Act is amended as follows.

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(2) After section 234A there is inserted—

"234AZA Non-harassment orders: domestic abuse cases

- (1) Section 234A applies subject to this section if an offence referred to in subsection (1) of that section is one listed in subsection (2)(c).
- (2) For the purposes of this section—
 - (a) "victim" has the same meaning as it has in section 234A,
 - (b) "child" has the same meaning as given by section 5(11) of the Domestic Abuse (Scotland) Act 2018,
 - (c) the list is—
 - (i) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
 - (ii) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.
- (3) A non-harassment order in the person's case may include provision for the order to apply in favour of any of the following, in addition to the victim—
 - (a) in any circumstances, a child usually residing with the person or a child usually residing with the victim (or a child usually residing with both the person and the victim),
 - (b) where the offence is one under section 1(1) of the Domestic Abuse (Scotland) Act 2018, and is aggravated as described in section 5(1)
 (a) of that Act, a child to whom the aggravation relates,

if the court is satisfied that it is appropriate for the child to be protected by the order.

- (4) The court must—
 - (a) without an application by the prosecutor, consider whether to make a non-harassment order in the person's case,
 - (b) after hearing the prosecutor as well as the person, make such an order unless of a negative conclusion on the question,

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(c) if of a negative conclusion on the question, explain the basis for this.

- (5) Here, a negative conclusion on the question is the conclusion by the court that there is no need for—
 - (a) the victim, or
 - (b) the children (if any) in mind by virtue of subsection (3),
 - to be protected by such an order.
- (6) In the operation of section 234A along with subsection (4)—
 - (a) subsection (1A) of that section is of no effect (and the reference in subsection (2) of that section to an application under subsection (1A) of that section is to be ignored),
 - (b) further-
 - (i) the references in subsections (2A), (2BA) and (2C) of that section to the person against whom the order is sought are to be read as being to the person in whose case the making of a non-harassment order is being considered,
 - (ii) the reference in subsection (2C) of that section to representations in response to the application is to be read as being to representations on the question of whether to make a non-harassment order,
 - (iii) the reference in subsection (6) of that section to the prosecutor at whose instance the order is made is to be read as being to the prosecutor in the case in which the non-harassment order is made.
- (7) For the avoidance of doubt, nothing in this section affects the ability to make a non-harassment order in the case instead of or in addition to dealing with the person in any other way.".

PART 2

MINOR AND CONSEQUENTIAL AMENDMENTS

- 10 (1) The 1995 Act is amended as follows.
 - (2) In section 79 (preliminary pleas and preliminary issues), after paragraph (c) of subsection (3A) there is inserted—
 - "(d) section 1A(2)(b) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 or section 7(2)(b) of the Domestic Abuse (Scotland) Act 2018.".
- 11 (1) The Abusive Behaviour and Sexual Harm (Scotland) Act 2016 is amended as follows.
 - (2) In section 1 (aggravation of offence where abuse of partner or ex-partner), in subsection (6)(b), the words "or civil partners" are repealed.
 - (3) After section 1 there is inserted—

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"1A Presumption as to the relationship

- (1) In proceedings for an offence that is aggravated as described in section 1(1)
 (a), the matter of a person being another person's partner or ex-partner is to be taken as established—
 - (a) according to the stating of the matter in the charge of the offence in the complaint or indictment, and
 - (b) unless the matter is challenged as provided for in subsection (2).
- (2) The matter is challenged—
 - (a) in summary proceedings, by—
 - (i) preliminary objection before the plea is recorded, or
 - (ii) later objection as the court allows in special circumstances,
 - (b) in proceedings on indictment, by giving notice of a preliminary objection in accordance with section 71(2) or 72(6)(b)(i) of the 1995 Act.".

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