



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XIII

MISCELLANEOUS

*[^{F1}Convention rights ^{F1}... compatibility issues [^{F1},
devolution issues and UNCRC compatibility issues]]*

[^{F1}288AReferences of UNCRC compatibility issues to the High Court or Supreme Court

- (1) In this section and section 288AC, “UNCRC compatibility issue” means a question, arising in criminal proceedings as to—
 - (a) whether words in an enactment to which section 29 or 30 of the UNCRC Incorporation Act applies give rise to an incompatibility with the UNCRC requirements,
 - (b) whether a public authority has acted (or proposed to act) in a way which is made unlawful by section 6(1) of the UNCRC Incorporation Act.
- (2) In subsection (1)—
 - “public authority” has the same meaning as in section 6(5) of the UNCRC Incorporation Act,
 - “the UNCRC requirements” has the meaning given in section 1(2) of that Act,
 - “UNCRC Incorporation Act” means the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.
- (3) Where a UNCRC compatibility issue has arisen in criminal proceedings before a court, other than a court consisting of 2 or more judges of the High Court, the court may, instead of determining it, refer the issue to the High Court.
- (4) The Lord Advocate, if a party to criminal proceedings before a court, other than a court consisting of 2 or more judges of the High Court, may require the court to refer to the High Court any UNCRC compatibility issue which has arisen in the proceedings.

Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 288AB is up to date with all changes known to be in force on or before 10 September 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) View outstanding changes

- (5) The High Court may, instead of determining a UNCRC compatibility issue referred to it under subsection (4), refer it to the Supreme Court.
- (6) Where a UNCRC compatibility issue has arisen in criminal proceedings before a court consisting of 2 or more judges of the High Court, otherwise than on a reference, the court may, instead of determining it, refer it to the Supreme Court.
- (7) The Lord Advocate, if a party to criminal proceedings before a court consisting of 2 or more judges of the High Court, may require the court to refer to the Supreme Court any UNCRC compatibility issue which has arisen in the proceedings otherwise than on a reference.
- (8) On a reference to the Supreme Court under this section—
 - (a) the powers of the Supreme Court are exercisable only for the purpose of determining the UNCRC compatibility issue,
 - (b) for that purpose the Court may make any change in the formulation of that issue that it thinks necessary in the interests of justice.
- (9) When it has determined a compatibility issue on a reference under this section, the Supreme Court must remit the proceedings to the High Court.
- (10) An issue referred to the High Court or the Supreme Court under this section is referred to it for determination.]

Textual Amendments

- F1** Ss. 288AB, 288AC inserted (16.7.2024) by [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024 \(asp 1\)](#), **ss. 32(3), 47(2)(a)** (with s. 43)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by [2010 asp 13 Sch. 7 para. 26](#)
- s. 13(1B)(1C) inserted by [2006 asp 10 s. 82\(2\)](#)
- s. 13(2)(aa) inserted by [2006 asp 10 s. 82\(3\)\(b\)](#)
- s. 13(3A) inserted by [2006 asp 10 s. 82\(4\)](#)
- s. 13(5)(ba) inserted by [2006 asp 10 s. 82\(5\)\(a\)](#)
- s. 13(6)(a)(iii) and word inserted by [2006 asp 10 s. 82\(6\)\(b\)](#)
- s. 13(8) inserted by [2006 asp 10 s. 82\(7\)](#)
- s. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- s. 49(1)-(1F) substituted for s. 49(1)-(3) by [2024 asp 5 s. 17\(2\)\(a\)](#)
- s. 49(4A)-(4C) inserted by [2024 asp 5 s. 17\(2\)\(c\)](#)
- s. 50(7) inserted by [2024 asp 5 s. 16\(2\)](#)
- s. 70B and cross-heading inserted by [2024 asp 5 s. 16\(3\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 142A inserted by [2024 asp 5 s. 16\(5\)](#)
- s. 167(7D)(7E) inserted by [2007 asp 17 sch. 4 para. 1\(3\)](#)
- s. 167(7D) words substituted by [2010 asp 13 Sch. 3 para. 16\(2\)](#)
- s. 167(7E) words substituted by [2010 asp 13 Sch. 3 para. 16\(3\)](#)
- s. 175(1)(ca) words substituted by [2024 asp 5 Sch. para. 7\(4\)\(a\)](#)
- s. 194ZA repealed by [2014 asp 18 sch. 3 para. 25](#)
- s. 200A inserted by [2016 asp 1 s. 85](#)
- s. 205A added by [1997 c. 48 s. 1\(1\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)