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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 392 (C. 21)**

**HIGH COURT OF JUSTICIARY  
SHERIFF COURT**

**The Vulnerable Witnesses (Criminal Evidence)  
(Scotland) Act 2019 (Commencement No. 1  
and Transitional Provisions) Regulations 2019**

*Made* - - - - *14th November 2019*  
*Laid before the Scottish*  
*Parliament* - - - - *18th November 2019*  
*Coming into force* - - *20th January 2020*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 12(2) and (3) of the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019(1).

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 (Commencement No. 1 and Transitional Provisions) Regulations 2019 and come into force on 20 January 2020.

(2) In these Regulations, “the Act” means the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019.

**Appointed day**

2.—(1) 20 January 2020 is the day appointed for the coming into force of the provisions of the Act specified in column 1 of the table in the schedule (the subject matter of which is described in the corresponding entry in column 2).

(2) Where a purpose is specified in an entry in column 3 of the table, the provision specified in the corresponding entry in column 1 comes into force only for that purpose.

**Child witnesses in certain solemn cases- transitional provision**

3. Section 1 of the Act applies only—

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- (a) where any accused in the proceedings first appears on petition on or after 20 January 2020, or
- (b) where no accused appears on petition, the indictment is served on any accused in the proceedings on or after 20 October 2020.

**Taking evidence by commissioner- transitional provisions**

4.—(1) Section 5(2) and (3) of the Act apply only where a commissioner is appointed on or after 20 January 2020.

(2) Section 5(6) of the Act applies only where section 1 applies by virtue of regulation 3.

St Andrew's House,  
Edinburgh  
14th November 2019

*HUMZA YOUSAF*  
A member of the Scottish Government

## SCHEDULE

Regulation 2

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provisions of the Act</i>	<i>Subject matter</i>	<i>Purpose of commencement</i>
Section 1	Child witnesses in certain solemn cases	Hearings in proceedings in the High Court of Justiciary
Section 2	Child witnesses under the age of 12	
Section 4	Review of arrangements for vulnerable witnesses	Hearings in proceedings in the High Court of Justiciary
Section 5	Taking evidence by commissioner	
Section 7	Timeframe for considering vulnerable witness notice	
Section 8	Vulnerable witness notice: lodging deadline	
Section 9	Report on operation of sections 1 and 5	
Section 10(1) to (3)	Consequential amendments	

**EXPLANATORY NOTE***(This note is not part of the Regulations)*

These Regulations bring into force on 20 January 2020 sections 1, 2, 4, 5, 7, 8, 9 and 10(1) to (3) of the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 (“the Act”).

Section 1 of the Act introduces a new rule in favour of pre-recording the evidence of child witnesses other than the accused in solemn proceedings (subject to specific exceptions), where the alleged offence is listed in new section 271BZA(2) of the Criminal Procedure (Scotland) Act 1995 (inserted by section 1). Under regulation 2 and the schedule of these regulations, section 1 will come into force only for the purpose of proceedings in the High Court of Justiciary. Under regulation 3, section 1 will apply for this purpose only in cases where the accused first appears on petition on or after 20 January 2020. In a small number of cases the accused never appears on petition, and in this situation section 1 will apply where the indictment is served on or after 20 October 2020. Under regulation 4(2), the same transitional arrangements will apply to section 5(6) of the Act, which alters the way in which the age of a witness is calculated where this is relevant to a decision on authorising the taking of evidence by commissioner. However, commencement of section 5(6) is not restricted to the High Court.

Section 4 of the Act restricts the ability of the court to alter on review an order providing for all of a witness’s evidence to be pre-recorded, even where the case does not fall within the new rule. This will commence for reviews on or after 20 January 2020, but in High Court proceedings only.

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Section 5(2) and (3) of the Act, which relate to a new requirement to fix a ground rules hearing in all cases where evidence is to be taken by commissioner, will apply only in cases where the commissioner is appointed by the court on or after 20 January 2020 (see regulation 4(1)).

The Bill for the Act received Royal Assent on 13 June 2019. Sections 11 to 13 came into force the following day.