
EXPLANATORY NOTE

(This note is not part of the Order)

This Commencement Order brings into force various provisions of the Vulnerable Witnesses (Scotland) Act 2004 (“the Act”). Part I of the Act amended the procedures in the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) as regards special measures for hearing the evidence of children and other vulnerable witnesses.

Previous commencement orders (the Vulnerable Witnesses (Scotland) Act 2004 (Commencement) Order 2005 ([S.S.I. 2005/168](#)) and the Vulnerable Witnesses (Scotland) Act 2004 (Commencement No. 2, Saving and Transitional Provisions) Order 2005 ([S.S.I. 2005/590](#))) brought into force all the special measures available to children in criminal proceedings under the Act. The special measures available under the Act are now brought into force with regard to adult vulnerable witnesses in solemn proceedings in the High Court and Sheriff Courts. The special measure of taking evidence by a commissioner is brought into force in respect of adult witnesses in such proceedings, other than proceedings in which, at the time the court is considering the vulnerable witness application under section 271C(5) or 271C(7) of the 1995 Act, or is reviewing the current arrangements for taking a vulnerable witness’s evidence under section 271D(1) of the 1995 Act: (i) the accused is charged with a sexual offence to which section 288C of the 1995 Act applies (rape, sodomy, etc., or other offences containing a substantial sexual element in respect of which the court has made an order under section 288C(4)); or (ii) a child witness under 12 is to give evidence at or for the purposes of the trial and the accused is charged with an offence listed in section 288E(3) of the 1995 Act (murder, culpable homicide, etc); or (iii) the court has made an order under section 288F of the 1995 Act prohibiting the accused from conducting his own defence in person at the trial and any victim statement proof relating to any offence to which the trial relates.

Part 2 of the 2004 Act provides for special measures in civil cases. The two previous commencement orders referred to above commenced all the special measures available under Part 2 of the Act, but only in relation to certain children’s hearings court proceedings in the sheriff court (which in Scotland are classed as civil proceedings) and only in respect of child witnesses. This Commencement Order brings those special measures into force for adult vulnerable witnesses in respect of sheriff court proceedings under Part II of the Children (Scotland) Act 1995. The special measure of taking evidence by a commissioner is brought into force in respect of adult witnesses in such proceedings, other than proceedings in respect of applications under section 65(7), 65(9) or 85 of that Act to which section 68A of that Act applies (restrictions on evidence in certain cases involving sexual abuse).