

2004 No. 405 (C. 28)

CRIMINAL LAW

**The Criminal Procedure (Amendment) (Scotland) Act 2004
(Commencement, Transitional Provisions and Savings)
Order 2004**

Made - - - - *22nd September 2004*

The Scottish Ministers, in exercise of the powers conferred by section 27(1) and (2) of the Criminal Procedure (Amendment) (Scotland) Act 2004(a), hereby make the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Criminal Procedure (Amendment) (Scotland) Act 2004 (Commencement, Transitional Provisions and Savings) Order 2004.

(2) In this Order—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(b); and

“the 2004 Act” means the Criminal Procedure (Amendment) (Scotland) Act 2004.

(3) In this Order, unless the context otherwise requires, words and expressions have the same meaning as in the 1995 Act (as amended by the 2004 Act).

Appointed day

2.—(1) Subject to the transitional provisions and savings contained in articles 3 to 5, the day appointed for the coming into force of the provisions of the 2004 Act set out in column 1 of Schedule 1 to this Order is the day specified in column 2 of that Schedule, but where an exception is specified in relation to a provision in column 1, that provision shall come into force on the appointed day subject to that exception.

(2) The day appointed for the coming into force of the provisions of the 2004 Act set out in column 1 of Schedule 2 to this Order shall be the same day as that appointed for the coming into force of the provisions in the Vulnerable Witnesses (Scotland) Act 2004(c) specified in column 2 of Schedule 2, but where any provision in column 2 comes into force only for a particular purpose, the corresponding provision in column 1 shall come into force only for that purpose.

Transitional provision and savings

3.—(1) No preliminary hearing shall take place before 1st April 2005.

(2) The provisions of the 2004 Act which come into force on 1st February 2005 shall apply for the purposes of a first diet, preliminary hearing or trial diet that commences after 31st March 2005.

(a) 2004 asp 5.

(b) 1995 c.46.

(c) 2004 asp 3.

(3) The provisions of the 1995 Act shall continue to apply as if this Order had not been made where (and only where)–

- (a) the accused is cited on or before 1st March 2005 to a diet in the High Court or the sheriff court which commences before 1st April 2005; or
- (b) the period mentioned in subsections (1) or (4) of section 65 of the 1995 Act as so continued (taking into account any extension under subsections (3), (5) or (7)) expires before 1st April 2005.

(4) Sub-paragraph (3) does not apply to the provisions of the 1995 Act that are repealed, substituted or amended by provisions of the 2004 Act that come into force on a day other than 1st February 2005.

(5) The reference in sub-paragraph (3)(a) to citation to a diet which commences before 1st April 2005 includes–

- (a) any further, adjourned, postponed or altered diet which commences before that date;
- (b) re-indictment to any diet which commences before that date; and
- (c) a first diet in the sheriff court which commences before that date and any subsequent trial diet in the sheriff court, provided the trial diet also commences before that date.

(6) For the purposes of this article–

- (a) a diet other than a trial diet shall be taken to commence when it is called; and
- (b) a trial diet shall be taken to commence when the jury is sworn.

Transitional provision relating to procedure where trial diet does not proceed

4.—(1) This article applies where a trial diet has been fixed for a date on or after 1st February 2005 but before 1st April 2005 and the trial does not proceed on that date.

(2) Where the High Court appoints a further trial diet for a date after 31st March 2005 it may, if it is satisfied that it is appropriate to do so, indicate that the diet is to be a floating diet for the purposes of section 83A of the 1995 Act.

(3) Where section 81(5)(a)(i) of the 1995 Act applies (as amended by the 2004 Act) it shall be read without reference to the word “further”.

(4) The application of the 1995 Act (as amended by the 2004 Act) in circumstances to which this article applies shall not have the effect of requiring a preliminary hearing to commence within a period of 11 months of the first appearance of the accused on petition in respect of the offence.

Transitional provision relating to engagement, dismissal and withdrawal of solicitor representing accused

5. Where any notification requirement arises by virtue of the coming into force of section 8 of the 2004 Act, that requirement is complied with if–

- (a) notification has been given prior to the coming into force of section 8 in a manner that satisfies the requirements of section 72F of the 1995 Act (as substituted by section 8 of the 2004 Act); or
- (b) notification is given forthwith.

St Andrew’s House,
Edinburgh
22nd September 2004

CATHY JAMIESON
A member of the Scottish Executive

SCHEDULE 1

Article 2(1)

<i>Column 1</i> <i>(provision of the 2004 Act)</i>	<i>Column 2</i> <i>(appointed day)</i>
Sections 17 and 20 to 24 and section 25 and paragraph 1 of the schedule for the purposes of bringing into force paragraphs 6, 17, 33 and 35 to 37 of the schedule.	4th October 2004
Sections 8 and 12 and section 25 and paragraph 1 of the schedule for the purposes of bringing into force paragraphs 3, 12 and 21 of the schedule.	4th December 2004
Sections 1(1) and (2), 1(3) (except for the purpose of inserting sections 72(6)(b)(ii), (6)(e) and (7) and 72B(1)(c) into the 1995 Act), 2, 3, 4(1) and (2), 5 to 7, 9, 10, 11 (except for the purpose of inserting sections 90B(7) to (9) and (11)(b) and 90C(3) to (9) into the 1995 Act), 13 to 16, 18, 19 and section 25 and paragraph 1 of the schedule for the purposes of bringing into force paragraphs 2, 4, 5, 7 to 11, 13 to 16, 18 to 20, 22 to 32, 34, 38 to 42, 45 to 49 and 51 to 58 of the schedule.	1st February 2005

SCHEDULE 2

Article 2(2)

<i>Column 1</i> <i>(provision of the 2004 Act)</i>	<i>Column 2</i> <i>(provision of the Vulnerable Witnesses</i> <i>(Scotland) Act 2004)</i>
Section 1(3), so far as it inserts sections 72(6)(b)(ii), (6)(e), (7) and 72B(1)(c) into the 1995 Act and section 25 and paragraph 1 of the schedule for the purposes of bringing into force paragraphs 43 and 44 of the schedule.	Section 1, so far as it inserts sections 271A, 271C and 271D into the 1995 Act.
Section 4(3) and (4).	Section 6, so far as it inserts sections 288E and 288F into the 1995 Act.
Section 25 and paragraph 1 of the schedule for the purposes of bringing into force paragraph 50 of the schedule.	Section 4.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force provisions of the Criminal Procedure (Amendment) (Scotland) Act 2004 (“the 2004 Act”) on various dates, and in specified circumstances (article 2). It also makes transitional and savings provisions (articles 3 to 5).

Article 2(1) brings into force the provisions specified in column 1 of Schedule 1 on the dates specified in column 2 of Schedule 1.

Article 2(2) provides that the provisions specified in column 1 of Schedule 2 will come into force on the same day as the corresponding provisions of the Vulnerable Witnesses (Scotland) Act 2004 (listed in column 2 of Schedule 2) come into force. A separate order or orders setting out the date or dates on which the provisions of the Vulnerable Witnesses (Scotland) Act 2004 come into force will be made. Certain provisions may only commence for certain purposes, in which case the provisions in column 1 of Schedule 2 will only commence for those purposes.

Article 3 contains transitional and savings provisions. Article 3(1) prevents a preliminary hearing taking place before 1st April 2005. However, the provisions that come into force on 1st February 2005 will apply from that date for the purposes of a first diet (in the sheriff court), preliminary hearing (in the High Court) or trial diet that commences after 31st March 2005 (article 3(2)).

The provisions in the 1995 Act shall continue to apply in certain circumstances as if they had not been amended, substituted or repealed by the provisions of the 2004 Act that come into force by virtue of this Order. Article 3(3) details the circumstances in which this will take place. Article 3(4) limits the scope of article 3(3) by providing that it does not apply to the provisions of the 1995 Act that are repealed, substituted or amended by provisions of the 2004 Act that come into force on a day other than 1st February 2005. Articles 3(5) and (6) contain interpretation provisions.

Article 4 contains transitional provisions to deal with the situation where a trial diet is scheduled to commence between 1st February and 31st March 2005 but, for whatever reason, does not commence on that date. Article 4(2) provides that where the High Court appoints a further trial diet for a date after 31st March 2005, it may use the power in section 83A of the 1995 Act (inserted by section 5 of the 2004 Act) to indicate that the diet is to be a floating diet. Where a trial diet does not proceed and the prosecutor gives notice to the accused under section 81 of the 1995 Act (substituted by section 9 of the 2004 Act) to appear on another date, article 4(3) provides that section 81(5)(a)(i) is to be read without the word “further”. Article 4(4) disapplies the 11 month time limit for the commencement of a preliminary hearing in circumstances to which article 3 applies.

Article 5 contains a transitional provision relating to the notification requirement in section 72F of the 1995 Act (as inserted by section 8 of the 2004 Act). Any such requirement will be met if notification was given prior to the coming into force of section 72F in a manner that would satisfy its requirements, or if notification is given forthwith.

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