

**2005 No. 168 (C. 7)**

**HIGH COURT OF JUSTICIARY**

**SHERIFF COURT**

**The Vulnerable Witnesses (Scotland) Act 2004  
(Commencement) Order 2005**

*Made* - - - - - *17th March 2005*

*Coming into force* - - - - - *1st April 2005*

The Scottish Ministers, in exercise of the powers conferred upon them by section 25 of the Vulnerable Witnesses (Scotland) Act 2004<sup>(a)</sup>, hereby make the following Order:

**Citation**

1. This Order may be cited as the Vulnerable Witnesses (Scotland) Act 2004 (Commencement) Order 2005.

**Appointed day**

2.—(1) 1st April 2005 is the day appointed for the coming into force of the provisions of the Vulnerable Witnesses (Scotland) Act 2004 set out in column 1 of the table of commencements in the schedule to this Order.

(2) The provisions referred to in subsection (1) shall come into force only for the purposes set out in column 2 of the table of commencements in the schedule to this Order.

**Definitions**

3. In this instrument:

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995<sup>(b)</sup>;

“the 2004 Act” means the Vulnerable Witnesses (Scotland) Act 2004.

**Savings and Transitions**

4.—(1) The provisions of the Vulnerable Witnesses (Scotland) Act 2004 brought into force by this Order shall, in respect of solemn proceedings in the High Court and the sheriff court, apply only to solemn proceedings commenced on or after 1st April 2005, with proceedings being taken to have commenced when a report of the case has been received by the procurator fiscal.

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<sup>(a)</sup> 2004 asp 3.  
<sup>(b)</sup> 1995 c.46.

(2) Part 2 of the Vulnerable Witnesses (Scotland) Act 2004, commenced by this Order in respect of children's hearings court proceedings, shall apply only in respect of hearings of relevant appeals and applications which have been lodged on or after 1st April 2005.

St Andrew's House,  
Edinburgh  
17th March 2005

*HUGH HENRY*  
A member of the Scottish Executive

## SCHEDULE

### Table of Commencements of the Vulnerable Witnesses (Scotland) Act 2004

<i>Provisions to be commenced</i>	<i>Purposes for which the provision is to be commenced</i>
Section 1 insofar as it substitutes for section 271 of the 1995 Act sections 271 (other than in sub-sections (5) and (6) of substituted section 271 the reference to section 271I), 271A, 271B, 271D (other than sub-section (5) of 271D and other than the reference in sub-section (2)(a) of 271D to 271C), 271E (other than the reference in sub-section (1)(b) of 271E to 271C), 271F (other than sub-sections (3), (4) and (8)(b) of 271F), 271G (other than in respect of section 271C), 271H (other than sub-section (1)(a) of 271H and the reference in sub-sections(1) and (3) of 271H to 271C) and 271J-271M	Only– (a) in respect of solemn proceedings in the High Court and sheriff court; and  (b) in respect of child witnesses as referred to in section 271(1)(a) of the Criminal Procedure (Scotland) Act 1995
Section 2 (other than sub-sections(2), (3) and (5))	Only– (a) in respect of solemn proceedings in the High Court and sheriff court; and  (b) in respect of child witnesses as referred to in section 271(1)(a) of the Criminal Procedure (Scotland) Act 1995
Section 3 insofar as it inserts section 15A (other than the reference in sub-section (1) of section 15A to 271I and the reference in section 15A(3)(b) to section 271C)	Only– (a) in respect of solemn proceedings in the High Court and sheriff court; and  (b) in respect of child witnesses as referred to in section 271(1)(a) of the 1995 Act
Section 4	For all purposes
Section 5	For all purposes
Section 6 insofar as it inserts section 288E into the 1995 Act	Only in respect of solemn proceedings in the High Court and sheriff court
Section 6 insofar as it inserts section 288F into the 1995 Act	Only– (a) in respect of solemn proceedings in the High Court and sheriff court; and  (b) in respect of child witnesses as referred to in section 271(1)(a) of the 1995 Act

<i>Provisions to be commenced</i>	<i>Purposes for which the provision is to be commenced</i>
Section 7(1) and (3)	Only– (a) in respect of solemn proceedings in the High Court and sheriff court; and  (b) in respect of child witnesses as referred to in section 271(1)(a) of the 1995 Act
Section 8	Only in respect of solemn proceedings in the High Court and sheriff court
Sections 11(1)(a), 11(3) and 11(5) (except in section 11(5) the reference to section 18 shall not include section 18(1)(a) and there shall be omitted the definition of vulnerable witness application)	Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995 in respect of appeals under section 51(1) and applications under sections 68 and 85 of that Act and only in respect of child witnesses
Section 12(1) to (4)	Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995 in respect of appeals under section 51(1) and applications under sections 68 and 85 of that Act
Section 13	Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995 in respect of appeals under section 51(1) and applications under sections 68 and 85 of that Act and only in respect of child witnesses
Section 14	Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995 in respect of appeals under section 51(1) and applications under sections 68 and 85 of that Act and only in respect of child witnesses
Section 15 (with omission of the words “or a vulnerable witness application” in section 15(1)(a) and the omission of the words “or vulnerable witness application” in section 15(4)(a))	Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995 in respect of appeals under section 51(1) and applications under sections 68 and 85 of that Act
Section 16 (with omission in the first line of “or other person”)	Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995 in respect of appeals under section 51(1) and applications under sections 68 and 85 of that Act
Section 17(1)	Only in so far as the sections mentioned in section 17(1) have been commenced

<i>Provisions to be commenced</i>	<i>Purposes for which the provision is to be commenced</i>
Section 17(2)	Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995 in respect of appeals under section 51(1) and applications under sections 68 and 85 of that Act and only in respect of child witnesses
Section 18 (other than sub-section (1)(a))	Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995 in respect of appeals under section 51(1) and applications under sections 68 and 85 of that Act and only in respect of child witnesses
Section 20	Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995 in respect of appeals under section 51(1) and applications under sections 68 and 85 of that Act and only in respect of child witnesses
Section 21	Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995 in respect of appeals under section 51(1) and applications under sections 68 and 85 of that Act and only in respect of child witnesses
Section 22	Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995 in respect of appeals under section 51(1) and applications under sections 68 and 85 of that Act and only in respect of child witnesses
Section 23	For all purposes
Section 24	For all purposes

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Commencement Order brings into force the first phase of the implementation of the Vulnerable Witnesses (Scotland) Act 2004 (“the Act”). That 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. The new regime introduced by the Act is applied in the first phase to trials on indictment in the High Court and Sheriff Court (i.e. solemn criminal proceedings involving trial by judge and jury). Secondly the new regime is confined to children defined as persons under 16 years old. The intention is that as regards criminal trials these procedures will in a subsequent phase be extended to all criminal trials in these courts, and there is power in the act to extend them to the District Courts. It is also the intention to extend the regime to all vulnerable witnesses (i.e. not confined to children). The new regime introduced in the first phase introduces all the special measures available to children under the amended 1995 Act other than the taking of evidence on commission. Again the intention is that this special measure will be made available when arrangements are in place. As regards proceedings not subject to the first phase regime, they will still be subject to section 271 of the 1995 Act (unsubstituted).

Part 2 of the Act provides for special measures in civil cases. This Part has been commenced only for limited purposes, namely in relation to children’s hearings which in Scotland are classed as civil proceedings and only in respect of proceedings in the sheriff court under Part II of the 1995 Act in respect of appeals under section 51(1) and applications under sections 68 and 85 of that Act. These are the only parts of the procedure where a child could be asked to give evidence. As in relation to the first phase criminal implementation, evidence on commission is not covered at present as a special measure. As with first phase criminal proceedings the special measures will be available only in respect of child witnesses.

Commenced for all purposes are also certain free standing measures not to do with special measures, namely sections 4 and 5 of the Act which amended the 1995 Act to respectively a) simplify evidence of identification; and b) allow expert evidence of the complainer’s subsequent behaviour in certain cases. The last provision is designed to allow psychiatrists and other experts to testify that certain types of conduct after the commission of an alleged offence on the complainer is not necessarily inconsistent with the credibility of that type of complaint. Sections 6, 7, 8 and 9 make further changes to the 1995 Act procedures. Section 23 amends the 1995 Act to restrict evidence that may be led in child abuse cases at children’s hearings. Finally for all cases - criminal and civil- the competence test is abolished (section 24 of the Act). In future witnesses will not be excluded if they are not apparently mentally sound, but rather their evidence will be heard and assessed as far as it goes and for what it is worth..



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