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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 40**

**CRIMINAL LAW**

**The Criminal Procedure (Amendment)  
(Scotland) Act 2004 (Incidental, Supplemental  
and Consequential Provisions) Order 2005**

*Made - - - - 24th January 2005*

*Coming into force in accordance with article 1*

The Scottish Ministers, in exercise of the powers conferred by section 26(1) and (2) of the Criminal Procedure (Amendment) (Scotland) Act 2004<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Order, a draft of which has, in accordance with section 26(4) of that Act, been laid before and approved by resolution of the Scottish Parliament:

**Citation and commencement**

1.—(1) This Order may be cited as the Criminal Procedure (Amendment) (Scotland) Act 2004 (Incidental, Supplemental and Consequential Provisions) Order 2005.

(2) Subject to paragraph (3) below, this Order shall come into force on 31st January 2005.

(3) Article 4(3) shall come into force on the day appointed for the coming into force of section 1 of the 2004 Act, so far as that section inserts sections 271A and 271C into the 1995 Act, but where section 1 of the 2004 Act comes into force for a particular purpose, article 4(3) shall come into force only for that purpose.

**Interpretation**

2. In this Order—

“the 2004 Act” means the Vulnerable Witnesses (Scotland) Act 2004<sup>(2)</sup>

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995<sup>(3)</sup>.

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(1) 2004 asp 5.  
(2) 2004 asp 3.  
(3) 1995 c. 46.

### **Amendments to the Criminal Procedure (Amendment) (Scotland) Act 2004**

3.—(1) The Criminal Procedure (Amendment) (Scotland) Act 2004 is amended in accordance with the following paragraphs of this article.

(2) In section 9, in section 81(4) of the 1995 Act as substituted, after “appointed” where it first occurs, insert “or the accused has been cited to a trial diet in the sheriff court”.

(3) In section 10(3), in inserted section 92(2F) of the 1995 Act, for paragraph (b) substitute—

“(b) in respect of which section 288E of this Act applies; or

(c) in which an order has been made under section 288F(2) of this Act.”.

(4) In section 18(2), in inserted section 25(2A)(a) of the 1995 Act, after “Crown Agent” insert—  
“and for that purpose the application shall be taken to be intimated to the Crown Agent if intimation of it is sent to the procurator fiscal for the sheriff court district in which bail was granted”.

(5) In paragraph 50(b) of the schedule, in inserted section 281A(3) of the 1995 Act for “the relevant time” substitute “the required time”.

### **Amendments to the Criminal Procedure (Scotland) Act 1995**

4.—(1) The 1995 Act is amended in accordance with the following paragraphs of this article.

(2) Section 24A (bail: extradition proceedings)(4) is renumbered as section 24F.

(3) In section 71, after subsection (2) insert—

“(2XA) At a first diet the court shall also dispose of any child witness notice under section 271A(2) or vulnerable witness application under section 271C(2) appointed to be disposed of at that diet.”.

St Andrew’s House, Edinburgh  
24th January 2005

CATHY JAMIESON  
A member of the Scottish Executive

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(4) Section 24A was inserted by the Extradition Act 2003 (c. 41), section 199.

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## EXPLANATORY NOTE

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

This Order makes amendments to the Criminal Procedure (Amendment) (Scotland) Act 2004 (“the 2004 Act”) and the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) which are ancillary to the provisions of the 2004 Act.

Section 9 of the 2004 Act is amended to clarify that new section 81(5) of the 1995 Act applies in relation to solemn cases in the sheriff court (article 3(2)).

Section 10(3) of the 2004 Act is amended to ensure that the provisions of section 92(2B)(b) and (2E) of the 1995 Act relating to the court appointing a solicitor to act for the accused in his absence do not apply where section 288E of the 1995 Act applies or where an order is made under section 288F(2) of that Act because in those circumstances section 288D of the 1995 Act makes provision relating to the appointment by the court of a solicitor to act for the accused. (article 3(3)).

Article 3(4) clarifies that intimation of an application for a change of bail address may be sent to the local procurator fiscal and that this will satisfy the requirement to intimate to the Crown Agent.

Article 3(5) corrects a reference in paragraph 50(b) of the schedule of the 2004 Act to “the relevant time” which should have been to “the required time”.

Article 4(2) corrects a consequential error in the numbering of the 1995 Act.

Article 4(3) amends section 71 of the 1995 Act to clarify that a court at the first diet must deal with child witness notices and vulnerable witness applications that have been appointed to be dealt with at that diet.