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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 59 (C. 8)**

**HIGH COURT OF JUSTICIARY  
SHERIFF COURT**

**The Vulnerable Witnesses (Scotland) Act 2004 (Commencement  
No. 3, Savings and Transitional Provisions) Order 2006**

*Made - - - - 9th February 2006*

The Scottish Ministers, in exercise of the powers conferred upon them by section 25 of the Vulnerable Witnesses (Scotland) Act 2004(1), hereby make the following Order:

**Citation**

1. This Order may be cited as the Vulnerable Witnesses (Scotland) Act 2004 (Commencement No. 3, Savings and Transitional Provisions) Order 2006.

**Appointed day**

2.—(1) 1st April 2006 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 paragraph (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(2); and

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

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(1) 2004 asp 3.

(2) 1995 c. 46. Section 271 was repealed and substituted with a new section and sections 271A to 271I were added by the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 1 (“the 2004 Act”); section 288C was added by the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), section 1; and sections 288E and 288F were added by the 2004 Act, section 6.

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### **Savings and Transitions**

4.—(1) The provisions of the 2004 Act 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 2006, with proceedings being taken to have commenced when a report of the case has been received by the procurator fiscal.

(2) Part 2 of the 2004 Act, 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 2006.

St Andrew’s House,  
Edinburgh  
9th February 2006

*HUGH HENRY*  
Authorised to sign by the Scottish Ministers

## SCHEDULE

Article 2

## Table of Commencements of the 2004 Act

<i>Column 1</i> <i>Provisions to be commenced</i>	<i>Column 2</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 (insofar as not already commenced other than in subsections (5) and (6) of substituted section 271 the reference to section 271I), 271C, 271D to 271G (insofar as not already commenced), 271H (insofar as not already commenced other than subsection (1)(a) of section 271H) and 271J to 271M (insofar as not already commenced)	Only in respect of solemn proceedings in the High Court and sheriff court.
Section 1 insofar as it substitutes for section 271 of the 1995 Act section 271(5) and (6) in relation to the references to sections 271H(1)(a) and 271I	Only in respect of solemn proceedings in the High Court and sheriff court, other than those in which, at the time the court is considering a 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— <ul style="list-style-type: none"> <li>(a) the accused is charged with a sexual offence to which section 288C of the 1995 Act applies;</li> <li>(b) the accused is charged with an offence in respect of which the court has made an order under section 288C(4) of the 1995 Act;</li> <li>(c) section 288E of the 1995 Act applies to the proceedings in respect of which the vulnerable witness application under consideration has been lodged or is being reviewed; or</li> <li>(d) an order has been made under section 288F(2) in the proceedings in respect of which the vulnerable witness notice under consideration has been lodged or is being reviewed.</li> </ul>
Section 2 insofar as not already commenced other than subsections (2), (3) and (5)	Only in respect of solemn proceedings in the High Court and sheriff court.
Section 3 insofar as not already commenced other than the reference in subsection (1) of section 15A to section 271I	Only in respect of solemn proceedings in the High Court and sheriff court.
Section 3 insofar as it inserts section 15A in relation to the reference in subsection (1) of section 15A to section 271I	Only in respect of solemn proceedings in the High Court and sheriff court, other than those in which, at the time the court is considering

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<i>Column 1</i> <i>Provisions to be commenced</i>	<i>Column 2</i> <i>Purposes for which the provision is to be commenced</i>
	a 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—
	(a) the accused is charged with a sexual offence to which section 288C of the 1995 Act applies;
	(b) the accused is charged with an offence in respect of which the court has made an order under section 288C(4) of the 1995 Act;
	(c) section 288E of the 1995 Act applies to the proceedings in respect of which the vulnerable witness application under consideration has been lodged or is being reviewed; or
	(d) an order has been made under section 288F(2) in the proceedings in respect of which the vulnerable witness notice under consideration has been lodged or is being reviewed.
Section 6 insofar as not already commenced	Only in respect of solemn proceedings in the High Court and sheriff court.
Section 7(1) and (3) insofar as not already commenced	Only in respect of solemn proceedings in the High Court and sheriff court.
Section 11 insofar as not already commenced (except in section 11(5) the reference to section 18 shall not include section 18(1)(a))	Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995(3) in respect of appeals under section 51(1) and applications under sections 65(7), 65(9) and 85 of that Act.
Section 11(5) insofar as the reference to section 18 includes section 18(1)(a)	Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995 in respect of—
	(a) appeals under section 51(1) of that Act;
	(b) applications under sections 65(7) and 65(9) of that Act other than applications to which section 68A(1)(a) of that Act applies; or
	(c) applications under section 85 of that Act other than applications to which section 68A(1)(b) of that Act applies.
Sections 12, 13 to 16, 17(2) and 18(1)(b) to (e) and (2) insofar as not already commenced	Only in respect of proceedings in the sheriff court under Part II of the Children

(3) 1995 c. 36. Section 51 was amended by the [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), schedule 4, paragraph 4 and section 65 was amended by section 12(4) of that Act. Sections 68A and 68B were added by the [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), section 23.

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<i>Column 1</i> <i>Provisions to be commenced</i>	<i>Column 2</i> <i>Purposes for which the provision is to be commenced</i>
Section 18(1)(a) and 19 insofar as not already commenced	(Scotland) Act 1995 in respect of appeals under section 51(1) and applications under sections 65(7), 65(9) and 85 of that Act.  Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995 in respect of— (a) appeals under section 51(1) of that Act; (b) applications under sections 65(7) and 65(9) of that Act other than applications to which section 68A(1)(a) of that Act applies; or (c) applications under section 85 of that Act other than applications to which section 68A(1)(b) of that Act applies.
Sections 20 to 22 insofar as not already commenced	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 65(7), 65(9) and 85 of that Act.

## 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

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(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).

#### **NOTE AS TO EARLIER COMMENCEMENT ORDERS**

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

The following provisions of the Vulnerable Witnesses (Scotland) Act 2004 have been brought into force by commencement order made before the date of this Order:–

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
Sections 1(partially), 2 (partially), 3 (partially), 4, 5, 6 (partially), 7(1) and (3) (partially), 8 (partially), 11(1) (a), (3) and (5) (partially), 12(1) to (4) (partially), 13 (partially), 14 (partially), 15 (partially), 16 (partially), 17(1) and (2) (partially), 18 (partially), 20 (partially), 21 (partially), 22 (partially), 23 and 24	1st April 2005	<a href="#">2005/168</a>
Sections 1(partially), 3 (partially), 11(1)(a), (3) and (5) (partially), 12(1) to (4) (partially), 13 (partially), 14 (partially), 15 (partially), 16 (partially), 17(2) (partially), 18 (partially), 19 (partially), 20 (partially), 21 (partially) and 22 (partially)	30th November 2005	<a href="#">2005/590</a>