

2007 No.329 (C.26)

HIGH COURT OF JUSTICIARY

SHERIFF COURT

**The Vulnerable Witnesses (Scotland) Act 2004 (Commencement
No. 5, Savings and Transitional Provisions) Order 2007**

Made - - - -

12th June 2007

The Scottish Ministers make the following Order in exercise of the powers conferred by section 25 of the Vulnerable Witnesses (Scotland) Act 2004(a).

Citation

1. This Order may be cited as the Vulnerable Witnesses (Scotland) Act 2004 (Commencement No. 5, Savings and Transitional Provisions) Order 2007.

Appointed day

2.—(1) 2nd July 2007 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(b); and

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

(a) 2004 asp 3.

(b) 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 Section 271 was repealed and substituted with a new section and sections 271A to 271I were added by the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 1; section 271I was amended by section 35(3) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6).

Savings and Transitional Provisions

4. 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 and summary proceedings in the sheriff court, apply only to solemn and summary proceedings commenced on or after 2nd July 2007, with proceedings being taken to have been commenced when a report of the case has been received by the procurator fiscal.

St Andrew's House,
Edinburgh
12th June 2007

KENNY MACASKILL
A member of the Scottish Executive

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 provisions are to be commenced</i> |
|--|--|
| Sections 1 and 3 insofar as not already commenced | <p>In respect of child witnesses as referred to in section 271(1)(a) of the 1995 Act in relation to solemn proceedings in the High Court and the sheriff court and summary proceedings in the sheriff court.</p> <p>In respect of vulnerable witnesses other than child witnesses as referred to in section 271(1)(b) of the 1995 Act, only in relation to solemn proceedings in the High Court and the sheriff court.</p> |

EXPLANATORY NOTE

(This note is not part of the Order)

This Commencement Order brings into force the provisions of sections 1 and 3 of the Vulnerable Witnesses (Scotland) Act 2004 (“the Act”), insofar as not already in force, for the purposes indicated in the Schedule to the Order. In particular, it brings into force the following provisions, which relate to the special measure of taking evidence by a commissioner:

- (a) section 1 of the Act insofar as it substitutes for section 271 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) the following:
 - sections 271(5) and (6) (in relation to the reference to section 271I);
 - section 271F(8)(b);
 - section 271I; and
- (b) section 3 of the Act insofar as it inserts section 15A into the Criminal Justice (Scotland) Act 2003, in relation to the reference in section 15A(1) to section 271I.

Previous commencement orders (S.S.I. 2005/590, S.S.I. 2006/59 and S.S.I. 2007/101) restricted commencement of these provisions to proceedings other than proceedings in which an accused is charged with a sexual offence to which section 288C of the 1995 Act applies or an offence listed in section 288E(3) where a child under 12 is to give evidence at the trial; or in which an order has been made by the court under section 288F of the 1995 Act prohibiting the accused from conducting his own defence in person at the trial.

In effect, the special measure of taking evidence by a commissioner may now be used, where appropriate, in respect of child and other vulnerable witnesses in all solemn proceedings in the High Court and sheriff court. The measure may also be used in respect of child witnesses in all summary proceedings in the sheriff court. As a result of amendments made to the 1995 Act by section 35 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the 2007 Act”), child and other vulnerable witnesses now have the same protections when giving evidence before a commissioner as they would have if giving evidence in court. Section 35 of the 2007 Act also amends the 1995 Act to introduce a requirement that any person appointed as a commissioner must be either a judge of the High Court or a sheriff, as appropriate.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the 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 | 2005/168 |

| <i>Provision</i> | <i>Date of Commencement</i> | <i>S.S.I. No.</i> |
|--|-----------------------------|-------------------|
| 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 | 2005/590 |
| Sections 1 (partially), 2 (partially), 3 (partially), 6 (partially), 7(1) and (3) (partially), 11 (partially), 12 (partially), 13 (partially), 14 (partially), 15 (partially), 16 (partially), 17(2) (partially), 18(1)(a) to 18(1)(e) (partially), 18(2) (partially), 19 (partially), 20 (partially), 21 (partially) and 22 (partially) | 1st April 2006 | 2006/59 |
| Sections 1 (partially), 2(5) (partially), 3 (partially), 6 (partially), 8 (partially) and 9 (partially) | 1st April 2007 | 2007/101 |

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£3.00

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