

VICTIMS AND WITNESSES (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Vulnerable witnesses

Section 10 – Vulnerable witnesses: main definitions

32. This section and sections 11 to 21 amend the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). These sections redefine vulnerable witness, including child witness, to improve the identification and the support available to enable them to give their best evidence and sets out the special measures available to these witnesses along with the procedure to be followed in criminal proceedings to enable such special measures to be used.
33. **Section 10(a)** replaces section 271(1) of the 1995 Act, and provides that the following categories of person are to be regarded as vulnerable witnesses:
- children (i.e. those under age 18 at the date of the commencement of the proceedings in which the hearing is being or is to be held);
 - adult witnesses whose quality of evidence (as defined in section 271(4) of the 1995 Act) is at significant risk of being diminished either as a result of a mental disorder (as defined by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003), or due to fear or distress in connection with giving evidence;
 - victims of alleged sexual offences, human trafficking, an offence the commission of which involves domestic abuse or stalking who are giving evidence in proceedings which relate to that particular offence;
 - witnesses who are considered by the court to be at significant risk of harm by reason of them giving evidence.
34. **Section 10(b)** inserts subsection (1AA) into section 271 of the 1995 Act which gives the Scottish Ministers an order-making power to modify the list of offences in section 271(1)(c) where the victim is automatically considered to be vulnerable for the purposes of proceedings relating to that offence.
35. **Section 10(c)** repeals section 271(1A) of the 1995 Act as it is no longer relevant as section 10(a) (substituting section 271(1) of the 1995 Act) provides that all those under 18 years are to be considered as child witnesses.
36. **Section 10(e)** inserts subsection (4A) into section 271 of the 1995 Act which requires the court to consider the best interests and views of the witness in deciding whether they are vulnerable either because the quality of their evidence is likely to be diminished (subsection (1)(b)) or they are likely to be at significant risk from harm in giving their evidence (subsection (1)(d)).