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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 590 (C. 30 )**

**HIGH COURT OF JUSTICIARY  
SHERIFF COURT**

**The Vulnerable Witnesses (Scotland) Act 2004 (Commencement  
No. 2, Saving and Transitional Provisions) Order 2005**

*Made - - - - 23rd November 2005*

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

**Citation**

1. This Order may be cited as the Vulnerable Witnesses (Scotland) Act 2004 (Commencement No. 2, Saving and Transitional Provisions) Order 2005.

**Appointed day**

2.—(1) 30th November 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 Order—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995<sup>(2)</sup>; 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(2) 1995 c. 46; section 271 was repealed and substituted with a new section and sections 271A to 271I were added by the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 1 (“the 2004 Act”);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.

#### **Saving and transitional provisions**

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 30th November 2005, 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 30th November 2005.

St Andrew's House, Edinburgh  
23rd November 2005

*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), 271F(8) (b), 271H(1)(a) and 271I	<p>Only in respect of child witnesses as referred to in section 271(1)(a) of the 1995 Act and 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 child witness notice under section 271A(5) or 271A(9) of the 1995 Act, or is reviewing the current arrangements for taking a child witness's evidence under section 271D(1) of the 1995 Act—</p> <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 child witness notice 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 child witness notice under consideration has been lodged or is being reviewed.</li> </ul>
Section 3 insofar as it inserts section 15A (insofar as not already commenced) (other than the reference in section 15A(3)(b) to section 271C)	<p>Only in respect of child witnesses as referred to in section 271(1)(a) of the 1995 Act and 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 child witness notice under section 271A(5) or 271A(9) of the 1995 Act, or is reviewing the current arrangements for taking a child witness's evidence under section 271D(1) of the 1995 Act—</p> <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</li> </ul>

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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>
	child witness notice 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 child witness notice under consideration has been lodged or is being reviewed.
Section 11(1)(a) and (3)	Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995 <sup>(3)</sup> in respect of applications under sections 65(7) and 65(9) of that Act and only in respect of child witnesses.
Section 11(5) (insofar as not already commenced), except there shall be omitted the definition of vulnerable witness application	Only in respect of child witnesses and 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(1) to (4), 13 to 15 (with omission of “or a vulnerable witness application” in section 15(1)(a) and the omission of “or vulnerable witness application” in section 15(4)(a)), 16 (with omission in the first line of “or other person”) and 17(2)	Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995 in respect of applications under sections 65(7) and 65(9) of that Act and only in respect of child witnesses.
Section 18(1)(a)	Only in respect of child witnesses and 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.
Section 18(1)(b) to (e) and (2)	Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland)

(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. Section 68A was added by the [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), section 23.

<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 19	Act 1995 in respect of applications under sections 65(7) and 65(9) of that Act and only in respect of child witnesses.  Only in respect of child witnesses and 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	Only in respect of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995 in respect of applications under sections 65(7) and 65(9) of that Act and only in respect of child witnesses.

## EXPLANATORY NOTE

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

This Commencement Order brings into force for certain purposes the special measure of taking evidence by a commissioner as part of the first phase of the implementation of the Vulnerable Witnesses (Scotland) Act 2004 (“the Act”). Part I of the Act amends 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).

A previous Commencement Order (the Vulnerable Witnesses (Scotland) Act 2004 (Commencement) Order 2005 (S.S.I. 2005/168)) (“the 2005 Order”) brought into force all the special measures available to children in criminal proceedings under the Act other than the taking of evidence by a commissioner. The purposes for which the special measure of taking evidence by a commissioner are now brought into force are for child witnesses in solemn proceedings in the High Court and sheriff courts, other than proceedings in which, at the time the court is considering the child witness

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notice under section 271A(5) or 271A(9) of the 1995 Act, or is reviewing the current arrangements for taking a child 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));
- (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 (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 2005 Order commenced all the special measures available under the Act, with the exception of taking evidence by a commissioner, 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. In addition to commencing all special measures for child witnesses (other than taking evidence by a commissioner in respect of applications made under sections 65(7) and 65(9) of Part II of the Children (Scotland) Act 1995, this Commencement Order also brings into force the special measure of taking evidence on commission in relation to children's hearings, but only in respect of child witnesses for the limited purpose of proceedings in the sheriff court under Part II of the Children (Scotland) Act 1995 in respect of appeals under section 51 of that Act and applications under section 65(7), 65(9) or 85 of that Act, other than applications 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 2004 Act 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	2005/168