

2007 No. 101 (C.13)

SHERIFF COURT

**The Vulnerable Witnesses (Scotland) Act 2004 (Commencement
No. 4, Savings and Transitional Provisions) Order 2007**

Made - - - -

20th February 2007

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

Citation

1. This Order may be cited as the Vulnerable Witnesses (Scotland) Act 2004 (Commencement No. 4, Savings and Transitional Provisions) Order 2007.

Appointed day

2.—(1) 1st April 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 Section 271 was repealed and substituted with a new section and sections 271A to 271I were added by the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 1 (“the 2004 Act”);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.

Savings and Transitional Provisions

4. The provisions of the 2004 Act brought into force by this Order shall, in respect of summary proceedings in the sheriff court, apply only to summary proceedings commenced on or after 1st April 2007, with proceedings being taken to have commenced when a report of the case has been received by the procurator fiscal.

St Andrew's House,
Edinburgh
20th February 2007

JOHANN MLAMONT
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 (other than in subsections (5) and (6) of substituted section 271 the reference to section 271I), 271A, 271B, 271D (other than subsection (5) and other than the reference in subsection (2)(a) to section 271C), 271E (other than the reference in subsection 1(b) to section 271C), 271F (other than subsections (3), (4) and (8)(b)), 271G (other than in respect of section 271C), 271H (other than subsection (1)(a) and the reference in subsections (1) and (3) to 271C) and 271J to 271M	<p>Only–</p> <ul style="list-style-type: none"> (a) in respect of summary proceedings in the sheriff court; and (b) in respect of child witnesses as referred to in section 271(1)(a) of the 1995 Act.
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 summary proceedings in the 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"> (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 child witness notice under consideration has been lodged or is being reviewed; or

<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>
	(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 2(5)	Only in respect of child witnesses as referred to in section 27(1)(a) of the 1995 Act.
Section 3 (other than the reference in section 15A(1) to section 271I and the reference in section 15A(3)(b) to section 271C)	Only– (a) in respect of summary proceedings in the sheriff court; and (b) in respect of child witnesses as referred to in section 271(1)(a) of the 1995 Act.
Section 3 (insofar as not already commenced) (other than the reference in section 15A(3)(b) to section 271C)	Only in respect of child witnesses as referred to in section 271(1)(a) of the 1995 Act and only in respect of summary proceedings in the 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– (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 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 is being reviewed.
Section 6 insofar as it inserts section 288E into the 1995 Act	Only in respect of summary proceedings in the sheriff court.

<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 6 insofar as it inserts section 288F into the 1995 Act	Only– <ul style="list-style-type: none"> (a) in respect of summary proceedings in the sheriff court; and (b) in respect of child witnesses as referred to in section 271(1)(a) of the 1995 Act.
Section 8	Only in respect of summary proceedings in the sheriff court.
Section 9	Only in respect of child witnesses as referred to in section 271(1)(a) of the 1995 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 1 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), the Vulnerable Witnesses (Scotland) Act 2004 (Commencement No. 2, Savings and Transitional Provisions) Order 2005 (S.S.I. 2005/590) and the Vulnerable Witnesses (Scotland) Act 2004 (Commencement No. 3, Savings and Transitional Provisions) Order 2006 (S.S.I. 2006/59)) brought into force the special measures available to children and adult vulnerable witnesses in solemn criminal proceedings in the High Court and sheriff courts, subject to certain reservations in respect of taking evidence by a commissioner. The same package of measures was brought into force in respect of such witnesses in children’s hearings, though only in respect of proceedings in the sheriff court in relation to appeals under section 51 of the Children (Scotland) Act 1995 and applications under sections 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). The special measures under the Act are now brought into force with regard to child witnesses in summary criminal proceedings in the sheriff court. Children are defined in the 1995 Act as persons under 16 years old.

The special measure of taking evidence by a commissioner is brought into force in respect of child witnesses in summary proceedings in the sheriff court other than proceedings in which, at the time the court is considering the 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—

- (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.

Sections 6, 8 and 9 make further changes to the 1995 Act procedures.

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

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