
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.