

POLICY NOTE

THE VULNERABLE WITNESSES (SCOTLAND) ACT 2004 (COMMENCEMENT NO. 8) ORDER 2015

SSI 2015/244 (C. 34)

1. The above instrument was made in exercise of the powers conferred by section 25 of the Vulnerable Witnesses (Scotland) Act 2004 (“the 2004 Act”). The instrument is laid before Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Policy Objectives

2. The 2004 Act makes provision for various measures to improve support for vulnerable witnesses in criminal and civil court proceedings. These are known as “special measures” and include enabling vulnerable witnesses to give evidence from behind a screen to prevent them seeing the accused, and giving evidence remotely by video link.
3. The purpose of this instrument is to bring into force on 1 July 2015 section 10 of the 2004 Act, which amends the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”).
4. Section 10 of the 2004 Act inserts section 288G (Application of vulnerable witnesses provisions to proceedings in the district court) to the 1995 Act. This provides the Scottish Ministers with an order making power to enable special measures to be used in the district courts (now Justice of the Peace (“JP”) courts), with such modifications as required. It does not, in itself, extend special measures to JP courts.
5. When the Vulnerable Witnesses (Scotland) Bill (“the Bill”) was introduced to Parliament in June 2003, the future of district courts was unclear pending the outcome of Sheriff Principal McInnes’ independent review of summary justice. In light of this, the then Scottish Executive did not consider it appropriate to introduce special measures to the district courts at that time. Instead, it sought a power to extend the availability of special measures to these courts by way of secondary legislation, should it be appropriate following the completion of the Summary Justice Review.
6. In the context of ongoing work to improve the support available to vulnerable witnesses (for example, through the implementation of the Victims and Witnesses (Scotland) Act 2014), the Scottish Government considers it an apt time to revisit proposals to extend special measures to JP courts. Further discussion with those affected by such an extension will be undertaken, and any secondary legislation laid using the power in section 288G would be subject to the Parliamentary scrutiny required of an affirmative order.

Consultation

7. In November 1998, the Scottish Office issued a consultation document on vulnerable and intimidated witnesses in criminal and civil cases, entitled *Towards a Just Conclusion*, and sought views on what might be done to help such witnesses give their best evidence. The introduction of the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 was the first step towards fulfilling some of the recommendations made as a result of that consultation.
8. *Towards a Just Conclusion* gave rise to further work that looked in detail at how the treatment of vulnerable and intimidated witnesses could be improved more generally by changes in the law of evidence and court procedures. To take this forward, on 1 May 2002, the Scottish Executive issued a further consultation paper, *Vital Voices – Helping Vulnerable Witnesses Give Evidence*. The outcome favoured changes to the law on the categories of persons who should be able to use special measures when giving evidence, the types of special measures used, and the availability of these measures in different court proceedings. A copy of the report of the analysis of the responses to that consultation can be found on the Scottish Government website.¹

Impact Assessments

9. Assessments on the effects on Equal Opportunities, Human Rights, Island Communities, Local Government, Sustainable Development etc. were carried out for the purposes of the Bill. The results of those impact assessments are more fully set out in the policy memorandum to the Bill and can be found on the Scottish Parliament website.²

Scottish Government
Justice Directorate
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¹ <http://www.gov.scot/Publications/2002/12/16060/15937>

² [http://www.scottish.parliament.uk/S2_Bills/Vulnerable%20Witnesses%20\(Scotland\)%20Bill/b05s2-introd-pm.pdf](http://www.scottish.parliament.uk/S2_Bills/Vulnerable%20Witnesses%20(Scotland)%20Bill/b05s2-introd-pm.pdf)