



# Vulnerable Witnesses (Scotland) Act 2004

## 2004 asp 3

### PART 1 **S**

#### CRIMINAL PROCEEDINGS

##### *Evidence of children and other vulnerable witnesses: special measures*

## **2 Consideration before the trial of matters relating to vulnerable witnesses **S****

(1) In section 71 (first diet of proceedings on indictment in the sheriff court) of the 1995 Act—

(a) after subsection (1) there is inserted—

“(1A) At a first diet, the court shall also—

- (a) ascertain whether subsection (1B) below applies to any person who is to give evidence at or for the purposes of the trial or to the accused, and
- (b) if so, consider whether it should make an order under section 271A(7) or 271D(2) of this Act in relation to the person or, as the case may be, the accused.

(1B) This subsection applies—

- (a) to a person who is to give evidence at or for the purposes of the trial if that person is, or is likely to be, a vulnerable witness,
  - (b) to the accused if, were he to give evidence at or for the purposes of the trial, he would be, or would be likely to be, a vulnerable witness.”
- (b) in subsection (2), after “(1)” there is inserted “ and (1A) ”, and
- (c) in subsection (3), after “(1)” where it first occurs there is inserted “ , (1A) ”.

(2) In section 73 (procedure at preliminary diets in the High Court) of the 1995 Act—

(a) after subsection (3) there is inserted—

“(3A) At a preliminary diet, the court shall also—

**Changes to legislation:** *Vulnerable Witnesses (Scotland) Act 2004, Section 2 is up to date with all changes known to be in force on or before 02 September 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (a) ascertain whether subsection (3B) below applies to any person who is to give evidence at or for the purposes of the trial or to the accused, and
- (b) if so, consider whether it should make an order under section 271A(7) or 271D(2) of this Act in relation to the person or, as the case may be, the accused.

(3B) This subsection applies—

- (a) to a person who is to give evidence at or for the purposes of the trial if that person is, or is likely to be, a vulnerable witness,
  - (b) to the accused if, were he to give evidence at or for the purposes of the trial, he would be, or would be likely to be, a vulnerable witness.”, and
- (b) in subsection (4), for “under subsection (3)” there is substitute “ or consider under subsection (3) or (3A) ”.

(3) After section 73 of the 1995 Act there is inserted—

**“73A Consideration of matters relating to vulnerable witnesses where no preliminary diet is ordered**

- (1) Where, in a case which is to be tried in the High Court, no preliminary diet is ordered, the court shall, at the trial diet before the first witness is sworn—
- (a) ascertain whether subsection (2) below applies to any person who is to give evidence at or for the purposes of the trial or to the accused, and
  - (b) if so, consider whether it should make an order under section 271A(7) or 271D(2) of this Act in relation to the person or, as the case may be, to the accused.
- (2) This subsection applies—
- (a) to a person who is to give evidence at or for the purposes of the trial if that person is, or is likely to be, a vulnerable witness,
  - (b) to the accused if, were he to give evidence at or for the purposes of the trial, he would be, or would be likely to be, a vulnerable witness.
- (3) At the trial diet, the court may ask the prosecutor and the accused any question in connection with any matter which it is required to ascertain or consider under subsection (1) above.”.
- (4) In section 74 (appeals in connection with preliminary diets) of the 1995 Act, in subsection (2), after paragraph (a) there is inserted—
- “(aa) may not be taken against a decision taken by virtue of—
- (i) in the case of a first diet, section 71(1A),
  - (ii) in the case of a preliminary diet, section 73(3A),
- of this Act;”.
- (5) In section 148 (intermediate diet in summary proceedings) of the 1995 Act—
- (a) after subsection (1) there is inserted—
- “(1A) At an intermediate diet in summary proceedings in the sheriff court, the court shall also—

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- (a) ascertain whether subsection (1B) below applies to any person who is to give evidence at or for the purposes of the trial or to the accused, and
- (b) if so, consider whether it should make an order under section 271A(7) or 271D(2) of this Act in relation to person or, as the case may be, the accused.

(1B) This subsection applies—

- (a) to a person who is to give evidence at or for the purposes of the trial if that person is, or is likely to be, a vulnerable witness,
  - (b) to the accused if, were he to give evidence at or for the purposes of the trial, he would be, or would be likely to be, a vulnerable witness.”, and
- (b) in subsection (4), at the end there is inserted “ or for the purpose of ascertaining or considering any matter mentioned in subsection (1A) above ”.

#### Commencement Information

- I1** S. 2(1)(4) in force at 1.4.2005 for specified purposes by S.S.I. 2005/168, art. 2, **Sch.** (with art. 4)
- I2** S. 2(1)(4) in force at 1.4.2006 for specified purposes by S.S.I. 2006/59, art. 2, **Sch.** (with art. 4)
- I3** S. 2(1)(4)(5) in force at 1.4.2008 in so far as not already in force by S.S.I. 2008/57, **art. 2** (with art. 3)
- I4** S. 2(5) in force at 1.4.2007 for specified purposes by S.S.I. 2007/101, art. 2, **Sch.** (with art. 4)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 11A11B inserted by [2020 asp 16 s. 4\(3\)](#)
- s. 12(3A) inserted by [2020 asp 16 s. 4\(4\)](#)
- s. 12(6A) inserted by [2020 asp 16 s. 5\(2\)](#)
- s. 22B-22D inserted by [2020 asp 16 s. 4\(5\)](#)