
EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force provisions of the Criminal Procedure (Amendment) (Scotland) Act 2004 (“the 2004 Act”) on various dates, and in specified circumstances (article 2). It also makes transitional and savings provisions (articles 3 to 5).

Article 2(1) brings into force the provisions specified in column 1 of Schedule 1 on the dates specified in column 2 of Schedule 1.

Article 2(2) provides that the provisions specified in column 1 of Schedule 2 will come into force on the same day as the corresponding provisions of the Vulnerable Witnesses (Scotland) Act 2004 (listed in column 2 of Schedule 2) come into force. A separate order or orders setting out the date or dates on which the provisions of the Vulnerable Witnesses (Scotland) Act 2004 come into force will be made. Certain provisions may only commence for certain purposes, in which case the provisions in column 1 of Schedule 2 will only commence for those purposes.

Article 3 contains transitional and savings provisions. Article 3(1) prevents a preliminary hearing taking place before 1st April 2005. However, the provisions that come into force on 1st February 2005 will apply from that date for the purposes of a first diet (in the sheriff court), preliminary hearing (in the High Court) or trial diet that commences after 31st March 2005 (article 3(2)).

The provisions in the 1995 Act shall continue to apply in certain circumstances as if they had not been amended, substituted or repealed by the provisions of the 2004 Act that come into force by virtue of this Order. Article 3(3) details the circumstances in which this will take place. Article 3(4) limits the scope of article 3(3) by providing that it does not apply to the provisions of the 1995 Act that are repealed, substituted or amended by provisions of the 2004 Act that come into force on a day other than 1st February 2005. Articles 3(5) and (6) contain interpretation provisions.

Article 4 contains transitional provisions to deal with the situation where a trial diet is scheduled to commence between 1st February and 31st March 2005 but, for whatever reason, does not commence on that date. Article 4(2) provides that where the High Court appoints a further trial diet for a date after 31st March 2005, it may use the power in section 83A of the 1995 Act (inserted by section 5 of the 2004 Act) to indicate that the diet is to be a floating diet. Where a trial diet does not proceed and the prosecutor gives notice to the accused under section 81 of the 1995 Act (substituted by section 9 of the 2004 Act) to appear on another date, article 4(3) provides that section 81(5)(a)(i) is to be read without the word “further”. Article 4(4) disapplies the 11 month time limit for the commencement of a preliminary hearing in circumstances to which article 3 applies.

Article 5 contains a transitional provision relating to the notification requirement in section 72F of the 1995 Act (as inserted by section 8 of the 2004 Act). Any such requirement will be met if notification was given prior to the coming into force of section 72F in a manner that would satisfy its requirements, or if notification is given forthwith.