
EXPLANATORY NOTE

(This note is not part of the Order)

This Commencement Order brings into force the first phase of the implementation of the Vulnerable Witnesses (Scotland) Act 2004 (“the Act”). That 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. The new regime introduced by the Act is applied in the first phase to trials on indictment in the High Court and Sheriff Court (i.e. solemn criminal proceedings involving trial by judge and jury). Secondly the new regime is confined to children defined as persons under 16 years old. The intention is that as regards criminal trials these procedures will in a subsequent phase be extended to all criminal trials in these courts, and there is power in the act to extend them to the District Courts. It is also the intention to extend the regime to all vulnerable witnesses (i.e. not confined to children). The new regime introduced in the first phase introduces all the special measures available to children under the amended 1995 Act other than the taking of evidence on commission. Again the intention is that this special measure will be made available when arrangements are in place. As regards proceedings not subject to the first phase regime, they will still be subject to section 271 of the 1995 Act (unsubstituted).

Part 2 of the Act provides for special measures in civil cases. This Part has been commenced only for limited purposes, namely in relation to children’s hearings which in Scotland are classed as civil proceedings and only in respect of proceedings in the sheriff court under Part II of the 1995 Act in respect of appeals under section 51(1) and applications under sections 68 and 85 of that Act. These are the only parts of the procedure where a child could be asked to give evidence. As in relation to the first phase criminal implementation, evidence on commission is not covered at present as a special measure. As with first phase criminal proceedings the special measures will be available only in respect of child witnesses.

Commenced for all purposes are also certain free standing measures not to do with special measures, namely sections 4 and 5 of the Act which amended the 1995 Act to respectively a) simplify evidence of identification; and b) allow expert evidence of the complainer’s subsequent behaviour in certain cases. The last provision is designed to allow psychiatrists and other experts to testify that certain types of conduct after the commission of an alleged offence on the complainer is not necessarily inconsistent with the credibility of that type of complaint. Sections 6, 7, 8 and 9 make further changes to the 1995 Act procedures. Section 23 amends the 1995 Act to restrict evidence that may be led in child abuse cases at children’s hearings. Finally for all cases criminal and civil– the competence test is abolished (section 24 of the Act). In future witnesses will not be excluded if they are not apparently mentally sound, but rather their evidence will be heard and assessed as far as it goes and for what it is worth..