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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations bring into force on 20 January 2020 sections 1, 2, 4, 5, 7, 8, 9 and 10(1) to (3) of the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 (“the Act”).

Section 1 of the Act introduces a new rule in favour of pre-recording the evidence of child witnesses other than the accused in solemn proceedings (subject to specific exceptions), where the alleged offence is listed in new section 271BZA(2) of the Criminal Procedure (Scotland) Act 1995 (inserted by section 1). Under regulation 2 and the schedule of these regulations, section 1 will come into force only for the purpose of proceedings in the High Court of Justiciary. Under regulation 3, section 1 will apply for this purpose only in cases where the accused first appears on petition on or after 20 January 2020. In a small number of cases the accused never appears on petition, and in this situation section 1 will apply where the indictment is served on or after 20 October 2020. Under regulation 4(2), the same transitional arrangements will apply to section 5(6) of the Act, which alters the way in which the age of a witness is calculated where this is relevant to a decision on authorising the taking of evidence by commissioner. However, commencement of section 5(6) is not restricted to the High Court.

Section 4 of the Act restricts the ability of the court to alter on review an order providing for all of a witness’s evidence to be pre-recorded, even where the case does not fall within the new rule. This will commence for reviews on or after 20 January 2020, but in High Court proceedings only.

Section 5(2) and (3) of the Act, which relate to a new requirement to fix a ground rules hearing in all cases where evidence is to be taken by commissioner, will apply only in cases where the commissioner is appointed by the court on or after 20 January 2020 (see regulation 4(1)).

The Bill for the Act received Royal Assent on 13 June 2019. Sections 11 to 13 came into force the following day.