POLICY NOTE

THE VULNERABLE WITNESSES (CRIMINAL EVIDENCE) (SCOTLAND) ACT 2019 (COMMENCEMENT NO. 2 AND TRANSITIONAL PROVISION) REGULATIONS 2025

SSI 2025/179 (C. 19)

1. The above instrument was made in exercise of the powers conferred by section 12 of the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019. The instrument is laid no procedure.

Summary Box

To allow for commencement of section 6 and section 10(4) of the 2019 Act. Section 6 allows for applications for the use of standard special measures to be made through a simplified notification procedure, freeing up judicial and administrative time. Section 10(4) contains consequential provision for situations where the relevant witness is the accused.

Policy Objectives

2. The policy objectives of this instrument are to:
    - Support delivery of the Scottish Government's Vision for Justice, by bringing forward a person-centred, trauma-informed, modern and efficient approach to vulnerable witness notifications;
    - Simplify the process for granting standard special measures; and
    - Free up judicial and administrative resources.

3. Under Section 271A of the Criminal Procedure (Scotland) Act 1995, a formal notice must be submitted to the court to make a request for standard special measures, such as the use of screens, live TV links, or supporters.

4. Special measures are a victim-centred means of supporting a vulnerable witness to give his or her best evidence in court, reducing the risk of re-traumatisation to the witness and allowing them to participate as fully as possible in the justice system.

5. Vulnerable witnesses are those witnesses who may need extra support in giving their evidence. A 'deemed vulnerable' witnesses is a victim of a serious intimate or sexual offence, such as sexual offences, human trafficking, domestic abuse or stalking. These witnesses are automatically entitled to special measures, as are all child witnesses. A 'vulnerable witness' is someone who may, for example, suffer from fear or distress in giving their evidence, or who may have more difficulty in giving their evidence due to a learning disability. These witnesses are also able to use special measures after due consideration has been given to their particular vulnerability.

6. When this vulnerable witness notice is filed in respect of a child or adult deemed vulnerable witness, the court is legally required to approve the standard special measures requested. Existing vulnerable witness notices must be completed by a staff member in the Crown Office and Procurator Fiscal Service (COPFS), emailed and read by a staff member in the Scottish Courts and Tribunals Service (SCTS), then placed in front of a judge for approval. Judges, COPFS and SCTS staff members are

therefore routinely required to complete, submit and approve requests which there is no judicial discretion to deny, creating unnecessary delays and additional administrative burdens.

7. Section 6 of the 2019 Act adds a new provision—section 271AA—to the Criminal Procedure (Scotland) Act 1995. Under this change, when a properly completed vulnerable witness notice is submitted on time, the special measures applied for will be granted automatically. This new process will free up judicial and administrative time.

8. If a notice is lodged late, a vulnerable witness will still be able to access special measures – the party applying for special measures will be able to complete a vulnerable witness application in hard copy, which will be submitted to the court and approved in the same way that vulnerable witness applications are dealt with currently.

Further information

9. COPFS and SCTS have together developed and tested a new automated system for notifying the courts of their intention to use standard special measures for taking the evidence of a vulnerable witness in a criminal case which conforms with the requirements of the Act. The relevant data is entered into the COPFS IT system which then automatically generates and securely sends a data file to the SCTS IT system. This ensures that the courts are aware of the special measure(s) being used without requiring oversight from the presiding judge. Notification emails are simultaneously generated for court staff and other parties to proceedings.

10. To ensure consistency between the prosecution and defence, and to provide defence agents with the opportunity to use a similarly simplified notifications process, a standard form has been created to allow defence agents to lodge vulnerable witness notices with the court. These will be manually processed by court staff.

11. The simplified notifications procedure would not apply in cases where the presumption in favour of pre-recording of evidence applies or where the vulnerable witness is a child under the age 12 to whom the special procedure set out in section 271B of the 1995 Act applies, as those require direct judicial involvement and engagement. Instead, the new administrative process will be reserved for cases where standard measures are appropriate and further judicial oversight is not needed.

12. The new process will not apply to cases which are already underway when the provisions come into force. The simplified procedure will only be used for new cases beginning after the date of commencement, to avoid duplication of effort and to ensure that parties will not be caught unprepared.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

13. The Scottish Ministers have made the following statement regarding children's rights.
14. In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019

(Commencement no.2 and Transitional Provision) Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

15. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

16. The Scottish Government has engaged key legal stakeholders including prosecutors and defence representatives on the proposed inclusion of the simplified notifications procedure. The new system has been developed and tested, and is ready to go live as soon as the regulations come into force on the 27 June. Maintaining the current system was considered but rejected due to its inefficiency.

Impact Assessments

17. An Equality Impact Assessment was carried out before the Vulnerable Witnesses Bill was laid before Parliament. It found that none of the proposals in the Bill would give rise to those affected being treated less favourably due to their protected characteristic. Further impact assessments have not been deemed necessary for this SSI.

Financial Effects

18. The Cabinet Secretary for Justice and Home Affairs confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

19. SCTS and COPFS expect to see some increased efficiency in the use of administrative and judicial resource as a result of automating a procedure which is currently undertaken manually.

Scottish Government
Justice Directorate

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