POLICY NOTE

THE VULNERABLE WITNESSES (CRIMINAL EVIDENCE) (SCOTLAND) ACT 2019 (COMMENCEMENT NO. 3 AND TRANSITIONAL PROVISION) REGULATIONS 2026

SSI 2026/136

The above instrument was made in exercise of the powers conferred by section 12(2) and (3) of the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 ("the Act"). The instrument is laid no procedure.

Summary Box

The purpose of this instrument is to extend the presumption in favour of pre-recording evidence in the most serious criminal cases to child witnesses aged under 16 in the Sheriff Court. This is achieved through commencement of section 1 of the Act for these witnesses. The presumption will only apply where the accused has appeared on petition on or after 30 March 2026, or (where the accused never appears on petition) the indictment is served on or after 30 December 2026.

Policy Objectives

The Scottish Government is committed to improving support for vulnerable complainers and witnesses in criminal cases, including children. This includes allowing witnesses access to special measures when giving their evidence, including recording their evidence ahead of trial.

This instrument extends a presumption in favour of pre-recording evidence ahead of trial to children aged under 16 in the most serious cases in the Sheriff Court. It does this by bringing into force section 1 of the Act. The presumption in favour of pre-recording introduced by section 1 does not apply to child accused.

The provisions of the Vulnerable Witnesses Act are being rolled out in stages, to avoid overwhelming the criminal justice system and to ensure that the youngest witnesses are prioritised first. Child witnesses aged 16 and 17 in the most serious Sheriff Court cases will come under the presumption in a later phase of the rollout.

EU Alignment Consideration

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

Consultation

In developing this SSI the Scottish Government consulted with the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunals Service, and the cross-sectoral Expansion of Pre-Recorded Evidence Implementation Group.

As a result of that consultation, this SSI was drafted so that the presumption in favour of pre-recorded evidence will apply in cases in which the accused first appears on petition on or after 30 March 2026. Where the accused does not appear on petition, the presumption will apply where the indictment is served on or after 30 December 2026. Similar provision was made when the presumption was commenced for the High Court and this reduces the risk of overwhelming the justice system.

Impact Assessments
A number of impact assessments were carried out for the Act. No further impact assessments have been considered necessary.

Financial Effects
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.

Scottish Government
Criminal Justice Directorate

12 March 2026