SCOTTISH STATUTORY INSTRUMENTS

2005 No. 190

SHERIFF COURT

Act of Sederunt (Child Care and Maintenance Rules) Amendment (Vulnerable Witnesses (Scotland) Act 2004) 2005

Made - - - -	*24th March 2005*
Coming into force - -	*1st April 2005*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(**1**) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Child Care and Maintenance Rules) Amendment (Vulnerable Witnesses (Scotland) Act 2004) 2005 and shall come into force on 1st April 2005.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Amendment of Child Care and Maintenance Rules

2.—(1) The Act of Sederunt (Child Care and Maintenance Rules) 1997(**2**) Chapter 3 (Children (Scotland) Act 1995) is amended in accordance with the following paragraphs.

(2) In Rule 3.22(1) (applications for evidence of children by television link) after the words "under Part II of the Act" insert "other than proceedings in the sheriff court in an appeal under section 51(1) or an application under section 65(7) or (9) or 85(1) of the Act".

(3) After Part X (Application for review of establishment of grounds of referral – new evidence) insert–

(**1**) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4), the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13 and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and was extended by the Child Support Act 1991 (c. 48), sections 39(2) and 49 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2).

(**2**) S.I.1997/291 (S.19).

"PART XI

VULNERABLE WITNESSES (SCOTLAND) ACT 2004

Interpretation

3.65. In this Part–

"the Act of 2004" means the Vulnerable Witnesses (Scotland) Act 2004(**3**);

"admission application" means an application for the admission of evidence or allowance of questioning pursuant to section 68B of the Act;

"child witness notice" has the meaning given in section 12(2) of the Act of 2004;

"review application" means an application for review of arrangements for vulnerable witnesses pursuant to section 13 of the Act of 2004.

Extent of application of this Part

3.66. This Part of Chapter 3 shall apply to proceedings in an appeal under section 51(1) or applications under section 65(7) or (9) or 85(1) of the Act.

Child Witness Notice

3.67. A child witness notice lodged in accordance with section 12(2) of the Act of 2004 shall be in Form 75.

3.68.—(1) The party lodging a child witness notice shall intimate a copy of the child witness notice to all other parties to the proceedings and to any safeguarder who has been appointed by the court and complete a certificate of intimation.

(2) A certificate of intimation referred to in this rule shall be in Form 76 and shall be lodged together with the child witness notice.

3.69.—(1) On receipt of a child witness notice, a sheriff may–

(a) make an order under section 12(1) of the Act of 2004 without holding a hearing;

(b) require of any of the parties further information before making any further order;

(c) fix a date for a hearing of the child witness notice and grant warrant to cite witnesses and havers.

(2) The sheriff may, subject to any statutory time limits, make an order altering the date of the proof or other hearing at which the child is to give evidence and make such provision for intimation of such alteration to all parties concerned as he deems appropriate.

(3) An order fixing a hearing for a child witness notice shall be intimated by the sheriff clerk–

(a) on the day the order is made; and

(b) in such manner as may be prescribed by the sheriff,

to all parties to the proceedings and such other persons as are named in the order where such parties or persons are not present at the time the order is made.

(**3**) 2004 asp 3.

Review of arrangements for vulnerable witnesses

3.70.—(1) A review application shall be in Form 77.

(2) Where the review application is made during the sheriff's hearing of the case, the sheriff may dispense with the requirements of paragraph (1).

3.71.—(1) Where a review application is in Form 77, the applicant shall intimate a copy of the review application to all other parties to the proceedings and to any safeguarder who has been appointed by the court and complete a certificate of intimation.

(2) A certificate of intimation referred to in this rule shall be in Form 78 and shall be lodged together with the review application.

3.72.—(1) On receipt of a review application, a sheriff may–

(a) if he is satisfied that he may properly do so, make an order under section 13(2) of the Act of 2004 without holding a hearing or, if he is not so satisfied, make such an order after giving the parties an opportunity to be heard;

(b) require of any of the parties further information before making any further order;

(c) fix a date for a hearing of the review application and grant warrant to cite witnesses and havers.

(2) The sheriff may, subject to any statutory time limits, make an order altering the date of the proof or other hearing at which the child is to give evidence and make such provision for intimation of such alteration to all parties concerned as he deems appropriate.

(3) An order fixing a hearing for a review application shall be intimated by the sheriff clerk–

(a) on the day the order is made; and

(b) in such manner as may be prescribed by the sheriff,

to all parties to the proceedings and such other persons as are named in the order where such parties or persons are not present at the time the order is made.

Determination of special measures

3.73. When making an order under section 12(1) or 13(2) of the Act of 2004 a sheriff may, in light thereof, make such further orders as he deems appropriate in all the circumstances.

Intimation of an order under section 12(1) or 13(2)

3.74. An order under section 12(1) or 13(2) of the Act of 2004 shall be intimated by the sheriff clerk–

(a) on the day the order is made; and

(b) in such manner as may be prescribed by the sheriff,

to all parties to the proceedings and such other persons as are named in the order where such parties or persons are not present at the time the order is made.

Lodging of video record and documents

3.75.—(1) Where evidence is taken on commission pursuant to an order made under section 12(1) or 13(2) of the Act of 2004 the commissioner shall lodge the video record of the commission and relevant documents with the sheriff clerk.

(2) On the video record and any documents being lodged the sheriff clerk shall–

(a) note–

(i) the documents lodged;

(ii) by whom they were lodged; and

(iii) the date on which they were lodged, and

(b) intimate what he has noted to all parties concerned.

Custody of video record and documents

3.76.—(1) The video record and documents referred to in rule 3.75 shall, subject to paragraph (2), be kept in the custody of the sheriff clerk.

(2) Where the video record of the evidence of a witness is in the custody of the sheriff clerk under this rule and where intimation has been given to that effect under rule 3.75(2), the name and address of that witness and the record of his evidence shall be treated as being in the knowledge of the parties; and no party shall be required, notwithstanding any enactment to the contrary–

(a) to include the name of that witness in any list of witnesses; or

(b) to include the record of his evidence in any list of productions.

Application for admission of restricted evidence

3.77.—(1) An admission application shall be in Form 79.

(2) Where an admission application is made during the sheriff's hearing of the case, the sheriff may dispense with the requirements of paragraph (1).

3.78.—(1) Where an admission application is in Form 79, the applicant shall intimate a copy of the admission application to all other parties to the proceedings and to any safeguarder who has been appointed by the court and complete a certificate of intimation.

(2) A certificate of intimation referred to in this rule shall be in Form 80 and shall be lodged together with the admission application.

3.79.—(1) On receipt of an admission application, a sheriff may–

(a) subject always to section 68B of the Act, make an order, in whole or in part admitting such evidence or allowing such questioning as may be set out in the admission application;

(b) require of any of the parties further information before making any further order;

(c) fix a date for a hearing of the admission application and grant warrant to cite witnesses and havers.

(2) The sheriff may, subject to any statutory time limits, make an order altering the date of the proof or other hearing to which the admission application relates and make such provision for intimation of such alteration to all parties concerned as he deems appropriate.

(3) An order fixing a hearing for an admission application shall be intimated by the sheriff clerk–

(a) on the day the order is made; and

(b) in such manner as may be prescribed by the sheriff,

to all parties to the proceedings and such other persons as are named in the order where such parties or persons are not present at the time the order is made.

3.80.—(1) When making an order pursuant to rule 3.79(1)(a) a sheriff may, in light thereof, make such further orders as he deems appropriate in all the circumstances.

3.81.—(1) An order made pursuant to rule 3.79(1)(a) shall be intimated by the sheriff clerk–

(a) on the day the order is made; and

(b) in such manner as may be prescribed by the sheriff,

to all parties to the proceedings and such other persons as are named in the order where such parties or persons are not present at the time the order is made.".

Edinburgh
24th March 2005

CULLEN OF WHITEKIRK
Lord President I.P.D.