SCOTTISH STATUTORY INSTRUMENTS

2005 No.188

HIGH COURT OF JUSTICIARY
SHERIFF COURT

Act of Adjournal (Criminal Procedure Rules Amendment No. 3) (Vulnerable Witnesses (Scotland) Act 2004) 2005

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

The Lord Justice General, the Lord Justice Clerk and Lords Commissioners of Justiciary, under and by virtue of the powers conferred on them by section 305 of the Criminal Procedure (Scotland) Act 1995(**1**), and of all other powers enabling them in that behalf, with the consent of the Scottish Ministers, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 3) (Vulnerable Witnesses (Scotland) Act 2004) 2005 and shall come into force on 1st April 2005.

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

Amendment of the Act of Adjournal (Criminal Procedure Rules) 1996

2.—(1) Subject to sub-paragraph (2), the Act of Adjournal (Criminal Procedure Rules) 1996(**2**) shall be amended in accordance with the following sub-paragraphs.

(2) Nothing in sub-paragraphs (3), (6) and (7)(a), (d), (e) or (f) of this Act of Adjournal shall affect any—

(a) summary proceedings; or

(b) solemn proceedings—

(i) which commenced before 1st April 2005; or

(ii) which commenced after 1st April 2005 where there is no child witness within the meaning of section 271(1)(a) of the Criminal Procedure (Scotland) Act 1995,

(**1**) 1995. c.46.
(**2**) S.I.1996/513, last amended by S.S.I.2005/160.

with proceedings being taken to have commenced when a report of the case has been received by the procurator fiscal.

(3) In rule 8.2(2) (notice to accused to appear)(**3**) after "applies" there shall be inserted "or, where it is known by the prosecutor that the offence is one to which section 288E of that Act (prohibition of personal conduct of defence where a child witness is under the age of 12)(**4**) applies,".

(4) In rule 21.4 (authentication of certain prior statements of witnesses) after "the first page of the statement" there shall be inserted "or attached to the device on which the statement has been recorded.".

(5) After rule 21.5 (form of application to introduce evidence relating to sexual offences)(**5**) there shall be inserted the following:–

"**Notice of intention to rely on presumption of identification**

21.6.—(1) A notice under section 281A(2)(a) of the Act of 1995 (notice of intention to rely on presumption of identification prior to trial)(**6**) shall be in Form 21.6–A.

(2) A notice under section 281A(2)(b) of the Act of 1995 (notice of intention to challenge facts in report of identification) shall be in Form 21.6–B.".

(6) For Chapter 22 (evidence of vulnerable persons)(**7**) there shall be substituted the following:–

"CHAPTER 22

EVIDENCE OF VULNERABLE WITNESSES

Child witness notice

22.1. A notice under section 271A(2) of the Act of 1995 (child witness notice)(**8**) shall be in Form 22.1 and shall be lodged with the clerk of court.

Procedure on lodging child witness notice

22.2.—(1) On receipt of a notice under rule 22.1 (child witness notice) the clerk of court shall—

(a) endorse on the notice the time and date on which it was received; and

(b) place the notice before a judge in chambers.

(2) The party that lodges the child witness notice shall lodge a certificate of intimation with the clerk of court—

(a) within 7 days after lodging the child witness notice; or

(b) at least 2 days before any first diet or preliminary hearing,

whichever is the earlier.

Intimation of an order under section 271A

22.3.—(1) An order—

(**3**) Rule 8.2 was amended by S.S.I. 2005/44.
(**4**) Section 288E was inserted by section 6 of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) and was amended by section 4(3) of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).
(**5**) Rule 21.5 was inserted by S.S.I. 2002/454.
(**6**) Section 281A was inserted by section 4 of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3).
(**7**) Chapter 22 was amended by S.S.I. 1997/1834.
(**8**) Section 271A was inserted by section 1(1) of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) and was amended by paragraph 43(a) of the Schedule to the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

(a) under section 271A(5)(a) of the Act of 1995 authorising the use of a special measure;

(b) under section 271A(5)(b) of that Act authorising the giving of evidence without the benefit of any special measures;

(c) appointing a child witness notice to be disposed of—

(i) under section 271A(5A)(a) of that Act(**9**), at a preliminary hearing; or

(ii) under section 271A(5A)(b) of that Act, at a first diet; or

(d) under section 271A(5A)(c) or (7)(b)(ii) of that Act(**10**), appointing a diet to be held before the trial diet; or

(e) under section 271A(9) of that Act (order in relation to special measures after hearing)(**11**),

may be signed by the clerk of court.

(2) An order mentioned in paragraph (1) shall be intimated by the clerk of court to all parties, unless the party was present at the hearing at which the order was made, and in the case of an order under paragraph (1)(c) or (d), to the governor of any institution in which the accused is detained.

Review of arrangements for vulnerable witnesses

22.4.—(1) An application under section 271D(1)(a) of the Act of 1995 (review of arrangements for vulnerable witnesses)(**12**) may be made—

(a) orally; or

(b) in writing by minute in Form 22.4.

(2) A minute under paragraph (1)(b) shall be lodged with the clerk of the court and served on every other party by the minuter.

Procedure for review

22.5. On receipt of a minute under rule 22.4(1)(b) (minute for review of arrangements for vulnerable witnesses) or, on a review on the court's own motion, the court shall make an order endorsed on the minute or recorded in the minute of proceedings—

(a) fixing a diet for a hearing of the application or to hear parties; and

(b) for service of the minute or order with the date of the diet on all parties and to the governor of any institution in which the accused is detained.

Intimation of the order

22.6. Where an order under section 271D(2) of the Act of 1995 (order after review of arrangements for vulnerable witnesses) is made at a hearing fixed under rule 22.5 (procedure for review) it shall be intimated by the clerk of court to all parties unless the party was present at the hearing at which the order was made.

(**9**) Section 271A(5A) was inserted by paragraph 43(d) of the Schedule to the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

(**10**) Section 271A(7)(b)(ii) was inserted by paragraph 43(e) of the Schedule to the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

(**11**) Section 271A(9) was amended by paragraph 43(h) of the Schedule to the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

(**12**) Section 271D was inserted by section 1(1) of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3).

Notice of prohibition of personal conduct of defence

22.7. In proceedings to which section 288E of the Act of 1995 (prohibition of personal conduct of defence in certain cases involving child witnesses under the age of 12)(**13**) applies, a notice in Form 22.7 shall be served on the accused by the prosecutor with any child witness notice, unless a notice in Form 8.2–C(**14**) has already been served.

Application for prohibition of personal conduct of defence

22.8.—(1) An application under section 288F(2)(a) of the Act of 1995 (prohibition of personal conduct of defence)(**15**) shall be made by minute in Form 22.8–A.

(2) The minute shall be lodged with the clerk of court and served on all parties by the minuter.

(3) On receipt of a minute under paragraph (1), or on the court's own motion, the court shall make an order endorsed on the minute or recorded in the minute of proceedings—

(a) fixing a diet for a hearing of the application or to hear parties; and

(b) for service of the minute or order with the date on all parties and to the governor of any institution in which the accused is detained.

(4) Where a party is not represented or personally present at a hearing under paragraph (3) when an order is made under section 288F of the Act of 1995 (order prohibiting personal conduct of defence) the clerk of court shall intimate the order to that party.

(5) On the making of an order under section 288F of the Act of 1995 in the absence of the accused, the prosecutor shall forthwith serve on the accused a notice in Form 22.8–B.

Transfer of cases

22.9. Where the sheriff makes an order under section 271J(4) or 271K(3) of the Act of 1995 (transfer of proceedings where evidence is by live television link or with the use of screens)(**16**) transferring the proceedings to another sheriff court (the "receiving court") the sheriff clerk shall forthwith transmit the record copy of the indictment, the minute of proceedings, any productions and any relevant documents to the clerk of the receiving court.

Evidence in chief in form of prior statement

22.10. Where a witness is to give evidence in chief in the form of a prior statement the witness shall be called, and—

(a) the oath or affirmation administered under rule 14.5 (form of oath or affirmation); or

(b) be admonished to tell the truth,

before the evidence in the form of a prior statement is given.".

(7) In the appendix—

(a) for Form 8.2–C(**17**) there shall be substituted the form set out in Part 1 of the Schedule to this Act of Adjournal;

(**13**) Section 288E was inserted by section 6 of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) and amended by section 4(3) of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).
(**14**) Form 8.2–C was amended by S.S.I. 2005/44.
(**15**) Section 288F was inserted by section 6 of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) and amended by section 4(4) of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).
(**16**) Sections 271J and 271K were inserted by section 1(1) of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3).
(**17**) Form 8.2–C was amended by S.S.I. 2005/44.

(b) for Form 21.4 there shall be substituted the form set out in Part 2 of the Schedule to this Act of Adjournal;

(c) after Form 21.5(**18**) there shall be inserted the forms set out in Part 3 of the Schedule to this Act of Adjournal;

(d) for Form 22.1 there shall substituted the forms set out in Part 4 of the Schedule to this Act of Adjournal;

(e) in Form 29.1–A, at the end of paragraph 3, there shall be inserted the following:–

"That [C.D.] is not a witness to whom section 291(6) of the Criminal Procedure (Scotland) Act 1995 applies [or that as [C.D.] is a witness under section 291(6) of the Criminal Procedure (Scotland) Act 1995 warrant is sought to cite the witness to attend for precognition on oath by the solicitor for the accused only].";

(f) in Form 29.1–B, at the end of paragraph 3, there shall be inserted the following:–

"That [C.D.] is not a witness to whom section 291(6) of the Criminal Procedure (Scotland) Act 1995 applies [or as [C.D.] is a witness under section 291(6) of the Criminal Procedure (Scotland) Act 1995 warrant is sought to cite the witness to attend for precognition on oath by the solicitor for the accused only].".

Edinburgh
24th March 2005

Cullen of Whitekirk
Lord Justice General I.P.D.

(**18**) Form 21.5 was inserted by S.S.I. 2002/454.