



Victims and Witnesses (Scotland) Act 2014 2014 asp 1

Vulnerable witnesses

10 Vulnerable witnesses: main definitions

In section 271 of the 1995 Act (vulnerable witnesses: main definitions)—

(a) for subsection (1), substitute—

“(1) For the purposes of this Act, a person who is giving or is to give evidence at, or for the purposes of, a hearing in relevant criminal proceedings is a vulnerable witness if—

- (a) the person is under the age of 18 on the date of commencement of the proceedings in which the hearing is being or is to be held,
- (b) there is a significant risk that the quality of the evidence to be given by the person will be diminished by reason of—
 - (i) mental disorder (within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003), or
 - (ii) fear or distress in connection with giving evidence at the hearing,
- (c) the offence is alleged to have been committed against the person in proceedings for—
 - (i) an offence listed in any of paragraphs 36 to 59ZL of Schedule 3 to the Sexual Offences Act 2003,
 - (ii) an offence under section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution etc.),
 - (iii) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation),
 - (iv) an offence the commission of which involves domestic abuse, or
 - (v) an offence of stalking, or

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- (d) there is considered to be a significant risk of harm to the person by reason only of the fact that the person is giving or is to give evidence in the proceedings.”,
- (b) after subsection (1), insert—
 - “(1AA) The Scottish Ministers may by order subject to the affirmative procedure modify subsection (1)(c).”,
- (c) subsection (1A) is repealed,
- (d) in subsection (2), after “(1)(b)” insert “or (d)”, and
- (e) after subsection (4), insert—
 - “(4A) In determining whether a person is a vulnerable witness under subsection (1)(b) or (d), the court must—
 - (a) have regard to the best interests of the witness, and
 - (b) take account of any views expressed by the witness.”.

11 Child and deemed vulnerable witnesses

- (1) In section 71(2XA) of the 1995 Act (first diet), for “child” substitute “vulnerable”.
- (2) In section 72(6)(b)(ii) of the 1995 Act (preliminary hearing procedure), for “child” substitute “vulnerable”.
- (3) In section 271(5) of the 1995 Act (definitions for sections 271A to 271M of the 1995 Act)—
 - (a) before the definition of “court”, insert—
 - ““child witness” means a vulnerable witness referred to in subsection (1)(a),”, and
 - (b) after that definition, insert—
 - ““deemed vulnerable witness” means a vulnerable witness referred to in subsection (1)(c).”.
- (4) In section 271A of the 1995 Act (child witnesses)—
 - (a) in subsection (1)—
 - (i) after “child witness”, where it first occurs, insert “or a deemed vulnerable witness”, and
 - (ii) the word “child”, where it second occurs, is repealed,
 - (b) in subsection (2)—
 - (i) after “child witness”, where it first occurs, insert “or a deemed vulnerable witness”,
 - (ii) for “child”, where it second occurs, substitute “vulnerable”, and
 - (iii) in each of paragraphs (a) and (b), the word “child” is repealed,
 - (c) in each of subsections (3) and (4), for “child” substitute “vulnerable”,
 - (d) after subsection (3), insert—
 - “(3A) In the case where a vulnerable witness notice under subsection (2)(a) specifies only a standard special measure, subsection (3)(a) does not apply.”.
 - (e) in subsection (5)—
 - (i) for “child”, where it first occurs, substitute “vulnerable”, and

- (ii) in paragraphs (a), (b) and (c), the word “child”, in each place where it occurs, is repealed,
 - (f) in subsection (5A)—
 - (i) in paragraph (a), for “child” substitute “vulnerable”, and
 - (ii) in paragraph (b), for “child” substitute “vulnerable”,
 - (g) in subsection (6)—
 - (i) in paragraph (a), after “child witness” insert “or a deemed vulnerable witness”,
 - (ii) in paragraph (b), for “child”, where it first occurs, substitute “vulnerable”,
 - (iii) in paragraph (b), the word “child”, where it second occurs, is repealed,
 - (iv) in paragraph (c), for “child”, where it first occurs, substitute “vulnerable”, and
 - (v) in paragraph (c), the word “child”, where it second occurs, is repealed,
 - (h) in subsection (7)(a)—
 - (i) for “child”, where it first occurs, substitute “vulnerable”, and
 - (ii) the word “child”, where it second occurs, is repealed,
 - (i) in subsection (8A)(a)—
 - (i) in sub-paragraph (i), for “child” substitute “vulnerable”, and
 - (ii) in paragraph (ii), the word “above”, where it second occurs, is repealed,
 - (j) in subsection (9), the word “child”, in each place where it occurs, is repealed,
 - (k) in subsection (10), the word “child”, in each place where it occurs, is repealed,
 - (l) in subsection (11)(a), the word “child” is repealed, and
 - (m) in subsection (13), for “child” substitute “vulnerable”.
- (5) The title of section 271A of the 1995 Act becomes “**Child and deemed vulnerable witnesses**”.
- (6) The title of section 271C of the 1995 Act becomes “**Vulnerable witness application**”.
- (7) In section 271E(1)(a) of the 1995 Act (party considering vulnerable witness notice or application), for “child” substitute “vulnerable”.
- (8) In section 271F(2)(a) of the 1995 Act (modifications of section 271 in relation to accused giving evidence as a child witness)—
 - (a) in paragraph (a)(i), for “child witness (except in the phrase “child witness notice”)” substitute “witness”, and
 - (b) in paragraph (a)(ii), the word “child” is repealed.
- (9) In section 288E of the 1995 Act (prohibition of personal conduct of defence in certain cases involving child witnesses under the age of 12), in each of subsections (5) and (7) for “child” substitute “vulnerable”.

12 **Child and deemed vulnerable witnesses: standard special measures**

In section 271A of the 1995 Act (the standard special measures)—

- (a) in subsection (14)—
 - (i) in paragraph (a), the words from “where” to the end are repealed, and

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- (ii) in paragraph (c), the words from “in”, where it second occurs, to the end are repealed, and
- (b) after that subsection, insert—
 - “(15) The Scottish Ministers may, by order subject to the affirmative procedure—
 - (a) modify subsection (14),
 - (b) in consequence of any modification made under paragraph (a)
 - (i) prescribe the procedure to be followed when standard special measures are used, and
 - (ii) so far as is necessary, modify sections 271A to 271M of this Act.”.

13 **Objections to special measures: child and deemed vulnerable witnesses**

In section 271A of the 1995 Act (child witnesses)—

- (a) after subsection (4), insert—
 - “(4A) Any party to the proceedings may, not later than 7 days after a vulnerable witness notice has been lodged, lodge with the court a notice (referred to in this section as an “objection notice”) stating—
 - (a) an objection to any special measure (other than a standard special measure) specified in the vulnerable witness notice that the party considers to be inappropriate, and
 - (b) the reasons for that objection.
 - (4B) The court may, on cause shown, allow an objection notice to be lodged after the period referred to in subsection (4A).
 - (4C) If an objection notice is lodged in accordance with subsection (4A) or (4B)—
 - (a) subsection (5)(a)(ii) does not apply to the vulnerable witness notice, and
 - (b) the court must make an order under subsection (5A).”.
- (b) in subsection (5), for “later than 7” substitute “earlier than 7 days and not later than 14”, and
- (c) in subsection (13), after “notice” insert “or an objection notice”.

14 **Child witnesses**

- (1) In section 271B of the 1995 Act (further special provision for child witnesses under the age of 12), for subsection (3), substitute—
 - “(3) Subsection (4) applies if the child witness expresses a wish to be present in the court-room for the purpose of giving evidence.
 - (4) The court must make an order under section 271A or, as the case may be, 271D which has the effect of requiring the child witness to be present in the court-room for the purpose of giving evidence unless the court considers that it would not be appropriate for the child witness to be present there for that purpose.

- (5) Subsection (6) applies if the child witness—
 - (a) does not express a wish to be present in the court-room for the purpose of giving evidence, or
 - (b) expresses a wish to give evidence in some other way.
- (6) The court may not make an order under section 271A or 271D having the effect mentioned in subsection (4) unless the court considers that—
 - (a) the giving of evidence by the child witness in some way other than by being present in the court-room for that purpose would give rise to a significant risk of prejudice to the fairness of the trial or otherwise to the interests of justice, and
 - (b) that risk significantly outweighs any risk of prejudice to the interests of the child witness if the order were to be made.”.
- (2) In section 271A(5) of the 1995 Act (orders authorising special measures), for “271B(3)” substitute “271B”.
- (3) In section 271D of the 1995 Act (review of arrangements for child witnesses and certain other witnesses), after subsection (6), add—
 - “(7) This section is subject to section 271B.”.

15 Reporting of proceedings involving children

In section 47 of the 1995 Act (restriction on report of proceedings involving children), in each of subsections (1), (2) and (3)(a), for “16”, wherever it occurs, substitute “18”.

16 Other vulnerable witnesses: assessment and application

- (1) After section 271B of the 1995 Act, insert—

“271BA Assessment of witnesses

- (1) This section applies where a party intends to cite a witness other than a child witness or a deemed vulnerable witness to give evidence at, or for the purposes of, a hearing in relevant criminal proceedings.
- (2) The party intending to cite the witness must take reasonable steps to carry out an assessment under subsection (3).
- (3) An assessment must determine whether the person—
 - (a) is likely to be a vulnerable witness, and
 - (b) if so, what special measure or combination of special measures ought to be used for the purpose of taking the person's evidence.
- (4) In determining under subsection (3)(a) whether a person is likely to be a vulnerable witness the party must—
 - (a) take into account the matters mentioned in section 271(2),
 - (b) have regard to the best interests of the person, and
 - (c) take account of any views expressed by the person.”.
- (2) In section 271C(1) of the 1995 Act (citation of vulnerable witnesses)—

- (a) after “witness”, where it first occurs, insert “or a deemed vulnerable witness”, and
- (b) before “considers” insert “and, having carried out an assessment under section 271BA,”.

17 Objections to special measures: other vulnerable witnesses

In section 271C of the 1995 Act (other vulnerable witnesses)—

- (a) after subsection (4), insert—
 - “(4A) Any party to the proceedings may, not later than 7 days after a vulnerable witness application has been lodged, lodge with the court a notice (referred to in this section as “an objection notice”) stating—
 - (a) an objection to any special measure specified in the vulnerable witness application that the party considers to be inappropriate, and
 - (b) the reasons for that objection.
 - (4B) The court may, on cause shown, allow an objection notice to be lodged after the period referred to in subsection (4A).
 - (4C) If an objection notice is lodged in accordance with subsection (4A) or (4B)—
 - (a) subsection (5) does not apply to the vulnerable witness application, and
 - (b) the court must make an order under subsection (5A).”
- (b) in subsection (5), for “later than 7” substitute “earlier than 7 days and not later than 14”, and
- (c) in subsection (11)—
 - (i) after “application”, where it first occurs, insert “or an objection notice”, and
 - (ii) after “application”, where it second occurs, insert “or, as the case may be, the notice”.

18 Review of arrangements for vulnerable witnesses

In section 271D(1)(a) of the 1995 Act (application for review of arrangements for vulnerable witnesses), for “the party citing or intending to cite the witness” substitute “any party to the proceedings”.

19 Temporary additional special measures

After section 271H of the 1995 Act, insert—

“271HA Temporary additional special measures

- (1) The Scottish Ministers may, by order subject to the affirmative procedure, specify additional measures which for the time being are to be treated as special measures listed in section 271H(1).
- (2) An order under subsection (1)

- (3) An order under subsection (1) must specify—
 - (a) the area in which the additional measures may be used,
 - (b) the period during which the additional measures may be used, and
 - (c) the procedure to be followed when the additional measures are used.”.

20 Special measures: closed courts

- (1) In section 271H(1) of the 1995 Act (the special measures), after paragraph (e) insert—
 - “(ea) excluding the public during the taking of the evidence in accordance with section 271HB of this Act,”.
- (2) After section 271HA of the 1995 Act (inserted by section 19), insert—

“271HB Excluding the public while taking evidence

- (1) This section applies where the special measure to be used in respect of a vulnerable witness is excluding the public during the taking of the evidence of the vulnerable witness.
- (2) The court may direct that all or any persons other than those mentioned in subsection (3) are excluded from the court during the taking of the evidence.
- (3) The persons are—
 - (a) members or officers of the court,
 - (b) parties to the case before the court, their counsel or solicitors or persons otherwise directly concerned in the case,
 - (c) *bona fide* representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings,
 - (d) such other persons as the court may specially authorise to be present.”.
- (3) In section 271F(8)(a) of the 1995 Act (special measures not applying in relation to a vulnerable witness who is the accused), after “271H(1)(c)” insert “and (ea)”.

21 Power to prescribe further special measures

In section 271H of the 1995 Act (the special measures)—

- (a) in subsection (1), paragraph (f) is repealed,
- (b) after subsection (1), insert—
 - “(1A) The Scottish Ministers may, by order subject to the affirmative procedure—
 - (a) modify subsection (1),
 - (b) in consequence of any modification made under paragraph (a) —
 - (i) prescribe the procedure to be followed when special measures are used, and
 - (ii) so far as is necessary, modify sections 271A to 271M of this Act.”, and
- (c) subsection (2) is repealed.

22 Vulnerable witnesses: civil proceedings

In section 11(1) of the Vulnerable Witnesses (Scotland) Act 2004 (vulnerable witnesses: civil proceedings)—

- (a) in paragraph (a), for “16” substitute “18”,
- (b) the word “or” immediately after that paragraph is repealed, and
- (c) after paragraph (b), insert “, or
 - (c) the person is of such description or is a witness in such proceedings as the Scottish Ministers may by order subject to the affirmative procedure prescribe.”.