

SCHEDULE

Paragraph 2(3)

Part 1

FORM 35A.2

Form of child witness notice

Rule 35A.2

FORM 35A.2

Form of child witness notice

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 12

Received theday of20.....

(Date of receipt of this notice)

.....*(signed)*

Depute Clerk of Session

In the Cause (Cause Reference No)

[A.B.] *(designation and address)*

Pursuer [or Petitioner]

against

[C.D.] *(designation and address)*

Defender [or Respondent]

CHILD WITNESS NOTICE

1. The applicant is the pursuer [or petitioner] [or defender] [or respondent] in the action by [A.B.] *(design)* against [C.D.] *(design)*.

2. The applicant has cited [or intends to cite] [E.F.] *(date of birth)* as a witness.

3. [E.F.] is a child witness under section 11 of the Vulnerable Witnesses (Scotland) Act 2004 [and was under the age of sixteen on the date of the commencement of proceedings].

4. The applicant considers that the following special measure[s] is [are] the most appropriate for the purpose of taking the evidence of [E.F.] [or that [E.F.] should give evidence without the benefit of any special measure];-

(delete as appropriate and specify any special measure(s) sought).

5. [The reason[s] this [these] special measure[s] is [are] considered the most appropriate is [are] as follows:

(here specify the reason(s) for the special measure(s) sought)].

OR

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[The reason[s] it is considered that [L.F.] should give evidence without the benefit of any special measure is [are]–

(here explain why it is felt that no special measures are required)

6. [E.F.] and the parent[s] of [or] person[s] with parental responsibility for [E.F.] has [have] expressed the following view[s] on the special measure[s] that is [are] considered most appropriate [or the appropriateness of [E.F.] giving evidence without the benefit of any special measure]:

(delete as appropriate and set out the view(s) expressed and how they were obtained).

7. Other information considered relevant to this application is as follows:

(here set out any other information relevant to the child witness notice).

8. The applicant asks the court to–

- (a) consider this child witness notice;
- (b) make an order authorising the special measure[s] sought; [or
- (c) make an order authorising the giving of evidence by [L.F.] without the benefit of special measures.]

(delete as appropriate)

.....(Signed)

Solicitor [or Agent] for A.B. [or C.D.] *(include full designation)*

NOTE: This form should be suitably adapted where section 16 of the Act of 2004 applies.

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FORM 35A.3

Form of vulnerable witness application

Rule 35A.3

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 12

Received the day of 20

(Date of receipt of this notice)

.....*(signed)*

Depute Clerk of Session

In the Cause (Cause Reference No.)

[A,B.] *(designation and address)*

Pursuer [or Petitioner]

against

[C,D.] *(designation and address)*

Defender [or Respondent]

VULNERABLE WITNESS APPLICATION

1. The applicant is the pursuer [or petitioner] [or defender] [or respondent] in the action by [A,B.] *(design)* against [C,D.] *(design)*.

2. The applicant has cited [or intends to cite] [E.F.] *(date of birth)* as a witness.

3. The applicant considers that [E.F.] is a vulnerable witness under section 11(1)(b) of the Vulnerable Witnesses (Scotland) Act 2004 for the following reasons –

(here specify reasons witness is considered to be a vulnerable witness).

4. The applicant considers that the following special measure[s] is [are] the most appropriate for the purpose of taking the evidence of [E.F.]:-

(specify any special measure(s) sought)

5. The reason[s] this [these] special measure[s] is [are] considered the most appropriate is [are] as follows:-

(here specify the reason(s) for the special measure(s) sought).

6. [E.F.] has expressed the following view[s] on the special measure[s] that is [are] considered most appropriate:

(set out the views expressed and how they were obtained).

7. Other information considered relevant to this application is as follows:

(here set out any other information relevant to the vulnerable witness application).

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8. The applicant asks the court to

- (a) consider this vulnerable witness application;
- (b) make an order authorising [the special measure|s] sought.

.....(Signed)

Solicitor [or Agent] for A.B. [or C.D.] (include full designation)

NOTE. This form should be suitably adapted where section 16 of the Act of 2004 applies.

FORM 35A.4

Form of certificate of intimation

Rule 35A.4(1)

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 12

CERTIFICATE OF INTIMATION

Cause Reference No.

I, (name and designation) certify that I intimated the child witness notice [or vulnerable witness application] relating to (insert name of witness) to (insert names of parties or solicitors for parties, as appropriate) by (insert method of intimation) on (insert date of intimation).

Date:

.....(Signed)

Solicitor [or Agent]

(include full business designation)

FORM 35A.6

Form of application for review

Rule 35A.6

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 13

Received the day of 20.....

(Date of receipt of this notice)

..... *(signed)*

Depute Clerk of Session

In the Cause (Cause Reference No.)

[A.B.] *(designation and address)*

Pursuer *[or Petitioner]*

against

[C.D.] *(designation and address)*

Defender *[or Respondent]*

APPLICATION FOR REVIEW OF ARRANGEMENTS FOR VULNERABLE WITNESS

1. The applicant is the pursuer *[or petitioner]* *[or defender]* *[or respondent]* in the action by [A.B.] *(design)* against [C.D.] *(design)*.

2. A proof *[or hearing]* is fixed for *(date)* at *(time)*.

3. [L.F.] is a witness who is to give evidence at, or for the purposes of, the proof *[or hearing]*. [E.F.] is a child witness *[or vulnerable witness]* under section 11 of the Vulnerable Witnesses (Scotland) Act 2004.

4. The current arrangements for taking the evidence of [L.F.] are *(here specify current arrangements)*.

5. The current arrangements should be reviewed as *(here specify reasons for review)*.

6. [E.F.] *[and the parent[s] of [or person[s] with parental responsibility for] [E.F.]]* has *[have]* expressed the following view[s] on *[the special measure[s] that is [are] considered most appropriate] [or the appropriateness of [E.F.] giving evidence without the benefit of any special measure]:-*

(delete as appropriate and set out the view[s] expressed and how they were obtained).

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7. The applicant seeks (here specify the order sought).

(Signed)

Solicitor [or Agent] for A.B. [or C.D.] (include full designation)

NOTE: This form should be suitably adapted where section 16 of the Act of 2004 applies.

FORM 35A.7

Form of certificate of intimation

Rule 35A.7(2)

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 13

CERTIFICATE OF INTIMATION

Cause Reference No

I, (name and designation) certify that I intimated the review application relating to (insert name of witness) to (insert names of parties or solicitors for parties, as appropriate) by (insert method of intimation) on (insert date of intimation).

Date:

..... (Signed)

Solicitor [or Agent]

(include full business designation)

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Part 2

FORM 36.2-A

Form of citation of witness to proof or jury trial

(date)

CITATION TO COURT OF SESSION

To [A,B,] *(design)*

(Name) who is pursuing /defending a case against *(name)* [or is a *(specify)* in the case of *(name)* against *(name)* [or has presented a petition] in the Court of Session and has asked you to be a witness. You must attend the Court of Session, Parliament Square, Edinburgh on *(insert date)* at *(insert time)* for that purpose, [and bring with you *(specify documents)*]].

If you

- would like to know more about being a witness
- are a child under 16
- think you may be a vulnerable witness within the meaning of section 11(1) of the Vulnerable Witness (Scotland) Act 2004 (that is someone the court considers may be less able to give their evidence due to mental disorder or fear or distress connected to giving your evidence at the court hearing)

you should contact *(specify the solicitor acting for the party or the party litigant citing the witness)* for further information.

If you are a vulnerable witness, then you should be able to use a special measure (such measures include the use of a screen, a live TV link or supporter, or a commissioner) to help you give evidence.

Failure to attend

It is very important that you attend court and you should note that failure to do so may result in a warrant being granted for your arrest.

If you have any questions about anything in this citation, please contact *(specify the solicitor acting for the party or the party litigant citing the witness)* for further information.

(Signed)

Messenger-at-Arms

[or Solicitor [or Agent] for *(name of party citing witness)*]

(Address)

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Please read the notes attached and bring this citation with you when you come to the court.

NOTES

1. What must I do?

The attached document requires you to appear as a witness in the case mentioned in it.

It obliges you to attend at the Court of Session at the time and on the date mentioned. The hearing will start on that date and may continue on the following days. Because it is difficult to estimate how long it will take to hear the evidence of other witnesses, you cannot be given a precise time when you will be called to give evidence. The solicitor for the party who has called you as a witness may, however, be able to arrange to give you some indication of when you are likely to be required.

You should not bring a child under the age of 14 years with you to court unless he or she is to give evidence. You should make arrangements to have the child looked after while you are at the court.

2. Where is the court?

The Court of Session is behind St Giles Cathedral, High Street, Edinburgh. Parking in central Edinburgh can be very difficult. If you are coming by car you should allow plenty of time to find a parking space.

3. What do I do when I get to court?

When you arrive at the Court of Session, you should enter by the main door, Door 11. You should inform the receptionist of the name of the case. You will be told where you should go. There are signs throughout the building indicating the routes and various courts and other facilities.

You should wait there until you are contacted by the solicitor for the party who cited you.

4. How long will I have to wait?

It is not possible to say how long you will require to wait before being asked to give evidence. The representative of the party who cited you will keep you advised of the situation; but you should note that you may have to stay all day. You may wish to bring a newspaper or magazine to read while you wait.

The court usually sits between 10am and 4pm, rising for lunch normally between 1pm and 2pm. There are occasions, however, when the court may sit after 4pm or may rise later for lunch, in order, for example, to complete an important part of the evidence. You will be advised when you may go for lunch and when you must return.

5. What facilities are available?

The court's restaurant is open between 9am and 3pm, and provides light refreshments as well as lunches. You should speak to the solicitor who cited you about arrangements for going to the restaurant. You should not go to the restaurant without telling the representative of the party who cited you.

There are toilets in witness rooms and other locations throughout the building. If there is not a toilet in your immediate vicinity, a security guard will direct you to the nearest one.

6. What will happen when I am called to give evidence?

A court officer (the macer) will call you into court when you are to give evidence. You will give evidence from a witness box near the front of the courtroom. The judge will ask you to repeat the oath. If you wish to affirm instead of taking the oath, it is a good idea to tell the macer or the solicitor for the party who has called you in advance.

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You will be asked questions by the advocate representing the party who has called you as a witness. Then the advocate or advocates for the other party or parties may ask you questions. Finally, the first advocate will have an opportunity to ask you further questions.

You **must** answer **all** the questions truthfully and honestly to the best of your ability.

A witness normally gives evidence standing in the witness box. If you find it difficult to stand for a long period, you should ask if you may sit down.

7. Who will be in court?

The judge will be seated on the bench. The clerk of court sits at a table below the judge. The advocates will be sitting facing the judge, and solicitors, parties and their representatives will be sitting behind the advocates. The Press and members of the public may also be in court. If the case is tried by jury, there will be twelve jurors sitting in a jury box opposite you.

8. Will I be compensated?

You do not get paid for giving evidence. You are entitled to some payment for out-of-pocket travelling and subsistence expenses. You should keep any receipts for these expenses and give them to the representative of the party who has called you. If you lose earnings, or need to pay someone else to do your job, you can be paid some compensation, subject to certain limits. These payments are the responsibility of the party who has called you as a witness and his representative. It is *not* the responsibility of the court.

9. If I wish to complain, how do I do so?

There are leaflets available at the reception desk at the entrance which contain the complaints procedures in relation to the services provided by (1) court staff, (2) solicitors and (3) the legal profession generally. If you have a complaint, please bring it to the attention of the appropriate person referred to in the leaflet.