
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 313

Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016

CHAPTER 14

VULNERABLE WITNESSES

Interpretation and application of this Chapter

- 14.1.**—(1) This Chapter applies where the evidence of a witness is to be taken in proceedings.
(2) In this Chapter—
“2004 Act” means the Vulnerable Witnesses (Scotland) Act 2004⁽¹⁾;
“child witness notice” has the meaning given by section 12(2) of the 2004 Act;
“review application” means an application under section 13 of the 2004 Act;
“vulnerable witness application” has the meaning given by section 12(6) of the 2004 Act.

Form of notices and applications

- 14.2.**—(1) A child witness notice is to be made in Form 14.2–A.
(2) A vulnerable witness application is to be made in Form 14.2–B.
(3) A review application is to be made—
(a) in Form 14.2–C; or
(b) orally, with the leave of the sheriff.

Determination of notices and applications

- 14.3.**—(1) When a notice or application under this Chapter is lodged, the sheriff may require any of the parties to provide further information before determining the notice or application.
(2) The sheriff may—
(a) determine the notice or application by making an order under section 12(1) or (6) or 13(2) of the 2004 Act without holding a hearing;
(b) fix a hearing at which parties are to be heard on the notice or application before determining it.
(3) The sheriff may make an order altering the date of any hearing at which evidence is to be taken in order that the notice or application may be determined.

Determination of notices and applications: supplementary orders

14.4. Where the sheriff determines a notice or application under this Chapter and makes an order under section 12(1) or (6) or 13(2) of the 2004 Act, the sheriff may make further orders to secure the expeditious disposal of the proceedings.

Intimation of orders

- 14.5.**—(1) Where the sheriff makes an order—
- (a) fixing a hearing under rule 14.3(2)(b);
 - (b) altering the date of a hearing under rule 14.3(3); or
 - (c) under section 12(1) or (6) or 13(2) of the 2004 Act,
- the sheriff clerk is to intimate the order in accordance with this rule.
- (2) Intimation is to be given to—
 - (a) every party to the proceedings; and
 - (b) any other person named in the order.
 - (3) Intimation is to be given—
 - (a) on the day that the hearing is fixed or the order is made;
 - (b) in the manner ordered by the sheriff.

Taking of evidence by commissioner: preparatory steps

- 14.6.**—(1) This rule applies where the sheriff authorises the special measure of taking evidence by a commissioner under section 19(1) of the 2004 Act.
- (2) The commission is to proceed without interrogatories unless the sheriff otherwise orders.
 - (3) The order of the sheriff authorising the special measure is sufficient authority for citing the vulnerable witness to appear before the commissioner.
 - (4) The party who cited the vulnerable witness—
 - (a) must give the commissioner—
 - (i) a certified copy of the order of the sheriff appointing the commissioner;
 - (ii) a copy of the pleadings;
 - (iii) where rule 14.7 applies, the approved interrogatories and cross-interrogatories;
 - (b) must instruct the clerk to the commission;
 - (c) is responsible in the first instance for the fee of the commissioner and the clerk.
 - (5) The commissioner is to fix a hearing at which the commission will be carried out.
 - (6) The commissioner must consult the parties before fixing the hearing.
 - (7) An application by a party for leave to be present in the room where the commission is carried out is to be made by motion.

Taking of evidence by commissioner: interrogatories

- 14.7.**—(1) This rule applies where the sheriff—
- (a) authorises the special measure of taking evidence by a commissioner under section 19(1) of the 2004 Act; and
 - (b) orders that interrogatories are to be prepared.

(2) When the sheriff makes an order for interrogatories to be prepared, the sheriff is to specify the periods within which parties must comply with the steps in this rule.

(3) The party who cited the vulnerable witness must lodge draft interrogatories in process.

(4) Any other party may lodge cross-interrogatories.

(5) The parties may adjust their interrogatories and cross-interrogatories.

(6) At the expiry of the adjustment period, the parties must lodge the interrogatories and cross-interrogatories as adjusted in process.

(7) The sheriff is to resolve any dispute as to the content of the interrogatories and cross-interrogatories, and approve them.

Taking of evidence by commissioner: conduct of commission

14.8.—(1) The commissioner is to administer the oath *de fidei administratione* to the clerk.

(2) The commissioner is to administer the oath to the vulnerable witness in Form 14.8–A unless the witness elects to affirm.

(3) Where the witness elects to affirm, the commissioner is to administer the affirmation in Form 14.8–B.

Taking of evidence by commissioner: lodging and custody of video record and documents

14.9.—(1) The commissioner is to lodge the video record of the commission and any relevant documents with the sheriff clerk.

(2) When the video record and any relevant document are lodged, the sheriff clerk is to notify every party—

(a) that the video record has been lodged;

(b) whether any relevant documents have been lodged;

(c) of the date on which they were lodged.

(3) The video record and any relevant documents are to be kept by the sheriff clerk.

(4) Where the video record has been lodged—

(a) the name and address of the vulnerable witness and the record of the witness’s evidence are to be treated as being in the knowledge of the parties;

(b) the parties need not include—

(i) the name of the witness in any list of witnesses; or

(ii) the record of evidence in any list of productions.