

2006 No. 75

SHERIFF COURT

**Act of Sederunt (Child Care and Maintenance Rules)
Amendment (Vulnerable Witnesses (Scotland) Act 2004) 2006**

Made - - - - - *24th February 2006*

Coming into force - - - - - *1st April 2006*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a) 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) 2006 and shall come into force on 1st April 2006.

(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(b) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 3.65(c) at the end there shall be inserted the following:—

“vulnerable witness application” has the meaning given in section 12(6)(a) of the Act of 2004”.

(3) After rule 3.69(d) there shall be inserted the following:—

“Vulnerable Witness Application

3.69A. A vulnerable witness application made in accordance with section 12(6)(a) of the Act of 2004 shall be in Form 76A.

3.69B.—(1) The party making a vulnerable witness application shall intimate a copy of the vulnerable witness 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.

(a) 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).

(b) S.I. 1997/291 (S.19); amended by S.S.I. 2005/190.

(c) Rule 3.65 was inserted by S.S.I. 2005/190.

(d) Rule 3.69 was inserted by S.S.I. 2005/190.

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

3.69C.—(1) On receipt of a vulnerable witness application a sheriff may—

- (a) make an order under section 12(6) of the Act of 2004 without holding a hearing;
- (b) require of any of the parties further information before making any further order; or
- (c) fix a date for a hearing of the vulnerable witness 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 vulnerable witness 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 vulnerable witness 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.”

(4) In rule 3.72(2)(a), for “child” there shall be substituted “witness”.

(5) In rules 3.73, 3.74 and 3.75(1)(b), after “12(1)” there shall be inserted “,12(6)”.

(6) In Schedule 1—

- (a) after Form 76 there shall be inserted the forms set out in the Schedule to this Act of Sederunt;
- (b) in Form 77—
 - (i) in paragraph 3, for “child” there shall be substituted “vulnerable”; and
 - (ii) for paragraph 6 there shall be substituted the following:—

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

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

- (c) in Form 78, for “child” there shall be substituted “witness”.

A C HAMILTON
Lord President
I.P.D.

Edinburgh
24th February 2006

(a) Rule 3.72 was inserted by S.S.I. 2005/190.
(b) Rules 3.73 to 3.75 were inserted by S.S.I. 2005/190.

SCHEDULE 1

Paragraph 2(6)

FORM 76A

Rule 3.69A

VULNERABLE WITNESSES (SCOTLAND) ACT 2004

Section 12

Received theday of20.....

(Date of receipt of this notice)

.....[signed]

Sheriff Clerk

VULNERABLE WITNESS APPLICATION

Sheriff Court

.....20

(Court Ref. No.)

1. [A.B.] (the applicant) is a party to [an appeal under section 51] or [an application under section [65(7)] or [65(9)] or [85(1)] of the Children (Scotland) Act 1995. [(Specify nature of interest of the party.)]

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

3. The applicant considers that [C.D.] 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 [C.D.].

(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 measures(s) sought).

6. [C.D.] 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).

8. The applicant asks the court to–
- (a) consider this vulnerable witness application;
 - (b) make an order authorising the special measure[s] sought.

.....(Signed)

[A.B.]

or [Legal representative of A.B.] (*include full designation*)

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

FORM 76B

Rule 3.69B

VULNERABLE WITNESSES (SCOTLAND) ACT 2004

CERTIFICATE OF INTIMATION

Sheriff Court

.....20.....

(Court Ref. No.)

I certify that intimation of the vulnerable witness application relating to [name of witness] was made to (insert names of parties or solicitors for parties, as appropriate) by (insert method of intimation; where intimation is by facsimile transmission, insert fax number to which intimation sent) on (insert date of intimation).

Date:

.....(Signed)

Solicitor [or Sheriff Officer]

(include full business designation)

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

These Rules amend the Act of Sederunt (Child Care and Maintenance Rules) 1997 (“the 1997 Rules”) (S.I. 1997/291) to make provision for the making of vulnerable witness applications (under section 12 of the Vulnerable Witnesses (Scotland) Act 2004) in proceedings under sections 51(1), 65(7) and (9) and 85(1) of the Children (Scotland) Act 1995.

Paragraph 2(3) inserts new rules 3.69A and 3.69B to provide for a form of vulnerable witness application and for intimation of such application by the party making the application to all other parties to the proceedings and any safeguarder.

Paragraph 2(3) also inserts a new rule 3.69C which allows the sheriff to authorise the use of special measures without holding a hearing. The sheriff may also, subject to any statutory time limits, alter the date of the proof or hearing at which the vulnerable witness is to give evidence. Where the sheriff decides to fix a hearing, rule 3.69C provides for intimation of the order fixing the hearing.

Paragraphs 4 and 5 make consequential amendments to rules 3.72 to 3.75 to allow for the application of those rules to vulnerable witness applications.

Paragraph 6 amends some of the forms set out in the 1997 Rules to provide for proceedings in relation to vulnerable witness applications.

2006 No. 75

SHERIFF COURT

Act of Sederunt (Child Care and Maintenance Rules)
Amendment (Vulnerable Witnesses (Scotland) Act 2004) 2006

£3.00

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