

2006 No. 76

HIGH COURT OF JUSTICIARY

SHERIFF COURT

**Act of Adjournal (Criminal Procedure Rules Amendment)
(Vulnerable Witnesses (Scotland) Act 2004) 2006**

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

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

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(a), 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) (Vulnerable Witnesses (Scotland) Act 2004) 2006 and shall come into force on 1st April 2006.

(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) The Act of Adjournal (Criminal Procedure Rules) 1996(b) shall be amended in accordance with the following sub-paragraphs.

(2) Nothing in this Act of Adjournal shall affect any—

- (a) summary proceedings; or
- (b) solemn proceedings—
 - (i) which commenced before 1st April 2006; or
 - (ii) which commenced after 1st April 2006 where there is no vulnerable witness within the meaning of section 271(1)(b) of the Criminal Procedure (Scotland) Act 1995(c), with proceedings being taken to have commenced when a report of a case has been received by the procurator fiscal.

(3) The following rules of the Act of Adjournal (Criminal Procedure Rules) 1996 shall apply in solemn proceedings which commence after 1st April 2006 and in which there is a vulnerable witness within the meaning of section 271(1)(b) of the Criminal Procedure (Scotland) Act 1995:—

- (a) rule 22.4(d)(review of arrangements for vulnerable witnesses);

(a) 1995 c.46.

(b) S.I. 1996/513, last amended by S.S.I. 2005/574.

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

(d) Rules 22.4 to 22.10 were inserted by S.S.I. 2005/188; Rules 22.11 to 22.15 were inserted by S.S.I. 2005/574.

- (b) rule 22.5 (procedure for review);
- (c) rule 22.6 (intimation of order);
- (d) rule 22.8 (application for prohibition of personal conduct of defence);
- (e) rule 22.9 (transfer of cases);
- (f) rule 22.10 (evidence in chief in form of prior statement);
- (g) rule 22.11 (appointment of commissioner);
- (h) rule 22.12 (commission);
- (i) rule 22.13 (video recording of commission);
- (j) rule 22.14 (custody of video recording and documents).

(4) After rule 22.1 (child witness notice)(a) there shall be inserted the following:–

“Vulnerable witness application

22.1A.— An application under section 271C(2) of the Act of 1995(b) (vulnerable witness application) shall be in Form 22.1A and shall be lodged with the clerk of court.”.

(5) For rule 22.2(c) (procedure on lodging child witness notice) there shall be substituted the following:–

“Procedure on lodging child witness notice or vulnerable witness application

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

- (a) endorse on the notice or application, as the case may be, the time and date on which it was received; and
- (b) place the notice or application, as the case may be, before a judge in chambers.

(2) The party that lodges the child witness notice or vulnerable witness application, as the case may be, shall lodge a certificate of intimation with the clerk of court–

- (a) within 7 days after lodging the notice or application, as the case may be; or
- (b) at least 2 days before any first diet or preliminary hearing,

whichever is the earlier.”.

(6) After rule 22.3(d) (intimation of an order under section 271A(e)) there shall be inserted the following:–

“Intimation of an order under section 271C

22.3A.—(1) An order–

- (a) under section 271C(5)(a) of the Act of 1995 authorising the use of a special measure;
- (b) appointing a vulnerable witness application to be disposed of–
 - (i) under section 271C(5A)(a)(f) of that Act, at a preliminary hearing; or
 - (ii) under section 271C(5A)(b) of that Act at a first diet;
- (c) under section 271C(5A)(c) of that Act, appointing a diet to be held before the trial diet; or

(a) Rule 22.1 was inserted by S.S.I. 2005/188.

(b) Section 271C was inserted by section 1(1) of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3).

(c) Rule 22.2 was inserted by S.S.I. 2005/188.

(d) Rule 22.3 was inserted by S.S.I. 2005/188.

(e) Section 271A was inserted by section 1(1) of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3).

(f) Section 271C was amended by paragraph 44 of the Schedule to the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

(d) under section 271C(7) of that Act (order in relation to special measure after hearing),
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)(b) or (c), to the governor of any institution in which the accused is detained.”.

(7) In the appendix after Form 22.1(a) there shall be inserted the form set out in the Schedule to this Act of Adjournal.

A C HAMILTON
Lord Justice General
I.P.D.

Edinburgh
24th February 2006

(a) Form 22.1 was inserted by S.S.I. 2005/188.

SCHEDULE

PART 1

Paragraph 2(7)

FORM 22.1A

Rule 22.1A

Form of vulnerable witness application under section 271C(2) of the Criminal Procedure (Scotland) Act 1995

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE
CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*) AT (*place*)]

VULNERABLE WITNESS APPLICATION

by

HER MAJESTY'S ADVOCATE [*or* THE PROCURATOR FISCAL, (*place*)]

[*or* [A.B.] (*address*)

[*or* Prisoner in the Prison of (*place*)]]

Prosecution reference.....

Court reference.....

HUMBLY SHEWETH:

1. That [A.B.], (*date of birth*) [, along with (*name(s) of co-accused*)] has been indicted on (*date of indictment*) at the instance of Her Majesty's Advocate with a preliminary hearing [*or* a trial diet] in the High Court of Justiciary sitting at (*place*) on (*date*) [*or* with a first diet on (*date*) and a trial diet on (*date*) in the sheriff court of (*place*)].

2. That [A.B.] is charged with (*specify charge*)[, which is an offence to which section 288C of the Criminal Procedure (Scotland) Act 1995 applies][*or* an order has been made under section 288F(2) of the Criminal Procedure (Scotland) Act 1995].

3. That the applicant has cited [*or* intends to cite][C.D.], (*date of birth*) as a witness who is to [*or* [A.B.] may] give evidence at, or for the purposes of, the trial.

4. That [C.D.] [*or* [A.B.]] is likely to be a vulnerable witness under section 271(1)(b) of the Criminal Procedure (Scotland) Act 1995 for the following reasons:–

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

5. The following special measure[s] is [*or* are] considered the most appropriate for the purpose of taking the evidence of [C.D.] [*or* the applicant]:–

(*here specify all special measures sought*)

The reason[s] this [*or* these] special measure[s] is [*or* are] considered the most appropriate is [*or* are] as follows:–

(here specify reason(s) for the special measure(s) including any information known on the possible effect on the witness if required to give evidence without the benefit of any special measures).

6. That [C.D.] [or [A.B.]] has expressed the following view[s]:–

(here set out the view(s) expressed, how and when they were obtained).

7. [That other information considered relevant to this application is as follows:–

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

8. That the applicant has intimated a copy of this Application on [A.B.] [or the legal representative of [A.B.]] [or on the Crown Agent] [or the Procurator Fiscal].

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]–

- (a) to authorise the special measure[s] sought; and
- (b) to do otherwise as to your Lordship[s] shall seem proper;
- (c) to require the clerk of court to intimate the order to *(specify)*.

ACCORDING TO JUSTICE, etc.

(Signed)

[A.B.]

[or Legal representative of [A.B.]]

[or Prosecutor]

(Address, e-mail address and telephone number of agent).

EXPLANATORY NOTE

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

This Act of Adjournal amends the Criminal Procedure Rules 1996 (S.I. 1996/513) (“the 1996 Rules”) to make provision consequential upon amendments to the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) by the Vulnerable Witness (Scotland) Act 2004 (asp 3) (“the 2004 Act”). Paragraph 2(2) and (3) sets out transitional provisions which are linked to the commencement of the 2004 Act under S.S.I 2006/59.

Paragraph 2(4) inserts a new rule 22.1A into the 1996 Rules to make provision for lodging a vulnerable witness application under section 271C of the 1995 Act.

Paragraph 2(5) amends rule 22.2 (procedure on lodging child witness notice) to apply the procedure for dealing with child witness notices to vulnerable witness applications.

Paragraph 2(6) inserts a new rule 22.3A to make provision for intimation of orders in relation to vulnerable witness applications under section 271C of the 1995 Act.

Paragraph 2(7) adds a new form of vulnerable witness application to the annexe of the 1996 Rules.

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