

2007 No. 478

SHERIFF COURT

**The Fatal Accidents and Sudden Deaths Inquiry Procedure
(Scotland) Amendment Rules 2007**

Made - - - - - *24th October 2007*

Coming into force - - - *1st November 2007*

The Scottish Ministers make the following Rules in exercise of the powers conferred by section 7 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976(a) and all other powers enabling them to do so.

Citation and commencement

1. These Rules may be cited as the Fatal Accidents and Sudden Deaths Inquiry Procedure (Scotland) Amendment Rules 2007 and come into force on 1st November 2007.

Amendment of the Fatal Accident Inquiry Rules

2.—(1) The Fatal Accidents and Sudden Deaths Inquiry Procedure (Scotland) Rules 1977(b) are amended as follows.

(2) In rule 2(1) (interpretation)—

(a) after the definition of “the Act”, insert—

““the 2004 Act” means the Vulnerable Witnesses (Scotland) Act 2004(c);”;

(b) in both the definitions of “officer of law” and “procurator fiscal” for “section 462 of the Criminal Procedure (Scotland) Act 1975” substitute “section 307(1) (interpretation) of the Criminal Procedure (Scotland) Act 1995(d)”; and

(c) after the definition of “officer of law”, insert—

““the Ordinary Cause Rules” means Schedule 1 to the Sheriff Courts (Scotland) Act 1907(e);”.

(3) Before rule 4(2)(a) (notice of holding of inquiry), insert—

“(za) any civil partner of the person who has died;”.

(a) 1976 c.14. The functions of the Lord Advocate were transferred to the Secretary of State by virtue of the Transfer of Functions (Lord Advocate and the Secretary of State) Order 1999 (S.I. 1999/678), and from the Secretary of State to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.I. 1977/191, amended by S.I. 1992/1568.

(c) 2004 asp 3.

(d) 1995 c.46.

(e) 1907 c.51. Schedule 1 was substituted by S.I. 1993/1956 and amended by S.I. 1996/2167 and 2445, S.S.I. 2000/239 and 408, 2001/8 and 144, 2002/7, 128 and 566, 2003/25 and 26, 2004/197 and 350, 2005/20, 189, 638 and 648 and 2006/207, 293, 410 and 509, and 2007/6 and 463.

(4) After rule 8 (citation of witnesses or havers), insert—

“Vulnerable witness procedure – forms

8A.—(1) This rule applies where a vulnerable witness (within the meaning of section 11(1) of the 2004 Act) is to give evidence at an inquiry and the application of the Ordinary Cause Rules(a) in relation to the vulnerable witness would otherwise require any of the forms in column 1 of the Table below to be used.

(2) The form used instead shall be as nearly as may be the corresponding form of the Schedule to these Rules that is specified in column 2 of the Table.

TABLE

<i>Column 1 – Ordinary Cause Rules form</i>	<i>Column 2 – Inquiry form</i>
child witness notice (Form G19)	Form 7
vulnerable witness application (Form G20)	Form 8
certificate of intimation (Form G21)	Form 9
review application (Form G22)	Form 10
certificate of intimation (Form G23)	Form 11

Vulnerable witness procedure - preliminary hearing

8B. If any preliminary hearing is held before the inquiry, the sheriff shall ascertain whether there is or is likely to be a vulnerable witness (within the meaning of section 11(1) of the 2004 Act) who is to give evidence at the inquiry, consider any child witness notice or vulnerable witness application that has been lodged where no order has been made under section 12 of the 2004 Act and consider whether any order under section 12 of that Act requires to be made.”.

(5) In the Schedule—

- (a) for Form 5 substitute the Form 5 set out in Schedule 1; and
- (b) at the end, add Forms 7 to 11 set out in Schedule 2.

KENNY MACASKILL

A member of the Scottish Executive

St. Andrews House,
Edinburgh
24th October 2007

(a) Amendments to the Ordinary Cause Rules related to the application of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) (including the addition of a new Chapter 45 of those Rules) were made by S.S.I. 2007/463.

SCHEDULE 1

Rule 2(5)(a)

Form of citation of witnesses or havers

“Rule 8

FORM 5

To (name and designation).

YOU are required to attend at the Sheriff Court House at (address) on (date) at (time) as a witness at the instance of (*insert “the Procurator Fiscal for the District of ” or name and address of person calling witness*) at the INQUIRY then to be held into the circumstances of the DEATH of (*name and address of deceased*) [and are required to bring with you]

If you–

- would like to know more about being a witness;
- are a child under the age of 16; or
- think you may be a vulnerable witness within the meaning of section 11(1) of the Vulnerable Witnesses (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 inquiry)

you should contact (*specify the Procurator Fiscal, police officer, sheriff officer or solicitor citing the witness*) for further information.

If you are a vulnerable witness (including a child under the age of 16), then you should be able to use a special measure (such measures include use of a screen, a live TV link or a supporter, or a commissioner) to help you give evidence.

Expenses

You may claim back money which you have to spend and any earnings you have lost within certain specified limits, because you have to come to the inquiry on the above date. These may be paid to you if you claim within specified time limits. Claims should be made to the person who has asked you to attend the inquiry. Proof of any loss of earnings should be given to that person.

If you wish your travelling expenses to be paid before you go to the inquiry, you should apply for payment to the person who has asked you to attend the inquiry.

Failure to attend

It is very important that you attend the inquiry and you should note that failure to do so may result in a warrant being granted for your arrest. In addition, if you fail to attend without any good reason, having requested and been paid your travelling expenses, you may be ordered to pay a penalty not exceeding £250.

If you have any questions about anything in this citation, please contact (*specify the Procurator Fiscal, police officer, sheriff officer or solicitor citing the witness*) for further information.

(*Signature and designation of Procurator Fiscal, police officer, sheriff officer or solicitor*)”

SCHEDULE 2

Rule 2(5)(b)

Forms for use with vulnerable witnesses

“Rule 8A

FORM 7

Form of child witness notice

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 12

FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY (SCOTLAND) ACT 1976

Received theday of20.....

(Date of receipt of this notice)

.....(signed)

Sheriff Clerk

CHILD WITNESS NOTICE

Sheriff Court

.....20

Court Ref. No.

1. The applicant is the Procurator Fiscal or a person entitled to appear at the inquiry under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 into the circumstances of the death of (insert name and address of deceased).

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

3. [A.B.] is a child witness under section 11 of the Vulnerable Witnesses (Scotland) Act 2004 [and was under the age of 16 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 [A.B.] [or that [A.B.] should give evidence without the benefit of any special measure]:-

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

5. [(a) 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

[(b) The reason[s] it is considered that [A.B.] 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. [A.B.] and the parent[s] of [*or* person[s] with parental responsibility for] [A.B.] has [have] expressed the following view[s] on the special measure[s] that is [are] considered most appropriate [*or* the appropriateness of [A.B.] 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 sheriff 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 [A.B.] without the benefit of special measures.

(delete as appropriate)

.....(*Signed*)

The applicant or legal representative of the applicant (*include full designation*)

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

FORM 8

Form of vulnerable witness application

Rule 8A

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 12
FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY (SCOTLAND) ACT 1976

Received theday of20.....

(Date of receipt of this notice)

.....*(signed)*

Sheriff Clerk

VULNERABLE WITNESS APPLICATION

Sheriff Court

.....20

Court Ref. No.

1. The applicant is the Procurator Fiscal or a person entitled to appear at the inquiry under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 into the circumstances of the death of *(insert name and address of deceased)*.

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

3. The applicant considers that [A.B.] 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 [A.B.]:-

(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. [A.B.] 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 sheriff to–

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

.....(*Signed*)

The applicant or legal representative of the applicant (*include full designation*)

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

FORM 9

Form of certificate of intimation

Rule 8A

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 12

FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY (SCOTLAND) ACT 1976

CERTIFICATE OF INTIMATION

Sheriff Court

.....20.....

Court Ref. No.

I certify that intimation of the child witness notice [*or vulnerable witness application*] relating to (*insert name of witness*) was made to (*insert names of the persons entitled to appear at the inquiry or the solicitors for those persons, as appropriate*) by (*insert method of intimation*) on (*insert date of intimation*).

Date:

(*Signature and designation of Procurator Fiscal, police officer, sheriff officer or solicitor*)

FORM 10

Form of application for review

Rule 8A

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 13

FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY (SCOTLAND) ACT 1976

Received theday of.....20....

(date of receipt of this notice)

.....*(signed)*

Sheriff Clerk

APPLICATION FOR REVIEW OF ARRANGEMENTS FOR VULNERABLE WITNESS

Sheriff Court.....

.....20....

Court Ref. No.

1. The applicant is the Procurator Fiscal or a person entitled to appear at the inquiry under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 into the circumstances of the death of *(insert name and address of deceased)*.

2. The fatal accident inquiry is fixed for *(date)* at *(time)*.

3. [A.B.] is a witness who is to give evidence at, or for the purposes of, the inquiry. [A.B.] 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 [A.B.] are *(here specify current arrangements)*.

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

6. [A.B.] [and the parent[s] of [*or person[s] with parental responsibility for*] [A.B.]] has [have] expressed the following view[s] on [the special measure[s] that is [are] considered most appropriate] [*or the appropriateness of*] [A.B.] 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. The applicant seeks (here specify the order sought).

(Signed)

[The applicant or]

legal representative of the applicant *(include full designation)*

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

FORM 11

Form of certificate of intimation

Rule 8A

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 13

FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY (SCOTLAND) ACT 1976

CERTIFICATE OF INTIMATION

Sheriff Court

.....20.....

Court Ref. No.

I certify that intimation of the review application relating to *(insert name of witness)* was made to *(insert names of the persons entitled to appear at the inquiry or the solicitors for those persons, as appropriate)* by *(insert method of intimation)* on *(insert date of intimation)*.

Date:

(Signature and designation of Procurator Fiscal, police officer, sheriff officer or solicitor)

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Fatal Accidents and Sudden Deaths Inquiry Procedure (Scotland) Rules 1977 (“the principal Rules”) on the conduct of fatal accident inquiries (“FAIs”).

Courts in civil proceedings such as FAIs are required by Part 2 of the Vulnerable Witnesses (Scotland) Act 2004 (“the 2004 Act”) to take into account the circumstances of vulnerable witnesses.

Under section 4(7) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (“the 1976 Act”), the FAI rules of evidence and procedure, and the powers of a sheriff to deal with contempt of court and enforce the attendance of witnesses, are as nearly as possible those applicable in an ordinary civil cause before a sheriff sitting alone, subject to the 1976 Act and FAI-specific rules made under it. The Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Vulnerable Witnesses (Scotland) Act 2004) 2007 (S.S.I. 2007/463) amends the rules for ordinary civil causes as a result of the 2004 Act.

These Rules make amendments required to the FAI-specific rules of procedure contained in the principal Rules, in particular to prescribe the forms required. They also require intimation to civil partners and make minor amendments to update references to repealed legislation.

2007 No. 478

SHERIFF COURT

The Fatal Accidents and Sudden Deaths Inquiry Procedure
(Scotland) Amendment Rules 2007

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