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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 295**

**Act of Adjournal (Criminal Procedure Rules 1996 and Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 4) (Sheriff Appeal Court) 2015 Amendment) (Miscellaneous) 2015**

**Citation, commencement and application, etc.**

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules 1996 and Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 4) (Sheriff Appeal Court) 2015 Amendment) (Miscellaneous) 2015.

(2) It comes into force on 1st September 2015.

(3) Paragraphs 2, 4 and 5(3) to (7) apply only to criminal proceedings commenced on or after 1st September 2015.

(4) For the purposes of subparagraph (3), criminal proceedings are to be taken as commenced on the day on which a report of the case has been received by the procurator fiscal.

(5) A certified copy is to be inserted in the Books of Adjournal.

**Amendment of Chapter 2 of the Criminal Procedure Rules 1996**

2.—(1) Chapter 2 (service of documents) of the Criminal Procedure Rules 1996(1) is amended in accordance with this paragraph.

(2) In rule 2.3A (service etc. on accused through a solicitor)(2)—

(a) the existing rule becomes paragraph (1);

(b) after paragraph (1) insert—

“(2) Paragraph (3) applies where a party requires to intimate—

(a) a vulnerable witness notice in accordance with section 271A(13) of the Act of 1995 (child and deemed vulnerable witnesses)(3); or

(b) a vulnerable witness application in accordance with section 271C(11) of the Act of 1995 (vulnerable witness application).

(3) Intimation may be given to a solicitor under section 72G or 148D of the Act of 1995 by—

(a) any of the methods specified in paragraph (1); or

(b) sending it to the solicitor via the CJSM system, if that solicitor is a CJSM user.

(4) In this rule—

“CJSM user” means a solicitor who has an active account on the CJSM system;

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(1) The Criminal Procedure Rules 1996 are in Schedule 2 to the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513, last amended by S.S.I. 2015/245). Chapter 2 was last amended by S.S.I. 2010/418.

(2) Rule 2.3A was inserted by S.S.I. 2005/434 and amended by S.S.I. 2007/511.

(3) Section 271A was inserted by the Vulnerable Witnesses (Scotland) Act 2004 (asp 11), section 1(1) and last amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 3), section 87(3). It is prospectively amended by the Victims and Witnesses (Scotland) Act 2014 (asp 1), sections 11 to 13.

“CJSM system” means the Criminal Justice Secure eMail system<sup>(4)</sup> managed by the Ministry of Justice to facilitate the transmission of encrypted sensitive information between criminal justice organisations and practitioners.”.

### **Amendment of Chapter 19A of the Criminal Procedure Rules 1996**

**3.**—(1) Chapter 19A (alteration by Clerk of Justiciary of place where case to be heard) of the Criminal Procedure Rules 1996<sup>(5)</sup> is amended in accordance with this paragraph.

(2) In rule 19A.1(1) (power of Clerk of Justiciary to alter place where case to be heard), after paragraph (d) insert—

“(e) adjourned a preliminary hearing under section 75A of the Act of 1995.”.

### **Amendment of Chapter 22 of the Criminal Procedure Rules 1996**

**4.**—(1) Chapter 22 (evidence of vulnerable witnesses) of the Criminal Procedure Rules 1996<sup>(6)</sup> is amended in accordance with this paragraph.

(2) For rule 22.1 (child witness notice), substitute—

#### **“Vulnerable witness notice: non-standard special measures**

**22.1.** Where a vulnerable witness notice under section 271A(2) of the Act of 1995 (vulnerable witness notice)—

- (a) specifies a special measure other than a standard special measure; or
- (b) seeks an order authorising the giving of evidence by the witness without the benefit of any special measure,

it shall be in Form 22.1 and shall be lodged with the clerk of court.”.

(3) After rule 22.1, insert—

#### **“Vulnerable witness notice: standard special measures**

**22.1ZA.** Where a vulnerable witness notice under section 271A(2) of the Act of 1995 (vulnerable witness notice) specifies only a standard special measure, it shall be in Form 22.1ZA and shall be lodged with the clerk of court.”.

(4) In rule 22.2 (procedure on lodging child witness notice or vulnerable witness application)<sup>(7)</sup>—

- (a) in paragraph (1), for “rule 22.1 (child witness notice)” substitute “rule 22.1 (vulnerable witness notice: non-standard special measures) or rule 22.1ZA (vulnerable witness notice: standard special measures)”;
- (b) in paragraph (2), for “child witness notice” substitute “vulnerable witness notice”;
- (c) the heading of rule 22.2 becomes “Procedure on lodging vulnerable witness notice or vulnerable witness application”.

(5) After rule 22.2, insert—

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(4) The CJSM system may be found at <http://cjsm.justice.gov.uk>.

(5) Chapter 19A was inserted by [S.S.I. 2003/468](#) and last amended by [S.S.I. 2010/418](#).

(6) Chapter 22 was substituted by [S.S.I. 2005/118](#) and last amended by [S.S.I. 2006/76](#).

(7) Rule 22.2 was substituted by [S.S.I. 2006/76](#).

### “Objections to special measures

**22.2A.**—(1) An objection notice under section 271A(4A) or 271C(4A) of the Act of 1995 (objections to special measures) shall be in Form 22.2A and shall be lodged with the clerk of court.

(2) On receipt of an objection notice mentioned in paragraph (1)—

- (a) the clerk of court shall endorse the time and date on which it is received;
- (b) the court shall make an order under section 271A(5A) or 271C(5A) of the Act of 1995; and
- (c) the court shall order intimation of the hearing to be made to the parties.

(3) The party that lodges the objection notice shall lodge a certificate of intimation with the clerk of court—

- (a) within 7 days after lodging the notice; or
- (b) where a diet mentioned in paragraph (4) has been fixed, at least 2 days before that diet,  
whichever is earlier.

(4) The diets are—

- (a) a first diet;
- (b) a preliminary hearing; or
- (c) a diet appointed in terms of section 271A(5A)(c) or 271C(5A)(c) of the Act of 1995.”.

(6) In rule 22.3(1)(c) (intimation of an order under section 271A), for “child witness notice” substitute “vulnerable witness notice”.

(7) In rule 22.7 (notice of prohibition of personal conduct of defence), for “child witness notice” substitute “vulnerable witness notice”.

### Amendment of the Appendix to the Criminal Procedure Rules 1996

**5.**—(1) The Appendix to the Criminal Procedure Rules 1996<sup>(8)</sup> is amended in accordance with this paragraph.

(2) For Form 20.3A-B (form of notice of requirement to notify police under Part 2 of the Sexual Offences Act 2003)<sup>(9)</sup>, substitute Form 20.3A-B set out in the Schedule to this Act of Adjournal.

(3) In Form 22.1 (form of child witness notice under section 271A(2) of the Criminal Procedure (Scotland) Act 1995)<sup>(10)</sup>—

- (a) for “child witness notice” in each place where it occurs substitute “vulnerable witness notice”;
- (b) for paragraph 4 substitute—

*“[where the witness is a child witness]*

**4.** That [C.D.] [*or* [A.B.]] is a vulnerable witness under section 271(1)(a) of the Criminal Procedure (Scotland) Act 1995 [and was under the age of twelve on the date of commencement of proceedings] [and has [*or* has not] expressed a wish to give their evidence in the court room in accordance with section 271B of the Criminal Procedure (Scotland) Act 1995].

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<sup>(8)</sup> The Appendix was last amended by [S.S.I. 2015/245](#).

<sup>(9)</sup> Form 20.3A-B was substituted by [S.S.I. 2007/276](#) and last amended by [S.S.I. 2014/349](#).

<sup>(10)</sup> Form 22.1 was substituted by [S.S.I. 2005/188](#) and last amended by [S.S.I. 2007/237](#).

*[or where the witness is a deemed vulnerable witness]*

4. That [C.D.] *[or [A.B.]]* is a vulnerable witness under section 271(1)(c) of the Criminal Procedure (Scotland) Act 1995.”;

(c) for paragraph 7, substitute—

“7. 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).*

*[where the witness is a child witness]*

7A. That [C.D.] *[or [A.B.]]* is a vulnerable witness under section 271(1)(a) of the Criminal Procedure (Scotland) Act 1995, and the parent[s] of [C.D.] *[or [A.B.]]* have *[or has]* expressed the following view[s]:—

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

(d) the title of the Form becomes “Form of vulnerable witness notice under section 271A(2) of the Criminal Procedure (Scotland) Act 1995”.

(4) After Form 22.1, insert Form 22.1ZA set out in the Schedule to this Act of Adjournal.

(5) In Form 22.1A (form of vulnerable witness application under section 271C(2) of the Criminal Procedure (Scotland) Act 1995)(11) in paragraph 4, after “section 271(1)(b)” insert “or (d)”.

(6) After Form 22.1A, insert Form 22.2A set out in the Schedule to this Act of Adjournal.

(7) In Form 22.4 (form of application for review of arrangements for taking evidence under section 271D of the Criminal Procedure (Scotland) Act 1995)(12)—

(a) in paragraph 2, for “the minuter has cited *[or intends to cite]* [C.D.] as” substitute “[C.D.] is”;

(b) for paragraph 6, substitute—

“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).*

*[where the witness is a child witness]*

6A. That [C.D.] *[or [A.B.]]* is a vulnerable witness under section 271(1)(a) of the Criminal Procedure (Scotland) Act 1995, and the parent[s] of [C.D.] *[or [A.B.]]* have *[or has]* expressed the following view[s]:—

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

#### **Amendment of the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 4) (Sheriff Appeal Court) 2015**

6.—(1) The Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 4) (Sheriff Appeal Court) 2015(13) is amended in accordance with this paragraph.

(2) In paragraph 2(9), in substituted rule 19.11—

(a) in paragraph (1)(a), after “section 179(9)” insert “of the Act of 1995”;

(b) in paragraph (1)(b), after “section 187(9)(a)” insert “of the Act of 1995”.

(3) In paragraph 3, in inserted rule 19E.4(1), after “section 194ZF(2)(a)” insert “of the Act of 1995”.

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(11) Form 22.1A was inserted by [S.S.I. 2006/76](#) and last amended by [S.S.I. 2008/62](#).

(12) Form 22.4 was inserted by [S.S.I. 2005/188](#) and last amended by [S.S.I. 2007/237](#).

(13) [S.S.I. 2015/245](#).

(4) In paragraph 5(23)(b), for “paragraph 4” substitute “paragraph 5”.

(5) In the Schedule, in Form 19E.2, for “19E.2(4)” in each place where it occurs, substitute “19E.2(5)”.

Edinburgh  
31st July 2015

*CJM Sutherland*  
Lord Justice Clerk  
I.P.D.