
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 356

Act of Sederunt (Sheriff Appeal Court Rules) 2015

PART 6

INCIDENTAL PROCEDURE: SPECIAL PROCEDURES

CHAPTER 24

VULNERABLE WITNESSES

Interpretation and application of this Chapter

24.1.—(1) This Chapter applies where proof or additional proof is ordered to be taken under rule 23.1(1).

(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(1)(a) of the 2004 Act;

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

Form of notices and applications

24.2.—(1) A child witness notice is to be made in Form 24.2–A.

(2) A vulnerable witness application is to be made in Form 24.2–B.

(3) A review application is to be made—

(a) in Form 24.2–C; or

(b) orally, if the Court grants leave.

Determination of notices and applications

24.3.—(1) When a notice or application under this Chapter is lodged, the Court may require any of the parties to provide further information before determining the notice or application.

(2) The Court 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 Court may make an order altering the date of the proof in order that the notice or application may be determined.

(1) 2004 asp 3, amended by the Children’s Hearings (Scotland) Act 2011 (asp 1), section 176 and Schedule 6, paragraph 1; and the Victims and Witnesses (Scotland) Act 2014 (asp 1), section 22.

Determination of notices and applications: supplementary orders

24.4. Where the Court 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 Court may make further orders to secure the expeditious disposal of the appeal.

Intimation of orders

- 24.5.**—(1) Where the Court makes an order—
- (a) fixing a hearing under rule 24.3(2)(b);
 - (b) altering the date of a proof or other hearing under rule 24.3(3); or
 - (c) under section 12(1) or (6) or 13(2) of the 2004 Act,
- the 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 made—
 - (a) on the day that the hearing is fixed or the order is made;
 - (b) in the manner ordered by the Court.

Taking of evidence by commissioner: preparatory steps

- 24.6.**—(1) This rule applies where the Court authorises the special measure of taking evidence by a commissioner under section 19(1) of the 2004 Act.
- (2) The commission is proceed without interrogatories unless the Court otherwise orders.
 - (3) The order of the Court 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 Court appointing the commissioner;
 - (ii) a copy of the appeal documents;
 - (iii) where rule 24.7 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.
 - (8) In this rule, “appeal documents” means any of the following documents that have been lodged in process by the time the use of the special measure is authorised—
 - (a) the note of appeal and answers;
 - (b) where there is a cross appeal, the grounds of appeal and answers;
 - (c) the appeal print and appendices;
 - (d) the notes of argument.

Taking of evidence by commissioner: interrogatories

- 24.7.**—(1) This rule applies where the Court—
- (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) The party who cited the vulnerable witness must lodge draft interrogatories in process.
- (3) Any other party may lodge cross-interrogatories.
- (4) The parties may adjust their interrogatories and cross-interrogatories.
- (5) At the expiry of the adjustment period, the parties must lodge the interrogatories and cross-interrogatories as adjusted in process.
- (6) The Court is to resolve any dispute as to the content of the interrogatories and cross-interrogatories, and approve them.
- (7) When the Court makes an order for interrogatories to be prepared, it is to specify the periods within which parties must comply with the steps in this rule.

Taking of evidence by commissioner: conduct of commission

- 24.8.**—(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 23.4-A unless the witness elects to affirm.
- (3) Where the witness elects to affirm, the commissioner is to administer the affirmation in Form 23.4-B.

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

- 24.9.**—(1) The commissioner is to lodge the video record of the commission and any relevant documents with the Clerk.
- (2) When the video record and any relevant document are lodged, the 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 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.