

## SCHEDULE 1

### The Simple Procedure Rules

## PART 11: Witnesses

---

### **11.1 What is this Part about?**

- (1) This Part is about the citation of witnesses and their attendance at hearings.
- (2) This Part is also about measures that the court can take to assist vulnerable witnesses in giving evidence.

#### *The citation of witnesses*

### **11.2 How can a party arrange the attendance of witnesses at a hearing?**

- (1) Parties must send each other and the court a List of Witnesses Form at least 2 weeks before the hearing.
- (2) The List of Witnesses Form must set out the witnesses that they want to appear at a hearing.
- (3) A party only needs to cite a witness to appear at a hearing if the party is unable otherwise to arrange for that witness to appear.
- (4) A witness may be cited to appear at a hearing by formally serving on that witness a Witness Citation Notice.
- (5) The Witness Citation Notice must be formally served on the witness at least 3 weeks before the hearing.

### **11.3 What if a witness does not appear at a hearing?**

- (1) If a witness is cited to appear at a hearing, the witness must appear at that hearing.
- (2) If a witness who has been cited does not appear at a hearing, the sheriff may order the witness to be brought to court.
- (3) The sheriff must not continue a hearing to another day solely because a witness did not appear.

#### *Vulnerable witnesses*

### **11.4 How will the court treat a child witness?**

- (1) If a party cites (or intends to arrange the attendance of) a child as a witness, that party must send the court and the other party a Child Witness Notice.
- (2) A Child Witness Notice asks the sheriff to authorise the use of a special measure in taking the child witness's evidence, or to decide that the child witness is to give evidence without the benefit of any special measure.
- (3) Before the sheriff decides how to deal with the Child Witness Notice, the sheriff may order the parties to provide further information.
- (4) The sheriff may decide to make the orders requested in the Child Witness Notice with or without ordering a discussion in court.
- (5) Where the sheriff decides to have a discussion, the sheriff clerk must send the parties notice of when it will be held.

*Status: This is the original version (as it was originally made).*

- (6) At the discussion, the sheriff must consider the Child Witness Notice and decide whether to authorise the use of a special measure in taking the child witness's evidence, or that the child witness is to give evidence without the benefit of any special measure.

#### **11.5 How will the court treat other vulnerable witnesses?**

- (1) If a party cites (or intends to arrange the attendance of) a witness who is not a child, but the party thinks that the witness is a vulnerable witness, that party may send the court and the other party a Vulnerable Witness Application.
- (2) A Vulnerable Witness Application asks the sheriff to decide whether the witness is a vulnerable witness. If the sheriff agrees, the sheriff may authorise the use of a special measure in taking the vulnerable witness's evidence.
- (3) Before the sheriff decides how to deal with the Vulnerable Witness Application, the sheriff may order the parties to provide further information.
- (4) The sheriff may decide to make the orders requested in the Vulnerable Witness Application with or without a discussion in court.
- (5) Where the sheriff decides to have a discussion, the sheriff clerk must send the parties notice of when it will be held.
- (6) At the discussion, the sheriff must consider the Vulnerable Witness Application and decide whether the witness is a vulnerable witness. If the sheriff agrees, the sheriff may authorise the use of a special measure in taking the vulnerable witness's evidence.

#### **11.6 What are special measures?**

- (1) Special measures are ways of taking the evidence of a child witness or a vulnerable witness.
- (2) The sheriff may authorise the use of any of these special measures:
  - (a) allowing that witness to give evidence before an independent person,
  - (b) allowing that witness to give evidence by live television link,
  - (c) allowing that witness to use a screen while giving evidence,
  - (d) allowing that witness to be supported by someone while giving evidence.

#### **11.7 How can a party ask the court to review the arrangements for a child witness or a vulnerable witness?**

- (1) The party who sent a Child Witness Notice or Vulnerable Witness Application to the court may ask the sheriff to review the arrangements for the child witness or vulnerable witness to give evidence by sending the court and the other party a Special Measures Review Application.
- (2) A Special Measures Review Application asks the sheriff to vary or revoke the current arrangements for the child witness or vulnerable witness to give evidence.
- (3) When a Special Measures Review Application is received, the sheriff may do one of 4 things:
  - (a) add a new special measure,
  - (b) substitute a new special measure for an existing one,
  - (c) delete a special measure, or
  - (d) revoke the order authorising the use of special measures entirely.

- (4) Before the sheriff decides how to deal with the Special Measures Review Application, the sheriff may order the parties to provide further information.
- (5) The sheriff may decide to make the orders requested in the Special Measures Review Application with or without a discussion in court.
- (6) Where the sheriff decides to have a discussion, the sheriff clerk must send the parties notice of when it will be held.
- (7) At the discussion, the sheriff must consider the Special Measures Review Application and decide whether to vary or revoke the current arrangements for the child witness or vulnerable witness to give evidence.

**11.8 What happens when evidence is to be given before an independent person?**

- (1) Where the sheriff authorises a child witness or a vulnerable witness to give evidence before an independent person, the hearing at which the evidence is taken is to be video recorded.
  - (2) A party may be present when a child witness or vulnerable witness gives evidence before an independent person only if the sheriff has given permission for this to happen.
  - (3) The independent person must send the video recording and any relevant documents from the hearing to the sheriff clerk.
  - (4) The sheriff clerk must send the parties a notice indicating that the video recording has been received.
  - (5) If any relevant documents or other evidence are also received, the sheriff clerk must send the parties notice of what they are and when they were received.
-