

SCHEDULE 6

Rule 4.9

VULNERABLE WITNESSES

Interpretation and application of this schedule

- 1.—(1) This schedule applies where a witness is to present information orally at an inquiry.
- (2) In this schedule—
 - “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 of the 2004 Act; and
 - “vulnerable witness application” has the meaning given by section 12(6) of the 2004 Act.

Form of notices and applications

- 2.—(1) A child witness notice is to be made in Form S6.2A.
- (2) A vulnerable witness application is to be made in Form S6.2B.
- (3) A review application is to be made—
 - (a) in Form S6.2C; or
 - (b) orally, with the leave of the sheriff.

Determination of notices and applications

- 3.—(1) When a notice or application under this schedule is lodged, the sheriff may require any of the participants to provide further information before determining the notice or application.
- (2) The sheriff 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; or
 - (b) fix a hearing at which participants are to be heard on the notice or application before determining it.
- (3) The sheriff may make an order altering the date of any hearing at which information is to be presented in order that the notice or application may be determined.

Determination of notices and applications: supplementary orders

4. Where the sheriff determines a notice or application under this schedule and makes an order under section 12(1) or (6) or 13(2) of the 2004 Act, the sheriff may make further orders to further the purpose of the inquiry.

Intimation of orders

- 5.—(1) Where the sheriff makes an order—
 - (a) fixing a hearing under paragraph 3(2)(b);
 - (b) altering the date of a hearing under paragraph 3(3); or
 - (c) under section 12(1) or (6) or 13(2) of the 2004 Act,the sheriff clerk is to intimate the order in accordance with this paragraph.

(1) 2004 asp 3.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (2) Intimation is to be given to—
 - (a) every participant; and
 - (b) any other person named in the order.
- (3) Intimation is to be given—
 - (a) on the day that the hearing is fixed or the order is made; and
 - (b) in the manner ordered by the sheriff.

Testimony by commissioner: preparatory steps

6.—(1) This paragraph applies where the sheriff authorises the special measure of taking evidence by a commissioner under section 19(1) of the 2004 Act.

- (2) The commission is to proceed without interrogatories unless the sheriff otherwise orders.
- (3) The order of the sheriff authorising the special measure is sufficient authority for citing the vulnerable witness to appear before the commissioner.
- (4) The participant who cited the vulnerable witness—
 - (a) must give the commissioner—
 - (i) a certified copy of the order of the sheriff appointing the commissioner;
 - (ii) a copy of the first notice; and
 - (iii) where paragraph 7 applies, the approved interrogatories and cross-interrogatories;
 - (b) must instruct the clerk to the commission; and
 - (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 participants before fixing the hearing.
- (7) An application by a participant for leave to be present in the room where the commission is carried out is to be made by application.

Testimony by commissioner: interrogatories

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

Testimony by commissioner: conduct of commission

- 8.—(1) The commissioner must administer the oath *de fidei administratione* to the clerk.

- (2) The commissioner must administer either the oath or affirmation to a witness.

Testimony by commissioner: lodging and custody of video record and documents

9.—(1) The commissioner is to lodge the video record of the commission and any relevant documents with the sheriff clerk.

(2) When the video record and any relevant document are lodged, the sheriff clerk is to notify every participant—

- (a) that the video record has been lodged;
- (b) whether any relevant documents have been lodged; and
- (c) of the date on which they were lodged.

(3) The video record and any relevant documents are to be kept by the sheriff clerk.

(4) Where the video record has been lodged—

- (a) the name and address of the vulnerable witness and the record of the information presented are to be treated as being in the knowledge of the participants; and
- (b) the participants need not include—
 - (i) the name of the witness in any list of witnesses; or
 - (ii) the record in any list of productions.