



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XII

#### EVIDENCE

##### *Special capacity*

#### 255 Special capacity.

Where an offence is alleged to be committed in any special capacity, as by the holder of a licence, master of a vessel, occupier of a house, or the like, the fact that the accused possesses the qualification necessary to the commission of the offence shall, unless challenged—

- (a) in the case of proceedings on indictment, by giving notice of a preliminary objection [<sup>F1</sup>in accordance with section 71(2) or 72(6)(b)(i)] of this Act; or
- (b) in summary proceedings, by preliminary objection before his plea is recorded, be held as admitted.

#### Textual Amendments

- F1** Words in s. 255(a) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 38](#); S.S.I. 2004/405, [art. 2](#), [Sch. 1](#) (with savings in arts. 3-5)

#### <sup>F2</sup> *Proof of age*

#### Textual Amendments

- F2** S. 255A and preceding cross-heading inserted (1.8.1997) by [1997 c. 48, s. 27](#); S.I. 1997/1712, [art. 3](#), [Sch. 1](#) (subject to arts. 4, 5)

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### **255A** **Proof of age.**

Where the age of any person is specified in an indictment or a complaint, it shall, unless challenged—

- (a) in the case of proceedings on indictment by giving notice of a preliminary objection [<sup>F4</sup>in accordance with section 71(2) or 72(6)(b)(i)] of this Act; or
  - (b) in summary proceedings—
    - (i) by preliminary objection before the plea of the accused is recorded; or
    - (ii) by objection at such later time as the court may in special circumstances allow,
- be held as admitted.]]

#### **Textual Amendments**

- F3** S. 255A and preceding cross-heading inserted (1.8.1997) by 1997 c. 48, s. 27; S.I. 1997/1712, art. 3, Sch. 1 (subject to arts. 4, 5)
- F4** Words in s. 255A(a) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 39; S.S.I. 2004/405, art. 2, Sch. 1 (with savings in arts. 3-5)

#### *Agreed evidence*

### **256 Agreements and admissions as to evidence.**

- (1) In any trial it shall not be necessary for the accused or for the prosecutor—
  - (a) to prove any fact which is admitted by the other; or
  - (b) to prove any document, the terms and application of which are not in dispute between them,
 and, without prejudice to paragraph 1 of Schedule 8 to this Act, copies of any documents may, by agreement of the parties, be accepted as equivalent to the originals.
- (2) For the purposes of subsection (1) above, any admission or agreement shall be made by lodging with the clerk of court a minute in that behalf signed—
  - (a) in the case of an admission, by the party making the admission or, if that party is the accused and he is legally represented, by his counsel or solicitor; and
  - (b) in the case of an agreement, by the prosecutor and the accused or, if he is legally represented, his counsel or solicitor.
- (3) Where a minute has been signed and lodged as aforesaid, any facts and documents admitted or agreed thereby shall be deemed to have been duly proved.

### **257 Duty to seek agreement of evidence.**

- (1) Subject to subsection (2) below, the prosecutor and the accused (or each of the accused if more than one) shall each identify any facts which are facts—
  - (a) which he would, apart from this section, be seeking to prove;
  - (b) which he considers unlikely to be disputed by the other party (or by any of the other parties); and
  - (c) in proof of which he does not wish to lead oral evidence,
 and shall, without prejudice to section 258 of this Act, take all reasonable steps to secure the agreement of the other party (or each of the other parties) to them; and the

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other party (or each of the other parties) shall take all reasonable steps to reach such agreement.

(2) Subsection (1) above shall not apply in relation to proceedings as respects which the accused (or any of the accused if more than one) is not legally represented.

(3) The duty under subsection (1) above applies—

(a) in relation to proceedings on indictment, from the date of service of the indictment until the swearing of the jury or, where intimation is given under section 76 of this Act, the date of that intimation; and

(b) in relation to summary proceedings, from the date on which the accused pleads not guilty until the swearing of the first witness or, where the accused tenders a plea of guilty at any time before the first witness is sworn, the date when he does so.

<sup>F5</sup>(4) Without prejudice to subsection (3) above, [<sup>F6</sup>in relation to proceedings on indictment], the parties to the proceedings shall, in complying with the duty under subsection (1) above, seek to ensure that the facts to be identified, and the steps to be taken in relation to those facts, [<sup>F7</sup>are identified and taken—

(a) in the case of the High Court, before the preliminary hearing;

(b) in the case of the sheriff court, before the first diet]

[ Without prejudice to subsection (3) above, in relation to summary proceedings, the <sup>F8</sup>(5) parties to the proceedings shall, in complying with the duty under subsection (1) above, seek to ensure that the facts to be identified, and the steps to be taken in relation to those facts, are identified and taken before any intermediate diet that is to be held.]]

#### Textual Amendments

**F5** S. 257(4) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 40](#); [S.S.I. 2004/405](#), [art. 2](#), Sch. 1

**F6** Words in s. 257(4) substituted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 30\(a\)](#), 84; [S.S.I. 2007/479](#), [art. 3\(1\)](#), Sch. (as amended by [S.S.I. 2007/527](#))

**F7** Words in s. 257(4) substituted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 30\(b\)](#), 84; [S.S.I. 2007/479](#), [art. 3\(1\)](#), Sch. (as amended by [S.S.I. 2007/527](#))

**F8** S. 257(5) added (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 20\(1\)](#), 84; [S.S.I. 2007/479](#), [art. 3\(1\)](#), Sch. (subject to [art. 7](#)) (as amended by [S.S.I. 2007/527](#))

## 258 Uncontroversial evidence.

(1) This section applies where, in any criminal proceedings, a party (in this section referred to as “the first party”) considers that facts which that party would otherwise be seeking to prove are unlikely to be disputed by the other parties to the proceedings.

(2) Where this section applies, the first party may prepare and sign a statement—

(a) specifying the facts concerned; or

(b) referring to such facts as set out in a document annexed to the statement, and shall, not less than [<sup>F9</sup>the relevant period] before the [<sup>F10</sup>relevant] diet, serve a copy of the statement and any such document on every other party.

[<sup>F11</sup>(2ZA) In subsection (2) above, the “relevant period” means—

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- (a) where the relevant diet for the purpose of that subsection is an intermediate diet in summary proceedings, 7 days;
- (b) in any other case, 14 days.]

[<sup>F12</sup>(2A) In subsection (2) above, “the relevant diet” means—

- (a) in the case of proceedings in the High Court, the preliminary hearing;
  - [ in summary proceedings in which an intermediate diet is to be held, that diet;]
- <sup>F13</sup>(aa) (b) in any other case, the trial diet.]

(3) Unless any other party serves on the first party, not more than seven days after the date of service of the copy on him under subsection (2) above or by such later time as the court may in special circumstances allow, a notice that he challenges any fact specified or referred to in the statement, the facts so specified or referred to shall be deemed to have been conclusively proved.

(4) Where a notice is served under subsection (3) above, the facts specified or referred to in the statement shall be deemed to have been conclusively proved only in so far as unchallenged in the notice.

[<sup>F14</sup>(4A) Where a notice is served under subsection (3) above <sup>F15</sup>. . . , the court may, on the application of any party to the proceedings made not less than 48 hours before the relevant diet, direct that any challenge in the notice to any fact is to be disregarded for the purposes of subsection (4) above if the court considers the challenge to be unjustified.

[ Where in summary proceedings the relevant diet for the purposes of subsection (4A) <sup>F16</sup>(4AA) above is an intermediate diet, an application under that subsection may be made at (or at any time before) that diet.]

(4B) In subsection (4A) above, “the relevant diet” means—

- (a) in proceedings in the High Court, the preliminary hearing; <sup>F17</sup>. . .
- (b) in [<sup>F18</sup>solemn] proceedings in the sheriff court, the first diet.
  - [ in summary proceedings—
- <sup>F19</sup>(c) (i) in which an intermediate diet is to be held, that diet;
- (ii) in which such a diet is not to be held, the trial diet.]

(4C) In proceedings in the High Court, the Court may, on cause shown, allow an application under subsection (4A) above to be made after the time limit specified in that subsection.

[ In summary proceedings, the court may allow an application under subsection (4A) <sup>F20</sup>(4D) above to be made late if the court is satisfied that a timeous application would not have been practicable.]]

(5) Subsections (3) and (4) above shall not preclude a party from leading evidence of circumstances relevant to, or other evidence in explanation of, any fact specified or referred to in the statement.

(6) Notwithstanding subsections (3) and (4) above, the court—

- (a) may, on the application of any party, where it is satisfied that there are special circumstances; and
- (b) shall, on the joint application of all the parties,

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direct that the presumptions in those subsections shall not apply in relation to such fact specified or referred to in the statement as is specified in the direction.

- (7) An application under subsection (6) above may be made at any time after the commencement of the trial and before the commencement of the prosecutor's address to the court on the evidence.
- (8) Where the court makes a direction under subsection (6) above it shall, unless all the parties otherwise agree, adjourn the trial and may, without prejudice to section 268 of this Act, permit any party to lead evidence as to any such fact as is specified in the direction, notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given.
- (9) A copy of a statement or a notice required, under this section, to be served on any party shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

#### Textual Amendments

- F9** Words in s. 258(2) substituted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 20(2)(a)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (subject to **art. 7**) (as amended by S.S.I. 2007/527)
- F10** Word in s. 258(2) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 25, 27(1)**, **Sch. para. 41(a)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (with savings in arts. 3-5)
- F11** S. 258(2ZA) inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 20(2)(b)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (subject to **art. 7**) (as amended by S.S.I. 2007/527)
- F12** S. 258(2A) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 25, 27(1)**, **Sch. para. 41(b)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (with savings in arts. 3-5)
- F13** S. 258(2A)(aa) inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 20(2)(c)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (subject to **art. 7**) (as amended by S.S.I. 2007/527)
- F14** S. 258(4A)-(4C) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 16, 27(1)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (with savings in arts. 3-5)
- F15** Words in s. 258(4A) repealed (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 20(2)(d)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (subject to **art. 7**) (as amended by S.S.I. 2007/527)
- F16** S. 258(4AA) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), **sch. 7 para. 61**; S.S.I. 2011/178, **art. 2**, sch.
- F17** Word immediately following paragraph (a) in s. 258(4B) repealed (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 20(2)(e)(i)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (subject to **art. 7**) (as amended by S.S.I. 2007/527)
- F18** Word in s. 258(4B)(b) inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 20(2)(e)(ii)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (subject to **art. 7**) (as amended by S.S.I. 2007/527)
- F19** S. 258(4B)(c) added (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 20(2)(e)(iii)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (subject to **art. 7**) (as amended by S.S.I. 2007/527)
- F20** S. 258(4D) added (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 20(3)**, 84 (as added by S.S.I. 2007/540, **art. 4**); S.S.I. 2007/479, **art. 3(1)**, Sch. (subject to **art. 7**) (as amended by S.S.I. 2007/527)

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## Hearsay

### 259 Exceptions to the rule that hearsay evidence is inadmissible.

- (1) Subject to the following provisions of this section, evidence of a statement made by a person otherwise than while giving oral evidence in court in criminal proceedings shall be admissible in those proceedings as evidence of any matter contained in the statement where the judge is satisfied—
  - (a) that the person who made the statement will not give evidence in the proceedings of such matter for any of the reasons mentioned in subsection (2) below;
  - (b) that evidence of the matter would be admissible in the proceedings if that person gave direct oral evidence of it;
  - (c) that the person who made the statement would have been, at the time the statement was made, a competent witness in such proceedings; and
  - (d) that there is evidence which would entitle a jury properly directed, or in summary proceedings would entitle the judge, to find that the statement was made and that either—
    - (i) it is contained in a document; or
    - (ii) a person who gave oral evidence in the proceedings as to the statement has direct personal knowledge of the making of the statement.
- (2) The reasons referred to in paragraph (a) of subsection (1) above are that the person who made the statement—
  - (a) is dead or is, by reason of his bodily or mental condition, unfit or unable to give evidence in any competent manner;
  - (b) is named and otherwise sufficiently identified, but is outwith the United Kingdom and it is not reasonably practicable to secure his attendance at the trial or to obtain his evidence in any other competent manner;
  - (c) is named and otherwise sufficiently identified, but cannot be found and all reasonable steps which, in the circumstances, could have been taken to find him have been so taken;
  - (d) having been authorised to do so by virtue of a ruling of the court in the proceedings that he is entitled to refuse to give evidence in connection with the subject matter of the statement on the grounds that such evidence might incriminate him, refuses to give such evidence; or
  - (e) is called as a witness and either—
    - (i) refuses to take the oath or affirmation; or
    - (ii) having been sworn as a witness and directed by the judge to give evidence in connection with the subject matter of the statement refuses to do so,

and in the application of this paragraph to a child, the reference to a witness refusing to take the oath or affirmation or, as the case may be, to having been sworn shall be construed as a reference to a child who has refused to accept an admonition to tell the truth or, having been so admonished, refuses to give evidence as mentioned above.
- (3) Evidence of a statement shall not be admissible by virtue of subsection (1) above where the judge is satisfied that the occurrence of any of the circumstances mentioned in paragraphs (a) to (e) of subsection (2) above, by virtue of which the statement would otherwise be admissible, is caused by—

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- (a) the person in support of whose case the evidence would be given; or
  - (b) any other person acting on his behalf,
- for the purpose of securing that the person who made the statement does not give evidence for the purposes of the proceedings either at all or in connection with the subject matter of the statement.
- (4) Where in any proceedings evidence of a statement made by any person is admitted by reference to any of the reasons mentioned in paragraphs (a) to (c) and (e)(i) of subsection (2) above—
- (a) any evidence which, if that person had given evidence in connection with the subject matter of the statement, would have been admissible as relevant to his credibility as a witness shall be admissible for that purpose in those proceedings;
  - (b) evidence may be given of any matter which, if that person had given evidence in connection with the subject matter of the statement, could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party; and
  - (c) evidence tending to prove that that person, whether before or after making the statement, made in whatever manner some other statement which is inconsistent with it shall be admissible for the purpose of showing that he has contradicted himself.
- (5) Subject to subsection (6) below, where a party intends to apply to have evidence of a statement admitted by virtue of subsection (1) above he shall, [<sup>F21</sup>by the relevant time], give notice in writing of—
- (a) that fact;
  - (b) the witnesses and productions to be adduced in connection with such evidence; and
  - (c) such other matters as may be prescribed by Act of Adjournal,
- to every other party to the proceedings and, for the purposes of this subsection, such evidence may be led notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given.
- [<sup>F22</sup>(5A) In subsection (5) above, “the relevant time” means—
- (a) in the case of proceedings in the High Court—
    - (i) not less than 7 days before the preliminary hearing; or
    - (ii) such later time, before the trial diet, as the judge may on cause shown allow;
  - (b) in any other case, before the trial diet.]
- (6) A party shall not be required to give notice as mentioned in subsection (5) above where—
- (a) the grounds for seeking to have evidence of a statement admitted are as mentioned in paragraph (d) or (e) of subsection (2) above; or
  - (b) he satisfies the judge that there was good reason for not giving such notice.
- (7) If no other party to the proceedings objects to the admission of evidence of a statement by virtue of subsection (1) above, the evidence shall be admitted without the judge requiring to be satisfied as mentioned in that subsection.

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- (8) For the purposes of the determination of any matter upon which the judge is required to be satisfied under subsection (1) above—
- (a) except to the extent that any other party to the proceedings challenges them and insists in such challenge, it shall be presumed that the circumstances are as stated by the party seeking to introduce evidence of the statement; and
  - (b) where such a challenge is insisted in, the judge shall determine the matter on the balance of probabilities, and he may draw any reasonable inference—
    - (i) from the circumstances in which the statement was made or otherwise came into being; or
    - (ii) from any other circumstances, including, where the statement is contained in a document, the form and contents of the document.
- (9) Where evidence of a statement has been admitted by virtue of subsection (1) above on the application of one party to the proceedings, without prejudice to anything in any enactment or rule of law, the judge may permit any party to lead additional evidence of such description as the judge may specify, notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given.
- (10) Any reference in subsections (5), (6) and (9) above to evidence shall include a reference to evidence led in connection with any determination required to be made for the purposes of subsection (1) above.

#### Textual Amendments

- F21** Words in s. 259(5) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 42\(a\)](#); S.S.I. 2004/405, [art. 2](#), [Sch. 1](#) (with savings in arts. 3-5)
- F22** S. 259(5A) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 42\(b\)](#); S.S.I. 2004/405, [art. 2](#), [Sch. 1](#) (with savings in arts. 3-5)

#### Modifications etc. (not altering text)

- C1** Ss. 259-261 excluded (1.4.1996) by [1995 c. 40](#), ss. 3, 7(2), [Sch. 3 Pt. II para. 14](#)

## 260 Admissibility of prior statements of witnesses.

- (1) Subject to the following provisions of this section, where a witness gives evidence in criminal proceedings, any prior statement made by the witness shall be admissible as evidence of any matter stated in it of which direct oral evidence by him would be admissible if given in the course of those proceedings.
- (2) A prior statement shall not be admissible under this section unless—
- (a) the statement is contained in a document;
  - (b) the witness, in the course of giving evidence, indicates that the statement was made by him and that he adopts it as his evidence; and
  - (c) at the time the statement was made, the person who made it would have been a competent witness in the proceedings.
- (3) For the purposes of this section, any reference to a prior statement is a reference to a prior statement which, but for the provisions of this section, would not be admissible as evidence of any matter stated in it.
- (4) Subsections (2) and (3) above do not apply to a prior statement—



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- (a) contained in a precognition on oath; or
- (b) made in other proceedings, whether criminal or civil and whether taking place in the United Kingdom or elsewhere,

and, for the purposes of this section, any such statement shall not be admissible unless it is sufficiently authenticated.

[<sup>F23</sup>(5) A prior statement made by a witness shall not, in any proceedings on indictment, be inadmissible by reason only that it is not included in any list of productions lodged by the parties.]

#### Textual Amendments

**F23** S. 260(5) inserted (4.10.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 23, 27(1); S.S.I. 2004/405, art. 2, Sch. 1 (subject to savings in arts. 3-5)

#### Modifications etc. (not altering text)

**C2** Ss. 259-261 excluded (1.4.1996) by [1995 c. 40, ss. 3, 7\(2\)](#), [Sch. 3 Pt. II para. 14](#)

**C3** S. 260(2)(c) modified (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 84, 206(1); S.S.I. 2011/178, art. 2, sch.

## 261 [<sup>F24</sup>Statements by co-accused]

- (1) Subject to the following provisions of this section, nothing in sections 259 and 260 of this Act shall apply to a statement made by the accused.
- (2) Evidence of a statement made by an accused shall be admissible by virtue of the said section 259 at the instance of another accused in the same proceedings as evidence in relation to that other accused.
- (3) For the purposes of subsection (2) above, the first mentioned accused shall be deemed—
  - (a) where he does not give evidence in the proceedings, to be a witness refusing to give evidence in connection with the subject matter of the statement as mentioned in paragraph (e) of subsection (2) of the said section 259; and
  - (b) to have been, at the time the statement was made, a competent witness in the proceedings.
- (4) Evidence of a statement shall not be admissible as mentioned in subsection (2) above unless the accused at whose instance it is sought to be admitted has given notice of his intention to do so as mentioned in subsection (5) of the said section 259; but subsection (6) of that section shall not apply in the case of notice required to be given by virtue of this subsection.

#### Textual Amendments

**F24** S. 261 title substituted (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), ss. 109(2), 117(2); S.S.I. 2017/345, art. 3, sch. (with art. 9)

#### Modifications etc. (not altering text)

**C4** Ss. 259-261 excluded (1.4.1996) by [1995 c. 40, ss. 3, 7\(2\)](#), [Sch. 3 Pt. II para. 14](#)

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## **[<sup>F25</sup>261Z Statements by accused**

- (1) Evidence of a statement to which this subsection applies is not inadmissible as evidence of any fact contained in the statement on account of the evidence's being hearsay.
- (2) Subsection (1) applies to a statement made by the accused in the course of the accused's being questioned (whether as a suspect or not) by a constable, or another official, investigating an offence.
- (3) Subsection (1) does not affect the issue of whether evidence of a statement made by one accused is admissible as evidence in relation to another accused.]

### **Textual Amendments**

**F25** S. 261ZA inserted (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 109(1)**, 117(2); [S.S.I. 2017/345](#), **art. 3**, **sch.** (with **art. 9**)

## *[<sup>F26</sup>Statements made after charge*

### **Textual Amendments**

**F26** S. 261ZB and cross-heading inserted (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **s. 117(2)**, **sch. 2 para. 34**; [S.S.I. 2017/345](#), **art. 3**, **sch.**

## **261ZB Exception to rule on inadmissibility**

Evidence of a statement made by a person in response to questioning carried out in accordance with authorisation granted under section 35 of the Criminal Justice (Scotland) Act 2016 is not inadmissible on account of the statement's being made after the person has been charged with an offence.]

## *[<sup>F27</sup>Witness statements*

### **Textual Amendments**

**F27** S. 261A and cross-heading inserted (6.6.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 85(2)**, 206(1); [S.S.I. 2011/178](#), **art. 2**, **sch.**

## **261A Witness statements: use during trial**

- (1) Subsection (2) applies where—
  - (a) a witness is giving evidence in criminal proceedings,
  - (b) the witness has made a prior statement,
  - (c) the prosecutor has seen or has been given an opportunity to see the statement, and
  - (d) the accused (or a solicitor or advocate acting on behalf of the accused in the proceedings) has seen or has been given an opportunity to see the statement.

*Status: Point in time view as at 20/01/2020.*

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- (2) The court may allow the witness to refer to the statement while the witness is giving evidence.]

## 262 Construction of sections 259 to [F28]261A].

- (1) For the purposes of sections 259 to [F29]261A] of this Act, a “statement” includes—
- (a) any representation, however made or expressed, of fact or opinion; and
  - (b) any part of a statement,
- but does not include a statement in a precognition other than a precognition on oath.
- (2) For the purposes of the said sections 259 to [F30]261A] a statement is contained in a document where the person who makes it—
- (a) makes the statement in the document personally;
  - (b) makes a statement which is, with or without his knowledge, embodied in a document by whatever means or by any person who has direct personal knowledge of the making of the statement; or
  - (c) approves a document as embodying the statement.
- (3) In the said sections 259 to [F30]261A]—
- “criminal proceedings” include [F31](other than in section 261A)] any hearing by the sheriff of an application made [F32]by virtue of section 93(2) (a) or 94(2)(a) of the Children’s Hearings (Scotland) Act 2011 (asp 1) to determine whether a ground is established, in so far as the application relates to the commission of an offence by the child, or for a review of such a determination;]
- “document” includes, in addition to a document in writing—
- (a) any map, plan, graph or drawing;
  - (b) any photograph;
  - (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
  - (d) any film, negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom;
- “film” includes a microfilm;
- “made” includes [F30](other than in section 261A)] allegedly made.
- (4) Nothing in the said sections 259 to [F30]261A] shall prejudice the admissibility of a statement made by a person other than in the course of giving oral evidence in court which is admissible otherwise than by virtue of those sections.

### Textual Amendments

- F28** Word in s. 262 heading substituted (6.6.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 85\(3\)\(a\)](#), 206(1); S.S.I. 2011/178, art. 2, sch.
- F29** Word in s. 262(1)-(4) substituted (6.6.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 85\(3\)\(b\)](#), 206(1); S.S.I. 2011/178, art. 2, sch.
- F30** Words in s. 262(3) inserted (6.6.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 85\(3\)\(c\)\(ii\)](#), 206(1); S.S.I. 2011/178, art. 2, sch.

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**F31** Words in s. 262(3) inserted (6.6.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 85(3)(c)(i), 206(1); S.S.I. 2011/178, art. 2, sch.

**F32** Words in s. 262(3) substituted (24.6.2013) by The Childrens Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, sch. 1 para. 10(7)

**Modifications etc. (not altering text)**

**C5** S. 262 applied (with modifications) (6.6.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 54(3), 206(1); S.S.I. 2011/178, art. 2, sch.

*Witnesses*

**263 Examination of witnesses.**

- (1) In any trial, it shall be competent for the party against whom a witness is produced and sworn *in causa* to examine such witness both in cross and *in causa*.
- (2) The judge may, on the motion of either party, on cause shown order that the examination of a witness for that party (“the first witness”) shall be interrupted to permit the examination of another witness for that party.
- (3) Where the judge makes an order under subsection (2) above he shall, after the examination of the other witness, permit the recall of the first witness.
- (4) In a trial, a witness may be examined as to whether he has on any specified occasion made a statement on any matter pertinent to the issue at the trial different from the evidence given by him in the trial; and evidence may be led in the trial to prove that the witness made the different statement on the occasion specified.
- (5) In any trial, on the motion of either party, the presiding judge may permit a witness who has been examined to be recalled.

**[<sup>F33</sup>264 Spouse or civil partner of accused a compellable witness**

- (1) The spouse or civil partner of an accused is a competent and compellable witness for the prosecution, the accused or any co-accused in the proceedings against the accused.
- (2) Subsection (1) is, if the spouse or civil partner is a co-accused in the proceedings, subject to any enactment or rule of law by virtue of which an accused need not (by reason of being an accused) give evidence in the proceedings.
- (3) Subsection (1) displaces any other rule of law that would (but for that subsection) prevent or restrict, by reference to the relationship, the giving of evidence by the spouse or civil partner of an accused.]

**Textual Amendments**

**F33** S. 264 substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 86(1), 206(1); S.S.I. 2011/178, art. 2, sch.

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## **265 Witnesses not excluded for conviction, interest, relationship, etc.**

- (1) Every person adduced as a witness who is not otherwise by law disqualified from giving evidence, shall be admissible as a witness, and no objection to the admissibility of a witness shall be competent on the ground of—
  - (a) conviction of or punishment for an offence;
  - (b) interest;
  - (c) agency or partial counsel;
  - (d) the absence of due citation to attend; or
  - (e) his having been precognosced subsequently to the date of citation.
- (2) Where any person who is or has been an agent of the accused is adduced and examined as a witness for the accused, it shall not be competent for the accused to object, on the ground of confidentiality, to any question proposed to be put to such witness on matter pertinent to the issue of the guilt of the accused.
- (3) No objection to the admissibility of a witness shall be competent on the ground that he or she is the father, mother, son, daughter, brother or sister, by consanguinity or affinity, or uncle, aunt, nephew or niece, by consanguinity of any party adducing the witness in any trial.
- (4) It shall not be competent for any witness to decline to be examined and give evidence on the ground of any relationship mentioned in subsection (3) above.

## **266 Accused as witness.**

- (1) Subject to subsections (2) to (8) below, the accused shall be a competent witness for the defence at every stage of the case, whether the accused is on trial alone or along with a co-accused.
- (2) The accused shall not be called as a witness in pursuance of this section except upon his own application or in accordance with subsection (9) or (10) below.
- (3) An accused who gives evidence on his own behalf in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged.
- (4) An accused who gives evidence on his own behalf in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—
  - (a) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or
  - (b) the accused or his counsel or solicitor has asked questions of the witnesses for the prosecution with a view to establishing the accused's good character or impugning the character of the complainer, or the accused has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of the witnesses for the prosecution or of the complainer; or
  - (c) the accused has given evidence against any other person charged in the same proceedings.

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- (5) In a case to which paragraph (b) of subsection (4) above applies, the prosecutor shall be entitled to ask the accused a question of a kind specified in that subsection only if the court, on the application of the prosecutor, permits him to do so.
- [<sup>F34</sup>(5A) Nothing in subsections (4) and (5) above shall prevent the accused from being asked, or from being required to answer, any question tending to show that he has been convicted of an offence other than that with which he is charged if his conviction for that other offence has been disclosed to the jury, or is to be taken into consideration by the judge, under section 275A(2) of this Act.]
- (6) An application under subsection (5) above in proceedings on indictment shall be made in the course of the trial but in the absence of the jury.
- (7) In subsection (4) above, references to the complainer include references to a victim who is deceased.
- (8) Every person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.
- (9) The accused may—
- (a) with the consent of a co-accused, call that other accused as a witness on the accused's behalf; or
  - (b) ask a co-accused any question in cross-examination if that co-accused gives evidence,
- but he may not do both in relation to the same co-accused.
- (10) The prosecutor or the accused may call as a witness a co-accused who has pleaded guilty to or been acquitted of all charges against him which remain before the court (whether or not, in a case where the co-accused has pleaded guilty to any charge, he has been sentenced) or in respect of whom the diet has been deserted; and the party calling such co-accused as a witness shall not require to give notice thereof, but the court may grant any other party such adjournment or postponement of the trial as may seem just.
- (11) Where, in any trial, the accused is to be called as a witness he shall be so called as the first witness for the defence unless the court, on cause shown, otherwise directs.

#### Textual Amendments

**F34** S. 266(5A) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002](#) (asp 9), s. 10(3); S.S.I. 2002/443, art. 3 (with art. 4(5))

## 267 Witnesses in court during trial.

- (1) The court may, on an application by any party to the proceedings, permit a witness to be in court during the proceedings or any part of the proceedings before he has given evidence if it appears to the court that the presence of the witness would not be contrary to the interests of justice.
- (2) Without prejudice to subsection (1) above, where a witness has, without the permission of the court and without the consent of the parties to the proceedings, been present in court during the proceedings, the court may, in its discretion, admit the witness, where

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it appears to the court that the presence of the witness was not the result of culpable negligence or criminal intent, and that the witness has not been unduly instructed or influenced by what took place during his presence, or that injustice will not be done by his examination.

[<sup>F35</sup>**267A Citation of witnesses for precognition**

(1) This Act shall be sufficient warrant for the citation of witnesses for precognition by the prosecutor, whether or not any person has been charged with the offence in relation to which the precognition is taken.

[ Subsection (1) extends to citation for precognition by the prosecutor where a European  
<sup>F36</sup>(1A) investigation order having effect by virtue of Part 3 of the Criminal Justice (European Investigation Order) Regulations 2017 contains a request for a person in Scotland to be heard under regulations 35 to 37 of those Regulations.]

(2) Such citation shall be in the form prescribed by Act of Adjournal or as nearly as may be in such form.

(3) A witness who, having been duly cited—

- (a) fails without reasonable excuse, after receiving at least 48 hours notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him; or
- (b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which the precognition is taken,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to a term of imprisonment not exceeding 21 days.]

**Textual Amendments**

**F35** S. 267A inserted (4.10.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 22, 27\(1\)](#); [S.S.I. 2004/405, art. 2, Sch. 1](#) (subject to savings in arts. 3-5)

**F36** S. 267A(1A) inserted (31.7.2017) by [The Criminal Justice \(European Investigation Order\) Regulations 2017 \(S.I. 2017/730\), reg. 1\(1\), Sch. 3 para. 3\(3\)](#) (with reg. 3)

[<sup>F37</sup>**Identification procedures**

**Textual Amendments**

**F37** S. 267B and preceding cross-heading inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\), ss. 34, 84](#); [S.S.I. 2007/479, art. 3\(1\), Sch.](#) (as amended by [S.S.I. 2007/527](#))

**267B Order requiring accused to participate in identification procedure**

(1) The court may, on an application by the prosecutor in any proceedings, make an order requiring the accused person to participate in an identification parade or other identification procedure.

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- (2) The application may be made at any time after the proceedings have been commenced.
- (3) The court—
  - (a) shall (if the accused is present) allow the accused to make representations in relation to the application;
  - (b) may, if it considers it appropriate to do so (where the accused is not present), fix a hearing for the purpose of allowing the accused to make such representations.
- (4) Where an order is made under subsection (1) above, the clerk of court shall (if the accused is not present) have notice of the order effected as respects the accused without delay.
- (5) Notice under subsection (4) above shall (in relation to any proceedings) be effected in the same manner as citation under section 141 of this Act.
- (6) It is sufficient evidence that notice has been effected under subsection (5) above if there is produced a written execution—
  - (a) in the form prescribed by Act of Adjournal or as nearly as may be in such form; and
  - (b) signed by the person who effected notice.
- (7) In relation to notice effected by means of registered post or the recorded delivery service, the relevant post office receipt requires to be produced along with the execution mentioned in subsection (6) above.
- (8) A person who, having been given due notice of an order made under subsection (1) above, without reasonable excuse fails to comply with the order is—
  - (a) guilty of an offence; and
  - (b) liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 12 months or to both.
- (9) For the purpose of subsection (5) above, section 141 of this Act is to be read with such modifications as are necessary for its application in the circumstances.
- (10) In this section, “the court” means—
  - (a) in the case of proceedings in the High Court, a single judge of that Court;
  - (b) in any other case, any court with jurisdiction in relation to the proceedings.]

*Additional evidence, etc.*

## **268 Additional evidence.**

- (1) Subject to subsection (2) below, the judge may, on a motion of the prosecutor or the accused made—
  - (a) in proceedings on indictment, at any time before the commencement of the speeches to the jury;
  - (b) in summary proceedings, at any time before the prosecutor proceeds to address the judge on the evidence,
 permit him to lead additional evidence.
- (2) Permission shall only be granted under subsection (1) above where the judge—



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- (a) considers that the additional evidence is *prima facie* material; and
  - (b) accepts that at the commencement of the trial either—
    - (i) the additional evidence was not available and could not reasonably have been made available; or
    - (ii) the materiality of such additional evidence could not reasonably have been foreseen by the party.
- (3) The judge may permit the additional evidence to be led notwithstanding that—
- (a) in proceedings on indictment, a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given; or
  - (b) in any case, a witness must be recalled.
- (4) The judge may, when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.
- (5) In this section “the commencement of the trial” means—
- (a) in proceedings on indictment, the time when the jury is sworn; and
  - (b) in summary proceedings, the time when the first witness for the prosecution is sworn.

## **269 Evidence in replication.**

- (1) The judge may, on a motion of the prosecutor made at the relevant time, permit the prosecutor to lead additional evidence for the purpose of—
- (a) contradicting evidence given by any defence witness which could not reasonably have been anticipated by the prosecutor; or
  - (b) providing such proof as is mentioned in section 263(4) of this Act.
- (2) The judge may permit the additional evidence to be led notwithstanding that—
- (a) in proceedings on indictment, a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given; or
  - (b) in any case, a witness must be recalled.
- (3) The judge may when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.
- (4) In subsection (1) above, “the relevant time” means—
- (a) in proceedings on indictment, after the close of the defence evidence and before the commencement of the speeches to the jury; and
  - (b) in summary proceedings, after the close of the defence evidence and before the prosecutor proceeds to address the judge on the evidence.

## **270 Evidence of criminal record and character of accused.**

- (1) This section applies where—
- (a) evidence is led by the defence, or the defence asks questions of a witness for the prosecution, with a view to establishing the accused’s good character or impugning the character of the prosecutor, of any witness for the prosecution or of the complainer; or

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- (b) the nature or conduct of the defence is such as to tend to establish the accused's good character or to involve imputations on the character of the prosecutor, of any witness for the prosecution or of the complainer.
- (2) Where this section applies the court may, without prejudice to section 268 of this Act, on the application of the prosecutor, permit the prosecutor to lead evidence that the accused has committed, or has been convicted of, or has been charged with, offences other than that for which he is being tried, or is of bad character, notwithstanding that, in proceedings on indictment, a witness or production concerned is not included in any list lodged by the prosecutor and that the notice required by sections 67(5) and 78(4) of this Act has not been given.
- (3) In proceedings on indictment, an application under subsection (2) above shall be made in the course of the trial but in the absence of the jury.
- (4) In subsection (1) above, references to the complainer include references to a victim who is deceased.

*[<sup>F38</sup>Special measures for child witnesses and other vulnerable witnesses]*

#### Textual Amendments

- F38** Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 1, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in **art. 4**); S.S.I. 2005/590, **art. 2**, Sch. (with **art. 4**); S.S.I. 2006/59, **art. 2**, Sch. (with **art. 4(1)**); S.S.I. 2007/101, **art. 2**, Sch. (with **art. 4**); S.S.I. 2007/329, **art. 2**, Sch. (with **art. 4**); S.S.I. 2008/57, **art. 2** (with **art. 3**)

#### <sup>F39</sup> Vulnerable witnesses: main definitions

- <sup>F40</sup>271 (1) For the purposes of this Act, a person who is giving or is to give evidence at, or for the purposes of, a hearing in relevant criminal proceedings is a vulnerable witness if—
- (a) the person is under the age of 18 on the date of commencement of the proceedings in which the hearing is being or is to be held,
- (b) there is a significant risk that the quality of the evidence to be given by the person will be diminished by reason of—
- (i) mental disorder (within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003), or
- (ii) fear or distress in connection with giving evidence at the hearing,
- (c) the offence is alleged to have been committed against the person in proceedings for—
- (i) an offence listed in any of paragraphs 36 to 59ZL of Schedule 3 to the Sexual Offences Act 2003,
- (ii) an offence under section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution etc.),
- (iii) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation),
- <sup>F41</sup>(iiiia) an offence of human trafficking (see section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015),]
- (iv) an offence the commission of which involves domestic abuse, or

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- (v) an offence of stalking, or
  - (d) there is considered to be a significant risk of harm to the person by reason only of the fact that the person is giving or is to give evidence in the proceedings.]
- <sup>F42</sup>(1A) . . . . .
- <sup>F43</sup>(1AA) The Scottish Ministers may by order subject to the affirmative procedure modify subsection (1)(c).]
- (2) In determining whether a person is a vulnerable witness by virtue of subsection (1)(b) [<sup>F44</sup>or (d)] above, the court shall take into account—
    - (a) the nature and circumstances of the alleged offence to which the proceedings relate,
    - (b) the nature of the evidence which the person is likely to give,
    - (c) the relationship (if any) between the person and the accused,
    - (d) the person’s age and maturity,
    - (e) any behaviour towards the person on the part of—
      - (i) the accused,
      - (ii) members of the family or associates of the accused,
      - (iii) any other person who is likely to be an accused or a witness in the proceedings, and
    - (f) such other matters, including—
      - (i) the social and cultural background and ethnic origins of the person,
      - (ii) the person’s sexual orientation,
      - (iii) the domestic and employment circumstances of the person,
      - (iv) any religious beliefs or political opinions of the person, and
      - (v) any physical disability or other physical impairment which the person has,as appear to the court to be relevant.
  - (3) For the purposes of subsection (1)(a) [<sup>F45</sup>, section 271B(1)(b) and sections 271BZA to 271BZC], proceedings shall be taken to have [<sup>F46</sup>commenced—
    - (a) where it is relevant to a court's consideration of whether to authorise the use of the special measure of taking evidence by commissioner (on its own or in combination with any other special measure) and the accused has appeared on petition, on the date when the accused appeared on petition, or
    - (b) in any other case, on the date] when the indictment or, as the case may be, complaint is served on the accused.
  - (4) In subsection (1)(b) above, the reference to the quality of evidence is to its quality in terms of completeness, coherence and accuracy.
- <sup>F47</sup>(4A) In determining whether a person is a vulnerable witness under subsection (1)(b) or (d), the court must—
  - (a) have regard to the best interests of the witness, and
  - (b) take account of any views expressed by the witness.]
- (5) In this section and sections 271A to 271M of this Act—
    - <sup>F48</sup>“child witness” means a vulnerable witness referred to in subsection (1) (a),]

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[<sup>F49</sup> “deemed vulnerable witness” means a vulnerable witness referred to in subsection (1)(c),]

“court” means the High Court or the sheriff court,

[<sup>F50</sup> “hearing in relevant criminal proceedings” means any hearing in the course of any criminal proceedings in the High Court or the sheriff court.]

<sup>F51</sup> ...

(6) In sections 271A to 271M of this Act, “special measure” means any of the special measures set out in, or prescribed under, section 271H below.]

### Textual Amendments

- F39** Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 1, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F40** S. 271(1) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 10(a), 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F41** S. 271(1)(c)(iia) inserted (31.5.2016) by [Human Trafficking and Exploitation \(Scotland\) Act 2015 \(asp 12\)](#), s. 45(2), **sch. para. 1** (with s. 44); S.S.I. 2016/128, reg. 2, **sch.**
- F42** S. 271(1A) repealed (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 10(c), 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F43** S. 271(1AA) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 10(b), 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F44** Words in s. 271(2) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 10(d), 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F45** Words in s. 271(3) substituted (20.1.2020) by [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(asp 8\)](#), **ss. 5(6)(a), 12(2)**; S.S.I. 2019/392, reg. 2 (with reg. 4(2))
- F46** Words in s. 271(3) substituted (20.1.2020) by [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(asp 8\)](#), **ss. 5(6)(b), 12(2)**; S.S.I. 2019/392, reg. 2 (with reg. 4(2))
- F47** S. 271(4A) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 10(e), 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F48** Definition in s. 271(5) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(3)(a), 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F49** Definition in s. 271(5) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(3)(b), 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F50** Definition in s. 271(5) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(2)(b)(ii), 206(1)**; S.S.I. 2011/178, art. 2, sch.
- F51** Definition in s. 271(5) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(2)(b)(i), 206(1)**; S.S.I. 2011/178, art. 2, sch.

### Modifications etc. (not altering text)

- C6** Ss. 271-271M applied by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 3, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- C7** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), **3** (with art. 1(3))

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### **[<sup>F52</sup>271A]<sup>F53</sup> Child and deemed vulnerable witnesses]**

(1) Where a child witness [<sup>F54</sup>or a deemed vulnerable witness] is to give evidence at or for the purposes of [<sup>F55</sup>a hearing in relevant criminal proceedings], the <sup>F56</sup>... witness is entitled, subject to—

- (a) subsections (2) to (13) below, and
- (b) section 271D of this Act,

to the benefit of one or more of the special measures for the purpose of giving evidence.

(2) A party citing or intending to cite a child witness [<sup>F57</sup>or a deemed vulnerable witness] shall, [<sup>F58</sup>by the required time], lodge with the court a notice (referred to in this Act as a “[<sup>F59</sup>vulnerable] witness notice”)—

- (a) specifying the special measure or measures which the party considers to be the most appropriate for the purpose of taking the <sup>F60</sup>... witness’s evidence, or
- (b) if the party considers that the <sup>F60</sup>... witness should give evidence without the benefit of any special measure, stating that fact.

(3) A [<sup>F61</sup>vulnerable] witness notice shall contain or be accompanied by—

- (a) a summary of any views expressed for the purposes of section 271E(2)(b) of this Act, and
- (b) such other information as may be prescribed by Act of Adjournal.

[ In the case where a vulnerable witness notice under subsection (2)(a) specifies only <sup>F62</sup>(3A) a standard special [<sup>F63</sup>measure—

- (a) subsection (3)(a) does not apply, and
- (b) subsection (5) has effect as if the words “not earlier than 7 days and” were omitted].]

(4) The court may, on cause shown, allow a [<sup>F64</sup>vulnerable] witness notice to be lodged after [<sup>F65</sup>the required time].

[ Any party to the proceedings may, not later than 7 days after a vulnerable witness <sup>F66</sup>(4A) notice has been lodged, lodge with the court a notice (referred to in this section as an “objection notice”) stating—

- (a) an objection to any special measure (other than a standard special measure) specified in the vulnerable witness notice that the party considers to be inappropriate, and
- (b) the reasons for that objection.

(4B) The court may, on cause shown, allow an objection notice to be lodged after the period referred to in subsection (4A).

(4C) If an objection notice is lodged in accordance with subsection (4A) or (4B)—

- (a) subsection (5)(a)(ii) does not apply to the vulnerable witness notice, and
- (b) the court must make an order under subsection (5A).]

(5) The court shall, not [<sup>F67</sup>earlier than 7 days and not later than 14] days after a [<sup>F68</sup>vulnerable] witness notice has been lodged, consider the notice in the absence of the parties and, subject to [<sup>F69</sup>sections 271B to 271BZB] of this Act—

- (a) in the case of a notice under subsection (2)(a) above—
  - (i) if a standard special measure is specified in the notice, make an order authorising the use of that measure for the purpose of taking the <sup>F70</sup>... witness’s evidence, and

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- (ii) if any other special measure is specified in the notice and the court is satisfied on the basis of the notice that it is appropriate to do so, make an order authorising the use of the special measure (in addition to any authorised by virtue of an order under sub-paragraph (i) above) for the purpose of taking the <sup>F70</sup>... witness's evidence,
  - (b) in the case of a notice under subsection (2)(b) above, if—
    - (i) the summary of views accompanying the notice under subsection (3) (a) above indicates that the <sup>F71</sup>... witness has expressed a wish to give evidence without the benefit of any special measure, and
    - (ii) the court is satisfied on the basis of the notice that it is appropriate to do so,
 make an order authorising the giving of evidence by the <sup>F71</sup>... witness without the benefit of any special measure, or
  - (c) if—
    - (i) paragraph (a)(ii) or (b) above would apply but for the fact that the court is not satisfied as mentioned in that paragraph, or
    - (ii) in the case of a notice under subsection (2)(b), the summary of views accompanying the notice under subsection (3)(a) above indicates that the <sup>F72</sup>... witness has not expressed a wish to give evidence without the benefit of any special measure,
 make an order [<sup>F73</sup>under subsection (5A) below.]
- [ That order is an order—
- <sup>F74</sup>(5A) (a) in the case of proceedings in the High Court where the preliminary hearing is yet to be held, appointing the [<sup>F75</sup>vulnerable] witness notice to be disposed of at that hearing;
- (b) in the case of proceedings on indictment in the sheriff court where the first diet is yet to be held, appointing the [<sup>F76</sup>vulnerable] witness notice to be disposed of at that diet; or
- (c) in any other case, appointing a diet to be held before [<sup>F77</sup>the hearing at which the evidence is to be given] and requiring the parties to attend the diet.]
- (6) Subsection (7) below applies where—
- (a) it appears to the court that a party intends to call a child witness [<sup>F78</sup>or a deemed vulnerable witness] to give evidence at or for the purposes of [<sup>F79</sup>a hearing in relevant criminal proceedings],
  - (b) the party has not lodged a [<sup>F80</sup>vulnerable] witness notice in respect of the <sup>F81</sup>... witness by the time specified in subsection (2) above, and
  - (c) the court has not allowed a [<sup>F82</sup>vulnerable] witness notice in respect of the <sup>F83</sup>... witness to be lodged after that time under subsection (4) above.
- (7) Where this subsection applies, the court shall—
- (a) order the party to lodge a [<sup>F84</sup>vulnerable] witness notice in respect of the <sup>F85</sup>... witness by such time as the court may specify, or
  - [<sup>F86</sup>(b) where the court does not so order—
    - (i) in the case of proceedings on indictment where this subsection applies at or before the preliminary hearing or, as the case may be, the first diet, at that hearing or diet make an order under subsection (9) below;
    - or

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- (ii) in any other case, make an order appointing a diet to be held before [F87 the hearing at which the evidence is to be given] diet and requiring the parties to attend the diet.]
- (8) On making an order under subsection [F88(5A)(c) or (7)(b)(ii)] above, the court may postpone [F89 the hearing at which the evidence is to be given].
- [ Subsection (9) below applies to—
- <sup>F90</sup>(8A) (a) a preliminary hearing or first diet, so far as the court is—
  - (i) by virtue of an order under subsection (5A)(a) or (b) above, disposing of a [F91 vulnerable] witness notice at the hearing or diet; or
  - (ii) by virtue of subsection (7)(b)(i) above, to make an order under subsection (9) <sup>F92</sup>... at the hearing or diet; and
- (b) a diet appointed under subsection (5A)(c) or (7)(b)(ii) above.]
- (9) [F93 Subject to section 271B, at] a [F94 hearing or diet to which this subsection [applies]], the court, after giving the parties an opportunity to be heard—
  - (a) in a case where any of the standard special measures has been authorised by an order under subsection (5)(a)(i) above, may make an order authorising the use of such further special measure or measures as it considers appropriate for the purpose of taking the <sup>F95</sup>... witness's evidence, and
  - (b) in any other case, shall make an order—
    - (i) authorising the use of such special measure or measures as the court considers to be the most appropriate for the purpose of taking the <sup>F95</sup>... witness's evidence, or
    - (ii) that the <sup>F95</sup>... witness is to give evidence without the benefit of any special measure.
- (10) [F96 Subject to section 271B, the court] may make an order under subsection (9)(b)(ii) above only if satisfied—
  - (a) where the <sup>F97</sup>... witness has expressed a wish to give evidence without the benefit of any special measure, that it is appropriate for the <sup>F97</sup>... witness so to give evidence, or
  - (b) in any other case, that—
    - (i) the use of any special measure for the purpose of taking the evidence of the <sup>F97</sup>... witness would give rise to a significant risk of prejudice to the fairness of the trial or otherwise to the interests of justice, and
    - (ii) that risk significantly outweighs any risk of prejudice to the interests of the <sup>F97</sup>... witness if the order is made.
- (11) A [F98 hearing or diet to which subsection (9) above applies] may—
  - (a) on the application of the party citing or intending to cite the <sup>F99</sup>... witness in respect of whom the diet is to be held, or
  - (b) of the court's own motion,be held in chambers.
- (12) A diet [F100 appointed under subsection (5A)(c) or (7)(b)(ii) above in any case may be conjoined with any other diet to be held before [F101 the hearing at which the evidence is to be given].]
- (13) A party lodging a [F102 vulnerable] witness notice [F103 or an objection notice] shall, at the same time, intimate the notice to the other parties to the proceedings.

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- [ In subsections (2) and (4) above, “the required time” means—
- <sup>F104</sup>(13A)<sup>F105</sup>(a) any time before a date has been fixed for one of the following—
- (i) a preliminary hearing in the High Court,
  - (ii) a first diet in the sheriff court, or
  - (iii) a hearing at which the evidence is to be given, or
- (b) if a date has been fixed—
- (i) for a preliminary hearing in the High Court, no later than 14 clear days before the preliminary hearing,
  - (ii) for a first diet in the sheriff court in the case of proceedings on indictment, no later than 7 clear days before the first diet, or
  - (iii) in a case in which the proceedings are not to take place in the High Court or on indictment in the sheriff court, for a hearing at which the evidence is to be given, no later than 14 clear days before that hearing.]

(14) In this section, references to a standard special measure are to any of the following special measures—

    - (a) the use of a live television link in accordance with section 271J of this Act <sup>F106</sup> ...
    - (b) the use of a screen in accordance with section 271K of this Act, and
    - (c) the use of a supporter in accordance with section 271L of this Act <sup>F107</sup> ...

[ The Scottish Ministers may, by order subject to the affirmative procedure—

<sup>F108</sup>(15) (a) modify subsection (14),

    - (b) in consequence of any modification made under paragraph (a)—
    - (i) prescribe the procedure to be followed when standard special measures are used, and
    - (ii) so far as is necessary, modify sections 271A to 271M of this Act.]]]

### Textual Amendments

- F52** Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 1, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F53** S. 271A title substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(5)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F54** Words in s. 271A(1) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(4)(a)(i)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F55** Words in s. 271A(1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(3)(a)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F56** Word in s. 271A(1) repealed (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(4)(a)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F57** Words in s. 271A(2) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(4)(b)(i)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F58** Words in s. 271A(2) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 25, 27(1)**, **Sch. para. 43(a)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2,



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- Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F59** Word in s. 271A(2) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(b)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F60** Word in s. 271A(2)(a)(b) repealed (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(b)(iii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F61** Word in s. 271A(3) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(c)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F62** S. 271A(3A) inserted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(d)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F63** Words in s. 271A(3A) substituted (20.1.2020) by Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 (asp 8), **ss. 7(2)**, 12(2); S.S.I. 2019/392, reg. 2
- F64** Word in s. 271A(4) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(c)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F65** Words in s. 271A(4) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 25, 27(1), Sch. para. 43(b)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F66** S. 271A(4A)-(4C) inserted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 13(a)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F67** Words in s. 271A(5) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 13(b)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F68** Word in s. 271A(5) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(e)(i)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F69** Words in s. 271A(5) substituted (20.1.2020) by Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 (asp 8), **ss. 10(2)**, 12(2); S.S.I. 2019/392, reg. 2
- F70** Word in s. 271A(5)(a) repealed (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(e)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F71** Word in s. 271A(5)(b) repealed (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(e)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F72** Word in s. 271A(5)(c) repealed (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(e)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F73** Words in s. 271A(5) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 25, 27(1), Sch. para. 43(c)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F74** S. 271A(5A) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 25, 27(1), Sch. para. 43(d)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)) S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F75** Word in s. 271A(5A)(a) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(f)(i)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F76** Word in s. 271A(5A)(b) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(f)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F77** Words in s. 271A(5A)(c) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 87(3)(b)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F78** Words in s. 271A(6)(a) inserted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(g)(i)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F79** Words in s. 271A(6)(a) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 87(3)(e)**, 206(1); S.S.I. 2011/178, art. 2, sch.

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*Changes to legislation: Criminal Procedure (Scotland) Act 1995, PART XII is up to date with all changes known to be in force on or before 10 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F80** Word in s. 271A(6)(b) substituted (1.9.2015) by **Victims and Witnesses (Scotland) Act 2014** (asp 1), **ss. 11(4)(g)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F81** Word in s. 271A(6)(b) repealed (1.9.2015) by **Victims and Witnesses (Scotland) Act 2014** (asp 1), **ss. 11(4)(g)(iii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F82** Word in s. 271A(6)(c) substituted (1.9.2015) by **Victims and Witnesses (Scotland) Act 2014** (asp 1), **ss. 11(4)(g)(iv)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F83** Word in s. 271A(6)(c) repealed (1.9.2015) by **Victims and Witnesses (Scotland) Act 2014** (asp 1), **ss. 11(4)(g)(v)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F84** Word in s. 271A(7)(a) substituted (1.9.2015) by **Victims and Witnesses (Scotland) Act 2014** (asp 1), **ss. 11(4)(h)(i)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F85** Word in s. 271A(7)(a) repealed (1.9.2015) by **Victims and Witnesses (Scotland) Act 2014** (asp 1), **ss. 11(4)(h)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F86** S. 271A(7)(b) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by **Criminal Procedure (Amendment) (Scotland) Act 2004** (asp 5), ss. 25, 27(1), **Sch. para. 43(e)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F87** Words in s. 271A(7)(b)(ii) substituted (28.3.2011) by **Criminal Justice and Licensing (Scotland) Act 2010** (asp 13), **ss. 87(3)(d)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F88** Words in s. 271A(8) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by **Criminal Procedure (Amendment) (Scotland) Act 2004** (asp 5), ss. 25, 27(1), **Sch. para. 43(f)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F89** Words in s. 271A(8) substituted (28.3.2011) by **Criminal Justice and Licensing (Scotland) Act 2010** (asp 13), **ss. 87(3)(e)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F90** S. 271A(8A) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by **Criminal Procedure (Amendment) (Scotland) Act 2004** (asp 5), ss. 25, 27(1), **Sch. para. 43(g)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F91** Word in s. 271A(8A)(a)(i) substituted (1.9.2015) by **Victims and Witnesses (Scotland) Act 2014** (asp 1), **ss. 11(4)(i)(i)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F92** Word in s. 271A(8A)(a)(ii) repealed (1.9.2015) by **Victims and Witnesses (Scotland) Act 2014** (asp 1), **ss. 11(4)(i)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F93** Words in s. 271A(9) substituted (20.1.2020) by **Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019** (asp 8), **ss. 2(3)(a)**, 12(2); S.S.I. 2019/392, reg. 2
- F94** Words in s. 271A(9) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by **Criminal Procedure (Amendment) (Scotland) Act 2004** (asp 5), ss. 25, 27(1), **Sch. para. 43(h)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F95** Word in s. 271A(9) repealed (1.9.2015) by **Victims and Witnesses (Scotland) Act 2014** (asp 1), **ss. 11(4)(j)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F96** Words in s. 271A(10) substituted (20.1.2020) by **Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019** (asp 8), **ss. 2(3)(b)**, 12(2); S.S.I. 2019/392, reg. 2
- F97** Word in s. 271A(10) repealed (1.9.2015) by **Victims and Witnesses (Scotland) Act 2014** (asp 1), **ss. 11(4)(k)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F98** Words in s. 271A(11) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by **Criminal Procedure (Amendment) (Scotland) Act 2004** (asp 5), ss. 25, 27(1), **Sch. para. 43(i)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

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- F99** Word in s. 271A(11)(a) repealed (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(4)(l)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F100** Words in s. 271A(12) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), **Sch. para. 43(j)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F101** Words in s. 271A(12) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(3)(g)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F102** Word in s. 271A(13) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(4)(m)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F103** Words in s. 271A(13) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 13(c)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F104** S. 271A(13A) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), **Sch. para. 43(k)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F105** S. 271A(13A)(a)-(c) substituted for s. 271A(13A)(a)(b) (20.1.2020) by [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(asp 8\)](#), **ss. 8(2)**, 12(2); S.S.I. 2019/392, reg. 2
- F106** Words in s. 271A(14)(a) repealed (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 12(a)(i)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F107** Words in s. 271A(14)(c) repealed (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 12(a)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F108** S. 271A(15) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 12(b)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)

#### Modifications etc. (not altering text)

- C7** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), 3 (with art. 1(3))
- C8** Ss. 271-271M applied by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 3**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

#### [<sup>F109</sup>271B] Further special provision for child witnesses under the age of 12

- (1) This section applies where a child witness—
- (a) is to give evidence at, or for the purposes of, [<sup>F110</sup>a hearing in relevant criminal proceedings] in respect of any offence specified in subsection (2) below, and
  - (b) is under the age of 12 on the date of commencement of the proceedings in which [<sup>F111</sup>the hearing] is being or to be held.
- (2) The offences referred to in subsection (1)(a) above are—
- (a) murder,
  - (b) culpable homicide,
  - <sup>F112</sup>(c) .....

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- (d) any offence which involves an assault on, or injury or a threat of injury to, any person (including any offence involving neglect or ill-treatment of, or other cruelty to, a child),
  - (e) abduction, <sup>F112</sup>...
  - (f) plagium.
  - <sup>F113</sup>(g) an offence to which section 288C applies (certain sexual offending),
  - (h) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
  - (i) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.]
- [<sup>F114</sup>(3) Subsection (4) applies if the child witness expresses a wish to be present in the court-room for the purpose of giving evidence.
- (4) The court must make an order under section 271A or, as the case may be, 271D which has the effect of requiring the child witness to be present in the court-room for the purpose of giving evidence unless the court considers that it would not be appropriate for the child witness to be present there for that purpose.
- [<sup>F115</sup>(4A) Where the court is required to make an order having the effect mentioned in subsection (4), an order made by the court under section 271A(5)(a) may authorise the use of a special measure or measures other than those specified in the vulnerable witness notice if that would result in the order having the effect mentioned in subsection (4).]
- (5) Subsection (6) applies if the child witness—
- (a) does not express a wish to be present in the court-room for the purpose of giving evidence, or
  - (b) expresses a wish to give evidence in some other way.
- (6) The court may not make an order under section 271A or 271D having the effect mentioned in subsection (4) unless the court considers that—
- (a) the giving of evidence by the child witness in some way other than by being present in the court-room for that purpose would give rise to a significant risk of prejudice to the fairness of the trial or otherwise to the interests of justice, and
  - (b) that risk significantly outweighs any risk of prejudice to the interests of the child witness if the order were to be made.]
- [ This section does not apply in a case to which section 271BZA applies.]]
- <sup>F116</sup>(7)

#### Textual Amendments

- F109** Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 1, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F110** Words in s. 271B(1)(a) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(4)(a)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F111** Words in s. 271B(1)(b) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(4)(b)**, 206(1); S.S.I. 2011/178, art. 2, sch.

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- F112** S. 271B(2)(c) and word preceding s. 271B(2)(f) repealed (1.4.2019) by Domestic Abuse (Scotland) Act 2018 (asp 5), s. 15(2), **sch. para. 6(2)(a)**; S.S.I. 2018/387, reg. 2 (with reg. 7)
- F113** Ss. 271B(2)(g)-(i) inserted (1.4.2019) by Domestic Abuse (Scotland) Act 2018 (asp 5), s. 15(2), **sch. para. 6(2)(b)**; S.S.I. 2018/387, reg. 2 (with reg. 7)
- F114** S. 271B(3)-(6) substituted for s. 271B(3) (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 14(1), 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F115** S. 271B(4A) inserted (20.1.2020) by Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 (asp 8), **ss. 2(2)(a), 12(2)**; S.S.I. 2019/392, reg. 2
- F116** S. 271B(7) inserted (20.1.2020) by Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 (asp 8), **ss. 2(2)(b), 12(2)**; S.S.I. 2019/392, reg. 2

#### Modifications etc. (not altering text)

- C7** Ss. 271-271M applied (with modifications) (23.12.2015) by The Justice of the Peace Courts (Special Measures) (Scotland) Order 2015 (S.S.I. 2015/447), arts. 1(2), **3** (with art. 1(3))
- C9** Ss. 271-271M applied by Criminal Justice (Scotland) Act 2003 (asp 7), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 3, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, { art. 2} (with art. 3)

#### [<sup>F117</sup>271BZA] Child witnesses in certain solemn cases: special measures

- (1) This section applies where a child witness, other than the accused, is to give evidence at, or for the purposes of, a hearing in relevant criminal proceedings which are—
- (a) solemn proceedings, and
  - (b) in respect of an offence listed in subsection (2).
- (2) The offences are—
- (a) murder,
  - (b) culpable homicide,
  - (c) assault to the danger of life,
  - (d) abduction,
  - (e) plagium,
  - (f) a sexual offence to which section 288C applies,
  - (g) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
  - (h) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,
  - (i) an offence that would have fallen within paragraph (h) if section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 had been in force when the offence was allegedly committed,
  - (j) an offence of human trafficking (see section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015),
  - (k) an offence under section 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 (slavery, servitude and forced or compulsory labour),
  - (l) an offence under section 1 of the Prohibition of Female Genital Mutilation (Scotland) Act 2005 (offence of female genital mutilation),
  - (m) an offence under section 3 of the Prohibition of Female Genital Mutilation (Scotland) Act 2005 (aiding and abetting female genital mutilation),
  - (n) an attempt to commit an offence mentioned in any of paragraphs (a) to (m).

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- (3) The court must enable all of the child witness's evidence to be given in advance of the hearing unless the court is satisfied that an exception is justified under subsection (7) or (8).
- (4) For the purposes of this section, the court enables all of the child witness's evidence to be given in advance of the hearing if—
  - (a) the court makes an order under section 271A which satisfies the following requirements—
    - (i) it authorises the use of one or both of the special measures listed in subsection (5) for the purpose of taking all of the child witness's evidence,
    - (ii) it does not authorise the use of an incompatible special measure for the purpose of taking any of the child witness's evidence, and
    - (iii) it does not authorise the giving of any of the child witness's evidence without the benefit of any special measure, and
  - (b) the court, if it commences a review under section 271D before the hearing has commenced, does not make an order under that section which—
    - (i) revokes the order made under section 271A, or
    - (ii) varies it in such a way that it no longer satisfies the requirements set out in paragraph (a)(i), (ii) and (iii).
- (5) The special measures mentioned in subsection (4)(a)(i) are—
  - (a) taking of evidence by a commissioner in accordance with section 271I,
  - (b) giving evidence in chief in the form of a prior statement in accordance with section 271M.
- (6) In this section, “incompatible special measure” means a special measure which is capable of being used only if the child witness gives evidence at the hearing (whether or not its use would require the child witness to be present in the courtroom).
- (7) An exception is justified if—
  - (a) the giving of all of the child witness's evidence in advance of the hearing would give rise to a significant risk of prejudice to the fairness of the hearing or otherwise to the interests of justice, and
  - (b) that risk significantly outweighs any risk of prejudice to the interests of the child witness if the child witness were to give evidence at the hearing.
- (8) An exception is justified if—
  - (a) the child witness is aged 12 or over on the date of commencement of the proceedings in which the hearing is being or is to be held,
  - (b) the child witness expresses a wish to give evidence at the hearing, and
  - (c) it would be in the child witness's best interests to give evidence at the hearing.
- (9) The Scottish Ministers may by regulations—
  - (a) modify subsection (2),
  - (b) remove the condition set out in subsection (1)(b) and the list of offences in subsection (2).
- (10) Regulations under subsection (9) are subject to the affirmative procedure.

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### Textual Amendments

**F117** Ss. 271BZA-271BZC inserted (20.1.2020 for specified purposes) by [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(asp 8\)](#), ss. **1(2)**, 12(2); S.S.I. 2019/392, reg. 2 (with reg. 3)

## 271BZB Child witnesses in certain solemn cases: modifications of section 271A

- (1) In a case to which section 271BZA applies, section 271A applies with the following modifications.
- (2) References to a standard special measure are to be read as references to any of the following special measures (and subsection (14) is to be read accordingly)—
  - (a) taking of evidence by a commissioner in accordance with section 271I,
  - (b) use of a supporter in accordance with section 271L,
  - (c) giving evidence in chief in the form of a prior statement in accordance with section 271M.
- (3) Section 271A(2) has effect as if—
  - (a) the words “Subject to section 271AA,” were omitted,
  - (b) the words “or a deemed vulnerable witness” were omitted.
- (4) Section 271A has effect as if the following subsection were inserted after subsection (2)—

“(2A) A vulnerable witness notice must—

  - (a) state that section 271BZA applies, and
  - (b) explain why the party considers that an exception is justified under section 271BZA(7) or (8) if the notice—
    - (i) does not specify one or both of the special measures listed in section 271BZA(5) for the purpose of taking all of the child witness's evidence,
    - (ii) specifies an incompatible special measure (as defined in section 271BZA(6)) for the purpose of taking any of the child witness's evidence, or
    - (iii) states that the party considers that the child witness should give any of the child witness's evidence without the benefit of any special measure.”.
- (5) Section 271A has effect as if the following subsections were inserted after subsection (10)—

“(10A) Subsections (5), (9) and (10) are subject to subsections (10B) to (10F).

(10B) Where the court is considering a notice in accordance with subsection (5) and the notice does not specify one or both of the special measures mentioned in section 271BZA(5) for the purpose of taking all of the child witness's evidence, the court may nonetheless make an order which has the effect of authorising the use of one or both of those special measures for that purpose.

(10C) Unless the court is satisfied that an exception is justified under section 271BZA(7) or (8), an order made by the court under this section—

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- (a) must authorise the use of one or more of the special measures mentioned in section 271BZA(5) for the purpose of taking all of the child witness's evidence,
  - (b) must not authorise the use of an incompatible special measure (as defined in section 271BZA(6)) for the purpose of taking any of the child witness's evidence, and
  - (c) must not authorise the giving of any of the child witness's evidence without the benefit of any special measure.
- (10D) Even if the court is satisfied that an exception is justified under section 271BZA(7) or (8), an order made by the court under this section must not have the effect of requiring the child witness to be present in the courtroom to give evidence unless the court is satisfied that subsection (10E) or (10F) applies.
- (10E) This subsection applies if—
- (a) the giving of evidence by the child witness in some way other than by being present in the courtroom for that purpose would give rise to a significant risk of prejudice to the fairness of the hearing or otherwise to the interests of justice, and
  - (b) that risk significantly outweighs any risk of prejudice to the interests of the child witness if the child witness were to be present in the courtroom to give evidence.
- (10F) This subsection applies if—
- (a) the child witness is aged 12 or over on the date of commencement of the proceedings in which the hearing is being held or is to be held,
  - (b) the child witness expresses a wish to be present in the courtroom to give evidence, and
  - (c) it would be in the child witness's best interests to be present in the courtroom to give evidence.”.

#### Textual Amendments

**F117** Ss. 271BZA-271BZC inserted (20.1.2020 for specified purposes) by [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(asp 8\)](#), ss. **1(2)**, **12(2)**; S.S.I. 2019/392, reg. 2 (with reg. 3)

#### **271BZC Child witnesses in certain solemn cases: modifications of section 271D**

- (1) In a case to which section 271BZA applies, section 271D applies with the following modifications.
- (2) Section 271D has effect as if—
  - (a) subsections (3A) to (3C) were omitted,
  - (b) subsection (4A) were omitted, and
  - (c) the following subsections were inserted after subsection (4A)—
    - “(4B) Subsections (2) to (4) are subject to subsections (4C) to (4H).
    - (4C) Unless the hearing has already commenced when the court commences its review or the court is satisfied that an exception is



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justified under section 271BZA(7) or (8), an order made by the court under this section must not—

- (a) revoke the earlier order, or
- (b) vary it in such a way that it no longer satisfies the requirements set out in section 271BZA(4)(a)(i), (ii) and (iii).

(4D) An order made by the court under this section must have the effect of authorising the use of the special measure of taking of evidence by a commissioner in accordance with section 271I if—

- (a) that is requested by any party to the proceedings, and
- (b) the earlier order authorises only the special measure of giving evidence in chief in the form of a prior statement in accordance with section 271M.

(4E) However, an order made by the court under this section need not have the effect described in subsection (4D) if—

- (a) the hearing has already commenced when the court commences its review, or
- (b) the court is satisfied that an exception is justified under section 271BZA(7) or (8).

(4F) Even if the hearing has already commenced when the court commences its review or the court is satisfied that an exception is justified under section 271BZA(7) or (8), an order made under this section must not have the effect of requiring the child witness to be present in the courtroom to give evidence unless the court is satisfied that subsection (4G) or (4H) applies.

(4G) This subsection applies if—

- (a) the giving of evidence by the child witness in some way other than by being present in the courtroom for that purpose would give rise to a significant risk of prejudice to the fairness of the hearing or otherwise to the interests of justice, and
- (b) that risk significantly outweighs any risk of prejudice to the interests of the child witness if the child witness were to be present in the courtroom to give evidence.

(4H) This subsection applies if—

- (a) the child witness is aged 12 or over on the date of commencement of the proceedings in which the hearing is being held or is to be held,
- (b) the child witness expresses a wish to be present in the courtroom to give evidence, and
- (c) it would be in the child witness's best interests to be present in the courtroom to give evidence.”]

#### Textual Amendments

**F117** Ss. 271BZA-271BZC inserted (20.1.2020 for specified purposes) by [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(asp 8\)](#), [ss. 1\(2\), 12\(2\)](#); [S.S.I. 2019/392, reg. 2](#) (with [reg. 3](#))

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## [<sup>F118</sup>271BA] Assessment of witnesses

- (1) This section applies where a party intends to cite a witness other than a child witness or a deemed vulnerable witness to give evidence at, or for the purposes of, a hearing in relevant criminal proceedings.
- (2) The party intending to cite the witness must take reasonable steps to carry out an assessment under subsection (3).
- (3) An assessment must determine whether the person—
  - (a) is likely to be a vulnerable witness, and
  - (b) if so, what special measure or combination of special measures ought to be used for the purpose of taking the person's evidence.
- (4) In determining under subsection (3)(a) whether a person is likely to be a vulnerable witness the party must—
  - (a) take into account the matters mentioned in section 271(2),
  - (b) have regard to the best interests of the person, and
  - (c) take account of any views expressed by the person.]

### Textual Amendments

**F118** S. 271BA inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 16(1)**, 34; [S.S.I. 2015/200](#), **art. 2(2)**, *sch.* (with [arts. 1\(3\)](#), 4)

### Modifications etc. (not altering text)

**C7** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), **arts. 1(2)**, **3** (with [art. 1\(3\)](#))

## [<sup>F119</sup>271C]<sup>F120</sup>Vulnerable witness application]

- (1) This section applies where a party citing or intending to cite a person (other than a child witness [<sup>F121</sup>or a deemed vulnerable witness]) to give evidence at, or for the purposes of, [<sup>F122</sup>a hearing in relevant criminal proceedings] (such a person being referred to in this section as “the witness”) [<sup>F123</sup>and, having carried out an assessment under section 271BA,] considers—
  - (a) that the witness is likely to be a vulnerable witness, and
  - (b) that a special measure or combination of special measures ought to be used for the purpose of taking the witness’s evidence.
- (2) Where this section applies, the party citing or intending to cite the witness shall, [<sup>F124</sup>by the required time], make an application (referred to as a “vulnerable witness application”) to the court for an order authorising the use of one or more of the special measures for the purpose of taking the witness’s evidence.
- (3) A vulnerable witness application shall—
  - (a) specify the special measure or measures which the party making the application considers to be the most appropriate for the purpose of taking the evidence of the witness to whom the application relates, and
  - (b) contain or be accompanied by—
    - (i) a summary of any views expressed for the purposes of section 271E(2)(b) of this Act, and

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(ii) such other information as may be prescribed by Act of Adjournal.

(4) The court may, on cause shown, allow a vulnerable witness application to be made after the [<sup>F125</sup>the required time].

[ Any party to the proceedings may, not later than 7 days after a vulnerable witness  
<sup>F126</sup>(4A) application has been lodged, lodge with the court a notice (referred to in this section as “an objection notice”) stating—

- (a) an objection to any special measure specified in the vulnerable witness application that the party considers to be inappropriate, and
- (b) the reasons for that objection.

(4B) The court may, on cause shown, allow an objection notice to be lodged after the period referred to in subsection (4A).

(4C) If an objection notice is lodged in accordance with subsection (4A) or (4B)—

- (a) subsection (5) does not apply to the vulnerable witness application, and
- (b) the court must make an order under subsection (5A).]

(5) The court shall, not [<sup>F127</sup>earlier than 7 days and not later than 14] days after a vulnerable witness application is made to it, consider the application in the absence of the parties and—

- (a) make an order authorising the use of the special measure or measures specified in the application if satisfied on the basis of the application that—
  - (i) the witness in respect of whom the application is made is a vulnerable witness,
  - (ii) the special measures or measures specified in the application are the most appropriate for the purpose of taking the witness’s evidence, and
  - (iii) it is appropriate to do so after having complied with the duty in subsection (8) below, or
- (b) if not satisfied as mentioned in paragraph (a) above, [<sup>F128</sup>make an order under subsection (5A) below.]

[ That order is an order—

- <sup>F129</sup>(5A) (a) in the case of proceedings in the High Court where the preliminary hearing is yet to be held, appointing the vulnerable witness application to be disposed of at that hearing,
- (b) in the case of proceedings on indictment in the sheriff court where the first diet is yet to be held, appointing the vulnerable witness application to be disposed of at that diet, or
- (c) in any other case, appointing a diet to be held before [<sup>F130</sup>the hearing at which the evidence is to be given] and requiring the parties to attend the diet.]

(6) On making an order under subsection [<sup>F131</sup>(5A)(c)] above, the court may postpone [<sup>F132</sup>the hearing at which the evidence is to be given].

[ Subsection (7) below applies to—

- <sup>F133</sup>(6A) (a) a preliminary hearing or first diet so far as the court is, by virtue of an order under subsection (5A)(a) or (b) above disposing of a vulnerable witness application at the hearing or diet, and
- (b) a diet appointed under subsection (5A)(c) above.]

(7) At a [<sup>F134</sup>hearing or diet to which this subsection applies], the court may—

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- (a) after giving the parties an opportunity to be heard, and
  - (b) if satisfied that the witness in respect of whom the application is made is a vulnerable witness,
- make an order authorising the use of such special measure or measures as the court considers to be the most appropriate for the purpose of taking the witness’s evidence.
- (8) In deciding whether to make an order under subsection (5)(a) or (7) above, the court shall—
- (a) have regard to—
    - (i) the possible effect on the witness if required to give evidence without the benefit of any special measure, and
    - (ii) whether it is likely that the witness would be better able to give evidence with the benefit of a special measure, and
  - (b) take into account the matters specified in subsection (2)(a) to (f) of section 271 of this Act.
- (9) A [<sup>F135</sup>hearing or diet to which subsection (7) above applies] may—
- (a) on the application of the party citing or intending to cite the witness in respect of whom the diet is to be held, or
  - (b) of the court’s own motion,
- be held in chambers.
- (10) A diet [<sup>F136</sup>appointed under subsection (5A)(c) above in any case may be conjoined with any other diet to be held before [<sup>F137</sup>the hearing at which the evidence is to be given].]
- (11) A party making a vulnerable witness application [<sup>F138</sup>or an objection notice] shall, at the same time, intimate the application [<sup>F139</sup>or, as the case may be, the notice] to the other parties to the proceedings.
- [ In subsections (2) and (4) above, “the required time” means—
- <sup>F140</sup>(12) (a) in the case of proceedings in the High Court, no later than 14 clear days before the preliminary hearing,
- (b) in the case of proceedings on indictment in the sheriff court, no later than 7 clear days before the first diet,
- (c) in any other case, no later than 14 clear days before [<sup>F141</sup>the hearing at which the evidence is to be given].]

### Textual Amendments

- F119** Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 1, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F120** S. 271C title substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(6), 34**; S.S.I. 2015/200, **art. 2(2)**, sch. (with arts. 1(3), 4)
- F121** Words in s. 271C(1) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 16(2)(a), 34**; S.S.I. 2015/200, **art. 2(2)**, sch. (with arts. 1(3), 4)
- F122** Words in s. 271C(1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(5)(a), 206(1)**; S.S.I. 2011/178, **art. 2**, sch.

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- F123** Words in s. 271C(1) inserted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 16(2)(b)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F124** Words in s. 271C(2) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(a)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F125** Words in s. 271C(4) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(b)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F126** S. 271C(4A)-(4C) inserted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 17(a)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F127** Words in s. 271C(5) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 17(b)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F128** Words in s. 271C(5)(b) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(c)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F129** S. 271C(5A) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(d)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F130** Words in s. 271C(5A)(c) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 87(5)(b)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F131** Words in s. 271C(6) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(e)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F132** Words in s. 271C(6) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 87(5)(c)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F133** S. 271C(6A) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(f)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F134** Words in s. 271C(7) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(g)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F135** Words in s. 271C(9) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(h)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F136** Words in s. 271C(10) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(i)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch.

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- (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F137** Words in s. 271C(10) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 87(5)(d)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F138** Words in s. 271C(11) inserted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 17(c)(i)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F139** Words in s. 271C(11) inserted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 17(c)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F140** S. 271C(12) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 25, 27(1), Sch. para. 44(j)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F141** Words in s. 271C(12)(c) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 87(5)(e)**, 206(1); S.S.I. 2011/178, art. 2, sch.

#### Modifications etc. (not altering text)

- C7** Ss. 271-271M applied (with modifications) (23.12.2015) by The Justice of the Peace Courts (Special Measures) (Scotland) Order 2015 (S.S.I. 2015/447), arts. 1(2), **3** (with art. 1(3))
- C10** Ss. 271-271M applied by Criminal Justice (Scotland) Act 2003 (asp 7), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 3, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

### [<sup>F142</sup>271D] Review of arrangements for vulnerable witnesses

- (1) In any case in which a person who is giving or is to give evidence at or for the purposes of [<sup>F143</sup>a hearing in relevant criminal proceedings] (referred to in this section as the “witness”) is or appears to the court to be a vulnerable witness, the court may at any stage in the proceedings (whether before or after the commencement of [<sup>F144</sup>the hearing] or before or after the witness has begun to give evidence)—
- (a) on the application of [<sup>F145</sup>any party to the proceedings], or
  - (b) of its own motion,
- review the current arrangements for taking the witness’s evidence and, after giving the parties an opportunity to be heard, make an order under subsection (2) below.
- (2) The order which may be made under this subsection is—
- (a) where the current arrangements for taking the witness’s evidence include the use of a special measure or combination of special measures authorised by an order under section 271A or 271C of this Act or under this subsection (referred to as the “earlier order”), an order varying or revoking the earlier order, or
  - (b) where the current arrangements for taking the witness’s evidence do not include any special measure, an order authorising the use of such special measure or measures as the court considers most appropriate for the purpose of taking the witness’s evidence.
- (3) An order under subsection (2)(a) above varying an earlier order may—
- (a) add to or substitute for any special measure authorised by the earlier order such other special measure as the court considers most appropriate for the purpose of taking the witness’s evidence, or

*Status: Point in time view as at 20/01/2020.*

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- (b) where the earlier order authorises the use of a combination of special measures for that purpose, delete any of the special measures so authorised.
- [ If an earlier order has the effect of enabling all of the witness's evidence to be given
- <sup>F146</sup>(3A) in advance of the hearing, the court may not make an order under subsection (2)(a) varying the earlier order in such a way that it no longer has that effect.
- (3B) However, the court may vary the earlier order in the way mentioned in subsection (3A) if the hearing has already commenced when the court commences its review or if the court is satisfied—
- (a) where the witness has expressed a wish to give evidence at the hearing, that it is appropriate for the witness to do so, or
  - (b) in any other case, that—
    - (i) if the court does not vary the earlier order in that way, there would be a significant risk of prejudice to the fairness of the hearing or otherwise to the interests of justice, and
    - (ii) that risk significantly outweighs any risk of prejudice to the interests of the witness if the court were not to vary the earlier order in that way.
- (3C) For the purposes of this section, an order has the effect of enabling all of the witness's evidence to be given in advance of the hearing if—
- (a) it authorises the use of one or both of these special measures for the purpose of taking all of the witness's evidence—
    - (i) taking of evidence by a commissioner in accordance with section 271I,
    - (ii) giving evidence in chief in the form of a prior statement in accordance with section 271M,
  - (b) it does not authorise the use of a special measure which is capable of being used only if the witness gives evidence at the hearing (whether or not its use would require the witness to be present in the courtroom), and
  - (c) it does not authorise the giving of any of the witness's evidence without the benefit of any special measure.]
- (4) The court may make an order under subsection (2)(a) above revoking an earlier order only if satisfied—
- (a) where the witness has expressed a wish to give or, as the case may be, continue to give evidence without the benefit of any special measure, that it is appropriate for the witness so to give evidence, or
  - (b) in any other case, that—
    - (i) the use, or continued use, of the special measure or measures authorised by the earlier order for the purpose of taking the witness's evidence would give rise to a significant risk of prejudice to the fairness of [<sup>F147</sup>the hearing] or otherwise to the interests of justice, and
    - (ii) that risk significantly outweighs any risk of prejudice to the interests of the witness if the order is made.
- (5) Subsection (8) of section 271C of this Act applies to the making of an order under subsection (2)(b) of this section as it applies to the making of an order under subsection (5)(a) or (7) of that section but as if the references to the witness were to the witness within the meaning of this section.

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(6) In this section, “current arrangements” means the arrangements in place at the time the review under this section is begun.

<sup>F148</sup>(6A) [ In this section, “court” includes a commissioner appointed under section 271I(1).]

<sup>F149</sup>(7) [ This section is subject to <sup>F150</sup>sections 271B to 271BZC.]]

### Textual Amendments

- F142** Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 1, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F143** Words in s. 271D(1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(6)(a)(i), 206(1)**; S.S.I. 2011/178, art. 2, sch.
- F144** Words in s. 271D(1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(6)(a)(ii), 206(1)**; S.S.I. 2011/178, art. 2, sch.
- F145** Words in s. 271D(1)(a) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 18, 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F146** S. 271D(3A)-(3C) inserted (20.1.2020 for specified purposes) by [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(asp 8\)](#), **ss. 4(2), 12(2)**; S.S.I. 2019/392, reg. 2
- F147** Words in s. 271D(4)(b)(i) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(6)(b), 206(1)**; S.S.I. 2011/178, art. 2, sch.
- F148** S. 271D(6A) inserted (20.1.2020) by [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(asp 8\)](#), **ss. 5(8), 12(2)**; S.S.I. 2019/392, reg. 2
- F149** S. 271D(7) added (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 14(3), 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F150** Words in s. 271D(7) substituted (20.1.2020) by [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(asp 8\)](#), **ss. 10(3), 12(2)**; S.S.I. 2019/392, reg. 2

### Modifications etc. (not altering text)

- C7** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), **3** (with art. 1(3))
- C11** Ss. 271-271M applied by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 3, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

### <sup>F151</sup>271EVulnerable witnesses: supplementary provision

(1) Subsection (2) below applies where—

- (a) a party is considering for the purposes of a <sup>F152</sup>vulnerable witness notice or a vulnerable witness application which of the special measures is or are the most appropriate for the purpose of taking the evidence of the person to whom the notice or application relates, or



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- (b) the court is making an order under section 271A(5)(a)(ii) or (b) or (9), 271C or 271D of this Act.
- (2) The party or, as the case may be, the court shall—
  - (a) have regard to the best interests of the witness, and
  - (b) take account of any views expressed by—
    - (i) the witness (having regard, where the witness is a child witness, to the witness’s age and maturity), and
    - (ii) where the witness is a child witness, the witness’s parent (except where the parent is the accused).
- (3) For the purposes of subsection (2)(b) above, where the witness is a child witness—
  - (a) the witness shall be presumed to be of sufficient age and maturity to form a view if aged 12 or older, and
  - (b) in the event that any views expressed by the witness are inconsistent with any views expressed by the witness’s parent, the views of the witness shall be given greater weight.
- (4) In this section—
  - “parent”, in relation to a child witness, means any person having parental responsibilities within the meaning of section 1(3) of the Children (Scotland) Act 1995 (c. 36) in relation to the child witness,
  - “the witness” means—
    - (a) in the case referred to in subsection (1)(a) above, the person to whom the notice or application relates,
    - (b) in the case referred to in subsection (1)(b) above, the person to whom the order would relate.]

#### Textual Amendments

- F151** Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 1, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F152** Word in s. 271E(1)(a) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(7), 34**; S.S.I. 2015/200, **art. 2(2)**, sch. (with arts. 1(3), 4)

#### Modifications etc. (not altering text)

- C7** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), **3** (with art. 1(3))
- C12** Ss. 271-271M applied by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 3, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

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## <sup>F153</sup>271F The accused

- (1) For the purposes of the application of subsection (1) of section 271 of this Act to the accused (where the accused is giving or is to give evidence at or for the purposes of <sup>F154</sup>a hearing in relevant criminal proceedings), subsection (2) of that section shall have effect as if—
- (a) for paragraph (c) there were substituted—
    - “(c) whether the accused is to be legally represented at <sup>F155</sup>the hearing] and, if not, the accused’s entitlement to be so legally represented.”, and
  - (b) for paragraph (e) there were substituted—
    - “(e) any behaviour towards the accused on the part of—
      - (i) any co-accused or any person who is likely to be a co-accused in the proceedings,
      - (ii) any witness or any person who is likely to be a witness in the proceedings, or
      - (iii) members of the family or associates of any of the persons mentioned in sub-paragraphs (i) and (ii) above.”.
- (2) Where, if the accused were to give evidence at or for the purposes of <sup>F156</sup>the hearing], he would be a child witness—
- (a) section 271A of this Act shall apply in relation to the accused subject to the following modifications—
    - (i) references to a <sup>F157</sup>witness] shall be read as if they were references to the accused,
    - (ii) references to the party citing or intending to cite a <sup>F158</sup>... witness shall be read as if they were references to the accused, and
    - (iii) subsection (6) shall have effect as if for paragraph (a) there were substituted—
      - “(a) it appears to the court that the accused, if he were to give evidence at or for the purposes of <sup>F159</sup>a hearing in relevant criminal proceedings], would be a child witness.”, and
  - (b) section 271B of this Act shall apply in relation to the accused as if—
    - (i) for subsection (1) there were substituted—
      - “(1) This section applies where the accused—
        - (a) if he were to give evidence at or for the purposes of <sup>F160</sup>a hearing in relevant criminal proceedings] would be a child witness, and
        - (b) is under the age of 12 on the date of commencement of the proceedings.”, and
      - (ii) in subsection (3), references to the child witness were references to the accused.
- (3) Subsection (4) below applies where the accused—
- (a) considers that, if he were to give evidence at or for the purposes of <sup>F161</sup>a hearing in relevant criminal proceedings], he would be a vulnerable witness other than a child witness, and
  - (b) has not decided to give evidence without the benefit of any special measures.

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- (4) Where this subsection applies, subsections (2) to (11) of section 271C of this Act shall apply in relation to the accused subject to the following modifications—
- (a) references to the witness shall be read as if they were references to the accused,
  - (b) references to the party citing or intending to cite the witness shall be read as if they were references to the accused, and
  - (c) in subsection (8)(b), the reference to subsection (2)(a) to (f) of section 271 of this Act shall be read as if it were a reference to that subsection as modified by subsection (1) above.
- (5) Section 271D of this Act shall apply in any case where it appears to the court that the accused, if he were to give evidence at or for the purposes of [F162the hearing], would be a vulnerable witness as it applies in the case referred to in subsection (1) of that section but subject to the following modifications—
- (a) references to the witness shall be read as if they were references to the accused,
  - (b) references to the party citing or intending to cite the witness shall be read as if they were references to the accused.
- (6) Where the witness within the meaning of section 271E of this Act is the accused, that section shall have effect in relation to the witness as if—
- (a) in subsection (1), paragraph (a) were omitted, and
  - (b) in subsection (2), the words “The party or, as the case may be,” were omitted.
- (7) Section 271M of this Act shall have effect, where the vulnerable witness is the accused, as if the reference in subsection (2) to the party citing the vulnerable witness were a reference to the accused.
- (8) The following provisions of this Act shall not apply in relation to a vulnerable witness who is the accused—
- (a) section 271H(1)(c) [F163and (ea)],
  - (b) section 271I(3).]

#### Textual Amendments

- F153** Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 1, 25**; [S.S.I. 2005/168](#), **art. 2**, Sch. (with savings in art. 4); [S.S.I. 2005/590](#), **art. 2**, Sch. (with art. 4); [S.S.I. 2006/59](#), **art. 2**, Sch. (with art. 4(1)); [S.S.I. 2007/101](#), **art. 2**, Sch. (with art. 4); [S.S.I. 2007/329](#), **art. 2**, Sch. (with art. 4); [S.S.I. 2008/57](#), **art. 2** (with art. 3)
- F154** Words in s. 271F(1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(7)(a)(i)**, 206(1); [S.S.I. 2011/178](#), art. 2, sch.
- F155** Words in s. 271F(1)(a) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(7)(a)(ii)**, 206(1); [S.S.I. 2011/178](#), art. 2, sch.
- F156** Words in s. 271F(2) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(7)(b)(i)**, 206(1); [S.S.I. 2011/178](#), art. 2, sch.
- F157** Word in s. 271F(2)(a)(i) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(8)(a)**, 34; [S.S.I. 2015/200](#), art. 2(2), sch. (with arts. 1(3), 4)
- F158** Word in s. 271F(2)(a)(ii) repealed (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(8)(b)**, 34; [S.S.I. 2015/200](#), art. 2(2), sch. (with arts. 1(3), 4)
- F159** Words in s. 271F(2) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(7)(b)(ii)**, 206(1); [S.S.I. 2011/178](#), art. 2, sch.
- F160** Words in s. 271F(2) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(7)(b)(iii)**, 206(1); [S.S.I. 2011/178](#), art. 2, sch.

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- F161** Words in s. 271F(3) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), **ss. 87(7)(c)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F162** Words in s. 271F(5) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), **ss. 87(7)(d)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F163** Words in s. 271F(8)(a) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014](#) (asp 1), **ss. 20(3)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)

#### Modifications etc. (not altering text)

- C7** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015](#) (S.S.I. 2015/447), arts. 1(2), **3** (with art. 1(3))
- C13** Ss. 271-271M applied by [Criminal Justice \(Scotland\) Act 2003](#) (asp 7), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004](#) (asp 3), **ss. 3**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

### [<sup>F164</sup>271G] Saving provision

Nothing in sections 271A to 271F of this Act affects any power or duty which a court has otherwise than by virtue of those sections to make or authorise any special arrangements for taking the evidence of any person.]

#### Textual Amendments

- F164** Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004](#) (asp 3), **ss. 1**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

#### Modifications etc. (not altering text)

- C7** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015](#) (S.S.I. 2015/447), arts. 1(2), **3** (with art. 1(3))
- C14** Ss. 271-271M applied by [Criminal Justice \(Scotland\) Act 2003](#) (asp 7), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004](#) (asp 3), **ss. 3**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

### [<sup>F165</sup>271H] The special measures

- (1) The special measures which may be authorised to be used under section 271A, 271C or 271D of this Act for the purpose of taking the evidence of a vulnerable witness are—
- (a) taking of evidence by a commissioner in accordance with section 271I of this Act,
  - (b) use of a live television link in accordance with section 271J of this Act,
  - (c) use of a screen in accordance with section 271K of this Act,
  - (d) use of a supporter in accordance with section 271L of this Act,

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- (e) giving evidence in chief in the form of a prior statement in accordance with section 271M of this Act, and
  - [ excluding the public during the taking of the evidence in accordance with section 271HB of this Act,]
- <sup>F166</sup>(ea) <sup>F167</sup>(f) .....
- [ The Scottish Ministers may, by order subject to the affirmative procedure—
- <sup>F168</sup>(1A) (a) modify subsection (1),
  - (b) in consequence of any modification made under paragraph (a)—
    - (i) prescribe the procedure to be followed when special measures are used, and
    - (ii) so far as is necessary, modify sections 271A to 271M of this Act.]
- <sup>F169</sup>(2) .....
- (3) Provision may be made by Act of Adjournal regulating, so far as not regulated by sections 271I to 271M of this Act, the use in any proceedings of any special measure authorised to be used by virtue of section 271A, 271C or 271D of this Act.]

#### Textual Amendments

- F165** Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 1, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F166** S. 271H(1)(ea) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 20(1), 34**; S.S.I. 2015/200, **art. 2(2)**, sch. (with arts. 1(3), 4)
- F167** S. 271H(1)(f) repealed (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 21(a), 34**; S.S.I. 2015/200, **art. 2(2)**, sch.
- F168** S. 271H(1A) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 21(b), 34**; S.S.I. 2015/200, **art. 2(2)**, sch.
- F169** S. 271H(2) repealed (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 21(c), 34**; S.S.I. 2015/200, **art. 2(2)**, sch.

#### Modifications etc. (not altering text)

- C7** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), **arts. 1(2), 3** (with art. 1(3))
- C15** Ss. 271-271M applied by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 3, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

#### [<sup>F170</sup> 271HA] Temporary additional special measures

- (1) The Scottish Ministers may, by order subject to the affirmative procedure, specify additional measures which for the time being are to be treated as special measures listed in section 271H(1).
- (2) An order under subsection (1)

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- (3) An order under subsection (1) must specify—
- (a) the area in which the additional measures may be used,
  - (b) the period during which the additional measures may be used, and
  - (c) the procedure to be followed when the additional measures are used.]

#### Textual Amendments

**F170** S. 271HA inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 19, 34**; [S.S.I. 2015/200, art. 2\(2\)](#), sch.

#### Modifications etc. (not altering text)

**C7** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), **arts. 1(2), 3** (with art. 1(3))

### [<sup>F171</sup>271HB] ~~Excluding the public while taking evidence~~

- (1) This section applies where the special measure to be used in respect of a vulnerable witness is excluding the public during the taking of the evidence of the vulnerable witness.
- (2) The court may direct that all or any persons other than those mentioned in subsection (3) are excluded from the court during the taking of the evidence.
- (3) The persons are—
  - (a) members or officers of the court,
  - (b) parties to the case before the court, their counsel or solicitors or persons otherwise directly concerned in the case,
  - (c) *bona fide* representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings,
  - (d) such other persons as the court may specially authorise to be present.]

#### Textual Amendments

**F171** S. 271HB inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 20(2), 34**; [S.S.I. 2015/200, art. 2\(2\)](#), sch. (with arts. 1(3), 4)

#### Modifications etc. (not altering text)

**C7** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), **arts. 1(2), 3** (with art. 1(3))

### [<sup>F172</sup>271I] Taking of evidence by a commissioner

- (1) Where the special measure to be used is taking of evidence by a commissioner, the court shall appoint a commissioner to take the evidence of the vulnerable witness in respect of whom the special measure is to be used.

[ A court which appoints a commissioner under subsection (1) must—

<sup>F173</sup>(1ZA) (a) fix a date for the proceedings before the commissioner, and

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- (b) fix a date for a hearing (to be known as a “ground rules hearing”) for the purpose of preparing for the proceedings.

(1ZB) The ground rules hearing is to be presided over by—

- (a) a judge of the court which appointed the commissioner if—
  - (i) the court directs that the ground rules hearing be conjoined with another hearing or diet that is to be held before the date of the proceedings to which the ground rules hearing relates and that hearing or diet is presided over by a judge, or
  - (ii) it is not reasonably practicable for the ground rules hearing to be presided over by the commissioner appointed to preside over the proceedings to which the ground rules hearing relates, or
- (b) in any other case, the commissioner appointed to preside over the proceedings to which the ground rules hearing relates.

(1ZC) In cases where a judge presides over a ground rules hearing in accordance with subsection (1ZB)(a), references to the commissioner in subsection (1ZD) are to be read as references to the judge.

(1ZD) The commissioner presiding over a ground rules hearing must—

- (a) ascertain the length of time the parties expect to take for examination-in-chief and cross-examination, including any breaks that may be required,
- (b) to the extent that the commissioner considers it appropriate to do so, decide on the form and wording of the questions that are to be asked of the vulnerable witness,
- (c) if the commissioner considers it appropriate to do so, authorise the use of a supporter at the proceedings, in accordance with section 271L,
- (d) if the commissioner considers that there are steps that could reasonably be taken to enable the vulnerable witness to participate more effectively in the proceedings, direct that those steps be taken,
- (e) subject to section 72(8) which applies in relation to the commissioner as it applies in relation to the court, dispose of any application that—
  - (i) has been made under section 275(1) or 288F(2), and
  - (ii) has not yet been disposed of by the court,
- (f) consider whether the proceedings should take place on the date fixed by the court and postpone the proceedings if the commissioner considers that it is in the interests of justice to do so having regard to all the circumstances, including—
  - (i) whether the parties are likely to be ready for the proceedings to take place on the date fixed by the court and if not, the reasons for that,
  - (ii) any views expressed by the parties on whether the proceedings should be postponed, and
  - (iii) whether postponement is in the interests of the vulnerable witness, and
- (g) consider and, if appropriate, make a decision on, any other matter that the commissioner considers could be usefully dealt with before the proceedings take place.]

[ Proceedings before a commissioner appointed under subsection (1) above shall, if the <sup>F174</sup>(1A) court so directed when authorising such proceedings [<sup>F175</sup>or it was so directed at the ground rules hearing], take place by means of a live television link between the place

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where the commissioner is taking, and the place from which the witness is giving, evidence.]

- (2) Proceedings before a commissioner appointed under subsection (1) above shall be recorded by video recorder.
- (3) An accused—
- (a) shall not, except by leave of the court on special cause shown, be <sup>F176</sup> present—
    - (i) in the room where such proceedings are taking place; or
    - (ii) if such proceedings are taking place by means of a live television link, in the same room as the witness], but
  - (b) is entitled by such means as seem suitable to the court to watch and hear the proceedings.
- (4) The recording of the proceedings made in pursuance of subsection (2) above shall be received in evidence without being sworn to by witnesses.

[ It is not necessary (in solemn cases) for an indictment to have been served before—

- <sup>F177</sup>(4A) (a) a party may lodge a vulnerable witness notice which specifies the special measure of taking evidence by commissioner as the special measure or one of the special measures which the party considers to be the most appropriate for the purpose of taking the witness's evidence,
- (b) a court may make an order authorising the use of the special measure of taking evidence by commissioner, whether on its own or in combination with any other special measure specified in the same vulnerable witness notice,
- (c) a court may appoint a commissioner under subsection (1), or
- (d) proceedings may take place before a commissioner appointed under subsection (1).]

[ Sections—

- <sup>F178</sup>(5) (a) 274;
- (b) 275;
- (c) 275B except subsection (2)(b);
- (d) 275C;
- (e) 288C;
- (f) 288E; and
- (g) 288F,

of this Act apply in relation to proceedings before a commissioner appointed under subsection (1) above as they apply in relation to a trial.

- (6) In the application of those sections in relation to such proceedings—
- (a) the commissioner acting in the proceedings is to perform the functions of the court as provided for in those sections;
  - (b) references—
    - (i) in those sections, except section 275(3)(c) and (7)(c), to a trial or a trial diet;
    - (ii) in those sections, except sections 275(3)(e) and 288F(2), (3) and (4), to the court,
 shall be read accordingly;



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- (c) the reference in section 275B(1) to 14 days shall be read as a reference to 7 days.
- (7) In a case where it falls to the court to appoint a commissioner under subsection (1) above, the commissioner shall be a person described in subsection (8) below.
- (8) The persons are—
- (a) where the proceedings before the commissioner are for the purposes of a trial <sup>F179</sup>which the court (when it appoints the commissioner) expects will be] in the High Court, a judge of the High Court; or
  - (b) in any other case, a sheriff.]]

#### Textual Amendments

- F172** Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 1, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F173** S. 271I(1ZA)-(1ZD) inserted (20.1.2020) by [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(asp 8\)](#), **ss. 5(2)**, 12(2); S.S.I. 2019/392, reg. 2 (with reg. 4(1))
- F174** S. 271I(1A) inserted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 35(3)(a)**, 84; S.S.I. 2007/250, **art. 3(a)**
- F175** Words in s. 271I(1A) inserted (20.1.2020) by [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(asp 8\)](#), **ss. 5(3)**, 12(2); S.S.I. 2019/392, reg. 2 (with reg. 4(1))
- F176** Words in s. 271I(3)(a) substituted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 35(3)(b)**, 84; S.S.I. 2007/250, **art. 3(a)**
- F177** S. 271I(4A) inserted (20.1.2020) by [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(asp 8\)](#), **ss. 5(4)**, 12(2); S.S.I. 2019/392, reg. 2
- F178** S. 271I(5)-(8) added (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 35(3)(c)**, 84; S.S.I. 2007/250, **art. 3(a)**
- F179** Words in s. 271I(8)(a) inserted (20.1.2020) by [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(asp 8\)](#), **ss. 5(5)**, 12(2); S.S.I. 2019/392, reg. 2

#### Modifications etc. (not altering text)

- C7** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), **3** (with art. 1(3))
- C16** Ss. 271-271M applied by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 3, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

#### <sup>F180</sup>271JLive television link

- (1) Where the special measure to be used is a live television link, the court shall make such arrangements as seem to it appropriate for the vulnerable witness in respect of whom the special measure is to be used to give evidence from a place outside the court-room where <sup>F181</sup>the hearing] is to take place by means of a live television link between that place and the court-room.

*Status: Point in time view as at 20/01/2020.*

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- (2) The place from which the vulnerable witness gives evidence by means of the link—
- (a) may be another part of the court building in which the court-room is located or any other suitable place outwith that building, and
  - (b) shall be treated, for the purposes of the proceedings at [<sup>F182</sup>the hearing], as part of the court-room whilst the witness is giving evidence.
- (3) Any proceedings conducted by means of a live television link by virtue of this section shall be treated as taking place in the presence of the accused.
- (4) Where—
- (a) the live television link is to be used in proceedings in a sheriff court, but
  - (b) that court lacks accommodation or equipment necessary for the purpose of receiving such a link,
- the sheriff may by order transfer the proceedings to any other sheriff court in the same sheriffdom which has such accommodation or equipment available.
- (5) An order may be made under subsection (4) above—
- (a) at any stage in the proceedings (whether before or after the commencement of [<sup>F183</sup>the hearing]), or
  - (b) in relation to any part of the proceedings.]

#### Textual Amendments

- F180** Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 1, 25**; [S.S.I. 2005/168](#), **art. 2**, Sch. (with savings in art. 4); [S.S.I. 2005/590](#), **art. 2**, Sch. (with art. 4); [S.S.I. 2006/59](#), **art. 2**, Sch. (with art. 4(1)); [S.S.I. 2007/101](#), **art. 2**, Sch. (with art. 4); [S.S.I. 2007/329](#), **art. 2**, Sch. (with art. 4); [S.S.I. 2008/57](#), **art. 2** (with art. 3)
- F181** Words in s. 271J(1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(8)(a)**, 206(1); [S.S.I. 2011/178](#), art. 2, sch.
- F182** Words in s. 271J(2)(b) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(8)(b)**, 206(1); [S.S.I. 2011/178](#), art. 2, sch.
- F183** Words in s. 271J(5)(a) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(8)(c)**, 206(1); [S.S.I. 2011/178](#), art. 2, sch.

#### Modifications etc. (not altering text)

- C7** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), **3** (with art. 1(3))
- C17** Ss. 271-271M applied by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 3, 25**; [S.S.I. 2005/168](#), **art. 2**, Sch. (with savings in art. 4); [S.S.I. 2005/590](#), **art. 2**, Sch. (with art. 4); [S.S.I. 2006/59](#), **art. 2**, Sch. (with art. 4); [S.S.I. 2007/101](#), **art. 2**, Sch. (with art. 4); [S.S.I. 2007/329](#), **art. 2**, Sch. (with art. 4); [S.S.I. 2008/57](#), **art. 2** (with art. 3)

#### [<sup>F184</sup>271K]Screens

- (1) Where the special measure to be used is a screen, the screen shall be used to conceal the accused from the sight of the vulnerable witness in respect of whom the special measure is to be used.

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- (2) However, the court shall make arrangements to ensure that the accused is able to watch and hear the vulnerable witness giving evidence.
- (3) Subsections (4) and (5) of section 271J of this Act apply for the purpose of the use of a screen under this section as they apply for the purpose of the use of a live television link under that section but as if—
  - (a) references to the live television link were references to the screen, and
  - (b) the reference to receiving such a link were a reference to the use of a screen.]

#### Textual Amendments

**F184** Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 1, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

#### Modifications etc. (not altering text)

**C7** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), **3** (with art. 1(3))

**C18** Ss. 271-271M applied by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 3, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

#### [<sup>F185</sup>271I] Supporters

- (1) Where the special measure to be used is a supporter, another person (“the supporter”) nominated by or on behalf of the vulnerable witness in respect of whom the special measure is to be used may be present alongside the witness to support the witness while the witness is giving evidence.
- (2) Where the person nominated as the supporter is to give evidence at [<sup>F186</sup>that or any other hearing in the proceedings], that person may not act as the supporter at any time before giving evidence.
- (3) The supporter shall not prompt or otherwise seek to influence the witness in the course of giving evidence.]

#### Textual Amendments

**F185** Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 1, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

**F186** Words in s. 271I(2) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(9)**, 206(1); S.S.I. 2011/178, art. 2, sch.

*Status: Point in time view as at 20/01/2020.*

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#### Modifications etc. (not altering text)

- C7** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), **3** (with art. 1(3))
- C19** Ss. 271-271M applied by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 3, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

#### [<sup>F187</sup>271M] Giving evidence in chief in the form of a prior statement

- (1) This section applies where the special measure to be used in respect of a vulnerable witness is giving evidence in chief in the form of a prior statement.
- (2) A statement made by the vulnerable witness which is lodged in evidence for the purposes of this section by or on behalf of the party citing the vulnerable witness shall, subject to subsection (3) below, be admissible as the witness's evidence in chief, or as part of the witness's evidence in chief, without the witness being required to adopt or otherwise speak to the statement in giving evidence in court.
- (3) Section 260 of this Act shall apply to a statement lodged for the purposes of this section as it applies to a prior statement referred to in that section but as if—
  - (a) references to a prior statement were references to the statement lodged for the purposes of this section,
  - (b) in subsection (1), the words “where a witness gives evidence in criminal proceedings” were omitted, and
  - (c) in subsection (2), paragraph (b) were omitted.
- (4) This section does not affect the admissibility of any statement made by any person which is admissible otherwise than by virtue of this section.
- (5) In this section, “statement” has the meaning given in section 262(1) of this Act.]

#### Textual Amendments

- F187** Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 1, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

#### Modifications etc. (not altering text)

- C7** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), **3** (with art. 1(3))
- C20** Ss. 271-271M applied by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 3, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

*Status: Point in time view as at 20/01/2020.*

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## <sup>F188</sup> Witness anonymity orders

### Textual Amendments

**F188** Ss. 271N-271Z inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. [90\(1\)](#), 206(1); S.S.I. 2011/178, art. 2, sch.

### Modifications etc. (not altering text)

**C21** Ss. 271N-271Z applied (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. [90\(3\)\(4\)](#), 206(1); S.S.I. 2011/178, art. 2, sch.

## 271N Witness anonymity orders

- (1) A court may make an order requiring such specified measures to be taken in relation to a witness in criminal proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.
- (2) The court may make such an order only on an application made in accordance with sections 271P and 271Q, if satisfied of the conditions set out in section 271R having considered the matters set out in section 271S.
- (3) The kinds of measures that may be required to be taken in relation to a witness include in particular measures for securing one or more of the matters mentioned in subsection (4).
- (4) Those matters are—
  - (a) that the witness's name and other identifying details may be—
    - (i) withheld,
    - (ii) removed from materials disclosed to any party to the proceedings,
  - (b) that the witness may use a pseudonym,
  - (c) that the witness is not asked questions of any specified description that might lead to the identification of the witness,
  - (d) that the witness is screened to any specified extent,
  - (e) that the witness's voice is subjected to modulation to any specified extent.
- (5) Nothing in this section authorises the court to require—
  - (a) the witness to be screened to such an extent that the witness cannot be seen by the judge or the jury,
  - (b) the witness's voice to be modulated to such an extent that the witness's natural voice cannot be heard by the judge or the jury.
- (6) An order made under this section is referred to in this Act as a “witness anonymity order”.
- (7) In this section “specified” means specified in the order concerned.

## 271P Applications

- (1) An application for a witness anonymity order to be made in relation to a witness in criminal proceedings may be made to the court by the prosecutor or the accused.
- (2) Where an application is made by the prosecutor, the prosecutor—

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- (a) must (unless the court directs otherwise) inform the court of the identity of the witness, but
  - (b) is not required to disclose in connection with the application—
    - (i) the identity of the witness, or
    - (ii) any information that might enable the witness to be identified, to any other party to the proceedings (or to the legal representatives of any other party to the proceedings).
- (3) Where an application is made by the accused, the accused—
  - (a) must inform the court and the prosecutor of the identity of the witness, but
  - (b) if there is more than one accused, is not required to disclose in connection with the application—
    - (i) the identity of the witness, or
    - (ii) any information that might enable the witness to be identified, to any other accused (or to the legal representatives of any other accused).
- (4) Subsections (5) and (6) apply where the prosecutor or the accused proposes to make an application under this section in respect of a witness.
- (5) Any relevant information which is disclosed by or on behalf of that party before the determination of the application must be disclosed in such a way as to prevent—
  - (a) the identity of the witness, or
  - (b) any information that might enable the witness to be identified, from being disclosed except as required by subsection (2)(a) or (3)(a).
- (6) Despite any provision in this Act to the contrary, any relevant list, application or notice lodged, made or given by that party before the determination of the application must not—
  - (a) disclose the identity of the witness, or
  - (b) contain any other information that might enable the witness to be identified, but the list, application or notice must, instead, refer to the witness by a pseudonym.
- (7) “Relevant information” means any document or other material which falls to be disclosed, or is sought to be relied on, by or on behalf of the party concerned in connection with the proceedings or proceedings preliminary to them.
- (8) “Relevant list, application or notice” means—
  - (a) a list of witnesses,
  - (b) a list of productions,
  - (c) a notice under section 67(5) or 78(4) relating to the witness,
  - (d) a motion or application under section 268, 269 or 270 relating to the witness,
  - (e) any other motion, application or notice relating to the witness.
- (9) The court must give every party to the proceedings the opportunity to be heard on an application under this section.
- (10) Subsection (9) does not prevent the court from hearing one or more of the parties to the proceedings in the absence of an accused and the accused's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.
- (11) Nothing in this section is to be taken as restricting any power to make rules of court.

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## **271Q Making and determination of applications**

- (1) In proceedings on indictment, an application under section 271P is a preliminary issue (and sections 79 and 87A and other provisions relating to preliminary issues apply accordingly).
- (2) No application under section 271P may be made in summary proceedings by any party unless notice of the party's intention to do so has been given—
  - (a) if an intermediate diet has been fixed, before that diet,
  - (b) if no intermediate diet has been fixed, before the commencement of the trial.
- (3) Subsection (2) is subject to subsections (4) and (8).
- (4) In summary proceedings in which an intermediate diet has been fixed, the court may, on cause shown, grant leave for an application under section 271P to be made without notice having been given in accordance with subsection (2)(a).
- (5) Subsection (6) applies where—
  - (a) the court grants leave for a party to make an application under section 271P without notice having been given in accordance with subsection (2)(a), or
  - (b) notice of a party's intention to make such an application is given in accordance with subsection (2)(b).
- (6) The application must be disposed of before the commencement of the trial.
- (7) Subsection (8) applies where a motion or application is made under section 268, 269 or 270 to lead the evidence of a witness.
- (8) Despite section 79(1) and subsection (2) above, an application under section 271P may be made in respect of the witness at the same time as the motion or application under section 268, 269 or 270 is made.
- (9) The application must be determined by the court before continuing with the trial.
- (10) Where an application is made under section 271P, the court may postpone or adjourn (or further adjourn) the trial diet.
- (11) In this section, “ commencement of the trial ” means the time when the first witness for the prosecution is sworn.

## **271R Conditions for making orders**

- (1) This section applies where an application is made for a witness anonymity order to be made in relation to a witness in criminal proceedings.
- (2) The court may make the order only if it is satisfied that Conditions A to D below are met.
- (3) Condition A is that the proposed order is necessary—
  - (a) in order to protect the safety of the witness or another person or to prevent any serious damage to property, or
  - (b) in order to prevent real harm to the public interest (whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities or otherwise).

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- (4) Condition B is that, having regard to all the circumstances, the effect of the proposed order would be consistent with the accused's receiving a fair trial.
- (5) Condition C is that the importance of the witness's testimony is such that in the interests of justice the witness ought to testify.
- (6) Condition D is that—
  - (a) the witness would not testify if the proposed order were not made, or
  - (b) there would be real harm to the public interest if the witness were to testify without the proposed order being made.
- (7) In determining whether the measures to be specified in the order are necessary for the purpose mentioned in subsection (3)(a), the court must have regard in particular to any reasonable fear on the part of the witness—
  - (a) that the witness or another person would suffer death or injury, or
  - (b) that there would be serious damage to property,
 if the witness were to be identified.

#### **271S Relevant considerations**

- (1) When deciding whether Conditions A to D in section 271R are met in the case of an application for a witness anonymity order, the court must have regard to—
  - (a) the considerations mentioned in subsection (2), and
  - (b) such other matters as the court considers relevant.
- (2) The considerations are—
  - (a) the general right of an accused in criminal proceedings to know the identity of a witness in the proceedings,
  - (b) the extent to which the credibility of the witness concerned would be a relevant factor when the witness's evidence comes to be assessed,
  - (c) whether evidence given by the witness might be material in implicating the accused,
  - (d) whether the witness's evidence could be properly tested (whether on grounds of credibility or otherwise) without the witness's identity being disclosed,
  - (e) whether there is any reason to believe that the witness—
    - (i) has a tendency to be dishonest, or
    - (ii) has any motive to be dishonest in the circumstances of the case,
 having regard in particular to any previous convictions of the witness and to any relationship between the witness and the accused or any associates of the accused,
  - (f) whether it would be reasonably practicable to protect the witness's identity by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

#### **271T Direction to jury**

- (1) Subsection (2) applies where, in a trial on indictment, any evidence has been given by a witness at a time when a witness anonymity order applied to the witness.



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- (2) The judge must give the jury such direction as the judge considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the accused.

## **271U Discharge and variation of order**

- (1) This section applies where a court has made a witness anonymity order in relation to any criminal proceedings.
- (2) The court may discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of the provisions of sections 271R and 271S that applied to the making of the order.
- (3) The court may do so—
  - (a) on an application made by a party to the proceedings if there has been a material change of circumstances since the relevant time, or
  - (b) on its own initiative.
- (4) The court must give every party to the proceedings the opportunity to be heard—
  - (a) before determining an application made to it under subsection (3)(a), and
  - (b) before discharging or varying the order on its own initiative.
- (5) Subsection (4) does not prevent the court from hearing one or more of the parties to the proceedings in the absence of an accused and the accused's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.
- (6) In subsection (3)(a) “the relevant time” means—
  - (a) the time when the order was made, or
  - (b) if a previous application has been made under that subsection, the time when the application (or the last application) was made.

## **271V Appeals**

- (1) The prosecutor or the accused may appeal to the [<sup>F189</sup>appropriate Appeal Court] against—
  - (a) the making of a witness anonymity order under section 271N,
  - (b) the kinds of measures that are required to be taken in relation to a witness under a witness anonymity order made under that section,
  - (c) the refusal to make a witness anonymity order under that section,
  - (d) the discharge of a witness anonymity order under section 271U,
  - (e) the variation of a witness anonymity order under that section, or
  - (f) the refusal to discharge or vary a witness anonymity order under that section.
- (2) The appeal may be brought only with the leave of the court of first instance, granted—
  - (a) on the motion of the party making the appeal, or
  - (b) on its own initiative.
- (3) The procedure in relation to the appeal is to be prescribed by Act of Adjournal.
- (4) If an appeal is brought under this section—
  - (a) the period between the lodging of the appeal and its determination does not count towards any time limit applying in respect of the case,

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- (b) the court of first instance or the [<sup>F190</sup>appropriate Appeal Court] may do either or both of the following—
- (i) postpone or adjourn (or further adjourn) the trial diet,
  - (ii) extend any time limit applying in respect of the case.
- (5) An appeal under this section does not affect any right of appeal in relation to any other decision of any court in the criminal proceedings.
- [ In this section, “appropriate Appeal Court” means—
- <sup>F191</sup>(6) (a) in the case of an appeal under this section against a decision made in proceedings on indictment, the High Court;
- (b) in the case of an appeal under this section against a decision made in summary proceedings, the Sheriff Appeal Court.]

#### Textual Amendments

**F189** Words in s. 271V(1) substituted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, **sch. 2 para. 5(10)(a)** (with art. 4)

**F190** Words in s. 271V(4)(b) substituted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, **sch. 2 para. 5(10)(a)** (with art. 4)

**F191** S. 271V(6) inserted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, **sch. 2 para. 5(10)(b)** (with art. 4)

### 271W Appeal against the making of a witness anonymity order

- (1) This section applies where—
- (a) an appeal is brought under section 271V(1)(a) against the making of a witness anonymity order, and
  - (b) the [<sup>F192</sup>court hearing the appeal] determines that the decision of the judge at first instance was wrong in law.
- (2) The [<sup>F193</sup>court hearing the appeal] must discharge the order and the trial is to proceed as if the order had not been made.

#### Textual Amendments

**F192** Words in s. 271W(1)(b) substituted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, **sch. 2 para. 5(11)** (with art. 4)

**F193** Words in s. 271W(2) substituted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, **sch. 2 para. 5(11)** (with art. 4)

### 271X Appeal against the refusal to make a witness anonymity order

- (1) This section applies where—
- (a) an appeal is brought under section 271V(1)(c) against the refusal to make a witness anonymity order in relation to a witness in criminal proceedings, and
  - (b) the [<sup>F194</sup>court hearing the appeal] determines that the decision of the judge at first instance was wrong in law.

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- (2) The [<sup>F195</sup>court hearing the appeal] must make an order requiring such specified measures to be taken in relation to the witness in the proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

#### Textual Amendments

- F194** Words in s. 271X(1)(b) substituted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, **sch. 2 para. 5(12)** (with art. 4)
- F195** Words in s. 271X(2) substituted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, **sch. 2 para. 5(12)** (with art. 4)

### 271Y Appeal against a variation of a witness anonymity order

- (1) This section applies where—
- an appeal is brought under section 271V(1)(e) against a variation of a witness anonymity order, and
  - the [<sup>F196</sup>court hearing the appeal] determines that the decision of the judge at first instance was wrong in law.
- (2) The [<sup>F197</sup>court hearing the appeal] must discharge the variation.
- (3) If the [<sup>F198</sup>court hearing the appeal] determines that it is appropriate to make an additional variation in view of the provisions of sections 271R and 271S, the court may do so.

#### Textual Amendments

- F196** Words in s. 271Y(1)(b) substituted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, **sch. 2 para. 5(13)** (with art. 4)
- F197** Words in s. 271Y(2) substituted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, **sch. 2 para. 5(13)** (with art. 4)
- F198** Words in s. 271Y(3) substituted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, **sch. 2 para. 5(13)** (with art. 4)

### 271Z Appeal against a refusal to vary or discharge a witness anonymity order

- (1) This section applies where—
- an appeal is brought under section 271V(1)(f) against a refusal to discharge or vary a witness anonymity order, and
  - the [<sup>F199</sup>court hearing the appeal] determines that the decision of the judge at first instance was wrong in law.
- (2) The [<sup>F200</sup>court hearing the appeal] must discharge the order, or make the variation, as the case requires.
- (3) If, in the case of a variation, the [<sup>F201</sup>court hearing the appeal] determines that it is appropriate to make an additional variation in view of the provisions of sections 271R and 271S, the court may do so.]

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### Textual Amendments

- F199** Words in s. 271Z(1)(b) substituted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, **sch. 2 para. 5(14)** (with art. 4)
- F200** Words in s. 271Z(2) substituted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, **sch. 2 para. 5(14)** (with art. 4)
- F201** Words in s. 271Z(3) substituted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, **sch. 2 para. 5(14)** (with art. 4)

### *Evidence on commission and from abroad*

#### **272 Evidence by letter of request or on commission.**

- (1) In any criminal proceedings in the High Court or the sheriff court the prosecutor or the defence may, at an appropriate time, apply to a judge of the court in which the trial is to take place (or, if that is not yet known, to a judge of the High Court) for—
  - (a) the issue of a letter of request to a court, or tribunal, exercising jurisdiction in a country or territory outside the United Kingdom, Channel Islands and Isle of Man for the examination of a witness resident in that country or territory; or
  - (b) the appointment of a commissioner to examine, at any place in the United Kingdom, Channel Islands, or Isle of Man, a witness who—
    - (i) by reason of being ill or infirm is unable to attend the trial diet; or
    - (ii) is not ordinarily resident in, and is, at the time of the trial diet, unlikely to be present in, the United Kingdom, Channel Islands or the Isle of Man.
- (2) A hearing, as regards any application under subsection (1) above by a party, shall be conducted in chambers but may be dispensed with if the application is not opposed.
- (3) An application under subsection (1) above may be granted only if the judge is satisfied that—
  - (a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and
  - (b) there would be no unfairness to the other party were such evidence to be received in the form of the record of an examination conducted by virtue of that subsection.
- (4) Any such record as is mentioned in paragraph (b) of subsection (3) above shall, without being sworn to by witnesses, be received in evidence in so far as it either accords with the averment mentioned in paragraph (a) of that subsection or can be so received without unfairness to either party.
- (5) Where any such record as is mentioned in paragraph (b) of subsection (3) above, or any part of such record, is not a document in writing, that record or part shall not be received in evidence under subsection (4) above unless it is accompanied by a transcript of its contents.
- (6) The procedure as regards the foregoing provisions of this section shall be prescribed by Act of Adjournal; and without prejudice to the generality of the power to make it, such an Act of Adjournal may provide for the appointment of a person before whom evidence may be taken for the purposes of this section.

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- (7) In subsection (1) above, “appropriate time” means as regards—
- (a) solemn proceedings, any time before the oath is administered to the jury;
  - (b) summary proceedings, any time before the first witness is sworn,
- or (but only in relation to an application under paragraph (b) of that subsection) any time during the course of the trial if the circumstances on which the application is based had not arisen, or would not have merited such application, within the period mentioned in paragraph (a) or, as the case may be, (b) of this subsection.
- (8) In subsection (3) and (4) above, “record” includes, in addition to a document in writing—
- (a) any disc, tape, soundtrack or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
  - (b) any film (including microfilm), negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom.
- (9) This section is without prejudice to any existing power at common law to adjourn a trial diet to the place where a witness is.
- [<sup>F202</sup>(10) Sections—
- (a) 274;
  - (b) 275;
  - (c) 275B except subsection (2)(b);
  - (d) 275C; and
  - (e) 288C,
- of this Act apply in relation to proceedings in which a commissioner examines a witness under subsection (1)(b) above as they apply in relation to a trial.
- (11) In the application of those sections in relation to such proceedings—
- (a) the commissioner acting in the proceedings is to perform the functions of the court as provided for in those sections;
  - (b) references—
    - (i) in those sections, except section 275(3)(c) and (7)(c), to a trial or a trial diet;
    - (ii) in those sections, except section 275(3)(e), to the court,shall be read accordingly;
  - (c) the reference in section 275B(1) to 14 days shall be read as a reference to 7 days.
- (12) In a case where it falls to the court to appoint a commissioner for the purposes of subsection (1)(b) above, the commissioner shall be a person described in subsection (13) below.
- (13) The persons are—
- (a) where the proceedings before the commissioner are for the purposes of a trial in the High Court, a judge of the High Court; or
  - (b) in any other case, a sheriff.]

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[<sup>F203</sup>(14) This section does not apply to a witness who or evidence that is the subject of a European investigation order made under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017.]

#### Textual Amendments

**F202** S. 272(10)-(13) added (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\), ss. 35\(4\), 84; S.S.I. 2007/250, art. 3\(a\)](#)

**F203** S. 272(14) inserted (31.7.2017) by [The Criminal Justice \(European Investigation Order\) Regulations 2017 \(S.I. 2017/730\), reg. 1\(1\), Sch. 3 para. 3\(4\)](#) (with [reg. 3](#))

### 273 Television link evidence from abroad.

- (1) In any [<sup>F204</sup>criminal] proceedings in the High Court or the sheriff court a person other than the accused may give evidence through a live television link if—
- (a) the witness is outside the United Kingdom;
  - (b) an application under subsection (2) below for the issue of a letter of request has been granted; and
  - (c) the court is satisfied as to the arrangements for the giving of evidence in that manner by that witness.
- (2) The prosecutor or the defence in any proceedings referred to in subsection (1) above may apply to a judge of the court in which the trial is to take place (or, if that court is not yet known, to a judge of the High Court) for the issue of a letter of request to—
- (a) a court or tribunal exercising jurisdiction in a country or territory outside the United Kingdom where a witness is ordinarily resident; or
  - (b) any authority which the judge is satisfied is recognised by the government of that country or territory as the appropriate authority for receiving requests for assistance in facilitating the giving of evidence through a live television link,
- requesting assistance in facilitating the giving of evidence by that witness through a live television link.
- (3) An application under subsection (2) above shall be granted only if the judge is satisfied that—
- (a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and
  - (b) the granting of the application —
    - (i) is in the interests of justice; and
    - (ii) in the case of an application by the prosecutor, is not unfair to the accused.

[<sup>F205</sup>(5) This section does not apply to a witness who or evidence that is the subject of a European investigation order made under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017.]

#### Textual Amendments

**F204** Word in s. 273(1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), ss. 91\(2\), 206\(1\); S.S.I. 2011/178, art. 2, sch.](#)

*Status: Point in time view as at 20/01/2020.*

**Changes to legislation:** Criminal Procedure (Scotland) Act 1995, PART XII is up to date with all changes known to be in force on or before 10 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

**F205** S. 273(5) inserted (31.7.2017) "after subsection (4)" by virtue of [The Criminal Justice \(European Investigation Order\) Regulations 2017 \(S.I. 2017/730\)](#), reg. 1(1), **Sch. 3 para. 3(5)** (with reg. 3)

*[<sup>F206</sup>Evidence from other parts of the United Kingdom*

**Textual Amendments**

**F206** S. 273A inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. **91(3)**, 206(1); S.S.I. 2011/178, art. 2, sch.

**273A Television link evidence from other parts of the United Kingdom**

- (1) In any criminal proceedings in the High Court or the sheriff court a person other than the accused may give evidence through a live television link if—
  - (a) the witness is within the United Kingdom but outside Scotland,
  - (b) an application under this section for the issue of a letter of request has been granted, and
  - (c) the court is satisfied as to the arrangements for the giving of evidence in that manner by that witness.
- (2) The prosecutor or the defence in any proceedings referred to in subsection (1) may apply for the issue of a letter of request.
- (3) The application must be made to a judge of the court in which the trial is to take place or, if that court is not yet known, to a judge of the High Court.
- (4) The judge may, on an application under this section, issue a letter to a court or tribunal exercising jurisdiction in the place where the witness is ordinarily resident requesting assistance in facilitating the giving of evidence by that witness through a live television link, if the judge is satisfied of the matters set out in subsection (5).
- (5) Those matters are—
  - (a) that the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial,
  - (b) that the granting of the application—
    - (i) is in the interests of justice, and
    - (ii) in the case of an application by the prosecutor, is not unfair to the accused.]

*Evidence relating to sexual offences*

**[<sup>F207</sup>274 Restrictions on evidence relating to sexual offences.**

- (1) In the trial of a person charged with an offence to which section 288C of this Act applies, the court shall not admit, or allow questioning designed to elicit, evidence which shows or tends to show that the complainer—
  - (a) is not of good character (whether in relation to sexual matters or otherwise);
  - (b) has, at any time, engaged in sexual behaviour not forming part of the subject matter of the charge;

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- (c) has, at any time (other than shortly before, at the same time as or shortly after the acts which form part of the subject matter of the charge), engaged in such behaviour, not being sexual behaviour, as might found the inference that the complainer—
  - (i) is likely to have consented to those acts; or
  - (ii) is not a credible or reliable witness; or
- (d) has, at any time, been subject to any such condition or predisposition as might found the inference referred to in sub-paragraph (c) above.

(2) In subsection (1) above—

“complainer” means the person against whom the offence referred to in that subsection is alleged to have been committed; and

the reference to engaging in sexual behaviour includes a reference to undergoing or being made subject to any experience of a sexual nature.]

#### Textual Amendments

**F207** S. 274 substituted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 7; S.S.I. 2002/443, [art. 3](#) (with [art. 4\(5\)](#))

#### [<sup>F208</sup>275 Exceptions to restrictions under section 274.

- (1) The court may, on application made to it, admit such evidence or allow such questioning as is referred to in subsection (1) of section 274 of this Act if satisfied that—
  - (a) the evidence or questioning will relate only to a specific occurrence or occurrences of sexual or other behaviour or to specific facts demonstrating—
    - (i) the complainer’s character; or
    - (ii) any condition or predisposition to which the complainer is or has been subject;
  - (b) that occurrence or those occurrences of behaviour or facts are relevant to establishing whether the accused is guilty of the offence with which he is charged; and
  - (c) the probative value of the evidence sought to be admitted or elicited is significant and is likely to outweigh any risk of prejudice to the proper administration of justice arising from its being admitted or elicited.
- (2) In subsection (1) above—
  - (a) the reference to an occurrence or occurrences of sexual behaviour includes a reference to undergoing or being made subject to any experience of a sexual nature;
  - (b) “the proper administration of justice” includes—
    - (i) appropriate protection of a complainer’s dignity and privacy; and
    - (ii) ensuring that the facts and circumstances of which a jury is made aware are, in cases of offences to which section 288C of this Act applies, relevant to an issue which is to be put before the jury and commensurate to the importance of that issue to the jury’s verdict,
 and, in that subsection and in sub-paragraph (i) of paragraph (b) above, “complainer” has the same meaning as in section 274 of this Act.



*Status: Point in time view as at 20/01/2020.*

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- (3) An application for the purposes of subsection (1) above shall be in writing and shall set out—
- (a) the evidence sought to be admitted or elicited;
  - (b) the nature of any questioning proposed;
  - (c) the issues at the trial to which that evidence is considered to be relevant;
  - (d) the reasons why that evidence is considered relevant to those issues;
  - (e) the inferences which the applicant proposes to submit to the court that it should draw from that evidence; and
  - (f) such other information as is of a kind specified for the purposes of this paragraph in Act of Adjournal.
- (4) The party making such an application shall, when making it, send a copy of it—
- (a) when that party is the prosecutor, to the accused; and
  - (b) when that party is the accused, to the prosecutor and any co-accused.
- (5) The court may reach a decision under subsection (1) above without considering any evidence; but, where it takes evidence for the purposes of reaching that decision, it shall do so as if determining the admissibility of evidence.
- (6) The court shall state its reasons for its decision under subsection (1) above, and may make that decision subject to conditions which may include compliance with directions issued by it.
- (7) Where a court admits evidence or allows questioning under subsection (1) above, its decision to do so shall include a statement—
- (a) of what items of evidence it is admitting or lines of questioning it is allowing;
  - (b) of the reasons for its conclusion that the evidence to be admitted or to be elicited by the questioning is admissible;
  - (c) of the issues at the trial to which it considers that that evidence is relevant.
- (8) A condition under subsection (6) above may consist of a limitation on the extent to which evidence—
- (a) to be admitted; or
  - (b) to be elicited by questioning to be allowed,
- may be argued to support a particular inference specified in the condition.
- (9) Where evidence is admitted or questioning allowed under this section, the court at any time may—
- (a) as it thinks fit; and
  - (b) notwithstanding the terms of its decision under subsection (1) above or any condition under subsection (6) above,
- limit the extent of evidence to be admitted or questioning to be allowed.]

#### Textual Amendments

**F208** S. 275 substituted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 8(1); S.S.I. 2002/443, art. 3 (with art. 4(5))

*Status: Point in time view as at 20/01/2020.*

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**[<sup>F209</sup>275A] Disclosure of accused’s previous convictions where court allows questioning or evidence under section 275**

- (1) Where, under section 275 of this Act, a court [<sup>F210</sup>(or, in proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act, a commissioner)] on the application of the accused allows such questioning or admits such evidence as is referred to in section 274(1) of this Act, the prosecutor shall forthwith place before the presiding judge any previous relevant conviction of the accused.
- (2) Any conviction placed before the judge under subsection (1) above shall, unless the accused objects, be—
  - (a) in proceedings on indictment, laid before the jury;
  - (b) in summary proceedings, taken into consideration by the judge.
- (3) An extract of such a conviction may not be laid before the jury or taken into consideration by the judge unless such an extract was appended to the notice, served on the accused under section 69(2) or, as the case may be, 166(2) of this Act, which specified that conviction.
- (4) An objection under subsection (2) above may be made only on one or more of the following grounds—
  - (a) where the conviction bears to be a relevant conviction by virtue only of paragraph (b) of subsection (10) below, that there was not a substantial sexual element present in the commission of the offence for which the accused has been convicted;
  - (b) that the disclosure or, as the case may be, the taking into consideration of the conviction would be contrary to the interests of justice;
  - (c) in proceedings on indictment, that the conviction does not apply to the accused or is otherwise inadmissible;
  - (d) in summary proceedings, that the accused does not admit the conviction.
- (5) Where—
  - (a) an objection is made on one or more of the grounds mentioned in paragraphs (b) to (d) of subsection (4) above; and
  - (b) an extract of the conviction in respect of which the objection is made was not appended to the notice, served on the accused under section 69(2) or, as the case may be, 166(2) above, which specified that conviction,
 the prosecutor may, notwithstanding subsection (3) above, place such an extract conviction before the judge.
- (6) In summary proceedings, the judge may, notwithstanding subsection (2)(b) above, take into consideration any extract placed before him under subsection (5) above for the purposes only of considering the objection in respect of which the extract is disclosed.
- (7) In entertaining an objection on the ground mentioned in paragraph (b) of subsection (4) above, the court shall, unless the contrary is shown, presume that the disclosure, or, as the case may be, the taking into consideration, of a conviction is in the interests of justice.
- (8) An objection on the ground mentioned in paragraph (c) of subsection (4) above shall not be entertained unless the accused has, under subsection (2) of section 69 of this Act, given intimation of the objection in accordance with subsection (3) of that section.

*Status: Point in time view as at 20/01/2020.*

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- (9) In entertaining an objection on the ground mentioned in paragraph (d) of subsection (4) above, the court shall require the prosecutor to withdraw the conviction or adduce evidence in proof thereof.
- (10) For the purposes of this section a “relevant conviction” is, subject to subsection (11) below—
- (a) a conviction for an offence to which section 288C of this Act applies by virtue of subsection (2) thereof; <sup>F211</sup> . . .
  - <sup>F212</sup> [ (aa) a conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to one to which section 288C of this Act applies by virtue of subsection (2) thereof; or]
  - (b) where a substantial sexual element was present in the commission of any other offence in respect of which the accused has previously been convicted, a conviction for that offence,

which is specified in a notice served on the accused under section 69(2) or, as the case may be, 166(2) of this Act.

<sup>F213</sup> [ Any issue of equivalence arising in pursuance of subsection (10)(aa) is for the court (10A) to determine.]

- (11) A conviction for an offence other than an offence to which section 288C of this Act applies by virtue of subsection (2) thereof is not a relevant conviction for the purposes of this section unless an extract of that conviction containing information which indicates that a sexual element was present in the commission of the offence was appended to the notice, served on the accused under section 69(2) or, as the case may be, 166(2) of this Act, which specified that conviction.

#### Textual Amendments

- F209** Ss. 275A, 275B inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), [s. 10\(4\)](#); [S.S.I. 2002/443](#), [art. 3](#) (with [art. 4\(5\)](#))
- F210** Words in s. 275A(1) inserted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 35\(5\)](#), 84; [S.S.I. 2007/250](#), [art. 3\(a\)](#)
- F211** Word in s. 275A(10) repealed (13.12.2010 for all purposes in respect of offences committed on or after this date) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 71\(1\)](#), 206(1), [Sch. 4 para. 7\(a\)\(i\)](#); [S.S.I. 2010/413](#), [art. 2](#), Sch.
- F212** S. 275A(10)(aa) inserted (13.12.2010 for all purposes in respect of offences committed on or after this date) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 71\(1\)](#), 206(1), [Sch. 4 para. 7\(a\)\(ii\)](#); [S.S.I. 2010/413](#), [art. 2](#), Sch.
- F213** S. 275A(10A) inserted (13.12.2010 for all purposes in respect of offences committed on or after this date) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 71\(1\)](#), 206(1), [Sch. 4 para. 7\(b\)](#); [S.S.I. 2010/413](#), [art. 2](#), Sch.

#### 275B Provisions supplementary to sections 275 and 275A

- (1) An application for the purposes of subsection (1) of section 275 of this Act shall not, unless on special cause shown, be considered by the court unless made
- <sup>F214</sup> [ (a) in the case of proceedings in the High Court, not less than 7 clear days before the preliminary hearing; or
  - (b) in any other case,]

*Status: Point in time view as at 20/01/2020.*

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not less than 14 clear days before the trial diet.

(2) Where—

- (a) such an application is considered; or
- (b) any objection under subsection (2) of section 275A of this Act is entertained, during the course of the trial, the court shall consider that application or, as the case may be, entertain that objection in the absence of the jury, the complainer, any person cited as a witness and the public.]

#### Textual Amendments

**F209** Ss. 275A, 275B inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), **s. 10(4)**; S.S.I. 2002/443, **art. 3** (with art. 4(5))

**F214** Words in s. 275B inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), **Sch. para. 45**; S.S.I. 2004/405, **art. 2**, Sch. 1 (with savings in arts. 3-5)

*[<sup>F215</sup>Expert evidence as to subsequent behaviour of complainer*

#### Textual Amendments

**F215** S. 275C and preceding cross-heading inserted (1.4.2005) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 5, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4)

### 275C Expert evidence as to subsequent behaviour of complainer in certain cases

(1) This section applies in the case of proceedings in respect of any—

- <sup>F216</sup>(a) [ offence to which section 288C of this Act applies,
- <sup>F217</sup>(b) [ an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
- (c) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.]

(2) Expert psychological or psychiatric evidence relating to any subsequent behaviour or statement of the complainer is admissible for the purpose of rebutting any inference adverse to the complainer’s credibility or reliability as a witness which might otherwise be drawn from the behaviour or statement.

(3) In subsection (2) above—

“complainer” means the person against whom the offence to which the proceedings relate is alleged to have been committed,

“subsequent behaviour or statement” means any behaviour or statement subsequent to, and not forming part of the acts constituting, the offence to which the proceedings relate and which is not otherwise relevant to any fact in issue at the trial.

<sup>F218</sup>(3A) [ Where the offence is as referred to in subsection (1)(b) above, the reference in the last definition in subsection (3) above to any behaviour or statement subsequent to the offence includes any behaviour or statement subsequent to a particular part of the course of behaviour of which the offence consists.]

*Status: Point in time view as at 20/01/2020.*

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- (4) This section does not affect the admissibility of any evidence which is admissible otherwise than by virtue of this section.]

#### Textual Amendments

- F216** S. 275(1)(a): words in s. 275C(1) renumbered as s. 275C(1)(a) (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), **sch. para. 7(2)(a)(i)**; S.S.I. 2018/387, reg. 2 (with reg. 7)
- F217** S. 275C(1)(b)(c) inserted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), **sch. para. 7(2)(a)(ii)**; S.S.I. 2018/387, reg. 2 (with reg. 7)
- F218** S. 275C(3A) inserted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), **sch. para. 7(2)(b)**; S.S.I. 2018/387, reg. 2 (with reg. 7)

### *Biological material*

#### **276 Evidence of biological material.**

- (1) Evidence as to the characteristics and composition of any biological material deriving from human beings or animals shall, in any criminal proceedings, be admissible notwithstanding that neither the material nor a sample of it is lodged as a production.
- (2) A party wishing to lead such evidence as is referred to in subsection (1) above shall, where neither the material nor a sample of it is lodged as a production, make the material or a sample of it available for inspection by the other party unless the material constitutes a hazard to health or has been destroyed in the process of analysis.

### *Transcripts and records*

#### **277 Transcript of police interview sufficient evidence.**

- (1) Subject to subsection (2) below, for the purposes of any criminal proceedings, a document certified by the person who made it as an accurate transcript made for the prosecutor of the contents of a tape (identified by means of a label) purporting to be a recording of an interview between—
- a police officer and an accused person; <sup>F219</sup>...
  - a person commissioned, appointed or authorised under section 6(3) of the <sup>M1</sup>Customs and Excise Management Act 1979 and an accused person<sup>F220</sup>; or
  - a person authorised by the Scottish Environment Protection Agency under section 108 of the Environment Protection Act 1995 and an accused person.]
- shall be received in evidence and be sufficient evidence of the making of the transcript and of its accuracy.
- (2) Subsection (1) above shall not apply to a transcript—
- unless a copy of it has been served on the accused not less than 14 days before <sup>F221</sup>(i) in the case of proceedings in the High Court, the preliminary hearing; (ii) in any other case,] his trial; or
  - if the accused, not less than <sup>F222</sup>(i) in the case of proceedings in the High Court, seven days before the preliminary hearing;

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- (ii) in any other case, six days before his trial;  
or (in either case)] by such later time before his trial as the court may in special circumstances allow, has served notice on the prosecutor that the accused challenges the making of the transcript or its accuracy.
- (3) A copy of the transcript or a notice under subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the transcript or notice, together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.
- (4) Where subsection (1) above does not apply to a transcript, if the person who made the transcript is called as a witness his evidence shall be sufficient evidence of the making of the transcript and of its accuracy.

[<sup>F223</sup>(5) Subsection (1) is without prejudice to section 108(12) of the Environment Act 1995.]

#### Textual Amendments

- F219** Word in s. 277(1) repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 31(2)(a)(i)**; S.S.I. 2014/160, art. 2(1)(2), sch.
- F220** S. 277(1)(c) and word inserted (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 31(2)(a)(ii)**; S.S.I. 2014/160, art. 2(1)(2), sch.
- F221** Words in s. 277(2)(a) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 46(a)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (with savings in arts. 3-5)
- F222** Words in s. 277(2)(b) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 46(b)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (with savings in arts. 3-5)
- F223** S. 277(5) added (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 31(2)(b)**; S.S.I. 2014/160, art. 2(1)(2), sch.

#### Marginal Citations

**M1** 1979 c.2.

<sup>F224</sup>**278 Record of proceedings at examination as evidence.**

.....

#### Textual Amendments

- F224** S. 278 repealed (17.1.2017) by Criminal Justice (Scotland) Act 2016 (asp 1), **ss. 78(2)(e)**, 117(2); S.S.I. 2016/426, art. 2, sch. (with art. 3)

### *Documentary evidence*

**279 Evidence from documents.**

Schedule 8 to this Act, which makes provision regarding the admissibility in criminal proceedings of copy documents and of evidence contained in business documents, shall have effect.

*Status: Point in time view as at 20/01/2020.*

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### <sup>F225</sup> Evidence from certain official documents

#### Textual Amendments

**F225** S. 279A and preceding cross-heading inserted (1.8.1997) by 1997 c. 48, s. 28(2); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

#### <sup>F226</sup> 279A Evidence from certain official documents.

- (1) Any letter, minute or other official document issuing from the office of or in the custody of any of the departments of state or government in the United Kingdom [<sup>F227</sup> or any part of the Scottish Administration] which—
  - (a) is required to be produced in evidence in any prosecution; and
  - (b) according to the rules and regulations applicable to such departments may competently be so produced,shall when so produced be *prima facie* evidence of the matters contained in it without being produced or sworn to by any witness.
- (2) A copy of any such document as is mentioned in subsection (1) above bearing to be certified by any person having authority to certify it shall be treated as equivalent to the original of that document and no proof of the signature of the person certifying the copy or of his authority to certify it shall be necessary.
- (3) Any order by any of the departments of state or government [<sup>F228</sup> or the Scottish Parliament] or any local authority or public body made under powers conferred by any statute or a print or a copy of such an order, shall when produced in a prosecution be received as evidence of the due making, confirmation, and existence of the order without being sworn to by any witness and without any further or other proof.
- (4) Subsection (3) above is without prejudice to any right competent to the accused to challenge any order such as is mentioned in that subsection as being *ultra vires* of the authority making it or on any other competent ground.
- (5) Where an order such as is mentioned in subsection (3) above is referred to in the indictment or, as the case may be, the complaint, it shall not be necessary to enter it in the record of the proceedings as a documentary production.
- (6) The provisions of this section are in addition to, and not in derogation of, any powers of proving documents conferred by statute or existing at common law.]

#### Textual Amendments

**F226** S. 279A and preceding cross-heading inserted (1.8.1997) by 1997 c. 48, s. 28(2); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

**F227** Words in s. 279A(1) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 122(4)(a); S.I. 1998/3178, art. 3

**F228** Words in s. 279A(3) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 122(4)(b); S.I. 1998/3178, arts. 3

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### *Routine evidence*

#### **280 Routine evidence.**

- (1) For the purposes of any proceedings for an offence under any of the enactments specified in column 1 of Schedule 9 to this Act, a certificate purporting to be signed by a person or persons specified in column 2 thereof, and certifying the matter specified in column 3 thereof shall, subject to subsection (6) below, be sufficient evidence of that matter and of the qualification or authority of that person or those persons.
- (2) The Secretary of State may by order—
  - (a) amend or repeal the entry in Schedule 9 to this Act in respect of any enactment; or
  - (b) insert in that Schedule an entry in respect of a further enactment.
- (3) An order under subsection (2) above may make such transitional, incidental or supplementary provision as the Secretary of State considers necessary or expedient in connection with the coming into force of the order.
- [<sup>F229</sup>(3A) For the purposes of any criminal proceedings, a report purporting to be signed by a person authorised by the Scottish Environment Protection Agency for the purpose of this subsection is sufficient evidence of any fact or conclusion as to fact contained in the report and of the authority of the signatory.]
- (4) For the purposes of any criminal proceedings, a report purporting to be signed by two authorised forensic scientists shall, subject to subsection (5) below, be sufficient evidence of any fact or conclusion as to fact contained in the report and of the authority of the signatories.
- (5) A forensic scientist is authorised for the purposes of subsection (4) above if—
  - (a) he is authorised for those purposes by the Secretary of State; or
  - (b) he—
    - <sup>F230</sup>(i) .....
    - (ii) possesses such qualifications and experience as the Secretary of State may for the purposes of that subsection by order prescribe; and
    - <sup>F230</sup>(iii) .....
- (6) Subsections (1) [<sup>F231</sup>, (3A)] and (4) above shall not apply to a certificate or, as the case may be, report tendered on behalf of the prosecutor or the accused—
  - (a) unless a copy has been served on the other party not less than fourteen days before
    - [<sup>F232</sup>(i) in the case of proceedings in the High Court, the preliminary hearing;
    - (ii) in any other case,]
 the trial; or
  - (b) where the other party, not more than seven days after the date of service of the copy on him under paragraph (a) above or by such later time as the court may in special circumstances allow, has served notice on the first party that [<sup>F233</sup>he] challenges the matter, qualification or authority mentioned in subsection (1) above or as the case may be the fact, conclusion or authority mentioned in subsection [<sup>F234</sup>(3A) or] (4) above.
- (7) A copy of a certificate or, as the case may be, report required by subsection (6) above, to be served on the accused or the prosecutor or of a notice required by that subsection



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- or by subsection (1) or (2) of section 281 of this Act to be served on the prosecutor shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such certificate or notice, together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of such a copy.
- (8) Where, following service of a notice under subsection (6)(b) above, evidence is given in relation to a report referred to in subsection (4) above by both of the forensic scientists purporting to have signed the report, the evidence of those forensic scientists shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report.
- (9) At any trial of an offence it shall be presumed that the person who appears in answer to the complaint is the person charged by the police with the offence unless the contrary is alleged.
- (10) An order made under subsection (2) or (5)(b)(ii) above shall be made by statutory instrument.
- (11) No order shall be made under subsection (2) above unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (12) A statutory instrument containing an order under subsection (5)(b)(ii) above shall be subject to annulment pursuant to a resolution of either House of Parliament.

#### Textual Amendments

- F229** S. 280(3A) inserted (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\), s. 61\(2\), sch. 3 para. 31\(3\)\(a\)](#); S.S.I. 2014/160, art. 2(1)(2), sch.
- F230** S. 280(5)(b)(i)(iii) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\), s. 129\(2\), sch. 8 Pt. 1](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F231** Word in s. 280(6) inserted (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\), s. 61\(2\), sch. 3 para. 31\(3\)\(b\)\(i\)](#); S.S.I. 2014/160, art. 2(1)(2), sch.
- F232** Words in s. 280(6)(a) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 25, 27\(1\), Sch. para. 48](#); S.S.I. 2004/405, art. 2, Sch. 1 (with savings in arts. 3-5)
- F233** Word in s. 280(6)(b) substituted (1.8.1997) by 1997 c. 48, s. 62(1), [Sch. 1 para. 21\(32\)](#); S.I. 1997/1712, art. 3, [Sch.](#) (subject to arts. 4, 5)
- F234** Words in s. 280(6)(b) inserted (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\), s. 61\(2\), sch. 3 para. 31\(3\)\(b\)\(ii\)](#); S.S.I. 2014/160, art. 2(1)(2), sch.

## 281 Routine evidence: autopsy and forensic science reports.

- (1) Where in a trial an autopsy report is lodged as a production by the prosecutor it shall be presumed that the body of the person identified in that report is the body of the deceased identified in the indictment or complaint, unless the accused not less than
- [<sup>F235</sup>(i) in the case of proceedings in the High Court, seven days before the preliminary hearing;
- (ii) in any other case, six days before the trial;
- or (in either case)] by such later time before the trial as the court may in special circumstances allow, gives notice that the contrary is alleged.
- (2) At the time of lodging an autopsy or forensic science report as a production the prosecutor may intimate to the accused that it is intended that only one of the pathologists or forensic scientists <sup>F236</sup>. . . purporting to have signed the report shall

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be called to give evidence in respect thereof; and [<sup>F237</sup>, where such intimation is given,] the evidence of [<sup>F238</sup>one of those pathologists or forensic scientists] shall be sufficient evidence of any fact or conclusion as to fact contained in the report and of the qualifications of the signatories, unless the accused, not less than

[<sup>F239</sup>(i) in the case of proceedings in the High Court, seven days before the preliminary hearing;

(ii) in any other case, six days before the trial;

or (in either case)] by such later time before the trial as the court may in special circumstances allow, serves notice on the prosecutor that he requires the attendance at the trial of the other pathologist or forensic scientist also.

- (3) Where, following service of a notice by the accused under subsection (2) above, evidence is given in relation to an autopsy or forensic science report by both of the pathologists or forensic scientists purporting to have signed the report, the evidence of those pathologists or forensic scientists shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report.

#### Textual Amendments

**F235** Words in s. 281(1) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 49(a)**; S.S.I. 2004/405, **art. 2(1)**, Sch. 1 (with savings in arts. 3-5)

**F236** Words in s. 281(2) repealed (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 49(b)(i)**; S.S.I. 2004/405, **art. 2(1)**, Sch. 1 (with savings in arts. 3-5)

**F237** Words in s. 281(2) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 49(b)(ii)**; S.S.I. 2004/405, **art. 2(1)**, Sch. 1 (with savings in arts. 3-5)

**F238** Words in s. 281(2) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 49(b)(iii)**; S.S.I. 2004/405, **art. 2(1)**, Sch. 1 (with savings in arts. 3-5)

**F239** Words in s. 281(2) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 49(b)(iv)**; S.S.I. 2004/405, **art. 2(1)**, Sch. 1 (with savings in arts. 3-5)

#### [<sup>F240</sup>281A] Routine evidence: reports of identification prior to trial

- (1) Where in a trial the prosecutor lodges as a production a report naming—
- (a) a person identified in an identification parade or other identification procedure by a witness, and
  - (b) that witness,

it shall be presumed, subject to subsection (2) below, that the person named in the report as having been identified by the witness is the person of the same name who appears in answer to the indictment or complaint.

- (2) That presumption shall not apply—
- (a) unless the prosecutor has, [<sup>F241</sup>by the required time], served on the accused a copy of the report and a notice that he intends to rely on the presumption, or
  - (b) if the accused—
    - (i) not more than 7 days after the date of service of the copy of the report, or
    - (ii) by such later time as the court may in special circumstances allow, has served notice on the prosecutor that he intends to challenge the facts stated in the report.

[ In subsection (2)(a) above, “the required time” means—

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- <sup>F242</sup>(3) (a) in the case of proceedings in the High Court—  
(i) not less than 14 clear days before the preliminary hearing; or  
(ii) such later time, being not less than 14 clear days before the trial, as the court may, in special circumstances, allow;  
(b) in any other case, not less than 14 clear days before the trial.]]

#### Textual Amendments

- F240** S. 281A inserted (1.4.2005) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 4, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4)
- F241** Words in s. 281A(2)(a) substituted (1.4.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 25, 27(1)**, **Sch. para. 50(a)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5)
- F242** S. 281A(3) inserted (1.4.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 25, 27(1)**, **Sch. para. 50(b)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5) (as amended (31.1.2005) by S.S.I. 2005/40, **art. 3(5)**)

### *Sufficient evidence*

## **282 Evidence as to controlled drugs and medicinal products.**

- (1) For the purposes of any criminal proceedings, evidence given by an authorised forensic scientist, either orally or in a report purporting to be signed by him, that a substance which satisfies either of the conditions specified in subsection (2) below is—  
(a) a particular controlled drug or medicinal product; or  
(b) a particular product which is listed in the British Pharmacopoeia as containing a particular controlled drug or medicinal product,  
shall, subject to subsection (3) below, be sufficient evidence of that fact notwithstanding that no analysis of the substance has been carried out.
- (2) Those conditions are—  
(a) that the substance is in a sealed container bearing a label identifying the contents of the container; or  
(b) that the substance has a characteristic appearance having regard to its size, shape, colour and manufacturer’s mark.
- (3) A party proposing to rely on subsection (1) above (“the first party”) shall, not less than 14 days before the [<sup>F243</sup>relevant] diet, serve on the other party (“the second party”)—  
(a) a notice to that effect; and  
(b) where the evidence is contained in a report, a copy of the report,  
and if the second party serves on the first party, not more than seven days after the date of service of the notice on him, a notice that he does not accept the evidence as to the identity of the substance, subsection (1) above shall not apply in relation to that evidence.

[<sup>F244</sup>(3A) In subsection (3) above, “the relevant diet” means—

- (a) in the case of proceedings in the High Court, the preliminary hearing;  
(b) in any other case, the trial diet.]

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- (4) A notice or copy report served in accordance with subsection (3) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the notice or copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.
- (5) In this section—  
“controlled drug” has the same meaning as in the <sup>M2</sup>Misuse of Drugs Act 1971; and  
“medicinal product” has the same meaning as in the <sup>M3</sup>Medicines Act 1968.

#### Textual Amendments

**F243** Word in s. 282(3) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 51\(a\)](#); S.S.I. 2004/405, [art. 2\(1\)](#), Sch. 1 (with savings in arts. 3-5)

**F244** S. 282(3A) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 51\(b\)](#); S.S.I. 2004/405, [art. 2\(1\)](#), Sch. 1 (with savings in arts. 3-5)

#### Marginal Citations

**M2** 1971 c.38.

**M3** 1968 c.67.

### 283 Evidence as to time and place of video surveillance recordings.

- (1) For the purposes of any criminal proceedings, a certificate purporting to be signed by a person responsible for the operation of a video surveillance system and certifying—
- the location of the camera;
  - the nature and extent of the person’s responsibility for the system; and
  - that visual images [<sup>F245</sup>(and any sounds) recorded on a particular device are images (and sounds), recorded by the system, of (or relating to)] events which occurred at a place specified in the certificate at a time and date so specified,
- shall, subject to subsection (2) below, be sufficient evidence of the matters contained in the certificate.
- (2) A party proposing to rely on subsection (1) above (“the first party”) shall, not less than 14 days before the [<sup>F246</sup>relevant] diet, serve on the other party (“the second party”) a copy of the certificate and, if the second party serves on the first party, not more than seven days after the date of service of the copy certificate on him, a notice that he does not accept the evidence contained in the certificate, subsection (1) above shall not apply in relation to that evidence.
- [<sup>F247</sup>(2A) In subsection (2) above, “the relevant diet” means—
- in the case of proceedings in the High Court, the preliminary hearing;
  - in any other case, the trial diet.]
- (3) A copy certificate or notice served in accordance with subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

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- (4) In this section, “video surveillance system” means apparatus consisting of a camera mounted in a fixed position and associated equipment for transmitting and recording visual images of events occurring in any place [<sup>F248</sup>(and includes associated equipment for transmitting and recording sounds relating to such events)].

#### Textual Amendments

- F245** Words in s. 283(1)(c) substituted (10.12.2007) by *Criminal Proceedings etc. (Reform) (Scotland) Act 2007* (asp 6), ss. 80, 84, **Sch. para. 23(a)**; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by 2007/527)
- F246** Word in s. 283(2) substituted (1.2.2005) by *Criminal Procedure (Amendment) (Scotland) Act 2004* (asp 5), ss. 25, 27(1), **Sch. para. 52(a)**; S.S.I. 2004/405, **art. 2(1)**, Sch. 1 (with savings in arts. 3-5)
- F247** S. 283(2A) inserted (1.2.2005) by *Criminal Procedure (Amendment) (Scotland) Act 2004* (asp 5), ss. 25, 27(1), **Sch. para. 52(b)**; S.S.I. 2004/405, **art. 2(1)**, Sch. 1 (with savings in arts. 3-5)
- F248** Words in s. 283(4) inserted (10.12.2007) by *Criminal Proceedings etc. (Reform) (Scotland) Act 2007* (asp 6), ss. 80, 84, **Sch. para. 23(b)**; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by 2007/527)

## 284 Evidence in relation to fingerprints.

- (1) For the purpose of any criminal proceedings, a certificate purporting to be signed by [<sup>F249</sup>a person authorised in that behalf by a chief constable] and certifying that [<sup>F249</sup>relevant physical data (within the meaning of section 18(7A) of this Act) was taken from or provided by] a person designated in the certificate at a time, date and place specified therein shall, subject to subsection (2) below, be sufficient evidence of the facts contained in the certificate.
- [<sup>F250</sup>(2) A party proposing to rely on subsection (1) above (“the first party”) shall, not less than 14 days before the [<sup>F251</sup>relevant] diet, serve on any other party to the proceedings a copy of the certificate, and [<sup>F252</sup>, if that other party serves on the first party, not more than seven days after the date of service of the copy on him, a notice that he does not accept the evidence contained in the certificate, subsection (1) above shall not apply in relation to that evidence.]
- (2A) Where the first party does not serve a copy of the certificate on any other party as mentioned in subsection (2) above, he shall not be entitled to rely on subsection (1) above as respects that party.]
- [<sup>F253</sup>(2B) In subsection (2) above, “the relevant diet” means—
- (a) in the case of proceedings in the High Court, the preliminary hearing;
  - (b) in any other case, the trial diet.]
- (3) A copy certificate or notice served in accordance with subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

#### Textual Amendments

- F249** Words in s. 284(1) substituted (1.8.1997) by *1997 c. 48, s. 47(4)(a)(i)(ii)*; S.I. 1997/1712, **art. 3**, **Sch.** (subject to **arts. 4, 5**)
- F250** S. 284(2)(2A) substituted (1.8.1997) for s. 284(2) by *1997 c. 48, s. 47(4)(b)*; S.I. 1997/1712, **art. 3**, **Sch.** (subject to **arts. 4, 5**)

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- F251** Word in s. 284(2) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 53(a)**; S.S.I. 2004/405, **art. 2(1)**, Sch. 1 (with savings in arts. 3-5)
- F252** Words in s. 284(2) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 54, 89** (with savings in S.S.I. 2003/287, art. 3); S.S.I. 2003/288, **art. 2**, Sch.
- F253** S. 284(2B) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 53(b)**; S.S.I. 2004/405, **art. 2(1)**, Sch. 1 (with savings in arts. 3-5)

### *Proof of previous convictions*

#### **285 Previous convictions: proof, general.**

- (1) A previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this subsection and subsections (2) to (6) below and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.
- (2) A certificate purporting to be signed by [<sup>F254</sup>or on behalf of] the [<sup>F255</sup>chief constable of the Police Service of Scotland] or the Commissioner of Police of the Metropolis, containing particulars relating to a conviction extracted from the criminal records kept [<sup>F256</sup>by the person by whom, or on whose behalf, the certificate is signed], and certifying that the copies of the fingerprints contained in the certificate are copies of the fingerprints appearing from the said records to have been taken in pursuance of rules for the time being in force under sections 12 and 39 of the <sup>M4</sup>Prisons (Scotland) Act 1989, or regulations for the time being in force under section 16 of the <sup>M5</sup>Prison Act 1952, from the person convicted on the occasion of the conviction or on the occasion of his last conviction, shall be sufficient evidence of the conviction or, as the case may be, of his last conviction and of all preceding convictions and that the copies of the fingerprints produced on the certificate are copies of the fingerprints of the person convicted.
- (3) Where a person has been apprehended and detained in the custody of the police in connection with any criminal proceedings, a certificate purporting to be signed by the chief constable concerned or a person authorised on his behalf, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.
- (4) A certificate purporting to be signed by or on behalf of the governor of a prison or of a remand centre in which any person has been detained in connection with any criminal proceedings, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.
- (5) A certificate purporting to be signed by [<sup>F257</sup>or on behalf of] the [<sup>F258</sup>chief constable of the Police Service of Scotland], and certifying that the fingerprints, copies of which are certified as mentioned in subsection (2) above by <sup>F259</sup>[<sup>F260</sup>... or on behalf of]<sup>F261</sup>the chief constable of the Police Service of Scotland] or the Commissioner of Police of the Metropolis to be copies of the fingerprints of a person previously convicted and the fingerprints certified by or on behalf of a chief constable or a governor as mentioned in subsection (3) or (4) above, or otherwise shown, to be the fingerprints of the person against whom the previous conviction is sought to be proved, are the fingerprints of the same person, shall be sufficient evidence of the matter so certified.

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- (6) An extract conviction of any crime committed in any part of the United Kingdom bearing to have been issued by an officer whose duties include the issue of extract convictions shall be received in evidence without being sworn to by witnesses.
  - (7) It shall be competent to prove a previous conviction or any fact relevant to the admissibility of the conviction by witnesses, although the name of any such witness is not included in the list served on the accused; and the accused shall be entitled to examine witnesses with regard to such conviction or fact.
  - (8) An official of any prison in which the accused has been detained on such conviction shall be a competent and sufficient witness to prove its application to the accused, although he may not have been present in court at the trial to which such conviction relates.
  - (9) The method of proving a previous conviction authorised by this section shall be in addition to any other method of proving the conviction.
- [<sup>F262</sup>(10) In this section “fingerprint” includes any record of the skin of a person’s finger created by a device approved by the Secretary of State under section 18(7B) of this Act.]

#### Textual Amendments

- F254** Words in s. 285(2) inserted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012](#) ([Consequential Modifications and Savings](#)) Order 2013 (S.S.I. 2013/119), art. 1, **sch. 1 para. 16(a)(i)**
- F255** Words in s. 285(2) substituted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012](#) ([Consequential Modifications and Savings](#)) Order 2013 (S.S.I. 2013/119), art. 1, **sch. 1 para. 16(a)(ii)**
- F256** Words in s. 285(2) substituted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012](#) ([Consequential Modifications and Savings](#)) Order 2013 (S.S.I. 2013/119), art. 1, **sch. 1 para. 16(a)(iii)**
- F257** Words in s. 285(5) inserted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012](#) ([Consequential Modifications and Savings](#)) Order 2013 (S.S.I. 2013/119), art. 1, **sch. 1 para. 16(b)(i)**
- F258** Words in s. 285(5) inserted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012](#) ([Consequential Modifications and Savings](#)) Order 2013 (S.S.I. 2013/119), art. 1, **sch. 1 para. 16(b)(ii)**
- F259** Words in s. 285(5) omitted (1.4.2013) by virtue of [The Police and Fire Reform \(Scotland\) Act 2012](#) ([Consequential Modifications and Savings](#)) Order 2013 (S.S.I. 2013/119), art. 1, **sch. 1 para. 16(b)(iii)**
- F260** Words in s. 285(5) substituted (1.8.1997) by 1997 c. 48, **s. 59(3)(a)(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
- F261** Words in s. 285(5) inserted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012](#) ([Consequential Modifications and Savings](#)) Order 2013 (S.S.I. 2013/119), art. 1, **sch. 1 para. 16(b)(iv)**
- F262** S. 285(10) inserted (1.8.1997) by 1997 c. 48, **s. 47(5)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

#### Marginal Citations

- M4** 1989 c.45.  
**M5** 1952 c.52.

## 286 Previous convictions: proof in support of substantive charge.

- (1) Without prejudice to section 285(6) to (9) or, as the case may be, section 166 of this Act, where proof of a previous conviction is competent in support of a substantive charge, any such conviction or an extract of it shall, if—
  - (a) it purports to relate to the accused and to be signed by the clerk of court having custody of the record containing the conviction; and

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- (b) a copy of it has been served on the accused not less than 14 days before the [F263relevant] diet,

be sufficient evidence of the application of the conviction to the accused unless, within seven days of the date of service of the copy on him, he serves notice on the prosecutor that he denies that it applies to him.

[F264(1A) In subsection (1)(b) above, “the relevant diet” means—

- (a) in the case of proceedings in the High Court, the preliminary hearing;  
(b) in any other case, the trial diet.]

- (2) A copy of a conviction or extract conviction served under subsection (1) above shall be served on the accused in such manner as may be prescribed by Act of Adjournal, and a written execution purporting to be signed by the person who served the copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of the copy.

[F265(3) The reference in subsection (1)(a) above to “the clerk of court having custody of the record containing the conviction” includes, in relation to a previous conviction by a court in another member State of the European Union, a reference to any officer of that court or of that State having such custody.]

#### Textual Amendments

- F263** Word in s. 286(1)(b) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 54\(a\)](#); S.S.I. 2004/405, [art. 2\(1\)](#), Sch. 1 (with savings in arts. 3-5)
- F264** S. 286(1A) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 54\(b\)](#); S.S.I. 2004/405, [art. 2\(1\)](#), Sch. 1 (with savings in arts. 3-5)
- F265** S. 286(3) added (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [ss. 57\(3\)](#), 89; S.S.I. 2003/288, [art. 2](#), Sch.

#### [F266] 286A Proof of previous conviction by court in other member State

- (1) A previous conviction by a court in another member State of the European Union may be proved against any person in any criminal proceedings by the production of evidence of the conviction and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.

(2) A certificate—

- (a) bearing—
- (i) to have been sealed with the official seal of a Minister of the State in question; and
  - (ii) to contain particulars relating to a conviction extracted from the criminal records of that State; and
- (b) including copies of fingerprints and certifying that those copies—
- (i) are of fingerprints appearing from those records to have been taken from the person convicted on the occasion of the conviction, or on the occasion of his last conviction; and
  - (ii) would be admissible in evidence in criminal proceedings in that State as a record of the skin of that person’s fingers,

shall be sufficient evidence of the conviction or, as the case may be, of the person’s last conviction and of all preceding convictions and that the copies



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*Status: Point in time view as at 20/01/2020.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, PART XII is up to date with all changes known to be in force on or before 10 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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of the fingerprints included in the certificate are copies of the fingerprints of the person convicted.

- (3) A conviction bearing to have been—
- (a) extracted from the criminal records of the State in question; and
  - (b) issued by an officer of that State whose duties include the issuing of such extracts,
- shall be received in evidence without being sworn to by witnesses.
- (4) Subsection (9) of section 285 of this Act applies in relation to this section as it does in relation to that section.]

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**Textual Amendments**

**F266** S. 286A inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [ss. 57\(4\)](#), 89; S.S.I. 2003/288, [art. 2](#), Sch.

**Status:**

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**Changes to legislation:**

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