



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XII

#### EVIDENCE

*[<sup>F1</sup>Special measures for child witnesses and other vulnerable witnesses]*

#### **[<sup>F1</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>F2</sup>(1ZA) (a) fix a date for the proceedings before the commissioner, and  
(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.

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**Changes to legislation:** Criminal Procedure (Scotland) Act 1995, Section 271I is up to date with all changes known to be in force on or before 26 February 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) [View outstanding changes](#)

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- (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>F3</sup>(1A) court so directed when authorising such proceedings [<sup>F4</sup>or it was so directed at the ground rules hearing], take place by means of a live television link between the place 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>F5</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>F6</sup>(4A)

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- (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>F7</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;
  - (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>F8</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

- F1** 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**)

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- F2** 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))
- F3** 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)**
- F4** 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))
- F5** 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)**
- F6** 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
- F7** 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)**
- F8** 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)

- C1** 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)
- C2** 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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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by [2010 asp 13 Sch. 7 para. 26](#)
- s. 13(1B)(1C) inserted by [2006 asp 10 s. 82\(2\)](#)
- s. 13(2)(aa) inserted by [2006 asp 10 s. 82\(3\)\(b\)](#)
- s. 13(3A) inserted by [2006 asp 10 s. 82\(4\)](#)
- s. 13(5)(ba) inserted by [2006 asp 10 s. 82\(5\)\(a\)](#)
- s. 13(6)(a)(iii) and word inserted by [2006 asp 10 s. 82\(6\)\(b\)](#)
- s. 13(8) inserted by [2006 asp 10 s. 82\(7\)](#)
- s. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 167(7D)(7E) inserted by [2007 asp 17 sch. 4 para. 1\(3\)](#)
- s. 167(7D) words substituted by [2010 asp 13 Sch. 3 para. 16\(2\)](#)
- s. 167(7E) words substituted by [2010 asp 13 Sch. 3 para. 16\(3\)](#)
- s. 194ZA repealed by [2014 asp 18 sch. 3 para. 25](#)
- s. 200A inserted by [2016 asp 1 s. 85](#)
- s. 205A added by [1997 c. 48 s. 1\(1\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by 2003 asp 7, s. 19(3); S.S.I. 2003/288, art. 2, Sch.)
- s. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- s. 288AB288AC inserted by [2024 asp 1 s. 32\(3\)](#)
- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by 2003 asp 7, s. 19(3); S.S.I. 2003/288, art. 2, Sch.)