

VULNERABLE WITNESSES (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Criminal Proceedings

Section 1 – Evidence of children and other vulnerable witnesses: special measures

Section 271D – Review of arrangements for vulnerable witnesses

24. This section enables the court at any time, up to and including when a vulnerable witness is giving evidence in a trial, to review the arrangements for the taking of their evidence. The court may make an order regarding the arrangements at the request of the party who is calling the witness or of its own accord. Such an order may add a special measure, or substitute a special measure in the previous order for another special measure which is considered more appropriate. Where a previous order contains a combination of special measures, the number of measures to be used can be reduced. An order that special measures may no longer be used can only be made in two types of instance. One is where the court is satisfied that it is appropriate to revoke the use of special measures where the witness does not wish to use them. Another is if the court is satisfied that there is a significant risk of prejudice to the fairness of the trial significantly outweighing the risk of prejudice to the witness.
25. Subsection (2)(b) allows the court to make an order for a special measure to be used by a vulnerable witness in circumstances where an order has not previously been made. In making such an order, the court must take into account the factors listed in section 271C(8).