

*These notes relate to the Vulnerable Witnesses (Criminal Evidence)
(Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019*

VULNERABLE WITNESSES (CRIMINAL EVIDENCE) (SCOTLAND) ACT 2019

EXPLANATORY NOTES

**ANNEX: SECTIONS 271 TO 271M OF THE CRIMINAL PROCEDURE
(SCOTLAND) ACT 1995 AS AMENDED BY THE ACT**

This Annex sets out the sections of the Criminal Procedure (Scotland) Act 1995 amended by this Act. The changes are shown by using strikethrough for text that is repealed and underline for text that is inserted. The text in this Annex is provided for guidance only and its accuracy is not warranted.

“Special measures for child witnesses and other vulnerable witnesses

271 Vulnerable witnesses: main definitions

- (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),
 - (iiia) 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
 - (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.
- (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) 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,

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- (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), section 271B(1)(b) and sections 271BZA to 271BZC above and section 271B(1)(b) below, proceedings shall be taken to have 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 commenced 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.
- (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—
 - “child witness” means a vulnerable witness referred to in subsection (1)(a),
 - “court” means the High Court or the sheriff court,
 - “deemed vulnerable witness” means a vulnerable witness referred to in subsection (1)(c),
 - “hearing in relevant criminal proceedings” means any hearing in the course of any criminal proceedings in the High Court or the sheriff court.
- (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.

VERSION OF SECTION 271A AS AMENDED BY THE ACT (IN CASES TO WHICH SECTION 271BZA DOES NOT APPLY)

“271A Child and deemed vulnerable witnesses

- (1) Where a child witness or a deemed vulnerable witness is to give evidence at or for the purposes of a hearing in relevant criminal proceedings, the 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 partySubject to section 271AA, a party citing or intending to cite a child witness or a deemed vulnerable witness shall, by the required time, lodge with the court a notice (referred to in this Act as a “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 witness's evidence, or
 - (b) if the party considers that the witness should give evidence without the benefit of any special measure, stating that fact.

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- (3) A 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.
- (3A) In the case where a vulnerable witness notice under subsection (2)(a) specifies only a standard special 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. measure, subsection (3)(a) does not apply.
- (4) The court may, on cause shown, allow a vulnerable witness notice to be lodged after the required time.
- (4A) Any party to the proceedings may, not later than 7 days after a vulnerable witness 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 earlier than 7 days and not later than 14 days after a vulnerable witness notice has been lodged, consider the notice in the absence of the parties and, subject to section 271Bsections 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 witness's evidence, and
 - (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 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 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 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 witness has not expressed a wish to give evidence without the benefit of any special measure,

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make an order under subsection (5A) below.

- (5A) That order is an order—
- (a) in the case of proceedings in the High Court where the preliminary hearing is yet to be held, appointing the 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 vulnerable witness notice to be disposed of at that diet; or
 - (c) in any other case, appointing a diet to be held before 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 or a deemed vulnerable witness to give evidence at or for the purposes of a hearing in relevant criminal proceedings,
 - (b) the party has not lodged a vulnerable witness notice in respect of the witness by the time specified in subsection (2) above or lodged a notice with the clerk of court in accordance with section 271AA by the time specified in that section, and
 - (c) the court has not allowed a vulnerable witness notice in respect of the witness to be lodged after that time under subsection (4) above or under section 271AA(5).
- (7) Where this subsection applies, the court shall—
- (a) order the party to lodge a vulnerable witness notice in respect of the witness by such time as the court may specify, or
 - (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
 - (ii) in any other case, make an order appointing a diet to be held before the hearing at which the evidence is to be given and requiring the parties to attend the diet.
- (8) On making an order under subsection (5A)(c) or (7)(b)(ii) above, the court may postpone the hearing at which the evidence is to be given.
- (8A) Subsection (9) below applies to—
- (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 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) at the hearing or diet; and
 - (b) a diet appointed under subsection (5A)(c) or (7)(b)(ii) above.
- (9) AtSubject to section 271B, at a 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 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 witness's evidence, or

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- (ii) that the witness is to give evidence without the benefit of any special measure.
- (10) The courtSubject to section 271B, the court may make an order under subsection (9)(b)(ii) above only if satisfied—
 - (a) where the witness has expressed a wish 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 of any special measure for the purpose of taking the evidence of the witness would give rise to a significant risk of prejudice to the fairness of the hearing at which the evidence is to be given 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.
- (11) A hearing or diet to which subsection (9) 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.
- (12) A diet appointed under subsection (5A)(c) or (7)(b)(ii) above in any case may be conjoined with any other diet to be held before the hearing at which the evidence is to be given.
- (13) A party lodging a vulnerable witness notice or an objection notice shall, at the same time, intimate the notice to the other parties to the proceedings.
- (13A) In subsections (2) and (4) above, “the required time” means—
 - (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.
 - (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 [the hearing at which the evidence is to be given.
- (14) In this section and section 271AA, 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,
 - (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.
- (15) The Scottish Ministers may, by order subject to the affirmative procedure—
 - (a) modify subsection (14),

These notes relate to the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019

- (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.

VERSION OF SECTION 271A AS AMENDED BY THE ACT AND WITH THE MODIFICATIONS MADE BY SECTIONS 271BZB (IN CASES TO WHICH SECTION 271BZA APPLIES)

“271A Child and deemed vulnerable witnesses

- (1) Where a child witness or a deemed vulnerable witness is to give evidence at or for the purposes of a hearing in relevant criminal proceedings, the 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 or a deemed vulnerable witness shall, by the required time, lodge with the court a notice (referred to in this Act as a “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 witness's evidence, or
 - (b) if the party considers that the witness should give evidence without the benefit of any special measure, stating that fact.
- (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.
- (3) A 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.
- (3A) In the case where a vulnerable witness notice under subsection (2)(a) specifies only a standard special 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. measure, subsection (3)(a) does not apply.
- (4) The court may, on cause shown, allow a vulnerable witness notice to be lodged after the required time.
- (4A) Any party to the proceedings may, not later than 7 days after a vulnerable witness notice has been lodged, lodge with the court a notice (referred to in this section as an “objection notice”) stating—

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- (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 earlier than 7 days and not later than 14 days after a vulnerable witness notice has been lodged, consider the notice in the absence of the parties and, subject to section 271Bsections 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 witness's evidence, and
 - (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 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 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 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 witness has not expressed a wish to give evidence without the benefit of any special measure,
make an order under subsection (5A) below.
- (5A) That order is an order—
 - (a) in the case of proceedings in the High Court where the preliminary hearing is yet to be held, appointing the 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 vulnerable witness notice to be disposed of at that diet; or
 - (c) in any other case, appointing a diet to be held before 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 or a deemed vulnerable witness to give evidence at or for the purposes of a hearing in relevant criminal proceedings,

These notes relate to the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019

- (b) the party has not lodged a vulnerable witness notice in respect of the witness by the time specified in subsection (2) above or lodged a notice with the clerk of court in accordance with section 271AA by the time specified in that section, and
 - (c) the court has not allowed a vulnerable witness notice in respect of the witness to be lodged after that time under subsection (4) above or under section 271AA(5).
- (7) Where this subsection applies, the court shall—
 - (a) order the party to lodge a vulnerable witness notice in respect of the witness by such time as the court may specify, or
 - (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
 - (ii) in any other case, make an order appointing a diet to be held before the hearing at which the evidence is to be given and requiring the parties to attend the diet.
- (8) On making an order under subsection (5A)(c) or (7)(b)(ii) above, the court may postpone the hearing at which the evidence is to be given.
- (8A) Subsection (9) below applies to—
 - (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 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) at the hearing or diet; and
 - (b) a diet appointed under subsection (5A)(c) or (7)(b)(ii) above.
- (9) AtSubject to section 271B, at a 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 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 witness's evidence, or
 - (ii) that the witness is to give evidence without the benefit of any special measure.
- (10) The courtSubject to section 271B, the court may make an order under subsection (9) (b)(ii) above only if satisfied—
 - (a) where the witness has expressed a wish 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 of any special measure for the purpose of taking the evidence of the witness would give rise to a significant risk of prejudice to the fairness of the hearing at which the evidence is to be given 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.
- (10A) Subsections (5), (9) and (10) are subject to subsections (10B) to (10F).

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(Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019*

- (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—
- (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.
- (11) A hearing or diet to which subsection (9) 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.
- (12) A diet appointed under subsection (5A)(c) or (7)(b)(ii) above in any case may be conjoined with any other diet to be held before the hearing at which the evidence is to be given.
- (13) A party lodging a vulnerable witness notice or an objection notice shall, at the same time, intimate the notice to the other parties to the proceedings.
- (13A) In subsections (2) and (4) above, "the required time" means—
- (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—

These notes relate to the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019

- (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.
- (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 [the hearing at which the evidence is to be given.
- (14) In this section and section 271AA, references to a standard special measure are to any of the following special measures—
- (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.
- (a) the use of a live television link in accordance with section 271J of this Act,
 - (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.
- (15) The Scottish Ministers may, by order subject to the affirmative procedure—
- (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.

“271AA Using only standard special measures

- (1) This section applies where—
- (a) a child witness or a deemed vulnerable witness is to give evidence at, or for the purposes of, a hearing in relevant criminal proceedings, and
 - (b) the party citing or intending to cite the witness considers that it is most appropriate for the witness to give evidence with the benefit of—
 - (i) one or more standard special measures, and
 - (ii) no other special measure.
- (2) The party must, by the required time, lodge with the clerk of court a notice specifying—
- (a) the standard special measure or measures that the party considers to be the most appropriate for the purpose of taking the witness’s evidence,
 - (b) whether the witness is a child witness or a deemed vulnerable witness,
 - (c) if the witness is a child witness, the witness’s age, and
 - (d) such other information as may be prescribed by Act of Adjournal.
- (3) The party lodging a notice with the clerk of court under subsection (2) must, at the same time, intimate the notice to the other parties to the proceedings.
- (4) If the party lodges a notice with the clerk of court by the required time, the witness is entitled to the benefit of the standard special measure or measures specified in the notice as if the use of that measure or measures were authorised by an order made by the court under section 271A(5)(a).

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(Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019*

- (5) If the party does not lodge a notice with the clerk of court by the required time, the court may, on cause shown, allow the party to lodge a vulnerable witness notice in accordance with section 271A (despite its being lodged later than the deadline for lodging a vulnerable witness notice).
- (6) In this section, the “required time” means—
 - (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.
- (7) This section does not apply in a case to which section 271B or 271BZA applies.

“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, 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 the hearing is being or to be held.
- (2) The offences referred to in subsection (1)(a) above are—
 - (a) murder,
 - (b) culpable homicide,
 - (c) any offence to which section 288C of this Act applies,
 - (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, and
 - (f) plagium.
- (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 courtroom 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.
- (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.

*These notes relate to the Vulnerable Witnesses (Criminal Evidence)
(Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019*

- (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.
- (7) This section does not apply in a case to which section 271BZA applies.

“271BZ 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,
 - (fa) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
 - (fb) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,
 - (fc) an offence that would have fallen within paragraph (fb) if section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 had been in force when the offence was allegedly committed,
 - (g) an offence of human trafficking (see section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015),
 - (h) an offence under section 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 (slavery, servitude and forced or compulsory labour),
 - (i) an offence under section 1 of the Prohibition of Female Genital Mutilation (Scotland) Act 2005 (offence of female genital mutilation),
 - (j) an offence under section 3 of the Prohibition of Female Genital Mutilation (Scotland) Act 2005 (aiding and abetting female genital mutilation),
 - (k) an attempt to commit an offence mentioned in any of paragraphs (a) to (j).
- (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

These notes relate to the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019

- (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.

“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) Subsection (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) The section 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

*These notes relate to the Vulnerable Witnesses (Criminal Evidence)
(Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019*

- (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) The section 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—

- (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.”.

“271BZ 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) The section has effect as if—
 - (a) subsections (3A) to (3C) were omitted,
 - (aa) subsection (4A) were omitted, and
 - (b) the following subsections were inserted after subsection (4A)—
 - “(4B) Subsections (2) to (4) are subject to subsections (4C) to (4F).
 - (4C) Unless 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 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).
 - (4CA) 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.
 - (4CB) However, an order made by the court under this section need not have the effect described in subsection (4CA) 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).
 - (4D) 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 (4E) or (4F) applies.
 - (4E) 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.
 - (4F) 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

*These notes relate to the Vulnerable Witnesses (Criminal Evidence)
(Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019*

- (c) it would be in the child witness's best interests to be present in the courtroom to give evidence."

“271BZ Power to apply section 271BZA to deemed vulnerable witnesses

- (1) The Scottish Ministers may by regulations extend the application of section 271BZA so that it also applies where a deemed vulnerable witness who is not a child witness is to give evidence at, or for the purposes of, a hearing in relevant criminal proceedings which are solemn proceedings.
- (2) Regulations under subsection (1) may, in particular—
- (a) make different provision for different descriptions of deemed vulnerable witness, including, in particular, provision to extend the application of section 271BZA only in cases involving specified descriptions of deemed vulnerable witness,
 - (b) make such provision as the Scottish Ministers consider necessary or expedient in connection with the extension of the application of section 271BZA, including, in particular, provision to apply section 271BZA subject to specified modifications,
 - (c) make different provision for different courts or descriptions of court,
 - (d) make different provision for other different purposes,
 - (e) make such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient,
 - (f) modify any enactment (including this Act).
- (3) In this section—
- “specified” means specified in the regulations,
- “descriptions of deemed vulnerable witness” may include, in particular, descriptions relating to the specific offences or types of offences that are alleged to have been committed against the deemed vulnerable witness.
- (4) Regulations under subsection (1) are subject to the affirmative procedure.

“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.

“271C Vulnerable witness application

- (1) This section applies where a party citing or intending to cite a person (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 (such a person being referred to in this section as “the witness”) 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, 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
 - (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 required time.
- (4A) Any party to the proceedings may, not later than 7 days after a vulnerable witness 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 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, make an order under subsection (5A) below.
- (5A) That order is an order—

These notes relate to the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019

- (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 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 (5A)(c) above, the court may postpone the hearing at which the evidence is to be given.
- (6A) Subsection (7) below applies to—
- (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 hearing or diet to which this subsection applies, the court may—
- (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 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 appointed under subsection (5A)(c) above in any case may be conjoined with any other diet to be held before the hearing at which the evidence is to be given.
- (11) A party making a vulnerable witness application or an objection notice shall, at the same time, intimate the application or, as the case may be, the notice to the other parties to the proceedings.
- (12) In subsections (2) and (4) above, “the required time” means—
- (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 the hearing at which the evidence is to be given.

VERSION OF SECTION 271D AS AMENDED BY THE ACT (IN CASES TO WHICH SECTION 271BZA DOES NOT APPLY)

“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 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 the hearing or before or after the witness has begun to give evidence)—
 - (a) on the application of 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
 - (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.
- (3A) If an earlier order has the effect of enabling all of the witness’s evidence to be given 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,

*These notes relate to the Vulnerable Witnesses (Criminal Evidence)
(Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019*

- (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 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.
- (4A) In a case in which a notice has been provided to the clerk of court in accordance with section 271AA(2), this section is to have effect as if the special measure or measures specified in the notice were authorised by an order under section 271A.
- (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.
- (6) In this section, “current arrangements” means the arrangements in place at the time the review under this section is begun.
- (6A) In this section, “court” includes a commissioner appointed under section 271I(1).
- (7) This section is subject to sections 271B to 271BZC section 271B.

**VERSION OF SECTION 271D AS AMENDED BY THE ACT AND WITH THE
MODIFICATIONS MADE BY SECTIONS 271BZC (IN CASES TO WHICH
SECTION 271BZA APPLIES)**

“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 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 the hearing or before or after the witness has begun to give evidence)—
- (a) on the application of 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

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(Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019*

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
 - (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.
- (3A) If an earlier order has the effect of enabling all of the witness's evidence to be given 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—
- 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 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 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.
- (4A) In a case in which a notice has been provided to the clerk of court in accordance with section 271AA(2), this section is to have effect as if the special measure or measures specified in the notice were authorised by an order under section 271A.
- (4B) Subsections (2) to (4) are subject to subsections (4C) to (4F).

*These notes relate to the Vulnerable Witnesses (Criminal Evidence)
(Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019*

- (4C) Unless 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 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) 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 (4E) or (4F) applies.
- (4E) 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 is present in the courtroom to give evidence.
- (4F) 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.
- (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.
- (6) In this section, “current arrangements” means the arrangements in place at the time the review under this section is begun.
- (6A) In this section, “court” includes a commissioner appointed under section 271I(1).
- (7) This section is subject to sections 271B to 271BZC section 271B.

“271E Vulnerable witnesses: supplementary provision

- (1) Subsection (2) below applies where—
- (a) a party is considering for the purposes of a vulnerable witness notice, a notice that is to be lodged with the clerk of court under section 271AA 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
 - (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

These notes relate to the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019

- (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.

“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 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 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 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 witness shall be read as if they were references to the accused,
 - (ii) references to the party citing or intending to cite a 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 a hearing

*These notes relate to the Vulnerable Witnesses (Criminal Evidence)
(Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019*

- in relevant criminal proceedings, would be a child witness.”, and
- (aa) section 271AA applies in relation to the accused with the following modifications—
- (i) in subsection (1)(a), the reference to a child witness or a deemed vulnerable witness is to be read as if it were a reference to the accused,
 - (ii) in subsections (1) to (5), references to the party citing or intending to cite the witness are to be read as if they were references to the accused,
 - (iii) in subsections (1)(b), (2)(a) and (4), references to the witness are to be read as if they were references to the accused,
 - (vi) subsection (2) has effect as if for paragraphs (b) and (c) there were substituted—
 - “(b) that the notice is lodged by the accused and that the accused is a child witness,
 - (c) the accused’s age, 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 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.”
 - (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 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.
- (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 the 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.

*These notes relate to the Vulnerable Witnesses (Criminal Evidence)
(Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019*

- (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) and (ea),
 - (b) section 271I(3).

“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.

“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,
 - (e) giving evidence in chief in the form of a prior statement in accordance with section 271M of this Act, and
 - (ea) excluding the public during the taking of the evidence in accordance with section 271HB of this Act.
- (1A) The Scottish Ministers may, by order subject to the affirmative procedure—
 - (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.
- (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.

“271HATemporary 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) may make different provision for different courts or descriptions of court or different proceedings or types of proceedings.
- (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.

“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.

“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.
- (1ZA) A court which appoints a commissioner under subsection (1) must—
 - (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.
- (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,

*These notes relate to the Vulnerable Witnesses (Criminal Evidence)
(Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019*

- (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.
- (1A) Proceedings before a commissioner appointed under subsection (1) above shall, if the court so directed when authorising such proceedings 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 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.
- (4A) It is not necessary (in solemn cases) for an indictment to have been served before—
- (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).
- (5) Sections—
- (a) 274;
 - (b) 275;
 - (c) 275B except subsection (2)(b);
 - (d)
 - (e)
 - (f) 288E; and
 - (g) 288F,

*These notes relate to the Vulnerable Witnesses (Criminal Evidence)
(Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019*

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 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.

“271J Live 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 the hearing is to take place by means of a live television link between that place and the court-room.
- (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 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 the hearing), or
 - (b) in relation to any part of the proceedings.

“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.

*These notes relate to the Vulnerable Witnesses (Criminal Evidence)
(Scotland) Act 2019 (asp 8) which received Royal Assent on 13 June 2019*

- (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.

“271L 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 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.

“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.