



Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019

2019 asp 8

Review of arrangements for taking evidence

4 Review of arrangements for vulnerable witnesses

(1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 271D, after subsection (3), insert—

“(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,

Status: This is the original version (as it was originally enacted).

- (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.”.