

2007 No. 463

SHERIFF COURT

**Act of Sederunt (Ordinary Cause, Summary Application,
Summary Cause and Small Claim Rules) Amendment
(Vulnerable Witnesses (Scotland) Act 2004) 2007**

Made - - - - *17th October 2007*

Coming into force - - *1st November 2007*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a), and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Vulnerable Witnesses (Scotland) Act 2004) 2007 and shall come into force on 1st November 2007.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Amendment of Ordinary Cause Rules

2.—(1) The Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(b) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 1.2(1) (interpretation) after the definition of “period of notice” there shall be inserted the following:—

““the Act of 2004” means the Vulnerable Witnesses (Scotland) Act 2004”.

(3) After rule 9.12(3)(c) (options hearing) there shall be inserted the following:—

“(d) consider any child witness notice or vulnerable witness application that has been lodged where no order has been made, or

(e) ascertain whether there is or is likely to be a vulnerable witness within the meaning of section 11(1) of the Act of 2004 who is to give evidence at any proof or hearing and whether any order under section 12(1) of the Act of 2004 requires to be made.”.

(a) 1971 c.58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13, the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2), and was extended by the Child Support Act 1991 (c.48), sections 39(2) and 49.

(b) 1907 c.51. Schedule 1 was substituted by S.I. 1993/1956 and amended by S.I. 1996/2167 and 2445, S.S.I. 2000/239 and 408, 2001/8 and 144, 2002/7, 128 and 566, 2003/25 and 26, 2004/197 and 350, 2005/20, 189, 638 and 648 and 2006/207, 293, 410 and 509, and 2007/6.

(4) At the end of rule 9A.3(3) (exchange lists of witnesses)(a) there shall be inserted the following:–

“and indicate whether the witness is considered to be a vulnerable witness within the meaning of section 11(1) of the Act of 2004 and whether any child witness notice or vulnerable witness application has been lodged in respect of that witness.”.

(5) After rule 10.6(3)(c) (procedural hearing)(b) there shall be inserted the following:–

“(d) consider any child witness notice or vulnerable witness application that has been lodged where no order has been made, or

(e) ascertain whether there is or is likely to be a vulnerable witness within the meaning of section 11(1) of the Act of 2004 who is to give evidence at any proof or hearing and whether any order under section 12(1) of the Act of 2004 requires to be made.”.

(6) In rule 28A.1(3) (pre-proof hearing)(c)–

(a) in sub-paragraph (b) for “9.12(3)(a) and (b)” there shall be substituted “9.12(3)(a),(b),(d) or (e)”.

(b) after sub-paragraph (b) there shall be inserted the following:–

“; and

(c) consider any child witness notice or vulnerable witness application that has been lodged where no order has been made, or ascertain whether there is or is likely to be a vulnerable witness within the meaning of section 11(1) of the 2004 Act who is to give evidence at any proof or hearing and whether any order under section 12(1) of the Act of 2004 requires to be made.”.

(7) In rule 28.12(1)(d) (commissions without interrogatories) after “be responsible” there shall be inserted “in the first instance”.

(8) In rule 32A.1(2) (live links)(d) at the end of the definition of “witness” there shall be inserted the following:–

“, except a vulnerable witness within the meaning of section 11(1) of the Act of 2004.”.

(9) For rule 33.22A(4) (child welfare hearing)(e) there shall be substituted the following:–

“(4) At the Child Welfare Hearing (which may be held in private), the sheriff shall seek to secure the expeditious resolution of disputes in relation to the child by ascertaining from the parties the matters in dispute and any information relevant to that dispute, and may–

(a) order such steps to be taken, make such order, if any, or order further procedure, as he thinks fit, and

(b) ascertain whether there is or is likely to be a vulnerable witness within the meaning of section 11(1) of the Act of 2004 who is to give evidence at any proof or hearing and whether any order under section 12(1) of the Act of 2004 requires to be made.”.

(10) For rule 33A.23(4) (child welfare hearing in civil partnership action)(f) there shall be substituted the following:–

“(4) At the Child Welfare Hearing (which may be held in private), the sheriff shall seek to secure the expeditious resolution of disputes in relation to the child by ascertaining from the parties the matters in dispute and any information relevant to that dispute, and may–

(a) order such steps to be taken, make such order, if any, or order further procedure, as he thinks fit, and

(a) Rule 9A.3 was inserted by S.S.I. 2004/197.
(b) Rule 10.6 was amended by S.S.I. 2004/197 and 2006/410.
(c) Rule 28A.1 was inserted by S.S.I. 2006/410.
(d) Rule 32A.1 was inserted by S.S.I. 2007/6.
(e) Rule 33.22A was inserted by S.I. 1996/2167.
(f) Rule 33A.23 was inserted by S.S.I. 2005/638.

- (b) ascertain whether there is or is likely to be a vulnerable witness within the meaning of section 11(1) of the Act of 2004 who is to give evidence at any proof or hearing and whether any order under section 12(1) of the Act of 2004 requires to be made.”.

(11) For rule 35.10(2) (hearings in actions of multiplepinding) there shall be substituted the following:–

“(2) The parties shall provide the sheriff with sufficient information to enable him to–

- (a) conduct the hearing as provided for in this Chapter,
- (b) consider any child witness notice or vulnerable witness application that has been lodged where no order has been made, or
- (c) ascertain whether there is or is likely to be a vulnerable witness within the meaning of section 11(1) of the Act of 2004 who is to give evidence at any proof or hearing and whether any order under section 12(1) of the Act of 2004 requires to be made.”.

(12) After rule 40.12(2)(b) (Case Management Conference)(a) there shall be inserted the following:–

“and

- (c) whether there is or is likely to be a vulnerable witness within the meaning of section 11(1) of the Act of 2004 who is to give evidence at any proof or hearing, consider any child witness notice or vulnerable witness application that has been lodged where no order has been made and consider whether any order under section 12(1) of the Act of 2004 requires to be made.”.

(13) After Chapter 44 (equality enactments)(b) there shall be inserted the following:–

“CHAPTER 45

VULNERABLE WITNESSES (SCOTLAND) ACT 2004

Interpretation

45.1. In this Chapter–

“child witness notice” has the meaning given in section 12(2) of the Act of 2004;

“review application” means an application for review of arrangements for vulnerable witnesses pursuant to section 13 of the Act of 2004;

“vulnerable witness application” has the meaning given in section 12(6) of the Act of 2004.

Child Witness Notice

45.2. A child witness notice lodged in accordance with section 12(2) of the Act of 2004 shall be in Form G19.

Vulnerable Witness Application

45.3. A vulnerable witness application lodged in accordance with section 12(6) of the Act of 2004 shall be in Form G20.

(a) Rule 40.12 was inserted by S.S.I. 2001/8.
(b) Chapter 44 was inserted by S.S.I. 2006/509.

Intimation

45.4.—(1) The party lodging a child witness notice or vulnerable witness application shall intimate a copy of the child witness notice or vulnerable witness application to all the other parties to the proceedings and complete a certificate of intimation.

(2) A certificate of intimation referred to in paragraph (1) shall be in Form G21 and shall be lodged with the child witness notice or vulnerable witness application.

Procedure on lodging child witness notice or vulnerable witness application

45.5.—(1) On receipt of a child witness notice or vulnerable witness application, the sheriff may—

- (a) make an order under section 12(1) or (6) of the Act of 2004 without holding a hearing;
- (b) require further information from any of the parties before making any further order;
- (c) fix a date for a hearing of the child witness notice or vulnerable witness application.

(2) The sheriff may, subject to any statutory time limits, make an order altering the date of the proof or other hearing at which the child or vulnerable witness is to give evidence and make such provision for intimation of such alteration to all parties concerned as he deems appropriate.

(3) An order fixing a hearing for a child witness notice or vulnerable witness application shall be intimated by the sheriff clerk—

- (a) on the day the order is made; and
- (b) in such manner as may be prescribed by the sheriff,

to all parties to the proceedings and such other persons as are named in the order where such parties or persons are not present at the time the order is made.

Review of arrangements for vulnerable witnesses

45.6.—(1) A review application shall be in Form G22.

(2) Where the review application is made orally, the sheriff may dispense with the requirements of paragraph (1).

Intimation of review application

45.7.—(1) Where a review application is lodged, the applicant shall intimate a copy of the review application to all other parties to the proceedings and complete a certificate of intimation.

(2) A certificate of intimation referred to in paragraph (1) shall be in Form G23 and shall be lodged together with the review application.

Procedure on lodging a review application

45.8.—(1) On receipt of a review application, the sheriff may—

- (a) if he is satisfied that he may properly do so, make an order under section 13(2) of the Act of 2004 without holding a hearing or, if he is not so satisfied, make such an order after giving the parties an opportunity to be heard;
- (b) require of any of the parties further information before making any further order;
- (c) fix a date for a hearing of the review application.

(2) The sheriff may, subject to any statutory time limits, make an order altering the date of the proof or other hearing at which the child or vulnerable witness is to give evidence and make such provision for intimation of such alteration to all parties concerned as he deems appropriate.

(3) An order fixing a hearing for a review application shall be intimated by the sheriff clerk—

- (a) on the day the order is made; and
- (b) in such manner as may be prescribed by the sheriff,

to all parties to the proceedings and such other persons as are named in the order where such parties or persons are not present at the time the order is made.

Determination of special measures

45.9. When making an order under section 12(1) or (6) or 13(2) of the Act of 2004 the sheriff may, in light thereof, make such further orders as he deems appropriate in all the circumstances.

Intimation of an order under section 12(1) or (6) or 13(2)

45.10. An order under section 12(1) or (6) or 13(2) of the Act of 2004 shall be intimated by the sheriff clerk—

- (a) on the day the order is made; and
- (b) in such manner as may be prescribed by the sheriff,

to all parties to the proceedings and such other persons as are named in the order where such parties or persons are not present at the time the order is made.

Taking of evidence by commissioner

45.11.—(1) An interlocutor authorising the special measure of taking evidence by a commissioner shall be sufficient authority for the citing the witness to appear before the commissioner.

(2) At the commission the commissioner shall—

- (a) administer the oath *de fidei administratione* to any clerk appointed for the commission; and
- (b) administer to the witness the oath in Form G14, or where the witness elects to affirm, the affirmation in Form G15.

(3) The commission shall proceed without interrogatories unless, on cause shown, the sheriff otherwise directs.

Commission on interrogatories

45.12.—(1) Where interrogatories have not been dispensed with, the party citing or intending to cite the vulnerable witness shall lodge draft interrogatories in process.

(2) Any other party may lodge cross-interrogatories.

(3) The interrogatories and cross-interrogatories, when adjusted, shall be extended and returned to the sheriff clerk for approval and the settlement of any dispute as to their contents by the sheriff.

(4) The party who cited the vulnerable witness shall—

- (a) provide the commissioner with a copy of the pleadings (including any adjustments and amendments), the approved interrogatories and any cross-interrogatories and a certified copy of the interlocutor of his appointment;

- (b) instruct the clerk; and
- (c) be responsible in the first instance for the fee of the commissioner and his clerk.

(5) The commissioner shall, in consultation with the parties, fix a diet for the execution of the commission to examine the witness.

Commission without interrogatories

45.13. Where interrogatories have been dispensed with, the party citing or intending to cite the vulnerable witness shall—

- (a) provide the commissioner with a copy of the pleadings (including any adjustments and amendments) and a certified copy of the interlocutor of his appointment;
- (b) fix a diet for the execution of the commission in consultation with the commissioner and every other party;
- (c) instruct the clerk; and
- (d) be responsible in the first instance for the fees of the commissioner and his clerk.

Lodging of video record and documents

45.14.—(1) Where evidence is taken on commission pursuant to an order made under section 12(1) or (6) or 13(2) of the Act of 2004 the commissioner shall lodge the video record of the commission and relevant documents with the sheriff clerk.

(2) On the video record and any documents being lodged the sheriff clerk shall—

- (a) note—
 - (i) the documents lodged;
 - (ii) by whom they were lodged; and
 - (iii) the date on which they were lodged, and
- (b) intimate what he has noted to all parties concerned.

Custody of video record and documents

45.15.—(1) The video record and documents referred to in rule 45.14 shall, subject to paragraph (2), be kept in the custody of the sheriff clerk.

(2) Where the video record of the evidence of a witness is in the custody of the sheriff clerk under this rule and where intimation has been given to that effect under rule 45.14(2), the name and address of that witness and the record of his evidence shall be treated as being in the knowledge of the parties; and no party shall be required, notwithstanding any enactment to the contrary—

- (a) to include the name of that witness in any list of witnesses; or
- (b) to include the record of his evidence in any list of productions.

Application for leave for party to be present at the commission

45.16. An application for leave for a party to be present in the room where the commission proceedings are taking place shall be by motion.”.

(14) In Appendix 1—

- (a) for Form G13 there shall be substituted the form set out in Part 1 of Schedule 1 to this Act of Sederunt; and
- (b) after Form G18 there shall be inserted the forms set out in Part 2 of Schedule 1 to this Act of Sederunt.

Amendment of Summary Application Rules

3.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(a) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 1.2(1) (interpretation), after “requires–” there shall be inserted the following:–

““the 2004 Act” means the Vulnerable Witnesses (Scotland) Act 2004;”.

(3) In rule 2.32(2)(live links)(b) at the end of the definition of “witness” there shall be inserted the following:–

“, except a vulnerable witness within the meaning of section 11(1) of the 2004 Act.”.

(4) After rule 2.32 (live links) there shall be inserted the following:–

“Enquiry when fixing hearing

2.33. Where the sheriff fixes a hearing he shall make enquiry whether there is or is likely to be a vulnerable witness within the meaning of section 11(1) of the 2004 Act who is to give evidence at any proof or hearing, consider any child witness notice or vulnerable witness application that has been lodged where no order has been made and consider whether any order under section 12(1) of the 2004 Act requires to be made.

Vulnerable witness procedure

2.34. Except where the sheriff otherwise directs, where a vulnerable witness is to give evidence in a hearing of a summary application any child witness notice or vulnerable application relating to the vulnerable witness shall be made in accordance with and regulated by Chapter 45 of the Ordinary Cause Rules.”.

Amendment of Summary Cause Rules

4.—(1) The Act of Sederunt (Summary Cause Rules) 2002(c) is amended in accordance with the following sub-paragraphs.

(2) In rule 1.1(2) (interpretation), after the definition of “the 1975 Act” there shall be inserted the following:–

““the 2004 Act” means the Vulnerable Witnesses (Scotland) Act 2004;”.

(3) At the end of rule 8.3(3) (purpose of hearing) there shall be inserted the following:–

“(e) enquire whether there is or is likely to be a vulnerable witness within the meaning of section 11(1) of the 2004 Act who is to give evidence at any proof or hearing, consider any child witness notice or vulnerable witness application that has been lodged where no order has been made and consider whether any order under section 12(1) of the 2004 Act requires to be made.”.

(4) At the end of rule 8.6(3) (lists of witnesses), there shall be inserted the following:–

“and indicate whether the witness is considered to be a vulnerable witness within the meaning of section 11(1) of the 2004 Act and whether any child witness notice or vulnerable witness application has been lodged in respect of that witness.”.

(a) S.I. 1999/929, amended by S.S.I. 2000/18 and 387, 2001/142, 2002/7, 129, 130, 146 and 583, 2003/26, 27, 98, 261, 319, 346 and 556, 2004/197, 222, 334 and 455, 2005/61, 473, 504 and 648 and 2006/410, 437 and 509, 2007/6, 339 and 440.
(b) Rule 2.32 was inserted by S.S.I. 2007/6.
(c) S.S.I. 2002/132, amended by S.S.I. 2002/516, 2003/216, 2004/197, 2005/648, 2006/509 and 2007/6.

(5) After Chapter 18 (recovery of evidence and attendance of witnesses) there shall be inserted the following:—

“CHAPTER 18A
VULNERABLE WITNESSES (SCOTLAND) ACT 2004

Interpretation

18A.1. In this Chapter—

“child witness notice” has the meaning given in section 12(2) of the 2004 Act;

“review application” means an application for review of arrangements for vulnerable witnesses pursuant to section 13 of the 2004 Act;

“vulnerable witness application” has the meaning given in section 12(6) of the 2004 Act.

Child Witness Notice

18A.2. A child witness notice lodged in accordance with section 12(2) of the 2004 Act shall be in Form 26B.

Vulnerable Witness Application

18A.3. A vulnerable witness application lodged in accordance with section 12(6) of the 2004 Act shall be in Form 26C.

Intimation

18A.4.—(1) The party lodging a child witness notice or vulnerable witness application shall intimate a copy of the child witness notice or vulnerable witness application to all the other parties to the proceedings and complete a certificate of intimation.

(2) A certificate of intimation referred to in paragraph (1) shall be in Form 26D and shall be lodged with the child witness notice or vulnerable witness application.

Procedure on lodging child witness notice or vulnerable witness application

18A.5.—(1) On receipt of a child witness notice or vulnerable witness application, the sheriff may—

- (a) make an order under section 12(1) or (6) of the 2004 Act without holding a hearing;
- (b) require further information from any of the parties before making any further order;
- (c) fix a date for a hearing of the child witness notice or vulnerable witness application.

(2) The sheriff may, subject to any statutory time limits, make an order altering the date of the proof or other hearing at which the child or vulnerable witness is to give evidence and make such provision for intimation of such alteration to all parties concerned as he deems appropriate.

(3) An order fixing a hearing for a child witness notice or vulnerable witness application shall be intimated by the sheriff clerk—

- (a) on the day the order is made; and

(b) in such manner as may be prescribed by the sheriff,
to all parties to the proceedings and such other persons as are named in the order where
such parties or persons are not present at the time the order is made.

Review of arrangements for vulnerable witnesses

18A.6.—(1) A review application shall be in Form 26E.

(2) Where the review application is made orally, the sheriff may dispense with the
requirements of paragraph (1).

Intimation of review application

18A.7.—(1) Where a review application is lodged, the applicant shall intimate a copy of
the review application to all other parties to the proceedings and complete a certificate of
intimation.

(2) A certificate of intimation referred to in paragraph (1) shall be in Form 26F and shall
be lodged together with the review application.

Procedure on lodging a review application

18A.8.—(1) On receipt of a review application, the sheriff may—

- (a) if he is satisfied that he may properly do so, make an order under section 13(2) of
the 2004 Act without holding a hearing or, if he is not so satisfied, make such an
order after giving the parties an opportunity to be heard;
- (b) require of any of the parties further information before making any further order;
- (c) fix a date for a hearing of the review application.

(2) The sheriff may, subject to any statutory time limits, make an order altering the date
of the proof or other hearing at which the child or vulnerable witness is to give evidence
and make such provision for intimation of such alteration to all parties concerned as he
deems appropriate.

(3) An order fixing a hearing for a review application shall be intimated by the sheriff
clerk—

- (a) on the day the order is made; and
- (b) in such manner as may be prescribed by the sheriff,

to all parties to the proceedings and such other persons as are named in the order where
such parties or persons are not present at the time the order is made.

Determination of special measures

18A.9. When making an order under section 12(1) or (6) or 13(2) of the 2004 Act the
sheriff may, in light thereof, make such further orders as he deems appropriate in all the
circumstances.

Intimation of an order under section 12(1) or (6) or 13(2)

18A.10. An order under section 12(1) or (6) or 13(2) of the 2004 Act shall be intimated
by the sheriff clerk—

- (a) on the day the order is made; and
- (b) in such manner as may be prescribed by the sheriff,

to all parties to the proceedings and such other persons as are named in the order where
such parties or persons are not present at the time the order is made.

Taking of evidence by commissioner

18A.11.—(1) An interlocutor authorising the special measure of taking evidence by a commissioner shall be sufficient authority for the citing the witness to appear before the commissioner.

(2) At the commission the commissioner shall—

- (a) administer the oath *de fidei administratione* to any clerk appointed for the commission; and
- (b) administer to the witness the oath in Form 20, or where the witness elects to affirm, the affirmation in Form 21.

(3) The commission shall proceed without interrogatories unless, on cause shown, the sheriff otherwise directs.

Commission on interrogatories

18A.12.—(1) Where interrogatories have not been dispensed with, the party citing or intending to cite the vulnerable witness shall lodge draft interrogatories in process.

(2) Any other party may lodge cross-interrogatories.

(3) The interrogatories and cross-interrogatories, when adjusted, shall be extended and returned to the sheriff clerk for approval and the settlement of any dispute as to their contents by the sheriff.

(4) The party who cited the vulnerable witness shall—

- (a) provide the commissioner with a copy of the pleadings (including any adjustments and amendments), the approved interrogatories and any cross-interrogatories and a certified copy of the interlocutor of his appointment;
- (b) instruct the clerk; and
- (c) be responsible in the first instance for the fee of the commissioner and his clerk.

(5) The commissioner shall, in consultation with the parties, fix a diet for the execution of the commission to examine the witness.

Commission without interrogatories

18A.13. Where interrogatories have been dispensed with, the party citing or intending to cite the vulnerable witness shall—

- (a) provide the commissioner with a copy of the pleadings (including any adjustments and amendments) and a certified copy of the interlocutor of his appointment;
- (b) fix a diet for the execution of the commission in consultation with the commissioner and every other party;
- (c) instruct the clerk; and
- (d) be responsible in the first instance for the fees of the commissioner and his clerk.

Lodging of video record and documents

18A.14.—(1) Where evidence is taken on commission pursuant to an order made under section 12(1) or (6) or 13(2) of the 2004 Act the commissioner shall lodge the video record of the commission and relevant documents with the sheriff clerk.

(2) On the video record and any documents being lodged the sheriff clerk shall—

- (a) note—
 - (i) the documents lodged;
 - (ii) by whom they were lodged; and
 - (iii) the date on which they were lodged, and

- (b) intimate what he has noted to all parties concerned.

Custody of video record and documents

18A.15.—(1) The video record and documents referred to in rule 18A.14 shall, subject to paragraph (2), be kept in the custody of the sheriff clerk.

(2) Where the video record of the evidence of a witness is in the custody of the sheriff clerk under this rule and where intimation has been given to that effect under rule 18A.14(2), the name and address of that witness and the record of his evidence shall be treated as being in the knowledge of the parties; and no party shall be required, notwithstanding any enactment to the contrary—

- (a) to include the name of that witness in any list of witnesses; or
- (b) to include the record of his evidence in any list of productions.

Application for leave for party to be present at the commission

18A.16. An application for leave for a party to be present in the room where the commission proceedings are taking place shall be by incidental application.”.

(6) In rule 37.1(2) (live links)(a) at the end of the definition of “witness” there shall be inserted the following:—

“, except a vulnerable witness within the meaning of section 11(1) of the 2004 Act.”.

(7) In Appendix 1—

- (a) for Form 26 there shall be substituted the form in Part 1 of Schedule 2 to this Act of Sederunt; and
- (b) after Form 26A there shall be inserted the forms set out in Part 2 of Schedule 2 to this Act of Sederunt.

Amendment of Small Claim Rules

5.—(1) The Act of Sederunt (Small Claim Rules) 2002(b) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 1.1(2) (interpretation), after the definition of “the 1975 Act” there shall be inserted the following:—

““the 2004 Act” means the Vulnerable Witnesses (Scotland) Act 2004;”.

(3) At the end of rule 9.2(3) (purpose of hearing) there shall be inserted the following:—

“(d) enquire whether there is or is likely to be a vulnerable witness within the meaning of section 11(1) of the 2004 Act who is to give evidence at any proof or hearing, consider any child witness notice or vulnerable witness application that has been lodged where no order has been made and consider whether any order under section 12(1) of the 2004 Act requires to be made.”.

(4) In rule 27.1(2) (live links)(c) at the end of the definition of “witness” there shall be inserted the following:—

“, except a vulnerable witness within the meaning of section 11(1) of the 2004 Act.”.

(a) Rule 37.1 was inserted by S.S.I. 2007/6.

(b) S.S.I. 2002/133, amended by S.S.I. 2003/26, 2004/197, 2005/648, 2006/509 and 2007/6.

(c) Rule 27.1 was inserted by S.S.I. 2007/6.

(5) After Chapter 17 (recovery of evidence and attendance of witnesses) there shall be inserted the following:–

“CHAPTER 17A
VULNERABLE WITNESSES (SCOTLAND) ACT 2004

Interpretation

17A.1. In this Chapter–

“child witness notice” has the meaning given in section 12(2) of the 2004 Act;

“review application” means an application for review of arrangements for vulnerable witnesses pursuant to section 13 of the 2004 Act;

“vulnerable witness application” has the meaning given in section 12(6) of the 2004 Act.

Child Witness Notice

17A.2. A child witness notice lodged in accordance with section 12(2) of the 2004 Act shall be in Form 16B.

Vulnerable Witness Application

17A.3. A vulnerable witness application lodged in accordance with section 12(6) of the 2004 Act shall be in Form 16C.

Intimation

17A.4.—(1) The party lodging a child witness notice or vulnerable witness application shall intimate a copy of the child witness notice or vulnerable witness application to all the other parties to the proceedings and complete a certificate of intimation.

(2) A certificate of intimation referred to in paragraph (1) shall be in Form 16D and shall be lodged with the child witness notice or vulnerable witness application.

Procedure on lodging child witness notice or vulnerable witness application

17A.5.—(1) On receipt of a child witness notice or vulnerable witness application, the sheriff may–

- (a) make an order under section 12(1) or (6) of the 2004 Act without holding a hearing;
- (b) require further information from any of the parties before making any further order;
- (c) fix a date for a hearing of the child witness notice or vulnerable witness application.

(2) The sheriff may, subject to any statutory time limits, make an order altering the date of the proof or other hearing at which the child or vulnerable witness is to give evidence and make such provision for intimation of such alteration to all parties concerned as he deems appropriate.

(3) An order fixing a hearing for a child witness notice or vulnerable witness application shall be intimated by the sheriff clerk–

- (a) on the day the order is made; and

(b) in such manner as may be prescribed by the sheriff,
to all parties to the proceedings and such other persons as are named in the order where
such parties or persons are not present at the time the order is made.

Review of arrangements for vulnerable witnesses

17A.6.—(1) A review application shall be in Form 16E.

(2) Where the review application is made orally, the sheriff may dispense with the
requirements of paragraph (1).

Intimation of review application

17A.7.—(1) Where a review application is lodged, the applicant shall intimate a copy of
the review application to all other parties to the proceedings and complete a certificate of
intimation.

(2) A certificate of intimation referred to in paragraph (1) shall be in Form 16F and shall
be lodged together with the review application.

Procedure on lodging a review application

17A.8.—(1) On receipt of a review application, the sheriff may—

- (a) if he is satisfied that he may properly do so, make an order under section 13(2) of
the 2004 Act without holding a hearing or, if he is not so satisfied, make such an
order after giving the parties an opportunity to be heard;
- (b) require of any of the parties further information before making any further order;
- (c) fix a date for a hearing of the review application.

(2) The sheriff may, subject to any statutory time limits, make an order altering the date
of the proof or other hearing at which the child or vulnerable witness is to give evidence
and make such provision for intimation of such alteration to all parties concerned as he
deems appropriate.

(3) An order fixing a hearing for a review application shall be intimated by the sheriff
clerk—

- (a) on the day the order is made; and
- (b) in such manner as may be prescribed by the sheriff,

to all parties to the proceedings and such other persons as are named in the order where
such parties or persons are not present at the time the order is made.

Determination of special measures

17A.9. When making an order under section 12(1) or (6) or 13(2) of the 2004 Act the
sheriff may, in light thereof, make such further orders as he deems appropriate in all the
circumstances.

Intimation of an order under section 12(1) or (6) or 13(2)

17A.10. An order under section 12(1) or (6) or 13(2) of the 2004 Act shall be intimated
by the sheriff clerk—

- (a) on the day the order is made; and
- (b) in such manner as may be prescribed by the sheriff,

to all parties to the proceedings and such other persons as are named in the order where
such parties or persons are not present at the time the order is made.

Taking of evidence by commissioner

17A.11.—(1) An interlocutor authorising the special measure of taking evidence by a commissioner shall be sufficient authority for the citing the witness to appear before the commissioner.

(2) At the commission the commissioner shall—

- (a) administer the oath *de fidei administratione* to any clerk appointed for the commission; and
- (b) administer to the witness the oath, or where the witness elects to affirm, the affirmation.

(3) The commission shall proceed without interrogatories unless, on cause shown, the sheriff otherwise directs.

Commission on interrogatories

17A.12.—(1) Where interrogatories have not been dispensed with, the party citing or intending to cite the vulnerable witness shall lodge draft interrogatories in process.

(2) Any other party may lodge cross-interrogatories.

(3) The interrogatories and cross-interrogatories, when adjusted, shall be extended and returned to the sheriff clerk for approval and the settlement of any dispute as to their contents by the sheriff.

(4) The party who cited the vulnerable witness shall—

- (a) provide the commissioner with a copy of the pleadings (including any adjustments and amendments), the approved interrogatories and any cross-interrogatories and a certified copy of the interlocutor of his appointment;
- (b) instruct the clerk; and
- (c) be responsible in the first instance for the fee of the commissioner and his clerk.

(5) The commissioner shall, in consultation with the parties, fix a diet for the execution of the commission to examine the witness.

Commission without interrogatories

17A.13. Where interrogatories have been dispensed with, the party citing or intending to cite the vulnerable witness shall—

- (a) provide the commissioner with a copy of the pleadings (including any adjustments and amendments) and a certified copy of the interlocutor of his appointment;
- (b) fix a diet for the execution of the commission in consultation with the commissioner and every other party;
- (c) instruct the clerk; and
- (d) be responsible in the first instance for the fees of the commissioner and his clerk.

Lodging of video record and documents

17A.14.—(1) Where evidence is taken on commission pursuant to an order made under section 12(1) or (6) or 13(2) of the 2004 Act the commissioner shall lodge the video record of the commission and relevant documents with the sheriff clerk.

(2) On the video record and any documents being lodged the sheriff clerk shall—

- (a) note—
 - (i) the documents lodged;
 - (ii) by whom they were lodged; and
 - (iii) the date on which they were lodged, and

- (b) intimate what he has noted to all parties concerned.

Custody of video record and documents

17A.15.—(1) The video record and documents referred to in rule 17A.14 shall, subject to paragraph (2), be kept in the custody of the sheriff clerk.

(2) Where the video record of the evidence of a witness is in the custody of the sheriff clerk under this rule and where intimation has been given to that effect under rule 17A.14(2), the name and address of that witness and the record of his evidence shall be treated as being in the knowledge of the parties; and no party shall be required, notwithstanding any enactment to the contrary—

- (a) to include the name of that witness in any list of witnesses; or
- (b) to include the record of his evidence in any list of productions.

Application for leave for party to be present at the commission

17A.16. An application for leave for a party to be present in the room where the commission proceedings are taking place shall be by incidental application.”.

(6) In Appendix 1—

- (a) for Form 16 there shall be set out the form in Part 1 of Schedule 3 to this Act of Sederunt; and
- (b) after Form 16A there shall be inserted the forms set out in Part 2 of Schedule 3 to this Act of Sederunt.

A C Hamilton
Lord President,
I.P.D.

Edinburgh
17th October 2007

SCHEDULE 1

Paragraph 2(14)

PART 1

FORM G13

Form of citation of witness or haver

Rule 28.4(4) and 29.7(4)

(date)

CITATION

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

To [A.B.] *(design)*

(Name) who is pursuing/defending a case against *(name)* [*or is a (specify) in the case of (name) against (name)*] has asked you to be a witness. You must attend the above sheriff court on *(insert date)* at *(insert time)* for that purpose, [and bring with you *(specify documents)*].

- If you would like to know more about being a witness
- are a child under the age of 16
- think you may be a vulnerable witness within the meaning of section 11(1) of the Vulnerable Witnesses (Scotland) Act 2004 (that is someone the court considers may be less able to give their evidence due to mental disorder or fear or distress connected to giving your evidence at the court hearing)

you should contact *(specify the solicitor acting for the party or the party litigant citing the witness)* for further information.

If you are a vulnerable witness (including a child under the age of 16), then you should be able to use a special measure (such measures include use of a screen, a live TV link or a supporter, or a commissioner) to help you give evidence.

Expenses

You may claim back money which you have to spend and any earnings you have lost within certain specified limits, because you have to come to court on the above date. These may be paid to you if you claim within specified time limits. Claims should be made to the person who has asked you to attend court. Proof of any loss of earnings should be given to that person.

If you wish your travelling expenses to be paid before you go to court, you should apply for payment to the person who has asked you to attend court.

Failure to attend

It is very important that you attend court and you should note that failure to do so may result in a warrant being granted for your arrest. In addition, if you fail to attend without any good reason, having requested and been paid your travelling expenses, you may be ordered to pay a penalty not exceeding £250.

If you have any questions about anything in this citation, please contact (*specify the solicitor acting for the party or the party litigant citing the witness*) for further information.

Signed

[P.Q.], Sheriff Officer,

or [X.Y.], (*add designation and business address*)

Solicitor for the pursuer [*or defender*][*or (specify*

PART 2

FORM G19

Form of child witness notice

Rule 45.2

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 12

Received the day of 20

(Date of receipt of this notice)

.....(signed)

Sheriff Clerk

CHILD WITNESS NOTICE

Sheriff Court

.....20

Court Ref. No.

1. The applicant is the pursuer [or defender] in the action by [A.B] (*design*) against [C.D.] (*design*).

2. The applicant has cited [or intends to cite] [E.F.] (*date of birth*) as a witness.

3. [E.F.] is a child witness under section 11 of the Vulnerable Witnesses (Scotland) Act 2004 [and was under the age of sixteen on the date of the commencement of proceedings].

4. The applicant considers that the following special measure[s] is [are] the most appropriate for the purpose of taking the evidence of [E.F.] [or that [E.F.] should give evidence without the benefit of any special measure]:-

(delete as appropriate and specify any special measure(s) sought).

5. [(a) The reason[s] this [these] special measure[s] is [are] considered the most appropriate is [are] as follows:-

(here specify the reason(s) for the special measures(s) sought)].

OR

[(b) The reason[s] it is considered that [E.F.] should give evidence without the benefit of any special measure is [are]-

(here explain why it is felt that no special measures are required).

6. [E.F.] and the parent [s] of [or [person[s] with parental responsibility for] [E.F.] has [have] expressed the following view[s] on the special measure[s] that is [are] considered most appropriate [or [the appropriateness of [E.F.] giving evidence without the benefit of any special measure]:-

(delete as appropriate and set out the view(s) expressed and how they were obtained).

7. Other information considered relevant to this application is as follows:-

(here set out any other information relevant to the child witness notice).

8. The applicant asks the court to–

- (a) consider this child witness notice;
- (b) make an order authorising the special measure[s] sought; *or*
- (c) make an order authorising the giving of evidence by [E.F.] without the benefit of special measures.

(delete as appropriate)

(Signed)

[A.B. *or* C.D.]

[or Legal representative of A.B. *[or* C.D.]] *(include full designation)*

NOTE: This form should be suitably adapted where section 16 of the Act of 2004 applies.

FORM G20

Form of vulnerable witness application

Rule 45.3

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 12

Received theday of20.....

(Date of receipt of this notice)

.....*(signed)*

Sheriff Clerk

VULNERABLE WITNESS APPLICATION

Sheriff Court

.....20

Court Ref. No.

1. The applicant is the pursuer [*or* defender] in the action by [A.B] (*design*) against [C.D.] (*design*).

2. The applicant has cited [*or* intends to cite] [E.F.] (*date of birth*) as a witness.

3. The applicant considers that [E.F.] is a vulnerable witness under section 11(1)(b) of the Vulnerable Witnesses (Scotland) Act 2004 for the following reasons:-

(here specify reasons witness is considered to be a vulnerable witness).

4. The applicant considers that the following special measure[s] is [are] the most appropriate for the purpose of taking the evidence of [E.F.]:-

(specify any special measure(s) sought).

5. The reason[s] this [these] special measure[s] is [are] considered the most appropriate is [are] as follows:-

(here specify the reason(s) for the special measures(s) sought).

6. [E.F.] has expressed the following view[s] on the special measure[s] that is [are] considered most appropriate:-

(set out the views expressed and how they were obtained).

7. Other information considered relevant to this application is as follows:-

(here set out any other information relevant to the vulnerable witness application).

8. The applicant asks the court to-

(a) consider this vulnerable witness application;

(b) make an order authorising the special measure[s] sought.

.....(*Signed*)

[A.B. *or* C.D.]

[*or* Legal representative of A.B. [*or* C.D.]] (*include full designation*)

NOTE: This form should be suitably adapted where section 16 of the Act of 2004 applies.

FORM G21

Form of certificate of intimation

Rule 45.4(1)

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 12

CERTIFICATE OF INTIMATION

Sheriff Court

.....20.....

Court Ref. No.

I certify that intimation of the child witness notice [*or vulnerable witness application*] relating to (*insert name of witness*) was made to (*insert names of parties or solicitors for parties, as appropriate*) by (*insert method of intimation; where intimation is by facsimile transmission, insert fax number to which intimation sent*) on (*insert date of intimation*).

Date:

.....(*Signed*)

Solicitor [*or Sheriff Officer*]

(*include full business designation*)

FORM G22

Form of application for review

Rule 45.6

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 13

Received theday of.....20....

(date of receipt of this notice)

.....*(signed)*

Sheriff Clerk

APPLICATION FOR REVIEW OF ARRANGEMENTS FOR VULNERABLE WITNESS

Sheriff Court.....

.....20...

Court Ref. No.

1. The applicant is the pursuer [*or* defender] in the action by [A.B.] (*design*) against [C.D.] (*design*).

2. A proof [*or* hearing] is fixed for (*date*) at (*time*).

3. [E.F.] is a witness who is to give evidence at, or for the purposes of, the proof [*or* hearing]. [E.F.] is a child witness [*or* vulnerable witness] under section 11 of the Vulnerable Witnesses (Scotland) Act 2004.

4. The current arrangements for taking the evidence of [E.F.] are (*here specify current arrangements*).

5. The current arrangements should be reviewed as (*here specify reasons for review*).

6. [E.F.] [and the parent[s] of [*or* person[s] with parental responsibility for] [E.F.]] has [have] expressed the following view[s] on [the special measure[s] that is [are] considered most appropriate] [*or* the appropriateness of [E.F.] giving evidence without the benefit of any special measure]:-

(delete as appropriate and set out the view(s) expressed and how they were obtained).

7. The applicant seeks (here specify the order sought).

(Signed)

[A.B. *or* C.D.]

[*or* Legal representative of A.B. [*or* C.D.]] (*include full designation*)

NOTE: This form should be suitably adapted where section 16 of the Act of 2004 applies.

FORM G23

Form of certificate of intimation

Rule 45.7(2)

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 13

CERTIFICATE OF INTIMATION

Sheriff Court

.....20.....

Court Ref. No.

I certify that intimation of the review application relating to *(insert name of witness)* was made to *(insert names of parties or solicitors for parties, as appropriate)* by *(insert method of intimation; where intimation is by facsimile transmission, insert fax number to which intimation sent)* on *(insert date of intimation)*.

Date:

(Signed)

Solicitor [*or* Sheriff Officer]

(include full business designation)

SCHEDULE 2

Paragraph 4(7)

PART 1

FORM 26

Form of citation of witness or haver

Rule 18.8(1)

(date)

CITATION

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

To [A.B.] *(design)*

(Name) who is pursuing/defending a case against *(name)* [*or is a (specify)* in the case of *(name)* against *(name)*] has asked you to be a witness. You must attend the above sheriff court on *(insert date)* at *(insert time)* for that purpose, [and bring with you *(specify documents)*].

If you

- would like to know more about being a witness
- are a child under the age of 16
- think you may be a vulnerable witness within the meaning of section 11(1) of the Vulnerable Witnesses (Scotland) Act 2004 (that is someone the court considers may be less able to give their evidence due to mental disorder or fear or distress connected to giving your evidence at the court hearing)

you should contact *(specify the solicitor acting for the party or the party litigant citing the witness)* for further information.

If you are a vulnerable witness (including a child under the age of 16) then you should be able to use a special measure (such measures include use of a screen, a live TV link or a supporter, or a commissioner) to help you give evidence.

Expenses

You may claim back money which you have to spend and any earnings you have lost within certain specified limits, because you have to come to court on the above date. These may be paid to you if you claim within specified time limits. Claims should be made to the person who has asked you to attend court. Proof of any loss of earnings should be given to that person.

If you wish your travelling expenses to be paid before you go to court, you should apply for payment to the person who has asked you to attend court.

Failure to attend

It is very important that you attend court and you should note that failure to do so may result in a warrant being granted for your arrest. In addition, if you fail to attend without any good reason, having requested and been paid your travelling expenses, you may be ordered to pay a penalty not exceeding £250.

If you have any questions about anything in this citation, please contact (*specify the solicitor acting for the party or the party litigant citing the witness*) for further information.

Signed

[P.Q.], Sheriff Officer,

or [X.Y.], (*add designation and business address*)

Solicitor for the pursuer [*or defender*][*or (specify)*]

PART 2

FORM 26B

Form of child witness notice

Rule 18A.2

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 12

Received the day of 20

(Date of receipt of this notice)

.....(signed)

Sheriff Clerk

CHILD WITNESS NOTICE

Sheriff Court

.....20

Court Ref. No.

1. The applicant is the pursuer [or defender] in the action by [A.B] (*design*) against [C.D.] (*design*).

2. The applicant has cited [or intends to cite] [E.F.] (*date of birth*) as a witness.

3. [E.F.] is a child witness under section 11 of the Vulnerable Witnesses (Scotland) Act 2004 [and was under the age of sixteen on the date of the commencement of proceedings].

4. The applicant considers that the following special measure[s] is [are] the most appropriate for the purpose of taking the evidence of [E.F.] [or that [E.F.] should give evidence without the benefit of any special measure]:-

(delete as appropriate and specify any special measure(s) sought).

5. [(a) The reason[s] this [these] special measure[s] is [are] considered the most appropriate is [are] as follows:-

(here specify the reason(s) for the special measures(s) sought)].

OR

[(b) The reason[s] it is considered that [E.F.] should give evidence without the benefit of any special measure is [are]-

(here explain why it is felt that no special measures are required).

6. [E.F.] and the parent [s] of [or person[s] with parental responsibility for] [E.F.] has [have] expressed the following view[s] on the special measure[s] that is [are] considered most appropriate [or the appropriateness of [E.F.] giving evidence without the benefit of any special measure]:-

(delete as appropriate and set out the view(s) expressed and how they were obtained).

7. Other information considered relevant to this application is as follows:-

(here set out any other information relevant to the child witness notice).

8. The applicant asks the court to–

- (a) consider this child witness notice;
- (b) make an order authorising the special measure[s] sought; *or*
- (c) make an order authorising the giving of evidence by [E.F.] without the benefit of special measures.

(delete as appropriate)

(Signed)

[A.B. *or* C.D.]

[*or* Representative of A.B. [*or* C.D.]] *(include full designation)*

NOTE: This form should be suitably adapted where section 16 of the Act of 2004 applies.

FORM 26C

Form of vulnerable witness application

Rule 18A.3

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 12

Received theday of20.....

(Date of receipt of this notice)

.....*(signed)*

Sheriff Clerk

VULNERABLE WITNESS APPLICATION

Sheriff Court

.....20

Court Ref. No.

1. The applicant is the pursuer [*or* defender] in the action by [A.B] (*design*) against [C.D.] (*design*).
2. The applicant has cited [*or* intends to cite] [E.F.] (*date of birth*) as a witness.
3. The applicant considers that [E.F.] is a vulnerable witness under section 11(1)(b) of the Vulnerable Witnesses (Scotland) Act 2004 for the following reasons:–
(here specify reasons witness is considered to be a vulnerable witness).
4. The applicant considers that the following special measure[s] is [are] the most appropriate for the purpose of taking the evidence of [E.F.]:–
(specify any special measure(s) sought).
5. The reason[s] this [these] special measure[s] is [are] considered the most appropriate is [are] as follows:–
(here specify the reason(s) for the special measures(s) sought).
6. [E.F.] has expressed the following view[s] on the special measure[s] that is [are] considered most appropriate:–
(set out the views expressed and how they were obtained).
7. Other information considered relevant to this application is as follows:–
(here set out any other information relevant to the vulnerable witness application).
8. The applicant asks the court to–
 - (a) consider this vulnerable witness application;

(b) make an order authorising the special measure[s] sought.

(Signed)

[A.B. or C.D.]

[or Representative of A.B. [or C.D.]] *(include full designation)*

NOTE: This form should be suitably adapted where section 16 of the Act of 2004 applies.

FORM 26D

Form of certificate of intimation

Rule 18A.4(2)

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 12

CERTIFICATE OF INTIMATION

Sheriff Court

.....20.....

Court Ref. No.

I certify that intimation of the child witness notice [*or vulnerable witness application*] relating to (*insert name of witness*) was made to (*insert names of parties or solicitors for parties, as appropriate*) by (*insert method of intimation; where intimation is by facsimile transmission, insert fax number to which intimation sent*) on (*insert date of intimation*).

Date:

(*Signed*)

Solicitor [*or Sheriff Officer*]

(*include full business designation*)

FORM 26E

Form of application for review

Rule 18A.6(1)

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 13

Received theday of.....20....

(date of receipt of this notice)

.....*(signed)*

Sheriff Clerk

APPLICATION FOR REVIEW OF ARRANGEMENTS FOR VULNERABLE WITNESS

Sheriff Court.....

.....20....

Court Ref. No.

1. The applicant is the pursuer [*or* defender] in the action by [A.B.] (*design*) against [C.D.] (*design*).

2. A proof [*or* hearing] is fixed for (*date*) at (*time*).

3. [E.F.] is a witness who is to give evidence at, or for the purposes of, the proof [*or* hearing]. [E.F.] is a child witness [*or* vulnerable witness] under section 11 of the Vulnerable Witnesses (Scotland) Act 2004.

4. The current arrangements for taking the evidence of [E.F.] are (*here specify current arrangements*).

5. The current arrangements should be reviewed as (*here specify reasons for review*).

6. [E.F.] [and the parent[s] of [*or* person[s] with parental responsibility for] [E.F.]] has [have] expressed the following view[s] on [the special measure[s] that is [are] considered most appropriate] [*or* the appropriateness of [E.F.] giving evidence without the benefit of any special measure]:-

(delete as appropriate and set out the view(s) expressed and how they were obtained).

7. The applicant seeks (here specify the order sought).

(Signed)

[A.B. *or* C.D.]

[*or* Representative of A.B. [*or* C.D.]] (*include full designation*)

NOTE: This form should be suitably adapted where section 16 of the Act of 2004 applies.

FORM 26F

Form of certificate of intimation

Rule 18A.7(2)

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 13

CERTIFICATE OF INTIMATION

Sheriff Court

.....20.....

Court Ref. No.

I certify that intimation of the review application relating to *(insert name of witness)* was made to *(insert names of parties or solicitors for parties, as appropriate)* by *(insert method of intimation; where intimation is by facsimile transmission, insert fax number to which intimation sent)* on *(insert date of intimation)*.

Date:

(Signed)

Solicitor [*or* Sheriff Officer]

(include full business designation)

PART 1

FORM 16

Form of citation of witness or haver

Rule 17.4(3)

(date)

CITATION

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

To [A.B.] *(design)*

(Name) who is pursuing/defending a case against *(name)* [*or is a (specify) in the case of (name) against (name)*] has asked you to be a witness. You must attend the above sheriff court on *(insert date)* at *(insert time)* for that purpose, [and bring with you *(specify documents)*].

If you

- would like to know more about being a witness
- are a child under the age of 16
- think you may be a vulnerable witness within the meaning of section 11(1) of the Vulnerable Witnesses (Scotland) Act 2004 (that is someone the court considers may be less able to give their evidence due to mental disorder or fear or distress connected to giving your evidence at the court hearing)

you should contact *(specify the solicitor acting for the party or the party litigant citing the witness)* for further information.

If you are a vulnerable witness (including a child under the age of 16) then you should be able to use a special measure (such measures include use of a screen, a live TV link or a supporter, or a commissioner) to help you give evidence.

Expenses

You may claim back money which you have to spend and any earnings you have lost within certain specified limits, because you have to come to court on the above date. These may be paid to you if you claim within specified time limits. Claims should be made to the person who has asked you to attend court. Proof of any loss of earnings should be given to that person.

If you wish your travelling expenses to be paid before you go to court, you should apply for payment to the person who has asked you to attend court.

Failure to attend

It is very important that you attend court and you should note that failure to do so may result in a warrant being granted for your arrest. In addition, if you fail to attend without any good reason, having requested and been paid your travelling expenses, you may be ordered to pay a penalty not exceeding £250.

If you have any questions about anything in this citation, please contact (*specify the solicitor acting for the party or the party litigant citing the witness*) for further information.

Signed

[P.Q.], Sheriff Officer,

or [X.Y.], (*add designation and business address*)

Solicitor for the pursuer [*or defender*][*or (specify)*]

PART 2

FORM 16B

Form of child witness notice

Rule 17A.2

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 12

Received theday of20.....

(Date of receipt of this notice)

.....(signed)

Sheriff Clerk

CHILD WITNESS NOTICE

Sheriff Court

.....20

Court Ref. No.

1. The applicant is the pursuer [or defender] in the action by [A.B] (*design*) against [C.D.] (*design*).

2. The applicant has cited [or intends to cite] [E.F.] (*date of birth*) as a witness.

3. [E.F.] is a child witness under section 11 of the Vulnerable Witnesses (Scotland) Act 2004 [and was under the age of sixteen on the date of the commencement of proceedings].

4. The applicant considers that the following special measure[s] is [are] the most appropriate for the purpose of taking the evidence of [E.F.] [or that [E.F.] should give evidence without the benefit of any special measure]:-

(delete as appropriate and specify any special measure(s) sought).

5. [(a) The reason[s] this [these] special measure[s] is [are] considered the most appropriate is [are] as follows:-

(here specify the reason(s) for the special measures(s) sought)].

OR

[(b) The reason[s] it is considered that [E.F.] should give evidence without the benefit of any special measure is [are]-

(here explain why it is felt that no special measures are required).

6. [E.F.] and the parent [s] of [or person[s] with parental responsibility for] [E.F.] has [have] expressed the following view[s] on the special measure[s] that is [are] considered most appropriate [or the appropriateness of [E.F.] giving evidence without the benefit of any special measure]:-

(delete as appropriate and set out the view(s) expressed and how they were obtained).

7. Other information considered relevant to this application is as follows:-

(here set out any other information relevant to the child witness notice).

8. The applicant asks the court to–

- (a) consider this child witness notice;
- (b) make an order authorising the special measure[s] sought; *or*
- (c) make an order authorising the giving of evidence by [E.F.] without the benefit of special measures.

(delete as appropriate)

(Signed)

[A.B. *or* C.D.]

[*or* Representative of A.B. [*or* C.D.]] *(include full designation)*

NOTE: This form should be suitably adapted where section 16 of the Act of 2004 applies.

FORM 16C

Form of vulnerable witness application

Rule 17A.3

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 12

Received theday of20.....

(Date of receipt of this notice)

.....*(signed)*

Sheriff Clerk

VULNERABLE WITNESS APPLICATION

Sheriff Court

.....20

Court Ref. No.

1. The applicant is the pursuer [*or* defender] in the action by [A.B] (*design*) against [C.D.] (*design*).

2. The applicant has cited [*or* intends to cite] [E.F.] (*date of birth*) as a witness.

3. The applicant considers that [E.F.] is a vulnerable witness under section 11(1)(b) of the Vulnerable Witnesses (Scotland) Act 2004 for the following reasons:–

(here specify reasons witness is considered to be a vulnerable witness).

4. The applicant considers that the following special measure[s] is [are] the most appropriate for the purpose of taking the evidence of [E.F.].

(specify any special measure(s) sought)

5. The reason[s] this [these] special measure[s] is [are] considered the most appropriate is [are] as follows:–

(here specify the reason(s) for the special measures(s) sought).

6. [E.F.] has expressed the following view[s] on the special measure[s] that is [are] considered most appropriate:–

(set out the views expressed and how they were obtained).

7. Other information considered relevant to this application is as follows:–

(here set out any other information relevant to the vulnerable witness application).

8. The applicant asks the court to–

(a) consider this vulnerable witness application;

(b) make an order authorising the special measure[s] sought.

(Signed)

[A.B. or C.D.]

[or Representative of A.B. [or C.D.]] *(include full designation)*

NOTE: This form should be suitably adapted where section 16 of the Act of 2004 applies.

FORM 16D

Form of certificate of intimation

Rule 17A.4(2)

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 12

CERTIFICATE OF INTIMATION

Sheriff Court

.....20.....

Court Ref. No.

I certify that intimation of the child witness notice [*or vulnerable witness application*] relating to (*insert name of witness*) was made to (*insert names of parties or solicitors for parties, as appropriate*) by (*insert method of intimation; where intimation is by facsimile transmission, insert fax number to which intimation sent*) on (*insert date of intimation*).

Date:

(Signed)

Solicitor [*or Sheriff Officer*]

(include full business designation)

FORM 16E

Form of application for review

Rule 17A.6(1)

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 13

Received theday of.....20....

(date of receipt of this notice)

.....*(signed)*

Sheriff Clerk

APPLICATION FOR REVIEW OF ARRANGEMENTS FOR VULNERABLE WITNESS

Sheriff Court.....20...

Court Ref. No.

1. The applicant is the pursuer [*or* defender] in the action by [A.B.] (*design*) against [C.D.] (*design*).

2. A proof [*or* hearing] is fixed for (*date*) at (*time*).

3. [E.F.] is a witness who is to give evidence at, or for the purposes of, the proof [*or* hearing]. [E.F.] is a child witness [*or* vulnerable witness] under section 11 of the Vulnerable Witnesses (Scotland) Act 2004.

4. The current arrangements for taking the evidence of [E.F.] are (*here specify current arrangements*).

5. The current arrangements should be reviewed as (*here specify reasons for review*).

6. [E.F.] [and the parent[s] of [*or* person[s] with parental responsibility for] [E.F.]] has [have] expressed the following view[s] on [the special measure[s] that is [are] considered most appropriate] [*or* the appropriateness of [E.F.] giving evidence without the benefit of any special measure]:-

(delete as appropriate and set out the view(s) expressed and how they were obtained).

7. The applicant seeks (here specify the order sought).

(Signed)

[A.B. *or* C.D.]

[*or* Representative of A.B. [*or* C.D.]] (*include full designation*)

NOTE: This form should be suitably adapted where section 16 of the Act of 2004 applies.

FORM 16F

Form of certificate of intimation

Rule 17A.7(2)

VULNERABLE WITNESSES (SCOTLAND) ACT 2004 Section 13

CERTIFICATE OF INTIMATION

Sheriff Court

.....20.....

Court Ref. No.

I certify that intimation of the review application relating to *(insert name of witness)* was made to *(insert names of parties or solicitors for parties, as appropriate)* by *(insert method of intimation; where intimation is by facsimile transmission, insert fax number to which intimation sent)* on *(insert date of intimation)*.

Date:

(Signed)

Solicitor [*or* Sheriff Officer]

(include full business designation)

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt makes miscellaneous amendments to the rules of procedure in the sheriff court as follows.

Paragraph 2 amends the Ordinary Cause Rules to provide that at any procedural hearing prior to a proof or hearing where evidence will be heard, the sheriff will consider any child witness notice or vulnerable application that has been lodged or if such a notice or application should be lodged or if any order in relation to a vulnerable witness needs to be made. It also inserts a requirement that the list of witnesses must contain information as to whether the witness is a vulnerable witness and whether the appropriate notices or applications have been lodged.

A new Chapter 45 is inserted to provide procedure and forms for dealing with new child witness notices, vulnerable witness applications and applications to review orders specifying the special measures to be used in conjunction with a vulnerable witness. It also sets out the procedure for the special measure of taking evidence by a commissioner.

Rule 32A.1 on the use of live TV links to take witnesses evidence is also amended to exclude the use of this procedure by a vulnerable witness as this may be ordered as a special measure.

The witness citation form is also amended to give the witness some information about the possibility of giving evidence with a special measure if they are a vulnerable witness.

Paragraph 3 amends the Summary Application Rules to provide that the procedure in the new Chapter 45 of the Ordinary Cause Rules is to be used if there is a vulnerable witness to give evidence at any proof or hearing under the Summary Application Rules. It is also provided that the sheriff will make enquiry as to whether any of the witnesses are vulnerable, consider any notices or applications relating to a vulnerable witness, or make any order that is required when he is fixing a hearing in a summary application.

Rule 2.32 on the use of live TV links to take witnesses evidence is also amended to exclude the use of this procedure by a vulnerable witness as this may be ordered as a special measure.

The witness citation form is also amended to give the witness some information about the possibility of giving evidence with a special measure if they are a vulnerable witness.

Paragraph 4 amends the Summary Cause Rules to provide that at the calling date hearing the sheriff will enquire whether there is or is likely to be a vulnerable witness, consider any child witness notice or vulnerable application that has been lodged or if such a notice or application should be lodged or if any order in relation to a vulnerable witness needs to be made. It also inserts a requirement that the list of witnesses must contain information as to whether the witness is a vulnerable witness and whether the appropriate notices or applications have been lodged.

A new Chapter 18A is inserted to provide procedure and forms for dealing with new child witness notices, vulnerable witness applications and applications to review orders specifying the special measures to be used in conjunction with a vulnerable witness. It also sets out the procedure for the special measure of taking evidence by a commissioner.

Rule 37.1 on the use of live TV links to take witnesses evidence is also amended to exclude the use of this procedure by a vulnerable witness as this may be ordered as a special measure.

The witness citation form is also amended to give the witness some information about the possibility of giving evidence with a special measure if they are a vulnerable witness.

Paragraph 5 amends the Small Claim Rules to provide that at the hearing after the defender lodges a response the sheriff will enquire whether there is or is likely to be a vulnerable witness, consider any child witness notice or vulnerable application that has been lodged or if such a notice or application should be lodged or if any order in relation to a vulnerable witness needs to be made.

A new Chapter 17A is inserted to provide procedure and forms for dealing with new child witness notices, vulnerable witness applications and applications to review orders specifying the special measures to be used in conjunction with a vulnerable witness. It also sets out the procedure for the special measure of taking evidence by a commissioner.

Rule 27.1 on the use of live TV links to take witnesses evidence is also amended to exclude the use of this procedure by a vulnerable witness as this may be ordered as a special measure.

The witness citation form is also amended to give the witness some information about the possibility of giving evidence with a special measure if they are a vulnerable witness.

£7.50

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under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland