



# Crime and Punishment (Scotland) Act 1997

## 1997 CHAPTER 48

### PART II

#### CRIMINAL PROCEDURE

##### *Evidential provisions*

#### **29 Evidence of vulnerable persons: special provisions.**

For section 271 of the 1995 Act there shall be substituted the following section—

##### **“271 Evidence of vulnerable persons: special provisions.**

- (1) Subject to subsections (7) and (8) below, where a vulnerable person has been or could be cited to give evidence in a trial the court may appoint a commissioner to take the evidence of that person if—
  - (a) in solemn proceedings, at any time before the oath is administered to the jury;
  - (b) in summary proceedings, at any time before the first witness is sworn;
  - (c) in exceptional circumstances in either solemn or summary proceedings, during the course of the trial,application is made in that regard; but to be so appointed a person must be, and for a period of five years have been, a member of the Faculty of Advocates or a solicitor.
- (2) Proceedings before a commissioner appointed under subsection (1) above shall be recorded by video recorder.
- (3) An accused shall not, except by leave of the commissioner, be present in the room where such proceedings are taking place but shall be entitled by such means as seem suitable to the commissioner to watch and hear the proceedings.

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*Status: Point in time view as at 01/08/1997.*

*Changes to legislation: There are currently no known outstanding effects for the Crime and Punishment (Scotland) Act 1997, Section 29. (See end of Document for details)*

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- (4) Subsections (2) to (6), (8) and (9) of section 272 of this Act shall apply to an application under subsection (1) above and evidence taken by a commissioner appointed under that subsection as those subsections apply to an application under subsection (1) of that section and evidence taken by a commissioner appointed on such an application.
- (5) Subject to subsections (7) and (8) below, where a vulnerable person has been or is likely to be cited to give evidence in a trial, the court may, on an application being made to it, authorise the giving of evidence by that person by means of a live television link.
- (6) Subject to subsections (7) and (8) below, where a vulnerable person has been or is likely to be cited to give evidence in a trial, the court may, on application being made to it, authorise the use of a screen to conceal the accused from the sight of that person while that person is present to give evidence; but arrangements shall be made to ensure that the accused is able to watch and hear as the evidence is given by the vulnerable person.
- (7) The court may grant an application under subsection (1), (5) or (6) above only on cause shown having regard in particular to—
  - (a) the possible effect on the vulnerable person if required to give evidence, no such application having been granted;
  - (b) whether it is likely that the vulnerable person would be better able to give evidence if such an application were granted; and
  - (c) the views of the vulnerable person.
- (8) In considering whether to grant an application under subsection (1), (5) or (6) above the court may take into account, where appropriate, any of the following—
  - (a) the nature of the alleged offence;
  - (b) the nature of the evidence which the vulnerable person is likely to be called upon to give;
  - (c) the relationship, if any, between the person and the accused; and
  - (d) where the person is a child, his age and maturity.
- (9) Where a sheriff to whom an application has been made under subsection (1), (5) or (6) above would have granted the application but for the lack of accommodation or equipment necessary to achieve the purpose of the application, he may by order transfer the case to any sheriff court which has such accommodation and equipment available, being a sheriff court in the same sheriffdom.
- (10) The sheriff court to which a case has been transferred under subsection (9) above shall be deemed to have granted an application under, as the case may be, subsection (1), (5) or (6) above in relation to the case.
- (11) Where a court has or is deemed to have granted an application under subsection (1), (5) or (6) above in relation to a vulnerable person, and the vulnerable person gives evidence that he recalls having identified, prior to the trial, a person alleged to have committed an offence, the evidence of a third party as to the identification of that person by the vulnerable person prior to the trial shall be admissible as evidence as to such identification.
- (12) In this section—

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- “child” means a person under the age of 16 years;  
“court” means the High Court or the sheriff court;  
“trial” means a trial under solemn or under summary procedure; and  
“vulnerable person” means—
- (a) any child; and
  - (b) any person of or over the age of 16 years—
    - (i) who is subject to an order made in consequence of a finding of a court in any part of the United Kingdom that he is suffering from mental disorder within the meaning of section 1(2) of the <sup>M1</sup>Mental Health (Scotland) Act 1984, section 1(2) of the <sup>M2</sup>Mental Health Act 1983, or Article 3(1) of the <sup>M3</sup>Mental Health (Northern Ireland) Order 1986 (application of enactment); or
    - (ii) who is subject to a transfer direction under section 71(1) of the 1984 Act, section 47 of the 1983 Act, or Article 53 of the 1986 Order (transfer directions); or
    - (iii) who otherwise appears to the court to suffer from significant impairment of intelligence and social functioning.”.

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**Marginal Citations**

**M1** 1984 c.36.

**M2** 1983 c.20.

**M3** S.I. 1986/595 (N.I.4).

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**Changes to legislation:**

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