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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 463**

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

**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(1) 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.”.

(4) At the end of rule 9A.3(3) (exchange lists of witnesses)(2) 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)(3) 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.”.

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(1) 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.

(2) Rule 9A.3 was inserted by S.S.I. 2004/197.

(3) Rule 10.6 was amended by S.S.I. 2004/197 and 2006/410.

- (6) In rule 28A.1(3) (pre-proof hearing)(4)–
- (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)(5) 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)(6) 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)(7) 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.”.
- (11) For rule 35.10(2) (hearings in actions of multiplepounding) 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

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(4) Rule 28A.1 was inserted by [S.S.I. 2006/410](#).  
(5) Rule 32A.1 was inserted by [S.S.I. 2007/6](#).  
(6) Rule 33.22A was inserted by [S.I. 1996/2167](#).  
(7) Rule 33A.23 was inserted by [S.S.I. 2005/638](#).

- (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)(8) 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)(9) 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.

*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–

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(8) Rule 40.12 was inserted by [S.S.I. 2001/8](#).

(9) Chapter 44 was inserted by [S.S.I. 2006/509](#).

- (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(10) shall be amended in accordance with the following sub-paragraphs.

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(10) 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.

(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)(11) 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(12) 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.”.

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

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(11) Rule 2.32 was inserted by [S.S.I. 2007/6](#).

(12) [S.S.I. 2002/132](#), amended by [S.S.I. 2002/516](#), [2003/216](#), [2004/197](#), [2005/648](#), [2006/509](#) and [2007/6](#).

“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)(**13**) 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.”.

(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(**14**) 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.”.

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

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

(4) In rule 27.1(2) (live links)(15) 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.”.

(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.

Edinburgh  
17th October 2007

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