

2015 No. 295

HIGH COURT OF JUSTICIARY

SHERIFF APPEAL COURT

SHERIFF COURT

Act of Adjournal (Criminal Procedure Rules 1996 and Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 4) (Sheriff Appeal Court) 2015 Amendment) (Miscellaneous) 2015

Made - - - - - *31st July 2015*

Laid before the Scottish Parliament *3rd August 2015*

Coming into force - - - *1st September 2015*

The High Court of Justiciary makes this Act of Adjournal under the powers conferred by section 305 of the Criminal Procedure (Scotland) Act 1995^(a) and all other powers enabling it to do so.

Citation, commencement and application, etc.

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules 1996 and Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 4) (Sheriff Appeal Court) 2015 Amendment) (Miscellaneous) 2015.

(2) It comes into force on 1st September 2015.

(3) Paragraphs 2, 4 and 5(3) to (7) apply only to criminal proceedings commenced on or after 1st September 2015.

(4) For the purposes of subparagraph (3), criminal proceedings are to be taken as commenced on the day on which a report of the case has been received by the procurator fiscal.

(5) A certified copy is to be inserted in the Books of Adjournal.

Amendment of Chapter 2 of the Criminal Procedure Rules 1996

2.—(1) Chapter 2 (service of documents) of the Criminal Procedure Rules 1996^(b) is amended in accordance with this paragraph.

(2) In rule 2.3A (service etc. on accused through a solicitor)^(c)—

^(a) 1995 c.46.

^(b) The Criminal Procedure Rules 1996 are in Schedule 2 to the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513, last amended by S.S.I. 2015/245). Chapter 2 was last amended by S.S.I. 2010/418.

^(c) Rule 2.3A was inserted by S.S.I. 2005/434 and amended by S.S.I. 2007/511.

- (a) the existing rule becomes paragraph (1);
- (b) after paragraph (1) insert—
 - “(2) Paragraph (3) applies where a party requires to intimate—
 - (a) a vulnerable witness notice in accordance with section 271A(13) of the Act of 1995 (child and deemed vulnerable witnesses)(a); or
 - (b) a vulnerable witness application in accordance with section 271C(11) of the Act of 1995 (vulnerable witness application).
 - (3) Intimation may be given to a solicitor under section 72G or 148D of the Act of 1995 by—
 - (a) any of the methods specified in paragraph (1); or
 - (b) sending it to the solicitor via the CJSM system, if that solicitor is a CJSM user.
 - (4) In this rule—
 - “CJSM user” means a solicitor who has an active account on the CJSM system;
 - “CJSM system” means the Criminal Justice Secure eMail system(b) managed by the Ministry of Justice to facilitate the transmission of encrypted sensitive information between criminal justice organisations and practitioners.”.

Amendment of Chapter 19A of the Criminal Procedure Rules 1996

3.—(1) Chapter 19A (alteration by Clerk of Justiciary of place where case to be heard) of the Criminal Procedure Rules 1996(c) is amended in accordance with this paragraph.

(2) In rule 19A.1(1) (power of Clerk of Justiciary to alter place where case to be heard), after paragraph (d) insert—

“(e) adjourned a preliminary hearing under section 75A of the Act of 1995,”.

Amendment of Chapter 22 of the Criminal Procedure Rules 1996

4.—(1) Chapter 22 (evidence of vulnerable witnesses) of the Criminal Procedure Rules 1996(d) is amended in accordance with this paragraph.

(2) For rule 22.1 (child witness notice), substitute—

“Vulnerable witness notice: non-standard special measures

22.1. Where a vulnerable witness notice under section 271A(2) of the Act of 1995 (vulnerable witness notice)—

- (a) specifies a special measure other than a standard special measure; or
- (b) seeks an order authorising the giving of evidence by the witness without the benefit of any special measure,

it shall be in Form 22.1 and shall be lodged with the clerk of court.”.

(a) Section 271A was inserted by the Vulnerable Witnesses (Scotland) Act 2004 (asp 11), section 1(1) and last amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 3), section 87(3). It is prospectively amended by the Victims and Witnesses (Scotland) Act 2014 (asp 1), sections 11 to 13.

(b) The CJSM system may be found at <http://cjsm.justice.gov.uk>.

(c) Chapter 19A was inserted by S.S.I. 2003/468 and last amended by S.S.I. 2010/418.

(d) Chapter 22 was substituted by S.S.I. 2005/118 and last amended by S.S.I. 2006/76.

(3) After rule 22.1, insert—

“Vulnerable witness notice: standard special measures

22.1ZA. Where a vulnerable witness notice under section 271A(2) of the Act of 1995 (vulnerable witness notice) specifies only a standard special measure, it shall be in Form 22.1ZA and shall be lodged with the clerk of court.”.

(4) In rule 22.2 (procedure on lodging child witness notice or vulnerable witness application)(a)—

- (a) in paragraph (1), for “rule 22.1 (child witness notice)” substitute “rule 22.1 (vulnerable witness notice: non-standard special measures) or rule 22.1ZA (vulnerable witness notice: standard special measures)”;
- (b) in paragraph (2), for “child witness notice” substitute “vulnerable witness notice”;
- (c) the heading of rule 22.2 becomes “Procedure on lodging vulnerable witness notice or vulnerable witness application”.

(5) After rule 22.2, insert—

“Objections to special measures

22.2A.—(1) An objection notice under section 271A(4A) or 271C(4A) of the Act of 1995 (objections to special measures) shall be in Form 22.2A and shall be lodged with the clerk of court.

(2) On receipt of an objection notice mentioned in paragraph (1)—

- (a) the clerk of court shall endorse the time and date on which it is received;
- (b) the court shall make an order under section 271A(5A) or 271C(5A) of the Act of 1995; and
- (c) the court shall order intimation of the hearing to be made to the parties.

(3) The party that lodges the objection notice shall lodge a certificate of intimation with the clerk of court—

- (a) within 7 days after lodging the notice; or
- (b) where a diet mentioned in paragraph (4) has been fixed, at least 2 days before that diet,
whichever is earlier.

(4) The diets are—

- (a) a first diet;
- (b) a preliminary hearing; or
- (c) a diet appointed in terms of section 271A(5A)(c) or 271C(5A)(c) of the Act of 1995.”.

(6) In rule 22.3(1)(c) (intimation of an order under section 271A), for “child witness notice” substitute “vulnerable witness notice”.

(7) In rule 22.7 (notice of prohibition of personal conduct of defence), for “child witness notice” substitute “vulnerable witness notice”.

Amendment of the Appendix to the Criminal Procedure Rules 1996

5.—(1) The Appendix to the Criminal Procedure Rules 1996(b) is amended in accordance with this paragraph.

(a) Rule 22.2 was substituted by S.S.I. 2006/76.
(b) The Appendix was last amended by S.S.I. 2015/245.

(2) For Form 20.3A-B (form of notice of requirement to notify police under Part 2 of the Sexual Offences Act 2003)(a), substitute Form 20.3A-B set out in the Schedule to this Act of Adjournal.

(3) In Form 22.1 (form of child witness notice under section 271A(2) of the Criminal Procedure (Scotland) Act 1995)(b)—

- (a) for “child witness notice” in each place where it occurs substitute “vulnerable witness notice”;
- (b) for paragraph 4 substitute—

“[where the witness is a child witness]

4. That [C.D.] [or [A.B.]] is a vulnerable witness under section 271(1)(a) of the Criminal Procedure (Scotland) Act 1995 [and was under the age of twelve on the date of commencement of proceedings] [and has [or has not] expressed a wish to give their evidence in the court room in accordance with section 271B of the Criminal Procedure (Scotland) Act 1995].

[or where the witness is a deemed vulnerable witness]

4. That [C.D.] [or [A.B.]] is a vulnerable witness under section 271(1)(c) of the Criminal Procedure (Scotland) Act 1995.”;

- (c) for paragraph 7, substitute—

“7. That [C.D.] [or [A.B.]] has expressed the following view[s]:—

(here set out the view(s) expressed, how and when they were obtained).

[where the witness is a child witness]

7A. That [C.D.] [or [A.B.]] is a vulnerable witness under section 271(1)(a) of the Criminal Procedure (Scotland) Act 1995, and the parent[s] of [C.D.] [or [A.B.]] have [or has] expressed the following view[s]:—

(here set out the view(s) expressed, how and when they were obtained).”.

- (d) the title of the Form becomes “Form of vulnerable witness notice under section 271A(2) of the Criminal Procedure (Scotland) Act 1995”.

(4) After Form 22.1, insert Form 22.1ZA set out in the Schedule to this Act of Adjournal.

(5) In Form 22.1A (form of vulnerable witness application under section 271C(2) of the Criminal Procedure (Scotland) Act 1995)(c) in paragraph 4, after “section 271(1)(b)” insert “or (d)”.

(6) After Form 22.1A, insert Form 22.2A set out in the Schedule to this Act of Adjournal.

(7) In Form 22.4 (form of application for review of arrangements for taking evidence under section 271D of the Criminal Procedure (Scotland) Act 1995)(d)—

- (a) in paragraph 2, for “the minuter has cited [or intends to cite] [C.D.] as” substitute “[C.D.] is”;

(a) Form 20.3A-B was substituted by S.S.I. 2007/276 and last amended by S.S.I. 2014/349.

(b) Form 22.1 was substituted by S.S.I. 2005/188 and last amended by S.S.I. 2007/237.

(c) Form 22.1A was inserted by S.S.I. 2006/76 and last amended by S.S.I. 2008/62.

(d) Form 22.4 was inserted by S.S.I. 2005/188 and last amended by S.S.I. 2007/237.

(b) for paragraph 6, substitute—

“6. That [C.D.] [or [A.B.]] has expressed the following view[s]:—

(here set out the view(s) expressed, how and when they were obtained).

[where the witness is a child witness]

6A. That [C.D.] [or [A.B.]] is a vulnerable witness under section 271(1)(a) of the Criminal Procedure (Scotland) Act 1995, and the parent[s] of [C.D.] [or [A.B.]] have [or has] expressed the following view[s]:—

(here set out the view(s) expressed, how and when they were obtained).”.

Amendment of the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 4) (Sheriff Appeal Court) 2015

6.—(1) The Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 4) (Sheriff Appeal Court) 2015(a) is amended in accordance with this paragraph.

(2) In paragraph 2(9), in substituted rule 19.11—

(a) in paragraph (1)(a), after “section 179(9)” insert “of the Act of 1995”;

(b) in paragraph (1)(b), after “section 187(9)(a)” insert “of the Act of 1995”.

(3) In paragraph 3, in inserted rule 19E.4(1), after “section 194ZF(2)(a)” insert “of the Act of 1995”.

(4) In paragraph 5(23)(b), for “paragraph 4” substitute “paragraph 5”.

(5) In the Schedule, in Form 19E.2, for “19E.2(4)” in each place where it occurs, substitute “19E.2(5)”.

CJM Sutherland
Lord Justice Clerk
I.P.D.

Edinburgh
31st July 2015

SCHEDULE

Paragraph 5(2), (4) and (6)

Form 20.3A-B

Rule 20.3A(2)

Form of notice of requirement to notify police under Part 2 of the Sexual Offences Act 2003

NOTICE OF REQUIREMENT TO NOTIFY POLICE

This notice is not a complete statement of the law. It contains a summary of the principal notification requirements with which you must comply. For further explanation or advice you should consult a solicitor.

Case No.

You have been convicted of [*or* found not legally responsible for] [*or* found to be under a disability and to have done the act charged against you in respect of] a sexual offence covered by the Sexual Offences Act 2003. The details are set out in the certificate of conviction [*or* finding] which is attached to this notice [*or* will be sent to you].

This means that you are now required by law to notify certain information to the police. Unless otherwise stated, that required information must be provided with the next 3 days (or, if you are in custody, within 3 days of your release)

You must notify the police

- (1) Of your name and any other names you use or have used, your date of birth, your home address (*i.e.* your sole or main residence in the UK or, if you have no such residence, the address or location of any place in the UK where you can regularly be found and, if there is more than one place, your choice of one of these places), and your national insurance number.
- (2) Of any change to your name or home address, or that you have been released from custody, within 3 days of the date of the change, or your release.
- (3) Of any address in the UK where you reside or stay for 7 days or longer. This means either 7 days at a time or a total of 7 days in any 12 month period.
- (4) Whether you have a passport, and, in relation to each passport you have, specify the issuing authority, the number, the dates of issue and expiry and the name and date of birth given as being those of the passport holder. Should you lose or cease to have a passport that has been notified or receive a passport that has not been notified, you must notify the police of this within 3 days of the change of circumstances.

- (5) Of full details of any plans to travel outside the United Kingdom. This notification must be given not less than 7 days in advance of the date of leaving the United Kingdom.
- (6) Whether you hold (either in your name or jointly with another person) any bank account(s).
- (7) Whether you hold any bank account(s) in the name of an unincorporated business which you operate, either solely or with another person.
- (8) Whether you hold a debit card in connection with any account described in paragraph (6) or (7).
- (9) Whether you hold (either in your own name or jointly with any other person) any account(s) with a credit card provider.
- (10) Whether any unincorporated business which you operate (either on your own or with any other person) holds any account(s) with a credit card provider.
- (11) Whether you hold a credit card(s) in connection with any account(s) as described in paragraphs (9) or (10).
- (12) If you hold any bank account(s) as described in paragraph (6), of
- (a) the name of the bank;
 - (b) the address of the office where the account is maintained;
 - (c) the account number and sort code.
- (13) If you hold any bank account(s) as described in paragraph (7), of
- (a) the name of the bank;
 - (b) the address of the office where the account is maintained;
 - (c) the account number and sort code;
 - (d) the name of the business in whose name the account is held.
- (14) If you hold any debit card(s) as described in paragraph (8), of
- (a) the card number;
 - (b) the validation date;
 - (c) the expiry date;
 - (d) the name of any business in whose name the card is held.

- (15) If you hold any account(s) as described in paragraphs (9) or (10), of
- (a) the name of the credit card provider;
 - (b) the address of the office at which the account is maintained; and
 - (c) the name of any business in whose name the account is held.
- (16) If you hold any credit card(s) as described in paragraph (11), of
- (a) the card number;
 - (b) the validation date;
 - (c) the expiry date;
 - (d) the name of any business in whose name the card is held.
- (17) Of the details mentioned in the previous paragraphs every 12 months when you have a sole or main residence in the United Kingdom, or every 7 days where you have no such address, *even if there is no change to those details.*

Please note: if you are already subject to the notification requirements because of a previous conviction, or finding for a relevant offence then it is not necessary to make another initial notification. However, you will have to comply with all other notification requirements (including the requirement to notify the police within 3 days of any release from custody or detention).

You must give this notice by going to any police station which is prescribed for the purposes of the notification requirements and giving it in person. If you do not know where those prescribed police stations are located, then ask at any police station.

These requirements apply to you from [*date of conviction or finding*] and shall continue to apply for 5 years [*or for 7 years*] [*or for 10 years*] [*or for the duration of your community payback order*] [*or indefinitely*].

If you fail to comply with these requirements without reasonable excuse, or give the police false information, you could be fined, or sent to prison for up to 5 years, or both.

Form 22.1ZA

Form of vulnerable witness notice under section 271A(2) of the Criminal Procedure
(Scotland) Act 1995: standard special measures

Rule 22.1ZA

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE
CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*) AT (*place*)]

VULNERABLE WITNESS NOTICE

by

HER MAJESTY'S ADVOCATE [or THE PROCURATOR FISCAL, (*place*)]

[or [A.B.] (*address*)

[or Prisoner in the Prison of (*place*)]]

Prosecution reference.....

Court reference.....

HUMBLY SHEWETH:

1. That [A.B.], (*date of birth*) [along with (*name(s) of co-accused*)] has been indicted on (*date of indictment*) at the instance of Her Majesty's Advocate with a preliminary hearing [or a trial diet] in the High Court of Justiciary sitting at (*place*) on (*date*) [or with a first diet on (*date*) and a trial diet on (*date*) in the sheriff court of (*place*)] [or has been charged in the above court on a summary complaint at the instance of the procurator fiscal with a trial diet on (*date*) in the sheriff court of (*place*)].

[or, where the vulnerable witness is notice is lodged for the purposes of proceedings under section 210C(7) of the Criminal Procedure (Scotland) Act 1995 (no objection to risk assessment report etc.)

1. That on (*date*) the High Court of Justiciary sitting at (*place*) made a risk assessment order [or an interim compulsion order] in respect of [A.B.].]
2. That the applicant has cited [or intends to cite] [C.D.], (*date of birth*) as a witness who is to give evidence at, or for the purposes of, the trial [or proceedings under section 210C(7) of the Criminal Procedure (Scotland) Act 1995].

[where the witness is a child witness

3. That [C.D.] [or [A.B.]] is a vulnerable witness under section 271(1)(a) of the Criminal Procedure (Scotland) Act 1995 (child witness).]

[or where the witness is a deemed vulnerable witness

3. That [C.D.] is a vulnerable witness under section 271(1)(c) of the Criminal Procedure (Scotland) Act 1995 (deemed vulnerable witness) because [A.B.] is charged with an offence:
- [listed in paragraphs 36 to 592L of the Sexual Offences Act 2003;]
[or under section 22 of the Criminal Justice (Scotland) Act 2003;]
[or under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004;]

[or the commission of which involves domestic abuse;]
[or of stalking;]
- and the offence is alleged to have been committed against [C.D.]
4. The following special measure[s] is [or are] considered the most appropriate for the purpose of taking the evidence of [C.D.] [or the applicant]:—
- (here specify any special measure(s) sought)*
5. That the special measure[s] listed in paragraph 4 is [or are] a standard special measure in terms of section 271A(14) of the Act of 1995.
6. That the applicant has intimated a copy of the Notice on [A.B.] [or the legal representative of [A.B.]] [or the Crown Agent] [or the procurator fiscal].

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]—

- (a) to authorise the special measure[s] sought; or
(b) to do otherwise as to your Lordship[s] shall seem proper; and
(c) to require the clerk of court to intimate the order to *(specify)*.

ACCORDING TO JUSTICE, etc.

(Signed)

[A.B.]

[or legal representative of [A.B.]]

[or Prosecutor]

(Address, email address and telephone number of agent).

Form 22.2A

Form of objection notice under section 271A(4A) or 271C(4A) of the Criminal Procedure (Scotland) Act 1995

Rule 22.2A

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*) AT (*place*)]

OBJECTION NOTICE

by

HER MAJESTY'S ADVOCATE [or THE PROCURATOR FISCAL, (*place*)]

[or [A.B.] (*address*)

[or Prisoner in the Prison of (*place*)]]

in

HER MAJESTY'S ADVOCATE [or THE PROCURATOR FISCAL, (*place*)]

against

[A.B.] (*address*)

[or Prisoner in the Prison of (*place*)]

Prosecution reference.....

Court reference.....

HUMBLY SHEWETH:

1. That [A.B.] [, along with (*names of co-accused*)] has been indicted at the instance of Her Majesty's Advocate [or has been charged on a summary complaint at the instance of the procurator fiscal].

[or
1. That [A.B.] was convicted of (*specify*) on (*date*).]
2. That [C.D.] is a witness who is to [or [A.B.] may] give evidence at, or for the purposes of, the trial [or proceedings under section 210C(7) of the Criminal Procedure (Scotland) Act 1995], and is a vulnerable witness under section 271(1) of the Criminal Procedure (Scotland) Act 1995.
3. That a vulnerable witness notice under section 271A(2) of the Act of 1995 has been lodged with the court.

[or

3. That a vulnerable witness application under section 271C(2) of the Act of 1995 has been lodged with the court.]

4. That objection is taken to the following special measure(s) which are specified in the vulnerable witness notice [or vulnerable witness application]:

(here specify the measure(s) to which objection is taken)

5. That the reasons for objection are:

(here specify the reasons for objection)

6. That the applicant has intimated a copy of this Notice on [A.B.] [or the legal representative of [A.B.]] [or the Crown Agent] [or the procurator fiscal].

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]—

(a) to make an order appointing the Notice to be disposed of at a hearing in accordance with section 271A(5A) [or 271C(5A)] of the 1995 Act;

(b) to appoint intimation of the hearing to be made to *(specify persons)*;

(c) thereafter, after hearing all the parties, to make an order *(specify)*;

(d) or to do otherwise as to your Lordship[s] shall seem proper.

ACCORDING TO JUSTICE, etc.

(Signed)

[A.B.]

[or legal representative of [A.B.]]

[or Prosecutor]

(Address, email address and telephone number of agent).

EXPLANATORY NOTE

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

This Act of Adjournal amends the Act of Adjournal (Criminal Procedure Rules) 1996 (“the Criminal Procedure Rules”) and the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 4) (Sheriff Appeal Court) 2015. It comes into force on 1st September 2015.

Paragraphs 2, 4 and 5(3) to (7) amend the Criminal Procedure Rules in consequence of the coming into force of the Victims and Witnesses (Scotland) Act 2014 (“the 2014 Act”).

Paragraph 2 amends rule 2.3A of the Criminal Procedure Rules to enable vulnerable witness notices and vulnerable witness applications to be intimated to the solicitor for an accused via the Criminal Justice Secure eMail system, in addition to the existing methods of intimation.

Paragraph 4 amends Chapter 22 of the Criminal Procedure Rules, principally to reflect changes in terminology (e.g. child witness notices becoming vulnerable witness notices) as a result of the amendments made to the Criminal Procedure (Scotland) Act 1995 by the 2014 Act. Paragraph 5(3) to (7) makes similar amendments to the Forms in the Appendix, and inserts new Forms that are required in consequence of the 2014 Act amendments.

Paragraph 3 amends rule 19A.1 of the Criminal Procedure Rules so that, where the High Court of Justiciary adjourns a preliminary hearing, the Clerk of Justiciary may alter the place where the adjourned preliminary hearing is to be heard.

Paragraph 5(2) substitutes a new Form 20.3A-B (form of notice of requirement to notify police under Part 2 of the Sexual Offences Act 2003) in the Appendix to the Criminal Procedure Rules. It adds the requirement to notify the police of plans to travel outside the United Kingdom, and clarifies that the Form contains a summary of the requirements, not a complete statement of the law.

Paragraph 6 corrects minor errors in the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 4) (Sheriff Appeal Court) 2015 before that instrument comes into force on 22nd September 2015.

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