
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 468

Act of Sederunt (Sheriff Appeal Court Rules) 2021

PART 6

INCIDENTAL PROCEDURE: SPECIAL PROCEDURES

CHAPTER 26

VULNERABLE WITNESSES

Application and interpretation of this Chapter

26.1.—(1) This Chapter applies where a proof or an additional proof is ordered to be taken under rule 25.1(1).

(2) In this Chapter—

“the 2004 Act” means the Vulnerable Witnesses (Scotland) Act 2004(1);

“child witness notice” has the meaning given by section 12(2) of the 2004 Act (orders authorising the use of special measures for vulnerable witnesses);

“review application” means an application under section 13(1)(a) of the 2004 Act (review of arrangements for vulnerable witnesses);

“vulnerable witness application” has the meaning given by section 12(6) of the 2004 Act (orders authorising the use of special measures for vulnerable witnesses).

Commencement Information

II Para. 26.1 in force at 6.1.2022, see [para. 1.1\(2\)](#)

Form of notices and applications

26.2.—(1) A child witness notice is to be made in Form 26.2–A.

(2) A vulnerable witness application is to be made in Form 26.2–B.

(3) A review application is to be made—

(a) in Form 26.2–C; or

(b) orally, if the Court grants leave.

(1) 2004 asp 3, amended by the Children’s Hearings (Scotland) Act 2011 (asp 1), section 176 and schedule 6, paragraph 1; the Victims and Witnesses (Scotland) Act 2014 (asp 1), section 22 and is prospectively amended by the Children (Scotland) Act 2020 (asp 16), sections 4 and 5.

Commencement Information

I2 Para. 26.2 in force at 6.1.2022, see [para. 1.1\(2\)](#)

Determination of notices and applications

26.3.—(1) When a notice or application under this Chapter is lodged, the Court may require any of the parties to provide further information before determining the notice or application.

(2) The Court may—

- (a) determine the notice or application by making an order under section 12(1) or (6) or 13(2) of the 2004 Act without holding a hearing;
- (b) fix a hearing at which parties are to be heard on the notice or application before determining it.

(3) The Court may make an order altering the date of the proof in order that the notice or application may be determined.

Commencement Information

I3 Para. 26.3 in force at 6.1.2022, see [para. 1.1\(2\)](#)

Determination of notices and applications: supplementary orders

26.4. Where the Court determines a notice or application under this Chapter and makes an order under section 12(1) or (6) or 13(2) of the 2004 Act, the Court may make further orders to secure the expeditious disposal of the appeal.

Commencement Information

I4 Para. 26.4 in force at 6.1.2022, see [para. 1.1\(2\)](#)

Intimation of orders

26.5.—(1) Where the Court makes an order—

- (a) fixing a hearing under rule 26.3(2)(b);
- (b) altering the date of a proof or other hearing under rule 26.3(3); or
- (c) under section 12(1) or (6) or 13(2) of the 2004 Act,

the Clerk must intimate the order in accordance with this rule.

(2) Intimation must be given to—

- (a) every party to the proceedings;
- (b) any other person named in the order.

(3) Intimation must be made—

- (a) on the day that the hearing is fixed or the order is made;
- (b) in the manner ordered by the Court.

Commencement Information

I5 Para. 26.5 in force at 6.1.2022, see [para. 1.1\(2\)](#)

Taking of evidence by commissioner: preparatory steps

26.6.—(1) This rule applies where the Court authorises the special measure of taking evidence by a commissioner under section 19(1) of the 2004 Act (taking of evidence by a commissioner).

(2) The commission is to proceed without interrogatories unless the Court otherwise orders.

(3) The order of the Court authorising the special measure is sufficient authority for citing the vulnerable witness to appear before the commissioner.

(4) The party who cited the vulnerable witness—

(a) must give the commissioner—

(i) a certified copy of the order of the Court appointing the commissioner;

(ii) a copy of the appeal documents;

(iii) where rule 26.7 applies, the approved interrogatories and cross-interrogatories;

(b) must instruct the clerk to the commission;

(c) is responsible in the first instance for the fee of the commissioner and the clerk.

(5) The commissioner is to fix a hearing at which the commission will be carried out.

(6) The commissioner must consult the parties before fixing the hearing.

(7) An application by a party for leave to be present in the room where the commission is carried out is to be made by motion.

(8) In this rule, “appeal documents” means any of the following documents that have been lodged in process by the time the use of the special measure is authorised—

(a) the note of appeal and answers;

(b) where there is a cross-appeal, the grounds of appeal and answers;

(c) the appeal print and appendices;

(d) the notes of argument.

Commencement Information

I6 Para. 26.6 in force at 6.1.2022, see [para. 1.1\(2\)](#)

Taking of evidence by commissioner: interrogatories

26.7.—(1) This rule applies where the Court—

(a) authorises the special measure of taking evidence by a commissioner under section 19(1) of the 2004 Act; and

(b) orders that interrogatories are to be prepared.

(2) The party who cited the vulnerable witness must lodge draft interrogatories in process.

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

(4) The parties may adjust their interrogatories and cross-interrogatories.

(5) At the expiry of the adjustment period, the parties must lodge the interrogatories and cross-interrogatories as adjusted in process.

(6) The Court is to resolve any dispute as to the content of the interrogatories and cross-interrogatories, and approve them.

(7) When the Court makes an order for interrogatories to be prepared, it is to specify the periods within which parties must comply with the steps in this rule.

Commencement Information

I7 Para. 26.7 in force at 6.1.2022, see [para. 1.1\(2\)](#)

Taking of evidence by commissioner: conduct of commission

26.8.—(1) The commissioner must administer the oath *de fideli administratione* to the clerk.

(2) The commissioner is to administer the oath to the vulnerable witness in Form 25.4-A unless the witness elects to affirm.

(3) Where the witness elects to affirm, the commissioner must administer the affirmation in Form 25.4-B.

Commencement Information

I8 Para. 26.8 in force at 6.1.2022, see [para. 1.1\(2\)](#)

Taking of evidence by commissioner: lodging and custody of video record and documents

26.9.—(1) The commissioner must lodge the video record of the commission and any relevant documents with the Clerk.

(2) When the video record and any relevant document are lodged, the Clerk must notify every party—

- (a) that the video record has been lodged;
- (b) whether any relevant documents have been lodged;
- (c) of the date on which they were lodged.

(3) The video record and any relevant documents must be kept by the Clerk.

(4) Where the video record has been lodged—

- (a) the name and address of the vulnerable witness and the record of the witness's evidence are to be treated as being in the knowledge of the parties;
- (b) the parties need not include—
 - (i) the name of the witness in any list of witnesses; or
 - (ii) the record of evidence in any list of productions.

Commencement Information

I9 Para. 26.9 in force at 6.1.2022, see [para. 1.1\(2\)](#)

Changes to legislation:

There are currently no known outstanding effects for the Act of Sederunt (Sheriff Appeal Court Rules) 2021, CHAPTER 26.