



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XII

#### EVIDENCE

*[<sup>F1</sup>Special measures for child witnesses and other vulnerable witnesses]*

#### **[<sup>F1</sup>271B Further special provision for child witnesses under the age of 12**

- (1) This section applies where a child witness—
- (a) is to give evidence at, or for the purposes of, [<sup>F2</sup>a hearing in relevant criminal proceedings] in respect of any offence specified in subsection (2) below, and
  - (b) is under the age of 12 on the date of commencement of the proceedings in which [<sup>F3</sup>the hearing] is being or to be held.
- (2) The offences referred to in subsection (1)(a) above are—
- (a) murder,
  - (b) culpable homicide,
  - <sup>F4</sup>(c) . . . . .
  - (d) any offence which involves an assault on, or injury or a threat of injury to, any person (including any offence involving neglect or ill-treatment of, or other cruelty to, a child),
  - (e) abduction, <sup>F4</sup>...
  - (f) plagium.
  - [ an offence to which section 288C applies (certain sexual offending),
  - <sup>F5</sup>(g)
  - (h) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
  - (i) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.]

[<sup>F6</sup>(3) Subsection (4) applies if the child witness expresses a wish to be present in the courtroom for the purpose of giving evidence.

*Status: Point in time view as at 26/12/2023.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 271B is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) The court must make an order under section 271A or, as the case may be, 271D which has the effect of requiring the child witness to be present in the court-room for the purpose of giving evidence unless the court considers that it would not be appropriate for the child witness to be present there for that purpose.
- [<sup>F7</sup>(4A) Where the court is required to make an order having the effect mentioned in subsection (4), an order made by the court under section 271A(5)(a) may authorise the use of a special measure or measures other than those specified in the vulnerable witness notice if that would result in the order having the effect mentioned in subsection (4).]
- (5) Subsection (6) applies if the child witness—
- (a) does not express a wish to be present in the court-room for the purpose of giving evidence, or
  - (b) expresses a wish to give evidence in some other way.
- (6) The court may not make an order under section 271A or 271D having the effect mentioned in subsection (4) unless the court considers that—
- (a) the giving of evidence by the child witness in some way other than by being present in the court-room for that purpose would give rise to a significant risk of prejudice to the fairness of the trial or otherwise to the interests of justice, and
  - (b) that risk significantly outweighs any risk of prejudice to the interests of the child witness if the order were to be made.]

[ This section does not apply in a case to which section 271BZA applies.]]

<sup>F8</sup>(7)

#### Textual Amendments

- F1** Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 1, 25**; [S.S.I. 2005/168](#), **art. 2**, Sch. (with savings in art. 4); [S.S.I. 2005/590](#), **art. 2**, Sch. (with art. 4); [S.S.I. 2006/59](#), **art. 2**, Sch. (with art. 4(1)); [S.S.I. 2007/101](#), **art. 2**, Sch. (with art. 4); [S.S.I. 2007/329](#), **art. 2**, Sch. (with art. 4); [S.S.I. 2008/57](#), **art. 2** (with art. 3)
- F2** Words in s. 271B(1)(a) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(4)(a)**, 206(1); [S.S.I. 2011/178](#), art. 2, sch.
- F3** Words in s. 271B(1)(b) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(4)(b)**, 206(1); [S.S.I. 2011/178](#), art. 2, sch.
- F4** S. 271B(2)(c) and word preceding s. 271B(2)(f) repealed (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), **sch. para. 6(2)(a)**; [S.S.I. 2018/387](#), reg. 2 (with reg. 7)
- F5** Ss. 271B(2)(g)-(i) inserted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), **sch. para. 6(2)(b)**; [S.S.I. 2018/387](#), reg. 2 (with reg. 7)
- F6** S. 271B(3)-(6) substituted for s. 271B(3) (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 14(1)**, 34; [S.S.I. 2015/200](#), art. 2(2), sch. (with arts. 1(3), 4)
- F7** S. 271B(4A) inserted (20.1.2020) by [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(asp 8\)](#), **ss. 2(2)(a)**, 12(2); [S.S.I. 2019/392](#), reg. 2
- F8** S. 271B(7) inserted (20.1.2020) by [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(asp 8\)](#), **ss. 2(2)(b)**, 12(2); [S.S.I. 2019/392](#), reg. 2

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**Modifications etc. (not altering text)**

- C1** Ss. 271-271M applied by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 3, 25**; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, { art. 2 } (with art. 3)
- C2** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), **3** (with art. 1(3))

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