



# 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>271BZC] Child witnesses in certain solemn cases: modifications of section 271D**

- (1) In a case to which section 271BZA applies, section 271D applies with the following modifications.
- (2) Section 271D has effect as if—
  - (a) subsections (3A) to (3C) were omitted,
  - (b) subsection (4A) were omitted, and
  - (c) the following subsections were inserted after subsection (4A)—
    - “(4B) Subsections (2) to (4) are subject to subsections (4C) to (4H).
    - (4C) Unless the hearing has already commenced when the court commences its review or the court is satisfied that an exception is justified under section 271BZA(7) or (8), an order made by the court under this section must not—
      - (a) revoke the earlier order, or
      - (b) vary it in such a way that it no longer satisfies the requirements set out in section 271BZA(4)(a)(i), (ii) and (iii).
    - (4D) An order made by the court under this section must have the effect of authorising the use of the special measure of taking of evidence by a commissioner in accordance with section 271I if—
      - (a) that is requested by any party to the proceedings, and
      - (b) the earlier order authorises only the special measure of giving evidence in chief in the form of a prior statement in accordance with section 271M.

**Changes to legislation:** Criminal Procedure (Scotland) Act 1995, Section 271BZC is up to date with all changes known to be in force on or before 04 August 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) View outstanding changes

- (4E) However, an order made by the court under this section need not have the effect described in subsection (4D) if—
- (a) the hearing has already commenced when the court commences its review, or
  - (b) the court is satisfied that an exception is justified under section 271BZA(7) or (8).
- (4F) Even if the hearing has already commenced when the court commences its review or the court is satisfied that an exception is justified under section 271BZA(7) or (8), an order made under this section must not have the effect of requiring the child witness to be present in the courtroom to give evidence unless the court is satisfied that subsection (4G) or (4H) applies.
- (4G) This subsection applies if—
- (a) the giving of evidence by the child witness in some way other than by being present in the courtroom for that purpose would give rise to a significant risk of prejudice to the fairness of the hearing 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 child witness were to be present in the courtroom to give evidence.
- (4H) This subsection applies if—
- (a) the child witness is aged 12 or over on the date of commencement of the proceedings in which the hearing is being held or is to be held,
  - (b) the child witness expresses a wish to be present in the courtroom to give evidence, and
  - (c) it would be in the child witness's best interests to be present in the courtroom to give evidence.”]

#### Textual Amendments

- F1** Ss. 271BZA-271BZC inserted (20.1.2020 for specified purposes) by [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(asp 8\)](#), **ss. 1(2), 12(2)**; [S.S.I. 2019/392, reg. 2](#) (with [reg. 3](#))

**Changes to legislation:**

Criminal Procedure (Scotland) Act 1995, Section 271BZC is up to date with all changes known to be in force on or before 04 August 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.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by 2010 asp 13 Sch. 7 para. 26
- s. 13(1B)(1C) inserted by 2006 asp 10 s. 82(2)
- s. 13(2)(aa) inserted by 2006 asp 10 s. 82(3)(b)
- s. 13(3A) inserted by 2006 asp 10 s. 82(4)
- s. 13(5)(ba) inserted by 2006 asp 10 s. 82(5)(a)
- s. 13(6)(a)(iii) and word inserted by 2006 asp 10 s. 82(6)(b)
- s. 13(8) inserted by 2006 asp 10 s. 82(7)
- s. 22(5A) inserted by 2007 asp 6 s. 7(2)(g)
- s. 22A(1A) inserted by 2023 asp 4 s. 1(2)
- s. 23B(1)(1A) substituted for s. 23B(1) by 2023 asp 4 s. 2(2)(a)
- s. 23B(6A) inserted by 2023 asp 4 s. 1(3)(c)
- s. 23B(8)-(10) inserted by 2023 asp 4 s. 2(2)(c)
- s. 23C(1A) inserted by 2023 asp 4 s. 2(3)(b)
- s. 23C(3) inserted by 2023 asp 4 s. 2(3)(c)
- s. 24(2C) inserted by 2023 asp 4 s. 4(4)
- s. 24(2AA) inserted by 2023 asp 4 s. 4(2)
- s. 44(5A)(5B) inserted by 2024 asp 5 s. 19(2)(c)
- s. 49(1)-(1F) substituted for s. 49(1)-(3) by 2024 asp 5 s. 17(2)(a)
- s. 49(4A)-(4C) inserted by 2024 asp 5 s. 17(2)(c)
- s. 50(7) inserted by 2024 asp 5 s. 16(2)
- s. 51(6)-(8) inserted by 2024 asp 5 s. 18(2)(e)
- s. 70B and cross-heading inserted by 2024 asp 5 s. 16(3)
- s. 73A inserted by 2004 asp 3 s. 2(3)
- s. 142A inserted by 2024 asp 5 s. 16(5)
- s. 167(7D)(7E) inserted by 2007 asp 17 sch. 4 para. 1(3)
- s. 167(7D) words substituted by 2010 asp 13 Sch. 3 para. 16(2)
- s. 167(7E) words substituted by 2010 asp 13 Sch. 3 para. 16(3)
- s. 175(1)(ca) words substituted by 2024 asp 5 Sch. para. 7(4)(a)
- s. 194ZA repealed by 2014 asp 18 sch. 3 para. 25
- s. 200A inserted by 2016 asp 1 s. 85
- s. 205A added by 1997 c. 48 s. 1(1) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by 2003 asp 7, s. 19(3); S.S.I. 2003/288, art. 2, Sch.)
- s. 208A inserted by 2024 asp 5 s. 19(6)
- s. 216(8)-(11) inserted by 2024 asp 5 s. 19(7)
- s. 249(4A)-(4D) inserted by 2014 asp 1 s. 24
- s. 271D(4A) inserted by 2019 asp 8 s. 6(4)
- s. 271F(2)(aa) inserted by 2019 asp 8 s. 10(4)
- s. 271AA inserted by 2019 asp 8 s. 6(2)
- s. 271BZD inserted by 2019 asp 8 s. 3(2)
- Sch. 5A added by 1997 c. 48 s. 1(2) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by 2003 asp 7, s. 19(3); S.S.I. 2003/288, art. 2, Sch.)