



# Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019

## 2019 asp 8

### *Taking evidence by commissioner*

#### **5 Taking evidence by commissioner**

(1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 271I, after subsection (1), insert—

“(1ZA) A court which appoints a commissioner under subsection (1) must—

- (a) fix a date for the proceedings before the commissioner, and
- (b) fix a date for a hearing (to be known as a “ground rules hearing”) for the purpose of preparing for the proceedings.

(1ZB) The ground rules hearing is to be presided over by—

- (a) a judge of the court which appointed the commissioner if—
  - (i) the court directs that the ground rules hearing be conjoined with another hearing or diet that is to be held before the date of the proceedings to which the ground rules hearing relates and that hearing or diet is presided over by a judge, or
  - (ii) it is not reasonably practicable for the ground rules hearing to be presided over by the commissioner appointed to preside over the proceedings to which the ground rules hearing relates, or
- (b) in any other case, the commissioner appointed to preside over the proceedings to which the ground rules hearing relates.

(1ZC) In cases where a judge presides over a ground rules hearing in accordance with subsection (1ZB)(a), references to the commissioner in subsection (1ZD) are to be read as references to the judge.

(1ZD) The commissioner presiding over a ground rules hearing must—

- (a) ascertain the length of time the parties expect to take for examination-in-chief and cross-examination, including any breaks that may be required,

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- (b) to the extent that the commissioner considers it appropriate to do so, decide on the form and wording of the questions that are to be asked of the vulnerable witness,
  - (c) if the commissioner considers it appropriate to do so, authorise the use of a supporter at the proceedings, in accordance with section 271L,
  - (d) if the commissioner considers that there are steps that could reasonably be taken to enable the vulnerable witness to participate more effectively in the proceedings, direct that those steps be taken,
  - (e) subject to section 72(8) which applies in relation to the commissioner as it applies in relation to the court, dispose of any application that—
    - (i) has been made under section 275(1) or 288F(2), and
    - (ii) has not yet been disposed of by the court,
  - (f) consider whether the proceedings should take place on the date fixed by the court and postpone the proceedings if the commissioner considers that it is in the interests of justice to do so having regard to all the circumstances, including—
    - (i) whether the parties are likely to be ready for the proceedings to take place on the date fixed by the court and if not, the reasons for that,
    - (ii) any views expressed by the parties on whether the proceedings should be postponed, and
    - (iii) whether postponement is in the interests of the vulnerable witness, and
  - (g) consider and, if appropriate, make a decision on, any other matter that the commissioner considers could be usefully dealt with before the proceedings take place.”.
- (3) In section 271I(1A), after “proceedings”, in the second place where it occurs, insert “ or it was so directed at the ground rules hearing ”.
- (4) In section 271I, after subsection (4), insert—
- “(4A) It is not necessary (in solemn cases) for an indictment to have been served before—
- (a) a party may lodge a vulnerable witness notice which specifies the special measure of taking evidence by commissioner as the special measure or one of the special measures which the party considers to be the most appropriate for the purpose of taking the witness's evidence,
  - (b) a court may make an order authorising the use of the special measure of taking evidence by commissioner, whether on its own or in combination with any other special measure specified in the same vulnerable witness notice,
  - (c) a court may appoint a commissioner under subsection (1), or
  - (d) proceedings may take place before a commissioner appointed under subsection (1).”.
- (5) In section 271I(8)(a), after “trial” insert “ which the court (when it appoints the commissioner) expects will be ”.
- (6) In section 271, in subsection (3)—
- (a) for “above and section 271B(1)(b) below” substitute “ , section 271B(1)(b) and sections 271BZA to 271BZC ”,

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- (b) for “commenced” substitute “commenced—
- (a) where it is relevant to a court's consideration of whether to authorise the use of the special measure of taking evidence by commissioner (on its own or in combination with any other special measure) and the accused has appeared on petition, on the date when the accused appeared on petition, or
  - (b) in any other case, on the date”.
- (7) In section 72(6)(b)(iii), after “hearing” insert “ (to the extent that the application has not already been disposed of) ”.
- (8) In section 271D, after subsection (6), insert—
- “(6A) In this section, “court” includes a commissioner appointed under section 271I(1).”.

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**Commencement Information**

**II** S. 5 in force at 20.1.2020 by S.S.I. 2019/392, reg. 2, sch. (with reg. 4)

**Changes to legislation:**

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