

2005 No.188

HIGH COURT OF JUSTICIARY

SHERIFF COURT

**Act of Adjournal (Criminal Procedure Rules Amendment No. 3)
(Vulnerable Witnesses (Scotland) Act 2004) 2005**

Made - - - - - *24th March 2005*

Coming into force - - - - - *1st April 2005*

The Lord Justice General, the Lord Justice Clerk and Lords Commissioners of Justiciary, under and by virtue of the powers conferred on them by section 305 of the Criminal Procedure (Scotland) Act 1995(a), and of all other powers enabling them in that behalf, with the consent of the Scottish Ministers, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 3) (Vulnerable Witnesses (Scotland) Act 2004) 2005 and shall come into force on 1st April 2005.

(2) This Act of Adjournal shall be inserted in the Books of Adjournal.

Amendment of the Act of Adjournal (Criminal Procedure Rules) 1996

2.—(1) Subject to sub-paragraph (2), the Act of Adjournal (Criminal Procedure Rules) 1996(b) shall be amended in accordance with the following sub-paragraphs.

(2) Nothing in sub-paragraphs (3), (6) and (7)(a), (d), (e) or (f) of this Act of Adjournal shall affect any—

(a) summary proceedings; or

(b) solemn proceedings—

(i) which commenced before 1st April 2005; or

(ii) which commenced after 1st April 2005 where there is no child witness within the meaning of section 271(1)(a) of the Criminal Procedure (Scotland) Act 1995,

with proceedings being taken to have commenced when a report of the case has been received by the procurator fiscal.

(a) 1995. c.46.

(b) S.I.1996/513, last amended by S.S.I.2005/160.

(3) In rule 8.2(2) (notice to accused to appear)(a) after “applies” there shall be inserted “or, where it is known by the prosecutor that the offence is one to which section 288E of that Act (prohibition of personal conduct of defence where a child witness is under the age of 12)(b) applies,”.

(4) In rule 21.4 (authentication of certain prior statements of witnesses) after “the first page of the statement” there shall be inserted “or attached to the device on which the statement has been recorded.”.

(5) After rule 21.5 (form of application to introduce evidence relating to sexual offences)(c) there shall be inserted the following:–

“Notice of intention to rely on presumption of identification

21.6.—(1) A notice under section 281A(2)(a) of the Act of 1995 (notice of intention to rely on presumption of identification prior to trial)(d) shall be in Form 21.6-A.

(2) A notice under section 281A(2)(b) of the Act of 1995 (notice of intention to challenge facts in report of identification) shall be in Form 21.6-B.”.

(6) For Chapter 22 (evidence of vulnerable persons)(e) there shall be substituted the following:–

“CHAPTER 22

EVIDENCE OF VULNERABLE WITNESSES

Child witness notice

22.1. A notice under section 271A(2) of the Act of 1995 (child witness notice)(f) shall be in Form 22.1 and shall be lodged with the clerk of court.

Procedure on lodging child witness notice

22.2.—(1) On receipt of a notice under rule 22.1 (child witness notice) the clerk of court shall—

- (a) endorse on the notice the time and date on which it was received; and
- (b) place the notice before a judge in chambers.

(2) The party that lodges the child witness notice shall lodge a certificate of intimation with the clerk of court—

- (a) within 7 days after lodging the child witness notice; or
- (b) at least 2 days before any first diet or preliminary hearing,

whichever is the earlier.

Intimation of an order under section 271A

22.3.—(1) An order—

- (a) under section 271A(5)(a) of the Act of 1995 authorising the use of a special measure;

(a) Rule 8.2 was amended by S.S.I. 2005/44.
(b) Section 288E was inserted by section 6 of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) and was amended by section 4(3) of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).
(c) Rule 21.5 was inserted by S.S.I. 2002/454.
(d) Section 281A was inserted by section 4 of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3).
(e) Chapter 22 was amended by S.S.I. 1997/1834.
(f) Section 271A was inserted by section 1(1) of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) and was amended by paragraph 43(a) of the Schedule to the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

- (b) under section 271A(5)(b) of that Act authorising the giving of evidence without the benefit of any special measures;
- (c) appointing a child witness notice to be disposed of—
 - (i) under section 271A(5A)(a) of that Act(a), at a preliminary hearing; or
 - (ii) under section 271A(5A)(b) of that Act, at a first diet; or
- (d) under section 271A(5A)(c) or (7)(b)(ii) of that Act(b), appointing a diet to be held before the trial diet; or
- (e) under section 271A(9) of that Act (order in relation to special measures after hearing)(c),

may be signed by the clerk of court.

(2) An order mentioned in paragraph (1) shall be intimated by the clerk of court to all parties, unless the party was present at the hearing at which the order was made, and in the case of an order under paragraph (1)(c) or (d), to the governor of any institution in which the accused is detained.

Review of arrangements for vulnerable witnesses

22.4.—(1) An application under section 271D(1)(a) of the Act of 1995 (review of arrangements for vulnerable witnesses)(d) may be made—

- (a) orally; or
- (b) in writing by minute in Form 22.4.

(2) A minute under paragraph (1)(b) shall be lodged with the clerk of the court and served on every other party by the minuter.

Procedure for review

22.5. On receipt of a minute under rule 22.4(1)(b) (minute for review of arrangements for vulnerable witnesses) or, on a review on the court’s own motion, the court shall make an order endorsed on the minute or recorded in the minute of proceedings—

- (a) fixing a diet for a hearing of the application or to hear parties; and
- (b) for service of the minute or order with the date of the diet on all parties and to the governor of any institution in which the accused is detained.

Intimation of the order

22.6. Where an order under section 271D(2) of the Act of 1995 (order after review of arrangements for vulnerable witnesses) is made at a hearing fixed under rule 22.5 (procedure for review) it shall be intimated by the clerk of court to all parties unless the party was present at the hearing at which the order was made.

Notice of prohibition of personal conduct of defence

22.7. In proceedings to which section 288E of the Act of 1995 (prohibition of personal conduct of defence in certain cases involving child witnesses under the age of 12)(e)

(a) Section 271A(5A) was inserted by paragraph 43(d) of the Schedule to the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).
 (b) Section 271A(7)(b)(ii) was inserted by paragraph 43(e) of the Schedule to the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).
 (c) Section 271A(9) was amended by paragraph 43(h) of the Schedule to the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).
 (d) Section 271D was inserted by section 1(1) of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3).
 (e) Section 288E was inserted by section 6 of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) and amended by section 4(3) of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

applies, a notice in Form 22.7 shall be served on the accused by the prosecutor with any child witness notice, unless a notice in Form 8.2-C(a) has already been served.

Application for prohibition of personal conduct of defence

22.8.—(1) An application under section 288F(2)(a) of the Act of 1995 (prohibition of personal conduct of defence)(b) shall be made by minute in Form 22.8-A.

(2) The minute shall be lodged with the clerk of court and served on all parties by the minuter.

(3) On receipt of a minute under paragraph (1), or on the court’s own motion, the court shall make an order endorsed on the minute or recorded in the minute of proceedings—

- (a) fixing a diet for a hearing of the application or to hear parties; and
- (b) for service of the minute or order with the date on all parties and to the governor of any institution in which the accused is detained.

(4) Where a party is not represented or personally present at a hearing under paragraph (3) when an order is made under section 288F of the Act of 1995 (order prohibiting personal conduct of defence) the clerk of court shall intimate the order to that party.

(5) On the making of an order under section 288F of the Act of 1995 in the absence of the accused, the prosecutor shall forthwith serve on the accused a notice in Form 22.8-B.

Transfer of cases

22.9. Where the sheriff makes an order under section 271J(4) or 271K(3) of the Act of 1995 (transfer of proceedings where evidence is by live television link or with the use of screens)(c) transferring the proceedings to another sheriff court (the “receiving court”) the sheriff clerk shall forthwith transmit the record copy of the indictment, the minute of proceedings, any productions and any relevant documents to the clerk of the receiving court.

Evidence in chief in form of prior statement

22.10. Where a witness is to give evidence in chief in the form of a prior statement the witness shall be called, and—

- (a) the oath or affirmation administered under rule 14.5 (form of oath or affirmation); or
- (b) be admonished to tell the truth,

before the evidence in the form of a prior statement is given.”.

(7) In the appendix—

- (a) for Form 8.2-C(d) there shall be substituted the form set out in Part 1 of the Schedule to this Act of Adjournal;
- (b) for Form 21.4 there shall be substituted the form set out in Part 2 of the Schedule to this Act of Adjournal;
- (c) after Form 21.5(e) there shall be inserted the forms set out in Part 3 of the Schedule to this Act of Adjournal;

(a) Form 8.2-C was amended by S.S.I. 2005/44.

(b) Section 288F was inserted by section 6 of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) and amended by section 4(4) of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

(c) Sections 271J and 271K were inserted by section 1(1) of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3).

(d) Form 8.2-C was amended by S.S.I. 2005/44.

(e) Form 21.5 was inserted by S.S.I. 2002/454.

(d) for Form 22.1 there shall substituted the forms set out in Part 4 of the Schedule to this Act of Adjournal;

(e) in Form 29.1-A, at the end of paragraph 3, there shall be inserted the following:–

“That [C.D.] is not a witness to whom section 291(6) of the Criminal Procedure (Scotland) Act 1995 applies [*or* that as [C.D.] is a witness under section 291(6) of the Criminal Procedure (Scotland) Act 1995 warrant is sought to cite the witness to attend for precognition on oath by the solicitor for the accused only].”;

(f) in Form 29.1-B, at the end of paragraph 3, there shall be inserted the following:–

“That [C.D.] is not a witness to whom section 291(6) of the Criminal Procedure (Scotland) Act 1995 applies [*or* as [C.D.] is a witness under section 291(6) of the Criminal Procedure (Scotland) Act 1995 warrant is sought to cite the witness to attend for precognition on oath by the solicitor for the accused only].”.

Cullen of Whitekirk
Lord Justice General
I.P.D.

Edinburgh

24th March 2005

SCHEDULE

Paragraph 2(7)

PART 1

FORM 8.2-C

Rules 8.2(2), 9A.3 and 12.7

Form of notice to accused to appear under section 66(6) of the Criminal Procedure (Scotland) Act 1995 where the charge in the indictment is of committing a sexual offence to which section 288C, or an offence to which section 288E, of the Criminal Procedure (Scotland) Act 1995 applies.

IMPORTANT NOTICE

(CITATION)

Court Reference.....

Prosecution Reference:

TO: *(name) (date of birth) (address)*

A CRIMINAL CASE IS BEING BROUGHT AGAINST YOU

A document has been prepared which sets out the criminal charges against you.

That document (the “indictment”) is attached to this notice.

YOU MUST APPEAR at *(place) High Court of Justiciary (address)* on *(date)* at *(time)* for a preliminary hearing [*or at (place) Sheriff Court (address) on (date) at (time) for a first diet and on (date) at (time) for a trial diet*] at which you will be required to answer the criminal charges against you in the indictment.

Because you are being charged with at least one sexual offence or a serious offence where a witness is under the age of twelve years old—

- (1) if you are tried for the offence, your defence may be conducted only by a lawyer;
- (2) it is therefore in your interests, if you have not already done so, to get the professional assistance of a solicitor;
- (3) if you do not engage a solicitor for the purposes of your defence at the preliminary hearing or the trial, the court will do so.

IF YOU DO NOT ATTEND THE COURT, A WARRANT MAY BE ISSUED FOR YOUR ARREST

(Signed)

Prosecutor

(Name, address, e-mail address and telephone number)

(Place and date)

PART 2
FORM 21.4

Rule 21.4

**Form of certificate of authentication of a prior statement for the purposes of section 260(4)
of the Criminal Procedure (Scotland) Act 1995**

Prosecution reference.....

Court reference.....

I, *(insert name and designation of person authenticating)*, HEREBY CERTIFY THAT this document [*or the attached document*], comprising [*this and*] the following *(insert number)* pages [*or (insert number) hours, (insert number) minutes and (insert number) seconds of recorded time*] is a full and accurate record of evidence given by *(insert name and designation of person who gave the prior statement and brief details of the nature, place and date of the proceedings during which the statement was made)*.

(Signed)

(Date)

PART 3
FORM 21.6-A

Rule 21.6(1)

**Form of notice of intention to rely on presumption as to identification under section 281A of
the Criminal Procedure (Scotland) Act 1995**

IN THE HIGH COURT OF JUSTICIARY

[or IN THE SHERIFF COURT

AT (*place*)]

NOTICE OF INTENTION TO RELY ON PRESUMPTION AS TO IDENTIFICATION

by

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

in the case against

(*insert name(s) of accused*)

Prosecution reference.....

Court reference.....

To: (*name and address of accused*)

TAKE NOTICE:

(1) That a report stating the fact[s] of an identification of (*insert name of accused identified*) in an identification parade or other identification procedure by a witness, and the name of that witness, has been lodged under section 281A of the Criminal Procedure (Scotland) Act 1995 by the prosecutor as a production in advance of trial.

(2) That the prosecutor intends to rely on a presumption that the person named in the report as having been identified by the witness is the person of the same name who appears in answer to the indictment [*or complaint*].

(3) That if you do not challenge [any of] the fact[s] in the report within seven days after the date of service of this notice it shall be presumed under section 281A of the above-mentioned Act that the person named in the report as having been identified by the witness is the person who appears in answer to the indictment [*or complaint*].

Served on (*date*) by me by (*state method of service*).

(*Signed*)

Prosecutor

(*Name, address, e-mail address and
telephone number*)

(*Place and date*)

FORM 21.6-B

Rule 21.6(2)

Form of notice of challenge under section 281A(2) of the Criminal Procedure (Scotland) Act 1995

NOTICE OF INTENTION TO CHALLENGE FACTS STATED IN REPORT OF IDENTIFICATION

by

[A.B.] (*address*)

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

in

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

against

(*insert name(s) of accused*)

Prosecution reference.....

Court reference.....

NOTICE IS HEREBY GIVEN under section 281A(2) of the Criminal Procedure (Scotland) Act 1995 that [A.B.] intends to challenge the following fact[s] stated in the report of an identification prior to trial lodged by the prosecutor as production number [*insert production number*] served on (*date*):-

(*here state or refer to the fact(s) challenged*)

(*Signed*)

Accused

[*or Legal representative for accused*]

(*Name, address and e-mail address and telephone number of solicitor*).

PART 4
FORM 22.1

Rule 22.1

Form of child witness notice under section 271A(2) of the Criminal Procedure (Scotland) Act 1995

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*)]

CHILD 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*)].

2. That [A.B.] is charged with (*specify charge*)[, which is an offence to which section 288C [or section 288E] of the Criminal Procedure (Scotland) Act 1995 applies][or and an order has been made under section 288F(2) of the Criminal Procedure (Scotland) Act 1995].

3. That the applicant has cited [or intends to cite][C.D.], (*date of birth*) as a witness who is to [or [A.B.] may] give evidence at, or for the purposes of, the trial.

4. That [C.D.] [or [A.B.]] is a child 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].

5. 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*)

[and that the special measure(s) of (*here specify special measure(s), other than the standard special measure(s) sought*) is [or are] not a standard special measure under section 271A(14) of the Act of 1995.

The reason[s] this [or these] special measure[s], other than the standard special measure[s], is [or are] considered the most appropriate is [or are] as follows:-

(*here specify reason(s) for the special measure(s), other than the standard special measure(s) sought*).

6. [or Authorisation of the use of no special measures is considered the most appropriate for the taking of evidence of [C.D.] [or the applicant] for the following reasons:-

(*here specify the reasons for no special measures being sought*).]

7. That [C.D.] [or [A.B.]] and the parent[s] of [or person[s] with parental responsibility for] [C.D.] [or [A.B.]] under section 271E(4) of the Act of 1995 have expressed the following view[s]:—

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

8. [That other information considered relevant to this application is as follows:—

(here set out any other information relevant to the child witness notice).]

9. That the applicant has intimated a copy of the Notice on [A.B.] [or the legal representative of [A.B.]] [or on the Crown Agent] [or the Procurator Fiscal].

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]—

- (a) to authorise the special measure[s] sought; and [or
- (b) to authorise the giving of evidence without the benefit of special measures];
- (c) or to do otherwise as to your Lordship[s] shall seem proper;
- (d) 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, e-mail address and telephone number of agent).

FORM 22.4

Rule 22.4

Form of application for review of arrangements for taking evidence under section 271D of the Criminal Procedure (Scotland) Act 1995

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

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

MINUTE

by

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

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

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

in

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

against

[A.B.] (*address*)

[or Prisoner in 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.
2. That the Minuter has cited [or intends to cite] [C.D.] as a witness who is to [or [A.B.] may] give evidence at, or for the purposes of, the trial. That [C.D.] [or [A.B.]] is a vulnerable witness under section 271(1) of the Criminal Procedure (Scotland) Act 1995.
3. That the current arrangements for taking the evidence of [C.D.][or [A.B.]] are (*here specify current arrangements*).
4. That the current arrangements should be reviewed as (*here specify reason(s) for review*).
5. That an order should be made to (*here specify the order sought*).
6. That [C.D.] [or [A.B.]] and the parent[s] of [or person[s] with parental responsibility for] [C.D.] [or [A.B.]] under section 271E(4) of the Act of 1995 have expressed the following view[s]:—
(*here set out the view(s) expressed, how and when they were obtained*).
7. That a copy of this Minute has been duly intimated conform to the execution[s] attached to this Minute.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]—

- (a) to fix a diet for hearing this application and to order intimation of this application and the diet to all parties;
- (b) thereafter, after hearing all the parties, to make an order (*specify*);

- (c) or to do otherwise as to your Lordship[s] shall seem proper;
- (d) to require the clerk of court to intimate the order to (*specify*).

IN RESPECT WHEREOF

(Signed)

[Prosecutor]

[or [A.B.]]

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

(Name, address, e-mail address, telephone number of agent)

(Place and date).

FORM 22.7

Rule 22.7

Form of notice of prohibition of personal conduct of defence in certain cases involving child witnesses under the age of twelve under section 288E of the Criminal Procedure (Scotland) Act 1995

IMPORTANT NOTICE

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

against

[A.B.] (*address*)

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

Prosecution reference.....

Court reference.....

To: (*name*), (*date of birth*), (*address*)

You have been charged with at least one serious offence in which a child witness under the age of twelve is to give evidence at or for the purposes of the trial, therefore—

- (1) if you are tried for the offence, your defence may be conducted only by a lawyer;
- (2) it is in your interests, if you have not already done so, to get the professional assistance of a solicitor;
- (3) if you do not engage a solicitor for the purpose of your defence at the preliminary hearing [*or* first diet] or the trial, the court will do so.

(*Signed*)

Prosecutor

(*Name, address, e-mail address, and telephone number*)

(*Place and date*)

FORM 22.8-A

Rule 22.8(1)

Form of minute seeking prohibition of the personal conduct of defence by the accused under section 288F of the Criminal Procedure (Scotland) Act 1995

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*)]

MINUTE

by

HER MAJESTY'S ADVOCATE [or THE PROCURATOR FISCAL, (*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 (*name(s) of co-accused*)] has been indicted at the instance of Her Majesty's Advocate in the High Court of Justiciary [or in the sheriff court] at (*place*) and a diet of (*specify*) has been fixed for (*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. That [C.D.] [or [A.B.]] is a vulnerable witness under section 271(1) of the Criminal Procedure (Scotland) Act 1995 as (*here state the reasons the witness is a vulnerable witness*).

3. That the Minuter applies for an order prohibiting [A.B.] from conducting his [or her] defence in person at the trial and in any victim statement proof relating to any offence to which the trial relates for the following reasons:—

(*here state reasons*).

4. That the offence in the indictment is not one to which sections 288C or 288E of the Criminal Procedure (Scotland) Act 1995 applies.

5. That a copy of this Minute has been duly intimated conform to the execution[s] attached to this Minute.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]—

- (a) to fix a diet for hearing this application and to order intimation of this application and the diet to all the parties;
- (b) thereafter, on being satisfied in terms of section 288F(3) of the Criminal Procedure (Scotland) Act 1995, to make an order prohibiting [A.B.] from conducting his [or her] defence in person at the trial and in any victim statement proof;
- (c) or to do otherwise as to your Lordship[s] shall seem proper;

(d) to require the clerk of court to intimate the order to *(specify)*.

IN RESPECT WHEREOF

(Signed)

Prosecutor

(Name, address, e-mail address, telephone number)

(Place and date)

FORM 22.8-B

Rule 22.8(5)

Form of notice to accused where an order granted prohibiting the personal conduct of defence by the accused under section 288F of the Criminal Procedure (Scotland) Act 1995

Prosecution reference.....

Court reference.....

To: *(name and address of accused)*

You have been charged with an offence where a witness, who is to give evidence at, or for the purposes of, the trial, is [*or you are*] a vulnerable witness under section 271(1) of the Criminal Procedure (Scotland) Act 1995.

On (*date*) at the High Court of Justiciary [*or in the sheriff court*] at (*place*) an order was made under section 288F(2) of that Act prohibiting you from personally conducting your defence to this charge.

TAKE NOTICE THAT—

- (1) if you are tried for the offence, your defence may be conducted only by a lawyer;
- (2) it is therefore in your interests, if you have not already done so, to get the professional assistance of a solicitor;
- (3) if you do not engage a solicitor for the purposes of your defence at the preliminary hearing [*or first diet*] or the trial, the court will do so.

(Signed)

Prosecutor

(Name, address, e-mail address and telephone number)

(Place and date)

EXPLANATORY NOTE

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

This Act of Adjournal amends the Criminal Procedure Rules 1996 (S.I. 1996/513) (“the 1996 Rules”) to make provision consequential upon amendments to the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) by the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) (“the 2004 Act”). Paragraph 2(2) sets out transitional provisions which are linked to the commencement of the 2004 Act under S.S.I. 2005/167.

Paragraph 2(3) amends rule 8.2 of the 1996 Rules (notice to accused to appear) in connection with notices to accused where the offence is one to which section 288E of the 1995 Act (prohibition of personal conduct of defence where there is a child witness under the age of 12) applies.

Paragraph 2(4) amends rule 21.4 of the 1996 Rules (authentication of prior statements) so as to apply to prior statements that are not written documents.

Paragraph 2(5) inserts a new rule 21.6 into the 1996 Rules to make provision for a notice by the prosecution of an intention to rely on a presumption as to identification by a witness prior to trial and a notice of intention to challenge that presumption by the accused under section 281A(2) of the 1995 Act.

Paragraph 2(6) substitutes for Chapter 22 (evidence of vulnerable persons), a new Chapter 22 dealing with evidence of vulnerable witnesses. It makes provision for lodging a child witness notice under section 271A of the 1995 Act and reviewing the arrangements made for vulnerable witnesses to give evidence. Rules are made in relation to the taking of evidence in chief in the form of a prior statement.

Paragraph 2(7) adds new forms to those set out in the annexe to the 1996 Rules and makes amendments to existing forms.

2005 No.188

HIGH COURT OF JUSTICIARY

SHERIFF COURT

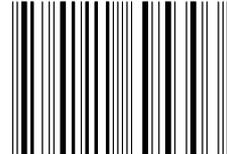
Act of Adjournal (Criminal Procedure Rules Amendment No. 3)
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