



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XII

#### EVIDENCE

##### *Special capacity*

#### 255 Special capacity.

Where an offence is alleged to be committed in any special capacity, as by the holder of a licence, master of a vessel, occupier of a house, or the like, the fact that the accused possesses the qualification necessary to the commission of the offence shall, unless challenged—

- (a) in the case of proceedings on indictment, by giving notice of a preliminary objection [<sup>F1</sup>in accordance with section 71(2) or 72(6)(b)(i)] of this Act; or
- (b) in summary proceedings, by preliminary objection before his plea is recorded, be held as admitted.

#### Textual Amendments

- F1** Words in s. 255(a) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), ss. 25, 27(1), [Sch. para. 38](#); S.S.I. 2004/405, [art. 2](#), [Sch. 1](#) (with savings in arts. 3-5)

#### <sup>F2</sup> *Proof of age*

#### Textual Amendments

- F2** S. 255A and preceding cross-heading inserted (1.8.1997) by [1997 c. 48, s. 27](#); S.I. 1997/1712, [art. 3](#), [Sch. 1](#) (subject to arts. 4, 5)

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### **255A** **Proof of age.**

Where the age of any person is specified in an indictment or a complaint, it shall, unless challenged—

- (a) in the case of proceedings on indictment by giving notice of a preliminary objection [<sup>F4</sup>in accordance with section 71(2) or 72(6)(b)(i)] of this Act; or
  - (b) in summary proceedings—
    - (i) by preliminary objection before the plea of the accused is recorded; or
    - (ii) by objection at such later time as the court may in special circumstances allow,
- be held as admitted.]]

#### **Textual Amendments**

**F3** S. 255A and preceding cross-heading inserted (1.8.1997) by 1997 c. 48, s. 27; S.I. 1997/1712, art. 3, Sch. 1 (subject to arts. 4, 5)

**F4** Words in s. 255A(a) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 39; S.S.I. 2004/405, art. 2, Sch. 1 (with savings in arts. 3-5)

#### *Agreed evidence*

### **256** **Agreements and admissions as to evidence.**

- (1) In any trial it shall not be necessary for the accused or for the prosecutor—
  - (a) to prove any fact which is admitted by the other; or
  - (b) to prove any document, the terms and application of which are not in dispute between them,
 and, without prejudice to paragraph 1 of Schedule 8 to this Act, copies of any documents may, by agreement of the parties, be accepted as equivalent to the originals.
- (2) For the purposes of subsection (1) above, any admission or agreement shall be made by lodging with the clerk of court a minute in that behalf signed—
  - (a) in the case of an admission, by the party making the admission or, if that party is the accused and he is legally represented, by his counsel or solicitor; and
  - (b) in the case of an agreement, by the prosecutor and the accused or, if he is legally represented, his counsel or solicitor.
- (3) Where a minute has been signed and lodged as aforesaid, any facts and documents admitted or agreed thereby shall be deemed to have been duly proved.

### **257** **Duty to seek agreement of evidence.**

- (1) Subject to subsection (2) below, the prosecutor and the accused (or each of the accused if more than one) shall each identify any facts which are facts—
  - (a) which he would, apart from this section, be seeking to prove;
  - (b) which he considers unlikely to be disputed by the other party (or by any of the other parties); and
  - (c) in proof of which he does not wish to lead oral evidence,
 and shall, without prejudice to section 258 of this Act, take all reasonable steps to secure the agreement of the other party (or each of the other parties) to them; and the

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other party (or each of the other parties) shall take all reasonable steps to reach such agreement.

(2) Subsection (1) above shall not apply in relation to proceedings as respects which the accused (or any of the accused if more than one) is not legally represented.

(3) The duty under subsection (1) above applies—

(a) in relation to proceedings on indictment, from the date of service of the indictment until the swearing of the jury or, where intimation is given under section 76 of this Act, the date of that intimation; and

(b) in relation to summary proceedings, from the date on which the accused pleads not guilty until the swearing of the first witness or, where the accused tenders a plea of guilty at any time before the first witness is sworn, the date when he does so.

[<sup>F5</sup>(4) Without prejudice to subsection (3) above, in the case of proceedings in the High Court, the parties to the proceedings shall, in complying with the duty under subsection (1) above, seek to ensure that the facts to be identified, and the steps to be taken in relation to those facts, by that subsection are identified and taken before the preliminary hearing.]

#### Textual Amendments

**F5** S. 257(4) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 40](#); [S.S.I. 2004/405](#), [art. 2](#), Sch. 1

### 258 Uncontroversial evidence.

(1) This section applies where, in any criminal proceedings, a party (in this section referred to as “the first party”) considers that facts which that party would otherwise be seeking to prove are unlikely to be disputed by the other parties to the proceedings.

(2) Where this section applies, the first party may prepare and sign a statement—

(a) specifying the facts concerned; or

(b) referring to such facts as set out in a document annexed to the statement, and shall, not less than 14 days before the [<sup>F6</sup>relevant] diet, serve a copy of the statement and any such document on every other party.

[<sup>F7</sup>(2A) In subsection (2) above, “the relevant diet” means—

(a) in the case of proceedings in the High Court, the preliminary hearing;

(b) in any other case, the trial diet.]

(3) Unless any other party serves on the first party, not more than seven days after the date of service of the copy on him under subsection (2) above or by such later time as the court may in special circumstances allow, a notice that he challenges any fact specified or referred to in the statement, the facts so specified or referred to shall be deemed to have been conclusively proved.

(4) Where a notice is served under subsection (3) above, the facts specified or referred to in the statement shall be deemed to have been conclusively proved only in so far as unchallenged in the notice.

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- [<sup>F8</sup>(4A) Where a notice is served under subsection (3) above in any solemn proceedings, the court may, on the application of any party to the proceedings made not less than 48 hours before the relevant diet, direct that any challenge in the notice to any fact is to be disregarded for the purposes of subsection (4) above if the court considers the challenge to be unjustified.
- (4B) In subsection (4A) above, “the relevant diet” means—
- (a) in proceedings in the High Court, the preliminary hearing; and
  - (b) in proceedings in the sheriff court, the first diet.
- (4C) In proceedings in the High Court, the Court may, on cause shown, allow an application under subsection (4A) above to be made after the time limit specified in that subsection.]
- (5) Subsections (3) and (4) above shall not preclude a party from leading evidence of circumstances relevant to, or other evidence in explanation of, any fact specified or referred to in the statement.
- (6) Notwithstanding subsections (3) and (4) above, the court—
- (a) may, on the application of any party, where it is satisfied that there are special circumstances; and
  - (b) shall, on the joint application of all the parties,
- direct that the presumptions in those subsections shall not apply in relation to such fact specified or referred to in the statement as is specified in the direction.
- (7) An application under subsection (6) above may be made at any time after the commencement of the trial and before the commencement of the prosecutor’s address to the court on the evidence.
- (8) Where the court makes a direction under subsection (6) above it shall, unless all the parties otherwise agree, adjourn the trial and may, without prejudice to section 268 of this Act, permit any party to lead evidence as to any such fact as is specified in the direction, notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given.
- (9) A copy of a statement or a notice required, under this section, to be served on any party shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

#### Textual Amendments

- F6** Word in s. 258(2) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 41\(a\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (with savings in arts. 3-5)
- F7** S. 258(2A) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 41\(b\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (with savings in arts. 3-5)
- F8** S. 258(4A)-(4C) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 16, 27\(1\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (with savings in arts. 3-5)

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

- C1** S. 258: amendment to earlier amending provision 2007 asp 6 s. 20 (10.12.2007) by [The Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(Incidental, Supplemental and Consequential Provisions\) Order 2007 \(S.S.I. 2007/540\)](#), [art. 4](#)

### Hearsay

#### 259 Exceptions to the rule that hearsay evidence is inadmissible.

- (1) Subject to the following provisions of this section, evidence of a statement made by a person otherwise than while giving oral evidence in court in criminal proceedings shall be admissible in those proceedings as evidence of any matter contained in the statement where the judge is satisfied—
- (a) that the person who made the statement will not give evidence in the proceedings of such matter for any of the reasons mentioned in subsection (2) below;
  - (b) that evidence of the matter would be admissible in the proceedings if that person gave direct oral evidence of it;
  - (c) that the person who made the statement would have been, at the time the statement was made, a competent witness in such proceedings; and
  - (d) that there is evidence which would entitle a jury properly directed, or in summary proceedings would entitle the judge, to find that the statement was made and that either—
    - (i) it is contained in a document; or
    - (ii) a person who gave oral evidence in the proceedings as to the statement has direct personal knowledge of the making of the statement.
- (2) The reasons referred to in paragraph (a) of subsection (1) above are that the person who made the statement—
- (a) is dead or is, by reason of his bodily or mental condition, unfit or unable to give evidence in any competent manner;
  - (b) is named and otherwise sufficiently identified, but is outwith the United Kingdom and it is not reasonably practicable to secure his attendance at the trial or to obtain his evidence in any other competent manner;
  - (c) is named and otherwise sufficiently identified, but cannot be found and all reasonable steps which, in the circumstances, could have been taken to find him have been so taken;
  - (d) having been authorised to do so by virtue of a ruling of the court in the proceedings that he is entitled to refuse to give evidence in connection with the subject matter of the statement on the grounds that such evidence might incriminate him, refuses to give such evidence; or
  - (e) is called as a witness and either—
    - (i) refuses to take the oath or affirmation; or
    - (ii) having been sworn as a witness and directed by the judge to give evidence in connection with the subject matter of the statement refuses to do so,

and in the application of this paragraph to a child, the reference to a witness refusing to take the oath or affirmation or, as the case may be, to having been sworn shall be construed as a reference to a child who has refused to accept

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an admonition to tell the truth or, having been so admonished, refuses to give evidence as mentioned above.

(3) Evidence of a statement shall not be admissible by virtue of subsection (1) above where the judge is satisfied that the occurrence of any of the circumstances mentioned in paragraphs (a) to (e) of subsection (2) above, by virtue of which the statement would otherwise be admissible, is caused by—

- (a) the person in support of whose case the evidence would be given; or
- (b) any other person acting on his behalf,

for the purpose of securing that the person who made the statement does not give evidence for the purposes of the proceedings either at all or in connection with the subject matter of the statement.

(4) Where in any proceedings evidence of a statement made by any person is admitted by reference to any of the reasons mentioned in paragraphs (a) to (c) and (e)(i) of subsection (2) above—

- (a) any evidence which, if that person had given evidence in connection with the subject matter of the statement, would have been admissible as relevant to his credibility as a witness shall be admissible for that purpose in those proceedings;
- (b) evidence may be given of any matter which, if that person had given evidence in connection with the subject matter of the statement, could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party; and
- (c) evidence tending to prove that that person, whether before or after making the statement, made in whatever manner some other statement which is inconsistent with it shall be admissible for the purpose of showing that he has contradicted himself.

(5) Subject to subsection (6) below, where a party intends to apply to have evidence of a statement admitted by virtue of subsection (1) above he shall, [<sup>F9</sup>by the relevant time], give notice in writing of—

- (a) that fact;
- (b) the witnesses and productions to be adduced in connection with such evidence; and
- (c) such other matters as may be prescribed by Act of Adjournal,

to every other party to the proceedings and, for the purposes of this subsection, such evidence may be led notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given.

[<sup>F10</sup>(5A) In subsection (5) above, “the relevant time” means—

- (a) in the case of proceedings in the High Court—
  - (i) not less than 7 days before the preliminary hearing; or
  - (ii) such later time, before the trial diet, as the judge may on cause shown allow;
- (b) in any other case, before the trial diet.]

(6) A party shall not be required to give notice as mentioned in subsection (5) above where—

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- (a) the grounds for seeking to have evidence of a statement admitted are as mentioned in paragraph (d) or (e) of subsection (2) above; or
  - (b) he satisfies the judge that there was good reason for not giving such notice.
- (7) If no other party to the proceedings objects to the admission of evidence of a statement by virtue of subsection (1) above, the evidence shall be admitted without the judge requiring to be satisfied as mentioned in that subsection.
- (8) For the purposes of the determination of any matter upon which the judge is required to be satisfied under subsection (1) above—
- (a) except to the extent that any other party to the proceedings challenges them and insists in such challenge, it shall be presumed that the circumstances are as stated by the party seeking to introduce evidence of the statement; and
  - (b) where such a challenge is insisted in, the judge shall determine the matter on the balance of probabilities, and he may draw any reasonable inference—
    - (i) from the circumstances in which the statement was made or otherwise came into being; or
    - (ii) from any other circumstances, including, where the statement is contained in a document, the form and contents of the document.
- (9) Where evidence of a statement has been admitted by virtue of subsection (1) above on the application of one party to the proceedings, without prejudice to anything in any enactment or rule of law, the judge may permit any party to lead additional evidence of such description as the judge may specify, notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given.
- (10) Any reference in subsections (5), (6) and (9) above to evidence shall include a reference to evidence led in connection with any determination required to be made for the purposes of subsection (1) above.

#### Textual Amendments

- F9** Words in s. 259(5) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 42\(a\)](#); S.S.I. 2004/405, [art. 2](#), [Sch. 1](#) (with savings in arts. 3-5)
- F10** S. 259(5A) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 42\(b\)](#); S.S.I. 2004/405, [art. 2](#), [Sch. 1](#) (with savings in arts. 3-5)

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

- C2** Ss. 259-261 excluded (1.4.1996) by [1995 c. 40](#), ss. 3, 7(2), [Sch. 3 Pt. II para. 14](#)

## 260 Admissibility of prior statements of witnesses.

- (1) Subject to the following provisions of this section, where a witness gives evidence in criminal proceedings, any prior statement made by the witness shall be admissible as evidence of any matter stated in it of which direct oral evidence by him would be admissible if given in the course of those proceedings.
- (2) A prior statement shall not be admissible under this section unless—
- (a) the statement is contained in a document;
  - (b) the witness, in the course of giving evidence, indicates that the statement was made by him and that he adopts it as his evidence; and



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- (c) at the time the statement was made, the person who made it would have been a competent witness in the proceedings.
- (3) For the purposes of this section, any reference to a prior statement is a reference to a prior statement which, but for the provisions of this section, would not be admissible as evidence of any matter stated in it.
- (4) Subsections (2) and (3) above do not apply to a prior statement—
- (a) contained in a precognition on oath; or
  - (b) made in other proceedings, whether criminal or civil and whether taking place in the United Kingdom or elsewhere,
- and, for the purposes of this section, any such statement shall not be admissible unless it is sufficiently authenticated.
- [<sup>F11</sup>(5) A prior statement made by a witness shall not, in any proceedings on indictment, be inadmissible by reason only that it is not included in any list of productions lodged by the parties.]

#### Textual Amendments

- F11** S. 260(5) inserted (4.10.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 23, 27(1)**; [S.S.I. 2004/405](#), **art. 2, Sch. 1** (subject to savings in [arts. 3-5](#))

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

- C3** Ss. 259-261 excluded (1.4.1996) by [1995 c. 40](#), **ss. 3, 7(2)**, **Sch. 3 Pt. II para. 14**
- C4** [S. 260\(2\)\(c\)](#) modified (prosp.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 84, 206(1)**

## 261 Statements by accused.

- (1) Subject to the following provisions of this section, nothing in sections 259 and 260 of this Act shall apply to a statement made by the accused.
- (2) Evidence of a statement made by an accused shall be admissible by virtue of the said section 259 at the instance of another accused in the same proceedings as evidence in relation to that other accused.
- (3) For the purposes of subsection (2) above, the first mentioned accused shall be deemed—
- (a) where he does not give evidence in the proceedings, to be a witness refusing to give evidence in connection with the subject matter of the statement as mentioned in paragraph (e) of subsection (2) of the said section 259; and
  - (b) to have been, at the time the statement was made, a competent witness in the proceedings.
- (4) Evidence of a statement shall not be admissible as mentioned in subsection (2) above unless the accused at whose instance it is sought to be admitted has given notice of his intention to do so as mentioned in subsection (5) of the said section 259; but subsection (6) of that section shall not apply in the case of notice required to be given by virtue of this subsection.



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

C5 Ss. 259-261 excluded (1.4.1996) by 1995 c. 40, ss. 3, 7(2), [Sch. 3 Pt. II para. 14](#)

### 262 Construction of sections 259 to 261.

- (1) For the purposes of sections 259 to 261 of this Act, a “statement” includes—
- (a) any representation, however made or expressed, of fact or opinion; and
  - (b) any part of a statement,
- but does not include a statement in a precognition other than a precognition on oath.
- (2) For the purposes of the said sections 259 to 261 a statement is contained in a document where the person who makes it—
- (a) makes the statement in the document personally;
  - (b) makes a statement which is, with or without his knowledge, embodied in a document by whatever means or by any person who has direct personal knowledge of the making of the statement; or
  - (c) approves a document as embodying the statement.
- (3) In the said sections 259 to 261—
- “criminal proceedings” include any hearing by the sheriff of an application made under Chapter 3 of Part II of the Children (Scotland) Act 1995 for a finding as to whether grounds for the referral of a child’s case to a children’s hearing are established, in so far as the application relates to the commission of an offence by the child, or for a review of such a finding;
- “document” includes, in addition to a document in writing—
- (a) any map, plan, graph or drawing;
  - (b) any photograph;
  - (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
  - (d) any film, negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom;
- “film” includes a microfilm;
- “made” includes allegedly made.
- (4) Nothing in the said sections 259 to 261 shall prejudice the admissibility of a statement made by a person other than in the course of giving oral evidence in court which is admissible otherwise than by virtue of those sections.

#### *Witnesses*

### 263 Examination of witnesses.

- (1) In any trial, it shall be competent for the party against whom a witness is produced and sworn *in causa* to examine such witness both in cross and *in causa*.

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- (2) The judge may, on the motion of either party, on cause shown order that the examination of a witness for that party (“the first witness”) shall be interrupted to permit the examination of another witness for that party.
- (3) Where the judge makes an order under subsection (2) above he shall, after the examination of the other witness, permit the recall of the first witness.
- (4) In a trial, a witness may be examined as to whether he has on any specified occasion made a statement on any matter pertinent to the issue at the trial different from the evidence given by him in the trial; and evidence may be led in the trial to prove that the witness made the different statement on the occasion specified.
- (5) In any trial, on the motion of either party, the presiding judge may permit a witness who has been examined to be recalled.

#### **264 Spouse of accused a competent witness.**

- (1) The spouse of an accused may be called as a witness—
  - (a) by the accused;
  - (b) by a co-accused or by the prosecutor without the consent of the accused.
- (2) Nothing in this section shall—
  - (a) make the spouse of an accused a compellable witness for a co-accused or for the prosecutor in a case where such spouse would not be so compellable at common law;
  - (b) compel a spouse to disclose any communication made between the spouses during the marriage.
- (3) The failure of the spouse of an accused to give evidence shall not be commented on by the defence or the prosecutor.
- (4) The spouse of a person charged with bigamy may be called as a witness either for the prosecution or the defence and without the consent of the person charged.

#### **265 Witnesses not excluded for conviction, interest, relationship, etc.**

- (1) Every person adduced as a witness who is not otherwise by law disqualified from giving evidence, shall be admissible as a witness, and no objection to the admissibility of a witness shall be competent on the ground of—
  - (a) conviction of or punishment for an offence;
  - (b) interest;
  - (c) agency or partial counsel;
  - (d) the absence of due citation to attend; or
  - (e) his having been precognosced subsequently to the date of citation.
- (2) Where any person who is or has been an agent of the accused is adduced and examined as a witness for the accused, it shall not be competent for the accused to object, on the ground of confidentiality, to any question proposed to be put to such witness on matter pertinent to the issue of the guilt of the accused.
- (3) No objection to the admissibility of a witness shall be competent on the ground that he or she is the father, mother, son, daughter, brother or sister, by consanguinity or

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affinity, or uncle, aunt, nephew or niece, by consanguinity of any party adducing the witness in any trial.

- (4) It shall not be competent for any witness to decline to be examined and give evidence on the ground of any relationship mentioned in subsection (3) above.

## **266 Accused as witness.**

- (1) Subject to subsections (2) to (8) below, the accused shall be a competent witness for the defence at every stage of the case, whether the accused is on trial alone or along with a co-accused.
- (2) The accused shall not be called as a witness in pursuance of this section except upon his own application or in accordance with subsection (9) or (10) below.
- (3) An accused who gives evidence on his own behalf in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged.
- (4) An accused who gives evidence on his own behalf in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—
- (a) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or
  - (b) the accused or his counsel or solicitor has asked questions of the witnesses for the prosecution with a view to establishing the accused's good character or impugning the character of the complainer, or the accused has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of the witnesses for the prosecution or of the complainer; or
  - (c) the accused has given evidence against any other person charged in the same proceedings.
- (5) In a case to which paragraph (b) of subsection (4) above applies, the prosecutor shall be entitled to ask the accused a question of a kind specified in that subsection only if the court, on the application of the prosecutor, permits him to do so.
- [<sup>F12</sup>(5A) Nothing in subsections (4) and (5) above shall prevent the accused from being asked, or from being required to answer, any question tending to show that he has been convicted of an offence other than that with which he is charged if his conviction for that other offence has been disclosed to the jury, or is to be taken into consideration by the judge, under section 275A(2) of this Act.]
- (6) An application under subsection (5) above in proceedings on indictment shall be made in the course of the trial but in the absence of the jury.
- (7) In subsection (4) above, references to the complainer include references to a victim who is deceased.
- (8) Every person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

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- (9) The accused may—
- (a) with the consent of a co-accused, call that other accused as a witness on the accused's behalf; or
  - (b) ask a co-accused any question in cross-examination if that co-accused gives evidence,
- but he may not do both in relation to the same co-accused.
- (10) The prosecutor or the accused may call as a witness a co-accused who has pleaded guilty to or been acquitted of all charges against him which remain before the court (whether or not, in a case where the co-accused has pleaded guilty to any charge, he has been sentenced) or in respect of whom the diet has been deserted; and the party calling such co-accused as a witness shall not require to give notice thereof, but the court may grant any other party such adjournment or postponement of the trial as may seem just.
- (11) Where, in any trial, the accused is to be called as a witness he shall be so called as the first witness for the defence unless the court, on cause shown, otherwise directs.

#### Textual Amendments

**F12** S. 266(5A) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002](#) (asp 9), [s. 10\(3\)](#); [S.S.I. 2002/443](#), [art. 3](#) (with [art. 4\(5\)](#))

### 267 Witnesses in court during trial.

- (1) The court may, on an application by any party to the proceedings, permit a witness to be in court during the proceedings or any part of the proceedings before he has given evidence if it appears to the court that the presence of the witness would not be contrary to the interests of justice.
- (2) Without prejudice to subsection (1) above, where a witness has, without the permission of the court and without the consent of the parties to the proceedings, been present in court during the proceedings, the court may, in its discretion, admit the witness, where it appears to the court that the presence of the witness was not the result of culpable negligence or criminal intent, and that the witness has not been unduly instructed or influenced by what took place during his presence, or that injustice will not be done by his examination.

### [<sup>F13</sup>267A] Citation of witnesses for precognition

- (1) This Act shall be sufficient warrant for the citation of witnesses for precognition by the prosecutor, whether or not any person has been charged with the offence in relation to which the precognition is taken.
- (2) Such citation shall be in the form prescribed by Act of Adjournal or as nearly as may be in such form.
- (3) A witness who, having been duly cited—
  - (a) fails without reasonable excuse, after receiving at least 48 hours notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him; or

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- (b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which the precognition is taken,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to a term of imprisonment not exceeding 21 days.]

#### Textual Amendments

**F13** S. 267A inserted (4.10.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 22, 27(1)**; [S.S.I. 2004/405](#), **art. 2**, Sch. 1 (subject to savings in arts. 3-5)

VALID FROM 10/12/2007

### *[<sup>F14</sup>Identification procedures*

#### Textual Amendments

**F14** S. 267B and preceding cross-heading inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 34, 84**; [S.S.I. 2007/479](#), **art. 3(1)**, Sch. (as amended by [S.S.I. 2007/527](#))

#### **267B Order requiring accused to participate in identification procedure**

- (1) The court may, on an application by the prosecutor in any proceedings, make an order requiring the accused person to participate in an identification parade or other identification procedure.
- (2) The application may be made at any time after the proceedings have been commenced.
- (3) The court—
  - (a) shall (if the accused is present) allow the accused to make representations in relation to the application;
  - (b) may, if it considers it appropriate to do so (where the accused is not present), fix a hearing for the purpose of allowing the accused to make such representations.
- (4) Where an order is made under subsection (1) above, the clerk of court shall (if the accused is not present) have notice of the order effected as respects the accused without delay.
- (5) Notice under subsection (4) above shall (in relation to any proceedings) be effected in the same manner as citation under section 141 of this Act.
- (6) It is sufficient evidence that notice has been effected under subsection (5) above if there is produced a written execution—
  - (a) in the form prescribed by Act of Adjournal or as nearly as may be in such form; and
  - (b) signed by the person who effected notice.

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- (7) In relation to notice effected by means of registered post or the recorded delivery service, the relevant post office receipt requires to be produced along with the execution mentioned in subsection (6) above.
- (8) A person who, having been given due notice of an order made under subsection (1) above, without reasonable excuse fails to comply with the order is—
  - (a) guilty of an offence; and
  - (b) liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 12 months or to both.
- (9) For the purpose of subsection (5) above, section 141 of this Act is to be read with such modifications as are necessary for its application in the circumstances.
- (10) In this section, “the court” means—
  - (a) in the case of proceedings in the High Court, a single judge of that Court;
  - (b) in any other case, any court with jurisdiction in relation to the proceedings.]

*Additional evidence, etc.*

## 268 Additional evidence.

- (1) Subject to subsection (2) below, the judge may, on a motion of the prosecutor or the accused made—
  - (a) in proceedings on indictment, at any time before the commencement of the speeches to the jury;
  - (b) in summary proceedings, at any time before the prosecutor proceeds to address the judge on the evidence,
 permit him to lead additional evidence.
- (2) Permission shall only be granted under subsection (1) above where the judge—
  - (a) considers that the additional evidence is *prima facie* material; and
  - (b) accepts that at the commencement of the trial either—
    - (i) the additional evidence was not available and could not reasonably have been made available; or
    - (ii) the materiality of such additional evidence could not reasonably have been foreseen by the party.
- (3) The judge may permit the additional evidence to be led notwithstanding that—
  - (a) in proceedings on indictment, a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given; or
  - (b) in any case, a witness must be recalled.
- (4) The judge may, when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.
- (5) In this section “the commencement of the trial” means—
  - (a) in proceedings on indictment, the time when the jury is sworn; and
  - (b) in summary proceedings, the time when the first witness for the prosecution is sworn.

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## **269 Evidence in replication.**

- (1) The judge may, on a motion of the prosecutor made at the relevant time, permit the prosecutor to lead additional evidence for the purpose of—
  - (a) contradicting evidence given by any defence witness which could not reasonably have been anticipated by the prosecutor; or
  - (b) providing such proof as is mentioned in section 263(4) of this Act.
- (2) The judge may permit the additional evidence to be led notwithstanding that—
  - (a) in proceedings on indictment, a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given; or
  - (b) in any case, a witness must be recalled.
- (3) The judge may when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.
- (4) In subsection (1) above, “the relevant time” means—
  - (a) in proceedings on indictment, after the close of the defence evidence and before the commencement of the speeches to the jury; and
  - (b) in summary proceedings, after the close of the defence evidence and before the prosecutor proceeds to address the judge on the evidence.

## **270 Evidence of criminal record and character of accused.**

- (1) This section applies where—
  - (a) evidence is led by the defence, or the defence asks questions of a witness for the prosecution, with a view to establishing the accused’s good character or impugning the character of the prosecutor, of any witness for the prosecution or of the complainer; or
  - (b) the nature or conduct of the defence is such as to tend to establish the accused’s good character or to involve imputations on the character of the prosecutor, of any witness for the prosecution or of the complainer.
- (2) Where this section applies the court may, without prejudice to section 268 of this Act, on the application of the prosecutor, permit the prosecutor to lead evidence that the accused has committed, or has been convicted of, or has been charged with, offences other than that for which he is being tried, or is of bad character, notwithstanding that, in proceedings on indictment, a witness or production concerned is not included in any list lodged by the prosecutor and that the notice required by sections 67(5) and 78(4) of this Act has not been given.
- (3) In proceedings on indictment, an application under subsection (2) above shall be made in the course of the trial but in the absence of the jury.
- (4) In subsection (1) above, references to the complainer include references to a victim who is deceased.



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### *Evidence of children*

#### **[<sup>F15</sup>271 Evidence of vulnerable persons: special provisions.**

- (1) Subject to subsections (7) and (8) below, where a vulnerable person has been or could be cited to give evidence in a trial the court may appoint a commissioner to take the evidence of that person if—
  - (a) in solemn proceedings, at any time before the oath is administered to the jury;
  - (b) in summary proceedings, at any time before the first witness is sworn;
  - (c) in exceptional circumstances in either solemn or summary proceedings, during the course of the trial,

application is made in that regard; but to be so appointed a person must be, and for a period of five years have been, a member of the Faculty of Advocates or a solicitor.
- (2) Proceedings before a commissioner appointed under subsection (1) above shall be recorded by video recorder.
- (3) An accused shall not, except by leave of the commissioner, be present in the room where such proceedings are taking place but shall be entitled by such means as seem suitable to the commissioner to watch and hear the proceedings.
- (4) Subsections (2) to (6), (8) and (9) of section 272 of this Act shall apply to an application under subsection (1) above and evidence taken by a commissioner appointed under that subsection as those subsections apply to an application under subsection (1) of that section and evidence taken by a commissioner appointed on such an application.
- (5) Subject to subsections (7) and (8) below, where a vulnerable person has been or is likely to be cited to give evidence in a trial, the court may, on an application being made to it, authorise the giving of evidence by that person by means of a live television link.
- (6) Subject to subsections (7) and (8) below, where a vulnerable person has been or is likely to be cited to give evidence in a trial, the court may, on application being made to it, authorise the use of a screen to conceal the accused from the sight of that person while that person is present to give evidence; but arrangements shall be made to ensure that the accused is able to watch and hear as the evidence is given by the vulnerable person.
- (7) The court may grant an application under subsection (1), (5) or (6) above only on cause shown having regard in particular to—
  - (a) the possible effect on the vulnerable person if required to give evidence, no such application having been granted;
  - (b) whether it is likely that the vulnerable person would be better able to give evidence if such an application were granted; and
  - (c) the views of the vulnerable person.
- (8) In considering whether to grant an application under subsection (1), (5) or (6) above the court may take into account, where appropriate, any of the following—
  - (a) the nature of the alleged offence;
  - (b) the nature of the evidence which the vulnerable person is likely to be called upon to give;
  - (c) the relationship, if any, between the person and the accused; and
  - (d) where the person is a child, his age and maturity.

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- (9) Where a sheriff to whom an application has been made under subsection (1), (5) or (6) above would have granted the application but for the lack of accommodation or equipment necessary to achieve the purpose of the application, he may by order transfer the case to any sheriff court which has such accommodation and equipment available, being a sheriff court in the same sheriffdom.
- (10) The sheriff court to which a case has been transferred under subsection (9) above shall be deemed to have granted an application under, as the case may be, subsection (1), (5) or (6) above in relation to the case.
- (11) Where a court has or is deemed to have granted an application under subsection (1), (5) or (6) above in relation to a vulnerable person, and the vulnerable person gives evidence that he recalls having identified, prior to the trial, a person alleged to have committed an offence, the evidence of a third party as to the identification of that person by the vulnerable person prior to the trial shall be admissible as evidence as to such identification.
- (12) In this section—
- “child” means a person under the age of 16 years;
  - “court” means the High Court or the sheriff court;
  - “trial” means a trial under solemn or under summary procedure; and
  - “vulnerable person” means—
    - (a) any child; and
    - (b) any person of or over the age of 16 years—
      - (i) who is subject to an order made in consequence of a finding of a court in any part of the United Kingdom that he is suffering from mental disorder within the meaning of section 1(2) of the <sup>M1</sup>Mental Health (Scotland) Act 1984, section 1(2) of the <sup>M2</sup>Mental Health Act 1983, or Article 3(1) of the <sup>M3</sup>Mental Health (Northern Ireland) Order 1986 (application of enactment); or
      - (ii) who is subject to a transfer direction under section 71(1) of the 1984 Act, section 47 of the 1983 Act, or Article 53 of the 1986 Order (transfer directions); or
      - (iii) who otherwise appears to the court to suffer from significant impairment of intelligence and social functioning.]

#### Textual Amendments

**F15** S. 271 substituted (1.8.1997) by 1997 c. 48, s. 29; S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

#### Marginal Citations

**M1** 1984 c.36.

**M2** 1983 c.20.

**M3** S.I. 1986/595 (N.I.4).

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VALID FROM 01/04/2005

## <sup>F16</sup>271A Child witnesses

- (1) Where a child witness is to give evidence at or for the purposes of a trial, the child witness is entitled, subject to—
  - (a) subsections (2) to (13) below, and
  - (b) section 271D of this Act,
 to the benefit of one or more of the special measures for the purpose of giving evidence.
- (2) A party citing or intending to cite a child witness shall, <sup>F17</sup>by the required time] , lodge with the court a notice (referred to in this Act as a “child witness notice”)—
  - (a) specifying the special measure or measures which the party considers to be the most appropriate for the purpose of taking the child witness’s evidence, or
  - (b) if the party considers that the child witness should give evidence without the benefit of any special measure, stating that fact.
- (3) A child witness notice shall contain or be accompanied by—
  - (a) a summary of any views expressed for the purposes of section 271E(2)(b) of this Act, and
  - (b) such other information as may be prescribed by Act of Adjournal.
- (4) The court may, on cause shown, allow a child witness notice to be lodged after <sup>F18</sup>the required time] .
- (5) The court shall, not later than 7 days after a child witness notice has been lodged, consider the notice in the absence of the parties and, subject to section 271B(3) of this Act—
  - (a) in the case of a notice under subsection (2)(a) above—
    - (i) if a standard special measure is specified in the notice, make an order authorising the use of that measure for the purpose of taking the child witness’s evidence, and
    - (ii) if any other special measure is specified in the notice and the court is satisfied on the basis of the notice that it is appropriate to do so, make an order authorising the use of the special measure (in addition to any authorised by virtue of an order under sub-paragraph (i) above) for the purpose of taking the child witness’s evidence,
  - (b) in the case of a notice under subsection (2)(b) above, if—
    - (i) the summary of views accompanying the notice under subsection (3) (a) above indicates that the child witness has expressed a wish to give evidence without the benefit of any special measure, and
    - (ii) the court is satisfied on the basis of the notice that it is appropriate to do so,
 make an order authorising the giving of evidence by the child witness without the benefit of any special measure, or
  - (c) if—
    - (i) paragraph (a)(ii) or (b) above would apply but for the fact that the court is not satisfied as mentioned in that paragraph, or

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(ii) in the case of a notice under subsection (2)(b), the summary of views accompanying the notice under subsection (3)(a) above indicates that the child witness has not expressed a wish to give evidence without the benefit of any special measure,

make an order [<sup>F19</sup>under subsection (5A) below.]

[ That order is an order—

- <sup>F20</sup>(5A) (a) in the case of proceedings in the High Court where the preliminary hearing is yet to be held, appointing the child witness notice to be disposed of at that hearing;
- (b) in the case of proceedings on indictment in the sheriff court where the first diet is yet to be held, appointing the child witness notice to be disposed of at that diet; or
- (c) in any other case, appointing a diet to be held before the trial diet and requiring the parties to attend the diet.]

(6) Subsection (7) below applies where—

- (a) it appears to the court that a party intends to call a child witness to give evidence at or for the purposes of the trial,
- (b) the party has not lodged a child witness notice in respect of the child witness by the time specified in subsection (2) above, and
- (c) the court has not allowed a child witness notice in respect of the child witness to be lodged after that time under subsection (4) above.

(7) Where this subsection applies, the court shall—

- (a) order the party to lodge a child witness notice in respect of the child witness by such time as the court may specify, or

[<sup>F21</sup>(b) where the court does not so order—

- (i) in the case of proceedings on indictment where this subsection applies at or before the preliminary hearing or, as the case may be, the first diet, at that hearing or diet make an order under subsection (9) below; or
- (ii) in any other case, make an order appointing a diet to be held before the trial diet and requiring the parties to attend the diet.]

(8) On making an order under subsection [<sup>F22</sup>(5A)(c) or (7)(b)(ii)] above, the court may postpone the trial diet.

[ Subsection (9) below applies to—

- <sup>F23</sup>(8A) (a) a preliminary hearing or first diet, so far as the court is—
- (i) by virtue of an order under subsection (5A)(a) or (b) above, disposing of a child witness notice at the hearing or diet; or
- (ii) by virtue of subsection (7)(b)(i) above, to make an order under subsection (9) above at the hearing or diet; and
- (b) a diet appointed under subsection (5A)(c) or (7)(b)(ii) above.]

(9) At a [<sup>F24</sup>hearing or diet to which this subsection applies], the court, after giving the parties an opportunity to be heard—

- (a) in a case where any of the standard special measures has been authorised by an order under subsection (5)(a)(i) above, may make an order authorising the use of such further special measure or measures as it considers appropriate for the purpose of taking the child witness's evidence, and

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- (b) in any other case, shall make an order—
- (i) authorising the use of such special measure or measures as the court considers to be the most appropriate for the purpose of taking the child witness’s evidence, or
  - (ii) that the child witness is to give evidence without the benefit of any special measure.
- (10) The court may make an order under subsection (9)(b)(ii) above only if satisfied—
- (a) where the child witness has expressed a wish to give evidence without the benefit of any special measure, that it is appropriate for the child witness so to give evidence, or
  - (b) in any other case, that—
    - (i) the use of any special measure for the purpose of taking the evidence of the child witness would give rise to a significant risk of prejudice to the fairness of the trial or otherwise to the interests of justice, and
    - (ii) that risk significantly outweighs any risk of prejudice to the interests of the child witness if the order is made.
- (11) A [<sup>F25</sup>hearing or diet to which subsection (9) above applies] may—
- (a) on the application of the party citing or intending to cite the child witness in respect of whom the diet is to be held, or
  - (b) of the court’s own motion,
- be held in chambers.
- (12) A diet [<sup>F26</sup>appointed under subsection (5A)(c) or (7)(b)(ii) above in any case may be conjoined with any other diet to be held before the trial diet in the case.]
- (13) A party lodging a child witness notice shall, at the same time, intimate the notice to the other parties to the proceedings.
- [ In subsections (2) and (4) above, “the required time” means—
- <sup>F27</sup>(13A) (a) in the case of proceedings in the High Court, no later than 14 clear days before the preliminary hearing;
- (b) in the case of proceedings on indictment in the sheriff court, no later than 7 clear days before the first diet;
- (c) in any other case, no later than 14 clear days before the trial diet.]
- (14) In this section, references to a standard special measure are to any of the following special measures—
- (a) the use of a live television link in accordance with section 271J of this Act where the place from which the child witness is to give evidence by means of the link is another part of the court building in which the court-room is located,
  - (b) the use of a screen in accordance with section 271K of this Act, and
  - (c) the use of a supporter in accordance with section 271L of this Act in conjunction with either of the special measures referred to in paragraphs (a) and (b) above.]

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### Textual Amendments

- F16** 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)
- F17** Words in s. 271A(2) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by **Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 43(a); S.S.I. 2004/405, art. 2(2), Sch. 2** (with savings in arts. 3-5); **S.S.I. 2005/168, art. 2, Sch.** (with savings in 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)
- F18** Words in s. 271A(4) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by **Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 43(b); S.S.I. 2004/405, art. 2(2), Sch. 2** (with savings in arts. 3-5); **S.S.I. 2005/168, art. 2, Sch.** (with savings in 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)
- F19** Words in s. 271A(5) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by **Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 43(c); S.S.I. 2004/405, art. 2(2), Sch. 2** (with savings in arts. 3-5); **S.S.I. 2005/168, art. 2, Sch.** (with savings in 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)
- F20** S. 271A(5A) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by **Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 43(d); S.S.I. 2004/405, art. 2(2), Sch. 2** (with savings in arts. 3-5); **S.S.I. 2005/168, art. 2, Sch.** (with savings in 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)
- F21** S. 271A(7)(b) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by **Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 43(e); S.S.I. 2004/405, art. 2(2), Sch. 2** (with savings in arts. 3-5); **S.S.I. 2005/168, art. 2, Sch.** (with savings in 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)
- F22** Words in s. 271A(8) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by **Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 43(f); S.S.I. 2004/405, art. 2(2), Sch. 2** (with savings in arts. 3-5); **S.S.I. 2005/168, art. 2, Sch.** (with savings in 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)
- F23** S. 271A(8A) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by **Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 43(g); S.S.I. 2004/405, art. 2(2), Sch. 2** (with savings in arts. 3-5); **S.S.I. 2005/168, art. 2, Sch.** (with savings in 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)
- F24** Words in s. 271A(9) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by **Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 43(h); S.S.I. 2004/405, art. 2(2), Sch. 2** (with savings in arts. 3-5); **S.S.I. 2005/168, art. 2, Sch.** (with savings in 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)
- F25** Words in s. 271A(11) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by **Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 43(i); S.S.I. 2004/405, art. 2(2), Sch. 2** (with savings in arts. 3-5); **S.S.I. 2005/168, art. 2, Sch.** (with savings in 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)



**Status:** Point in time view as at 01/02/2005. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Criminal Procedure (Scotland) Act 1995, PART XII is up to date with all changes known to be in force on or before 20 April 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)

- F26** Words in s. 271A(12) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by **Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 43(j); S.S.I. 2004/405, art. 2(2), Sch. 2** (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in 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)
- F27** S. 271A(13A) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by **Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 43(k); S.S.I. 2004/405, art. 2(2), Sch. 2** (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in 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)

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

- C6** 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)

VALID FROM 01/04/2005

### <sup>F28</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, a trial 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 the trial is being or to be held.
- (2) The offences referred to in subsection (1)(a) above are—
- (a) murder,
  - (b) culpable homicide,
  - (c) any offence to which section 288C of this Act applies,
  - (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, and
  - (f) plagium.
- (3) Where this section applies, the court shall not make an order under section 271A or 271D of this Act which has the effect of requiring the child witness to be present in the court-room or any part of the court building in which the court-room is located for the purpose of giving evidence unless satisfied—
- (a) where the child witness has expressed a wish to be so present for the purposes of giving evidence, that it is appropriate for the child witness to be so present for that purpose, or
  - (b) in any other case, that—
    - (i) the taking of the evidence of the child witness without the child witness being so present would give rise to a significant risk of



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- prejudice to the fairness of the trial or otherwise to the interests of justice, and
- (ii) that risk significantly outweighs any risk of prejudice to the interests of the child witness if the order is made.]

### Textual Amendments

**F28** 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)

### Modifications etc. (not altering text)

**C7** 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)

VALID FROM 01/04/2006

### [<sup>F29</sup>271C] Vulnerable witnesses other than child witnesses

- (1) This section applies where a party citing or intending to cite a person (other than a child witness) to give evidence at, or for the purposes of, a trial (such a person being referred to in this section as “the witness”) considers—
  - (a) that the witness is likely to be a vulnerable witness, and
  - (b) that a special measure or combination of special measures ought to be used for the purpose of taking the witness’s evidence.
- (2) Where this section applies, the party citing or intending to cite the witness shall, [<sup>F30</sup>by the required time] , make an application (referred to as a “vulnerable witness application”) to the court for an order authorising the use of one or more of the special measures for the purpose of taking the witness’s evidence.
- (3) A vulnerable witness application shall—
  - (a) specify the special measure or measures which the party making the application considers to be the most appropriate for the purpose of taking the evidence of the witness to whom the application relates, and
  - (b) contain or be accompanied by—
    - (i) a summary of any views expressed for the purposes of section 271E(2)(b) of this Act, and
    - (ii) such other information as may be prescribed by Act of Adjournal.
- (4) The court may, on cause shown, allow a vulnerable witness application to be made after the [<sup>F31</sup>the required time] .

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(5) The court shall, not later than 7 days after a vulnerable witness application is made to it, consider the application in the absence of the parties and—

- (a) make an order authorising the use of the special measure or measures specified in the application if satisfied on the basis of the application that—
  - (i) the witness in respect of whom the application is made is a vulnerable witness,
  - (ii) the special measures or measures specified in the application are the most appropriate for the purpose of taking the witness’s evidence, and
  - (iii) it is appropriate to do so after having complied with the duty in subsection (8) below, or
- (b) if not satisfied as mentioned in paragraph (a) above, [<sup>F32</sup>make an order under subsection (5A) below.]

[ That order is an order—

- <sup>F33</sup>(5A) (a) in the case of proceedings in the High Court where the preliminary hearing is yet to be held, appointing the vulnerable witness application to be disposed of at that hearing,
- (b) in the case of proceedings on indictment in the sheriff court where the first diet is yet to be held, appointing the vulnerable witness application to be disposed of at that diet, or
- (c) in any other case, appointing a diet to be held before the trial diet and requiring the parties to attend the diet.]

(6) On making an order under subsection [<sup>F34</sup>(5A)(c)] above, the court may postpone the trial diet.

[ Subsection (7) below applies to—

- <sup>F35</sup>(6A) (a) a preliminary hearing or first diet so far as the court is, by virtue of an order under subsection (5A)(a) or (b) above disposing of a vulnerable witness application at the hearing or diet, and
- (b) a diet appointed under subsection (5A)(c) above.]

(7) At a [<sup>F36</sup>hearing or diet to which this subsection applies] , the court may—

- (a) after giving the parties an opportunity to be heard, and
- (b) if satisfied that the witness in respect of whom the application is made is a vulnerable witness,

make an order authorising the use of such special measure or measures as the court considers to be the most appropriate for the purpose of taking the witness’s evidence.

(8) In deciding whether to make an order under subsection (5)(a) or (7) above, the court shall—

- (a) have regard to—
  - (i) the possible effect on the witness if required to give evidence without the benefit of any special measure, and
  - (ii) whether it is likely that the witness would be better able to give evidence with the benefit of a special measure, and
- (b) take into account the matters specified in subsection (2)(a) to (f) of section 271 of this Act.

(9) A [<sup>F37</sup>hearing or diet to which subsection (7) above applies] may—

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- (a) on the application of the party citing or intending to cite the witness in respect of whom the diet is to be held, or
- (b) of the court’s own motion,
- be held in chambers.
- (10) A diet [<sup>F38</sup>appointed under subsection (5A)(c) above in any case may be conjoined with any other diet to be held before the trial diet in the case.]
- (11) A party making a vulnerable witness application shall, at the same time, intimate the application to the other parties to the proceedings.
- [ In subsections (2) and (4) above, “the required time” means—
- <sup>F39</sup>(12) (a) in the case of proceedings in the High Court, no later than 14 clear days before the preliminary hearing,
- (b) in the case of proceedings on indictment in the sheriff court, no later than 7 clear days before the first diet,
- (c) in any other case, no later than 14 clear days before the trial diet.]]

### Textual Amendments

- F29** 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, 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](#))
- F30** Words in s. 271C(2) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 25, 27\(1\)](#), [Sch. para. 44\(a\)](#); [S.S.I. 2004/405](#), [art. 2\(2\)](#), [Sch. 2](#) (subject to arts. 3-5); [S.S.I. 2005/168](#), [art. 2](#), [Sch.](#) (with savings in [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](#))
- F31** Words in s. 271C(4) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 25, 27\(1\)](#), [Sch. para. 44\(b\)](#); [S.S.I. 2004/405](#), [art. 2\(2\)](#), [Sch. 2](#) (subject to arts. 3-5); [S.S.I. 2005/168](#), [art. 2](#), [Sch.](#) (with savings in [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](#))
- F32** Words in s. 271C(5)(b) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 25, 27\(1\)](#), [Sch. para. 44\(c\)](#); [S.S.I. 2004/405](#), [art. 2\(2\)](#), [Sch. 2](#) (subject to arts. 3-5); [S.S.I. 2005/168](#), [art. 2](#), [Sch.](#) (with savings in [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](#))
- F33** S. 271C(5A) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 25, 27\(1\)](#), [Sch. para. 44\(d\)](#); [S.S.I. 2004/405](#), [art. 2\(2\)](#), [Sch. 2](#) (subject to arts. 3-5); [S.S.I. 2005/168](#), [art. 2](#), [Sch.](#) (with savings in [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](#))
- F34** Words in s. 271C(6) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 25, 27\(1\)](#), [Sch. para. 44\(e\)](#); [S.S.I. 2004/405](#), [art. 2\(2\)](#), [Sch. 2](#) (subject to arts. 3-5); [S.S.I. 2005/168](#), [art. 2](#), [Sch.](#) (with savings in [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](#))
- F35** S. 271C(6A) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 25, 27\(1\)](#), [Sch.](#)

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- para. 44(f);** S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in 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)
- F36** Words in s. 271C(7) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(g);** S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in 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)
- F37** Words in s. 271C(9) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(h);** S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in 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)
- F38** Words in s. 271C(10) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(i);** S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in 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)
- F39** S. 271C(12) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(j);** S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in 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)

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

- C8** 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)

VALID FROM 01/04/2005

#### <sup>F40</sup>271D Review of arrangements for vulnerable witnesses

- (1) In any case in which a person who is giving or is to give evidence at or for the purposes of the trial (referred to in this section as the “witness”) is or appears to the court to be a vulnerable witness, the court may at any stage in the proceedings (whether before or after the commencement of the trial or before or after the witness has begun to give evidence)—
- (a) on the application of the party citing or intending to cite the witness, or
  - (b) of its own motion,
- review the current arrangements for taking the witness’s evidence and, after giving the parties an opportunity to be heard, make an order under subsection (2) below.
- (2) The order which may be made under this subsection is—
- (a) where the current arrangements for taking the witness’s evidence include the use of a special measure or combination of special measures authorised by an order under section 271A or 271C of this Act or under this

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- subsection (referred to as the “earlier order”), an order varying or revoking the earlier order, or
- (b) where the current arrangements for taking the witness’s evidence do not include any special measure, an order authorising the use of such special measure or measures as the court considers most appropriate for the purpose of taking the witness’s evidence.
- (3) An order under subsection (2)(a) above varying an earlier order may—
- (a) add to or substitute for any special measure authorised by the earlier order such other special measure as the court considers most appropriate for the purpose of taking the witness’s evidence, or
- (b) where the earlier order authorises the use of a combination of special measures for that purpose, delete any of the special measures so authorised.
- (4) The court may make an order under subsection (2)(a) above revoking an earlier order only if satisfied—
- (a) where the witness has expressed a wish to give or, as the case may be, continue to give evidence without the benefit of any special measure, that it is appropriate for the witness so to give evidence, or
- (b) in any other case, that—
- (i) the use, or continued use, of the special measure or measures authorised by the earlier order for the purpose of taking the witness’s evidence would give rise to a significant risk of prejudice to the fairness of the trial or otherwise to the interests of justice, and
- (ii) that risk significantly outweighs any risk of prejudice to the interests of the witness if the order is made.
- (5) Subsection (8) of section 271C of this Act applies to the making of an order under subsection (2)(b) of this section as it applies to the making of an order under subsection (5)(a) or (7) of that section but as if the references to the witness were to the witness within the meaning of this section.
- (6) In this section, “current arrangements” means the arrangements in place at the time the review under this section is begun.]

### Textual Amendments

- F40** 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, 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**)

### Modifications etc. (not altering text)

- C9** 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**)



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VALID FROM 01/04/2005

### [<sup>F41</sup>271E Vulnerable witnesses: supplementary provision

- (1) Subsection (2) below applies where—
  - (a) a party is considering for the purposes of a child witness notice or a vulnerable witness application which of the special measures is or are the most appropriate for the purpose of taking the evidence of the person to whom the notice or application relates, or
  - (b) the court is making an order under section 271A(5)(a)(ii) or (b) or (9), 271C or 271D of this Act.
- (2) The party or, as the case may be, the court shall—
  - (a) have regard to the best interests of the witness, and
  - (b) take account of any views expressed by—
    - (i) the witness (having regard, where the witness is a child witness, to the witness’s age and maturity), and
    - (ii) where the witness is a child witness, the witness’s parent (except where the parent is the accused).
- (3) For the purposes of subsection (2)(b) above, where the witness is a child witness—
  - (a) the witness shall be presumed to be of sufficient age and maturity to form a view if aged 12 or older, and
  - (b) in the event that any views expressed by the witness are inconsistent with any views expressed by the witness’s parent, the views of the witness shall be given greater weight.
- (4) In this section—
 

“parent”, in relation to a child witness, means any person having parental responsibilities within the meaning of section 1(3) of the Children (Scotland) Act 1995 (c. 36) in relation to the child witness,

“the witness” means—

  - (a) in the case referred to in subsection (1)(a) above, the person to whom the notice or application relates,
  - (b) in the case referred to in subsection (1)(b) above, the person to whom the order would relate.]

#### Textual Amendments

**F41** 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, 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)

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

**C10** 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.

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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)

VALID FROM 01/04/2005

## <sup>F42</sup>271F The accused

- (1) For the purposes of the application of subsection (1) of section 271 of this Act to the accused (where the accused is giving or is to give evidence at or for the purposes of the trial), subsection (2) of that section shall have effect as if—
- (a) for paragraph (c) there were substituted—
    - “(c) whether the accused is to be legally represented at the trial and, if not, the accused’s entitlement to be so legally represented.”, and
  - (b) for paragraph (e) there were substituted—
    - “(e) any behaviour towards the accused on the part of—
      - (i) any co-accused or any person who is likely to be a co-accused in the proceedings,
      - (ii) any witness or any person who is likely to be a witness in the proceedings, or
      - (iii) members of the family or associates of any of the persons mentioned in sub-paragraphs (i) and (ii) above.”.
- (2) Where, if the accused were to give evidence at or for the purposes of the trial, he would be a child witness—
- (a) section 271A of this Act shall apply in relation to the accused subject to the following modifications—
    - (i) references to a child witness (except in the phrase “child witness notice”) shall be read as if they were references to the accused,
    - (ii) references to the party citing or intending to cite a child witness shall be read as if they were references to the accused, and
    - (iii) subsection (6) shall have effect as if for paragraph (a) there were substituted—
      - “(a) it appears to the court that the accused, if he were to give evidence at or for the purposes of the trial, would be a child witness.”, and
  - (b) section 271B of this Act shall apply in relation to the accused as if—
    - (i) for subsection (1) there were substituted—
      - “(1) This section applies where the accused—
        - (a) if he were to give evidence at or for the purposes of the trial would be a child witness, and
        - (b) is under the age of 12 on the date of commencement of the proceedings.”, and
      - (ii) in subsection (3), references to the child witness were references to the accused.
- (3) Subsection (4) below applies where the accused—



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- (a) considers that, if he were to give evidence at or for the purposes of the trial, he would be a vulnerable witness other than a child witness, and
  - (b) has not decided to give evidence without the benefit of any special measures.
- (4) Where this subsection applies, subsections (2) to (11) of section 271C of this Act shall apply in relation to the accused subject to the following modifications—
- (a) references to the witness shall be read as if they were references to the accused,
  - (b) references to the party citing or intending to cite the witness shall be read as if they were references to the accused, and
  - (c) in subsection (8)(b), the reference to subsection (2)(a) to (f) of section 271 of this Act shall be read as if it were a reference to that subsection as modified by subsection (1) above.
- (5) Section 271D of this Act shall apply in any case where it appears to the court that the accused, if he were to give evidence at or for the purposes of the trial, would be a vulnerable witness as it applies in the case referred to in subsection (1) of that section but subject to the following modifications—
- (a) references to the witness shall be read as if they were references to the accused,
  - (b) references to the party citing or intending to cite the witness shall be read as if they were references to the accused.
- (6) Where the witness within the meaning of section 271E of this Act is the accused, that section shall have effect in relation to the witness as if—
- (a) in subsection (1), paragraph (a) were omitted, and
  - (b) in subsection (2), the words “The party or, as the case may be,” were omitted.
- (7) Section 271M of this Act shall have effect, where the vulnerable witness is the accused, as if the reference in subsection (2) to the party citing the vulnerable witness were a reference to the accused.
- (8) The following provisions of this Act shall not apply in relation to a vulnerable witness who is the accused—
- (a) section 271H(1)(c),
  - (b) section 271I(3).]

### Textual Amendments

- F42** 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, 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)

### Modifications etc. (not altering text)

- C11** 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.

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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)

VALID FROM 01/04/2005

### [<sup>F43</sup>271G Saving provision

Nothing in sections 271A to 271F of this Act affects any power or duty which a court has otherwise than by virtue of those sections to make or authorise any special arrangements for taking the evidence of any person.]

### Textual Amendments

**F43** 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, 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)

### Modifications etc. (not altering text)

**C12** 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)

VALID FROM 01/04/2005

### [<sup>F44</sup>271H The special measures

- (1) The special measures which may be authorised to be used under section 271A, 271C or 271D of this Act for the purpose of taking the evidence of a vulnerable witness are—
  - (a) taking of evidence by a commissioner in accordance with section 271I of this Act,
  - (b) use of a live television link in accordance with section 271J of this Act,
  - (c) use of a screen in accordance with section 271K of this Act,
  - (d) use of a supporter in accordance with section 271L of this Act,
  - (e) giving evidence in chief in the form of a prior statement in accordance with section 271M of this Act, and
  - (f) such other measures as the Scottish Ministers may, by order made by statutory instrument, prescribe.
- (2) An order under subsection (1)(f) above shall not be made unless a draft of the statutory instrument containing the order has been laid before and approved by a resolution of the Scottish Parliament.

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- (3) Provision may be made by Act of Adjournal regulating, so far as not regulated by sections 271I to 271M of this Act, the use in any proceedings of any special measure authorised to be used by virtue of section 271A, 271C or 271D of this Act.]

#### Textual Amendments

- F44** 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, 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)

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

- C13** 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)

VALID FROM 01/04/2005

### 271I Taking of evidence by a commissioner

- (1) Where the special measure to be used is taking of evidence by a commissioner, the court shall appoint a commissioner to take the evidence of the vulnerable witness in respect of whom the special measure is to be used.
- (2) Proceedings before a commissioner appointed under subsection (1) above shall be recorded by video recorder.
- (3) An accused—
  - (a) shall not, except by leave of the court on special cause shown, be present in the room where such proceedings are taking place, but
  - (b) is entitled by such means as seem suitable to the court to watch and hear the proceedings.
- (4) The recording of the proceedings made in pursuance of subsection (2) above shall be received in evidence without being sworn to by witnesses.

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

- C14** 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 and 1.4.2007 for certain purposes, 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. 2008/57, **art. 2** (with art. 3)

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VALID FROM 01/04/2005

### [<sup>F45</sup>271J Live television link

- (1) Where the special measure to be used is a live television link, the court shall make such arrangements as seem to it appropriate for the vulnerable witness in respect of whom the special measure is to be used to give evidence from a place outside the court-room where the trial is to take place by means of a live television link between that place and the court-room.
- (2) The place from which the vulnerable witness gives evidence by means of the link—
  - (a) may be another part of the court building in which the court-room is located or any other suitable place outwith that building, and
  - (b) shall be treated, for the purposes of the proceedings at the trial, as part of the court-room whilst the witness is giving evidence.
- (3) Any proceedings conducted by means of a live television link by virtue of this section shall be treated as taking place in the presence of the accused.
- (4) Where—
  - (a) the live television link is to be used in proceedings in a sheriff court, but
  - (b) that court lacks accommodation or equipment necessary for the purpose of receiving such a link,
 the sheriff may by order transfer the proceedings to any other sheriff court in the same sheriffdom which has such accommodation or equipment available.
- (5) An order may be made under subsection (4) above—
  - (a) at any stage in the proceedings (whether before or after the commencement of the trial), or
  - (b) in relation to any part of the proceedings.]

#### Textual Amendments

**F45** 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, 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)

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

**C15** 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)

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VALID FROM 01/04/2005

## [<sup>F46</sup>271K Screens

- (1) Where the special measure to be used is a screen, the screen shall be used to conceal the accused from the sight of the vulnerable witness in respect of whom the special measure is to be used.
- (2) However, the court shall make arrangements to ensure that the accused is able to watch and hear the vulnerable witness giving evidence.
- (3) Subsections (4) and (5) of section 271J of this Act apply for the purpose of the use of a screen under this section as they apply for the purpose of the use of a live television link under that section but as if—
  - (a) references to the live television link were references to the screen, and
  - (b) the reference to receiving such a link were a reference to the use of a screen.]

### Textual Amendments

**F46** 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, 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](#))

### Modifications etc. (not altering text)

**C16** 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](#))

VALID FROM 01/04/2005

## [<sup>F47</sup>271L Supporters

- (1) Where the special measure to be used is a supporter, another person (“the supporter”) nominated by or on behalf of the vulnerable witness in respect of whom the special measure is to be used may be present alongside the witness to support the witness while the witness is giving evidence.
- (2) Where the person nominated as the supporter is to give evidence at the trial, that person may not act as the supporter at any time before giving evidence.
- (3) The supporter shall not prompt or otherwise seek to influence the witness in the course of giving evidence.]

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### Textual Amendments

**F47** 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, 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)

### Modifications etc. (not altering text)

**C17** 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)

VALID FROM 01/04/2005

## [<sup>F48</sup>271M] Giving evidence in chief in the form of a prior statement

- (1) This section applies where the special measure to be used in respect of a vulnerable witness is giving evidence in chief in the form of a prior statement.
- (2) A statement made by the vulnerable witness which is lodged in evidence for the purposes of this section by or on behalf of the party citing the vulnerable witness shall, subject to subsection (3) below, be admissible as the witness's evidence in chief, or as part of the witness's evidence in chief, without the witness being required to adopt or otherwise speak to the statement in giving evidence in court.
- (3) Section 260 of this Act shall apply to a statement lodged for the purposes of this section as it applies to a prior statement referred to in that section but as if—
  - (a) references to a prior statement were references to the statement lodged for the purposes of this section,
  - (b) in subsection (1), the words “where a witness gives evidence in criminal proceedings” were omitted, and
  - (c) in subsection (2), paragraph (b) were omitted.
- (4) This section does not affect the admissibility of any statement made by any person which is admissible otherwise than by virtue of this section.
- (5) In this section, “statement” has the meaning given in section 262(1) of this Act.]

### Textual Amendments

**F48** 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, 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)



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

**C18** 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)

VALID FROM 28/03/2011

### *[<sup>F49</sup>Witness anonymity orders*

#### Textual Amendments

**F49** **Ss. 271N-271Z** and cross-heading inserted (prosp. with application in accordance with s. 90(3) of the amending Act) by **Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 90(1), 206(1)** (with s. 90(4))

#### 271N Witness anonymity orders

- (1) A court may make an order requiring such specified measures to be taken in relation to a witness in criminal proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.
- (2) The court may make such an order only on an application made in accordance with sections 271P and 271Q, if satisfied of the conditions set out in section 271R having considered the matters set out in section 271S.
- (3) The kinds of measures that may be required to be taken in relation to a witness include in particular measures for securing one or more of the matters mentioned in subsection (4).
- (4) Those matters are—
  - (a) that the witness's name and other identifying details may be—
    - (i) withheld,
    - (ii) removed from materials disclosed to any party to the proceedings,
  - (b) that the witness may use a pseudonym,
  - (c) that the witness is not asked questions of any specified description that might lead to the identification of the witness,
  - (d) that the witness is screened to any specified extent,
  - (e) that the witness's voice is subjected to modulation to any specified extent.
- (5) Nothing in this section authorises the court to require—
  - (a) the witness to be screened to such an extent that the witness cannot be seen by the judge or the jury,
  - (b) the witness's voice to be modulated to such an extent that the witness's natural voice cannot be heard by the judge or the jury.



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(6) An order made under this section is referred to in this Act as a “witness anonymity order”.

(7) In this section “specified” means specified in the order concerned.

### **271P Applications**

(1) An application for a witness anonymity order to be made in relation to a witness in criminal proceedings may be made to the court by the prosecutor or the accused.

(2) Where an application is made by the prosecutor, the prosecutor—

(a) must (unless the court directs otherwise) inform the court of the identity of the witness, but

(b) is not required to disclose in connection with the application—

(i) the identity of the witness, or

(ii) any information that might enable the witness to be identified,

to any other party to the proceedings (or to the legal representatives of any other party to the proceedings).

(3) Where an application is made by the accused, the accused—

(a) must inform the court and the prosecutor of the identity of the witness, but

(b) if there is more than one accused, is not required to disclose in connection with the application—

(i) the identity of the witness, or

(ii) any information that might enable the witness to be identified,

to any other accused (or to the legal representatives of any other accused).

(4) Subsections (5) and (6) apply where the prosecutor or the accused proposes to make an application under this section in respect of a witness.

(5) Any relevant information which is disclosed by or on behalf of that party before the determination of the application must be disclosed in such a way as to prevent—

(a) the identity of the witness, or

(b) any information that might enable the witness to be identified,

from being disclosed except as required by subsection (2)(a) or (3)(a).

(6) Despite any provision in this Act to the contrary, any relevant list, application or notice lodged, made or given by that party before the determination of the application must not—

(a) disclose the identity of the witness, or

(b) contain any other information that might enable the witness to be identified,

but the list, application or notice must, instead, refer to the witness by a pseudonym.

(7) “Relevant information” means any document or other material which falls to be disclosed, or is sought to be relied on, by or on behalf of the party concerned in connection with the proceedings or proceedings preliminary to them.

(8) “Relevant list, application or notice” means—

(a) a list of witnesses,

(b) a list of productions,

(c) a notice under section 67(5) or 78(4) relating to the witness,

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- (d) a motion or application under section 268, 269 or 270 relating to the witness,
  - (e) any other motion, application or notice relating to the witness.
- (9) The court must give every party to the proceedings the opportunity to be heard on an application under this section.
- (10) Subsection (9) does not prevent the court from hearing one or more of the parties to the proceedings in the absence of an accused and the accused's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.
- (11) Nothing in this section is to be taken as restricting any power to make rules of court.

### **271Q Making and determination of applications**

- (1) In proceedings on indictment, an application under section 271P is a preliminary issue (and sections 79 and 87A and other provisions relating to preliminary issues apply accordingly).
- (2) No application under section 271P may be made in summary proceedings by any party unless notice of the party's intention to do so has been given—
- (a) if an intermediate diet has been fixed, before that diet,
  - (b) if no intermediate diet has been fixed, before the commencement of the trial.
- (3) Subsection (2) is subject to subsections (4) and (8).
- (4) In summary proceedings in which an intermediate diet has been fixed, the court may, on cause shown, grant leave for an application under section 271P to be made without notice having been given in accordance with subsection (2)(a).
- (5) Subsection (6) applies where—
- (a) the court grants leave for a party to make an application under section 271P without notice having been given in accordance with subsection (2)(a), or
  - (b) notice of a party's intention to make such an application is given in accordance with subsection (2)(b).
- (6) The application must be disposed of before the commencement of the trial.
- (7) Subsection (8) applies where a motion or application is made under section 268, 269 or 270 to lead the evidence of a witness.
- (8) Despite section 79(1) and subsection (2) above, an application under section 271P may be made in respect of the witness at the same time as the motion or application under section 268, 269 or 270 is made.
- (9) The application must be determined by the court before continuing with the trial.
- (10) Where an application is made under section 271P, the court may postpone or adjourn (or further adjourn) the trial diet.
- (11) In this section, “commencement of the trial” means the time when the first witness for the prosecution is sworn.

### **271R Conditions for making orders**

- (1) This section applies where an application is made for a witness anonymity order to be made in relation to a witness in criminal proceedings.

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- (2) The court may make the order only if it is satisfied that Conditions A to D below are met.
- (3) Condition A is that the proposed order is necessary—
  - (a) in order to protect the safety of the witness or another person or to prevent any serious damage to property, or
  - (b) in order to prevent real harm to the public interest (whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities or otherwise).
- (4) Condition B is that, having regard to all the circumstances, the effect of the proposed order would be consistent with the accused's receiving a fair trial.
- (5) Condition C is that the importance of the witness's testimony is such that in the interests of justice the witness ought to testify.
- (6) Condition D is that—
  - (a) the witness would not testify if the proposed order were not made, or
  - (b) there would be real harm to the public interest if the witness were to testify without the proposed order being made.
- (7) In determining whether the measures to be specified in the order are necessary for the purpose mentioned in subsection (3)(a), the court must have regard in particular to any reasonable fear on the part of the witness—
  - (a) that the witness or another person would suffer death or injury, or
  - (b) that there would be serious damage to property,if the witness were to be identified.

## **271S Relevant considerations**

- (1) When deciding whether Conditions A to D in section 271R are met in the case of an application for a witness anonymity order, the court must have regard to—
  - (a) the considerations mentioned in subsection (2), and
  - (b) such other matters as the court considers relevant.
- (2) The considerations are—
  - (a) the general right of an accused in criminal proceedings to know the identity of a witness in the proceedings,
  - (b) the extent to which the credibility of the witness concerned would be a relevant factor when the witness's evidence comes to be assessed,
  - (c) whether evidence given by the witness might be material in implicating the accused,
  - (d) whether the witness's evidence could be properly tested (whether on grounds of credibility or otherwise) without the witness's identity being disclosed,
  - (e) whether there is any reason to believe that the witness—
    - (i) has a tendency to be dishonest, or
    - (ii) has any motive to be dishonest in the circumstances of the case,having regard in particular to any previous convictions of the witness and to any relationship between the witness and the accused or any associates of the accused,

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- (f) whether it would be reasonably practicable to protect the witness's identity by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

#### **271T Direction to jury**

- (1) Subsection (2) applies where, in a trial on indictment, any evidence has been given by a witness at a time when a witness anonymity order applied to the witness.
- (2) The judge must give the jury such direction as the judge considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the accused.

#### **271U Discharge and variation of order**

- (1) This section applies where a court has made a witness anonymity order in relation to any criminal proceedings.
- (2) The court may discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of the provisions of sections 271R and 271S that applied to the making of the order.
- (3) The court may do so—
  - (a) on an application made by a party to the proceedings if there has been a material change of circumstances since the relevant time, or
  - (b) on its own initiative.
- (4) The court must give every party to the proceedings the opportunity to be heard—
  - (a) before determining an application made to it under subsection (3)(a), and
  - (b) before discharging or varying the order on its own initiative.
- (5) Subsection (4) does not prevent the court from hearing one or more of the parties to the proceedings in the absence of an accused and the accused's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.
- (6) In subsection (3)(a) “the relevant time” means—
  - (a) the time when the order was made, or
  - (b) if a previous application has been made under that subsection, the time when the application (or the last application) was made.

#### **271V Appeals**

- (1) The prosecutor or the accused may appeal to the High Court against—
  - (a) the making of a witness anonymity order under section 271N,
  - (b) the kinds of measures that are required to be taken in relation to a witness under a witness anonymity order made under that section,
  - (c) the refusal to make a witness anonymity order under that section,
  - (d) the discharge of a witness anonymity order under section 271U,
  - (e) the variation of a witness anonymity order under that section, or
  - (f) the refusal to discharge or vary a witness anonymity order under that section.
- (2) The appeal may be brought only with the leave of the court of first instance, granted—

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- (a) on the motion of the party making the appeal, or
  - (b) on its own initiative.
- (3) The procedure in relation to the appeal is to be prescribed by Act of Adjournal.
- (4) If an appeal is brought under this section—
- (a) the period between the lodging of the appeal and its determination does not count towards any time limit applying in respect of the case,
  - (b) the court of first instance or the High Court may do either or both of the following—
    - (i) postpone or adjourn (or further adjourn) the trial diet,
    - (ii) extend any time limit applying in respect of the case.
- (5) An appeal under this section does not affect any right of appeal in relation to any other decision of any court in the criminal proceedings.

#### **271W Appeal against the making of a witness anonymity order**

- (1) This section applies where—
- (a) an appeal is brought under section 271V(1)(a) against the making of a witness anonymity order, and
  - (b) the High Court determines that the decision of the judge at first instance was wrong in law.
- (2) The High Court must discharge the order and the trial is to proceed as if the order had not been made.

#### **271X Appeal against the refusal to make a witness anonymity order**

- (1) This section applies where—
- (a) an appeal is brought under section 271V(1)(c) against the refusal to make a witness anonymity order in relation to a witness in criminal proceedings, and
  - (b) the High Court determines that the decision of the judge at first instance was wrong in law.
- (2) The High Court must make an order requiring such specified measures to be taken in relation to the witness in the proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

#### **271Y Appeal against a variation of a witness anonymity order**

- (1) This section applies where—
- (a) an appeal is brought under section 271V(1)(e) against a variation of a witness anonymity order, and
  - (b) the High Court determines that the decision of the judge at first instance was wrong in law.
- (2) The High Court must discharge the variation.
- (3) If the High Court determines that it is appropriate to make an additional variation in view of the provisions of sections 271R and 271S, the court may do so.

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### **271Z Appeal against a refusal to vary or discharge a witness anonymity order**

- (1) This section applies where—
  - (a) an appeal is brought under section 271V(1)(f) against a refusal to discharge or vary a witness anonymity order, and
  - (b) the High Court determines that the decision of the judge at first instance was wrong in law.
- (2) The High Court must discharge the order, or make the variation, as the case requires.
- (3) If, in the case of a variation, the High Court determines that it is appropriate to make an additional variation in view of the provisions of sections 271R and 271S, the court may do so.]

### *Evidence on commission and from abroad*

### **272 Evidence by letter of request or on commission.**

- (1) In any criminal proceedings in the High Court or the sheriff court the prosecutor or the defence may, at an appropriate time, apply to a judge of the court in which the trial is to take place (or, if that is not yet known, to a judge of the High Court) for—
  - (a) the issue of a letter of request to a court, or tribunal, exercising jurisdiction in a country or territory outside the United Kingdom, Channel Islands and Isle of Man for the examination of a witness resident in that country or territory; or
  - (b) the appointment of a commissioner to examine, at any place in the United Kingdom, Channel Islands, or Isle of Man, a witness who—
    - (i) by reason of being ill or infirm is unable to attend the trial diet; or
    - (ii) is not ordinarily resident in, and is, at the time of the trial diet, unlikely to be present in, the United Kingdom, Channel Islands or the Isle of Man.
- (2) A hearing, as regards any application under subsection (1) above by a party, shall be conducted in chambers but may be dispensed with if the application is not opposed.
- (3) An application under subsection (1) above may be granted only if the judge is satisfied that—
  - (a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and
  - (b) there would be no unfairness to the other party were such evidence to be received in the form of the record of an examination conducted by virtue of that subsection.
- (4) Any such record as is mentioned in paragraph (b) of subsection (3) above shall, without being sworn to by witnesses, be received in evidence in so far as it either accords with the averment mentioned in paragraph (a) of that subsection or can be so received without unfairness to either party.
- (5) Where any such record as is mentioned in paragraph (b) of subsection (3) above, or any part of such record, is not a document in writing, that record or part shall not be received in evidence under subsection (4) above unless it is accompanied by a transcript of its contents.

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- (6) The procedure as regards the foregoing provisions of this section shall be prescribed by Act of Adjournal; and without prejudice to the generality of the power to make it, such an Act of Adjournal may provide for the appointment of a person before whom evidence may be taken for the purposes of this section.
- (7) In subsection (1) above, “appropriate time” means as regards—
- (a) solemn proceedings, any time before the oath is administered to the jury;
  - (b) summary proceedings, any time before the first witness is sworn,
- or (but only in relation to an application under paragraph (b) of that subsection) any time during the course of the trial if the circumstances on which the application is based had not arisen, or would not have merited such application, within the period mentioned in paragraph (a) or, as the case may be, (b) of this subsection.
- (8) In subsection (3) and (4) above, “record” includes, in addition to a document in writing—
- (a) any disc, tape, soundtrack or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
  - (b) any film (including microfilm), negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom.
- (9) This section is without prejudice to any existing power at common law to adjourn a trial diet to the place where a witness is.

### **273 Television link evidence from abroad.**

- (1) In any solemn proceedings in the High Court or the sheriff court a person other than the accused may give evidence through a live television link if—
- (a) the witness is outside the United Kingdom;
  - (b) an application under subsection (2) below for the issue of a letter of request has been granted; and
  - (c) the court is satisfied as to the arrangements for the giving of evidence in that manner by that witness.
- (2) The prosecutor or the defence in any proceedings referred to in subsection (1) above may apply to a judge of the court in which the trial is to take place (or, if that court is not yet known, to a judge of the High Court) for the issue of a letter of request to—
- (a) a court or tribunal exercising jurisdiction in a country or territory outside the United Kingdom where a witness is ordinarily resident; or
  - (b) any authority which the judge is satisfied is recognised by the government of that country or territory as the appropriate authority for receiving requests for assistance in facilitating the giving of evidence through a live television link, requesting assistance in facilitating the giving of evidence by that witness through a live television link.
- (3) An application under subsection (2) above shall be granted only if the judge is satisfied that—
- (a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and
  - (b) the granting of the application —



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- (i) is in the interests of justice; and
- (ii) in the case of an application by the prosecutor, is not unfair to the accused.

VALID FROM 28/03/2011

*[<sup>F50</sup>Evidence from other parts of the United Kingdom*

**Textual Amendments**

**F50** S. 273A and cross-heading inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 91(3), 206(1)

**273A Television link evidence from other parts of the United Kingdom**

- (1) In any criminal proceedings in the High Court or the sheriff court a person other than the accused may give evidence through a live television link if—
  - (a) the witness is within the United Kingdom but outside Scotland,
  - (b) an application under this section for the issue of a letter of request has been granted, and
  - (c) the court is satisfied as to the arrangements for the giving of evidence in that manner by that witness.
- (2) The prosecutor or the defence in any proceedings referred to in subsection (1) may apply for the issue of a letter of request.
- (3) The application must be made to a judge of the court in which the trial is to take place or, if that court is not yet known, to a judge of the High Court.
- (4) The judge may, on an application under this section, issue a letter to a court or tribunal exercising jurisdiction in the place where the witness is ordinarily resident requesting assistance in facilitating the giving of evidence by that witness through a live television link, if the judge is satisfied of the matters set out in subsection (5).
- (5) Those matters are—
  - (a) that the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial,
  - (b) that the granting of the application—
    - (i) is in the interests of justice, and
    - (ii) in the case of an application by the prosecutor, is not unfair to the accused.]

*Evidence relating to sexual offences*

**[<sup>F51</sup>274 Restrictions on evidence relating to sexual offences.**

- (1) In the trial of a person charged with an offence to which section 288C of this Act applies, the court shall not admit, or allow questioning designed to elicit, evidence which shows or tends to show that the complainer—

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- (a) is not of good character (whether in relation to sexual matters or otherwise);
- (b) has, at any time, engaged in sexual behaviour not forming part of the subject matter of the charge;
- (c) has, at any time (other than shortly before, at the same time as or shortly after the acts which form part of the subject matter of the charge), engaged in such behaviour, not being sexual behaviour, as might found the inference that the complainer—
  - (i) is likely to have consented to those acts; or
  - (ii) is not a credible or reliable witness; or
- (d) has, at any time, been subject to any such condition or predisposition as might found the inference referred to in sub-paragraph (c) above.

(2) In subsection (1) above—

“complainer” means the person against whom the offence referred to in that subsection is alleged to have been committed; and

the reference to engaging in sexual behaviour includes a reference to undergoing or being made subject to any experience of a sexual nature.]

#### Textual Amendments

**F51** S. 274 substituted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 7; S.S.I. 2002/443, [art. 3](#) (with art. 4(5))

#### [<sup>F52</sup>275 Exceptions to restrictions under section 274.

- (1) The court may, on application made to it, admit such evidence or allow such questioning as is referred to in subsection (1) of section 274 of this Act if satisfied that—
  - (a) the evidence or questioning will relate only to a specific occurrence or occurrences of sexual or other behaviour or to specific facts demonstrating—
    - (i) the complainer’s character; or
    - (ii) any condition or predisposition to which the complainer is or has been subject;
  - (b) that occurrence or those occurrences of behaviour or facts are relevant to establishing whether the accused is guilty of the offence with which he is charged; and
  - (c) the probative value of the evidence sought to be admitted or elicited is significant and is likely to outweigh any risk of prejudice to the proper administration of justice arising from its being admitted or elicited.
- (2) In subsection (1) above—
  - (a) the reference to an occurrence or occurrences of sexual behaviour includes a reference to undergoing or being made subject to any experience of a sexual nature;
  - (b) “the proper administration of justice” includes—
    - (i) appropriate protection of a complainer’s dignity and privacy; and
    - (ii) ensuring that the facts and circumstances of which a jury is made aware are, in cases of offences to which section 288C of this Act applies, relevant to an issue which is to be put before the jury and commensurate to the importance of that issue to the jury’s verdict,

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and, in that subsection and in sub-paragraph (i) of paragraph (b) above, “complainer” has the same meaning as in section 274 of this Act.

- (3) An application for the purposes of subsection (1) above shall be in writing and shall set out—
  - (a) the evidence sought to be admitted or elicited;
  - (b) the nature of any questioning proposed;
  - (c) the issues at the trial to which that evidence is considered to be relevant;
  - (d) the reasons why that evidence is considered relevant to those issues;
  - (e) the inferences which the applicant proposes to submit to the court that it should draw from that evidence; and
  - (f) such other information as is of a kind specified for the purposes of this paragraph in Act of Adjournal.
- (4) The party making such an application shall, when making it, send a copy of it—
  - (a) when that party is the prosecutor, to the accused; and
  - (b) when that party is the accused, to the prosecutor and any co-accused.
- (5) The court may reach a decision under subsection (1) above without considering any evidence; but, where it takes evidence for the purposes of reaching that decision, it shall do so as if determining the admissibility of evidence.
- (6) The court shall state its reasons for its decision under subsection (1) above, and may make that decision subject to conditions which may include compliance with directions issued by it.
- (7) Where a court admits evidence or allows questioning under subsection (1) above, its decision to do so shall include a statement—
  - (a) of what items of evidence it is admitting or lines of questioning it is allowing;
  - (b) of the reasons for its conclusion that the evidence to be admitted or to be elicited by the questioning is admissible;
  - (c) of the issues at the trial to which it considers that that evidence is relevant.
- (8) A condition under subsection (6) above may consist of a limitation on the extent to which evidence—
  - (a) to be admitted; or
  - (b) to be elicited by questioning to be allowed,
 may be argued to support a particular inference specified in the condition.
- (9) Where evidence is admitted or questioning allowed under this section, the court at any time may—
  - (a) as it thinks fit; and
  - (b) notwithstanding the terms of its decision under subsection (1) above or any condition under subsection (6) above,
 limit the extent of evidence to be admitted or questioning to be allowed.]

#### Textual Amendments

**F52** S. 275 substituted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), [s. 8\(1\)](#); [S.S.I. 2002/443](#), [art. 3](#) (with [art. 4\(5\)](#))

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### [<sup>F53</sup>275A] Disclosure of accused’s previous convictions where court allows questioning or evidence under section 275

- (1) Where, under section 275 of this Act, a court on the application of the accused allows such questioning or admits such evidence as is referred to in section 274(1) of this Act, the prosecutor shall forthwith place before the presiding judge any previous relevant conviction of the accused.
- (2) Any conviction placed before the judge under subsection (1) above shall, unless the accused objects, be—
  - (a) in proceedings on indictment, laid before the jury;
  - (b) in summary proceedings, taken into consideration by the judge.
- (3) An extract of such a conviction may not be laid before the jury or taken into consideration by the judge unless such an extract was appended to the notice, served on the accused under section 69(2) or, as the case may be, 166(2) of this Act, which specified that conviction.
- (4) An objection under subsection (2) above may be made only on one or more of the following grounds—
  - (a) where the conviction bears to be a relevant conviction by virtue only of paragraph (b) of subsection (10) below, that there was not a substantial sexual element present in the commission of the offence for which the accused has been convicted;
  - (b) that the disclosure or, as the case may be, the taking into consideration of the conviction would be contrary to the interests of justice;
  - (c) in proceedings on indictment, that the conviction does not apply to the accused or is otherwise inadmissible;
  - (d) in summary proceedings, that the accused does not admit the conviction.
- (5) Where—
  - (a) an objection is made on one or more of the grounds mentioned in paragraphs (b) to (d) of subsection (4) above; and
  - (b) an extract of the conviction in respect of which the objection is made was not appended to the notice, served on the accused under section 69(2) or, as the case may be, 166(2) above, which specified that conviction,
 the prosecutor may, notwithstanding subsection (3) above, place such an extract conviction before the judge.
- (6) In summary proceedings, the judge may, notwithstanding subsection (2)(b) above, take into consideration any extract placed before him under subsection (5) above for the purposes only of considering the objection in respect of which the extract is disclosed.
- (7) In entertaining an objection on the ground mentioned in paragraph (b) of subsection (4) above, the court shall, unless the contrary is shown, presume that the disclosure, or, as the case may be, the taking into consideration, of a conviction is in the interests of justice.
- (8) An objection on the ground mentioned in paragraph (c) of subsection (4) above shall not be entertained unless the accused has, under subsection (2) of section 69 of this Act, given intimation of the objection in accordance with subsection (3) of that section.

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- (9) In entertaining an objection on the ground mentioned in paragraph (d) of subsection (4) above, the court shall require the prosecutor to withdraw the conviction or adduce evidence in proof thereof.
- (10) For the purposes of this section a “relevant conviction” is, subject to subsection (11) below—
- (a) a conviction for an offence to which section 288C of this Act applies by virtue of subsection (2) thereof; or
  - (b) where a substantial sexual element was present in the commission of any other offence in respect of which the accused has previously been convicted, a conviction for that offence,
- which is specified in a notice served on the accused under section 69(2) or, as the case may be, 166(2) of this Act.
- (11) A conviction for an offence other than an offence to which section 288C of this Act applies by virtue of subsection (2) thereof is not a relevant conviction for the purposes of this section unless an extract of that conviction containing information which indicates that a sexual element was present in the commission of the offence was appended to the notice, served on the accused under section 69(2) or, as the case may be, 166(2) of this Act, which specified that conviction.]

#### Textual Amendments

**F53** Ss. 275A, 275B inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 10(4); S.S.I. 2002/443, art. 3 (with art. 4(5))

#### [<sup>F53</sup> 275B Provisions supplementary to sections 275 and 275A

- (1) An application for the purposes of subsection (1) of section 275 of this Act shall not, unless on special cause shown, be considered by the court unless made
- <sup>F54</sup> [ in the case of proceedings in the High Court, not less than 7 clear days before
    - (a) the preliminary hearing; or
    - (b) in any other case,]
 not less than 14 clear days before the trial diet.
- (2) Where—
- (a) such an application is considered; or
  - (b) any objection under subsection (2) of section 275A of this Act is entertained,
- during the course of the trial, the court shall consider that application or, as the case may be, entertain that objection in the absence of the jury, the complainer, any person cited as a witness and the public.]

#### Textual Amendments

**F53** Ss. 275A, 275B inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 10(4); S.S.I. 2002/443, art. 3 (with art. 4(5))

**F54** Words in s. 275B inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 45](#); S.S.I. 2004/405, art. 2, Sch. 1 (with savings in arts. 3-5)

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VALID FROM 01/04/2005

*[<sup>F55</sup>Expert evidence as to subsequent behaviour of complainer*

**Textual Amendments**

**F55** S. 275C and preceding cross-heading inserted (1.4.2005) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), ss. 5, 25; S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4)

**275C Expert evidence as to subsequent behaviour of complainer in certain cases**

- (1) This section applies in the case of proceedings in respect of any offence to which section 288C of this Act applies.
- (2) Expert psychological or psychiatric evidence relating to any subsequent behaviour or statement of the complainer is admissible for the purpose of rebutting any inference adverse to the complainer’s credibility or reliability as a witness which might otherwise be drawn from the behaviour or statement.
- (3) In subsection (2) above—  
“complainer” means the person against whom the offence to which the proceedings relate is alleged to have been committed,  
“subsequent behaviour or statement” means any behaviour or statement subsequent to, and not forming part of the acts constituting, the offence to which the proceedings relate and which is not otherwise relevant to any fact in issue at the trial.
- (4) This section does not affect the admissibility of any evidence which is admissible otherwise than by virtue of this section.]

*Biological material*

**276 Evidence of biological material.**

- (1) Evidence as to the characteristics and composition of any biological material deriving from human beings or animals shall, in any criminal proceedings, be admissible notwithstanding that neither the material nor a sample of it is lodged as a production.
- (2) A party wishing to lead such evidence as is referred to in subsection (1) above shall, where neither the material nor a sample of it is lodged as a production, make the material or a sample of it available for inspection by the other party unless the material constitutes a hazard to health or has been destroyed in the process of analysis.

*Transcripts and records*

**277 Transcript of police interview sufficient evidence.**

- (1) Subject to subsection (2) below, for the purposes of any criminal proceedings, a document certified by the person who made it as an accurate transcript made for the

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prosecutor of the contents of a tape (identified by means of a label) purporting to be a recording of an interview between—

- (a) a police officer and an accused person; or
- (b) a person commissioned, appointed or authorised under section 6(3) of the <sup>M4</sup>Customs and Excise Management Act 1979 and an accused person,

shall be received in evidence and be sufficient evidence of the making of the transcript and of its accuracy.

(2) Subsection (1) above shall not apply to a transcript—

- (a) unless a copy of it has been served on the accused not less than 14 days before
  - [<sup>F56</sup>(i) in the case of proceedings in the High Court, the preliminary hearing;
  - (ii) in any other case,]

his trial; or

- (b) if the accused, not less than
  - [<sup>F57</sup>(i) in the case of proceedings in the High Court, seven days before the preliminary hearing;
  - (ii) in any other case, six days before his trial;

or (in either case)] by such later time before his trial as the court may in special circumstances allow, has served notice on the prosecutor that the accused challenges the making of the transcript or its accuracy.

(3) A copy of the transcript or a notice under subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the transcript or notice, together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

(4) Where subsection (1) above does not apply to a transcript, if the person who made the transcript is called as a witness his evidence shall be sufficient evidence of the making of the transcript and of its accuracy.

#### Textual Amendments

**F56** Words in s. 277(2)(a) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), ss. 25, 27(1), [Sch. para. 46\(a\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (with savings in arts. 3-5)

**F57** Words in s. 277(2)(b) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), ss. 25, 27(1), [Sch. para. 46\(b\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (with savings in arts. 3-5)

#### Marginal Citations

**M4** 1979 c.2.

## 278 Record of proceedings at examination as evidence.

(1) Subject to subsection (2) below, the record made, under section 37 of this Act (incorporating any rectification authorised under section 38(1) of this Act), of proceedings at the examination of an accused shall be received in evidence without being sworn to by witnesses, and it shall not be necessary in proceedings on indictment to insert the names of any witnesses to the record in any list of witnesses, either for the prosecution or for the defence.

(2) On the application of either an accused or the prosecutor—



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- (a) in proceedings on indictment, subject to sections 37(5) and [<sup>F58</sup>79(1)] of this Act, the court may determine that the record or part of the record shall not be read to the jury; and
  - (b) in summary proceedings, subject to the said section 37(5) and to subsection (4) below, the court may refuse to admit the record or some part of the record as evidence.
- (3) At the hearing of an application under subsection (2) above, it shall be competent for the prosecutor or the defence to adduce as witnesses the persons who were present during the proceedings mentioned in subsection (1) above and for either party to examine those witnesses upon any matters regarding the said proceedings.
- (4) In summary proceedings, except on cause shown, an application under subsection (2) (b) above shall not be heard unless notice of at least 10 clear days has been given to the court and to the other parties.
- (5) In subsection (2) above, the “record” comprises—
- (a) as regards any trial of an indictment, each record included, under section 68(1) of this Act, in the list of productions; and
  - (b) as regards a summary trial, each record which it is sought to have received under subsection (1) above.

#### Textual Amendments

**F58** Words in s. 278(2)(a) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), ss. 25, 27(1), [Sch. para. 47](#); S.S.I. 2004/405, [art. 2](#), [Sch. 1](#) (with savings in [arts. 3-5](#))

### *Documentary evidence*

#### **279 Evidence from documents.**

Schedule 8 to this Act, which makes provision regarding the admissibility in criminal proceedings of copy documents and of evidence contained in business documents, shall have effect.

### *[<sup>F59</sup> Evidence from certain official documents*

#### Textual Amendments

**F59** S. 279A and preceding cross-heading inserted (1.8.1997) by [1997 c. 48, s. 28\(2\)](#); S.I. 1997/1712, [art. 3](#), [Sch.](#) (subject to [arts. 4, 5](#))

#### <sup>F60</sup>**279A Evidence from certain official documents.**

- (1) Any letter, minute or other official document issuing from the office of or in the custody of any of the departments of state or government in the United Kingdom [<sup>F61</sup>or any part of the Scottish Administration] which—
- (a) is required to be produced in evidence in any prosecution; and
  - (b) according to the rules and regulations applicable to such departments may competently be so produced,

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shall when so produced be *prima facie* evidence of the matters contained in it without being produced or sworn to by any witness.

- (2) A copy of any such document as is mentioned in subsection (1) above bearing to be certified by any person having authority to certify it shall be treated as equivalent to the original of that document and no proof of the signature of the person certifying the copy or of his authority to certify it shall be necessary.
- (3) Any order by any of the departments of state or government [<sup>F62</sup>or the Scottish Parliament] or any local authority or public body made under powers conferred by any statute or a print or a copy of such an order, shall when produced in a prosecution be received as evidence of the due making, confirmation, and existence of the order without being sworn to by any witness and without any further or other proof.
- (4) Subsection (3) above is without prejudice to any right competent to the accused to challenge any order such as is mentioned in that subsection as being *ultra vires* of the authority making it or on any other competent ground.
- (5) Where an order such as is mentioned in subsection (3) above is referred to in the indictment or, as the case may be, the complaint, it shall not be necessary to enter it in the record of the proceedings as a documentary production.
- (6) The provisions of this section are in addition to, and not in derogation of, any powers of proving documents conferred by statute or existing at common law.]

#### Textual Amendments

- F60** S. 279A and preceding cross-heading inserted (1.8.1997) by 1997 c. 48, s. 28(2); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)
- F61** Words in s. 279A(1) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 122(4)(a); S.I. 1998/3178, art. 3
- F62** Words in s. 279A(3) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 122(4)(b); S.I. 1998/3178, arts. 3

### *Routine evidence*

#### **280 Routine evidence.**

- (1) For the purposes of any proceedings for an offence under any of the enactments specified in column 1 of Schedule 9 to this Act, a certificate purporting to be signed by a person or persons specified in column 2 thereof, and certifying the matter specified in column 3 thereof shall, subject to subsection (6) below, be sufficient evidence of that matter and of the qualification or authority of that person or those persons.
- (2) The Secretary of State may by order—
  - (a) amend or repeal the entry in Schedule 9 to this Act in respect of any enactment; or
  - (b) insert in that Schedule an entry in respect of a further enactment.
- (3) An order under subsection (2) above may make such transitional, incidental or supplementary provision as the Secretary of State considers necessary or expedient in connection with the coming into force of the order.

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- (4) For the purposes of any criminal proceedings, a report purporting to be signed by two authorised forensic scientists shall, subject to subsection (5) below, be sufficient evidence of any fact or conclusion as to fact contained in the report and of the authority of the signatories.
- (5) A forensic scientist is authorised for the purposes of subsection (4) above if—
  - (a) he is authorised for those purposes by the Secretary of State; or
  - (b) he—
    - (i) is a constable or is employed by a police authority under section 9 of the <sup>M5</sup>Police (Scotland) Act 1967;
    - (ii) possesses such qualifications and experience as the Secretary of State may for the purposes of that subsection by order prescribe; and
    - (iii) is authorised for those purposes by the chief constable of the police force maintained for the police area of that authority.
- (6) Subsections (1) and (4) above shall not apply to a certificate or, as the case may be, report tendered on behalf of the prosecutor or the accused—
  - (a) unless a copy has been served on the other party not less than fourteen days before
    - [<sup>F63</sup>(i) in the case of proceedings in the High Court, the preliminary hearing;
    - (ii) in any other case,]the trial; or
  - (b) where the other party, not more than seven days after the date of service of the copy on him under paragraph (a) above or by such later time as the court may in special circumstances allow, has served notice on the first party that [<sup>F64</sup>he] challenges the matter, qualification or authority mentioned in subsection (1) above or as the case may be the fact, conclusion or authority mentioned in subsection (4) above.
- (7) A copy of a certificate or, as the case may be, report required by subsection (6) above, to be served on the accused or the prosecutor or of a notice required by that subsection or by subsection (1) or (2) of section 281 of this Act to be served on the prosecutor shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such certificate or notice, together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of such a copy.
- (8) Where, following service of a notice under subsection (6)(b) above, evidence is given in relation to a report referred to in subsection (4) above by both of the forensic scientists purporting to have signed the report, the evidence of those forensic scientists shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report.
- (9) At any trial of an offence it shall be presumed that the person who appears in answer to the complaint is the person charged by the police with the offence unless the contrary is alleged.
- (10) An order made under subsection (2) or (5)(b)(ii) above shall be made by statutory instrument.
- (11) No order shall be made under subsection (2) above unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

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- (12) A statutory instrument containing an order under subsection (5)(b)(ii) above shall be subject to annulment pursuant to a resolution of either House of Parliament.

#### Textual Amendments

- F63** Words in s. 280(6)(a) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), ss. 25, 27(1), [Sch. para. 48](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (with savings in arts. 3-5)
- F64** Word in s. 280(6)(b) substituted (1.8.1997) by 1997 c. 48, s. 62(1), [Sch. 1 para. 21\(32\)](#); S.I. 1997/1712, [art. 3](#), [Sch.](#) (subject to arts. 4, 5)

#### Marginal Citations

- M5** 1967 c.77.

### 281 Routine evidence: autopsy and forensic science reports.

- (1) Where in a trial an autopsy report is lodged as a production by the prosecutor it shall be presumed that the body of the person identified in that report is the body of the deceased identified in the indictment or complaint, unless the accused not less than
- [<sup>F65</sup>(i) in the case of proceedings in the High Court, seven days before the preliminary hearing;
- (ii) in any other case, six days before the trial;
- or (in either case)] by such later time before the trial as the court may in special circumstances allow, gives notice that the contrary is alleged.
- (2) At the time of lodging an autopsy or forensic science report as a production the prosecutor may intimate to the accused that it is intended that only one of the pathologists or forensic scientists <sup>F66</sup>. . . purporting to have signed the report shall be called to give evidence in respect thereof; and [<sup>F67</sup>, where such intimation is given,] the evidence of [<sup>F68</sup>one of those pathologists or forensic scientists] shall be sufficient evidence of any fact or conclusion as to fact contained in the report and of the qualifications of the signatories, unless the accused, not less than
- [<sup>F69</sup>(i) in the case of proceedings in the High Court, seven days before the preliminary hearing;
- (ii) in any other case, six days before the trial;
- or (in either case)] by such later time before the trial as the court may in special circumstances allow, serves notice on the prosecutor that he requires the attendance at the trial of the other pathologist or forensic scientist also.
- (3) Where, following service of a notice by the accused under subsection (2) above, evidence is given in relation to an autopsy or forensic science report by both of the pathologists or forensic scientists purporting to have signed the report, the evidence of those pathologists or forensic scientists shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report.

#### Textual Amendments

- F65** Words in s. 281(1) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), ss. 25, 27(1), [Sch. para. 49\(a\)](#); S.S.I. 2004/405, [art. 2\(1\)](#), Sch. 1 (with savings in arts. 3-5)
- F66** Words in s. 281(2) repealed (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), ss. 25, 27(1), [Sch. para. 49\(b\)\(i\)](#); S.S.I. 2004/405, [art. 2\(1\)](#), Sch. 1 (with savings in arts. 3-5)

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- F67** Words in s. 281(2) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 49\(b\)\(ii\)](#); S.S.I. 2004/405, [art. 2\(1\)](#), Sch. 1 (with savings in arts. 3-5)
- F68** Words in s. 281(2) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 49\(b\)\(iii\)](#); S.S.I. 2004/405, [art. 2\(1\)](#), Sch. 1 (with savings in arts. 3-5)
- F69** Words in s. 281(2) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 49\(b\)\(iv\)](#); S.S.I. 2004/405, [art. 2\(1\)](#), Sch. 1 (with savings in arts. 3-5)

VALID FROM 01/04/2005

### **[<sup>F70</sup>281A Routine evidence: reports of identification prior to trial**

- (1) Where in a trial the prosecutor lodges as a production a report naming—
- (a) a person identified in an identification parade or other identification procedure by a witness, and
  - (b) that witness,

it shall be presumed, subject to subsection (2) below, 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.

- (2) That presumption shall not apply—
- (a) unless the prosecutor has, [<sup>F71</sup>by the required time], served on the accused a copy of the report and a notice that he intends to rely on the presumption, or
  - (b) if the accused—
    - (i) not more than 7 days after the date of service of the copy of the report, or
    - (ii) by such later time as the court may in special circumstances allow, has served notice on the prosecutor that he intends to challenge the facts stated in the report.

[ In subsection (2)(a) above, “the required time” means—

- <sup>F72</sup>(3) (a) in the case of proceedings in the High Court—
- (i) not less than 14 clear days before the preliminary hearing; or
  - (ii) such later time, being not less than 14 clear days before the trial, as the court may, in special circumstances, allow;
- (b) in any other case, not less than 14 clear days before the trial.]]

#### **Textual Amendments**

- F70** S. 281A inserted (1.4.2005) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), [ss. 4, 25](#); S.S.I. 2005/168, [art. 2](#), Sch. (with savings in art. 4)
- F71** Words in s. 281A(2)(a) substituted (1.4.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 50\(a\)](#); S.S.I. 2004/405, [art. 2\(2\)](#), Sch. 2 (with savings in arts. 3-5)
- F72** S. 281A(3) inserted (1.4.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 50\(b\)](#); S.S.I. 2004/405, [art. 2\(2\)](#), Sch. 2 (with savings in arts. 3-5) (as amended (31.1.2005) by S.S.I. 2005/40, [art. 3\(5\)](#))

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### Sufficient evidence

#### 282 Evidence as to controlled drugs and medicinal products.

(1) For the purposes of any criminal proceedings, evidence given by an authorised forensic scientist, either orally or in a report purporting to be signed by him, that a substance which satisfies either of the conditions specified in subsection (2) below is—

- (a) a particular controlled drug or medicinal product; or
- (b) a particular product which is listed in the British Pharmacopoeia as containing a particular controlled drug or medicinal product,

shall, subject to subsection (3) below, be sufficient evidence of that fact notwithstanding that no analysis of the substance has been carried out.

(2) Those conditions are—

- (a) that the substance is in a sealed container bearing a label identifying the contents of the container; or
- (b) that the substance has a characteristic appearance having regard to its size, shape, colour and manufacturer’s mark.

(3) A party proposing to rely on subsection (1) above (“the first party”) shall, not less than 14 days before the [<sup>F73</sup>relevant] diet, serve on the other party (“the second party”)—

- (a) a notice to that effect; and
- (b) where the evidence is contained in a report, a copy of the report,

and if the second party serves on the first party, not more than seven days after the date of service of the notice on him, a notice that he does not accept the evidence as to the identity of the substance, subsection (1) above shall not apply in relation to that evidence.

[<sup>F74</sup>(3A) In subsection (3) above, “the relevant diet” means—

- (a) in the case of proceedings in the High Court, the preliminary hearing;
- (b) in any other case, the trial diet.]

(4) A notice or copy report served in accordance with subsection (3) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the notice or copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

(5) In this section—

“controlled drug” has the same meaning as in the <sup>M6</sup>Misuse of Drugs Act 1971; and

“medicinal product” has the same meaning as in the <sup>M7</sup>Medicines Act 1968.

#### Textual Amendments

**F73** Word in s. 282(3) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 51\(a\)](#); S.S.I. 2004/405, [art. 2\(1\)](#), Sch. 1 (with savings in arts. 3-5)

**F74** S. 282(3A) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 51\(b\)](#); S.S.I. 2004/405, [art. 2\(1\)](#), Sch. 1 (with savings in arts. 3-5)

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### Marginal Citations

M6 1971 c.38.

M7 1968 c.67.

## 283 Evidence as to time and place of video surveillance recordings.

- (1) For the purposes of any criminal proceedings, a certificate purporting to be signed by a person responsible for the operation of a video surveillance system and certifying—
- the location of the camera;
  - the nature and extent of the person’s responsibility for the system; and
  - that visual images recorded on a particular video tape are images, recorded by the system, of events which occurred at a place specified in the certificate at a time and date so specified,

shall, subject to subsection (2) below, be sufficient evidence of the matters contained in the certificate.

- (2) A party proposing to rely on subsection (1) above (“the first party”) shall, not less than 14 days before the [<sup>F75</sup>relevant] diet, serve on the other party (“the second party”) a copy of the certificate and, if the second party serves on the first party, not more than seven days after the date of service of the copy certificate on him, a notice that he does not accept the evidence contained in the certificate, subsection (1) above shall not apply in relation to that evidence.

[<sup>F76</sup>(2A) In subsection (2) above, “the relevant diet” means—

- in the case of proceedings in the High Court, the preliminary hearing;
- in any other case, the trial diet.]

- (3) A copy certificate or notice served in accordance with subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

- (4) In this section, “video surveillance system” means apparatus consisting of a camera mounted in a fixed position and associated equipment for transmitting and recording visual images of events occurring in any place.

### Textual Amendments

**F75** Word in s. 283(2) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 52\(a\)](#); S.S.I. 2004/405, [art. 2\(1\)](#), Sch. 1 (with savings in arts. 3-5)

**F76** S. 283(2A) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 52\(b\)](#); S.S.I. 2004/405, [art. 2\(1\)](#), Sch. 1 (with savings in arts. 3-5)

## 284 Evidence in relation to fingerprints.

- (1) For the purpose of any criminal proceedings, a certificate purporting to be signed by [<sup>F77</sup>a person authorised in that behalf by a chief constable] and certifying that [<sup>F77</sup>relevant physical data (within the meaning of section 18(7A) of this Act) was taken from or provided by] a person designated in the certificate at a time, date and place



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specified therein shall, subject to subsection (2) below, be sufficient evidence of the facts contained in the certificate.

[<sup>F78</sup>(2) A party proposing to rely on subsection (1) above (“the first party”) shall, not less than 14 days before the [<sup>F79</sup>relevant] diet, serve on any other party to the proceedings a copy of the certificate, and [<sup>F80</sup>, if that other party serves on the first party, not more than seven days after the date of service of the copy on him, a notice that he does not accept the evidence contained in the certificate, subsection (1) above shall not apply in relation to that evidence.]

(2A) Where the first party does not serve a copy of the certificate on any other party as mentioned in subsection (2) above, he shall not be entitled to rely on subsection (1) above as respects that party.]

[<sup>F81</sup>(2B) In subsection (2) above, “the relevant diet” means—

- (a) in the case of proceedings in the High Court, the preliminary hearing;
- (b) in any other case, the trial diet.]

(3) A copy certificate or notice served in accordance with subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

#### Textual Amendments

**F77** Words in s. 284(1) substituted (1.8.1997) by 1997 c. 48, s. 47(4)(a)(i)(ii); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

**F78** S. 284(2)(2A) substituted (1.8.1997) for s. 284(2) by 1997 c. 48, s. 47(4)(b); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

**F79** Word in s. 284(2) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 53(a); S.S.I. 2004/405, art. 2(1), Sch. 1 (with savings in arts. 3-5)

**F80** Words in s. 284(2) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 54, 89 (with savings in S.S.I. 2003/287, art. 3); S.S.I. 2003/288, art. 2, Sch.

**F81** S. 284(2B) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 53(b); S.S.I. 2004/405, art. 2(1), Sch. 1 (with savings in arts. 3-5)

#### *Proof of previous convictions*

### 285 Previous convictions: proof, general.

- (1) A previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this subsection and subsections (2) to (6) below and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.
- (2) A certificate purporting to be signed by [<sup>F82</sup>the Secretary of State or by a person authorised by him to sign such a certificate] or the Commissioner of Police of the Metropolis, containing particulars relating to a conviction extracted from the criminal records kept [<sup>F82</sup>in pursuance of a service provided and maintained by the Secretary of State under or by virtue of section 36 of the <sup>M8</sup>Police (Scotland) Act 1967 or by or on behalf of the Commissioner of Police of the Metropolis], and certifying that the copies of the fingerprints contained in the certificate are copies of the fingerprints

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appearing from the said records to have been taken in pursuance of rules for the time being in force under sections 12 and 39 of the <sup>M9</sup>Prisons (Scotland) Act 1989, or regulations for the time being in force under section 16 of the <sup>M10</sup>Prison Act 1952, from the person convicted on the occasion of the conviction or on the occasion of his last conviction, shall be sufficient evidence of the conviction or, as the case may be, of his last conviction and of all preceding convictions and that the copies of the fingerprints produced on the certificate are copies of the fingerprints of the person convicted.

- (3) Where a person has been apprehended and detained in the custody of the police in connection with any criminal proceedings, a certificate purporting to be signed by the chief constable concerned or a person authorised on his behalf, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.
- (4) A certificate purporting to be signed by or on behalf of the governor of a prison or of a remand centre in which any person has been detained in connection with any criminal proceedings, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.
- (5) A certificate purporting to be signed by [<sup>F83</sup>the Secretary of State or by a person authorised by him to sign such a certificate], and certifying that the fingerprints, copies of which are certified as mentioned in subsection (2) above by [<sup>F83</sup>the Secretary of State or by a person authorised by him to sign such a certificate or by or on behalf of] or the Commissioner of Police of the Metropolis to be copies of the fingerprints of a person previously convicted and the fingerprints certified by or on behalf of a chief constable or a governor as mentioned in subsection (3) or (4) above, or otherwise shown, to be the fingerprints of the person against whom the previous conviction is sought to be proved, are the fingerprints of the same person, shall be sufficient evidence of the matter so certified.
- (6) An extract conviction of any crime committed in any part of the United Kingdom bearing to have been issued by an officer whose duties include the issue of extract convictions shall be received in evidence without being sworn to by witnesses.
- (7) It shall be competent to prove a previous conviction or any fact relevant to the admissibility of the conviction by witnesses, although the name of any such witness is not included in the list served on the accused; and the accused shall be entitled to examine witnesses with regard to such conviction or fact.
- (8) An official of any prison in which the accused has been detained on such conviction shall be a competent and sufficient witness to prove its application to the accused, although he may not have been present in court at the trial to which such conviction relates.
- (9) The method of proving a previous conviction authorised by this section shall be in addition to any other method of proving the conviction.
- [<sup>F84</sup>(10) In this section “fingerprint” includes any record of the skin of a person’s finger created by a device approved by the Secretary of State under section 18(7B) of this Act.]

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#### Textual Amendments

- F82** Words in s. 285(2) substituted (1.8.1997) by 1997 c. 48, s. 59(2)(a)(b); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)
- F83** Words in s. 285(5) substituted (1.8.1997) by 1997 c. 48, s. 59(3)(a)(b); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)
- F84** S. 285(10) inserted (1.8.1997) by 1997 c. 48, s. 47(5); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

#### Marginal Citations

- M8** 1967 c.77.
- M9** 1989 c.45.
- M10** 1952 c.52.

### 286 Previous convictions: proof in support of substantive charge.

(1) Without prejudice to section 285(6) to (9) or, as the case may be, section 166 of this Act, where proof of a previous conviction is competent in support of a substantive charge, any such conviction or an extract of it shall, if—

- (a) it purports to relate to the accused and to be signed by the clerk of court having custody of the record containing the conviction; and
- (b) a copy of it has been served on the accused not less than 14 days before the [<sup>F85</sup>relevant] diet,

be sufficient evidence of the application of the conviction to the accused unless, within seven days of the date of service of the copy on him, he serves notice on the prosecutor that he denies that it applies to him.

[<sup>F86</sup>(1A) In subsection (1)(b) above, “the relevant diet” means—

- (a) in the case of proceedings in the High Court, the preliminary hearing;
- (b) in any other case, the trial diet.]

(2) A copy of a conviction or extract conviction served under subsection (1) above shall be served on the accused in such manner as may be prescribed by Act of Adjournal, and a written execution purporting to be signed by the person who served the copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of the copy.

[<sup>F87</sup>(3) The reference in subsection (1)(a) above to “the clerk of court having custody of the record containing the conviction” includes, in relation to a previous conviction by a court in another member State of the European Union, a reference to any officer of that court or of that State having such custody.]

#### Textual Amendments

- F85** Word in s. 286(1)(b) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 54(a); S.S.I. 2004/405, art. 2(1), Sch. 1 (with savings in arts. 3-5)
- F86** S. 286(1A) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 54(b); S.S.I. 2004/405, art. 2(1), Sch. 1 (with savings in arts. 3-5)
- F87** S. 286(3) added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 57(3), 89; S.S.I. 2003/288, art. 2, Sch.

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[<sup>F88</sup>**286A** Proof of previous conviction by court in other member State

- (1) A previous conviction by a court in another member State of the European Union may be proved against any person in any criminal proceedings by the production of evidence of the conviction and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.
- (2) A certificate—
  - (a) bearing—
    - (i) to have been sealed with the official seal of a Minister of the State in question; and
    - (ii) to contain particulars relating to a conviction extracted from the criminal records of that State; and
  - (b) including copies of fingerprints and certifying that those copies—
    - (i) are of fingerprints appearing from those records to have been taken from the person convicted on the occasion of the conviction, or on the occasion of his last conviction; and
    - (ii) would be admissible in evidence in criminal proceedings in that State as a record of the skin of that person’s fingers,shall be sufficient evidence of the conviction or, as the case may be, of the person’s last conviction and of all preceding convictions and that the copies of the fingerprints included in the certificate are copies of the fingerprints of the person convicted.
- (3) A conviction bearing to have been—
  - (a) extracted from the criminal records of the State in question; and
  - (b) issued by an officer of that State whose duties include the issuing of such extracts,shall be received in evidence without being sworn to by witnesses.
- (4) Subsection (9) of section 285 of this Act applies in relation to this section as it does in relation to that section.]

**Textual Amendments**

**F88** S. 286A inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [ss. 57\(4\)](#), 89; S.S.I. 2003/288, [art. 2](#), Sch.

**Status:**

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