



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XII

EVIDENCE

[^{F1}Special measures for child witnesses and other vulnerable witnesses]

Textual Amendments

- F1** Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\), ss. 1, 25; S.S.I. 2005/168, art. 2, Sch. \(with savings in art. 4\); S.S.I. 2005/590, art. 2, Sch. \(with art. 4\); S.S.I. 2006/59, art. 2, Sch. \(with art. 4\(1\)\); S.S.I. 2007/101, art. 2, Sch. \(with art. 4\); S.S.I. 2007/329, art. 2, Sch. \(with art. 4\); S.S.I. 2008/57, art. 2 \(with art. 3\)](#)

[^{F2} 271 Vulnerable witnesses: main definitions

- [^{F3}(1)** For the purposes of this Act, a person who is giving or is to give evidence at, or for the purposes of, a hearing in relevant criminal proceedings is a vulnerable witness if—
- (a) the person is under the age of 18 on the date of commencement of the proceedings in which the hearing is being or is to be held,
 - (b) there is a significant risk that the quality of the evidence to be given by the person will be diminished by reason of—
 - (i) mental disorder (within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003), or
 - (ii) fear or distress in connection with giving evidence at the hearing,
 - (c) the offence is alleged to have been committed against the person in proceedings for—
 - (i) an offence listed in any of paragraphs 36 to 59ZL of Schedule 3 to the Sexual Offences Act 2003,

Status: Point in time view as at 23/12/2015.

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- (ii) an offence under section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution etc.),
- (iii) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation),
- (iv) an offence the commission of which involves domestic abuse, or
- (v) an offence of stalking, or
- (d) there is considered to be a significant risk of harm to the person by reason only of the fact that the person is giving or is to give evidence in the proceedings.]

^{F4}(1A)

[^{F5}(1AA) The Scottish Ministers may by order subject to the affirmative procedure modify subsection (1)(c).]

(2) In determining whether a person is a vulnerable witness by virtue of subsection (1)(b)

[^{F6}or (d)] above, the court shall take into account—

- (a) the nature and circumstances of the alleged offence to which the proceedings relate,
- (b) the nature of the evidence which the person is likely to give,
- (c) the relationship (if any) between the person and the accused,
- (d) the person’s age and maturity,
- (e) any behaviour towards the person on the part of—
 - (i) the accused,
 - (ii) members of the family or associates of the accused,
 - (iii) any other person who is likely to be an accused or a witness in the proceedings, and
- (f) such other matters, including—
 - (i) the social and cultural background and ethnic origins of the person,
 - (ii) the person’s sexual orientation,
 - (iii) the domestic and employment circumstances of the person,
 - (iv) any religious beliefs or political opinions of the person, and
 - (v) any physical disability or other physical impairment which the person has,

as appear to the court to be relevant.

(3) For the purposes of subsection (1)(a) above and section 271B(1)(b) below, proceedings shall be taken to have commenced when the indictment or, as the case may be, complaint is served on the accused.

(4) In subsection (1)(b) above, the reference to the quality of evidence is to its quality in terms of completeness, coherence and accuracy.

[^{F7}(4A) In determining whether a person is a vulnerable witness under subsection (1)(b) or (d), the court must—

- (a) have regard to the best interests of the witness, and
- (b) take account of any views expressed by the witness.]

(5) In this section and sections 271A to 271M of this Act—

[^{F8} “child witness” means a vulnerable witness referred to in subsection (1) (a).]

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[^{F9} “deemed vulnerable witness” means a vulnerable witness referred to in subsection (1)(c),]

“court” means the High Court or the sheriff court,

[^{F10} “hearing in relevant criminal proceedings” means any hearing in the course of any criminal proceedings in the High Court or the sheriff court.]

^{F11} ...

(6) In sections 271A to 271M of this Act, “special measure” means any of the special measures set out in, or prescribed under, section 271H below.]

Textual Amendments

- F2** 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)
- F3** S. 271(1) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 10(a), 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F4** S. 271(1A) repealed (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 10(c), 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F5** S. 271(1AA) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 10(b), 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F6** Words in s. 271(2) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 10(d), 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F7** S. 271(4A) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 10(e), 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F8** Definition in s. 271(5) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(3)(a), 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F9** Definition in s. 271(5) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(3)(b), 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F10** Definition in s. 271(5) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(2)(b)(ii), 206(1)**; S.S.I. 2011/178, art. 2, sch.
- F11** Definition in s. 271(5) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(2)(b)(i), 206(1)**; S.S.I. 2011/178, art. 2, sch.

Modifications etc. (not altering text)

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

[^{F12}271A][^{F13}Child and deemed vulnerable witnesses]

(1) Where a child witness [^{F14}or a deemed vulnerable witness] is to give evidence at or for the purposes of [^{F15}a hearing in relevant criminal proceedings], the ^{F16}... witness is entitled, subject to—

(a) subsections (2) to (13) below, and

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- (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 [^{F17}or a deemed vulnerable witness] shall, [^{F18}by the required time], lodge with the court a notice (referred to in this Act as a “[^{F19}vulnerable] witness notice”)—
- (a) specifying the special measure or measures which the party considers to be the most appropriate for the purpose of taking the ^{F20}... witness’s evidence, or
 - (b) if the party considers that the ^{F20}... witness should give evidence without the benefit of any special measure, stating that fact.
- (3) A [^{F21}vulnerable] 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.
- [In the case where a vulnerable witness notice under subsection (2)(a) specifies only a ^{F22}(3A) standard special measure, subsection (3)(a) does not apply.]
- (4) The court may, on cause shown, allow a [^{F23}vulnerable] witness notice to be lodged after [^{F24}the required time].
- [Any party to the proceedings may, not later than 7 days after a vulnerable witness ^{F25}(4A) notice has been lodged, lodge with the court a notice (referred to in this section as an “objection notice”) stating—
- (a) an objection to any special measure (other than a standard special measure) specified in the vulnerable witness notice that the party considers to be inappropriate, and
 - (b) the reasons for that objection.
- (4B) The court may, on cause shown, allow an objection notice to be lodged after the period referred to in subsection (4A).
- (4C) If an objection notice is lodged in accordance with subsection (4A) or (4B)—
- (a) subsection (5)(a)(ii) does not apply to the vulnerable witness notice, and
 - (b) the court must make an order under subsection (5A).]

(5) The court shall, not [^{F26}earlier than 7 days and not later than 14] days after a [^{F27}vulnerable] witness notice has been lodged, consider the notice in the absence of the parties and, subject to section [^{F28}271B] 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 ^{F29}... 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 ^{F29}... 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 ^{F30}... witness has expressed a wish to give evidence without the benefit of any special measure, and

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- (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 ^{F30}... 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
- (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 ^{F31}... witness has not expressed a wish to give evidence without the benefit of any special measure,
make an order [^{F32}under subsection (5A) below.]
- [That order is an order—
- ^{F33}(5A) (a) in the case of proceedings in the High Court where the preliminary hearing is yet to be held, appointing the [^{F34}vulnerable] 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 [^{F35}vulnerable] witness notice to be disposed of at that diet; or
- (c) in any other case, appointing a diet to be held before [^{F36}the hearing at which the evidence is to be given] 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 [^{F37}or a deemed vulnerable witness] to give evidence at or for the purposes of [^{F38}a hearing in relevant criminal proceedings],
- (b) the party has not lodged a [^{F39}vulnerable] witness notice in respect of the ^{F40}... witness by the time specified in subsection (2) above, and
- (c) the court has not allowed a [^{F41}vulnerable] witness notice in respect of the ^{F42}... 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 [^{F43}vulnerable] witness notice in respect of the ^{F44}... witness by such time as the court may specify, or
- [^{F45}(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 [^{F46}the hearing at which the evidence is to be given] diet and requiring the parties to attend the diet.]
- (8) On making an order under subsection [^{F47}(5A)(c) or (7)(b)(ii)] above, the court may postpone [^{F48}the hearing at which the evidence is to be given].
- [Subsection (9) below applies to—
- ^{F49}(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 [^{F50}vulnerable] witness notice at the hearing or diet; or

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- (ii) by virtue of subsection (7)(b)(i) above, to make an order under subsection (9) ^{F51}... at the hearing or diet; and
- (b) a diet appointed under subsection (5A)(c) or (7)(b)(ii) above.]
- (9) At a [^{F52}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 ^{F53}... witness’s evidence, and
- (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 ^{F53}... witness’s evidence, or
- (ii) that the ^{F53}... 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 ^{F54}... witness has expressed a wish to give evidence without the benefit of any special measure, that it is appropriate for the ^{F54}... 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 ^{F54}... 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 ^{F54}... witness if the order is made.
- (11) A [^{F55}hearing or diet to which subsection (9) above applies] may—
- (a) on the application of the party citing or intending to cite the ^{F56}... 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 [^{F57}appointed under subsection (5A)(c) or (7)(b)(ii) above in any case may be conjoined with any other diet to be held before [^{F58}the hearing at which the evidence is to be given].]
- (13) A party lodging a [^{F59}vulnerable] witness notice [^{F60}or an objection 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—
- ^{F61}(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 [^{F62}the hearing at which the evidence is to be given].]
- (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 ^{F63}...

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- (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 ^{F64}...

- [The Scottish Ministers may, by order subject to the affirmative procedure—
- ^{F65}(15) (a) modify subsection (14),
- (b) in consequence of any modification made under paragraph (a)—
 - (i) prescribe the procedure to be followed when standard special measures are used, and
 - (ii) so far as is necessary, modify sections 271A to 271M of this Act.]]

Textual Amendments

- F12** 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 \(with art. 3\)](#)
- F13** S. 271A title substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\), ss. 11\(5\), 34; S.S.I. 2015/200, art. 2\(2\), sch. \(with arts. 1\(3\), 4\)](#)
- F14** Words in s. 271A(1) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\), ss. 11\(4\)\(a\)\(i\), 34; S.S.I. 2015/200, art. 2\(2\), sch. \(with arts. 1\(3\), 4\)](#)
- F15** Words in s. 271A(1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), ss. 87\(3\)\(a\), 206\(1\); S.S.I. 2011/178, art. 2, sch.](#)
- F16** Word in s. 271A(1) repealed (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\), ss. 11\(4\)\(a\)\(ii\), 34; S.S.I. 2015/200, art. 2\(2\), sch. \(with arts. 1\(3\), 4\)](#)
- F17** Words in s. 271A(2) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\), ss. 11\(4\)\(b\)\(i\), 34; S.S.I. 2015/200, art. 2\(2\), sch. \(with arts. 1\(3\), 4\)](#)
- F18** 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 \(with art. 3\)](#)
- F19** Word in s. 271A(2) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\), ss. 11\(4\)\(b\)\(ii\), 34; S.S.I. 2015/200, art. 2\(2\), sch. \(with arts. 1\(3\), 4\)](#)
- F20** Word in s. 271A(2)(a)(b) repealed (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\), ss. 11\(4\)\(b\)\(iii\), 34; S.S.I. 2015/200, art. 2\(2\), sch. \(with arts. 1\(3\), 4\)](#)
- F21** Word in s. 271A(3) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\), ss. 11\(4\)\(c\), 34; S.S.I. 2015/200, art. 2\(2\), sch. \(with arts. 1\(3\), 4\)](#)
- F22** S. 271A(3A) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\), ss. 11\(4\)\(d\), 34; S.S.I. 2015/200, art. 2\(2\), sch. \(with arts. 1\(3\), 4\)](#)
- F23** Word in s. 271A(4) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\), ss. 11\(4\)\(c\), 34; S.S.I. 2015/200, art. 2\(2\), sch. \(with arts. 1\(3\), 4\)](#)
- F24** 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 \(with art. 3\)](#)
- F25** S. 271A(4A)-(4C) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\), ss. 13\(a\), 34; S.S.I. 2015/200, art. 2\(2\), sch. \(with arts. 1\(3\), 4\)](#)
- F26** Words in s. 271A(5) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\), ss. 13\(b\), 34; S.S.I. 2015/200, art. 2\(2\), sch. \(with arts. 1\(3\), 4\)](#)

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- F27** Word in s. 271A(5) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(e)(i)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F28** Word in s. 271A(5) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 14(2)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F29** Word in s. 271A(5)(a) repealed (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(e)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F30** Word in s. 271A(5)(b) repealed (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(e)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F31** Word in s. 271A(5)(c) repealed (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(e)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F32** 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)
- F33** 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)
- F34** Word in s. 271A(5A)(a) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(f)(i)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F35** Word in s. 271A(5A)(b) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(f)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F36** Words in s. 271A(5A)(c) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 87(3)(b)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F37** Words in s. 271A(6)(a) inserted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(g)(i)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F38** Words in s. 271A(6)(a) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 87(3)(c)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F39** Word in s. 271A(6)(b) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(g)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F40** Word in s. 271A(6)(b) repealed (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(g)(iii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F41** Word in s. 271A(6)(c) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(g)(iv)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F42** Word in s. 271A(6)(c) repealed (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(g)(v)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F43** Word in s. 271A(7)(a) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(h)(i)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F44** Word in s. 271A(7)(a) repealed (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(h)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F45** 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)
- F46** Words in s. 271A(7)(b)(ii) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 87(3)(d)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F47** 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,

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- 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)
- F48** Words in s. 271A(8) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 87(3)(e)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F49** 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)
- F50** Word in s. 271A(8A)(a)(i) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(i)(i)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F51** Word in s. 271A(8A)(a)(ii) repealed (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(i)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F52** 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)
- F53** Word in s. 271A(9) repealed (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(j)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F54** Word in s. 271A(10) repealed (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(k)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F55** 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)
- F56** Word in s. 271A(11)(a) repealed (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(l)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F57** 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)
- F58** Words in s. 271A(12) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 87(3)(g)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F59** Word in s. 271A(13) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(4)(m)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F60** Words in s. 271A(13) inserted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 13(c)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F61** 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)
- F62** Words in s. 271A(13A)(c) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 87(3)(h)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F63** Words in s. 271A(14)(a) repealed (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 12(a)(i)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F64** Words in s. 271A(14)(c) repealed (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 12(a)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F65** S. 271A(15) inserted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 12(b)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)

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Modifications etc. (not altering text)

- C2** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), **3** (with art. 1(3))
- C3** 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)

[^{F66}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, [^{F67}a hearing in relevant criminal proceedings] in respect of any offence specified in subsection (2) below, and
 - (b) is under the age of 12 on the date of commencement of the proceedings in which [^{F68}the hearing] 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.
- [^{F69}(3) Subsection (4) applies if the child witness expresses a wish to be present in the court-room for the purpose of giving evidence.
- (4) The court must make an order under section 271A or, as the case may be, 271D which has the effect of requiring the child witness to be present in the court-room for the purpose of giving evidence unless the court considers that it would not be appropriate for the child witness to be present there for that purpose.
- (5) Subsection (6) applies if the child witness—
- (a) does not express a wish to be present in the court-room for the purpose of giving evidence, or
 - (b) expresses a wish to give evidence in some other way.
- (6) The court may not make an order under section 271A or 271D having the effect mentioned in subsection (4) unless the court considers that—
- (a) the giving of evidence by the child witness in some way other than by being present in the court-room for that purpose would give rise to a significant risk of prejudice to the fairness of the trial or otherwise to the interests of justice, and
 - (b) that risk significantly outweighs any risk of prejudice to the interests of the child witness if the order were to be made.]]

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Textual Amendments

- F66** 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)
- F67** Words in s. 271B(1)(a) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(4)(a)**, 206(1); [S.S.I. 2011/178](#), art. 2, sch.
- F68** Words in s. 271B(1)(b) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(4)(b)**, 206(1); [S.S.I. 2011/178](#), art. 2, sch.
- F69** S. 271B(3)-(6) substituted for s. 271B(3) (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 14(1)**, 34; [S.S.I. 2015/200](#), art. 2(2), sch. (with arts. 1(3), 4)

Modifications etc. (not altering text)

- C2** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), **3** (with art. 1(3))
- C4** 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)

[^{F70}271B Assessment of witnesses

- (1) This section applies where a party intends to cite a witness other than a child witness or a deemed vulnerable witness to give evidence at, or for the purposes of, a hearing in relevant criminal proceedings.
- (2) The party intending to cite the witness must take reasonable steps to carry out an assessment under subsection (3).
- (3) An assessment must determine whether the person—
 - (a) is likely to be a vulnerable witness, and
 - (b) if so, what special measure or combination of special measures ought to be used for the purpose of taking the person's evidence.
- (4) In determining under subsection (3)(a) whether a person is likely to be a vulnerable witness the party must—
 - (a) take into account the matters mentioned in section 271(2),
 - (b) have regard to the best interests of the person, and
 - (c) take account of any views expressed by the person.]

Textual Amendments

- F70** S. 271BA inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 16(1)**, 34; [S.S.I. 2015/200](#), art. 2(2), sch. (with arts. 1(3), 4)

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Modifications etc. (not altering text)

C2 Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), 3 (with art. 1(3))

[^{F71}271C][^{F72}Vulnerable witness application]

- (1) This section applies where a party citing or intending to cite a person (other than a child witness [^{F73} or a deemed vulnerable witness]) to give evidence at, or for the purposes of, [^{F74} a hearing in relevant criminal proceedings] (such a person being referred to in this section as “the witness”) [^{F75} and, having carried out an assessment under section 271BA,] 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, [^{F76} 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 [^{F77} the required time].
- [Any party to the proceedings may, not later than 7 days after a vulnerable witness
- ^{F78}(4A) application has been lodged, lodge with the court a notice (referred to in this section as “an objection notice”) stating—
- (a) an objection to any special measure specified in the vulnerable witness application that the party considers to be inappropriate, and
 - (b) the reasons for that objection.
- (4B) The court may, on cause shown, allow an objection notice to be lodged after the period referred to in subsection (4A).
- (4C) If an objection notice is lodged in accordance with subsection (4A) or (4B)—
- (a) subsection (5) does not apply to the vulnerable witness application, and
 - (b) the court must make an order under subsection (5A).]
 - (5) The court shall, not [^{F79} earlier than 7 days and not later than 14] 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—

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- (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, [^{F80}make an order under subsection (5A) below.]
- [That order is an order—
- ^{F81}(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 [^{F82}the hearing at which the evidence is to be given] and requiring the parties to attend the diet.]
- (6) On making an order under subsection [^{F83}(5A)(c)] above, the court may postpone [^{F84}the hearing at which the evidence is to be given].
- [Subsection (7) below applies to—
- ^{F85}(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 [^{F86}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 [^{F87}hearing or diet to which subsection (7) above applies] may—
- (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.

Status: Point in time view as at 23/12/2015.

Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Special measures for child witnesses and other vulnerable witnesses is up to date with all changes known to be in force on or before 28 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)

(10) A diet [^{F88}appointed under subsection (5A)(c) above in any case may be conjoined with any other diet to be held before [^{F89}the hearing at which the evidence is to be given].]

(11) A party making a vulnerable witness application [^{F90}or an objection notice] shall, at the same time, intimate the application [^{F91}or, as the case may be, the notice] to the other parties to the proceedings.

[In subsections (2) and (4) above, “the required time” means—

- ^{F92}(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 [^{F93}the hearing at which the evidence is to be given].]

Textual Amendments

- F71** 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)
- F72** S. 271C title substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(6), 34**; S.S.I. 2015/200, **art. 2(2)**, sch. (with arts. 1(3), 4)
- F73** Words in s. 271C(1) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 16(2)(a), 34**; S.S.I. 2015/200, **art. 2(2)**, sch. (with arts. 1(3), 4)
- F74** Words in s. 271C(1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(5)(a), 206(1)**; S.S.I. 2011/178, **art. 2**, sch.
- F75** Words in s. 271C(1) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 16(2)(b), 34**; S.S.I. 2015/200, **art. 2(2)**, sch. (with arts. 1(3), 4)
- F76** 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)
- F77** 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)
- F78** S. 271C(4A)-(4C) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 17(a), 34**; S.S.I. 2015/200, **art. 2(2)**, sch. (with arts. 1(3), 4)
- F79** Words in s. 271C(5) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 17(b), 34**; S.S.I. 2015/200, **art. 2(2)**, sch. (with arts. 1(3), 4)
- F80** 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)
- F81** 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

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- 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)
- F82** Words in s. 271C(5A)(c) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 87(5)(b)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F83** 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)
- F84** Words in s. 271C(6) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 87(5)(c)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F85** 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. 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)
- F86** 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)
- F87** 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)
- F88** 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)
- F89** Words in s. 271C(10) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 87(5)(d)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F90** Words in s. 271C(11) inserted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 17(c)(i)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F91** Words in s. 271C(11) inserted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 17(c)(ii)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F92** 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)
- F93** Words in s. 271C(12)(c) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 87(5)(e)**, 206(1); S.S.I. 2011/178, art. 2, sch.

Modifications etc. (not altering text)

- C2** Ss. 271-271M applied (with modifications) (23.12.2015) by The Justice of the Peace Courts (Special Measures) (Scotland) Order 2015 (S.S.I. 2015/447), arts. 1(2), **3** (with art. 1(3))
- C5** 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)

[^{F94}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 [^{F95}a hearing in relevant criminal proceedings] (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 [^{F96}the hearing] or before or after the witness has begun to give evidence)—
 - (a) on the application of [^{F97}any party to the proceedings], 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 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 [^{F98}the hearing] 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.

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[This section is subject to section 271B.]]
F99(7)

Textual Amendments

- F94** 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)
- F95** Words in s. 271D(1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(6)(a)(i)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F96** Words in s. 271D(1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(6)(a)(ii)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F97** Words in s. 271D(1)(a) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 18, 34**; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F98** Words in s. 271D(4)(b)(i) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(6)(b)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F99** S. 271D(7) added (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 14(3)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)

Modifications etc. (not altering text)

- C2** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), **3** (with art. 1(3))
- 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)

[^{F100}271E]Vulnerable witnesses: supplementary provision

- (1) Subsection (2) below applies where—
- a party is considering for the purposes of a [^{F101}vulnerable] 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
 - 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—
- have regard to the best interests of the witness, and
 - take account of any views expressed by—
 - the witness (having regard, where the witness is a child witness, to the witness's age and maturity), and
 - 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—

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- (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

- F100** 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)
- F101** Word in s. 271E(1)(a) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(7), 34**; [S.S.I. 2015/200](#), **art. 2(2)**, sch. (with arts. 1(3), 4)

Modifications etc. (not altering text)

- C2** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), **arts. 1(2), 3** (with art. 1(3))
- 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)

[^{F102}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 [^{F103}a hearing in relevant criminal proceedings]), 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 [^{F104}the hearing] 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,

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- (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 [F105the hearing], 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 [F106witness] shall be read as if they were references to the accused,
 - (ii) references to the party citing or intending to cite a F107 ... 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 [F108a hearing in relevant criminal proceedings], 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 [F109a hearing in relevant criminal proceedings] 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—
 - (a) considers that, if he were to give evidence at or for the purposes of [F110a hearing in relevant criminal proceedings], 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 [F111the hearing], 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—

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- (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) [^{F112}and (ea)] ,
 - (b) section 271I(3).]

Textual Amendments

- F102** 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)
- F103** Words in s. 271F(1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(7)(a)(i)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F104** Words in s. 271F(1)(a) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(7)(a)(ii)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F105** Words in s. 271F(2) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(7)(b)(i)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F106** Word in s. 271F(2)(a)(i) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(8)(a)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F107** Word in s. 271F(2)(a)(ii) repealed (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(8)(b)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F108** Words in s. 271F(2) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(7)(b)(ii)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F109** Words in s. 271F(2) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(7)(b)(iii)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F110** Words in s. 271F(3) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(7)(c)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F111** Words in s. 271F(5) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(7)(d)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F112** Words in s. 271F(8)(a) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 20(3)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)

Modifications etc. (not altering text)

- C2** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), 3 (with art. 1(3))
- 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

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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)

[^{F113}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

F113 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)

C2 Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), 3 (with art. 1(3))

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)

[^{F114}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

[excluding the public during the taking of the evidence in accordance with section 271HB of this Act,]

^{F115}(ea)
^{F116}(f)

[The Scottish Ministers may, by order subject to the affirmative procedure—

- ^{F117}(1A) (a) modify subsection (1),
- (b) in consequence of any modification made under paragraph (a)—
- (i) prescribe the procedure to be followed when special measures are used, and
 - (ii) so far as is necessary, modify sections 271A to 271M of this Act.]

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^{F118}(2)

- (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

- F114** 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)
- F115** S. 271H(1)(ea) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 20(1), 34**; [S.S.I. 2015/200](#), **art. 2(2)**, sch. (with arts. 1(3), 4)
- F116** S. 271H(1)(f) repealed (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 21(a), 34**; [S.S.I. 2015/200](#), **art. 2(2)**, sch.
- F117** S. 271H(1A) inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 21(b), 34**; [S.S.I. 2015/200](#), **art. 2(2)**, sch.
- F118** S. 271H(2) repealed (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 21(c), 34**; [S.S.I. 2015/200](#), **art. 2(2)**, sch.

Modifications etc. (not altering text)

- C2** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), **arts. 1(2), 3** (with art. 1(3))
- 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. 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)

[^{F119}271HA] Temporary additional special measures

- (1) The Scottish Ministers may, by order subject to the affirmative procedure, specify additional measures which for the time being are to be treated as special measures listed in section 271H(1).
- (2) An order under subsection (1)
- (3) An order under subsection (1) must specify—
- the area in which the additional measures may be used,
 - the period during which the additional measures may be used, and
 - the procedure to be followed when the additional measures are used.]

Textual Amendments

- F119** S. 271HA inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 19, 34**; [S.S.I. 2015/200](#), **art. 2(2)**, sch.

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Modifications etc. (not altering text)

C2 Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), **3** (with art. 1(3))

[^{F120}**271HB** **Excluding the public while taking evidence**

- (1) This section applies where the special measure to be used in respect of a vulnerable witness is excluding the public during the taking of the evidence of the vulnerable witness.
- (2) The court may direct that all or any persons other than those mentioned in subsection (3) are excluded from the court during the taking of the evidence.
- (3) The persons are—
 - (a) members or officers of the court,
 - (b) parties to the case before the court, their counsel or solicitors or persons otherwise directly concerned in the case,
 - (c) *bona fide* representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings,
 - (d) such other persons as the court may specially authorise to be present.]

Textual Amendments

F120 S. 271HB inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), ss. **20(2)**, 34; [S.S.I. 2015/200](#), art. 2(2), sch. (with arts. 1(3), 4)

Modifications etc. (not altering text)

C2 Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), **3** (with art. 1(3))

[^{F121}**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.
[Proceedings before a commissioner appointed under subsection (1) above shall, if the ^{F122}(1A) court so directed when authorising such proceedings, take place by means of a live television link between the place where the commissioner is taking, and the place from which the witness is giving, evidence.]
- (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 [^{F123} present—
 - (i) in the room where such proceedings are taking place; or
 - (ii) if such proceedings are taking place by means of a live television link, in the same room as the witness] , but

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- (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.

[Sections—

- ^{F124}(5) (a) 274;
 (b) 275;
 (c) 275B except subsection (2)(b);
 (d) 275C;
 (e) 288C;
 (f) 288E; and
 (g) 288F,

of this Act apply in relation to proceedings before a commissioner appointed under subsection (1) above as they apply in relation to a trial.

- (6) In the application of those sections in relation to such proceedings—
- (a) the commissioner acting in the proceedings is to perform the functions of the court as provided for in those sections;
- (b) references—
- (i) in those sections, except section 275(3)(c) and (7)(c), to a trial or a trial diet;
- (ii) in those sections, except sections 275(3)(e) and 288F(2), (3) and (4), to the court,
- shall be read accordingly;
- (c) the reference in section 275B(1) to 14 days shall be read as a reference to 7 days.
- (7) In a case where it falls to the court to appoint a commissioner under subsection (1) above, the commissioner shall be a person described in subsection (8) below.
- (8) The persons are—
- (a) where the proceedings before the commissioner are for the purposes of a trial in the High Court, a judge of the High Court; or
- (b) in any other case, a sheriff.]]

Textual Amendments

- F121** 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)
- F122** S. 271I(1A) inserted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 35(3)(a)**, 84; S.S.I. 2007/250, **art. 3(a)**
- F123** Words in s. 271I(3)(a) substituted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 35(3)(b)**, 84; S.S.I. 2007/250, **art. 3(a)**
- F124** S. 271I(5)-(8) added (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 35(3)(c)**, 84; S.S.I. 2007/250, **art. 3(a)**

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Modifications etc. (not altering text)

- C2** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), **3** (with art. 1(3))
- 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. 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)

[^{F125}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 [^{F126}the hearing] 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 [^{F127}the hearing], 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 [^{F128}the hearing]), or
 - (b) in relation to any part of the proceedings.]

Textual Amendments

- F125** 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)
- F126** Words in s. 271J(1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(8)(a)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F127** Words in s. 271J(2)(b) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(8)(b)**, 206(1); S.S.I. 2011/178, art. 2, sch.

Status: Point in time view as at 23/12/2015.

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F128 Words in s. 271J(5)(a) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), **ss. 87(8)(c)**, 206(1); S.S.I. 2011/178, art. 2, sch.

Modifications etc. (not altering text)

C2 Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015](#) (S.S.I. 2015/447), arts. 1(2), **3** (with art. 1(3))

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)

[^{F129}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

F129 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)

C2 Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015](#) (S.S.I. 2015/447), arts. 1(2), **3** (with art. 1(3))

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)

[^{F130}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

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Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Special measures for child witnesses and other vulnerable witnesses is up to date with all changes known to be in force on or before 28 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)

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 ^{F131}that or any other hearing in the proceedings], 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.]

Textual Amendments

- F130** 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**)
- F131** Words in s. 271L(2) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 87(9)**, 206(1); S.S.I. 2011/178, **art. 2**, sch.

Modifications etc. (not altering text)

- C2** Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), **arts. 1(2), 3** (with **art. 1(3)**)
- 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, 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**))

^{F132}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.]

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Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Special measures for child witnesses and other vulnerable witnesses is up to date with all changes known to be in force on or before 28 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)

Textual Amendments

F132 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)

C2 Ss. 271-271M applied (with modifications) (23.12.2015) by [The Justice of the Peace Courts \(Special Measures\) \(Scotland\) Order 2015 \(S.S.I. 2015/447\)](#), arts. 1(2), **3** (with art. 1(3))

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)

Status:

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Changes to legislation:

Criminal Procedure (Scotland) Act 1995, Cross Heading: Special measures for child witnesses and other vulnerable witnesses is up to date with all changes known to be in force on or before 28 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.