

ACT OF ADJOURNAL (CRIMINAL PROCEDURE RULES) 1996 SI 1996/513

SCHEDULE 2

CRIMINAL PROCEDURE RULES 1996

PART VI Evidence

CHAPTER 22 EVIDENCE OF VULNERABLE WITNESSES

The undernoted rules shall apply to solemn cases in which there are vulnerable witnesses, and in which a report of the case was received by the procurator fiscal after 30th November 2005: Rules 22.4, 22.5, 22.6, and 22.8 to 22.14.

Rule 22.15 shall apply to solemn cases in which there are vulnerable witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2006.

The undernoted rules shall apply to summary proceedings in the sheriff court in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2007: Rules 22.1 - 22.15.

Child witness notice

N.B. Rule 22.1 applies to summary proceedings in the sheriff court in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2007.

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

Vulnerable witness application

N.B. Rule 22.1A applies only to solemn cases in which there are vulnerable witnesses, and in which a report of the case was received by the procurator fiscal on or after 1st April 2006.

22.1A An application under section 271C(2) of the Act of 1995 (vulnerable witness application) shall be in Form 22.1A and shall be lodged with the clerk of court.

Procedure on lodging child witness notice or vulnerable witness application

N.B. Rule 22.2 applies only to

(a) solemn cases in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 30th November 2005,

(b) summary proceedings in the sheriff court in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2007.

22.2 (1) On receipt of a notice under rule 22.1 (child witness notice) or application under rule 22.1A (vulnerable witness application) the clerk of court shall—

(a) endorse on the notice or application, as the case may be, the time and date on which it was received; and

(b) place the notice or application, as the case may be, before a judge in chambers.

(2) The party that lodges the child witness notice or vulnerable witness application, as the case may be, shall lodge a certificate of intimation with the clerk of court:

(a) within 7 days after lodging the notice or application, as the case may be; or

(b) at least 2 days before any first diet or preliminary hearing, whichever is the earlier

Procedure on lodging child witness notice

N.B. See Rule 22.2 above - this version of Rule 22.2 applies to all other cases.

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

(a) endorse on the notice the time and date on which it was received; and

(b) place the notice before a judge in chambers.

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

(a) within 7 days after lodging the child witness notice; or

(b) at least 2 days before any first diet or preliminary hearing,

whichever is the earlier.

Intimation of an order under section 271A

N.B. Rule 22.3 applies to summary proceedings in the sheriff court in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2007.

22.3 (1) An order –

- (a) under section 271A(5)(a) of the Act of 1995 authorising the use of a special measure;
- (b) under section 271A(5)(b) of that Act authorising the giving of evidence without the benefit of any special measures;
- (c) appointing a child witness notice to be disposed of –
 - (i) under section 271A(5A)(a) of that Act, at a preliminary hearing; or
 - (ii) under section 271A(5A)(b) of that Act, at a first diet; or
- (d) under section 271A(5A)(c) or (7)(b)(ii) of that Act, appointing a diet to be held before the trial diet; or
- (e) under section 271A(9) of that Act (order in relation to special measures after hearing),

may be signed by the clerk of court.

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

Intimation of an order under section 271C

N.B. Rule 22.3A applies only to solemn cases in which there are vulnerable witnesses, and in which a report of the case was received by the procurator fiscal on or after 1st April 2006.

22.3A (1) An order:

- (a) under section 271C(5)(a) of the Act of 1995 authorising the use of a special measure;
- (b) appointing a vulnerable witness application to be disposed of–
 - (i) under section 271C(5A)(a) of that Act, at a preliminary hearing; or
 - (ii) under section 271C(5A)(b) of that Act at a first diet;
- (c) under section 271C(5A)(c) of that Act, appointing a diet to be held before the trial diet; or
- (d) under section 271C(7) of that Act (order in relation to special measure after hearing),

may be signed by the clerk of court.

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

Review of arrangements for vulnerable witnesses

N.B. Rule 22.4 applies to summary proceedings in the sheriff court in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2007.

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

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

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

Procedure for review

N.B. Rule 22.5 applies to summary proceedings in the sheriff court in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2007.

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

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

Intimation of the order

N.B. Rule 22.6 applies to summary proceedings in the sheriff court in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2007.

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

Notice of prohibition of personal conduct of defence

N.B. Rule 22.7 applies to summary proceedings in the sheriff court in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2007.

22.7 In proceedings to which section 288E of the Act of 1995 (prohibition of personal conduct of defence in certain cases involving child witnesses under the age of 12) applies, a notice in Form 22.7 shall be served on the accused by the

prosecutor with any child witness notice, unless a notice in Form 8.2-C has already been served.

Application for prohibition of personal conduct of defence

N.B. Rule 22.8 applies to summary proceedings in the sheriff court in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2007.

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

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

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

(a) fixing a diet for a hearing of the application or to hear parties; and

(b) for service of the minute or order with the date on all parties and to the governor of any institution in which the accused is detained.

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

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

Transfer of cases

N.B. Rule 22.9 applies to summary proceedings in the sheriff court in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2007.

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

Evidence in chief in form of prior statement

N.B. Rule 22.10 applies to summary proceedings in the sheriff court in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2007.

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

(a) the oath or affirmation administered under rule 14.5 (form of oath or affirmation); or

(b) be admonished to tell the truth,

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

Appointment of commissioner

N.B. Rule 22.11 applies only to

(a) solemn cases in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 30th November 2005,

(b) summary proceedings in the sheriff court in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2007.

22.11 (1) On making an order under section 271A(5) or (9) of the Act of 1995 (order in relation to special measures) authorising the taking of evidence by a commissioner in accordance with section 271I of that Act, the High Court or the sheriff, as the case may be, shall appoint:

(a) a commissioner to take the evidence of the vulnerable witness; and

(b) a clerk to assist the commissioner in the carrying out of his duties,

and shall dispense with interrogatories.

(2) On the appointment of a commissioner under paragraph (1), the Clerk of Justiciary or sheriff clerk, as the case may be, shall send the order to the commissioner or his clerk with such other relative documents as the court may direct.

(3) On sending the order to the commissioner or his clerk under paragraph (2), the Clerk of Justiciary or sheriff clerk, as the case may be, shall note on the record copy of the indictment or in the minute of proceedings:

(a) the order and the documents sent;

(b) the names of the persons to whom the order and documents were sent;

(c) the date on which the order and documents were sent.

The commission

N.B. Rule 22.12 applies only to

(a) solemn cases in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 30th November 2005,

(b) summary proceedings in the sheriff court in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2007.

22.12 (1) The commissioner shall, on receiving the order and documents mentioned in rule 22.11(2) (appointment of commissioner), determine the place and date of the diet for the taking the evidence of the witness to whom the order of the court relates, and shall give reasonable notice of those matters to all parties.

(2) The commissioner may vary or revoke his determination or adjourn the taking of the evidence of the witness to such other place, at such other date and time, as he may determine.

(3) If, in the course of the examination of a witness under this rule, any question arises as to the admissibility of any evidence, the commissioner, unless a judge or sheriff of the relevant court, shall not determine any such question but shall allow the evidence subject to all questions of competency and relevancy.

Video recording of commission

N.B. Rule 22.13 applies only to

(a) solemn cases in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 30th November 2005,

(b) summary proceedings in the sheriff court in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2007.

22.13 (1) On the carrying out of his commission in accordance with the terms of the order appointing him, or otherwise on concluding his commission, the commissioner or his clerk shall cause the tape or disc of the video recording of the commission to be sealed in an envelope or other similar container, which the commissioner shall sign and date, and on which the following information shall be endorsed:

- (a) the name of the accused;
- (b) the prosecution and court reference numbers; and
- (c) the time of commencement and of termination of the tape or disc;

which sealed envelope shall be returned, with the relative documents, to the Clerk of Justiciary or sheriff clerk, as the case may be.

(2) On the video recording and any documents being returned to him, the Clerk of Justiciary or sheriff clerk, as the case may be, shall—

(a) note:

(i) the documents returned;

(ii) by whom the documents were returned; and

(iii) the date on which the documents were returned;

on the record copy of the indictment or in the minute of proceedings;
and

(b) intimate what he has noted to all parties.

(3) The seal on the envelope or container shall be broken only on the authority of the Clerk of Justiciary or sheriff clerk, as the case may be.

(4) The Clerk of Justiciary or sheriff clerk, as the case may be, shall only permit such access to the tape or disc for such period as may be required for the purposes of the authorisation and on expiry of that period, shall again cause the tape or disc of the video recording of the commission to be sealed, which the Clerk of Justiciary or sheriff clerk, as the case may be, shall sign, and on which the following information shall be endorsed—

(a) the name of the accused;

(b) the date of the commission;

(c) the name of the commissioner;

(d) the prosecution and court reference numbers;

(e) the time of commencement and termination of the tape or disc;

(f) the time and date of sealing of the tape or disc.

Custody of video recording and documents

N.B. Rule 22.14 applies only to

(a) solemn cases in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 30th November 2005,

(b) summary proceedings in the sheriff court in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2007.

22.14 (1) The Clerk of Justiciary or sheriff clerk, as the case may be, shall keep the tape or disc of the video recording and documents referred to in rule 22.13(1) (video record of evidence on commission) in his custody.

(2) Where the tape or disc of the video recording of the evidence of a witness is in the custody of the Clerk of Justiciary or sheriff clerk, as the case may be, under this rule and where intimation has been given to that effect under rule 22.13(2)(b) to all the parties, the name and address of the witness and the tape or disc of the video recording of his or her evidence shall be treated as being within the knowledge of those parties; and no party shall be required, notwithstanding any enactment to the contrary, to include the tape or disc of the video recording of that witness's evidence in any list of productions.

Applications for leave for accused to be present at commission

N.B. Rule 22.15 applies only to

(a) solemn cases in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 30th November 2005,

(b) solemn cases in which there are vulnerable witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2006,

(c) summary proceedings in the sheriff court in which there are child witnesses, and in which a report of the case was received by the procurator fiscal after 1st April 2007.

22.15 (1) An application in writing under section 271I(3) of the Act of 1995 (application for leave for accused to be present in the room during commission) shall be in Form 22.15.

(2) The application shall be lodged with the clerk of court and served on every other party by the applicant.

(3) On receipt of an application under paragraph (2), the clerk of court shall place the application before a judge in chambers.

(4) On considering the application in the absence of parties, or of any person acting on their behalf, the judge shall—

(a) grant leave as requested; or

(b) fix a diet for a hearing of the application; and

(c) make an order for service of the application with the date on all parties and to the governor of any institution in which the accused is detained.

(5) Where an order under section 2711(3) of the Act of 1995 (leave for accused to be present in the room) is granted, it shall be intimated by the clerk of court to all parties unless the party was present at the hearing at which the order was made.