SCOTTISH STATUTORY INSTRUMENTS

2005 No. 574

HIGH COURT OF JUSTICIARY

SHERIFF COURT

Act of Adjournal (Criminal Procedure Rules Amendment No. 6) (Vulnerable Witnesses (Scotland) Act 2004) (Evidence on Commission) 2005

Made - - - - *9th November 2005*

Coming into force - - *30th November 2005*

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

Citation and commencement

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 6) (Vulnerable Witnesses (Scotland) Act 2004) (Evidence on Commission) 2005 and shall come into force on 30th November 2005.

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

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

2.—(1) Subject to sub-paragraph (2), the Act of Adjournal (Criminal Procedure Rules) 1996(**b**) shall be amended in accordance with sub-paragraphs (3) and (4).

(2) Nothing in this Act of Adjournal shall affect any—

(a) summary proceedings; or

(b) solemn proceedings—

(i) which commenced before 30th November 2005; or

(**a**) 1995 c.46.
(**b**) S.I. 1996/513, last amended by S.S.I. 2005/472.

(ii) which commenced after 30th November 2005 where there is no child witness within the meaning of section 271(1)(a) of the Criminal Procedure (Scotland) Act 1995(**a**),

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

(3) At the end of Chapter 22 (evidence of vulnerable witnesses)(**b**) there shall be inserted the following:–

"**Appointment of commissioner**

22.11.—(1) On making an order under section 271A(5) or (9) of the Act of 1995 (order in relation to special measures)(**c**) authorising the taking of evidence by a commissioner in accordance with section 271I of that Act(**d**), 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

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

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;

(**a**) Section 271 was inserted by section 1(1) of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3).
(**b**) Chapter 22 was amended by S.S.I. 2005/188.
(**c**) Section 271A was inserted by section 1(1) of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3).
(**d**) Section 271I was inserted by section 1(1) of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3).

(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

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

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 271I(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.".

(4) In the appendix after Form 22.8-B(**a**) there shall be inserted the form set out in the Schedule to this Act of Adjournal.

Cullen of Whitekirk

Lord Justice General, I.P.D.

Edinburgh
9th November 2005

(**a**) Form 22.8-B was inserted by S.S.I. 2005/188.

SCHEDULE

FORM 22.15

Paragraph 2(4)

Form of application for leave for accused to be present during a commission under section 271I(3) of the Criminal Procedure (Scotland) Act 1995

Rule 22.15

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

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

APPLICATION FOR LEAVE TO BE PRESENT AT COMMISSION

under section 271I(3) of the Criminal Procedure (Scotland) Act 1995

by

[A.B.] (*address*)

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

Prosecution reference……

Court reference……..

HUMBLY SHEWETH:

1. That [A.B.], (*date of birth*) [, along with (*name(s) of co-accused*)] has been indicted on (*date of indictment*) at the instance of Her Majesty's Advocate in the High Court of Justiciary [*or* in the sheriff court of (*place*)] and a diet of (*specify*) has been fixed for (*date*).

2. That on (*date*) an order was made to allow the evidence of [C.D.] to be taken on commission as [C.D.] is a vulnerable witness under section 271(1) of the Criminal Procedure (Scotland) Act 1995.

3. That [A.B.] seeks leave of the court to be present in the room during the proceedings before the commissioner.

4. That [A.B.] can show special cause for leave to be granted as follows:–

(*here state reasons that show special cause*).

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

MAY IT THEREFORE, please your Lordship[s]—

(a) to grant leave under section 271I(3) of the Act of 1995 for [A.B.] to be present in the room during the commission proceedings; [*or*

(b) to fix a diet for hearing this application and to order intimation of the diet to all parties;]

(c) to do otherwise as to your Lordship[s] shall seem proper;

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

IN RESPECT WHEREOF

(*Signed*)

[A.B.]

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

(*Address, e-mail address and telephone number of agent*).

(*Place and date*)

EXPLANATORY NOTE

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

This Act of Adjournal amends the Criminal Procedure Rules 1996 (S.I. 1996/513) ("the 1996 Rules") to make provision consequential upon amendments to the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") by the Vulnerable Witness (Scotland) Act 2004 (asp 3) ("the 2004 Act"). Paragraph 2(2) sets out transitional provisions that are linked to the commencement of the 2004 Act.

Paragraph 2(3) inserts new rules into Chapter 22 of the 1996 Rules on Evidence by Vulnerable Witnesses for taking evidence from a vulnerable witness by a commissioner. The new rules set out a procedure for the appointment of a commissioner and determination by the commissioner of the place and date for the commission to be held. The new rules also provide procedure for sealing and retaining copies of the video recording of the commission proceedings and for applications by the accused for leave to be present in the room during those proceedings.

Paragraph 2(4) inserts a form of application for the accused to be present at a commission.

SCOTTISH STATUTORY INSTRUMENTS

2005 No. 574

HIGH COURT OF JUSTICIARY

SHERIFF COURT

Act of Adjournal (Criminal Procedure Rules Amendment No. 6) (Vulnerable Witnesses (Scotland) Act 2004) (Evidence on Commission) 2005

£3.00

© Crown Copyright 2005

Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland
100 11/05 19593