

VULNERABLE WITNESSES (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Criminal Proceedings

Section 1 – Evidence of children and other vulnerable witnesses: special measures

Section 271A – Child witnesses

11. Subsection (1) entitles all child witnesses to give their evidence with the help of at least one special measure. Under subsections (2) and (13) the party calling the witness must submit a notice to the court and at the same time intimate it to the other parties at least 14 clear days before the trial, setting out which, if any, special measures the party considers to be the most appropriate. Where a child has expressed a view then details of the child's view must be included in the notice.
12. The court must consider the child witness notice within 7 days of the notice having been lodged. If the notice specifies a "standard" special measure, then the court must make an order authorising the use of that measure for the child witness giving evidence. Subsection (14) defines "standard" special measures as either the use of a live television link within the court building, or the use of a screen. In either case this can include a supporter as well.
13. If a notice specifies a non "standard" special measure, then in the event that the court is satisfied with the special measure sought the court can make an order granting the use of that measure for the child witness giving evidence. This order can be made in the absence of the parties. Subsections (5) and (9) enable a hearing to be held in cases where the court is not satisfied and the parties are to be given an opportunity to address the court at this hearing. These hearings can be conjoined with an existing diet already set down for the case.
14. In the event that a child witness notice is not lodged in time the court also has power under subsections (6) and (7) to either order such a notice to be lodged or to arrange a diet to be held before the trial.
15. Subsections (5)(b) and (9)(b)(ii) enable the court to order that the child witness is to give evidence without the benefit of any special measure. Subsections (2)(b), (5)(b) and (10) however have the effect that such an order can be made in only two circumstances: if the child has expressed a wish to give evidence without any special measure and the court considers that appropriate, or if the use of a special measure would give rise to a significant risk of prejudice to the trial and that risk significantly outweighs any risk of prejudice to the interests of the child.
16. Subsection (11) provides the court with the power, on its own motion or on the motion of the party calling the vulnerable witness, to hold a hearing on special measures in private (i.e. in chambers or after clearing the court).