



Vulnerable Witnesses (Scotland) Act 2004

2004 asp 3

PART 2

CIVIL PROCEEDINGS

Evidence of children and other vulnerable witnesses: special measures

12 Orders authorising the use of special measures for vulnerable witnesses

- (1) Where a child witness is to give evidence in or for the purposes of any civil proceedings, the court must, before the proof or other hearing at which the child is to give evidence, make an order—
 - (a) authorising the use of such special measure or measures as the court considers to be the most appropriate for the purpose of taking the child witness's evidence, or
 - (b) that the child witness is to give evidence without the benefit of any special measure.
- (2) The party citing or intending to cite a child witness must lodge with the court a notice (referred to in this Part as a "child witness notice")—
 - (a) specifying the special measure or measures which the party considers to be the most appropriate for the purpose of taking the child witness's evidence, or
 - (b) if the party considers that the child witness should give evidence without the benefit of any special measure, stating that fact,and the court must have regard to the child witness notice in making an order under subsection (1) above.
- (3) If a child witness notice specifies any of the following special measures, namely—
 - (a) the use of a live television link in accordance with section 20 where the place from which the child witness is to give evidence by means of the link is another part of the court building in which the court-room is located,
 - (b) the use of a screen in accordance with section 21, or
 - (c) the use of a supporter in accordance with section 22 in conjunction with either of the special measures referred to in paragraphs (a) and (b) above,

that special measure is, for the purposes of subsection (1)(a) above, to be taken to be the most appropriate for the purposes of taking the child witness's evidence.

- (4) The court may make an order under subsection (1)(b) above only if satisfied—
- (a) that the child witness has expressed a wish to give evidence without the benefit of any special measure and that it is appropriate for the child witness so to give evidence, or
 - (b) that—
 - (i) the use of any special measure for the purpose of taking the evidence of the child witness would give rise to a significant risk of prejudice to the fairness of the proceedings or otherwise to the interests of justice, and
 - (ii) that risk significantly outweighs any risk of prejudice to the interests of the child witness if the order is made.
- (5) Subsection (6) below applies in relation to a person other than a child witness who is to give evidence in or for the purpose of any civil proceedings (referred to in this section as “the witness”).
- (6) The court may—
- (a) on an application (referred to in this Part as a “vulnerable witness application”) made to it by the party citing or intending to cite the witness, and
 - (b) if satisfied that the witness is a vulnerable witness,
- make 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.
- (7) In deciding whether to make an order under subsection (6) above, the court must—
- (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 section 11(2)(a) to (f).