

POLICY NOTE

THE VULNERABLE WITNESSES (GIVING EVIDENCE IN RELATION TO THE DETERMINATION OF CHILDREN'S HEARINGS GROUNDS: AUTHENTICATION OF PRIOR STATEMENTS) (SCOTLAND) REGULATIONS 2013

SSI 2013/215

The above instrument is made in exercise of the powers conferred by section 22A(8) of the Vulnerable Witnesses (Scotland) Act 2004 as inserted by the Children's Hearings (Scotland) Act 2011 ("the 2011 Act"). The instrument is subject to negative procedure.

That section enables the Scottish Ministers to prescribe by regulations the manner in which a prior statement is to be authenticated, to enable its use in Children's Hearings proceedings within the Sheriff Court

A prior statement is a type of special measure intended to help vulnerable witnesses in court proceedings give the best evidence they can. A prior statement enables the witness' evidence in chief to be recorded without interruption before the hearing and alleviates the need for them to adopt or otherwise speak to the statement when giving evidence in court i.e. confirm that the statement was made by them and is accurate. The prior statement is evidence in the same way as direct oral evidence given at the hearing. The prior statement requires to be authenticated before it can be used in any proceedings.

The use of special measures is intended to reduce the anxiety and pressure that vulnerable witnesses may feel when they give evidence. They are currently available to children under 16 and other vulnerable witnesses where there is a risk that the quality of their evidence will be diminished by reason of a mental disorder or fear or distress in connection with giving evidence at the trial. Applications for special measures are made through either child witness notices (for those under 16 or 18 in human trafficking cases) or vulnerable witness applications (for those aged 16 and over).

The Victims and Witnesses (Scotland) Bill was introduced to the Scottish Parliament on 6 February 2013. It will amend the definition of "child witness" to those under age 18 in civil and criminal proceedings and the definition of vulnerable witness in criminal proceedings to include alleged victims of sexual offences, domestic abuse, human trafficking, and stalking. These categories of vulnerable witness will be entitled to use certain special measures when giving evidence. As a result, in criminal cases applications for special measures for child witnesses and deemed vulnerable witnesses will be made through a vulnerable witness notice. Other categories of vulnerable witness will continue to apply through a vulnerable witness application. A child witness notice will continue to be used in civil cases.

Policy objectives

The intention is to enable witnesses to give the best evidence they can by making prior statements available as a special measure to child and adult vulnerable witnesses in children's hearings court proceedings to ensure parity with criminal proceedings. Arrangements to use and authenticate prior statements in children's hearings court proceedings are based as far as possible on the existing arrangements in criminal proceedings.

Regulation 2 details how prior statements are to be authenticated. They will require a signed prescribed certificate to be attached to them certifying that the statement is genuine. The certificate will have to be signed by the witness or a party who was present when the statement was made. The Schedule sets out the prescribed certificate to be used in the authentication of a prior statement.

Commencement date

The date for the commencement of these regulations is 27 September 2013.

Consultation

There has been an open public consultation on this instrument which ran for 12 weeks from 9 December 2011 to 2 March 2012. Two responses were received. Both supported the instrument as drafted.

Impact assessments

There are no equality impact issues.

Financial effects

The regulations would not impose any additional costs on any other bodies, individuals or Businesses.

**Scottish Government
Justice Directorate**

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