



Vulnerable Witnesses (Scotland) Act 2004

2004 asp 3

PART 2

CIVIL PROCEEDINGS

Evidence of children and other vulnerable witnesses: special measures

11 Interpretation of this Part

- (1) For the purposes of this Part of this Act, a person who is giving or is to give evidence in or for the purposes of any civil proceedings is a vulnerable witness if—
 - (a) the person is under the age of 16 on the date of commencement of the proceedings (such a vulnerable witness being referred to in this Part as a “child witness”), or
 - (b) where the person is not a child witness, there is a significant risk that the quality of the evidence to be given by the person will be diminished by reason of—
 - (i) mental disorder (within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)), or
 - (ii) fear or distress in connection with giving evidence in the proceedings.
- (2) In considering whether a person is a vulnerable witness by virtue of subsection (1)(b) above, the court must take into account—
 - (a) the nature and circumstances of the alleged matter to which the proceedings relate,
 - (b) the nature of the evidence which the person is likely to give,
 - (c) the relationship (if any) between the person and any party to the proceedings,
 - (d) the person’s age and maturity,
 - (e) any behaviour towards the person on the part of—
 - (i) any party to the proceedings,
 - (ii) members of the family or associates of any such party,
 - (iii) any other person who is likely to be a party to the proceedings or a witness in the proceedings, and
 - (f) such other matters, including—

Status: This is the original version (as it was originally enacted).

- (i) the social and cultural background and ethnic origins of the person,
- (ii) the person's sexual orientation,
- (iii) the domestic and employment circumstances of the person,
- (iv) any religious beliefs or political opinions of the person, and
- (v) any physical disability or other physical impairment which the person has,

as appear to the court to be relevant.

- (3) For the purposes of subsection (1)(a) above, proceedings are taken to have commenced when the petition, summons, initial writ or other document initiating the proceedings is served, and, where the document is served on more than one person, the proceedings shall be taken to have commenced when the document is served on the first person on whom it is served.
- (4) In subsection (1)(b), the reference to the quality of evidence is to its quality in terms of completeness, coherence and accuracy.
- (5) In this Part—
 - “child witness notice” has the meaning given in section 12(2),
 - “civil proceedings” includes, in addition to such proceedings in any of the ordinary courts of law, any proceedings to which section 91 (procedural rules in relation to certain applications etc.) of the Children (Scotland) Act 1995 (c. 36) applies,
 - “court” is to be construed in accordance with the meaning of “civil proceedings”,
 - “special measure” means any of the special measures set out in, or prescribed under, section 18,
 - “vulnerable witness application” has the meaning given in section 12(6)(a).