

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 17 – Proceedings under Part 10: Evidence

Section 176 – Amendments of Vulnerable Witnesses (Scotland) Act 2004

255. This section makes consequential amendments to the Vulnerable Witnesses (Scotland) Act 2004 (“the 2004 Act”). Subsection (3) amends section 12 of the 2004 Act and clarifies that the child witness notice or vulnerable witness application must be lodged or made before the commencement of the hearing at which the child or vulnerable witness is to give evidence. Subsection (4) inserts a new section 16A into the 2004 Act which allows the Principal Reporter to lodge a child witness notice or a vulnerable witness application, or to make an application for a review of the current arrangements for taking the witness’s evidence. The reporter may exercise this power where he or she is citing the witness who is also a party to the proceedings. The witness may lodge the notices or applications independently of the reporter.
256. Subsection (5) inserts a new section 22A into the 2004 Act which provides for evidence in chief to be given by prior statement in any hearing by a sheriff of an application under sections 93 or 94 of this Act to establish whether or not a ground for referral is established, or to review the establishing of a ground under section 110 of this Act where the ground of referral is that the child has committed an offence. The use of a prior statement enables a witness’s evidence to be recorded without interruption before the trial and alleviates the need for the witness to adopt or otherwise speak to the statement when giving evidence in court. It also avoids the need for the witness to be led through potentially distressing material in court. A prior statement of the type mentioned in subsection (7) of section 22A will only be admissible if it has been authenticated. The method of authentication is to be provided for by the Scottish Ministers in secondary legislation. For the purposes of section 22A, a statement is contained in a document where the person: makes the statement personally; has direct knowledge of the statement; or approves the statement.