



# Children's Hearings (Scotland) Act 2011

## 2011 asp 1

### PART 17

#### PROCEEDINGS UNDER PART 10: EVIDENCE

#### **176 Amendment of Vulnerable Witnesses (Scotland) Act 2004**

- (1) The Vulnerable Witnesses (Scotland) Act 2004 (asp 3) is amended as follows.
- (2) In section 11 (interpretation of Part 2 of Act), in subsection (5)—
  - (a) after “Part—” insert—

““the 2011 Act” means the Children's Hearings (Scotland) Act 2011 (asp 1),”
  - (b) in the definition of “civil proceedings”, for the words from “any proceedings” to the end substitute “relevant proceedings”, and
  - (c) after the definition of “court” insert—

““relevant proceedings” means proceedings under Part 10 of the 2011 Act (other than section 98 [<sup>F1</sup>or 99]),”.
- (3) In section 12 (order authorising the use of special measures for vulnerable witnesses), after subsection (7) add—
  - “(8) In the case of relevant proceedings, the child witness notice or vulnerable witness application—
    - (a) must be lodged or made before the commencement of the hearing at which the child or, as the case may be, vulnerable witness is to give evidence,
    - (b) on cause shown, may be lodged or made after the commencement of that hearing.”.
- (4) After section 16 insert—

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**“16A Relevant proceedings: Principal Reporter's power to act for party to proceedings**

- (1) Subsection (2) applies where a child witness or other person who is giving or is to give evidence in or for the purposes of relevant proceedings (referred to in this section as “the party”) is a party to the proceedings.
- (2) The Principal Reporter may, on the party's behalf—
  - (a) lodge a child witness notice under section 12(2),
  - (b) make a vulnerable witness application for an order under section 12(6),
  - (c) make an application under section 13(1)(a) for review of the current arrangements for taking a witness's evidence.”.
- (5) After section 22 insert—

**“22A Giving evidence in chief in the form of a prior statement**

- (1) This section applies to proceedings in relation to—
  - (a) an application made by virtue of section 93 or 94 of the 2011 Act to determine whether the ground mentioned in section 67(2)(j) of that Act is established, or
  - (b) an application under section 110 of that Act for review of a finding that the ground mentioned in section 67(2)(j) of that Act is established.
- (2) The special measures which may be authorised by virtue of section 12 or 13 for the purpose of taking the evidence of a vulnerable witness at a hearing to consider such an application include (in addition to those listed in section 18(1)) the giving of evidence in chief in the form of a prior statement in accordance with subsections (3) to (10).
- (3) Where that special measure is to be used, a statement made by the vulnerable witness (a “prior statement”) may be lodged in evidence for the purposes of this section by or on behalf of the party citing the vulnerable witness.
- (4) A prior statement is admissible as the witness's evidence in chief, or as part of the witness's evidence in chief, without the witness being required to adopt or otherwise speak to the statement in giving evidence.
- (5) A prior statement is admissible as evidence of any matter stated in it of which direct oral evidence by the vulnerable witness would be admissible if given at the hearing.
- (6) A prior statement is admissible under this section only if—
  - (a) it is contained in a document, and
  - (b) at the time the statement was made, the vulnerable witness would have been a competent witness for the purposes of the hearing.
- (7) Subsection (6) does not apply to a prior statement—
  - (a) contained in a precognition on oath, or
  - (b) made in other proceedings (whether criminal or civil and whether taking place in the United Kingdom or elsewhere).

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- (8) A prior statement of a type mentioned in subsection (7) is not admissible for the purposes of this section unless it is authenticated in such manner as may be prescribed by regulations made by statutory instrument by the Scottish Ministers.
- (9) This section does not affect the admissibility of any statement made by any person which is admissible otherwise than by virtue of this section.
- (10) In this section—  
“document” has the meaning given by section 262(3) of the Criminal Procedure (Scotland) Act 1995 (c.46),  
“statement”—  
(a) includes—  
(i) any representation, however made or expressed, of fact or opinion, and  
(ii) any part of a statement, but  
(b) does not include a statement in a precognition other than a precognition on oath.
- (11) For the purposes of this section, a statement is contained in a document where the person who makes it—  
(a) makes the statement in the document personally,  
(b) makes a statement which is, with or without the person's knowledge, embodied in a document by whatever means or by any person who has direct personal knowledge of the making of the statement, or  
(c) approves a document as embodying the statement.
- (12) A statutory instrument containing regulations under subsection (8) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

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**Textual Amendments**

- F1** Words in s. 176(2)(c) inserted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 20(19)**
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**Commencement Information**

- I1** S. 176 in force at 24.6.2013 by [S.S.I. 2013/195](#), **arts. 2, 3**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 17A inserted by [2020 asp 16 s. 6\(2\)](#)
- s. 25(3) inserted by [2020 asp 16 s. 30\(7\)](#)
- s. 27(3)-(4A) substituted for s. 27(3)(4) by [2020 asp 16 s. 3\(2\)](#)
- s. 62(5)(q)-(u) inserted by [2020 asp 9 s. 8\(2\)\(b\)](#)
- s. 163(2)-(2B) substituted for s. 163(2) by [2020 asp 16 s. 27\(3\)\(b\)](#)
- s. 164(2)-(2B) substituted for s. 164(2) by [2020 asp 16 s. 27\(4\)\(b\)](#)
- s. 165(2)-(2B) substituted for s. 165(2) by [2020 asp 16 s. 27\(5\)\(b\)](#)