



Children (Scotland) Act 2020

2020 asp 16

Vulnerable witnesses and parties

8 Vulnerable parties

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 11A insert—

“11B Vulnerable parties

- (1) In proceedings to which subsection (2) applies—
 - (a) in relation to a party whom the court would be required by section 11B of the Vulnerable Witnesses (Scotland) Act 2004 to consider a vulnerable witness if the party were to give evidence in or for the purposes of the proceedings, the court must—
 - (i) order the use of any special measure that the party requests,
 - (ii) order the use of a special measure that the court considers appropriate and, if the party requested a different special measure, give reasons for not ordering its use, or
 - (iii) give reasons for not ordering the use of any special measure,
 - (b) in relation to any other party, the court may order the use of a special measure if the court considers that—
 - (i) attending or participating in hearings is causing, or is likely to cause, the party distress,
 - (ii) the party’s distress is likely to be reduced by the use of the special measure, and
 - (iii) the use of the special measure would not give rise to a significant risk of prejudice to the fairness of the proceedings or otherwise to the interests of justice.
- (2) This subsection applies to proceedings, commenced on or after section 8 of the Children (Scotland) Act 2020 comes into force, in which the court is considering, or has considered, whether to make an order under section 11(1).
- (3) An order under subsection (1) may authorise a special measure in relation to the whole of the proceedings or only a part of them.

- (4) A court may vary or revoke an order it made under subsection (1).
- (5) An order under subsection (1) or (4) may be made—
 - (a) at any time, and
 - (b) whether or not a party to the proceedings has applied for one.
- (6) The special measures which may be authorised by virtue of an order under subsection (1) or (4) are—
 - (a) use of a live television link,
 - (b) use of a screen,
 - (c) use of a supporter,
 - (d) any other measure prescribed by the Scottish Ministers by regulations.
- (7) Regulations under subsection (6)(d) are subject to the affirmative procedure.
- (8) In considering whether attending or participating in hearings is causing, or is likely to cause, a person distress, the court must take into account—
 - (a) the nature and circumstances of any matters raised, or likely to be raised, in the proceedings,
 - (b) the relationship (if any) between the person and any other party to the proceedings,
 - (c) the person's age and maturity,
 - (d) any behaviour towards the person on the part of—
 - (i) any other party to the proceedings,
 - (ii) members of the family or associates of any other party,
 - (iii) any other person who is likely to be a party to the proceedings or a witness in the proceedings, and
 - (e) such other matters as appear to the court to be relevant, including—
 - (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,
 - (v) any physical disability or other physical impairment which the person has.

11C Special measures under section 11B

- (1) If a court orders the use of a live television link, the court must make such arrangements as seem to it appropriate to enable the vulnerable party to watch and hear the proceedings by means of such a link.
- (2) If a court orders the use of a screen, a screen must be used to conceal the vulnerable party from the sight of the other parties to the proceedings.
- (3) If a court—
 - (a) orders the use of—
 - (i) a live television link, or
 - (ii) a screen, and

(b) considers it necessary or appropriate for the other parties to be able, during the proceedings, to—

- (i) hear the vulnerable party,
- (ii) watch the vulnerable party, or
- (iii) both,

the court must make such arrangements as seem to it appropriate to enable the other parties to do so.

(4) Where—

- (a) a court has ordered the use of a live television link or a screen in proceedings in a sheriff court, but
- (b) the court lacks accommodation or equipment necessary to enable the measure to be used,

the sheriff may by order transfer all or any part of the proceedings to any sheriff court in the same sheriffdom which has such accommodation or equipment available.

(5) If a court orders the use of a supporter, another person (“the supporter”) nominated by or on behalf of the vulnerable party may be present alongside the vulnerable party for the purpose of providing support during the proceedings.

(6) The supporter—

- (a) must not prompt or otherwise seek to influence the vulnerable party in the course of a hearing,
- (b) may not act as the supporter, within the meaning of subsection (5), while the vulnerable party is giving evidence,
- (c) may not act as the supporter, if the supporter is to give evidence in the proceedings, at any time before giving evidence.

(7) Subsection (6)(b) does not preclude the same person from being both—

- (a) a supporter within the meaning of subsection (5), and
- (b) a supporter within the meaning of section 22 of the Vulnerable Witnesses (Scotland) Act 2004.

(8) In this section—

- (a) references to a measure being ordered are to its being ordered under section 11B,
- (b) “vulnerable party” means the party for whose benefit the court ordered the use of the measure in question.”.