



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 [^{F1}18] on the date of commencement of the proceedings (such a vulnerable witness being referred to in this Part as a “child witness”), ^{F2} ...
 - (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^{F3}, or
 - (c) the person is of such description or is a witness in such proceedings as the Scottish Ministers may by order subject to the affirmative procedure prescribe.]
- (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,

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- (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—
 - (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—
 - [^{F4}“the 2011 Act” means the Children’s Hearings (Scotland) Act 2011 (asp 1),]
 - “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, [^{F5}relevant proceedings],
 - “court” is to be construed in accordance with the meaning of “civil proceedings”,
 - [^{F6}“relevant proceedings” means proceedings under Part 10 of the 2011 Act (other than section 98 or 99),]
 - “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).

Textual Amendments

- F1** Word in s. 11(1)(a) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 22(a)**, 34; S.S.I. 2015/200, art. 2(2), Sch. (with arts. 1(4)5)
- F2** Word in s. 11(1) repealed (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 22(b)**, 34; S.S.I. 2015/200, art. 2(2), Sch. (with arts. 1(4)5)
- F3** S. 11(1)(c) and word inserted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 22(c)**, 34; S.S.I. 2015/200, art. 2(2), Sch. (with arts. 1(4)5)
- F4** Words in s. 11(5) inserted (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), **ss. 176(2)(a)**, 206(2) (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F5** Words in s. 11(5) substituted (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), **ss. 176(2)(b)**, 206(2) (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F6** Words in s. 11(5) inserted (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), **ss. 176(2)(c)**, 206(2) (with s. 186); S.S.I. 2013/195, **arts. 2, 3** (as amended 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)**)

Commencement Information

- I1** S. 11 in force at 1.4.2006 for specified purposes by [S.S.I. 2006/59](#), art. 2, **Sch.** (with art. 4)

Changes to legislation: *Vulnerable Witnesses (Scotland) Act 2004, Section 11 is up to date with all changes known to be in force on or before 01 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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| I2 | S. 11 in force at 1.11.2007 in so far as not already in force by S.S.I. 2007/447 , art. 3, Sch. (with art. 4) |
| I3 | S. 11(1)(a)(3)(5) in force at 1.4.2005 for specified purposes by S.S.I. 2005/168 , art. 2, Sch. (with art. 4) |
| I4 | S. 11(1)(a)(3) in force at 30.11.2005 for specified purposes by S.S.I. 2005/590 , art. 2, Sch. (with art. 4) |
| I5 | S. 11(5) in force at 30.11.2005 for specified purposes by S.S.I. 2005/590 , art. 2, Sch. (with art. 4) |

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Changes and effects yet to be applied to :

- s. 11(5) words substituted by [2020 asp 16 s. 4\(2\)](#)

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):

- s. 11A11B inserted by [2020 asp 16 s. 4\(3\)](#)
- s. 12(3A) inserted by [2020 asp 16 s. 4\(4\)](#)
- s. 12(6A) inserted by [2020 asp 16 s. 5\(2\)](#)
- s. 22B-22D inserted by [2020 asp 16 s. 4\(5\)](#)