



# Children's Hearings (Scotland) Act 2011

## 2011 asp 1

### PART 17

#### PROCEEDINGS UNDER PART 10: EVIDENCE

#### **172 Use of evidence obtained from prosecutor**

- (1) This section applies where an application is made to the sheriff—
  - (a) to determine whether a section 67 ground is established, or
  - (b) to review a grounds determination.
- (2) The Principal Reporter may request a prosecutor to give the Principal Reporter evidence held by the prosecutor in connection with the investigation of a crime or suspected crime if the Principal Reporter considers that the evidence might assist the sheriff in determining the application.
- (3) The request may relate only to evidence lawfully obtained in the course of the investigation.
- (4) The prosecutor may refuse to comply with the request if the prosecutor reasonably believes that it is necessary to retain the evidence for the purposes of any proceedings in respect of a crime (whether or not the proceedings have already commenced).

#### **173 Cases involving sexual behaviour: evidence**

- (1) This section applies where—
  - (a) an application is made to the sheriff—
    - (i) to determine whether a section 67 ground is established, or
    - (ii) to review a grounds determination, and
  - (b) the ground involves sexual behaviour engaged in by any person.
- (2) In hearing the application the sheriff must not, unless the sheriff makes an order under section 175, admit evidence, or allow questioning of a witness designed to elicit evidence, which shows or tends to show one or more of the circumstances mentioned in subsection (3) in relation to a person mentioned in subsection (4).
- (3) The circumstances are that the person—

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- (a) is not of good character (whether in relation to sexual matters or otherwise),
  - (b) has, at any time, engaged in sexual behaviour not forming part of the subject-matter of the ground,
  - (c) has, at any time (other than shortly before, at the same time as or shortly after the acts which form part of the subject-matter of the ground), engaged in behaviour (not being sexual behaviour) that might found an inference that the person is not credible or the person's evidence is not reliable,
  - (d) has, at any time, been subject to any condition or predisposition that might found the inference that the person is not credible or the person's evidence is not reliable.
- (4) The persons are—
- (a) the child,
  - (b) a person giving evidence for the purposes of the hearing,
  - (c) any other person evidence of whose statements is given for the purposes of the hearing.
- (5) In subsection (4)(c), “statements” includes any representations, however made or expressed, of fact or opinion.
- (6) In this section and section 174, references to sexual behaviour engaged in include references to having undergone or been made subject to any experience of a sexual nature.

**174 Cases involving sexual behaviour: taking of evidence by commissioner**

- (1) Subsection (2) applies where—
- (a) a commissioner is appointed under section 19 of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) to take evidence for the purposes of a hearing before the sheriff—
    - (i) to determine whether a section 67 ground is established, or
    - (ii) to review a grounds determination, and
  - (b) the ground involves sexual behaviour engaged in by any person.
- (2) The commissioner must not, unless the sheriff makes an order under section 175, take evidence which shows or tends to show one or more of the circumstances mentioned in section 173(3) in relation to a person mentioned in section 173(4).

**175 Sections 173 and 174: application to sheriff for order as to evidence**

- (1) On the application of a person mentioned in subsection (2), the sheriff may, if satisfied as to the matters mentioned in subsection (3) make an order—
- (a) admitting evidence of the kind mentioned in section 173(2),
  - (b) allowing questioning of the kind mentioned in that section,
  - (c) enabling evidence of the kind mentioned in section 174(2) to be taken.
- (2) Those persons are—
- (a) the child,
  - (b) a relevant person in relation to the child,
  - (c) the Principal Reporter,

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- (d) a safeguarder appointed under section or whose appointment is confirmed under that section.
- (3) Those matters are—
- (a) the evidence or questioning will relate only to—
    - (i) a specific occurrence or specific occurrences of sexual behaviour or other behaviour demonstrating the character of the person,
    - (ii) specific facts demonstrating the character of the person,
    - (iii) a specific occurrence or specific occurrences of sexual behaviour or other behaviour demonstrating a condition or predisposition to which the person is or has been subject, or
    - (iv) specific facts demonstrating a condition or predisposition to which the person is or has been subject,
  - (b) the occurrence, occurrences or facts are relevant to establishing the ground, and
  - (c) the probative value of the evidence is significant and is likely to outweigh any risk of prejudice to the proper administration of justice arising from its being admitted or elicited.
- (4) References in this section to an occurrence or occurrences of sexual behaviour include references to undergoing or being made subject to any experience of a sexual nature.
- (5) In this section “proper administration of justice” includes—
- (a) appropriate protection of the person’s dignity and privacy, and
  - (b) ensuring the facts and circumstances of which the sheriff is made aware are relevant to an issue to be put before the sheriff and commensurate with the importance of that issue to the sheriff’s decision on the question whether the ground is established.

## **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),”.
- (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,

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- (b) on cause shown, may be lodged or made after the commencement of that hearing.”.

(4) After section 16 insert—

**“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.

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- (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).
- (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.”.