



Children (Scotland) Act 2020

2020 asp 16

Vulnerable witnesses and parties

PROSPECTIVE

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.

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Children (Scotland) Act 2020, Section 8. (See end of Document for details)

- (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.

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Children (Scotland) Act 2020, Section 8. (See end of Document for details)

- (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.”.

Status:

This version of this provision is prospective.

Changes to legislation:

There are currently no known outstanding effects for the Children (Scotland) Act 2020, Section 8.