

VULNERABLE WITNESSES (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Civil Proceedings

Section 12 – Orders authorising the use of special measures for vulnerable witnesses

67. This section sets out the procedure for child witness notices and vulnerable witness applications in civil proceedings.
68. Subsections (1) to (4) specify the procedure for child witness notices. The party calling the child witness must lodge a notice outlining the special measures sought. The court is required to make an order authorising the use of the most appropriate special measure to enable the child witness to give their evidence or to make an order stating that the child witness will be giving their evidence without the benefit of a special measure. The latter order can only be made if either the child witness has expressed the wish not to use a special measure and the court considers that appropriate, or the risk of prejudice to the fairness of the proof significantly outweighs the risk of prejudice to the interests of the child witness.
69. Where a child witness notice requires a live television link within the court or screens (in either case with or without a supporter), then the court must authorise the use of these special measures.
70. Subsections (5) to (7) give the court a power, on application by the party intending to call the witness, to authorise the use of a special measure for an adult vulnerable witness. Before making such an order for the most appropriate special measure the court must be satisfied that the witness is vulnerable. In reaching this decision the court must take into account a range of factors.
71. Subsection (7) sets out the range of factors which must be taken into account by the court when determining whether to make an order:
 - the possible effect on the witness if they are not allowed to use special measures;
 - whether there is a chance that they will be more able to give their evidence with special measures than without; and
 - the list of factors set out in the section 11(2).