



Vulnerable Witnesses (Scotland) Act 2004

2004 asp 3

PART 2

CIVIL PROCEEDINGS

Evidence of children and other vulnerable witnesses: special measures

13 Review of arrangements for vulnerable witnesses

- (1) In any civil proceedings in which a person who is giving or is to give evidence (referred to in this section as “the witness”) appears to the court to be a vulnerable witness, the court may at any stage in the proceedings (whether before or after the commencement of the proof or other hearing at which the witness is giving or is to give evidence or before or after the witness has begun to give evidence)—
 - (a) on the application of the party citing or intending to cite the witness, or
 - (b) of its own motion,review the current arrangements for taking the witness’s evidence and make an order under subsection (2) below.
- (2) The order which may be made under this subsection is—
 - (a) where the current arrangements for taking the witness’s evidence include the use of a special measure or combination of special measures authorised by an order under section 12 or under this subsection (referred to as the “earlier order”), an order varying or revoking the earlier order, or
 - (b) where the current arrangements for taking the witness’s evidence do not include any special measure, an order authorising the use of such special measure or measures as the court considers most appropriate for the purpose of taking the witness’s evidence.
- (3) An order under subsection (2)(a) above varying an earlier order may—
 - (a) add to or substitute for any special measure authorised by the earlier order such other special measure as the court considers most appropriate for the purpose of taking the witness’s evidence, or
 - (b) where the earlier order authorises the use of a combination of special measures for that purpose, delete any of the special measures so authorised.

- (4) The court may make an order under subsection (2)(a) above revoking an earlier order only if satisfied that—
- (a) the witness has expressed a wish to give or, as the case may be, continue to give evidence without the benefit of any special measure and that it is appropriate for the witness so to give evidence, or
 - (b) that—
 - (i) the use, or continued use, of the special measure for the purpose of taking the witness's evidence would give rise to a significant risk of prejudice to the fairness of the proceedings or otherwise to the interests of justice, and
 - (ii) that risk significantly outweighs any risk of prejudice to the interests of the witness if the order is made.
- (5) Subsection (7) of section 12 applies to the making of an order under subsection (2) (b) of this section as it applies to the making of an order under subsection (6) of that section but as if the references to the witness were to the witness within the meaning of this section.
- (6) In this section, “current arrangements” means the arrangements in place at the time the review under this section is begun.