



Vulnerable Witnesses (Scotland) Act 2004

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PART 2

CIVIL PROCEEDINGS

Establishment of grounds of referral to children's hearings: restrictions on evidence

23 Establishment of grounds of referral to children's hearings: restrictions on evidence

After section 68 (application to sheriff to establish grounds of referral) of the Children (Scotland) Act 1995 (c. 36) there is inserted—

“68A Restrictions on evidence in certain cases involving sexual abuse

- (1) This section applies in relation to—
 - (a) an application under section 65(7) or (9) of this Act in which the ground of referral to be established is a condition mentioned in—
 - (i) paragraph (b) of subsection (2) of section 52 of this Act where that condition is alleged to be satisfied by reference to sexual behaviour engaged in by any person,
 - (ii) paragraph (d), (e) or (f) of that subsection where that condition is alleged to be satisfied by reference to a relevant offence, or
 - (iii) paragraph (g) of that subsection, or
 - (b) an application under section 85 of this Act for a review of a finding that any such ground of referral is established.
- (2) In hearing the application, the sheriff shall not admit, or allow questioning designed to elicit, evidence which shows or tends to show that the child who is the subject of the application or any other witness giving evidence at the hearing (such child or other witness being referred to in this section and section 68B of this Act as “the witness”)—
 - (a) is not of good character (whether in relation to sexual matters or otherwise),

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- (b) has, at any time, engaged in sexual behaviour not forming part of the subject matter of the ground of referral,
 - (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 of referral), engaged in such behaviour, not being sexual behaviour, as might found the inference that the witness is not a credible or reliable witness, or
 - (d) has, at any time, been subject to any such condition or predisposition as might found the inference referred to in paragraph (c) above.
- (3) In subsection (1)(a)(ii) above, “relevant offence” means—
- (a) an offence mentioned in paragraph 1 or 4 of Schedule 1 (offences against children under the age of 17 to which special provisions apply) to the Criminal Procedure (Scotland) Act 1995 (c. 46), or
 - (b) any other offence mentioned in that Schedule where there is a substantial sexual element in the alleged commission of the offence.
- (4) In subsection (2)(b) and (c) above—
- (a) “the subject matter of the ground of referral” means—
 - (i) in the case of an application in which the ground of referral to be established is the condition referred to in paragraph (a) (i) of subsection (1) above, the sexual behaviour referred to in that paragraph,
 - (ii) in the case of any other application, the acts or behaviour constituting the offence by reference to which the ground of referral is alleged to be established, and
 - (b) the reference to engaging in sexual behaviour includes a reference to undergoing or being made subject to any experience of a sexual nature.

68B Exceptions to restrictions under section 68A

- (1) The sheriff hearing an application referred to in subsection (1) of section 68A of this Act may, on an application by any party to the proceedings, admit such evidence or allow such questioning as is referred to in subsection (2) of that section if satisfied that—
- (a) the evidence or questioning will relate only to a specific occurrence or occurrences of sexual or other behaviour or to specific facts demonstrating—
 - (i) the character of the witness, or
 - (ii) any condition or predisposition to which the witness is or has been subject,
 - (b) that occurrence or those occurrences of behaviour or facts are relevant to establishing the ground of referral, and
 - (c) the probative value of the evidence sought to be admitted or elicited is significant and is likely to outweigh any risk of prejudice to the proper administration of justice arising from its being admitted or elicited.
- (2) In subsection (1) above—
- (a) the reference to an occurrence or occurrences of sexual behaviour includes a reference to undergoing or being made subject to any experience of a sexual nature,

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- (b) “the proper administration of justice” includes—
 - (i) appropriate protection of the witness’s dignity and privacy, and
 - (ii) 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 of referral is established.
- (3) In this section, “the witness” means the child who is the subject of the application referred to in section 68A(1) or other witness in respect of whom the evidence is sought to be admitted or elicited.”.