



Children (Scotland) Act 2020

2020 asp 16

Vulnerable witnesses and parties

PROSPECTIVE

6 Hearing to ascertain if case involves vulnerable witnesses

- (1) The Children's Hearings (Scotland) Act 2011 is modified as follows.
- (2) After Part 17 insert—

“PART 17A

PROTECTION FOR VULNERABLE WITNESSES

176A Duty to ascertain whether vulnerable witnesses to give evidence

- (1) In proceedings under Part 10 or section 154, the court must fulfil the duty specified in subsection (2) at a hearing held before the first hearing in which a person is to give evidence.
- (2) The duty is to ascertain whether—
 - (a) any of the parties have cited, or intend to cite, a person who is or may be a vulnerable witness to give evidence at any point during the proceedings, and
 - (b) any party who is or may be a vulnerable witness intends to give evidence at any point during the proceedings (without having been cited as a witness by one of the other parties).
- (3) The hearing at which the court fulfils the duty specified in subsection (2)—
 - (a) is referred to in this Part as the preliminary hearing,
 - (b) need not be a hearing solely for the purpose of fulfilling that duty.
- (4) If—
 - (a) the court ascertains at the preliminary hearing that—

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 6. (See end of Document for details)

- (i) a party has cited, or intends to cite, a witness who the court is satisfied is a vulnerable witness, or
- (ii) a party who the court is satisfied is a vulnerable witness intends to give evidence,
- (b) no child witness notice in respect of that witness has been lodged with the court, and
- (c) no vulnerable witness application in respect of that witness has been made to the court,

the court must also ascertain at the preliminary hearing the party's views as to the special measure or measures (if any) that would be most appropriate for the purpose of taking the witness's evidence.

- (5) Where a party is considering for the purposes of subsection (4) which of the special measures is or are the most appropriate for the purpose of taking the evidence of a witness the party has cited, or intends to cite, section 15(2) of the Vulnerable Witnesses Act applies to the party as it would if the party were considering that matter for the purposes of a child witness notice or (as the case may be) a vulnerable witness application.

176B Power to order special measures without child witness notice

- (1) This section applies where—
 - (a) at a preliminary hearing, the court ascertains that a party has cited, or intends to cite, a witness who the court is satisfied is a child witness, and
 - (b) no child witness notice in respect of that witness has been lodged with the court.
- (2) At the end of the preliminary hearing, the court may make an order in relation to the witness under section 12(1) of the Vulnerable Witnesses Act.
- (3) In making an order by virtue of subsection (2), the court must have regard to any views of the party mentioned in subsection (1) that were ascertained in accordance with section 176A(4).
- (4) If the court makes an order by virtue of subsection (2), the party mentioned in subsection (1) is relieved of the duty under section 12(2) of the Vulnerable Witnesses Act to lodge a child witness notice in respect of the witness in question.

176C Power to order special measures without vulnerable witness application

- (1) This section applies where—
 - (a) at a preliminary hearing under section 176A, the court ascertains that a party has cited, or intends to cite, a witness who the court is satisfied—
 - (i) is a vulnerable witness, but
 - (ii) is not a child witness, and
 - (b) no vulnerable witness application has been made to the court in respect of the witness.

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 6. (See end of Document for details)

- (2) The court may make an order in relation to the witness under section 12(6) of the Vulnerable Witnesses Act, despite the fact that no vulnerable witness application has been made.
- (3) In making an order by virtue of subsection (2), the court must have regard to any views of the party mentioned in subsection (1) that were ascertained in accordance with section 176A(4).

176D Interpretation of Part

In this Part—

“child witness” has the meaning given by section 11(1)(a) of the Vulnerable Witnesses Act,

“child witness notice” has the meaning given by section 12(2) of the Vulnerable Witnesses Act,

“preliminary hearing” has the meaning given by section 176A(3),

“vulnerable witness” means a person who is a vulnerable witness for the purposes of the Vulnerable Witnesses Act (including any person deemed to be a vulnerable witness by virtue of section 11A of that Act),

“vulnerable witness application” has the meaning given by section 12(6) (a) of the Vulnerable Witnesses Act,

“the Vulnerable Witnesses Act” means the Vulnerable Witnesses (Scotland) Act 2004.”.

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 6.