

Evidence of Children

Karen Gailey

Question:

When should you call upon a child to give evidence in private children proceedings and with what safeguards?

- Children (Scotland) Act 1995 Section 11 orders;
- Other types of family proceedings;
- Other types of civil proceedings

Section 11(2) Orders

- Depriving a party of PRRs
- Imposing PRRs on a party
- Residence Order
- Contact Order
- Specific Issue Order
- Interdict
- Administration of the child's property
- Appointment or removal of a guardian

Specific Issue Orders

- Proposed relocation
- Choice of school

Section 11 (7) (b)

(7) Subject to subsection (8) below, in considering whether or not to make an order under subsection (1) above and what order to make, the court—

... (b) taking account of the child's age and maturity, shall so far as practicable—

- (i) give him an opportunity to indicate whether he wishes to express his views;
- (ii) if he does so wish, give him an opportunity to express them; and
- (iii) have regard to such views as he may express.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

- Form F9 / Form 49.8-N
- Child Welfare Report
- Child Psychologist
- Interview by Sheriff
- Affidavit evidence
- Oral evidence

Child psychologists and other experts

JQ v CC Glasgow Sheriff Court 1st March 2016

Civil Evidence (Scotland) Act 1988

2. (1) In any civil proceedings—

....(b) a statement made by a person otherwise than in the course of the proof shall be admissible as evidence of any matter contained in the statement of which direct oral evidence by that person would be admissible;...

Vulnerable Witnesses (Scotland) Act 2004

- Part 2 applies to civil proceedings
- Applies to all witnesses under the age of 18 (Section 11)
- Child Witness Notice (Section 12)
- Special Measures (Sections 18 – 22)

Special Measures

- Taking of evidence by a Commissioner;
- Use of a live television link;
- Use of a screen;
- Use of a supporter;
- Or such other measures as the Scottish Ministers may by order prescribe.



Family
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