

Vulnerable Witnesses

Main Definitions of Eligibility

A person under the age of 16 on the date of commencement of proceedings (child witness)

If not a child, where there is a significant risk that the quality of their evidence will be diminished by reason of:

- mental disorder (within the meaning of s328 of the Mental Health (Care & Treatment) (Scotland) Act 2003 (asp13), or
- fear or distress in connection with giving evidence at the trial

A mental disorder includes mental illness, personality disorder or learning disability. The legislation makes clear it is not normally indicated by: -

- sexual orientation, sexual deviancy, transsexualism or transvestism
- dependence on, or use of, alcohol or drugs
- behaviour that causes, or is likely to cause, harassment, alarm or distress to any other person
- acting as no prudent person would act

The critical issue is whether there is a significant risk that the quality of the evidence of the witness will be diminished. Quality of evidence relates to its completeness, coherence and accuracy.

Relevant Factors

The court takes into account a number of factors when deciding if a person is vulnerable:-

- the nature and circumstances of the alleged offence
- the nature of the evidence which the person is likely to give
- the relationship (if any) between the person and the accused
- the person's age and maturity
- any behaviour towards the person on the part of the accused, members of the family or associates of the accused, or any other person who is likely to be an accused or a witness in the proceedings
- other matters about the person that appear relevant to the court, including (but not necessarily limited to)
 - their social and cultural background and ethnic origins
 - their sexual orientation
 - their domestic and employment circumstances
 - any religious beliefs or political opinions
 - any physical disability or other physical impairment

These factors are not in themselves absolute indicators of vulnerability. What may present a significant risk to the quality of the evidence of one person may have little or no effect on another.

Application to the accused

The legislation provides for the accused to make use of special measures when giving evidence if he or she is deemed to be vulnerable.

The factors to be taken into account when assessing vulnerability in an adult accused include:-

- whether the accused is to be legally represented and his/her entitlement to be legally represented
- any behaviour towards the accused by any co-accused, witness or family member or associate of the co-accused or witness

The accused is not entitled to use screens as a special measure.

Civil Cases

The definition of a vulnerable witness is the same in civil and criminal cases, and any court proceedings before a sheriff in relation to children's hearings.

More information

Further information about the Vulnerable Witnesses (Scotland) Act 2004 is given in:-

- in the Vulnerable Witnesses (Scotland) Act 2004 – an Information Guide
- at the Witnesses in Scotland website (www.witnessesinscotland.com)