

**Child Rights and Wellbeing
Impact Assessment**

**Vulnerable Witnesses
(Criminal Evidence)
(Scotland) Bill**

June 2018



Scottish Government
Riaghaltas na h-Alba
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13 June 2018

Executive Summary

The Programme for Government 2017-18 announced the Scottish Government's intention to introduce a Vulnerable Witnesses and Pre-recorded Evidence Bill to reduce further the need for children and vulnerable witnesses to give evidence in a courtroom.

An effective criminal justice system secures justice for the victims of crime, and punishes those who are convicted of crime, while securing a fair trial to those who are accused of crime. The criminal justice system cannot fulfil its functions unless witnesses come forward and give evidence. However, there is a risk that witnesses – especially child and other vulnerable witnesses of the most serious and traumatic crimes – may be re-traumatised through their participation in the criminal justice process. This does not benefit those witnesses or the interests of justice. Giving evidence in court long after events have taken place also does not support witnesses to provide the best evidence to allow courts to establish the facts of the case in the interests of fair and balanced outcomes.

In recent years, significant changes have been made to the criminal justice system to recognise the interests of vulnerable witnesses. These have included strengthened arrangements to extend access to special measures in court and, where appropriate, to help keep children and other vulnerable witnesses out of court, for example through greater access to remote video links for both summary and solemn cases. However, the Scottish Government believes strongly that more can and should be done to support child and other vulnerable witnesses, whilst protecting the interests of people accused of crimes.

This Bill will add to recent improvements to strengthen and improve the rights and experiences of victims and witnesses and removing any barriers to enable the greater use of pre-recorded evidence.

The Bill will improve how the criminal justice system responds to children and other vulnerable witnesses, aiming to enable child and vulnerable witnesses to give their best evidence whilst maintaining the rights of a person accused of a crime, by:

- creating a new rule in favour of children under 18 to have their evidence pre-recorded in advance of trial in the most serious of cases (solemn cases heard in the High Court or Sheriff Court). A secondary legislation power is also included in the Bill to extend the new rule to categories of adult “deemed vulnerable witnesses” in solemn cases.
- providing flexibility for a separate ground rules hearing to be held, if necessary, prior to evidence being taken by way of commissioner. This applies to every commission and not just those commissions where the new rule in favour of children under 18 applies. The policy intention is that a hearing to consider ground rules is to take place prior to every commission, however there is flexibility in the Bill for this to be conjoined with any other

	<p>hearing or diet if easier and more efficient to do so. Currently preliminary hearings are in effect acting as ground rules hearings and the expectation is that they will continue to do so.</p> <ul style="list-style-type: none"> • making various other amendments to the 1995 Act to allow commissions to be held prior to service of the indictment (if appropriate to do so); making provision for the same judge who presides over the ground rules hearing to preside over the commission, where reasonably practicable; and making provision for a new intimation process for standard special measures for child and deemed vulnerable witnesses. <p>The aim of the Child Rights and Wellbeing Impact Assessment (CRWIA) is to identify, consider and record the anticipated impact of the Bill on children’s rights and wellbeing in Scotland.</p> <p>The provisions in the Bill have been considered and assessed for:</p> <ul style="list-style-type: none"> • compliance with/advancement of the articles of the UNCRC; and • how they will protect and promote the wellbeing of children and young people who may be affected by the provisions in the Bill, using the child wellbeing indicators.
<p>Background</p>	<ul style="list-style-type: none"> • As set out in the “Justice in Scotland: Vision and Priorities”, one of the key priorities for 2017-18 is to “improve the experience of victims and witnesses, minimising court attendance and supporting them to give best evidence”.¹ One of the key actions flowing from that priority is that “justice partners will test and take forward new models to better support child and other vulnerable witnesses, including through the greater use of pre-recorded evidence, strengthened joint investigative interviews and exploring the application of the collaborative Barnahus concept for child victims in Scotland.”² • Between 29 June 2017 and 29 September 2017, the Scottish Government consulted on pre-recording evidence of child and other vulnerable witnesses. The focus of the consultation was on addressing identified legislative and practical gaps within the current arrangements for enabling child and other vulnerable witnesses to have their evidence pre-recorded in advance of trial, with a particular focus on strengthening and improving the current arrangements for evidence being taken by a Commissioner. <p>The consultation received 47 responses, comprised of 16 individuals and 31 organisations. An analysis of the responses was published in December 2017. The majority of respondents were supportive of the removal of legislative barriers to the greater use of pre-recording and the longer term aim of a presumption in favour of child and vulnerable adult witnesses having all their evidence taken in advance of the criminal trial. There was general support for the initial focus being on child</p>

¹ Scottish Government, *Justice in Scotland: Vision and Priorities* (July 2017), p 3.

² Scottish Government, *Justice Vision and Priorities: Delivery Plan 2017-18* (July 2017), p 15.

	<p>witnesses and complainers and also for focusing on the most serious crimes in the High Court.</p> <p>Some respondents, including the Faculty of Advocates, recognised the substantial resource and logistical implications of a shift to a presumption to use pre-recorded evidence and were supportive of pilots and phased implementation.</p> <ul style="list-style-type: none"> • This Bill will add to recent improvements to strengthen and improve the rights and experiences of victims and witnesses and remove any barriers to enable the greater use of pre-recorded evidence. • The Bill will aim to enable the evidence of child and vulnerable witnesses to be taken at an earlier stage, outwith the court room, to avoid having to endure the stress and anxiety of giving evidence in the formal court environment, allowing them to give their best evidence whilst maintaining the rights of a person accused of a crime. The Bill is an important step towards achieving the vision of the Cabinet Secretary for Justice that, where possible, child witnesses should not have to give evidence during a criminal trial. • Although the focus of the new rule is on child witnesses, the intention is that by making a number of other changes to the process of giving evidence by commissioner and the special measures process as well as removing any existing legislative barriers to pre-recording evidence, other vulnerable witnesses will also benefit from the reforms. The Bill also includes a power for the new rule to be extended to adult “deemed vulnerable witnesses” in solemn cases. • More detailed background to the Bill is set out in the Policy Memorandum published alongside the Bill on the Scottish Parliament website.
<p>Scope of the CRWIA</p>	<p>The proposals for the Bill were developed and their likely effect assessed using a range of evidence, including a full public consultation and further consultation with the Bill Stakeholder Group comprising of relevant justice sector partners.</p> <p>Policy officials also considered evidence from a variety of studies and reports including:</p> <ul style="list-style-type: none"> • Scottish Court Service, Evidence and Procedure Review: Report (March 2015); SCTS , Evidence and Procedure Review – Next Steps (February 2016); SCTS, Evidence and Procedure Review - Child and Vulnerable Witnesses Project: Pre-Recorded Evidence Workstream Project Report (September 2017) • The Advocates Gateway, Ground rules hearings and the fair treatment of vulnerable people in court: Toolkit 1 (December 2016) • Ministry of Justice, Process evaluation of pre-recorded cross-examination pilot (Section 28) (2016)

	<ul style="list-style-type: none"> • Inspectorate of Prosecution in Scotland, Thematic Review of the Investigation and Prosecution of Sexual Crimes (November 2017) <p>The CRWIA considers whether any of the Bill's provisions impact on the rights and wellbeing of children and young people in Scotland.</p> <p>The CRWIA should be read in conjunction with the Equality Impact Assessment (EQIA) which considers the potential impact of the Bill's provisions on each of the protected characteristics (including age).</p>
<p>Children and young people's views and experiences</p>	<p>Given the vulnerability of the children impacted by the Bill, the technical nature of the policy development and drafting of the provisions of the Bill, and indeed of the operational context and reasoning for legislating, direct engagement with children and young people was not considered appropriate.</p> <p>However, the responses to the public consultation helped to shape the policy of the Bill. Respondents to the consultation included:</p> <ul style="list-style-type: none"> • A number of local authority Child Protection Committees and services for children, young people and families • Scottish Association of Social Work and Social Work Scotland • Eighteen and Under • Includem • Scottish Children's Reporter Administration • Centre for Youth and Criminal Justice • NSPCC Scotland • Royal College of Paediatrics and Child Health • Children 1st
<p>Key Findings</p>	<p>The Scottish Government has found that none of the proposals impinge upon the Articles of the UNCRC or the indicators of wellbeing and that the Bill will not have a negative impact on children and young people.</p> <p>We consider that the impact on children and young people would be positive and that by reducing the need for child witnesses to give evidence in the formal court environment, and reducing the stress and trauma associated with this, this will allow them to give their best evidence. This would promote the following Articles of the UNCRC:</p> <ul style="list-style-type: none"> • Art 3 of the UNCRC: taking the appropriate legislative and administrative measures to ensure that children have the protection and care necessary for their wellbeing; and • Art 39 of the UNCRC: the right of children who have been the victim of any form of exploitation to receive the help they need to recover their health, dignity and self-respect and re-integrate into society.
<p>Conclusions and Recommendations</p>	<p>Having assessed the impact on children and young people, we consider it appropriate to proceed with the proposals and introduce the Bill to Parliament as we consider the reforms will have a positive impact on children and young people.</p>

Monitoring and review

The policy will be monitored throughout the parliamentary passage of the Bill and continuing through the implementation of the Bill by continued engagement with relevant justice sector partners and key third sector organisations representing children and young people.

Bill - Clause	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to wellbeing indicators
Sections 1 & 2	To require that, in the most serious criminal cases, the court must enable child witnesses to give all of their evidence in advance of the criminal trial, without having to attend the trial (subject to a few exceptions).	Child witnesses in the most serious criminal cases	<p>These provisions do not impinge on any of the UNCRC articles.</p> <p>We consider these provisions advance Article 39: Recovery and rehabilitation of child victims –taking all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.</p>	<p>These provisions should have a positive impact on wellbeing indicators.</p> <p>We consider that they advance:</p> <p>Respected, Included and Healthy.</p>
Section 3	To provide a power for the Scottish Ministers to make regulations extending the new rule so that it applies to	Adult deemed vulnerable witnesses	This provision does not impinge on any of the UNCRC articles.	This provision does not impinge on any of the wellbeing indicators.

	deemed vulnerable witnesses as well as child witnesses.			
Section 4	To limit the court's power, in respect of cases which do not fall within the new rule, to vary special measures which have been put in place for the purpose of taking the evidence of a child witness or vulnerable witness if the current special measures enable the witness's evidence to be taken in advance of trial.	Child witnesses and vulnerable witnesses	This provision does not impinge on any of the UNCRC articles. We consider it advances: Article 3: Best interests of the child – every decision and action taken relating to a child must be in their best interest.	This provision should have a positive impact on wellbeing indicators. We consider that it advances: Respected
Section 5	To introduce a new type of procedural hearing, to be known as a ground rules hearing, which is to be used for the purpose of preparing for the hearing before the commissioner.	Child witnesses and vulnerable witnesses	This provision does not impinge on any of the UNCRC articles. We consider it advances: Article 3: Best interests of the child – every decision and action taken relating to a child must be in their best interest. Article 39: Recovery and rehabilitation of child victims	This provision should have a positive impact on wellbeing indicators. We consider that it advances: Respected
Section 6	To introduce a simplified procedure for securing the use	N/A – an operational	This provision does not impinge on any of the	This provision does not impinge on any of the wellbeing indicators.

	of standard special measures for children and deemed vulnerable witnesses.	reform	UNCRC articles.	
Sections 7 & 8	To make adjustments to the timeframe within which a court must consider a vulnerable witness notice must be lodged with the court.	N/A – an operational reform	These provisions do not impinge on any of the UNCRC articles.	These provisions do not impinge on any of the wellbeing indicators.
Sections 9 to 12	General provisions dealing with consequential amendments, ancillary provision, commencement and short title.	-	These provisions do not impinge on any of the UNCRC articles.	These provisions do not impinge on any of the wellbeing indicators.

CRWIA Declaration

Tick relevant section, and complete the form.

CRWIA required

CRWIA not required

Yes

Authorisation

Policy lead

Laura McDavitt, Criminal Justice Reform Policy Officer, Criminal Justice Division

Date

31/05/2018

Deputy Director or equivalent

Willie Cowan, Deputy Director, Criminal Justice Division

Date

01/06/2018



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