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Special measures factsheet

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1. What are we going to do?

Provide that all domestic abuse victims are eligible for assistance when giving evidence in criminal proceedings.

This could enable them, for example, to give their evidence from behind a screen or via a video link.

Justice Secretary, Robert Buckland, Commons second reading of the Bill, October 2019:

“ If the quality of a victim’s evidence can be improved by allowing them to give evidence from behind a screen or via video link, or by playing a pre-recorded interview, we should do everything we can to allow that. The Bill, importantly, ensures that the victims of domestic abuse are automatically eligible for such special measures.”

8. Will you extend automatic eligibility of special measures to parties in the civil courts?
9. Key facts

2. How are we going to do it?

Generally, for a witness in criminal proceedings to be eligible for ‘special measures’ as an ‘intimidated’ witness, the court must be satisfied that the quality of the witness’s evidence is likely to be diminished due to their fear or distress about testifying. Complainants in respect of modern slavery offences and sexual offences are automatically eligible for special measures on these grounds, as are witnesses in proceedings relating to certain listed offences involving guns or knives.

The Bill provides that victims of domestic abuse will also be automatically eligible for special measures on the grounds of fear or distress. The Bill defines domestic abuse, and victims will be automatically eligible for special measures whenever it is alleged the behaviour of the accused falls within that definition.

However, whether any special measures are ultimately provided in a particular case will still depend on whether the court considers they would be likely to improve the quality of the witness’s evidence (taking into account the witness’s wishes and the ability of parties to effectively test the evidence).

3. Background

Victims of domestic abuse can already be eligible for special measures in criminal proceedings if the court is satisfied the quality of their evidence is likely to be diminished due to their fear or distress about testifying. In such cases, they are eligible for special measures as ‘intimidated’ witnesses. Domestic abuse victims will also be eligible as ‘vulnerable’ witnesses if they are under 18 years old or the quality of their evidence is likely to be diminished by reason of their mental or physical incapacity.

If a witness is eligible for special measures, the court must determine whether any available special measures are likely to improve the quality of the witness’s evidence (and if so, which measure, or combination of measures would be best). In making that decision the court must consider all the circumstances of the case, including any views expressed by the witness and whether the measure(s) would inhibit the evidence being effectively tested by a party to the proceedings. So, eligibility does not necessarily guarantee that a special measure will be granted in any particular case, but it does require the court to consider whether a special measure should be granted.

4. What are “special measures”?

There are a range of special measures available, for example giving evidence

from behind a screen, in private (that is without the public being in court) or via a live link so that victims do not have to face the accused. The use of video links allows victims and witnesses to take part in criminal proceedings without having to meet the accused face-to-face, thereby reducing unnecessary stress.

5. Will the victims of domestic abuse automatically get special measures to help them to give their evidence?

Those who are victims of domestic abuse (under the new definition set out in the Bill) will not have to satisfy the fear or distress test to be eligible for special measures in the criminal courts. It will remain a matter for the court to decide which (if any) of the available measures would be appropriate in the particular case.

6. What about special measures in family courts?

In the criminal courts, the effect of the Bill is that victims of domestic abuse will be automatically eligible for special measures as 'intimidated' witnesses. They will not have to satisfy the fear or distress test for eligibility.

There is no comparable fear or distress test in the family courts. Instead, the court is under an express duty to consider whether parties or witnesses are vulnerable and, in particular, must take any concerns about abuse into account. A court may make such directions as are necessary to help the vulnerable person participate in proceedings or to ensure the quality of their evidence is not diminished. These directions may include the provision of special measures.

7. Will the accused's right to a fair trial be compromised by automatic eligibility for special measures?

We do not consider that making domestic abuse victims automatically eligible for special measures compromises the accused's ECHR or common law fair trial rights. The decision as to whether any special measure should be used in a particular case is left to the court, which is required by the Human Rights Act 1998 to act compatibly with ECHR rights. Section 19(3) of the Youth Justice and

Criminal Evidence Act 1999 also requires the court, in determining whether to make a special measures direction, to consider whether the measure(s) in question might tend to inhibit the witness's evidence being effectively tested by a party to the proceedings.

8. Will you extend automatic eligibility of special measures to parties in the civil courts?

The Civil Justice Council (CJC) recently held a consultation to consider vulnerable parties in the civil courts, this included the issue of special measures in the civil jurisdiction. A working party is considering the responses ahead of making recommendations to CJC in January 2020 who will advise on next steps.

9. Key facts

To support the special measure of allowing for vulnerable or intimidated witnesses to be screened from the accused, in 2018/19 HM Courts and Tribunals Service invested £150,000 to provide an additional 295 privacy screens across 110 criminal courts in England and Wales.

These screens are part of a package of actions to help HMCTS to meet commitments made in the Victims Strategy to improve the experience of victims and witnesses attending court.

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