

T: 0300 244 4000  
E: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

Margaret Mitchell MSP  
Convener of the Justice Committee  
Scottish Parliament  
By email  
[justicecommittee@parliament.scot](mailto:justicecommittee@parliament.scot)

4 February 2019

Dear Margaret,

Thank you for the report published by the Justice Committee on 24<sup>th</sup> January 2019 following its Stage 1 consideration of the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill, and for the Committee's detailed scrutiny of the Bill as introduced.

I am pleased that the Committee's report supports the general principles of the Bill, and that the Committee welcomes the introduction of the rule, applying to child witnesses in the most serious cases, generally requiring the child's evidence to be given in advance of the trial.

The report raises a number of important points, including some significant requests and recommendations for both the Scottish Government and our justice sector partners, both on the Bill and on wider policy initiatives. As you are aware, I am committed to working with all our partners to improve the experience of victims and witnesses in the justice system – particularly for children and other vulnerable people who have been the subject of the most serious crimes. Your Committee's consideration of this Bill and wider issues is very timely given the programme of work now being undertaken by this Government and the recently established Victims Taskforce.

The attached annex provides the Scottish Government's response to the report, for members to consider ahead of the Stage 1 debate. I have highlighted where I consider the issues raised in the report fall more appropriately within the responsibilities of other justice organisations, in particular within the independent responsibilities of the Lord Advocate and the Lord President.



**HUMZA YOUSAF**

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



Accredited  
Until 2020



## The rule requiring pre-recording of evidence

### *The rule requiring pre-recording*

**169. The Committee welcomes the introduction of the rule in section 1 of the Bill, which would generally require child witnesses in the most serious cases to give all of their evidence in advance of the criminal trial. This is an important step forward in increasing the greater use of pre-recording, which the Committee agrees will reduce the distress and trauma caused to child witnesses as well as improve the quality of justice.**

The Scottish Government is pleased to note that the Committee welcomes the introduction of the proposed new rule in section 1 of this Bill.

**170. The Committee considers that the introduction of this rule must be balanced with sufficient safeguards to protect the rights of the accused. In particular, the Committee notes the concerns raised by the Faculty of Advocates and others that, unless the Crown Office and Procurator Fiscal Service meets its disclosure obligations in good time, the defence cannot properly prepare for a commission. The Committee asks the Scottish Government to set out what steps it intends to take to address these concerns.**

The Scottish Government notes the Committee's comments but considers the issues raised regarding disclosure are a matter for the Lord Advocate.

**171. The Committee also heard that the current drafting of section 2(4) of the Bill, which provides that all of the child witness's evidence may be given by way of a prior statement, might be interpreted as precluding the scope for cross-examination in such cases. The Committee asks the Scottish Government to consider whether the Bill should be amended to make it clear that this is not the intention.**

The Scottish Government is aware of the concerns raised that the provisions in the Bill may, in certain circumstances, enable a prior statement to be lodged as the only evidence even where the other party wishes to cross examine. Whilst we do not agree with this interpretation, the Scottish Government does want to allay any concerns in this regard. We will therefore consider further whether a clarifying provision would be a helpful addition for this Bill.

### *Phased implementation of the rule requiring pre-recording*

**172. The Committee recognises the significant costs associated with a rule in favour of pre-recording, which are discussed in more detail later in this report, as well as the shifts in legal practice and culture which will be required. The Committee therefore agrees that a phased approach to implementation is sensible, with the initial focus being on child witnesses in the most serious cases.**

The Scottish Government is pleased to note that the Committee agrees that a phased approach to implementation is sensible.

*Extending the rule requiring pre-recording*

**173. However, the Committee considers that section 1 of the Bill should be amended to include domestic abuse in the list of offences covered by the rule requiring pre-recording, given the trauma that children can experience in such cases. The Committee welcomes the indication from the Cabinet Secretary for Justice that he is willing to consider this extension.**

The Scottish Government has noted the views that the rule in section 1 of the Bill should be extended to domestic abuse cases. We will consider this proposal further and we will be keen to hear further views on this suggestion during the Stage 1 debate.

**174. The Committee also supports the extension of the rule requiring pre-recording to adult deemed vulnerable witnesses. The Committee is not persuaded that pre-recording the evidence of such witnesses will enhance their credibility with jurors. Moreover, the Committee notes that the Bill's provisions do not alter the existing statutory definition of a deemed vulnerable witness.**

**175. The Committee recognises that the process of giving evidence can be just as distressing for witnesses in summary cases as for solemn cases. This is particularly an issue for child witnesses giving evidence in domestic abuse cases, which are often prosecuted under summary procedure. The Committee therefore recommends that more use should be made of existing provisions which allow evidence to be pre-recorded in summary cases. The Committee, however, acknowledges that extending a rule requiring pre-recording to summary cases would have significant resource implications.**

**176. The Committee heard that there would be benefits in the greater use of pre-recording for other categories of vulnerable witness, such as those who are vulnerable by reason of mental disorder. However, there does not seem to be a pressing case for extending the rule requiring pre-recording to these witnesses. Moreover, some evidence suggested that, given the range of vulnerabilities in these categories, there is a need for flexibility in the approach to evidence-taking. Nonetheless, the Committee asks the Scottish Government to consider what steps could be taken to increase the use of pre-recording for other categories of vulnerable witness where appropriate.**

The Scottish Government notes the Committee's comments. Evidence by a Commissioner can already be requested for other categories of vulnerable witness such as witnesses where the quality of their evidence may be diminished by reason of a mental disorder or fear or distress in connection with giving evidence at the trial. The Scottish Government considers that any steps to increase the use of pre-

recording for these other categories would be a matter for the Lord Advocate or legal representatives (for vulnerable witnesses who are called for the defence.)

- 177. On balance, the Committee considers that it is appropriate that the Scottish Government will have the power to extend the rule requiring pre-recording through regulations. This should allow other child and adult deemed vulnerable witnesses to benefit from the provisions without any unnecessary delay caused by requiring further primary legislation.**

The Scottish Government is pleased to note that the Committee is content with the power to extend pre-recording through affirmative regulations.

- 178. It is important that there is an opportunity for sufficient parliamentary scrutiny of any extension of the rule in section 1 of the Bill. The Committee agrees that the regulations should therefore be subject to the affirmative procedure. It also recommends that the Scottish Government provide the Scottish Parliament with early notification of its intention to lay any regulations extending the rule to other offences, courts or adult deemed vulnerable witnesses. The Committee welcomes the indication from the Cabinet Secretary for Justice that he would be willing to share information gathered during the monitoring and evaluation of earlier phases of implementation, to inform the Committee's scrutiny of any regulations extending the application of the rule. This information should be provided at the same time as the Scottish Government gives early notification of its intention to lay regulations. This would not preclude the Committee at that stage from recommending that it would be more appropriate for any extension of the rule to be provided for in primary legislation.**

The Scottish Government undertakes to keep the Scottish Parliament updated as regards any plans to extend the pre-recording rule and the outcome of the monitoring and evaluation which will take place after each stage of the phased implementation.

#### *Timetable for implementation*

- 179. The Scottish Government's draft implementation plan provides a useful starting point for considering the timetable for extending the rule to other offences, courts and adult deemed vulnerable witness. A more detailed implementation plan should be developed as soon as possible. This should provide a clear framework which can be used to monitor progress and ensure that there is not undue delay in extending the benefits of the rule to other witnesses.**

- 180. The Committee considers that any plan should build in sufficient time for monitoring and evaluation, as well as potential resulting changes such as enhancements to the technology available for pre-recording. It welcomes that this approach has been suggested in the draft implementation plan provided by the Scottish Government. The**

**Committee heard that this would be necessary to ensure that the rule is delivering improvements in practice and to learn lessons before extending to other categories of witness. The Committee asks the Scottish Government to provide more detail on how each phase will be evaluated and how decisions will be made about future phases of implementation.**

The Scottish Government will be working with justice partners on detailed plans for monitoring of the implementation of the proposed reforms. Before any such plans can be developed, it is important to await confirmation that the Bill's general principles are agreed to and also whether any significant changes may be made to the Bill which could affect the plans for implementation. The Scottish Government will work closely with its justice sector partners when considering the best way to monitor and evaluate each phase. Once the approach has been agreed then we will share further details with the Justice Committee.

#### *Child accused*

**181. The Committee understands why, at this stage, the rule requiring pre-recording will not apply to child accused, given the concerns raised that to do so could prejudice the accused's right to silence and ability to respond to the evidence produced at trial. However, the Committee also heard that more needs to be done to support child accused giving evidence, particularly as these children can often be the most vulnerable. The Committee therefore welcomes the ongoing work by the Scottish Government to consider the position of the child accused and requests an update on its plans for improving the support offered.**

**182. In particular, it appears that existing special measures which could be used to support child accused, such as giving their evidence by live television link, are currently underused. The Committee recommends that the Scottish Government work with relevant justice agencies, including the Law Society of Scotland, Faculty of Advocates and the Scottish Courts and Tribunals Service, to consider what steps could be taken to increase the use of such measures for child accused. This could include, for example, enhanced guidance or training for defence solicitors and advocates.**

The Scottish Government notes that it is for the legal representative for a child accused of a crime to consider the most appropriate special measure for that child. In general, it would not fall to the Scottish Government to lead on any training for defence solicitors and advocates, as this would be more appropriately carried out by other organisations who lead on training for the legal sector.

#### **Taking evidence by a commissioner**

##### *Ground rules hearings*

**262. The Committee welcomes the provisions in the Bill which would require a ground rules hearing to be held prior to the taking of evidence**

by a commissioner. The Committee heard that the preparation undertaken at these hearings is essential to ensure that the process of taking evidence by a commissioner works effectively and takes into account the needs of the child or vulnerable witness, whilst protecting the rights of the accused to challenge the evidence against them.

- 263.** The Bill lists certain matters which must be considered at the ground rules hearing. Whilst recognising the need for flexibility, the Committee asks the Scottish Government to consider whether these requirements could be strengthened to encourage robust scrutiny of the questions to be asked of the witness at the commission. This would ensure that vulnerable witnesses are questioned appropriately, in a way that minimises the risk of causing further harm or distress.

The Scottish Government considers that this issue is appropriately covered by the *High Court Practice Note for Evidence by a Commissioner* which already includes this as an item for consideration at the ground rules hearing. The Practice Note has the advantage that it is a more flexible vehicle which can be more easily updated over time than specific requirements in primary legislation. It will be a matter for the Lord President to consider whether the Practice Note requires revision in due course.

- 264.** The Committee also recommends that the court should be required at the ground rules hearing to ensure the provision of appropriate support for the witness, informed by ongoing assessment of the witness's needs, and to consider whether input should be sought from other relevant agencies and organisations.

The Scottish Government notes this recommendation but is of the view that the Grounds Rules Hearing is focused on what further support (in the way of special measures) may be necessary for the witness to give evidence at the commission only. Any further comment on this proposal may be more appropriate for the Lord President rather than the Scottish Government.

#### *Intermediaries*

- 265.** The Committee considers that there should be a role for intermediaries in ground rules hearings and commissions, to ensure that expert advice is available on the communication needs of the witness. The Committee welcomes the work being undertaken by the Scottish Government to scope out the potential introduction of an intermediary scheme, and acknowledges that it may therefore be premature to include provisions on intermediaries in the Bill. However, the Committee recommends that the Scottish Government consider what steps could be taken in the interim to ensure that the process for taking evidence by a commissioner is informed by appropriate information and expertise on the individual communication needs of the child or vulnerable witness. The Committee also asks the Scottish Government to provide further detail, including time frames, on the scoping work being undertaken.

The Scottish Government considers that there is currently no legislative bar if a person was required to assist with advising the Court on the communication needs of a witness, and as highlighted in their evidence to the Committee, Police Scotland already use communication specialists on occasion to assist with JIIs. It is acknowledged, however, that a lack of formal structure and guidance in relation to this type of support may mean that it is not used as often as it could be.

The Scottish Government has liaised with agencies in other jurisdictions to research the specialist types of support available there, in particular learning from issues which have arisen during implementation and beyond; and also considering ideas and practices which are recognised having helped lead to improvements. The Scottish Government is also working with colleagues across government to consider the types of support that are available in both criminal and civil cases in order to ensure a joined-up approach.

In 2019/20, the Scottish Government will undertake further, more detailed work with justice and health partners and other key stakeholders to identify the most appropriate options for communication support in the context of the Scottish legal system. The aim will be to help enable equal access to justice for both vulnerable witnesses and vulnerable accused throughout the entire process and not just in isolation in terms of the ground rules hearing.

In parallel to this work, the Scottish Government will also engage with these partners and wider stakeholders to raise awareness that specialist support can currently be used and encourage the sharing of good practice at a national level to help ensure consistency across the country.

#### *Timing of commissions*

- 266. The Committee notes the provisions in the Bill that will enable commissions to take place before the service of the indictment. This provides an opportunity to take evidence from child and vulnerable witnesses earlier in the process, which should have benefits both in terms of enabling the witness to recount events more accurately and to recover from them more quickly. However, there must be sufficient certainty over the charges to ensure that the witness is not questioned unnecessarily for a case that does not proceed, or has to be re-questioned if the charges later change.**
- 267. The Committee notes that both the Scottish Government and the Crown Office and Procurator Fiscal Service expect that the vast majority of commissions will continue to take place after the indictment has been served. Whilst the Committee understands the practical reasons for this view, it is keen to ensure that this approach does not undermine the underlying policy aims of the Bill, given the amount of time that can lapse between an initial complaint to the police and the service of the indictment.**
- 268. The Committee therefore recommends that, if most commissions are to take place after service of the indictment, a sustained effort must**

**be made to expedite the process particularly in cases involving child witnesses. The Committee welcomes the funding that has been provided by the Scottish Government to the Crown Office and Procurator Fiscal Service to reduce the time taken to indictment. The Committee requests further detail on the work being undertaken by the Crown Office and the progress that has been made.**

The Scottish Government notes the request for further detail being undertaken by the Crown Office to expedite the process, particularly in cases involving child witnesses. This is a matter more appropriate for the Lord Advocate to comment upon.

**269. During evidence, the possibility of holding more than one commission to question a vulnerable witness was highlighted (e.g. where new evidence emerges after the initial commission but before the trial). Whilst this should be avoided where possible, to limit the impact of further questioning on the witness, the Committee accepts that it may be necessary on occasion. The Committee asks the Scottish Government to consider whether the Bill should be amended to provide a clear procedure for applications to take further evidence from a witness by a commissioner, including appropriate powers for the court to protect the witness from unnecessary questioning.**

The Scottish Government is giving consideration to this issue, and whether it is necessary to achieve this aim by primary legislation. The Scottish Government does not consider there is currently any legislative bar to a second commission so it is unclear whether having a specific provision in the Bill would be helpful. The concern would be if such a provision, almost by its nature, encouraged second commissions, given that the policy aim is to limit the number of times that a child or vulnerable witness is interviewed. Subject, of course to the Parliament agreeing the general principles of the Bill, the Scottish Government will consider all these issues before determining whether to propose such an amendment to the Bill. Given the complexities, however, and the need to engage further with justice sector partners such as the Scottish Courts and Tribunals Service, if an amendment was to be proposed it may be more likely that it would be ready for Stage 3 rather than Stage 2.

#### *Role of the commissioner*

**270. The Committee recognises the need for flexibility in the programming of court business, and therefore agrees that it would not be appropriate for the Bill to require the same judge or commissioner to preside over the ground rules hearing and commission hearing, as well as the trial itself. However, such continuity can provide reassurance to the witness and therefore, wherever possible, should be encouraged. The Committee asks the Scottish Government to provide more information on how it will work with the Scottish Courts and Tribunals Service to achieve such continuity in practice.**

Court programming is a matter for the Lord President.



*Resources for taking evidence by a commissioner*

**271.** The estimates set out in the Financial Memorandum provide a helpful indication of the potential costs associated with the Bill's provisions on pre-recording evidence. The Committee recognises that the greater use of pre-recording will have significant resource implications for justice stakeholders and, as discussed earlier in this report, therefore supports a phased approach to implementation. The Scottish Government must monitor the costs of implementation, including the impact on other parts of the criminal justice system, to ensure that sufficient resources are in place for each phase of implementation.

The Scottish Government will monitor the cost of implementation as part of the monitoring and evaluating process that will be undertaken after each part of the staged implementation process for these proposed reforms.

**272.** The Committee welcomes the funding for a new dedicated child and vulnerable witness suite in Glasgow. The Committee heard that this should provide the Scottish Courts and Tribunal Service with the capacity, at least in the short to medium term, to conduct more commissions. However, as is discussed further later in this report, the Committee heard that this facility will not in itself be enough to significantly improve the experience of witnesses and ensure they are provided with appropriate support.

**273.** Moreover, evidence to the Committee suggests that further investment will be required in the facilities and technology for taking evidence by a commissioner, particularly as the rule requiring pre-recording is extended to other offences and adult deemed vulnerable witnesses. These resource requirements must be met for each phase of implementation of the Bill.

**274.** The Committee also asks the Scottish Government to consider whether further investment is needed to ensure that appropriate facilities for taking evidence by commissioner are available in other areas of the country. The Committee heard that there are currently difficulties in using more remote sites, particularly as there is a lack of consistency in the technology and equipment available.

In addition to the funding for the child and vulnerable witnesses suites in Glasgow, the Scottish Government has provided over £1 million to the Scottish Courts and Tribunals Service to upgrade other parts of the court estate and to invest in portable technology.

**275.** Resources must be in place to ensure that all those involved in ground rules hearings and commissions, including judges, sheriffs, and prosecution and defence lawyers, receive appropriate trauma-informed training. The costs associated with such training do not appear to be covered in the Financial Memorandum. The Committee asks the Scottish

**Government to provide further detail on how such training will be resourced and, in particular, what training will be provided to ensure that questioning of witnesses at commissions is carried out appropriately.**

Training on such issues is a matter for the Judicial Institute for judges and sheriffs and for organisations that regularly provide training to advocates and solicitors. The Committee may be aware that on the 30th January 2019, the Judicial Institute for Scotland announced plans to provide new refreshed training for all sheriff and judges ahead of the new domestic abuse offence coming into force.

Additionally, the Scottish Government has plans in place to host a roundtable in early 2019, for NHS Education Scotland, the Law Society for Scotland and other stakeholders from the legal profession to discuss opportunities to develop a bespoke trauma-informed training resource for solicitors to count towards CPD. The consideration of questions and how they are undertaken are already matters that would be covered at the ground rules hearing and therefore are subject to judicial scrutiny. The High Court Practice Note specifically asks practitioners to bear in mind the useful information that is contained in the Advocates Gateway (<https://www.theadvocatesgateway.org/>). This website contains detailed guidance on questioning children and vulnerable persons.

**276. The Committee asks the Scottish Government to keep under review, and inform the Committee of, any other additional resources that may be required which are not currently covered by the Financial Memorandum. For example, the Committee heard that additional costs may be incurred if commission hearings are to take place pre-indictment.**

The Scottish Government notes the Committee's recommendations concerning investment and resources necessary for the successful implementation of this Bill. Resources have already been made available to ensure the physical infrastructure is in place to manage the increase in Commissions, and we will consider the ongoing requirements arising out of the Bill in the next Spending Review.

#### **Prior statements**

**302. The Committee recognises that the greater use of prior statements as evidence in chief has the potential to minimise the need for that evidence to be given at any subsequent commission. The Committee heard that improving the quality of joint investigative interviews (JIIs), which are carried out jointly by police and social work as part of a child protection investigation, will ensure that they can be more routinely used as evidence in chief, thus supporting the Bill's policy objective to increase the use of pre-recorded evidence.**

**303. The Committee therefore welcomes the work that has already been undertaken to review the training programme for police officers and social workers conducting JIIs, as well as the funding from the Scottish Government to support the new training programme and to roll-**

**out new technology. As is discussed later in this report, the Committee considers that learning from the Barnahus principles could be used to enhance the current process for JIIs.**

**304. The Committee asks the Scottish Government for an update on work to improve the quality of JIIs, including any plans to move to using a smaller number of police officers and social workers with more training and experience. Whilst the Committee heard that such an approach would allow interviewers to build up expertise through regular practice, any delivery model must ensure appropriate provision to meet local needs.**

**305. The Committee also recommends that the Scottish Government should work with the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunals Service to consider whether ongoing feedback could be provided to police and social work on the quality of JIIs. Data should also be collected to monitor the number of JIIs used in criminal proceedings as evidence in chief, alongside qualitative analysis of the reasons why JIIs are or are not used.**

The Scottish Government is working with justice agencies to improve the quality and process for joint investigative interviews (JIIs) with vulnerable child witnesses in accordance with the recommendations made by the Evidence and Procedure Review Joint Investigative Interviews Work-stream Report.

Separate multi-agency governance and working groups have been established to oversee the JII training and the justice – evidential recommendations including technology improvements and data collection. It is intended that the Committee's recommendations on JIIs will be discussed at the next meetings of these oversight groups.

The two governance groups report to the Justice Board and the National Child Protection Leadership Group and the Scottish Government will ensure that the Justice Committee are also kept informed of the progress of the JII work-streams.

As a brief update on the review of the JII training, the Scottish Government can advise that a new training programme is expected to be finalised by March. The JII Training Project has developed an approach to investigative interviewing of children which is both trauma informed and achieves best evidence through more robust planning and interview techniques. The approach will be underpinned by evaluation and quality assurance – which will include ongoing data collection on the use of JIIs and continuous feedback by the justice agencies involved and SCRA.

Implementation plans are being developed which consider delivery of a pilot, revision of national guidance and wider roll out and governance of the JII training. Plans will consider opportunities to develop specialist cadres of experienced interviewers.

**306. The Committee notes that JIIs are only used in a small number of cases and that there may, in the future, be a need to extend visual recording of police interviews to other child and vulnerable witnesses, if**

**pre-recorded evidence taken at the earliest opportunity is to be used more widely. The Committee recognises that this would have significant resource implications for Police Scotland in particular. The Committee notes that the Scottish Government is exploring piloting visually recorded interviews with other vulnerable witnesses and asks for further information on this work, as well as any other plans to extend visually recorded interviews.**

The Scottish Government, along with Police Scotland, Crown Office and Procurator Fiscal Service and Rape Crisis Scotland, has established a working group to develop a pilot within two sites in Scotland to visually record adult rape complainers' statements and ensure that the visually recorded interview is of a standard which could be used as a 'prior statement' in evidence in chief. It is hoped that the pilot could assist in developing a better understanding of how to obtain best evidence and improve rape complainers' experiences of the justice process. It is envisaged that the pilot will run over a two year period and will be subject to external evaluation.

### **Additional measures to support vulnerable witnesses**

**326. The Committee agrees with the evidence that it heard that, in order to meet the underlying policy objectives of the Bill, it is crucial that sufficient information and support is available for child and vulnerable witnesses. This must be provided before, during and after witnesses have given their evidence.**

**327. The Committee welcomes the establishment of the Victims Taskforce to drive forward improvements for victims and witnesses in the criminal justice system. The Committee requests regular updates from the Cabinet Secretary for Justice on the work of the Victims Taskforce.**

The Victims Taskforce will meet quarterly, with the next meeting scheduled for 6<sup>th</sup> March. All papers and minutes will be published on the Scottish Government website at <https://www.gov.scot/groups/victims-taskforce/>. The Cabinet Secretary for Justice is happy to answer any specific questions the Committee may have about the work of the Taskforce.

**328. The Committee recommends that a priority for the Victims Taskforce should be to review the information and support provided to child and vulnerable witnesses at all stages of their involvement in the criminal justice system.**

This recommendation is reflected by the core remit of the Taskforce, which is to improve support, advice and information for victims and witnesses of crime at all stages of the criminal justice system. This will include looking at the information and support that is available to both child and vulnerable witnesses.

**329. This should include consideration of the support available to witnesses after they have given evidence and the criminal justice process has concluded. In particular, there must be sufficient measures**

**in place to protect witnesses against the risks of harassment or further victimisation. This is important not only to protect individuals from harm, but also to ensure that other potential witnesses are not deterred from giving evidence. The Committee asks the Scottish Government to provide further information on how these risks are addressed at present and how protections for witnesses and their families could be strengthened.**

As set out in the Cabinet Secretary for Justice's letter to the Committee of 19<sup>th</sup> December, rights and support for victims in Scotland are underpinned by the Victims and Witnesses (Scotland) Act 2014.

The 2014 Act contains provisions relating to the support and protection of people who come in contact with the criminal justice system. These include the right of a victim to be protected during and after a criminal investigation and the requirement for the police to carry out an individual assessment of a victim's needs in terms of a variety of factors, including the risk of repeat victimisation and intimidation.

These rights are set out clearly in the Victims Code, which can be accessed here <https://www.mygov.scot/victims-code-for-scotland/>.

The Scottish Government will seek further advice from Police Scotland on how these risks are assessed in practice and discuss ways in which this process could be strengthened, if required.

The Victims Taskforce will also look at how we can improve end-to-end support for victims and witnesses throughout the entire criminal justice process and beyond. This will include ensuring victims and witnesses feel safe from any threat of harassment, victimisation or intimidation. For example, after the conclusion of a trial or when an offender is due to be released from prison.

**330. The Committee recommends that, wherever possible, a child or vulnerable witness should receive support from the same person before, during and after the process of giving evidence. It therefore welcomes the work being undertaken by the Scottish Government and Victim Support Scotland to provide a single point of contact model. The Committee asks the Scottish Government to provide further detail on how this could be improved and strengthened, including whether any legislative change is required.**

A key focus for the Victims Taskforce is to drive forward work to develop a new 'victim centred' approach to support victims and witnesses at every stage of the criminal justice process and reduce the need for them to have to retell their story to several different organisations. This work will be led by Victim Support Scotland in collaboration with other Taskforce members. A report setting out further details on the victim-centred approach will be published by Spring 2019.

**331. The Committee also considers that there needs to be continued efforts to improve communication with child and vulnerable witnesses. The Committee welcomes the steps being taken by the Crown Office and**

**Procurator Fiscal Service to improve the frequency of contact with witnesses and between support agencies, and requests an update on progress.**

The Scottish Government notes the request for an update on the work by the Crown Office and Procurator Fiscal Service to improve the frequency of contact with witnesses and between support agencies. This is, of course, a matter for the Lord Advocate.

### **Implementing the Barnahus principles in Scotland**

- 383. The Committee considers that there is a compelling case for the implementation of the Barnahus principles in Scotland, as the most appropriate model for taking the evidence of child witnesses.**
- 384. The Committee recognises that there is no single model of the Barnahus and that its implementation would have to be adapted in the context of Scotland’s adversarial criminal justice system. However, the Committee does not consider that this should prevent the Scottish Government from moving towards full implementation of the Barnahus principles, specifically a “one forensic interview” approach.**
- 385. As the Committee saw first-hand during its visit to the Statens Barnehus in Oslo, a one forensic interview approach delivers benefits both in terms of the quality of the evidence obtained from child witnesses and in supporting their recovery from trauma. Moreover, work already carried out as part of the Evidence and Procedure Review sets out how the approach could be adapted for Scotland. This work was supported by stakeholders across the criminal justice system, including the Crown Office and Procurator Fiscal Service, the Faculty of Advocates, the Law Society of Scotland and the Scottish Courts and Tribunals Service, as well organisations working with child and vulnerable witnesses. The Committee therefore sees no reason, in principle, why a one forensic interview model could not be used in appropriate cases in Scotland.**
- 386. On a practical level, the Committee acknowledges that adopting such an approach would involve a significant shift in current legal culture and practice, as well as require a substantial investment in resources. It therefore agrees with the conclusions of the Evidence and Procedure Review that this should be part of a longer-term vision for improving how child witnesses give evidence in criminal proceedings.**
- 387. Whilst the Bill's aim of increasing the use of pre-recorded evidence is to be welcomed, it is clear to the Committee that a Barnahus model remains a considerable distance from where things currently stand in Scotland. The Committee therefore recommends that more immediate steps should be taken to adopt elements of the Barnahus principles, whilst continuing to work towards the longer-term aim of full implementation.**

The Scottish Government agrees that adopting the Barnahus concept in Scotland would require significant shifts in legal culture and practice. In addition, work to develop an effective model, with the child's recovery at its centre, would also require to involve health boards, children's services including social work and education, and the third sector. This is why the Scottish Government announced plans to commission Healthcare Improvement Scotland, in partnership with the Care Inspectorate, to develop Scotland-specific standards, with scope for wide consultation. During this work, we will consider what elements or principles of Barnahus can be tested or implemented in the short term. Once published, the standards will provide a roadmap for the improvements required in order to move towards Barnahus.

The Bill's reforms are an important step that could bring improvements in a shorter time period that could enable many more of our most vulnerable witnesses, in particular children, giving pre-recorded evidence in advance of a criminal trial.

This work sits alongside a number of improvements underway that reflect many of the principles of Barnahus, including activity by the Chief Medical Officer's Taskforce for the improvement of services for adults and children who have experienced rape and sexual assault, improvements to joint investigative interviews and work to address and mitigate against childhood adversity.

**388. In particular, the Committee recommends that, in the short term, priority should be given to investing in child-friendly facilities where services to support children and their families are available "under one roof". Whilst the announcement of the new facility for child and vulnerable witnesses in Glasgow is to be welcomed, the Committee heard that this will not in itself be enough to significantly improve the experience of witnesses and ensure they are provided with appropriate support.**

The Scottish Government is actively considering where some elements or principles of Barnahus could be tested in an appropriate multi-agency facility. Pre-recording evidence such as joint investigative interviews and evidence by a commissioner could be included in any test sites.

The Equally Safe Multi-Agency Centre (ESMAC) in Edinburgh, for victims of gender based violence, is an example of such a site. It is implemented by a partnership of NHS Lothian, City of Edinburgh Council and Police Scotland and, in December last year, was supported by £2.4m of Scottish Government funding. The ESMAC plans include the co-location of video recording facilities (adults and children), forensic medical examinations, home-like settings for children and specialist victims support services.

The Committee also refers to the Scottish Courts and Tribunals Service's facilities in Glasgow, supported by £0.9m. Although these facilities are more limited in that they will not house any of the investigative stages, in the short term, what they will offer will allow children and vulnerable witnesses to give their evidence for criminal trials within a safe, sensitive and secure environment.

**389. The Committee also recommends that urgent action be taken to enhance the training for all those involved in interviewing and taking evidence from child and vulnerable witnesses. Improvements to training for those conducting joint investigative interviews were discussed earlier in this report, and the Committee welcomes the evidence it heard that development of this training will include learning from the Barnahus principles.**

The Scottish Government is supporting a number of areas of work which promote trauma-informed practice and training, in addition to work to improve joint investigate interviews.

In June 2018, the Deputy First Minister announced £1.35 million investment to launch a National Trauma Training Programme to support the Scottish workforce to respond to psychological trauma. This three-year funding package aims to provide direct training to over 5,000 people across all sectors of the Scottish workforce. Senior leaders and in-house trainers involved in this programme will receive intensive training to help incorporate trauma awareness into organisations' learning and development activity, and to help them design services in a way that recognises the impact of trauma.

As part of this investment, service level agreements will be offered to Integrated Joint Boards and third sector organisations with expertise and capability to deliver training nationwide. A draft national trauma training plan, which has been designed in collaboration with partners and aims to guide implementation, is currently out for consultation.

In addition, in early 2019 the Scottish Government will host a roundtable stakeholder event to discuss the development of trauma-informed training materials to meet the needs of the legal profession and other key justice stakeholders.

The work of the Victims Taskforce will also help identify improvements required, informed by the direct experience of victims.

**390. In the Committee's view, an enhanced joint investigative interview process, conducted by highly-trained interviewers in child-friendly facilities with other services available at the same location, would deliver significant benefits for child witnesses and be a meaningful step forward in implementing the Barnahus principles. The Committee also considers that, where possible, any further questioning of the child, including through the process of taking evidence by a commissioner, should take place within the same facility.**

The Scottish Government recognises that a child-centred approach to taking evidence by commissioner would be supported by use of a consistent, child-friendly facility for any further questioning.

As set out above, the Scottish Government will consider what is required to deliver this, as part of our work to explore the Barnahus concept and improve the response



to children. This will be supported by developments such as the new ESMAC Centre and the improved Scottish Courts and Tribunals Service facilities in Glasgow.

**391. The Committee welcomes the work announced by the Cabinet Secretary for Justice to develop a set of Scotland-specific standards for Barnahus. As part of this work, the Committee asks the Scottish Government to reflect on the evidence and recommendations set out in this report.**

The Scottish Government welcomes the Committee's support for the approach of exploring how the Barnahus concept could operate in Scotland, and the evidence and recommendations in this report will inform our work moving forward.

**392. The Committee also considers that the Scottish Government must continue to drive forward efforts to fully implement the Barnahus principles in Scotland, setting out a clear timetable for action, to ensure that progress is made within this parliamentary session.**

The challenges in fully implementing a Barnahus model, including a single forensic interview, in an adversarial justice system are significant.

The development of Scotland-specific standards for Barnahus by Healthcare Improvement Scotland and the Care Inspectorate will help us to fully understand what is required to improve our collective response to child victims, across the justice and health systems and local authorities. This will enable us to set out a roadmap for improvements.

These Scotland-specific standards will be based on the European PROMISE Quality standards for Barnahus. It is anticipated that the scoping stage will begin in early 2019. Work to develop standards will take around 12 months, incorporating time for extensive consultation.

**393. The Committee intends to meet with the Cabinet Secretary to discuss further the learning from its visit to the Statens Barnehus in Oslo.**

The Scottish Government notes the intention for the Committee to meet with the Cabinet Secretary to discuss further the learnings from the Committee after its visit to Statens Barnehus in Oslo.

#### **The streamlined process for standard special measures**

**414. The Committee welcomes the provisions in the Bill which will streamline the process for arranging for the use of standard special measures, making the process an administrative rather than a judicial one. The Committee heard that this will have savings in terms of judicial and court staff time, as well as enable Victim Information and Advice staff to spend more time engaging with witnesses.**

**415. However, the Committee also heard some concerns that the views of witnesses are not always sought before special measures are requested. The Committee asks the Scottish Government to consider whether any further requirements are necessary to ensure that witnesses are able to make informed decisions about special measures and their views are routinely sought, particularly under the new streamlined procedure.**

The Scottish Government considers that current legislation (s271E of the Criminal Procedure (Scotland) Act 1995) does already place specific obligations on a party calling a child or vulnerable witness to ensure that they have regard to the best interests of that witness and take into account their views (for a child witness depending on their age and maturity). This legislative requirement must still be met even for the new proposed streamlined process for standard special measures. In terms of ensuring that the witness makes an informed decision, this is a matter for the legal representative calling the witness (prosecution or defence), so it may be a matter on which it is more appropriate for the Lord Advocate, Faculty of Advocates and Law Society of Scotland to comment upon rather than the Scottish Government.