

JUSTICE COMMITTEE

VULNERABLE WITNESSES (CRIMINAL EVIDENCE) (SCOTLAND) BILL

SUBMISSION FROM THE SHERIFFS' ASSOCIATION

Introduction

This response is submitted on behalf of the Sheriffs' Association. The Association previously responded to the earlier consultation on the same subject. This response echoes some of what was said on behalf of the Association in that earlier response.

We start by responding to the questions set out in the call for evidence.

1. Do you agree with introduction of the “new rule” that child witnesses in the most serious cases must give all their evidence in advance of a criminal trial? Do you have any views on how this new rule should be implemented?

In principle, we welcome the recording of a child's evidence as early as possible.

There are concerns about whether it will be appropriate in all serious criminal cases for the evidence of child witnesses to be taken in advance. There may be circumstances in which it is not appropriate for evidence to be dealt with in that way. A clear mechanism must be put in place to ensure that in appropriate cases any presumption about the pre-recording of evidence can be rebutted. That mechanism is provided at s271BZA (3), (7) and (8)

As to implementation, the taking of evidence of children in advance might be most appropriately dealt with by taking the evidence on commission. Consideration will have to be given to the timing of that. As we say, that evidence should be taken as early as possible.

Often, the examination in chief will be by way of Joint Investigative Interview rather than commission. We suggest that it is important that adequate training and resourcing of police and social work services is in place so that there is no need for the evidence-in-chief to be repeated at a commission. Furthermore if a commission with cross-examination is to take place at an early stage then there has to be full and early disclosure and legal aid must be available promptly in addition.

The Association has misgivings about prior statements being used as “...all of the child witness's evidence...”. That would preclude the opportunity for an accused to cross examine a child witness. We question the extent to which that special measure will be used.

2. The Bill would allow in the future for this new rule to be extended to other vulnerable witnesses, including adult “deemed vulnerable witnesses”. Do you agree with this approach and, if so, to whom would you extend the provisions?

The Association agrees that if the new rule is found to operate satisfactorily and without interfering with the rights of accused, there should be scope for extending it to other vulnerable witnesses. The other categories of witnesses to whom it should be extended is a matter of policy for the Scottish Government.

3. Do you have any views on the changes proposed to the procedure for taking evidence by commissioner, such as the introduction of a ground rules hearing?

A ground rules hearing is vital. It is important that issues such as the likely duration of the questioning and admissibility are resolved before any examination or cross examination takes place. If not, there is the possibility, if not the likelihood, that the pre-recorded examination will be interrupted. Any interruptions might be edited out but that will not assist in getting the best evidence from the witness.

4. Do you agree with the introduction of a simplified notification procedure for standard special measures?

Yes. This seems sensible.

5. The Scottish Government considers that the proposals in the Bill will have significant implications for the criminal justice system. Do you have any views on the practical, financial or other impacts of the Bill, including the proposed phased roll-out of the provisions in this Bill?

The use of pre-recorded evidence should be phased in initially in solemn cases and initially in the High Court. By reason of volume that is the appropriate forum for piloting. If the necessary resources are made available the system can then be rolled out through solemn cases in the Sheriff Court.

Again, by reason of volume the sensible starting point would appear to be piloting using child witnesses although that may raise more challenges than piloting with other groups. The initial focus should be on child complainers.

The Association expresses no other views on the question posed.

In addition, the Association makes the following observations.

The purpose of the Bill is said to be "...to improve how children in the most serious cases participate in the Criminal Justice system...". The new section 271BZA(2) sets out the list of offences to which the "new rule" is to apply, at least at the outset. It is recognised that s271BZA(9) gives Scottish Ministers the power to vary the list but we question whether at the outset the list is sufficiently broadly framed. We say that because included in the list is the offence "assault to the danger of life". That is a serious offence but often when prosecuted the offence involves no actual injury. Offences labelled as assault to the danger of life often appear less serious than for example assault to severe injury and permanent disfigurement or permanent impairment. We question whether these other offences should be included at the outset in the list in s271BZA(2).