

**JUSTICE COMMITTEE****VULNERABLE WITNESSES (CRIMINAL EVIDENCE) (SCOTLAND) BILL****SUBMISSION FROM POLICE SCOTLAND****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?**

Police Scotland fully supports the policy objective of the Bill which is to improve how children participate in the criminal justice system. The introduction of the “new rule” whereby, in the most serious cases (solemn proceedings), child witnesses evidence will be pre-recorded is welcomed. This is seen as a further step to mitigate or minimise re-traumatisation as they participate through the criminal justice process.

The policy memorandum highlights that giving evidence in court long after events have taken place does not support witnesses to give the best evidence to allow courts to establish the facts of the case in the interests of fair and balanced outcomes. While the Bill will reduce the timeline once criminal proceedings have commenced, it is worth highlighting that, for a whole range of reasons, many children and adults delay disclosing (or never disclose) the type of abuse; exploitation or coercion which constitute the crimes or offences outlined in Section 271BZA(2). While it would appear the criminal justice journey is far less likely to be the sole reason for delayed reporting for the majority of victims, especially children, it is hoped that the provisions in the Bill will, along with other non-legislative improvement, provide victims of historically under reported crimes the reassurance to report and do so earlier.

While the “new rule” and “ground rules hearing” implementation is a matter for the prosecution; defence and Scottish Courts and Tribunals Service, Police Scotland strongly supports the position that a prior statement can be a visually recorded; audio recorded or hand-written statement. While not covered in the Bill, if the policy intention is for all ‘vulnerable’ witness in the most serious cases to have their witness statements visually recorded then further consideration is required to assess both the operational feasibility along with training, Information Technology; interview facility and transcription requirements.

**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?**

Police Scotland agrees with the future vision, we would however suggest that labelling an individual a ‘vulnerable witness’ could be disempowering and could result in more passive dependence and less resilience. For witnesses who have been subject of the most serious crimes, it is suggested that a wider assessment is made which would consider issues such as adversity; situational vulnerability; resilience and protective factors and, as such, a degree of flexibility should be included in the Bill. This would allow for all adult witnesses in solemn proceedings to

be able to give their evidence in a way that suits their unique individual needs using the most appropriate measure(s) from the wide range available.

**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?**

Police Scotland supports the introduction of a ground rules hearing. The benefits of planning an interview, especially when it involves a child/young person or adult who may have difficulty communicating, has been highlighted for many years and is something that Police Scotland and our partners, whether Social Work or Scottish Appropriate Adult Network, is constantly striving to improve.

The introduction of a ground rules hearing is seen as good practice – good practice to discuss and establish how to enable the witness to give their best evidence and agree restrictions/limitations in advance.

Given ground rules hearings take place in other jurisdictions, it is suggested that the learning and developments experienced outwith can assist the introduction in Scotland. Two areas which Police Scotland would wish to highlight as essential is ensuring all those involved in ground rules hearings have undertaken training on the impact of trauma and the importance role of independent communication specialists (intermediaries) at the hearing and subsequent evidence taking, whatever form that takes.

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

Police Scotland agree that a simplified notification procedure for standard special measures would be beneficial and also consideration given to flexibility in timescales for submission should the requirement for standard special measures come to light during trial preparation.

**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?**

Police Scotland agree that the proposed staged approach is pragmatic. While the Bill is weighted towards the preparation and provision for evidence taking, it is anticipated that any risk or wellbeing assessment, as well as the views of the witness, made during the investigation phase will be of interest as the case progresses through the criminal justice process.

If it is envisioned that the requirement for 'victim strategies', which are presently shared with the Crown Office and Procurator Fiscal Service (COPFS) in rape cases, may potentially be extended to all witnesses who have been subject of the most serious crimes, this will have resource implications for Police Scotland.

Notwithstanding, such an assessment is undertaken during the investigation stage. It is suggested that court mandated advocacy and support services may be better placed to update the initial investigative assessment to ensure its currency and relevance.

As highlighted in Q.1 Police Scotland strongly supports the position that a prior statement can be a visually recorded; audio recorded or hand-written statement.

While not referred to in the Bill or associated memoranda, if the policy intention is for all 'vulnerable' witness in the most serious cases (solemn proceedings) to have their witness statements visually recorded (Visually Recorded Interview) then further consideration is required to assess both the operational feasibility along with training, Information Technology; interview facility and transcription requirements. It is assessed that any expansion out with the initial narrow criteria will have noteworthy financial implications for Police Scotland, both in terms of capital and revenue spend.