

Victims, Witnesses, and Justice Reform (Scotland) Bill: factsheet

Special measures in civil cases

Special measures in court cases are to protect people in court who might be vulnerable.

Special measures can include:

- taking of evidence by a commissioner
- use of a live television link, rather than being in the court itself
- use of a screen
- use of a supporter when in court

Civil cases

The existing legislation on special measures for vulnerable persons giving evidence in court covers civil cases as well as criminal cases. However, there have been requests over the years to improve the legislation on special measures in relation to civil cases.

This reflects that issues such as domestic abuse can be raised in civil cases, as well as in criminal cases. In addition, procedure is different. For example, in civil cases there is no prosecutor and there are also hearings that a vulnerable person may need to attend which don't involve the giving of evidence.

The provisions in the Children (Scotland) Act 2020

The [Children \(Scotland\) Act 2020](#) includes provisions to enhance special measures in some cases. The 2020 Act covers cases under section 11 of the Children (Scotland) Act 1995, which mainly relates to child contact and residence, and proceedings in the ordinary courts relating to referrals from children's hearings.

The sections in the 2020 Act on special measures have not yet been implemented.

The Victims, Witnesses, and Justice Reform (Scotland) Bill

The provisions in the current Bill, which extend to civil cases generally, are modelled on the provisions in the 2020 Act on enhanced special measures for cases such as child contact and residence.

If enacted, the provisions on special measures in the [Victims, Witnesses, and Justice Reform \(Scotland\) Bill](#) will provide that the court has to consider a person to be a vulnerable witness if:

- they are protected by a civil protection order (such as an interdict or non-harassment order) from conduct by a party to the proceeding, or
- where they are the victim or complainer in respect of certain criminal offences committed or alleged to have been committed by a party to the proceedings

Prohibition on a party conducting their own civil case and carrying out personal cross-examination

The Bill adds prohibiting a party from conducting their own case to the list of special measures available in all civil cases.

It also lays down a presumption that this is the most appropriate special measure when a party intends to cross examine a witness who is considered vulnerable because they are protected by a civil protection order against the party or because the party has been convicted of or has been charged with offences against the witness.

The Bill also provides that the Scottish Ministers must establish a register of solicitors who may be appointed by the court when a person has been prohibited from conducting their own civil case. This helps ensure the person has legal representation.

Non-evidential hearings

The Bill provides that special measures can be available in non-evidential civil hearings and not just in hearings where evidence is being taken.

An example of a hearing in a civil case where evidence is not normally taken is a child welfare hearing in a contact or residence case.