

EQUALITY IMPACT ASSESSMENT - RESULTS

<p>Title of Policy</p>	<p>Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill</p>
<p>Summary of aims and desired outcomes of Policy</p>	<p>The main policy aim of the Bill is to improve how child witnesses, in the first instance, and vulnerable witnesses participate in our criminal justice system by enabling the much greater use of pre-recording their evidence in advance of a criminal trial.</p> <p>The Bill will aim to enable the evidence of child and vulnerable witnesses to be taken at an earlier stage, outwith the court room, to avoid having to endure the stress and anxiety of giving evidence in the formal court environment, allowing them to give their best evidence whilst maintaining the rights of a person accused of a crime. The Bill is an important step towards achieving the vision of the Cabinet Secretary for Justice that, where possible, child witnesses should not have to give evidence during a criminal trial.</p> <p>Although the focus of the new rule is on child witnesses, the intention is that by making a number of other changes to the process of giving evidence by commissioner and the special measures process as well as removing any existing legislative barriers to pre-recording evidence,</p>

	other vulnerable witnesses will also benefit from the reforms. The Bill also includes a power for the new rule to be extended to adult “deemed vulnerable witnesses” in solemn cases.
Directorate: Division: team	Justice Directorate, Criminal Justice Division, Criminal Justice Reform Team

Executive summary

An Equality Impact Assessment (EQIA) was undertaken in connection with the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill to consider potential impacts across the protected characteristics for the provisions included in the Bill.

The Bill will primarily affect child and vulnerable witnesses, including complainers, to a crime and public bodies involved in the criminal justice system including Crown Office and Procurator Fiscal Service (COPFS), Scottish Courts and Tribunal Service (SCTS) and the Scottish Legal Aid Board (SLAB).

Equality issues were considered during the policy development process, and none of the proposals are considered to give rise to the possibility of those affected being treated less favourably due to their protected characteristic. Indeed, some of the reforms relating to child witnesses under 18 are intended to ensure that their rights and experiences are improved due to their protected characteristic of age.

As the proposals in the Bill are intended to apply equally to all affected, and appeared to have no significant differential effect on the basis of the protected characteristics, it was considered that a relatively limited Equality Impact Assessment would be appropriate. The focus of the data gathering and consideration was on determining whether there may be any inadvertent effects on different groups, by examining the populations likely to be affected by the Bill (primarily complainers and witnesses).

The EQIA, which took into consideration a wide range of existing research, confirmed that the proposals in the Bill are unlikely to have any significant

differential effect on the basis of the protected characteristics. While some minor effects may be present, these are considered to be proportionate.

In particular, there is an intended positive differential impact on age of introducing a new rule requiring that the evidence of child witnesses under 18 will be taken and recorded in advance of the trial in the most serious solemn cases. It is, however, widely recognised that this group of witnesses can be particularly vulnerable and the party calling child and vulnerable witnesses who do not fall within the new rule will be able to apply to use the special measure ‘evidence by commissioner’, as is the case at present. The Bill also includes a power for the new rule to be extended to adult “deemed vulnerable witnesses” in solemn cases.

No changes to the policy were considered necessary following the EQIA. However, the Scottish Government will continue to work with key stakeholders to ensure full account is taken of equality issues as the Bill progresses through the parliamentary process and in its implementation .

Background

An effective criminal justice system secures justice for the victims of crime, and punishes those who are convicted of crime, while securing a fair trial to those who are accused of crime. The criminal justice system cannot fulfil its functions unless witnesses come forward and give evidence. However, there is a risk that witnesses – especially child and other vulnerable witnesses of the most serious and traumatic crimes – may be re-traumatised through their participation in the criminal justice process. This does not benefit those witnesses or the interests of justice. Giving evidence in court long after events have taken place also does not support witnesses to provide the best evidence to allow courts to establish the facts of the case in the interests of fair and balanced outcomes.

In recent years, significant changes have been made to the criminal justice system to recognise the interests of vulnerable witnesses. These have included strengthened arrangements to extend access to special measures in court and, where appropriate, to help keep children and other vulnerable witnesses out of court, for example through greater access to remote video links for both summary and solemn cases. However, the Scottish Government believes strongly that more can and should be done to support child and other vulnerable witnesses, whilst protecting the interests of people accused of crimes.

As set out in the “Justice in Scotland: Vision and Priorities”, one of the key priorities for 2017-18 is to “improve the experience of victims and witnesses, minimising court attendance and supporting them to give best evidence”. One of the key actions flowing from that priority is that “justice partners will test and take forward new models to better support child and other vulnerable witnesses, including through the greater use of pre-recorded evidence, strengthened joint investigative interviews and exploring the application of the collaborative Barnahus concept for child victims in Scotland.”

This Bill will, in part, take forward that key action - adding to recent improvements to strengthen and improve the rights and experiences of victims and witnesses and removing any barriers to enable the greater use of pre-recorded evidence.

The Bill will improve how the criminal justice system responds to children and other vulnerable witnesses, aiming to enable child and vulnerable witnesses to

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give their best evidence whilst maintaining the rights of a person accused of a crime, by:

- creating a new rule in favour of children under 18 to have their evidence pre-recorded in advance of trial in the most serious of cases (solemn cases heard in the High Court or Sheriff Court). A secondary legislation power is also included in the Bill to extend the new rule to categories of adult “deemed vulnerable witnesses” in solemn cases.
- providing flexibility for a separate ground rules hearing to be held, if necessary, prior to evidence being taken by way of commissioner. This applies to every commission and not just those commissions where the new rule in favour of children under 18 applies. The policy intention is that a hearing to consider ground rules is to take place prior to every commission, however there is flexibility in the Bill for this to be conjoined with any other hearing or diet if easier and more efficient to do so. Currently preliminary hearings are in effect acting as ground rules hearings and the expectation is that they will continue to do so.
- making various other amendments to the 1995 Act to allow commissions to be held prior to service of the indictment (if appropriate to do so); making provision for the same judge who presides over the ground rules hearing to preside over the commission, where reasonably practicable; and making provision for a new intimation process for standard special measures for child and deemed vulnerable witnesses.

The Scope of the EQIA

The likely effects of the policy were informed by a range of evidence, including public consultation and stakeholder engagement on the policy proposals of the Bill. Evidence from a variety of studies and reports was considered including:

- Scottish Court Service, Evidence and Procedure Review: Report (March 2015)
- SCTS , Evidence and Procedure Review – Next Steps (February 2016)
- SCTS, Evidence and Procedure Review - Child and Vulnerable Witnesses Project: Pre-Recorded Evidence Workstream Project Report (September 2017)
- The Advocates Gateway, Ground rules hearings and the fair treatment of vulnerable people in court: Toolkit 1 (December 2016)
- Ministry of Justice, Process evaluation of pre-recorded cross-examination pilot (Section 28) (2016)
- Inspectorate of Prosecution in Scotland, Thematic Review of the Investigation and Prosecution of Sexual Crimes (November 2017)
- Responses to the consultation: Pre-recording Evidence of Child and other Vulnerable Witnesses and the associated analysis

The focus in looking at this evidence was to ensure that the policies being developed for the Bill had no inadvertent negative differential effect on the basis of the protected characteristics.

Given that the proposals in the Bill appeared to have no significant direct effect in relation to the protected characteristics, the Scottish Government's focus in carrying out the EQIA was to determine whether there may be any inadvertent effects on different groups, by examining the populations likely to be affected by the Bill (primarily witnesses and complainers).

There has been ongoing consultation with key stakeholder groups and justice partners during the policy development process.

Key Findings

The EQIA confirmed that the proposals in the Bill are unlikely to have any significant differential effect on the basis of the protected characteristics.

With regard to eliminating unlawful discrimination, harassment and victimisation, there is no evidence to show that any victim or witness is currently treated less favourably due to their protected characteristic. The proposed reforms in the Bill will not change this as, although the new rule will only impact certain categories of child witness, all child and vulnerable

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witnesses will continue to be able to apply to have their evidence pre-recorded.

In relation to advancing equality of opportunity, the provisions of the Bill will positively impact on people because of their age - enabling children and young people to provide their best evidence.

On promoting good relations among and between different age groups, the new rule is in favour of pre-recording the evidence for child witnesses in certain solemn cases, at present the party citing child and vulnerable witnesses can already apply to have their evidence pre-recorded and will still be able to do so if the new rule for certain categories of child witnesses is introduced. In addition, the Bill also includes a power for the new rule to be extended to adult "deemed vulnerable witnesses" in solemn cases. The Scottish Government considers these categories of witnesses would also benefit from the greater use of pre-recording and this power therefore ensures that the Bill's most significant reform can be extended beyond child witnesses in due course.

The impact of the Bill on children and young people is considered in more detail in a separate Child Rights and Wellbeing Impact Assessment (CRWIA).

Recommendations and Conclusion

The Scottish Government has concluded that none of the proposals are discriminatory and that there are no significant issues that are considered would impact negatively upon the various groups.

As the EQIA process has not identified any issues which would have a detrimental impact on any of the protected groups, the Scottish Government has concluded that no changes to the Bill are necessary.

In relation to implementation, the Scottish Government will continue to meet with COPFS, SCTS and key external stakeholders, both during and after the implementation of the legislation, to monitor its progress and, if necessary, to identify any areas requiring additional work.