

The **Scottish Women's Rights Centre** welcome the opportunity to respond to the consultation on Pre-Recording Evidence of Child and Other Vulnerable Witnesses as a subject that has significant implications for the client group we serve.

Question 1 - Do you consider that the ultimate longer-term aim should be a presumption that child and other vulnerable witnesses should have all their evidence taken in advance of a criminal trial?

Yes.

The Scottish Women's Rights Centre believe that the pre-recording of statements as close to the initial report as feasible will not only improve engagement in the justice process for vulnerable witnesses, but it will also produce the best evidence possible.

Question 2 – Should section 271A(14) of the 1995 Act be amended to include the use of (a) prior statements as evidence in chief and (b) evidence by a commissioner as standard special measures?

Yes

It should be standard that children and vulnerable witnesses have prior statements taken in a safe environment and that this should be used as evidence in chief as a special measure. This would improve the experience of justice for women, children and vulnerable witnesses with experience of gender based violence or abuse by not re-traumatising them in the way that court appearances where they may have to face the accused do.

We would additionally welcome the introduction of evidence by a commissioner with the relevant experience and authority as a special measure. We believe that said evidence should then be used as evidence in chief and for cross examination.

3. If a presumption to use pre-recorded evidence is placed on a statutory basis, how best should it be phased in to allow for appropriate piloting and expansion of necessary operational arrangements, eg:

- Should the initial focus of any presumption be on all child witnesses, or on child complainers or on those under a certain age?
- Should the initial focus be on all solemn cases, cases in the High Court or cases involving only certain types of offences, eg. sexual offences; serious violent offences; etc.

The Scottish Women's Rights Centre believe that in order to phase in the presumption the focus should be on cases where special measures for vulnerable witnesses are already automatically applied, for example children, sexual crimes, domestic abuse, stalking and trafficking. The initial focus should be for *types* of offences, not which court it is going through.

4. Do you consider any further change is necessary regarding how a child witness's wishes, on whether to give evidence during the trial, are taken into

account?

We welcome the consideration of Barnahus type models that bring together multi-disciplinary teams to meet the needs of the child during, and equally as importantly, after engagement with the justice process. Research shows access to early interventions and support is beneficial, therefore early access to therapeutic support through Barnahus would be of benefit to the child witnesses.

We consider it to be of utmost importance that children's rights are respected throughout the court process, and that their views and participation are listened to and taken seriously.

5. Should the right to choose to give evidence in court be maintained for all witnesses or limited to those above a certain age, eg. children aged 12 or above?

We believe that giving evidence by pre-recorded evidence should be the default for all children and vulnerable witnesses.

Assumptions about the capacity and capabilities of children routinely ignore the wishes of children, and the Scottish Women's Rights Centre typically advocate for a rights based approach. However, without experience of giving evidence in court on a trial of this nature the risk of additional trauma being inflicted to witnesses unprepared for what it entails is very real. We take the view that the notion of choice in this instance is more complicated than it might seem, and would recommend that only in the most exceptional of circumstances should a child or vulnerable witness give evidence in court; the use of pre-recorded evidence should be automatic.

6. Should a child accused in a criminal case be able to give pre-recorded evidence in advance of trial?

Yes. The Scottish Women's Rights Centre believe that pre-recorded evidence gives best evidence, provides protection to child accused and protects the right to a fair trial.

7. Are there any differences to be considered between how a child complainer or witness can give pre-recorded evidence and how a child accused can do so?

No

8. Do you consider legislation should provide for the taking of evidence by commissioner before service of the indictment?

Yes. We consider this to be essential to ensure that pre recorded statements are taken as close to the incident as possible.

9. What other barriers, if any, may exist in relation to taking evidence by commissioner before service of the indictment? And how these could be

addressed?

Issues of disclosure will require to be addressed.

10. Do you have any comments on any other changes that may be required to this process to make evidence by a commissioner a more effective and proportionate mechanism for taking evidence in advance of a trial?

We consider it to be important that commissioners properly and effectively trained in matters related to gender based violence and that they have the authority to intervene should questions asked in the cross-examination be inappropriate.

11. Do you agree that a ground rules hearing should be a requirement for all cases where a cross examination of a child witness is to be pre-recorded?

Yes

Ground rules hearings are important to agree the types of questions and how they can be asked, as well as approaches for dealing with particular needs of individual witnesses, particularly to ensure accessibility or that additional needs are met.

12. Do you have any comments on the proposed timing for the ground rules hearing?

We consider that this should happen at as early a stage as possible, to minimise delays in evidence being recorded.

13. Should the same individual (i.e. Judge/ Sheriff) who will act as the Commissioner also preside at the trial?

Yes

14. Do you consider that the Commissioner should be able to review the arrangements for a vulnerable witness giving evidence?

Yes

15. Should the Commissioner be the ultimate decision maker on which questions are appropriate to be asked during a pre-recorded cross examination?

Yes