Vulnerable Witnesses (Scotland) Bill

Bill Number: SP Bill 5
Introduced on: 23 June 2003
Introduced by: Cathy Jamieson (Executive Bill)
Passed: 4 March 2004
Royal Assent: 14 April 2004

2004 asp 3

Passage of the Bill

The Vulnerable Witnesses (Scotland) Bill [SP Bill 5] was introduced in the Scottish Parliament on 23 June 2003. The Justice 2 Committee, as lead committee, commenced taking Stage 1 oral evidence on the general principles of the Bill at its meeting on 2 September 2003. The Stage 1 (general principles) debate took place on 19 November 2003 and the Bill was passed following the Stage 3 debate on 4 March 2004.

Purpose and objectives of the Bill

The main policy objectives of the Bill are:

- To widen the categories of witnesses who may be considered ‘vulnerable’ and in consequence eligible to benefit from the use of special measures when giving evidence
- To improve the quality of evidence given by vulnerable witnesses, in particular children
- To enable and encourage greater use of special measures for these witnesses in all types of court proceedings

The Executive’s programme of work on this part of the law of evidence began in November 1998 with the launch of the consultation document ‘Towards a Just Conclusion’ (Scottish Executive 1998), on vulnerable and intimidated witnesses in criminal and civil cases. The consultation was followed by the ‘Towards a Just Conclusion Action Plan’ (Scottish Executive 2000), which made various commitments in relation to vulnerable witnesses more generally. The Sexual Offences (Procedure and Evidence) Scotland Act 2002 fulfilled the first commitment of the Action Plan which was to improve the way in which victims in sex offence cases give evidence.

Provisions of the Bill

The Vulnerable Witnesses (Scotland) Bill follows on from the commitment in paragraph 2.12 of the Action plan which sought to improve the law of
evidence as it relates to vulnerable and intimidated witnesses. The Bill is in 3 parts; Part 1 – Criminal Proceedings; Part 2 – Civil Proceedings; and Part 3 – Miscellaneous and General.

Part 1 of the Bill deals with evidential and procedural matters for vulnerable witnesses giving evidence in criminal proceedings. The Criminal Procedure (Scotland) Act 1995 will be amended to define the categories of vulnerable witnesses and the special measures which are available to allow witnesses to give their evidence. This part of the Bill also provides that an accused in a trial will be prevented from conducting his own defence and cross-examining child witnesses in cases of violent assault, culpable homicide and murder, where the child is under 12 years of age.

Under Part 2 of the Bill, vulnerable witnesses in civil cases will also be able to use special measures i.e. television link, screens, the use of a supporter and evidence on commission.

Part 3 of the Bill abolishes the competence test for witnesses in criminal and civil proceedings and provides that the evidence of any person called as a witness in criminal or civil proceedings is not inadmissible solely because the witness does not understand either the nature of the duty of a witness to give truthful evidence, or the difference between truth and lies. The intention is that all witnesses, particularly the most vulnerable, should be given the opportunity to be heard and that the court should be able to consider all the relevant evidence in a case.

Parliamentary consideration

In its Stage 1 Report, the Justice 2 Committee stated that, subject to comments in the Report, the Committee agreed that the Executive had struck the right balance between the protection of vulnerable witnesses and the rights of the accused to a fair trial and that the Committee therefore recommended that the Parliament agreed to the general principles of the Vulnerable Witnesses (Scotland) Bill. However, a number of amendments were brought forward at Stage 2 which reflected some of the concerns and comments made by the Committee in the Stage 1 Report.

An amendment brought forward by Karen Whitefield MSP sought to introduce a rule prohibiting the accused from conducting his or her defence in person in violent crime cases that involve child witnesses under the age of 12. Despite a concern raised by Nicola Sturgeon MSP that such a blanket prohibition would tip the balance too far in the wrong direction, the Executive agreed that even if special measures are used, a young child witness might be distressed if they could see or identify the accused conducting his or her defence and therefore accepted the amendment.

Also, in its Stage 1 report, the Justice 2 Committee was of the view that a witness who has given evidence should be able to act as a supporter. The Executive was persuaded by the committee’s arguments that a general rule
excluding a witness from acting as a supporter was not appropriate. Accordingly, amendments brought forward at Stage 2 would allow a person who is nominated by the vulnerable witness and who is to give evidence at the trial to act as a supporter once he or she has given evidence.