Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill

Bill Number: SP Bill 34
Introduced on: 12 June 2018
Introduced by: Michael Matheson (Government Bill)
Passed: 9 May 2019
Royal Assent: 13 June 2019

Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 asp 8

Purpose of the Bill

The Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill, as introduced in June 2018, set out reforms relating to the use of special measures for vulnerable witnesses in criminal cases.

Existing statutory provisions allow for the use of various special measures with the aim of assisting vulnerable witnesses in giving their evidence (eg allowing a witness to give evidence from outside the courtroom by way of a live video link). The existing definition of vulnerable witness includes:

- child witnesses (under the age of 18)
- complainers in cases involving a sexual offence, human trafficking, domestic abuse or stalking (referred to as deemed vulnerable witnesses)

Another of the existing special measures allows evidence provided in advance to be used as the evidence of the vulnerable witness at the trial. This may be in the form of a prior statement or a video recording taken during special proceedings before a commissioner (a sheriff or High Court judge).

The Bill set out reforms aimed at streamlining arrangements for the use of special measures and improving processes for pre-recording evidence. Most notably, it set out a rule applying to child witnesses involved in certain very serious cases, which would generally require the court to make provision for all of the child’s evidence to be given in advance of the trial. The Scottish Government would have the power to extend the application of the rule by regulations. This could involve extending it to cases involving other serious offences and/or adult vulnerable witnesses.
Parliamentary Consideration

The Justice Committee was designated as lead committee for parliamentary consideration of the Bill. Its stage 1 report, recommending that the general principles of the Bill be approved, was published in January 2019.

The stage 1 report welcomed the proposed rule on taking a child’s evidence in advance of trial, whilst noting that the rights of the accused must also be safeguarded. It expressed support for adding domestic abuse to the list of offences covered by the rule. An amendment giving effect to this was agreed at stage 2. The stage 1 report also indicated support for provisions allowing for the extension of the rule to adult deemed vulnerable witnesses.

The stage 1 debate took place in February 2019, following which the general principles of the Bill were agreed without the need for a vote.

Proposed amendments considered during stage 2 included ones seeking to create a statutory requirement to review and report on the impact of the reforms. They were not agreed to, but the Government offered to work with interested members on an alternative amendment in advance of stage 3. A relevant amendment was subsequently agreed at stage 3.

A significant part of the Justice Committee’s work during scrutiny of the Bill involved consideration of what additional steps might be taken to improve the way in which vulnerable witnesses are dealt with. It took evidence on the use, in other countries, of Barnahus (or child’s house) systems for child witnesses.

Barnahus systems bring a range of relevant services together in a child-friendly environment (eg criminal investigation, child protection and support services). By doing so, they seek to ensure that a child receives necessary support whilst providing evidence which can later be used in court. Such systems may involve a child being questioned by a single specialist interviewer, with other relevant professionals (eg defence lawyer) observing from another room.

The Justice Committee expressed support for the adoption of this type of system in Scotland. It acknowledged that adopting an approach where a defence lawyer does not directly question the witness would involve a significant shift in current legal culture, and thus should be approached as part of a longer-term vision. It recommended the taking of more immediate steps to adopt other elements of Barnahus. During stage 3, the Minister for Community Safety stated that:

“As the cabinet secretary has said to the Parliament throughout the passage of the Bill, a Scottish version of the Barnahus concept is the Scottish Government’s intended destination and the Bill is an important initial step towards that destination. We are committed to making progress towards a truly trauma-informed, recovery-focused response to child victims.” (Official Report 9 May 2019, col 76)

Following the stage 3 debate in May 2019, the Bill was passed unanimously.