



FRAGILE

Vulnerable Witnesses (Scotland) Act 2004

INFORMATION GUIDE

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INTRODUCTION

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INFORMATION
GUIDE

THE PURPOSE OF THIS BOOKLET IS TO PROVIDE PRACTITIONERS WITH A BRIEF GUIDE TO THE VULNERABLE WITNESSES (SCOTLAND) ACT 2004 AND INFORMATION ABOUT HOW IT IS BEING IMPLEMENTED.

THIS BOOKLET IS LIKELY TO BE OF PARTICULAR INTEREST TO LEGAL PRACTITIONERS, THE POLICE, VICTIM INFORMATION AND ADVICE (VIA), SOCIAL WORKERS, WITNESS SERVICE VOLUNTEERS AND WORKERS IN OTHER SUPPORT ORGANISATIONS.

BACKGROUND

The Vulnerable Witnesses (Scotland) Act 2004 received Royal Assent on 14 April 2004. It was the result of extensive consultation carried out over several years and drew on detailed research and analysis. It responded to the concerns held by many organisations and individuals that too many victims of crime and witnesses to crimes found the criminal justice process daunting, stressful and intimidating.

In November 1998, the Scottish Office issued a consultation document on vulnerable and intimidated witnesses in criminal and civil cases, entitled, *“Towards a Just Conclusion”* and sought views on what might be done to help such witnesses give their best evidence. The introduction of the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002, was the first step towards fulfilling some of the recommendations made as a result of that consultation.

“Towards a Just Conclusion” gave rise to further work that looked in detail at how the treatment of vulnerable and intimidated witnesses could be improved more generally by changes in the law of evidence and court procedures. To take this forward, in May 2002, the Scottish Executive issued a further consultation paper, *“Vital Voices – Helping Vulnerable Witnesses Give Evidence”*.

The outcome favoured changes to the law on the categories of persons who should be able to use special measures when giving evidence, the types of special measures used, and the availability of these measures in different court proceedings. Details of these changes are explained further in this booklet.

PURPOSE OF THE ACT

The Act aims to improve conditions for vulnerable witnesses by increasing the number of support measures available to help them participate more fully in criminal and any civil court proceedings. Some of the most vulnerable witnesses are children and the Act aims to ensure they are supported and protected at all stages of the legal process.

THE ACT:

- FORMALISES THE EXISTING SPECIAL MEASURES WHICH ARE AVAILABLE TO VULNERABLE WITNESSES WHEN GIVING EVIDENCE IN THE HIGH COURT, SHERIFF COURT AND CHILDREN'S HEARINGS.
- EXTENDS THE DEFINITION OF "VULNERABLE WITNESSES" WHERE THERE IS A SIGNIFICANT RISK THAT THE QUALITY OF THEIR EVIDENCE WILL BE DIMINISHED THROUGH FEAR OR DISTRESS.
- INTRODUCES NEW SPECIAL MEASURES AND PROVIDES OTHER PROVISIONS DESIGNED TO HELP CHILD AND VULNERABLE ADULT WITNESSES GIVE THEIR BEST EVIDENCE.

PROVISIONS WITHIN THE ACT

IN CRIMINAL CASES:

- All child witnesses under the age of 16 will be automatically entitled to standard special measures to assist them to give their best evidence (see special measures overleaf).
- Applications may be made to request any special measures for any child or adult vulnerable witnesses including witnesses for the defence.
- These measures also apply if a child accused, or vulnerable accused, gives evidence.
- The Act introduces a notice procedure in respect of child witnesses, which will streamline the process of deciding on the appropriate special measures.
- Some child witnesses will be able to give evidence without attending the court building where the trial is taking place. This will apply in particular to child witnesses under 12 in criminal cases involving sexual assault or violence.
- A witness may not need to identify an accused person in the courtroom in cases where there has been a previous formal identification by the witness and if the court allows this to be used instead.
- An accused person in cases of certain violent crimes is prohibited from personally taking statements from a child witness under 12.
- An accused person in cases of certain violent crimes involving child witnesses under 12 is prevented from conducting their own case. The accused must be legally represented in court.

- The court will also have discretionary power to prevent the accused conducting their case personally in other cases involving vulnerable witnesses and the power to appoint a legal representative for the accused. This provision already exists in all sexual offence cases.
- The Act allows the use of expert evidence to explain a victim's behaviour in certain cases.

IN CIVIL CASES:

- Standard and further special measures also apply in civil proceedings including Children's Hearings court procedures. There will be a similar notice procedure in respect of child witnesses and application procedure in respect of vulnerable adult witnesses.
- There is provision to protect children and young people against unfair use of sexual or character history evidence about them in Children's Hearings court procedures.

IN BOTH CRIMINAL AND CIVIL CASES:

- The definition of "vulnerable witness" is widened to include anyone where there is a significant risk that the quality of their evidence may be diminished by reason of fear or distress in connection with giving evidence at the trial. This will enable the court to take into account the wider circumstances of the case, such as the nature of the evidence the witness will give, and any relationship between the witness and the accused.
- The Act abolishes the "competence test". The court is no longer entitled to ask preliminary questions of the witness to ascertain whether the witness understands the difference between truth and lies and the duty to give truthful evidence.

SPECIAL MEASURES

THE ACT FORMALISES EXISTING SPECIAL MEASURES AND INTRODUCES SOME NEW ONES.

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STANDARD SPECIAL MEASURES FOR CHILD WITNESSES UNDER THE AGE OF 16

- ◆ Use of a live television link in another part of the court building
- ◆ Use of a screen
- ◆ Use of a supporter, in conjunction with either of the standard special measures mentioned above

FURTHER SPECIAL MEASURES AVAILABLE ON APPLICATION FOR EITHER CHILD WITNESSES UNDER THE AGE OF 16 OR ADULT VULNERABLE WITNESSES

- ◆ Use of a live television link from another part of the court building or other place outwith that building
- ◆ Greater use of prior statements of vulnerable witnesses as evidence in chief (in criminal cases only)
- ◆ Taking of evidence by a commissioner
- ◆ Use of a screen
- ◆ Use of a supporter

Where no special measures are specified the court must be satisfied that this is the witness's wish and is appropriate. In the case of child witnesses, the views of the child and parent must be obtained and taken into account.

The special measures may also be used in combination where appropriate.

APPLYING FOR SPECIAL MEASURES

Information about which measure is most appropriate for the witness, will now be specified on either a Child Witness Notice or, in the case of an adult witness, on a Vulnerable Witness Application.

A child under 16 years of age is automatically entitled to “standard special measures”. This means that the court will expect a child to use one or more of these measures. The court will need to take account of the child’s own preference and his or her best interest. The person citing the child as a witness will provide information about this on the Child Witness Notice.

A child may be entitled to further special measures. For these, the court will have to be satisfied, on the basis of the information on the Child Witness Notice, that the use of a further special measure is appropriate. Where these are specified, the court may be satisfied on the basis of the information provided that they are appropriate. However, further information, or a hearing may be required before authorisation.

The court will normally expect a child under the age of 12 at the time of indictment, in certain categories of cases, to give their evidence without having to come to court.

Any person citing or intending to cite a child witness or a vulnerable adult, will be expected to lodge a Child Witness Notice/Vulnerable Witness Application in criminal cases by the required time before the date of the trial. In the case of proceedings in the High Court, this will be no later than 14 clear days before the preliminary hearing. In the case of proceedings on indictment in the Sheriff Court, no later than 7 clear days before the first diet and in any other case, no later than 14 clear days before the trial diet.

The Notice or Application must specify what special measures are being asked for. If no special measures are asked for in the case of child witnesses, the Child Witness Notice must give reasons so that the court is satisfied.

The Notice or Application must include a summary of the views expressed by the child witness or vulnerable adult and in some cases, the views of their parent or carers. The court will consider these views along with the other information in the notice. This will be done in private. The court may agree with what is requested or may defer a decision until a court hearing.

The court still has overall authority to authorise a special measure or measures and will take the final decision as to which special measure(s) may be most appropriate.

It is possible for the Sheriff or Judge to review the arrangements for taking the vulnerable witness's evidence at any time in the course of the court proceedings. The person who cited the witness can also request a review. A Child Witness Notice or Vulnerable Witness Application can therefore be lodged after the required time in special circumstances.

IMPLEMENTATION TIMETABLE

The provisions of the Act relating to child witnesses in High Court and Sheriff Court solemn cases and Children's Hearings court procedures will be implemented in April 2005.

The Act will only apply to child witnesses cited or likely to be cited in respect of High Court and Sheriff Court solemn cases that have been reported by the police to the Procurator Fiscal on or after 1 April 2005.

In respect of Children's Hearings court procedures, the Act will apply only in respect of relevant appeals and applications under sections 51(1), 68 and 85 of the Children (Scotland) Act 1995 which have been made on or after 1 April 2005.

In April 2006, the provisions relating to adult vulnerable witnesses in High Court and Sheriff Court solemn cases will be implemented.

This will be followed in 2007 by implementation of the provisions covering both child and adult vulnerable witnesses relating to Sheriff Court Summary cases. This may be reconsidered nearer the time in light of any developments in respect of the recommendations on summary justice contained in the McInnes Report.

The final phase of implementation would extend the Act's provisions to Civil cases including Fatal Accident Inquiries both in the Court of Session and in the Sheriff Court. This will be reviewed during 2006.

FURTHER INFORMATION

The Scottish Executive Victims and Witnesses Unit – *Vital Voices* website <http://www.scotland.gov.uk/Topics/Justice/criminal/17416/12874> provides the remits, membership, papers and minutes of the Implementation Steering Group and its sub-groups.

The website also provides details on the wider aspects of what the Scottish Executive's Victims and Witnesses Unit is doing to help meet the goal of putting victims and witnesses at the heart of the criminal justice system.

Further guidance on the use of special measures in relation to child witnesses will follow over the summer.

The Victims and Witnesses Unit of the Scottish Executive Justice Department can be contacted by e-mail through Mrs Clare Collin at clare.collin@scotland.gsi.gov.uk or Bill Moore at bill.moore@scotland.gsi.gov.uk or by telephone on **0131 244 3332** or **0131 244 2690**.

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USEFUL LINKS

Vulnerable Witnesses (Scotland) Act 2004

<http://www.scotland-legislation.hms0.gov.uk/legislation/scotland/acts2004/20040003.htm>

Towards a Just Conclusion

www.scotland.gov.uk/library/documents-w3/tajc-00.htm

Sexual Offences (Procedure and Evidence) (Scotland) Act 2002

www.hms0.gov.uk/legislation/scotland/acts2002/20020009.htm

Vital Voices – Helping Vulnerable Witnesses Give Evidence
(consultation)

www.scotland.gov.uk/library5/justice/hvwm-00.asp

Vital Voices – Helping Vulnerable Witnesses Give Evidence
(Report on the analysis of responses to the consultation)

www.scotland.gov.uk/library5/justice/vvhw-00.asp

Vital Voices – Helping Vulnerable Witnesses Give Evidence –
Policy Statement

<http://www.scotland.gov.uk/library5/justice/vvps-00.asp>

OTHER RELEVANT DOCUMENTS

Law Society of Scotland Code of Conduct for Criminal Work
(Precognition of Witnesses)

www.lawscot.org.uk/solicitors_services/code_crim.html

The Lord Advocates Working Group on Child Witness Support:
Report and Recommendations

www.scotland.gov.uk/cru/kd01/purple/witness-13.htm

Memorandum by the Lord Justice General on the Treatment of
Child Witnesses by the Courts

www.scotland.gov.uk/consultations/justice/childwitness-38.asp

Modernising Justice in Scotland: the High Court of Justiciary

www.scotland.gov.uk/library5/justice/mjis-00.asp

SUPPORTING CHILD WITNESSES GUIDANCE PACK:

Guidance on Interviewing Child Witnesses in Scotland

www.scotland.gov.uk/library5/justice/cwis-00.asp

Guidance on Questioning Children in Court

www.scotland.gov.uk/library5/justice/gqcc-00.asp

Guidance on Child Witness Court Familiarisation Visits

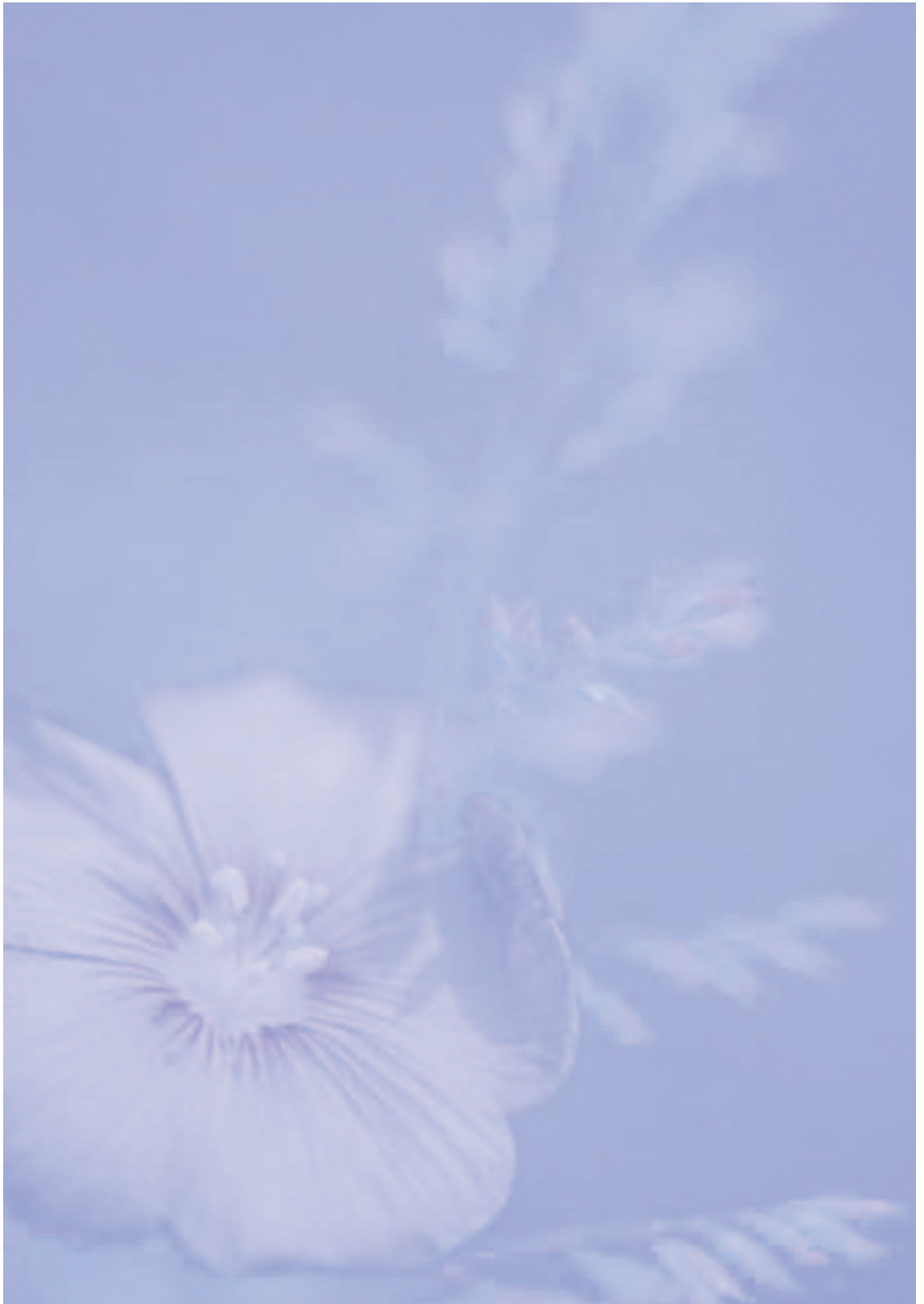
www.scotland.gov.uk/library5/justice/gcwc-00.asp

Code of Practice to Facilitate the Provision of Therapeutic Support
to Child Witnesses in Court Proceedings

www.scotland.gov.uk/library5/justice/tscwcp-00.asp

Information about Child, Young and Vulnerable Adult Witnesses
to Inform Decision-Making in the Legal Process Good Practice

www.scotland.gov.uk/library5/justice/cyvawgpg-00.asp





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