RESPONSE
by
FACULTY OF ADVOCATES
To
Pre-Recording evidence of Child and Other Vulnerable Witnesses

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The Faculty of Advocates is the professional body to which advocates belong. The Faculty welcomes the opportunity to provide written evidence to the Scottish Government in relation to the Consultation on Pre-Recording evidence of Child and Other Vulnerable Witnesses

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

Any comments?

It is recognised that the memories of young children and vulnerable adults in relation to traumatic and distressing events can become confused and fade with the passage of time. Accordingly, any delay in the recording of their evidence may have a detrimental effect on the quality of the evidence they are able to give in the trial process. It must therefore be in the interests of justice that the evidence of these witnesses is captured at the earliest available opportunity. As such, the Faculty of Advocates considers that a statutory presumption that child and vulnerable witnesses should have their evidence taken in advance of a criminal trial is a logical and sensible approach and one that will, if carried out effectively and to the necessary standards, well serve both the public interest and the administration of justice.

Section 271 of the 1995 Act covers special measures. In the earlier paragraphs of this consultation we set out the current position on the special measure of "taking evidence by commissioner". Another special measure that can also involve taking evidence earlier in the process is 'prior statements'. Specifically, section 271H(e) provides that "giving evidence in chief in the form of a prior statement in accordance with section 271M may be used as a 'special' measure. Section 271A(14) specifies what constitutes a 'standard' special measure; the use of a live television link (section 271A(14)(a); the use of a screen (section 271A(14)(b) and the use of a supporter (section 271A(14)(c)). So, at present the use of a prior statement as evidence in chief is not defined as a 'standard' special measure. This means that the Court requires to be satisfied by the information in the vulnerable witness application that it is appropriate for the child's (or vulnerable witness's) evidence in chief

to be given by way of a prior statement. This prior statement could be written or recorded on video. Potentially if a prior statement was to become a standard special measure this could lead to it being used more often as a way for a child or vulnerable witness not having to attend a criminal trial to give their evidence.

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

Any comments?

There is no reason why prior statements in evidence in chief or evidence by a commissioner should not be used as a standard special measure. However, there are two important points to be made.

Firstly, in relation to the use of prior statements as evidence in chief, it is the collective experience of members of the Faculty of Advocates who appear regularly in criminal trials that currently, the quality of both written and recorded prior statements of child or vulnerable witnesses is often very poor and cannot properly be used at trial in the way envisaged.

Secondly, an application for evidence on commission cannot take place until the service of the indictment by the Crown. Often service of the indictment occurs a long time after the events with which the trial process is concerned and regularly a year after an accused has appeared on petition. If the purpose of taking the evidence of a child or vulnerable witness on commission in advance of the trial is to capture the evidence of the witness at the earliest available opportunity then the way cases are currently handled in practice would not permit such an outcome.

Transitional arrangements for moving to pre-recorded evidence for child witnesses
In line with the findings of the Evidence and Procedure Review Next Steps Report, we do not underestimate the challenges involved in moving to a system where most children and other vulnerable witnesses are not required to be present to give evidence during a criminal trial. Our current view is that in order to successfully implement such a policy so that it does not disrupt the administration of justice or very importantly cause further trauma to the witness, it will be necessary to devise a number of transitional arrangements in terms of how this new procedure should ultimately be rolled out. We want to consider how best any greater presumption in favour of the use of pre-recorded evidence should be phased in for certain categories of witnesses and types of criminal case. In particular, we note the recommendation of the Evidence and Procedure Review Next Steps Report that initial priority should be given to child witnesses under a certain age initially in solemn cases.

Question 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.**

Any comments?

The Faculty of Advocates notes that in the Evidence and Procedure Review Next Steps Report, "Next Steps", published by the Scottish Courts and Tribunals Service, the principal recommendation is that, initially for solemn cases, there should be a systematic approach to the evidence of children or vulnerable witnesses in which it should be presumed that evidence in chief of such a witness will be captured and presented at trial in pre-recorded form; and that the subsequent cross-examination of that witness will also, on application, be recorded in advance of trial.

In order for this approach to succeed, "Next Steps" advocated an approach to be followed and advised that, in addition to selecting a limited group of witnesses in respect of which the initial focus of any presumption will apply, other important issues also required to be addressed in order to make a success of the changes proposed.

"Next Steps" suggested that it would be appropriate to limit the first stage of this approach to children under the age of 16, although some flexibility should be allowed to account for exceptional circumstances. The Faculty of Advocates accepts the sense of such a proposal in relation to the category of witness, and suggests that it would make also make sense, in order to ensure that the change in practice and procedure proposed is successful and there is a careful and consistent development of case law, to further limit the initial focus to cases involving sexual and serious violent offences that merit indictment in the High Court.

However, this restriction in focus should not ignore the other crucial developments and changes in practice that "Next Steps" also recognised were necessary. The Faculty of Advocates strongly supports what "Next Steps" set out at pages 28 to 30 of the report, and encourages those responsible for these to act as soon as practicable in order to take these forward.

These developments and changes can be summarised as follows:

- Witnesses' eligibility for recording of their evidence in advance of trial should follow the framework set out in section 271(1) of the Criminal Procedure (Scotland) Act 1995 (as amended by section 10(a) of the Victims and Witnesses Scotland Act 2014) and should apply to the presentation of evidence in chief in recorded form. Such witnesses should be able, on application, to undergo cross examination as early as possible in advance of trial.

- There should be sufficient protocols in place, supported by the appropriate levels of training to ensure that, as far as possible, there is early identification of a witness's particular needs and access to the support required to meet the needs of vulnerability. In this connection, "Next Steps" highlighted that further work was required that would involve the police, social work and third sector bodies to consider what protocols or other guidance will need to be in place to ensure an appropriate approach is taken.

- Interviews of witnesses should take place in the most secure environment and according to most effective techniques. There should be a presumption that evidence in chief will be provided by a pre-recorded interview as close as possible to the report of the alleged incident itself. The current guidelines for interviewing children, which were issued in 2011, should be revised explicitly to require the use of the NICHD protocol. "Next Steps" recognised that there will be a significant challenge in implementing the required training and on-going support to secure a consistent approach throughout Scotland.

- Further work is required to develop the appropriate procedures in order to minimise the gap between the child giving initial evidence and the cross examination. This may mean that wherever possible an application for pre-recorded procedures should be made at the petition stage. This will also require a rigorous approach to early disclosure.

- There requires to be a clear, structured process for the pre-recording of cross examination in advance of trial. This means that, as a matter of priority, consideration should be given to how best to improve on the current practice in relation to taking evidence by a Commissioner. In this respect, the Crown should establish guidelines on the criteria to be applied in deciding whether a witness should have their evidence taken by a Commissioner.

- In the longer term, there needs to be a new framework within which a new approach could be managed. "Next Steps" also recognised that urgent consideration should be given to the options for such a longer-term strategy to secure, as quickly as reasonably achievable, a change in the way that children and young people are questioned and cross examined. In this connection, "Next Steps" looked to the possibility of legislating for a "Full Pigot" approach and raised the possibility of the introduction of ground rules hearings, the use of intermediaries, a widespread programme of education, training and guidance for the judiciary and legal practitioners and the consideration of the legal aid provisions which would be required to support legal representatives participating in the system.

Right to choose to give evidence in Court
The Victims and Witnesses (Scotland) Act 2014 amended section 271B of the Criminal Procedure (Scotland) Act 1995 to place greater emphasis on the wishes of a child as to where they give evidence. Where a child under 12 wishes to be present in court to give evidence at a trial for a serious offence listed in that section, the court must make an order requiring the child to be present unless the court considers that would not be appropriate (section 271B(3) and (4)).

Question 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 ?

The Faculty of Advocates considers that some change will be required. If the presumption is that child witnesses have all their evidence pre-recorded, there should also be a presumption that a child witness under 12 does not give evidence in court, even if they express a desire to do so.

This presumption would be open to rebuttal in circumstances where a court considers it appropriate.

Question 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?

While it might be thought more appropriate for a child over 12 to have a right to give evidence in court if they so wish, it should be recognised that this approach would cut across the general aim of this project. Assuming that the child over 12 has his or her evidence suitably recorded for court, we are not convinced that their right to choose to give evidence in court is being transgressed by the fact that it is not given in person in court.

The Faculty of Advocates would recommend that the same presumption operates for all child witnesses; that no child witness gives evidence in court, even if they express a desire to do so.

This presumption would be open to rebuttal in circumstances where a court considers it appropriate.

Child Accused in Criminal cases
Currently, children under the age of eight are deemed to lack the legal capacity to commit an offence, and therefore cannot be prosecuted in the criminal courts and can only be referred to the children's hearings system on non-offence grounds. Children aged between eight and 12 cannot be prosecuted in the criminal courts but can be referred to the children's hearings system on both offence and non-offence grounds. Children aged 12 or more can be prosecuted in the criminal courts (subject to the guidance of the Lord Advocate) or referred to the children's hearings system on both offence and non-offence grounds. A person accused of a crime, if classed as vulnerable, is entitled to apply to use standard special measures with the exception of using a screen. Screens are only appropriate as a special measure for vulnerable witnesses other than an accused, as they are used to shield witnesses from the accused. A child accused is therefore not treated any differently to that of any other child witness with the exception that a child accused is not entitled to use screens as a special measure or apply for the special measure of a closed court. The potential however for child accused to give prerecorded evidence in advance of the trial is likely to raise different issues and practical considerations than arise for other child witnesses. There are also some important differences between an accused person and another vulnerable witness. For instance the accused can choose whether or not to give evidence and he or she also has a right to legal representation.

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

Yes, provided that the child accused makes the decision to give pre-recorded evidence in advance of trial following on the advice of his lawyer, who considers that in the circumstances of this child accused's case, this is the way in which the child accused is able to give their best evidence.

Any comments?

In this connection, before a decision is reached on the use of pre-recorded evidence for a child accused, the Faculty of Advocates envisages it would be essential that the child accused's lawyer will have been provided with full disclosure by the Crown, that all the necessary enquiries in relation to the child accused's defence have been made and that he or she is furnished with sufficient information to allow him or her to understand the child's level of maturity, intellectual and emotional capacities and what other steps can or are to be taken to promote the child accused's ability to understand and participate in proceedings.

In relation to the child's maturity, intellectual and emotional capacities it is well recognised in practice that the instruction of a suitably qualified child psychiatrist and/or child psychologist will be necessary in order to inform properly the child's accused's lawyer in this regard.

In relation to the other steps that can be taken to promote ability to understand and participate in proceedings, a child accused's lawyer, with the assistance of expert medical evidence, will require to give consideration to the adequacy or otherwise of the practical measures that can be applied in any case, some of which are often implemented after full discussion of the needs of a child accused with the presiding judge at a stage in the pre-trial process, such as:

- Counsel getting to know their clients well enough to ensure good communication
- Using concise and simple language
- Having regular breaks
- Taking additional time to explain court proceedings
- Being proactive in ensuring that the child accused has access to support
- Explaining and ensuring he understands the charge, outcomes and sentences
- Controlling questioning to ensure that they are short and clear
- Court familiarisation visits
- Removing formal court dress
- Sitting the child accused out of the dock without the attendance of a dock officer and at the same level as counsel and the judge
- Timing the length of evidence and breaks
- Ensuring that questioning is framed appropriately and expressed in a non-hostile manner
- Clearing the public gallery

In light of the level of the necessary information that the child accused's lawyer will require to have access to in order to be confident that he or she is able to provide the best advice in what is a crucial decision in the trial process, it makes sense to approach this question on the basis that there should be no presumption in favour of a child accused giving evidence in advance of trial and, that any decision taken in this connection is one that the court recognises may require to be taken at a relatively late stage in the pre-trial process.

Question 7 - Are there are 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?

Yes, there are significant differences to be considered, all as more fully described below.

Any comments?

The most significant difference to be considered between how a child complainer or witness can give pre-recorded evidence and how a child accused can do so is the fact that, an accused person is entitled to legal representation and is not obliged to give evidence at trial. In practice, the decision as to whether he does so is a tactical one that is informed after assessing all the evidence that has been led against him. Thus, the approach to the child accused's right to give pre-recorded evidence must be made in a very different way to that of any other child witness or child complainer.

In ***Regina (D) v Camberwell Green Youth Court [2005] UKHL 4***, in a case in which the House of Lords rejected the defence submission that by requiring the evidence of child witnesses to be given by video recording and or video link while not affording the same facility to child defendants violated a defendant's Article 6 rights, Baroness Hale, at paragraph 58 considered some of the difficulties about admitting a video recorded interview of a child accused's evidence in chief. In summary, the difficulties she recognised were; -

- Who would conduct the taking of the evidence of the child and how?

- What safeguards against repeated interviews could be given?

- What safeguards would ensure that the child's interview would not be made available to the other side before the trial?

- There are obvious difficulties about applying binding advance presumptions about how a child defendant's evidence is given, if indeed it is to be given at all, when he is ordinarily free to make such decisions in light of events as they unfold.

In giving consideration to this issue, the Faculty of Advocates has taken on board the comments of Baroness Hale in the case of ***Regina (D) v Camberwell Green Youth Court*** and have also had regard to special measures available to a child accused, and the steps that a court can take in the exercise of its inherent powers to assist a child accused to give his best quality evidence.

If the provision for a child accused to give pre-recorded evidence is to be made available, then there requires to be clear and structured rules and processes set down that have regard to;

- The stage at which a child accused makes the decision to proceed by way of pre-recorded evidence on the advice of his lawyer.

- The manner in which the Crown are entitled to conduct the cross examination of the child accused.

- The manner in which a co-accused is entitled to conduct the cross examination of the child accused.

- The applicability of ground rules hearings.

- The use of intermediaries - in this connection the Faculty of Advocates notes with interest the judicial review case of ***R (OP) v Cheltenham MC & Ors [2014] EWHC 1944 (Admin)*** where the court recognised that an unarguable inequality of arms was revealed where the Ministry of Justice had refused an accused with learning disabilities and who suffered from Asperger's Syndrome access to a registered intermediary where such an intermediary was available to a Crown witness.

- The necessary safeguards to avoid the child accused having to give evidence on repeated occasions.

- The extent to which the child accused can depart from pre-recorded evidence at trial and either elect not to give evidence or chose to give oral evidence at trial.

- The use that the Crown can make of pre-recorded evidence at trial, in circumstances where it is departed from at trial and, any right that they may have to comment on the pre-recorded evidence and the child accused's decision not to rely on this at trial.

- The use that a co-accused can make of pre-recorded evidence at trial, in circumstances where it is departed from at trial and, any right that they may have to comment on the pre-recorded evidence and the child accused's decision not to rely on this at trial.

- How a trial judge should properly direct a jury as to how to use a child accused's pre-recorded evidence.

We understand that one of the issues that has been raised is the timing for making applications for the use of evidence by a commissioner. In practical terms the current legislative provisions require that in the High Court the vulnerable witness notice requires to be lodged no later than 14 clear days prior to the preliminary hearing; and for "proceedings on indictment in the sheriff court" no later than seven clear days before the first diet. (See Section 271A(13A) and section 271C(12) of the 1995 Act). In solemn cases, evidence by a commissioner is only applied for after the indictment is served.3 This is because there is no specific statutory procedure for taking evidence by commissioner before service of the indictment. This has previously been raised as one of the reasons why it is not used more often. It also tends to be the case that until the indictment has been served it may not be sufficiently clear what requires to be proven in a specific case.

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

Yes

Any comments?

This legislative change will further assist in ensuring that the evidence of child and vulnerable witnesses is captured at the earliest available opportunity.

Question 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?

The barriers that may exist in relation to taking evidence by commissioner before service of the indictment relate to, proper disclosure at a later stage in the process which may reveal information about which the cross examiner was ignorant at the time, and/or the later discovery by the accused's lawyer of evidence that exculpates the accused that was not uncovered during the police enquiry.

The disclosure of later material by the Crown, such as medical and social work records and the results of the forensic analysis of computers and mobile telephones regularly occurs in practice. This disclosure can very often arise many months after the service of the indictment. It is also often material that is highly relevant to an accused's defence and can legitimately be used to good effect in cross examination to challenge a witnesses' credibility and reliability. There is therefore the very obvious concern for defence Counsel that, at the stage where he or she cross examines the witness during a commission, it might not be possible to put all of the defence case and to make all the points that would otherwise be made if full access to the relevant disclosure had occurred – or access to the late evidence had been achieved. Thus, there is the genuine anxiety for defence Counsel that the quality and effect of a cross examination may be significantly diminished by reason of these factors, all to the prejudice of the accused.

Any comments?

In order to overcome these barriers, it will be necessary for the Crown to adopt the rigorous approach to early disclosure encouraged by the "Next Steps" report, and where they are aware of ongoing enquiries that may yield material that is relevant to the proper preparation and presentation of the defence case, advise the accused's advisors of this and to do all that is possible to secure disclosure of this material prior to the witness giving evidence on commission. This approach would

permit defence counsel to take an informed decision as to the way in which they conduct their cross examination of the witness and whether they would wish to raise this issue prior to the evidence on commission, for example at the ground rules hearing.

It will also be necessary to introduce a measure of flexibility in the process. If the interests of justice require a further cross-examination, where an accused has not been able to challenge the witnesses evidence fully or effectively because of late disclosure or a change in the nature of the charge, then there may require to be a statutory provision enabling an application for further cross examination of the witness to come before the court, either before or during the trial process.

However, in this connection the Faculty of Advocates is aware of the criminal practice directions and the relevant line of authority that has emerged in England with regard to the role of advocates in the cross examination of vulnerable witnesses and whether it is possible for counsel to insist upon the right to "put one's case" or previous inconsistent statements to a vulnerable witness. In ***R v Lubemba; R v P (J) [2015] 1 Cr. App. R. 12, CA*** at paragraph 45 Lady Justice Hallett DBE said, "*It is now generally accepted that if justice is to be done to the vulnerable witness and also to the accused, a radical departure from the traditional style of advocacy will be necessary. Advocates must adapt to the witness, not the other way around. They cannot insist upon any supposed right "to put one's case" or previous inconsistent statements to a vulnerable witness. If there is a right "to put one's case" (about which we have our doubts) it must be modified for young and vulnerable witnesses. It is perfectly possible to ensure the jury are made aware of the defence case and of significant inconsistencies without intimidation or distressing a witness".*

Whilst Lady Justice Hallett's comments are relevant to English procedure, the Faculty of Advocates recognises that the same or similar approach is likely to be followed by the courts in Scotland and, accordingly, the extent to which late disclosure might be a ground upon which to seek an application for further cross examination may be very restricted in practice. In such a situation, it should be recognised that during the trial process it will be legitimate for defence Counsel to ask the Trial Judge to draw the jury's attention to undermining material available from another source in an agreed form immediately after the witness' evidence.

Question 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?

No

Any comments?

No

Ground Rules Hearings
One of the key elements to be considered for any model for prerecording evidence is how the child is questioned. In England and Wales, in advance of any cross examination, a ground rules hearing is held. The Advocates Gateway Toolkit sets out the principles for the hearing. 4. These include:-3 S271A(13A) of the Criminal Procedure (Scotland) Act 1995 4 The Advocates Gateway – Ground rules hearing and the fair treatment of vulnerable people in court– Toolkit 1 – 1 December 2016, http://www.theadvocatesgateway.org/images/toolkits/1-ground-ruleshearings-and-the-fair-treatment-of-vulnerable-people-in-court-2016.pdf
• That these hearings are used by judges to make directions for the fair treatment and participation of vulnerable defendants and vulnerable witnesses.
• The Court must take every reasonable step to ensure the participation of vulnerable witnesses and defendants.

• It is reasonable for judges to ask advocates to write out their proposed questions for the vulnerable witness and share them with the judge and the intermediary (when there is one).
The Toolkit also sets out rules on the manner of questioning, the duration of questioning, questions that may or may not be asked and communication aids.
This has meant that for the section 28 pilots the police, Crown Prosecution Service and defence are required to complete their case preparation in advance and the defence need to formulate their crossexamination questions at a much earlier stage. The judge in the case then conducts a ground rules hearing where matters such as the length of the cross-examination, the questions to be asked and any other practical matters are agreed. Although some of these matters could be addressed as part of the preliminary hearing, a specific ground rules hearing could become a requirement when evidence is to be prerecorded.
Grounds rules hearings often involve an intermediary. An intermediary, as used in other jurisdictions, provides specialist assistance to victims and witnesses with communication needs to give their best evidence in criminal investigations and at trial, by ensuring they can understand questions put to them and can communicate their answers effectively.
Intermediaries are not currently used in Scottish courts but the Scottish Government is currently assessing the potential benefits and operational requirements of introducing intermediaries.

Question 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.

The Faculty of Advocates considers that ground rules hearings, "GRH", are vital and these should be introduced along with the input of intermediaries. The Faculty of Advocates is of the view that intermediaries are important as this stage to ensure that the format of planned questioning reflects best practice as it evolves. The intermediary is there to enable questions to be asked in a way the witness can understand, and to enable the witness to give an answer in a way that will assist the court. They will act as an officer of the court and will be there to assist all participants, including Counsel.

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

If the GRH is to be effective then ideally the Crown and the defence should have been provided with sufficient notice of this in order to prepare properly and be in a position to assist the court.

The Faculty of Advocates understands that the GRH should be the hearing at which all the hard work is done so that the questioning of the witness will then run as smoothly as possible, and would recommend that:

- The GRH should be done well in advance of the witness giving evidence.
- Trial Counsel should be in attendance, and ideally so should the Trial Judge.

- Where there is an intermediary, the report should be served well in advance of the GRH so that both parties can read and fully digest it.

- In a case where written questions are to be submitted at the GRH for Judicial discussion/approval it would probably be helpful to provide these to the intermediary ahead of the hearing so that they can provide constructive feedback about them.

- The intermediary should be present at the GRH.

- The intermediary should also be present at the stage where the witness gives evidence in order to assist the witness and the parties questioning the witness.

Any comments?

Given that the courts are looking to provide a flexible and dynamic approach to the way in which child and vulnerable witnesses give their evidence, there is no reason in principle why a GRH cannot take place with very limited notice and within a short period of time prior to the witness giving their evidence. However, this should not be the normal method of approach as experience dictates that good notice and proper time for preparation are essential to successful outcomes following on any court hearing – including a GRH.

Role of the Commissioner
Section 271I of the 1995 Act allows evidence by a commissioner to be used as a special measure for vulnerable witnesses. The court may appoint a commissioner for these purposes. Where the proceedings before the commissioner are in the High Court, the commissioner must be a judge of the High Court, or in any other case, a sheriff. There is a potential issue of whether the same judge who is to hear the actual trial should also conduct the commission hearing. Section 271D of the 1995 Act enables the court at any time, up to and including when a vulnerable witness is giving evidence in a trial, to review the arrangements for the taking of their evidence. We understand that it can cause practical difficulties that a High Court Judge when acting as a commissioner has no authority to review the arrangements for taking a vulnerable witnesses evidence. This means that a Commissioner can't consider a late application for an additional special measure such as using a prior statement as the child's evidence in chief.
This difficulty could potentially be resolved by amending the 1995 Act to enable the Commissioner to review the arrangements for a vulnerable witness to give evidence.

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

Yes

Any comments?

This will ensure consistency in approach.

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

Yes

Any comments?

A Commissioner should exercise great care and discretion when deciding whether to review the arrangements for a vulnerable witness giving evidence. To do otherwise would be contrary to the interests of justice and defeat the purpose of the GRH, which is to encourage and facilitate the attendance of vulnerable witnesses and their participation in the trial process. Such an approach to the review of arrangements will ensure consistency in approach and provide a child and vulnerable witness with the necessary confidence that what has been ordered by the Judge at the GRH, will apply at the time they give their evidence.

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

Yes

Any comments?

No

Other comments
No

Question 16 - Do you have any other comments relevant to this consultation?

No