



## Being a Witness



## The Use of Special Measures

A booklet for adult witnesses in criminal and children's hearing court proceedings



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# being a witness

## The Use of Special Measures

A booklet for adult witnesses in criminal and children's hearing court proceedings.



The pictures used in this booklet have been taken from the Scottish Executive 'Being a Witness' CD-Rom – a guide for children and adult vulnerable witnesses.



A special thanks to everyone involved.



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## The Use of Special Measures



# Introduction

The experience of being a witness is likely to be new and unfamiliar.

Some witnesses may be particularly vulnerable because of their circumstances or the nature of the evidence they may be asked to give to the court.

There are different ways to help a particularly vulnerable witness give their evidence and these are called special measures.

All witnesses should already have been given information in the form of leaflets or a booklet about what it means to be a witness and about going to court.

This booklet provides information to adult witnesses who may be vulnerable about the use of special measures to help give their evidence.


This booklet will tell you what these special measures are and how they might help you.

## What is a vulnerable witness?

The court may consider some witnesses to be particularly vulnerable if the quality of their evidence will be affected by a mental disorder or by the fear or distress relating to giving their evidence.

Mental disorder can mean mental illness or learning disability. Fear or distress can be caused by a number of different things.

If you think that you may be a vulnerable witness, you should discuss this with the person citing you (the procurator fiscal, children's reporter or lawyer in the case). They will discuss your circumstances with you and whether it is appropriate to make an application to the court for you to use special measures.



To help the most vulnerable witnesses, legislation was passed in the Scottish Parliament in 2004. The Vulnerable Witnesses (Scotland) Act aims to improve the support measures available to help witnesses, who are particularly vulnerable, give the best evidence they possibly can.

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If the person who is citing you as a witness considers that you may be regarded as a vulnerable witness under the terms of the legislation, they will discuss this with you. They will also explain about the application they will need to submit to the court (the judge or sheriff who is dealing with the case) for you to use special measures.

Their application will need to include details about:

- why you should be considered as a vulnerable witness, including any additional information prepared to support the application;
- your views as to which special measure(s) you would prefer to use; and
- whether this is considered the most appropriate special measure(s) to support you whilst you give your evidence.



The judge or sheriff must be satisfied that you meet the legal criteria to be regarded as a vulnerable witness, and to do this, they will consider all of the information in the application.

If the judge or sheriff agrees that you are vulnerable under the terms of the legislation, they must consider what effect it may have on you if you had to give evidence without using a special measure and whether you may be more able to give your evidence with the benefit of a special measure.

**It is the judge or the sheriff who will decide whether to grant permission to allow a witness to use special measures and which special measures may be most appropriate.**

## The Use of Special Measures



You may have been given this booklet to help you understand what each of these special measures are and how they may help you.

Many witnesses will be anxious about giving evidence and some may be identified as vulnerable under the terms of the legislation. However, not every witness will require the benefit of using special measures.

### **REMEMBER**

**Whether or not you are using a special measure to help you give your evidence, there are additional support arrangements that can be made for witnesses who may feel vulnerable.**

**For example, you may be able to enter the court building through a different entrance, or wait to give your evidence in a different room from the other witnesses. It may be possible to request extra comfort breaks to help you when you are giving your evidence, or the court might be closed to members of the public.**

**Speak to the person who cited you to be a witness. They will discuss your particular circumstances and what might be most helpful to you.**

# Special measures available for vulnerable witnesses giving evidence

If you are identified as a witness who might be particularly vulnerable as described by the law, there are a number of special measures to help you give your evidence so that you can participate more fully in the criminal court proceedings or children's hearing court proceedings.

The special measures are:

- A screen in the courtroom (page 9);
- A television link outwith the courtroom (page 10);
- A supporter (using a support person) (page 12);
- A prior statement previously given by the witness (page 15);

- Evidence taken by a commissioner (page 16).

It is also possible to use a combination of these special measures. For example, you may be considering whether to use a television link and also have a support person to sit with you whilst you give your evidence.

**Please remember that these special measures are only available to particularly vulnerable witnesses and require a special application to be submitted and approved by the court.**



## The Use of Special Measures



If the person who is citing you to be a witness thinks that you may be vulnerable and there is a significant risk that the quality of your evidence will be affected, they will consider making an application to the court for you to use one or more of the special measures mentioned.

They should explain the special measures and discuss with you which one may be the most helpful, according to your particular needs and the circumstances of the case.

The application will have to contain information in support of their case for you to use special measures. This information may be quite brief or, where necessary, more detailed. In some circumstances, the information required to support the application for special measures may be of a private or sensitive nature, depending on the reasons for your particular vulnerability.

For the purposes of assessing vulnerability, or making an application to the court for you to use special measures, the person who cited you as a witness will discuss your circumstances with you. In some cases, they may need to ask for your permission to make further enquiries as to your health, perhaps from your doctor or social worker, to support their application to be submitted to the court.



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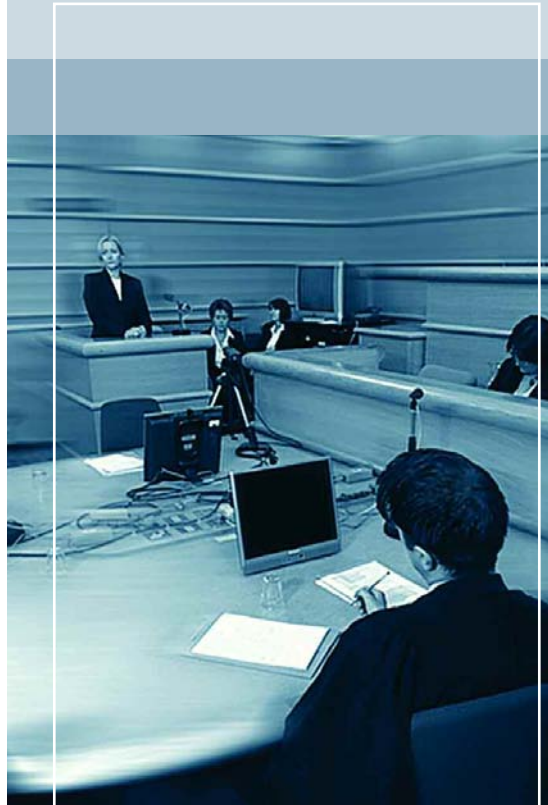
## The Use of Special Measures



Please note that some or all of the information or specialist reports prepared, in respect of your particular vulnerability, may form part of the application to the court for you to use special measures and will therefore be seen by, or be known to, the accused or their legal representative.

If you are concerned about any aspect of this, please speak to the person who is citing you to be a witness.

It is important to remember that the judge or sheriff will take account of your interests as a witness but must also take account of the interests of justice and the fairness to the trial or hearing.



## Special measure – using a screen

If you are regarded as vulnerable under the terms of the legislation, and the person who cited you as a witness believes that your evidence might be affected by seeing an accused or other person involved in the case, using a screen in the courtroom may help you to give your evidence.

The screen is put up as a 'room divider', or curtain, beside the witness box, between you and the accused (or other person involved in the case). Therefore you will not see this person. The only people you will see will be the judge (and jury



if present), sheriff and children's reporter and any other lawyers involved in the proceedings.

However, it is important for you to know that the accused or other people on the other side of the screen in the courtroom will be able to see you indirectly through a court television monitor when you are giving your evidence.

# Special measure - using a television link



If the person citing you considers that you may be a vulnerable witness, and that your evidence may be affected by you being inside the courtroom, the court may be asked to consider an application for you to use the television link to give your evidence.

**The television link room** is separate to the courtroom where the trial or hearing is taking place. It is usually in the same building as

the courtroom but can also be set up in a different building.

The television is linked to the courtroom so that everyone inside the courtroom can see and hear you give your evidence.

The judge or sheriff and lawyers in the courtroom each have a television monitor, microphone and camera, but you will only be able to see and hear the person who is asking you questions - you won't be able to see anyone else in the courtroom, including the accused or other person.

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All the cameras are controlled by the judge or sheriff. When these are switched on, you will only be able to see and hear the judge, sheriff or lawyers one at a time and they will be able to see and hear you.

**You must understand that even though the television link will prevent you from seeing the accused or other person involved in the case. This person will still be able to see and hear you on the courtroom's television monitor when you are giving your evidence.**

### The Use of Special Measures



## Special measure – using a supporter

Many witnesses who are feeling vulnerable may feel very isolated when giving their evidence and can sometimes be reassured by having someone sitting near them, either in the courtroom or in the television link room. This person is known as a supporter. They can support you just by being present when you are giving your evidence.

Your supporter can also offer support and reassurance to you before you give your evidence and, if the court allows, they can keep you company during any breaks.

**However, your supporter cannot help you with any part of your evidence. They must not interfere, or try to influence your evidence in any way. When sitting near you whilst you give your evidence, they must not try to prompt you or interrupt you whilst you are giving your evidence.**

If the person citing you as a witness is making an application to use this special measure, you can tell them who you would like as your supporter, although the final decision will be made by the court.



Most witnesses prefer to have someone they know, and will feel comfortable with, when giving their evidence.

Here are some things you may want to consider when deciding who might be your supporter:

- If your preferred supporter is also cited as a witness, they won't be able to act as your supporter unless they have finished giving their own evidence;
- You should try to think about how your supporter might react if they hear your evidence. For example,
- you may want to protect certain family or friends from hearing the details of your evidence. If you think they might get upset or angry in court, this may also upset you. You may decide that it is best for you to have someone from outside your family;
- The person you wish to have as a supporter may already know too many details about the case and the court may think they could have an influence on what you say. In some cases, the court may not approve your preferred supporter because of this;

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- You may already be supported by someone from a specialist support organisation or social work department and wish to nominate them.

The person citing you as a witness should be able to offer you some advice and help you to choose a supporter. In some criminal cases, VIA or the Witness Service may discuss this with you.

**It is always important to remember that your supporter cannot help you with your evidence and cannot answer any questions for you in court.**

If the court has allowed you to have a supporter, your supporter will be able to sit along side you when you are using any of the other special measures approved by the court.







## Special measure – using a prior statement

If you are a vulnerable witness in a criminal case and there was a video or audio taped interview between you and the police, or a written statement, the person citing you as a witness may be able to ask the court to consider allowing this to be played or read out in court as part of your evidence.

At the trial, you may be asked to watch or listen whilst this recording is played or read out and then you will be asked questions about what you said in your statement.

Using this special measure does not mean that you are excused from being asked questions about your prior statement.

Remember that you will still be asked questions by any other lawyers involved in the case, for example a lawyer acting for an accused person.

If the person citing you as witness is considering using this special measure, they will explain more about it and ask for your views.

# Special measure – evidence taken by a commissioner

If you are considered to be a vulnerable witness, in some cases, the procurator fiscal, children's reporter or lawyer might want to record your evidence before the court case starts. The court might agree to this if it is thought that the quality of your evidence might be affected by waiting until the court date. This is known as giving your evidence to a commissioner. The evidence you give to the commissioner can then be used during the court case.

Giving evidence to a commissioner means that you give your evidence at a different time or place than the actual court case.

In some circumstances, this special measure can also be used once a court case has started.

The court will nominate someone to act as the commissioner. Depending on the type of case, this may be a judge or advocate or other suitable person. You will be asked questions and give your evidence in the usual way but this will be in front of the commissioner rather than the judge or sheriff at the trial or hearing.

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During the commission, the accused or relevant person involved in the children's hearing court proceedings, is entitled to see and hear the proceedings as they happen but will not normally be in the same room as you.

All of the commission proceedings will be video recorded and the recording will be kept by the court. It will then be played during the trial or court hearing and will be regarded as your evidence in the same way as the evidence of any other witness.

If your evidence is recorded at a commission, you will not normally have to give any evidence during the court case.

If the person citing you as a witness is considering this special measure, they will talk to you and explain more about what it means and how it will be done.

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## Your views

If the person citing you as a witness believes that you might qualify as a vulnerable witness, they will explain the special measures to you and how they will work. They will ask for your views about whether any of the special measures might help you to give your evidence and which one(s) you might prefer to use. They will also explain what information will be included in the application to be submitted to the court.

Not all vulnerable witnesses will want to use special measures. Even if you are particularly vulnerable, you may prefer to give your evidence without using a special measure. However, in some cases, the judge or sheriff may

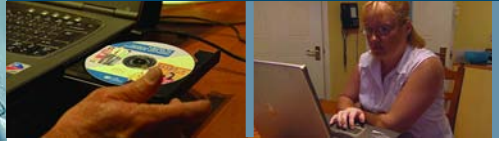
still decide that it would be in your best interest to use a special measure whilst giving your evidence.

You should talk to the person citing you about your own particular circumstances and your thoughts about the court case including which particular special measure(s) you may find most helpful.

**The court will take account of your views along with any of the information included in the application before coming to a decision about whether to allow you to use a special measure and which special measure is the most appropriate to your circumstances.**

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### The Use of Special Measures



The court is likely to do this if it believes that the quality of your evidence is being affected by your particular vulnerability.

After reading this booklet, you may already have an idea about which special measure might be most helpful to you, or you may find it helpful in reaching a decision to visit a courtroom or the television link room if you are considering using this special measure. It may also be possible to use a CD-Rom to look at an image of a courtroom and see how each of the special measures will operate.

**It is important to remember that the court will have regard to your best interests as a witness but must also take account of the interests of justice and the fairness to the trial or hearing.**

If your circumstances change, or you change your mind about what special measures might be most helpful, you should tell the person who is citing you as a witness. They will discuss with you what alternative special measures might be more suitable and whether an application will be made to the court.

In all cases, it is possible for the court to review the arrangements for you to give your evidence. This means that, even once you have started giving your evidence, the court can consider allowing you to use a special measure or can change the special measure you are using.

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**The Use of Special Measures**

Your notes

Further copies of this document are available, on request, in audio, large print format and in community languages. Please contact 0131 244 2213.

اس دستاویز کی مزید کاپیاں آڈیو کیسیٹ پر اور بڑے حروف کی چھپائی میں اور کمیونٹی کی زبانوں میں طلب کیے جانے پر دستیاب ہیں، برائے مہربانی اس پتہ پر رابطہ کریں:

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**Gheibhear lethbhreacan a bharrachd ann an cruth ris an èistear, ann an clò mòr agus ann an cànan coimhearsnachd. Cuir fios gu:**

इस दस्तावेज़/कागज़ात की और प्रतियाँ, माँगे जाने पर, ऑडियो टेप पर और बड़े अक्षरों में तथा कम्प्यूनिटी भाषाओं में मिल सकती हैं, कृपया संपर्क करें:

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此文件有更多備份，如果需要，語音版本和大大字體版本及少數種族語言版本也可提供，請聯絡：

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