



SCOTTISH LAW COMMISSION
(Scot Law Com No 125)

Report on the Evidence of Children and Other Potentially Vulnerable Witnesses

Laid before Parliament by the Lord Advocate
under section 3(2) of the Law Commissions Act 1965

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The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965 for the purposes of promoting the reform of the law of Scotland. The Commissioners are:

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Scottish Law Commission

Item 1 of our First Programme of Law Reform

The Evidence of Children and Other Potentially Vulnerable Witnesses

To: The Right Honourable the Lord Fraser of Carmyllie, QC,
Her Majesty's Advocate

We have the honour to submit our Report on the Evidence of Children and
Other Potentially Vulnerable Witnesses.

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KENNETH F BARCLAY, *Secretary*
20 December 1989

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Part I Introduction

Preliminary

1.1 In June 1988 we published a Discussion Paper¹ on the Evidence of Children and Other Potentially Vulnerable Witnesses (hereafter referred to as “the Discussion Paper”). Simultaneously we also published a research paper on Evidence from Children, which had been prepared for us by Mrs Kathleen Murray, and which described and commented on the various techniques currently in use in the United States for securing the testimony of children. These papers were published in response to a request by the then Lord Advocate that we should give priority to this topic as part of our general work on the law of evidence.²

1.2 We received comments on the provisional proposals contained in the Discussion Paper from a wide range of consultees, including some living and working in countries other than Scotland. We are most grateful for the assistance given to us by all our consultees, and a full list of those who commented on the Discussion Paper is to be found in Appendix B. In addition to formal consultation, some Commissioners have been able to discuss the issues raised in the Discussion Paper with experienced practitioners from many professions, and from many parts of the world, in the course of conferences and seminars on the subject of children’s evidence. Close contact has also been maintained with the Committee under the Chairmanship of Judge Pigot QC, which is examining the possible introduction of video-taped testimony in England and Wales. Additionally, one of our Commissioners has been able to see the arrangements for taking evidence by a live closed circuit television link which are now in place at the Central Criminal Court, London; and several Commissioners attended a demonstration of that technique which was given in the High Court in Edinburgh in July 1989.

The issues

1.3 In recent years considerable attention has focussed on the subject of child abuse in many parts of the world. Apart from the medical and social problems raised by that form of abuse, it has also led many countries to reconsider the rules of evidence governing the testimony of children, and the means by which the evidence of children is actually presented to a court. Since rules of evidence differ to a greater or lesser extent from country to country, the problems, and the solutions, are not always the same. For example, in some countries, such as England and Wales, children under a certain age (around 7) are wholly prohibited from giving evidence by any means,³ whereas in other countries, such as Scotland, there is no such prohibition; and in practice evidence is from time to time given in courts in Scotland by quite young children.

1.4 There are, however, some issues which appear to be common to all of the debates and discussions about the giving of evidence by children. First, it is now generally accepted that some children can be seriously traumatised by having to

1. No 75.

2. The law of evidence is included in our First Programme of Law Reform (Scot Law Com No 1, 1965).

3. See *R v Wallwork* (1958) 42 Cr App R 153; *R v Wright and Ormerod*, unreported, Court of Appeal, Criminal Division, 29 October 1987.

recount unpleasant events in open court, and particularly in front of the accused.¹ Even where serious trauma is not to be anticipated, the experience of having to give evidence in court may be highly disagreeable, and in some instances a child may be unable, or at least unwilling, to give any evidence at all by the time of the trial. Of course, it is no doubt true that giving evidence in court is likely to be a disagreeable experience for most witnesses, including those who are adults. However, children as a whole are given a particularly privileged position within our legal system on account of their youth, their immaturity, and their vulnerability; and we accordingly see no reason for not taking such steps as may be necessary and desirable to protect them, where it is appropriate to do so, from the more disagreeable aspects of giving evidence.

1.5 A second issue, which is also common to many of the debates on this topic, concerns the reliability of children's testimony. It is now widely accepted that children, including very young children, can be as reliable in their recollection of events as adults. However, it also seems to be generally accepted that a child's capacity for recall, especially on points of detail, may deteriorate more rapidly over a period of time than would that of an adult. This seems to be particularly the case with very young children. Consequently, unless a trial can take place very soon after an event has occurred, a way may have to be found to secure a child's evidence at an early stage for subsequent presentation in court. This presents many problems, which we discuss later in this Report. For the moment, however, we would simply observe that, if a way can be found to present in court an earlier statement taken from a child, that may not only give the court more accurate evidence on which to base its decision, but also it may go some way towards reducing the more unpleasant aspects of giving evidence in court which we referred to in the preceding paragraph. Indeed, it could remove the need to give evidence at all in as much as the availability of a full, prior statement by the child for use at trial may persuade some accused persons to tender a plea of guilty. We understand that this frequently happens in those countries where a prior statement by a child is admissible as evidence.

1.6 A third, and most important, issue concerns the right of an accused person to receive a fair trial. While it is, in our view, perfectly proper to try to find ways to alleviate the more disagreeable features of the giving of evidence by children, it is imperative to ensure that any new rules or procedures do not detract from the right to a fair trial which an accused person has traditionally enjoyed under the Scottish system. That right is, of course, reinforced by the European Convention on Human Rights, and in particular by Article 6 which provides:

“Everyone charged with a criminal offence has the following minimum rights . . .

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”

We note that the European Court of Human Rights has held² that there was a violation of Article 6(d) when, in Austria, an accused was convicted mainly on the basis of written statements made to the police by two non-compellable witnesses who refused to give oral testimony at trial. That decision has clear implications for any procedure designed to *replace* a child's testimony in court by, for example, a prior statement which had been video recorded.

1.7 A further general issue is whether any new rules or procedures should be limited in their availability and use—for example by being available only for children who have been the victims of sexual offences, or only for children below a certain age. This is the position in some jurisdictions. We for our part can see no justification for imposing such limitations. While it may be the case that children who have, for

1. See, for example, Goodman and others. *The Emotional Effects of Criminal Court Testimony on Child Sexual Assault Victims: A Preliminary Report*, in G Davis and J Drinkwater, eds. *The Child Witness. Do the Courts Abuse Children?* (Issues in Criminological and Legal Psychology, vol 13, British Psychological Society, 1988).

2. *Unterperinger* (1/1985/87/134); see also *Kostovski v The Netherlands* (10/1988/154/208), reported in *The Times*, 22 November 1989.

example, been the victims of sexual abuse will as a rule be particularly damaged and particularly vulnerable if required to give evidence by conventional means, it does not follow, in our opinion, that they will necessarily be the *only* children in that situation; nor indeed does it follow that *all* sexually abused children will require special measures. We consider that any new rules or procedures should be available for all children (that is to say, those below the age of 16) who are required to give evidence in criminal proceedings. As will be seen, however, we are proposing that most of the new rules and procedures which we are recommending should be used at the discretion of the court where stated grounds for using them have been established. That should ensure that they will be used only in appropriate cases.

1.8 There is one further matter which we should mention before leaving the introductory part of this Report. It has all along been our impression that any new techniques or procedures, and in particular those involving modern technology such as closed circuit television, are unlikely to be required in more than a few cases. In the majority of cases—and provided that there has been careful and sympathetic pre-trial preparation of the child—we anticipate that children will be able to give evidence at trial by conventional means without suffering undue trauma or distress. We are reinforced in this view by what we have heard about the experience in the United States where “advanced” techniques and procedures have been available for some years. It appears that judges and practitioners there are increasingly coming to the conclusion that careful pre-trial preparation, in the sense of explaining to the child what to expect, coupled with sensitive handling of the child from the moment of arrival at the court house, can produce perfectly satisfactory results in many cases with the consequence that special techniques and procedures can be used sparingly, and only where their use is plainly necessary.

1.9 That is not, of course, an argument for not introducing new techniques and procedures. If their use can be justified in some cases, it is better to have them available than not to have them at all. In this Report, accordingly, we are recommending the introduction of some new procedures. It is not, however, our intention that they should regularly be used in place of the giving of evidence by conventional means. Rather, it is our intention that they should be available so that, in appropriate cases, those responsible may be able to select whichever one of them appears to be the most likely to result in a child’s evidence being given fairly and accurately, and with a minimum of distress to the child.

1.10 In Part II of this Report we consider what can be done—and what in many instances is already being done—to reduce the undesirable features of giving evidence by conventional means. In Part III we give our views on some fundamental matters, such as the need for corroboration, which were mentioned in the Discussion Paper. In Part IV we recommend the introduction of certain new rules of evidence and procedure. In Part V we express our conclusions on certain other matters which were canvassed in the Discussion Paper. Finally, in Part VI we summarise our recommendations. Not all of our recommendations will require to be implemented by legislation. For those that do, however, a draft Bill, giving effect to them, is appended as Appendix A. Finally, we should add that, for convenience, we have written this Report as if a child witness will always be adduced for the prosecution. No doubt that will most commonly be the case. However, it is not our intention that our recommendations should apply only to prosecution witnesses. Our intention is that they should apply in respect of all children who are required to give evidence; and our draft Bill has been framed so as to give effect to that intention.

Part II Evidence by conventional means—reducing anxiety and distress

Introduction

2.1 Given our view that many children will be able to continue to give evidence by conventional means, but given also that it is desirable, so far as is reasonable, to try to ensure that that experience causes as little anxiety and distress as possible, it is necessary to consider what practical measures might be taken within current practice. In the Discussion Paper we canvassed several possibilities. These were—

- (a) the removal of wigs and gowns by judges, counsel and solicitors;
- (b) the positioning of the child at a table in the well of the court along with the judge, counsel and solicitors, rather than requiring the child to give evidence from the witness box;
- (c) attempting to allocate the smallest and least intimidating court room for trials involving child witnesses;
- (d) expansion of the practice whereby prosecutors take child witnesses on a pre-trial tour of the court room and explain to them the functions of the judge, jury, defence lawyers, and other officials;
- (e) permitting a relative or other supporting person to sit alongside the child while he or she is giving evidence;
- (f) the installation of effective sound amplification systems in all courts which are not presently so equipped;
- (g) the provision of special waiting room facilities for children, closed to other witnesses, and equipped with some suitable furniture, toys, books, and games; and
- (h) obliging the presiding judge to clear the court of all persons not having a direct involvement in the proceedings in any case where a child is giving evidence in court.¹

2.2 Most of these suggestions are not new, and many of the practices involved already occur from time to time. For example, it is not uncommon at present for judges and counsel to remove their wigs and gowns when a young child is giving evidence. On occasions a judge will come down from his elevated position on the Bench and sit at the court table along with counsel and the child witness; and not infrequently a court will be cleared while a child is giving evidence by virtue of the powers contained in sections 166 and 362 of the Criminal Procedure (Scotland) Act 1975. However, none of those practices is mandatory. As a result some children may be alarmed and distressed on seeing, for example, the formal dress worn by judges and counsel. Moreover, where attempts are made, by prosecutors and others, to prepare a child for the experience of giving evidence, it may be difficult to do so accurately and effectively where certain practices and procedures are merely discretionary.

1. Discussion Paper, paras 5.8 to 5.15.

Removal of wigs and gowns, and position of child, judge and others in court

2.3 For those reasons we provisionally suggested in the Discussion Paper that it should become mandatory, in all cases involving a witness under the age of 16, for judges, counsel and solicitors to remove wigs and gowns, and for them to sit at a table with the child during the giving of evidence. This provoked a mixed response from consultees. While some welcomed our proposals, others thought that they could lead to undesirable consequences in some cases. As one experienced Sheriff put it—“I would not like to see a rule which required me to disrobe and sit beside, if not actually hold hands with, a 15 year old lout who was determinedly committing perjury in the interests of his 16 year old friend who was on trial for assault”. To meet this kind of problem some consultees suggested that the practices in question should be mandatory only in relation to younger children where they were the victims or witnesses of alleged sexual offences: in other cases they should be at the discretion of the presiding judge. Yet another consultee suggested that the wishes of the child should be taken into account: some children—particularly older ones—might feel upset and offended if they saw that they were being treated differently from adult witnesses.

2.4 We can see great force in some of these arguments, and we are therefore persuaded that it would not be appropriate for the practices which we have been discussing to become mandatory in the case of all child witnesses below the age of 16. On the other hand, we do not think that it would be desirable to create mandatory rules only for children below a certain age, or for those children who have been the victims of, or who have witnessed, certain specified crimes. We fear that the existence of such rules would discourage judges from following similar practices in respect of children who did not fall within the prescribed categories notwithstanding that such practices might be wholly beneficial in other cases also. Accordingly, we have concluded that such matters should remain at the discretion of the presiding judge in all cases involving children under the age of 16.

2.5 We hope, however, that judges will be as sensitive as possible to the need to put children, and particularly young children, at their ease when giving evidence in court. We are aware that many judges are already alive to this need, but we suspect that some may not be. In the Discussion Paper we suggested that, if certain practices were to become mandatory, that result might be achieved by the issue of suitable practice notes or practice directions. That, of course, is no longer appropriate in the context of the approach which we are now recommending. It does occur to us, however, that some desirable uniformity of approach in the exercise of judicial discretion would be likely to be achieved if some authoritative guidance could be provided for all judges. Some years ago that was achieved in relation to the matter of contempt of court when, in 1975, a memorandum of guidance was issued to all judges by the Lord Justice General. We respectfully suggest that the Lord Justice General might consider the preparation and circulation of a similar memorandum in relation to the matters which we have just been discussing.

Clearing of court

2.6 In the Discussion Paper¹ we raised the question whether the existing discretionary power given to a judge² to clear from the court room all those not directly involved while a child is giving evidence should become a mandatory provision. The response of consultees was mixed. Some were in favour of making the provision mandatory, while others preferred that the matter should remain at the judge's discretion. Since we have now decided³ that matters like the removal of wigs and gowns should remain discretionary, we consider that the clearing of the court while a child is giving evidence should also remain discretionary. However, if the Lord

1. Paras 5.13, 5.14.

2. By the Criminal Procedure (Scotland) Act 1975, ss 166 and 362.

3. See para 2.4 above.

Justice General were minded, as we have suggested,¹ to issue a memorandum to judges regarding certain discretionary matters, we respectfully suggest that it might also make mention of the subject of clearing the court when a child is giving evidence.

2.7 In the context of clearing the court while a child is giving evidence we also mentioned in the Discussion Paper some other possible amendments of sections 166 and 362 of the 1975 Act. We suggested expanding those sections so that they would apply in any case where a child is giving evidence in court.² We considered whether, if the provisions were to become mandatory, the press should continue to be entitled to be present in court.³ We also considered whether, if the sections were in any event going to be amended, there would be advantage in making clear that representatives of the press could include representatives of radio and television services.⁴ These matters also provoked mixed responses from consultees. Given our view that the power to clear the court should remain discretionary, we have concluded that we should not make any positive recommendations on the above matters.

2.8 We now return to the other practical measures which we outlined in paragraph 2.1 above.

Allocation of small court room

2.9 So far as the proposal to allocate the smallest and least intimidating court room possible for trials involving child witnesses is concerned, this met with general support from consultees, though one did point out that it could result in the child being closer to the accused than would be the case in a larger room. Moreover, we recognise that in some instances the *smallest* court room in a court house might be unsuitable for other reasons: it might be cramped, stuffy, and thoroughly disagreeable. Subject to that, however, we remain of the view that, so far as practicable, attempts should be made to use a court room which is not intimidating for children called as witnesses. That will often, we think, involve using a smaller rather than a larger court room. The major problem, of course, (and this was noted by several consultees) is the practical one that the design and capacity of existing court buildings may not always enable a suitable court room to be found for cases where children are witnesses. Naturally, we accept this difficulty, and can do no more than to encourage those responsible to do whatever reasonably can be done in this respect. We were assured by Scottish Courts Administration that at present, and whenever possible, efforts *are* made by court staff to make special arrangements for the hearing of children's evidence. This information is most welcome. On the other hand, we were somewhat disturbed to be told by another consultee that, in court houses where a separate room is set aside for hearing children's hearing proofs (for example, where a child is accused of, but denies committing, a crime) the view is apparently taken that that room cannot be used for the trial of an adult where a child is a witness despite the fact that the room would otherwise be entirely suitable for that purpose. If this be the case, we would urge those responsible to consider whether such a restriction is really necessary, particularly if it results in young children who are witnesses having to give their evidence in large, intimidating court rooms.

Pre-trial preparation of child

2.10 In relation to the pre-trial preparation of child witnesses we wish to acknowledge that a very great deal is already being done in this regard by Crown Office and by procurators fiscal around the country. It is obvious that great attention is now being given to this, and we understand that the results are already being perceived as beneficial in that many children are thought to have been better able to cope with

1. Para 2.5 above.

2. Para 5.15.

3. Para 5.16.

4. Para 5.17.

the experience of giving evidence than would otherwise have been the case. We are also aware that Crown Office has very recently prepared a slim booklet entitled "Going to Court" which, we understand, will in future be sent to all children who are called to court as witnesses. This booklet is in bright colours, is illustrated, and describes in simple terms the people and the procedures that the child will encounter in court. The booklet appears to be aimed at fairly young, rather than very young, children, but the hope is, we understand, that parents will also use it to explain procedures to younger children. In our view this booklet is an imaginative venture, and it will be interesting to see whether it proves to be of help in preparing children for attending court as witnesses.

2.11 We should add that, while welcoming the pre-trial preparation of a child as being desirable in principle, some consultees questioned whether it should be done by the prosecutor on the basis that either he might thereby coach the child in some way, or alternatively the child might be cross-examined, possibly unfairly, as having been coached. We doubt whether this is a real problem. Prosecutors will be aware of this risk and will, we are sure, guard against anything untoward being said to the child prior to trial. In the circumstances we do not consider that existing practices should be disturbed for this reason.

Presence of relative or other supporting person

2.12 The presence of a relative or other supporting person to sit alongside a child who is giving evidence is something which occurs at present—again, particularly where the child is young. This plainly must be a matter for the discretion of the court, and we did not suggest otherwise in the Discussion Paper. However, we did raise a question as to whether, in the absence of any formal rules, there might be some doubt as to whether this practice is permissible at all. In fact, none of our consultees appeared to share that worry, and accordingly we need not pursue it further. There seems to be little doubt that the presence, close at hand, of a parent or some other trusted adult can, in some cases, give a young child the reassurance that is required for evidence to be given clearly and confidently; and for that reason we consider that this practice should be encouraged as much as possible. There are, however, some ancillary problems.

2.13 One is the problem of coaching. Plainly it would be quite wrong for a parent or other supporting adult to coach a child in the sense of trying to tell the child what to say. On the other hand we can see nothing wrong in a parent simply trying to coax a reluctant child into saying something. Sometimes a young child may be over-awed on first coming into court, and be reluctant to speak at all, but may respond to some gentle persuasion by his or her parent. In our view the presiding judge should warn a supporting adult against coaching in the first sense mentioned above, but should be prepared to permit, and even encourage, the adult to coax the child into giving evidence. Whether or not this will be desirable in any given case will, of course, be a matter for the discretion of the presiding judge.

2.14 A second problem is the practical one that, on some occasions, the supporting adult may also be a witness in the case. In that event it would be improper for the adult to be present in court with the child prior to giving evidence himself or herself. In some instances it might also be inappropriate for that adult to be alongside the child even after he or she had given evidence. Sometimes such problems can be resolved simply by rearranging the order in which witnesses are called but, where that is impracticable, the answer would appear to be to try to find another trusted adult, who is not a witness in the case, to accompany the child. No doubt this is something which prosecutors will have in mind when making their pre-trial arrangements for the attendance of child witnesses in court.

Sound amplification

2.15 The proposal that effective sound amplification systems should be installed in all court rooms not presently so equipped was widely supported by consultees. One

or two made the valid point that an amplification system may not be so important as securing that court rooms are acoustically efficient; and Scottish Courts Administration told us that, in new or refurbished court rooms, the emphasis is on acoustic efficiency rather than sound amplification systems. We accept those comments, and in the Discussion Paper we may have inadvertently narrowed the focus of attention to things like microphones and loudspeakers when in truth our concern was that, by whatever means, a child, or indeed any witness, should be able to give audible evidence in court without having to be repeatedly asked to speak up.

2.16 It is gratifying that efforts are being made to provide effective acoustics in new and refurbished court rooms; but the fact of the matter is that there are still many court rooms around the country where witnesses, who are not accustomed to projecting their voices, have difficulty in making themselves heard unless they speak at a volume which is unnatural for them and which may, during prolonged examination and cross-examination, become stressful and tiring. This may be particularly so where the witness is a child.

2.17 Given the programme of refurbishment currently being undertaken by Scottish Courts Administration, we accept that it may not be sensible to introduce sound amplification systems in all courts not presently so equipped, particularly if some of them are shortly due for refurbishment. However, we remain concerned that children should, so far as practicable, be able to give their evidence without the need to shout. Two possible solutions occur to us.

2.18 First, we think that Scottish Courts Administration should consider the situation in those older courts which are not scheduled for refurbishment in the relatively near future. Where the acoustics of such courts are plainly unsatisfactory, consideration should be given to the installation of effective sound amplification equipment. Second, where a court house has more than one court room, one of which is acoustically more effective than another, attempts should be made to hold trials involving child witnesses in the room with the more effective acoustics. We are conscious that this proposal may, in some instances, be at odds with our earlier proposal¹ that cases involving children should be in the least intimidating court room possible. However, in that event, or if a particular court room had to be used for other reasons—say, because it was the only one suitable for a sitting of the High Court—we consider that that would provide a compelling case for the installation of effective sound amplification equipment.

Special waiting room facilities

2.19 Our proposals regarding special waiting room facilities for children were well received by consultees, and we were encouraged to be told by Scottish Courts Administration that there should be no difficulty about providing a supply of suitable furniture, and of toys, books and games, in all court houses for the use of child witnesses. We accordingly urge Scottish Courts Administration to make the necessary arrangements for this to be done.

2.20 We recognise, of course, that, save in the most spacious of court houses, it will not be possible to have witness rooms which are designated as being solely for use by children. We are, however, most anxious that, whenever possible, children should not have to share a witness room with other adult witnesses (apart from any accompanying adults), and should never have to share a waiting room with the accused or any of the witnesses called on his behalf. We urge those who are responsible for the allocation of witnesses to witness rooms to keep those objectives firmly in mind.

1. Para 2.9 above.

The use of discretion

2.21 In the foregoing paragraphs we have recommended that certain matters, such as disrobing and clearing the court, should be at the discretion of the presiding judge, and we have suggested that the Lord Justice General might consider giving some guidance to judges regarding the exercise of that discretion. It is not for us to say what that guidance should be, but we imagine that the most relevant factors governing the use of the discretion are likely to be the age of the child, the nature of the charge, the nature of the evidence which the child is likely to be required to give, the relationship, if any, between the child and the accused, whether the trial is summary or on indictment, and any additional information concerning the health or welfare of the child which may be brought to the attention of the court by any of the parties to the proceedings.

2.22 In respect of all of the foregoing matters our recommendations are summarised as follows:

1. **The following matters should continue to be at the discretion of the court–**
 - (a) **removal of wigs and gowns by the judge, counsel and solicitors while a child is giving evidence;**
 - (b) **positioning a child witness at a table in the well of the court along with the judge, counsel and solicitors, rather than requiring the child to give evidence from the witness box;**
 - (c) **permitting a relative or other supporting adult to sit alongside the child while he or she is giving evidence;**
 - (d) **clearing the court of persons not directly involved in the trial under the powers conferred by sections 166 and 362 of the Criminal Procedure (Scotland) Act 1975.**

(Paragraphs 2.3 to 2.6; 2.12 to 2.14)

2. **The Lord Justice General should be invited to issue to all judges a memorandum of guidance as to the exercise of discretion in relation to the foregoing matters.**

(Paragraphs 2.5 to 2.6)

3. **Whenever it is practicable to do so, a trial involving a witness who is a child should be allocated to a court room which is as non-intimidating as possible.**

(Paragraph 2.9)

4. **Existing arrangements and procedures to prepare a child for the experience of giving evidence in court should be encouraged and extended.**

(Paragraphs 2.10 to 2.11)

5. **Scottish Courts Administration should take all practicable steps to secure that children, and indeed other witnesses, can be heard in court when speaking in a normal tone of voice. To this end consideration should be given to installing effective sound amplification equipment in those court rooms which are not at present acoustically effective and which are not scheduled for total refurbishment in the near future.**

(Paragraphs 2.15 to 2.18)

6. (a) **So far as practicable, children attending court as witnesses should be accommodated in waiting rooms from which all adults are excluded other than those accompanying the children concerned.**

- (b) **On no account should a child witness be required to share the same waiting room as the accused or any of his witnesses.**

- (c) **Scottish Courts Administration should take immediate steps to provide in every court house a supply of suitable furniture, toys, books and games for use by children who are waiting in waiting rooms to give evidence in court.**

(Paragraphs 2.19 to 2.20)

Part III Corroboration, competency and identification

Corroboration

3.1 In the Discussion Paper we noted that in some countries, such as England and Wales, there is no general requirement of corroboration in criminal cases. However, there may be an exception to that general rule in the case of evidence given by children. Until recently, under the law applicable in England and Wales, the unsworn evidence of a child had to be corroborated, and could only be corroborated by evidence given by another witness on oath: it could not be corroborated by the unsworn evidence of another child. Moreover, even where evidence was given by a child who had taken the oath, judges were required to warn a jury that it might be unsafe to convict on that evidence alone in the absence of corroboration.

3.2 Considerable changes were made to those rules of English law by the Criminal Justice Act 1988.¹ Corroboration of the unsworn evidence of a child is no longer required, and a judge no longer needs to give a warning to a jury where such a warning is required “by reason only that the evidence is the evidence of a child”.²

3.3 At the time when those changes were being introduced for England and Wales there were suggestions in some quarters that the requirement of corroboration of the evidence of child witnesses might also be relaxed in Scotland. However, the background in Scotland is quite different in that Scots law imposes a general requirement of corroboration for the proof of all crimes and offences (save only a few trivial statutory offences). Consequently, any relaxation of the corroboration requirement in relation to the evidence of children would, in Scotland, involve the creation of a major exception to the general law whereas the recent statutory provision in England and Wales was designed to remove an existing exception to the general law there. In the Discussion Paper we proposed³ that there should be no change to existing Scots law on this matter, and that proposal was widely accepted by consultees. So far as we can tell from a brief survey of foreign law systems, Scotland may now be one of only a few countries which impose a general corroboration requirement for proof of crimes and offences; and accordingly it may be that this Scottish rule should be reassessed at some time to see whether its retention, as a general requirement, is justified. However, we are in no doubt that it would be unprincipled to depart from that requirement in respect only of a certain class of witness or certain classes of crime. Accordingly, we recommend:

7. In cases of child abuse and other cases in which children are witnesses there should be no exception to the general rule of Scots law whereby all the material facts justifying a conviction must be proved by corroborated evidence.

(Paragraphs 3.1 to 3.3)

3.4 Given our view that there should be no change to the rules requiring corroboration, we also considered in the Discussion Paper⁴ the special rule of evidence known as the *Moorov* rule.⁵ Under this rule two or more single witnesses to separate incidents may corroborate each other where the accused is charged with a series of similar offences which are closely linked in time, character and circumstances. We considered whether that rule could be widened, and whether it might with advantage be given

1. s 34.

2. *Ibid*, subs (2).

3. Para 5. 20.

4. Paras 5.21, 5.22.

5. So-called after the leading case in which the rule was enunciated: *Moorov v HMA* 1930 JC 68.

statutory expression, but we provisionally concluded that neither of those courses should be followed. Almost all consultees agreed with our provisional view, and we see no reason to change it. We accordingly recommend:

8. The rule of evidence known as the *Moorov* rule should not be widened by statute, nor should any attempt be made to give it statutory expression.

(Paragraph 3.4)

Competency of child witnesses

3.5 In some jurisdictions children below a certain age are simply not permitted to give evidence, and are therefore regarded as incompetent witnesses in the legal sense of that word. In England and Wales, for example, we understand that children below about the age of 7 are in this category.¹ In other jurisdictions, while young children may be potentially competent witnesses, in the sense of being eligible to give evidence, they may have to satisfy a test of competency in the sense of showing that they are adequately articulate, and can understand the difference between right and wrong, and truth and falsehood. There is thus in effect a presumption against competency, both in the legal and the factual sense, which has to be overcome.

3.6 In the Discussion Paper we observed² that there may be some uncertainty about where Scots law stands on this matter, but we noted³ that modern practice appears to assume that a child of any age is legally competent to give evidence subject to his or her verbal abilities and understanding of truth and falsehood being adequately confirmed in the course of a preliminary conversation between the judge and the child. In the circumstances we suggested⁴ that there might be advantage in having express statutory provision to clarify this matter. Almost all of our consultees assented to this proposal. However, just as this Report was nearing completion, the High Court delivered an opinion which, in our view, makes it unnecessary to have statutory provision on this matter. In *Rees v Lowe*⁵ a 3 year old girl was adduced as a witness in a summary trial. No objection was taken to the witness on account of age, but the accused appealed against his conviction on the ground that the sheriff had not properly ascertained that the child understood the difference between truth and falsehood, and had not admonished the child to tell the truth: instead, the sheriff had purported to apply some sort of continuous assessment to the child's evidence as it was being given. In allowing the appeal, the High Court made it clear that the proper procedure is for the presiding judge to satisfy himself that a child of tender years knows the difference between telling the truth and telling lies and, if so satisfied, to admonish the child to tell the truth. Given the existence of such recent authority on this matter, we consider that there is now no need for any statutory provision.

Identification of an accused

3.7 The identification of an accused person as the perpetrator of an alleged offence is always an essential matter which the prosecution requires to establish in the course of a trial. Even where a previous identification parade has taken place, it is customary in Scotland for a witness to be asked to identify in court the person whom he or she has been talking about in evidence. Likewise, an in-court identification will frequently be sought even where the witness is talking about a friend or a relative, and there is really no dispute that the accused is the friend or relative being referred to.

3.8 The obligation to look at, and to point to, the accused which this practice entails may be upsetting for many witnesses, and may be particularly so for witnesses who

1. See *R v Wallwork* (1958) 42 Cr App R 153; *R v Wright and Ormerod*, unreported, Court of Appeal, Criminal Division, 29 October 1987.

2. Para 2.2.

3. Para 2.3.

4. Para 5.25.

5. High Court of Justiciary, 7 November 1989 (unreported).

are children. As we noted in the Discussion Paper¹, having to face the accused in court is, in the view of many commentators, one of the most distressing aspects of giving evidence for many children. Indeed, it is in part to avoid this confrontation that use is now made in some jurisdictions of devices such as screens and closed circuit television. However, if in-court identification is to be regarded as essential, the possible value of such devices will be diminished. Even if such devices are not used but rather, as sometimes happens in Scottish courts, the child is positioned, when giving evidence, so that the accused is out of his or her line of vision, there may still be upset for the child if visual identification of the accused is thereafter required.

3.9 To avoid those difficulties we considered in the Discussion Paper² whether alternative identification procedures could be used in place of in-court identification. In particular we considered the use of prior identification parades and the use of photographs, and we suggested that, where there was, for example, satisfactory identification parade evidence, it should not be necessary for a child to have to identify an accused face to face in court.

3.10 We note that in England and Wales so-called “dock identifications” have found disfavour with the courts since at least 1914,³ and it now seems to be normal practice, at least in the Crown Court, for identification of an accused to be established by other means—usually by an identification parade coupled with other evidence sufficient to link the person picked out at the parade with the person in the dock. The reasoning behind this approach appears to be two-fold: first, that a witness’s memory is likely to be more accurate and reliable shortly after an event rather than when he comes to court, possibly many months later; and second, that identification at an identification parade is likely to be fairer to an accused in that he is standing where he pleases in the midst of a line of other people of roughly the same age and with similar physical characteristics, whereas in court he is perforce placed prominently in the dock and flanked by two uniformed prison officers (in Scotland, police officers).

3.11 Our proposals on this matter met with a mixed response from consultees. While many welcomed our suggestion that a child should, if at all possible, be spared from having to make a face to face identification in court, others suggested that such an identification would always be the best evidence, and would therefore always be required. One consultee questioned whether attendance at a formal identification parade might not be just as frightening and stressful for a young child as making a visual identification in court. It was also pointed out, quite rightly, by some consultees that, where identification is a really live issue in a particular case, the accused must always be able to challenge evidence of identification however it has been given.

3.12 There is no doubt that in some cases identification will be a crucial and contested issue. While—given the approach taken with regard to identification in England and Wales—some of us doubt that in-court identification is necessarily the *best* evidence to resolve such an issue, we nonetheless have to accept that in some instances such a means of identification may have to be resorted to. Accordingly, we do not seek to prohibit its use. However, in many instances identification is not in dispute in the sense that the accused does not seek to challenge that he is the person referred to in a witness’s evidence (though he may wish to challenge the evidence about what he is alleged to have done). In such cases, therefore, identification of the accused is normally no more than a formality, albeit a formality which must be observed if the prosecution is to prove its case. We believe that in cases of this sort it should not be necessary for a child to make an in-court identification.

3.13 One way of achieving that result would be by the use of a joint minute of admissions agreeing, for example, that the accused is the person whom the witness picked out at an identification parade. We doubt, however, whether that is likely to be the best way of achieving the desired result. Defence lawyers are understandably reluctant to enter into joint minutes of admissions, particularly in respect of matters

1. Para 3.9 *et seq.*

2. Para 5.23 *et seq.*

3. *R v Cartwright* (1914) 10 Cr App R 219.

which, though non-controversial, are crucial for proof of the prosecution case: a witness might die, or disappear, or fail to give evidence on the crucial matter, and, by signing the minute, the defence lawyer would have denied his client the benefit of that fortuitous event. One alternative would be to follow the English practice of holding an identification parade in all cases, and then proving, probably by the evidence of police officers, that the accused is the same person as was picked out by the witness. That, however, might run foul of the best evidence rule as it appears to be currently understood by many practitioners in Scotland, and it would in any event be unnecessarily cumbersome and perhaps even distressing in a case where the accused was well known to the witness through being, for example, a relative, a neighbour, or a family friend.

3.14 Another alternative—and it is the one which we favour—was suggested to us by Crown Office. This involves making an appropriate addition to the notice procedure which is presently provided for in criminal proceedings by section 26 of the Criminal Justice (Scotland) Act 1980. That section provides for certain routine matters to be established or presumed where a certificate or other document has been served on an accused person or lodged in court and the accused has not challenged the matter within a fixed period of time prior to trial. One of the subsections in section 26¹ already makes some provision regarding identification in that, in a trial under summary procedure, it is to be presumed that the person who appears in answer to the complaint is the person charged by the police with the offence unless the contrary is alleged. However, that provision, which followed on a recommendation by the Thomson Committee,² is too limited for our purpose. It was intended by the Thomson Committee³ primarily to cater for the case where a police officer has seen an accused only once, at the time of charging him, and is then required, perhaps months later, to identify him in court. Moreover, the subsection is restricted to summary procedure only.

3.15 We consider that what is required is a wider provision which will apply in both summary and solemn procedure. A possible model is, we think, to be found in subsection (6) of section 26. That provides that, where an autopsy report is lodged as a production by the prosecutor, it is to be presumed that the body of the person identified in that report is the body of the deceased identified in the indictment or complaint unless the accused gives notice that the contrary is alleged. On the analogy of that provision we think that it could be provided that, where a report of an identification parade or of some other recognised identification procedure has been lodged as a production by the prosecutor, it should be presumed that the person named as having been identified by the witness is the person named in the complaint or indictment and answering the charge in court unless he, within a specified period prior to trial, gives notice that the contrary is alleged. We think that, subject to the addition of some matters of detail to which we turn in a moment, a provision along those lines would be helpful, and would be likely, in cases where identification is not in issue, to remove any need for in-court identification. This would be particularly beneficial if, as we propose in Part IV of this Report, use were to be made in future of certain techniques which are primarily designed to prevent the witness and the accused being face to face in court.

3.16 In the proposal which we outlined above we spoke of the report of an identification parade or “of some other recognised identification procedure”. We did so because we think that it will be desirable to have as much flexibility as possible in this procedure. In some instances identification from photographs may be sufficient. Indeed, where a child is speaking about a member of his or her family, it may be suitable and satisfactory simply to have the child point out the person in question in a family photograph album. Some of our consultees expressed reservations about the use of photographs for identification purposes, but we do not think that their use can be criticised when identification is uncontentious; and in any event, as we pointed

1. subs (5).

2. Criminal Procedure in Scotland (2nd Report) Cmnd 6218, para 46.08.

3. Ibid, para 46.06; and see *Smith v Paterson* 1982 SCCR 295.

out in the Discussion Paper,¹ the use of photographs as a means of identification is already provided for in the revised Scottish Guidelines on Identification Parades which were approved by the Lord Advocate and the Secretary of State in 1981.

3.17 Consideration has to be given to the time-scale for the lodging of a report of an identification parade or other identification procedure, and for the accused, if so advised, to give notice of challenge. It is also for consideration whether the mere lodging of the report should suffice to give rise to the presumption in the absence of notice of challenge, or whether it should also be necessary for the prosecutor to give notice to the accused that he has lodged the report and intends to use it as a basis for the presumption.

3.18 One of the difficulties here is that the time-scales and procedures are different in cases proceeding under solemn or summary procedure. In the former situation an indictment, with a list of productions, must be served on an accused not less than 29 days prior to trial.² Under summary procedure by contrast no list of productions is prepared, and any productions are normally lodged only when a trial is commencing. We have come to the conclusion that the best course will be to follow the procedure which governs most of the provisions of section 26 of the 1980 Act, that is to say service of a notice by the prosecutor not less than 14 days before trial, with service of a counter-notice by the accused, if so advised, not less than six days before trial, or by such later time before the trial as the court may in special circumstances allow. We are not aware that these time-scales have caused any difficulty, either under solemn or summary procedure, in respect of the matters covered by section 26, and we think that they should be satisfactory for the purpose which we are now considering.

3.19 We have, of course, been considering the matter of identification procedures in the context of child witnesses. It occurs to us, however, that the notice procedure which we are proposing may be beneficial in any case where identification is uncontroversial, and where there has already been satisfactory identification by some other means. We therefore propose that, if adopted, this procedure should be capable of being used in respect of any witness.

3.20 On the whole matter we accordingly recommend:

- 9(a) In any case, whether under solemn or summary procedure, where a report of an identification parade or of some other recognised identification procedure has been lodged as a production by the prosecutor, it should be presumed, subject to (b) below, that the person named in the report as having been identified by a witness also named in the report is the person of the same name in the complaint or indictment and answering the charge in court.**
- (b) The foregoing presumption should arise only where (i) the prosecutor has, not less than 14 days before the trial, served on the accused a copy of the report and a notice of intention to rely on the presumption, and (ii) the accused has not given notice of an intention to challenge the facts stated in the report by at least six days before the trial, or by such later time before the trial as the court may in special circumstances allow.**

(Paragraphs 3.7 to 3.20; clause 9)

1. Para 5.24.

2. Criminal Procedure (Scotland) Act 1975, s 75.

Part IV New rules of procedure and evidence

Rejected options

4.1 In the Discussion Paper we examined in some detail¹ the system of “youth interrogators” which has been in use in Israel since 1955. Although that system (which allows the youth interrogator to give what is in effect hearsay evidence in lieu of testimony by the child) appears to be generally accepted, and to work satisfactorily, in Israel, we concluded² that it would be inappropriate for use in Scotland, and might in any event contravene Article 6.3(d) of the European Convention on Human Rights.³ The great majority of consultees concurred with our views, and we accordingly adhere to them.

4.2 We similarly gave no support to the option of having a general hearsay exception in relation to statements made by children. Under such an option any statement by a child would be admissible as evidence of the facts stated in it without the necessity of the child giving evidence and being subjected to cross-examination. We did, however, suggest that any existing exceptions to the hearsay rule (such as that the maker of the statement is dead) should be retained. Once again the great majority of consultees concurred with our views, and again we adhere to them.

4.3 The next option which we considered in the Discussion Paper was modelled on proposals which had originally been put forward by Professor Glanville Williams.⁴ The aim of those proposals was two-fold—first, to have a means of taking a statement from a child in circumstances which would not be stressful or harmful, and which would obviate the need for the child to appear in court; and second, to avoid any risk of unfairness to the accused by allowing him or his lawyer to play a part in suggesting lines of questioning to the interviewer. Briefly, the proposal was that, at as early a stage as possible, the child would be interviewed in congenial surroundings by an experienced and sympathetic interviewer. The accused and his lawyer would watch and hear the proceedings from behind a one-way glass window, and the lawyer would be able to communicate with, and suggest questions to, the interviewer by means of a microphone and ear speaker. The whole interview would be video recorded, and the recording would be used at trial in place of live evidence by the child. We suggested a number of refinements to that proposal, and sought the views of our consultees.⁵

4.4 While some consultees accepted this proposal in whole or in part, there were others who did not. Interestingly, the latter category was not solely composed of legal consultees, nor were legal consultees wholly absent from the former. The main objections which were voiced against this proposed procedure were that, because the interview would take place at an early stage, an accused would probably not be in possession of all the relevant facts to enable him to put his case to the best effect. Moreover, and even more importantly, the limited opportunity given to the accused to put questions to the child would be no real alternative to cross-examination, and could cause grave prejudice.

4.5 We can see great force in these objections, and we have therefore concluded that it would be inappropriate to recommend such a radical innovation in the way in

1. Paras 4.2 to 4.4.

2. Para 5.34.

3. See para 1.6 above.

4. See Discussion Paper, para 5.37 *et seq.*

5. Discussion Paper, para 5.49.

which evidence is presented to a court. We think in any event that a recommendation which we make later in this Report¹ will go a long way towards satisfying the objectives which the foregoing proposal was intended to achieve while at the same time meeting the main objections to it which we have noted above.

4.6 As an alternative to the foregoing proposal we also suggested in the Discussion Paper² a modified procedure whereby a child would be interviewed without the accused or the prosecutor being present, and a video recording of that interview would be admissible in lieu of live evidence by the child, but both the prosecutor and the defence would have an absolute right to require the child to give evidence in a more formal manner. Most of our consultees did not favour this option. A principal criticism was that it would introduce an unacceptable degree of uncertainty into the proceedings both for the parties and for the child. We see the force of that criticism, and do not propose the adoption of this option. Once again, it may be largely superseded by what we recommend in paragraph 4.66 below.

Recommended options for new procedures and new rules of evidence

Preliminary 4.7 In what follows in this Part of the Report we make some positive recommendations for new procedures and new rules of evidence. Before doing so, we think that it may be helpful to reiterate two points which we have made earlier. The first is that it is our belief that in many cases children will be able to give evidence in court by conventional means, and without the need for special techniques or procedures, provided that they are dealt with in a sensitive and understanding manner. Consequently, any new techniques or procedures will, we anticipate, be required in a relatively small number of cases. However, if such techniques and procedures can be devised and can be made available, possibly with the help of modern technology, for cases where, without them, a child might be unable to testify at all, or might be able to do so only at the expense of considerable harm and distress, we think that they should be introduced for use when required.

4.8 That brings us to the second point. We are not suggesting that all of the new techniques and procedures which we recommend hereafter should be used in a case where conventional testimony would not otherwise be possible. Rather, it is our intention that they should represent a range of available options from which can be selected the one which appears likely to be the most beneficial in a given case.

4.9 With these preliminary observations, we now turn to consider our recommended options in more detail. All of them are procedures or techniques which will, in one way or another, involve the giving of formal evidence by a child, and which will make the child available for cross-examination. As such they cannot, we think, be open to objections of the kind which persuaded us to reject the options detailed earlier in this Part, nor are they likely, in our view, to contravene either the spirit or the letter of Article 6 of the European Convention on Human Rights.

Pre-trial deposition 4.10 In the Discussion Paper we described³ the pre-trial deposition procedure which is now available in many of the States in the USA. Under this procedure, which in many respects resembles the Scottish procedure of taking evidence on commission, the child is examined and cross-examined in advance of the trial, and a video recording of the proceedings is then used at trial in place of an appearance there by the child. The deposition proceedings are presided over either by the judge who is to take the trial or, if he cannot be available, by a commissioner acting on his behalf.

4.11 The perceived advantage of this kind of procedure is that, while it permits full and formal examination and cross-examination of the witness, it does so in

1. Para 4.66 below.

2. Para 5.50.

3. Para 4.29 *et seq.*

circumstances which are likely to be much less frightening and distressing for the child than having to appear in court. Normally the deposition proceedings will take place in a small and congenial room where the child can feel comfortable; the child will normally have a close relative nearby; and the accused, if present, will be out of sight of the child, preferably behind a one-way screen of some kind, or watching the proceedings through the medium of closed circuit television. At the same time the child will not feel the sense of isolation which may in some cases attend the use of live link closed circuit television since the judge or commissioner, the prosecutor, and the defence lawyer will all be in the same room with the child. By the same token, the judge or commissioner will be able to ensure, possibly more readily than when closed circuit television is being used,¹ that the child is not being improperly prompted by a relative or other supporting adult.

4.12 We considered that this procedure was likely to offer positive advantages in some cases, and accordingly we proposed in the Discussion Paper² that a procedure, modelled on that in use in the United States, should be introduced in Scotland. This proposal was accepted by most consultees. Of the few who rejected it some did so because of a preference for the more radical independent interview procedure which we ourselves have now rejected,³ and one did so on the view that nothing other than live testimony in court can ever be acceptable.

4.13 Of those consultees who accepted this proposal some nonetheless made important observations of which note should be taken. First, it was said that any pre-trial deposition procedure should take place as near to the actual date of trial as possible since otherwise an accused might not be fully prepared in the sense of having ascertained what all the prosecution witnesses were likely to say, and of having prepared his own defence. We see considerable force in this observation. It is, of course, true that, if a pre-trial deposition procedure were not to take place until very shortly before a trial, it would not have the advantage of securing a child's evidence shortly after the event; and, as we have mentioned earlier, an early statement by the child may offer positive advantages in some cases. On the other hand, there may be other ways of securing that advantage.⁴ Moreover, the holding of a pre-trial deposition very shortly before the trial may offer other advantages beyond ensuring that an accused has had sufficient time to prepare his defence. It may make it more likely that the judge who is to take the trial will be able to preside at the taking of the pre-trial deposition. Like many of our consultees, we regard this as highly desirable; and, within a few days of a trial, it will generally be known who the trial judge is to be, and he may well be available to take the deposition at that time. There is also the advantage that, if a pre-trial deposition takes place shortly before a trial, it may by then be known whether or not identification of the accused is going to be a live issue at the trial. We do not think that the pre-trial deposition procedure would be desirable in a case where visual identification of the accused was required but, if the notice procedure which we recommended in paragraph 3.20 above has been used, it will be known, normally six days before the trial, whether that matter is a live issue or not. Accordingly, we think that, for the foregoing reasons, the balance of advantage will normally lie with using the pre-trial deposition procedure only a few days at most before the date of the trial. However, we do not propose that this should be an absolute rule. There may be exceptional cases where the use of the procedure at an earlier stage might be advantageous, and we do not wish to exclude that possibility. No doubt an earlier use of the procedure might create a risk of prejudice to an accused, but we would anticipate that any such risk would be taken into account by the judge when determining whether or not to authorise the use of the procedure in the first place. It is also possible, of course, that the need for this procedure may only become apparent after a trial has started, for example if a child breaks down in court and is clearly incapable of continuing to give evidence by conventional means. We accordingly think that, in exceptional circumstances, a court should be entitled to authorise the use of this procedure for taking evidence even at such a late stage.

1. But see para 4.30 below.

2. Para 5.59.

3. See para 4.5 above.

4. See para 4.45 *et seq* below.

4.14 It was a feature of the proposal made in the Discussion Paper that, if this new procedure were to be introduced, it should not be available as of right but only upon application to the court. None of our consultees dissented from that approach, and we adhere to it. In the Discussion Paper we suggested possible grounds on which a court might consider it appropriate to authorise this procedure. Since, however, we are now recommending in favour of the introduction of closed circuit television arrangements,¹ and are making positive recommendations in relation to the use of screens,² it is better to consider together the grounds on which any of those procedures might be authorised. We do so in paragraph 4.38 and succeeding paragraphs below.

4.15 A further feature of the pre-trial deposition proposal which we made in the Discussion Paper is that the accused should be entitled to be present during the proceedings, but should normally be out of sight of the child:³ he should either be behind a one-way glass or should be able to watch the proceedings by means of closed circuit television. This was generally agreed by consultees, though some stressed—and we, of course, accept this—that it would be essential that the accused should be able to communicate with his counsel or solicitor. Communication could be achieved by means of a small microphone and earpiece speaker, and we would expect that, prior to the commencement of the proceedings, the presiding judge or commissioner would explain to the accused that he could communicate in this way and, if necessary, seek a brief adjournment so as to consult with his legal representatives face to face and in private. As between the use of one-way glass or closed circuit television as a means of enabling the accused to watch the proceedings, we think that the chosen method may in some cases depend on what is locally available. However, since it is an intrinsic feature of this procedure that it should be video recorded for subsequent use at trial (which will of course necessitate the use of television cameras) we suspect that closed circuit television will probably be the most practical way of enabling the accused to see the proceedings. We have made some tentative enquiries of one of the companies which has recently installed closed circuit television systems in several English courts, and we have been advised that what we are proposing here would not present any technical problems, nor would the necessary equipment represent a very substantial capital outlay. Finally, we should add that, since one of the objectives of the procedure which we have been describing is to ensure that a child witness does not have to face the accused in person, it follows that the procedure would be inappropriate in a case where an accused was unrepresented and was conducting his own defence. In such a case we consider that the option of live closed circuit television might be seen as preferable.⁴

4.16 On the whole matter we accordingly recommend:

- 10(a) Where a child has been cited to give evidence in a criminal trial, whether under solemn or summary procedure, it should be competent, as an alternative to adducing the child as a witness in court, to take the evidence of that child on commission prior to the date of the trial or, exceptionally, during the course of the trial.**
- (b) The taking of evidence on commission should, so far as practicable, take place in a room which is congenial and non-threatening so that the child may feel at ease during the proceedings.**
- (c) Whenever possible the commission proceedings should be presided over by the judge who is to preside at the subsequent trial, which failing by a commissioner acting on his behalf.**
- (d) The commission proceedings should normally, but not necessarily, take place as short a time before the date of the trial as possible.**
- (e) The commission proceedings should be video recorded so that the video recording can be played at the trial in place of live evidence by the child.**

1. See para 4.28 *et seq* below.

2. See para 4.17 *et seq* below.

3. Occasionally a child might be adduced as a witness on behalf of an accused. We think that in such a case that accused should be permitted, with the leave of the commissioner, to be present in the room where the commission proceedings are taking place.

4. See para 4.28 *et seq* below.

- (f) **The accused should not, except with the permission of the commissioner, be present in the room where the commission proceedings are taking place, but he should be entitled to watch and hear those proceedings either by being behind a one-way screen or by the use of a closed circuit television link to a separate room. In either event he should be able to communicate with his counsel or solicitor by means of a microphone and ear-piece speaker.**

(Paragraphs 4.10 to 4.16; clause 1)

Use of screens

4.17 In the Discussion Paper we expressed considerable reservations about the use of screens as a means of concealing an accused from the sight of a child who is giving evidence in court.¹ Those reservations were based, first, on a concern that screens might not in fact be effective in reducing a child's anxiety in as much as the child would still be aware that the accused was nearby; second, on a fear that, by their ad hoc nature, screens might prejudice an accused by suggesting to a jury that the child had good reason to be afraid of him; and third, on the view that the variable design and layout of court rooms might in any event make the erection of screens impracticable in some instances. We did, however, seek the views of consultees on this matter.

4.18 In the result about half of our consultees rejected the use of screens for some or all of the reasons given by us, while the other half supported their use in cases where no more was required in order to give effective reassurance to a child. Had the matter rested solely on the views so expressed, we would have hesitated to make any positive recommendation on this matter. However, it appears that screens have already in fact been used both in the High Court and in sheriff courts, and our understanding is that their use has been seen as helpful. Moreover, they are now in fairly regular use in courts in England and Wales, and English judges and others have advised us that they are generally regarded as being advantageous in terms of enabling a fearful child to give evidence with greater confidence. Moreover, we have been told both by judges and by counsel practising in England that they do not regard the use of screens as prejudicial to an accused provided that the judge gives appropriate directions to a jury.²

4.19 Faced with the reality of what is now happening in Scotland (and to an even greater extent in England and Wales), we consider that we must now revise our earlier reservations about the use of screens. The view has been taken in England and Wales that the use of screens does not require any statutory authorisation, and this appears also to be the view of those Scottish judges who have so far allowed the use of screens in Scottish courts. Consequently it may be assumed that the use of screens in appropriate cases is likely to increase in Scotland in future.

4.20 In the circumstances we do not seek to stop that trend. It occurs to us, however, that there would be advantage if the way in which screens are used could be regulated to some extent by statutory provision. There are several reasons why this would be desirable.

4.21 First, there may be room for doubt at present about whether the use of screens can be authorised by a court against the wishes of an accused as opposed to their being used solely of consent. Subject to the satisfactory resolution of other problems which we mention below, we believe that a court should be entitled to authorise the use of screens on cause shown notwithstanding that that may be contrary to the wishes of the accused: and we think that it would be helpful if this were to be made clear.

4.22 Second, there is the question of what should be sufficient justification for the use of screens. It would be helpful if this were to be stated, and we make suggestions below³ as to what the grounds for authorising the use of screens might be.

1. Paras 5.60 to 5.65.

2. The practice of using screens has now been approved by the Court of Appeal: *R v X and Others*, *The Times*, 3 November 1989.

3. Para 4.38 *et seq.*

4.23 Third, there is the nature of the screens themselves. One of the anxieties which we had when, in the Discussion Paper, we expressed reservations about the use of screens was that, as well as shielding the child from the accused, they might also prevent the accused from seeing the child. This would inevitably be the case if the screen was made of an opaque material rather than one-way glass. We consider that it is important that, when a witness is giving evidence in court, an accused should be able not only to hear but also to see the witness. On the basis that a witness's demeanour while giving evidence may be a helpful guide for the assessment of truthfulness and reliability, it is, we believe, as important for an accused to be able to detect any tell-tale signs as it is for the judge or jury.

4.24 This problem could be resolved by the use of screens constructed of one-way glass. There is, however, an alternative solution. It has been brought to our attention that trials have recently taken place in the Central Criminal Court in London where witnesses have been concealed from the accused by the use of opaque screens but the accused have been able to watch the witnesses giving evidence through the medium of closed circuit television. Briefly, what happened was that a small television camera was mounted on a tripod in front of the screened witness box, and three monitor screens showing the witness were positioned in the court. One was for the use of the accused, one was for observation by the judge and counsel, and one was for the jury in case, as sometimes happened, their view of the child was obscured by counsel. The problem of counsel obscuring the view of the jury arose because, having regard to the layout of the particular court room, it was necessary in those cases to use a mobile witness box rather than the normal fixed box; and this had to be located in a position which placed counsel between the witness and the jury.

4.25 Because the need to use screens is likely to arise relatively infrequently, it seems to us that the procedure which we have just described may be preferable to the use of one-way screens. We imagine that such screens would represent quite an expensive outlay if they had to be provided in all, or even most, courts around the country. Of course the equipment required for a closed circuit television relay will not be inexpensive, but it may already be available for other purposes. For the London trials described above the necessary equipment was supplied by the Metropolitan Police; and, if closed circuit television were to be installed in some Scottish courts for other purposes, it could, we believe, be utilised for this purpose also. We therefore see an arrangement, similar to that made in the Central Criminal Court, as being a practicable solution to the problem in Scottish courts. We think, however, that some flexibility should be permitted since what may be suitable for one court room may not be suitable for another court room of a different size and layout. We therefore propose that statutory provision should simply say that, where screens are to be used to conceal an accused from a witness, it should be ensured, by some appropriate means, that the accused is able to watch the witness and to observe his or her demeanour while giving evidence.

4.26 If, as we are proposing, a court should be entitled to direct the use of screens even where their use is opposed by the accused, it will be necessary to have some sort of procedure, and some sort of time-scale, for making the appropriate application to the court. We return to this matter of procedure after our discussion of the remaining option, namely live link closed circuit television.¹

4.27 First, we sum up our position with regard to the use of screens as follows:

11(1) Provision should be made to regulate the use of screens as a means of keeping an accused out of sight of a child who is giving evidence in court.

(2) It should be provided—

(a) Where any child under the age of 16 is a witness in a trial, whether under solemn or summary procedure, the court may, on an application by the prosecutor, authorise the use of screens to conceal the accused from the

1. See para 4.38 *et seq* below.

child's sight notwithstanding that such use of screens is objected to by or on behalf of the accused.

(b) Where the use of screens is permitted it should be ensured by some appropriate means that the accused is able to watch the witness and to observe his or her demeanour while giving evidence.

(Paragraphs 4.17 to 4.27; clause 2)

Closed circuit television 4.28 In the Discussion Paper we suggested that live closed circuit television should not be introduced in Scotland as a means of enabling child witnesses to give their evidence.¹ Our principal reason for reaching that conclusion was that we considered that a child who was too frightened to give evidence in court was unlikely to be any less frightened if required to sit in a distant room, surrounded by a mass of cameras and screens, and speaking to a disembodied voice emerging from one of those screens. No doubt in view of the negative position which we ourselves had adopted at that stage, the majority of consultees simply agreed with us without making any further comment.

4.29 Since that time we have had occasion to change our views. Following on the passing of the Criminal Justice Act 1988 live closed circuit television systems have been introduced into several courts in England. One of us has had the advantage of seeing such a system in operation at the Central Criminal Court in London, and several of us saw a demonstration of a comparable system at the High Court in Edinburgh. We have also had the advantage of the views of some English judges and counsel who have had practical experience of trials in which children gave their evidence through the medium of closed circuit television. All of this has persuaded us, first, that a closed circuit television arrangement need not be obtrusive or threatening from the point of view of the child, and second, that it need not, and does not, present problems from the point of view of judges, counsel and, so far as can be ascertained, juries.

4.30 From the technical point of view the important features of the systems which we have seen are, first, that they are entirely automatic and do not require the attendance of camera operators and technicians, and second, that they provide both the judge and counsel with an opportunity to watch not only the child but also others as well. So far as the child is concerned, he or she is placed in a room near to the court room.² That room is carpeted, and simply but agreeably decorated and furnished. The child sits at a table, accompanied by a parent or other supporting adult, and facing the child is what appears to be an ordinary domestic television set. In fact the set will have either a concealed camera built in to it, or a small camera clipped on top of it. On the screen will appear the face of whoever is speaking to the child at the time. In the court room there are three different kinds of television monitor. For the jury, the accused, and the general public there are large screens which simply show the face of the child at all times. Counsel have small monitors, with built-in or clipped on cameras, the screens of which simultaneously show, by a split screen technique, the face of the child and the face of whoever is at the time speaking to the child. Finally, the judge has a monitor which, in addition to showing what can be seen by counsel, also shows a view of the whole room where the child is. This is transmitted from a fixed camera fitted near the ceiling of the room, and enables the judge to ensure that the child is not being influenced or coached by any other person in the room. All of the cameras are voice-activated, and so switch on automatically as soon as a person begins to speak to the child.

4.31 Our impression—and this is confirmed by what we have been told by English judges and counsel—is that a closed circuit arrangement along the lines which we have described appears likely to be helpful in some cases both in terms of reducing distress for the child and also in terms of ensuring that the child will in fact be able to give evidence. Such an arrangement may also offer positive advantages in a case

1. Para 5.72.

2. Proximity to the court room is seen as desirable so that, if necessary, productions can be taken to the child for inspection or identification.

where an accused elects to defend himself. We are accordingly of the view that provision should be made to enable closed circuit television arrangements to be introduced into Scottish courts. Since, of course, this is a completely different view from that which we expressed in the Discussion Paper, we have advised most of our major consultees of our revised thinking, and of the reasons for it. We understand that most of them are now content to see closed circuit television introduced in Scotland.¹

4.32 In the arrangements which are presently in use in England and Wales, and which we have described above, the child is alone in the remote room save only for an accompanying adult and, possibly, a court attendant. We assume that similar arrangements would be made were closed circuit television to be introduced into Scottish courts. However, we understand that in Canada, where the use of closed circuit television has recently been authorised, the practice is for prosecution and defence counsel to be in the room with the child while the judge, the accused, and the jury remain in court and watch the examination and cross-examination through their monitor screens. The thinking behind this approach is, apparently, that a child is likely to feel less isolated and less ill at ease if some of the main participants in the trial are in the same room. We do not venture an opinion as to which approach is likely to be the better one. However, we do consider that any statutory provision, authorising the use of closed circuit television in Scottish courts, should be framed in a way which would permit a degree of flexibility in the use of the equipment, and which would permit a change from one arrangement to another should circumstances, or experience, make that desirable.

4.33 As with the other special procedures which we have been discussing, it is necessary to consider the grounds upon which the use of closed circuit television might be authorised. We deal with that and related matters below.² For the present we simply **recommend**:

12. Provision should be made to enable courts in Scotland to authorise the use of a live closed circuit television link to enable children to give evidence from outside the court room.

(Paragraphs 4.28 to 4.33; clause 3)

4.34 It would probably not be sensible or practicable to instal closed circuit television equipment in every court in Scotland. Furthermore, to do so would, we imagine, be prohibitively expensive. Some limitation could be achieved by excluding district courts from the use of such equipment. We think that such a limitation would be sensible since in practice district courts are unlikely to hear cases in which the need for closed circuit television would arise; and, even if it did, it would be open to the prosecutor to take the case in the sheriff court instead. Even in the limited context of sheriff courts and the High Court, however, it is still probably not sensible or practicable to instal the equipment in all courts. While the detailed disposition of the equipment is not primarily a matter for us, we suggest that a possible arrangement might be to have installations in the High Court in Edinburgh and Glasgow, in the sheriff courts in Edinburgh and in Glasgow, and in all the other sheriff courts which are used by the High Court when on circuit. That would not only ensure sufficient provision for the High Court but would also ensure that at least one sheriff court in each sheriffdom was provided with the equipment.

4.35 With a spread of provision along the foregoing lines a sheriff court case which was thought likely to require the use of closed circuit television could be taken in a court which had the necessary equipment installed. That, however, raises a possible problem in relation to jurisdiction.

4.36 Under section 7 of the Sheriff Courts (Scotland) Act 1971 a sheriff has jurisdiction in all districts of the sheriffdom for which he is appointed. However, it does not

1. We note, incidentally, that the introduction of closed circuit television in Scottish courts has recently been recommended, albeit for a very different purpose, by the War Crimes Inquiry (War Crimes: Report of the War Crimes Inquiry, 1989, Cm 744, para 9.34).

2. See para 4.38 *et seq.*

necessarily follow from that that a sheriff sitting in one sheriff court district may competently try a crime which has been committed in another district, albeit in the same sheriffdom. The Sheriff Courts (Scotland) Act 1870 expressly declared¹ that an offence committed in one county of a sheriffdom could be tried in a court sitting in another county of the same sheriffdom; but that Act was repealed by the Reorganisation of Sheriffdoms Order 1974,² and that Order contains no similar provision in respect of sheriff court districts. The learned author of Renton and Brown's *Criminal Procedure*³ suggests that there is little doubt that the principle of the unity of a sheriffdom applies to the districts of the current sheriffdoms as it did to the counties of the old, and refers to an unreported sheriff court case⁴ where an offence in Livingston was held to be triable in Edinburgh. On the other hand the High Court has very recently reserved its opinion on just this point.⁵ In the circumstances we consider that it would be appropriate to remove any uncertainty which there may be on this matter.

4.37 In relation to the foregoing matters we accordingly **recommend:**

13. The courts which should be entitled to authorise the use of a live closed circuit television link to enable children to give evidence from outside the court room should be the High Court and the sheriff court.

(Paragraph 4.34; clause 11)

14. Where an offence is alleged to have been committed in one district in a sheriffdom, it should be competent to try that offence, under either solemn or summary procedure, in a sheriff court in any other district in that sheriffdom.

(Paragraphs 4.35 to 4.37; clause 10)

Applicability of new procedures, and grounds for use

4.38 In the Discussion Paper we considered the grounds which might justify the use of a Scottish version of the pre-trial deposition procedure, but we did not consider that topic in relation to the use of screens or closed circuit television because, at that time, we were not proposing that they should be introduced into Scottish courts. We are now, of course, recommending the introduction of all three procedures, and consequently consideration must now be given to the grounds which would justify the use of any of them.

4.39 Since these procedures are all measures which are designed to achieve the same ultimate objectives, namely the reduction of unnecessary distress to children, and the best environment for securing coherent and full evidence, we consider that the grounds for authorising their use should be the same in all cases, with the final selection of a particular procedure being determined by the weight to be attached to the special factors which may be present in a given case. In other words, we think that a judge should first consider whether a case has been made out for using a special procedure to take the evidence of a child, and should then go on to consider, having regard to the circumstances of the particular case, which procedure appears likely to be the most beneficial and effective. One factor which might influence a judge's choice might be whether or not an accused person is defending himself. In cases where that is so, closed circuit television would, we imagine, be selected in preference to either the pre-trial deposition procedure or a screen.

4.40 In making the foregoing observations we are conscious of the fact that the statutory provision⁶ which permits the use of closed circuit television in England and Wales does not set out any grounds or guidelines. However, we think that it would be helpful to give some statutory guidance as to the factors which might point to the desirability of authorising a special procedure for taking a child's evidence. In relation to pre-trial depositions we proposed in the Discussion Paper that a court should be entitled to authorise the procedure on cause shown "taking into account matters such

1. S 12.

2. SI 1974 No 2087.

3. 5th ed, para 1-30.

4. *Smith v Paterson*, Edinburgh Sheriff Court, October 1980.

5. *Kilbane and Others v HMA*, 1989 SCCR 313.

6. Criminal Justice Act 1988, s 32.

as the age and maturity of the child, the nature of the offence, the nature of the evidence which the child is likely to be called on to give, and the possible effect on the child if required to give evidence in court".¹ These criteria were generally accepted by consultees, though one important group of consultees thought that this, and any other new procedures, should be restricted to children under the age of 14 called as witnesses in jury trials to give evidence about sexual misbehaviour either as an alleged victim or as an apparent eye witness. We do not agree that there should be any such restriction. In practice, no doubt, some parts of the suggested restriction are likely to come about in any event simply because a special procedure is more likely to be seen as potentially helpful and useful in the case of younger children, and in the case of children who would otherwise have to be exposed to the solemnity of a jury trial. But there could, we think, be the occasional case where the procedure would be advantageous in respect of a child of 14 years of age or more, and cases where the procedure might be advantageous in the case of a child who was cited to give evidence in a summary trial. We therefore consider that it would be unwise to exclude such possibilities altogether. So far as the suggested restriction to sexual offences is concerned, we are even more firmly of the view that such a restriction would be unwise. Children may be required to give evidence in cases where they have been physically, as opposed to sexually, abused, or they may, for example, have to give evidence as a witness to some horrific crime such as a homicide. We are unable to accept that such children are any less likely to be in need of special procedures than those who have been the victims, or the witnesses, of sexual misbehaviour.

4.41 So far as the proposed criteria for permitting the use of the procedure are concerned, some consultees appeared to think that we were proposing an exhaustive list, and accordingly suggested additional criteria such as the nature of any relationship between the child and the accused. In fact it was our intention that any specified criteria should be no more than examples of factors to which the court would have regard when exercising a wide general discretion. We are, however, grateful for those suggestions and, as will be seen, some of them are reflected in the recommendation which we make below.²

4.42 In making that recommendation we are conscious that it is relatively uncommon for a statute to offer guidance as to the way in which a court should exercise a discretionary power. However, in this instance the procedures which may be so authorised are all quite novel and, for that reason, we believe that some guidance may prove to be helpful.

4.43 If the procedures which we have been considering are to be available only on cause shown, it remains for consideration whether any special application procedure requires to be devised. We think that there probably should be some provision about this. While an application to use a screen or closed circuit television could be made in the course of a trial, we would hope that such an application would normally be made in advance of the trial, if only to allow time for the necessary equipment to be installed.³ An application to use the pre-trial deposition procedure will normally be made in advance of the trial. In those circumstances we think that there should be provision for a simple procedure whereby the party wishing to seek authorisation for a special measure for taking a child's evidence would lodge the application in court, while at the same time giving notice of it to all other parties. The application would then be disposed of by the court, possibly 24 hours later. We consider that provision along the foregoing lines would most appropriately be made by Act of Adjournal.

4.44 To sum up on the foregoing matters, we **recommend:**

15. A court should authorise the use of a pre-trial deposition procedure, a screen, or a live closed circuit television link only on cause shown, taking into account

1. Discussion Paper, para 5.59.

2. See para 4.44 below.

3. Although a court may have closed circuit television installed, we understand that the only permanent part of the installation is the wiring. The monitors and cameras are disconnected and removed to safe storage when not in use.

matters such as: the age and maturity of the child; the nature of the offence; the nature of the evidence which the child is likely to be called on to give; the relationship, if any, between the child and the accused; the possible effect on the child if required to give evidence in open court; and the likelihood that the child may be better able to give evidence if not required to do so in open court.
(Paragraphs 4.38 to 4.42; clause 4)

16. A court should be entitled to authorise the use of pre-trial deposition procedure, closed circuit television, or screens in respect of any child under the age of 16 who is cited as a witness at any trial in the High Court or at any trial, whether under solemn or summary procedure, in the sheriff court.
(Paragraph 4.40; clause 11)

17. Provision should be made by Act of Adjournal to regulate the procedure for making application to use pre-trial deposition procedure, closed circuit television, or screens in relation to the evidence of a child.
(Paragraph 4.43)

Changes in the rules of evidence: prior statements

4.45 We have already observed that, in the Discussion Paper, we proposed that there should be no general hearsay exception so as to admit, in place of formal testimony, a prior statement made by a child. That proposal was accepted by the great majority of our consultees, and we have not departed from it in this Report.¹ However, we also considered in the Discussion Paper the problems surrounding the admissibility of a prior statement in a case where a child does give evidence at trial, whether that be by conventional means or by means of some new procedure such as closed circuit television or a pre-trial deposition.² We suggested that the present rules about such statements are unsatisfactory since, for the most part, they admit only such prior statements as are inconsistent with a witness's testimony in court, and then only for the limited purpose of challenging his credibility. Under present rules a prior statement can be used only in limited circumstances as evidence of the facts which are stated in it. We understand that in practice prior statements, particularly when in the form of reports, for example by a doctor, are often accepted as evidence of the facts stated in them; but we suspect that such a practice may be a matter of convenience and commonsense rather than a reflection of the strict law. In the circumstances we proposed total abolition of the existing rules and their replacement by a rule whereby a prior statement which had been put to the witness would be admissible not only for or against that witness's credibility but also as evidence of any facts contained in it.

4.46 In Discussion Paper No 75, which was concerned with the evidence of children, we made the foregoing proposal solely in the context of prior statements made by a child. However, we were conscious of the fact that any deficiencies which there may be in the law relating to prior statements exist in relation to statements made by a witness of any age. Accordingly, in Discussion Paper No 77,³ which we published a few months after the Discussion Paper on the Evidence of Children, we repeated our proposal regarding prior statements, but on that occasion we did so in relation to all witnesses.⁴ We have now had the advantage of seeing the comments made by our consultees in relation to the proposals contained in Discussion Paper No 77 as well as on those in Discussion Paper No 75 and, in the circumstances, we consider that we should in this Report examine this matter in a general context rather than just in the context of witnesses who are children. As will be seen, however, some of the considerations which point to the desirability of making some reform to existing law are particularly apparent and compelling in the case of children.

4.47 It is probably fair to say that, in many instances, a witness's recollection of events is likely to be more accurate and reliable shortly after the events in question than will be the case many months later. It appears that this may be particularly so

1. See para 4.2 above.

2. Discussion Paper, paras 2.13 *et seq.*, and 5.74 *et seq.*

3. *Criminal Evidence: Affidavit Evidence, Hearsay and Related Matters in Criminal Proceedings.*

4. Discussion Paper No 77, para 4.15 *et seq.*

in the case of children, and especially young children. Moreover, as we have remarked several times in this Report, it may be that some children will recount their experiences not only more accurately but also more readily if they are able to do so in circumstances which are less stressful and less threatening than appearing in court.

4.48 With such considerations in mind, it is now becoming quite common for some children, especially those who are the suspected victims of abuse, to be interviewed at an early stage after possible abuse has been revealed, for that interview to be video recorded, and for that video recording to be retained thereafter as an account of the child's statement of what took place. Depending partly on local practice, such interviews may be conducted by a police officer, by a social worker, by a doctor, or by some other professional. On the view that such video recorded statements may be a valuable addition to any testimony that a child may be able to give at trial, there is growing interest in several parts of the world in the possibility of changing rules of evidence so as to make such video recordings admissible at trial.

4.49 In England and Wales the Home Secretary has established a Committee under the Chairmanship of Judge Pigot to examine this issue. Several States in Australia have recently introduced, or are contemplating the introduction of, provisions to allow video recorded statements or, more generally, statements in documentary form by a child to be admissible as evidence.¹ In New Zealand a Bill is presently before Parliament which would permit the evidence of a complainant under the age of 14 to be given in the form of a video-taped interview.² In Canada, the Criminal Code was amended in 1987 to admit video-taped statements by children.³

4.50 Special provisions relating to children, such as those just mentioned, would of course be unnecessary were Scots law to be reformed in the radical way which we originally proposed, namely by making all prior statements admissible as evidence of fact where the maker of the statement also gives evidence in court. However, many of our consultees⁴ thought that to do that would be to go too far. Their main concern was with the—by no means improbable—situation where a witness's evidence in court was quite different from what he was alleged to have said on a previous occasion, and where, as might well happen, he either denied having made the earlier statement, or admitted having made a statement but claimed that it had, whether deliberately or otherwise, been inaccurately reported to the court. If, in such a case, the witness's prior statement and his evidence in court were both to be admissible as evidence of fact, it could be extremely difficult, if not impossible, for a judge or jury to reach any reliable conclusion as to which, if any, version of the facts to accept.

4.51 We can see force in that line of objection to our original proposal. Another line of objection, which is also implicit in the one outlined above, is that, to admit *any* prior statement as evidence of fact would involve admitting evidence as to the content of such statements which might itself be unreliable and inaccurate. That, of course, would be an objection even to the limited admissibility of prior statements under existing law, but we recognise that it is an objection which may have more force if a prior statement were to be admissible as evidence of fact.

4.52 Despite the foregoing objections, some of our consultees who were opposed to the wholesale admissibility of prior statements were nonetheless prepared to contemplate a more limited departure from the present rules in that they were prepared to consider the admission of prior statements as evidence of fact where (a) the accuracy of the evidence about the prior statement was in some way assured, and (b) the maker of the statement adopted its contents in the witness box. We are now disposed to think that this approach may offer a way forward.

4.53 Probably one of the principal shortcomings of the present rules is that they forbid the introduction of what may well be reliable and accurate evidence in a

1. See, for example, Tasmania, Evidence Act 1910, s 81B; South Australia, Evidence Act 1929, s 34ca; New South Wales, Child (Care and Protection) Act 1987, s 24A.

2. Evidence Act 1908, proposed section 23E.

3. Now s 715.1; see further para 4.54 below.

4. In response both to Discussion Paper No 75 and to Discussion Paper No 77.

situation where, by the time of a trial, a witness simply cannot remember all the details which he or she was easily able to recall on the earlier occasion. This may be particularly so where the witness is a child. Moreover, where the facts in question are particularly distasteful, it may spare a witness some of the distress of having to recount them all in court if an earlier account of them can be made available to the court in addition to the witness's testimony on the day of the trial. It should also be borne in mind that, were earlier statements to become admissible in certain circumstances, they might on occasions be beneficial to the defence. In *Sparks v The Queen*,¹ which was an appeal to the Privy Council from the Supreme Court of Bermuda, the appellant, who was a white staff sergeant serving in the United States Air Force, and who had been convicted of indecently assaulting a 3 year old girl, unsuccessfully sought leave to introduce as evidence a statement by the child, made shortly after the event, that "it was a coloured boy" who had committed the assault.

4.54 One possible approach to this issue is to be found in what is now section 715.1 of the Criminal Code of Canada. That section provides:

"In any proceeding relating to an offence under [various sections of the Code relating to sexual offences] in which the complainant was under the age of 18 years at the time the offence is alleged to have been committed, a video-tape made within a reasonable time after the alleged offence, in which the complainant describes the acts complained of, is admissible in evidence if the complainant adopts the contents of the video-tape while testifying."

As can be seen, that provision contains six significant elements, namely:

- (1) it is restricted to earlier statements made in relation to certain sexual offences;
- (2) it is restricted to statements made by "the complainant";
- (3) it is restricted to such statements where they are made by young people under the age of 18;
- (4) the earlier statement must be in the form of a video-tape;
- (5) the statement must have been made "a reasonable time" after the alleged offence; and
- (6) the young person must adopt the contents of the video-tape while testifying.

Two of those elements, namely the form in which the statement is recorded, and the subsequent adoption of the statement by the child, are both consistent with the limited reform which, as we noted above,² some of our consultees were prepared to contemplate. We think, however, that all of the foregoing elements merit some further consideration.

4.55 So far as a restriction to certain sexual offences is concerned, we have earlier rejected such a restriction in relation to matters such as the use of closed circuit television and pre-trial depositions.³ Nor are we persuaded that such a restriction can be justified in relation to a limited admissibility of prior statements. If the justification for the restriction is that the recounting of the events surrounding a sexual offence may be particularly distasteful and difficult in court, our answer would be that the recounting of events surrounding some other offences may be equally distasteful and difficult. If, as we believe, any relaxation of existing rules should extend to those who have witnessed an offence as well as to those who are "complainants", a child might be required to give evidence regarding highly distasteful offences such as, for example, homicides or serious assaults. Moreover, if one of the purposes of a provision like the Canadian section 715.1 is to secure additional evidence which, by its near contemporaneity, is likely to be fuller and more accurate than evidence given in court, we can see no good reason why that advantage should be conferred in the trial of certain offences but denied in others.

4.56 If it were to be decided that any reform of the law should be limited so as to affect only child witnesses, we would have no difficulty with the restriction to persons

1. [1964] AC 964. In that case the child was not herself a competent witness by reason of her age.

2. Para 4.52.

3. See para 4.40 above.

under the age of 18, save only that in a Scottish context the upper age limit probably ought to be 16. However, we are not persuaded that any such restriction is necessary. Those of our consultees who favoured some limited reform of the existing law in respect of prior statements did so in relation to the generality of witnesses, and not just children. Our position is that, if prior statements are to become admissible as evidence of fact in certain circumstances, that should be so regardless of the age of the person who made the statement.¹

4.57 The restriction in the Canadian provision to a statement which has been video-taped causes us some difficulty. We accept, of course, that one of the principal objections to the admission of hearsay evidence² is that a statement may be garbled in the retelling, and that any evidence about its contents may, by the time that evidence comes to be given, be quite inaccurate in the sense that it does not correctly represent what was said on the earlier occasion. Indeed, that is why some of our consultees, as we noted above, were prepared to consider reform in this area only where the statement was in a form where its accuracy could be assured. We are not persuaded, however, that a video recording represents the only means of achieving such accuracy. An audio recording has *prima facie* the same claim to accuracy as a video recording (though it will not, of course, have the added advantage of showing the witness's facial expressions and general demeanour). Even a written and signed statement, or a signed letter, may be capable of being shown to be genuine and as accurate as a video recording.³ What all of the foregoing examples have in common is that, unlike purely oral statements which are subsequently recounted orally, they are all of a character which renders it likely that they accurately record what was said by the maker of the statement. If prior statements are to become admissible as evidence of fact in certain circumstances, we think that it would be unnecessarily restrictive to limit that reform to cases where the statements are in the form of a video recording, particularly since, as we have already noted, that might in practice limit the reform to statements made by children. We therefore conclude that reform should extend to all statements which have been recorded in a manner which appears likely to ensure that the record is accurate and complete.

4.58 There are some ancillary questions in relation to a prior statement, and they concern the form of the statement and the purpose for which the statement was made. In the first place, there are statements which take the form of precognitions. In both Discussion Paper No 75 and Discussion Paper No 77 we proposed that precognitions should be excluded from any reform of the law on prior statements, and that view was widely accepted by consultees. The point is, of course, that a precognition probably does not contain the witness's own words. In the circumstances we adhere to our previous position on that point.

4.59 A more difficult question concerns the purpose for which a statement was made. We have already noted that it is becoming increasingly common for children, who are thought to be the victims of abuse, to be interviewed by doctors, social workers, or others, and for any such interview to be video recorded. In general, however, the purpose of conducting and recording that interview is not to obtain a recorded statement which can subsequently be presented in court. Rather, the purpose is to avoid subjecting the child to a multiplicity of interviews, and to secure a single, recorded statement which can thereafter be shared by all the various agencies who have a continuing interest in the case—the police, medical and psychiatric services, social workers, and so on. Some of our consultees questioned whether a statement which had been obtained primarily for, say, therapeutic purposes should be capable of being used subsequently as evidence in criminal proceedings.

1. In practice, if a video recording were to be the only form in which a statement could be admitted, it might be rare for there to be a statement by an adult witness which would be in an acceptable form: but, see para 4.57 below.

2. A prior statement, even by a person who gives evidence at trial, is technically hearsay evidence in that it is evidence of what was said by a person outside the court room. Where the maker of the statement gives evidence, the other principal objection to the admission of hearsay, namely that the maker of the statement cannot be cross-examined, does not of course arise.

3. Some of our more influential consultees were prepared to entertain the admissibility of signed, written statements in this context.

4.60 In Canada it is apparently the practice in some cases for a social worker to interview a child specifically for the purpose of obtaining a video recorded statement which may later be used as evidence. That may be an appropriate course to follow in some instances, but it may not always be practicable or desirable. In our view it should not matter whether a video recorded, or otherwise recorded, statement was originally made for some purpose other than being used as evidence. Under the Civil Evidence (Scotland) Act 1988 statements taken from a child for therapeutic purposes may now be admitted in civil proceedings, and we can see no reason why they should not also be capable of being admitted in criminal proceedings.

4.61 The next element of note in the Canadian section 715.1 is that the statement must have been made within a reasonable time after the alleged offence. Upon one view this is a sensible provision. We have observed more than once in this Report that a statement made soon after an event is generally likely to be more accurate and more comprehensive than evidence given many months later; and, of course, one of the main objectives of reforming the law so as to admit prior statements in certain circumstances is to secure the advantages of accuracy and comprehensiveness at the time of the trial. It might, however, be argued that, while what we have just said may be sound in principle, a provision to the effect that a statement must have been made "within a reasonable time after the alleged offence" is vague and imprecise, and is likely to provoke endless arguments about what is or is not "a reasonable time". Does "reasonable" in this context simply mean "within a short time", or does it mean "within a time that was reasonable for the child (or, possibly, for others) in all the circumstances, even though that may not have been within a short time after the event"? The Canadian provision is also, we think, open to the criticism that, by requiring that the statement should have been made within a reasonable time *after the alleged offence*, it would appear to exclude statements which were made within a reasonable time after the alleged offence *was first reported*. Not infrequently cases of child abuse are disclosed a considerable time after they have taken place, and we think that it would be unfortunate if statements made thereafter were to be totally excluded.

4.62 In the whole circumstances we have come to the conclusion that this part of the Canadian provision should not be followed in Scotland. Given that, to be admissible, a prior statement should, as we have already suggested, be accurately and acceptably recorded, and given also that, as we shall shortly suggest, the witness should be required to adopt the contents of the earlier statement, we consider that a further requirement as to the time when the statement was made would be unnecessarily restrictive as well as being productive of dispute. It may be, of course, that the time when a particular prior statement was made will affect the weight that can be attached to it, but that will be a matter for the judge or jury to resolve in the circumstances of each case.

4.63 The final element of the Canadian provision which requires to be noted is the requirement that the prior statement must be adopted by the witness while testifying. As we have seen, this is something which is regarded as essential by those of our consultees who were prepared to contemplate some limited reform of the law in relation to the admissibility of prior statements.

4.64 We imagine that a simple requirement that a prior statement should be adopted by a witness is unlikely to give rise to difficulty where the witness is an adult or a fairly mature child. However, we doubt whether such terminology would be appropriate in respect of a statement made by a young child. A 4 year old, for example, is unlikely to have much idea of what is involved if a word like "adopt" is used. We therefore think that any statutory provision should use more general terms to provide that, for a statement to be admissible, the witness should indicate by appropriate means that the statement was made and that its contents are true. It is of course possible that in some instances a witness may be willing to adopt as true only part of a prior statement. In that event, our recommendation should apply to such part or parts of the prior statement as are so adopted.

4.65 Subject to the various qualifications which have been discussed in the preceding paragraphs we believe that the admissibility of a witness's prior statement or statements, as evidence of fact, would represent a valuable reform of the law. It would enable a trial court to consider relevant evidence which might not otherwise be available; it might go some way towards relieving a witness from having to recount in court all the details of a distressing or unpleasant experience; but at the same time, since such prior statements would be admissible only where the maker of the statement gave evidence, it would ensure that the witness could be subject to cross-examination not only in respect of evidence given by him at the trial but also in respect of anything contained in the prior statement.

4.66 In the circumstances, we recommend:

18. Where a witness gives evidence at a trial, or in the form of a pre-trial deposition, any prior statement made by that witness should be admissible as evidence of the facts stated in it provided that the following conditions are satisfied—

- (a) the statement should not be in the form of a precognition;
- (b) the statement should be in written form and signed by the witness, in the form of an audio recording or a video recording, or in some other permanent form from which it can reasonably be inferred that it accurately and completely records what was said by the witness on the previous occasion; and
- (c) the witness must, in the course of his or her evidence, indicate by appropriate means that the statement (or any part of the statement) was made and that its contents (or any part of its contents) are true. Where only part of the statement is adopted, this recommendation will apply to the part so adopted.

(Paragraphs 4.45 to 4.66; clause 8)

4.67 If effect were to be given to the foregoing recommendation, it would be for consideration whether a party seeking to have a prior statement admitted in evidence should give advance notice of his intention to do so. At the moment a prior statement can simply be introduced in evidence in the course of a trial (though only, of course, for the limited purpose for which such a statement is at present admissible). If, as we have suggested above, a prior statement must be embodied in some kind of permanent record, such as a video recording, in order to be admissible, then of course some advance notice will be given when that record is lodged as a production. In cases on indictment that production will have to be shown on a list of productions which is served on an accused, along with the indictment, at least 29 days prior to trial.¹ In summary cases there is normally no list of productions, but as a rule productions are lodged with the clerk of court at the commencement of the trial. We consider that these arrangements are likely to work satisfactorily in respect of prior statements and, as presently advised, we see no need to make provision for the giving of notice that a prior statement is to be introduced at trial. However, if experience were to show that such a procedure was desirable, provision for it could be made at a later stage by Act of Adjournal.

4.68 Before leaving the subject of prior statements there is one further topic which we should address. In the Discussion Paper we pointed out that in some instances a prior statement may have been elicited in response to questions, such as leading questions, which would have been disallowed had they been put to the witness in that form in court.² We suggested that a statement which would otherwise be admissible should not be rendered inadmissible simply because it had been made in response to leading questions, but we added that, in such a case, it would be for the judge or jury to take into account the way in which the statement had been obtained in determining what weight to attach to it. This, of course, is a situation which could arise where the statement was contained in a video recording of an interview: in such a case both the questions and the answers would be known to the court. Most of our consultees agreed with our views on this matter.

1. Criminal Procedure (Scotland) Act 1975, s 75.

2. Paras 5.77, 5.78.

4.69 In the Discussion Paper we did, however, suggest that a prior statement should be inadmissible where it had been obtained by means which were actually unlawful, such as unauthorised telephone tapping.¹ This was also agreed by most of our consultees. However, the requirement of adoption has some relevance in this connection. If a prior statement is adopted by its maker in evidence, notwithstanding that it was in fact unlawfully obtained, we can see no reason why it should not be admissible, provided of course that it satisfies the other requirements which we have recommended in paragraph 4.66 above. On this matter we do not consider that it is necessary to recommend any regulatory legislation.

4.70 We accordingly recommend:

- 19. A prior statement which is admissible by virtue of recommendation 18 should not be inadmissible solely on the ground that it was elicited in response to questions which were leading or otherwise of a character to which objection might have been taken had the questions been put to the witness in the course of a trial.**

(Paragraphs 4.68 to 4.70; clause 8(4))

1. Para 5.79.

Part V Miscellaneous matters

5.1 Apart from the main issues which have so far been addressed in this Report, there are several miscellaneous matters on which we also sought the views of consultees in the Discussion Paper. We deal with them in this Part of the Report.

A representative to protect a child's interests

5.2 On the analogy of practice in some parts of the United States, we considered in the Discussion Paper the possible appointment of a person to protect, and possibly represent, the interests of a child who is to be a witness in criminal proceedings.¹ The possible justification for such an appointment is that it would provide a measure of continuous support for the child right up to, and including, the proceedings in court, and would enable the child to be better prepared for the giving of evidence than might otherwise be the case. We also queried whether, if there were to be such an appointment, the role of "safeguarder" under the children's hearing system² could be enlarged for that purpose.

5.3 Our questions on those matters elicited a mixed response from consultees. While a majority agreed that it would be desirable to have someone to look after a child's interests both before and during the trial proceedings, some questioned the need or desirability of creating a new official appointment for this purpose, and suggested instead that social work departments should seek to provide this kind of service for children. So far as enlarging the role of safeguarders is concerned, some consultees suggested that this could create an undesirable tension between the new role which we were considering and the existing role given to safeguarders under the Social Work (Scotland) Act 1968.³ Conversely, another consultee proposed that, where a safeguarder had already been appointed in connection with children's hearing proceedings arising out of an incident which was also the subject of criminal proceedings, he should be entitled to look after the child's interests in those criminal proceedings also.

5.4 In the absence of clear support for a wholly new kind of official, we have decided to make no recommendation on this matter. However, it seems to us that, under existing arrangements, it may be possible for those concerned—prosecutors, social workers, safeguarders, and others—to consider and develop new and improved ways of protecting the interests of children who are to be witnesses, and we urge them to do so.

Expert witnesses

5.5 In some countries, such as Germany, expert witnesses are used to assist the courts in the assessment of credibility. In other countries, such as the United States, expert witnesses may be used for the more limited purpose of providing evidence on matters such as behavioural syndromes, indicating whether or not a particular pattern of behaviour is consistent with an experience which a victim claims to have undergone. Sometimes such evidence may be led by the prosecution to rebut a defence assertion that, for example, a child who had truly been sexually abused would never have behaved in a particular way thereafter.

5.6 In the Discussion Paper we gave no support to the use of expert witnesses for the first of the purposes mentioned above, but we sought the views of consultees on

1. Para 5.84 *et seq.*

2. See Social Work (Scotland) Act 1968, s 34A.

3. That role is to safeguard the interests of a child in children's hearing proceedings where there is, or may be, a conflict between the interests of the child and those of his parent: 1968 Act, s 34A(1)(c)(i).

the use of experts for the more limited purpose mentioned second above.¹ Almost all consultees agreed with us on the first matter. So far as the more limited use of expert witnesses is concerned, most consultees saw some potential advantage in such evidence, but doubted whether legislation on that matter was either necessary or desirable. We agree with that, and accordingly we make no recommendation on this matter.

Availability of new procedures and techniques

5.7 In the Discussion Paper we concluded that any new procedures or techniques for taking a child's evidence should be available in any kind of criminal proceeding in the High Court or the sheriff court, but not in the district court, and should be available in respect of any child under the age of 16.² We have already dealt with those issues elsewhere in the Report in connection with the various procedures and techniques which we are recommending, and we simply confirm now that we adhere to our previously expressed views. We should add, however, that our recommendations in relation to, for example, the admissibility of a witness's prior statements will of course be universally applicable.

Use of video recording in court

5.8 If the recommendations contained in this Report are implemented, there will be occasions when a video recording will have to be played in court in the course of a trial, and in that event there may be a question as to whether it should only be played once, or whether the whole, or part, of it may be played more than once. We sought the views of consultees on this matter.³ Most agreed with us that this should be a matter for the discretion of the court, and we therefore make no recommendation on this matter.

Shorthand recording of evidence contained in video recording

5.9 In the Discussion Paper we considered whether it should be necessary for the court shorthand writer to make a record of the contents of a video recording while it is being played in court, and we provisionally concluded that this should not be necessary.⁴ We did not consider the situation where evidence is given through the medium of a closed circuit television link since at that time we were against the use of such a procedure. We have now, of course, recommended in favour of the introduction of such a facility in Scotland, and accordingly the position of the shorthand writer must now be considered in that context also.

5.10 We have come to the conclusion that the practice should be different in the two cases. Where evidence is given live through the medium of closed circuit television it could, of course, be simultaneously video recorded. However, that might not be done; and, even where it was attempted, there could be no guarantee that the recording would function properly. By the time any defects or omissions were discovered it would be too late to obtain a record of the witness's evidence. Accordingly, we **recommend:**

- 20. Where a witness gives evidence through the medium of a live closed circuit television link, that evidence should be recorded by the court shorthand writer irrespective of whether or not the televised transmission is being simultaneously video recorded.**

(Paragraphs 5.9 to 5.10)

5.11 We think that the position of a pre-existing video recording is somewhat different. The condition of the recording will be known in advance and, if there are any gaps or defects, then of course the affected parts of the recording will simply not emerge as evidence. So far as the shorthand writer is concerned, we think that it might be difficult, if not impossible, for him to record what was being said on the video recording during the time that it is being played in court. Some parts of the recording might be indistinct and, while a shorthand writer can ask a witness to repeat an answer where evidence is being given live, that of course is impossible where the evidence is pre-recorded. Most of our consultees agreed with us about this. However, the Court of Session Judges made the important point that a transcript may be

1. Paras 5.87, 5.88.

2. Paras 5.89 to 5.91.

3. Discussion Paper, paras 5.94, 5.97.

4. Paras 5.95, 5.97.

required in the event of an appeal. We accept that, but we think that the answer will be to follow the practice which is, we believe, common when, as sometimes happens at present, an audio recording is to be used in evidence. In such cases a transcript is normally prepared in advance and either agreed by parties or proved at trial. We believe that a similar practice could be followed in relation to video recordings. We would simply add that, where there is both a video recording and a transcript, we think that both should be available to the Appeal Court if required. On occasions the visual image might provide a helpful addition to the spoken word, as apparently happened in a recent case which came before the Supreme Court of California.¹ In that case a police interrogation of the accused was video-taped and contained several self-incriminating statements. The accused contended that he had asserted his constitutional right to silence prior to making those statements, but the prosecution argued that, at the relevant point in the interrogation, the accused was merely voicing frustration and an unwillingness to continue to be interrogated by a particular police officer. It appears that the Supreme Court found a viewing of the tape to be of considerable assistance in determining the proper interpretation of the accused's spoken words.

5.12 We recommend:

21. **Where evidence is presented in court in the form of a video recording, it should not be necessary for the court shorthand writer to record what is said on that recording; but a separate transcript of the contents of the recording should be made and, if possible, agreed as accurate by all parties in the proceedings. In the event of an appeal, both the transcript and the video recording should be available for use by the Appeal Court.**

(Paragraphs 5.11 to 5.12)

Use of dolls 5.13 In the Discussion Paper we suggested that the use of "anatomically correct" dolls, as an aid to giving evidence on sexual matters, should be permissible whenever a child gives evidence; and we sought the views of consultees as to whether or not there should be legislation on this matter.² Most of our consultees agreed that such dolls could be a useful aid, particularly for young children, subject to the court having a discretion to regulate their use. On the question of possible legislation most consultees considered this to be unnecessary, though one of our overseas consultees drew our attention to the fact that legislation on this matter was found to be necessary in the State of New York in order to overcome judicial reluctance to permit the use of dolls. So far as Scotland is concerned, we are not persuaded that any legislation is required for the present, and accordingly we make no recommendation on this matter. This is, however, something which may require reconsideration in the light of further experience.

Use of special techniques in civil and other non-criminal proceedings 5.14 In the Discussion Paper we suggested that, if special techniques to enable a child to give evidence were to be introduced for criminal proceedings, there might be advantage in making them available also in civil proceedings and in children's hearing cases coming before the sheriff.³ In an action for divorce, for example, a child might be called as a witness and be required to testify on matters which were unpleasant and distressing; and, in a children's hearing case requiring proof before a sheriff, a child might well have to give evidence on matters which were, or at least might be, the subject of separate criminal proceedings.

5.15 Almost all of our consultees agreed with our views on this. In fact, however, much of what we are recommending in this Report is now permissible in civil proceedings, by virtue of the reforms introduced by the Civil Evidence (Scotland) Act 1988. Thus, for example, a prior statement in any form by a witness in civil proceedings is admissible as evidence of fact, and indeed any hearsay statement is now admissible in civil proceedings. However, we are of the view that it may be of added advantage in such proceedings to be able to take a child's evidence by means of a live closed

1. *People v Jennings*, Criminal Law Reporter, 10/12/88, 44(2) 2021-2022.

2. Paras 5.96, 5.97.

3. Paras 5.98, 5.99.

circuit television link, or by means of what, in a criminal context, we have called a pre-trial deposition.¹ We accordingly **recommend:**

22. Provision should be made to enable a child to give evidence by means of a live closed circuit television link or by means of a pre-trial deposition (appropriately adapted for the purpose of civil proceedings) in any case where the child is a witness in civil proceedings, or in a proof before the sheriff under section 42 of the Social Work (Scotland) Act 1968.

(Paragraphs 5.14 to 5.15; clauses 5 and 6)

Potentially vulnerable witnesses other than children

5.16 In Part VI of the Discussion Paper we invited comment on the possibility of extending the availability of new techniques for taking a witness's evidence to witnesses other than children. In particular we had in mind adult witnesses who are elderly, who are mentally handicapped, or who are the alleged victims of serious sexual offences such as rape.

5.17 The foregoing suggestion met with the approval of practically all of our consultees, and we therefore consider that effect should be given to it. However, it is desirable to consider in rather more detail how, and to what extent, this should be done.

5.18 For this purpose the relevant techniques are pre-trial depositions, closed circuit television, and the use of screens to shield the witness from a sight of the accused. Assuming that the grounds for authorising the use of any of those were to be roughly the same in the case of adult witnesses as in the case of children,² we consider that any one of them might be beneficial in some cases. An adult complainer in a case of incest might be willing to give evidence in court, but might do so more confidently and with less distress if shielded from the accused by a screen. An elderly and timid witness might have a great fear of appearing in court, but be able to give evidence by means of a pre-trial deposition. And a complainer in a case of rape might be quite unable to give evidence in court, but be able to do so through the medium of closed circuit television. We believe that all three procedures could have a part to play in ensuring, first, that evidence is actually made available, and second, that such evidence is given in circumstances which do not cause unnecessary distress or anxiety to the witness concerned. We therefore believe that all three procedures should be available for adult witnesses as well as for children.

5.19 The next question is whether, in that event, such procedures should be restricted only to certain categories of adult witnesses or only to those who are witnesses in respect of specified offences. We have already rejected any restriction in the case of child witnesses,³ and we consider that a similar degree of flexibility should be permitted in the case of adult witnesses. No doubt courts will in practice be slow to authorise the use of special procedures in the case of adult witnesses, and will do so only where the circumstances clearly require them both in the interests of justice and in the interests of the witnesses themselves. Such caution will, we think, impose its own restrictions, but will do so more flexibly and more appropriately than would be the case if somewhat arbitrary restrictions were to be imposed by statute.

5.20 There remains the question whether, as we have recommended in the case of children,⁴ there should be some statutory guidance as to the grounds or considerations which might persuade a court to authorise a special procedure for taking evidence. We think that there should be, but the factors which we recommended in the case of children will require some modification for adult witnesses.

5.21 In the case of children we recommended that a court should authorise the use of a special procedure on cause shown, taking into account matters such as: the age

1. At present, evidence may be taken on commission in civil proceedings, but the grounds for doing so are somewhat narrower than those we recommend in respect of pre-trial depositions, and it is not currently the practice for evidence on commission to be video recorded.

2. We consider those grounds in more detail below.

3. See para 4.40 above.

4. Para 4.44 above.

and maturity of the child; the nature of the offence; the nature of the evidence which the child is likely to be called on to give; the relationship, if any, between the child and the accused; the possible effect on the child if required to give evidence in open court; and the likelihood that the child may be better able to give evidence if not required to do so in open court. Of those factors “the age and maturity of the child” is not appropriate for adult witnesses, as so expressed. We think that age may certainly be a relevant factor in that special measures may be required for a witness by reason of advanced years; but we would suggest that “maturity” should be replaced by a reference to matters such as physical condition, and mental capacity.

5.22 On this matter we accordingly recommend:

23. Provision should be made to entitle a court to authorise the use of a pre-trial deposition, a screen, or a live closed circuit television link as a means of taking the evidence of an adult witness.

24. The court should be entitled to grant authority for that on cause shown, taking into account matters such as: the age of the witness; the physical condition and mental capacity of the witness; the nature of the offence; the nature of the evidence which the witness is likely to be called on to give; the relationship, if any, between the witness and the accused; the possible effect on the witness if required to give evidence in open court; and the likelihood that the witness may be better able to give evidence if not required to do so in open court.

(Paragraphs 5.16 to 5.22; clause 7)

Part VI Summary of recommendations

(Those recommendations to which effect is given in the annexed draft Bill are marked with an asterisk)

Use of discretion

1. The following matters should continue to be at the discretion of the court—
 - (a) removal of wigs and gowns by the judge, counsel and solicitors while a child is giving evidence;
 - (b) positioning a child witness at a table in the well of the court along with the judge, counsel and solicitors, rather than requiring the child to give evidence from the witness box;
 - (c) permitting a relative or other supporting adult to sit alongside the child while he or she is giving evidence;
 - (d) clearing the court of persons not directly involved in the trial under the powers conferred by sections 166 and 362 of the Criminal Procedure (Scotland) Act 1975.

(Paragraphs 2.3 to 2.6; 2.12 to 2.14)
2. The Lord Justice General should be invited to issue to all judges a memorandum of guidance as to the exercise of discretion in relation to the foregoing matters.

(Paragraphs 2.5 to 2.6)
3. Whenever it is practicable to do so, a trial involving a witness who is a child should be allocated to a court room which is as non-intimidating as possible.

(Paragraph 2.9)
4. Existing arrangements and procedures to prepare a child for the experience of giving evidence in court should be encouraged and extended.

(Paragraphs 2.10 to 2.11)
5. Scottish Courts Administration should take all practicable steps to secure that children, and indeed other witnesses, can be heard in court when speaking in a normal tone of voice. To this end consideration should be given to installing effective sound amplification equipment in those court rooms which are not at present acoustically effective and which are not scheduled for total refurbishment in the near future.

(Paragraphs 2.15 to 2.18)
6.
 - (a) So far as practicable, children attending court as witnesses should be accommodated in waiting rooms from which all adults are excluded other than those accompanying the children concerned.
 - (b) On no account should a child witness be required to share the same waiting room as the accused or any of his witnesses.
 - (c) Scottish Courts Administration should take immediate steps to provide in every court house a supply of suitable furniture, toys, books and games for use by children who are waiting in waiting rooms to give evidence in court.

(Paragraphs 2.19 to 2.20)

Corroboration

7. In cases of child abuse and other cases in which children are witnesses there should be no exception to the general rule of Scots law whereby all the material facts justifying a conviction must be proved by corroborated evidence.
(Paragraphs 3.1 to 3.3)
8. The rule of evidence known as the *Moorov* rule should not be widened by statute, nor should any attempt be made to give it statutory expression.
(Paragraph 3.4)

Identification of an accused

- *9. (a) In any case, whether under solemn or summary procedure, where a report of an identification parade or of some other recognised identification procedure has been lodged as a production by the prosecutor, it should be presumed, subject to (b) below, that the person named in the report as having been identified by a witness also named in the report is the person of the same name in the complaint or indictment and answering the charge in court.
 - (b) The foregoing presumption should arise only where (i) the prosecutor has, not less than 14 days before the trial, served on the accused a copy of the report and a notice of intention to rely on the presumption, and (ii) the accused has not given notice of an intention to challenge the facts stated in the report by at least six days before the trial, or by such later time before the trial as the court may in special circumstances allow.
(Paragraphs 3.7 to 3.20; clause 9)

Recommended options for new procedures and new rules of evidence

Pre-trial deposition

- *10. (a) Where a child has been cited to give evidence in a criminal trial, whether under solemn or summary procedure, it should be competent, as an alternative to adducing the child as a witness in court, to take the evidence of that child on commission prior to the date of the trial or, exceptionally, during the course of the trial.
 - (b) The taking of evidence on commission should, so far as practicable, take place in a room which is congenial and non-threatening so that the child may feel at ease during the proceedings.
 - (c) Whenever possible the commission proceedings should be presided over by the judge who is to preside at the subsequent trial, which failing by a commissioner acting on his behalf.
 - (d) The commission proceedings should normally, but not necessarily, take place as short a time before the date of the trial as possible.
 - (e) The commission proceedings should be video recorded so that the video recording can be played at the trial in place of live evidence by the child.
 - (f) The accused should not, except with the permission of the commissioner, be present in the room where the commission proceedings are taking place, but he should be entitled to watch and hear those proceedings either by being behind a one-way screen or by the use of a closed circuit television link to a separate room. In either event he should be able to communicate

with his counsel or solicitor by means of a microphone and ear-piece speaker.

(Paragraphs 4.10 to 4.16; clause 1)

Use of screens

- *11. (1) Provision should be made to regulate the use of screens as a means of keeping an accused out of sight of a child who is giving evidence in court.
- (2) It should be provided—
- (a) Where any child under the age of 16 is a witness in a trial, whether under solemn or summary procedure, the court may, on an application by the prosecutor, authorise the use of screens to conceal the accused from the child's sight notwithstanding that such use of screens is objected to by or on behalf of the accused.
- (b) Where the use of screens is permitted it should be ensured by some appropriate means that the accused is able to watch the witness and to observe his or her demeanour while he or she is giving evidence.
- (Paragraphs 4.17 to 4.27; clause 2)

Closed circuit television

- *12. Provision should be made to enable courts in Scotland to authorise the use of a live closed circuit television link to enable children to give evidence from outside the court room.
- (Paragraphs 4.28 to 4.33; clause 3)
- *13. The courts which should be entitled to authorise the use of a live closed circuit television link to enable children to give evidence from outside the court room should be the High Court and the sheriff court.
- (Paragraph 4.34; clause 11)
- *14. Where an offence is alleged to have been committed in one district in a sheriffdom, it should be competent to try that offence, under either solemn or summary procedure, in a sheriff court in any other district in that sheriffdom.
- (Paragraphs 4.35 to 4.37; clause 10)

Applicability of new procedures, and grounds for use

- *15. A court should authorise the use of a pre-trial deposition procedure, a screen, or a live closed circuit television link only on cause shown, taking into account matters such as: the age and maturity of the child; the nature of the offence; the nature of the evidence which the child is likely to be called on to give; the relationship, if any, between the child and the accused; the possible effect on the child if required to give evidence in open court; and the likelihood that the child may be better able to give evidence if not required to do so in open court.
- (Paragraphs 4.38 to 4.42; clause 4)
- *16. A court should be entitled to authorise the use of pre-trial deposition procedure, closed circuit television, or screens in respect of any child under the age of 16 who is cited as a witness at any trial in the High Court or at any trial, whether under solemn or summary procedure, in the sheriff court.
- (Paragraph 4.40; clause 11)
17. Provision should be made by Act of Adjournal to regulate the procedure

for making application to use pre-trial deposition procedure, closed circuit television, or screens in relation to the evidence of a child.

(Paragraph 4.43)

Changes in the rules of evidence: prior statements

*18. Where a witness gives evidence at a trial, or in the form of a pre-trial deposition, any prior statement made by that witness should be admissible as evidence of the facts stated in it provided that the following conditions are satisfied—

- (a) the statement should not be in the form of a precognition;
- (b) the statement should be in written form and signed by the witness, in the form of an audio recording or a video recording, or in some other permanent form from which it can reasonably be inferred that it accurately and completely records what was said by the witness on the previous occasion; and
- (c) the witness must, in the course of his or her evidence, indicate by appropriate means that the statement (or any part of the statement) was made and that its contents (or any part of its contents) are true. Where only part of the statement is adopted, this recommendation will apply to the part so adopted.

(Paragraphs 4.45 to 4.66; clause 8)

19. A prior statement which is admissible by virtue of recommendation 18 should not be inadmissible solely on the ground that it was elicited in response to questions which were leading or otherwise of a character to which objection might have been taken had the questions been put to the witness in the course of a trial.

(Paragraphs 4.68 to 4.70; clause 8(4))

Shorthand recording of evidence contained in video recording

20. Where a witness gives evidence through the medium of a live closed circuit television link, that evidence should be recorded by the court shorthand writer irrespective of whether or not the televised transmission is being simultaneously video recorded.

(Paragraphs 5.9 to 5.10)

21. Where evidence is presented in court in the form of a video recording, it should not be necessary for the court shorthand writer to record what is said on that recording; but a separate transcript of the contents of the recording should be made and, if possible, agreed as accurate by all parties in the proceedings. In the event of an appeal, both the transcript and the video recording should be available for use by the Appeal Court.

(Paragraphs 5.11 to 5.12)

Use of special techniques in civil and other non-criminal proceedings

*22. Provision should be made to enable a child to give evidence by means of a live closed circuit television link or by means of a pre-trial deposition (appropriately adapted for the purpose of civil proceedings) in any case where the child is a

witness in civil proceedings, or in a proof before the sheriff under section 42 of the Social Work (Scotland) Act 1968.

(Paragraphs 5.14 to 5.15; clauses 5 and 6)

Potentially vulnerable witnesses other than children

*23. Provision should be made to entitle a court to authorise the use of a pre-trial deposition, a screen, or a live closed circuit television link as a means of taking the evidence of an adult witness.

*24. The court should be entitled to grant authority for that on cause shown, taking into account matters such as: the age of the witness; the physical condition and mental capacity of the witness; the nature of the offence; the nature of the evidence which the witness is likely to be called on to give; the relationship, if any, between the witness and the accused; the possible effect on the witness if required to give evidence in open court; and the likelihood that the witness may be better able to give evidence if not required to do so in open court.

(Paragraphs 5.16 to 5.22; clause 7)

Appendix A

EVIDENCE (CHILDREN AND OTHER WITNESSES) (SCOTLAND) BILL

ARRANGEMENT OF CLAUSES

Clause

1. Evidence of children on commission in criminal proceedings.
2. Use of screens in taking evidence of children in criminal proceedings.
3. Evidence of children through television link in criminal proceedings.
4. Circumstances in which procedure under s 1, 2 or 3 may be authorised.
5. Evidence of children in civil proceedings.
6. Applications under s 42(2) of Social Work (Scotland) Act 1968.
7. Evidence of other vulnerable witnesses in criminal proceedings.
8. Admissibility of prior statements of witnesses.
9. Identification of accused.
10. Sheriff court jurisdiction.
11. Interpretation.
12. Short title, commencement and extent.

DRAFT
OF A
BILL
TO

A.D. 1989.

Make new provision for Scotland with regard to the giving of evidence by children and other vulnerable witnesses, the admissibility of prior statements of witnesses, the identification of accused persons and the criminal jurisdiction of sheriffs; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Evidence (Children and Other Witnesses) (Scotland) Bill

Evidence of children on commission in criminal proceedings.

1.—(1) Notwithstanding section 32 of the 1980 Act and subject to section 4 of this Act, where a child has been cited to give evidence in a trial, whether under solemn or summary procedure, the court may, on an application being made to it at an appropriate time, appoint a commissioner to take the evidence of the child.

(2) The proceedings before a commissioner under this section shall be recorded by video recorder.

(3) The accused shall not be present in the room where the proceedings under this section are taking place except with the leave of the commissioner, but the accused, if not present, shall be entitled to watch and hear those proceedings by such other means as seem suitable to the commissioner.

(4) In subsection (1) above “at an appropriate time” means—

(a) in relation to solemn proceedings, at any time before the oath is administered to the jury;

(b) in relation to summary proceedings, at any time before the first witness is sworn, or

(c) in exceptional circumstances, in relation to either solemn or summary proceedings, during the course of the trial.

Use of screens in taking evidence of children in criminal proceedings.

2.—(1) Subject to section 4 of this Act, where a child has been cited to give evidence in a trial, whether under solemn or summary procedure, the court may, on an application being made to it, authorise the use of a screen to conceal the accused from the sight of the child, notwithstanding that such use of a screen is objected to by or on behalf of the accused.

(2) Where a screen is used in pursuance of this section, arrangements shall be made to ensure that the accused is able to watch and hear the child while the child is giving evidence.

Evidence of children through television link in criminal proceedings.

3. Subject to section 4 of this Act, where a child has been cited to give evidence in a trial, whether under solemn or summary procedure, the court may, on an application being made to it, authorise the giving of evidence by the child by means of a live television link.

Circumstances in which procedure under s 1, 2 or 3 may be authorised.

4.—(1) The court may grant an application under section 1, 2 or 3 of this Act only on cause shown having regard in particular to—

(a) the possible effect on the child if required to give evidence in open court; and

(b) whether it is likely that the child would be better able to give evidence if not required to do so in open court.

(2) In having regard to the matters referred to in paragraphs (a) and (b) of subsection (1) above, the court may take into account, where appropriate, any of the following—

(a) the age and maturity of the child;

(b) the nature of the alleged offence;

(c) the nature of the evidence which the child is likely to be called on to give; and

(d) the relationship, if any, between the child and the accused.

EXPLANATORY NOTES

Clause 1

This clause gives effect to recommendation 10, and allows a court to authorise the taking of a child's evidence on commission with the proceedings being video recorded for subsequent replay at trial.

Subsection (1)

Since section 32 of the 1980 Act already makes limited provision for the taking of evidence on commission in criminal proceedings, this subsection makes clear that the new procedure in clause 2 is supplementary to that provision.

Subsection (3)

This implements recommendation 10(f). In most instances it would defeat one of the main purposes of the new procedure if the accused were to be present, and visible to the child, while evidence was being taken on commission. However, in the interests of justice the accused should be enabled by some suitable means to watch and hear the proceedings while they are taking place.

Clause 2

This clause gives effect to recommendation 11, and provides statutory authority for the practice of using a screen to shield a child from an accused person while the child is giving evidence in court.

Clause 3

This clause gives effect to recommendation 12 and permits a court to authorise the giving of evidence by a child by means of a live television link.

Clause 4

This clause gives effect to recommendation 15 and makes clear that the procedures provided for in clauses 1, 2 and 3 may be authorised only on cause shown. A non-exhaustive list of matters to which the court is to have regard when considering whether or not cause has been shown is set out in subsections (1) and (2).

Evidence (Children and Other Witnesses) (Scotland) Bill

Evidence of
children in civil
proceedings.

5.—(1) Subject to subsections (2) and (3) below, where a child has been cited to give evidence in civil proceedings, the court may—

(a) on an application being made to it at an appropriate time, appoint a commissioner to take the evidence of the child; or

(b) on an application being made to it, authorise the giving of evidence by the child by means of a live television link.

(2) The court may grant an application under paragraph (a) or (b) of subsection (1) above only on cause shown having regard in particular to—

(a) the possible effect on the child if required to give evidence in open court; and

(b) whether it is likely that the child would be better able to give evidence if not required to do so in open court.

(3) In having regard to the matters referred to in paragraphs (a) and (b) of subsection (2) above, the court may take into account, where appropriate, any of the following—

(a) the age and maturity of the child;

(b) the nature of the matters averred in the civil proceedings;

(c) the nature of the evidence which the child is likely to be called on to give; and

(d) the relationship, if any, between the child and any party to the civil proceedings.

(4) The proceedings before a commissioner under subsection (1)(a) above shall be recorded by video recorder.

(5) No party to the civil proceedings shall be present in the room where the proceedings before the commissioner are taking place except with the leave of the commissioner, but a party excluded from such a room under this subsection shall be entitled to watch and hear those proceedings by such other means as seem suitable to the commissioner.

(6) In subsection (1)(a) above—

“at an appropriate time” means—

(i) at any time before the first witness is sworn; or

(ii) in exceptional circumstances, during the course of the proof or jury trial (as the case may be);

“court” means the Court of Session or the sheriff.

EXPLANATORY NOTES

Clause 5

This clause gives effect in part to recommendation 22 and, in effect, extends to civil proceedings (subject to appropriate modifications) the procedures introduced for criminal proceedings by clauses 1 and 3.

Evidence (Children and Other Witnesses) (Scotland) Bill

Applications under s 42(2) of Social Work (Scotland) Act 1968.

6. After section 42 of the Social Work (Scotland) Act 1968 there shall be inserted the following section—

Evidence of children in relation to applications under s 42(2).

42A.—(1) Subject to subsections (2) and (3) below, where a child under the age of 16 years has been cited to give evidence at a hearing in chambers of an application under section 42(2) of this Act, the sheriff may—

- (a) on an application being made to him at an appropriate time, appoint a commissioner to take the evidence of the child; or
- (b) on an application being made to him, authorise the giving of evidence by the child by means of a live television link.

(2) The sheriff may grant an application under paragraph (a) or (b) of subsection (1) above only on cause shown having regard in particular to—

- (a) the possible effect on the child if required to give evidence in chambers; and
- (b) whether it is likely that the child would be better able to give evidence if not required to do so in chambers.

(3) In having regard to the matters referred to in paragraphs (a) and (b) of subsection (2) above, the court may take into account, where appropriate, any of the following—

- (a) the age and maturity of the child;
- (b) the nature of the grounds of referral;
- (c) the nature of the evidence which the child is likely to be called on to give; and
- (d) the relationship, if any, between the child and any person named or referred to in any ground for the referral of the case.

(4) The proceedings before a commissioner under subsection (1)(a) above shall be recorded by video recorder.

(5) If the commissioner considers that the presence of any person in the room where the proceedings before him are taking place might inhibit a child in the giving of evidence before him, he may exclude that person from the room while such evidence is being given; but a person excluded under this subsection shall be entitled to watch and hear those proceedings by such other means as seem suitable to the commissioner.

(6) In subsection (1)(a) above “at an appropriate time” in relation to the hearing of an application under section 42(2) of this Act means—

- (a) at any time before the first witness is sworn; or
- (b) in exceptional circumstances, during the course of the hearing.”.

Evidence of other vulnerable witnesses in criminal proceedings.

7. Sections 1 to 4 of this Act shall apply in relation to a person aged 16 years or more as they apply in relation to a child but as if for paragraph (a) of section 4(2) there were substituted the following paragraphs—

- “(a) the age of the person;
- (aa) the physical condition and mental capacity of the person;”.

EXPLANATORY NOTES

Clause 6

This clause gives effect to the remainder of recommendation 22 and extends to applications under section 42 of the Social Work (Scotland) Act 1968 (subject to appropriate modifications) the procedures introduced for criminal proceedings by clauses 1 and 3.

Clause 7

This clause gives effect to recommendations 23 and 24 and, with some modifications, extends to vulnerable adult witnesses the provisions of clauses 1 to 4.

Evidence (Children and Other Witnesses) (Scotland) Bill

Admissibility of
prior statements
of witnesses.

8.—(1) Subject to the following provisions of this section, where a witness gives evidence at a trial of an offence, whether under solemn or summary procedure, or before a commissioner under section 1 of this Act, any prior statement made by the witness shall be admissible as evidence of the facts stated in it.

(2) A prior statement shall not be admissible as mentioned in subsection (1) above unless—

(a) the statement is—

- (i) in writing and signed by the witness;
- (ii) in the form of an audio or a video recording; or
- (iii) in some other permanent form from which it can reasonably be inferred that it accurately and completely records what was said by the witness when the statement was made;

(b) the witness, in the course of giving evidence, indicates by appropriate means that the statement was made by him and that its contents are true.

(3) A prior statement made in the form of a precognition shall not be admissible as aforesaid.

(4) A prior statement which would otherwise be admissible as mentioned in subsection (1) above shall not be rendered inadmissible by reason that it was made in response to a question which was leading or otherwise of a character to which objection might have been taken if the question had been put to the witness in the course of a trial.

(5) This section applies in relation to a part of a prior statement as it applies in relation to the whole of a prior statement.

(6) This section is without prejudice to the operation of sections 147 and 349 of the 1975 Act.

Identification of
accused.

9. section 26 of the 1980 Act (routine evidence) after subsection (5) there shall be inserted the following subsections—

“(5A) Where in a trial, whether under solemn or summary procedure, a report of an identification parade or of other identification procedure is lodged as a production by the prosecutor, it shall be presumed, subject to subsection (5B) below, that the person named in the report as having been identified by a witness who is also specified in the report is the person of the same name who appears in answer to the indictment or complaint.

(5B) The presumption under subsection (5A) above shall arise only if—

- (a) the prosecutor has, not less than 14 days before the trial, served on the accused a copy of the report and a notice that he intends to rely on the presumption; and
- (b) the accused, not less than 6 days before the trial, or by such later time before the trial as the court may in special circumstances allow, has not served notice on the prosecutor that he intends to challenge the facts stated in the report.”.

EXPLANATORY NOTES

Clause 8

This clause gives effect to recommendations 18 and 19. Subject to certain safeguards a prior statement by a witness may be used at a trial or when evidence is being given on commission as evidence of the facts stated in it. It will remain the law that a prior statement may not be used for that purpose where the witness does not give evidence.

Clause 9

This clause gives effect to recommendation 9, and introduces a procedure which may make it unnecessary for a witness to identify an accused in court.

Evidence (Children and Other Witnesses) (Scotland) Bill

Sheriff court
jurisdiction.

10.—(1) At the end of section 3 of the 1975 Act there shall be added the following subsection—

“(4) Where an offence is alleged to have been committed in one district in a sheriffdom, it shall be competent to try that offence in a sheriff court in any other district in that sheriffdom.”.

(2) At the end of section 288 of the 1975 Act there shall be added the following subsection—

“(5) Where an offence is alleged to have been committed in one district in a sheriffdom, it shall be competent to try that offence in a sheriff court in any other district in that sheriffdom.”.

Interpretation.

11. In this Act—

“the 1975 Act” means the Criminal Procedure (Scotland) Act 1975;

“the 1980 Act” means the Criminal Justice (Scotland) Act 1980;

“child” means a person under the age of 16 years;

“court” means, except in section 5, the High Court of Justiciary or the sheriff.

Short title,
commencement
and extent.

12.—(1) This Act may be cited as the Evidence (Children and Other Witnesses) (Scotland) Act 1989.

(2) This Act shall come into force on such date as the Secretary of State may appoint by order made by statutory instrument; and different dates may be so appointed for different provisions.

(3) This Act extends to Scotland only.

EXPLANATORY NOTES

Clause 10

This clause gives effect to recommendation 14. It is required in order to avoid any jurisdictional problems which might arise were a facility such as closed circuit television to be available only in selected courts within a sheriffdom.

Clause 11

In this clause the definitions of "child" and "court" give effect to recommendations 13 and 16.

Clause 12

Subsection (2) of this clause envisages that, since time may be required to supply courts with certain equipment such as closed circuit television, it may be necessary to appoint different dates for the commencement of different provisions in the Act.

Appendix B

List of those who submitted written comments on Discussion Paper No 75.

(Note: in the case of some of the organisations listed below the views which were expressed were those of individuals, or groups of individuals, within the organisation in question, and were not necessarily the views of the organisation itself.)

Association of Chief Police Officers (Scotland)
Association of Directors of Social Work
Association of Scottish Police Superintendents
Ann Black
British Association for the Study and Prevention of Child Abuse and Neglect
British Federation of University Women
Children's Panel Chairmen's Group
Convention of Scottish Local Authorities
Court of Session Judges, Working Party
Crown Office
Edinburgh Family Service Unit
Faculty of Advocates
Judge Marjory D Fields
Glasgow College, Department of Psychology
Sheriff G H Gordon
Law Society of Scotland
Jenny McEwan
Mr A D Miller
Rosemary Milne
Kathleen Murray
Mrs Alison Newman
Dr Rosemary Pattenden
Procurator Fiscal Society
Royal Scottish Society for the Prevention of Cruelty to Children
Scottish Child Law Centre
Scottish Courts Administration
Scottish Law Agents Society
Scottish Legal Action Group
Scottish Police Federation
Scottish Rape Crisis Centres
Scottish Women's Aid
Sheriff A V Sheehan
Sheriffs' Association
Society of Writers to HM Signet
J R Spencer
Amanda Tarrant
University of Aberdeen, Law Faculty
University of Edinburgh, Sociology Department
Dr Norman W Wallace
George A Watt
Dr Sula Wolff