



Department of  
**Justice**  
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**Achieving Best Evidence in Criminal Proceedings:  
Guidance on Interviewing Victims and Witnesses,  
Using Special Measures and Provision of Pre-Trial Therapy**

**Consultation on Best Practice Guidance  
for Practitioners**

**July 2010**



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## **Ministerial foreword**

I am pleased to publish for consultation these proposals for achieving best evidence in criminal proceedings. In doing so, I would like to thank all those involved in the development of the guidance for their valuable contribution.

Drawing on experience locally and elsewhere, the document describes best practice for practitioners on effective interviewing techniques when working with vulnerable or intimidated witnesses, including victims, and how to support these witnesses before and during their court appearance, especially through the provision of special measures. The document also contains best practice guidance on the provision of therapy ahead of a trial so that vulnerable and intimidated witnesses should not be denied any emotional support and counselling they need before and during the trial.

In order to make justice accessible to **all**, we must overcome barriers which may prevent that. By providing best practice guidance for practitioners who work with vulnerable and intimidated witnesses, and a related training programme, we can take a significant step in achieving that vision.

I welcome all responses to the consultation, in particular from anyone who has been a vulnerable or intimidated witness and from those who work with these witnesses, whether in the statutory, community or voluntary sector. I very much hope that coming out of this consultation will be an indispensable document for practitioners, which will be used in order to assist vulnerable and intimidated witnesses during their engagement with the criminal justice process and beyond, to not only give their best evidence in criminal proceedings but to help them in their journey of recovery.

**David Ford**  
**Justice Minister**

## **Introduction**

The Department of Justice (DOJ), together with its statutory and voluntary partners represented on the Victim and Witness Task Force (VWTF), is consulting on revised guidance for practitioners - for example, police officers, social care workers, legal representatives and therapists - on interviewing victims and witnesses, using special measures and the provision of pre-trial therapy in order to achieve best evidence in criminal proceedings.

The VWTF is a sub-group of the Criminal Justice Board for Northern Ireland. It is chaired by the DOJ and is made up of representatives from the Police Service of Northern Ireland (PSNI), Public Prosecution Service (PPS), Northern Ireland Courts and Tribunals Service (NICTS), Northern Ireland Prison Service (NIPS), Probation Board for Northern Ireland (PBNI), Youth Justice Agency (YJA), Victim Support Northern Ireland (VSNI) and the NSPCC.

## **Background**

In 2002 the Home Office produced guidance, Achieving Best Evidence (ABE), to assist and support practitioners on the application of special measures, which were provided for in the Youth Justice and Criminal Justice Act 1999. In 2003 a Northern Ireland adaptation of ABE was produced (this can be viewed at [www.nio.gov.uk/achieving\\_best\\_evidence\\_in\\_criminal\\_proceedings\\_ni\\_guidance\\_for\\_vulnerable\\_and\\_intimidated\\_witnesses.pdf](http://www.nio.gov.uk/achieving_best_evidence_in_criminal_proceedings_ni_guidance_for_vulnerable_and_intimidated_witnesses.pdf)). NI's ABE set out procedures to be followed by police and their partners in social services in planning and conducting video recorded interviews of vulnerable and intimidated witnesses. However, unlike the GB version, NI's ABE did not include detailed guidance on using special measures, chapters on procedures to be followed for witness support and preparation ahead of proceedings and on the day of trial, and related appendices. Pre-trial therapy guidance to assist practitioners in supporting adult and child witnesses was also not produced.

## **Explanatory note on special measures**

Special measures are statutory provisions which were introduced to assist vulnerable and intimidated witnesses to give their best possible evidence in criminal proceedings. Special measures provisions were enacted in England and Wales in the Youth Justice and Criminal Evidence Act 1999 and replicated in NI in the Criminal Evidence (NI) Order 1999 (“the 1999 Order”). A list of special measures provisions, together with a brief synopsis of the eligibility criteria, is attached at **Annex A**. The majority of special measures in the 1999 Order have been made available to eligible witnesses across all court tiers.

In 2005, special measures were further extended, by way of Article 6 of the Criminal Justice (NI) Order 2005, to assist those vulnerable and intimidated witnesses giving evidence in anti-social behaviour proceedings (civil cases).

More recently, provision has been made to extend the use of the live link provision in the 1999 Order to assist vulnerable defendants in certain cases. This provision was commenced in February 2009.

The special measures provisions were the subject of a recent evaluation exercise. Resulting from that, a number of amendments to the 1999 Order are planned by way of the proposed Justice Bill. These are also set out in **Annex A**.

Before ABE is printed, we will make sure that it is updated to reflect the most up to date legislative position.

## **The revised guidance**

Given the missing chapters in NI’s ABE, it was decided that it should be updated to include the additional guidance. The VWTF agreed to take forward this work and included it as an action in its work programme. A sub-group of the VWTF was established to draft the guidance (membership at **Annex B**). It was chaired by an Assistant Director of the NSPCC and members included representatives from the DOJ, PSNI, PPS, NICTS and VSNI, as well as officials from the Northern and South-Eastern Health and Social Care Trusts.

The guidance will apply to both prosecution and defence witnesses. Further, the guidance provided in ABE will be advisory.

The guidance in the new document is grouped into eight chapters:

- Chapter 1 provides a general introduction to the 1999 Order as it relates to interviewing, safeguarding and supporting witnesses. Background material is provided to give a general orientation to those who need to be familiar with the intentions and provisions of Part II of the Order;
- Chapter 2 gives advice and guidance on how to prepare for and how to conduct investigative interviews with children. It covers the legal knowledge necessary to carry out such interviews in a manner satisfactory to the courts, the requirements for the video recording of such interviews, and advice on their conduct, including the style, variety and pace of questioning;
- Chapter 3 contains advice and guidance on how to prepare for and how to conduct investigative interviews with vulnerable adult witnesses. Again, the legal position as regard to these witnesses is outlined and advice given on how such witnesses may be most effectively interviewed to obtain best evidence. Specific guidance is provided on interviewing witnesses with sensory impairments, learning disabilities and mental ill health;
- Chapter 4 provides advice and guidance on how to prepare for and how to conduct investigative interviews with adult intimidated witnesses. Specific guidance is provided on the use of the enhanced cognitive interview;
- Chapter 5 describes how witnesses may be supported, safeguarded and prepared in the interval between a statement being made and a case coming to trial. Topics covered include the nature and type of support that may be offered, access to therapy and the witness services, and appropriate procedures to be followed once the outcome of a case is known;

- Chapter 6 describes in detail the range of special measures available to vulnerable and intimidated witnesses, including children, at the discretion of the court. It also describes good practice in the examination and cross-examination of witnesses, so as to enable them to give their best evidence; and
- Chapters 7 and 8 set out guidance on the provision of pre-trial therapy for child and vulnerable and intimidated adult witnesses. In particular the guidance seeks to: improve understanding of the difficulties for prosecutions associated with the provision of therapy prior to a criminal trial; clarify the roles of those involved in making decisions about the provision of therapy; provide advice on the appropriateness of different therapeutic techniques; and set out a framework for good practice which highlights the important issues.

There are also 19 appendices, which cover a wide range of topics such as standards for the court witness supporter in the live link room and technical guidance on video recording interviews.

**A draft of the revised Achieving Best Evidence guidance can be viewed at [www.dojni.gov.uk](http://www.dojni.gov.uk) and [www.cjsni.gov.uk](http://www.cjsni.gov.uk).** A hard copy can also be posted on request.

### **Equality impact**

Section 75 of the Northern Ireland Act 1998 requires public authorities to have due regard to the need to promote equality of opportunity and to the desirability of promoting good relations between certain groups of people. The sub-group was very conscious of this duty when drafting the revised guidance. A screening of the guidance has indicated that no section 75 group should be adversely affected by it and that it need not be subject to a full Equality Impact Assessment.

However, views are welcome on the implication of the guidance on equality of opportunity for all groups specified under section 75 of the 1998 Act.

## **The consultation exercise**

The draft guidance is now being issued for consultation. The Department would like to take this opportunity to acknowledge the contribution of the sub-group of the VWTF to the development of this draft document, which was invaluable and very much appreciated. However, to ensure that this work is appropriately concluded and that a comprehensive and useful guidance document to support practitioners working with vulnerable and intimidated witnesses is produced, assistance and contribution by way of this consultation exercise is requested and welcomed. The views from those working with vulnerable and intimidated victims and witnesses, and from those who have themselves been such victims and witnesses, are particularly welcome. You are therefore invited to participate in this consultation process by reviewing and commenting on the draft document. All comments are welcome. However, we would particularly appreciate your views on the following questions:

1. Is the guidance clear, accurate and easily understood?
2. Do you have any suggestions about how the draft guidance document could be improved?
3. Are there any sections of the guidance where greater clarity or more detail is needed?
4. Has anything been left out in any of the chapters that should be included?
5. Does the guidance make clear the impact and implications for practice and service delivery?
6. Does the guidance help you to understand how to improve practice and service provision?
7. Do you have any concerns about any of the guidance contained in the document?

8. Do you think there are any possible unintended consequences of the guidance?
9. Do you have any additional suggestions for documents that could be included in the Appendix "Useful sources"?
10. Have you any thoughts about issues that will need to be addressed during implementation?

Your comments, which should include your name and contact address, should be sent by email, letter or fax to:

Achieving Best Evidence Consultation  
Delivery Improvement Unit  
Criminal Justice Development Division  
Department of Justice  
Massey House  
Stormont Estate  
Belfast  
BT4 3SX

Telephone: (028) 905 27123  
Fax: (028) 905 27507  
Text phone: (028) 905 27668  
E-mail: [jpd.public@dojni.x.gsi.gov.uk](mailto:jpd.public@dojni.x.gsi.gov.uk)

Comments should be returned by **5pm on Friday 15 October 2010**.

You may wish to use the response pro forma at **Annex C** to provide us with your views. We will acknowledge receipt of all comments that we receive and will try to answer any questions raised.

If you have any queries about the information provided in this document please contact the DOJ Delivery Improvement Unit (whose details are listed above) for assistance. However, if you have any queries or concerns about the way in which the consultation process itself has been handled, you may raise these with the DOJ Consultation Co-ordinator at the following address:

Mark Higgins  
Central Co-ordination Branch  
Central Management Unit  
Department of Justice  
Castle Buildings  
Stormont Estate  
Belfast  
BT4 3SG

Telephone: (028) 905 89784  
Text phone: (028) 905 27668  
E-mail: mark.higgins@dojni.x.gsi.gov.uk

### **Alternative formats**

An electronic version of this document is available to view and download from the DOJ and CJSNI websites ([www.dojni.gov.uk](http://www.dojni.gov.uk) and [www.cjsni.gov.uk](http://www.cjsni.gov.uk)). Hard copies will be posted on request. The text phone contact details are detailed above. Copies in other formats (including Braille, large print, audio cassette, computer disc, etc) may be made available on request. If it would assist you to access the document in an alternative format or a language other than English, please let us know, and we will do our best to assist you.

### **Confidentiality of responses**

The DOJ will publish a summary of responses following the completion of the consultation process. Unless individual respondents specifically indicated that they wish their response to be treated in confidence, the nature of their response may be included in any published summary of responses. Respondents should also be aware that the DOJ's obligations under the Freedom of Information Act 2000 may require that any responses not subject to specific exemptions in the Act may be disclosed to other parties on request.

## Special Measures Provisions, Criteria and Application Process

### Special Measures Provisions

Special measures contained within Part II of the Criminal Evidence (NI) Order 1999 are:

- **screens in the courtroom** (Article 11) – screens are physically placed around the witness box to prevent the witness from seeing the defendant;
- **evidence by live link** (Article 12) – the witness gives evidence from a separate room located outside of the courtroom where proceedings are taking place;
- **evidence given in private** (Article 13) – the judge/magistrate will clear the courtroom of those who do not need to be in the courtroom when the witness is giving their evidence. Only legal representatives connected with the case and one nominated press member will be allowed to remain. This measure applies to sexual offence and intimidation cases only.
- **removal of wigs and gowns** (Article 14) – by lawyers and judges in the Crown Court to make the courtroom appear less formal;
- **video-recorded evidence-in-chief** (Article 15) – the police interview will be visually recorded and played at the trial as the witness' evidence in chief;
- **video-recorded cross-examination or re-examination** (Article 16) – where any further evidence is recorded in advance of the trial and played on the day of trial (this Article has not been commenced);
- **intermediaries** (Article 17) – people who act as 'go-betweens' to improve the communication and understanding of the witness. The intermediary will normally be a specialist - through training or with a unique knowledge of the witness, or have skills to overcome specific communication problems - who can help a witness who has difficulty understanding questions or framing evidence coherently to communicate (this Article has not yet been commenced); and
- **aids to communication** (Article 18) – devices used by the witness to assist them in understanding questions and communicating their answers, such as symbol books and alphabet aids.

## Special Measures Criteria

A **vulnerable witness** is defined as a person:

- under the age of 17 at the time of hearing;
- suffering from a mental disorder, or who has a mental impairment or learning disability that the court considers significant enough to effect the quality of evidence; or
- having a physical disorder or disability that the court considers likely to affect the quality of their evidence.

An **intimidated witness** is defined as a person who the court judges likely to have the quality of their evidence diminished due to fear or distress in giving evidence. To determine whether a witness is intimidated, the court must take into account certain factors including:

- the nature and circumstances of the case;
- the age of the witness;
- their social and cultural background; and
- any behaviour towards the witness on the part of the accused or his/her associates.

## Special Measures Application Process

A witness' need for special measures is first identified and considered by the police in consultation with Social Services. Where relevant, officers will identify criteria to determine whether a video recorded interview of the witness' evidence (as opposed to the standard written statement) should be used and in certain circumstances, may consult with the prosecutor. Officers may also team up with their social services partners to conduct the video recorded interview, to ensure that the best possible evidence can be achieved.

Once the case has been passed from the police to the prosecutor and a decision has been taken to prosecute, the prosecutor will consider the witness's eligibility from information provided by the police. An application is then made to the appropriate court to secure the use of the most appropriate measure/s in the proceedings.

Before granting an application for special measures, the court must be satisfied that the use of special measures provisions generally and the particular special measure applied for, is likely to maximise the quality of the witness' evidence. The court must also take into account the witness' views and also whether the measure/s might inhibit the evidence being effectively tested by the defendant. These limitations, however, do not apply in full to:

- children under the age of 17; and
- adult complainants of sexual offences.

Whilst both these categories of witnesses will always be considered automatically eligible for special measures, adult complainants of sexual offences have the right to opt out of the use of special measures. Child witnesses, however, do not have the right to opt out under the current special measures legislation.

The 1999 Order imposes special obligations on courts when they deal with child witnesses (those under the age of 17). It creates three categories of child witnesses:

- children giving evidence in a sexual offence case;
- children giving evidence in a case involving an offence of violence, abduction or neglect; and
- children giving evidence in all other cases.

The legislation creates a 'primary rule' for **all child witnesses** which means that a presumption will apply to how they give their evidence in court. Child witnesses will automatically have a video-recording admitted as their evidence in chief and will give any further evidence or cross-examination through use of a live link at trial.

However, for child witnesses described as being in need of "special protection" (the first two categories listed above), the courts do not have to consider whether the special measures provided will improve the quality of their evidence, as that requirement is treated as being satisfied.

For child witnesses not considered in need of special protection, the presumption to have a video-recorded statement admitted as evidence in chief and the use of live link

for giving further evidence, or in cross-examination, is **rebuttable**, i.e. it will apply unless giving evidence in this way would not improve the quality of the child's evidence.

Currently no child witness can opt out of the use of special measures provisions or choose the way in which they give their evidence.

### **Proposed amendments to the 1999 Order**

Following an evaluation exercise, the following amendments to the 1999 Order are planned by way of the proposed Justice Bill:

- the age at which persons are considered to be young witnesses to be 18 years rather than 17 years as at present;
- subject to safeguards, the views of young witnesses to be taken into account when special measures applications are being made;
- to remove the special category of child witnesses who are in need of special protection which will have the effect of placing all child witnesses on the same footing, regardless of the offence to which the proceedings relate;
- provision to be made to formalise the presence of a supporter in the live link room when a witness is giving evidence;
- adult complainants of sexual offences to be automatically entitled to give video recorded evidence in chief;
- to relax the restrictions on a witness giving additional evidence in chief after their video recorded statement has been admitted; and
- the intermediaries provision to be made available to vulnerable defendants.

**Membership of ABE Sub-Group**

Avery Bowser, NSPCC (Chair)

Eileen Burke, Public Prosecution Service

Norma Dempster, Department of Justice

Geri Hanna, Victim Support NI

Sam Hughes, Police Service of NI

Tim Kennedy, South Eastern Health and Social Care Trust

Anne Marks, Police Service of NI

Morag McClurg, South Eastern Health and Social Care Trust

George Russell, NI Courts and Tribunals Service

Liz Schumacher, Northern Health and Social Care Trust

**CONSULTATION RESPONSE PRO FORMA**

**Achieving Best Evidence in Criminal Proceedings  
Guidance on interviewing victims and witnesses, using special  
measures and provision of pre-trial therapy**

The purpose of this consultation is to seek views from those working with victims and witnesses, those who have themselves been victims and witnesses, and the broader general public on the revised guidance to practitioners on interviewing victims and witnesses, using special measures and the provision of pre-trial therapy. All comments are welcome. However, we would particularly appreciate your views on the following questions:

1. Is the guidance clear, accurate and readily understood?

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**Name** \_\_\_\_\_

**Organisation** \_\_\_\_\_

**Address** \_\_\_\_\_

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**Tel** \_\_\_\_\_

**Email** \_\_\_\_\_

**Date** \_\_\_\_\_

**Please return your completed questionnaire or other response to:**

Achieving Best Evidence Consultation  
Delivery Improvement Unit  
Criminal Justice Development Division  
Department of Justice  
Massey House  
Stormont Estate  
Belfast  
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Comments should be returned by **5pm on Friday 15 October 2010.**