

**CRIMINAL COURTS PRACTICE NOTE NO. 1 OF
2026**

**TAKING OF EVIDENCE OF A VULNERABLE WITNESS BY A COMMISSIONER IN
THE SHERIFF COURT**

Introduction

1. This Practice Note will come into effect on 30 March 2026.
2. This Practice Note adopts and endorses the protocol contained in High Court Practice Note Number 1 of 2019 “VULNERABLE AND CHILD WITNESSES: written questions” (see Schedule 1) and its presumption that for children under 12, and certain other witnesses with particular communication or comprehension difficulties, written questions will be prepared by the parties for consideration by the court.¹

Guiding Principles

3. The guiding principles of taking evidence by a commissioner are that
 - The taking of evidence from child and vulnerable witnesses should entail the least number of questions consistent with a practitioner’s professional duties.
 - It should be carried out as speedily as is possible.
 - Questions should be simple and straightforward.
 - The language used should be understandable to the witness.
 - The questioner should avoid tagged or hypothetical questions and complex syntax.
 - Practitioners should craft their questions according to these principles and the guidance provided by the relevant toolkit(s) in the Advocates Gateway website <https://www.theadvocatesgateway.org/>.
 - Regard will be had to the best interests of the witness.

Purpose

4. The purpose of this Practice Note is:
 - to promote greater consideration of, and to provide guidance on the preparation for and the capturing of evidence of vulnerable witnesses by a commissioner; and
 - to ensure efficiency and the best use of available resources to support vulnerable witnesses in giving their evidence in evidence by a commissioner proceedings in the Sheriff Court.

¹ Section 271I(1ZD)(b) of the Criminal Procedure Scotland Act 1995 states that the Commissioner presiding over a Ground Rules Hearing must to the extent that the Commissioner considers it appropriate to do so, decide on the form and wording of the questions that are to be asked of the vulnerable witness.

Guidance

5. This Practice Note accordingly gives guidance on:
- when practitioners should consider whether the taking of evidence by a commissioner is required;
 - what practitioners must do in preparation for seeking authorisation to take evidence by a commissioner;
 - what issues the court will expect practitioners to address in an application in relation to taking evidence by a commissioner;
 - what issues the court will expect practitioners to address at the Ground Rules Hearing; and
 - what must be done by practitioners in preparation for, during and after an evidence by a commissioner hearing.

When practitioners should consider whether the taking of evidence by a commissioner (“a Commission”) is required

6. Early conduct of a Commission has benefits for all parties not only in the earlier capture of the evidence but also in providing greater notice to address issues such as admissibility and agreement of evidence.

7. Parties must consider proactively and at as early a stage as possible whether any witness is, or may be, a vulnerable witness. Consideration must be given to whether any statutory presumption² requiring the pre-recording of a witness’s evidence is applicable. Such matters should be discussed with the witness to support them in expressing an informed view.

8. If the Crown or defence intends to seek the special measure of a Commission, that must be intimated to the Sheriff Court having jurisdiction (“Relevant Court”) and to the other party at the earliest opportunity to enable administrative and practical arrangements to be made and in order that legal aid can be secured without delay.

9. Before deciding to make an application parties should seek and take into account

² [The Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019](#) (section 1) introduced a statutory presumption for the pre-recording of the evidence of certain specified types of vulnerable witnesses in advance of trial. It was to be introduced in phases. The presumption has been in place in the High Court for child witnesses in a defined set of offence types since 20 January 2020. The next phase of the presumption will be extended to child complainers and witnesses under the age of 16 giving evidence in a defined list of offences in sheriff solemn cases. The Scottish Government’s website (see [Pre-recording witness evidence - Victims and witnesses - gov.scot](#)) indicates that this will come in to force on 30 March 2026.

the views of the witness, and/or parent or guardian of the witness, as appropriate, with a view to determining whether taking evidence by a commissioner will be the most suitable special measure, or whether another special measure, or a combination of measures, will be better in supporting the witness and obtaining their best evidence.

10. Parties should always be properly informed about the communication abilities and additional vulnerabilities of any witness who is the subject of an application to take evidence by a commissioner.

11. Parties must consider how relevant information relating to the application, and any subsequent commission hearing, will be communicated to the witness.

Preparation for seeking authorisation to take the evidence of a vulnerable witness by Commission

12. A Vulnerable Witness notice or application, as appropriate (“the Application”), must be prepared and lodged with the Relevant Court in accordance with the applicable deadlines set out in the Criminal Procedure (Scotland) Act 1995.³ The Additional Information for the Court Form (produced at Schedule 2) should also be completed and lodged at the same time.

13. It is essential to support the efficient conduct of business that the statutory deadlines for lodging are complied with. Parties are, however, encouraged to lodge the required documentation as soon as possible.

14. When lodging the Application it is essential for the party seeking such authorisation to specifically advise the Relevant Court of the intention to have the evidence of a vulnerable witness taken by Commission. This will allow the availability of a suitable venue(s) to be checked.

15. In preparing the Application a practitioner is to:

- have regard to the best interests of the witness;
- consider any statutory presumption(s) that are in place;
- consider whether sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995 apply. These provisions operate at a Commission in the same way as at trial and the Commissioner will perform the functions of the court as provided for in those sections (section 271I(5) and (6)). As such, evidence prohibited by section 274 will not be heard under reservation at a Commission;
- provide all relevant information in respect of the witness available to them to

³ See section 271A(13A), section 271C(12) and section 271I(4A) of the Criminal Procedure (Scotland) Act 1995. The applicable notice or application proforma to be completed can be accessed and downloaded via the Criminal procedure forms section of the Scottish Courts and Tribunals Service’s website: www.scotcourts.gov.uk

support the consideration of the Application, parties' preparations for and any subsequent Commission; and

- give ongoing consideration to the matters previously referred to in paragraphs 9 and 10.

Issues the court will expect practitioners to address in an Application in relation to taking evidence by Commission

16. The Application must:

- contain the relevant statutory provisions and reference any applicable statutory presumption(s);
- explain the basis upon which the witness qualifies as a vulnerable witness, and any specific issues relating to the witness;
- state why a Commission is considered appropriate for the witness;
- state whether the Commission requires to be held in any particular place, or environment, due to the location of the witness or any particular vulnerabilities which the witness may have;
- state whether the witness will give evidence to the Commissioner in person at a designated site or by live television link from another location and, if so, details of that proposed location;
- state whether the witness requires additional special measures, in particular whether there should be a court appointed supporter;
- state whether the witness is restricted as to any times of the day, or particular days or dates that he or she can attend a Commission as a result of their vulnerability;
- state whether the witness is likely to need frequent breaks or has any other special requirements, such as mobility or access requirements;
- state the communication and any additional needs of the witness: identifying the level of the witness's comprehension, and whether any communication aids or other reasonable adjustments are required. In appropriate cases, it may assist the court to be provided with any expert report addressing these issues and any other relevant issues. Any applicable psychologist report should be made available to the defence and the court when the application is lodged;
- identify the appropriate form, wording and scope of questions to be asked and, where appropriate, written questions should be prepared for consideration by the court (see Practice Note 1 of 2019 "VULNERABLE AND CHILD WITNESSES: written questions"). In instances where the witness is a child under the age of 12, and/or the witness is known to have significant communication or comprehension difficulties, written questions should be prepared for consideration by the court;
- address how any question of identification is going to be dealt with;

- identify any productions or labels that may require to be put to the witness. The use of any productions or labels should be kept to a minimum;
- confirm if a prior statement in any form is proposed to be, or may be put to a witness and if so the relevant statutory provision to be utilised;
- a copy of the statement or recording and transcript (as applicable) and the relevant passages therein (which should be kept to a minimum) should be produced to the court in the applicable format in advance of the hearing fixed to determine the Application. The Application should state the manner in which such a statement should be put, and the provision(s), if any, of the Criminal Procedure (Scotland) Act 1995 being relied upon. It should confirm that the parties have discussed the best means of putting such a statement to a witness, having regard to the interests of the witness and the fairness of the trial;
- state whether an interpreter is needed;
- provide a carefully considered estimate of the likely length in minutes of any proposed examination in chief or cross examination, as applicable.

Issues the court will expect practitioners to address at the Ground Rules Hearing

17. Excluding summary proceedings or when section 271I(4A) is being utilised, the Application will, other than in exceptional circumstances be considered at the First Diet. The court will expect to be addressed on all matters set out in the Application and the detail contained in the Additional Information for the Court proforma at Schedule 2 at the appointed hearing.

18. Other than in exceptional circumstances, the Ground Rules Hearing will be conducted at the same hearing. In solemn proceedings this will be, the First Diet.

19. Parties will be expected to be in a position to assist the court in its consideration of all relevant matters at the hearing. Only in exceptional circumstances will a continuation of the Ground Rules Hearing be allowed. A Commission Preparation proforma for completion by the party making the Application, in collaboration with other parties, has been prepared and is produced at Schedule 3 to assist with this process. The proforma should be completed and lodged with the Relevant Court no later than 2 days before the hearing the Application is being considered at.

20. Parties should be prepared to address the court on the proforma and on the following matters:

- Whether an interpreter is needed;
- whether the witness will affirm or take the oath. A witness under 12 is not to be put on oath;
- the location of the proposed dedicated evidence by a commissioner suite to be

used, and any link room the witness may need to attend, with regard given to what is the most suitable in the interests of the witness;

- the timing of the Commission which is the most suitable in the interests of the witness;
- the availability of the witness;
- the need for the witness to have any pre-Commission familiarisation with the location(s) and how that is proposed to be accommodated;
- the location from which the accused is to observe the Commission and how he is to communicate any instructions to his advisors;
- every effort should be taken to ensure Commissions take place in dedicated facilities created for that purpose. If it is proposed that the Commission is to take place within an alternative court building in which the witness and the accused will both be present, what arrangements will be put in place to ensure that they do not come into contact with each other;
- where more than one witness is to provide evidence in the case on the same day, how parties propose to schedule the attendance of the witnesses at the location, and where necessary what arrangements will be put in place to ensure that they do not come into contact with each other;
- the reasonable adjustments which may be required to enable effective participation by the witness;
- how the Commissioner/ and parties should introduce themselves to the witness in advance of the Commission, and when this will take place, having regard to the needs and preferences of the witness;
- whether any of the parties should speak to the witness after the Commission; again having regard to the needs and any specific communication needs of the witness;
- whether any communication aids are required e.g. "body maps";
- the appropriate form, wording and scope of questions to be asked. Per the terms of paragraph 2 above the court may expect or otherwise ask parties to prepare questions in writing;
- the proposed length of examination-in-chief and cross examination, and whether breaks may be required and how requests for unscheduled breaks may be notified and dealt with;
- the scope for any further agreement between the parties which might shorten the length of the Commission or confine the issues to be addressed;
- where there are multiple accused, how repetitious questioning may be avoided;
- where potential objections are known whether they can be avoided or resolved in advance;
- the lines of inquiry to be pursued;
- the scope of any questioning permitted under section 275 of the Criminal

Procedure (Scotland) Act 1995, and how it is to be addressed; the scope of any questions relating to prior statements lodged in accordance with paragraph 16;

- if a statement in whatever form is to be used as the evidence in chief of the witness, what arrangements are to be made for the witness to see this statement well in advance of the Commission (i.e. how, where, and when). It is not to occur on the day of the Commission;
- whether any such statement requires to be redacted or edited in any way;
- whether, and, to what extent there should be any further examination in chief of the witness;
- where any productions or labels are to be put to the witness, how this is to be managed;
- whether any special equipment (for example, to show CCTV images to the witness) may be required;
- the extent to which it is necessary to “put the defence case” to the witness; if necessary or appropriate, how that is to be done; and specifically whether the parties have agreed how this issue may be addressed in due course for the purposes of the jury. Parties are invited to have regard to the observations of the Court of Appeal in *R v Lubemba* [2015] 1 WLR 1579 and *R v Barker* [2011] Criminal LR 233; and
- the court may also make directions as to the circumstances in which visually recorded prior statements may be made available to the defence.

The court may make directions about the above matters, or any other matters which might affect the Commission proceedings (including specifying any other steps which will facilitate the giving of evidence by the witness), or which may be required for the effective conduct of the Commission. If combined special measures are sought, the court will address how this is to work in practice.

21. Following consideration of matters at the hearing, the court will direct the date, time and location of the Commission, the arrangements for the accused to view the Commission, and need for further or the dispensation of, any written questions or lines of questioning. The court will also direct that parties may access a copy of the recording once available. Unless otherwise advised or directed, access will be on the following standard conditions:

- that copies will not be made of any recording, disc(s) or storage device(s) or medium on which the recording is contained;
- that no disclosure of the recording or contents of the disc(s) or storage device(s) or medium on which the recording is contained will be made unless necessary in the legitimate interests of the accused;
- that, as applicable, the disc(s) or storage device(s) on which the recording is contained will be returned at the end of the proceedings;
- that except when being viewed, the disc(s) or storage device(s), as applicable, will be kept in a locked, secure container and not left unattended or otherwise

unprotected;

- that the accused can view the recording(s), only under the supervision of their legal representatives.

22. The court may impose other conditions as seems appropriate.

23. The court will direct that within 14 days of being advised that a copy of the Commission recording is available, parties are to confirm to the court in writing that they have viewed and listened to the recording and that it is of sufficient quality without headphones for use at the trial. Parties are to complete the proforma produced at Schedule 4 and lodge with the Relevant Court within that timescale.

24. The court will only consider fixing a post-commission hearing when it is known that the court will have to address any questions of admissibility which have been reserved at the Commission.

Preparation for, conduct of, and after the Commission hearing

Preparation

25. Having regard to the vulnerability of the witness, parties are expected to make every effort to avoid adjournment of a Commission, particularly on the day of the Commission itself. The principal party seeking to take the witness's evidence should make every effort to communicate with the witness and support and enable their attendance at the Commission in so far as possible.

26. If an agent becomes unavailable to conduct the Commission, every effort must be made to ensure, well in advance thereof, that alternative representation is made available and suitably prepared to conduct the Commission.

27. Witnesses report a benefit from meeting practitioners before the Commission itself. Accordingly, where practitioners are to meet a witness before the Commission, it will be presumed that the defence agent will make themselves available to do so.

28. The Commissioner will assume that all parties are aware of the matters discussed at the Grounds Rules Hearing, the orders made and are ready to proceed as ordered by the court.

The Commission

29. The conduct of the Commission including all questioning is subject to the overall control of the Commissioner. Prior approval of questions may not preclude different or additional questions being put to the witness at the Commission. The Commissioner will have regard to whether any different or additional areas of questioning ought to have been predicted and the relevance of the questions with reference to the witness's presentation on the day.

30. The Commission must start on time, unless a delayed start is in the best interests of the witness.
31. No wigs and gowns will be worn.
32. Parties should be aware of the need to, and be prepared to ensure:
- (i) that in the eliciting of all of the witness's evidence, irrespective of any pre-approved questioning, that regard is had to the needs, limitations and presentation of the witness and their professional duties to all;
 - (ii) that all microphones are working, and on when required; that the witness is favourably situated in respect of a microphone; and that they take care not to speak over the witness; and
 - (iii) that all productions and labels including recordings to be used and put before the witnesses are available and, as applicable, playable.
33. The Commissioner is empowered to rule on an objection at a Commission hearing (Act of Adjournal Rule 22.12(3)).
34. Sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995 apply just as they do at trial (section 271I(5) and (6)).
35. If during the Commission it is apparent to the Commissioner that the Commission recording should be edited before trial, the Commissioner should inform parties of the issue and invite them to ensure it is done. The clerk should minute this accordingly.

After the Commission

36. Unless otherwise directed by the court, within 14 days of being advised that a copy of the Commission recording is available for review, and as applicable borrowing, parties must complete and lodge with the Relevant Court the proforma produced at Schedule 4.
37. If there is a need for editing of the Commission recording parties should seek to agree this between themselves in the first instance and action this. All applications to SCTS for agreed edits to SCTS Commission recordings should be made using the proforma produced at Schedule 5.
38. If there is problem with the Commission recording parties should seek to resolve it between themselves in the first instance which may include agreement on aspects of the evidence, the production of a transcript or other approach.
39. If the intervention of the court is required in respect of either a problem with the recording or the extent of any edits required that cannot be agreed this should be brought to the Relevant Court's attention as quickly as possible to ensure the most efficient means

for this to be addressed. If this occurs before the trial diet, [section 75A](#) procedure may require to be utilised.

40. If at any subsequent trial the recording is found to be deficient, the court will expect to be addressed on why this was not identified sooner.

AISHA Y ANWAR KC

Glasgow, 17 March 2026
Sheriff Principal of the
Sheriffdom of Glasgow and
Strathkelvin

ANDREW MILLER

Aberdeen, 17 March 2026
Sheriff Principal of the
Sheriffdom of Grampian,
Highland, and Islands

NIGEL ROSS

Edinburgh, 18 March 2026
Sheriff Principal of the
Sheriffdom of Lothian and
Borders

BRIAN A MOHAN

Paisley, 19 March 2026
Temporary Sheriff
Principal of the Sheriffdom
of North Strathclyde

CATHERINE DOWDALLS
KC

Hamilton, 17 March 2026
Sheriff Principal of the
Sheriffdom of South
Strathclyde, Dumfries and
Galloway

GILLIAN A WADE KC

Perth, 17 March 2026
Sheriff Principal of the
Sheriffdom of Tayside,
Central and Fife

SCHEDULES

Schedule 1 - High Court Practice Note Number 1 of 2019

Schedule 2 - Additional Information for the Court Proforma

Schedule 3 - Evidence by a Commissioner Preparation Proforma

Schedule 4 - Evidence by a Commissioner Recording Check Proforma

Schedule 5 - SCTS Evidence by a Commissioner Recording Editing Request Proforma

SCHEDULE 1

HIGH COURT OF JUSTICIARY

Practice Note

No.1 of 2019

VULNERABLE AND CHILD WITNESSES: written questions

1. This Practice Note takes effect from 8 April 2019.
2. It supplements *High Court Practice Note Number 1 of 2017: Taking of evidence of a vulnerable witness by a commissioner*. Paragraph 11 of that Practice Note provides that the court may consider asking parties to prepare questions in writing. The Protocol set out in the schedule to this Practice Note sets out the general approach to be taken in this matter.
3. The Protocol has been agreed by the Crown, the Faculty of Advocates and the Law Society of Scotland.

CJM Sutherland

Lord Justice General

Edinburgh

5 March 2019

SCHEDULE

PROTOCOL FOR WRITTEN QUESTIONS

VULNERABLE AND CHILD WITNESSES

In assessing whether to call for written questions in advance of a commission to take the evidence of a child or vulnerable witness, the court will be mindful that each such witness will have different abilities and limitations. No rigid and inflexible rules can be laid down. Prior approval of questions does not necessarily preclude different or additional questions being put to the witness; matters may have to be reassessed having regard to the demeanour and presentation of the witness in the course of the commission hearing. The commissioner can expect advocates-depute and counsel for the accused, as officers of the court, to act in accordance with their professional responsibilities. These may require different or additional questions to be asked, the content of which will depend on the answers given. All questioning is subject to the overall control of the commissioner and he or she will have regard to whether any different or additional areas of questioning ought to have been predicted and the relevance of the questions.

Certain general principles can be identified.

Parties should always be properly informed about the communication abilities and additional vulnerabilities of any witness who is the subject of an application to take evidence on commission. The Crown should be in a position to inform the court and the commissioner on all the relevant issues affecting the vulnerable witness. In some cases the Crown will have had the witness examined by a psychologist. The report should always be made available to the defence and the court when the application is lodged. It will sometimes be appropriate for the examining psychologist to be shown proposed questions so that a view on the format of the questions can be given.

The taking of evidence from child and vulnerable witnesses should entail the least number of questions consistent with the duties of counsel. It should be carried out as speedily as is possible. Questions should be simple and straightforward. The language used should be understandable to the witness. The questioner should avoid tagged or hypothetical questions and complex syntax. Regard will be paid to the best interests of the witness.

A child under 12 is not put on oath. As a general rule, in the case of such children written questions will be called for. In the case of witnesses with significant communication or comprehension difficulties, whether as a result of learning disability or a mental health condition or otherwise, written questions will generally be called for. The court will consider each such case on its merits and will, when appropriate, dispense with the requirement for

written questions on being satisfied that the evidence of the witness can be properly adduced without prior approval of questions. In the case of children of 12 and over, written questions may be required, having regard to the child's best interests and the information available as to the child's abilities.

In appropriate cases, other means to protect the witness and to allow his or her evidence to be obtained will be considered. For example, it will sometimes be sufficient for the defence to intimate the lines of questioning proposed for the witness. This may be the case, for example, where the Crown anticipate substantial questioning of the witness at the commission and are to intimate written questions in advance. Even in the absence of written questions, all those participating in eliciting the evidence of vulnerable and child witnesses must bear in mind the limitations of the witness. They should craft their questions according to the principles outlined above and to the guidance provided by the Advocates Gateway website.

SCHEDULE 2

**Vulnerable Witness Notices and Applications
Additional Information for the Court**

HMA v

PF Reference:

To: Clerk of Justiciary / Sheriff Clerk (*delete as appropriate*)

Please find enclosed Vulnerable Witness Notices and Applications for this case relating to the following witnesses:

- [Name] [DOB]
- ...

1. Note any relationships between:

a) the listed witnesses, and

b) the listed witnesses and any other witnesses giving evidence in this case of which the court should be aware.

If there are none, please state "N/A" below.

2. Is it appropriate for the witnesses named above to give evidence from the same place?

If not, please state the reason(s) below; if not applicable, please state "N/A".

3. Is it desirable for any witnesses named in answer box 1 above to give evidence from the same place, other than from the court building?

If so, please provide a brief explanation below; if not applicable, please state "N/A".

4. Is it necessary for any witnesses named in answer box 1 to be kept apart and/or located in separate witness rooms?

If so, please provide a brief explanation below; if not applicable, please state "N/A".

5. On the basis of the information contained within the case papers are COPFS aware of any specific risks of violent or disruptive behaviour during the process of attending to give and giving evidence, which may be presented by any witnesses listed above?

(NB. This does not include consideration of any record of prior convictions any witnesses may have.)

Please answer Yes/No; and if 'Yes', please provide details.

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6. Do any witnesses have additional support needs? (eg disabilities which are relevant, interpreter required, communication difficulties, access requirements, etc.)

Please answer Yes/No; and if 'Yes', please describe the additional support needs and explain what additional support is required as a result.

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7. For Live Television Link Requests Only:

List which witnesses would prefer to give evidence from a location within a court building and which would prefer to give evidence from a remote site. For witnesses giving evidence from a remote site, specify your preferred site/location.

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8. Are there any specific needs or concerns expressed by any witness about attending at court requiring exceptional arrangements to be considered?

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| Legal Point of Contact: Telephone: Email: | |
| Lodged by: | |

SCHEDULE 3

EVIDENCE BY A COMMISSIONER PREPARATION PROFORMA

HMA v
PF REF:
SCTS REF:

Witness Name:

VULNERABLE WITNESSES – EVIDENCE BY A COMMISSIONER “ON COMMISSION”

In accordance with Practice Note 1 of 2026 in cases where special measures in the form of evidence on commission (including cases where it is proposed that a statement or recording will form evidence in chief) are sought this form should be completed and lodged with the court in advance of any hearing fixed to consider a vulnerable witness notice or application seeking the special measure of evidence on commission.

IN ALL CASES

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| A | Has there been full disclosure? | |
| B | Has the court been provided with any relevant expert reports and sources of information germane to its consideration of the application or notice? | |

IN CASES WHERE IT IS PROPOSED THAT EVIDENCE IN CHIEF WILL TAKE THE FORM OF A STATEMENT AND/OR RECORDING OF AN INTERVIEW AND/OR TRANSCRIPT

Standard protocols govern the circumstances in which visually recorded prior statements may be made available to the defence

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| C | Where it is proposed to use an audio/visual recording of a JII as evidence in chief, has the Crown or party relying upon it checked that the recording is of sufficient quality and is playable on court equipment? Is a transcript of the recording available and has it been produced to the court? | |
| D | Has the Crown or party relying upon the recording satisfied itself that the evidence in the recording and/or document is all relevant, admissible and in section 288C cases that its admission would not contravene section 274? | |
| E | Are the defence taking objection to any of the content of the recording/statement as a preliminary issue or otherwise? | |
| F | Have Crown and defence identified appropriate redactions to address the issues in paras D and E? | |

IN ALL CASES SEEKING EVIDENCE ON COMMISSION

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| 1. | Is an interpreter required? | |
| 2. | Will the witness affirm or take the oath? A witness under 12 is | |

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| | not to be put on oath. | |
| 3. | <p>What dedicated evidence by commissioner facility location will be the most suitable in the interests of the witness?</p> <p>If the witness is to join the commission by live link, what remote location is most suitable in the interests of the witness?</p> <p>If an alternative court building in which the witness and the accused will both be present is to be used, what arrangements will be put in place to ensure that they do not come into contact with each other?</p> | |
| 4. | What time for the commission is the most suitable in the interests of the witness. | |
| 5. | What is the witness's availability. | |
| 6. | Is there a need for the witness to have any pre-commission familiarisation with the location(s)? How is that to be accommodated? | |
| 7. | <p>See default arrangements below regarding the location for the accused to view to the proceedings. Do any special arrangements require to be made for communication between the accused and solicitor viewing the commission and solicitor participating in the commission facility/room?</p> <p>If there are multiple accused, are any particular arrangements required for the accused to view by way of video link from the nearest court CCTV room?</p> | |
| 8. | <p>If more than one witness is to provide evidence on the same day, how is the attendance of the witnesses at the location to be scheduled?</p> <p>What arrangements will be put in place to ensure that they do not come into contact with each</p> | |

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| | other? | |
| 9. | What are the specific communication needs of the witness? | |
| 10. | How and when, taking account of the needs of the witness including any specific communication needs, should the Commissioner/or parties introduce themselves to the witness in advance of the commission, and if necessary speak to them after the commission. | |
| 11. | <p>Reasonable adjustments to enable the effective participation of the witness.</p> <p>Are any communication aids required e.g. body maps?</p> <p>Will breaks be required? If the witness may require unscheduled breaks for a personal, medical or other reason which may be embarrassing to articulate, how is this to be communicated?</p> | |
| 12. | <p>Questioning</p> <p>What are the lines of enquiry to be pursued in chief and in cross-examination?</p> <p>Is there merit in the submission of written questions in advance of the Commission?</p> <p>If the witness is under the age of 12 or has specific communication or comprehension needs questions should be provided.</p> <p>Has a list of questions been prepared and intimated to the court:</p> <p>i. By the Crown, if the Crown envisages examining in chief? ii. By the defence?</p> | |
| 13. | How long will the commission take? Please provide an | |

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| | <p>accurate estimate expressed in minutes for:</p> <p>i. Examination in chief ii. Cross examination</p> <p>Will breaks be required? If the witness may require unscheduled breaks for a personal, medical or other reason which may be embarrassing to articulate, how is this to be communicated?</p> | |
| 14. | <p>Can the scope of any questioning be reduced which might shorten the length of the commission:</p> <p>i. By further agreement of evidence. ii. By agreement between parties to avoid unnecessary questioning and duplication on the issues to be addressed?</p> | |
| 15. | <p>In cases of multiple accused, how will repetitious questioning be avoided?</p> | |
| 16. | <p>Do the Crown have a section 275 application? If yes, how will this be addressed in the scope of questioning?</p> | |
| 17. | <p>Do the defence have a section 275 application? If yes, how will this be addressed in the scope of questioning?</p> | |
| 18. | <p>Is it anticipated that reference will be made to prior statements. Is a prior statement to be used as part of the witness's evidence in chief?</p> <p>If so:</p> <p>i. What is the purpose? ii. What passages will be referred to? iii. How, where and when is the statement to be shown to the witness in advance of the commission? iv. Should there be any examination in chief of the witness (and, if so, to what extent)?</p> | |

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|-----|---|--|
| | iv. Does any prior statement which may need to be put require redaction or editing? | |
| 19. | Are any productions or labels to be put to the witness? How is this to be managed? | |
| 20. | Will any special equipment or assistance be required? E.g. to show CCTV evidence to the witness? | |
| 21. | What is the extent to which it will be necessary to “put the defence case” to the witness? (See <i>R v Lubemba</i> 2015 1 WLR 1579 and <i>R v Barker</i> 2011 Crim. LR 233) | |
| 22. | How is that to be done? | |
| 23. | Have parties agreed how this issue may be addressed in due course for the purposes of the jury? | |
| 24. | <p>DEFAULT ARRANGEMENTS FOR COMMISSION HEARINGS</p> <p>If there is a particular issue which may require departure from the following standard protocols, please set out the proposed variation and reasons for proposing it below:</p> <p>Any pre-commission familiarisation will take place according to standard protocols operated by VIA.</p> <p>The accused will watch proceedings by way of a video link from the nearest court /CCTV room. Communication will take place by ‘phone/text/instant message between the solicitor (sitting with the accused) and the solicitor/solicitor advocate/counsel (attending the commission facility/room).</p> | |
| | Party lodging the form: | |
| | Contact details for the party: | |

SCHEDULE 4

EVIDENCE BY A COMMISSIONER RECORDING CHECK PROFOMA

| | |
|-------------------------------|--|
| Name of accused | |
| PF Reference number | |
| Court Reference number | |
| Date of hearing | |
| Location of hearing | |
| Who you represent | |

| | |
|--|---------------------------------------|
| I confirm that I have viewed and listened to the recording of the evidence by a commissioner and I am satisfied that it is of sufficient quality without headphones for use at the trial. | YES/NO (delete as appropriate) |
| If the answer is 'NO' what steps are being taken to address this. | |

| | |
|----------------------|--|
| Name of party | |
| Signed | |
| Date | |

Please note that once completed the above form should be submitted to the Relevant Court and will be placed within the case papers for trial.

