



**Appendix 3: RCNI Submission on Victims’ Testimony to Joint Oireachtas Committee on Justice 02/21  
Table of Special Measures for Victims & Some Witnesses in Legal Proceedings RCNI March 2019**

Special Measures	Statutory Provision	Victims & Witnesses “other than accused” Under 18	Victims & Witnesses “other than accused” Over 18	Victims Only Under 18	Victims Only Over 18	“mental disorder” Or “mental condition”	Sexual Offences only	Relevant Offences only	All Offences	
Video-Link	S13 CEA 92	Yes, unless court “sees good reason to the contrary”	With leave of the court	Yes if S14AA applies	Yes if S14AA applies	Yes, though no specific provision	No, though they are included in definition of relevant offence	Yes, unless S14AA applies	Yes, for victims only if S14AA applies	<b>COURTS?</b> Any criminal proceedings potentially, civil proceedings under S25 DVA 18 (applicants only)
Intermediary	S14 CEA 92	Yes, if court is satisfied that “interests of justice so require having regard to age ....of witness”	Yes, if court is satisfied that interests of justice so require “having regard to ...mental condition of witness”	Yes if S14AA applies	Yes if S14AA applies	Yes, if court is satisfied that interests of justice so require “having regard to the...mental condition of witness”; S19 CEA 92 applies this to anyone with “mental disorder” as defined in CEA 92	No, though they are included in definition of relevant offence	Yes, unless S14AA applies	Yes, for victims only if S14AA applies	Any criminal proceedings potentially

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Screens	S14A CEA 92	Court may direct screen be used unless satisfied that it would be “contrary to interests of justice” to do so	No – victims only	Court may direct that screen be used for victims only if satisfied that “interests of justice so require”, subject to S14AA	Court may direct that screen be used for victims only if satisfied that “interests of justice so require”, subject to S14AA	No	No, though they are included in definition of relevant offence	Yes, unless S14AA applies	Yes, for victims only if S14AA applies	Any criminal proceedings potentially
Wigs/Gowns (restrictions on both lawyers and judges wearing them)	S14B CEA 92	Yes, for relevant offences	No, unless person has “mental disorder” within meaning of CEA 92	Yes	No, unless person has “mental disorder” within meaning of CEA 92	Yes, provided person has “mental disorder” within meaning of CEA 92 and see RIGHT	No, though they are included in definition of relevant offence	Yes, unless person is victim AND either under 18 or has “mental disorder” within meaning of CEA 92	Yes, if person is victim either under 18 or has “mental disorder” within meaning of CEA 92	Any criminal proceedings potentially
Personal cross-examination restrictions	S14C CEA 92	Yes, for relevant offences, court “shall” direct accused not to cross-examine in person,	Yes, for sexual offences only, court “may” direct accused not to cross-examine in person,	Yes, for relevant offences, court “shall” direct accused not to cross-examine in person,	Yes, for sexual offences only, court “may” direct accused not to cross-examine in person,	No specific provision relating to persons with a “mental disorder” (covered by general provisions)	Yes, if the person giving evidence is over 18	Yes, provided the person giving evidence is under 18	No - Only relevant, and sometimes, sexual offences covered	Criminal proceedings for any relevant offence potentially if witness is under 18, sexual

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		unless court's view is that interests of justice so require	unless court's view is that interests of justice so require	unless court's view is that interests of justice so require	unless court's view is that interests of justice so require					offences only if witness is over 18; Under S16 DVA 18, either applicant or respondent in DVA 18 application may apply for order, identical tests for eligibility based on age as in criminal courts
Pre-recorded evidence	S16(1)(b) CEA 92	Yes, provided that offence is sexual one specified in S16(1)(b)(ii) and person is either under 18 or has "mental disorder" as defined in CEA 92	No, unless offence is sexual one specified in S16(1)(b)(ii) and person has "mental disorder" as defined in CEA 92	Yes, if victim is under 18 or has "mental disorder" as defined in CEA 92	No, unless victim has "mental disorder" as defined in CEA 92	Yes, if person is victim with "mental disorder" as defined in CEA 92, or is witness other than accused, has "mental disorder" as above, and offence is sexual one specified in S16(1)(b)(ii)	Yes, sexual offences only if person is a witness and is either under 18 or has "mental disorder" as defined in CEA 92	Yes, relevant offences including sexual offences are all covered as long as witness is victim and is either under 18 or has "mental disorder" as	Yes, all offences are covered provided victim is either under 18 or has "mental disorder" within the meaning of CEA 92	Any criminal proceedings potentially

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								specified in CEA 92		
Counselling records (objection to their disclosure)	S19A CEA 92	Yes, provisions cover complainant in sexual offence trial and “any other person to whom the counselling record relates”, of any age	Yes, provisions cover complainant in sexual offence trial and “any other person to whom the counselling record relates”, of any age	Yes	Yes	Yes (no specific provision or exclusion)	Yes, sexual offences referred to in Schedule to SOA 2001 are covered	No, unless offences are sexual offences referred to in Schedule to SOA 2001	No, unless offences are sexual offences referred to in Schedule to SOA 2001	Criminal proceedings for any sexual offence referred to in the Schedule to SOA 2001; complainant or witness are both entitled to separate legal representation (LAB) on application for disclosure
In camera – general power to exclude public/part of it	S20 CJVCA 17	No – victims only	No – victims only	Yes, if Court is satisfied there is need to protect victim from secondary and repeat victimisation, intimidation, or retaliation and it is not contrary to	Yes, if Court is satisfied there is need to protect victim from secondary and repeat victimisation, intimidation, or retaliation and it is not contrary to	Yes, if Court is satisfied there is need to protect victim from secondary and repeat victimisation, intimidation, or retaliation and it is not contrary to the interests of justice	Yes. NB sexual offence proceedings have special additional provisions under S6 CLRA 81 (rape, agg sexual assault, defilement) and S20 CJA 1951 (any offence of	Yes, all offences are covered by S20 CJVCA 17 and sexual offences have specific additional provisions – see LEFT	Yes, all offences are covered by S20 CJVCA 17 and sexual offences have specific additional provisions – see LEFT	Any criminal Proceedings potentially; Under DVA 18 SS23 and 34 respectively, any civil proceedings and any breach proceedings “shall” be

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				the interests of justice	the interests of justice		obscene or indecent nature)			heard otherwise than in public
Anonymity for complainant – S7 applies from moment accused is charged	S7 CLRA 81	No – complainants only in certain sexual offence trials may benefit from anonymity	No – complainants only in certain sexual offence trials may benefit from anonymity	Yes – limited to complainants in certain sexual offence trials only	Yes – limited to complainants in certain sexual offence trials only	Yes – limited to complainants in certain sexual offence trials only (no separate provision for complainants with “mental disorder”)	Yes – limited to trials of following sexual offences: rape, agg sexual assault, sexual assault, defilement, incest, offences contrary to S6 CLSOA 93	No, apart from those relevant sexual offences listed LEFT	No, apart from those relevant sexual offences listed LEFT x 2	Criminal proceedings for certain sexual offences; also in S36 DVA 18 breach offence proceedings, reporting restrictions apply
Legal advice for complainant – available free of charge without means test from LAB once accused has been charged	S26 CLAA 95	No- victims of certain sexual offences only may benefit from free legal advice once accused is charged (LAB)	No- victims of certain sexual offences only may benefit from free legal advice once accused is charged (LAB)	Yes, victims of certain sexual offences only may benefit from free legal advice once accused is charged (LAB)	Yes, victims of certain sexual offences only may benefit from free legal advice once accused is charged (LAB)	Yes, victims of certain sexual offences only may benefit from free legal advice once accused is charged (LAB) – no separate provision for complainant with “mental disorder”	Yes, victims of certain sexual offences only may benefit from free legal advice once accused is charged (LAB) – these are: rape, agg sexual assault, incest, defilement, and offences	No, victims of certain sexual offences only may benefit from free legal advice once accused is charged (LAB)	No, victims of certain sexual offences only may benefit from free legal advice once accused is charged (LAB)	Available once accused is charged with one or more sexual offences listed LEFT x 2 ie out of court – is not a form of legal representation <b>NOTE</b> victims of certain

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							contrary to S6 CLSOA 1993			trafficking offences have right to legal advice under CLAA 95 also
Legal representatio n – becomes available once notice of S3 CLRA 81 application is received from defence free of charge and without means test – extends to application for leave only	S4A CLRA 81	No – applies to complainants in certain sexual offence trials only, namely rape, agg sexual assault, defilement, and offences contrary to S6 CLSOA 93	No – applies to complainants in certain sexual offence trials only, namely rape, agg sexual assault, defilement, and offences contrary to S6 CLSOA 93	Yes - applies to complainants in certain sexual offence trials only, namely rape, agg sexual assault, defilement, and offences contrary to S6 CLSOA 93	Yes - applies to complainants in certain sexual offence trials only, namely rape, agg sexual assault, defilement, and offences contrary to S6 CLSOA 93	Yes - applies to complainants in certain sexual offence trials only, namely rape, agg sexual assault, defilement, and offences contrary to S6 CLSOA 93 (no specific provision for complainants with “mental disorder”)	Yes - applies to complainants in certain sexual offence trials only, namely rape, agg sexual assault, defilement, and offences contrary to S6 CLSOA 93	No – applies to complainant s in certain sexual offence trials only, namely rape, agg sexual assault, defilement, and offences contrary to S6 CLSOA 93	No – applies to complainant s in certain sexual offence trials only, namely rape, agg sexual assault, defilement, and offences contrary to S6 CLSOA 93	Criminal proceedings for certain sexual offences only, namely rape, agg sexual assault, defilement and offences contrary to S6 CLSOA 1993 <b>NOTE</b> judge cannot hear S3 CLRA 81 applic without ensuring complainant has had notice of it and has had reasonable opportunity

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										to arrange legal rep.
Privacy “sexual experience” – defence can only adduce evidence of complainant’s “other sexual experience” with leave of Court. Leave should only be granted if: “[judge]..is satisfied that it would be unfair to the accused person to refuse to allow the evidence to be adduced or the question to be asked, that is to say, if he is	S3 CLRA 81	No – only applies to defence applications in respect of complainant’s other sexual experience in trials of certain sexual offences, namely rape, agg sexual assault, sexual assault, defilement, incest and offences contrary to S6 CLSOA 93	No – only applies to defence applications in respect of complainant’s other sexual experience in trials of certain sexual offences, namely rape, agg sexual assault, sexual assault, defilement, incest and offences contrary to S6 CLSOA 93	Yes – only applies to defence applications in respect of complainant’s other sexual experience in trials of certain sexual offences, namely rape, agg sexual assault, sexual assault, defilement, incest and offences contrary to S6 CLSOA 93	Yes – only applies to defence applications in respect of complainant’s other sexual experience in trials of certain sexual offences, namely rape, agg sexual assault, sexual assault, defilement, incest and offences contrary to S6 CLSOA 93	Yes – only applies to defence applications in respect of complainant’s other sexual experience in trials of certain sexual offences, namely rape, agg sexual assault, sexual assault, defilement, incest and offences contrary to S6 CLSOA 93 (not specific to complainants with “mental disorder”)	Yes – only applies to defence applications in respect of complainant’s other sexual experience in trials of certain sexual offences, namely rape, agg sexual assault, sexual assault, defilement, incest and offences contrary to S6 CLSOA 93	No – only applies to defence applications in respect of complainant’s other sexual experience in trials of certain sexual offences, namely rape, agg sexual assault, sexual assault, defilement, incest and offences contrary to S6 CLSOA 93	No – only applies to defence applications in respect of complainant’s other sexual experience in trials of certain sexual offences, namely rape, agg sexual assault, sexual assault, defilement, incest and offences contrary to S6 CLSOA 93	Defence obligation to seek leave to adduce evidence of complainant’s other sexual experience only applies in trials of certain sexual offences, namely rape, agg sexual assault, sexual assault, defilement, incest and offences contrary to S6 CLSOA 93. <b>NOTE</b> prosecution do not have to seek leave to adduce this kind of evidence.



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<p>satisfied that, on the assumption that if the evidence or question was not allowed the jury might reasonably be satisfied beyond reasonable doubt that the accused person is guilty, the effect of allowing the evidence or question might reasonably be that they would not be so satisfied” (S3(2)(b) CLRA 81)</p>										
<p>Privacy S21 CJVCA 18 – restrictions</p>	<p>S21 CJVCA 18</p>	<p>Yes – law gives court power to</p>	<p>Yes – law gives court power to</p>	<p>Yes – law gives court power to</p>	<p>Yes – law gives court power to</p>	<p>Yes – law gives court power to make any</p>	<p>Yes – law covers “any proceedings</p>	<p>Yes – law covers “any proceedings</p>	<p>Yes – law covers “any proceedings</p>	<p>Covers “any proceedings</p>



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on defence cross-examination relating to private life of victim which is unrelated to the offence		make any directions it considers “just and proper regarding any evidence ....and any questions asked in cross-examination at the trial, which relates [to irrelevant aspects of victim’s private life]”	make any directions it considers “just and proper regarding any evidence ....and any questions asked in cross-examination at the trial, which relates [to irrelevant aspects of victim’s private life]”	make any directions it considers “just and proper regarding any evidence ....and any questions asked in cross-examination at the trial, which relates [to irrelevant aspects of victim’s private life]”	make any directions it considers “just and proper regarding any evidence ....and any questions asked in cross-examination at the trial, which relates [to irrelevant aspects of victim’s private life]”	directions it considers “just and proper regarding any evidence ....and any questions asked in cross-examination at the trial, which relates [to irrelevant aspects of victim’s private life]” (no exclusions where victim has “mental disorder”)	relating to an offence” - Court may make order where court is satisfied that there is a need to protect victim from secondary and repeat victimisation, intimidation or retaliation, and it would not be contrary to interests of justice in the case [to do so] <b>NOTE</b> covers sexual assault cases	relating to an offence” - Court may make order where court is satisfied that there is a need to protect victim from secondary and repeat victimisation , intimidation or retaliation, and it would not be contrary to interests of justice in the case [to do so]	relating to an offence” - Court may make order where court is satisfied that there is a need to protect victim from secondary and repeat victimisation , intimidation or retaliation, and it would not be contrary to interests of justice in the case [to do so]	relating to an offence”
Acc’ment in Court	Various: S20 CJVCA 17 refers to general right of victims to be	No – these rights apply to crime victims, and applicants in DVA 18 proceedings	No – these rights apply to crime victims, and applicants in DVA 18	Yes - these rights apply to crime victims, and applicants in DVA 18 proceedings	Yes - these rights apply to crime victims, and applicants in DVA 18	Yes - these rights apply to crime victims, in any criminal proceedings and applicants in	Yes - these rights apply to crime victims, in any criminal proceedings and applicants in DVA 18	Yes - these rights apply to crime victims, in any criminal proceedings and	Yes - these rights apply to crime victims, in any criminal proceedings and	In any criminal proceedings for any offence (1) separate right for

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	accompanied by friend or support worker in court (1) S29 CJA 17 provides for victim to be accompanied by friend or support worker in certain sexual trials (2) and S26 DVA 18 provides for applicants for DVA orders only to have CA rights (3)	only. Child victims in criminal proceedings are entitled to be accompanied by “appropriate adult” as well as by a support worker, at Garda interview as well as at Court (S18 CJVCA 17)	proceedings only.	only. Child victims in criminal proceedings are entitled to be accompanied by “appropriate adult” as well as by a support worker, at Garda interview as well as at Court (S18 CJVCA 17)	proceedings only.	DVA 18 proceedings.	proceedings. Victims of rape, agg sexual assault, sexual assault, defilement, and offences contrary to S6 CLSOA 93, have separate right to court accompaniment (See S29 CJA 17)	applicants in DVA 18 proceedings.	applicants in DVA 18 proceedings.	complainants in certain sexual offence proceedings to be accompanied by friend or support worker (2) and S26 DVA 18 right of applicants to be accompanied by friend or support worker in DVA order proceedings (3)
Video-link for adults and children in any civil proceedings, if Court is satisfied no unfairness arises and it	S26 CLMPA 08	Yes, adult parties and witnesses may avail of this protection	Yes, under and over 18s may avail of this protection, both parties and witnesses	Yes, adult parties and witnesses may avail of this protection	Yes, under and over 18s may avail of this protection, both parties and witnesses	No separate provision for parties/witnesses with any form of disability	N/A	N/A	N/A	Any civil court NOTE: DVA applications have specific separate provisions under DVA 18

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is not contrary to interests of justice										NOTE: V/L may be used inside/outside State
Video-link with the leave of the court, from inside or outside State	S21 CA 97	No, children only may benefit as well as adults whose mental disability means it is not reasonable for them to live independently	Yes, any witness under 18 may benefit as well as adults whose mental disability means it is not reasonable for them to live independently	No, children only may benefit as well as adults whose mental disability means it is not reasonable for them to live independently	Yes, any witness under 18 may benefit whose mental disability means it is not reasonable for them to live independently	Yes, any person over 18 may benefit whose mental disability means it is not reasonable for them to live independently	N/A	N/A	N/A	Any civil proceedings concerning the welfare of a child or a person whose mental disability means it is not reasonable for them to live independently
Intermediary through whom questions may be put to child/person with mental disability with leave of the court	S22 CA 97	No, children only may benefit unless person has "mental disability"	Yes, children only may benefit unless person has "mental disability"	No, children only may benefit unless person has "mental disability"	Yes, children only may benefit unless person has "mental disability"	Yes, if the person has a "mental disability" such that it is not reasonable for them to live independently	N/A	N/A	N/A	Any civil proceedings concerning the welfare of a child or of a person of full age with a mental disability



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### NOTES:

#### (1) List of Statute Abbreviations:

CJA 51:	Criminal Justice Act 1951
CLRA 81:	Criminal Law (Rape) Act 1981
CLSOA 93:	Criminal Law (Sexual Offences) 1993
CLAA 95:	Civil Legal Aid Act 1995
CA 97:	Children Act 1997
CLMPA 08:	Civil Law (Miscellaneous Provisions) Act 2008
CLSOA 17:	Criminal Law (Sexual Offences) Act 2017
CJVA 17:	Criminal Justice (Victims of Crime) Act 2017
DVA 18:	Domestic Violence Act 2018

#### (2) Key to other Abbreviations:

Agg sexual assault:	Aggravated sexual assault contrary to Section 3 Criminal Law (Rape) (Amendment) Act 1990
Defilement:	Sexual act with a child, contrary to Sections 2 and 3 Criminal Law (Sexual Offences) Act 2006 (as amended)

#### (3) Status of all Special Measures cited in this table:

All are now in force, as at 5<sup>th</sup> March 2019.



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**(4) Any related Court Rules:** None as at 5<sup>th</sup> March 2019, but it is understood there will soon be Court Rules relating to DVA 2018.

**Dated 5<sup>th</sup> March 2019**

**Rape Crisis Network Ireland (RCNI) clg**

**Carmichael Centre**

**North Brunswick Street**

**Dublin D07 RHA8**

**Tel:** 01- 8656954

**Email:** [legal@rcni.ie](mailto:legal@rcni.ie)

**Website:** [www.rcni.ie](http://www.rcni.ie)

**Reference:** RCNI/LPD/1

**Disclaimer:** While every care has been taken to ensure that all information provided in this Table is up to date and accurate as at 26<sup>th</sup> February 2019, no responsibility is taken by RCNI clg or any of its employees, contractees and/or volunteers for any inadvertent omission or error therein or for any consequences of such omission or error whatsoever.

**Note:** This Submission is supported by Safe Ireland [www.safeireland.ie](http://www.safeireland.ie)

