Victims and Witnesses (Scotland) Bill

Bill Number: SP Bill 23
Introduced on: 06 February 2013
Introduced by: Kenny MacAskill (Government Bill)
Passed: 12 December 2013
Royal Assent: 17 January 2013

Passage of the Bill

The Victims and Witnesses (Scotland) Bill was introduced in the Parliament on 6 February 2013. The Parliament’s Justice Committee was designated as lead committee and considered the proposals in the Bill relating to victims and witnesses. The Health and Sport Committee was designated as a secondary committee and considered proposals relating to the setting up of a National Confidential Forum (NCF). The Justice Committee commenced taking Stage 1 oral evidence on 16 April 2013. The Health and Sport Committee commenced its Stage 1 oral evidence on 26 March 2013. The Stage 1 debate took place on 19 June 2013 and was passed following the Stage 3 debate on 12 December 2013.

Purpose and objectives of the Bill

The Bill seeks to improve elements of the criminal justice system which pertain particularly to victims and witnesses and also provides for the establishment of a National Confidential Forum to give adults who were placed in institutional care as children the opportunity to recount their experiences, including experience of abuse, in a confidential and non-judgemental setting, to an independent panel.

Provisions of the Bill

Key provisions relating to victims and witnesses include, amongst other things, giving victims and witnesses a right to certain information about their case; creating a duty on organisations and agencies within the criminal justice
system to set clear standards of service for victims and witnesses; and creating a presumption that certain categories of victim are vulnerable and giving such victims the right to utilise special measures when giving evidence.

The key functions of the NCF are to receive and listen in private to the experiences of adults placed in institutional care as children and to offer acknowledgement of those experiences; to contribute to the prevention of abuse of children placed in institutional care in the future by making proposals to inform policy and practice based on the experiences recounted in hearings of the NCF; and to signpost services to participants and their families which can offer support, advocacy, advice and information before during and after testimony is given.

**Parliamentary consideration**

In general, the proposals in the Bill received support across the Parliament. There were a number of issues, both in relation to the proposals concerning victims and witnesses and the NCF, which were keenly debated, leading to amendments in some areas. A number of those issues are highlighted below.

Issues in relation to victims and witnesses which were raised during stage 1 included: whether a definition of ‘victim’ should be placed on the face of the bill; and the right of victims of certain sexual offences to specify the gender of any person who has reason to interview them.

At stage 1, some witnesses argued that a clear definition of the word ‘victim’ would help to provide clarity for individuals and their families as to their rights under the proposed legislation. It was also suggested that the word ‘victim’ may have unintended consequences for the rights of the accused where it is used prior to and during a trial. The Justice Committee recommended that the Scottish Government give consideration to including a definition of ‘victim’ on the face of the Bill.

In response, the Cabinet Secretary for Justice stated that the overarching policy objective of the Bill is to improve the support available to victims and witnesses throughout the justice system, putting victims’ interests at the heart of on-going improvements within the system and to ensure that witnesses are able to perform their public duty effectively. He stated that in pursuing these objectives, he was mindful of the need to ensure that the justice process is fair to the accused. He stated that there should be no need for a criminal conviction before a person who has suffered as a result of a crime has access to appropriate support services. He also agreed that it was important to ensure that no negative inference should be drawn in relation to the guilt of the accused. Subsequent amendments to include a definition of ‘victim’ on the face of the Bill were not successful.

The Bill also provided a right for victims of certain sexual offences to choose the gender of any person who has reason to interview them. At stage 1, it was recommended that this right be extended to enable such victims to also choose the gender of a person who was to carry out medical examinations.
An amendment to this effect was brought forward by the Government and agreed to without division.

With regard to the NCF, the Health and Sport Committee recommended that the Government give consideration as to whether the age of eligibility to participate in the Forum should be reduced from 18 to 16. In response, the Minister for Public Health stated that he had decided that 16 and 17 year olds should have the opportunity to have their experiences and testimony heard, and had been assured that the NCF would be an appropriate setting for a person of that age. The Minister noted that, as the NCF had been set up to deal with historical matters, participants must have left the institution they had been resident in before they could participate. Notwithstanding this, an amendment brought forward by the Government to reduce the age of those eligible to participate from 18 to 16 was agreed to without division.