Justice Committee  
Victims and Witnesses (Scotland) Bill

Written submission from the Crown Office and Procurator Fiscal Service

Thank you for the opportunity to comment on the general principles contained in the first twenty five sections of the Victims and Witnesses Bill.

The Crown Office and Procurator Fiscal Service (COPFS) is committed to providing victims and witnesses with a professional service at all times. We aim to take account of any additional support that individual victims or witnesses may require and to provide them with the information they need, when they need it. However, we are not complacent about the experience of victims and witnesses within the criminal justice system and recognise that there are still areas where more can be done.

The principles contained in the Victims and Witnesses Bill remind us all that victims and witnesses are not spectators in criminal proceedings. Each contributes a critical component in the criminal justice system.

Many have unfortunately encountered disturbing and distressing intrusions into their lives as a result of criminal conduct and find themselves having to engage with unfamiliar procedures and terminology in a system that they would have preferred to avoid.

A key objective of the Bill is to improve the experience of victims and witnesses, to enable them to fulfil their public duty effectively; COPFS is supportive of this objective and recognises that the experience of individual victims and witnesses is the responsibility of the justice system as a whole.

I have provided detailed comments in relation to the specific proposals raised in your invitation in the attached document. I hope that this information is helpful.

Catherine Dyer  
Crown Agent and Chief Executive  
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Standards of service

1. Section 2 of the Bill imposes requirements on persons and organisations to set and publish standards. COPFS recognises the need to let victims and witnesses know what they can expect from the criminal justice system in terms of standards of service.

2. In 2010 COPFS published “Our Commitments to Victims and Witnesses”, which consolidated information about the standards of service that victims and witnesses can expect from COPFS. This is available on the COPFS public website and copies of these commitments are displayed in reception areas of every Procurator Fiscal’s Office.
3. COPFS also published its refreshed “Customer Feedback Policy” in October 2010. This provides clarity to anyone who wishes to make any complaint, comment, compliment or suggestion regarding the work of COPFS and the standard of service provided to them.

4. COPFS is currently establishing a formal review process for victims of crime, to provide information on what steps they can take if they are unhappy with a decision about action in the public interest, which has been made by a prosecutor, in the case in which they are involved.

**Disclosure of information about criminal proceedings**

5. Section 3 of the Bill states that information may be requested about the following:

   a) a decision not to proceed with a criminal investigation and any reasons for it;
   b) a decision not to institute criminal proceedings and any reasons for it;
   c) the place in which a trial is to be held;
   d) the date on which and time at which a trial is to be held;
   e) the nature of the charges libelled against the relevant person;
   f) the stage that the criminal proceedings have reached; and
   g) the final disposal in the criminal proceedings and any reasons for it.

6. COPFS already routinely provides information set out in (a) to (g) to victims and witnesses if it is requested. The Victim Information and Advice (VIA) service has been an integral part of COPFS since 2004. Dedicated, specially trained members of COPFS staff support those identified as the most vulnerable victims and witnesses. Accordingly any victim of domestic abuse, a sexual offence or hate crime, any child witness or vulnerable witness and any victim in solemn proceedings is automatically offered VIA service. Additionally, information and advice is provided to bereaved relatives in any case involving a death, which is reported for consideration of criminal proceedings or where a Fatal Accident Inquiry is to be held.

7. VIA advise about procedures within the criminal justice system generally, update regarding developments in the particular case and pass on information about organisations which can provide specific assistance. Over the last 18 months or so provision of consistent information to victims and witnesses has been enhanced further by dedicated VIA staff who deal with requests for information by telephone being based at the Enquiry Point which is the COPFS national contact centre.

8. Even if a victim or witness does not fall within the categories normally referred to VIA as detailed above, any victim or witness who requires information will be provided with as much as possible.

9. The term “final disposal”, may need further defined within the legislation to clarify whether this is intended to refer not simply to type of verdict and sentence but to include reasons for the verdict and/or the rational for the particular sentence. This information would fall under the auspices of the courts and judiciary. It is understood
that at present, the reasons for verdict and sentence are not routinely sought or recorded in every case at present.

**Access to special measures**

10. COPFS considers that the proposals in relation to the use of special measures represent a significant benefit to vulnerable witnesses. These proposals will enable victims and witnesses to give their evidence to the court with increased confidence. In turn, this should result in the court being better able to fully assess all the available evidence in the interests of justice.

11. It is noted however that section 9 of the Bill allows for the defence to lodge an objection to a vulnerable witness notice with section 13 covering the same situation for vulnerable witness applications. It is appreciated that this has been included as a result of the decision in the case of *I v Dunn 2012 SLT 983*. However there is no further information about how such an objection should be considered by the court. The policy objective behind the extension of special measures is to ensure that the contribution of victims and witnesses is valued and supported. It would be unfortunate if this was to be undermined by objections to the use of special measures. Currently child witnesses can be certain that if they wish to give evidence with the use of special measures then they can do so. A major anxiety for many adult vulnerable witnesses under the current system is the uncertainty as to whether or not the special measure they would wish to be in place will be granted.

12. It is suggested that it should not be possible for any objection to a special measure for a child witness or ‘deemed vulnerable witness’ to be on the basis of disputed vulnerability or their right of access to a standard special measure. It is understood that the purpose of this section of the Bill is to ensure vulnerability is appropriately identified as applying to certain categories of victims who are to be automatically regarded as vulnerable. The automatic entitlement to standard special measures should not then be open to challenge. For example, it should not be possible to argue that a victim of a sexual offence is not vulnerable – in the same way that it is not currently possible to argue that a 15 year old is not a child witness. Furthermore, the ability to challenge the use of standard special measures would appear to undermine the purpose of creating two categories of special measures – standard and non-standard.

13. COPFS would also welcome positive inclusion of the use of special measures in appropriate cases in the Justice of the Peace Court. Although provided for in the Vulnerable Witnesses (Scotland) Act 2004, this has not yet been implemented.

**Human rights**

14. COPFS supports any work which improves the way that Scotland ensures the protection of Human Rights for everyone. It is particularly important to pay attention to the voices of those who tend to be marginalised in mainstream debates surrounding human rights. As a prosecuting authority COPFS is part of the criminal justice system, which has duties to the victims, witnesses and bereaved relatives who are an integral part of the system.
15. To ensure effective criminal sanctions are in place it is vitally important that courts are provided with the best evidence on which to make their determinations. Therefore COPFS supports measures which will reassure vulnerable witnesses about their safety and will ensure that the evidence given is of the highest quality and integrity.

16. The automatic entitlement to special measures for certain categories of witnesses will reduce the need to provide information about their personal and private lives, thereby enhancing the protection of a witness's Article 8 rights. This is supported by COPFS, as it is recognised that treating victims and witnesses with dignity and respect is key to ensuring they have the confidence to report crimes and, where necessary, are willing and able to provide evidence in court.