Justice Committee

Victims and Witnesses (Scotland) Bill

Supplementary written submission from the Law Society of Scotland

Please pass on the Society’s thanks to the Justice Committee for allowing us the opportunity to provide a possible steer on the definition of ‘victim’

The Society’s Criminal Law Committee has considered this, and looked at a number of definitions from other jurisdictions. For example, the UN Victims Declaration defines the term “victim” as

“persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power”

And the Council of Europe Committee of Ministers’ Recommendation on assistance to victims of crime defines victims in similar terms:

“Victim means a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, caused by acts or omissions that are in violation of the criminal law of a member state. The term victim also includes, where appropriate, the immediate family or dependants of the direct victim.”

The committee notes that Professor Miller made reference to these definitions in his response to the Justice Committees’ call for evidence.

However, in the committee’s view, although the aforementioned international standards and definitions are useful, they are drafted for a slightly different purpose and so might not be suitable for the purposes of the Victims and Witnesses Bill.

The committee suggests that a useful comparator may be the Victims of Crime Assistance Act 2009 (Queensland: http://www.legislation.qld.gov.au/LEGISLTN/ACTS/2009/09AC035.pdf) which includes the following definition:

5 Meaning of victim
(1) A victim is a person who has suffered harm –
(a) because a crime is committed against the person; or
(b) because the person is a family member or dependant of a person who has died or suffered harm because a crime is committed against that person;
(c) as a direct result of intervening to help a person who has died or suffered harm because a crime is committed against that person.
(2) A person who commits a crime against a person as mentioned in subsection (1)(a) is not a victim of the crime under subsection (1)(b) or (c).
[Note (a) that “victim” is given a slightly different definition in certain sections of the Act (ss 8 (fair and dignified treatment), 9 (privacy of victim), 139 (functions of victim services coordinator)) where it is expanded to include “a person who has suffered harm as a direct result of witnessing a crime committed against someone else” and (b) “harm” is defined in Schedule 3 as “physical, mental or emotional harm” – i.e. economic harm is not included.]

Please let me know if you or the Committee have any other questions on this.

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Law Reform
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