Justice Committee

Victims and Witnesses (Scotland) Bill

Written submission from Children 1st

At Children 1st, we listen, we support and we take action to secure a brighter future for Scotland’s vulnerable children. Our work is built on over 125 years experience as the RSSPCC. By working together with, and listening to children, young people, their families and communities, and by influencing public policy and opinion; we help to change the lives of vulnerable children and young people for the better. We work to safeguard children and young people, to support them within their families and to help them to recover from abuse, neglect and violence.

Children 1st has 46 local services and four national services across Scotland, and we work closely with many local authorities as well as working in partnership with other organisations. All our services are child centred. The children, young people and families we support are key partners in all aspects of our work.

In addition to our services, Children 1st chairs Justice for Children. The aim of Justice for Children is to work with professionals, lay people and academics to ensure that children are able to give their best evidence in court. It seeks to create solutions that preserve the essential judicial rights of accused persons, or of defenders or pursuers, while at the same time safeguarding and promoting the interests and welfare of any children involved. Justice for Children is an alliance of individuals and organisations, including advocates, academics, ChildLine in Scotland, the Scottish Child Law Centre, Scottish Women’s Aid and Children 1st.

Children 1st supports the principles of the Victims and Witnesses Bill and welcomes many of the measures it suggests. Generally, the bill will add to the framework of support currently available for child victims and witnesses in the justice system and addresses many of the concerns Children 1st has long campaigned on. However, we do have concerns about some proposed measures in and indeed, some omissions from the bill, as outlined below.

The proposal to create a duty on relevant justice organisations to set clear standards of service for victims and witnesses

We support this proposal and welcome Ministers’ intention to publish draft regulations during the passage of this bill so that we might all be reassured by the detail of what will be contained in the standards. Children 1st is concerned that we might still get a set of minimum standards, yet it is our aspiration for this measure to result in public bodies demonstrating how they will achieve best standards of service, to deliver certainty to victims and witnesses about the level of service they should expect and to clarify their expectations on the extent of what can be provided.

The standards appear only to apply to criminal proceedings, yet many children and young people are party to civil proceedings as well, and the children involved in these cases also require a set of service standards. We are aware that civil proceedings are quite different from criminal ones and that there is currently a reform
process underway relating to civil actions. However, we would consider it appropriate for all court proceedings and public bodies engaged in those proceedings and cases to work to the same standards of service for victims and witnesses.

Finally, from our longstanding experience of supporting children and young people throughout court proceedings, we know that the information needs and support required by child victims and witnesses can be quite particular. We would prefer to see the duty to set and publish standards make specific reference to provide for the needs of child victims and witnesses, in a child-centred and child-friendly way.

**The proposal to give victims and witnesses a right to certain information about their case**

Children 1st welcomes these proposals as we know that existing practices currently fall short of meeting victims' information needs. For example, we are aware of child victims of serious sexual abuse who have been refused updates from VIA because the case is of a highly sensitive nature. These children then face a dead end, and are not told where to go to find out the information they seek. In other recent cases, child victims of sexual crimes are told that they are too old to be eligible to give evidence at a remote site.

We particularly welcome Section 3, disclosure of information about criminal proceedings. If implemented appropriately, these provisions will go a considerable way to addressing longstanding issue for child victims and witnesses about being kept informed throughout proceedings, and of changes to charges, hearing dates and so on. We also know of one recent case where a child who had been sexually abused was assured that the case would go to trial on a certain day, only to turn up at court that day with her family, wait for two hours in the waiting room and receive a text message that the trial would now not be going ahead and that she would be advised of the re-scheduled date in due course. Clearly, regulations and guidance will have to be clear about acceptable methods of contact, as well as timelines and providing sufficient information in child-centred and child-friendly ways.

We also welcome Section 23, the victims’ right to receive information about the release of the offender. This has been an issue in the past for children and young people and we welcome this being remedied.

Currently, our understanding is that despite the law being changed in section 54 of the Criminal Justice and Licensing (Scotland) Act 2010 to allow witnesses access to prior statements, it is Crown Office policy for the provision not to be applied for child victims and witnesses under the age of 16. We therefore, would hope that Section 1 (3) (a) might allow for that policy to be changed by expressly applying section 54 to all child victims and witnesses.

It is important to consider not just what information is shared, but *how* it is shared with the victim. Children often tell us that they receive very little advice about the trial or special measures. Children 1st recommends that any professional or organisation tasked with providing information to a child victim or witness about different aspects of the justice process should have basic training skills in how to engage with children.
and young people, to listen to children, and ensure that the child understands what
the information being shared. Indeed, we would contend that the changes proposed
through this bill actually add greater currency to the need for a specific child witness
support service in Scotland, following established international models which work
very well.

**The proposal to give vulnerable witnesses a right to access certain special
measures when giving evidence**

All special measures should be available to all child and young person victims and
vulnerable witnesses and we welcome in particular the extension of the definition of
a child victim, witness and indeed, offender to 18. There should be a requirement to
proactively offer each child the full range of standard special measures, including an
explanation of how these measures work, a tour of the court house and remote sites,
and to check in with the child nearer to the trial date in case the child has changed
his or her mind regarding use of special measures. There should be a duty to ensure
that children receive the measures that best meet their needs and wishes, rather
than the most convenient or readily available special measure (often the screen). The
use of special measures should be monitored and evaluated, with views sought
from child victims and witnesses as well as court staff, judges, lawyers, and juries,
wherever possible. We note currently that the Scottish Government holds no central
data about the use of special measures and their effectiveness or otherwise since
their introduction in the 2004 Act.

Children 1st welcomes measures aimed at tidying up the application of special
measures and extending their availability. However, we wonder why there continues
to be a need to notify and apply for special measures which should automatically
apply. Moreover, we note from the financial memorandum a limited financial impact
from these measures, yet the equipment used for giving evidence by TV link is out of
date, technologically slow, often breaks down and is no longer cost-effective. Investment in new technology and new equipment is required if this measure is to be
given full and proper effect in future.

We note and welcome provisions which allow for additional special measures to be
tested before becoming “standard”. In particular, we note the successful use of
intermediaries in a number of recent complex cases of child sexual abuse and also
Ministers’ intention to pilot their use more thoroughly. Children 1st has long
campaigned for the introduction and use of intermediaries for child victims and
witnesses and welcomes this development.

We are concerned that the practical effect of sections 9 and 14 might adversely
impact on children and young people’s automatic entitlement to use special
measures to give evidence. We are, of course, aware of the need to protect the
rights of the accused but believe a balance must be struck. We would welcome the
committee clarifying how these sections might work in practice during the passage of
the bill and how children and young people will be kept informed and advised of such
applications and notifications. Again, the need to do so in a child-centred and child-
friendly way suggests the need for a specific child witness support service.
We understand the policy intention behind Section 10 but are concerned that the remedy provided could seriously undermine children and young people’s right to give evidence away from court. We believe that the test provided in section 10 will result in more children being required to attend court in person to give evidence which Children 1st considers to be a retrograde step and undermines the principle of children giving evidence through the use of standard special measures. Indeed, we do not consider it necessary – current law is sufficient, in that it allows children over the age of 12 to decide where and how to give evidence: what is required is better awareness and training of how to present options to children and young people about how and where they give evidence.

But Children 1st would contend that only in very exceptional circumstances, should it ever be considered appropriate for a child under 12 to give evidence in person in court. Indeed, we are concerned that this measure is trying to resolve a problem which requires to be addressed more fully in criminal proceedings, that of children acting as witnesses in adult proceedings, particularly those involving their parents or carers. We know from our services supporting women and children and young people to recover from abuse, particularly domestic abuse, how traumatic this can be and intend to provide more detailed evidence and case studies highlighting our concerns before Stage 2. In short, Children 1st considers section 10 unnecessary and undesirable – what we would prefer to see being addressed is this more fundamental issue of involving children in adult proceedings as witnesses.

Indeed, other reforms, such as the potential removal of corroboration and the introduction and roll-out of joint investigative interviewing (which we welcome wholeheartedly) should by themselves reduce the number of children being required to be witnesses alongside a parent in a court action.

If this section is to proceed, then training of sheriffs and judges around the needs and interests of child victims and witnesses is vital, alongside robust guidance. In addition, we would like to see consideration of additional and/or temporary special measures to support a child giving evidence in person be mandatory practice where section 10 applies.

The proposal to require the court to consider compensation to victims in certain cases

In principle, we are not opposed to the idea of offenders paying a victim’s surcharge, providing, as with England and Wales, it applies to offenders aged 18 and over only and we would welcome the committee seeking clarification that this will be the case. This is an area where regulations will be vital in terms of the detail; for example, clarity is required on what happens if someone doesn’t pay the victim surcharge. We are currently seeking the views of young people who have been victims on this proposal and will provide that information to the committee before Stage 2 of the bill process.

We are, however, concerned at the proposal for restitution orders and in particular, how the measure proposes only to provide for police officers. Children 1st wonders if there is scope to extend this provision. For example, we have long been concerned at how offenders who have abused children through online images or
pornography are not required to make restitution for what many perceive as a victimless crime. At the same time, we know of the funding and resource pressure on services which support children to recover from child sexual abuse – our own eight services are almost entirely funded through our own fundraised income and yet, the waiting list for these services is always one of the longest. Applying something like a restitution order to offenders of specific online sexual offences – many of whom often have resources available – to go towards funding abuse and trauma recovery services would enable more children and young people who have been sexually abused to receive the right support at the right time to recover.

**Any human rights implications arising from the victims and witnesses provisions in the Bill**

The policy memorandum includes narrative on ECHR compatibility but says nothing about being UNCRC compatible, or even if this has been reviewed by Scottish Government as part of the consultation and drafting processes.

In terms of reporting duties, setting clear standards of service will allow statutory bodies to report on the implementation of the UN Convention on the Rights of the Child, and also the implementation of the standards required by the EU directive.

We note too that in 2012, the Scottish Government committed to undertake child rights impact assessments on appropriate legislation – we would suggest that this bill would have been appropriate for such an assessment to be undertaken.

**Additional evidence for the committee:**

**Victim statements**

Children 1st is concerned that the proposed provisions on victim statements reinforce an anomaly in terms of the definition of children. Nowhere else in legislation are we aware of children being defined as being under 14 and indeed, this provision (which we acknowledge is an existing one) appears to cut across the Age of Legal Capacity Act 1991. We would suggest that the reform required here is to bring the application of victim statements into line with other age-related legislation i.e. for children over the age of 12 to be invited to provide their own victim statement where appropriate.

We are also concerned at the provisions of the new sections created which are wholly un-child-centred and somewhat retrograde. We would prefer to see provisions around victim statements take on more of a GIRFEC approach in that where possible, children and young people should be supported to give their views. Again, support could be provided by a child witness service. Creating statutory provision which allows courts to continue to rely on the views of parents and carers in lieu of those of children and young people themselves appears to cut across the general direction of travel in policy for children.

Moreover, section (11C), which provides for a number of carers of a child to be potentially involved has real potential for conflict for a child who is likely to already be experiencing stress and trauma. A child victim or witness might well have a range of
carers and indeed, could be looked after – this is an unnecessary definition and provision in the bill.

This is a complex area and as such we would draw the Committee’s attention to the commitment made in the Children’s Hearings (Scotland) Act 2011 for advocacy provision to be made available to all children and young people entering the Hearings system. This will be come into force in 2014 and we would recommend that consideration is given to ensuring through the Victims and Witnesses Bill that all child victims and witnesses are given access to this advocacy provision as a matter of course.

Children 1st
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