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14 November 2023

Dear Convener

Thank you for your letter of 5 October 2023, which relates to implementation of previously passed legislation in the context of the Committee's Stage 1 scrutiny of the Victims, Witnesses, and Justice Reform (Scotland) Bill ('the Bill').

The Bill's reforms are important and necessary and important to achieve our shared aim of ensuring Scotland's justice system is effective, person centred, and meets the needs of those it serves.

As you know, the Lady Dorrián Review identified that iterative reforms to the management of sexual offence cases over time had not resulted in sustained improvements in victims' experiences of the trial process. It is my firm belief that this Bill is necessary to drive the level of systemic change necessary to address the issues identified in the Review, by the Victims Taskforce and by victims and witnesses themselves.

This can, and should, be done in tandem with the work that is ongoing in relation to previously passed legislation in order to realise the required level of transformation and build on past incremental improvements.

Therefore I acknowledge the concerns that have been raised at Committee about the time that can be taken to implement primary legislation and I hope that this update provides reassurance that work is ongoing and progress is being made, despite the impacts of the COVID-19 pandemic on the justice system and the realities of the public sector financial position. Attached is an annex providing an update on implementation of previously passed legislation relating to special measures, victim and witness support and trauma-informed practice.

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I hope that this is helpful and assists the Committee in their scrutiny of the Bill.

Yours sincerely



**ANGELA CONSTANCE**

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## Updates on previously passed legislation

### Children (Scotland) Act 2020

The Scottish Government provided an update on implementation of the Children (Scotland) Act 2020, going through each section, in [this response on Public Petition PE1968](#) to the Citizen Participation and Public Petitions Committee. As this response notes, there are budgetary pressures in relation to implementing the Act in full which will cost around £15 million a year.

As the update to the Citizen Participation and Public Petitions Committee noted, some provisions of the 2020 Act are in force. To give one example, section 13 has been commenced. This relates to sibling contact. It provides that local authorities must take such steps to promote personal relations and direct contact between a looked after child and their siblings, as appear to the local authority to be appropriate, having regard to the local authority's duty to promote the welfare of the child.

We continue to work on implementation. We have been in detailed discussions with the Care Inspectorate on the regulation of child contact centres and hope to lay SSIs in the next few months, and we are also considering what other provisions of the 2020 Act we can commence within the next year.

On special measures, the Bill will extend provisions in the Act for the protection of vulnerable witnesses and parties, which are presently limited in their application to proceedings under section 11 of the Children (Scotland) Act 1995 (mainly child contact and residence cases), to cover civil proceedings generally. This reflects that domestic abuse can occur in civil cases generally and not just in family cases.

Responses to the Scottish Government consultation and the evidence that the Committee has received so far suggests that extending provisions in the 2020 Act to civil cases generally is largely welcome, although points are being raised on whether the Bill should go further. We will consider these points very carefully. As the Bill is extending provisions in the 2020 Act on special measures, we would not plan to commence these provisions in the 2020 Act at this stage.

### Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019

The Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 committed the Scottish Government to expanding the use of pre-recorded evidence of child and vulnerable witnesses in the most serious cases.

We recognised that the requirements associated with adopting the presumption would place significant additional demand on the justice system and that the implementation of the Act would need to be carefully managed. Not long after the Act received Royal Assent, the justice system had to change the way they worked due to the need to respond to the global COVID-19 pandemic which is continuing to place additional pressure on the justice system as they now deal with the backlog of cases. Consequently, the presumption has not yet been implemented beyond Phase 1, which includes children who are witnesses and complainers in the High Court.

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The provisions in the VWJR Bill complement the Act. They would establish an automatic presumption that all complainers in the specialist sexual offences court will have their evidence pre-recorded. Courts already have the power to direct pre-recording of evidence for vulnerable witnesses. The pre-recording of complainers' evidence is conducted by the courts routinely in sexual offences cases, but we want to go further by ensuring that all victims of sexual offences can pre-record their evidence ahead of trial.

Section 9 of the 2019 Act requires Ministers to publish a report on the Act. This will be published by the end of the calendar year and will provide further information into the operation of the Act.

Through a cross sector implementation group, work is underway with justice partners to progress with further roll out of the presumption. We aim to publish an updated Implementation Plan before the end of this financial year.

### **Domestic Abuse (Protection) (Scotland) Act 2021**

In relation to implementation of Part 1 of the Domestic Abuse (Protection) (Scotland) Act 2021, it is useful to set out the work undertaken to date and to highlight some of the emerging challenges encountered in relation to commencement.

By way of background, Part 1 of the Act, when commenced, will give Police Scotland the power to issue a Domestic Abuse Protection Notice (DAPN) to someone suspected of causing harm to someone they live with some or all of the time. This could be used to prevent a person suspected of causing harm from entering the home shared with the person suspected of being at risk. The intention is for a DAPN to be utilised where domestic abuse is suspected but there is insufficient evidence to pursue a criminal route.

Due to human rights considerations, a DAPN is only able to be in place for a very short period of time. On issuing a DAPN, Police Scotland would then apply to the civil courts the next court day for a Domestic Abuse Protection Order (DAPO) which, if granted by the courts would give the person suspected of being at risk of harm, up to three months breathing space in which to consider their longer-term options.

Following Royal Assent an Implementation Board was established to work with relevant partners including Police Scotland, the Scottish Courts and Tribunal Service and Scottish Women's Aid. The work was paused in October 2021 due to other priorities but was re-established in November last year. In addition to the re-established Implementation Board, an Operational Working Group comprising of justice stakeholders that will be operationally impacted by the Act, was established to work through the detail of how the legislation could operate.

There are several challenges in relation to the implementation of Part 1 of the legislation. In summary these include but are not limited to: an estimated higher than anticipated volume of cases; how the timescales laid down in the legislation impact on operational justice agencies; and challenges in how the views of children can be gathered in a way that does not cause additional harm or trauma. These issues all have associated resource implications. In addition, there are a number of practical aspects to the legislation for

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operational justice agencies that require further consideration on how these could be resolved.

Scotland is not unique in experiencing challenges in implementing a protection notice and order scheme. The broadly equivalent scheme in England and Wales, Domestic Violence Protection Notices (DVPNs) and Orders (DVPOs) took over 4 years to be rolled out across all 43 police forces. The scheme is planned to be repealed following conclusion of the Home Office and Ministry of Justice led pilot of its revised DAPO scheme through the Domestic Abuse Act 2021.

The UK Government has also encountered challenges in how the pilot will operate in practice in England and Wales and is currently working through how these could be resolved. Similarly, Northern Ireland is progressing with the development of its DAPO scheme. The detail of the scheme in Northern Ireland will be set out in regulations, but the development of these is proving challenging.

Despite the challenges in implementing the Domestic Abuse Protection Notice and Order scheme, we remain committed to working with stakeholders to deliver a scheme that realises the intended benefits of the legislation.

In relation to Part 2 of the Act, in which responsibility sits with the Minister for Housing, the provisions will, when implemented, give social landlords the ability to apply to the court for an order which will have the effect of enabling a social landlord to transfer a tenancy to a victim/survivor, upholding women's rights to remain in the family home and to take a more proactive role in supporting and protecting victims of domestic abuse.

Part 2 had originally been planned to be brought into force by the end of 2022 but was temporarily halted due to resourcing and other priorities following the Programme for Government announcement of a rent freeze, moratorium on evictions and the subsequent introduction of emergency housing legislation.

Work is progressing, on the wide range of tasks necessary to commence Part 2, including secondary legislation, changes to court procedures and forms, model tenancy agreements and the development of statutory guidance in consultation with stakeholders. We aim to bring the tenancy related provisions at Part 2 into force in 2024, subject to the necessary rules and forms of court also being in place.

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