Scottish Courts and Tribunals Service

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Ms Audrey Nicoll MSP
Convener

By email to Committee Clerk
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13 March 2025

Dear Convener

Victims, Witnesses, and Justice Reform (Scotland) Bill- Scottish Government Stage 2 amendments

I thank you for the Committee's email of 7 March 2025 and for the opportunity to provide some comments on behalf of the SCTS in relation to the Scottish Government's planned amendments on the above Bill. For ease of reference I have tried to allocate comments under the applicable parts of the Bill with associated headings below in so far as possible. The comments, given the size and extent of the Bill, are not exhaustive but I hope provide the Committee with useful insights for the SCTS's perspective.

I am more than happy to provide any additional information or clarity on the comments below should the Committee find that useful.

Part 2- Trauma-informed practice – Amendments 170 & 171

As stated in our stage 1 evidence the SCTS is, and remains committed to becoming a trauma informed organisation and has taken a number of important steps to support it including supporting and contributing alongside other justice partnerships to the creation of NES's two e-modules and taking a trauma informed lens when designing and creating new evidence facilities in Dundee.

Like many justice partners we welcome and support the need to be ambitious in this arena. One way of doing this is to ensure the definition of trauma-informed practice in the Bill reflects that ambition in so far as possible. However in doing that, it is equally important to ensure that the definition is not inflexible or legally prohibitive and that justice partners are provided with sufficient resourcing, as applicable, to achieve that. On the former two points in particular we do have reservations that the current framing of the amendment may unintentionally create unachievable aims in law. In many instances 'effective participation' is a legal entitlement set out in law. It might not therefore always be within the gift of any of the 5 justice organisations, who are principally subject to the majority of the obligations in Part 2, to implement. We would therefore wish to ensure there is clarity on what is expected.

We have and are happy to liaise further with Scottish Government policy colleagues leading on this part of the Bill to help address and refine this, from an SCTS perspective, in so far as possible.

Part 3- Special Measures in Civil Cases- Amendments 140-143

We anticipate that the amendments may significantly increase the number of users who may seek or be entitled to special measures. Given the potential impact on court programming if there is an absence of equipment or suitable facilities to respond to this demand, it is essential that there is an acknowledgement of the need for, and the ultimate provision of additional Government resourcing to SCTS to support implementation.

Amendment 144 (and specifically new subsection (5A)) provides that when making an order in these circumstances, the court must take account of the party's views and, if the party is a child, the views of the child's parent. Cognisance must be given to the potential increased judicial time and resources required to support this proposal, over and above the practicalities and potential delays and impacts on court programming that may occur in relation to this. There will also be additional costs both staff and judicial for any additional hearing to consider and / or obtain the views mentioned.

Part 4- Criminal Juries and Verdicts - Amendment 233- communication supporters for jurors

The SCTS supports in principle legislative changes that may help more people to take part in and contribute to the important civic duty that is jury duty. Fundamentally to support that aim, however, is the need for clarity in so far as possible on the face of the Bill, on who it aims to support. We currently have reservations in respect of this and therefore would welcome further detail on the category of disabilities the provisions intend to cover. To further empower jurors who may require assistance and balance that with helping to minimise any potential delay to the start of court proceedings should identification of needs occurs only on the day of the juror's attendance at court, a mechanism that facilitates early intimation of needs by jurors would be very welcome.

Sufficient resourcing for the SCTS to make any reasonably practicable changes available to include juror communication supporters physically within the court environment is also crucial. Such facilities currently cater for 15 juror members. The provisions may require the court to include at least an additional 2 people within those spaces. Given the volume of court rooms and jury muster (rest rooms) that might be impacted by these proposals, alongside the often listed nature of the SCTS's estate there may be significant costs associated to make this proposal, in so far as changes are physically possible, a reality. We would wish to ensure the Committee is acutely aware of this.

Part 5- Sexual Offences Court

As indicated in our written submissions, and oral evidence to the Committee at stage 1, the SCTS is entirely supportive of the creation of a new national jurisdiction sexual offences court as recommended by the then Lord Justice Clerk, Lady Dorrian. The foundations for this are set out in the Bill as introduced. That position has not changed. Without wholescale reforms in this area, we are, as Lady Dorrian put it likely to be debating the same issues 40 years hence. Retention of the existing two tier court system for solemn sexual offences which comes with it differing legislative deadlines, requirements, expectations and practices will inhibit the potential for improved user and justice wide change that the Review envisaged and said was needed. In 23/24, 47.6% of High Court indictments, 443 cases, were categorised as sexual crimes. 10.3% of sheriff court solemn indictments, or 761 cases were similarly categorised. The creation of a new trauma informed national jurisdiction court with universal legislative requirements and rules and procedures, developed through a trauma informed lens, and presided over by dedicated trained judicial office holders is the best and the only realistic opportunity to support some of the most serious allegations of crime in this country progress through our justice system, and

improve the experience for all complainers, vulnerable witnesses, accused, practitioners, judiciary and staff involved in them.

In terms of the specific amendments proposed we would make the following comments:

We note that a substantive change (**Amendment 185**) has been made to the process for the appointment of the judiciary to the new court. The Lord Justice General's (LJG) general power to deploy all relevant judicial officer holders with applicable trauma training, skills and expertise as he sees fit has been removed, replaced in some respects with a power to nominate applicable officer holders for Ministers to appoint, modelled primarily on the approach currently used for temporary judges, along with a remuneration power in relation to those judges so appointed. While we acknowledge that the appointment model is a policy matter for the Scottish Government to consider, we have made representations to the Scottish Government on possible operational and financial implications of this amended model, which will now need to be considered.

We note that **Amendment 197** seeks to introduce a new ability, in principle, for the SCTS to pay remuneration and allowances determined by Scottish Ministers, and also pay reasonable expenses. To ensure its operation in practice sufficient additional resourcing will require to be made available by Scottish Government to the SCTS.

A presumption for the pre-recording of complainer evidence is a corner stone of Lady Dorrian's cross-justice sector review, and its recommended national sexual offences court. The underlying rationale was that the system must be one which "allows the vulnerable witness to give their best evidence as early as possible after the alleged offence is reported". With the consensus being that giving evidence by commissioner is far less traumatising than giving evidence in court. The SCTS, like others, undeniably recognises that choice is a central part of any trauma informed system. Essential to a complainer or vulnerable party, being able to express a choice or 'wish' (terminology used in the Bill) to depart from a presumption and give live evidence to the court, is not only that they have (i) awareness of the option; but (ii) that they are enabled to make an **informed** 'wish' or choice. This may be achieved through the provision of pertinent information and support. It is also important that the court making any decision is made of aware of the steps and information that has been made available and taken to facilitate this expression.

The differences between the processes of giving evidence at trial and e.g. on commission extend well beyond the issue of scheduling (currently a commission in the High Court can take place on average within 15 weeks of application, while the current average journey time for a trial is 46 weeks). Other differences include the environment in which the evidence is given, the forum, the format of the questions, the number and identity of the parties present and, crucially, the duration of the evidence giving process. This is crucial information that requires to be conveyed to the witness before any choice to give evidence at trial may be considered an informed one. The SCTS welcomes in principle provision made in parts of **Amendment 208** to support the provision of information to support informed choice, though would equally support greater provision on the face of the Bill to secure and support information provision.

Part 6- Independent legal representation for complainers in respect of section 275

The SCTS, like a number of justice partners and organisations, supports the creation of a right to independent legal representation for complainers in circumstances when a section 275 application is made. We support the form recommended by Lady Dorrian's cross justice sector Review. As indicated in stage 1 evidence, the SCTS had significant concerns that the provisions within the Bill as introduced would, due to processes and practices and timescales created therein, unintentionally but radically increase churn and delay with associated impact on complainers, accused, practitioners, jurors and the justice system generally. It had the potential to act contrary to a trauma informed approach the Bill was seeking to achieve.

While some changes have been made to address some of our concerns e.g. ensuring the court is notified of the ILR being appointed (**Amendment 222**) and the introduction of a mechanism and timescales for objection to disclosure of certain items of evidence to the complainer's ILR; we remain concerned that a number remain, and will be realised in practice if not addressed. The 'disclosure process' remains complicated, and will by default build in opportunities for delay and the need for extra hearings. The latter is particularly concerning within the summary case forum, given the need for efficiency, and the achievements made to date through the Summary Case Management initiative. The latter is now scheduled for national roll out. It will delay other processes e.g. evidence by commissioner which are intended to occur earlier and improve user experiences; in addition to trials/case determinations.

The SCTS is disappointed to note that no provision has been made within the amendments to effectively address how section 275 applications made during a trial (or evidence by commissioner) might be more effectively addressed. A general discretionary power for the judiciary to waive certain matters or steps required, which could help alleviate to some extent some of our concerns, particularly at trial has not been included. Delays at trials not only impact complainers, accused, and witnesses, but also jurors and the justice system at large. Increased juror costs, travel and subsistence may also arise.

We believe in addition to those points mentioned above there are further changes that could be made to the provisions to expedite the 'disclosure process' and minimise, but not totally eradicate, the concerns we have. We are happy to continue to liaise with Scottish Government officials on this point to support the effective operationalisation of this important area of reform.

Amendment 226 seeks to create (via new 275ZC) what appears to be a new offence of knowingly using or disclosing evidence provided as part of the ILR process. We would merely note that it is essential that the SCTS is appropriately funded as required to address any increased case load as a consequence of this.

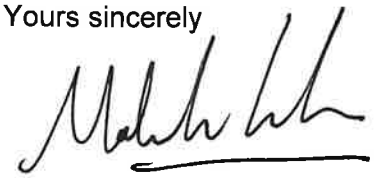
Victims Notification Scheme- Amendment 172

This amendment will result in a substantive increase in the number of victims of crime who will be entitled to access a range of information about the perpetrator. The SCTS is one of a number of justice partnerships involved in the supply of this information. We would therefore wish reassurances from Government that commensurate financial resourcing will be provided as required.

As indicated throughout this response the SCTS is committed to working with Scottish Government policy colleagues to improve in so far as possible those areas where we envisage the greatest operational and practical challenges remain.

I am personally happy to provide any further clarification or information in respect of the above that the Committee may find helpful.

Yours sincerely



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