

# Victims, Witnesses, and Justice Reform (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:  
Explanatory Notes (SP Bill 26-EN), a Financial Memorandum (SP Bill 26-FM), a Policy  
Memorandum (SP Bill 26-PM), a Delegated Powers Memorandum (SP Bill 26-DPM) and  
statements on legislative competence (SP Bill 26-LC).**

# Victims, Witnesses, and Justice Reform (Scotland) Bill [AS INTRODUCED]

An Act of the Scottish Parliament to establish a Victims and Witnesses Commissioner for Scotland; to make provision for the investigation and prosecution of crime, and the conduct and scheduling of criminal and civil proceedings, to be done in a trauma-informed way; to make provision for special measures for vulnerable witnesses and vulnerable parties in civil proceedings, including the special measure of prohibiting the personal conduct of certain cases; to abolish the not proven verdict and to make provision about the size of juries in criminal trials and the number of jurors needed to deliver guilty verdicts; to establish a new court to try persons accused of certain sexual offences; to provide for anonymity for victims of certain sexual offences; to provide for complainers' legal representatives to be heard in relation to applications to admit certain evidence in sexual offences cases; to enable a pilot of rape trials before a judge without a jury; and for connected purposes.

## PART 1

### VICTIMS AND WITNESSES COMMISSIONER FOR SCOTLAND

#### *Establishment*

#### **1 Victims and Witnesses Commissioner for Scotland**

- (1) The office of Victims and Witnesses Commissioner for Scotland is established.
- (2) Schedule 1 makes further provision about the office.

#### *Functions and powers*

#### **2 Functions**

- (1) The Commissioner's general function is to promote and support the rights and interests of victims and witnesses.
- (2) In exercising the general function, the Commissioner is to—
  - (a) engage, in such manner as the Commissioner considers appropriate, with—
    - (i) victims and witnesses,
    - (ii) persons providing victim support services,

- (b) take such steps as the Commissioner considers appropriate to raise awareness of and promote the interests of victims and witnesses,
- (c) monitor compliance with—
  - (i) standards of service set and published under section 2 of the Victims and Witnesses (Scotland) Act 2014 (“the 2014 Act”),
  - (ii) the Victims’ Code for Scotland prepared and published under section 3B of that Act,
- (d) promote best practice, in particular trauma-informed practice, by—
  - (i) criminal justice agencies,
  - (ii) persons providing victim support services,
- (e) undertake and commission research in order to—
  - (i) produce the Commissioner’s annual report under section 16,
  - (ii) make recommendations, in relation to any matter relevant to the Commissioner’s general function, to criminal justice agencies and to persons providing victim support services.

### 3 Civil function

- (1) The Scottish Ministers may, by regulations, amend the Commissioner’s general function to include the civil function.
- (2) The civil function is to promote and support the rights and interests of persons involved in proceedings other than criminal proceedings.
- (3) Regulations under subsection (1) may, in particular—
  - (a) contain a definition, for the purposes of the civil function, of—
    - (i) proceedings other than criminal proceedings,
    - (ii) persons involved in proceedings other than criminal proceedings,
  - (b) provide for the exercise of the civil function to include—
    - (i) engagement, in such manner as the Commissioner considers appropriate, with persons involved in proceedings other than criminal proceedings or providing support to persons involved in such proceedings,
    - (ii) taking such steps as the Commissioner considers appropriate to raise awareness of and promote the interests of persons involved in proceedings other than criminal proceedings,
    - (iii) promoting best practice, in particular trauma-informed practice, by persons involved in the administration and management of proceedings other than criminal proceedings and by persons providing support to persons involved in such proceedings,
    - (iv) undertaking and commissioning research in order to include information relating to the exercise of the civil function within the annual report under section 16,
    - (v) undertaking and commissioning research in order to make recommendations, in relation to any matter relevant to the civil function, to persons involved

in the administration and management of proceedings other than criminal proceedings and persons that provide support to persons involved in such proceedings,

(c) modify this Part to include within the Commissioner's functions and powers—

- (i) persons involved in proceedings other than criminal proceedings,
- (ii) the administration and management of proceedings other than criminal proceedings and persons involved in such administration and management,
- (iii) persons providing support to persons involved in proceedings other than criminal proceedings.

(4) Regulations under subsection (1) may—

- (a) make any incidental, supplementary, consequential, transitional, transitory or saving provision the Scottish Ministers consider appropriate for the purposes of, in connection with or for giving full effect to this section,
- (b) modify this Part (including schedules 1 and 2).

#### **4 Engagement**

(1) In exercising the Commissioner's function under section 2(2)(a), the Commissioner—

- (a) may establish such groups as the Commissioner considers appropriate,
- (b) must pay particular attention to groups of victims and witnesses who do not have other adequate means by which they can make their views known.

(2) The Commissioner must prepare and keep under review a strategy for engaging with victims, witnesses and persons providing victim support services in accordance with section 2(2)(a) and this section.

#### **5 Advisory group**

(1) The Commissioner may establish and maintain an advisory group to give advice and information to the Commissioner about matters relating to the Commissioner's functions.

(2) The members of any such advisory group are to be such persons as the Commissioner may determine, subject to the approval of the Parliamentary corporation as to—

- (a) the number of members,
- (b) the persons to be appointed.

(3) The Commissioner may pay to the members of any such advisory group such remuneration and allowances (including expenses) as the Commissioner, with the approval of the Parliamentary corporation, may determine.

(4) The procedure of any such advisory group is to be such as the Commissioner may determine.

#### **6 Power to work with others**

(1) The Commissioner may, in the exercise of the Commissioner's functions—

- (a) work with a person mentioned in subsection (2), on such terms as may be agreed with the person,

- (b) when requested by such a person, provide assistance to the person,
- (c) consult such a person.

(2) The persons are—

- (a) the Scottish Parliament,
- (b) the Scottish Ministers,
- (c) the Lord Advocate,
- (d) the chief constable of the Police Service of Scotland,
- (e) His Majesty’s Inspectors of Constabulary in Scotland,
- (f) the Scottish Police Authority,
- (g) the Police Investigations and Review Commissioner,
- (h) the Information Commissioner,
- (i) the Scottish Human Rights Commission,
- (j) the Commissioner for Children and Young People in Scotland,
- (k) such other persons as the Commissioner considers appropriate.

## **7 General powers**

- (1) The Commissioner may do anything which appears to the Commissioner—
  - (a) to be necessary or expedient for the purposes of, or in connection with, the performance of the Commissioner’s functions, or
  - (b) to be otherwise conducive to the performance of those functions.
- (2) Despite the generality of subsection (1), the Commissioner may pay fees and allowances to a person for advice, assistance or any other service only with the approval of the Parliamentary corporation.

## **8 Restriction on exercise of functions**

- (1) The Commissioner may not exercise any function in relation to an individual case.
- (2) But subsection (1) does not prevent the Commissioner considering individual cases and drawing conclusions about them for the purpose of, or in the context of, exercising a function.
- (3) The Commissioner may exercise the Commissioner’s functions in relation to victims’ and witnesses’ experiences that occurred prior to the coming into force of this section, but only if and to the extent that the experiences are relevant to the exercise of the Commissioner’s general function.
- (4) For the purposes of subsection (1), “individual case” includes—
  - (a) a particular victim or witness,
  - (b) the bringing or conduct of particular proceedings,
  - (c) anything done or omitted to be done by a person acting in a judicial capacity or on the instructions of or on behalf of such a person.

*Strategic plan*

**9 Strategic plan**

- (1) The Commissioner must, in respect of each 3 year period—
- (a) prepare and publish a strategic plan, and
  - (b) lay a copy of the plan before the Scottish Parliament before the beginning of the 3 year period to which it relates.
- (2) Before publishing a strategic plan, the Commissioner must consult on a draft of it with—
- (a) the Parliamentary corporation, and
  - (b) such other persons as the Commissioner considers appropriate.
- (3) A strategic plan is a plan setting out how the Commissioner proposes to perform the Commissioner’s functions during the period covered by the plan and, in particular, setting out—
- (a) what the Commissioner’s objectives and priorities are for that period,
  - (b) how the Commissioner proposes to achieve them,
  - (c) what the timetable is for doing so, and
  - (d) what the estimated costs are of doing so.
- (4) The Commissioner may, at any time, review and revise a strategic plan.
- (5) Where the Commissioner revises a strategic plan—
- (a) subsections (1) to (4) apply to the revised strategic plan as they apply to the original strategic plan,
  - (b) the reference in subsection (1) to the 3 year period is to be read as a reference to the period to which the revised strategic plan relates.
- (6) In this section, “3 year period” means—
- (a) the period of 3 years beginning with 1 April next following the coming into force of this section, and
  - (b) each subsequent period of 3 years.

*Investigations*

**10 Carrying out investigations**

- (1) The Commissioner may carry out an investigation into whether, by what means, and the extent to which a criminal justice agency has, or has had, regard to the rights, interests, and views of victims and witnesses in making decisions or taking actions that affect those victims and witnesses.
- (2) The Commissioner may carry out an investigation under subsection (1) only if the Commissioner, having considered the available evidence on, and any information received about, the matter, is satisfied on reasonable grounds that the investigation would not duplicate work that is properly the function of another person.

- (3) The Commissioner may not carry out an investigation so far as it would relate to—
- (a) the making of decisions or taking of action in particular legal proceedings before a court or tribunal, or
  - (b) a matter which is the subject of legal proceedings before a court or tribunal.

5     **11     Initiation and conduct of investigation**

- (1) Before taking any steps in the conduct of an investigation, the Commissioner must—
- (a) draw up terms of reference for the investigation, and
  - (b) take such steps as appear to the Commissioner to be appropriate with a view to bringing notice of the investigation and terms of reference to the attention of persons likely to be affected by it.
- 10
- (2) An investigation is to be conducted in public except to the extent that the Commissioner considers that the taking of evidence in private is necessary or appropriate.

**12     Investigations: witnesses and documents**

- (1) The Commissioner may require any person to—
- (a) give evidence on any matter within the terms of reference of an investigation,
  - (b) produce documents in the custody or control of that person which have a bearing on any such matter.
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- (2) The Commissioner may not impose a requirement under subsection (1) on any person whom the Parliament could not require, under section 23 of the Scotland Act 1998, to attend its proceedings for the purpose of giving evidence or to produce documents.
- 20
- (3) A person is not obliged under this section to answer any question or produce any document which that person would be entitled to refuse to answer or produce in proceedings in a court in Scotland.
- (4) A representative of the Crown Office and Procurator Fiscal Service is not obliged under this section to answer any question or produce any document concerning the operation of the system of criminal prosecution in any particular case if the Lord Advocate—
- (a) considers that answering the question or producing the document might prejudice criminal proceedings in that case or would otherwise be contrary to the public interest, and
  - (b) has authorised the representative to decline to answer the question or produce the document on that ground.
- 25
- (5) The Scottish Ministers may, by regulations, make further provision in relation to the giving of evidence or the production of documents under subsection (1).
- (6) In subsection (4), a “representative of the Crown Office and Procurator Fiscal Service” means—
- (a) Crown Counsel,
  - (b) a procurator fiscal,
  - (c) a person employed in the Crown Office and Procurator Fiscal Service,
- 30
- 35

- (d) any person duly authorised to represent or act for the persons mentioned in paragraphs (a) to (c).

### **13 Reports on investigations**

- 5 (1) The Commissioner must, at the conclusion of an investigation, publish a report of the investigation.
- (2) The report may include a requirement for the criminal justice agency to respond to the report, within such period as the Commissioner reasonably requires, with a statement in writing addressed to the Commissioner setting out its reasoned response to the report.
- 10 (3) A report of an investigation must not be published until the criminal justice agency which was the subject of the investigation has, to the extent that it is reasonable and practicable to do so, been given a copy of the draft report and an opportunity to make representations on it.
- (4) The Commissioner must lay a copy of the report before the Scottish Parliament as soon as reasonably practicable following its publication.

15 *Information gathering*

### **14 Power to gather information**

- 20 (1) The Commissioner may require a criminal justice agency to supply information which the Commissioner reasonably requires for the purpose of determining whether that agency has complied with, or is complying with—
- (a) standards of service set and published under section 2 of the 2014 Act,
- (b) the Victims' Code for Scotland prepared and published under section 3B of that Act.
- (2) Where a requirement is imposed under subsection (1), the Commissioner must give the criminal justice agency a written notice specifying—
- 25 (a) the information, or the nature of the information, which is to be supplied,
- (b) the form in which it is to be supplied,
- (c) in the case of information which is to be supplied by means of a statement in person, the place at which it is to be supplied, and
- (d) the particular matters in connection with which the information is required.
- 30 (3) A criminal justice agency is not obliged under this section to provide information which that agency would be entitled to refuse to provide in any proceedings in a court in Scotland.
- (4) The Lord Advocate is not obliged under this section to provide information which concerns the operation of the system of criminal prosecution in any particular case if the Lord Advocate considers that providing the information—
- 35 (a) might prejudice criminal proceedings in that case,
- (b) would otherwise be contrary to the public interest.

- (5) The Commissioner may revoke any requirement imposed under subsection (1) by giving written notice to the criminal justice agency to whom notice of the requirement was given.
- (6) In this section, “information” includes unrecorded information.

5 **15 Offence of Commissioner disclosing confidential information**

- (1) A person mentioned in subsection (2) commits an offence if—
- (a) the person knowingly discloses any information which—
- (i) has been obtained by or on behalf of the Commissioner for the purposes of exercising the Commissioner’s functions, and
- (ii) at the time of disclosure is not, and has not previously been, in the public domain, and
- (b) the disclosure is not authorised by subsection (3).
- (2) The persons referred to in subsection (1) are persons who are or have been—
- (a) the Commissioner,
- (b) a member of the Commissioner’s staff,
- (c) an agent of the Commissioner.
- (3) For the purposes of subsection (1)(b), disclosure is authorised only so far as it is—
- (a) made with the consent of the person from whom the information was obtained,
- (b) subject to subsection (4), necessary for the purpose of enabling or assisting the exercise of the Commissioner’s functions under this Act, or
- (c) made for the purposes of legal proceedings, whether criminal or civil (including information disclosed for the purposes of the investigation of any offence or suspected offence).
- (4) Subsection (3)(b) does not authorise the disclosure of information which leads, or is likely to lead, to the identification of—
- (a) victims,
- (b) witnesses,
- (c) persons suspected of committing of an offence but who have not been charged in relation to that offence.
- (5) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment, to a fine.

*Annual report*

**16 Annual Report**

- (1) The Commissioner must, in respect of each financial year—
- (a) prepare and publish a report on the Commissioner’s functions, and

(b) lay a copy of the report before the Scottish Parliament as soon as practicable after the end of that year.

(2) The report must include—

(a) a review of issues identified by the Commissioner in the financial year as being relevant to victims and witnesses,

(b) a review of the Commissioner's activity in that year, including the steps taken to fulfil each of the Commissioner's functions,

(c) any recommendations by the Commissioner arising out of that activity,

(d) an overview of the activity the Commissioner intends to undertake in the financial year following the year to which the report relates.

(3) Recommendations under subsection (2)(c) may include recommendations in relation to—

(a) the provision of training to the members and employees of a criminal justice agency,

(b) a person's standards of service set and published under section 2 of the 2014 Act,

(c) the Victims' Code for Scotland prepared and published under section 3B of that Act,

(d) trauma-informed practice,

(e) the provision of information to victims and witnesses,

(f) any other matter relating to the Commissioner's functions.

(4) The Commissioner must—

(a) comply with any direction given to the Commissioner by the Parliamentary corporation in relation to the form and content of the report,

(b) ensure that a report does not include any information that would or might disclose the identity of an individual.

(5) The first report under this section is to relate to the period beginning on the day that this section comes into force and ending—

(a) if the financial year ends not less than 6 months after the day that this section comes into force, on the last day of that financial year, or

(b) otherwise, on the last day of the next financial year.

## **17 Requirement to respond to annual report**

(1) Where a report under section 16 names—

(a) a criminal justice agency,

(b) a person providing victim support services,

the Commissioner may, in the report, impose on the person a requirement to respond to the report.

- (2) Where a requirement to respond is imposed under subsection (1)—
- (a) the Commissioner must give a copy of the report to the person named in the report, and
  - (b) the person must provide a written statement within such reasonable period as the Commissioner specifies.
- (3) The statement must set out the person's reasoned response to the part of the report which relates to their activities.

## **18 Publication of responses to annual report**

- (1) The Commissioner must—
- (a) publish any statement provided in response to a requirement to respond imposed under section 17, and
  - (b) lay a copy of it before the Scottish Parliament.
- (2) Subsection (1) does not apply if, or to the extent that, the Commissioner considers publication and laying to be inappropriate.
- (3) In particular, the Commissioner must ensure that, so far as reasonably practicable, the version of the statement which is published and laid under subsection (1) does not include any information which would not, under section 16(4), be included in a report.
- (4) The Commissioner may, in such manner as the Commissioner considers appropriate, publicise a failure to comply with a requirement to respond.

### *Miscellaneous*

## **19 Reports**

- (1) The Commissioner may lay before the Parliament any report, in addition to reports under sections 13 and 16, prepared by the Commissioner if the Commissioner considers it appropriate to do so.
- (2) The Commissioner must ensure that, so far as reasonably practicable having regard to the subject matter, a report does not name or otherwise identify an individual who has—
- (a) given information to the Commissioner, and
  - (b) not consented to being named in the report.

## **20 Protection from actions of defamation**

- (1) For the purposes of the law of defamation—
- (a) any statement made to the Commissioner has absolute privilege,
  - (b) any statement in the Commissioner's report on an investigation has absolute privilege,
  - (c) any other statement made by the Commissioner has qualified privilege.

(2) In this section—

(a) a reference to a statement being made to or by the Commissioner—

(i) includes a statement being made to or by (as the case may be) a member of the Commissioner’s staff or an agent of the Commissioner,

(ii) does not include a statement made to or by (as the case may be) an individual when the individual is not acting in the individual’s capacity as the Commissioner, a member of the Commissioner’s staff or an agent of the Commissioner,

(b) “statement” has the same meaning as in the Defamation and Malicious Publication (Scotland) Act 2021.

#### *Co-operation with Commissioner*

### **21 Co-operation with Commissioner**

(1) The Commissioner may request that a specified criminal justice agency co-operate with the Commissioner in any way that the Commissioner considers necessary for the purposes of the Commissioner’s functions.

(2) A criminal justice agency which receives a request under subsection (1) must respond to that request confirming—

(a) that it will comply with the request so far as reasonably practicable, or

(b) that it will not comply with the request and the reason for that non-compliance.

#### *Application of public authorities legislation*

### **22 Application of public authorities legislation**

Schedule 2 amends other Acts so that their provisions apply to the office of Victims and Witnesses Commissioner for Scotland.

#### *Interpretation of Part*

### **23 Interpretation of Part**

(1) In this Part (including schedule 1)—

“Commissioner” means the Victims and Witnesses Commissioner for Scotland,

“criminal justice agency” means—

(a) the Lord Advocate,

(b) the Scottish Ministers,

(c) the chief constable of the Police Service of Scotland,

(d) the Scottish Courts and Tribunals Service,

(e) the Parole Board for Scotland,

“harmful behaviour by a child” means action or behaviour by a child under 12 years of age which falls within section 179A(2) of the Children’s Hearings (Scotland) Act 2011,

“offence”—

(a) includes—

(i) any offence, regardless of whether it is committed, or suspected to have been committed, before or after this section comes into force,

(ii) conduct which would constitute an offence, whether or not a person has been charged with or convicted of an offence in relation to that conduct,

(b) does not include conduct by a child in respect of which the child has been referred to a children’s hearing,

“Parliamentary corporation” means the Scottish Parliamentary Corporate Body,

“victim” means a person against or in respect of whom—

(a) an offence, or

(b) harmful behaviour by a child,

has been, or is suspected to have been, committed or carried out.

“victim support services” has the meaning given by section 3D(5) of the 2014 Act,

“witness” means a person who is or appears to be a witness in respect of an offence, or harmful behaviour by a child.

(2) The Scottish Ministers may, by regulations—

(a) modify the list in the definition of “criminal justice agency” in subsection (1) to add, vary or remove entries,

(b) modify the definition in subsection (1) of—

(i) victim,

(ii) witness,

(c) make any other modification to subsection (1) which the Scottish Ministers consider necessary or expedient in consequence of modifications made by virtue of paragraph (b).

## PART 2

### TRAUMA-INFORMED PRACTICE

#### *Principle of trauma-informed practice*

#### **24 Principle of trauma-informed practice**

(1) The 2014 Act is amended as follows.

(2) In section 1 (general principles)—

(a) in subsection (3), after paragraph (c) insert—

“(ca) that, during and after the investigation and proceedings, a victim or witness should be treated in a way that accords with trauma-informed practice,”

(b) after subsection (3) insert—

“(3A) For the purposes of this section, “trauma-informed practice” has the meaning given by section 69 of the Victims, Witnesses, and Justice Reform (Scotland) Act 2024.”.

5 (3) In section 2 (standards of service)—

(a) in subsection (1), after paragraph (a) insert—

“(aa) the carrying out of those functions in relation to such a person in a way that accords with trauma-informed practice,”,

(b) after subsection (4) insert—

10 “(4A) Each person mentioned in subsection (2) must set and publish revised standards within the period of 18 months beginning on the day on which section 24 of the Victims, Witnesses, and Justice Reform (Scotland) Act 2024 comes into force.

15 (4B) Subsections (1) to (4) apply to the revised standards as they apply to the original standards.”,

(c) in subsection (6), after the definitions of “prison” and “young offenders institution” insert—

““trauma-informed practice” has the meaning given by section 69 of the Victims, Witnesses, and Justice Reform (Scotland) Act 2024.”.

20 *Conduct of proceedings in accordance with trauma-informed practice*

**25 Criminal courts: conduct of proceedings**

(1) The Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) is amended as follows.

(2) In section 305 (Acts of Adjournal), after subsection (1A) insert—

25 “(1B) Subsection (1) also extends to making provision by Act of Adjournal for the purpose of ensuring that criminal proceedings are conducted in a way that accords with trauma-informed practice.”.

(3) In section 307 (interpretation), after the definition of “training school order” insert—

““trauma-informed practice” has the meaning given by section 69 of the Victims, Witnesses, and Justice Reform (Scotland) Act 2024.”.

30 **26 Civil courts: conduct of proceedings**

(1) The Courts Reform (Scotland) Act 2014 is amended as follows.

(2) In section 103 (power to regulate procedure etc. in the Court of Session), in subsection (2), after paragraph (c) insert—

35 “(ca) ensuring that such proceedings are conducted in a way that accords with trauma-informed practice,”.

(3) In section 104 (power to regulate procedure etc. in the sheriff court and the Sheriff Appeal Court), in subsection (2), after paragraph (c) insert—

“(ca) ensuring that such proceedings are conducted in a way that accords with trauma-informed practice.”.

(4) In section 136 (interpretation), after the definition of “solicitor” insert—

““trauma-informed practice” has the meaning given by section 69 of the Victims, Witnesses, and Justice Reform (Scotland) Act 2024.”.

*Duty to have regard to principle of trauma-informed practice*

**27 Scheduling of business in Scottish courts**

(1) The Judiciary and Courts (Scotland) Act 2008 is amended as follows.

(2) In section 2 (head of the Scottish Judiciary)—

(a) after subsection (2) insert—

“(2ZA) In carrying out the responsibility mentioned in subsection (2)(a), the Lord President must have regard to the desirability of doing so in a way that accords with trauma-informed practice.”.

(b) after subsection (6) insert—

“(6A) For the purposes of this section, “trauma-informed practice” has the meaning given by section 69 of the Victims, Witnesses, and Justice Reform (Scotland) Act 2024.”.

**28 Scheduling of business in sheriff courts and the Sheriff Appeal Court**

(1) The Courts Reform (Scotland) Act 2014 is amended as follows.

(2) In section 27 (sheriff principal’s responsibility for efficient disposal of business in sheriff courts), after subsection (3) insert—

“(3A) In carrying out the responsibility imposed by subsection (1), the sheriff principal must have regard to the desirability of doing so in a way that accords with trauma-informed practice.”.

(3) In section 29 (Lord President’s power to exercise functions under sections 27 and 28), in subsection (1), after paragraph (a) insert—

“(aa) is prejudicial to the carrying out of the responsibility imposed by section 27(1) in a way that accords with trauma-informed practice.”.

(4) In section 56 (President’s responsibility for efficient disposal of business), after subsection (3) insert—

“(3A) In carrying out the responsibility imposed by subsection (1), the President must have regard to the desirability of doing so in a way that accords with trauma-informed practice.”.

**29 Scheduling of business in justice of the peace courts**

(1) The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 is amended as follows.

(2) In section 61 (efficient disposal of business in justice of the peace courts)—

(a) after subsection (1) insert—

“(1A) In carrying out the responsibility imposed by subsection (1), the sheriff principal must have regard to the desirability of doing so in a way that accords with trauma-informed practice.”,

(b) after subsection (4) insert—

“(5) For the purposes of this section, “trauma-informed practice” has the meaning given by section 69 of the Victims, Witnesses, and Justice Reform (Scotland) Act 2024.”.

### PART 3

#### SPECIAL MEASURES IN CIVIL CASES

##### *Vulnerable witnesses*

### 30 Vulnerable witnesses

(1) The Vulnerable Witnesses (Scotland) Act 2004 is amended as follows.

(2) In section 11B (deemed vulnerable witnesses: proceedings concerning order under section 11(1) of the Children (Scotland) Act 1995) (inserted by section 4(3) of the Children (Scotland) Act 2020 (“the 2020 Act”))—

(a) in subsection (1), for “proceedings to which subsection (2) applies”, substitute “civil proceedings other than relevant proceedings”,

(b) subsection (2) is repealed,

(c) the section title becomes “**Deemed vulnerable witnesses: proceedings other than relevant proceedings**”.

### 31 Prohibition on personal conduct of case

(1) The Vulnerable Witnesses (Scotland) Act 2004 is amended as follows.

(2) In section 18(1) (the special measures)—

(a) in paragraph (d), the word “and” is repealed,

(b) after paragraph (d) insert—

“(da) prohibition on personal conduct of case by one or more of the parties to the proceedings in accordance with sections 22B to 22D, and”.

(3) In section 22B (prohibition on personal conduct of case) (inserted by section 4(5) of the 2020 Act)—

(a) for subsection (1), substitute—

“(1) Where the special measure to be used is prohibition on personal conduct of case, the court must prohibit the party or parties identified in the order from conducting their own case in person.”,

(b) subsections (2) and (3) are repealed.

(4) In section 22D (presumption that personal conduct of case should be prohibited) (inserted by section 4(5) of the 2020 Act), in subsection (1), in paragraph (b), for the words from “other proceedings” to the end substitute “proceedings other than relevant proceedings”.

**32 Register of solicitors for section 22B of the Vulnerable Witnesses (Scotland) Act 2004**

- (1) In the 2020 Act, section 7 is repealed.
- (2) The Vulnerable Witnesses (Scotland) Act 2004 is amended by subsections (3) and (4).
- 5 (3) In section 22B (prohibition on personal conduct of case) (inserted by section 4(5) of the 2020 Act), in subsection (7), for the words “section 7 of the Children (Scotland) Act 2020” substitute “section 22E and, if the register is divided into parts, the part which applies to the proceedings”.
- 10 (4) After section 22D (presumption that personal conduct of case should be prohibited) (inserted by section 4(5) of the 2020 Act) insert—

**“22E Register of solicitors for section 22B**

- (1) The Scottish Ministers must—
- (a) establish, and
- 15 (b) (subject to provision made under subsection (2)(d)) maintain, a register of solicitors who may be appointed by a court under section 22B(6).
- (2) The Scottish Ministers, by regulations—
- (a) must—
- 20 (i) specify the requirements that a person must satisfy in order to be included, and remain, on the register or each part of it (which may include requirements as to training and qualifications),
- (ii) set out the processes for including a person on, and removing a person from, the register or each part of it (including appeal rights),
- (b) may provide for the register to be divided into parts by reference to type, subject matter, or category of civil proceedings,
- 25 (c) may provide for the remuneration by the Scottish Ministers of solicitors appointed under section 22B(6), including expenses and outlays (such as counsel’s fees),
- (d) may—
- 30 (i) confer the duty of maintaining the register on a person, and
- (ii) make such modifications to other enactments as the Scottish Ministers consider appropriate for the purposes of, or in connection with, or for giving full effect to provision made by virtue of sub-paragraph (i).
- (3) Before making regulations under subsection (2), the Scottish Ministers must consult—
- 35 (a) the Faculty of Advocates, and
- (b) the Law Society of Scotland.
- (4) If the register is divided in accordance with subsection (2)(b), the entry for each person included on the register must specify on which part or parts of the register they are included.
- 40

- (5) Regulations under subsection (2)—
- (a) are subject to the affirmative procedure if, by virtue of paragraph (d)(ii) of that subsection, they add to, replace, or omit any part of the text of an Act, but
  - (b) otherwise are subject to the negative procedure.”.

*Vulnerable parties*

**33 Vulnerable parties**

- (1) In the 2020 Act, section 8 is repealed.
- (2) The Vulnerable Witnesses (Scotland) Act 2004 is amended by subsection (3).
- (3) After section 22E (register of solicitors for section 22B) (as inserted by section 32), insert—

*“Vulnerable parties*

**22F Vulnerable parties**

- (1) In proceedings to which subsection (2) applies—
  - (a) in relation to a party who would be deemed a vulnerable witness by virtue of section 11B if the party were to give evidence in or for the purposes of the proceedings, if the court is satisfied that the party will, or is likely to, attend or participate in hearings, the court must—
    - (i) order the use of any special measure that the party requests,
    - (ii) order the use of a special measure that the court considers is appropriate and, if the party requested a different special measure, give reasons for not ordering its use, or
    - (iii) give reasons for not ordering the use of any special measure,
  - (b) in relation to any other party, the court may order the use of a special measure if the court considers that—
    - (i) attending or participating in hearings is causing, or is likely to cause, the party distress,
    - (ii) the party’s distress is likely to be reduced by the use of the special measure, and
    - (iii) the use of the special measure would not give rise to a significant risk of prejudice to the fairness of the proceedings or otherwise to the interests of justice.
- (2) This subsection applies to any civil proceedings, other than relevant proceedings, commenced on or after section 33 of the Victims, Witnesses, and Justice Reform (Scotland) Act 2024 comes into force.
- (3) An order under subsection (1) may authorise a special measure in relation to the whole of proceedings or only a part of them.
- (4) A court may vary or revoke an order it made under subsection (1).

- (5) An order under subsection (1) or (4) may be made—
- (a) at any time, and
  - (b) whether or not a party to the proceedings has applied for one.
- (6) The special measures which may be authorised by virtue of an order under subsection (1) or (4) are—
- (a) use of a live television link,
  - (b) use of a screen,
  - (c) use of a supporter,
  - (d) any other measure prescribed by the Scottish Ministers by regulations.
- (7) Regulations under subsection (6)(d) are subject to the affirmative procedure.
- (8) In considering whether attending or participating in hearings is causing, or is likely to cause, a person distress, the court must take into account—
- (a) the nature and circumstances of any matters raised, or likely to be raised, in the proceedings,
  - (b) the relationship (if any) between the person and any other party to the proceedings,
  - (c) the person's age and maturity,
  - (d) any behaviour towards the person on the part of—
    - (i) any other party to the proceedings,
    - (ii) members of the family or associates of any other party,
    - (iii) any other person who is likely to be a party to the proceedings or a witness in the proceedings, and
  - (e) such other matters as appear to the court to be relevant, including—
    - (i) the social and cultural background and ethnic origins of the person,
    - (ii) the person's sexual orientation,
    - (iii) the domestic and employment circumstances of the person,
    - (iv) any religious beliefs or political opinions of the person,
    - (v) any physical disability or other physical impairment which the person has.

**22G Special measures under section 22F**

- (1) If a court orders the use of a live television link, the court must make such arrangements as seem to it appropriate to enable the vulnerable party to watch and hear the proceedings by means of such a link.
- (2) If a court orders the use of a screen, a screen must be used to conceal the vulnerable party from the sight of the other parties to the proceedings.

(3) If a court—

(a) orders the use of—

(i) a live television link, or

(ii) a screen, and

(b) considers it necessary or appropriate for the other parties to be able, during the proceedings, to—

(i) hear the vulnerable party,

(ii) watch the vulnerable party, or

(iii) both,

the court must make such arrangements as seem to it appropriate to enable the other parties to do so.

(4) Where—

(a) a court has ordered the use of a live television link or a screen in proceedings in a sheriff court, but

(b) the court lacks accommodation or equipment necessary to enable the measure to be used,

the sheriff may by order transfer all or any part of the proceedings to any sheriff court in the same sherrifdom which has such accommodation or equipment available.

(5) If a court orders the use of a supporter, another person (“the supporter”) nominated by or on behalf of the vulnerable party may be present alongside the vulnerable party for the purpose of providing support during the proceedings.

(6) The supporter—

(a) must not prompt or otherwise seek to influence the vulnerable party in the course of a hearing,

(b) may not act as the supporter, within the meaning of subsection (5), while the vulnerable party is giving evidence,

(c) may not act as the supporter, if the supporter is to give evidence in the proceedings, at any time before giving evidence.

(7) Subsection (6)(b) does not preclude the same person from being both—

(a) a supporter within the meaning of subsection (5), and

(b) a supporter within the meaning of section 22.

(8) In this section—

(a) references to a measure being ordered are to its being ordered under section 22F,

(b) “vulnerable party” means the party for whose benefit the court ordered the use of the measure in question.”.

**PART 4**

CRIMINAL JURIES AND VERDICTS

*Solemn proceedings*

**34 Jury size and quorum**

- 5 (1) The 1995 Act is amended as follows.
- (2) In section 88 (plea of not guilty, balloting and swearing of jury, etc.), for subsection (2) substitute—
- 10 “(2) The jury to try the accused is to consist of 12 jurors chosen in open court by ballot from the list of persons summoned, in the manner prescribed by Act of Adjournal.
- (2A) The names of the 12 jurors chosen in accordance with subsection (2) must be recorded in the minutes of proceedings.”.
- (3) For section 90 substitute—

**“90 Effect of death or discharge of jurors**

- 15 (1) This section applies where, in the course of a trial, a juror—
- (a) dies, or
- (b) is discharged by the court on the court being satisfied that it is for any reason inappropriate for the juror to continue to serve as a juror.
- (2) The court may determine that the trial is to proceed before the remaining jurors provided that—
- 20 (a) there are at least 9 remaining jurors, and
- (b) the court is satisfied that it is in the interests of justice that the trial proceed before the remaining jurors.
- (3) Before determining whether the trial is to proceed, the court must give the prosecutor and the accused an opportunity to make representations on that question.
- 25 (4) Where a trial proceeds by virtue of subsection (2), the remaining jurors are a properly constituted jury for the purpose of the trial.”.

**35 Verdict of guilty or not guilty and majority required for guilty verdict**

- 30 (1) The 1995 Act is amended as follows.
- (2) Before section 100 (verdict of jury) insert—

**“99A Verdict of guilty or not guilty and majority for guilty verdict**

- (1) In respect of each charge, the jury must deliver a verdict of either—
- 35 (a) guilty, or
- (b) not guilty.
- (2) The jury may return a verdict of guilty only if a majority of the jurors are in favour of that verdict.

- (3) Otherwise, the jury must return a verdict of not guilty.
- (4) For the purposes of subsection (2), a majority of jurors are in favour of a verdict if—
  - (a) in the case of a jury consisting of 11 or 12 jurors, at least 8 of the jurors are so in favour,
  - (b) in the case of a jury consisting of 9 or 10 jurors, at least 7 jurors are so in favour.”.

(3) In section 100 (verdict of jury) the section title becomes “**Delivery of jury verdict**”.

*Summary proceedings*

**36 Verdict of guilty or not guilty**

- (1) The 1995 Act is amended as follows.
- (2) Before section 162 (judges equally divided) insert—

**“161A Verdict of guilty or not guilty**

In respect of each charge, the court must deliver a verdict of either—

- (a) guilty, or
- (b) not guilty.”.

**PART 5**

SEXUAL OFFENCES COURT

**CHAPTER 1**

ESTABLISHMENT, JURISDICTION AND JUDGES OF THE SEXUAL OFFENCES COURT

*Establishment*

**37 Sexual Offences Court**

- (1) There is established a court of law to be known as the Sexual Offences Court.
- (2) The Sexual Offences Court consists of—
  - (a) the Lord Justice General,
  - (b) the Lord Justice Clerk, and
  - (c) judges each to be known as a Judge of the Sexual Offences Court.

*Jurisdiction and competence*

**38 Jurisdiction and competence: general**

- (1) The Sexual Offences Court has jurisdiction and competence to hear and determine cases to such extent as is provided by or under—
  - (a) this Act, or
  - (b) any other enactment.

- (2) The Sexual Offences Court’s jurisdiction and competence is exercisable, at sittings of the Court, by one or more of—
- (a) the Lord Justice General,
  - (b) the Lord Justice Clerk,
  - (c) a Judge of the Sexual Offences Court.
- (3) The Sexual Offences Court has all such powers as are, under the law of Scotland, inherently possessed by a court of law for the purposes of the discharge of its jurisdiction and competence and giving full effect to its decisions.
- (4) Subsection (3) is subject to any provision of this Act or any other enactment that restricts or excludes any power of the Sexual Offences Court in determining or disposing of a case.

### **39 Jurisdiction: sexual offences**

- (1) The Sexual Offences Court may try any sexual offence which is triable on indictment in any place in Scotland.
- (2) Where an indictment includes at least one sexual offence when the trial diet commences, the Sexual Offences Court may try every offence listed on the indictment.
- (3) If, at any time after the trial diet commences, the indictment is amended to no longer include a sexual offence, the Sexual Offences Court may continue to try the remaining offences.
- (4) But an indictment in the Sexual Offences Court may not include the offence of—
- (a) treason,
  - (b) breach of duty by magistrates.
- (5) In this Part, “sexual offence” means—
- (a) an offence listed for the time being in schedule 3,
  - (b) attempting to commit an offence listed for the time being in schedule 3.
- (6) The Scottish Ministers may, by regulations, modify—
- (a) the definition in subsection (5),
  - (b) the list in schedule 3.

### *Judges of the Sexual Offences Court*

### **40 Appointment of Judges of the Sexual Offences Court**

- (1) The Lord Justice General may appoint persons holding a relevant judicial office to hold office also as Judges of the Sexual Offences Court.
- (2) The Lord Justice General may appoint as many Judges of the Sexual Offences Court under subsection (1) as the Lord Justice General considers necessary for the purposes of the Sexual Offences Court.

(3) The Lord Justice General may appoint a person to the office of Judge of the Sexual Offences Court only if—

(a) the person has completed (whether before this section comes into force or otherwise) an approved course of training on trauma-informed practice in sexual offence cases, and

(b) the Lord Justice General considers the person has the skills and experience necessary to fulfil the office.

(4) Appointment as a Judge of the Sexual Offences Court—

(a) is for such period of time as the Lord Justice General specifies when making the appointment,

(b) does not affect a person’s appointment to the relevant judicial office and the person may continue to act in that capacity.

(5) A person holding office as a Judge of the Sexual Offences Court under this section ceases to hold that office if they cease to hold the relevant judicial office.

(6) If a person holding office as a Judge of the Sexual Offences Court is suspended from the relevant judicial office they are also suspended from office as a Judge of the Sexual Offences Court.

(7) The Lord Justice General may remove a Judge of the Sexual Offences Court from office.

(8) Before removing a Judge of the Sexual Offences Court under subsection (7), the Lord Justice General must consult—

(a) the President of the Sexual Offences Court, if the Lord Justice General is not the President,

(b) the Vice President of the Sexual Offences Court.

(9) Removal from the office of Judge of the Sexual Offences Court does not affect a person’s appointment to the relevant judicial office.

(10) In this section—

“approved course of training” means a training course which is approved by the Lord Justice General for the purpose of appointment to the office of Judge of the Sexual Offences Court,

a “relevant judicial office” means—

(a) Lord Commissioner of Justiciary,

(b) temporary judge,

(c) sheriff principal,

(d) sheriff.

**CHAPTER 2**

ORGANISATION OF BUSINESS

*President and Vice President of the Sexual Offences Court*

**41 President and Vice President of the Sexual Offences Court**

- 5 (1) The Lord Justice General may assume the office of President of the Sexual Offences Court.
- (2) If the Lord Justice General does not assume office under subsection (1), then the Lord Justice General must appoint—
- 10 (a) the Lord Justice Clerk, or
- (b) one of the Judges of the Sexual Offences Court,  
to the office of President of the Sexual Offences Court.
- (3) The Lord Justice General must appoint—
- (a) the Lord Justice Clerk, or
- 15 (b) one of the Judges of the Sexual Offences Court,  
to the office of Vice President of the Sexual Offences Court.
- (4) A person appointed under subsection (2)(b) must hold the office of Lord Commissioner of Justiciary.
- (5) A person may not hold the office of President and Vice President of the Sexual Offences Court at the same time.
- 20 (6) The President and Vice President—
- (a) each hold the respective office for such period as the Lord Justice General may determine,
- (b) may at any time resign office—
- 25 (i) by giving notice in writing to the Lord Justice General, or
- (ii) where the Lord Justice General resigns the office of President of the Sexual Offences Court, by publishing notice of that resignation.
- (7) The Lord Justice General may at any time remove the President or Vice President from office.
- 30 (8) If a person holding office as President or Vice President is, for any period, suspended from office as—
- (a) Lord Justice General,
- (b) Lord Justice Clerk, or
- (c) a relevant judicial office mentioned in section 40(10),
- 35 the person is also suspended from office as President or Vice President, as the case may be, for the same period.

**42 President and Vice President: incapacity and suspension**

- (1) Subsection (2) applies during any period when the President of the Sexual Offences Court—
- (a) is unable (for any reason) to carry out the functions of the office, or
  - (b) is suspended from office.
- (2) During the period mentioned in subsection (1)—
- (a) the functions of the President are to be carried out instead by the Vice President of the Sexual Offences Court, and
  - (b) anything that falls to be done in relation to the President falls to be done instead in relation to the Vice President.
- (3) Subsection (4) applies during any period when both the President and the Vice President of the Sexual Offences Court—
- (a) are unable (for any reason) to carry out the functions of the President, or
  - (b) are suspended from office.
- (4) During the period mentioned in subsection (3), subsection (2) does not apply and—
- (a) the Lord Justice General may undertake to carry out the functions of the President, if the Lord Justice General is not the President,
  - (b) if the Lord Justice General does not undertake to carry out the functions of the President under paragraph (a), the Lord Justice General must direct that the functions of the President are to be carried out instead by—
    - (i) the Lord Justice Clerk, if the Lord Justice Clerk is not the President or Vice President, or
    - (ii) such Judge of the Sexual Offences Court (other than the President or Vice President) as the Lord Justice General may appoint to act in place of the President, and
  - (c) anything that falls to be done in relation to the President falls to be done instead in relation to the person carrying out the functions of the President in accordance with this subsection.

*Disposal of business*

**43 President's responsibility for efficient disposal of business**

- (1) The President of the Sexual Offences Court is responsible for ensuring the efficient disposal of business in the Sexual Offences Court.
- (2) The President must make such arrangements as appear necessary or expedient for the purpose of carrying out the responsibility imposed by subsection (1).
- (3) In particular, the President may provide for the allocation of business among the Judges of the Sexual Offences Court.
- (4) In carrying out the responsibility imposed by subsection (1), the President must have regard to the desirability of doing so in a way that accords with trauma-informed practice.

- (5) In carrying out the responsibility imposed by subsection (1), the President may give a direction of an administrative character to—
- (a) a Judge of the Sexual Offences Court,
  - (b) a member of staff of the Scottish Courts and Tribunals Service.
- 5 (6) A person who receives a direction under subsection (5) must comply with the direction.
- (7) This section is subject to section 2(2)(a) and (2A) of the Judiciary and Courts (Scotland) Act 2008.

### *Sittings*

#### **44 Sittings of the Sexual Offences Court**

- 10 (1) More than one sitting of the Sexual Offences Court may take place at the same time, and at different places.
- (2) Sittings of the Sexual Offences Court may be held at any place in Scotland.
- (3) The President of the Sexual Offences Court may by order prescribe—
- 15 (a) the number of sittings of the Sexual Offences Court that are to be held at each place at which they may be held, and
- (b) the days on which, and the times at which, those sittings are to be held.
- (4) Before making an order under subsection (3), the President must consult—
- (a) the Lord Justice General, if the Lord Justice General is not the President,
- (b) the Lord Advocate.
- 20 (5) The President must publish notice of the matters prescribed by an order under subsection (3) in such manner as the President thinks appropriate in order to bring those matters to the attention of persons having an interest in them.
- (6) Subsection (3) is subject to section 2(2)(a) and (2A) of the Judiciary and Courts (Scotland) Act 2008.
- 25 (7) In addition to those prescribed by order under subsection (3), the Sexual Offences Court must hold such further sittings as the Lord Advocate may require.

### *Transfer of cases*

#### **45 Transfer of cases to the Sexual Offences Court**

- (1) The 1995 Act is amended as follows.
- 30 (2) After section 288B, insert—

#### *“Transfer of cases to the Sexual Offences Court*

##### **288BZA Transfer of cases to the Sexual Offences Court**

- (1) This section applies when an accused person has been cited to attend a diet of—
- 35 (a) the sheriff court on indictment, or
- (b) the High Court of Justiciary.

- 5
- (2) In this section, the “relevant court” means the High Court of Justiciary or the sheriff court which the accused person has been cited to attend.
- (3) On an application under subsection (4), the relevant court may, on cause shown, make an order for the transfer of the proceedings to the Sexual Offences Court and for adjournment to a diet of that Court (“a transfer order”).
- (4) An application may be made to the relevant court for a transfer order—
- (a) by the prosecutor,
  - (b) jointly by the prosecutor and the accused.
- 10
- (5) Where an application is made—
- (a) by the prosecutor under subsection (4)(a),
  - (b) jointly by the prosecutor and the accused under subsection (4)(b), and there is another accused in the case who is not party to the application,
- 15
- the relevant court must, before making a transfer order, give the accused, or the accused who is not party to the application, as the case may be, an opportunity to make representations about the application, whether orally or in writing.
- (6) An application under subsection (4) may be made—
- (a) at any time in the period beginning with the day on which the accused is served with an indictment and ending on the day on which the trial diet is first appointed,
  - (b) on cause shown, at any time in the period beginning with the day after the period mentioned in paragraph (a) expires and ending on the day before the trial commences.
- 20
- (7) The relevant court may consider an application under subsection (4) at a first diet (in the case of proceedings in the sheriff court) or the preliminary hearing (in the case of proceedings in the High Court).
- 25
- (8) At a first diet or preliminary hearing, as the case may be, the relevant court may ask the prosecutor and the accused any question in connection with any matter which is relevant to an application under subsection (4).
- 30
- (9) Section 74 applies to a decision—
- (a) to make a transfer order under this section,
  - (b) not to make such an order,
- 35
- whether or not such decision was made at a first diet (in the case of proceedings in the sheriff court) or a preliminary hearing (in the case of proceedings in the High Court).
- (10) Where a transfer order is made under this section, the first diet (in the case of proceedings in the sheriff court) or preliminary hearing (in the case of proceedings in the High Court) is to be treated as the preliminary hearing of the Sexual Offences Court for the purpose of section 65.”.

#### **46 Transfer of cases from the Sexual Offences Court**

- (1) This section applies when an accused person has been cited to attend a diet of the Sexual Offences Court.
- 5 (2) On an application under subsection (3), the Sexual Offences Court may, on cause shown, make an order for the transfer of the proceedings to the High Court of Justiciary or a sheriff court with jurisdiction to hear the case, as specified in the application, and for an adjournment to a diet of that court (“a transfer order”).
- (3) An application may be made to the Sexual Offences Court for a transfer order—
- 10 (a) by the prosecutor,
- (b) jointly by the prosecutor and the accused.
- (4) Where an application is made—
- (a) by the prosecutor under subsection (3)(a),
- (b) jointly by the prosecutor and the accused under subsection (3)(b), and there is
- 15 the Sexual Offences Court must, before making a transfer order, give the accused, or the accused who is not party to the application, as the case may be, an opportunity to make representations about the application, whether orally or in writing.
- (5) An application under subsection (3) may be made—
- 20 (a) at any time in the period beginning with the day on which the accused is served with an indictment and ending on the day on which the trial diet is first appointed,
- (b) on cause shown, at any time in the period beginning with the day after the period mentioned in paragraph (a) expires and ending on the day before the trial commences.
- (6) The Sexual Offences Court may consider an application under subsection (3) at a
- 25 preliminary hearing.
- (7) At a preliminary hearing the Sexual Offences Court may ask the prosecutor and the accused any question in connection with any matter which is relevant to an application under subsection (3).
- (8) Section 74 of the 1995 Act applies to a decision—
- 30 (a) to make a transfer order under this section,
- (b) not to make such an order,
- whether or not such decision was made at a preliminary hearing.
- (9) Where a transfer order is made under this section, the preliminary hearing of the Sexual Offences Court is to be treated, for the purposes of section 65 of the 1995 Act, as—
- 35 (a) the first diet of the sheriff court (in the case of transfer to the sheriff court), or
- (b) the preliminary hearing of the High Court (in the case of transfer to the High Court).
- (10) In this section—
- “first diet” is to be construed in accordance with section 66(6)(a) of the 1995 Act,

“preliminary hearing” is to be construed in accordance with section 66(6)(b) of that Act.

*Rights of audience*

**47 Rights of audience: solicitors**

- 5 (1) Subject to subsections (2) and (6), a solicitor has a right of audience in the Sexual Offences Court only if the solicitor meets the requirement set out in subsection (3).
- (2) Where an indictment in the Sexual Offences Court includes the offence of murder, rape, or both, then a solicitor has a right of audience in respect of that indictment only if, in addition to meeting the requirement set out in subsection (3), the solicitor has a right of audience in the High Court of Justiciary under section 25A of the Solicitors (Scotland) Act 1980.
- 10 (3) The requirement is that the solicitor has completed (whether before this section comes into force or otherwise) an approved course of training on trauma-informed practice in sexual offence cases.
- 15 (4) The Council of the Law Society of Scotland must keep, and make publicly available, a record of the solicitors who have a right of audience in the Sexual Offences Court in accordance with this section.
- (5) In this section and section 48, an “approved course of training” means a training course which is approved by the Lord Justice General for the purpose of acquiring rights of audience in the Sexual Offences Court.
- 20 (6) Nothing in this section affects the right of a prosecutor to appear in the Sexual Offences Court by virtue of a commission from the Lord Advocate.

**48 Rights of audience: advocates**

- 25 (1) Subject to subsection (4), an advocate has a right of audience in the Sexual Offences Court only if the advocate meets the requirement set out in subsection (2).
- (2) The requirement is that the advocate has completed (whether before this section comes into force or otherwise) an approved course of training on trauma-informed practice in sexual offence cases.
- (3) The Faculty of Advocates must keep a record of the advocates who have a right of audience in the Sexual Offences Court in accordance with this section.
- 30 (4) Nothing in this section affects the right of a prosecutor to appear in the Sexual Offences Court by virtue of a commission from the Lord Advocate.

**49 Statement of training requirement for prosecutors**

- 35 (1) The Lord Advocate must make available to the public a statement setting out any training on trauma-informed practice in sexual offence cases which prosecutors will be required to complete in order to conduct proceedings in the Sexual Offences Court.
- (2) The Lord Advocate may from time to time revise the statement.
- (3) In this section and in sections 47 and 48, “prosecutor” means Lord Advocate, Solicitor General, Crown Counsel or procurator fiscal (and any person duly authorised to represent or act for them).
- 40

### CHAPTER 3

#### ADMINISTRATION

##### *Clerks*

#### **50 Clerk of the Sexual Offences Court**

- 5 (1) The Scottish Courts and Tribunals Service must appoint a person who holds, or has previously held, a relevant office to hold office as Clerk of the Sexual Offences Court.
- (2) A person's appointment as Clerk of the Sexual Offences Court does not affect the person's appointment to the relevant office.
- (3) A person's appointment as Clerk of the Sexual Offences court—
- 10 (a) lasts for such period, and
- (b) is on such other terms and conditions,
- as the Scottish Courts and Tribunals Service may determine.
- (4) In this section, a “relevant office” means—
- (a) Accountant of Court,
- 15 (b) Principal Clerk of Session,
- (c) other Clerk or officer of the Court of Session,
- (d) Principal Clerk of Justiciary,
- (e) Depute, Assistant or other Clerk in the Justiciary Office of the High Court of Justiciary,
- 20 (f) sheriff clerk,
- (g) sheriff clerk depute.

#### **51 Deputy Clerks of the Sexual Offences Court**

- (1) The Scottish Courts and Tribunals Service may appoint persons to be Deputy Clerks of the Sexual Offences Court.
- 25 (2) The number of Deputy Clerks is for the Scottish Courts and Tribunals Service to determine.
- (3) A person's appointment as Deputy Clerk—
- (a) lasts for such period, and
- (b) is on such other terms and conditions,
- 30 as the Scottish Courts and Tribunals Service may determine.
- (4) A person may hold office as a Deputy Clerk of the Sexual Offences Court at the same time as holding office as clerk, or deputy or assistant clerk, of another court.

#### **52 Clerk and Deputy Clerks: further provisions**

- 35 (1) A person may be appointed as Clerk of the Sexual Offences Court under section 50(1), or Deputy Clerk of the Sexual Offences Court under section 51(1), only if they have

completed (whether before this section comes into force or otherwise) an approved course of training on trauma-informed practice in sexual offence cases.

(2) The Clerk and Deputy Clerks of the Sexual Offences Court are also members of staff of the Scottish Courts and Tribunals Service.

5 (3) Accordingly, a reference in any enactment to the staff of the Scottish Courts and Tribunals Service includes, except where the context requires otherwise, a reference to the Clerk and Deputy Clerks of the Sexual Offences Court.

(4) The Clerk of the Sexual Offences Court may, with the consent of the Scottish Courts and Tribunals Service, delegate the carrying out of any of the Clerk's functions to—

10 (a) a Deputy Clerk of the Sexual Offences Court, or

(b) any other member of staff of the Scottish Courts and Tribunals Service.

(5) Subsection (6) applies in relation to any period during which—

(a) the office of Clerk of the Sexual Offences Court is vacant, or

15 (b) the holder of that office is for any reason unable to carry out the functions of the office.

(6) The Scottish Courts and Tribunals Service may make arrangements for the functions of the Clerk of the Sexual Offences Court to be carried out during the period referred to in subsection (5) by—

(a) a Deputy Clerk of the Sexual Offences Court, or

20 (b) any other member of staff of the Scottish Courts and Tribunals Service.

(7) The Scottish Courts and Tribunals Service may give such instructions to the Clerk of the Sexual Offences Court, or a person carrying out the Clerk's functions under subsection (6), as it considers necessary for the purposes of this Act, and the Clerk or, as the case may be, such person must comply with any such instructions.

25 (8) In this section, “approved course of training” means a training course which is approved by the Lord Justice General for the purpose of appointment to the office of Clerk or Deputy Clerk of the Sexual Offences Court.

#### *Sexual Offences Court records*

### **53 Sexual Offences Court records**

30 (1) The Public Records (Scotland) Act 1937 is amended as follows.

(2) After section 1 (High Court and Court of Session records), insert—

#### **“1ZA Sexual Offences Court records**

35 (1) The records of the Sexual Offences Court are to be transmitted to the Keeper at such times, and subject to such conditions, as may be prescribed by act of adjournal.

(2) An act of adjournal under subsection (1) may—

(a) fix different times and conditions of transmission for different descriptions or records,

(b) make provision for—

(i) re-transmission of records to the Sexual Offences Court or the High Court of Justiciary when necessary for the purposes of proceedings in either court,

5 (ii) the return to the Keeper of records re-transmitted under sub-paragraph (i) as soon as they are no longer required for such purposes.

(3) Before making an act of adjournal under subsection (1), the High Court must consult the Keeper.”.

10 **54 Sexual Offences Court records: authentication and electronic form**

(1) A record of the Sexual Offences Court is authenticated by being signed by—

(a) a Judge of the Sexual Offences Court, or

(b) the Clerk of the Sexual Offences Court.

15 (2) A record authenticated in accordance with subsection (1), or a certified copy of such a record or of an extract of such a record, is sufficient evidence of the facts recorded in the record.

(3) The Sexual Offences Court may keep (and produce) records in electronic form.

(4) For the purposes of this section, a reference to a record or a copy of a record being signed or, as the case may be, certified, includes a reference to the record or copy being authenticated by means of—

(a) an electronic signature, or

(b) such other means of authentication as may be specified for that purpose by act of adjournal.

25 (5) Before making an act of adjournal under subsection (4)(b), the High Court must consult the Keeper.

(6) In this section—

“certified copy” means a copy certified by the Clerk of the Sexual Offences Court as a true copy,

30 “electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000, but includes a version of an electronic signature which is reproduced on a paper document,

“record” means any interlocutor, decree, minute or other document by which the proceedings and decisions of the Sexual Offences Court are recorded.

**CHAPTER 4**

PROCEDURE

*Procedure*

**55 Sexual Offences Court procedure**

- 5 (1) The provisions of the 1995 Act apply to proceedings in the Sexual Offences Court as though the proceedings were taking place in the High Court of Justiciary (and references are to be construed accordingly) except where and to the extent that the provisions of the 1995 Act are inconsistent with provision made by or under this Act.
- 10 (2) The Scottish Ministers may, by regulations, make further provision for the procedure which applies to proceedings in the Sexual Offences Court.
- (3) Before making regulations under subsection (2), the Scottish Ministers must consult the Lord Justice General.
- (4) Regulations under subsection (2) may modify any enactment (including this Act).
- 15 (5) The High Court may by act of adjournal make any incidental, supplementary, consequential, transitional, transitory or saving provision it considers appropriate, including modifying any enactment (including this Act), for the purposes of, in connection with or for giving full effect to this Part and any provision made under it.
- (6) Subsection (5) is without prejudice to section 305 of the 1995 Act.

*Prohibition on personal conduct of defence*

**56 Prohibition on personal conduct of defence**

- 20 (1) An accused is prohibited from conducting their own case in person at, or for the purposes of, any hearing in the course of proceedings in the Sexual Offences Court at which a witness is to give evidence.
- (2) If, at any point in the proceedings, the Sexual Offences Court—
- 25 (a) ascertains that an accused does not have a solicitor to conduct the accused's case at, or for the purposes of, any hearing at which a witness is to give evidence, and
- (b) is not satisfied that the accused intends to engage a solicitor to do so,
- the Court must appoint a solicitor to conduct the accused's case.
- (3) The Sexual Offences Court may only appoint a solicitor who has a right of audience
- 30 in the Court in accordance with section 47.
- (4) An appointed solicitor—
- (a) is to ascertain and act upon the instructions of the accused,
- (b) in the event that the accused gives no instructions, or gives instructions that are inadequate or perverse, is to act in the accused's best interests,
- 35 (c) is not obliged to comply with any instruction by the accused to dismiss counsel.
- (5) An appointed solicitor—
- (a) may not be dismissed by the accused,

- (b) may be relieved from the appointment by the Sexual Offences Court if the Court is satisfied that the solicitor is no longer able to act upon the accused's instructions or in the accused's best interests, and the Court must appoint another solicitor to conduct the accused's case.

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*Vulnerable witnesses*

**57 Vulnerable witnesses**

- (1) In its application to proceedings in the Sexual Offences Court, part 12 of the 1995 Act is modified in accordance with this section.

- (2) Section 271 has effect as if—

10

- (a) in subsection (1), for paragraph (c) there were substituted—

“(c) a sexual offence listed on the indictment is alleged to have been committed against the person,”,

- (b) in subsection (5)—

15

- (i) in the definition of “court”, after “High Court” there were inserted “, the Sexual Offences Court,”,

- (ii) in the definition of “hearing in relevant criminal proceedings”, after “High Court” there were inserted “, the Sexual Offences Court,”.

*Ground rules hearings*

**58 Ground rules hearings**

20

- (1) In its application to proceedings in the Sexual Offences Court, the 1995 Act is modified in accordance with this section.

- (2) Part 12 of the 1995 Act has effect as if—

- (a) after section 271A, there were inserted—

**“271AZA Vulnerable witness ground rules hearings**

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- (1) Where a vulnerable witness is to give evidence at or for the purposes of any hearing in the course of proceedings in the Sexual Offences Court, the Court must fix a date of a hearing (to be known as a “vulnerable witness ground rules hearing”) for the purpose of preparing for the trial diet.

30

- (2) The Judge of the Sexual Offences Court presiding over the vulnerable witness ground rules hearing must—

- (a) ascertain how the vulnerable witness's evidence is to be taken,

- (b) make such order, if any, under—

- (i) section 271A, 271C or 271D,

- (ii) section 59(2) of the Victims, Witnesses, and Justice Reform (Scotland) Act 2024,

35

as the Sexual Offences Court considers appropriate,

- 5
- (c) ascertain the length of time the parties expect to take for examination-in-chief and cross-examination, including any breaks that may be required,
- (d) to the extent that the Judge considers it appropriate to do so, decide on the form and wording of the questions that are to be asked of the vulnerable witness,
- (e) if the Judge considers it appropriate to do so, authorise the use of a supporter at the hearing at which the vulnerable witness is to give evidence,
- 10 (f) if the Judge considers that there are steps that could reasonably be taken to enable the vulnerable witness to participate more effectively in the hearing at which the vulnerable witness is to evidence, direct that those steps be taken,
- (g) subject to section 72(8), dispose of any application that—
- 15 (i) has been made under section 275(1), and
- (ii) has not yet been disposed of by the Court,
- (h) consider whether the hearing at which the vulnerable witness is to give evidence should take place on the date fixed by the Court and postpone the hearing if the Judge considers that it is in the interests of justice to do so having regard to all the circumstances, including—
- 20 (i) the way in which the vulnerable witness's evidence is to be taken,
- (ii) whether the parties are likely to be ready for the hearing to take place on the date fixed by the Court and if not, the reasons for that,
- 25 (iii) any views expressed by the parties on whether the hearing should be postponed, and
- (iv) whether postponement is in the interests of the vulnerable witness, and
- (i) consider and, if appropriate, make a decision on, any other matter that the Judge considers could be usefully dealt with before the hearing at which the vulnerable witness is to give evidence takes place.
- 30
- (3) Reference in subsection (1) to a vulnerable witness includes a witness in respect of whom an order has been made under section 271C(5)(a) or (7).”,
- (b) in section 271I—
- 35 (i) in subsection (1ZA), paragraph (b) were omitted,
- (ii) subsections (1ZB), (1ZC) and (1ZD) were omitted,
- (iii) in subsection (1A), for “ground rules hearing” there were substituted “vulnerable witness ground rules hearing”,
- (iv) in subsection (7), for “person described in subsection (8) below.” there were substituted “Judge of the Sexual Offences Court.”,
- 40 (v) subsection (8) were omitted.

*Pre-recording of evidence*

**59 Pre-recording of evidence**

- 5 (1) The Sexual Offences Court must enable all of a vulnerable complainer’s evidence to be given in advance of a hearing at which the complainer would otherwise be required to give evidence, unless the Court is satisfied that an exception is justified under subsection (3) or (4).
- (2) For the purposes of this section, the Sexual Offences Court enables all of the vulnerable complainer’s evidence to be given in advance of the hearing if it—
- 10 (a) makes an order authorising—
- (i) the taking of the vulnerable complainer’s evidence by a commissioner in accordance with section 60,
- (ii) the giving of evidence in chief by the vulnerable complainer in the form of a statement in accordance with section 61, and
- (b) does not authorise—
- 15 (i) the giving of any of the vulnerable complainer’s evidence other than in accordance with such order,
- (ii) the use of an incompatible special measure for the purpose of taking any of the vulnerable complainer’s evidence.
- (3) An exception is justified under this subsection if—
- 20 (a) the giving of all of the vulnerable complainer’s evidence in advance of the hearing would give rise to a significant risk of prejudice to the fairness of the hearing or otherwise to the interests of justice, and
- (b) that risk significantly outweighs any risk of prejudice to the interests of the vulnerable complainer if the complainer were to give evidence at the hearing.
- 25 (4) An exception is justified under this subsection if—
- (a) the vulnerable complainer is aged 12 or over on the date of commencement of the proceedings in which the hearing is being or is to be held,
- (b) the vulnerable complainer expresses a wish to give evidence at the hearing, and
- 30 (c) it would be in the vulnerable complainer’s best interests to give evidence at the hearing.
- (5) Section 271A of the 1995 Act applies in relation to a vulnerable complainer giving evidence at, or for the purposes of, a hearing in the Sexual Offences Court as it applies to a child witness or deemed vulnerable witness giving evidence in accordance with subsection (1) of that section.
- 35 (6) In this section, “incompatible special measure” means a measure set out in, or prescribed under, section 271H of the 1995 Act which is capable of being used only if the complainer gives evidence at the hearing (whether or not its use would require the complainer to be present in the courtroom).
- (7) In this section and in section 60 and 61—
- 40 (a) a “complainer” in proceedings is the person against whom the offence to which the proceedings relate is alleged to have been committed,

- (b) a complainer is a vulnerable complainer if—
- (i) a sexual offence to which the proceedings relate is alleged to have been committed against that complainer, or
  - (ii) the complainer otherwise falls to be treated as a vulnerable witness by virtue of section 271(1) of the 1995 Act.

**60 Taking of evidence by a commissioner**

- (1) Where an order is made under section 59(2)(a)(i) for the taking of evidence by a commissioner, the Sexual Offences Court must appoint a Judge of the Sexual Offences Court as commissioner to take the evidence of the vulnerable complainer.
- (2) When appointing a commissioner under subsection (1), the Sexual Offences Court must fix a date for proceedings before the commissioner.
- (3) Proceedings before a commissioner appointed under subsection (1) must, if the Sexual Offences Court so directs when authorising such proceedings or if it so directs at the vulnerable witness ground rules hearing, take place by means of a live television link between the place where the commissioner is taking, and the place from which the vulnerable complainer is giving, evidence.
- (4) An audio-visual recording must be made of proceedings before a commissioner.
- (5) An accused—
- (a) may not, except by leave of the Sexual Offences Court on special cause shown, be present—
    - (i) in the room where the proceedings are taking place,
    - (ii) if the proceedings are taking place by means of a live television link, in the same room as the vulnerable complainer, but
  - (b) is entitled to watch and hear the proceedings by such means as the Sexual Offences Court considers appropriate.
- (6) The recording of the proceedings made in accordance with subsection (4) is to be received in evidence without being sworn to by witnesses.
- (7) Subject to subsection (8), sections 274, 275, 275B (except subsection (2)(b)), 275C, 288E and 288F of the 1995 Act apply in relation to proceedings before a commissioner in the Sexual Offences Court as they apply (by virtue of section 55(1)) in relation to a trial in the Sexual Offences Court.
- (8) In the application of those sections in relation to proceedings before a commissioner in the Sexual Offences Court—
- (a) the commissioner acting in the proceedings is to perform the functions of the court as provided for in those sections,
  - (b) references in those sections—
    - (i) except section 275(3)(c) and (7)(c), to a trial or a trial diet,
    - (ii) except sections 275(3)(e) and 288F(2), (3), and (4), to the courtare to be read accordingly,

- (c) the reference in section 275B(1) to 14 clear days is to be read as a reference to 7 days.

## **61 Giving evidence in the form of a prior statement**

- 5 (1) This section applies where an order is made under section 59(2)(a)(ii) for the giving of evidence by the vulnerable complainer in the form of a statement made in advance of a hearing (“a vulnerable complainer’s prior statement”).
- 10 (2) A vulnerable complainer’s prior statement which is lodged in evidence by or on behalf of the prosecution in accordance with this section is admissible as the vulnerable complainer’s evidence in chief, or as part of the vulnerable complainer’s evidence in chief, without the vulnerable complainer being required to adopt or otherwise speak to the statement in giving evidence in the Sexual Offences Court.
- (3) Subject to subsection (4) a vulnerable complainer’s prior statement—
- 15 (a) is admissible as evidence of any matter stated in it of which direct oral evidence by the vulnerable complainer would be admissible if given in the course of proceedings,
- (b) does not require to be included in any list of productions lodged by the prosecutor.
- (4) A vulnerable complainer’s prior statement is not admissible under this section unless—
- 20 (a) the statement is contained in a document,
- (b) at the time the statement was made, the vulnerable complainer would have been a competent witness in the proceedings.
- (5) Subsection (4) does not apply to a vulnerable complainer’s prior statement which is sufficiently authenticated and—
- 25 (a) is contained in a precognition on oath, or
- (b) was made in other proceedings, whether criminal or civil and whether taking place in the United Kingdom or elsewhere.
- (6) This section does not affect the admissibility of any statement made by any person which is admissible otherwise than by virtue of this section.
- (7) For the purposes of this section—
- 30 (a) a “statement” includes—
- (i) any representation, however made or expressed, of fact or opinion,
- (ii) any part of a statement,
- but does not include a statement in a precognition other than a precognition on oath.
- (b) a statement is contained in a document where the person who makes it—
- 35 (i) makes the statement in the document personally,
- (ii) makes a statement which is, with or without the person’s knowledge, recorded in a document by a person who has direct personal knowledge of the making of the statement, or
- (iii) approves a document as embodying the statement,

- (c) “document” includes, in addition to a document in writing—
- (i) any map, plan, graph or drawing,
  - (ii) any photograph,
  - (iii) any disc, tape, sound track or other device in which sounds or other data (other than visual images) are recorded so as to be capable of being reproduced,
  - (iv) any film (including microfilm), negative, tape, disc or other device in which one or more visual images are recorded so as to be capable of being reproduced.

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*Sentencing*

**62 Sentencing power of the Sexual Offences Court**

The Sexual Offences Court may impose on a person that it convicts of an offence any sentence which the High Court of Justiciary would be entitled to impose on the person in respect of the offence for which the person has been convicted.

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**PART 6**

SEXUAL OFFENCES CASES: FURTHER REFORM

*Anonymity for victims*

**63 Sexual offences cases: anonymity and restriction on publications**

- (1) The Criminal Justice (Scotland) Act 2016 is amended as follows.
- (2) After section 106, insert—

20

**“CHAPTER 2B**

ANONYMITY FOR VICTIMS

*Restriction on publications relating to listed offences*

**106C Restriction on publications relating to listed offences**

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- (1) Subject to sections 106D and 106E, no publication is to include information relating to a person if that information is likely to lead to the identification of the person as being a victim of an offence listed in subsection (5).
- (2) For the purposes of subsection (1), information relating to a person includes in particular—
  - (a) the person’s name,
  - (b) the person’s address,
  - (c) the identity of any school or other educational establishment attended by the person,
  - (d) the identity of any place at which the person works,
  - (e) any still or moving picture of the person.

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35

- (3) The restriction imposed by subsection (1)—
- (a) applies during the lifetime of the person to whom the information relates, and
  - (b) ceases to apply on that person’s death.
- 5 (4) The restriction imposed by subsection (1) does not prevent the person to whom the information relates from publishing information which is likely to lead to their own identification as being a victim of an offence listed in subsection (5).
- (5) The offences referred to in subsection (1) are—
- 10 (a) an offence under section 52 or 52A of the Civic Government (Scotland) Act 1982 (offences involving indecent photographs of children),
  - (b) an offence to which section 288C of the Criminal Procedure (Scotland) Act 1995 applies (certain sexual offences),
  - 15 (c) an offence under section 1 of the Prohibition of Female Genital Mutilation (Scotland) Act 2005 (offence of female genital mutilation),
  - (d) an offence under section 1, 9, 10, 11 or 12 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (certain sexual offences against or in respect of children),
  - 20 (e) an offence under section 1 (human trafficking) or section 4 (slavery, servitude and forced or compulsory labour) of the Human Trafficking and Exploitation (Scotland) Act 2015,
  - (f) an offence under section 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (disclosing, or threatening to disclose, an intimate photograph or film),
  - 25 (g) an offence under section 140, 141, 142, 152, 153 or 154 of the Health and Care Act 2022 (offences relating to virginity testing and hymenoplasty),
  - (h) attempting to commit any offence mentioned in paragraphs (a) to (g) (but not paragraph (b)).
- 30 (6) The Scottish Ministers may, by regulations, modify subsection (5) by adding an offence to, varying the description of an offence mentioned in, or removing an offence from, that subsection.
- (7) Regulations under subsection (6) are subject to the affirmative procedure.
- (8) In this section—
- 35 “offence” includes any offence, regardless of whether it is committed, or suspected to have been committed, before or after this section comes into force,
  - “publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed or accessible to the public at large or any section of the public (whether on registration, payment, subscription or otherwise),
  - 40 “relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990,

“victim of an offence” means a person against or in respect of whom an offence has been, or is suspected to have been, committed.

**106D Power to dispense with restriction: child victims**

5 (1) A sheriff may by order dispense with the restriction imposed by section 106C(1) where—

(a) the information to which the restriction would apply is information relating to a child, and

(b) the sheriff considers that the conditions set out in subsection (4)(a) and (b) are satisfied.

10 (2) A sheriff may make an order under subsection (1) on the application of a person other than the child who wishes to publish information relating to the child.

(3) Before deciding whether to make an order under subsection (1), the sheriff must give the following persons an opportunity to make representations—

15 (a) the person who made the application,

(b) the child to whom the information relates.

(4) The conditions referred to in subsection (1)(b) are that—

(a) the child to whom the information relates—

(i) understands the nature of an order under subsection (1),

(ii) appreciates what the effect of making such an order would be, and

(iii) gives consent to the publication of the information, and

(b) there is no good reason why an order under subsection (1) should not be made.

25 (5) The child to whom the order under subsection (1) relates may withdraw consent by giving, before the information is published, written notice to the person who obtained the order.

(6) Where a child gives notice under subsection (5), the restriction imposed by section 106C(1) is, from the time the notice is received, no longer dispensed with.

30 (7) The decision of the sheriff under this section is final.

(8) In this section—

“child” means a person who is under 18 years of age at the date on which the application is made,

“consent” means free agreement.

35 **106E Power to dispense with restriction: conviction for relevant offence**

(1) This section applies where—

(a) a court convicts a person of a relevant offence, and

- (b) there is information relating to that person the publication of which is restricted by section 106C(1).
- (2) The court may, of its own accord, make an order dispensing with the restriction imposed by section 106C(1) if—
- 5 (a) the court is satisfied that—
- (i) the person convicted of a relevant offence alleged that they were a victim of an offence listed in section 106C(5), and
- (ii) there is a connection between the conduct amounting to the relevant offence and the allegation that the person was a victim of an
- 10 offence listed in section 106C(5), and
- (b) the court is satisfied that it is in the interests of justice to dispense with the restriction.
- (3) In this section—
- “relevant offence” means—
- 15 (a) an offence of perjury,
- (b) an offence of attempting to pervert the course of justice,
- (c) an offence under section 44 of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations),
- “victim of an offence” has the same meaning as in section 106C.

20 **106F Offence and defences**

- (1) A person who publishes relevant information in contravention of section 106C commits an offence and is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
- 25 (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (2) A person charged with an offence under this section has a defence if it is established that the conditions mentioned in subsection (3) were met.
- (3) Those conditions are that—
- 30 (a) the person to whom the relevant information relates—
- (i) had given written consent to the publication of information in relation to an offence listed in section 106C(5),
- (ii) was at least 18 years of age when that consent was given, and
- (iii) had not, before the information was published, given written notice
- 35 of the withdrawal of that consent, and
- (b) the information published relates to the offence to which that consent relates.

(4) A person charged with an offence under this section has a defence if it is established that—

(a) the information published was in the public domain (having already been published by the person to whom the information relates or otherwise), and

(b) where the information was in the public domain as a result of it being published by a person other than the person to whom it relates, there was no reason for the person charged to believe that the conditions mentioned in subsection (3) were not met in relation to that prior publication.

(5) A person charged with an offence under this section has a defence if it is established that they were not aware, and neither suspected nor had reason to suspect, that the publication included relevant information.

(6) For the purposes of subsections (2), (4) and (5), a matter is established if—

(a) evidence adduced is enough to raise an issue as to whether that is the case, and

(b) the prosecution does not prove beyond reasonable doubt that it is not the case.

(7) For the purposes of subsections (2) and (3)(a)(ii), that a person was at least 18 years of age is established only if the person charged with the offence took reasonable steps to establish the person's age.

(8) For the purposes of subsection (3)(a), consent which purports to be specific to a particular publication may be taken to be consent to publication generally.

(9) In this section—

“consent” means free agreement,

“relevant information” means information the publication of which is restricted under section 106C(1).

**106G Individual culpability where organisation commits offence under section 106F**

(1) This section applies where—

(a) an offence under section 106F is committed by a relevant organisation, and

(b) the commission of the offence—

(i) involves consent or connivance, or

(ii) is attributable to neglect,

on the part of a responsible individual.

(2) The responsible individual (as well as the relevant organisation) commits the offence.

- (3) For the purposes of this section—
- (a) “relevant organisation” means an organisation listed in the first column of the table in subsection (4),
- (b) “responsible individual” means, in relation to a relevant organisation—
- (i) an individual falling within the corresponding entry in the second column of that table, or
- (ii) an individual purporting to act in the capacity of an individual falling within the corresponding entry.
- (4) The table is as follows—

<b>Relevant organisation</b>	<b>Responsible individual</b>
a company as mentioned in section 1 of the Companies Act 2006	a director, manager, secretary or other similar officer a member, where the company’s affairs are managed by its members
a limited liability partnership	a member
a partnership other than a limited liability partnership	a partner
any other body or association	an individual who is concerned in the management or control of the body’s or association’s affairs

**106H Crown application: offence under section 106F**

- (1) Nothing in section 106F makes the Crown criminally liable.
- (2) The Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (1).
- (3) Subsection (1) does not affect the criminal liability of persons in the service of the Crown.”.

*Independent legal representation for complainers*

**64 Applications to admit certain evidence relating to sexual offences: rights of complainers**

- (1) The 1995 Act is amended as follows.
- (2) In section 275 (exceptions to restrictions under section 274)—
- (a) in subsection (2), in paragraph (b), the closing words are repealed,
- (b) after subsection (4) insert—

“(4A) The prosecutor (whether the party making the application or otherwise) must, as soon as reasonably practicable after the application is made—

- (a) notify the complainer that an application for the purposes of subsection (1) has been made,
- (b) give the complainer an explanation of the application, of the evidence sought to be admitted and, as the case may be, of the questioning proposed to be allowed,
- (c) give the complainer information about the rights mentioned in section 275ZA.

(4B) The prosecutor must, where given notice under section 275ZA(2), send to the complainer’s legal representative—

- (a) a copy of the application,
- (b) a copy of the complaint or, as the case may be, indictment to the extent that it relates to the application,
- (c) subject to subsection (4D), a copy of any evidence referred to in, or relevant to, the application.

(4C) Before sending any evidence mentioned in subsection (4B)(c) to the complainer’s legal representative, the prosecutor must—

- (a) apply to the court for authority to do so,
- (b) send a copy of the application to the accused and the complainer’s legal representative.

(4D) On an application under subsection (4C)(a), the court may, after giving the prosecutor, the accused and the complainer’s legal representative an opportunity to make representations—

- (a) refuse the application,
- (b) authorise the sending of the evidence in the form, and subject to any limitations, the court thinks is in the interests of justice,
- (c) impose conditions on the disclosure of the evidence by the complainer’s legal representative to the complainer or any other person.”,

(c) after subsection (9) insert—

“(10) In this section and in section 275ZA—

“complainer” has the same meaning as in section 274,

“legal representative” means—

- (a) a solicitor,
- (b) an advocate, or
- (c) a solicitor who has a right of audience in the High Court of Justiciary under section 25A of the Solicitors (Scotland) Act 1980.”.

(3) After section 275 insert—

**“275ZA Rights of complainers in relation to section 275 applications**

- (1) This section applies where an application is made for the purposes of section 275(1).
- (2) The complainer’s legal representative is, on giving notice to the prosecutor, entitled—
- (a) to be provided with a copy of—
- (i) the application,
- (ii) the complaint or, as the case may be, the indictment to the extent that it relates to the application,
- (iii) subject to section 275(4D), a copy of any evidence referred to in, or relevant to, the application,
- (b) to be given an opportunity to make representations to the court in relation to the application, including as to—
- (i) the accuracy of any statements made in it, and
- (ii) whether the evidence sought to be admitted or questioning proposed should be admitted or, as the case may be, allowed.”.
- (4) In section 275B (provisions supplementary to sections 275 and 275A), in subsection (1)—
- (a) in paragraph (a), for “7” substitute “21”,
- (b) for paragraph (b) substitute—
- “(b) in the case of proceedings on indictment in the sheriff court, not less than 21 clear days before the first diet,
- (c) in the case of summary proceedings, not less than 21 clear days before the first intermediate diet or, if no such diet is fixed, the trial diet.”,
- (c) in the section title, for “**275 and 275A**” substitute “**275 to 275A**”.
- (5) In section 74 (appeals in connection with preliminary diets), after subsection (1) insert—
- “(1A) For the purposes of an appeal under subsection (1) against a decision to grant an application under section 275(1), “party” includes the complainer’s legal representative (within the meaning of section 275(10)).”.

*Rape trials pilot*

**65 Pilot of single judge rape trials**

- (1) The Scottish Ministers may, by regulations, provide that trials on indictment for rape or attempted rape which meet specified criteria are, for a specified period, to be conducted by the court sitting without a jury.
- (2) Regulations under subsection (1) must include provision for the making of representations by an accused to the court as to whether the specified criteria are met in relation to the accused’s trial.
- (3) Before making regulations under subsection (1) the Scottish Ministers must consult—
- (a) the Lord Justice General,

- (b) the Lord Advocate,
- (c) the Faculty of Advocates,
- (d) the Law Society of Scotland,
- (e) the Scottish Courts and Tribunals Service,
- 5 (f) such persons providing victim support services as Ministers consider appropriate,  
and
- (g) any other person Ministers consider appropriate.

(4) For the purposes of any trial conducted by virtue of this section—

- 10 (a) the court has all the powers, authorities and jurisdiction which it would have had  
if it had been sitting with a jury, together with power to determine any question  
and to make any finding which would, apart from this section, be required to be  
determined or made by a jury, and references in any enactment or other rule of  
law to a jury or the verdict or finding of a jury are to be construed accordingly,
- 15 (b) the judge conducting the trial may make such orders as the judge considers  
necessary for the fair and efficient disposal of the case.

(5) The judge conducting a trial by virtue of this section must, when giving the verdict or  
as soon as reasonably practicable after doing so, give written reasons for the verdict.

20 (6) The High Court may by act of adjournal make any incidental, supplementary,  
consequential, transitional, transitory or saving provision it considers appropriate,  
including modifying any enactment, for the purposes of, in connection with or for giving  
full effect to this section and any provision made under it.

(7) Subsection (6) is without prejudice to section 305 of the 1995 Act.

(8) In this section—

“court” means either or both—

- 25 (a) the High Court,
- (b) the Sexual Offences Court,

“rape” means rape—

- (a) at common law,
- (b) under section 1 of the Sexual Offences (Scotland) Act 2009, and
- 30 (c) of a young child under section 18 of that Act,

“specified” means specified in regulations under subsection (1),

“victim support services” has the meaning given by section 3D(5) of the 2014  
Act, and

35 any expression (other than “enactment”) used in this section which is also used in the  
1995 Act has the same meaning in this section as it does in that Act.

## **66 Report on section 65 pilot**

- (1) This section applies where regulations are made under section 65(1).

- (2) The Scottish Ministers must, as soon as reasonably practicable after the end of the period specified in the regulations—
- (a) review the operation of trials conducted by virtue of those regulations, and
  - (b) publish a report on the findings of that review.
- 5 (3) The Scottish Ministers may carry out the review mentioned in subsection (2)(a) themselves or appoint a person to carry out that review.
- (4) In carrying out the review mentioned in subsection (2)(a), the Scottish Ministers or, as the case may be, the person appointed under subsection (3) must consult such persons as they consider appropriate.
- 10 (5) The report published under subsection (2)(b) may include such other information as the Scottish Ministers consider appropriate.
- (6) The Scottish Ministers must lay the report published under subsection (2)(b) before the Scottish Parliament.

## PART 7

### FINAL PROVISIONS

#### 67 Regulations

- (1) Any power of the Scottish Ministers to make regulations under this Act includes the power to make—
- (a) incidental, supplementary, consequential, transitional, transitory or saving provision,
  - (b) different provision for different purposes.
- 20 (2) Subject to subsections (3) to (5), regulations under this Act are subject to the affirmative procedure.
- (3) Regulations under section 12(5) are subject to the negative procedure.
- (4) Regulations under section 68(1)—
- 25 (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act),
- (b) otherwise, are subject to the negative procedure.
- (5) This section does not apply to regulations under section 71(2).

#### 68 Ancillary provision

- 30 (1) The Scottish Ministers may, by regulations, make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
- (2) Regulations under subsection (1) may modify any enactment (including this Act).

**69 Interpretation**

In this Act—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995,

“the 2014 Act” means the Victims and Witnesses (Scotland) Act 2014,

5 “the 2020 Act” means the Children (Scotland) Act 2020,

“trauma-informed practice” is a means of operating that—

(a) recognises that a person may have experienced trauma,

(b) understands the effects which trauma may have on the person, and

10 (c) involves adapting processes and practices, based on that understanding of the effects of trauma, to seek to avoid, or minimise the risk of, exposing the person to—

(i) any recurrence of past trauma, or

(ii) further trauma.

**70 Modification of enactments**

15 Schedule 4 makes further modifications of enactments in consequence of this Act.

**71 Commencement**

(1) This section and sections 67, 68, 69 and 72 come into force on the day after Royal Assent.

20 (2) The other provisions of this Act come into force on such day as the Scottish Ministers may, by regulations, appoint.

(3) Regulations under subsection (2) may—

(a) include transitional, transitory or saving provision,

(b) make different provision for different purposes, including different provision for—

25 (i) different courts or descriptions of court,

(ii) different proceedings or types of proceedings,

(iii) different descriptions of witness,

(c) make different provision for different areas.

**72 Short title**

30 The short title of this Act is the Victims, Witnesses, and Justice Reform (Scotland) Act 2024.

SCHEDULE 1  
*(introduced by section 1(2))*

THE OFFICE OF VICTIMS AND WITNESSES COMMISSIONER FOR SCOTLAND

**PART 1**

STATUS AND INDEPENDENCE

*Status*

- 1 (1) The Commissioner is, as Commissioner, to be regarded as a juristic person distinct from the individual for the time being holding the office.
- (2) The Commissioner—
- 10 (a) is not a servant or agent of the Crown, and
- (b) does not enjoy any status, immunity, or privilege of the Crown.
- (3) The Commissioner's property is not to be regarded as property of, or property held on behalf of, the Crown.
- (4) Individuals working as the Commissioner's staff are not, on that account, to be regarded as civil servants.
- 15

*Independence*

- 2 (1) The Commissioner is not, except as provided in the provisions listed in sub-paragraph (2), subject to the direction or control of—
- (a) any member of the Scottish Parliament,
- 20 (b) the Scottish Ministers, or
- (c) the Parliamentary corporation.
- (2) The provisions referred to in sub-paragraph (1) are—
- (a) sections 5(2) and (3), 7(2), and 16(4), and
- 25 (b) paragraphs 5, 6(3), 8, 9, 10, 11, 12, 13(1), 15(1), 16(1) and (2), 17(1) and (4), and 18(2) of this schedule.

**PART 2**

APPOINTMENT, TERMINATION AND TERMS AND CONDITIONS

*Appointment*

- 3 (1) The office of Commissioner is to be held by an individual appointed by His Majesty on the nomination of the Scottish Parliament.
- (2) An individual may not be appointed to hold the office of Commissioner if the individual is disqualified under paragraph 4.
- (3) An individual who holds or has held the office of Commissioner may not be reappointed.
- 30

*Disqualification from appointment*

4 An individual is disqualified from holding the office of Commissioner if the individual is or, within the year preceding the date on which the appointment is to take effect, has been—

- 5
- (a) a member of the Scottish Parliament,
  - (b) a member of the House of Commons,
  - (c) a member of the House of Lords, or
  - (d) a person who is, or who is a member, employee or appointee of, a criminal justice agency.

10 *Tenure*

5 Subject to paragraph 6, the Commissioner holds office for such period, not exceeding 8 years, as the Parliamentary corporation determines at the time of appointment.

*Early termination*

6 (1) The Commissioner's appointment ends if—

- 15
- (a) the Commissioner is relieved of office by His Majesty at the Commissioner's request,
  - (b) the Commissioner becomes disqualified from holding office (see paragraph 4), or
  - (c) the Commissioner is removed from office in accordance with sub-paragraph (2).

(2) The Commissioner may be removed from office by His Majesty if—

- 20
- (a) either of the conditions in sub-paragraph (3) is met, and
  - (b) the number of members voting in favour of the resolution referred to in the condition in question is at least two thirds of the total number of seats for members of the Scottish Parliament.

(3) The conditions are—

- 25
- (a) that—
    - (i) the Parliamentary corporation is satisfied that the Commissioner has breached the Commissioner's terms and conditions of appointment, and
    - (ii) the Parliament resolves that the Commissioner should be removed from office for that breach,
  - (b) the Parliament resolves that it has lost confidence in the Commissioner's willingness, suitability or ability to perform the Commissioner's functions.
- 30

*Validity of things done*

7 The validity of anything done by the Commissioner is not affected by—

- 35
- (a) a defect in the nomination of the Commissioner,
  - (b) the disqualification of an individual as the Commissioner after appointment.

*Remuneration and pensions, etc.*

- 8 (1) The Parliamentary corporation may pay the Commissioner such remuneration and allowances (including expenses) as the Parliamentary corporation determines.
- 5 (2) The Parliamentary corporation must indemnify the Commissioner in respect of any liabilities incurred by the Commissioner in the exercise of the Commissioner's functions.
- (3) The Parliamentary corporation may pay, or make arrangements for the payment of, such pensions, allowances and gratuities to, or in respect of, any individual who holds or has held the office of Commissioner as the Parliamentary corporation determines.
- (4) Those arrangements may include—
- 10 (a) making payments towards the provision of those pensions, allowances and gratuities,
- (b) providing and maintaining schemes for the payment of those pensions, allowances and gratuities.
- 15 (5) The reference in sub-paragraph (3) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of office.

*Other terms and conditions*

- 9 (1) The Parliamentary corporation may, subject to any provision made by this Act, determine the terms and conditions on which the Commissioner is appointed.
- (2) Those terms and conditions may—
- 20 (a) prohibit the Commissioner from holding any other specified office, employment or appointment or engaging in any other specified occupation,
- (b) provide that the Commissioner's holding of any such office, employment or appointment or engagement in any such occupation is subject to the approval of the Parliamentary corporation.
- 25 (3) In sub-paragraph (2)(a), “specified” means specified (by name or description) in the Commissioner's terms and conditions.

*Temporary appointments*

- 10 (1) This paragraph applies during any period when—
- 30 (a) the office of Commissioner is vacant, or
- (b) the individual holding the office is for any reason unable to perform the Commissioner's functions.
- (2) The Parliamentary corporation may appoint an individual to act as the Commissioner during that period.
- 35 (3) An individual is eligible for appointment under sub-paragraph (2) only if the individual is not—
- (a) prevented from being reappointed to the office of Commissioner by virtue of paragraph 3(3),
- (b) disqualified from holding the office of Commissioner under paragraph 4.

- (4) An individual appointed under sub-paragraph (2)—
- (a) is appointed on such terms and conditions, and for such period, as the Parliamentary corporation determines,
  - (b) while acting as Commissioner is to be treated as the Commissioner for all purposes except those of paragraphs 5, 6, and 8(3).
- (5) An appointment under sub-paragraph (2) ends if—
- (a) the individual is relieved of office by the Parliamentary corporation at the individual's request, or
  - (b) the individual is removed from office by the Parliamentary corporation by notice in writing.

### **PART 3**

#### STAFF AND OFFICES

##### *Appointment of staff*

- 11 The Commissioner may, with the consent of the Parliamentary corporation as to numbers,  
15 appoint staff.

##### *Staff terms and conditions*

- 12 Staff appointed by the Commissioner are appointed on such terms and conditions as the  
Commissioner, with the approval of the Parliamentary corporation, determines.

##### *Staff pensions*

- 20 13 (1) The Commissioner may, with the approval of the Parliamentary corporation, pay or  
make arrangements for the payment of pensions, allowances and gratuities to, or in  
respect of, any individual who is or has been a member of staff of the Commissioner.
- (2) Those arrangements may include—
- (a) making payments towards the provision of those pensions, allowances and  
25 gratuities,
  - (b) providing and maintaining schemes for the payment of those pensions, allowances  
and gratuities.
- (3) The reference in sub-paragraph (1) to pensions, allowances and gratuities includes  
pensions, allowances and gratuities by way of compensation for loss of office.

##### *Authority to perform functions*

- 30 14 (1) The Commissioner may authorise any person to perform such of the Commissioner's  
functions (and to such extent) as the Commissioner determines.
- (2) The giving of authority under sub-paragraph (1) does not—
- (a) affect the Commissioner's responsibility for the performance of the functions,
  - (b) prevent the Commissioner from performing the functions.
- 35

*Duty to comply with directions*

- 15 (1) The Commissioner must comply with any direction given to the Commissioner by the Parliamentary corporation in relation to—
- 5 (a) the location of the Commissioner's office,  
(b) the sharing of premises, staff, services or other resources with any other officeholder or any public body.
- (2) A direction under this section may vary or revoke a previous direction.
- (3) The Parliamentary corporation is to make any direction under this section publicly available.

10

**PART 4**

ACCOUNTS AND ACCOUNTABILITY

*Budget*

- 16 (1) The Commissioner must, before the start of each financial year—
- 15 (a) prepare proposals for the Commissioner's use of resources and expenditure during the year (a "budget"), and  
(b) by such date as the Parliamentary corporation determines, send the budget to it for approval.
- (2) The Commissioner may, in the course of a financial year, prepare a revised budget for the remainder of the year and send it to the Parliamentary corporation for approval.
- 20 (3) In preparing a budget or revised budget, the Commissioner must ensure that the Commissioner's resources will be used economically, efficiently and effectively.
- (4) A budget or revised budget must contain a statement confirming that the Commissioner has complied with the duty under sub-paragraph (3).

*Accountable officer*

25

- 17 (1) The Parliamentary corporation must designate the Commissioner or a member of the Commissioner's staff as the accountable officer.
- (2) The functions of the accountable officer are—
- 30 (a) signing the accounts of the expenditure and receipts of the Commissioner,  
(b) ensuring the propriety and regularity of the finances of the Commissioner,  
(c) ensuring that the resources of the Commissioner are used economically, efficiently and effectively, and  
(d) where the accountable officer is not the Commissioner, the duty set out in sub-paragraph (3).
- 35 (3) The duty referred to in sub-paragraph (2)(d) is a duty, where the accountable officer is required to act in a way that the accountable officer considers would be inconsistent

with the proper performance of the functions specified in sub-paragraph (2)(a) to (c), to—

- (a) obtain written authority from the Commissioner before taking the action, and
- (b) send a copy of that authority as soon as possible to the Auditor General for Scotland.

- (4) The accountable officer is answerable to the Scottish Parliament for the performance of the functions specified in sub-paragraph (2).

#### *Accounts and audit*

18 (1) The Commissioner must—

- (a) keep proper accounts and accounting records,
- (b) prepare in respect of each financial year a statement of accounts, and
- (c) send a copy of the statement to the Auditor General for Scotland for auditing.

- (2) The Commissioner must comply with any directions from the Scottish Ministers in relation to the matters mentioned in sub-paragraph (1)(a) and (b).

- (3) The Commissioner must make the audited statement of accounts available, without charge, for inspection by any person upon request.

### SCHEDULE 2

*(introduced by section 22)*

#### APPLICATION OF PUBLIC AUTHORITIES LEGISLATION TO THE OFFICE OF VICTIMS AND WITNESSES COMMISSIONER FOR SCOTLAND

##### *Scottish Public Services Ombudsman Act 2002*

1 In Part 2 of schedule 2 of the Scottish Public Services Ombudsman Act 2002 (other Scottish public authorities liable to investigation), after paragraph 54 insert—

“54ZA The Victims and Witnesses Commissioner for Scotland.”.

##### *Freedom of Information (Scotland) Act 2002*

2 In Part 7 of schedule 1 of the Freedom of Information (Scotland) Act 2002 (Scottish public authorities to which the Act applies), after paragraph 105, insert—

“105ZA The Victims and Witnesses Commissioner for Scotland.”.

##### *Public Services Reform (Scotland) Act 2010*

3 In schedule 5 of the Public Services Reform (Scotland) Act 2010 (Scottish public authorities with mixed or no reserved functions to which Part 2 order-making powers apply), after the entry relating to the Standards Commission for Scotland, insert—  
“Victims and Witnesses Commissioner for Scotland”.

*Public Records (Scotland) Act 2011*

4 In the schedule of the Public Records (Scotland) Act 2011 (other authorities to which Part 1 applies), before the entry relating to VisitScotland, insert—

“Victims and Witnesses Commissioner for Scotland”.

5 *Procurement Reform (Scotland) Act 2014*

5 In Part 3 of the schedule of the Procurement Reform (Scotland) Act 2014 (other contracting authorities to which the Act applies), after paragraph 67 insert—

“67A Victims and Witnesses Commissioner for Scotland”.

10 SCHEDULE 3  
*(introduced by section 39)*

SEXUAL OFFENCES

**PART 1**

CRIMES AT COMMON LAW

*Crimes at common law*

- 15 1 Rape.
- 2 2 Clandestine injury to woman.
- 3 3 Abduction of woman or girl with intent to rape.
- 4 4 Assault with intent to rape or ravish.
- 5 5 Indecent assault.
- 20 6 6 Lewd, indecent or libidinous behaviour or practices.
- 7 7 7 Sodomy, unless every person involved in the offence was 16 or over and was a willing participant.

**PART 2**

STATUTORY OFFENCES

25 *Offences under the Mental Health (Scotland) Act 1984*

8 An offence under any of the following provisions of the Mental Health (Scotland) Act 1984—

- (a) section 106 (protection of mentally handicapped females),
- (b) section 107 (protection of patients).

*Offences under the Criminal Law (Consolidation) (Scotland) Act 1995*

9 An offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995—

- (a) section 1 (incest),
- 5 (b) section 2 (intercourse with a stepchild),
- (c) section 3 (intercourse of person in position of trust with child under 16),
- (d) section 5 (intercourse with girl under 16),
- (e) section 6 (indecent behaviour towards girl between 12 and 16),
- (f) section 8 (abduction of girl under 18 for purposes of unlawful intercourse),
- 10 (g) section 10 (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16).

*Offence under the Sexual Offences (Amendment) Act 2000*

10 An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust).

15 *Offences under the Mental Health (Care and Treatment) (Scotland) Act 2003*

11 An offence under any of the following provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003—

- (a) section 311(1) (non-consensual sexual acts),
- (b) section 311(3) (persons providing care services: sexual offences).

20 *Offence under the Prohibition of Female Genital Mutilation (Scotland) Act 2005*

12 An offence under section 1 of the Prohibition of Female Genital Mutilation (Scotland) Act 2005 (female genital mutilation).

*Offences under the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005*

25 13 An offence under any of the following provisions of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005—

- (a) section 1 (meeting a child following certain preliminary contact),
- (b) section 9 (paying for sexual services of a child),
- 30 (c) section 10 (causing or inciting provision by child of sexual services or child pornography),
- (d) section 11 (controlling a child providing sexual services or involved in pornography),
- (e) section 12 (arranging or facilitating provision by child of sexual services or child pornography).

*Offences under the Sexual Offences (Scotland) Act 2009*

14 (1) An offence under any of the following provisions of Part 1 of the Sexual Offences (Scotland) Act 2009 (rape etc.)—

- (a) section 1 (rape),
- 5 (b) section 2 (sexual assault by penetration),
- (c) section 3 (sexual assault),
- (d) section 4 (sexual coercion),
- (e) section 5 (coercing a person into being present during a sexual activity),
- (f) section 6 (coercing a person into looking at a sexual image),
- 10 (g) section 7(1) (communicating indecently),
- (h) section 7(2) (causing a person to see or hear an indecent communication),
- (i) section 8 (sexual exposure),
- (j) section 9 (voyeurism),
- (k) section 11 (administering a substance for a sexual purpose).

15 (2) An offence under any of the following provisions of Part 4 of the Sexual Offences (Scotland) Act 2009 (children)—

- (a) section 18 (rape of a young child),
- (b) section 19 (sexual assault on a young child by penetration),
- (c) section 20 (sexual assault on a young child),
- 20 (d) section 21 (causing a young child to participate in a sexual activity),
- (e) section 22 (causing a young child to be present during a sexual activity),
- (f) section 23 (causing a young child to look at a sexual image),
- (g) section 24(1) (communicating indecently with a young child),
- (h) section 24(2) (causing a young child to see or hear an indecent communication),
- 25 (i) section 25 (sexual exposure to a young child),
- (j) section 26 (voyeurism towards a young child),
- (k) section 28 (having intercourse with an older child),
- (l) section 29 (engaging in penetrative sexual activity with or towards an older child),
- (m) section 30 (engaging in sexual activity with or towards an older child),
- 30 (n) section 31 (causing an older child to participate in a sexual activity),
- (o) section 32 (causing an older child to be present during a sexual activity),
- (p) section 33 (causing an older child to look at a sexual image),
- (q) section 34(1) (communicating indecently with an older child),
- (r) section 34(2) (causing an older child to see or hear an indecent communication),
- 35 (s) section 35 (sexual exposure to an older child),

- 5
- (t) section 36 (voyeurism towards an older child),
  - (u) section 37(1) (engaging while an older child in sexual conduct with or towards another older child),
  - (v) section 37(4) (engaging while an older child in consensual sexual conduct with another older child).
- (3) An offence under any of the following provisions of Part 5 of the Sexual Offences (Scotland) Act 2009—
- (a) section 42 (sexual abuse of trust),
  - (b) section 46 (sexual abuse of trust of a mentally disordered person).
- 10
- (4) Any of the following offences set out in schedule 3 of the Sexual Offences (Scotland) Act 2009—
- (a) abduction with intent to commit rape under section 1 (rape),
  - (b) abduction with intent to commit rape under section 18 (rape of a young child),
  - (c) assault with intent to commit rape under section 1 (rape),
  - 15 (d) assault with intent to commit rape under section 18 (rape of a young child).

*Offence under the Abusive Behaviour and Sexual Harm (Scotland) Act 2016*

- 15 An offence under section 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (disclosing, or threatening to disclose, an intimate photograph or film).

*Offence under the Domestic Abuse (Scotland) Act 2018*

- 20 16 An offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018 (abusive behaviour towards partner or ex-partner), where it is apparent from the offence as charged in the indictment that there was a substantial sexual element present in the alleged commission of the offence.

*Offences under the Health and Care Act 2022*

- 25 17 An offence under any of the following provisions of the Health and Care Act 2022—
- (a) section 140 (virginity testing),
  - (b) section 141 (offering to carry out virginity testing),
  - (c) section 142 (aiding or abetting etc. a person to carry out virginity testing),
  - (d) section 152 (hymenoplasty),
  - 30 (e) section 153(offering to carry out hymenoplasty),
  - (f) section 154 (aiding or abetting etc. a person to carry out hymenoplasty).

SCHEDULE 4  
*(introduced by section 70)*

MINOR AND CONSEQUENTIAL MODIFICATIONS

*Legal Aid (Scotland) Act 1986*

- 5 1 (1) The Legal Aid (Scotland) Act 1986 is amended as follows.
- (2) In section 21, subsection (1), paragraph (a), after sub-paragraph (i) insert—
- “(iza) the Sexual Offences Court;”.
- (3) In section 22, subsection (1), after paragraph (de), insert—
- 10 “(df) where a solicitor has been appointed under section 56(2) of the Victims, Witnesses, and Justice Reform (Scotland) Act 2024 (prohibition on personal conduct of defence) to conduct the accused’s case in the Sexual Offences Court;”.

*Judiciary and Courts Scotland Act 2008*

- 2 (1) The Judiciary and Courts (Scotland) Act 2008 is amended as follows.
- 15 (2) In section 2, subsection (2A), after “President of the Sheriff Appeal Court”, insert “or the President of the Sexual Offences Court;”.
- (3) In section 2, subsection (6), after paragraph (b) insert—
- “(ba) the Sexual Offences Court;”.
- (4) In section 43, subsection (2), after paragraph (ca), insert—
- 20 “(cab) the office of Judge of the Sexual Offences Court;”.
- (5) In section 62, subsection (1), after paragraph (b), insert—
- “(bza) the President of the Sexual Offences Court in the carrying out of functions under section 43 of the Victims, Witnesses, and Justice Reform (Scotland) Act 2024;”.

25 *Courts Reform (Scotland) Act 2014*

- 3 (1) The Courts Reform (Scotland) Act 2014 is amended as follows.
- (2) In schedule 1 (civil proceedings in relation to which summary sheriff has competence), after paragraph 4A, insert—
- “Orders dispensing with restriction on publications relating to child victims*
- 30 4B Proceedings under section 106D of the Criminal Justice (Scotland) Act 2016.”.



# **Victims, Witnesses, and Justice Reform (Scotland) Bill**

[AS INTRODUCED]

An Act of the Scottish Parliament to establish a Victims and Witnesses Commissioner for Scotland; to make provision for the investigation and prosecution of crime, and the conduct and scheduling of criminal and civil proceedings, to be done in a trauma-informed way; to make provision for special measures for vulnerable witnesses and vulnerable parties in civil proceedings, including the special measure of prohibiting the personal conduct of certain cases; to abolish the not proven verdict and to make provision about the size of juries in criminal trials and the number of jurors needed to deliver guilty verdicts; to establish a new court to try persons accused of certain sexual offences; to provide for anonymity for victims of certain sexual offences; to provide for complainers' legal representatives to be heard in relation to applications to admit certain evidence in sexual offences cases; to enable a pilot of rape trials before a judge without a jury; and for connected purposes.

Introduced by: Angela Constance  
On: 25 April 2023  
Bill type: Government Bill

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