

# Victims and Witnesses (Scotland) Bill

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## Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 31

Long Title

Amendments marked \* are new (including manuscript amendments) or have been altered.

### Before section 1

#### Margaret Mitchell

25 Before section 1, insert—

##### <Definition of victim

- (1) For the purposes of this Act, a victim is a person who has suffered harm—
  - (a) because an offence has, or is alleged to have, been committed against the person,
  - (b) because the person is a prescribed relative or dependent of a person who has died because an offence has, or is alleged to have, been committed against that person, or
  - (c) as a direct result of intervening—
    - (i) to help another person against whom an offence has, or is alleged to have, been committed, or
    - (ii) to prevent an offence, or alleged offence, being committed against another person.
- (2) For the purposes of subsection (1), “harm” includes—
  - (a) physical, mental or emotional harm,
  - (b) economic loss,
  - (c) loss or damage to tangible or intangible property.
- (3) In subsection (1)(b), “prescribed” means prescribed by the Scottish Ministers by order.
- (4) An order under subsection (1)(b) is subject to the negative procedure.>

### Section 1

#### Elaine Murray

1 In section 1, page 1, line 26, at end insert—

- <( ) In having regard to the principles mentioned in subsection (3), each person mentioned in subsection (2) must consider the specific needs, rights and wishes of a child who is or appears to be a victim or witness in relation to a criminal investigation or criminal proceedings.>

**Elaine Murray**

2 In section 1, page 1, line 26, at end insert—

<( ) In having regard to the principle mentioned in subsection (3)(a), each person mentioned in subsection (2) must take steps to provide information to a child who is or appears to be a victim or witness in relation to a criminal investigation or criminal proceedings in such form as the child may reasonably require.>

**Elaine Murray**

26 In section 1, page 1, line 28, at end insert—

<( ) In this section, “child” means a person under 18 years of age.>

**Section 2**

**Elaine Murray**

3 In section 2, page 2, line 8, at end insert—

<( ) Each person mentioned in subsection (2) in setting and publishing standards under subsection (1), in so far as the standards could relate to a child, must do so in such a way that the welfare of a child is of paramount consideration.>

**Elaine Murray**

27 In section 2, page 2, line 30, at end insert—

<“child” means a person under 18 years of age.>

**Section 2A**

**Elaine Murray**

4 In section 2A, page 3, line 8, at end insert—

<( ) In preparing a report under subsection (2), the person must, so far as reasonably practicable, ascertain and have regard to the views of persons who are or appear to be victims or witnesses in relation to a criminal investigation or criminal proceedings.>

**Elaine Murray**

5 In section 2A, page 3, line 19, at end insert—

<( ) Before making regulations under subsection (4), the Scottish Ministers must consult those persons mentioned in section 2(2).>

**Elaine Murray**

6 In section 2A, page 3, line 19, at end insert—

<( ) The person may in consequence of a report under subsection (2) revise the standards set under section 2(1), so as to meet the needs of persons who are or appear to be victims or witnesses in relation to a criminal investigation or criminal proceedings.>

- ( ) Where the person revises the standards set under section 2(1) the person must publish those revised standards.>

#### After section 2A

##### Elaine Murray

7 After section 2A, insert—

##### **Child witnesses: guidance**

- <(1) Each person mentioned in section 2(2) (“the publisher”) must prepare and publish guidance setting out how, in carrying out the functions of the person, the needs, rights and wishes of a child who is or appears to be a victim or witness (“child witness”) will be considered in relation to a criminal investigation or criminal proceedings.
- (2) In particular, such guidance must set out how the needs, rights and wishes of a child witness will be considered in—
- (a) having regard to the principles mentioned in section 1(3),
  - (b) setting and publishing standards under section 2(1),
  - (c) the provision of information to a child witness in relation to a criminal investigation or criminal proceedings.
- (3) Before publishing guidance under subsection (1), the publisher must consult such persons as appear to the publisher to have a significant interest in the guidance.
- (4) The publisher must lay a copy of guidance prepared under subsection (1) before the Parliament as soon as reasonably practicable.
- (5) The publisher may vary or revoke any guidance published under subsection (1).
- (6) In this section, “child” means a person under 18 years of age.>

##### Margaret Mitchell

28 After section 2A, insert—

##### *<Co-ordination of support for victims and witnesses*

##### **Co-ordination of support for victims and witnesses**

- (1) The persons mentioned in subsection (2) (“the persons”) must take steps to co-ordinate the provision of support to a person who is or appears to be a victim or witness in relation to a criminal investigation or criminal proceedings and, in particular, take steps—
- (a) to co-ordinate the provision of information to a victim or witness,
  - (b) in so far as appropriate, to share information between the persons in relation to a victim or witness,
  - (c) to offer a victim or witness a single point of contact on behalf of all the persons,
- with a view to improving the experience of victims and witnesses in relation to criminal investigations and criminal proceedings.
- (2) The persons are—
- (a) the Lord Advocate, but only in relation to functions relating to the investigation and prosecution of crime,

- (b) the chief constable of the Police Service of Scotland,
- (c) the Scottish Court Service.>

## **Section 2C**

### **Kenny MacAskill**

**8** Leave out section 2C and insert—

#### **<Restorative justice**

- (1) The Scottish Ministers may issue guidance about—
  - (a) the referral of a person who is, or appears to be, a victim in relation to an offence and a person who has, or is alleged to have, committed the offence to restorative justice services, and
  - (b) the provision of restorative justice services to those persons.
- (2) Any person, or description of person, prescribed by the Scottish Ministers by order must have regard to any guidance issued by the Scottish Ministers under subsection (1).
- (3) In this section, “restorative justice services” means any process in which the persons such as are mentioned in subsection (1)(a) participate with a view to resolving any matter arising from the offence or alleged offence with the assistance of a person who is unconnected with either person or the offence or alleged offence.
- (4) An order under subsection (2) is subject to the negative procedure.>

## **Section 3**

### **Kenny MacAskill**

**9** In section 3, page 4, line 40, at end insert—

- <( ) In the case where the qualifying information falls within paragraph (a), (b) or (c) of subsection (6), a qualifying person must not comply with a request under subsection (1) in so far as disclosure of the qualifying information would require disclosure of information supplied by a Minister of the Crown or a department of the Government of the United Kingdom that is held in confidence by the person.>

## **Section 5**

### **Kenny MacAskill**

**10** In section 5, page 6, line 26, leave out <60> and insert <59ZL>

### **Kenny MacAskill**

**11** In section 5, page 6, line 31, leave out <consisting of> and insert <the commission of which involves>

## Section 5A

### Kenny MacAskill

- 13 In section 5A, page 7, line 15, leave out <60> and insert <59ZL>

## After section 5A

### Graeme Pearson

- 12\* After section 5A, insert—

*<Disclosure of sensitive personal information*

#### **Disclosure of sensitive personal information**

- (1) The Lord Advocate must prepare and publish guidance on the circumstances in which sensitive personal information in relation to a person who is or appears to be a victim of an offence listed in any of paragraphs 36 to 59ZL of Schedule 3 to the Sexual Offences Act 2003 (“the victim”) may be requested and disclosed in relation to a criminal investigation or criminal proceedings.
- (2) Guidance published under subsection (1) must make provision in particular about—
  - (a) the circumstances in which it may be considered appropriate to request disclosure of such information,
  - (b) the manner by which such a request must be made,
  - (c) subject to paragraph (d), the need to obtain the free and informed consent of the victim to such a disclosure,
  - (d) the circumstances in which it may be appropriate for such information to be disclosed without the consent of the victim,
  - (e) the persons to whom such information may be disclosed and how this may vary in different circumstances,
  - (f) the support that must be made available to the victim where disclosure of such information is requested.
- (3) Before issuing guidance under subsection (1), the Lord Advocate must consult such persons as the Lord Advocate considers appropriate.
- (4) Guidance published under subsection (1) must be laid before the Parliament as soon as reasonably practicable.
- (5) The Lord Advocate may vary or revoke any guidance issued under subsection (1).
- (6) In this section, “sensitive personal information” includes information in a health, social work or education record.>

### Margaret Mitchell

- 29 After section 5A, insert—

*<Health and other sensitive information*

#### **Evidence relating to sexual offences: health and other sensitive information**

- (1) This section applies where a relevant person seeks to access health or other sensitive information about a person who is or appears to be the victim of an offence of a type mentioned in subsection (6) in relation to—
  - (a) a criminal investigation,
  - (b) criminal proceedings.
- (2) The person must, in relation to the provision of such information, be given an opportunity to—
  - (a) obtain legal advice,
  - (b) appoint a legal representative.
- (3) Where the person appoints a legal representative under subsection (2)(b), the legal representative must be given an opportunity to submit evidence on whether access to the health or other sensitive information should be provided.
- (4) A legal representative appointed under subsection (2)(b) may provide such evidence—
  - (a) in writing,
  - (b) at any relevant hearing.
- (5) The Scottish Ministers may by regulations establish, maintain and administer a fund for the purpose of securing the provision of—
  - (a) legal advice under subsection (2)(a),
  - (b) legal representation under subsection (2)(b),in relation to a person who is or appears to be a victim of an offence of a type mentioned in subsection (6).
- (6) The types of offence are—
  - (a) an offence under paragraph 36 of Schedule 3 to the Sexual Offences Act 2003,
  - (b) an offence under paragraph 59D of Schedule 3 to the Sexual Offences Act 2003,
  - (c) an offence listed in any of paragraphs 37 to 59C of Schedule 3 to the Sexual Offences Act 2003,
  - (d) an offence listed in any of paragraphs 59E to 59ZL of Schedule 3 to the Sexual Offences Act 2003.
- (7) In this section—

“health information” means information which relates to the physical or mental health or condition of a person,

“other sensitive information” includes information in a social work record, an educational record, a local authority care record and a counselling record.

“relevant person” means—

  - (a) a constable,
  - (b) a prosecutor (as defined in section 307(1) of the 1995 Act),
  - (c) a person accused of an offence or the legal representative of the person so accused.
- (8) Regulations under subsection (5) are subject to the affirmative procedure.

- (9) This section comes into force on such day as the Scottish Ministers may by order appoint, but different days may be appointed in relation to the different offences listed in subsection (6).>

**Margaret Mitchell**

**30** After section 5A, insert—

**<Pilot scheme**

- (1) The Scottish Ministers may by order (the “pilot order”) appoint a day on which section (*Evidence relating to sexual offences: health and other sensitive information*)(1)(b), (2), (3), (4), (5), (6)(a) and (b), (7), (8) and 9 are to come into force in respect of hearings at the High Court of Justiciary sitting at a location specified in the order.
- (2) The pilot order may bring section (*Evidence relating to sexual offences: health and other sensitive information*)(1)(b), (2), (3), (4), (5), (6)(a) and (b), (7), (8) and 9 into force with such modifications as the Scottish Ministers consider appropriate.
- (3) The pilot order must be in force for such period as the Scottish Ministers consider appropriate but for no less than a period of six months.
- (4) An order under subsection (1) is subject to the affirmative procedure.>

**Margaret Mitchell**

**31** After section 5A, insert—

**<Report on pilot scheme**

- (1) The Scottish Ministers must no later than six months following the completion of the pilot scheme publish a report setting out—
  - (a) the number of occasions when legal advice was obtained under section (*Evidence relating to sexual offences: health and other sensitive information*)(2)(a),
  - (b) the number of occasions when a legal representative was appointed under section (*Evidence relating to sexual offences: health and other sensitive information*)(2)(b),
  - (c) a description of the type of information that was sought by a relevant person on each occasion under section (*Evidence relating to sexual offences: health and other sensitive information*)(1),
  - (d) the number of occasions when information sought under section (*Evidence relating to sexual offences: health and other sensitive information*)(1) was admitted as evidence at any relevant hearing.
- (2) The Scottish Ministers must lay a copy of the report published under subsection (1) before the Parliament as soon as is reasonably practicable.>

**Section 6**

**Kenny MacAskill**

**14** In section 6, page 8, line 3, leave out <60> and insert <59ZL>

**Kenny MacAskill**

- 15 In section 6, page 8, line 10, leave out <consisting of> and insert <the commission of which involves>

**Section 7**

**Kenny MacAskill**

- 16 In section 7, page 9, line 7, at end insert—  
<( ) after subsection (3), insert—  
“(3A) In the case where a vulnerable witness notice under subsection (2)(a) specifies only a standard special measure, subsection (3)(a) does not apply.”>

**Section 19**

**Graeme Pearson**

- 17 In section 19, page 14, line 28, at end insert—  
<( ) After subsection (5), insert—  
“(5A) A victim statement or a statement supplementary to, or in amplification of, the victim statement may be made—  
(a) in writing,  
(b) by way of oral representation,  
(c) by such other means as the Scottish Ministers may prescribe by order.  
(5B) The Lord President may issue guidance as to how representations under subsection (5A)(b) and (c) may be made.  
(5C) Where a person chooses to make a statement under subsection (5A)(b), the person may do so by use of a live television link.  
(5D) Where a person chooses to make a statement by way of a live television link the court must make such arrangements as seem to it appropriate for the person to give evidence by means of such a link.  
(5E) An order under subsection (5A)(c) must not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Parliament.”>

**Elaine Murray**

- 32 In section 19, page 14, line 36, at end insert—  
<( ) after “(6)”, insert “and (11B)(b)”>

**Elaine Murray**

- 33 In section 19, page 15, line 4, leave out from beginning to end of line 30 and insert—  
<“(11A) In so far as is reasonably practicable and taking account of the age and maturity of the child, a child who has not attained the age of 12 years must be given an opportunity to make a victim statement.

- (11B) Where a child is not of sufficient age and maturity under subsection (11A)—
- (a) any victim statement must instead be made by a parent or parents of the child, or
  - (b) where a statement cannot be made by a person under paragraph (a), the statement may be made by the qualifying person highest listed in subsection (10).
- (11C) A child who is given an opportunity to make a victim statement by virtue of this section must be provided with such support as the child needs to enable the child to make the statement.
- (11D) In subsection 11B(a), “parent” has the same meaning as in the Education (Scotland) Act 1980.”>

### **Kenny MacAskill**

**18** In section 19, page 16, line 5, at end insert—

<(7A) Section 16 of the 2003 Act (victim’s right to receive information concerning release etc. of offender) is amended in accordance with subsections (7B) to (7F).

(7B) In subsection (5)—

5

(a) in paragraph (a)—

(i) after “person”, insert “to be given the information”, and

(ii) after “Act”, insert “(except that, in the case where a qualifying person is a child who has not attained the age of 12 years, paragraph (a)(i) of the said section 14(6) is to be construed as if the reference to the qualifying person were to a person who cares for the child)”,

10

(b) in paragraph (b)(ii)—

(i) after “child”, insert “who has not attained the age of 12 years”,

(ii) the words from “such” to “paragraph (b)” are repealed,

(iii) after “person” insert “to be given the information”, and

15

(iv) for the words from “mentioned”, where it second occurs, to “cares”, substitute “references to the person who cares for the child”,

(c) in paragraph (b)(i), after “sub-paragraph”, where it second occurs, insert “(taking him to be the person “afforded an opportunity””, and

20

(d) in paragraph (b) the words “(taking him to be the person “afforded an opportunity”)” are repealed.

(7C) In subsection (6)—

(a) for “and (8) to (12)” substitute “to (11)”, and

(b) after “relation to”, where it first occurs, insert “paragraphs (a) and (b)(i) of”.

(7D) Subsection (7) is repealed.

25

(7E) In subsection (8), for “(7)” substitute “(5)(a) and (b)(ii)”.

(7F) After subsection (8), add—

“(9) The Scottish Ministers may by order amend this section by substituting for the age for the time being specified in any part of this section such other age as they think fit.”>

**John Finnie**

**18A** As an amendment to amendment 18, line 27, after <for> insert—

- <(a) the person for the time being specified in any part of this section to whom information may be made available such other person as they think fit,
- (b)>

**John Finnie**

**18B** As an amendment to amendment 18, line 29, at end insert—

- <(10) The Scottish Ministers may issue guidance on the support to be provided to children receiving information under this section.
- (11) Before issuing guidance under subsection (10), the Scottish Ministers must consult such persons as they consider appropriate.
- (12) The Scottish Ministers may vary or revoke any guidance issued under subsection (10).”>

**Section 20**

**Elaine Murray**

**19** In section 20, page 16, line 13, at end insert—

- <(4B) Before making a compensation order, the court must take steps to ascertain the views and wishes of the victim.
- (4C) No compensation order may be made where the victim notifies the court that the victim does not wish to receive compensation from the person convicted of the offence.
- (4D) For the purposes of subsections (4B) and (4C), “victim” has the meanings given by subsections (1A) and (1C).”>

**Section 21**

**Alison McInnes**

**34\*** In section 21, page 16, line 20, at end insert—

- <( ) of assault of a person acting in a capacity mentioned in section 1(3)(zb), (b) or (c) of the Emergency Workers (Scotland) Act 2005 (assaulting certain providers of emergency services) under section (1)(1) of that Act.>

**Alison McInnes**

**35\*** In section 21, page 16, line 39, insert at end <, and

- ( ) persons acting in a capacity mentioned in section 1(3)(zb), (b) and (c) of the Emergency Workers (Scotland) Act 2005 who have been assaulted as mentioned in section 1(1) of that Act.>

**Kenny MacAskill**

- 20 In section 21, page 17, line 2, at end insert <or>

**Section 23**

**Graeme Pearson**

- 21 In section 23, page 21, line 28, at end insert—

<( ) after subsection (8), insert—

- “(9) Subsection (10) applies where a person who is entitled to receive information under this section as respects a convicted person has intimated a desire to receive it.
- (10) The person to be given the information must be afforded an opportunity to intimate the form in which that person reasonably requires to receive such information.”>

**Section 24**

**Graeme Pearson**

- 22 In section 24, page 21, line 37, after second <to> insert—

<( ) the convicted person by way of video link as respects such release and as to the conditions which might be specified in the licence in question,  
( )>

**Graeme Pearson**

- 23 In section 24, page 22, line 4, after <made> insert <, including how such representations to the offender may be made by way of video link>

**After section 25**

**Graeme Pearson**

- 24 After section 25, insert—

*<Provision of information to victims in court proceedings: solemn cases*

**Guidance on provision of information to victims in court proceedings: solemn cases**

- (1) The Scottish Ministers may issue guidance to the Scottish Court Service on minimum standards to apply about the provision of information in relation to solemn proceedings to a person who is or appears to be a victim in relation to such proceedings.
- (2) The Scottish Court Service must have due regard to any guidance issued under subsection (1).

- (3) Before issuing guidance under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.
- (4) The Scottish Ministers must lay a copy of any guidance issued under subsection (1) before the Parliament as soon as is reasonably practicable.
- (5) The Scottish Ministers may vary or revoke any guidance issued under subsection (1).>

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