

# Victims and Witnesses (Scotland) Bill

---

---

## 3rd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the third day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

### Groupings of amendments

#### **Special measures: intermediary**

84

#### **Victim statements**

29, 86, 30, 68, 31, 32

*Notes on amendments in this group*

Amendment 68 pre-empts amendment 31

#### **Compensation orders**

69

#### **Restitution Orders: extension of application of the fund**

70, 71, 72, 73

#### **The Restitution Fund and Victim Surcharge Fund: establishment and administration**

33, 34, 35, 36, 37, 38, 42, 90, 43, 44, 45, 46, 47

#### **Victim Surcharge Fund: eligibility**

87, 88, 89

#### **Victim Surcharge Fund: reports**

91

#### **Right to release information about offender**

92, 93, 94

#### **Right to make oral representations**

95, 96, 97, 98, 99, 100

**Communication with victims and witnesses**

101

**Commencement**

54

**Amendments already debated**

**Definition of victim**

With 74 – 39, 40, 41, 49, 48, 50, 51

**Evidence in relation to sexual offences: disclosure of information**

With 82 – 85

**Minor and technical**

With 28 – 52, 53

## THIS IS NOT THE MARSHALLED LIST

### Amendments in debating order

#### Special measures: intermediary

##### John Finnie

84 After section 16, insert—

##### <Special measures: intermediary

- (1) In section 271H(1) of the 1995 Act (the special measures), after paragraph (ea) (inserted by section 16(1) of this Act), insert—

“(eb) taking of evidence through an interpreter or other person approved by the court for the purposes of section 271HC of this Act.”.

- (2) After section 271HB of the 1995 Act (inserted by section 16(2) of this Act), insert—

##### “271HC Taking of evidence through an intermediary

- (1) This section applies where the special measure to be used in respect of a vulnerable witness is taking evidence through an interpreter or other person approved by the court (“the intermediary”).
- (2) The intermediary must in so far as is necessary—
- (a) communicate to the witness any questions put to the witness,
  - (b) communicate to any person asking such questions the responses given by the witness,
  - (c) provide any further information to the witness or person asking the questions to enable such questions and responses to be understood.”.
- (3) In section 271F(8)(a) of the 1995 Act (special measures not applying in relation to a vulnerable witness who is the accused), after “271H(1)(c)” insert “and (eb)”.>

#### Victim statements

##### Kenny MacAskill

29 In section 19, page 12, line 3, leave out <as follows> and insert <in accordance with subsections (2) to (7).>

##### Graeme Pearson

86 In section 19, page 12, line 10, 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) Where a person chooses to make a statement by way of oral representation, the person may do so by use of a live television link.

## THIS IS NOT THE MARSHALLED LIST

- (5C) 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.
- (5D) 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.”.>

### **Kenny MacAskill**

- 30 In section 19, page 12, line 13, leave out <14> and insert <12>

### **Elaine Murray**

- 68 In section 19, page 12, line 23, leave out from beginning to end of line 10 on page 13 and insert—
- <“(11A) A child must be given an opportunity to make a victim statement where the child has not attained the age of 12 but is of sufficient age and maturity to make such a 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 person who has parental responsibilities or rights under the Children (Scotland) Act 1995 (c.36), or
- (b) if a statement cannot be made by a person under paragraph (a), the statement may be made by a “qualifying person” whose relationship to the child is listed in subsection (10).
- (11C) In determining the maturity of a child a view must be obtained from a person registered in the part of the register maintained under the Health Professions Order 2001 which relates to practitioner psychologists.
- (11D) Where there is more than one qualifying person in relation to a child, the court must determine which qualifying person should make that statement.
- (11E) In making a determination under subsection (11D), so far as practicable and having regard to the age and maturity of the child, the court must—
- (a) give the child an opportunity to express any views on which qualifying person is to make the statement, and
- (b) take into account any such views in determining which qualifying person is to make the statement.
- (11F) A child who is given an opportunity to make a victim statement by virtue of subsection (11A) or to express views on which qualifying person is to make the statement under subsection (11C) must be provided with such support as the child needs to enable the child to make the statement or express views, as the case may be.”.>

### **Kenny MacAskill**

- 31 In section 19, page 12, line 23, leave out <14> and insert <12>

### **Kenny MacAskill**

- 32 In section 19, page 13, line 13, at end insert—
- <(7) After subsection (12), insert—

## **THIS IS NOT THE MARSHALLED LIST**

- “(13) A victim statement, or a statement made by virtue of subsection (3) in relation to a victim statement, may be made in such form and manner as may be prescribed.
- (14) An order under subsection (13) may—
- (a) include such incidental, supplementary or consequential provision as the Scottish Ministers consider appropriate,
  - (b) modify any enactment (including this Act).
- (15) An order under subsection (13) may be made so as to have effect for a period specified in the order.
- (16) An order under subsection (13) containing provision of the type mentioned in subsection (15) may provide that its provisions are to apply only in relation to one or more areas specified in the order.”.
- (8) In section 88(2) of the 2003 Act (orders), at the beginning of paragraph (b) insert “14(13) or”.>

### **Compensation orders**

#### **Elaine Murray**

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

- <(4B) In considering whether to make a compensation order, the court must take steps to ascertain the views 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).”.>

### **Restitution Orders: extension of application of the fund**

#### **Alison McInnes**

**70** In section 21, page 13, line 26, at end insert—

- <( ) section 1(1) of the Emergency Workers (Scotland) Act 2005 (assaulting or impeding certain providers of emergency services).>

#### **Alison McInnes**

**71** In section 21, page 13, line 26, at end insert—

- <( ) section 2(1) of the Emergency Workers (Scotland) Act 2005 (assaulting or impeding certain emergency workers responding to emergency circumstances).>

## THIS IS NOT THE MARSHALLED LIST

### **Alison McInnes**

- 72 In section 21, page 14, line 6, after <(asp 8)> insert <and section 1(1) of the Emergency Workers (Scotland) Act 2005.>

### **Alison McInnes**

- 73 In section 21, page 14, line 6, after <(asp 8)> insert <and section 2(1) of the Emergency Workers (Scotland) Act 2005.>

## **The Restitution Fund and Victim Surcharge Fund: establishment and administration**

### **Kenny MacAskill**

- 33 In section 21, page 14, line 3, leave out <and maintain> and insert <, maintain and administer>

### **Kenny MacAskill**

- 34 In section 21, page 14, line 8, at end insert—  
<( ) the Scottish Ministers or, with the consent of the Scottish Ministers, a person specified by order by virtue of subsection (5) in respect of outlays incurred in administering the fund.>

### **Kenny MacAskill**

- 35 In section 21, page 14, line 10, leave out <and maintaining> and insert <, maintaining and administering>

### **Kenny MacAskill**

- 36 In section 21, page 14, line 12, after <about> insert <the administration of>

### **Kenny MacAskill**

- 37 In section 21, page 14, leave out lines 14 and 15

### **Kenny MacAskill**

- 38 In section 22, page 16, line 34, leave out <and maintain> and insert <, maintain and administer>

### **Kenny MacAskill**

- 42 In section 22, page 16, line 40, at end insert <or  
( ) the Scottish Ministers or, with the consent of the Scottish Ministers, a person specified by order by virtue of subsection (5) in respect of outlays incurred in administering the fund.>

### **Graeme Pearson**

- 90 In section 22, page 16, line 40, at end insert—  
<( ) A payment out of the fund may not be used to supplement or replace payments to be made out of the Scottish Consolidated Fund.>

**THIS IS NOT THE MARSHALLED LIST**

**Kenny MacAskill**

- 43 In section 22, page 17, line 2, leave out <and maintaining> and insert <, maintaining and administering>

**Kenny MacAskill**

- 44 In section 22, page 17, line 4, leave out <order> and insert <regulations>

**Kenny MacAskill**

- 45 In section 22, page 17, line 4, after <about> insert <the administration of>

**Kenny MacAskill**

- 46 In section 22, page 17, leave out lines 6 to 9

**Kenny MacAskill**

- 47 In section 22, page 17, line 14, leave out <or (6) is> and insert <and regulations under subsection (6) are>

**Victim Surcharge Fund: eligibility**

**Margaret Mitchell**

- 87 In section 22, page 16, line 6, leave out from <other> to end of line 8

**Margaret Mitchell**

- 88 In section 22, page 16, leave out line 10

**Margaret Mitchell**

- 89 In section 22, page 16, line 11, leave out from beginning to <Ministers,> in line 12

**Victim Surcharge Fund: reports**

**Graeme Pearson**

- 91 In section 22, page 18, line 15, at end insert—

**<The Victim Surcharge Fund: reports**

- (1) The Scottish Ministers, or such person to whom they have delegated the duties imposed on them by section 253G(3), must prepare and publish a report in relation to the matters mentioned in subsection (3).
- (2) A report under subsection (1) must be published—
  - (a) before the end of the period of 12 months beginning with the day on which the fund is established, and
  - (b) as soon as practicable following—
    - (i) the expiry of the period of 12 months beginning with the day on which a report is published under paragraph (a), and

**THIS IS NOT THE MARSHALLED LIST**

- (ii) each subsequent period of a year.
- (3) The matters are—
  - (a) the sum paid into the fund,
  - (b) the sum still due to be paid into the fund by persons who the court has ordered to make payment of a victim surcharge,
  - (c) a list of those persons ordered to make payment of a victim surcharge who are yet to make that payment,
  - (d) the sum paid out of the fund,
  - (e) an account and assessment of how the sum paid out of the fund has been used.
- (4) The Scottish Ministers may by regulations prescribe information (in addition to that required under subsection (3)) that reports prepared under subsection (1) must contain.
- (5) Regulations under subsection (4) are subject to the negative procedure.”.>

**Right to release information about offender**

**Margaret Mitchell**

**92** In section 23, page 18, line 21, at end insert—

<( ) in subsection (1), after paragraph (c), insert—

“(ca) to any period of imprisonment or detention and the following conditions apply—

- (i) the person was subject to an indefinite notification period under or by virtue of the Sexual Offences Act 2003, and
- (ii) has ceased to be subject to such a notification period.”.>

**Graeme Pearson**

**93** In section 23, page 18, line 22, after <(3),> insert—

<( ) before paragraph (a) insert—

“(za) at the time of sentencing, the date on which the convicted person is, under or by virtue of the 1993 Act, eligible for release;”,

( )>

**Graeme Pearson**

**94** In section 23, page 18, line 25, at end insert—

<( ) in subsection (4), after paragraph (a), insert—

“(ab) specify the minimum period of time before the date on which the convicted person is released, under or by virtue of the 1989 Act or the 1993 Act, (other than by being granted temporary release) by which time a person must be notified of that release; or”.>

**THIS IS NOT THE MARSHALLED LIST**

**Right to make oral representations**

**Graeme Pearson**

- 95 In section 24, page 18, line 33, leave out from <if> to <imprisonment,>

**Margaret Mitchell**

- 96 In section 24, page 18, line 33, after <imprisonment,> insert <or is, or has at any time been, subject to an indefinite notification period under or by virtue of the Sexual Offences Act 2003 (c.42)>

**Graeme Pearson**

- 97 In section 24, page 18, line 34, after <to> where it second occurs 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**

- 98 In section 24, page 18, line 37, at end insert—  
    <( ) be afforded an opportunity to make oral representations to 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**

- 99 In section 24, page 19, line 2, after <made> insert <, including how such representations to the offender may be made by way of video link>

**Graeme Pearson**

- 100 In section 24, page 19, line 7, leave out lines 7 to 9

**Communication with victims and witnesses**

**Graeme Pearson**

- 101 After section 25, insert—  
    <**Communications with victims and witnesses**  
    (1) Any communication providing information by a relevant person to a person who is or appears to be a victim or witness in relation to a criminal investigation or criminal proceedings must be in such form as the person reasonably requires.  
    (2) For the purposes of subsection (1)—  
        (a) the relevant person must take steps to ascertain the views and wishes of the victim or witness in relation to the form that such communications should take,

## **THIS IS NOT THE MARSHALLED LIST**

- (b) a communication includes notification to a victim in respect of the release of a convicted person.
- (3) In this section—
  - “relevant person” means a—
    - (a) a constable,
    - (b) a prosecutor (as defined in section 307(1) of the 1995 Act),
    - (c) a prescribed person providing support services to victims and witnesses,
  - “victim” includes a prescribed relative of a victim.
- (4) In subsection (3), “prescribed” means prescribed by the Scottish Ministers by order.
- (5) An order under subsection (4) is subject to the negative procedure.>

### **Commencement**

#### **Kenny MacAskill**

- 54** In section 30, page 27, line 33, after <sections> insert <26 so far as it inserts the new section 4ZA, 27(1), 27(2) so far as it inserts paragraphs 1, 2 and 5 of the new schedule 1A, 27(3),>