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# Victims, Witnesses, and Justice Reform (Scotland) Bill: Consideration prior to Stage 3

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This briefing seeks to inform Stage 3 proceedings of the Victims, Witnesses, and Justice Reform (Scotland) Bill. It outlines the main issues considered during Stages 1 and 2.



15 May 2025  
SB 25-21

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# Summary

The main provisions of the Victims, Witnesses, and Justice Reform (Scotland) Bill as introduced were set out in six parts; with a seventh part covering issues such as the interpretation of terms used in the Bill and commencement. Three additional parts were added at Stage 2 (parts 2A, 2B and 5A).

The main provisions are outlined below, starting with those in the Bill as introduced.

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

Part 1 provides for the creation of a new office of Victims and Witnesses Commissioner for Scotland. The Commissioner would be tasked with supporting the rights and interests of victims and witnesses within the criminal justice system, with the possibility of this being extended to cover people involved in civil proceedings.

In its Stage 1 Report, the Criminal Justice Committee stated that it remained to be convinced that a strong case had been made for the establishment of this Commissioner. In response the Scottish Government reiterated a commitment to the proposal, arguing that it would provide a level of accountability that is currently lacking.

Some amendments were agreed to at Stage 2, including changes to the powers of the Commissioner when seeking information. Other provisions within this part were broadly unchanged.

## **Part 2 - Trauma-informed practice**

Part 2 sets out measures aimed at better supporting vulnerable victims and witnesses, by seeking to embed the use of trauma-informed practice across the justice system.

The Criminal Justice Committee's Stage 1 Report agreed on the importance of embedding trauma-informed practice, whilst also noting that members had differing views on whether legislation is needed for this.

Amendments agreed to at Stage 2 expanded the definition of trauma-informed practice used in the Bill. This is set out in the interpretation section in Part 7 of the Bill.

## **Part 3 - Special measures in civil cases**

Part 3 seeks to expand the availability of special measures in civil cases. Special measures are a range of practical steps aimed at making it easier for vulnerable witnesses to give their evidence to a court, or vulnerable parties to appear at court hearings (e.g. by video link from outside the court room or from behind a screen in the court).

The Stage 1 Report supported the policy goal of Part 3 but emphasised the need for adequate resources for successful implementation. It discussed expanding the definition of 'deemed vulnerable' and highlighted the mixed evidence on whether those deemed vulnerable should automatically receive special measures.

Following the Stage 1 report, the Scottish Government initially proposed lodging amendments to introduce a broader definition of 'deemed vulnerable'. At Stage 2, the Scottish Government lodged amendments to make the definition wider than in the Bill as introduced but narrower than the definition it originally proposed following the Committee's

report. The amendments reflecting this revised approach were agreed to at Stage 2.

#### **Part 4 - Criminal juries and verdicts**

In the Bill as introduced, this part provided for reforms to the conduct of criminal trials by:

- reducing the size of criminal juries (from 15 to 12 jurors) and providing that at least two-thirds of jurors must support conviction for there to be a guilty verdict (moving away from the possibility of a guilty verdict based on a simple majority of jurors)
- abolishing the not proven verdict (leaving verdicts of guilty and not guilty) in relation to both jury and non-jury cases.

The Criminal Justice Committee's Stage 1 Report agreed that the not proven verdict should be abolished. But, in relation to juries the Committee stated that the evidence it had taken had not produced a clear answer on whether changes were needed and (if so) what they should be.

Amendments agreed to at Stage 2 included ones retaining 15 person juries. However, the Bill as amended still provides that at least two-thirds of jurors must support conviction for there to be a guilty verdict, as well as abolishing the not proven verdict.

#### **Part 5 - Sexual Offences Court**

Part 5 contains measures aimed at improving the prosecution of serious sexual offences by establishing a specialist court to deal with such offences - the Sexual Offences Court. Where the accused is charged with such an offence, the court would also be able to deal with any non-sexual offences forming part of the case. The sentencing powers of the court would include custodial sentences up to life imprisonment.

In its Stage 1 Report, the Criminal Justice Committee noted that its members were split on whether the proposals for a Sexual Offences Court should be taken forward. Those who were not supportive argued that improvements in the prosecution of such cases could be made by more specialism within existing court structures.

The Bill as amended at Stage 2 still provides for the creation of a Sexual Offences Court, but various changes were made. These included ones relating to: the legal representation of accused persons; the appointment and tenure of judges; and how vulnerable witnesses may choose to give evidence.

#### **Part 6 - Sexual offences cases: further reform**

Part 6 of the Bill as introduced contained provisions seeking to:

- establish legislative protection for the anonymity of victims of sexual (and certain other) offences
- provide independent legal representation (ILR) for complainers in sexual offence cases where there is an application to use evidence relating to the sexual history or character of the complainer
- allow for the running of a pilot of rape trials before a judge without a jury.

The proposals in the first two areas were broadly welcomed by the Criminal Justice Committee in its Stage 1 Report, albeit with some caveats (e.g. in relation to the

practicalities of some of the procedures relating to ILR).

However, the Stage 1 Report noted that the proposed pilot of rape trials without juries was one of the most controversial aspects of the Bill, and that the Committee was split on whether the proposal should be supported. Sections of the Bill providing for the pilot were removed at Stage 2.

In relation to the other two areas, amendments agreed at Stage 2 included ones seeking to simplify disclosure of evidence to independent legal representatives as part of the process for ILR.

### **Part 2A - Victims' right to receive information**

The Bill was amended at Stage 2 to add provisions aimed at taking forward Scottish Government plans to reform the Victim Notification Scheme. Further proposals for amendment in this area may be expected at Stage 3.

### **Part 2B - Release of prisoners**

The Bill was amended at Stage 2 to require the Parole Board for Scotland to take into account, when considering release on parole, any failure by a prisoner convicted of murder or culpable homicide to disclose information about the location of the victim's body.

### **Part 5A - Special measures for vulnerable witnesses under the 1995 Act**

The Bill was amended at Stage 2 to make some changes to special measures in criminal cases. As noted above, Part 3 of the Bill deals with special measure in civil cases.

### **Other issues considered at Stage 2**

Various other issues were also considered at Stage 2 but not added to the Bill at that stage. This included discussion of proposed amendments relating to: the use of non-harassment orders in criminal cases; the circumstances when a victim statement can be made to help inform sentencing; and victim access to court transcripts.

# Overview

The [Victims, Witnesses, and Justice Reform \(Scotland\) Bill](#) (the Bill) <sup>1</sup> was introduced by the Scottish Government on 25 April 2023, with provisions aimed at reforming various aspects of the justice system. Whilst much of the Bill focuses on criminal justice issues, it also deals with some civil justice matters.

The provisions of the Bill as introduced were set out in seven parts:

- Part 1 - Victims and Witnesses Commissioner for Scotland
- Part 2 - Trauma-informed practice
- Part 3 - Special measures in civil cases
- Part 4 - Criminal juries and verdicts
- Part 5 - Sexual Offences Court
- Part 6 - Sexual offences cases: further reform
- Part 7 - Final provisions (e.g. dealing with commencement).

An earlier [SPICe briefing](#) <sup>2</sup> provides more detail on the Bill as introduced.

The Parliament's Criminal Justice Committee was designated as lead committee for parliamentary consideration of the Bill. Its [Stage 1 Report](#) <sup>3</sup> was published on 29 March 2024. In relation to the general principles of the Bill, the report stated (para 1,276):

“ As a Committee, we are content to agree the general principles of the Bill at Stage 1. The Bill contains proposals which are intended to improve the justice system for victims and witnesses. Not every Member supported every proposal in the Bill. Some Members have concerns about the extent of legal reform contained in one Bill and the potential unintended consequences of the cumulative effect of the system changes. There are some areas where we have recommended that further evidence, data and scrutiny is required. We have made a number of suggestions on how the Bill can be improved. Allowing the Bill to progress to Stage 2 enables such improvements to be made. For some Members, the final composition of the Bill at Stage 3 will determine whether they are ultimately able to support it.”

The Scottish Government provided a [written response](#) <sup>4</sup> to the Stage 1 Report on 16 April 2024.

The Bill completed Stage 1 with the [Stage 1 debate](#) <sup>5</sup> on 23 April 2024, following which the general principles of the Bill were agreed to - for 60, against 0, abstentions 62. The number of MSPs voting by party were as follows:

- for - 54 SNP and 6 Green
- abstentions - 30 Conservative, 21 Labour, 6 SNP, 4 Liberal Democrats and 1 Alba.

On 31 October 2024, the Scottish Government wrote to the Criminal Justice Committee

outlining [areas where it was planning to lodge Stage 2 amendments](#).<sup>6</sup> These included proposed changes to provisions in all six of the main parts of the Bill as introduced – although with more significant changes proposed for some parts. The letter also indicated that the Scottish Government intended to lodge amendments which would allow it to take forward [planned reforms to the Victim Notification Scheme](#).<sup>7</sup>

The Criminal Justice Committee took evidence on the proposals in the Scottish Government's letter at three meetings during Stage 2 consideration:

- [4 December 2024](#)<sup>8</sup> - from victim organisations and representatives of the legal profession
- [11 December 2024](#)<sup>9</sup> - from the Minister for Victims and Community Safety, Siobhian Brown MSP, in relation to the Victim Notification Scheme
- [26 February 2025](#)<sup>10</sup> - from the Cabinet Secretary for Justice and Home Affairs, Angela Constance MSP, in relation to the other aspects of the letter.

On 4 March 2025, the Scottish Government wrote again to the Committee, providing an [update on planned Stage 2 amendments as well as issues which might be dealt with at Stage 3](#).<sup>11</sup>

Formal Stage 2 scrutiny of proposed amendments took place at four meetings of the Criminal Justice Committee between 12 March and 2 April 2025. This was followed by publication of the [Bill as amended at Stage 2](#).<sup>12</sup>

Important amendments agreed to at Stage 2 included ones to the following parts of the Bill as introduced:

- Part 4 - retaining 15 person juries and seeking to facilitate research into jury decision making
- Part 5 - making changes to some of the provisions for a Sexual Offences Court
- Part 6 - seeking to streamline the process involved in providing independent legal representation for complainers
- Part 6 - removing provision in the Bill for a pilot of rape and attempted rape trials without a jury
- Part 7 - requiring the Scottish Government to carry out a review of the operation of the legislation after it is enacted.

Three new parts were also added to the Bill, including one with provisions relating to reform of the Victim Notification Scheme (Part 2A).

Further information on significant Stage 2 amendments agreed to, along with some which were not, is provided in the rest of this briefing.

# Part 1: Victims and Witnesses Commissioner for Scotland

## Stage 1

Part 1 of the Bill as introduced provided for the creation of the office of Victims and Witnesses Commissioner for Scotland (the Commissioner).

Under those provisions, the Commissioner would be tasked with supporting the rights and interests of victims and witnesses within the criminal justice system, with the possibility of this being extended to cover people involved in civil proceedings.

The Commissioner would be independent of the Scottish Government and justice agencies (e.g. the Crown Office & Procurator Fiscal Service, Police Scotland and the Scottish Courts & Tribunals Service), and would be accountable to the Scottish Parliament. Whilst initial funding would be provided by the Scottish Government, ongoing funding would be provided by the Parliament.

The Criminal Justice Committee's [Stage 1 Report](#) (paras 159-162) highlighted three issues the Committee had considered in relation to the proposals:

“ First, the Commissioner would be a new voice which would be required to fit into the existing landscape of organisations which already advocate for victims' rights and interests, with considerable effectiveness. Some have argued that this new voice would bring a fresh focus and impetus. However, another view, which we are concerned about, is that the post could create another layer of bureaucracy and stand in the way of victims and advocacy groups engaging directly with policy-makers.”

“ Second, the proposal in the Bill would result in the creation of another commissioner, at a time when public finances are under pressure and there are already eight commissioners funded by the Scottish Parliamentary Corporate Body with a further three commissioners being proposed by current members bills.”

“ Third, we must also consider whether there would be an 'opportunity cost', associated with the establishment of a Victims and Witnesses Commissioner. By that we mean that the costs of funding the Commissioner post would not be available to be used for other purposes to support victims and witnesses.”

In its Stage 1 Report, the Criminal Justice Committee concluded that (para 164):

“ In light of these considerations, we remain to be convinced that a strong case has been made for the establishment of a Victims and Witnesses Commissioner. Instead, we consider that better outcomes may be achieved by focusing spending in areas which have a more direct and immediate benefit for victims and witnesses.”

However, it also set out some recommendations and comments applying to a situation where the proposals for the Commissioner are taken forward. These included that the post of Commissioner should initially be established as a time-limited pilot.

In its [written response](#) to the Stage 1 Report, the Scottish Government reiterated a commitment to its proposals for the Commissioner. As part of the justification for this, it

argued that the Commissioner would provide a level of accountability that is currently lacking (p 1):

“ No existing public body or organisation has the statutory power of holding criminal justice agencies to account in relation to how the rights of victims and witnesses are met or upheld, nor is this a role that can be given to a third sector organisation.”

During the [Stage 1 debate](#), the Cabinet Secretary for Justice and Home Affairs, Angela Constance MSP, referred to concerns expressed by the Criminal Justice Committee (col 27):

“ I note the committee's reservations, particularly around resource and the impact on victim support organisations. However, I believe that the role can be established in a way that is cost efficient and which will enhance the work of support organisations rather than diminish or duplicate their efforts.”

The Committee's Stage 1 Report also noted that the Finance and Public Administration Committee was conducting an inquiry into the role of commissioners, adding that (para 161):

“ We raise the possibility that there may be a need to amend the proposals for the Victims and Witnesses Commissioner depending on the outcome of that report.”

The Finance and Public Administration Committee's [Report on Scotland's Commissioner Landscape: A Strategic Approach](#)<sup>13</sup> was published in September 2024, and [debated in the Chamber](#)<sup>14</sup> on 31 October 2024.

## Stage 2

### Scottish Government correspondence on potential amendments

Scottish Government proposals for amendment, as set out in its [letter of 31 October 2024](#), included one on strengthening the powers of the Commissioner in the event of a criminal justice agency failing to comply with a request for information. On this point, it may be noted that the Criminal Justice Committee's [Stage 1 Report](#) included the following (para 168):

“ On the power given in the Bill for the Commissioner to require persons to give evidence and produce documents, we note that the Bill does not contain any powers to enforce these provisions. The Cabinet Secretary observed that this is something which Parliament would be able to pursue and consider what further action would be appropriate. We ask the Scottish Government for clarity on how this would work in practice, and ask whether there is a need for enforcement power to be included on the face of the Bill.”

The Scottish Government's letter of 31 October, also referred to planned Stage 2 amendments to expand the definition of 'victim' to allow the Commissioner to engage with as wide a group of people as possible. However, its [letter of 4 March 2025](#) stated that this would be dealt with at Stage 3.

### Formal consideration of amendments

Consideration of proposed Stage 2 amendments relating to this Part of the Bill took place at the Criminal Justice Committee's [meeting on 12 March 2025](#).<sup>15</sup>

Several Scottish Government amendments were agreed to, including one on strengthening the powers of the Commissioner when seeking information - as outlined in the Government's letter of 31 October 2024.

An amendment put forward by Sharon Dowey MSP sought to provide that the post of Commissioner would initially be established on a time-limited basis - reflecting one of the recommendations set out in the Committee's Stage 1 Report (para 165). The aim being to allow the value of the new post to be assessed before deciding whether to make it permanent. However, the amendment was disagreed to on the Convener's casting vote.

Other amendments considered by the Committee included one lodged by Jamie Greene MSP providing that the work of the Commissioner would include preparing and publishing a victims' charter. He explained at the meeting of the Committee that (col 13):

“ In my view, a simple and well-worded victims charter would be a single, comprehensive and understandable source of information that would let victims know what their rights are, how the process works and what their various points of contact will be.”

In response, the Cabinet Secretary for Justice and Home Affairs indicated that she agreed with the principle of the amendment but could not support it in its current form. She offered to work with Jamie Greene ahead of Stage 3 to produce an alternative amendment with the same purpose. On this basis, the amendment was withdrawn.

# Part 2: Trauma-informed practice

## Stage 1

Part 2 of the Bill as introduced sought to improve the experience of people who become involved in the justice system (e.g. victims and witnesses) by embedding the use of trauma-informed practice. Some of the measures would cover civil as well as criminal cases.

The provisions dealt with the following aspects of the justice system:

1. Justice agencies - the Bill as introduced required the Crown Office & Procurator Fiscal Service, Scottish Prison Service, Police Scotland, Scottish Courts & Tribunals Service and the Parole Board for Scotland to have regard to the principle that victims and witnesses should be treated in accordance with trauma-informed practice. This would include stating how they will do so in their standards of service.
2. Court rules - the High Court and Court of Session already have powers to set out rules regulating practice and procedure in court proceedings. The Bill as introduced sought to make clear that these powers include the ability to regulate proceedings to promote trauma-informed practice.
3. Scheduling of court business - certain members of the judiciary (e.g. the Lord President and sheriffs principal) have responsibilities for ensuring that arrangements are in place to secure the efficient disposal of court business. The Bill as introduced added that, in carrying out their responsibilities in this area, they must have regard to the desirability of doing so in a way that accords with trauma-informed practice.

In its [Stage 1 Report](#), the Criminal Justice Committee highlighted the evidence it had received from survivors. The Committee commented (paras 412-413) that the "significant and unnecessary trauma they faced during their journey through the criminal justice system is unacceptable", and that:

“ We are therefore in no doubt of the importance of embedding trauma-informed practice which will enable victims to give their best evidence.”

The Stage 1 Report noted that Committee members had differing views on whether legislation is needed to encourage trauma-informed practice, whilst also setting out recommendations for strengthening the legislative proposals in this area.

Recommendations included expanding the requirement for training in trauma-informed practice (para 418):

“ We think it is vital that all participants in the court should be required to conduct themselves in a manner that accords with trauma-informed practice. This is the principle being followed for the proposed new Sexual Offences Court, in which judges and defence lawyers will be required to undertake training in trauma-informed practice before attending this court. We see no reason why these training requirements should not be extended to defence lawyers and judges participating in all court proceedings. We recommend that they should be.”

In relation to this recommendation, the Scottish Government's [written response](#) to the

Stage 1 Report stated that (p 8):

“ We note the Committee's desire to see more widespread trauma-informed training for defence lawyers and judges, and we are open to exploring with partners ways in which trauma-informed training could be further embedded and mainstreamed.”

## Stage 2

### Scottish Government correspondence on potential amendments

The [letter of 31 October 2024](#) from the Scottish Government indicated that it would bring forward amendments to expand the definition of trauma-informed practice in the Bill.

On this issue, the Criminal Justice Committee's Stage 1 Report stated that (para 147):

“ we believe that the definition of trauma-informed practice in the Bill requires to be strengthened. We recommend that the definition in the Bill should be amended to bring it in line with that put forward in the Knowledge and Skills Framework created by NHS Education for Scotland.”

### Formal consideration of amendments

Discussion of proposed Stage 2 amendments relating to this Part of the Bill took place at the Criminal Justice Committee's [meeting on 12 March 2025](#).<sup>15</sup> This included amendments concerning the definition of trauma-informed practice set out in Part 7 (section 69) of the Bill as introduced.

Scottish Government amendments discussed on 12 March, and agreed to on 2 April 2025, expanded the definition of trauma-informed practice. The Cabinet Secretary for Justice and Home Affairs, Angela Constance MSP, noted that the changes responded to the recommendation on the issue in the Committee's Stage 1 Report.

As noted above, the Committee's Stage 1 Report also recommended more widespread trauma-informed training for defence lawyers and judges. This was the subject of an amendment lodged by Sharon Dowey MSP. The amendment was not moved, with the Cabinet Secretary arguing for a non-legislative approach to further embedding relevant training.

## Part 3: Special measures in civil cases

Part 3 of the Bill as introduced dealt with special measures in civil cases.

Special measures are a range of practical steps associated with the court process. These steps are aimed at making it easier for vulnerable witnesses to give their evidence to the court.

In addition, some forms of court hearing do not involve evidence taking from witnesses (non-evidential hearings). Special measures can also make it easier for vulnerable people pursuing or defending court proceedings (and described in Part 3 as vulnerable parties) to appear at such court hearings.

Examples of special measures include giving evidence by video link from outside the court room or from behind a screen in court.

At present, special measures in civil cases are covered by two Acts:

- the [Vulnerable Witnesses \(Scotland\) Act 2004](#) (the 2004 Act) which introduced the original scheme for special measures
- the [Children \(Scotland\) Act 2020](#) (the 2020 Act) which aims to address some of the weaknesses of the 2004 Act. The provisions on special measures in the 2020 Act are not in force.

### Stage 1

#### Provisions of the Bill

The main policy aim of Part 3 of the Bill (as introduced) was to extend certain changes to special measures provided for in the 2020 Act (those applying to one type of family case) to most types of civil case. With key features including:

- specific categories of witness in a civil case would be 'deemed vulnerable', meaning their vulnerability would not have to be assessed by the court in an individual case
- a new special measure, which prohibits a person from conducting their case personally, as opposed to being represented by a solicitor. There would be a presumption (or starting point for the court) in favour of this special measure in certain circumstances
- the possibility for the first time - in civil cases not covered by the 2020 Act - of special measures in non-evidential hearings.

In respect of the first bullet point above, there were two main classes of 'deemed vulnerable witness' in civil cases proposed under the Bill as introduced:

- those who have been the victim of certain offences, including sexual offences and offences relating to domestic abuse, in respect of which someone now a party in the civil case is also being prosecuted, or has been convicted, in the criminal courts
- those who benefit from a type of court order known as a 'civil protection order' which,

in turn, prohibits certain conduct towards that person by a party in the current civil case.

However, it should be noted that, even where a witness is 'deemed vulnerable', they would not have an absolute right to special measures under Part 3. The need for special measures would still be assessed by the court applying certain statutory tests.

Also, where the new special measure prohibiting personal conduct of a case is in force a solicitor would be appointed from a register of solicitors to represent the party affected by the special measure.

## Stage 1 scrutiny

In its [Stage 1 Report](#), the Criminal Justice Committee welcomed the overarching policy objective of Part 3 to enhance the availability of special measures in civil cases.

However, the Committee highlighted various issues with Part 3, for example (at paras 456-461) noting inconsistencies in the availability of special measures across courts. The Committee emphasised that adequate resources are crucial for the successful implementation of Part 3 (para 487).

The Committee (at paras 438-447) also considered arguments from stakeholders suggesting that the definition of 'vulnerable witnesses' should be expanded. For example, as mentioned in the Stage 1 Report (at para 442), Rape Crisis Scotland proposed that witnesses in all civil cases involving allegations of rape or sexual violence should be considered vulnerable.

The Committee also noted (at paras 452-455) the somewhat mixed evidence received on whether the entitlement to special measures for deemed vulnerable witnesses should be absolute, rather than assessed by a court in an individual case according to various statutory tests.

The Committee (at para 489) raised concerns about restrictions on accessing special measures and requested a response from the Scottish Government. The Scottish Government committed to considering potential amendments in their [written response](#) to the Stage 1 Report (at p 11).

The Committee supported the creation of a register of solicitors for those prohibited from self-representation in court but criticised the lack of details on how it will work in practice (para 490). The Scottish Government, in response (at p 11-12), pointed to a [consultation on a register of solicitors for the 2020 Act](#)<sup>16</sup> for more information, on the basis that the register under Part 3 "would be along similar lines".

## Stage 2

### Scottish Government correspondence on potential amendments

The [letter of 31 October 2024](#) from the Scottish Government indicated that it would bring forward amendments in three areas. The [letter of 4 March 2025](#) then explained the Government's somewhat revised plans in this area.

In more detail, the October 2024 letter proposed an extension of the 'deemed vulnerable'

status to include:

- individuals with evidence from a reputable source - such as a health practitioner - of domestic abuse or sexual assault by a litigant
- those individuals seeking a civil protection order ([the Bill as introduced restricted it to individuals already benefiting from one](#)) or financial damages following sexual assault.

The October 2024 letter also highlighted possible future amendments on what the consequences would be of someone being 'deemed vulnerable.' It proposed two sets of miscellaneous amendments, including those extending the possibility of special measures to participants in inquiries such as fatal accident inquiries.

The March 2025 letter:

- confirmed that the Scottish Government was no longer intending to extend 'deemed vulnerable' status to those with evidence from a reputable source, [due to concerns raised by Scottish Women's Aid about women having to experience potentially intrusive questions and examinations as a result](#)
- explained that, when considering the potential consequences of the 'deemed vulnerable' status, the Scottish Government had decided not to alter the ability of judges or sheriffs to make decisions based on individual circumstances
- confirmed that the Scottish Government was not proceeding with the extension of special measures for participants in inquiries, such as fatal accident inquiries.

### **Formal consideration of amendments**

Consideration of proposed Stage 2 amendments relating to this Part of the Bill took place at the Criminal Justice Committee's [meeting on 19 March 2025](#).<sup>17</sup>

Government amendments were agreed to which:

- mean that individuals would now be deemed vulnerable if they are either applying for a civil protection order or have started court proceedings for damages due to sexual abuse, harassment, or assault
- added 'lawburrows' to the list of relevant court orders for the purposes of the 'deemed vulnerable' status - this is a specific type of order that can be made to protect against violence by a particular person
- clarified that 'interim' versions of all the relevant court orders, that is, orders which are temporary and issued while a case is being resolved, also qualify in determining whether someone is to be deemed vulnerable.

Liam Kerr MSP also proposed amendments relating to the register of solicitors, which were agreed upon. These amendments require Scottish Ministers to set regulations for the pay of solicitors appointed to represent parties affected by the special measure prohibiting personal conduct of a case. In the Bill as introduced, the making of regulations setting pay was optional.

# Part 4: Criminal juries and verdicts

## Stage 1

Part 4 of the Bill as introduced sought to reform:

- criminal juries - making changes to both jury size and the majority required for a guilty verdict (removing the possibility of conviction on the basis of a simple majority)
- criminal verdicts - abolishing the not proven verdict (leaving verdicts of guilty and not guilty).

In relation to jury size, it provided for a jury formed with 12 jurors instead of the current 15. This number could be reduced if one or more jurors were discharged during a trial (e.g. due to illness) but the jury would need to retain at least 9 members to continue hearing the case.

Under the provisions of the Bill as introduced, a guilty verdict would require the support of at least 8 out of 12 jurors (compared to the current 8 out of 15). This would be reduced to 7 where juror discharges resulted in a jury of 9 or 10 members. Thus, requiring a minimum of two-thirds support for a guilty verdict. (Under the current system the support of 8 jurors is needed for a guilty verdict even if juror numbers are reduced to the minimum allowable level of 12.)

In relation to verdicts, three options are currently available following a trial - guilty, not guilty and not proven. This applies to both jury and non-jury trials (where the outcome is decided by a sheriff or justice of the peace). In legal terms, the implications of a not proven verdict are the same as a not guilty verdict in that the accused is acquitted. The Bill as introduced sought to abolish the not proven verdict.

In its [Stage 1 Report](#) (para 672), the Criminal Justice Committee expressed support for abolishing the not proven verdict:

“ On the balance of evidence, having heard arguments for and against, we believe the not proven verdict has had its day and should be abolished.”

It noted that (para 676):

“ the Scottish Government's position is that, if the not proven verdict is abolished, then changes are needed to jury size and (in particular) the majority required for conviction in the interests of maintaining a 'fair and balanced' system. Put simply, its view is that abolishing the not proven verdict will make convictions somewhat more likely, and so other changes (often referred to 'balancing measures') are required which would have the opposite effect.”

However, the Criminal Justice Committee reported that the evidence it had taken on whether changes to juries were needed and what those changes should be, had not produced a clear answer. On this basis, it stated that (para 690):

“ Overall, then, we recommend that should the Scottish Government proceed with the abolition of the not proven verdict we cannot support the proposed changes to jury size and majority because we have not heard compelling evidence to support this.”

In its [written response](#) to the Stage 1 Report, the Scottish Government welcomed the Criminal Justice Committee's support for abolishing the not proven verdict. In relation to jury size and majority, the Scottish Government highlighted the evidence it had relied on in bringing forth its proposals, whilst also stating that (p 16):

“ However, as we have previously stated, it is essential that any reforms to our criminal justice system command confidence in its integrity. Therefore, we take it very seriously that the Committee does not support the proposed changes to jury size and majority and will give careful consideration to the issues they have raised.”

## Stage 2

### Scottish Government correspondence on potential amendments

The [letter of 31 October 2024](#) from the Scottish Government, indicated that it planned to bring forward amendments to retain 15 person juries in criminal cases (removing provisions in the Bill which would reduce them to 12 jurors).

However, it added that the Government remained of the view that a move away from the possibility of being found guilty by simple majority is still needed in a system without the not proven verdict – to avoid any increased risk of wrongful convictions. It concluded:

“ After careful consideration, I believe that the most prudent approach, best able to maintain balance and confidence in our system, is to seek support for a model with two verdicts, fifteen jurors, and a two thirds majority requirement for conviction. This is the model that the majority of Senators preferred if Scotland changes to a two verdict system.”

The letter did not go into further detail as to how exactly this might operate where juror discharges result in a reduced jury, but the Scottish Government subsequently advised that the intention was to amend the Bill to provide:

- jury consisting of 14 or 15 jurors - at least 10 in favour of a guilty verdict for a conviction
- jury consisting of 13 jurors - at least 9 in favour of a guilty verdict for a conviction
- jury consisting of 12 jurors - at least 8 in favour of a guilty verdict for a conviction.

So, still requiring a minimum of two-thirds support for a guilty verdict where a jury is reduced in numbers.

### Formal consideration of amendments - jury size and majority

Several Scottish Government amendments, agreed at the Criminal Justice Committee's [meeting on 26 March 2025](#),<sup>18</sup> took forward its planned changes. Thus, compared to the current rules, the Bill as amended at Stage 2 provides for:

- criminal juries - changes to the majority required for a guilty verdict, by requiring a minimum of two-thirds support for guilty (but does not change the current jury size)
- criminal verdicts - abolition of the not proven verdict, leaving verdicts of guilty and not

guilty (this was also provided for in the Bill as introduced).

Much of the debate at the Committee's meeting focused on the majority of jurors required for a guilty verdict in a system without the not proven verdict:

- should a conviction be possible based on a simple majority of jurors (e.g. 8 out of 15 as is allowed under the current system)
- should the majority required be increased to a minimum of two-thirds (e.g. 10 out of 15 as proposed by the Scottish Government)
- should the level of support required for a guilty verdict be increased further, requiring a unanimous or near unanimous verdict, to bring the approach in Scotland closer to that in some other jurisdictions?

In support of increasing the required majority from its current position, the Cabinet Secretary for Justice and Home Affairs repeated her previous position that research indicates that convictions are more likely in a two-verdict system. She stated that (col 4):

“ The not proven verdict is one aspect of an interconnected system, and the evidence tells us that abolishing it is likely to have an impact on jury behaviour and case outcomes, leading to more convictions in finely balanced trials.”

“ As parliamentarians, it is our responsibility to ensure that the reforms for which we legislate are fair, have integrity, and command confidence. I do not believe that legislating to remove the not proven verdict as a stand-alone reform that maintains the simple majority can achieve that.”

However, she argued that increasing the required jury majority for a conviction to unanimity (or near unanimity) would be "too high a threshold to deliver fairness for all" (col 5).

Stating the case for a higher threshold, Sharon Dowey MSP referred to the approach in England and Wales, where a majority verdict of 10 out of 12 is allowed, as well as developments affecting the rules on corroboration in Scotland.

Several members of the Committee questioned whether the proposed changes to juries were based upon sufficiently robust evidence. For example, Katy Clark MSP said (col 13):

“ We must strive to ensure that changes are evidence based. At the moment, as has been said, we have no information about how juries vote in Scotland, so we are working with a very limited evidence base. We do not know whether most juries provide a unanimous verdict, (...) or whether most juries are split eight to seven, nine to six or, indeed, 10 to five, which is the majority that the cabinet secretary has proposed. We also do not know whether jury splits are very different in different kinds of cases. For example, in assault cases, there might tend to be unanimous verdicts whereas, in rape cases, there might often be very small majorities. We can speculate, but we simply do not know.”

Concerns were also expressed in relation to the potential impact of changes being uncertain. For example, Fulton MacGregor MSP commented that (col 23):

“ I will say that, whatever decision we take today in going forward into stage 3, we all remain uncomfortable about the impact that it might have. As Pauline McNeill said, it is unclear whether there will be an increase or a decrease in the number of convictions and what the scale of that increase or decrease will be. What is really important is that the bill is reviewed.”

And Katy Clark MSP that (col 24):

“ It seems to me that one of the risks of the proposals that have been put forward by the Scottish Government is that we will see lower conviction rates in rape and other sexual assault cases.”

The Committee's Convener, Audrey Nicoll MSP, described the scrutiny of this issue as "far and away been the most difficult decision on the bill" (col 26), but went on to say:

“ I have found myself moving from a position of being quite troubled by the magnitude of the decision to feeling more comfortable and reassured and to thinking about my decision as a matter of principle. I feel more at ease with the Government's proposal of retaining a jury size of 15 but with a majority requirement of 10. I feel that that is an additional safeguard, and I am persuaded by it.”

### **Formal consideration of amendments - research into juries**

Other amendments agreed at the Committee's meeting on 26 March 2025 included ones lodged by the Scottish Government seeking to facilitate research into how juries make decisions.

The Scottish Government's [letter of 31 October 2024](#) highlighted this issue in the context of provisions in the Bill as introduced relating to a [pilot scheme for rape trials without a jury](#). It stated that:

“ Legislatively, I will bring forward amendments to allow for research to be carried out into jury deliberations which is currently heavily restricted by the Contempt of Court Act 1981. This would pave the way for further development of the evidence base on whether and how rape myths affect the verdicts juries reach in rape and attempted rape cases, to help us all understand if these myths are a barrier to the proper administration of justice and if that is the case, to inform debate on how that could best be addressed.”

At the Committee's meeting on 26 March, the Cabinet Secretary for Justice and Home Affairs, Angela Constance MSP, explained that the Scottish Government's amendments would:

- allow the collection and publication of research data on what is said by jurors during their deliberations and how they vote
- require the Scottish Government to publish any research that is carried out by (or on behalf of) the Scottish Government.

In speaking to those amendments, the Cabinet Secretary referred to specific concerns relating to rape trials, whilst also noting that research could also look at other types of case.

As noted above, members of the Committee had already expressed concerns in relation to

the potential impact of changes to the jury majority required for a conviction. In this context, Pauline McNeill MSP added (col 41):

“ It is crucial that we gather as much information as we can, because we are stepping into the unknown. Although I have said that I am more supportive of the 10 to five majority, I accept that we are stepping into the unknown. One way or another, we must try to have some research carried out to ensure that we have done the right thing. Members in a future session of Parliament might need to do that if conviction rates were to change in one direction or another. There is no way that we can avoid having to review what we do so that we can say whether we did or did not do the right thing. Therefore, it is very important to have such a provision.”

# Part 5: Sexual Offences Court

## Stage 1

Part 5 of the Bill as introduced sought to improve the prosecution of serious sexual offences by establishing a specialist court to deal with such offences. Under those proposals, the Sexual Offences Court would include the following features:

1. **Jurisdiction** - the Sexual Offences Court would have the power to deal with a wide range of sexual offences prosecuted under solemn procedure (used for more serious cases). It would be for the prosecution to determine whether a case involving a qualifying sexual offence should be indicted to the new court or to existing criminal courts. In effect, part of the current caseload of solemn sheriff courts and the High Court could instead be dealt with by the Sexual Offences Court. Where a case involved a mix of sexual and non-sexual offences, it would be able to deal with both. This could include a charge of murder.
2. **Judiciary** - existing High Court judges and sheriffs could be appointed as judges of the Sexual Offences Court. They would need to have completed training on trauma-informed practice in sexual offence cases, and have the necessary skills and experience.
3. **Sentencing** - the Sexual Offences Court would be able to impose any sentence which the High Court could impose for the same offence. This would include a sentence of life imprisonment for some offences.
4. **Rights of audience** - solicitors, solicitor advocates and advocates would generally be able to represent an accused person in the Sexual Offences Court. They would (like the judiciary) need to have completed training on trauma-informed practice in sexual offence cases. However, the right to represent an accused would be limited to solicitor advocates and advocates in relation to some very serious charges. Decisions on who presented the prosecution case in the Sexual Offences Court would be left to the Lord Advocate.
5. **Procedures** - the way in which the Sexual Offences Court worked would include a presumption in favour of vulnerable complainers being able to pre-record their evidence in advance of trial. More generally, its procedures would be based on those of the High Court, with the possibility of more bespoke rules and practices being developed.

In its [Stage 1 Report](#), the Criminal Justice Committee noted that members were split on whether the proposals for a Sexual Offences Court should be taken forward (paras 893-894):

“ Some Members support the proposals in the Bill for a new Sexual Offences Court. For those Members, the model of a new Sexual Offences Court has the potential to deliver a degree of improvement in the handling of sexual offence cases which cannot be realised using existing mechanisms. Those Members encourage the Scottish Government to take the necessary steps to address the concerns outlined in this report regarding the status of the new court.”

“ Other Members do not support the proposals for a standalone sexual offences court. Their view is that it would be possible to achieve the necessary improvements and address concerns raised by some elsewhere in this report through the creation of specialist divisions of the High Court and Sheriff Court. For them, a new specialist court will not in itself achieve a meaningful improvement to the experience of victims.”

The Stage 1 Report also set out some areas of concern. For example (including brief information on the Scottish Government's [response](#)):

#### Representation in the Sexual Offences Court

- Committee - all cases which would previously have been prosecuted in the High Court should still involve representation by solicitor advocates or advocates if prosecuted in the Sexual Offences Court
- Scottish Government - endorsed this in principle whilst highlighting potential difficulties in setting this out in legislation.

#### Prosecution of murder

- Committee - any sexual offence case which includes a charge of murder should still be prosecuted in the High Court
- Scottish Government - considering whether Stage 2 amendments are appropriate.

#### Removal of judges

- Committee - sought reassurance on whether the process of removing judges from the Sexual Offences Court would be appropriate
- Scottish Government - noted that it had been exploring alternative mechanisms and that it would bring forward amendments at Stage 2.

#### Court estate

- Committee - given that the existing court estate would be used for the Sexual Offences Court, sought reassurance that this would be fit for purpose
- Scottish Government - whilst acknowledging limitations within the court estate, pointed to benefits for the Sexual Offences Court in being able to use any part of the High Court and sheriff court estates in selecting appropriate locations.

#### Evidence of complainers

- Committee - recommended that the presumption in favour of vulnerable complainers providing their evidence in advance of trial should not unduly limit their choice in how they want to give evidence.
- Scottish Government - acknowledged the Committee's concerns and stated that it was exploring the issue with justice partners.

During the [Stage 1 debate](#), the Cabinet Secretary for Justice and Home Affairs, Angela Constance MSP, reiterated her reasons for believing that a new court is needed (col 28):

“ Victims cannot afford for us to rely on the historical status and structure of the existing court system to deliver changes that we all agree are needed and which the status quo has singularly failed to deliver. If we fail to take ambitious action now, we risk consigning victims to unnecessary retraumatisation through a court system that is not sufficiently specialised or focused on improving victims' experiences.”

## Stage 2

### Scottish Government correspondence on potential amendments

The [letter of 31 October 2024](#) from the Scottish Government repeated its support for the proposed Sexual Offences Court, whilst also indicating several areas where it was considering amendments:

1. Legal representation of accused – amendments seeking to add a mechanism to address concerns that accused persons should be able to access the same level of legal representation in the new court as they can under current arrangements. It is envisaged that the work of the new court will include dealing with a range of cases which are currently prosecuted in the High Court, where the defence is always presented by an advocate or solicitor advocate.
2. Appointment and tenure of judges – amendments seeking to enhance the security of tenure of judges and safeguard the independence of judicial decision-making in the new court.
3. Remuneration of judges – seeking to allow the Scottish Government to make bespoke arrangements for the remuneration of judges in the new court. The Criminal Justice Committee's Stage 1 Report (para 792) noted evidence from the Sheriffs and Summary Sheriffs Association that it was not clear whether sheriffs will be paid at an enhanced rate where presiding over cases in the new court.
4. Evidence of vulnerable witnesses – exploring possible amendments to embed greater choice for adult deemed vulnerable witnesses (i.e. complainers in cases involving sexual offences, domestic abuse, stalking or trafficking) as to whether they pre-record their evidence or provide it live at trial. Noted that the use of pre-recorded evidence "remains a fundamental bedrock" of the new court.
5. Double jeopardy – amendments seeking to apply the new evidence exception, as set out in the Double Jeopardy (Scotland) Act 2011, to cases that are prosecuted in the new court.

The Double Jeopardy (Scotland) Act 2011 sets out the rule against double jeopardy, which generally prevents someone from being tried twice for the same crime. However, it also sets out three exceptions to this rule where further prosecution is possible:

- exception for tainted acquittals – the original acquittal is tainted by an offence against the course of justice (e.g. one involving the intimidation of witnesses)
- exception in relation to admissions – the prosecutor has new evidence that the accused admitted committing the offence
- new evidence exception – the prosecutor has other new evidence of guilt (i.e.

something other than an admission).

Under the current provisions of the 2011 Act, the third exception only applies to cases which were prosecuted in the High Court.

On a separate point, the letter did not say that the Scottish Government was planning to amend the Bill to ensure that any case involving a charge of murder is still prosecuted in the High Court. As noted above, the Criminal Justice Committee's Stage 1 Report recommended that the Bill should be amended in this way. The issue was raised again at the Committee's [meeting on 26 February 2025](#)<sup>10</sup> when questioning the Cabinet Secretary for Justice and Home Affairs on Government proposals for amending the Bill. The Cabinet Secretary reiterated the Government's reasoning for allowing the proposed Sexual Offences Court to deal with some cases involving murder (col 16):

“ I was very mindful of the Lord Advocate's evidence with regard to the Crown's prosecution of cases involving serious sexual offending against multiple victims, where the accused was alleged to have killed one of them. In my mind, there is an argument that, for all those potential witnesses, there would be benefit in enabling the case to go to the sexual offences court.”

She did, however, add that the Scottish Government would "continue to reflect on and consider matters".

### **Formal consideration of amendments - establishment of the court**

Proposed amendments which would have removed provisions in the Bill establishing a Sexual Offences Court, and instead provide for alternative specialist arrangements within existing court structures, were debated at the Criminal Justice Committee's [meeting on 26 March 2025](#).<sup>18</sup>

Speaking in favour of establishing specialist arrangements within the existing High Court and sheriff courts, Pauline McNeill MSP agreed that there "needs to be a significant shift in the way that we deal with sexual offences cases" (col 42), but argued that this could be achieved in a different way without the scale of organisational change required for setting up a new court.

Sharon Dowey MSP also argued for specialist arrangements within existing court structures, commenting that (col 47):

“ My fear is that we are trying to put something into legislation that sounds good but that will not do any good for the victims. Many small changes could be made that would have a huge impact on victims, but we are trying to make a huge change that, if not implemented properly, could end up having a detrimental impact on victims and make the court system worse rather than improve it (...).”

In response, the Cabinet Secretary referred to Stage 1 evidence in support of establishing a stand-alone Sexual Offence Court, adding that (cols 51-52):

“ Principally, and crucially, the benefits of specialism can, in my view, be realised only by bringing together all cases of the same type, from both the High Court and the sheriff courts, in a single forum. That will foster the development of bespoke processes that are informed by best practice drawn from across the High Court and sheriff courts, and ensure that those processes are applied consistently to the benefit of all complainers in serious sexual offences cases across the country.”

Proposed amendments seeking to remove provisions in the Bill for a Sexual Offences Court, and provide for alternative specialist arrangements within existing court structures, were either disagreed to, withdrawn, or not moved.

### **Formal consideration of amendments - other issues**

Consideration of proposed amendments on other issues relating to a Sexual Offences Court took place at the Criminal Justice Committee's [meeting on 2 April 2025](#).<sup>19</sup> This included the following issues:

1. Legal representation of accused - several Scottish Government amendments were agreed to which sought to ensure that the accused will still be represented by an advocate or solicitor advocate in types of cases which are currently prosecuted in the High Court, but may in the future be prosecuted in the proposed Sexual Offences Court.
2. Appointment and tenure of judges - a series of Scottish Government amendments were agreed to which sought to respond to concerns in this area highlighted during Stage 1 scrutiny.
3. Remuneration of judges - a Scottish Government amendment was agreed to allowing it to make bespoke arrangements for the remuneration of judges of the Sexual Offences Court.
4. Choice for vulnerable complainers in providing evidence - a Scottish Government amendment was agreed to, in response to the concern that a presumption in favour of vulnerable complainers pre-recording their evidence in advance of trial should not unduly limit their choice in how they want to give evidence. It applies different rules to adult and child complainers, with the expressed wishes of the former not being subject to the court applying a test of what would be in their best interests.
5. Double jeopardy - a Scottish Government amendment was agreed to extending the double jeopardy new evidence exception to cases prosecuted in the Sexual Offences Court.
6. Prosecution of murder - an amendment lodged by Pauline McNeill MSP sought to ensure that any case involving a charge of murder is still prosecuted in the High Court. It was disagreed to on the Convener's casting vote.

# Part 6: Sexual offences cases - further reform

Part 6 of the Bill as introduced sought to:

- establish legislative protection for the anonymity of victims of sexual (and certain other) offences
- provide independent legal representation (ILR) for complainers in sexual offence cases where there is an application to use evidence relating to the sexual history or character of the complainer
- allow for the running of a pilot of rape and attempted rape trials before a judge without a jury.

These three areas are considered separately below.

## Anonymity for victims

### Stage 1

Current arrangements in Scotland for protecting the anonymity of victims in sexual offence cases largely rely upon convention and the responsibility of the press. Section 63 of the Bill as introduced sought to provide automatic statutory protection for the anonymity of victims of a wide range of sexual and related offences (e.g. human trafficking).

It would generally prevent the publication of information likely to lead to the identification of a person as being a victim of a relevant offence. The protection would continue to apply during a victim's lifetime. The concept of publication was defined broadly (e.g. to include information made available on social media as well as newspapers and television).

The right to protection would not be dependent upon any proactive steps by the victim (e.g. reporting the matter to the police). Nor on any formal action being taken in a case (e.g. a suspect being charged or prosecuted). Section 63 of the Bill as introduced defined 'victim of an offence' as meaning:

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

A failure to comply with the restrictions on publishing would be a criminal offence. This would be subject to certain defences (e.g. based on the information already being in the public domain).

An adult victim would be able to give others permission to publish information. Where the victim is still a child (under 18), the victim's consent would not be sufficient - the matter would have to be considered by a court.

In its [Stage 1 Report](#), the Criminal Justice Committee welcomed the proposals in the Bill as introduced.

However, it raised several issues, including ones seeking clarification of:

- the application of the public domain defence where someone shares information which has already been made public by a child victim
- the application of the Bill's definition of a 'victim' to situations where an accused has been acquitted.

In its [written response](#) to the Stage 1 Report, the Scottish Government confirmed that the policy intention is:

- that the public domain offence should not apply where someone shares information which has been made public by a child victim, but that further consideration was being given to situations where friends or family of the child share such information
- that an acquittal should not affect the protection of victim anonymity, and that consideration was being given to whether the Bill should be amended to make this clearer.

## Stage 2

### Scottish Government correspondence on potential amendments

The [letter of 31 October 2024](#) from the Scottish Government indicated that it was planning to bring forward amendments to:

- provide for the primacy of the protections for anonymity for victims of sexual offences set out in the Bill over existing provisions protecting the anonymity of children set out in the Criminal Procedure (Scotland) Act 1995
- make clear that the public domain defence would not apply to people who publish information identifying a child victim, even where the child has self-published their own story
- put beyond doubt that the right to anonymity would not terminate after an acquittal in a criminal case
- ensure there is in no loophole which would allow the publication of information identifying a child victim on the basis that the perpetrator was under the age of criminal responsibility.

In relation to the first bullet point, section 47 of the Criminal Procedure (Scotland) Act 1995 provides protection for the anonymity of children involved in court proceedings; whether as complainers, witnesses or accused. It applies in respect of newspaper reports, and sound and television programmes.

### Formal consideration of amendments

Consideration of proposed amendments in this area took place at the Criminal Justice Committee's [meeting on 2 April 2025](#).<sup>19</sup>

In policy terms, the main issue of debate was whether the protection of anonymity set out in the Bill should be extended to apply after the death of the victim. This was an issue covered in evidence taken by the Criminal Justice Committee - see paragraphs 920 to 932

of its [Stage 1 Report](#).

Amendments lodged by Liam Kerr MSP sought to extend anonymity to after death. He noted that they would (col 30):

“ extend the right of anonymity for complainers or victims of the listed offences so that it would continue after they had died and would ensure that there was the possibility of applying to the court to take away the restriction after the victim's death.”

In response, the Cabinet Secretary for Justice and Home Affairs, Angela Constance MSP, indicated that she could not support the amendments, commenting that (col 31):

“ It is significant that jurisdictions that have extended the right to anonymity beyond a victim's natural life, which include Ireland and individual states in Australia, have subsequently amended their legislation due to the unintended and damaging consequences for bereaved family members.”

Liam Kerr's proposed amendments were disagreed to on the Convener's casting vote.

A range of Scottish Government amendments in this area were agreed to. They generally sought to clarify the effect of the existing provisions in the Bill (e.g. to put beyond doubt that the right to anonymity does not end after an acquittal of the accused in a criminal case).

## Independent legal representation for complainers

### Stage 1

Existing legislation restricts evidence being led about the sexual history and character of complainers in sexual offence trials - sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995.

Section 64 of the Bill as introduced sought to support the appropriate use of those restrictions, by giving complainers a right to independent legal representation (ILR) where there is an application to the court to lead sexual history and character evidence. Specifically, it would:

- require the prosecution to provide the complainer with information on the application to allow sexual history and character evidence
- allow the complainer to be represented by a lawyer in relation to that application
- provide for the disclosure of relevant evidence to that lawyer
- allow the lawyer to make representations to the court on the application
- allow the lawyer to appeal a court decision to grant an application.

In its [Stage 1 Report](#), the Criminal Justice Committee welcomed the proposals in the Bill as introduced, whilst also commenting that it would have liked additional information on how the current provisions are working in practice.

Shortly after the Stage 1 Report was published, a report of relevant research funded by the Scottish Government was also published - [The Use of Sexual History Evidence and 'Sensitive Private Data' in Scottish Rape and Attempted Rape Trials](#).<sup>20</sup> The report noted that the research aimed to address gaps in evidence on how the provisions in sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995 were operating, taking into account shifts in law, policy and practice since previous research was published in 2007. It stated that the research highlights areas where there has been positive change, as well as areas where further improvements could be made.

In relation to the way in which the Bill sought to provide for ILR, the Stage 1 Report noted concerns raised in evidence about the practicality of some of the procedures provided for. For example (para 1,037):

“ we heard several comments that the proposed arrangements for disclosing relevant information in relation to a case could be simplified. For example, the Senators of the College of Justice suggested that the procedures in the Bill would prove 'time-consuming and cumbersome', due to the requirement for the Crown to ask the court's permission to disclose evidence to the complainer's representative.”

It went on to recommend that the Scottish Government addresses such points, including bringing forward amendments where necessary to simplify the procedures.

In its [written response](#) to the Stage 1 Report, the Scottish Government acknowledged that the provisions need to be workable for all concerned, and stated that (p 37):

“ We are discussing with stakeholders how we might simplify some of the operational aspects. This includes the process for disclosing relevant evidence to the independent legal representative and we will bring forward amendments at stage two. As well as alleviating resource pressures this would of course avoid additional delay to the complainer's journey time.”

## Stage 2

### Scottish Government correspondence on potential amendments

The [letter of 31 October 2024](#) from the Scottish Government indicated that it would bring forward amendments to:

1. Simplify the process for disclosure of evidence to independent legal representatives.
2. Place a duty on independent legal representatives to notify the prosecution and the court when appointed by a complainer.
3. Ensure that independent legal representatives are subject to a duty of confidentiality.
4. Ensure that complainers have the same amount of time in which to instruct independent legal representatives when they are giving their evidence by commissioner.

The letter of 31 October also indicated that an amendment would be lodged to extend the restrictions in section 274 of the Criminal Procedure (Scotland) Act 1995, so that they apply in all cases involving an offence under section 1 of the Domestic Abuse (Scotland)

Act 2018 where the commission of that offence is said to involve a sexual element.

Section 1 of the Domestic Abuse (Scotland) Act 2018 sets out an offence of abusive behaviour towards a partner or ex-partner. Such abuse may include a sexual element. Where it does, current rules provide that the restrictions set out in section 274 of the Criminal Procedure (Scotland) Act 1995 apply where the court has made an order that the behaviour in the charge includes a 'substantial sexual element'. The proposed change in this area would appear to extend the restrictions to cases involving any sexual element (not necessarily a substantial one).

However, the Scottish Government's [letter of 4 March 2025](#) advised that it would not be lodging a Stage 2 amendment on this particular issue, noting that:

“ Officials are continuing to engage with SCTS [Scottish Courts & Tribunals Service] to better understand the operational impact on the courts and judiciary of this amendment with the intention of lodging it at Stage 3.”

### **Formal consideration of amendments**

Consideration of proposed amendments in this area took place at the Criminal Justice Committee's [meeting on 2 April 2025](#).<sup>19</sup>

A series of Scottish Government amendments were agreed to which sought to address the four points highlighted above. In outlining the purpose of the amendments, the Cabinet Secretary for Justice and Home Affairs, Angela Constance MSP stated (col 38):

“ I have paid careful attention to views on independent legal representation during and following stage 1. My amendments in this group reflect that and the close working that has been carried out by the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunals Service to ensure that the amendments clarify roles and responsibilities and will streamline operational processes.”

However, a [letter to the Committee from the Scottish Courts and Tribunals Service](#)<sup>21</sup> expressed the view that the amendments did not go far enough in streamlining the proposed process, and that concerns about it causing delays in cases remained. The letter stated that they were "happy to continue to liaise with Scottish Government officials on this point to support the effective operationalisation of this important area of reform".

Other proposed amendments considered at the Committee's meeting on 2 April included ones lodged by Katy Clark MSP and Maggie Chapman MSP seeking broader legal representation, advice or advocacy for victims of sexual offences - not limited to situations where there is an application to lead evidence on the sexual history and character of the complainer. None of these amendments were agreed to. However, the Cabinet Secretary outlined plans for a pilot project providing legal advice (col 52):

“ I am pleased to advise the committee that I intend to support the proposal that has been submitted to me by Rape Crisis Scotland and the Faculty of Advocates to deliver a pilot for free independent legal advice. Although it is complementary to the objectives of the bill, the pilot does not require legislative underpinning.”

“ The pilot will provide specialist independent legal advice from dedicated solicitors for complainers in rape and attempted rape cases, utilising the expert Emma Ritch law clinic. Where desired, the pilot will provide access to an independent and experienced court practitioner to assist complainers in feeling more prepared to give evidence as well as ensuring that complainers know their rights, helping to make those rights more accessible. An advisory group chaired by the Scottish Government and including Rape Crisis Scotland, the Crown Office and Police Scotland will inform the development of the pilot.”

Independent legal representation (ILR) differs from independent legal advice, in that ILR involves the lawyer having some direct involvement in the court process - as is the case for the provisions already in the Bill. The Cabinet Secretary noted that (col 51):

“ the independent legal representation provision in the bill as it stands is very firmly focused on what is a deeply intrusive aspect of sexual offence cases in terms of sexual history evidence. The change that the bill will bring is already significant in breaking new ground for complainers, with the introduction of a third party into proceedings.”

She went on to say that these provisions would need to be evaluated, and that at this point she was "very reticent to go further than the original intentions of the bill" in relation to ILR.

## Rape trials pilot

### Stage 1

Under current legislation, rape is always prosecuted under solemn procedure in the High Court. As discussed earlier, Part 5 of the Bill provides for the creation of a specialist Sexual Offences Court to deal with sexual offences prosecuted under solemn procedure, including rape.

At present, all prosecutions under solemn procedure involve a jury where there is a trial.

Separate from the proposals for a Sexual Offences Court, sections 65 and 66 of the Bill as introduced would have allowed the Scottish Government to establish, by secondary legislation, a pilot scheme for criminal trials of rape or attempted rape under solemn procedure without a jury. The pilot would have:

- taken place within the High Court and/or the proposed Sexual Offences Court
- involved a single judge delivering the verdict following a trial and providing written reasons for that verdict
- be followed by a review and publication of a report on how it operated.

In relation to the purpose of the pilot, the Bill's [Policy Memorandum](#)<sup>22</sup> stated that (para 567):

“ The policy objective is to gather evidence to enable an analysis, properly informed by empirical research, to be undertaken of some of the difficulties encountered in Scotland in the prosecution of cases involving rape, and in particular to allow an assessment of the system by which verdicts are reached.”

In April 2024, after publication of the Criminal Justice Committee's Stage 1 Report, the Scottish Government published some additional [statistics on conviction rates in rape cases](#).<sup>23</sup> They pointed to a particularly low conviction rate where a case involves a single complainer.

In its [Stage 1 Report](#), the Criminal Justice Committee noted that the proposed pilot of rape trials without juries was one of the most controversial aspects of the Bill. The Committee was split on whether the proposal should be supported.

Members supporting the proposed pilot acknowledged that departing from the principle of trial by jury for serious crimes required significant justification. They argued that this existed in the need to improve the current experience of rape complainers. They believed that a time-limited pilot could provide a valuable opportunity to obtain evidence on issues such as rape myths,<sup>i</sup> and how both experiences and outcomes might differ where there is no jury. They also highlighted the opportunity to obtain written reasons from judges deciding cases.

Members who did not support the proposed pilot gave various reasons, including:

- the fact that the pilot would determine outcomes for real people in real cases
- the value of juries in representing a broader range of experiences than are found amongst the judiciary
- an inadequate evidence base for having a pilot, including conflicting evidence on the prevalence of rape myths
- the risk of the pilot undermining public confidence in the justice system.

In its [written response](#) to the Stage 1 Report, the Scottish Government:

- stated that it would seek to amend the Bill to include more detail on the criteria for cases being included in the pilot, and that it was also considering whether more information on how the pilot would be evaluated should be set out in the Bill
- indicated that it was considering the possibility of trials under the pilot being heard by a panel (a judge plus two lay members) rather than a single judge alone.

## Stage 2

### Scottish Government correspondence on potential amendments

The [letter of 31 October 2024](#) from the Scottish Government indicated that it would seek to amend the Bill at Stage 2 to remove provision for a pilot:

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<sup>i</sup> Potential rape myths include beliefs that a victim will always fight back or shout for help, and that false accusations are commonly made.

“ I recognise there is not enough cross-party support at this time for the pilot of single judge rape trials to progress. In the interests of building as much consensus as possible around the Bill, I will no longer pursue this policy and bring forward relevant amendments to remove it from the Bill.”

It added that:

“ I am working on a range of legislative and non-legislative measures to explore and address the underlying issues the pilot was seeking to address. Legislatively, I will bring forward amendments to allow for research to be carried out into jury deliberations which is currently heavily restricted by the Contempt of Court Act 1981. This would pave the way for further development of the evidence base on whether and how rape myths affect the verdicts juries reach in rape and attempted rape cases, to help us all understand if these myths are a barrier to the proper administration of justice and if that is the case, to inform debate on how that could best be addressed.”

### **Formal consideration of amendments**

Consideration of proposed amendments in this area took place at the Criminal Justice Committee's [meeting on 2 April 2025](#).<sup>19</sup>

Amendments lodged by Russell Findlay MSP, and supported by the Scottish Government, removing provision in the Bill for a pilot of rape and attempted rape trials without a jury were agreed to (deleting sections 65 and 66 of the Bill as introduced).

Scottish Government amendments in relation to research on jury deliberations were agreed to at the Committee's meeting on 26 March 2025 - see above [discussion of Stage 2 in relation to criminal juries and verdicts](#).

# Additional issues considered at Stage 2

This section outlines some of the additional issues considered during Stage 2 consideration of the Bill.

## Victim notification scheme

### Current provisions

The Victim Notification Scheme (VNS) was created by provisions in the Criminal Justice (Scotland) Act 2003. It came into force on 1 November 2004. Since then, it has been amended and expanded. Information on the current arrangements is set out in [guidance for victims](#) published by the Scottish Government in 2018.<sup>24</sup>

It gives a victim the right to receive information about the release of an offender serving a custodial sentence. Depending on the length of the sentence, the victim may also be able to make representations where release is being considered. There are also provisions dealing with cases where an offender is detained in hospital for mental health treatment. Where the direct victim of an offence has died, certain eligible relatives are entitled to receive information and make representations.

Although commonly referred to as a single scheme, victim notification is currently dealt with under three separate schemes:

1. Victim Information Scheme (VIS) – a victim of an offender sentenced to less than 18 months imprisonment can request information on the date of release of the offender, and any conditions of release imposed for the protection of the victim, from the Scottish Prison Service. The victim does not have to register for this in advance, and the victim can decide if they wish to request the information or not.
2. Victim Notification Scheme (VNS) – where an offender has been sentenced to 18 months or more, a victim can register to join this. Taking part is voluntary. This scheme has two parts, with an eligible victim being able to opt-in to either or both:
  - part 1 allows the victim to receive a range of information, including the date of the offender's release and when the offender first becomes eligible for temporary release
  - part 2 allows the victim to make representations about the release of the prisoner (including temporary release by the Scottish Prison Service and decisions by the Parole Board for Scotland about release on parole).
3. CORO Victim Notification Scheme (CORO VNS) – available to victims of patients in the forensic mental health system who are subject to a compulsion order and restriction order (CORO). It provides victims with the right to certain information relating to a patient, and to make representations before certain decisions are made about the patient. Again, taking part is voluntary.

The following organisations are involved in making the notification schemes work:

- Crown Office & Procurator Fiscal Service – provides registration packs to victims for the VNS

- Scottish Prison Service – writes to victims with information
- Parole Board for Scotland and Mental Health Tribunal for Scotland – facilitate victim representations under the VNS
- Scottish Government – writes to victims of offenders subject to a CORO with information
- victim support organisations – provide support and assistance to victims.

## Independent review

The [report of an independent review of victim notification](#) was published in May 2023,<sup>25</sup> setting out 22 recommendations (not all of which required legislation). In its conclusions, it commented (p 72):

“ Our brief recognised that victims and victim support organisations had concerns about the current operation of the scheme in that it was seen as bureaucratic, difficult to navigate, disjointed and confusing. Concerns had been expressed about the level of take-up and that some victims may be failing to engage for reasons which were not entirely clear.”

And that:

“ Our principal recommendation is the establishment of a new team to provide responsive and personalised information for victims, to inform fully and avoid misunderstandings, as well as refer effectively to support.”

In October 2024, the Scottish Government published a [response to the review](#)<sup>26</sup> stating that it "agreed with or agreed in principle with the majority of the recommendations" (p 3). In relation to changes requiring legislation, it added that (p 4):

“ We intend to use the Victims, Witnesses, and Justice Reform (Scotland) Bill, which is currently at Stage 2, to deliver recommendations that need primary legislation. This Bill presents the ideal opportunity to deliver the benefits of VNS reform quickly, which we all will want to see.”

The Scottish Government also issued a [news release](#) in October outlining its response to the independent review.<sup>7</sup>

## Proposed amendments

### Scottish Government correspondence on potential amendments

The Bill as introduced did not include provisions dealing specifically with the Victim Notification Scheme (VNS) or related schemes. However, the Scottish Government's [letter of 31 October 2024](#) repeated its previously stated intention to use the Bill to deliver those recommendations of the independent review requiring primary legislation.

In its [letter of 4 March 2025](#), the Scottish Government provided more detail of planned

Stage 2 amendments in this area. These included:

- victim contact team - amendments providing the legal underpinning for a team which would be established in response to the independent review recommendation that there should be a "new team to provide responsive and personalised information for victims"
- merger of the Victim Notification and Victim Information schemes - not one of the recommendations of the independent review.

In relation to the proposed merger of the VNS and VIS, the Scottish Government's letter of 4 March stated:

“ I am pleased to note that we have been able to go beyond the scope of the independent Review in one important aspect, following on from positive engagement with stakeholders. This relates to amendments which will take forward the merger of the VNS and the Victim Information Scheme, making it easier for victims to navigate what can be a complex system - and will allow for one criminal justice scheme to operate to the benefit of all victims currently served by these two separate schemes. This will also ensure that the information available to victims is no longer determined by the length of the sentence received by the offender.”

The letter of 4 March also noted that the Scottish Government planned to bring forward further relevant amendments at Stage 3.

### **Formal consideration of amendments**

Consideration of proposed Stage 2 amendments on this issue took place at the Criminal Justice Committee's [meeting on 12 March 2025](#).<sup>15</sup> Relevant Scottish Government amendments were agreed to, forming a new part of the Bill: Part 2A - Victims' Right to Receive Information.

The agreed amendments included a legal underpinning for the proposed victim contact team and for the merger of the VIS and VNS. The Minister for Victims and Community Safety, Siobhian Brown MSP, outlined the purpose of the various amendments at the meeting on 12 March (see cols 28-31 of the Official Report).

There was also discussion of proposed amendments, lodged by Katy Clark MSP and Jamie Greene MSP, relating to rights to information and referral to support services of victims. None of these amendments were moved, but the Minister offered to have discussion on some of the issues in advance of Stage 3 (see cols 31-45 of the Official Report).

## **Victims and decisions on prosecution**

Proposed Stage 2 amendments, considered at the Criminal Justice Committee's [meeting on 12 March 2025](#),<sup>15</sup> included ones seeking to strengthen the rights of victims where the prosecution decides: not to prosecute someone; to discontinue a prosecution; or accept a guilty plea to a lesser charge.

## Decision not to prosecute or to discontinue a prosecution

An amendment lodged by Jamie Greene MSP would have required the prosecution to notify a victim where a decision is taken not to prosecute or to end a prosecution.<sup>ii</sup> In speaking to his amendment, Jamie Greene referred to a [consultation](#)<sup>27</sup> he had undertaken relating to a [draft proposal](#)<sup>28</sup> for a Member's Bill.<sup>iii</sup> The consultation noted that victims can already ask the prosecution to review a decision not to prosecute or to discontinue a prosecution - under the [Victims' Right to Review](#).<sup>29</sup> It went on to state that (p 21):

“ Increasing the take-up of the Victim Right to Review scheme should boost the number of victims who get the prosecution of the case they're entitled to – that is why it is vital this proposal is included in the proposed Bill. It would enshrine the right of all victims to be notified of a decision not to prosecute or to discontinue prosecution so that victims have the opportunity to request a review of this decision, should they wish.”

In seeking to use the current Scottish Government Bill to make this change, Jamie Greene MSP added (at the Committee's meeting on 12 March) that - "far too many decisions are being made at the moment, without victims, or alleged victims, being told about them" (col 61).

Responding to the proposed amendment, the Cabinet Secretary for Justice and Home Affairs, Angela Constance MSP, indicated that she could not support it. In doing so, she referred to current arrangements for informing those victims covered by the [Victim Information and Advice service](#).<sup>30</sup> And stated that (col 67):

“ Victims who have chosen to be included in the Crown Office victim information and advice scheme will be proactively advised of the decisions in their case - notwithstanding that much more needs to be done to ensure that more people are informed of their rights and are aware of that scheme. The Crown Office is currently undertaking work to explore the possibility of extending proactive notification of no-action decisions to categories of victims and witnesses beyond those who are currently engaged with the victim information and advice scheme - although it advises that that work is on-going and complex and will carry resource implications. I am happy to engage with members and the Crown Office to get more information on the detail of that work.”

Jamie Greene MSP's amendment was disagreed to (For 2, Against 4, Abstentions 2).

## Decision to accept a guilty plea to a lesser charge

A series of amendments lodged by Russell Findlay MSP dealt with the situation where the prosecution might accept a guilty plea by an accused to a lesser charge. At the Committee's meeting, he commented that (col 57):

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ii A similar amendment lodged by Sharon Dowey MSP was not moved.

iii The draft proposal has not led to the introduction of the proposed Bill.

“ One aspect of the criminal justice system that causes significant distress to victims is plea deals. We all understand and accept the premise of those: when an accused pleads guilty at an early stage, it spares victims from giving evidence. We do not oppose plea deals per se - they have long been an important feature in the justice system. Our concerns are about the way in which they are sometimes used and the general lack of transparency around those decisions.”

His proposed amendments offered three alternative options for strengthening the rights of victims:

- requiring the prosecution to notify a victim where a plea to a lesser charge is accepted
- requiring the prosecution to seek and take into account the views of a victim before accepting a plea to a lesser charge
- requiring the prosecution to seek the views of a victim before accepting a plea to a lesser charge and only do so if the victim agrees (i.e. giving the victim a veto on a plea deal).

In relation to the third option, Russell Findlay MSP commented that it may go too far "as it could be seen as meddling in the independence of the prosecution service" (col 57), but that he had lodged it to demonstrate the seriousness of victims' concerns.

In response, the Cabinet Secretary for Justice and Home Affairs said that she could not support any of the proposed amendments. She argued that both the second and third options risked interfering with the independence of the Lord Advocate as head of the prosecution service.

Regarding the first option (i.e. requiring that a victim is notified), the Cabinet Secretary argued that it would (col 65):

“ provide no means by which a victim can choose not to receive such information or to exercise agency, no matter their individual preference, would create mandatory processes for specific points in the criminal justice process and therefore add complexity to the system that victims need to navigate.”

On the Scottish Government's position regarding the first option, Russell Findlay said (col 68):

“ I absolutely do not buy the novel argument put forward by the cabinet secretary that some victims appear to want to be kept in the dark. That is absolutely not my experience.”

He did not, however, move any of his amendments in this area.

## **Non-harassment orders in criminal cases**

### **Current provisions**

Non-harassment orders (NHOs) require a person to stop doing something. They seek to prevent behaviour which may cause harm or distress to another. Although they can be granted by the courts in the context of both criminal and civil proceedings, the following

focuses on the criminal cases.

Sections 234A and 234AZA of the [Criminal Procedure \(Scotland\) Act 1995](#) deal with NHOs in criminal cases. Under section 234A, the prosecution can ask the court to make an NHO as part of the disposal following conviction. This applies where the person is convicted of an offence involving misconduct towards the victim. Breach of the NHO is in itself a criminal offence.

Section 234AZA was inserted into the Criminal Procedure (Scotland) Act 1995 by provisions in the Domestic Abuse (Scotland) Act 2018 – with effect from April 2019. It makes special provision for cases where a person is convicted of an offence involving domestic abuse. Where it applies:

- the court must consider whether to make an NHO without waiting for the prosecutor to ask for one
- there is what may be described as a presumption in favour of making an NHO, in that the court is directed to make one unless it concludes that the protection such an order would provide is not needed
- in addition to seeking to protect the victim, the NHO may also contain provisions to protect a child involved in the case.

## Proposed amendments

Proposed Stage 2 amendments, considered at the Criminal Justice Committee's [meeting on 19 March 2025](#),<sup>17</sup> included ones lodged by Pam Gosal MSP, Maggie Chapman MSP and Sharon Dowe MSP seeking to strengthen the use of non-harassment orders (NHOs) in criminal cases.

In broad terms they would have imposed a requirement on the courts to impose an NHO where a person is convicted of certain offences - either sexual offences or domestic abuse offences (depending on the amendment).

Responding to the proposed amendments, the Cabinet Secretary for Justice and Home Affairs said (col 5):

“ The amendments seek to achieve something that we are all committed to. They seek to ensure that victims are fully supported by the justice system and that appropriate sentencing options are available and used by the independent court to protect victims. I cannot support the amendments as drafted, but I have written to Pam Gosal, Maggie Chapman and Sharon Dowe to indicate that I am sympathetic to their clearly well intentioned amendments and to suggest that we work together ahead of stage 3 to deliver the underlying policy aim of improving protection for victims.”

Concerns highlighted by the Cabinet Secretary included the need for the courts to retain a discretion not to impose an NHO where it would be of no benefit. She did, however, add that "there is a strong case" for affording victims of sexual offences the same protection that exists for victims of domestic abuse. As noted above, the current provisions relating to domestic abuse cases include a presumption in favour of making an NHO.

Following the Cabinet Secretary's comments, the proposed amendments were either

withdrawn or not moved.

## Special measures in criminal cases

Special measures are a range of practical steps aimed at making it easier for vulnerable witnesses to give their evidence to the court.<sup>iv</sup> They currently include:

- allowing a witness to give evidence by live video link from outside the court room or from behind a screen in court
- allowing a witness to provide their evidence in advance of the trial (e.g. evidence by commissioner recorded during special proceedings before a judge).

Further information on the use of special measures in criminal cases is provided on the Crown Office and Procurator Fiscal Service's website - [Vulnerable victims and witnesses \(special measures\)](#).<sup>31</sup>

Proposed Stage 2 amendments in this area were considered at the Criminal Justice Committee's [meeting on 19 March 2025](#).<sup>17</sup> These included a Scottish Government amendment seeking to slightly alter reforms made by the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019.

That Act provided for a rule applying to child witnesses involved in certain serious cases prosecuted under solemn procedure. Where it applies, the rule generally requires the court to make provision for all of the child's evidence to be given in advance of the trial (e.g. through an evidence by commissioner hearing). One of the exceptions to the rule covers situations where a child witness aged 12 or more wishes to give evidence during the trial, and it would be in the child's best interests to do so. The above Scottish Government amendment (which was agreed on 2 April) provides for the exception to apply to children under 12. During the Committee's meeting on 19 March (col 11), the Cabinet Secretary for Justice and Home Affairs, Angela Constance MSP, explained the reasons for the amendment, with reference to the [United Nations Convention on the Rights of the Child \(UNCRC\)](#):

“ Article 12 of the UNCRC requirements puts an obligation on public authorities to give all children aged under 18 the right to express their opinions on matters that affect them, and for their views to be given due weight in line with their age and maturity. If the court is unable to grant an exception for children under the age of 12 based on their wish to give evidence at a trial, it is unable to give due weight to those children's views.”

Amendments agreed in this area form a new part of the Bill as amended at Stage 2: Part 5A - Special Measures for Vulnerable Witnesses under the 1995 Act.

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<sup>iv</sup> As discussed earlier in this briefing, the Bill as introduced included provisions relating to [special measures in civil cases](#).

# Victim statements

## Current provisions

Section 14 of the [Criminal Justice \(Scotland\) Act 2003](#) allows some victims to make a statement about the impact of the crime, to help inform the court's decision on sentencing. This right applies where the case involves a prescribed offence and is prosecuted in a prescribed court:

- the prescribed offences are currently set out in the the [Victim Statements \(Prescribed Offences\) \(No. 2\) \(Scotland\) Order 2009](#), and include a range of violent offences, sexual offences, and road traffic offences resulting in a death
- the prescribed courts are currently set out in [Victim Statements \(Prescribed Courts\) \(Scotland\) Order 2009](#), and are the High Court or a sheriff court when dealing with a case under solemn procedure (used for more serious cases).

In 2019, the Scottish Government carried out a [consultation on widening the scope of the victim statement scheme](#).<sup>32</sup>

More [information about making a victim statement](#) is provided by the Scottish Government.<sup>33</sup>

## Proposed amendment

A proposed Stage 2 amendment lodged by Jamie Greene MSP sought to amend section 14 of the Criminal Justice (Scotland) Act 2003 to widen the scope of the victim statement scheme - removing references to prescribed offences and courts.

It was considered at the Criminal Justice Committee's [meeting on 19 March 2025](#),<sup>17</sup> with Jamie Greene MSP explaining that (col 12):

“ At the moment, only victims of certain offences may make a statement to a court during solemn proceedings. Essentially, my amendment seeks to extend the franchise by allowing more victims the opportunity to provide a victim impact statement to court if they so choose.”

In response, the Cabinet Secretary for Justice and Home Affairs indicated that she supported the ambition of the amendment, but could not support the specific amendment.

The Cabinet Secretary noted that the findings of the 2019 Scottish Government consultation made it clear that "there is an appetite for change, such as widening the list of eligible offences and piloting new ways for victim statements to be made" (col 14). She went on to say that she wanted to move to a position where victims have the right to make a statement in all cases, but that practical considerations meant that this could not be done in a single step (col 14):

“ I do not support making that move in one step at this time, due to the need to ensure that the resource and operational aspects are properly considered. That is particularly the case in relation to summary cases, as the volume of cases and therefore statements would be significantly greater, with associated resource implications.”

On what might be done now, the Cabinet Secretary added that (col 15):

“ I am particularly keen that we take the first step of expanding this right to all solemn cases, where there is an established process in place and where there will therefore be fewer additional operational considerations. There will be some resource implications. However, this is an area that I would be keen to discuss further with Mr Greene with a view to lodging an amendment at stage 3 to make that initial change to the legislation.”

On that basis, the amendment was withdrawn.

## Release of prisoners on parole

### Current provisions

The [Parole Board for Scotland](#) considers the release on parole of prisoners serving custodial sentences. Its website notes that:

“ Parole is a system that enables offenders to be released on licence in the community under the supervision of a community based social worker. If an offender is released on parole, they are subject to be recalled to prison at any time if they breach the terms of their licence. Parole is only granted where the Parole Board is satisfied that the risk presented by the offender can be managed in the community.”

The parole system mainly deals with prisoners serving sentences of four or more years, including life sentence prisoners. There are separate early release arrangements for prisoners serving sentences of less than four years.

In relation to the factors taken into account by the Parole Board when considering release on parole, its website states:

“ It will take into account information about the original offence from the trial judge's report. The Board is interested in behaviour in prison, offending history, family and social background and plans for release. The Board also considers whether the offender has taken any steps to address issues or problems which may have contributed to their offending behaviour. The main consideration for the Board will be to assess whether an offender is likely to be a risk to the community if they are released on licence.”

The legislative basis for this approach to parole decisions is set out in the [Parole Board \(Scotland\) Rules 2022](#). The rules were made by the Scottish Government under powers set out in the Prisoners and Criminal Proceedings (Scotland) Act 1993.

The [Victim Notification Scheme](#) (VNS) allows victims to make representations about the release of some prisoners, including release on parole. A document on [standards of service for victims and witnesses](#)<sup>34</sup> includes relevant standards relating to the work of the Parole Board.

## Proposed amendments

Various amendments relating to parole, lodged by Jamie Greene MSP and Sharon Dowey MSP, were considered at the Criminal Justice Committee's [meeting on 19 March 2025](#).<sup>17</sup> In broad terms, they sought to improve the experience and rights of victims and their families during the parole process.

During the meeting, the Cabinet Secretary for Justice and Home Affairs, Angela Constance MSP, advised the Committee that the Scottish Government would be publishing a consultation on parole reform in August 2025. She noted that this would build on changes made in the Parole Board (Scotland) Rules 2022.

The proposed Stage 2 amendments to the Bill included ones on the following issues:

1. Right to attend parole hearings - seeking to give victims, or a family member of a deceased victim, a general right to observe parole hearings in relation to the offender's case. Currently, under [rule 30](#) of the Parole Board (Scotland) Rules 2022, a victim may apply to attend a parole hearing in some cases (e.g. where the prisoner is serving a life sentence). In response, the Cabinet Secretary stated that the forthcoming Scottish Government consultation would cover the issue. The relevant amendment was withdrawn.
2. Safety of victims and family members - seeking to ensure that this is a factor taken into account by the Parole Board when considering the release of a prisoner. Currently, under [rule 11](#) of the Parole Board (Scotland) Rules 2022, one of the issues which the Parole Board may take into account is the "effect on the safety or security of any other person (including in particular any victim or any family member of a victim, or any family member of the person concerned)". In response, the Cabinet Secretary offered to work with the member in advance of Stage 3 to develop alternative drafting. The relevant amendment was withdrawn.
3. Information about victim's remains - seeking to require the Parole Board to take into account, when considering release on parole, any failure by a prisoner convicted of murder or culpable homicide to disclose information about the location of the victim's body. Currently, under [rule 12](#) of the Parole Board (Scotland) Rules 2022, this is an issue which the Parole Board may take into account. The amendment was agreed and is set out in a new part of the Bill as amended: Part 2B - Release of Prisoners.

## Victim access to court transcripts

Separately from its scrutiny of this Bill, the Criminal Justice Committee has undertaken work looking at the case for improving [access to trial transcripts for victims of rape and other sexual offences](#).<sup>35</sup>

In October 2023, the Scottish Government [wrote to the Committee providing information on a pilot](#) allowing complainants in High Court trials, involving charges of rape or sexual assault, to make a request for funding to support applications for trial transcripts.<sup>36</sup>

Subsequent correspondence on the topic includes a letter sent by the Scottish Government to the Committee in February 2025, [providing an update on the pilot](#).<sup>37</sup> Later

the same month, at the Criminal Justice Committee's [meeting on 26 February 2025](#),<sup>10</sup> the Committee Convener, Audrey Nicoll MSP, raised the issue with the Cabinet Secretary for Justice and Home Affairs (cols 27-28):

“ You helpfully wrote to the committee recently to say that the pilot for providing free transcripts for complainers in High Court sexual offences cases is to be extended for a further 12 months, which is welcome. We are aware that some campaigners have suggested that the bill might be an opportunity to make the pilot permanent. What are your views on that suggestion?”

In response, the Cabinet Secretary said (col 28):

“ I was pleased to extend the pilot, which was done in recognition of the volume of cases. We want to be able to get through all the cases in the pilot so that it can be properly evaluated. I am not in a position to answer any questions about scope, but I am sure that all members, as is their right, will test the scope of the legislation by lodging amendments on this and, no doubt, other topics.”

Proposed amendments on the issues, lodged by Pauline McNeill MSP, Audrey Nicoll MSP and Jamie Greene MSP, were considered at the Criminal Justice Committee's [meeting on 19 March 2025](#).<sup>17</sup> They all looked to the possibility of having permanent arrangements for access to free transcripts. Responding, the Cabinet Secretary said (col 59):

“ I have already outlined to the three members with amendments on this matter that, although I do not support the amendments as they stand, I am entirely sympathetic to their aims and want to work with all of them ahead of stage 3, as there will be an opportunity to include aspects of all their intentions at that point.”

On the basis of what she said, the Stage 2 amendments were withdrawn or not moved.

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