



The Scottish Parliament
Pàrlamaid na h-Alba

Criminal Justice Committee

Angela Constance MSP
Cabinet Secretary for Justice and
Home Affairs
The Scottish Government

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By email

8 October, 2023

Dear Cabinet Secretary,

At the recent meeting of the Committee, several witnesses raised the issue of the non-implementation or delays with key provisions in previously passed pieces of legislation that seek to make reforms with a similar policy justification to some of those provided for in the Victims, Witnesses and Justice Reform (Scotland) Bill. This initially came up within the context of special measures and support for vulnerable witnesses.

Examples that have been cited to us included:

- The changes for children outlined in the **Children (Scotland) Act 2020** where it was reported to us that significant portions of that Act, including sections 4-8 on certain special measures in certain family cases, remain unimplemented.
- The **Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019** which makes way for crucial improvements in the availability of the option for children to pre-recorded evidence (such as Evidence on Commission), but is still only at the early stages of being phased in. Research conducted by the University of Edinburgh evaluating **Bairns Hoose** (published in March 2023) which we heard clearly shows that despite legislative changes that means pre-recorded evidence being technically available to ensure children do not have to attend court “the requirement [to attend court] remained in almost all cases.”
- The **Domestic Abuse (Protection) (Scotland) Act 2021** which remains largely unimplemented. Part 1 of the Act could create a situation where vulnerable people might potentially be in the civil court when the court is considering whether to grant a Domestic Abuse Protection Order and might need special measures. We understand Part 1 of this Act is not in force and

there is no date for doing so and that, for Part 2, this will not be until some time next year.

This non, delayed or partial implementation of previously passed Acts of the Scottish Parliament was described to us as “legislative limbo” and we would be concerned if we were to pass yet more legislation in the form of the Victims, Witnesses and Justice Reform (Scotland) Bill without significant efforts to implement in full legislation which the Parliament has previously agreed to.

The Committee would like to request an audit from your officials of previously passed legislation in areas such as, but not limited to, special measures, victim/witness support and trauma-informed practice to understand what has been implemented, what has been delayed and what is yet to be brought into force (including timescales for doing so). It would be helpful to understand the reasons for any delays, e.g. resourcing.

We do appreciate that other organisations such as the courts have a role to play in implementing certain provisions in legislation so, if the delays are the responsibility of other bodies, it would be helpful if you could identify this so that we can approach them for an update.

I look forward to your response.

Best wishes,

A handwritten signature in black ink that reads "Audrey N : CN". The signature is written in a cursive, flowing style.

Audrey Nicoll MSP
Convener, Criminal Justice Committee