Cabinet Secretary for Justice and Home Affairs
Rùnaire a' Chaibineit airson Ceartas agus Cùisean na Dùthcha
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Scottish Government
Riaghaltas na h-Alba

Audrey Nicoll MSP
Convener
Criminal Justice Committee

(VWJRBill@Parliament.Scot)

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Dear Convener

Thank you for the Criminal Justice Committee's report on the Victims, Witnesses, and Justice Reform (Scotland) Bill at Stage 1, published on 29 March 2024. I welcome the Committee's comprehensive and detailed scrutiny of this landmark legislation and in particular the inclusive approach taken which enabled a wide range of views, including – crucially – those of victims, to be heard.

The table below sets out my response to the recommendations made. It also covers the recommendations made at Stage 1 by the Delegated Powers and Law Reform Committee in their report published on 22 December 2023. I extend my thanks for careful scrutiny and consideration of the Bill at Stage 1 to that Committee and to the Finance and Public Administration Committee and am copying this letter to their Conveners.

I look forward to continuing constructive work with the Committee and the wider Parliament on the Bill as we deliver our shared ambition to put victims at the heart of the justice system.

Yours sincerely

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Part 1 – Victims and Witnesses Commissioner for Scotland	
Recommendation	**Scottish Government response**
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. We invite the Scottish Government to consider if they still wish to proceed. [para 164]	The Scottish Government is committed to the establishment of a Victims and Witnesses Commissioner for Scotland. There has been substantial consultation and engagement with victims, victim support organisations and the Victims Taskforce on this issue since 2020. The Commissioner will provide an independent voice for victims and witnesses, champion their views and encourage policy makers and criminal justice agencies to put victims' rights and interests at the heart of the justice system. This statutory mechanism will ensure that victims' and witnesses voices and experiences will be heard. During the Committee's evidence sessions, lack of accountability by organisations involved in the criminal justice process was consistently raised as a key issue for victims and witnesses. 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. The Victims and Witnesses Commissioner would fill this gap and provide the mechanism of accountability that is lacking from the criminal justice system. We note the Committee's comments about the proposed costs for the Commissioner being better spent on delivering frontline services, providing an immediate benefit to victims and witnesses. However, failing to invest in this role would mean the opportunity for accountability, systemic change, and the potential to improve the experiences of future victims and witnesses, would be significantly reduced. The Scottish Government would like to highlight that provisions in the Bill do not prevent the role of the Victims and Witnesses

	Commissioner from being held by another Commissioner, although there are possible limits on a dual-appointment. Schedule 1 of the Bill places limits on appointments. It would be for the Scottish Corporate Parliamentary Body to decide on the appropriateness of a dual appointment, in line with the restrictions set out in Schedule 1. The Bill also provides for the sharing of premises, staff, services of other resources with any other officeholder or public body, providing for cost savings.
If, having considered the points we raised, a Commissioner post is to be established, then we recommend that in the first instance it should be for a time-limited period in order to allow for an assessment to be made of the value of the role. We recommend that any extension to this initial period should only take place after an independent review had been conducted into the operation of the post and following a further decision of Parliament. We expect that Parliament would want to see clear evidence that the post of Commissioner has noticeably improved the experience of victims and witnesses. We recommend that the initial time-limited period for the post should be a single term in office to allow sufficient opportunity for the effectiveness, or otherwise, of the new post to be demonstrated. [para 165]	We note the Committee's recommendation for the Commissioner post to be established for a time-limited period, and that any extension to the initial period to only take place after an independent review had been conducted into the operation of the post and following a further decision of the Parliament. If this is the will of the Parliament, the Scottish Government would suggest that the term be long enough for the Commissioner to demonstrate their effectiveness, in order to ensure accurate feedback to an independent review. The Bill provides for the tenure of the role to be determined by the Scottish Parliamentary Corporate Body.
We noted the specific concerns which have been raised with us by the Children's Commissioner about the potential overlap between its remit and the role of the Victims and Witnesses Commissioner. We invite the Scottish Government to respond to these concerns and consider whether the Bill could be clearer in this regard. We also invite the Scottish Government to address the point raised by the British Transport Police that it would not be legally subject to any monitoring or engagement by the Commissioner. We believe that this raises wider issues about the interface and role of the various commissioners which may be covered by the forthcoming report of the Finance and Public Administration Committee. [para 167]	We note the points raised by the Children's Commissioner about the potential overlap between its remit and that of the Victims and Witnesses Commissioner and will explore with the Children's Commissioner how the two roles can best work together for the interests of child victims and witnesses in Scotland. The Bill provides that the Victims and Witnesses Commissioner's general function is to promote and support the rights and interests of victims and witnesses (as set out in s2(1)). In exercising the general function, the Victims and Witnesses Commissioner is to (a) engage with victims and witnesses, persons

	providing victim support services; (b) raise awareness of and promote the interests of victims and witnesses; (c) monitor compliance with (i) standards of service set and published under s(2) of the Victims & Witnesses (Scotland) Act 2014, (ii) the Victims' Code for Scotland; (d) promote best practice, in particular trauma-informed practice by (i) criminal justice agencies); (i) persons providing victim support services; (e) undertake and commission research in order to (i) produce the Commissioner's annual report, and (ii) make recommendations, in relation to any matter relevant to the Commissioner's general function, to criminal justice agencies and to persons providing victim support services. The Children's Commissioner's general function is to promote and safeguard the rights of children and young people in Scotland. In exercising that general function, the Commissioner is to (a) promote awareness and understanding of the rights of children and young people; (b) keep under review the law, policy and practice relating to the rights of children and young people with a view to assessing the adequacy and effectiveness of such law, policy and practice; (c) promote best practice by service providers; and (d) promote, commission, undertake and publish research on matters relating to the rights of children and young people. The Bill allows the Victims and Witnesses Commissioner to exercise their functions and powers in relation to all victims and witnesses in the criminal justice landscape. Where victims and witnesses are children and young people, there would be overlap of the general functions of the two Commissioners. Section 6 of the Bill allows the Commissioner the power to work with others in the exercise of the their functions. The power to work with others (listed in section 6(2)) enables the Commissioner to work jointly with, assist or consult specific persons on such terms as may be agreed. The Childrens' Commissioner is named as one of these persons. The Victims and Witnesses Commissioner would have the

	power to consult with the Children's Commissioner and agree on how to work together in relation to promoting the rights and interests of child victims and witnesses in the criminal justice landscape. Section 1 of the Victims and Witnesses (Scotland) Act 2014 ("the 2014 Act") sets out a number of general principles in relation to victims and witnesses receiving information, having their safety ensured, having access to support, and being able to effectively participate in an investigation and proceedings. Section 2 of the 2014 Act provides that certain persons must set and publish standards in relation to the carrying out of their functions in relation to a person who is a or appears to be a victim or witness in relation to a criminal investigation or criminal proceedings, and their procedure for making and resolving complaints. Section 2(2) provides the persons who are required to set and publish standards of service. The British Transport Police (BTP) voluntarily follows the 2014 Act, and publishes a standards of service. We thank BTP for its recommendation and we have engaged with them to discuss their evidence to Committee and their feedback on the Bill. We recognise that many organisations support the Bill and in particular welcome the role of the Victims and Witnesses Commissioner and the embedding of trauma-informed practice across Scotland's justice system. When we met with BTP, we discussed the options available to them and how best to enable them to follow the ethos and obligations of the Bill. BTP recognised that some of the obligations that would be placed upon them by this Bill would be challenging to adhere to and, therefore, we are not pursuing adding BTP to the list of organisations who will be under the scrutiny of the Commissioner at this stage.

	Monitoring and evaluation of an organisation's commitment to good practice and trauma-informed practice is of course relevant to many more organisations than those listed in the Bill. The Bill does not preclude other organisations from having regard to trauma-informed practice. Not being under the scrutiny of the Commissioner does not preclude organisations from undertaking their own monitoring and evaluation.
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. [para 168]	The Bill does not currently provide penalties for lack of compliance with the Victims and Witnesses Commissioner's requests. The Scottish Government considers that this is normal in relation to legal obligations placed on public bodies; criminal justice agencies would be expected to act lawfully where the Victims and Witnesses Commissioner exercises their legal powers to ingather information under the Bill. Following the Committee's deliberations, we confirm that the Scottish Government will bring forward an amendment at Stage 2 on enforcement measures. This would ensure clarity for those organisations which the Commissioner might ask to provide evidence and produce documents, and would also provide parity with other Commissioners.
Lastly, we noted the suggestion in the written submission from the Crown Office and Procurator Fiscal Service (COPFS) that the power in the Bill to require a 'reasoned response' from the Lord Advocate to matters within the Commissioner's annual report might affect the Lord Advocate's legal responsibilities. We note that the Lord Advocate has now been reassured on this point (see paragraph 141) and considers that no amendments are required to the Bill. We welcome this, but believe it is necessary for the understanding reached between the COPFS and the Scottish Government to be formalised in a memorandum of understanding and for this to be publicly available. [para 169]	Scottish Government officials have discussed this issue with COPFS, who are content that no MOU is drafted between the Scottish Government and COPFS at this time, rather that this is for the Victims and Witnesses Commissioner, when in post, as the role is independent from the Scottish Ministers. Section 6 of the Bill enables working relationships to be formed between the Victims and Witnesses Commissioner and the Lord Advocate (and thus COPFS). We are considering bringing forward an amendment at stage 2 which would provide that the Commissioner gives all criminal justice

	organisations the opportunity to review any recommendations included in any report from the Commissioner, prior to publication of the report. This has been discussed with COPFS.
Part 2 – Trauma-informed practice	
Recommendation	**Scottish Government response**
The Bill proposes that five justice agencies must have regard to the principle that victims and witnesses should be treated in a way that accords with trauma-informed practice. We do not disagree with this objective but believe that the Bill must be more ambitious in how it approaches this subject. It must be more than a 'tick-box' exercise. Our view is that justice agencies have been 'having regard' to trauma-informed practice for some time now, but this has not delivered the required pace of improvement. We recommend that the Bill should be strengthened to provide that the justice agencies do more than offer everyone a short training course. They should also proactively be required to undertake an audit of their functions and report on whether they are trauma- informed and, if not, what proposals they intend to put in place to remedy this. [para 416]	We thank the Criminal Justice Committee for its thorough and detailed recommendations on Part 2 of the Bill. We are pleased that the Committee agrees on the fundamental importance of embedding trauma-informed practice in our justice system. We agree that trauma-informed practice should be tangible and meaningful, not a 'tick-box' exercise. That is one reason we believe the Victims and Witnesses Commissioner has an important role to play in ensuring that justice agencies are held accountable on their implementation of trauma-informed practice. By amending section 2 of the Victims & Witnesses (Scotland) Act 2014 the Bill requires justice agencies to set and publish standards on how they carry out their functions in a way that reflects trauma-informed practice. The current section 3 of the 2014 Act will now link to the new standards on that practice, prescribing that agencies must annually report on how and the extent to which the standards have been met, provide, and describe whether any standards have been changed in the last year or how they are proposed to change in the coming year. The Commissioner will independently monitor compliance with those standards and also make use of such annual reports in doing so. Whilst we recognise the Committee's interest in having a transparent and comprehensive audit, our view is that the ongoing reporting requirement, which requires that justice agencies assess how the standards on trauma-informed practice have been met in the last year, as well as proactively setting out how they intend to meet them over the next year, is an appropriate means of monitoring and

	reporting; especially when now allied to active oversight by the Commissioner. We will continue to engage with our partners across the justice system to consider whether more can be done to help ensure that the provisions on trauma-informed practice translate into concrete changes in ways of working. As noted above, this includes working closely with the Victims Taskforce which has a dedicated workstream on the implementation of the Knowledge and Skills Framework.
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. In our view, this Framework represents the gold standard on how to support trauma-informed practice in the justice sector. The definition of trauma-informed practice in the Framework is comprehensive and, crucially, includes reference to supporting recovery and ensuring participation. We recommend that this definition should be adopted in the Bill. [para 417]	The Knowledge and Skills Framework is an extremely valuable resource to support the development and adoption of a trauma-informed approach across justice organisations. It sets out six aims and outcomes for trauma-informed justice. The definition of trauma-informed practice in the Bill has been designed to be consistent with those aims, but the two are not identical because the Bill and the Framework serve different roles. There are several reasons why a bespoke approach was taken for the definition in the Bill: • It is creating a statutory duty on justice agencies: for that duty to be meaningful, it needs to be relevant to each justice agency's work, and that work will vary significantly across all organisations, each of whom have a different focus. The definition needs to be non-prescriptive and flexible enough to reflect that. • The Bill adds trauma-informed practice to the list of principles in section 1 of the Victims and Witnesses (Scotland) Act 2014. That list already includes a principle that, "*in so far as it would be appropriate to do so, a victim or witness should be able to participate effectively in the investigation and proceedings*" and this and the other existing principles will now be informed by the new trauma-informed practice principle.

	• The definition in the Bill needs to be meaningful for all of the provisions that make use of the definition (e.g. those on the scheduling of court business). The definition in the Bill was developed collaboratively with partners across the justice system, including NHS Education for Scotland (NES).During Stage 1, we engaged further with justice partners and with NES to explore the implications of amending the definition to the definitions outlined in the aims of the Knowledge and Skills Framework; partners continue to caution against unintended consequences of an expanded definition encompassing all the Framework's aims. We will however keep the definition under active consideration and continue to work with our justice partners as they embed and implement trauma-informed practice.
Our view is that a 'whole system' approach needs to be taken to embedding trauma-informed practice in the justice system. This includes addressing the concerns which have been identified about the trauma which can be caused by cross-examinations in court if it is not conducted in a trauma- informed manner. 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. [para 418]	We agree that cross-examination can be particularly distressing for victims, and can contribute to re-traumatisation. As the Committee notes, Part 5 of the Bill requires defence practitioners and the judiciary to have undergone trauma-informed training in order to participate in the Sexual Offences Court, which will have jurisdiction to hear sexual offence cases prosecuted on indictment. In addition, the Bill empowers the courts to make rules to ensure that proceedings are conducted in accordance with trauma-informed practice – such rules could apply to <u>all</u> courts, whether criminal or civil. 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.
Furthermore we note that the Bill contains a provision which makes it clear that court rules can be used for the purpose of ensuring that court proceedings are conducted in a way that accords with	The content of court rules on procedure and practice is a matter for the independent courts. The provisions in the Bill empower the courts to set rules designed to ensure that proceedings are

trauma-informed practice. However, this appears to us to be somewhat non-prescriptive in nature. The Bill does not, itself, provide for any specific changes to court rules. Whilst recognising the independence of the judiciary, we recommend that these provisions should be strengthened to specifically require that court proceedings must be conducted in line with trauma-informed practice. [para 419]	conducted in accordance with trauma-informed practice, without seeking to prescribe the contents of such rules. We recognise the Committee's desire to ensure that court proceedings accord with trauma-informed practice as far as possible, and we are considering whether amendments should be brought forward at Stage 2 to strengthen the Bill. When creating any legal obligation, careful consideration needs to be given as to how it would be realised and how it could be enforced, to avoid any unintended consequences.
Regrettably, we do not think it is realistic to legislate to prohibit the use of floating trials completely. Instead, we recommend that the Scottish Courts and Tribunals Service should make every effort to keep the use of floating trials to the absolute minimum that is required. We see this as being a particular priority in the proposed new Sexual Offences Court. We further note the evidence that some victims would be willing to wait longer for their case to come to court if there was certainty as to the date. However, we are also aware that some may prefer an earlier date if one was made available through the use of a floating trial. We recommend that the Scottish Courts and Tribunals Service consider the feasibility of allowing victims that choice. [para 421]	We recognise the distress that can be caused by an uncertain trial date and are supportive of reducing the use of floating trials where that can be done without having a negative impact on people's experiences. We note the Committee's recommendation for the Scottish Courts and Tribunals Service (SCTS) on this issue.
The final point which we want to raise is that legislation is not necessarily required to deliver improvements. We are very grateful to the survivors who highlighted to us some of the cultural and procedural changes which in their view could, and should, be delivered now. We have outlined these in our report. Some of these changes need not necessarily be costly. They could be as simple as avoiding legal jargon when updating survivors on their case. We also note that justice agencies need to treat survivors as individuals and tailor their support to their specific needs. Criminal justice agencies should be mindful of and responsive to any emerging research around trauma-informed practice.	We agree that many improvements can be delivered without legislation. We are working closely with the Victims Taskforce to improve the experience for all victims and witnesses, and a number of areas of work are being progressed through the Taskforce and its workstreams, including implementation of the Knowledge and Skills Framework for Trauma-Informed Justice, published last year, and improving communications more generally, to ensure that written communications are tailored to individuals and their situations. We consider that Part 2 of the Bill will complement and accelerate change within the criminal justice system.

[para 434]	
Part 3 – Special measures in civil cases	
Recommendation	**Scottish Government response**
We note that some of the existing legislation relating to special measures in civil cases has not yet come into force, for example certain provisions in the Children (Scotland) Act 2020. Some organisations have identified backlogs of legislation in this policy area which has been passed by Parliament but not yet enacted. We are concerned about this position, given that Parliament is now being asked to agree more legislation in this area. The Cabinet Secretary's explanation is that the COVID-19 pandemic interrupted implementation of the 2020 Act and, in the meantime, expanded measures are now being taken forward in this Bill. While we note this explanation, we recommend that the Scottish Government sets out a clear timetable for the implementation of the various provisions in Part 3 of the Bill. [para 486]	Part 3 makes provision on special measures to protect vulnerable witnesses and parties in civil hearings. It amends and in some cases repeals provisions contained in the Children (Scotland) Act 2020. As noted at paragraph 471 of the Committee's report we have indicated that implementation of Part 3 would take around two years (from commencement of the Bill provisions that enable the implementation). This reflects the need to: • Establish the register of solicitors which the court can use to appoint a solicitor when a person has been prohibited from conducting their own case. • Contract out the day-to-day operation of the register. This could take around a year to specify; go through the procurement process; and give the successful contractor time to get ready. • Recruit solicitors to the register. That could take another year. • Make regulations in relation to the register, including the consultation required by the Bill with the Faculty of Advocates and the Law Society of Scotland. • In line with usual practice, prepare a policy paper to the Scottish Civil Justice Council to propose court rules. We would aim to start the process of proposing rules at the same time as we start to establish the register and start to prepare regulations. • At this time, we would also check with SCTS on their operational readiness to implement the new provisions. We will need to check with the SCTS if they have enough equipment; whether any IT changes needed; and whether more public-facing information is needed.

	Part 3 of the Bill, when taken with the provisions in the 2020 Act, will enhance special measures in both civil proceedings generally and children's hearings proceedings. So when working on commencement, we will also need to take account of children's hearings proceedings as well as civil proceedings generally.
We understand that there are differences in the legislation governing civil and criminal cases. However, we have concerns that some of the restrictions on accessing special measures in civil cases which we have discussed do not reflect the trauma response approach the Bill sets out to achieve. We ask the Scottish Government for its response to the concerns we have heard. [para 489]	As the Committee notes, there are differences between criminal and civil cases. In a criminal case the offence libelled will generally relate to a specific form of conduct so it is possible to provide that a witness is deemed to be vulnerable if the offence falls into a particular category (e.g. a sexual offence or a domestic abuse offence) and is alleged to have been committed against the witness. Civil cases are different as the type of order sought is not generally specific to a form of conduct. Having said that, we recognise the concerns raised by a number of those who gave evidence that the provisions in Part 3 do not fully reflect the trauma-informed response the Bill sets out to achieve. Therefore, we will consider whether any Scottish Government amendments should be brought forward in this area.
We note the proposal in the Bill to establish a register of solicitors who may be appointed by the court to act for a person when that person has been prohibited from representing themselves in court. We are supportive of this proposal, however we heard a number of questions about how it would work in practice, including who will administer the register and what criteria will be required for inclusion. We appreciate that work is ongoing, but it does not seem satisfactory that so many basic details are unknown at a time that Parliament is being asked to scrutinise the Bill. We ask the Cabinet Secretary to address these deficiencies before stage 3. [para 490]	Section 7 of the Children (Scotland) Act 2020 would establish a register of solicitors to be appointed when a person has been prohibited from conducting their own case in some family proceedings. Part 3 of the Bill, if enacted, will repeal and replace section 7 of the 2020 Act to reflect that Part 3 extends provisions in the 2020 Act on special measures to cover civil proceedings generally and not just some family proceedings. The Bill provides that the register of solicitors must be established by the Scottish Ministers, with the option of regulations conferring the duty to maintain the register on another person. Our current

	expectation is the duty to maintain the register would remain with the Scottish Ministers, but a contract would be let so day to day work would be carried out by an external body. The Scottish Government carried out a consultation in 2021 which included material on establishing the register under the 2020 Act.[1] The proposed register under the Bill would be along similar lines to the register proposed under section 7 of the 2020 Act. (One difference is that the register may be divided into parts by reference to type, subject matter or category of civil proceedings.) The 2021 consultation sought views on a range of proposals relating to how the register might to work in practice, including: • maintaining the register; • requirements for solicitors to be included on the register; • ongoing training requirements for solicitors on the register; • how the court would appoint a solicitor from the register; appointment of Counsel; • fee rates; • expenses for solicitors; and • complaints procedures. An analysis of the responses was carried out and published.[2] The Bill provides that Scottish Ministers must by regulations specify the requirements that a person needs to satisfy in order to be on the register. Before making regulations in relation to the register, the Bill

[1] See Part 4 of Children (Scotland) Act 2020 - registers of child welfare reporters, curators ad litem and solicitors: consultation - gov.scot (www.gov.scot)
[2] Registers of child welfare reporters, curators ad litem and solicitors appointed when an individual is prohibited from conducting their own case: consultation analysis - gov.scot (www.gov.scot)

	lays down that the Scottish Ministers must consult the Faculty of Advocates and the Law Society of Scotland. The consultation on the 2020 Act provisions also contained a number of draft impact assessments, which we will look to finalise in relation to any regulations made under provisions in the Bill.
We note that the Scottish Government is planning to undertake some workshops on a 'single sheriff' model for criminal and civil cases. We look forward to receiving an update on this work. [para 491]	We note the points raised at Committee regarding the 'single sheriff' model for criminal and civil cases to be scheduled and heard together. We agree that in principle the single sheriff model is worth exploring, but as highlighted to the Committee, this would be a substantial piece of work. Further consideration would therefore be for the longer term, alongside other potential approaches to the family courts. The workshops the Committee refers to will look at the 'single sheriff' model alongside other possible ways of improving the interface between the criminal and civil courts in relation to domestic abuse. Following Scottish Government funded research published last year that examined the operation of Scottish family law in child contact cases[3] we plan to hold two workshops with key stakeholders to discuss the issues; consider what improvements are needed; and try to find potential solutions. The first workshop, with statutory delivery bodies (including SCTS, COPFS, Police Scotland), will take place on 8 May 2024. The second workshop is planned for Summer 2024 and we plan to invite representatives from voluntary, third sector and other key bodies (such as Scottish Women's Aid, Scottish Women's Rights

[3] Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings | Scottish Civil Justice Hub (scjh.org.uk)

	Centre, ASSIST, Children 1st, Family Law Association and the Law Society of Scotland.). In the Family Justice Modernisation Strategy[4] we committed to preparing a discussion paper on improving the interaction between criminal and civil courts in the context of domestic abuse. The outcomes of the workshops will inform that paper. We will keep the Committee and Parliament generally updated on progress with the workshops.
Part 4 – Criminal juries and verdicts	
Recommendation	**Scottish Government response**
The not proven verdict should be abolished and we support this provision in the Bill. [para 685]	The Scottish Government welcomes the Committee's support for the proposal to abolish the not proven verdict, which is based on significant and longstanding concerns, compelling independent research and extensive stakeholder engagement. Survivors and families have shown immense bravery and dedication in campaigning for this reform to improve our legal system.
We note that if a 12-person jury is introduced, the Lord Advocate has suggested including a retrial provision in the Bill in the event of a 7-5 verdict. This would be a significant change to the Scottish legal system on which there had not been any specific consultation. If the Scottish Government were to consider this retrial proposal, further evidence is vital and full consultation must take place. [para 689]	The issue of hung juries and retrials was addressed in the not proven and related reforms consultation[5], which attracted 200 responses from a broad range of stakeholders. If the Scottish Government were to progress any retrial proposal further, we agree that further evidence is vital and would engage appropriately with a broad range of stakeholders.
We recommend that should the Scottish Government proceed with the abolition of the not proven verdict but we cannot support the	We have always recognised that these are finely balanced decisions and a range of expert stakeholders have differing views on what

[4] Part 4: Protecting victims of domestic abuse Background - Family Justice Modernisation Strategy - gov.scot (www.gov.scot)
[5] The not proven verdict and related reforms - Scottish Government consultations - Citizen Space

proposed changes to jury size and majority because we have not heard compelling evidence to support this. [para 690]	reforms, if any, should accompany the abolition of the not proven verdict. The proposals within the Bill are based on the evidence that suggests that moving to two verdicts of guilty/not guilty will lead to an increase in convictions in finely balanced cases. This finding has been most prominently set out in the independent Scottish jury research[6] - the largest and most realistic of its kind ever undertaken in the UK - as well as in recently published research by Curley et al. (2022)[7]. These two studies are considered to be the most robust within the existing literature, on account of their stimulus material being more realistic than alternative studies, as set out in a recently published analysis by Jackson et al. (2024)[8] that considered the evidence base as a whole. Furthermore, existing practice in every similar jurisdiction worldwide - including England and Wales, New Zealand, Australia, Canada and the United States – is that two verdicts and a qualified majority are considered the most appropriate way to ensure justice for complainers while minimising the risk of miscarriages of justice. As with all research, there are limitations with mock jury research such as the extent to which research findings will translate to real life trials, and we are grateful to the Committee for their examination of these issues and for highlighting the concerns of the Lord Advocate which of course must receive careful consideration. While some have suggested that research with 'real' jurors may yield useful additional insights, it is important to be clear that research with 'real' jurors cannot be used for investigating the impact of reforms to verdicts, majority or jury size, as a real trial cannot be held multiple

[6] Scottish jury research: findings from a mock jury study - gov.scot (www.gov.scot)
[7] Proven and not proven: A potential alternative to the current Scottish verdict system - Curley - 2022 - Behavioral Sciences & the Law - Wiley Online Library
[8] Full article: The effect of verdict system on juror decisions: a quantitative meta-analysis (tandfonline.com)

	times to see the impact of changing these factors - using mock juries is the only way to do this. The proposed jury reforms are intended to be a proportionate and balanced reform that is mindful of the unique nature of the Scottish system. 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.
The Scottish Government and other relevant bodies must work closely with academics and others to collect data on the abolition of not proven and provide a report to Parliament in due course on the impact. [para 691]	We recognise the importance of monitoring and evaluating the reforms proposed by this Bill to ensure that they deliver the policy intention, drive meaningful change, that there are no unintended consequences, and to maintain public confidence in the justice system. We confirm that the Scottish Government will bring forward an amendment at Stage 2 to introduce monitoring, evaluation and reporting requirements for the Bill. Turning specifically to the topic of abolishing not proven, statistics on criminal proceedings concluded in Scottish courts are published annually in the Criminal Proceedings in Scotland[9] including convictions and acquittals by crime type. It is important to be clear that conviction rates reflect a range of factors both in and outwith the Bill (including COPFS decisions on which cases proceed to court, evidential differences between case types, as well as proportions of guilty pleas) and therefore any changes to conviction rate must be understood within this wider context. In addition to data on convictions and acquittals, we consider it would be most meaningful to include evidence around attitudes and

[9] 2. Trends in conviction rates - Criminal Proceedings in Scotland, 2021-22 - gov.scot (www.gov.scot)

	experience in a wider report to Parliament on the operation of the Bill. We would intend to consult with justice agencies, victims and witnesses, victim support organisations and others who may be relevant in this regard, such as academics with expertise in this area in order to develop the content of the report.
Part 5 – Sexual Offences Court	
Recommendation (from CJC)	**Scottish Government response**
One of our key objectives is to ensure that there is no perception that the Sexual Offences Court lacks seriousness or solemnity when compared to the High Court This was one of the particular concerns highlighted to us by survivors. Put simply, we do not want the new court to feel like it is a 'downgrade', given the seriousness of the crimes which it will hear. [Para 872]	Sexual offences are among the most serious crimes dealt with by our courts. We agree with the Committee on the importance of ensuring that any court we establish for the purposes of prosecuting sexual offences must possess a solemnity that reflects the gravity of these offences and, crucially, avoids any perception that they are being downgraded because they are not heard in the High Court. The Bill recognises this by establishing the Sexual Offences Court and investing it with the powers and authority necessary to respond to the severity of offending that it will hear. Bringing sexual offences together in a single forum will enable the Sexual Offences Court to deliver much needed improvements to the experiences of complainers through specialism in the conduct and management of cases. It is within the gift of the Parliament to help to shape how the Sexual Offences Court is seen. The Sexual Offences Court must be empowered with the authority it needs to become established as a court on equal footing with the High Court, this includes giving the judiciary and the legal profession the tools they need to create an identity and an environment that will command confidence.

We note the reasons why the Scottish Government is proposing the approach taken to rights of audience in the Bill. Our view is that, in establishing the Sexual Offences Court, the general principle should be adopted that cases which would previously have been heard in the High Court should attract the same level of representation when heard in the Sexual Offences Court. The Committee believes that this point should be set out on the face of the Bill and invites the Scottish Government to set out its views on this matter. [para 878]	That cases currently heard in the High Court should attract the same level of legal representation when heard in the Sexual Offences Court is a principle that we fully endorse. As the Committee has acknowledged in its Stage 1 Report, however, there are specific challenges associated with embedding this principle in legislation. In particular, outwith those offences which can only be prosecuted in the High Court (including rape and murder), or which can only be tried summarily, there is no defined list of criteria which is used to determine whether a case should be indicted to the High Court. Rather, decisions about which court a case is indicted to are made independently by prosecutors, acting on behalf of the Lord Advocate, based on the individual facts and circumstances of that case. The Sexual Offences Court will hear cases which would previously have been heard in the High Court and those which would have been heard in the sheriff courts before a sheriff and jury. It is challenging to set out rules regarding rights of audience in the Bill which would operate alongside prosecutorial discretion, and which seek to replicate how the Lord Advocate may choose to exercise that discretion under the current model of criminal courts in Scotland. We do, however, agree with the rationale that underpins this recommendation and confirm we are giving consideration to if and how such a principle might be embedded in legislation via Stage 2 amendments.
We heard about one specific point about rights of audience on which we believe further thinking is required. It is currently the case that the High Court will in practice deal with some serious sexual offence cases which do not include a charge of rape. Representation in such cases would be at advocate or solicitor advocate level. However, under the Bill, in the Sexual Offences	We share the Committee's desire to ensure that an accused is entitled to the same level of representation should their case be indicted to the Sexual Offences Court as they are under existing structures.

Court these same cases could be represented by a solicitor. To our mind this seems to be a discrepancy which requires to be addressed. In this regard, the Cabinet Secretary has indicated that she is working to develop a mechanism to identify such cases and make them eligible for legal aid for advocates or solicitor advocates. She is also exploring whether this mechanism can be included in the Bill. We would be supportive of this initiative. Accordingly, we recommend that the Scottish Government amends the Bill in this way at Stage 2. [para 879]	As indicated in the Cabinet Secretary's evidence to the Committee, our intention had been to bring forward provisions to achieve this through secondary legislation although we acknowledge that the Committee has recommended this to be set out in the Bill. Accordingly, we will continue to work with justice partners to develop a mechanism which seeks to ensure that an accused can access the same level of legal representation in the Sexual Offences Court to that which they are currently entitled, with a view to bringing forward amendments to the Bill at Stage 2.
We do not think that a strong case has been made that the Sexual Offences Court should be able to hear murder cases. We recommend that the Scottish Government amends the Bill so that any case involving murder is tried in the High Court. [para 884]	We recognise that the inclusion of murder within the Sexual Offences Court's jurisdiction is a complex and nuanced issue. We also acknowledge that the Committee has accurately reflected in its report our reasons for doing so and note that the Lord Advocate gave the Committee a specific example of a case in which a murder was committed following an escalation of offending behaviour and in which victims of sexual offences were required to give evidence who would have benefitted from the specialist approaches adopted by the Sexual Offences Court. We note, in particular, the Committee's concern that the Sexual Offences Court could hear murder cases in which the accused is not being prosecuted for sexual offences because these charges have been removed from the indictment before the case reaches trial albeit that these cases are likely to exceptionally rare and that the Bill gives COPFS the power to apply to transfer cases to another court where it feels that the Sexual Offences Court is no longer the appropriate forum in which to prosecute that case. In light of the evidence heard by the Committee and the recommendations it has made we are considering whether Stage 2 amendments are appropriate.

Several specific practical questions about the proposed appointment process have been raised by the Sheriff and Summary Sheriffs' Association. We invite the Scottish Government to respond to the issues they raised. [para 885]	We thank the Sheriffs and Summary Sheriffs Association for its detailed and considered response on the provisions at Part 5 of the Bill. As requested by the Committee, a response to the specific points they have raised in relation to the appointment of Judges of the Sexual Offences Court is set out below: • **Whether sheriffs will be appointed or invited to apply –** We note the points raised about the need for express provision in the Bill which sets out whether sheriffs will be appointed to the Sexual Offences Court or invited to apply. We do, however, consider that some operational flexibility may be useful in relation to the appointments process. To look at a similar process, that of the appointment of temporary judges, we note that express provision is not made on this matter in the applicable primary legislation. We are considering whether Stage 2 amendments are appropriate. • **Vicarious trauma -** We recognise the risk that those who work in the Sexual Offences Court, including judges, may experience vicarious trauma and the importance of taking steps to avert this. We note the Lord President[10] is responsible for making and maintaining appropriate arrangements for the welfare, training and guidance for and of judicial officeholders and the role the Judicial Institute for Scotland may play in ensuring appropriate training and support for the judiciary. • **Period of appointment –** We recognise that there are merits in specifying a period of time that Judges of the Sexual Offences Court are to be appointed for as proposed by the Sheriffs and Summary Sheriffs Association. We also note that similar provision exists for temporary judges who are appointed for a period of 5 years. We will explore this proposal as part of wider changes we are considering to the process for appointing Judges

[10] The Lord President and the Lord Justice General is the same person. Where this role is referenced in our responses to the recommendations about the Sexual Offences Court, we use the term 'Lord President' or 'Lord Justice General' depending on the context, including how it is noted in the legislation relevant to the matter we are discussing.

	of the Sexual Offences Court and will bring forward amendments at Stage 2 if appropriate. • **Workload of sheriffs –** Establishing the Sexual Offences Court will not generate new cases but rather will redistribute cases across a reformed court structure. SCTS indicated in their evidence to the Committee that around 11% of sheriff solemn cases indicted to its courts can be categorised as sexual offence cases and therefore could be redistributed to the new court. The Lady Dorrian Review report envisaged the creation of a specialist court with this structure would allow all available resources to be used flexibly and to full capacity. Given the responsibilities of Lord Justice General regarding the judiciary noted above which sit alongside their responsibility for efficient disposal of business within the Courts, we would anticipate that any additional demands or concerns would be for the Lord Justice General, in conjunction with Sheriffs Principal, to consider. • **Removal of Judges of the Sexual Offences Court –** This issue is dealt with below, in response to Paragraph 886 of the Committee's report. • **Remuneration for sheriffs appointed to sit in the Court –** It is not our intention at present to pay additional remuneration to sheriffs appointed to preside over cases in the Sexual Offences Court. Whilst we will keep this approach under review during implementation of the Court and beyond, it is worthwhile noting the approach proposed is analogous to that adopted in respect of temporary judges. • **Resourcing for the specific training and support needs –** We recognise the concerns raised by the Sheriffs and Summary Sheriffs Association and the importance of ensuring that those appointed to preside over cases in the Sexual Offences Court receive the appropriate training. As referenced above we acknowledge the Lord President's responsibilities for making and maintaining appropriate arrangements for the welfare, training and guidance of judicial office holders. We also note that format

	and content of training provided to the judiciary is typically the preserve of the Judicial Institute for Scotland and we would want to guard against provisions that restrict or cut across this.
The Bill provides that Lord Justice General can remove a judge from the court without any reason, though not from the office which that judge held prior to appointment to the Sexual Offences Court. A concern highlighted to us was that these arrangements could constitute interference with a judge's security of tenure, with knock-on implications in respect of the ECHR article 6 right to a hearing by an independent and impartial tribunal established by law. Views differed as to whether this was an issue of concern or not. The Scottish Government has indicated it is looking to bring forward an amendment in this area. [para 886]	We recognise the concerns that have been raised about the proposed process for removing Judges of the Sexual Offences Court and the potential impact of this on perceptions of judicial independence. It is noted that the Lord Justice General already has a similar power, in relation to Appeal Sheriffs. Under the Courts Reform (Scotland) Act 2014 the Lord President has the power to remove an Appeal Sheriff from post should this be agreed to by a majority of Appeal Sheriffs. It is also important to note that, like with Appeal Sheriffs, under the provisions in the Bill as currently drafted, the Lord Justice General would only have the power to remove Judges of the Sexual Offences Court from that position and not from their substantive post as a Senator, sheriff or sheriff principal. We recognise the need for an approach that safeguards perceptions of the integrity of judicial independence. As such, and as the Cabinet Secretary highlighted in evidence to the Committee, we have been exploring alternative mechanisms for removing judges from the Court, and confirm we will bring forward amendments at Stage 2. As part of this we have been exploring potential alignment with processes that already exist for removing temporary judges. Under this approach, temporary judges can only be removed from office by the First Minister following upon a tribunal the membership of which includes senior of members of the judiciary finding that the individual is unfit to hold the office of temporary judge.
A particular concern for us is the condition of some of the existing court estate, given that no new court buildings are planned. It is envisaged that the Sexual Offences Court will be able to sit in many more locations than the High Court, which the Cabinet	While recognising existing limitations within the court estate, an important benefit of establishing the Sexual Offences Court with national jurisdiction is that it can utilise the entirety of both the High Court and sheriff court estates. The Sexual Offences Court can

Secretary said can currently sit in 10 locations. The figure of 39 locations was mentioned. This would have the advantage of promoting 'local justice'. However, we would want to be reassured that any venue in which the new court sits will be capable of being adapted to trauma-informed practice. For example, some survivors highlighted to us the importance of the availability of separate entrances for complainers and the accused, and separate public spaces during any breaks in the trial. Furthermore, we would want to be reassured that the use of, for example, sheriff court facilities to hear cases which might previously have been heard in the High Court, would not affect the status of the court in the eyes of the public. The nature of court facilities can have an impact on how that court is perceived. [para 887]	therefore utilise those locations best suited to ensuring that victims in sexual offence cases will have access to a trauma-informed environment when engaging with the court process while ensuring that the court environment sufficiently reflects the severity of cases being heard. Decisions on where the Sexual Offences Court sits will, of course, be a matter for the judiciary supported by SCTS and in consultation with the Lord Advocate. We will work closely with SCTS and with justice partners more broadly to ensure, in so far as possible recognising the independence of the judiciary that the court environment is a key consideration in determining the most appropriate locations for the Sexual Offences Court to sit.
We have already recommended, in the section of our report on Part 2 of the Bill, that the use of floating trials should be kept to the absolute minimum that is required, and that we see this as being a particular priority in the Sexual Offences Court. [para 888]	As set out in our response to the recommendation at paragraph 421, we recognise that the uncertainty caused by the use of floating trial diets can be a source of considerable anxiety for complainers and this is particularly true of victims of sexual offences. We are supportive of reducing the use of floating trial diets where that can be achieved without impacting on the other aims of the Court.
We welcome the provision in the Bill that the new court must enable a vulnerable complainer's evidence to be given in advance of trial by the use of special measures. However, we understand that the Bill only permits complainers to give live evidence in the Sexual Offences Court if the court is satisfied that it would be in their best interests. We recommend that this provision should be amended to allow complainers more of a choice in this matter. This would be in line with views we heard from survivors that the justice system should be more responsive to individuals' preferences. [para 889]	A presumption in favour of pre-recorded evidence is a key pillar of the model of Sexual Offences Court recommended by the Lady Dorrian Review based on evidence which shows that it can reduce the risk of re-traumatisation to victims and support them in providing their best evidence. In the interests of consistency, the provisions in the Bill which establish a presumption in favour of pre-recorded evidence for victims giving evidence in the Sexual Offences Court mirror those set out in the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019. As the Committee has heard in its evidence on the Bill, informed choice is a key component of trauma-informed practice and we must

	therefore give vulnerable witnesses agency over how they chose to interact with the court process where possible. We acknowledge concerns that have been raised with the Committee that provisions in the Bill which establish the presumption and which give the Court the power to override a vulnerable witness's express preference to give evidence at trial are paternalistic and run counter to the principles of trauma-informed practice particularly in respect of adult vulnerable witnesses. We are working with justice partners to explore whether it is appropriate to bring forward amendments at Stage 2 which would ensure that the presumption in favour of pre-recorded evidence does not come at the expense of choice.
We note the University College London research conducted in England & Wales that conviction rates are lower when a complainer's evidence is pre-recorded. While, on the face of it, this is a concern, it is not clear to what extent, if any, this research might be applicable to the use of pre-recorded evidence in the Scottish justice system where different arrangements apply. It is difficult for the Committee to fully assess the validity of this proposal due to a lack of Scottish-specific research which we believe is required. [Para 890]	We agree with the Committee's conclusion that it is hard to assess the relevance to Scotland of the findings from Professor Thomas' research into the impact of the use of pre-recorded evidence on conviction rates not least because only initial findings from this study have been made public so far and, as the Committee has acknowledged, the context in which the research was conducted is very different from the system in place for pre-recorded evidence in Scotland. Once Professor Thomas's full research is published, we will be able to explore what the impact of those differences may be and how we might apply the outcomes of the research in the Scottish context. In addition, we are exploring the potential to conduct or commission our own research, in order to build up a holistic understanding of the impacts of pre-recording of evidence in Scotland.
All Members agree that more needs to be done to improve the experience of victims and witnesses in relation to sexual offences. The Committee agree that reforms, some of which are covered elsewhere in this report, such as independent legal representation for complainers in rape cases, a single point of contact for	We welcome the Committee's view, which accords with the Scottish Government's assessment. Improving the experiences of victims and witnesses in sexual offence cases is a stated aim of the Bill, which sits alongside ongoing non-legislative work with the same aim.

complainers and a pre-meeting with a prosecutor are key. Some of these can be achieved without legislation and should be pursued as a matter of urgency. [para 892]	The Victims Taskforce is leading work on developing a Victim Centred Approach across justice agencies. This includes consideration of a single point of contact. The project is expected to report in the summer. The Taskforce is also progressing work with justice agencies to improve communications with victims and witnesses. This will ensure that written correspondence is trauma informed and tailored to individuals and their circumstances. We note the Committee's views regarding meetings between the prosecutor and complainers, which is an operational matter for COPFS. We also note the information the Lord Advocate provided to the Committee on 31 January in respect of this and the ongoing Sexual Offences Review commissioned in 2021. The provision of independent legal representation as proposed in the Bill is - as the Committee has recognised - about providing advice to, and giving the views of, the complainer purely in respect of section 275 applications. As such, the independent legal representative is not there to provide wider legal advice, or to function as a single point of contact for complainers, or to replace the role of the Advocate Depute. The right to legal representation in the Bill sits alongside our continued commitment to advocacy support. The Scottish Government funds a wide range of services which support victims, survivors, and witnesses, including Rape Crisis Scotland's National Advocacy Project, Victim Support Scotland and the Scottish Women's Right Centre. This represents a significant financial investment in services that provide free support, information, and legal advice during the various phases of the criminal justice journey. The Committee will also be aware of the VIA (Victim Information and Advice) Modernisation Programme that is being undertaken by

	COPFS. This was commenced in 2022/23 and involves a comprehensive review of the VIA service provided by COPFS. This programme aims to deliver an improved service to victims, witnesses and next of kin, and support the effective preparation of casework and prosecution of crime.
Some Members[11] 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. [para 893]	We welcome the thoughtful and detailed scrutiny that the Committee has undertaken in respect of the provisions at Part 5 of the Bill. Many of the witnesses who gave evidence to the Committee highlighted the potential for a specialist court to transform the management of cases involving sexual offences in order to deliver genuine and much needed improvements to the experiences of victims in a way that would not be possible within existing structures. While we are disappointed that, despite this powerful evidence, not all members of the Committee support the proposal to establish the Sexual Offences Court, in recognition of its transformative potential we remain convinced of the need for the Sexual Offences Court and are committed to progressing with the provisions at Part 5 of the Bill. We have taken on board the comments and recommendations made by the Committee and will consider these in more detail to determine whether Stage 2 amendments are necessary to ensure the Bill equips the Court with the powers and authority to deliver the necessary improvements to the management of sexual offence cases.
Other Members[12] do not support the proposals for a standalone sexual offences court. Their view is that it would be possible to achieve the improvements and address concerns raised by some elsewhere in this report through the creation of specialist division of the High Court and Sheriff Court. For them, a new specialist court	That the Sexual Offences Court should be a new Court for Scotland was key to the model of Court that was proposed by the Lady Dorrian Review. This was on the basis that successive attempts at reforming the management of sexual offence cases over many decades within existing structures have failed to deliver meaningful

[11] Audrey Nicoll MSP, Rona Mackay MSP, Fulton MacGregor MSP and John Swinney MSP.
[12] Katy Clark MSP, Pauline McNeill MSP, Sharon Dowey MSP and Russell Findlay MSP.

will not in itself achieve a meaningful improvement to the experience of victims. [para 894]	improvements to the experience of victims and that wholesale reform was needed to achieve this. This was reiterated by Lady Dorrian in her evidence to the Committee who stressed the need for a distinct court stating that: *"the review group was unanimous… that an approach was necessary that would go beyond tinkering and creating a little specialist group within the overall judiciary".* Other witnesses, including the Lord Advocate, senior members of the judiciary and victim support organisations were similarly robust in their evidence to the Committee highlighting that a separate court was a pre-requisite to delivering wholesale reforms to the management of sexual offence cases. The proposal to introduce specialist divisions of the High Court and sheriff courts to hear sexual offences cases instead of establishing a distinct court was considered and rejected by a cross-sector Working Group. The reasons for rejecting this proposal are set out in a report published by the Working Group[13] but ultimately they concluded that this approach could not deliver meaningful and sustained improvements to the experience of victims and would not introduce a sustainable model for managing growth in the volume and complexity of sexual offence cases. We look forward to working with the Committee on the proposed recommendations to address their concerns about the Sexual Offences Court and to demonstrate the potential of a distinct court to transform the management of sexual offence cases.
Recommendation (from DPLRC) *Section 55(2) – Sexual Offence Court procedure.*	**Scottish Government response**

[13] Lady Dorrian Review Governance Group: Specialist Sexual Offences Court Working Group Report (www.gov.scot)

The Committee acknowledges that it may be helpful to have a power to make further provision about criminal procedure in order to deal with unforeseen inconsistencies and ambiguities. However, it considers that the power, as currently drafted, is broader than necessary and therefore calls on the Scottish Government to bring forward an amendment at Stage 2 which would limit the scope of the power.	We have exchanged correspondence with the Delegated Powers and Law Reform Committee on this matter. The need to adopt the regulation-making power set out at Section 55(2) of the Bill is a consequence of the approach adopted at Section 55(1) which applies High Court procedure to the Sexual Offences Court. It is possible that unforeseen difficulties may arise from this approach, the details of which are by their nature unknown at this time. Restricting the power may restrict our ability to swiftly take action to rectify any difficulties that arise. Prior to the Sexual Offences Court hearing cases we cannot know how effectively High Court procedures will operate in the new Court and what, if any, changes may be required to its processes and procedures to ensure the Court works as intended. This power enables the Scottish Ministers to bring forward regulations that will promptly address any issues that may arise as a result of adopting High Court procedure in the Court. We are considering whether Stage 2 amendments are appropriate to limit the scope of this power without creating undue to risk to the effective operation of the Sexual Offences Court.
Part 6 – Anonymity for victims	
Recommendation	**Scottish Government response**

The Bill proposes that the right to anonymity for complainers for various sexual and related offences ends on the death of the victim. Some witnesses have called for anonymity to continue after death, not least to provide reassurance for surviving family members. On the other hand, there is an established legal principle that certain rights end with a person's death. [para 966]	The consideration of the area of posthumous anonymity in the Committee's report illustrates that this is an incredibly complex issue with differing views. As the Committee has noted, a model of automatic lifelong anonymity for victims of sexual offences (and the limited other offences covered by the anonymity protections) has been adopted in the Bill for a number of reasons which are set out in the Bill's Policy Memorandum[14]. In particular, anonymity protections that automatically expire upon the death of the victim have the advantage of simplicity and certainty for the victim during their lifetime, while also representing a natural end point that is consistent with approaches in other areas of law when it comes to privacy and personal data protection. The approach in the Bill followed careful consideration of attempts to extend anonymity laws beyond a victim's lifetime in other countries. With the benefit of that consideration, it remains our policy that a Scottish model of anonymity for victims of sexual (and certain other limited offences) should be automatic and lifelong, with protections starting at the earliest possible point. We were also struck by the compelling evidence of the survivors who attended the Criminal Justice Committee to give evidence on 17 January who cautioned that any re-enforcement or pushing for people to keep themselves anonymous reinforced the idea that being a victim of a sexual offence is something to be ashamed of when it is not the victim's shame to carry anymore.[15] Both Dr Tickell and Seonaid Stevenson-McCabe, whose informed and expert perspective was recognised by the Committee when they attended to give evidence on 31 January, endorsed the anonymity model in the Bill, including the end point of expiry upon death.

[14] Policy Memorandum accessible (parliament.scot), at paragraphs 387 to 391 and 398 to 399
[15] Official Report (parliament.scot), at page 21

	As the Committee also notes in its report, we have been giving separate consideration to the calls to extend anonymity to child murder victims. This has emerged as a specific issue during the course of scrutiny of the Children (Care and Justice) (Scotland) Bill by the Education, Children and Young People Committee. During his evidence to the Criminal Justice Committee on 31 January for the Victims, Witnesses and Justice Reform (Scotland) Bill, Dr Tickell remarked that the issues concerning children who are bereaved being scrutinised at the moment raise slightly different issues. As such, it is important to be clear from the outset that anonymity for child murder victims is a distinct policy area separate to anonymity for victims of sexual offences which has not previously been consulted upon and which requires careful consideration in its own right. The Scottish Government has every sympathy for the incredible loss suffered by families who have lost children in this terrible way. The re-traumatising impact that continuing and intrusive media coverage can have on bereaved families is clear. We have been considering this issue in detail. We have shared evidence on how reporting restrictions operate in other jurisdictions and, as noted by the Committee in its report, and hosted a roundtable discussion with victim support organisations, academics, legal professionals and media representatives on 20 February. A note of the event was issued to the Education, Children and Young People Committee.[16] Meetings have been held with bereaved families and Victim Support Scotland to discuss this area in more detail. While the number of families directly affected by this issue is thankfully very small, a change in this area could have significant

[16] SG - Gaelic - Minister for Children, Young People and Keeping the Promise (parliament.scot)

	implications for media organisations and the general public, both as users of social and other media, and in terms of public interest. For these reasons, the Scottish Government does not wish to underestimate the complexities involved and consider it is critical that a wider exploration of this issue is carried out and possible options for change in a full public consultation. We are committed to ensuring that we build a robust body of evidence in order to inform any next steps in this area. As such, the Scottish Government is currently considering how a consultation can be framed and the timescales for its publication this year.
We heard calls for the provisions on anonymity to be expanded to cover other offences such as domestic abuse. We have sympathy with this suggestion, but also acknowledge some of the practical implications. In effect, this may mean that anonymity also has to be given to the accused due to the risk of 'jigsaw identification', given that domestic abuse cases are relationship- based. This is not one of the policy objectives of the Bill. We seek clarity from the Scottish Government on whether domestic abuse cases which have a significant sexual element will be captured by the provisions in the Bill. [para 967]	We note and agree with the observations of the Committee in this area in its report. The anonymity protections apply to sexual offences, offences with a significant sexual element and certain other offences that share the same underlying concerns regarding privacy and dignity, including female genital mutilation and human trafficking. It is not the policy intention for the anonymity protections in the Bill to extend to all offences of domestic abuse, including those which do not contain a significant sexual element. The practical implications of doing so is set out in the Committee's report and is discussed in the Policy Memorandum which accompanied the Bill.[17] The anonymity protections in the Bill will capture domestic abuse cases which have a significant sexual element to the offending behaviour. No additional provision is needed to ensure that offences with a significant sexual element are included within the scope of the

[17] Policy Memorandum accessible (parliament.scot), paragraphs 408 to 411

	anonymity reforms due to the early start point for anonymity provided for in the Bill. Where, for example, domestic abuse involves sexual offending behaviour, a victim will benefit from the Bill's anonymity protections. That is because the early start point for anonymity means if someone was sexually assaulted by their partner or ex-partner, then under the Bill, they would have a right to anonymity from the moment that sexual assault was alleged to have happened. The right of anonymity does not depend on any subsequent decisions by criminal justice agencies as to whether to charge the perpetrator with (a qualifying) sexual assault offence as opposed to a (non-qualifying) alternative offence like domestic abuse. Instead, it is the underlying behaviour itself that is important and if that amounts to a sexual assault (or any form of sexual offending behaviour), it would trigger the right to anonymity from the moment it occurred. What later offence, if any, the accused is subsequently charged or prosecuted with is irrelevant. This ensures that there is no disparity in anonymity protections available to victims of sexual offending behaviour simply because of the relationship between the victim and the perpetrator.
We heard from Dr Andrew Tickell and Seonaid Stevenson-McCabe about the possibility that the Bill as drafted would criminalise a family member (or indeed anyone else) who shared a child victim's social media post disclosing that they were a victim of a sexual offence. The provisions in the Bill in this area are complex. Our understanding is that the Scottish Government's policy intention is that the public domain defence for revealing information should not apply where the information was made public by a child. However, we recommend that the Scottish Government provides clarity on this point and addresses the specific scenario about the potential	The Committee's query touches on two aspects of the anonymity reforms in the Bill. Namely, the operation of the public domain defence; and separately, the additional protections for children when it comes to the ability of third parties to share identifying information about a child victim of a sexual offence. Firstly, the Committee is correct that it is the policy intention that the public domain defence does <u>not</u> apply where a person shares identifying information about a child victim of a sexual offence, including when the identifying information has already been published by the child victim themselves. Instead, to lawfully publish

criminalisation of the family member of a victim which was highlighted to us in evidence (see paragraph 938). [para 968]	identifying information about a child victim, the third party must go through the court application process in section 106D of the Bill, which serves as an additional safeguard to make clear self-publication by a child does not automatically amount to an absolute waiver of anonymity. We agree with the Committee it is important the operation of the public domain defence is as clear as possible in this regard and we are considering whether amendments at Stage 2 are appropriate. Turning to the extra safeguards in the Bill for children, while both children and adults can self-publish their own story without fear of committing a criminal offence and without having to go through a court process, the Bill provides additional protections for children when it comes to potential publication of identifying information by third parties through a requirement of judicial oversight. This applies whether or not the child has already self-published their story, for example, on their own social media page. The extra safeguards ensure the child is at the centre of decisions about how information about them may be made available, and to what extent, recognising particular sensitivities that may exist. The judicial oversight role recognises that a child may be particularly vulnerable and lack the maturity to fully understand what they are consenting to if they are approached by a third party wishing to tell their story, irrespective of whether the child has already self-published some details. It also acknowledges that children may spontaneously publish their own story on social media without a full appreciation of the implications of doing so; and we do not consider it should be assumed that a child who does so wishes extensive coverage beyond their immediate social media circle. As such, the oversight process applies to all third parties who wish to share publicly that a child has been the victim of a sexual offence and does not exempt, for example, a child's relatives.

	This reflects the Bill's policy that as far as possible a child should control the amplification of their own story and that includes through family members of the child as well as media organisations and any other third party, so a child's story cannot 'go viral' or be more widely publicised without their explicit consent. It is important to note any potential criminalisation of a relative (or indeed any third party) would require someone reporting them to the police in the first instance, the police then considering it merits a report to COPFS, and then independent prosecutors taking the view (amongst other factors) that it is in the public interest to raise criminal proceedings against the individual concerned. However, we note the points raised in this area by Dr Tickell and Seonaid Stevenson-McCabe through their supplementary written evidence to the Committee are considering whether Stage 2 amendments in this area might be appropriate, for example to provide further statutory defences, or whether this is a matter or is better left to the application of police and prosecutorial discretion. In doing so, we will have particular regard to the feasibility of any legislative carve out for example, to exempt friends, peers or family members from the court oversight process that would not unacceptably erode the extra safeguards for children.
The Crown Office and Procurator Fiscal Service has noted there is a lack of clarity in the Bill as to whether the provisions on anonymity would apply in cases where there has been an acquittal. It appears that the uncertainty arises from the way 'victim' is defined in the Bill. We understand that the Scottish Government is open to an amendment on this point and we recommend that one is brought forward at Stage 2. [para 969]	We have noted the comments of COPFS in this area. It is not the policy intention that the provisions on anonymity would cease to apply in the event of an acquittal in any criminal proceedings. In line with the Committee's recommendation we are considering whether the Bill could be clearer on this point to avoid any ambiguity by bringing forward an amendment at Stage 2.

This is a sensitive issue on which the Committee heard limited evidence, specifically from two witnesses with a specialist interest in this area. In their evidence they raised several issues which could have wider consequences and the Scottish Government should address these points. [para 970]	Our understanding of the Committee's final remarks at paragraph 970 is that the area of anonymity for victims of sexual offences more broadly is a sensitive issue in respect of which limited evidence has been taken from two witnesses - Dr Andrew Tickell and Seonaid Stevenson-McCabe – who have a specialist interest in this area. The Committee has asked the Scottish Government to address the points raised in Dr Tickell and Seonaid Stevenson-McCabe's evidence. As noted by the Committee, Dr Tickell and Seonaid Stevenson-McCabe provided a written submission to the Criminal Justice Committee[18]; attended the Criminal Justice Committee to give oral evidence on 31 January; and later provided supplementary written evidence[19]. The majority of the points raised by Dr Tickell and Seonaid Stevenson-McCabe have been covered in the responses to the Committee's specific queries above, including the public domain defence and its application to child victims' identifying information; and the scope of the provisions to other offences such as domestic abuse which contain a significant sexual element. The remaining issue raised by Dr Tickell and Seonaid Stevenson-McCabe which has not been addressed so far relates to the age at which a child may unilaterally waive their right to anonymity through a third party without the additional safeguarding role of a court. Under the Bill, children cannot unilaterally waive their own anonymity through a third party until age 18. This approach was chosen for consistency with the UNCRC definition of a child, which defines a child as everyone aged under 18[20].

[18] Response 96906720 to Victims, Witnesses, and Justice Reform (Scotland) Bill - Scottish Parliament - Citizen Space
[19] Tickell and Stevenson VWJR Bill Supplementary Evidence 16 February 2024 (parliament.scot)
[20] Convention on the Rights of the Child | OHCHR, Article 1

	In their written submission Dr Tickell and Seonaid Stevenson-McCabe observe that most of the relevant legal systems studied establish the threshold of 18 years of age for child victims to authorise other publishers to waive their anonymity, whether this is in relation to the national broadcaster or a single social media account. They note this is consistent with international definitions of childhood in the criminal justice context.[21] However, Dr Tickell and Seonaid Stevenson-McCabe also observe that in England and Wales, child victims must be sixteen years of age to waive their anonymity, and some jurisdictions set the threshold even earlier. Ultimately they invite colleagues with more experience of working with children and young people in these contexts to assist the Committee further in exploring which threshold seems most appropriate for Scots law.[22] We are keeping this area under review and welcome views as the Bill progresses through the parliamentary scrutiny process, including whether the age of 18 is considered appropriate.
Part 6 – Independent legal representation for complainers	
Recommendation	**Scottish Government response**
One of the areas the Committee would have wished to scrutinise is the process and the application of section 274 and 275 otherwise known as the 'rape shield provisions'. It would be helpful if the Scottish Government provided further information about this. [para 1036]	The process and application of sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995 have informed both the report from Lady Dorrian's review group and our provisions for independent legal representation. Paragraphs 478 to 483 of the policy memorandum that accompanies this Bill set out the current legislative framework. The Committee may find it useful to note the following research which Lady Dorrian's report referenced:

[21] Tickell and Stevenson (3).pdf, at paragraph 40
[22] Tickell and Stevenson (3).pdf, at paragraph 42

	• (Keane, E., & Convery, T. (2020) - Proposal for Independent Legal Representation in Scotland for Complainers where an Application is Made to Lead Evidence of their Sexual History or Character.[23] This research considers the origin of sections 274 and 275 as well as outlining how the provisions operate in practice (see section 1) • Cowan, S. (2020) - The use of sexual history and bad character evidence in Scottish sexual offences trials.[24] Chapters 3 and 4 provide an overview of the legislative provisions including how and when section 275 applications are made. The Scottish Government is happy to provide more information if required.
It is important that the new arrangements for independent legal representation are workable and efficient, and do not contribute to delays in the courts. It is also important that a complainer and any lawyer they have to appoint are able to have a reasonable amount of time to consider any request under section 275. As explained in paragraph 994, the Bill currently suggests 21 days but we heard evidence that this should be extended to 28 days. We therefore recommend that the Scottish Government addresses the points which have been raised with us about the proposals in the Bill and bring forward Stage 2 amendments where necessary to simplify the procedures.	The Scottish Government understands the need for these provisions to be workable for all concerned. It is important to recognise that introducing such a notable change into the process was always likely to have some operational impact and that there would be a need to consider that alongside broader intent of introducing ILR in the first place. 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

[23] Proposal for Independent Legal Representation in Scotland for Complainers where an Application is Made to Lead Evidence of their Sexual History or Character — University of Edinburgh Research Explorer

[24] The use of sexual history and bad character evidence in Scottish sexual offences trials (equalityhumanrights.com)

[paras 1038 – 1039]	resource pressures this would of course avoid additional delay to the complainer's journey time. The Bill extends existing timescales for the Crown or defence to submit a section 275 application, to no less than 21 days, ahead of the preliminary hearing or trial diet taking place. This reflects the fact that additional time will be required for complainers to instruct an independent legal representative, to seek their advice, and for the representations to be prepared on behalf of the complainer. This extension is very much a proportionate approach which recognises that complainers may need time to consider whether to instruct an independent legal representative balanced with the timetabling concerns expressed by SCTS and the judiciary. To extend the time period for submitting a section 275 application beyond the 21-day period in solemn cases would have serious operational implications. Section 66(6) of the 1995 Act provides that when an accused is served with an indictment, they are given notice to appear at a first diet or preliminary hearing not less than 29 clear days later. Any timescale for the making of an application under section 275 has to build in time for the accused to do this after they are served with an indictment. We acknowledge that there may be occasions where a complainer, or an independent legal representative, requires additional time, and we are considering whether Stage 2 amendments are appropriate to put steps in place which allow for an application to be made to adjourn the preliminary hearing, in these circumstances. This would mitigate concerns expressed by the Committee and Rape Crisis Scotland.
We also heard views that the provisions in the Bill should be extended to provide independent legal representation or advice at other stages in the justice process. This was a particular theme of the evidence we received from survivors. They felt they needed	We welcome the Committee's conclusion that independent legal representation should remain focused on section 275 applications. This concurs with the Scottish Government's policy aims and the report from Lady Dorrian's review group.

someone advocating on their behalf, particularly early in the process. In their view, this would have significantly improved their overall experience of the justice process. We are sympathetic to this view and invite the Scottish Government to comment on the evidence we heard. However, given the limitations on available resources, we think the immediate focus should be on properly resourcing the new provisions for independent legal representation for section 275 applications. [para 1040]	We paid close attention to the evidence heard and recognise the desire by some stakeholders for independent legal representation to go further. However, these provisions already amount to a substantial change and we share the Committee's sentiment that these must be workable. By focusing on delivering independent legal representation to section 275 applications as outlined in Lady Dorrian's review group report, it is our view that it will provide a base for evaluation of its effectiveness, use, cost, and whether further reform is required, including how that might best be delivered. It should also be noted that the right to legal representation sits alongside our continued commitment to advocacy support. The Scottish Government fund a wide range of services which support victims, survivors, and witnesses, including Rape Crisis Scotland's National Advocacy Project, Victim Support Scotland, the Scottish Women's Right Centre, and the Victim Information and Advice service (delivered through COPFS). This represents a significant financial investment, and the services provide free support, information, and legal advice during the various phases of the criminal justice journey.
Part 6 – Rape trials pilot	
Recommendation (from CJC)	**Scottish Government response**
It is clear to us that if the pilot is to go ahead then much improved data on conviction rates is needed. There must be clear baseline information in order to properly understand what changes may have occurred as a result of the pilot. At the moment, we are not confident this exists, at least publicly. We are not clear how a comparison is going to be made between trials that take place within the pilot and other similar cases that do not. We recommend	We know that the conviction rate for rape is consistently much lower than for other crime types: in 2021/22 the overall conviction rate in Scotland for rape and attempted rape was 48%, compared to 84% for all crimes (and 88% for all crimes and offences)[25]. However, as the Lord Advocate explained in her evidence to the Committee, that overall rate masks the fact that in the type of cases the pilot proposes to focus on – that is, cases where there is one complainer

[25] See Table 2 of the Criminal Proceedings Accredited Official Statistics

that justice agencies work together in order to address the widespread concerns about the lack of comprehensive data on conviction rates for rape and other sexual offences. This data should be published online in the interests of transparency. [para 1254]	and one charge involving one accused person - the conviction rate is even lower. We cannot break down the National Statistics by number of complainers but Justice Analytical Services have utilised a data set that is provided to Scottish Government to calculate conviction rates for case accused, by crime type. Thanks to that work, we can now report that in each of the five years 2018-19 to 2022-23, the conviction rate for cases of rape and attempted rape where there was a single charge was **between 22% and 27%.**[26] Whilst we cannot guarantee that these single charge cases involved single complainers and single accused, as that could only be guaranteed through a manual checking of indictments, we are confident those are sensible assumptions to provide a proxy to determine this conviction rate. A table setting out the data in full, including a description of how the rate is calculated, is appended to this response. This information will also be published on the Scottish Government website.[27] We recognise there are other needs in relation to available data and are convening a short life working group to examine what further work may be possible. We agree that it will be important to gather a range of baseline measures before the pilot is run, including on conviction rates, to help us identify the impact that the pilot is having. It is important to bear in mind that conviction rates are impacted by a range of factors that cannot be controlled for, and so data on conviction rates will only give us limited insight into the operation of the pilot. The pilot will need to be evaluated by measuring a number of different factors (e.g. complainers' experiences), as we discuss in more detail below.
We welcome the commitment made by the Cabinet Secretary to bring forward amendments to provide more information about the pilot on the face of the Bill. We recommend that these	We recognise the appetite for including more information on the operational detail of the pilot on the face of the Bill and confirm that

[26] We cannot tell from this data source if the accused was convicted on a single or multiple accused rape case but we are making an assumption that the all accused are single accused.
[27] Crime and justice statistics - gov.scot (www.gov.scot)

amendments provide more details about both the criteria for assessing the pilot and the criteria for cases to be included. [para 1261]	amendments will be brought forward at Stage 2 that set out the criteria for cases to be included in the pilot. We are also keen to ensure that there is clarity on how the pilot will be evaluated. The Working Group identified three key objectives against which the pilot should be evaluated: how single judge trials are perceived by those involved in the trial process; what impact they have on the effectiveness and efficiency of managing rape trials; and what impact single judge trials have on outcomes. We are considering whether amendments are brought forward at Stage 2 to set these out on the face of the Bill. This would provide a core framework for the review of the pilot in primary legislation. The final research design for the pilot will be informed through collaboration with partners across the justice sector, so it is important that the legislation allows flexibility for that process to identify any additional areas of research. Our intention is that a baselining exercise will be carried out before the pilot is run. This exercise will look at cases that meet the same criteria as those that will be heard in the pilot, and will review them using the same evaluation questions that will be used for the pilot. Once the pilot has been run and evaluated, we will then have two sets of data: one for cases heard by juries, and the other for cases with the same characteristics but heard in the pilot.
There has been some uncertainty as to which court the pilot would take place in. The Bill provides that it can take place in either the High Court or the new Sexual Offences Court. However, the Cabinet Secretary told us that a decision still had to be made, and the sequencing of the introduction of the proposals in the Bill will be important in this regard. She set out some provisional thinking when she gave evidence but stressed that no decisions had been made. For all these reasons, we recommend that, ahead of Stage 2, the Scottish Government, sets out a clear timeline for the order	We recognise the importance of a clear timeline for implementation, particularly as the Bill represents a major package of transformational change and as some of the reforms are interlinked. The sequencing of implementation will be important in determining what we define as the baseline when we come to evaluate the pilot.

in which it would propose to implement the various provisions in the Bill with indicative dates. [para 1263 - 1264]	We intend for implementation to be phased, to take account of resourcing and the planning required by justice agencies to ensure all reforms are carefully managed and do not disrupt the operation of the system. The delivery of some policies requires secondary legislation, Orders under the Scotland Act 1998 and/or court rules, and some will require training and I.T. adaptations for operational partners. We have taken all of these factors into account in our implementation planning, and the current estimated timeline is as follows (based on the Bill passing in late 2025, and subject to the to further discussions with justice agencies and other stakeholders as the Bill makes its way through Parliament and availability of resources beyond that): • Part 2: Trauma-informed practice - Q1 2025 • Part 1: Victims and Witnesses Commissioner – Q3 2025 • Part 4: Criminal verdicts and juries – Q3 2025 • Part 6: Independent legal representation – Q3 2025 • Part 6: Anonymity – Q4 2025 • Part 5: Sexual Offences Court – Q4 2026 • Part 3: Special measures in civil cases - Q1 2027 • Part 6: Pilot – Q4 2028 We will keep the Committee updated with any significant changes to this timeline.
Our preference is that the Scottish Government provides further evidence to Parliament on the detail of the pilot, including the assessment criteria, in the form of a report before any regulations are laid. Furthermore, Parliament would need time beyond the usual 40 days to consider any regulations for this Part and possibly make amendments. As such, they should be subject to the 'super	We note the Committee's recommendations on parliamentary procedure for the regulations establishing the pilot. As set out elsewhere in this response, we intend to amend the Bill to provide further detail on the pilot's operation in primary legislation, ensuring that Parliament is able to consider this as part of its scrutiny of the Bill.

affirmative' procedure and provided as drafts first for consultation by the relevant committees. [para 1265]	We will consider the appropriate procedure for the regulations on the pilot, and the request that Scottish Ministers lay a report before laying the regulations.
An idea was mentioned in evidence that an alternative to a single-judge trial would be a panel of judges. There is an argument that this might address some of the concerns which have been raised with us about vesting too much decision-making power in one person. The Cabinet Secretary appeared to be open-minded regarding this possibility. We invite the Cabinet Secretary to update us on the Scottish Government's thinking ahead of the Stage 1 debate. [para 1267]	The single judge model is established, effective and respected in Scotland. However, we have listened carefully to the views witnesses have expressed to the Committee and we recognise that some stakeholders are keen to see joint decision-making for cases in the pilot, and greater diversity of decision makers than a single-judge model offers. We have examined a number of different panel models used by other European jurisdictions, engaging with judges, defence lawyers, lay panel members and prosecutors to hear their perspectives on how these models work in practice. We believe that a panel has the potential to address concerns about a single decision maker, while remaining consistent with the aims of the pilot. We see particular advantages in adopting a mixed panel model where one professional judge sits alongside two lay members: there is longstanding precedent for this kind of approach in our specialist tribunals, and it would increase the diversity of decision-makers hearing cases in the pilot. The alternative approach would be a panel of professional judges. We will continue to explore, and to discuss with partners, how a panel model could be delivered. We will write to the Committee before Stage 2 to update Members on our intended approach.
Having considered all of this evidence and acknowledging that the proposed judge only pilot is a significant departure from the long-established right of a person accused of serious crime to trial by a jury of their peers, some Members of the Committee[28] have reached the conclusion that the pilot should be supported, subject	We welcome Members' support for the pilot, and their recognition that it offers an unrivalled opportunity to gather meaningful, empirical evidence on the most effective way to respond to cases of rape and attempted rape. We agree that the Committee has heard compelling

[28] Audrey Nicoll MSP, Rona Mackay MSP, Fulton MacGregor MSP, John Swinney MSP

to a number of important safeguards. Those Members recognise that the principle of trial by jury for a serious crime should only be departed from for significant reasons and these Members consider that working to improve the experience of victims and complainers merits such a course of action. Those Members believe such a pilot is also justified given the evidence the Committee heard from the Lord Justice Clerk and the Lord Advocate. Those Members believe the pilot should proceed on the basis that it is time- limited for a period of no longer than 18 months. The concerns of the Delegated Powers and Law Reform Committee that a pilot could be run more than once due to the current drafting of the Bill, must be fully remedied by amendment at Stage 2. The basis for evaluation of the pilot must be expressly set out in the Bill by amendment at Stage 2. These Members consider that such a pilot will provide a unique and valuable opportunity to gather evidence on topics such as rape myths, experiences and perceptions of those involved in the trial process, it will create the opportunity to obtain written judgements from a judge, and measure outcomes such as early pleas and convictions in rape trials. Their view is that there is a need to take a bold approach to address these issues and a pilot would allow practical evidence to be obtained about an alternative model which could have the potential to deliver improvements. [para 1268]	evidence from witnesses that underlines the need to take a substantively different approach to these cases. We recognise the appetite for including more information on the operational detail of the pilot on the face of the Bill. We have been clear that the pilot will be time-limited, and we are considering whether to bring forward amendments at Stage 2 that would specify the maximum duration of the pilot. Before setting out the duration, it will be important to understand how many cases a pilot of that length would be likely to capture, so we will model this alongside preparing any amendments to specify the length of the pilot. As we previously indicated to the Delegated Powers Committee, it is our intention to run a single pilot. We are exploring amendments that could be brought forward at Stage 2 to explicitly limit the regulation-making power in section 65 so that it can only be used to run a single pilot, while preserving the ability to make further regulations that may be needed to support the running of that pilot.
Other Members[29] are not persuaded that this this pilot should go ahead. In their view, this proposal represents a fundamental departure in Scots law from the long-established right of a person accused of serious crime to trial by a jury of their peers. These Members believe there is insufficient evidence to justify what would amount to an experiment with people's lives. They are also concerned that this will create a two-tier justice system, with a distinction between the crimes of rape and murder, which will still	We note Members' views on the pilot and re-iterate our commitment to continuing to listen to the voices of members from all parties, as well as those of partners from across the justice system and of victims themselves. Juries play a key role in Scotland's justice system, but there is a compelling body of evidence that rape myths may influence the decisions that jurors reach in sexual offence cases. That is a risk to

[29] Sharon Dowey MSP and Russell Findlay MSP

be heard by juries. These Members believe in the value of juries, which are a cornerstone of the justice system and which reflect wider society and comprise a broad range of life experiences. Furthermore, they agree with concerns that have been raised about the homogenous nature of the judiciary, particularly in respect of gender and ethnicity. These Members agree with witnesses who expressed concern about a lack of data about rape prosecutions and convictions generally, not least in relation to single-complainer cases. They are also mindful of the conflicting evidence about the prevalence and impact, or otherwise, of rape myths. These Members also believe that time needs to be given to assess the impact of directing juries about rape myths, which only began in September 2023 and on the potential impact on rape prosecutions following the High Court's October 2023 decision to overrule Smith v Lees 1997 JC 73. While the threats of a potential boycott by legal practitioners are unfortunate, their view is that they cannot be wished away as they could render the proposed pilot unworkable and should be meaningfully addressed by the Scottish Government. They believe it is important to recognise that some rape complainers expressed a preference for their cases being heard by a jury, rather than a single judge. They also have concerns about what they believe is a lack of clarity about the Scottish Government's intent about this proposal and about how it will be assessed. Furthermore, their view is that unanswered questions remain about the cost of any pilot and whether the required resources could potentially be better used to improve victims' experiences in other ways. [para 1269]	the administration of justice, which could in turn undermine public confidence in juries. We believe it is important that we examine the use of juries in rape cases and try to better understand the impacts they have: a time-limited pilot enables us to do that. As indicated in our response to paragraph 1267, we are exploring the possibility of adopting a model for the pilot that would involve two lay members sitting alongside a professional judge, which would retain lay participation and increase the diversity of decision-makers in the pilot. We hope that the data on single complainer conviction rates we have set out above in response to paragraph 1254 is also helpful to Members. We continue to engage with legal practitioners on proposals for the pilot. As the Cabinet Secretary stated in her evidence to the Committee, we are open to dialogue and input on plans for the pilot's operation and evaluation, to give as much assurance as possible to those who have concerns.
Other Members[30] take the following view. Trial by jury for serious offences has been a tenet of Scots law for centuries. They would have expected the Scottish Government to come forward with robust proposals for a time limited single pilot with clear criteria and	We note Members' views on the pilot. We agree that there is much more that can be done to improve access to justice for rape victims. We believe we need the empirical evidence a pilot can give us to

[30] Katy Clark MSP and Pauline MacNeill MSP

protections when proposing to set aside this right, and for the Committee to have the full opportunity to scrutinise those proposals. It should also be noted that this is not a pilot and would apply to real cases. These Members believe that women rape victims are failed by the justice system in rape cases, with complainers describing their experiences as retraumatising and citing the delays in the justice system as causing significant distress. However, from the evidence they have heard, the existence of the jury has not been one of the foremost issues that complainers have raised. These Members are concerned about proceeding with a 'pilot' when there is such polarisation of views, and are concerned about the impact this will have on public confidence, given that proposals are not fully developed, and believe it is more important to focus on other specific measures that will improve women's experience, such as independent legal representation and a single point of contact for rape victims. They also have concerns regarding the lack of diversity in the cohort of judges who will hear rape cases. They therefore do not support these proposals. If the provisions relating to the pilot proceed, a panel of three should be considered and a sunset clause will be essential. [para 1270]	consider how to respond to cases of rape and attempted rape most effectively. As indicated in our response to paragraph 1267, we are exploring the possibility of adopting a panel model for the pilot, which would increase the diversity of decision-makers in the pilot. Elsewhere in this response, we have also set out a range of amendments we plan to bring forward in order to include more information on the pilot in primary legislation, including on the case criteria, the pilot duration, and the bases for evaluation. We hope that Members find this additional information helpful, and we look forward to continued engagement as we seek to build as much consensus as possible on the pilot.
Recommendation (from DPLRC) *Section 65(1) – Pilot of single judge rape trials*	**Scottish Government response**
The Committee calls on the Scottish Government to bring forward amendments at Stage 2 which would limit the scope of the power, particularly regarding the "specified criteria" to which a trial must meet to fall under the scope of the pilot, and the time period of the pilot	Please see our response to paragraph 1261 of the Criminal Justice Committee's report, above.
The Committee also calls on the Scottish Government to bring forward amendments at Stage 2 which would make it clear that the pilot can only run once, without limiting its ability to bring forward	Please see our response to paragraph 1268 of the Criminal Justice Committee's report, above.

additional technical regulations in relation to the pilot should this be necessary. [this recommendation is supported by the CJC – see paras 1266 and 1268 of their report]	

Appendix 1: Conviction rates data *(the highlighted column contains the conviction rates referred to in our response to paragraph 1254)*

	Accused with single charge of rape or attempted rape at registration			Accused with more than one charge of rape or attempted rape at registration		
	Convicted	**Not convicted**	**Conviction rate**	**Convicted**	**Not convicted**	**Conviction rate**
2018-19	21	73	22.3%	154	145	51.1%
2019-20	23	62	27.0%	119	141	45.8%
2020-21	12	38	24.0%	75	80	48.4%
2021-22	19	67	22.1%	174	128	57.6%
2022-23	24	70	25.5%	155	123	55.8%

Source: Scottish Government – Journey Times Data Extract

Notes:

1. This data extract is derived from the Scottish Courts and Tribunals Service administrative criminal data base and is provided primarily for the calculation of criminal case accused journey times. This is a different data source from Police Scotland's Criminal History System which is used to produce the Criminal Proceedings Accredited Official Statistics. The data sources are very close but not identical in terms of overall conviction numbers and conviction rates for rape and attempted rape.
2. These data represent the number of individual case accused who had at least one charge of rape or attempted rape at registration.
3. The data are split between those who had only a single charge of rape or attempted rape and those who had more than one charge. The single charge cases are therefore assumed to be single charge and single complainer.
4. We cannot tell from this data source if the accused was convicted on a single or multiple accused rape case but we are making an assumption that the all accused are single accused.
5. In keeping with the methodology used to produce the Accredited Official Statistics, cases where an accused was found guilty of a charge other than rape or attempted rape have been excluded from the totals.
6. Not convicted includes verdicts of acquitted, plea of not guilty accepted and deserted and should not be treated as an acquittal rate.