

Criminal Justice Committee
Wednesday 12 March 2025
9th Meeting, 2025 (Session 6)

Victim Notification Scheme (VNS) and wider changes to the Victims, Witnesses and Justice Reform Bill at Stage 2

Note by the clerk

Introduction

1. On 4 March 2025, the Committee received the attached letter from the Cabinet Secretary for Justice and Home Affairs and the Minister for Victims and Community Safety (see **Annex A**).
2. This letter provides an update on the Scottish Government's approach to the Victims, Witnesses, and Justice Reform (Scotland) Bill in relation to the Victim Notification Scheme (VNS) and outlines amendments to the Bill at Stages 2 and 3. The letter also comments on other planned amendments to the Bill.
3. This Bill is being considered at Day 1 of Stage 2 at today's meeting.
4. The letter details how the Scottish Government intends to merge the VNS and the Victim Information Scheme (VIS) to create a single, streamlined process for victims. It also outlines key legislative changes aimed at improving access to information for victims, particularly in cases involving compulsion orders and restriction orders (COROs).
5. The letter also provides information on other proposed amendments to the Bill, including measures related to the eligibility of child victims, nomination of persons to receive information, secure care, and cross-border transfers of prisoners.

Action

6. Members are invited to note the contents of the letter from the Cabinet Secretary and Minister, and use the information contained in the letter as part of the Stage 2 process.
7. Separately from consideration of the Bill at Stage 2, members may wish to consider if they wish to ask for feedback from any external organisation (e.g. victim's groups) on the contents of the letter. If so, members are invited to let the clerks know directly and we can approach them and ask for views.

Clerks to the Committee
March 2025

Annexe A: Letter from the Cabinet Secret for Justice and Home Affairs and Minister for Victims and Community Safety

Audrey Nicoll MSP
Convener
Criminal Justice Committee
The Scottish Parliament
Edinburgh
EH99 1SP

VWJRBill@Parliament.Scot

4 March 2025

Dear Convener,

We are writing to provide an update of how we will be approaching the Victims, Witnesses, and Justice Reform (Scotland) Bill in relation to the Victim Notification Scheme (VNS), as well as provide you information about amendments to the Bill on other topics that we had proposed lodging at Stage 2 but are no longer bringing forward at this stage.

Further to this - following meetings and discussion of the history of removing not proven – the Cabinet Secretary thought it may helpful to set out a timeline in relation to this topic. This is attached in Annex A at the end of the letter.

VICTIM NOTIFICATION SCHEME

When the Minister wrote to you in January, she committed to providing specifics about proposed amendments as they became available and we are now in a position to do this.

I am pleased to note that we have been able to go beyond the scope of the independent Review in one important aspect, following on from positive engagement with stakeholders.

This relates to amendments which will take forward the merger of the VNS and the Victim Information Scheme, making it easier for victims to navigate what can be a complex system - and will allow for one criminal justice scheme to operate to the benefit of all victims currently served by these two separate schemes. This will also ensure that the information available to victims is no longer determined by the length of the sentence received by the offender. Alongside the amendment underpinning the creation of the Victim Contact Team, this represents a platform for fundamental change to how the VNS operates.

As you know, the current legislative provision for the VNS is a complex area of law which requires careful consideration as amendments are developed. However, we are confident that the package of amendments that the Minister will bring forward at Stage 2 as the Scottish Government's response to the recommendations from the VNS review will, if agreed, make a real difference to victims' experiences.

Due to this complexity of the current legislation for VNS the Minister plans to lodge amendments across Stages 2 and 3 to ensure they are all fit for purpose and deliver what is needed for victims effectively.

At Stage 2, we are prioritising core principles of reform such as the legal underpinning of the victim contact team and revising the legal framework for VNS. The Minister will also lodge necessary amendments to reform how the VNS operates in respect of compulsion orders and restriction orders (COROs).

These amendments will deliver the principles of change for VNS reform for consideration by the Committee.

At Stage 3, we will require to lodge some further amendments to help fully deliver the ambition we have for victims. Many of these amendments will be in the category of specific aspects of how the reformed VNS will operate rather than the general principles of reform.

Further details are given below:

Stage 2 amendments – reform principles

VNS and VIS merger

This provides the wider legislative framework for a reformed VNS. The effect of the amendment is to merge the existing separate schemes of a) the VIS which provides more limited information for victims of offenders sentenced to fewer than 18 months' imprisonment and b) the VNS which currently operates for victims of offenders sentenced to 18 months or more. As noted above, this will result in a single criminal justice scheme, reducing complexity, and expanding the entitlement of victims by ensuring that victims' entitlements to information will be determined by that person's status, rather than by the sentence received by an offender. This reform goes further than the recommendations from the independent review as it has become apparent in considering how to effect legislative change in this area that greater benefits can be achieved by taking this step.

The legal underpinning for the victim contact team

A key part of establishing the victim contact team is allowing data sharing from COPFS to the victim contact team, since the recommendation from the review proposed automatic sharing of data. This is fundamental to allowing the Victim Contact team to operate and carry out their role of ensuring that victims are provided with information about the scheme and are supported to exercise meaningful choice about how to engage with it.

CORO VNS reforms

The policy intention is to improve the quality of information available on the CORO VNS and aim for parity of treatment for victims where possible, irrespective of where the offender is being detained:

- Amend section 2(3)(b) of The Victims and Witnesses (Scotland) Act 2014 to include persons who are subject to a compulsion order and restriction order, transfer for treatment direction or hospital direction; bringing them under the Scottish Ministers functions. This will allow for the CORO VNS to be included in the annual reports on standards of services for victims and witnesses, aligning reporting standards across the VNS.
- Enable registered victims to receive information in relation to a patient on a compulsion order and restriction order (CORO), where that patient has transferred out of Scotland, been made subject to corresponding measures, and subsequently transferred back into Scotland on a CORO for the same offence.
- Allow for victims who have had the opportunity to make representations to be told the outcome of the related decision. Allow for victims to be told about a decision by the Mental Health Tribunal for Scotland to make no order under section 193 of the Mental Health Act; as well as information about appeals against that decision.
- Create a power to be able to redefine what is a “relevant” condition, as described in section 18A of the Criminal Justice (Scotland) Act 2003. The intention is to work with victims to better identify the conditions that they wish to know about and make changes to the CORO VNS scheme in light of those consultations and discussions. Creating a power now to be able to redefine what a 'relevant' condition as described in section 18A of the Criminal Justice (Scotland) Act 2003 will allow us to make the necessary changes sought by victims in the future.
- Ensure the first occasion of unescorted suspension of detention (“SUS”) from hospital victims are told about relates to the first occasion outwith hospital grounds. Currently under the VNS, registered victims are entitled to know about the first occasion an offender on a compulsion order and restriction order, transfer for treatment direction or hospital direction is granted unescorted leave. This is known as unescorted SUS, and it can take place within or outwith hospital grounds.

When the first occasion of unescorted SUS is granted within the grounds of the hospital, there would be minimal risk the victim and patient might encounter one another. It is our view that it is more relevant to the victim to receive information about the first occasion of unescorted SUS when it is outwith hospital grounds. As such this amendment will ensure that victims receive information about the first occasion an offender is granted unescorted suspension of detention when this takes place outwith hospital grounds.

Stage 3 amendments – detailed areas

UNCRC child victim compatibility

CJ/S6/25/9/1

- These amendments will ensure that the eligibility of child victims registering for both the criminal justice VNS and the CORO VNS is compatible with UNCRC.

Nomination of person to receive information

- All victims, regardless of age, will be able to nominate a person to receive information on their behalf, under both the criminal justice VNS and the CORO VNS. Victims can already nominate a “supporter” which is an organisation prescribed by Ministers who will receive information instead of, or as well as, the victim. This includes any information before decisions are taken to release a convicted person.

Secure care

- The policy intention is to provide parity of information for victims to access information as far as possible, including where a child offender is in secure accommodation.

Eligibility of others to receive VNS information in the event of the death or incapacity of a victim

- The intention is for these amendments to provide for discretion and flexibility in relation to who might be able to register for information in the event of death or incapacity of a victim, moving away from the strict hierarchy that is currently in place.

Information on every instance of temporary release where offender may be closely proximate to victim

- We will seek a power such that the Scottish Ministers may, by regulations, add provision on temporary release and remove existing reference to temporary release as part of that addition. At present, victims can only be notified of the first time an offender is entitled to be considered for temporary release.

Cross border transfer of prisoners (and an ancillary information power)

- These amendments will provide for information to be shared with the victim where an offender or patient is transferred to or from another jurisdiction, or is deported.

CORO VNS reforms

- *Any further amendments needed following Stage 2 consideration*

OTHER AMENDMENTS

As you will recall, the Cabinet Secretary wrote to you on 31 October 2024 outlining the Scottish Government's plans for amendment to the Bill at Stage 2. A small number of amendments which had initially been proposed for Stage 2 and included in that letter are not being taken forward for this stage. These are:

Victims and Witnesses Commissioner

Expanding the definition of 'victim', to ensure that the Commissioner can engage with as wide a group of people as possible

As the Cabinet Secretary told the Committee on 26 February, the planned changes to the VNS mean that it is preferable to lodge this amendment at Stage 3 to ensure that the definition for the VWC aligns with the work on the VNS.

Technical amendments in relation to how criminal justice organisations are collectively referred to

Work is ongoing in and we intend to lodge amendments in relation to this area at Stage 3.

Special measures in civil cases

Extending who is deemed vulnerable to include persons who provide evidence from a reputable source of domestic abuse or sexual assault by a party to the case

The Cabinet Secretary discussed at committee concerns raised by Scottish Women's Aid about how this amendment would work in practice. Engagement about how best to address these concerns continues.

What the courts should do when a person is deemed vulnerable

As the Cabinet Secretary told the committee on 26 February this is a complex area and there are concerns that this amendment might remove the ability of a judge or sheriff to take decisions based on the particular circumstances of an individual case. Furthermore, removing that discretion might raise concerns about the right to a fair hearing.

Extension of special measures to include participants in inquiries, such as Fatal Accident Inquiries (FAIs)

FAIs are non-adversarial in nature and can take place in a wide variety of locations, which might give rise to practical points. Given this, the Scottish Government does not intend to lodge the above amendment at Stage 2.

Independent legal representation

Extending the restrictions in section 274 so that they apply to docket witnesses and complainers in all cases which involve offences under section 1 of the Domestic Abuse (Scotland) Act 2018, where the behaviour includes a sexual element.

Officials are continuing to engage with SCTS to better understand the operational impact on the courts and judiciary of this amendment with the intention of lodging it at Stage 3.

I trust that the Committee finds this helpful, as we approach the amending stages of the Bill, and we look forward to working with the Committee on this.

ANGELA CONSTANCE

SIQBHIAN BROWN

Timeline of recent consideration of the not proven verdict and numbers of accused acquitted not proven

Year	Event	Criminal proceedings data Total number of people acquitted not proven by main offence ¹
1992	Not proven verdict delivered by the jury in the case of the murder of Amanda Duffy. Her family, including her father, Joe Duffy, launch campaign for the abolition of the not proven verdict. Westminster considers abolition of the verdict a number of times following efforts by George Robertson MP in 1993 and John Home Robertson MP in 1995.	1992-93 – data not accessible.
2013	Michael McMahon’s Member’s Bill, Criminal Verdicts (Scotland) Bill is introduced. The Bill proposes the abolition of the not proven verdict along with an associated increase in the jury majority to two thirds.	2013-14 Total: 1116 - sexual crimes: 92 - rape/att rape: 43
2014	Report of the Academic Expert Group to Lord Bonyon’s Post-Corroboration Safeguards Review invites the Review to consider if the not proven verdict should be abolished; whether jury size should reduce to 12 and whether a form of qualified majority should be adopted.	2014-15 Total: 1147 - sexual crimes: 124 - rape/att rape: 50
2015	The final report of Lord Bonyon’s Post-Corroboration Safeguards Review recommends jury research to understand the use the not proven verdict and the relationship between the three verdict system, jury size and jury majority.	2015-16 Total: 1173 - sexual crimes: 116 - rape/att rape: 46
2015	Not proven verdict delivered by the jury in the case of the rape of Miss M.	
2016	Michael McMahon’s Member’s Bill fails to secure enough support to progress beyond Stage 1. A key	2016-17

¹ Information on other outcomes (including total number acquitted not guilty and where the charge is proved) is available through the same links noted below.

	reason for opposition was to await the evidence from the planned jury research.	Total: 1234 - sexual crimes: 110 - rape/att rape: 42
2017		2017-18 Total: 1024 - sexual crimes: 112 - rape/att rape: 48
2018	Miss M launches the End Not Proven campaign with Rape Crisis Scotland.	2018-19 – data not accessible.
2019	The independent Scottish jury research is published, It is the largest and most realistic of its kind ever undertaken in the UK and it is the first large-scale mock jury research project to consider the unique Scottish jury system with 15 jurors, three verdicts and the simple majority.	2019-20 Total: 1039 - sexual crimes: 157 - rape/att rape: 74
2019/20	Scottish Government conducts extensive engagement programme on the jury research and publishes a summary of discussions .	2020-21 Total: 356 - sexual crimes: 66 - rape/att rape: 42
2021	SNP manifesto commits to consulting on the removal of the not proven verdict given the strong case that can be made for its abolition. Manifestos of Scottish Conservatives, Scottish Greens and Scottish Labour commit to end the not proven verdict.	2021-22 Total: 752 - sexual crimes: 169 - rape/att rape: 95
2021	Scottish Government launches a public consultation to seek views on the three verdict system in Scottish criminal trials and, if the not proven verdict were to be abolished, whether any accompanying reforms would be necessary.	
2022	Analysis of responses and responses to the consultation published; 62% of respondents support abolition of the not proven verdict. In terms of jury majority, 28% believe that with two verdicts we should maintain the current simple majority requirement;	2022-23 Total: 984 - sexual crimes: 201

	52% support introducing a qualified majority of some kind; only 13% support a system similar to that in place in England, requiring a majority of 10 from 12 noting the other differences in the criminal justice systems of the two jurisdictions.	- rape/att rape: 95
2023	Victims, Witnesses and Justice Reform (Scotland) Bill introduced, seeking to remove the not proven verdict and move to a two verdict system.	