

Criminal Justice Committee

7th Meeting, 2024 (Session 6), Wednesday 7 February 2024

Victims, Witnesses, and Justice Reform (Scotland) Bill

Note by the clerk

Background

1. The Committee is taking evidence on the [Victims, Witnesses, and Justice Reform \(Scotland\) Bill](#) at [Stage 1 of the Parliament's legislative process](#).
2. The Bill proposes changes to the law to try to improve the experience of victims and witnesses in the justice system. The Bill also proposes changes to the criminal justice system to try to improve the fairness, clarity and transparency of the framework within which decisions in criminal cases are made.
3. In general, the Committee is adopting [a phased approach](#) to its consideration of the Bill, to divide the Bill into more manageable segments for the purposes of Stage 1.

Today's evidence on the Bill

4. At today's meeting, the Committee will conclude its oral evidence taking by hearing from Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs, and Scottish Government officials.
5. The session will focus on the Cabinet Secretary's response to the written and oral evidence the Committee has received in relation to Parts 4, 5 and 6 of the Bill.
6. The Cabinet Secretary last appeared before the Committee on 15 November 2023 when she gave evidence in response to the written and oral evidence the Committee had received in relation to Parts 1, 2 and 3 of the Bill.
7. Since then, some further issues have emerged in relation to Parts 1 to 3 of the Bill. Therefore, Members may also wish to address these issues with the Cabinet Secretary on 7 February.

Parts of the Bill

8. The substantive parts of the Bill which the meeting on 7 February may cover are-

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| <h2>Part 1</h2> <h3>Establishment of a Victims and Witnesses Commissioner for Scotland</h3> <p>Establishes an independent Commissioner for Scotland who is independent from the Scottish Government, and accountable to the Scottish Parliament.</p> | <h4>Commissioner's functions and powers:</h4> <ul style="list-style-type: none">Promote and support the rights and interests of victims and witnessesMust take steps to raise awareness and promote the interests of victims and witnessesMust monitoring compliance with the Standards of Service and the Victims' Code for ScotlandMust promote best practice and a trauma-informed approach by criminal justice agencies and those who provide support services to victimsInvestigate whether criminal justice agencies have had regard to the interests of victims and witnesses in carrying out their functions, but not intervene in individual cases |
| <h2>Part 2</h2> <h3>Trauma-informed practice</h3> <p>Creates a new legal requirement for criminal justice agencies to have regard to trauma-informed practice. The Victims and Witnesses (Scotland) Act 2014 already sets out range of general principles to which criminal justice agencies must have regard to. Part 2 adds trauma-informed approach to that list in the 2014 Act.</p> | <ul style="list-style-type: none">Creates a requirement for justice agencies to have regard to trauma-informed practice, and for Standards of Service they produce to cover trauma-informed practiceEmpowers the courts to set rules and procedures on trauma-informed practice in relation to both criminal and civil business.A requirement for the judiciary to take trauma-informed practice into account when scheduling both criminal and civil court business. |
| <h2>Part 3</h2> <h3>Special measures in civil cases</h3> <p>Special measures are practical steps a court can take to help vulnerable litigants and witnesses to be in a courtroom setting with as little fear and distress as possible.</p> <p>Currently under the law, no adult in a civil case is automatically treated as vulnerable or entitled to special measures. Special measures are also only available where evidence is being taken and witnesses are being cross-examined on it.</p> | <h4>Part 3 of the Bill broadly split into the following areas:</h4> <ul style="list-style-type: none">It would extend a new approach to special measures found in the Children (Scotland) Act 2020 for certain family cases to civil cases more generally.It would treat certain categories of witness as automatically vulnerable and would also allow special measures to help litigants in hearings where evidence is not being taken.It would allow a court to prohibit a litigant from personally conducting their own case and cross-examining witnesses in civil cases. |

Part 4

Criminal juries and verdicts

Contains measures reforming criminal trials.

- Removes 'Not Proven' as a verdict in all criminal trials, leaving verdicts of 'Guilty' and 'Not Guilty'.
- Changes the size of a jury in a criminal trial from 15 to 12 members.
- Changes the majority of jurors required for conviction from being a simple majority (where there is a full complement of jurors) to a two-thirds majority.

Part 5

Sexual Offences Court

Establishes a new specialist court to deal with serious sexual offences

- Establishes a Sexual Offences Court with the power to deal with serious sexual offence cases, including non-sexual offences forming part of such cases
- Provides that judges for the new court would be drawn from existing High Court judges and sheriffs with relevant skills, experience and training.
- Sets out a range of training requirements and procedures (e.g. on the use of pre-recorded evidence) aimed at embedding a trauma-informed approach.

Part 6

Sexual Offences Cases: further reform

Introduced new provisions, as well as amending existing legislation, to make further reform to sexual offence cases

- Provides automatic life-long protection for the anonymity of victims of sexual offences.
- Gives complainers in sexual offence cases a right to independent legal representation when an application is made to introduce evidence about the complainers' sexual history or character
- Gives power to the Scottish Ministers to establish, by secondary legislation, a pilot scheme for rape trials without a jury.

Further reading

9. A SPICe briefing on the Bill [can be found online](#).
10. The responses to the Committee's call for views on the Bill [can be found online](#).
11. A [SPICe analysis of the call for views, covering Parts 1 – 3 of the Bill](#) was circulated with papers for the meeting on 4 October 2023.
12. A [SPICe analysis of the call for views, covering Part 4 of the Bill](#) was circulated with papers for the meeting on 29 November 2023.
13. A [SPICe analysis of the call for views covering Parts 5 and 6 of the Bill](#), was circulated with the committee papers for the meeting on 10 January.

Previous evidence sessions

14. A summary of the oral evidence sessions the Committee has undertaken on the Bill is set out in the Annex to this paper.
15. A summary of the written submissions received in the Bill are set out in paper CJ/S6/24/7/2, which accompanies the papers for this meeting.

**Clerks to the Committee
February 2024**

ANNEX

The Criminal Justice Committee began its phased scrutiny of the Bill by hearing from the Cabinet Secretary for Justice and Home Affairs on 27 September 2023. This session covered all of the policy aspects of the Bill-

- The Official Report of the evidence session of 27 September is available online to read: [Criminal Justice Committee Official Report, 27 September 2023](#).

During Phase 1 of its scrutiny, the Committee heard from witnesses on Parts 1 – 3 of the Bill on the establishment of a Victims and Witnesses Commissioner, Trauma Informed Practice, and the extension of Special Measures to Civil Law cases. The Official Reports of those evidence are-

- On 4 October we heard from witnesses representing victim's organisation and third sector organisations on Parts 1-3. They were Ann Marie Coccozza of FAMS - Families and Friends Affected by Murder and Suicide; Sandy Brindley of Rape Crisis Scotland; Dr Marsha Scott of Scottish Women's Aid; Kate Wallace of Victim Support Scotland; Dr Louise Hill of Children 1st; Bill Scott of Inclusion Scotland and Graham O'Neill, of the Scottish Refugee Council. The Official Report of the evidence session of 4 October is available online to read: [Criminal Justice Committee Official Report, 4 October 2023](#).
- On 25 October we heard from representation of the legal profession on Parts 1-3. They were Jonathan Campbell of the Edinburgh Bar Association, Jamie Foulis, of the Family Law Association and Stuart Munro of the Law Society of Scotland. The Official Report of the evidence session of 25 October is available online to read: [Criminal Justice Committee Official Report, 25 October 2023](#).
- On 1 November we heard from medical/psychological witnesses Dr Caroline Bruce of NHS Education for Scotland and Professor Thanos Karatzias, of Edinburgh Napier University and the Rivers Centre for Traumatic Stress on the issue of trauma-informed practice. We also heard from Laura Buchan of COPFS, Sue Brookes of the Scottish Prison Service, Chief Superintendent Derek Frew of Police Scotland, Ian Bryce of the Parole Board for Scotland and David Fraser from the Scottish Courts and Tribunal Service. All are criminal justice sector agencies to whom Part 2 of the Bill on Trauma Informed Practice applies. The Official Report of the evidence session of 1 November is available online to read: [Criminal Justice Committee Official Report, 1 November 2023](#).
- On 15 November we again took evidence from the Cabinet Secretary for Justice and Home Affairs on the evidence we had received on Parts 1 – 3 of the Bill. The Official Report of the evidence session of 15 November is available online to read: [Criminal Justice Committee Official Report, 15 November 2023](#).

During Phase 2 of our scrutiny, we focused on Part 4 of the Bill on the abolition of not proven and the changes to juries. That evidence is available here-

- On 29 November we heard from Eamon Keane and Prof. Fiona Leverick of the School of Law at the University of Glasgow. They spoke about the methodology

behind the research the carried out into verdicts and juries which was commissioned by the Scottish Government. The Official Report of the session is now online here [Criminal Justice Committee Official Report, 29 November 2023.](#)

- On 6 December we heard from Sandy Brindley of Rape Crisis Scotland and Mr Joe Duffy on Part 4 of the Bill. The Official Report of the session is available here [Criminal Justice Committee Official Report , 6 December 2023.](#)
- On 13 December we heard from Ronnie Renucci KC of the Faculty of Advocates, Stuart Munro of the Law Society of Scotland, Stuart Murray of the Scottish Solicitors Bar Association and Laura Buchan and Alisdair Macleod of COPFS on Part 4 of the Bill. The Official Report of the session is available here [Criminal Justice Committee Official Report , 13 December 2023.](#)

During Phase 3 of our scrutiny, we focus on Parts 5 and 6 of the Bill on the setting up of a new Sexual Offences Court. That evidence is available here-

- On 10 January we heard from The Right Honourable Lady Dorrian, Lord Justice Clerk, Right Honourable Dorothy Bain KC, Lord Advocate, David Fraser and Danielle McLaughlin, Scottish Courts and Tribunals Service. The Official Report of the evidence session of 10 January is available online to read [Criminal Justice Committee Official Report, 10 January 2024.](#)
- On 17 January we heard from survivors of rape and sexual assault Jennifer McCann, Hannah McLaughlan, Ellie Wilson, Sarah Ashby, Hannah Stakes and Anisha Yaseen. And from Sandy Brindley of Rape Crisis Scotland, Kate Wallace of Victim Support Scotland, Dr Marsha Scott of Scottish Women's Aid and Emma Bryson of Speak Out Survivors. The Official Report of the evidence session of 17 January is available online to read [Criminal Justice Committee Official Report, 17 January 2024.](#)
- On 24 January we heard from Prof. James Chalmers, Prof. Vanessa Munro and Prof. Cheryl Thomas KC. And from Tony Lenehan KC, Faculty of Advocates, Sheila Webster and Alan McCreadie, Law Society of Scotland and Simon Di Rollo KC. The Official Report of the evidence session of 24 January is available online to read: [Criminal Justice Committee Official Report 24 January 2024.](#)
- On 31 January we heard from Right Honourable Dorothy Bain KC, Lord Advocate, Right Honourable Lord Matthews, Senator of the College of Justice, Sheriff Andrew Cubie, Sheriff of Glasgow & Strathkelvin, Appeal Sheriff and Temporary High Court Judge, Dr Andrew Tickell and Seonaid Stevenson-McCabe, Glasgow Caledonian University. The Official Report of the evidence session of 31 January will be available online to read [here in the coming days.](#)
- On 6 February we will hear from Simon Brown, Vice President of the Scottish Solicitors Bar Association on Part 6 of the Bill. The Official Report of that session will be available in due course.