

Scottish Women's Aid Briefing on Stage 2 amendments

The Victims, Witnesses and Justice Reform (Scotland) Bill offers an opportunity to reform the criminal, and civil justice system through streamlining and improving existing procedures and introducing new processes. These, hopefully, will foster a greater understanding of issues facing victims and the benefits to them, and, indeed, all participants in the criminal and civil systems, of a better understanding of the issues facing victims, particularly in sexual offending and domestic abuse, and of applying a trauma-based practice.

Headline Themes

- **We do not support the creation of the Victims and Witnesses Commissioner**
- **We support reforms to the Victim Notification Scheme**

Victims and Witnesses Commissioner

Amendments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 235, 55, 57, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 134, 135, 136, 137, 138, 139, 140

We recommend that the Committee support amendments 1- 25 and 57

We maintain our opposition to the creation of this Commissioner: this will add a layer of bureaucracy, impact on victim support service budgets and the funds could be better utilised improving services and advice to victims.

SWA is also concerned about the push to create further major reforms while legislation that could make a real difference to the lives of women, children and young people experiencing domestic abuse, such as the Domestic Abuse (Scotland) Act 2021 and important provisions within the Children (Scotland) Act 2020, languish uncommenced. A lack of Government funding has prevented the implementation of this much needed legislation and the significant cost of establishing the Commissioner has become even more relevant given the current financial strictures facing the Scottish Government. In these circumstances, this is not the time to create this new office, and efforts should concentrate on existing measures that could make a practical difference

Victim Notification Scheme Reform and referrals to victim support service

Amendments 61, 172, 237, 238

- **Amendment 172** -We support this reform to the Scheme, providing parity of access to information on prisoner release regardless of the length of the offender's sentence
- **Amendment 61**- We also support the creation of an "opt-out" system making victim's engagement with information provision around prisoner release as accessible and supportive as possible, which will better support women experiencing domestic abuse at stressful time when they are likely faced with a number of issues to navigate. This reformed system must, of course, support any subsequent choice to "opt in" and join the revised Scheme
- **Amendments 237 and 238**- these appear positive, but we seek reassurance around how these will operate in practice, namely how relevant victim support services would be identified, designated and prescribed, to ensure that women experiencing domestic abuse continue to have access to existing and long-standing specialist, local domestic abuse services

Trauma-Informed Practice- Amendments 60, 87

SWA **supports amendments 60 and 87** which introduce obligations on Ministers to review trauma bases practice and report on and account as to how trauma-informed duties are being taken forward.

Release of prisoners- We do not support amendment 251- We note, with concern this introduces an obligation that Parole Board decisions “take into account” of any remorse shown by the prisoner. This would be open to widespread misuse and manipulation, will compromise the risk assessment process and, ultimately, the safety of victims, particularly those of gender-based violence and domestic abuse.

Electronic monitoring requirement- amendment 67- we support this amendment requiring Ministers to report on the effectiveness of Electronic Monitoring and GPS, important given the current system reform underway around the use of both of these.

Special measures in criminal proceedings- Amendments 89, 216, 217

SWA **supports amendment 89**, offering victims information and more choice around special measures and **supports amendments 216 and 217** intended to better support use of pre-recorded evidence. Witnesses’ views and needs are important and should inform the use of special measures. In criminal proceedings, victims of domestic abuse are automatically deemed vulnerable witnesses, with automatic rights to access standard special measures, but we are aware that women’s preferred choice of special measure is not always made available so, for both civil and criminal proceedings, these must be properly resourced and available across all the courts in Scotland.

Special Measures in civil cases- amendments 141, 142, 143, 144

We **support amendment 143** strengthening consideration of children’s best interests and capacity to contribute views to court proceedings.

While it is positive that the Bill will extend the availability of special measures to **all** civil proceedings (both evidential and non-evidential, and both child and non-child related), continued limits to eligibility thresholds restrict women’s access to these protections; the Cabinet Secretary’s amendment 141, providing deemed vulnerable witness status to those holding, and applying for, protective orders or involved in an action seeking damages for certain sexual offences, does not go far enough.

We reiterate our position that the current amendments in the Bill are piecemeal and continue to apply eligibility thresholds that do not give women automatic eligibility to use standard special measures of their choice, in any civil proceeding where domestic abuse is an issue.

We note the Cabinet Secretary’s 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 and might raise concerns about the right to a fair hearing but SWA is seeking to uphold the Article 6 rights, the right to participation and as fair hearing, of women experiencing domestic abuse and arguably their Article 3 rights, where the process of being in proximity to a perpetrator during proceedings is degrading to them and causes fear and prevents participation. We would argue this approach is victim-centred, trauma-based practice in line with the direction of travel in relation to victims, their rights and treatment within the justice system as set out in the Bill. We look forward to working with the Scottish Government on how this can be achieved.

Our final comment is that more attention and scrutiny requires to be given as to how the various reforms, which are very adult centred, will impact on children and we would urge the Scottish Government to ensure this during implementation.

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