

Island Communities Impact Assessment – Victims, Witnesses, and Justice Reform (Scotland) Bill

April 2023

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Introduction

This document records the decision not to undertake an Island Communities Impact Assessment (“ICIA”) in respect of the Victims, Witnesses, and Justice Reform (Scotland) Bill (“the Bill”). It also summarises the information and evidence that has been considered, along with the rationale for this decision.

Further information about the background and the policy intention of the Bill is set out in the Policy Memorandum. Estimated costs are set out in the Bill’s Financial Memorandum.

The Scottish Government acknowledges that there are different words to describe those who have experienced crime, particularly sexual offences. Views on which terms are used can be strongly held. Some terms, for example ‘complainer’ are used when describing a person in a legal setting; ‘victim’ or ‘survivor’ are more commonly used when referring to a person in a broader context not restricted to the legal system. This document uses a mix of these terms with the choice of term influenced by the context.

Policy aims

The Bill responds to concerns raised about the need to improve the experiences of victims and witnesses within Scotland’s justice system, especially the victims of sexual crime. At the same time, it continues to safeguard the operation and principles of the system and protects the rights of those accused of crime.

The Bill contains a package of reforms which collectively form a transformed approach to how victims are treated in more sensitive and responsive justice system. In particular, the Bill:

- strengthens the rights of victims of crime and embeds trauma-informed practice across the justice system
- improves the experience of vulnerable parties and witnesses in civil cases
- looks to address longstanding concerns and difficulties in how justice operates for victims of the most serious sexual crimes

The Bill has been informed by the work of the [Victims’ Taskforce](#), [Lady Dorrian’s Review into Improving the Management of Sexual Offence Cases](#) and [the Review’s Governance Group](#), as well as by [independent jury research published in October 2019](#). It has also been informed by public consultations on [improving victims’ experiences of the justice system](#) and on [the not proven verdict and related reforms](#), as well as by extensive engagement with stakeholders.

A summary of the policy content of the Bill and the specific aim of each policy is set out below.

Establishing a Victims and Witnesses Commissioner for Scotland

The Bill will establish an independent Victims and Witnesses Commissioner for Scotland to promote and support the rights and interests of victims and witnesses. Part of the Commissioner's role will be to monitor criminal justice agencies' compliance with the [Victims' Code for Scotland](#) and [Standards of Service for Victims and Witnesses](#).

Embedding trauma-informed practice across the justice system

The Bill aims for the justice system to treat victims and witnesses more compassionately. This means engaging with people in ways that understand the impact trauma can have on them and try to avoid the risk of re-traumatising them. This is intended to help people to give their best evidence and support their recovery.

Special measures for vulnerable parties and witnesses in civil cases

The Bill extends special measures to non-evidential hearings and ban personal self-representation in certain circumstances. This will better protect vulnerable parties and witnesses in civil cases.

Abolition of the not proven verdict and related reforms

Abolishing the not proven verdict in all criminal trials in Scotland is intended to increase public confidence that criminal verdicts are returned on a sound, rational basis while ensuring balance and fairness to all parties.

The Bill recognises the complex and interlinked nature of the jury system so also contains related reforms to reduce juror numbers (from 15 to 12) and change the majority required for a conviction.

Creating a Sexual Offences Court

The Bill will create a new Sexual Offences Court, which is distinct from existing court structures. This is intended to improve the experiences of complainers in serious sexual offence cases.

The new Court will place an emphasis on increased pre-recording of evidence and improved judicial case management. It will introduce a requirement for specialist training for all personnel. In addition, the Court will also provide a framework within which to develop and implement best practice in the management of sexual offences cases.

Lifelong anonymity for complainers in sexual and certain other offences

These provisions will protect the dignity of victims by providing an automatic lifelong right of anonymity for complainers of sexual offences and limited other offences (human trafficking, modern slavery, female genital mutilation, and the carrying out of hymenoplasty and virginity testing).

Preserving the anonymity of complainers in such cases serves an important protective function. It will help to minimise the re-traumatisation of victims before, during and after the court process and, in turn, increase the confidence of victims to come forward and report such crimes in the first instance.

Right to independent legal representation for complainers when applications to lead sexual history and/or ‘bad character’ evidence are made in sexual offence cases

The Bill creates an automatic right to publicly funded independent legal representation for complainers when applications are made to lead evidence of their sexual history or ‘bad character’ in sexual offence cases.

This is intended to improve the complainer’s experience in sexual offence trials, in particular their understanding and ability to provide their views and be heard in court in respect of an especially intrusive aspect of criminal procedure.

Piloting single judge trials for cases of rape and attempted rape

The Bill gives Ministers powers to conduct a time-limited pilot of single judge trials for cases of rape and attempted rape, removing the jury as a decision-maker in these cases.

Conducting the pilot will provide evidence to inform debate into the effectiveness of single judge rape trials. The pilot will also provide an insight into the extent to which single judge rape trials can improve the experience of complainers and increase the efficiency of cases through the court system.

Who will the Bill affect?

The Bill will primarily affect

- victims and witnesses in criminal cases
- vulnerable parties and witnesses in civil cases
- people accused of crimes
- jurors
- justice agencies
- third sector support organisations
- the legal profession
- the Scottish Legal Aid Board (SLAB)

Information relating to island communities

Crime and victimisation

At [the last census \(2011\)](#), a total of 93 islands in Scotland were inhabited, with a total population of 103,700 (2% of the total population of Scotland).

[National statistics on crimes and offences recorded by the police](#) show that the crime rate of the islands is generally very low.

In 2020/21 there were 144, 198 and 205 crimes per 10,000 people from Orkney, Shetland and Na h-Eileanan Siar local authorities respectively (compared to the 451 crimes per 10,000 people across Scotland on average). Highland local authority and Argyll and Bute local authority, which cover a number of island communities as well as communities on the mainland, also have crime rates that are below the Scottish average (319 crimes per 10,000 people for the former and 311 crimes per 10,000 for the latter).

North Ayrshire, which includes the islands of Arran and the Cumbraes, has a higher crime rate than the average across Scotland (497 per 10,000 people). The [Scottish Index of Multiple Deprivation](#) (which includes crime as a deprivation factor) shows that for the 186 data zones in the North Ayrshire in 2020, none of the 10% most deprived areas are on the island of Arran and only 2 are found in the north coast region, which includes the Cumbraes.

While the Scottish Crime and Justice Survey does not contain findings relating specially to islands communities, it considers the differences in responses between urban and rural areas. [Main findings from the 2019/20 Scottish Crime and Justice Survey](#) relevant to the policies in the Bill are:

- there was no statistically significant difference in the proportion who experienced serious sexual assault since the age of 16 depending on whether they lived in urban or rural areas, which is a consistent finding with previous results
- there was no statistically significant difference in the proportion of respondents who had experienced less serious sexual assault since the age of 16 between those living in urban and rural areas, which is a consistent finding with previous results
- no difference was detected in the likelihood of having experienced partner abuse by urban and rural location, both since the age of 16 (16.6% and 15.6%, respectively) and in the 12 months prior to interview (3.2% and 3.0%, respectively)

Participation in court proceedings

There are five Sheriff Courts located in island communities. [These courts are at Lerwick, Kirkwall, Stornoway, Lochmaddy and Portree.](#)

People living in island communities who are required to participate in court proceedings, including sitting on a jury, may have to travel to courts on the mainland.

The Scottish Courts and Tribunals Service (SCTS) has advised that the list of potential jurors is checked in advance to identify anyone who is required to travel a long distance. When the court makes contact to ascertain availability, it checks to see if there are any anticipated difficulties with the travelling distance and it is

indicated to the potential juror that they could be excused on that basis, if they wish. The court cannot make that decision for jurors - it is a matter for them as to whether they wish to serve as a juror. If they do, and depending on the individual circumstances, the court can arrange overnight accommodation for jurors from distant locations.

Data relating to measures in the Bill

There is currently no data on the use of special measures in courts on the islands.

There is no available data on where jurors are cited from as SCTS do not routinely gather information on jurors.

There is currently no disaggregated data held on applications to lead sexual history/'bad character' evidence.

Consultation and engagement

Over the course of 2019/20, the Scottish Government arranged events relating to verdict and jury reforms involving stakeholders across Scotland from sectors including legal professionals (defence, prosecution and members of the judiciary), third sector organisations, academics, and officials from various public bodies. There was also a number of meetings with people with experience of the criminal justice system. The purpose was to hear participants' views on the implications of the 2019 jury research findings, if these reflected their own experiences of the criminal justice system and whether they were in favour of potential criminal justice reforms.

The [consultation on not proven verdict and related reforms](#) ran between 13 December 2021 to 11 March 2022 and received 200 responses.

The [consultation on improving victims' experiences of the justice system](#) was open from 12 May to 19 August 2022 and received 69 responses.

As part of this consultation on improving victims' experience, [a workshop was held with stakeholders to consider the proposals to establish a Victims and Witnesses Commissioner](#). Attendees included representatives from local government, criminal justice agencies, the legal sector, academia, the third sector and individuals with lived experience of crime. An event for people with learning disabilities to consider the proposals in the consultation was held in conjunction with People First (Scotland) and the SOLD Network.

There also has been ongoing engagement throughout the policy development process with stakeholders from across the justice sector. Some of the stakeholders involved in this engagement are:

- academics who have undertaken work relating to jury research, independent legal representation and anonymity for sexual offence complainers
- ASSIST
- Crown Office and Procurator Fiscal Service

- Faculty of Advocates
- FAMS
- Judicial Institute of Scotland
- Law Society of Scotland
- Miscarriages of Justice Organisation Scotland
- Parole Board for Scotland
- Police Scotland
- Public Defence Solicitors Office
- Rape Crisis Scotland
- Scottish Courts and Tribunals Service
- Scottish Legal Aid Board
- Scottish Prison Service
- Scottish Women's Aid
- TARA (Trafficking Awareness Raising Alliance)
- Victim Support Scotland

Findings in relation to impacts on island communities

Consultation on not proven and related reforms

The [analysis of responses to the consultation on not proven and related reforms](#) found that the majority of the 99 respondents who answered the question about island communities in the consultation on not proven and related reforms thought there would be no impacts. A few respondents commented on island communities specifically however no significant impacts were raised.

Consultation on improving victims' experiences of the justice system

The [analysis of responses to the consultation on improving victims' experiences of the justice system](#) found that respondents generally agreed that victims living in more remote communities, such as the Scottish islands, faced particular challenges with regard to accessing justice and there was agreement that support was needed for victims who live remotely. In particular, it was felt that assistance with costs of travel or reducing the need to travel for appearances at court through more frequent and consistent use of technological solutions would be helpful.

A specific concern was raised that people living in island communities may not benefit from anonymity provisions in the same way as people from more populous areas, as such close-knit communities tend to be aware of what is happening within them. Overall, however, it was observed that many of the proposals would have a positive impact on accessibility and access to support.

The analysis of responses does not record any specific points on special measures in courts on the islands. However, one point made by consultees generally on special measures was about the availability of equipment. The analysis of responses noted that "increased demand for relevant specialist equipment, especially at short notice, or for cases heard in settings outside of a normal court room, could be difficult to manage, for example. Any lack of availability in equipment (due to

increased demand) could then impact on case progress and cause delays (unless additional funding for equipment was put in place).”

Wider consultation and engagement

No significant impacts on island communities have been identified through engagement with stakeholders.

Other sources

The [consultation on registers of child welfare reporters, curators ad litem and solicitors](#), which ran between March and July 2021 sought views on measures contained in the Children (Scotland) Act 2020 (“the 2020 Act”). Provisions of the 2020 Act, when commenced, will provide for solicitors to be appointed when a person is prohibited from conducting their own case in certain circumstances. The current Bill intends to extend this to civil cases in general.

The consultation on the 2020 Act measures noted there may be an impact on island communities if there were fewer solicitors available in island communities who could be appointed from the register to represent a person who is prohibited from personally conducting their own case.

Assessment

It is assessed that the Bill will not have a significantly different effect on island communities.

The Bill is intended to improve the experiences of people who come into contact with the justice system regardless of where they are living and will ensure consistency of approach across Scotland.

There is no intention for the Bill to have a different effect on the island communities and it has been assessed that the provisions in the Bill do not need to be developed in a way to improve or mitigate the outcomes expected from the Bill. The matters which have been identified in this assessment can be addressed or mitigated as part of implementation.

Consultation will be required with SCTS in relation to the implementation of the provisions of the Bill on special measures to ensure that island courts are equipped so that such measures are readily available.

There may be greater potential in island communities for there not to be a local solicitor on the register when a person is prohibited from representing themselves and from carrying out personal cross-examination. The aim is to ensure that there is a good geographical spread of solicitors on the register and consultation with the legal profession may be required in this respect.

The Family Law Committee of the Scottish Civil Justice Council has established a sub-group to consider what needs to be done to implement the provisions in the

2020 Act on special measures, so this may have relevance to the measures in the Bill given that the Bill extends some of the 2020 Act measures.

Consultation with the legal profession may also be required to ensure availability of solicitors in island communities to act as independent legal representatives for complainers sexual offence cases where applications to lead sexual history/'bad character' evidence are made.

Sign-off

In preparing the ICIA, we have formed an opinion that our policy, strategy or service is not likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities).

The reason for this is detailed in the assessment section above.

ICIA approved by: Anna Donald, Deputy Director, Criminal Justice Division

Date approved: 9 April 2023



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