

Stage 3 Briefing

Victims, Witnesses and Justice Reform (Scotland) Bill

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Victims, Witnesses and Justice Reform (Scotland) Bill¹ (“the Bill”) was introduced to the Scottish Government, on 25 April 2023. We submitted written evidence² to the Criminal Justice Committee of the Scottish Parliament (“the lead Committee”) in September 2023. We gave oral evidence to the lead Committee on four occasions: on 25 October 2023³, 13 December 2023⁴, 24 January 2024⁵, and 4 December 2024⁶. The lead Committee’s Stage 1 Report on the Victims, Witnesses and Justice Reform (Scotland) Bill⁷ (“the Stage 1 Report”) was published on 29 March 2024. We issued a briefing ahead of the Stage 1 debate on the Bill⁸. On 23 April 2024, Parliament agreed the general principles of the Bill.

The lead Committee considered the Bill at Stage 2 from 7 March to 2 April 2025. The Bill as amended as Stage 2 was published on 3 April 2025⁹.

We welcome the opportunity to consider and provide comment on the Bill ahead of the Stage 3 proceedings scheduled for 16 September 2025.

General comments

During the parliamentary scrutiny of the Bill, significant changes to the criminal justice system have been discussed. All these reforms have the main purpose of improving the experiences of complainers, victims and witnesses who are frequently involved in court proceedings. As indicated by the Cabinet Secretary for Justice and Home Affairs, the Bill “contains a package of reforms to bring about structural, procedural and cultural shifts necessary for a justice system that is trauma-informed and person-centred, and in which processes are modern, fair and transparent¹⁰”.

¹ [Victims, Witnesses and Justice Reform \(Scotland\) Bill – as introduced \(parliament.scot\)](https://parliament.scot/bills/victims-witnesses-and-justice-reform-scotland-bill-as-introduced)

² [Written evidence: Victims, Witnesses and Justice Reform \(Scotland\) Bill \(lawscot.org.uk\)](https://lawscot.org.uk/written-evidence-victims-witnesses-and-justice-reform-scotland-bill)

³ [Criminal Justice Committee, Official Report of the 26th Meeting 2023, Session 6 \(parliament.scot\)](https://parliament.scot/criminal-justice-committee-official-report-of-the-26th-meeting-2023-session-6)

⁴ [Criminal Justice Committee, Official Report of the 34th Meeting 2023, Session 6 \(parliament.scot\)](https://parliament.scot/criminal-justice-committee-official-report-of-the-34th-meeting-2023-session-6)

⁵ [Criminal Justice Committee, Official Report of the 4th Meeting 2024, Session 6 \(parliament.scot\)](https://parliament.scot/criminal-justice-committee-official-report-of-the-4th-meeting-2024-session-6)

⁶ [Criminal Justice Committee, Official Report of the 38th Meeting 2024, Session 6 \(parliament.scot\)](https://parliament.scot/criminal-justice-committee-official-report-of-the-38th-meeting-2024-session-6)

⁷ [Victims, Witnesses and Justice Reform \(Scotland\) Bill Stage 1 Report \(parliament.scot\)](https://parliament.scot/victims-witnesses-and-justice-reform-scotland-bill-stage-1-report)

⁸ [Stage 1 Briefing – Victims, Witnesses and Justice Reform \(Scotland\) Bill \(lawscot.org.uk\)](https://lawscot.org.uk/stage-1-briefing-victims-witnesses-and-justice-reform-scotland-bill)

⁹ [Victims, Witnesses and Justice Reform \(Scotland\) Bill – as amended at Stage 2 \(parliament.scot\)](https://parliament.scot/victims-witnesses-and-justice-reform-scotland-bill-as-amended-at-stage-2)

¹⁰ [Letter from the Cabinet Secretary for Justice and Home Affairs regarding Stage 3 of the Victims, Witnesses and Justice Reform \(Scotland\) Bill – 5 September 2025 \(parliament.scot\)](https://parliament.scot/letter-from-the-cabinet-secretary-for-justice-and-home-affairs-regarding-stage-3-of-the-victims-witnesses-and-justice-reform-scotland-bill-5-september-2025)

We welcome reforms to the justice system that ensure complainers, victims and witnesses are treated with dignity and respect. We also welcome the introduction of provisions that impact positively on the public perception of our criminal justice system.

Some of the measures proposed within the Bill have promoted discussions on complex and fundamental aspects of the justice system such as the right to a fair trial, the burden of proof required for obtaining a conviction, the way in which the evidence is tested in an adversarial system, the role of juries, and how victims of serious offences are treated in the course of a trial. We appreciate that finding a sensible balance in relation to these challenging issues is a difficult task.

When the Bill was introduced in 2023, we expressed serious concerns on several measures proposed. These included the single judge pilot that was removed at Stage 2¹¹. While we welcome this decision, we still have reservations in respect of some remaining proposals set out in the Bill.

We appreciate that a significant number of amendments lodged at Stage 3 are focused on measures directed at improving the experience of victims and complainers in relation to serious offences and we consider that others will be better placed to comment on the impacts that such changes may have. Our comments in this briefing will be mainly focused on the parts of the Bill on which we have previously expressed a view, and the amendments proposed at Stage 3 related to those provisions.

The Bill, if passed, will make wide-changes to the criminal justice system. A successful implementation will require careful collaboration and engagement with all justice sector stakeholders, including the legal professions.

Victims and Witnesses Commissioner for Scotland

We have supported the creation of the Victims and Witnesses Commissioner for Scotland.

We are pleased to see that at Stage 2, the Bill was amended to include enforcement powers when a criminal justice agency refuses or fails to provide information required in the exercise of the Commissioner's power to gather information. We note that those enforcement powers do not apply to individuals, such as legal practitioners, who may refuse to provide the information required when it is confidential and/or protected by the Legal Professional Privilege (LPP). We consider this an essential safeguard.

Criminal juries and verdicts

[We have indicated our concerns](#) about the abolition of the not proven verdict. We have stated that the criminal justice system is a complex system. The number of

¹¹ [Letter from the Cabinet Secretary for Justice and Home Affairs after the conclusion of Stage 1 of the Victims, Witnesses and Justice Reform \(Scotland\) Bill – 31 October 2024 \(parliament.scot\)](#)

verdicts currently available provides an important safeguard against unsafe convictions.

When the Bill was introduced in 2023, it proposed reducing the number of jurors from 15 to 12. In cases where jurors die or were discharged, the court could proceed with at least 9 remaining jurors. The jury would need to reach a qualified majority for returning a guilty verdict. At Stage 2, the Bill was amended to maintain the 15-person jury. The Cabinet Secretary of Justice and Home Affairs indicated in a letter directed to the Convener of the Criminal Justice Committee the following:

“The reason the Bill proposed to reduce the jury size to 12 was that independent evidence suggested that would improve the effectiveness of jury deliberations. However, I accept that this is a largely separate issue from the other jury reforms in the Bill, and that abolishing the not proven verdict does not, in itself, necessitate reducing jury size. Having reflected on the Committee position, I can confirm that I will bring forward amendments at Stage 2 so that Scotland retains a 15 person jury in criminal trials”¹².

As acknowledged by the Cabinet Secretary in her letter, Scotland is the only common law jurisdiction that requires simple majority to reach a conviction. However, in the Cabinet Secretary’s view, “the most prudent approach” was to maintain the 15-person jury but require that at least two-thirds of the jurors are in favour of a guilty verdict to convict. All of this would be in the context of two verdicts available, rather than the current three.

As such, section 34 of the Bill as amended at Stage 2 substitutes section 90 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), maintaining a 15-person jury and allowing the court to proceed with the trial with at least 12 remaining jurors, if jurors die or are discharged.

Section 34B of the Bill includes provisions for assistance for jurors with physical disabilities, allowing them to participate in the trial. This new provision allows to the court to appoint juror’s communication supporters to provide such assistance. We welcome this provision as it would contribute to have more diverse juries and enhance participation of the public in the criminal justice system.

Section 35 of the Bill introduces section 99A to the 1995 Act. This new section provides that, for solemn procedures, juries must return a verdict of either guilty or not guilty, thus abolishing the not proven verdict in solemn proceedings. This section also establishes a qualified majority for reaching a guilty verdict as explained below:

- For juries of 14 or 15 jurors, at least 10 jurors must be in favour of the guilty verdict
- For juries of 13 jurors, at least 9 jurors must be in favour of the guilty verdict
- For juries of 12 jurors, at least 8 jurors must be in favour of the guilty verdict

¹² [Letter from the Cabinet Secretary of Justice and Home Affairs to the Convener of the Criminal Justice Committee – 31 October 2024 \(parliament.scot\)](https://www.parliament.scot/Document/2024-10-31/Letter%20from%20the%20Cabinet%20Secretary%20of%20Justice%20and%20Home%20Affairs%20to%20the%20Convener%20of%20the%20Criminal%20Justice%20Committee%20-%2031%20October%202024)

Section 36 of the Bill introduces section 161A to the 1995 Act, providing that in respect of each charge, the court must return a verdict of guilty or not guilty in summary proceedings. This extends the abolition of the not proven verdict to summary proceedings.

We maintain our concerns regarding the changes proposed in respect of jury deliberations. All other comparable jurisdictions have a two-verdicts system but a requirement for unanimity or close to unanimity to reach a verdict.

When the majority required to convict was discussed at Stage 2, the Cabinet Secretary indicated that:

“Scotland has additional safeguards that other jurisdictions with two verdicts do not have, such as corroboration. The Lord Advocate’s recent letter to the committee made it clear that the outcome of her recent references did not remove the requirement for corroboration and that prosecutors continue to have to satisfy the court of proof beyond reasonable doubt by corroborated evidence. That requirement is not placed on prosecutors in other jurisdictions. That is why the bill would require that two thirds of the jury are in favour of a conviction, rather than moving to unanimity or near unanimity [...]”¹³.

The statement made by the Cabinet Secretary showed that the Scottish criminal justice system has unique features that are interconnected for the purposes of achieving the main objective of acquitting the innocent and convicting the guilty. Those unique features include the number of verdicts available, the number of jurors, the majority required to convict and the rule of corroboration. We have expressed at Stage 2 that the rule of corroboration has been diluted by the Lord Advocate reference case of HMA vs PG and JM¹⁴. As such, we are unconvinced that a two-thirds majority would provide an effective safeguard against unsafe convictions in a two-verdicts system.

We are concerned that the model proposed in Part 4 of the Bill has never been proved effective in any other comparable jurisdiction, nor is it based on conclusive evidence that shows its effectiveness. The lack of evidence to support the proposals in Part 4 of the Bill may lead to unintended consequences in the fairness of criminal trials.

We note that sections 36A and 36B modify the Contempt of Court Act 1981 and introduce provisions for conducting research into juries. We appreciate the potential impact that such research may have on further criminal law reform.

Sexual Offences Court

When the Bill was introduced, [we expressed our concerns with the creation of a standalone court for sexual offences](#), as a matter of principle. We consider that

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¹⁴ [Criminal Justice Committee meeting. Official report of the meeting of the 4 December 2024 \(parliament.scot\)](#)

the new court will create more complexity within the system, affecting the efficiency of criminal proceedings in cases of sexual offences.

At Stage 2, the Cabinet Secretary lodged amendments that addressed some of the concerns that [we expressed at Stage 1](#), particularly regarding the tenure of the Judges and the rights of audience in the Sexual Offences Court.

We indicated that, as initially drafted, section 40 of the Bill allowed the Lord Justice General to appoint and remove the judges of the Sexual Offences Court, with a relative wide discretion. We welcome that at Stage 2, the Cabinet Secretary introduced amendments that addressed those concerns.

Section 39A indicates that a person who holds a relevant high judicial office¹⁵ and has completed an approved trauma-informed practice for sexual offences training, also holds an office as a Judge of a Sexual Offences Court. If that person ceases to hold the relevant high judicial office, they also ceases to be a Judge of the Sexual Offences Court.

The amended section 40 provides that the Scottish Ministers may appoint a person with a relevant judicial office¹⁶ to hold an office as Judges of the Sexual Offences Court, after that person:

- Completes a trauma-informed practice in sexual offence training, in terms of section 39A(5) of the Bill
- The Lord Justice General considers that person has the skills and experience for holding the office, and recommends that person's appointment.

The appointment of Judges of the Sexual Offences Court with a relevant judicial office is for a period of 5 years that can be extended unless:

- The Lord Justice General declines or makes a recommendation against the reappointment, or
- The Judge of the Sexual Offences Court has sat for fewer than 50 days in total in the initial period of 5 years.

At Stage 2, the Cabinet Secretary lodged amendments to introduce section 47(2A), which clarifies the rights of audience of solicitors in the Sexual Offences Court. While it is still a requirement to complete an approved training in trauma-informed practice for sexual offences, only solicitors with extended rights of audience can appear before the Court when the indictment includes one of the following offences:

- The offence of murder, attempted murder, rape or attempted rape
- An offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018 where the alleged course of behaviour includes behaviour which would

¹⁵ "Relevant high judicial office" means (a) Lord Commissioner of Justiciary, (b) temporary judge in terms of section 39A(4).

¹⁶ "Relevant judicial office" means (a) sheriff principal, or (b) sheriff in terms of section 40(10) of the Bill.

amount to an offence under section 1 of the Sexual Offences (Scotland) Act 2009

- An offence to which the minimum sentence expected is a period of imprisonment of at least 5 years
- An offence in relation to which the accused is being retried as a result of an application by the Lord Advocate under section 4(3)(b) of the Double Jeopardy (Scotland) Act 2011.

At Stage 2, the Bill was amended to introduced section 49A which provides that the Scottish Ministers must carry out a review in relation to legal representation in the Sexual Offences Court. This review must be carried out as soon as reasonable practicable after 5 years of the operation of the Sexual Offences Court.

If a standalone court is created, we consider that provisions on the tenure of the Judges are now appropriate. We also acknowledge an improvement in the provisions about the rights of audience in the new Court, making clearer when an accused person would require Counsel representation.

We note that ahead for Stage 3 Pauline McNeill MSP has lodged **amendment 114** that would exclude from the jurisdiction of the Sexual Offences Court an indictment that includes the offence of murder. Ms McNeill also lodged **amendment 115** that provides that if an indictment includes the offence of rape, the Sexual Offences Court may only try the offence where the Court consists of the Lord Justice General, the Lord Justice Clerk or a Judge with a relevant high judicial office.

Amendment 114 in the name of Ms McNeill maintains the jurisdiction of the High Court of Justiciary for charges of murder. We consider this is a sensible approach if a standalone court is introduced and we are supportive of this amendment.

We also consider appropriate that when a charge of rape is tried before the Sexual Offences Court, at least one of the Judges should hold a relevant high judicial office. This seems to be consistent with Section 3(6) of the 1995 Act.

While we appreciate the efforts made by the Scottish Government in addressing some of the concerns expressed at earlier stages, we are still unconvinced that a standalone court is needed. We have expressed our support to the creation of special divisions within the current court structure¹⁷.

We therefore support **amendment 109 and consequential amendments 112 to 160** introduced by Pauline McNeill MSP at Stage 3. Amendment 109 establishes a special division of either or both the High Court and Sheriff Court to hear sexual offences cases. The operation of this divisions would be regulated by an Act of Adjournal of the High Court. This approach addresses the need for specialisation

¹⁷ [Victims, Witnesses and Justice Reform \(Scotland\) Bill written evidence submission \(lawscot.org.uk\)](https://lawscot.org.uk)

-that has proven to be efficient in Domestic Abuse cases- without adding unnecessary complexity to the system.

Restrictions on evidence relating to sexual offences

We note that the Cabinet Secretary has lodged amendment 55 which modifies section 274 of the 1995 Act. Section 274 provides that in trials conducted against a person charged with specific sexual offences, the court must restrict the introduction of evidence relating to sexual behaviour, character or credibility of the complainer. Amendment 55 aims to extend the restriction of such evidence to:

- Domestic abuse cases under section 1(1) of the Domestic Abuse (Scotland) Act 2018, in which the alleged abusive behaviour includes a behaviour that could also constitute one of the sexual offences originally covered by section 274.

Cases in which a person is charged with an offence in connection with which a docket is included in the indictment or complaint.

We **oppose amendment 55**. Section 274 of the 1995 Act acts to prevent the leading of otherwise admissible evidence at trial. The justification of this restriction is the particular nature of sexual offending. If the Cabinet Secretary aims to significantly expand the category of charges to which the provision relates, that is something that should be subject to a proper, informed debate, not included as an amendment at Stage 3.

Superior courts (specifically the House of Lords and the European Court of Human Rights¹⁸) have already determined that sections 274 and 275 are fair.

However, we have raised our concern in the UK Supreme Court in a [joint intervention](#) with the Faculty of Advocates in the cases of Keir and Daly v HMA. We highlighted the approach of the courts to common law relevancy. Our concern is that the courts have tightened the relevancy test, meaning that the statutory scheme (including the process for asking for otherwise prohibited material to be introduced through section 275) is increasingly bypassed. The Court has yet to issue its written judgment in the case of Keir¹⁹. Accordingly, we consider it sensible to wait until the UK Supreme Court decides on the matter before expanding the scope of section 274.

¹⁸ ECtHR. [Judge v the United Kingdom. Application No. 35863/10](#)

¹⁹ [Keir \(Appellant\) v His Majesty's Advocate \(Respondent\) UKSC/2023/0123](#)



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