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## **Criminal Justice Committee**

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## **Victims, Witnesses, and Justice Reform (Scotland) Bill: analysis of the call for views (parts 1-3)**

### **Introduction**

The Criminal Justice Committee launched its [call for views](#) on the [Victims, Witnesses, and Justice Reform \(Scotland\) Bill](#) on 19 June 2023. It closed on 8 September.

The call for views covered all six parts of the Bill. **Due to the Committee's decision to take a phased approach to the consideration of the Bill this paper only discusses the responses to Parts 1-3 of the Bill. Responses to the call for views that relate to subsequent parts of the Bill will be discussed in future papers.**

The intention of this paper is not to be exhaustive, rather it is to provide an overview of the main issues raised in the submissions. The [submissions are published online](#).

### **Responses**

The Committee received over 250 submissions to the call for views. Of these submissions, around a quarter were from organisations, with the rest from individuals.

Of the first three Parts of the Bill, the first on the Victims and Witnesses Commissioner for Scotland was subject to the highest number of comments from the submissions.

Broadly speaking, responders to the call for views had more to say regarding Parts 4-6 of the Bill than they did about the initial three Parts.

## **Part 1: Victims and Witnesses Commissioner for Scotland**

When asked about their views on Part 1 of the Bill, the submissions to the call for views were broadly positive about the creation of a Victims and Witnesses Commissioner for Scotland, although a notable exception was Scottish Women's Aid, whose submission is discussed in more detail below. Respondents had numerous comments about the specifics of the role and how these details were set out in the Bill. These comments are summarised below.

### **Extent of the Commissioner's Remit**

Most of the responses focussed on different elements of the remit of the proposed Commissioner and several concerns were raised regarding the legislation as currently drafted.

### **Individual Cases**

There were differing views expressed by the submissions regarding the fact that the Bill would not allow the proposed Commissioner to investigate individual cases.

Some advocacy groups felt that this omission would prevent the Commissioner from fully upholding the rights of victims and witnesses, and that:

“we found it unclear as to what investigations the Commissioner would be able to carry out and in what way, if exploring individual cases is prevented.”  
(Equally Safe Edinburgh Committee)

It was also noted that this differed from the role of some other Commissioners in Scotland, including the Children & Young People's Commission (CYSPS):

“The CYSPS can also investigate cases affecting the human rights of an individual child or young person. While noting that the proposed Victims and Witnesses Commissioner can conduct investigations, we question why the proposed Commissioner would be prevented from acting in relation to individual cases.” (Action for Children Scotland)

Organisations involved in the justice system, however, felt that it was vital that the Commissioner was not in a position to intervene in individual cases. Police Scotland, for example, noted that:

“As set out at Section 8(1) of the Bill, it is preferable that the Victims' Commissioner is not in a position to intervene in individual cases.”

They discussed concerns regarding the possibility of prejudicing investigations and the data protection rights of the various parties involved in investigations.

Similar concerns were shared by the Law Society of Scotland who noted that:

“We welcome the provision at Section 8 (1) which restricts the Commissioner in the exercise of any individual case. If the Commissioner exercised the function in that way, this could adversely affect the trial process.”

Victim Support Scotland’s submission noted that while there was an appetite to extend provisions in the Bill to allow the proposed Commissioner to investigate individual cases, that this may not be appropriate. They did, however, suggest:

“expanding the function of the Commissioner to include the ability to investigate individual cases of non-compliance with the Victims Code for Scotland where it does not fall within the jurisdiction of another body.”

## **Interactions with criminal justice organisations**

Concerns regarding the Commissioner’s interactions with criminal justice organisations were raised repeatedly by Police Scotland and the Crown Office & Procurator Fiscal Service (COPFS). They were concerned about the Commissioner potentially prejudicing investigations, as well as issues regarding data protection and the independence of the Lord Advocate. One example of their concerns included:

“Section 12(1) (b) of the Bill gives the Commissioner powers to require any person to produce documentation held by them which will have a bearing on ‘any such matter’. The wording of this section of the Bill is not clear in respect of what ‘matters’, documentation may be required to be produced in relation to or in respect of whom these requests may be made of. It is not clear when these requests may be made. Again, this is potentially problematic where the documents sought may prejudice an ongoing or future investigation or may result in the disclosure of sensitive or confidential information, intelligence, or investigative tactics employed by police officers. This could also raise issues of data protection where evidence is sought in respect of specific details of specific cases.” (Police Scotland)

As a potential solution to some of these concerns, Police Scotland suggested that it may be helpful to amend the Bill to include an additional requirement that any evidence or documentation produced in the course of an investigation by the Commissioner should not be used for any purposes other than in respect of the investigation for which it was produced.

The need to respond to the reports written by the Commissioner also raised concerns with both Police Scotland and with COPFS. The latter argued that sections 16 and 17 of the Bill would interfere with the independence of the Lord Advocate:

“It is submitted that the provisions to provide the Commissioner with powers to make recommendations to the Lord Advocate in areas that are reserved to the Lord Advocate would interfere with her independence which is codified and guaranteed in section 48(5) of the Scotland Act 1998...This issue is further compounded by the provisions in section 17 of the proposed Bill that would place a statutory obligation on the Lord Advocate to provide a ‘reasoned response’.”

Different concerns regarding the mechanism for gathering evidence for the Commissioner's reports were raised by the Scottish Criminal Cases Review Commission (SCCRC). They felt that the Bill could be better drafted to provide a more effective enforcement mechanism to deal with situations where a criminal justice agency fails to provide information:

"In the SCCRC's view, a more effective example of modern drafting on the subject of evidence-gathering powers may be found in the Scottish Biometrics Commissioner Act 2020. The enforcement power in section 17 of that Act appears to the SCCRC to be framed in such a way as to provide the Scottish Biometrics Commissioner with a simple and credible method of dealing with other agencies who fail to provide them with material necessary for executing their function."

## **Broadening the Commissioner's remit**

There were several comments stating that the remit of the Commissioner was not broad enough. These comments suggested several potential additions to the legislation.

Some responders proposed that everyone who comes into contact with the justice system needs to be included in the Commissioner's remit. One submission noted:

"we strongly believe that fundamentally, the remit of the Commissioner is insufficiently broad in its scope... we are of the view that the Commissioner's remit should extend to everyone who has been harmed by crime including people who have been witnesses of crime, or family members of individuals accused of a crime." (Families Outside)

Other comments related to specific elements that they felt were missing from the remit. The British Transport Police were concerned that:

"as it stands, British Transport Police is excluded from the relevant provisions of Part 1 of the Bill. This means we would not be legally subject to any monitoring or engagement that comes from the eventual Victims and Witnesses Commissioner for Scotland."

There were also concerns expressed regarding how the role of the Commissioner would be held up to public scrutiny. Comments included:

"We recommend the Victims and Witnesses Commissioner for Scotland be made subject to the Public Sector Equality Duty, the Scottish specific equality duties, and the Fairer Scotland Duty, which would require them to have due regard to equality in their work." (Equality and Human Rights Commission)

A note of caution was sounded by some responses that discussed potentially broadening the remit of the Commissioner, noting that any expansion needed to be carefully considered. For example, the Scottish Children's Reporter Administration said that it would be "essential that the unique approach of the children's hearings system is fully understood" before any widening of the Commissioner's remit to that area.

## Civil Justice

Section 3, and the potential to extend the Commissioner’s remit to include the civil justice system, was also a topic of discussion explored by respondents. While comments were mainly in favour of the inclusion of this provision, a couple of amendments to it were suggested.

The Law Society of Scotland suggested that:

“before Scottish Ministers amend the Commissioner’s general function by regulations to include the civil function, they should consult with persons who have knowledge and experience of civil proceedings.”

Police Scotland also raised the concern that:

“this could take in a wide range of matters such as FAIs, Public Inquiries, and the various forms of civil litigation in which the Chief Constable is involved. It is of particular importance that any ‘support’ provided to those engaging in civil litigation does not stray into the realms of ‘advice’ and it should be clear to parties engaging with the Commissioner in respect of any civil function that the provision of advice is not a matter for the Commissioner.”

## Advisory group

Respondents were generally in favour of a future Commissioner making use of powers to convene an advisory group. There were however some suggestions on how to ensure that this group:

“would be diverse, inclusive and representative of all people living in Scotland.” (Stirling Council)

For example, the need to include frontline services was raised by multiple respondents including the organisation Beira’s Place who stated that:

“it is crucial that any advisory group set up by the Commissioner include workers from front line support and advocacy services. It is currently fashionable to invite one or two people with ‘lived experience’ to sit on advisory groups, reference groups, boards, or participate in consultations. This approach can be problematic in that it can border on tokenism, and voyeurism.”

This was backed up the Criminal Justice Voluntary Sector Forum whose response noted:

“As a forum, we think there should be a commitment to creating an advisory group rather than just an option. As part of this, it is crucial that mechanisms are established to ensure seldom heard victims’ voices are also listened to and acted upon, and that there are mechanisms for ensuring the Commissioner responds to those voices.”

The need to ensure communication across the sector when setting up advisory groups was also brought up, with one response suggesting:

“Factors such as the potential for duplication of effort with, for example, the Children and Young People’s Commissioner Scotland (CYPCS) will have to be considered where the interests of children and young people as persons against whom offences have been committed may have been up until now separately represented.” (Law Society of Scotland)

## **Interaction with existing stakeholders**

Some responses discussed concerns that the role of the Commissioner might negatively impact on long standing relationships between stakeholders and existing Commissioners, justice agencies and policy makers.

Comments included:

“Members raised the concern that there could be situations in which roles and remit overlap and people who seek support could be continuously referred to other Commissions. There is perhaps a need for clarity and distinction in these roles and responsibilities, and the need to establish a clear process for collaborative working, to ensure that no one is batted from ‘pillar to post’.” (Criminal Justice Voluntary Sector Forum)

“national third sector organisation, Victim Support Scotland, promotes and supports the rights and interests of victims and witnesses, and there are regulatory/inspection bodies in place for criminal justice and the Crown Office and Procurator Fiscal Service. Therefore, clarity on the full range of proposed activities to be assigned to the Commissioner would be welcome.” (Equally Safe Edinburgh Committee)

“introducing a third party between the national strategic intermediaries would dilute our impact while draining much needed resources from the government purse. In Scotland, the VAWG sector and victim support organisations, and those supported by them, benefit from a long history of positive and open engagement, as valued partners and stakeholders and critical friends, with the Scottish Government Ministers and officials, Scottish Parliament, and the various statutory agencies including Police Scotland, COPFS and SCTS.” (Scottish Women’s Aid)

## **Views against Part 1**

While many of the responses were in favour of the creation of the proposed Commissioner, there were others who were firmly against the creation of this role. For some, the role was seen as an additional barrier:

“We do not support the establishment of a Victims and Witnesses Commissioner for Scotland as this presents, for the VAWG (Violence against women and girls) sector especially, an additional layer of bureaucracy and

unnecessary complication. Should plans go ahead for such a commissioner, a Commissioner for VAWG will be necessary also.” (Scottish Women’s Aid)

Many also criticised the use of the word ‘victim’ rather than complainer, feeling that using the word ‘victim’ in the title of the Commissioner’s role may go against the presumption of innocence in the criminal justice system:

“Faculty considers that in legal contexts, such as legislation, ‘complainer’ is the appropriate term to be used. Faculty considers that Parliament ought to give great consideration as to whether it wishes to designate an individual as a ‘victim’ prior to a conviction, and potentially despite a verdict of acquittal. It would be unfortunate if Parliament chose to disregard the presumption of innocence and equated the making of an allegation with an automatic presumption of guilt. Faculty will, nonetheless, reflect the wording of the Bill in its response” (Faculty of Advocates)

The Faculty of Advocates also commented on section 7(1) and what it believed were wide powers.

“Section 7(1) of the Bill gives the Commissioner the power to do anything which appears to the Commissioner to be necessary or expedient for the purposes of, or in connection with the performance of the Commissioner’s functions, or to be otherwise conducive to the performance of those functions. Whilst this general power is subject to a restriction on the ability to pay fees and allowances, and the restriction in terms of Section 8 of the Bill not to exercise any function in relation to an individual case, the power to do “anything” appears to Faculty to be a wide one, and the Parliament may wish to consider whether it wishes to give the Commissioner such a wide-ranging power.”

Other comments against the creation of the Commissioner role focused on the cost of, and bureaucracy created by, establishing the post. One such response stated that:

“There are limited funding and resources currently within criminal justice Scotland and we believe this appointment would adversely impact resources and that the funding ring fenced for this appointment would be better directed at providing additional support services to victims and victims’ services.” (The Manda Centre)

## Part 2: Trauma-informed practice

Responses to the call for views relating to Part 2 were broadly positive, with many organisations providing lived examples of how trauma-informed practice could change the experiences of individuals they had engaged with. There was, however, broad concern regarding the practicalities of achieving this within the Scottish justice system.

### Definition of ‘trauma-informed’

A theme found in the submissions was that the definition of ‘trauma-informed’ as written in Part 2 of the Bill did not fully align with that given in the recent [NHS Education for Scotland \(NES\) publication on trauma informed justice](#). There was general consensus that this should be amended taking the framework into account. Comments included:

“In general Part 2 is welcomed. However, with the recent publication of NES (2023) Trauma Informed Justice: A Knowledge and Skills Framework for Working with Victims and Witnesses, we suggest that the definition of trauma informed practice in the Bill should be more fully aligned with the agreed consensus definition contained in the framework.” (NHS Education for Scotland)

### The adversarial system

Comments on this section of the Bill often highlighted concerns regarding the fact that the adversarial system of justice could, by its nature, limit the scope of trauma-informed practice within the Scottish system. One responder noted:

“Our partnership expressed concern around how trauma-informed an adversarial system can be, as the very essence of this system is not designed with trauma-informed principles in mind. For trauma-informed practice to be truly embedded in justice processes, a complete redesign would be required.” (Equally Safe Edinburgh Committee)

There was a lot of discussion regarding cross-examination, and the negative impact that this experience can have on individuals giving evidence. Rape Crisis Scotland noted:

“We have seen far too many examples of cruel and distressing cross examination of survivors which have been subject to judicial criticism... The court should be under an obligation to prevent this type of conduct and place an onus on the defence to adhere to trauma-informed standards. Cross examination is a means to test evidence and protect against miscarriages of justice, but this does not need to be at the expense of the fair treatment of the complainer.”

While supporting the need to cross-examine witnesses in cases, COPFS expressed the opinion that the system could still embed trauma-informed practice:

“Proving a case requires the prosecutor to lead evidence from witnesses, and an accused person is entitled to cross-examine those witnesses, during the trial. Inevitably, that will involve asking the witness to recall and speak about events, which may have been very traumatic for them... These challenges do not prohibit the criminal justice sector recognising the impact of trauma on individuals and seeking to operate in a manner that seeks to avoid traumatising.”

## Training

A repeated issue brought up in submissions was the need for training within the justice system to be appropriate to ensure trauma-informed practice became embedded. Many suggested that Part 2 of the Bill should be amended to widen the scope of who needs training. Comments included:

“Training should be mandatory, of a high standard and consistent across organisations. This will have funding implications for those organisations for which such training isn’t already on their agenda.” (Dumfries and Galloway Council)

Other submissions highlighted the cost of training including:

“The estimated costs set out in the Financial Memorandum are principally focused on the SCTS implementing a programme of trauma-informed training for staff at all levels, as a response to the proposed obligations set out in section 24 of the Bill. Aside from whether this is ultimately an approach adopted by the SCTS, the costs incurred in any such approach will be subject to a number of variables (e.g. format, duration, content and objectives of any such training) some of which the SCTS may have limited control over.” (The Scottish Courts and Tribunals Service)

Alternatively, some such as the Faculty of Advocates suggested additional training was not needed:

“Whilst Faculty supports the promotion of trauma-informed practice through specifically highlighting the issue within key legislation, Faculty remains of the view that legal professionals within the justice system already possess the necessary skills and experience required to recognise and adapt practices for the benefit of persons who may have experienced trauma.” (Faculty of Advocates)

## Additional suggestions

There was a general concern expressed by many respondents that Part 2 of the Bill did not contain enough detail on the ways in which trauma-informed practice would be embedded in meaningful and measurable ways.

In its submission, Criminal Justice Voluntary Sector Forum noted that its members:

“were keen that ‘trauma-informed’ not be reduced to a ‘buzz word’ and that changes are properly considered.”

The submission from Children 1<sup>st</sup> warned that they felt:

“it is entirely possible that this Bill will pass without any clear understanding of what will follow and how much this will cost. Changes to the SCTS estate and to COPFS processes ‘cannot be quantified’. We believe this Bill is the right opportunity to offer parliament some sense of how and when public funding might be needed to support the changes needed in this Bill, and this should be clarified further as the Bill goes forward.”

As well as a general concern that this Part of the Bill lacked detail, some submissions made recommendations for areas that were currently felt to be missing. A selection of the most popular suggested amendments are summarised below.

## **Communication**

Many responses noted that improved communication channels between the justice system and those engaging with it were a necessary component of trauma-informed practice. One such comment noted that:

“There needs to be a specific commitment to improve the provision of information to complainers ... (it) should include a clear legislative requirement on the court and the COPFS to provide survivors with information regarding their case in a timely fashion. Survivors continue to tell us that they are not kept informed about what is happening with their case.” (Rape Crisis Scotland)

## **‘Floating’ trials**

There was a lot of discussion regarding ‘floating’ trials among the submissions. Floating trial diets are used in solemn criminal cases. A trial is allocated to a five-day period and may start at any time during that period. More information on their use is set out in the Bill’s [policy memorandum](#) (see paras 164 to 165 and 173 to 176).

Many of the organisations who worked with individuals who had experience of the judicial system believed that the Bill should include:

“a specific commitment to ...dispense with floating trial diets in rape and sexual offences cases... We are supportive of the specific inclusion of the need for trauma informed practice in relation to scheduling court diets but are concerned about the retention of floating trial diets. Court delays have been at unacceptable levels for some time, but we are acutely aware that the use of floating trial diets causes distress and trauma to survivors and are disappointed that steps have not been taken to envisage a new and improved way to deal with the scheduling of these trials.” (Rape Crisis Scotland)

This view was supported by Victim Support Scotland.

The Scottish Courts and Tribunals Service noted in their response that delays can occur whether or not floating trial diets are used and argued that floating trials meet a need for flexibility:

“It is very difficult to guarantee that a trial will start or a witness will give evidence on a particular day, irrespective of the scheduling model used and efforts made by parties. This can be due to witnesses and accused persons and legal personnel being unable to, or failing to attend due to a variety of reasons e.g. ill health, most keenly seen with the pandemic. While the floating trial model does not eradicate this or the above mentioned issues of inaccurate estimates and other challenges, it currently provides and supports greater flexibility for case scheduling and the utilisation of finite court room, judicial and staff resources to respond to them.”

## **Data**

The need for some form of metric to measure progress on embedding trauma-informed practice was noted by some respondents. For example:

“We recommend that provision is made on the face of the Bill, or in accompanying statutory guidance, that data on the use of trauma-informed practice must be collected and monitored to enable learning about what works in supporting victims and witnesses. Data should be disaggregated by protected characteristics.” (Equality and Human Rights Commission)

## Part 3: Special Measures in Civil Cases

The submissions who provided a response to Part 3 of the Bill were generally in favour of special measures being extended to civil cases. The comments mainly raised concerns that the Bill did not go far enough in ensuring special measures were available to those that would benefit from them.

### Limitations of special measures in Part 3

Many organisations, especially those who work with individuals with lived experience of the civil justice system, were worried that the bar to access special measures is set too high in Part 3 of the Bill as it stands.

For example, Scottish Women’s Aid and Rape Crisis Scotland suggested that the scope of who is classified as a ‘deemed vulnerable witness’ (meaning the witnesses will automatically be treated as vulnerable) should be broadened. These organisations wanted to see a revised definition which covers any situation where there are allegations of certain conduct, for example, domestic abuse or sexual violence.

The current (narrower) definition in Part 3 requires the prosecution of a relevant offence or the existence of ‘civil protection order’, for example, an ‘interdict’ or ‘non-harassment order’, prohibiting certain conduct towards the victim. On difficulties with the current definition, Victim Support Scotland and Rape Crisis Scotland drew attention to the low prosecution and conviction rates for offences involving gender-based violence. Rape Crisis Scotland highlighted issues with victims obtaining civil protection orders in practice.

In a similar vein, Sheriffs & Summary Sheriffs’ Association focused on the position of a ‘vulnerable party’ (i.e. the person raising or defending civil court proceedings):

“The definition...effectively identifies a vulnerable party as one in relation to whom where there is in force a non-harassment order, interdict or similar remedy or where there is either a conviction or a prosecution for any of the offences listed...There is an argument that a broader definition (such as where there are ongoing civil proceedings between the parties in which protective remedies are sought/domestic abuse is averred) should be considered. This would better fit with the policy intention of the Bill.”

Some organisations also highlighted that, even if someone is deemed vulnerable, they will not have an automatic right to special measures as a result. For example, Scottish Women’s Aid commented:

“even if women achieve ‘deemed vulnerable witness’ status..., they still do not have an absolute right to special measures; a Vulnerable Witness Application is needed, and the court can still decide that no special measures are needed...”

Several organisations, including Scottish Women’s Aid, argued that being deemed vulnerable should result in an automatic entitlement to special measures.

It was noted by several commentators that the access to special measures in civil courts as set out in the Bill fell short of the rights of those in criminal courts, both in terms of who is classified as automatically vulnerable and what the consequences of that classification are. For example, one organisation noted:

“We feel that the provision of special measures in civil cases should be more in line with those in the criminal justice system. In criminal cases, s271 of Criminal Procedure (Scotland) Act 1995 gives provision for witnesses in certain circumstances to be ‘deemed’ vulnerable. This includes those under 18 but also where the proceedings relate to; sexual offending, trafficking, domestic abuse, stalking, or there is a ‘significant risk of harm’ to the person by them giving evidence.

We believe that the provisions on civil cases should incorporate such a ‘deemed’ vulnerable quality where the civil proceedings incorporate assertions of rape or sexual violence.” (Rape Crisis Scotland)

Another concern raised when the legislation was compared to that used in criminal cases, was that the current Bill would exclude supporters from civil cases:

“In relation to the use of supporters, in the proposed new section 22G(6)(b) there is a prohibition upon the use of a supporter while the vulnerable party is giving evidence. We are not clear why that should be so. In criminal cases, supporters routinely sit alongside vulnerable witnesses whilst they are giving their evidence, and indeed that may be the point in proceedings when support may be needed most. We can think of no principled reason why supporters should be prohibited from sitting alongside a party whilst they are giving evidence, subject to the proper and sensible caveats set out in sections 22G(6)(a) and (c).” (The Senators of the College of Justice)

## **Self-representation**

When it came to the idea of prohibiting self-representation in certain circumstances (a specific special measure proposed in Part 3) there was less consensus in the submissions. While organisations were broadly in favour of the proposals, it should be noted that several individuals were very against the idea. They highlighted the rights of individuals to self-represent as well raising concerns about the costs and potential quality of solicitors appointed from a register.

Those in support of the provisions generally commented that the scope of this section was not broad enough. One such submission stated:

“We note that the policy intention, outlined by the Scottish Government, is ‘to protect persons who have suffered abuse, such as domestic abuse, from being cross-examined by their abuser’ and note that Bill as framed may fall short in achieving this aim.

The prohibition on cross-examination follows the same requirements as discussed above for special measures to be granted, which again causes significant barriers to justice for some survivors. We note that the survivors in civil damages cases, such as Miss M, Miss AB, and Denise Clair, would not

have been afforded the protection from cross-examination automatically.”  
(Scottish Women's Rights Centre (SWRC))

There were also several concerns raised about the remuneration of solicitors who were placed on the register as outlined by the Bill. For example, the Law Society of Scotland stated:

“We believe that regulations setting out of both solicitors’ remuneration and conferring the duty of maintaining the register on a person should not be discretionary but should be mandatory. We would also welcome some detail regarding the operation of payments and who it is anticipated will be responsible for maintaining the register.”

This concern was supported by the Senators of the College of Justice who noted:

“we observe that whilst certain aspects of the regulations relating to the establishment of the Register are mandatory, others are permissive only, such as the remuneration of any solicitors appointed to the Register, including payment of their outlays. We observe only that in the absence of certainty of remuneration, it may prove difficult to attract applicants for inclusion on the Register.”

Comments were also made regarding dividing the register into sections, and whether this needed to be mandatory:

“the Bill contains a provision that “may provide for the register to be divided into parts by reference to type, subject matter, or category of civil proceedings”. We would note that it is essential that special attention is paid to the impact of this change, and whether ‘may’ should be changed to ‘must’ here. It is critical that solicitors acting for parties prohibited from representing themselves in cases involving child victims and witnesses have had sufficient training on specific areas such as child development, infant mental health and the impact of trauma on children. It is important that in expanding the protections against self-representation beyond cases relating to children, that the unique considerations in these cases and indeed the unique needs of children and young people are not lost.” (NSPCC)

## **Resources**

Among the responses from legal organisations the subject of the resources required to meet the extension of special measures in civil courts was discussed. The Scottish Courts and Tribunals Service were concerned that the Financial Memorandum had not considered the full resource implications of this Part of the Bill:

“The costs to the SCTS set out in the Financial Memorandum to the Bill are primarily focused on the costs of equipping an additional 20 courtrooms as a consequence of the provisions in the Bill. However, given the wide variety of circumstances to which the Bill will extend the use of special measures, this may not be sufficient and may result in issues with the scheduling of court hearings. It is also possible that to support those hearings that might take

place in chambers, rather than in the court room, additional equipment may require to be purchased.

Whilst the Financial Memorandum provides some indication of the potential volumes of cases to which the measures may apply, we do not consider that these fully reflect the number of occasions measures will require to be put in place, and that the numbers/projections have the potential to be substantially higher with commensurate impact on access to resources.”

Also on resources, the Faculty of Advocates stated:

“Faculty further supports the introduction of a register of solicitors to ensure those prevented from conducting their own litigation are able to access legal advice. However, the same questions of resource remain. The provisions leave regulation of the register (including training and qualification requirements) and matters of remuneration to the Scottish Ministers. Faculty would welcome further information as to the Government’s intentions in this regard. Faculty holds a concern that, just as is the case in the criminal sector, the number of solicitors registered to provide civil and children’s legal aid continues to diminish. It may be that due to pressures of business and level of remuneration, there will not be a sufficient number of solicitors willing to be included on the register relative to the demands of litigants.”

## **Implementation concerns**

There was some concern within the submissions about the possible timescale for implementation of this Part of the Bill due to similar legislation that had not yet been enacted. Examples of these submissions include:

“it is frustrating to see an extension of measures that have not yet appeared in practice for children and young people following the Children (Scotland) Act 2020. It is important that children and young people do not see further delay to the implementation of provisions that are already in law for them.” (Children 1<sup>st</sup>)

“We would also again note that the above protections as yet do not apply to Vulnerable Witnesses in Parental Rights and Responsibilities cases as the Children (Scotland) Act 2020 has yet to be brought into force and echo our agreement with Children 1st that there should be a review of the backlog of legislation passed but not yet enacted and its impact.” (NSPCC)

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