

EXPLANATORY NOTES

Victims, Witnesses, and Justice Reform (Scotland) Act 2025 (asp 12)

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VICTIMS, WITNESSES, AND JUSTICE REFORM (SCOTLAND) ACT 2025

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Victims, Witnesses, and Justice Reform (Scotland) Act 2025. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

3. The Act, which makes a number of changes to the law on the treatment of victims and witnesses (and other vulnerable people involved in court proceedings) and on civil and criminal justice, is in 13 Parts as follows:

- Part 1 –establishes a new Victims and Witnesses Commissioner for Scotland and makes provision about the Commissioner's functions.
- Part 2 – imposes a requirement on criminal justice bodies to have regard to trauma-informed practice in carrying out their functions; requires the standards of service produced by those criminal justice bodies to include standards on trauma-informed practice; allows the courts to make rules for the purpose of ensuring that criminal, civil, and Fatal Accident Inquiry proceedings are conducted in a way that accords with trauma-informed practice; and requires the judiciary to take trauma-informed practice into account when scheduling criminal and civil court business.
- Part 3 – makes provision for victims to be informed about plea agreements or decisions not to prosecute or to discontinue proceedings, makes changes to the victim notification scheme, which provides for victims to be given information and, in certain circumstances, have the right to make representations, about the person who offended against them; extends the right to make a victim statement to complainers in all solemn proceedings; requires the provision of court transcripts to complainers in certain proceedings; makes provision about referral to victim support services by the police; and requires the Scottish Ministers to review the provision of information to victims of persons offered fixed penalties.
- Part 4 – makes provision about factors which the Parole Board for Scotland must take into account in deciding whether a prisoner is to be released and about specific considerations which the Parole Board and/or the Scottish Ministers must make when setting licence conditions on release.

- Part 5 – provides for the special measures available to the courts in relation to vulnerable witnesses in some court proceedings to be available in all civil proceedings; extends the range of special measures available to include allowing the court to prohibit parties from personally conducting their own case; and makes provision for special measures to be available where parties to civil proceedings are regarded as vulnerable.
- Part 6 – abolishes the not proven verdict; and makes provision for criminal juries, including providing that a jury can continue to sit in a case provided at least 12 jurors remain, providing for the minimum number of jurors needed to deliver a guilty verdict, altering the form and manner of jury affirmation, providing for support for jurors with communication needs due to disability, and providing for research into juries.
- Part 7 – establishes a new Sexual Offences Court to try persons accused of certain sexual offences.
- Part 8 – adds the admission of the record of a prior examination as a special measure available in relation to vulnerable witnesses in criminal proceedings and makes changes to the provision of special measures to child witnesses.
- Part 9 – provides for a number of other reforms of the criminal justice system, in particular:
    - lifelong anonymity for victims of certain sexual offences (subject to waiver by the victim or the court in certain circumstances);
    - extends certain restrictions on evidence in proceedings related to sexual offences to cover proceedings in relation to additional offences and offences in connection with which a docket is included in the indictment or complaint;
    - a right for legal representatives of complainers in certain sexual offences cases to make representations in relation to applications made for the purposes of section 275(1) of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") to admit certain sexual history and character evidence.
- Part 10 – makes provision about the making of non-harassment orders.
- Part 11 – creates two new offences of "breaching" certain protective orders made outwith Scotland.
- Part 12 – requires the Scottish Ministers to review proceedings for domestic abuse offences where there are also related or connected proceedings (civil or criminal).
- Part 13 – contains the final provisions, including provision defining "trauma-informed practice" as well as provision for commencement of the Act.

CROWN APPLICATION

4. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. This Act applies to the Crown in the same way as it applies to everyone else. The Act amends a number of existing enactments, some of which do, and some of which do not, apply to the Crown. The Act generally makes no change

to the application of those enactments to the Crown. See, however, new section 106H of the Criminal Justice (Scotland) Act 2016, being inserted by section 104 of this Act, which makes provision for the application to the Crown of the offence provision in new section 106F.

PART 1 – VICTIMS AND WITNESSES COMMISSIONER FOR SCOTLAND

5. This Part of the Act establishes the office of Victims and Witnesses Commissioner for Scotland ("the Commissioner"), and makes provision for the Commissioner's functions, powers, and duties.

Establishment

Section 1 and schedule 1 – Victims and Witnesses Commissioner for Scotland

6. Subsection (1) of section 1 establishes the office of Victims and Witnesses Commissioner for Scotland. Subsection (2) introduces schedule 1, which makes provision about various administrative matters including the status, remuneration, and terms of appointment of the Commissioner, and about the Commissioner's staff.

7. Paragraph 1 of schedule 1 provides that the Commissioner's status is that of a juristic person distinct from the natural person holding the office of Commissioner. In addition, the Commissioner is not to be regarded as being a servant or agent of the Crown. The Commissioner's property belongs to the Commissioner and not to the Crown, and the Commissioner's staff are not civil servants.

8. Paragraph 2 of schedule 1 provides that, except in certain specified provisions of the Act, the Commissioner is not bound to follow orders or directions from members of the Scottish Parliament, the Scottish Ministers, or the Scottish Parliamentary Corporate Body ("SPCB").

9. Paragraphs 3 and 4 of schedule 1 provide for the appointment, and disqualification from appointment, of the Commissioner. The Commissioner will be appointed by the King, following their nomination by the Scottish Parliament. The Commissioner may only serve one term of office, and a person is disqualified from being appointed Commissioner if at the time of the appointment, or in the year preceding the appointment, the person is or has been a member of the Scottish Parliament, the House of Commons, or the House of Lords, or a member, employee, or appointee of one of the criminal justice bodies defined in section 25 of the Act. This is to ensure that the Commissioner is free from political influence, given that the role will involve scrutiny of the operation of the criminal justice system.

10. Under paragraph 5 of schedule 1, the Commissioner may hold office for a single term of up to 8 years, as determined by the SPCB at the time of appointment. This is consistent with the tenure arrangements set out in the Scottish Parliamentary Commissions and Commissioners etc. (Scotland) Act 2010.

11. Paragraph 6 of schedule 1 sets out the circumstances under which a Commissioner's appointment may terminate early. A Commissioner may resign or may become disqualified from holding office under paragraph 4. The Commissioner can also be removed from office where either the SPCB is satisfied that the Commissioner has breached their terms and conditions of appointment and the Parliament resolves to remove the Commissioner as a result, or where the Parliament resolves that it has lost confidence in a Commissioner's willingness, suitability or ability to perform the Commissioner's functions. A resolution in either scenario

requires the support of at least two thirds of (normally) the total number of members of the Scottish Parliament. However, the number of votes required is based on the number of seats, so the percentage does not reduce if a seat is temporarily vacant pending a by-election.

12. Paragraph 7 of schedule 1 provides that the validity of any acts of the Commissioner is unaffected by any procedural defects in the Parliament's nomination or by the Commissioner subsequently becoming disqualified from acting as the Commissioner.

13. Paragraph 8 of schedule 1 enables the SPCB to set and pay such remuneration, allowances, pension and gratuities to the Commissioner as it determines. It will be for the SPCB to decide whether payments are made and the amounts of any payments. The SPCB must indemnify the Commissioner for liabilities incurred by the Commissioner in the exercise of their functions. This means that when the Commissioner incurs costs in carrying out their functions, they are entitled to recover those costs from the SPCB.

14. Under paragraph 9 of schedule 1, the SPCB may determine the terms and conditions of the Commissioner's appointment insofar as not already set out in the Act, including prohibiting the Commissioner from holding any other office, employment or appointment, or requiring that the Commissioner first obtain the approval of the SPCB before holding any other office, employment or appointment. This is to avoid any appointment being seen to compromise the independence of the Commissioner.

15. Paragraph 10 of schedule 1 makes provision for the appointment of a temporary Commissioner to hold the office either during a period when the post is vacant or where the Commissioner is unable to perform their functions. During that period, the SPCB may appoint as temporary Commissioner a person who has not previously held the position and who is not disqualified from holding the post under paragraph 4 of this schedule. The SPCB will determine the terms, conditions and duration of the appointment and may relieve the individual from the post at its discretion (by notice in writing), or at the request of the individual.

16. Paragraphs 11 and 12 of schedule 1 allow the Commissioner to appoint staff, subject to the consent of the SPCB as to the numbers, and to determine their terms and conditions subject to the approval of the SPCB.

17. Paragraph 13 of schedule 1 allows the Commissioner to pay pensions, allowances and gratuities to current or former members of staff, including the establishment of one or more pensions schemes and pay allowances and gratuities by way of compensation for loss of employment. Approval for such arrangements must be obtained from the SPCB.

18. Under paragraph 14 of schedule 1, while the Commissioner can delegate any function to any person, ultimately the Commissioner remains responsible for the performance of those delegated functions. Having delegated functions, the Commissioner is still able to decide to perform those functions personally.

19. Paragraph 15 of schedule 1 places an obligation on the Commissioner to comply with directions from SPCB in relation to the location of the Commissioner's office, and the sharing of any resources with any other public office or body.

20. Paragraph 16 of schedule 1 requires the Commissioner to prepare a budget for approval by the SPCB before each financial year. The Commissioner may revise the budget during the year, with the SPCB's approval again being required. The Commissioner is placed under a duty to ensure the economical, efficient, and effective use of the Commissioner's resources.

21. Paragraph 17 of schedule 1 makes provision for the SPCB to designate an accountable officer for the Commissioner – either the Commissioner or a member of the Commissioner's staff. The accountable officer's responsibilities include the signature of accounts and ensuring the propriety and regularity of finances and the economical, efficient, and effective use of resources. If the accountable officer is not the Commissioner, then the accountable officer requires to send to the Auditor General for Scotland a copy of the Commissioner's written authority in respect of any action which the accountable officer has been required to take which the accountable officer considers to be inconsistent with the proper performance of their functions.

22. Paragraph 18 of schedule 1 requires the Commissioner to keep proper accounts and records and prepare and send to the Auditor General for Scotland an annual statement of accounts. The Commissioner is bound to comply with directions from the Scottish Ministers about those accounts, records, and statement, and following audit, to make the statement of accounts available for inspection on request, to any person and without charge.

Functions and powers

Section 2 – functions

23. Section 2 provides that the Commissioner's general function is to promote and support the rights and interests of victims and witnesses. Definitions of "victims" and "witnesses", for the purposes of this part of the Act, are included in section 25.

24. Subsection (2) imposes on the Commissioner a duty to carry out certain specific activities in order to achieve that general function. The activities include engagement with relevant persons, raising awareness, including in relation to the Victims' Charter, monitoring compliance with statutory duties, considering the provision of information under the victim notification scheme and the making of representations by victims, promoting best practice, especially by criminal justice bodies in relation to trauma-informed practice, and producing research. A definition of "criminal justice body", for the purposes of this Part of the Act, is included at section 25. The criminal justice bodies are the Lord Advocate, the Scottish Ministers, the chief constable of the Police Service of Scotland, the Scottish Courts and Tribunals Service, and the Parole Board for Scotland.

Section 3 – civil function

25. Section 3(1) gives the Scottish Ministers a power to make regulations extending the Commissioner's general function to cover persons involved in proceedings other than criminal proceedings, such as proceedings relating to contract disputes or civil damages, as described in subsection (2).

26. Subsection (3)(a) allows for the regulations to define which proceedings and persons are to be included within the extended function of the Commissioner. Subsection (3)(b) provides for the regulations to impose on the Commissioner a duty to carry out certain specific activities in exercising the extended function. These activities broadly match the activities which the Commissioner will already be obliged to carry out under section 2 in relation to criminal proceedings, and persons involved in those proceedings.

27. Regulations under this section will be subject to the affirmative procedure.[1]

Sections 4 and 5 – engagement, and advisory group

28. Section 4 contains more detail about the engagement which the Commissioner is obliged to carry out, as part of the general function, with victims, witnesses, and persons providing support to victims. Subsection (1) allows the Commissioner to establish groups through which to carry out engagement. Separately, it imposes on the Commissioner a duty to pay particular attention to groups of victims and witnesses who do not have other ways of interacting with the criminal justice process. Subsection (2) requires the Commissioner to prepare a strategy setting out how they will carry out the duty of engagement, and to review this to ensure it remains up to date.

29. Section 5 provides for the establishment of an advisory group, at the discretion of the Commissioner. The Commissioner is empowered, by subsection (2), to appoint the members of such a group, and under subsection (3) to pay remuneration and expenses to those members. The Commissioner requires the approval of the Scottish Parliamentary Corporate Body for the appointment and payment of members of any such advisory group.

Section 6 – power to work with others

30. Subsection (1) of section 6 allows the Commissioner to work with the parties named in subsection (2), on terms agreed between the Commissioner and the relevant party, to assist those parties as requested, and to consult them.

Section 7 – general powers

31. Subsection (1) of section 7 provides a general, overarching power for the Commissioner to do things relative to the exercise of the Commissioner's functions. Subsection (2) places a requirement on the Commissioner to obtain the approval of SPCB before making payments for services.

Section 8 – restriction on exercise of functions

32. Section 8 sets out restrictions which apply to the exercise of the Commissioner's functions. Subsection (1) prevents the Commissioner from acting in relation to individual cases. "Individual case" is defined in subsection (5) as including a particular victim or witness, particular proceedings, or anything done in a judicial capacity. Subsection (2) provides that, despite that restriction, the Commissioner may consider individual cases and their impact on matters relevant to the Commissioner's functions. This means that while the Commissioner may, for example, consider how a criminal justice body's actions in relation to a particular case demonstrate their adherence to trauma-informed practice, the Commissioner may not intervene in that case. Subsection (3) prevents the Commissioner from acting in a way that adversely impacts on the independence of any of the criminal justice bodies, whether that independence is protected by statute or otherwise.

33. Subsection (4) allows the Commissioner to act in relation to events that took place before the section came into force, where relevant.

[1] See section 67(2) and section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (legislation.gov.uk).

Victims' charter

Section 9 – victims' charter

34. Section 9 places a duty on the Commissioner to publish a Victims' Charter within 12 months of section 9 coming into force. The charter is to be laid before the Scottish Parliament, reviewed once a year, and revised as appropriate following any such review.

35. Subsection (2) sets out certain information which must be included within the charter and provides for the Commissioner to include any further information as the Commissioner thinks appropriate. Subsection (3) requires the Commissioner to invite certain persons to participate in the preparation of the charter. Those persons are victims, victim support service organisations, and the criminal justice bodies, as defined in section 25, as well as other persons the Commissioner thinks appropriate. Subsection (4) makes provision for there to be more than one charter, as there might be different information or provision in relation to different types of victim, such as children, or in relation to victims of different types of offences, such as violent offences, and it may be considered beneficial for this information or provision to be set out separately.

36. Subsection (5) provides that where the charter is revised and re-published, the same requirements in relation to publishing, content, and participation, and the provision in relation to there being more than one charter, apply as they do in relation to the original charter. Subsection (6) makes clear that any preparation work in relation to the charter done before section 9 comes into force is to be treated as valid.

Strategic Plan

Section 10 – strategic plan

37. Section 10 deals with strategic planning by the Commissioner. Subsection (1) provides for a strategic plan to be prepared every 3 years and laid before the Scottish Parliament. Subsection (2) requires the Commissioner to consult with SPCB and other relevant persons prior to publishing a plan. Subsection (3) sets out what each strategic plan must include. Subsections (4) and (5) make provision for revision by the Commissioner of a strategic plan, which the Commissioner can choose to do at any time.

Investigations

Sections 11 and 12 – carrying out investigations, and initiation and conduct of investigation

38. Section 11 empowers the Commissioner to carry out investigations into the regard which a criminal justice body has, or has had, to the rights, interests, and views of victims and witnesses when doing things that affect those victims and witnesses. Section 25 defines "criminal justice body", for the purposes of this Part of the Act, as being each of the Lord Advocate, the Scottish Ministers, the chief constable of the Police Service of Scotland, the Scottish Courts and Tribunals Service, and the Parole Board for Scotland.

39. Subsection (2) provides that the Commissioner must be satisfied that any work carried out as part of an investigation is not work which should be carried out by another person. This would include, for example, work that falls within the remit of the Children and Young People's Commissioner for Scotland. This is to avoid the unnecessary duplication of work.

Subsection (3) prevents the Commissioner from carrying out investigations, or work as part of a wider investigation, in relation to decisions made or actions taken in legal proceedings or matters which are subject to legal proceedings.

40. Subsection (1) of section 12 requires the Commissioner to prepare terms of reference for each investigation the Commissioner intends to carry out, and to make sure that people who might be affected by the investigation are made aware, in advance, that the investigation will take place. Subsection (2) provides that, as far as possible, investigations must be carried out in a way that is publicly accessible.

Sections 13 and 14 – investigations: witnesses and documents, and reports on investigations

41. Subsection (1) of section 13 gives the Commissioner powers to collect evidence during an investigation. The Commissioner can do this by requiring persons to give evidence or produce documents relevant to the investigation. Subsections (2) to (4) set out restrictions to that power, and exceptions to when a person might be required to give evidence. In particular, subsection (2) prevents the Commissioner from imposing a requirement on a person that the Scottish Parliament could not, under section 23 of the Scotland Act 1998, require to attend its proceedings or produce documents. Section 23 provides, for example, that judges or members of a tribunal might not be required to give evidence, and makes provision for the circumstances in which Ministers of the Crown might be called upon to do so. The regulation-making power in subsection (5) enables the Scottish Ministers to make further provision in relation to the giving of evidence. That might include, for example, provision about matters such as the giving of evidence under oath, or the application of privilege. That regulation-making power will be subject to the negative procedure.2

42. Section 14 places a duty on the Commissioner to publish a report on an investigation when that investigation is complete, and to lay a copy of the report before the Scottish Parliament. Subsection (2) allows the Commissioner to include in the report a requirement for the criminal justice body which was the subject of the report to respond to the report with a statement. Subsection (3) requires the Commissioner to give the criminal justice body a draft of the report and the opportunity to make comments to the Commissioner about its contents before the Commissioner publishes the report. This applies even if the report contains no requirement, under subsection (2), for the criminal justice body to respond to the report.

Information gathering

Section 15 and 16 – power to gather information, and failure to supply required information

43. Section 15 empowers the Commissioner to require criminal justice bodies to give information to the Commissioner. The section covers any information that the Commissioner reasonably requires to establish whether the body is in compliance with its standards of service, or the Victims Code for Scotland, under the Victims and Witnesses (Scotland) Act 2014. Subsection (2) sets out the content of the notice which the Commissioner must give the body when information is required. Subsections (3) and (4) set out exemptions to the obligation on criminal justice bodies to supply information to the Commissioner under this section.

[2] See section 67(3) and section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 (legislation.gov.uk).

Subsection (6) makes provision for cases where a criminal justice body refuses to supply information under the exemption set out in subsection (3). If the Commissioner is of the view that the exemption does not apply in relation to that information, and that the information should have been supplied, the Commissioner can report the matter to the Court of Session to determine whether the information should be supplied.

44. Section 16(1) gives the Commissioner the power to take either or both of the actions set out in subsections (3) and (4) where a criminal justice body, without a reasonable excuse, refuses or fails to supply information which the Commissioner has requested under section 15. Section 16(1) does not apply where the criminal justice body has relied on the exemptions in section 15(3) or (4) to refuse to supply information. Section 16(2) gives the Commissioner the power to take the action set out in subsection (4) where the Commissioner suspects that information which has been supplied under section 14 has been deliberately altered.

45. The action set out in subsection (3) is the publication by the Commissioner of the fact that the criminal justice body has refused or failed to supply the information. The action set out in subsection (4) is the reporting by the Commissioner of the refusal or failure to supply the information, or the altering of the information, to the Court of Session. Subsection (5) provides that, where the Commissioner reports a refusal or failure to supply information, or the altering of information, to the Court of Session under subsection (4), the Court may make any enforcement order that the Court considers appropriate, which includes the making of no order, or may treat the matter as contempt of court.

Section 17 – offence of Commissioner disclosing confidential information

46. Section 17 imposes a confidentiality obligation on the Commissioner, the Commissioner's staff, and any agent of the Commissioner. It also covers persons who have previously held any of those positions. Subsection (1) creates an offence, which applies only to those persons, of disclosing information obtained in the course of carrying out the Commissioner's functions. Information which was in the public domain at the time of the disclosure, or had previously been in the public domain, is not covered by the offence.

47. Subsection (3) sets out circumstances in which disclosure of information which would otherwise be covered by the offence is authorised. These circumstances are: where the information is disclosed with the consent of the person from whom it was obtained, where disclosure was necessary for the exercise of the Commissioner's functions, for example the disclosure of information obtained from one criminal justice body to another criminal justice body in the promotion of joined-up trauma-informed practice, and where disclosure was made for the purposes of criminal or civil legal proceedings or the investigation of an offence or suspected offence. Subsection (4) goes on to provide that where disclosure was made for the purposes of the Commissioner's functions, it must not include the disclosure of information which would be likely to lead to the identification of any victim, witness, or person suspected (but not charged) with committing an offence.

48. Subsection (5) sets out that the penalties which might be imposed on a person convicted of the offence are a fine up to the statutory minimum on summary conviction, or a fine on conviction on indictment.

Annual report

Section 18 – annual report

49. Section 18 requires the Commissioner to prepare and publish a report on the Commissioner's functions each financial year, and to lay a copy of the report before the Scottish Parliament. A copy of the draft report is to be given to each criminal justice body, and any person providing victim support services who is named in the report, at least 5 days before the report is published. The report is to include a review of relevant issues, a review of the Commissioner's activity, any recommendations by the Commissioner, a summary of any review and revision of the Victims' Charter that year, and a summary of the Commissioner's proposed activity for the following year.

50. Subsection (4) sets out examples of matters in relation to which the Commissioner might make recommendations in the annual report. These include training of staff of criminal justice bodies, statutory standards, trauma-informed practice, and the provision of information to victims and witnesses. Subsection (5) provides for the SPCB to give the Commissioner directions in relation to the form and content of the report and prohibits the inclusion in the report of any information which might lead to the identification of an individual.

Sections 19 and 20 – requirement to respond to annual report, and publication of responses to report

51. Section 19 provides that where a report under section 18 names a criminal justice body or person providing victim support services, the report might also impose on that person a requirement to respond to the report. If the report imposes such a requirement, the Commissioner must specify a reasonable period for the person to reply. The person must reply within that period, responding to the relevant part of the report. The relevant persons will have received a copy of the draft report at least 5 days prior to its publication by virtue of section 18.

52. Section 20 requires the Commissioner to publish responses received under section 19, and to lay copies of those responses before the Scottish Parliament. The obligation to publish the response and lay it before the Parliament does not apply, under subsection (2), if the Commissioner considers publication and laying to be inappropriate. Subsection (3) provides that, in particular, the Commissioner must ensure that the published response does not include confidential information about an individual. If a person has not responded to a report which included a requirement for them to do so, the Commissioner may publicise the fact of that lack of response.

Miscellaneous

Section 21 – reports

53. Section 21 provides a general power for the Commissioner to publish any reports that the Commissioner considers appropriate. This power is in addition to the Commissioner's obligation to publish its annual report, and reports on its investigations. At least 5 days before publishing a report under this section, the Commissioner must give a draft copy of the report to each criminal justice body. Any report published under this section must, so far as reasonably practicable, not identify any individual who has given information to the Commissioner unless that individual has given prior consent to being named in the report. Reports published under this section may be laid before the Scottish Parliament if the Commissioner considers such laying to be appropriate.

Section 22 – protection from action of defamation

54. Section 22 ensures that statements made to the Commissioner, and statements made by the Commissioner in a report on an investigation, have absolute privilege (meaning they cannot form the basis of an action of defamation by any person referred to in those statements). Other statements made by the Commissioner, by the Commissioner's staff or by an agent of the Commissioner in the course of their duties, have qualified privilege (meaning they cannot form the basis of an action of defamation unless the statement was made with malice or intent to injure).

Duty to co-operate with Commissioner

Section 23 – duty to co-operate with Commissioner

55. Section 23 gives the Commissioner a power to request that a criminal justice body co-operate with the Commissioner in the exercise of the Commissioner's functions. Subsection (2) places a requirement on bodies who receive such a request to respond, either confirming that they will comply with the request, or giving reasons why they will not comply.

Application of public authorities legislation

Section 24 and schedule 2 – application of public authorities legislation

56. Section 24 introduces schedule 2, which inserts reference to the Victims and Witnesses Commissioner for Scotland into relevant legislation, so that that legislation will apply to, or in respect of, the Commissioner.

57. Paragraph 1 of schedule 2 adds the Commissioner to the list of authorities in schedule 2 of the Scottish Public Services Ombudsman Act 2002. The effect is to:

- make the Commissioner open to investigation by the ombudsman (see section 5 of the 2002 Act)
- oblige the Commissioner to have a complaint handling procedure that complies with the statement of principles published by the ombudsman under section 16A of the 2002 Act
- permit the Commissioner to be made subject to the further requirement to have a complaint handling procedure that complies with a model complaints handling procedure prepared by the ombudsman (see sections 16B and 16C of the 2002 Act).

58. Paragraph 2 of schedule 2 adds the Commissioner to the list of Scottish public authorities in schedule 1 of the Freedom of Information (Scotland) Act 2002. This means that the Commissioner will be subject to the requirements which that Act places on public bodies, including requirements to provide information to the public on request and to have in place a scheme for the pro-active publication of information it holds.

59. Being a public authority within the meaning of the Freedom of Information (Scotland) Act 2002 also makes the Commissioner a "Scottish public authority" to which the Environmental Information (Scotland) Regulations 2004 apply, meaning that the Commissioner will be bound to keep and make available certain environmental information relative to the Commissioner's functions.

60. It also means that the Commissioner falls within the definition of a "public body" under section 44 of the Climate Change (Scotland) Act 2009. This means that the Commissioner must act in a way calculated to contribute to the delivery of climate change targets and any climate change adaptation programme and in the way that the Commissioner considers is most sustainable. The Commissioner can also be made subject to further climate change duties, including reporting duties.

61. In addition, as a public authority within the meaning of the Freedom of Information (Scotland) Act 2002, the Commissioner is a "public authority" or "public body" for the purposes of the UK General Data Protection Regulation by virtue of section 7 of the Data Protection Act 2018 (subject to the power under that section to remove that status not being exercised). The UK General Data Protection Regulation (also commonly referred to by the acronym "UK GDPR") is Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.3 There are particular rules applied to bodies classified as "public authorities" (over and above those applied to all data processors) in the UK GDPR and the Data Protection Act 2018. An analysis of those rules is beyond the scope of these Notes.

62. Paragraph 3 of schedule 2 adds the Commissioner to the list of bodies in schedule 5 of the Public Services Reform (Scotland) Act 2010 ("the 2010 Act"). This means that it is a body in relation to which an order can be made under section 14 of that Act where it would improve the exercise of public functions, having regard to efficiency, effectiveness and economy. An order under section 14 of the 2010 Act can (subject to restrictions, and only after the Scottish Parliament has approved a draft of the order):

- modify, confer, abolish, transfer or provide for the delegation of any function of a public body,
- amend the constitution of a public body.

63. Paragraph 4 of schedule 2 makes the Commissioner subject to the duties created by the Public Records (Scotland) Act 2011 to produce, implement and keep under review a records management plan.

64. Paragraph 5 of schedule 2 adds the Commissioner to the list of contracting authorities subject to the duties created by the Procurement Reform (Scotland) Act 2014 regarding their procurement activities and some specific measures aimed at promoting good, transparent and consistent practice in procurement.

[3] As it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as modified by Schedule 1 of the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019.

Interpretation of Part

Section 25 – interpretation of Part

65. Section 25 contains definitions of terms used in this Part of the Act. Subsection (2) provides a power for the Scottish Ministers to amend certain of those definitions. In particular, this power might be used if the power in section 3, to extend the Commissioner's functions to proceedings other than criminal proceedings, is used. Regulations under subsection (2) will be subject to the affirmative procedure.4

PART 2 – TRAUMA-INFORMED PRACTICE

66. This Part of the Act makes a number of changes to existing legislation by adding provision in relation to "trauma-informed practice". That expression is defined for the Act as a whole in section 114 as a means of operating that—

- recognises that a person may have experienced trauma,
- understands the effects which trauma may have on the person, including how trauma may affect any evidence given by the person, and
- based on that understanding, involves adapting processes and practices to seek to avoid, or minimise the risk of, either exposing the person to any recurrence of past trauma or to any further trauma or negatively impacting the person's recovery from trauma, and to enable the person to participate effectively in court proceedings.

Principle of trauma-informed practice

Section 26 – principle of trauma-informed practice

67. Section 1 of the Victims and Witnesses (Scotland) Act 2014 ("the 2014 Act") requires a number of persons and organisations involved in the criminal justice system (as listed in section 1(2)) to have regard to a number of principles, that are set out in section 1(3), when carrying out their functions in so far as those functions relate to a person who is or appears to be a victim or witness in relation to a criminal investigation or criminal proceedings. Section 26(2) of this Act amends those principles to add a new principle that victims and witnesses should be treated in a way that accords with trauma-informed practice (as defined in section 114 of this Act).

68. Section 2 of the 2014 Act requires the persons and organisations listed in section 2(2) to set and publish standards of service in relation to the carrying out of certain functions in relation to victims and witnesses and in relation to procedures for making and resolving complaints about the way in which the person carries out those functions.

69. Section 26(3)(a) amends section 2(1) of the 2014 Act so that those standards of service must also cover the carrying out of functions in a way that accords with trauma-informed practice (again as defined in section 114). Section 26(3)(b) adds a new subsection (4A) to section 2 of the 2014 Act requiring revised standards or service to be published within 18 months of section 26 coming into force. Those revised standards of service must include standards of service in relation to trauma-informed practice.

[4] See section 67(2) and section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (legislation.gov.uk).

Conduct of proceedings in accordance with trauma-informed practice

70. Sections 27, 28 and 29 amend existing powers in legislation, under which court procedure can be regulated by the High Court of Justiciary and the Court of Session, so that criminal proceedings, civil proceedings and fatal accident inquiry proceedings can be conducted in a way that accords with trauma-informed practice.

Section 27 – criminal courts: conduct of proceedings

71. Section 27 amends the main power of the High Court to regulate criminal procedure in that court, in the sheriff courts, in the Sheriff Appeal Court and in the justice of the peace courts by act of adjournal (section 305 of the 1995 Act). The power will now include express reference to making provision for the purpose of ensuring that criminal proceedings are conducted in a way that accords with trauma-informed practice (as defined, in section 307(1) of the 1995 Act, by reference to section 114 of this Act).

Section 28 – civil courts: conduct of proceedings

72. Section 28 amends the power of the Court of Session to regulate procedure in that court by act of sederunt (section 103 of the Courts Reform (Scotland) Act 2014). The power will now include express reference to making provision for the purpose of ensuring that civil proceedings are conducted in a way that accords with trauma-informed practice (as defined, in section 136 of the Courts Reform (Scotland) Act 2014, by reference to section 114 of this Act). This section also amends section 104 of the Courts Reform (Scotland) Act 2014 – the power to regulate procedure in the sheriff courts and in the Sheriff Appeal Court by act of sederunt – in a similar way.

Section 29 – fatal accident inquiries: conduct of proceedings

73. Section 29 amends the power of the Court of Session to regulate procedure in fatal accident inquiry proceedings by act of sederunt (section 36 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016). The power will now include express reference to making provision for the purpose of ensuring that proceedings are conducted in a way that accords with trauma-informed practice. Subsection (2)(b) adds a definition of "trauma-informed practice" to section 36, by reference to section 114 of this Act.

Duty to have regard to principle of trauma-informed practice

74. Sections 30, 31 and 32 amend a number of provisions in legislation under which business in the civil and criminal courts, including in relation to fatal accident inquiry proceedings, is scheduled. The primary consideration when scheduling court business will still be the efficient disposal of business (see section 2(2)(a) of the Judiciary and Courts (Scotland) Act 2008, sections 27(1) and 56(1) of the Courts Reform (Scotland) Act 2014 and section 61(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007). But, as a result of the amendments in these sections, the persons responsible for scheduling court business must have regard to the desirability of doing so in a way that accords with trauma-informed practice.

75. As an example of the practical effect this might have, one possible way in which the judiciary could apply trauma-informed practice when scheduling court business would be to aim to assign fixed trial dates in certain circumstances – such as when a vulnerable complainer needs to attend court to give evidence during the course of the trial, because their evidence has not been pre-recorded. However, this is just an illustration: decisions on specific approaches to trauma-informed scheduling would be a matter for the judiciary.

Section 30 – scheduling of business in Scottish courts

76. The Lord President of the Court of Session, as head of the Scottish judiciary, has the responsibility under section 2 of the Judiciary and Courts (Scotland) Act 2008 to make and maintain arrangements for securing the efficient disposal of business in the Scottish courts. Section 30 amends section 2 of the 2008 Act so that, in carrying out that responsibility, the Lord President must have regard to the desirability of doing so in a way that accords with trauma-informed practice.

Section 31 – scheduling of business in sheriff courts and the Sheriff Appeal Court

77. Under section 27 of the Courts Reform (Scotland) Act 2014, the sheriff principal of each sheriffdom has the responsibility of ensuring the efficient disposal of business in the sheriff courts of the sheriffdom. Section 31(2) amends section 27 of the Courts Reform (Scotland) Act 2014 so that, in carrying out that responsibility, the sheriff principal must have regard to the desirability of doing so in a way that accords with trauma-informed practice.

78. Section 31(3) also amends section 29 of the Courts Reform (Scotland) Act 2014, under which the Lord President may, in certain circumstances, step in and exercise the functions of a sheriff principal under sections 27 and 28 of that Act. The effect of the amendment is to add a new reason which entitles the Lord President to step in. That new reason is that the Lord President considers that the way the sheriff principal is exercising or has exercised the function is prejudicial to the carrying out by the sheriff principal of the responsibility under section 27(1) of the Courts Reform (Scotland) Act 2014 (as amended by section 31(2) of this Act) in a way that accords with trauma-informed practice.

79. Section 56 of the Courts Reform (Scotland) Act 2014 makes similar provision for the Sheriff Appeal Court to that made for the sheriff courts under section 27 of that Act, so that the President of the Sheriff Appeal Court has the responsibility of ensuring the efficient disposal of business in that court. Section 31(4) amends section 56 of the Courts Reform (Scotland) Act 2014 so that, in carrying out that responsibility, the President must have regard to the desirability of doing so in a way that accords with trauma-informed practice.

Section 32 – scheduling of business in justice of the peace courts

80. Under section 61 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, the sheriff principal of each sheriffdom is responsible for securing the efficient disposal of business in justice of the peace courts in that sheriffdom. Section 32 amends section 61 of the 2007 Act so that, in carrying out that responsibility, the sheriff principal must have regard to the desirability of doing so in a way that accords with trauma-informed practice.

PART 3 – VICTIMS' RIGHTS TO RECEIVE INFORMATION

81. This Part of the Act makes changes to existing legislation in relation to the rights of victims to receive information concerning the release, or other key events within the criminal justice system, of the person who offended against them.

Section 33 – victim's right to information about plea agreements, etc.

82. Section 33 inserts a new section 6A into the Victims and Witnesses (Scotland) Act 2014 ("the 2014 Act") to give victims of crime in solemn proceedings the right, if they request it, to be informed if the prosecution and the accused enter into a "plea agreement" as a result of which—

- a "relevant charge" libelled in the indictment has been amended and the prosecutor has accepted a guilty plea to that charge, or
- the prosecutor has accepted a plea of not guilty to a relevant charge.

83. For these purposes, "victim" is defined in section 6A(2) as the person against whom the offence was allegedly committed or, where that person dies as a result of the alleged offence, a prescribed relative of the person. Section 6A(4) provides for the meanings of expressions used in the section, including "prescribed relative" and "relevant charge".

84. The Scottish Ministers are able, by regulations subject to the affirmative procedure, to extent the application of section 6A to summary proceedings (see subsections (5) and (6)).

Section 34 – victims' right to be informed of decision not to prosecute or to discontinue proceedings

85. Section 34 also amends the 2014 Act to insert a new section 3K. Section 3K imposes a duty on the prosecutor to inform any person who is, or appears to be, a victim in relation to an offence or alleged offence of the prosecutor's decision not to prosecute a person for the offence, or to discontinue criminal proceedings against a person for the offence.

Section 35 – single victim notification system

86. Section 16 of the Criminal Justice (Scotland) Act 2003 ("the 2003 Act") sets out the circumstances in which information about an offender is to be provided to an eligible person who is registered to receive information. Previously, section 16 only applied where the offender had been sentenced to imprisonment or detention of 18 months or more, to life imprisonment, or to detention without limit of time. Section 35(2) amends section 16 so that it applies in relation to offenders who have been sentenced to imprisonment or detention for any period of time. Subsections (3) and (4) make changes to section 17 and 17ZA of the 2003 Act to provide victims with rights to make representations in certain circumstances where an offender is being released on licence, regardless of the length of the offender's sentence.

87. Section 35(6) and (7) of the Act repeal sections 27A and 27B of the Victims and Witnesses (Scotland) Act 2014 ("the 2014 Act"). Those sections made provision about the giving of information to victims of offences in respect of which the offender was sentenced to imprisonment for a period of less than 18 months. The changes being made to section 16 of the 2003 Act mean that those victims will now be entitled to receive information about the offender by virtue of that section, and so the provision made in sections 27A and 27B of the 2014 Act is no longer needed. Subsections (8) and (9) make consequential changes to section 29A and 29B of the 2014 Act, which deal with child and deceased victims of offences, to reflect this change.

Section 36 and part 1 of schedule 3 – right of eligible persons to receive information in event of death or incapacity of victim

88. Section 16(5) of the 2003 Act makes provision about what happens where information would fall to be given to a person by virtue of section 16(1) but that person has died or is incapable, or is a child under the age of 12, to ensure that another relevant person can receive that information in their place. Subsection (6) makes related provision.

89. Section 36 introduces part 1 of schedule 3, which sets out modifications to the provisions in relation to the provision of information where the person to whom information would otherwise fall to be given has died or is incapable. By virtue of the modifications, section 16(5) of the 2003 Act provides that where information would fall to be given to a person by virtue of section 16(1), but that person has died or is incapable, a designated person can receive that information in their place. Section 16(5) no longer makes provision in relation to victims under the age of 12. That provision is made instead by the modifications made to the 2003 Act by section 38 of this Act.

90. Paragraph 1(2)(b) of part 1 of schedule 3 replaces section 16(5). The new section 16(5) provides that, where the original victim has died or incapable, section 16(1) will apply as if references in that subsection to "the victim" were references to "the designated person". This means that any designated person will have the same rights under section 16(1) as the victim would otherwise have had. Section 16(6) is repealed by paragraph 1(2)(d).

91. Paragraph 1(2)(c) of part 1 of schedule 3 then inserts new subsections (5A) to (5K) into section 16 of the 2003 Act. The new subsections make detailed provision about the designation of persons to receive information where the victim has died or is incapable. Under new subsection (5B)(a), the Scottish Ministers may designate up to 4 persons to receive the information in cases where the victim has died and may designate one person where the victim is incapable. New subsection (5B)(b) obliges the Scottish Ministers to consider whether any person who has indicated that they wish to be designated ought to be designated – no formal application process for designation is set out in these provisions, but such a process may be established on an administrative basis. If the maximum number of persons has already been designated, however, then the Scottish Ministers are not required to consider designating the person.

92. New subsections (5C) and (5D) provide for the Scottish Ministers to remove or replace persons as designated persons, and, where the victim has died, to add additional designated persons. Under new subsection (5C)(b) the Scottish Ministers may designate a total of 5 persons where the victim has died – that means that the usual limit of 4 may be exceeded where the additional person wishing to be designated can demonstrate to the Scottish Ministers that there is justification for the limit to be exceeded and for them to be appointed.

93. New subsection (5E) requires the Scottish Ministers to have regard to the code of practice in relation to the designation of persons. The code of practice is to be issued under new section 18ZA of the 2003 Act, being inserted by paragraph (4) of part 1 of schedule 3.

94. New subsections (5F) to (5J) make provision about the designation of children to receive information in the case of death or incapacity of the victim. In such cases, the Scottish Ministers are to determine whether the information should be given to the child, to the child and the person who cares for them (such as their parent), only to the person who cares for them, or to another adult who has a relationship to the child. In making that determination, the

Scottish Ministers are to consider the age and maturity of the child, any views expressed by the child, and the best interests of the child. The Scottish Ministers are also to have regard to the code of practice to be issued under new section 18ZA. A designation may be reviewed by the Scottish Ministers at any time, including at the request of the child or of any adult who, under the determination made by the Scottish Ministers, is to receive the information as well as or instead of the child. A new determination can be made as a result of such a review.

95. New subsection (5J) provides that where a child has been receiving information as a result of having been designated, the Scottish Ministers must contact the child before they turn 18 to establish how the information is to be provided once the child turns 18. However, a new intimation will be required under section 16(1), after the child has turned 18, in order to effect a change. Otherwise, they are to continue to receive information in accordance with the determination made when they were still a child (and so, for example, their parent might continue to receive information in addition).

96. New subsection (5K) provides a definition of "incapable" for the purposes of new subsection (5) of section 16 of the 2003 Act. The definition refers to the person being incapable of understanding or remembering the information, due to a mental disorder or inability to communicate. Where an inability to communicate can be overcome by the use of a communication aid, a person is not treated as incapable.

97. Paragraph (2)(e) of part 1 of schedule 3 replaces the previous section 16(9) of the 2003 Act, which made provision for the Scottish Ministers to modify elements of section 16 by order. The replacement subsection (9) changes the power to a regulation-making power, and updates which parts of the section can be modified, to reflect the changes being made to the section by this Act.

98. Section 16B of the 2003 Act provides information about persons entitled to be given information under section 16A of that Act. Section 16A is about the provision of information to a victim of an offence where a person has been made subject to a compulsion order and a restriction order as a result of having been convicted of that offence. Paragraph (3) of part 1 of schedule 3 amends section 16B to make equivalent provision in relation to the death or incapacity of a victim entitled to receive information under section 16A as for persons entitled to receive information under section 16, as modified by paragraph (2) of part 1 of schedule 3.

99. Paragraph (4) of part 1 of schedule 3 inserts a new section 18ZA into the 2003 Act. The new section requires the Scottish Ministers to prepare a code of practice, to which they are to have regard in designating persons to receive information, adding or removing designated persons, and in determining who is to receive information when a child is designated.

100. The Scottish Ministers must publish a draft of the code and consult with such persons as they consider appropriate in preparing the code. They are then to publish the code in the manner they consider appropriate and lay the code before the Scottish Parliament. The code may be revised and an updated code published at any time. New section 18ZA(4) sets out an illustrative list of matters which might be covered by the code. The list includes persons who may be designated, by reference to their relationship to the victim, guidance about various matters around the designation of persons, and the setting out of a complaints and reconsideration process.

Section 37 – victim notification and right to make representations where offender is a child

101. Section 37 amends part 2 of the 2003 Act to make provision for victims to receive information where the offender is under the age of 18. Subsection (2)(a) repeals section 16(1)(c) of the 2003 Act, which applied that section in relation to offences committed by children who were consequently sentenced to detention without limit of time under sections 205 or 208 of the Criminal Procedure (Scotland) Act 1995. The changes made by section 35 of this Act mean that section 16(1) will apply in relation to all offenders sentenced to any period of imprisonment or detention, which includes those previously covered by paragraph (c). Subsection (2)(b) then repeals section 16(2) of the 2003 Act, which prevented section 16 from applying in relation to offences committed by children under the age of 16. Accordingly, section 16 will now apply regardless of the age of the offender.

102. Paragraphs (c) to (f) of subsection (2) make changes to section 16(3) of the 2003 Act to reflect the broader application of section 16 in relation to offences committed by children.

103. Subsections (3), (4), (5), (6) and (7) amend sections 16ZA, 16A, 16D, 17, and 17ZA of the 2003 Act respectively, so that those sections will apply regardless of the age of the offender.

104. Subsection (8) inserts new section 17AA into the 2003 Act. The new section makes provision for situations where a person is entitled to receive information under section 16 or 16ZA of the 2003 Act in relation to an offence committed by a child, and either the child is due to be released automatically, or the local authority intends to review the child's case and considers that the child might be released as a result of that review. In either case, the person entitled to receive information is to be given the opportunity to make representations about relevant aspects of the release, where that person has notified the Scottish Ministers previously that they want to be given the opportunity to do so.

Section 38 – provision of information where victim is a child

105. Section 38 amends part 2 of the 2003 Act to make provision about the giving of information under that part where the victim of the relevant offence is a child. Subsection (2) amends section 16 of the 2003 Act by inserting a new run of subsections (4A) to (4F) into that section. New subsection (4A) provides that, where the victim is a child, references to the victim are to be treated as references to both the child and the person who cares for them – such as their parent. This means that an intimation that the person wishes to receive information can be made by either the child or the person who cares for them.

106. New subsection (4B) provides that where an intimation is made under section 16(1) by a child or a person who cares for a child, in respect of a child victim, the Scottish Ministers are to determine whether the information should be given to the child, to the child and the person who cares for them, only to the person who cares for them, or to another adult who has a relationship to the child. Such a determination is only to be made if the Scottish Ministers are satisfied that the person to whom information is to be given by virtue of the determination consents to receiving it. In making a determination, the Scottish Ministers are to consider the age and maturity of the child, any views expressed by the child, and the best interests of the child. The Scottish Ministers are also to have regard to the code of practice to be issued under new section 18ZA of the 2003 Act, being inserted by paragraph (4) of part 1 of schedule 3. A determination may be reviewed by the Scottish Ministers at any time, including at the request

of the child or of any adult who, under the determination made by the Scottish Ministers, is to receive the information as well as or instead of the child. A new determination can be made as a result of such a review.

107. New subsection (4F) provides that where a child has been receiving information as a result of a determination, the Scottish Ministers must contact the child before the child turns 18 to establish how the information is to be provided once the child turns 18. However, a new intimation will be required to be made under section 16(1), after the child has turned 18, in order to effect a change. Otherwise, the child is to continue to receive information in accordance with the existing determination.

108. Section 38(3) amends section 16B of the 2003 Act, so that child victims are treated the same in respect of the provision of information under section 16A as they are in respect of the provision of information under section 16.

109. Section 38(4) amends section 17 of the 2003 Act so that references to "the victim" become references to "P". This is for consistency with other sections in part 2 of the 2003 Act and reflects the fact that the relevant person might be a designated person, a nominee of the victim, or an adult receiving information on behalf of a child victim.

Section 39 and part 2 of Schedule 3 – notification of individual other than supporter to receive information

110. Section 39 introduces part 2 of schedule 3, which modifies the 2003 Act to make provision for the nomination of a person to receive information as well as or instead of the victim. This right is provided as an alternative to the existing right already in section 16ZA of the 2003 Act which allows for information to be given to a supporter, either instead of the person entitled to receive information under section 16, or as well as that person, and at the request of either the person or the supporter, subject in each case to the consent of the other. A supporter is a person to whom subsection (2) of section 16ZA applies. That subsection applies to persons of a description set out by the Scottish Ministers in regulations and providing support services to victims.

111. Paragraph 2(2)(a)(i) replaces references to "the victim" in section 16ZA with references to "P", this is for consistency with other sections in part 2 of the 2003 Act and reflects the fact that the relevant person might be a designated person or an adult receiving information on behalf of a child victim. Paragraph 2(a)(iv) makes provision to support that change.

112. The effect of subparagraph (2)(a)(ii), (iii), and (v), taken together, is that section 16ZA of the 2003 Act is amended so that the person entitled to receive information under section 16 – whether that is the original victim of the crime, a designated person or an adult receiving information on behalf of a child victim – may choose for either a supporter or a nominated person to receive the information. They may choose for the information to be given to the supporter or nominated person either in addition to receiving it themselves, or instead of receiving it themselves. They may not choose for information to be given to both a supporter and a nominated person, however.

113. Subparagraph (2)(c) inserts a new subsection (1A) into section 16ZA. The new subsection provides that a person who is nominated must be an adult aged 18 years or older and must not be the person convicted of the offence against the victim – that is, the person to whom the information relates. Subparagraph (2)(d) makes provision to support the change from

referring to "the victim" to referring to "P". Subparagraph (2)(e) adds reference to a nominee to section 16ZA(3), meaning that the Scottish Ministers will be required to give information to a nominee unless there are exceptional circumstances which make it inappropriate to do so.

114. Subparagraph (2)(f) inserts a new run of subsections (3A) to (3F) into section 16ZA. New subsection (3A) makes provision about when a nomination ceases to be effective. This will be the case when either the nominee indicates that they no longer consent to receiving the information, or when the Scottish Ministers are made aware that the nominee has died or has become incapable of understanding the information.

115. New subsection (3B) adds an entitlement for supporters to withdraw an intimation that they have previously made under section 16ZA(1)(b). New subsection (3C) makes provision for the person otherwise entitled to receive information under section 16 to withdraw an intimation that they wish either a supporter or a nominee to receive the information, or, where a supporter made the intimation, to withdraw consent to the supporter being given that information. In any such case, the supporter or nominee would no longer receive information. The person entitled to receive information under section 16 may also make a fresh intimation – meaning they could request that the information be given to a new supporter or nominee, or they could consent to an intimation made by a new supporter under section 16ZA(1)(b). New subsection (3D) makes clear that where any of these events take place, they effectively cancel out any previous intimation or consent. There is no need for the previous intimation or consent to have been explicitly cancelled.

116. New subsection (3E) sets out requirements for the Scottish Ministers to give notice to parties where a change is requested in relation to the provision of information under section 16ZA. The Scottish Ministers will be required to notify the person entitled to receive information under section 16 if a supporter or nominee withdraws their consent to receiving information. They will also be required to confirm to the supporter or nominee, in that case, that information will no longer be given. In cases where the person entitled to receive information under section 16 withdraws an intimation or grant of consent, or makes a fresh intimation or grant of consent, to the effect that a previous supporter or nominee will no longer be entitled to receive information, the Scottish Ministers will be required to notify the previous supporter or nominee.

117. New subsection (3F) makes provision about cases where the person who is entitled to receive information under section 16 is a child, and a supporter or nominee has been receiving information. In such cases, the Scottish Ministers must contact the child before the child turns 18 to establish how the information is to be provided once the child turns 18. However, a new intimation will be required to be made under section 16(1), after the child has turned 18, in order to effect a change. Otherwise, the information will continue to be provided in the way it was being provided previously, including to any supporter or nominee.

118. Subparagraph (2)(g) substitutes the definition of "support services" in section 16ZA(5) with a new definition which replaces references to "the victim" with references to "P".

119. Subparagraph (4) makes changes to section 16D of the 2003 Act which are equivalent to the changes made to section 16ZA. Section 16D is about the provision of information to a supporter where the offender was subject to a compulsion order and restriction order. As a result of the changes, victims of such offenders will be entitled to appoint a nominee, instead of a supporter, should they choose to do so.

120. Subparagraph (7) makes equivalent changes to section 17ZA of the 2003 Act. That section is about the provision of information and notifications to a supporter where an offender is to be released on licence. As a result, victims of such offenders will be entitled to appoint a nominee, instead of a supporter, should they choose to do so.

121. Subparagraph (9) modifies section 17A of the 2003 Act. That section requires that a person entitled to receive information under section 16 is given the right to make representations where an offender is being considered for temporary release. Subparagraph (9) adds reference to nominees to that section. Nominees (and supporters) are not given the right to make representations, however. The changes to section 17A reflect the fact that a nominee may have been receiving information under section 16ZA.

122. Section 17B of the 2003 Act makes provision about the right of a person entitled to receive information under section 16 or 16A to make representations before a hospital direction or transport for treatment direction is made in relation to the offender, or before one of certain decisions which might be taken in relation to an offender subject to a compulsion order and a restriction order is made. The relevant decisions are set out in section 17B(5). Paragraph 2(10) adds a new subsection (5A) to section 17B. The new subsection requires the Scottish Ministers to set a time limit for representations to be made.

123. Subparagraph (11) inserts a new section 17BA into the 2003 Act. The new section makes provision about cases where a person is entitled to make representations under section 17B. It provides that where a person is entitled to receive the information that a decision described in section 17B is to be made, that person might intimate that they wish for a supporter or nominee to receive that information as well as, or instead of, themselves. The supporter or nominee is not given the right to make representations, only to receive the information that the decision is to be made and the person has the right to make representations. The provision in relation to the appointment of supporters and nominees is equivalent to that made in section 16ZA, as amended by this Act.

124. Section 17D of the 2003 Act provides for a person who was given the right to make representations under section 17B to receive information about that decision once it has been made. Section 17DA provides for such a person to intimate that they wish for a supporter to receive that information as well as, or instead of, themselves. Subparagraph (12) amends section 17DA to allow for the person to make an alternative intimation that they wish for a nominee to receive the information as well as, or instead of, themselves, in the same way as is provided for in section 16ZA, as amended by this Act.

125. Subparagraphs (14) and (15) make changes to sections 17E and 18A of the 2003 Act to reflect the addition of the right to have a nominee throughout part 2.

Section 40 – transfers of convicted persons

126. Section 40 makes changes to Part 2 of the 2003 Act in relation to how the rights under section 16 operate when offenders are transferred to or from Scotland. Subsection (2) amends section 16 itself. Paragraph (a) adds a new subsection (1A), which sets out the circumstances in which the section 16 rights apply in relation to the victim of an offender transferred to Scotland. Where the offender is transferred by way of an unrestricted transfer section 16 will apply; where the offender is transferred by way of a restricted transfer section 16 will not apply. Section 40(4) inserts definitions of restricted and unrestricted transfers into section 18A(1) of

the 2003 Act. These are tied to the Crime (Sentences) Act 1997, and whether a transfer is restricted or unrestricted determines the extent to which the Scottish Ministers are responsible for the management of the offender.

127. Subsection (2)(b) makes changes to section 16(3) of the 2003 Act, which sets out the information which is to be provided in relevant cases. Subparagraph (i) amends paragraph (c), which requires that victims be informed when the offender is transferred outwith Scotland, to provide that they must also be informed of the jurisdiction to which the offender has been transferred. The information does not need to be given if the Scottish Ministers believe it would not be in the interest of justice to do so. Subparagraph (ii) adds a new paragraph (ca) into section 16(3) which requires that where an offender had previously been transferred out of Scotland, the victim is to be told if and when the offender is transferred back into Scotland.

128. Subsection (3) inserts a new run of sections 16ZB, 16ZC and 16ZD into the 2003 Act. Section 16ZB deals with the rights to receive information under section 16 where the offender is transferred out of Scotland to another part of the United Kingdom, to one of the Channel Islands, or to the Isle of Man, on an unrestricted transfer – a definition of which is inserted into section 18A of the 2003 Act by section 40(4).

129. Subsection (2) of new section 16ZB provides that section 16 will no longer apply in relation to the offender, meaning that no further information will fall to be given under that section, beginning with the day on which the Scottish Ministers notify the relevant person under section 16 that the transfer has taken place. If that notification were not given, then the Scottish Ministers would be liable to continue providing information.

130. Because the rights granted by the other relevant sections of Part 2 of the 2003 Act flow from a person being entitled to receive information under section 16, those other rights are also extinguished on the day on which section 16 ceases to apply in relation to an offender.

131. Subsection (3) of new section 16ZB sets out further information which the Scottish Ministers must provide to the person receiving information under section 16 when notifying them that the offender has been transferred. The additional information will ensure that the person is aware that they won't receive further information from the Scottish Ministers unless the offender is returned to Scotland, and that there may be an equivalent scheme in the place to which the offender has been transferred through which they can receive information.

132. Subsection (4) of new section 16ZB provides that if the offender is transferred back into Scotland while serving the sentence relating to the offence to which the rights under section 16 relate, the rights under section 16 recommence in relation to that offender on the day on which they are transferred.

133. Subsection (5) of new section 16ZB makes provision about what happens when a person applies to be given information under section 16, but the relevant offender has already been transferred out of Scotland to another part of the UK, to one of the Channel Islands, or to the Isle of Man, on an unrestricted transfer. It sets out the information which the Scottish Ministers must provide in such cases to ensure that the person applying to receive information is made aware that they may have rights to receive information from the relevant authorities in the place to which the offender has been transferred, and that they may be entitled to receive information from the Scottish Ministers in the future if the offender is returned to Scotland.

134. New section 16ZC deals with the rights to receive information under section 16 where the offender is transferred out of Scotland to another part of the United Kingdom, to one of the Channel Islands, or to the Isle of Man, on a restricted transfer – a definition of which is inserted into section 18A of the 2003 Act by section 40(4).

135. Subsection (1) of new section 16ZC provides that section 16 will continue to apply in relation to the offender, subject to the modifications set out in subsection (3). The first of those modifications is that the Scottish Ministers will only be obliged to use reasonable endeavours to supply information, instead of being under an absolute obligation do so (unless, as set out in section 16(1), there are exceptional circumstances which make it inappropriate to do so). The second modification is that the Scottish Ministers may supply information about an event which is equivalent to an event set out in section 16(3). This reflects the fact that the offender will be in a different jurisdiction and so the exact details in section 16(3) might not apply, while ensuring that the victim will receive the same type of information.

136. Subsection (1)(b) of new section 16ZC sets out further information which the Scottish Ministers must provide to the person receiving information under section 16 when notifying them that the offender has been transferred. The additional information will ensure that the person is aware that they will continue to receive information from the Scottish Ministers, and that there may be an equivalent scheme in the place to which the offender has been transferred through which they can receive further information.

137. Subsection (3) of new section 16ZC sets out what happens if an offender has been transferred out of Scotland on a restricted transfer, and that transfer has become an unrestricted transfer because a condition of the transfer has been removed. This process is set out in paragraph 6(1)(a) of schedule 1 to the Crime (Sentences) Act 1997.

138. In such cases, the offender will, from the date that the condition is removed, be treated as though they are on an unrestricted transfer, and no information will fall to be given under section 16. The Scottish Ministers will be required to notify persons receiving information under section 16 of the change to the type of transfer, and of the information set out in new section 16ZB(3) – which is the information given to victims when an offender is transferred on unrestricted transfer. This includes the fact that the person will no longer be entitled to receive information from the Scottish Ministers about the offender. Section 16ZB(4) and (5) will apply in relation to the offender from the date that the condition is removed.

139. New section 16ZD deals with cases where an offender is transferred to Scotland after having been convicted and sentenced to imprisonment or detention in a place that is not the United Kingdom, one of the Channel Islands, or the Isle of Man. Subsection (2) empowers the Scottish Ministers to give information about the victim notification scheme to the relevant authorities in the place from which the person is transferred, request that that information be passed on to any person who would be entitled to request information under section 16 if the person had been convicted and sentenced in Scotland, and request from those authorities the details of any such person. If the Scottish Ministers receive that information, they are empowered to use reasonable endeavours to inform that person of their right to receive information.

140. Subsection (2) of new section 16ZD provides for section 16 to apply in relation to a person transferred to Scotland from outwith the United Kingdom, Channel Islands, or Isle of Man, subject to Scottish Ministers only being obliged to use reasonable endeavours to supply the relevant information.

Section 41 – additional information to be provided to victims

141. Section 41 modifies Part 2 of the 2003 Act to provide that, where under that Part information is to be given to a person, or a person is to be entitled to make representations, the Scottish Ministers can provide additional information to the person. The additional information might be used to provide the person with context which will help them to understand the core information being provided.

142. The modification is achieved by the insertion of a new subsection into each of sections 16, 16A, 17, 17A, 17B, and 17D of the 2003 Act.

Section 42 – powers to modify information to be given and right to make representations

143. Section 42 makes changes to provisions in Part 2 of the 2003 Act which allow the Scottish Ministers to make changes by secondary legislation to the information which is to be provided under that Part.

144. Section 16(4)(b) of the 2003 Act gives the Scottish Ministers the power, by order, to add new types of information to the list set out in section 16(3) of information which is to be provided to a victim under that section. Section 42(2) adds to this power so that the Scottish Ministers can also remove a type of entry from that list or can alter an existing entry. Section 42(5) makes a consequential change to section 18B of the 2003 Act to reflect this.

145. Section 17A of the 2003 Act makes provision about a victim's right to make representations about conditions to be imposed on an offender the first time that offender is entitled to be considered for temporary release. Subsection (3) inserts new subsections (5), (6) and (7) into section 17A.

146. New subsection (5)(a) being inserted into section 17A gives the Scottish Ministers a regulation-making power to provide that victims are to be given this right on other occasions, as well as or instead of the first occasion that the offender is entitled to be considered for temporary release. Subsection (5)(b) gives the Scottish Ministers the power to extend the right to make representations to victims of children, where the local authority is to review the child's case and considers that they might be released, or has already reviewed the case and intends to release the child. Subsection (5)(c) gives the Scottish Ministers the power to add further matters about which the victim can make representations, in addition to conditions to be imposed.

147. New subsections (6) and (7) being inserted into section 17A make further provision about the regulation-making power in subsection (5).

148. Section 17B of the 2003 Act makes provision about the right of a person entitled to receive information under section 16 or 16A to make representations before a hospital direction or transport for treatment direction is made in relation to the offender, or before one of certain decisions which might be taken in relation to an offender subject to a compulsion order and a restriction order is made. Section 42(4) inserts new subsection (7) into section 17B. New subsection (7)(a) gives the Scottish Ministers a regulation-making power to provide that persons are to be given the opportunity to make representations on other occasions, as well as or instead of the first time that a decision is made to grant a certificate suspending the relevant offender's detention without a supervision requirement being imposed on that offender. New subsection (7)(b) gives the Scottish Ministers the power to specify circumstances in which the right to make representations may be withheld, subject to conditions which must be specified in the regulations.

149. Section 42(6) makes a consequential change to section 88 of the 2003 Act, to reflect the addition of new regulation-making powers in sections 17A and 17B.

Section 43 – co-operation with the Scottish Ministers for the purposes of sharing information with victims

150. Section 43 inserts a new section 17DB into the 2003 Act. Subsection (1) of the new section provides that the Lord Advocate may co-operate with the Scottish Ministers in relation to the provision of information to victims. Subsection (2) gives the Scottish Ministers a regulation-making power by which they can impose a duty on any person, other than the Lord Advocate, to co-operate with the Scottish Ministers in relation to the provision of information to victims. This differs from the provision made by subsection (1), which permits, but does not require the Lord Advocate to co-operate. Persons specified in regulations made under subsection (2) would be required to co-operate.

151. Subsection (3) of the new section gives the Scottish Ministers the power to co-operate with the persons listed in subsection (4), for the purpose of either the Scottish Ministers providing information to victims, or the person with whom the Scottish Ministers are co-operating providing information to victims in their own jurisdiction under an equivalent scheme. The persons listed in subsection (4) are persons in other jurisdictions who have equivalent functions to those of the Scottish Ministers under sections 16 to 17DA of the 2003 Act, or who have responsibility for information which is relevant to those functions of the Scottish Ministers, and so therefore may be in a position to provide that information to the Scottish Ministers.

152. Subsection (5) makes clear that co-operation under this section includes the sharing of information as required to enable to the Scottish Ministers to carry out their duty to provide information to victims.

Section 44 – standards of service

153. Section 2 of the 2014 Act requires the Lord Advocate, the Scottish Ministers, Police Scotland, the Scottish Court Service, and the Parole Board for Scotland to publish standards of service in relation to the carrying out of their functions in relation to victims. Section 2(3) provides that the relevant functions of the Scottish Ministers are those relating to prisons and young offenders institutions, and persons detained in them. Section 44 expands this to include functions of the Scottish Ministers which relate to persons subject to compulsion orders and restriction orders, persons subject to hospital directions, or persons subject to transfer for treatment directions. This means that the standards of service in relation to victims which the Scottish Ministers are required to publish under section 2(1) of the 1995 Act must cover the carrying out of those Scottish Ministers functions in relation to victims of persons subject to such measures.

Section 45 - victim's right to receive information concerning offender subject to compulsion order by virtue of cross-border transfer

154. Section 16A of the 2003 Act is about the provision of information to a victim of an offence where the offender has been made subject to a compulsion order and a restriction order as a result of that offence. Subsection (2) of section 45 amends section 16A so that it also applies in two further circumstances. The first additional circumstance is where the offender is transferred to Scotland and is treated as subject to a compulsion order and a restriction order,

as a result of having been subject to equivalent measures in the place from which they were transferred. This means that victims of an offence committed outwith Scotland may qualify to receive information under this section.

155. The second additional circumstance is where the offender, after having been made subject to the compulsion order and restriction order, was removed from Scotland and, in the country to which they were removed, made subject to that country's equivalent of a compulsion order and a restriction order, then subsequently returned to Scotland and treated as subject to a compulsion and restriction order by virtue of the original offence. This means that if the offender is transferred out of Scotland and then back again, while being subject to measures relating to the original offence, the victim does not lose their entitlement to receive information.

156. Section 16C of the 2003 Act sets out what information is to be given to a victim who is entitled to receive information by virtue of section 16A. Section 16C(2)(f) requires victims to be told when the person in respect of whom they are entitled to receive information is transferred out of Scotland. Subsection (3)(a) of section 45 amends section 16C(2)(f) to provide that victims must be told, in addition, the jurisdiction to which the person has been transferred. The information does not need to be given if the Scottish Ministers believe it would not be in the interest of justice to do so.

157. Subsection (3)(b) adds further information to 16C(2), to the effect that a victim entitled to receive information by virtue of section 16A is entitled to be told when the person in respect of whom they are entitled to receive information returns to Scotland, where that person was previously transferred outwith Scotland.

158. Subsection (4) inserts new sections 16E and 16F into the 2003 Act. New section 16E makes provision about the rights of a victim to receive information under section 16A when the person to whom that information relates is transferred outwith Scotland in accordance with regulations made under section 290 of the Mental Health (Care and Treatment) (Scotland) Act 2003. New section 16E(2) provides that the right to receive information about the person under section 16A(2) stops on the day that the victim is told that the person has been transferred. The Scottish Ministers must also, when notifying the victim of the transfer, inform them that they will not receive any further information unless the person is transferred back to Scotland and that they may be entitled to receive information about the person under an equivalent scheme in the place to which the person has been transferred, and give the person any information that the Scottish Ministers are able to provide about any such scheme. Section 16E(4) makes provision about what happens when a victim applies to receive information under section 16A, and the person about whom they would be entitled to receive information has already been transferred. In that case, the Scottish Ministers are required to tell the person applying that the person has been transferred, and where they have been transferred, that as a result the victim has no entitlement to receive information about that person, that they will be notified if the person is transferred back to Scotland and will receive information from that date, that they might be entitled to receive information under an equivalent scheme in the place to which the person has been transferred, and any information that the Scottish Ministers are able to give about any such scheme.

159. New section 16F makes provision about the rights of a victim to receive information where a person is transferred to Scotland other than by virtue of regulations made under section 290 of the Mental Health (Care and Treatment) Scotland Act 2003, and is subject, or treated as subject, to a compulsion order and a restriction order by virtue of that transfer. Such transfers are likely to be in relation to persons who are transferred from outwith the United Kingdom,

the Channel Islands, the Isle of Man, or the European Union. Under the new section 16F, the Scottish Ministers will be required to notify the relevant authorities in the country from which the person is transferred of the rights of victims under Part 2 of the 2003 Act, to request that that information is passed on to any person who would be entitled to receive information under section 16A if the offender had been made subject to a compulsion order and restriction order in Scotland, and to further request that the relevant authorities give the Scottish Ministers the details of any such person. If the Scottish Ministers receive such details, they are then to use reasonable endeavours to notify the person of their right to receive information, and to continue to supply information under section 16A.

160. Section 18B(2) of the 2003 Act allows the Scottish Ministers to amend section 16A so that information may be given to a victim where the offender has been made subject to a compulsion order but not a restriction order. Section 45(5) of the Act provides that, if this power has been exercised, then the Scottish Ministers may also provide for the provision of information to victims where an offender is transferred to Scotland and treated as being subject to a compulsion order by virtue of having been subject to equivalent measures in the country from which they were transferred.

Section 46 – information to be given concerning offender subject to compulsion order

161. Section 16C(2)(i) requires the Scottish Ministers to inform victims who are entitled to receive information by virtue of section 16A if the offender has been recalled to hospital under section 202 of the Mental Health (Care and Treatment) (Scotland) Act 2003. Section 46 adds a new paragraph (j) to section 16C(2) of the 2003 Act, requiring the Scottish Ministers to also notify the victim if the offender appeals against such a recall, and the outcome of any such appeal.

Section 47 – victim's right to receive information under section 17D after representations

162. Section 17D of the 2003 Act is about the provision of information to victims where a decision has been made in relation to an offender, and the victim was given the opportunity to make representations about that decision under section 17B. Section 17B relates to certain decisions which might be taken in relation to offenders who are subject to a hospital direction or a transfer for treatment direction, and offenders who are subject to a compulsion order and a restriction order.

163. Section 17D(2) currently requires the Scottish Ministers to inform the victim that the decision has been taken. Section 47 amends this so that the victim must also be informed what that decision is. Section 47 also adds new subsections (5) and (6) to section 17D of the 2003 Act. The new subsections apply where the Scottish Ministers have informed the victim, under subsection (2), that the Tribunal has decided to make no order in relation to the offender under section 193 of the Mental Health (Care and Treatment) Scotland Act 2003 – meaning that the Tribunal has decided not to vary or revoke a compulsion order to which the offender is subject – and the offender has made an appeal against that decision. Under the new subsection (6), the Scottish Ministers would be required to inform the victim that the decision has been appealed against, or that it cannot be competently appealed against and is therefore final. The Scottish Ministers would also be required to supply certain additional information in relation to the appeal, equivalent to the information set out in section 16C(4) of the 2003 Act. That includes information as to whether the Court of Session has decided to allow the appeal, whether that decision has then been appealed to the Supreme Court, whether the Supreme Court has allowed the appeal, and whether the decision is therefore final.

Section 48 – conditional discharge: relevant conditions

164. Offenders subject to compulsion orders and restriction orders, hospital directions, or transfer of treatment directions, may be eligible for release on conditional discharge. Sections 16A, 16D and 17B of the 2003 Act, in making provision about information to be provided to victims of such offenders, or some such offenders, require that victims only be given information about a condition of discharge where the condition is "relevant" to the victim. Section 18A(3) of the 2003 Act sets out the circumstances in which a condition is considered relevant to a victim. Section 48 amends section 18A by adding a power for the Scottish Minister to modify those circumstances

Section 49 – SUS within hospital grounds

165. Section 18A(2)(a) of the 2003 Act provides that references in Part 2 of that Act to a certificate under the Mental Health Act which suspends a person's detention and does not impose a supervision requirement are references to certificates under section 224(2) of the Mental Health Act (Care and Treatment) (Scotland) Act 2003 which are not subject to a supervision condition. The effect of such a certificate is that the detention of the person in a hospital, by order or direction, would be suspended, and the person would be permitted to leave the hospital grounds without supervision.

166. Section 18A(2)(b) goes on to provide that reference to a certificate being granted for the first time means the first time since the person was detained under the order or direction or recalled to hospital while subject to that order or direction. Under section 16 of the 2003 Act, the victim of the offence which led to the detention of the person is entitled to be informed the first time such a certificate is granted.

167. Section 49 amends section 18A to make provision in relation to persons detained by order or direction in a specific hospital unit, rather than a hospital at large. The change means that in relation to those persons, references to the first time that person is granted a certificate allowing them unsupervised suspension of detention means the first time a certificate is granted which allows them to leave the hospital of which the unit forms part without supervision. This means that if the person is granted a certificate allowing them to leave the unit in which they are detained, but which does not allow them to leave the wider hospital or its grounds, that is not treated as the first grant of a certificate and therefore does not trigger a right for the victim to be notified.

Section 50 – victim statements in solemn proceedings

168. Section 14 of the 2003 Act makes provision for victims to be given the opportunity to make victim statements in certain proceedings. Section 50(2) amends subsection (1) of section 14 so that the right will apply in all solemn proceedings, or where proceedings are likely to be solemn proceedings. The right will continue to apply where proceedings are taken, or are likely to be taken, in a prescribed court or class of court. Subsection (2)(b) and (c) make associated changes to subsection (2), and to insert new subsection (2A), to support this, by providing that the right applies in relation to any offence in solemn proceedings. The right will continue to apply in relation to prescribed offences in any other proceedings.

169. Subsection (2)(e) and (f) and subsection (3) make relevant technical changes to subsections (15) and (16) of section 14, and to section 88, of the 2003 Act.

Section 51 – provision of transcript of record of trial to certain complainers

170. Section 51 of the Criminal Procedure (Scotland) Act 1995 makes provision for the Clerk of Justiciary to direct that court transcripts of certain trials be made available. A person (other than a person convicted at the trial) can request copies of the transcript, for a fee. Section 51(2) adds a new subsection (2ZA) to section 94 which provides that where the complainer in certain sexual offence cases in either the High Court or the Sexual Offences Court request a copy of the transcript, it must be provided free of charge. The relevant trial must have commenced on or after 31 December 2006, due to the coming in to force dates of the relevant legislation.

Section 52 – right to referral by Police Scotland to victim support services

171. Section 3D of the 2014 Act makes provision for victims to be informed by the police of their right to request a referral to victim support services, or to contact such services directly. Section 52 enhances this right by requiring the police to inform victims that victim support services are available, and what is meant by victim support services – with reference to the definition set out in section 3D(5). In addition, they will be required to inform the victim that they are entitled to have their details passed to appropriate victim support services so that those services may contact the victim. The victim must also be informed of their right to discontinue the services in the future should they wish to do so. The replacement subsection (2), inserted by section 52(2)(b), makes further provision about this process. Where the victim decides to contact the services directly, the police will be required to provide the necessary information for the victim to do so. New subsection (2A) being inserted by section 52(2)(b) makes further provision about this process.

172. Section 50(2)(e) inserts new subsections (4A) and (4B) into section 3D. The new subsections require the chief constable to produce guidance for police constables in relation to the referral of victims to support services, and to keep that guidance under review.

Section 53 – release on licence: reasons for decisions

173. Section 53 amends section 17 of the 2003 Act. That section gives persons entitled to receive information under section 16 the right to make representations about the potential release on licence of the relevant offender. It also gives such persons the right to be told whether or not the Parole Board has recommended or directed release, whether any release is to be subject to conditions, and whether the terms of any such conditions relate to contact with the victim or their family. Section 53 provides that the victim must also be told the reasons why a decision to direct or recommend release or to impose conditions in relation to release has been made.

Section 54 – review of victim's right to receive information on fixed penalties

174. Section 54 imposes a duty on the Scottish Ministers to carry out a review of the entitlement of victims to receive information, by virtue of legislation, about the acceptance or rejection of fixed penalties offered to alleged offenders in accordance with section 302 of the Criminal Procedure (Scotland) Act 1995, and any reasons given by the offenders as to why the offer has been accepted or rejected. The review is to be carried out within 2 years of section 54 coming into force and is to be published and laid before the Scottish Parliament.

PART 4 – RELEASE OF PRISONERS

Section 55 – Parole Board rules: decisions where prisoner has information about victim's remains

175. Section 55 amends section 20 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 ("the 1993 Act"). Subsection (4)(c) of that section allows the Scottish Ministers to make rules setting out what matters the Parole Board for Scotland ("the Board") may take into account in dealing with a case. Section 55 amends this to provide that rules may set out matters which the Board must take into account. It also inserts a new subsection (4AA) into section 20 in relation to prisoners who are serving a sentence in relation to murder or culpable homicide, where the victim's remains have not been recovered, which provides that rules made under subsection (4)(c) must require the Board to take into account whether there are reasonable grounds to believe that the prisoner has information about the location or disposal of the victim's remains and which the prisoner has not disclosed.

Section 56 – Parole Board rules: safety and security of victims' family

176. Section 56 makes further changes to section 20 of the 1993 Act in relation to matters which the Board must take into account by inserting new subsections (4AB) and (4AC). As a result, rules made under subsection (4)(c) must require the Board, when making any decision in a prisoner's case, to take into account the likely impact of the decision on the safety and security of any victim or of any family member of a victim. In this context, "victim" is defined as a person against or in respect of whom an offence has been committed by the prisoner.

Section 57 – licence conditions: exclusion zones

177. Section 57 also amends the 1993 Act, by inserting subsections (4B), (4C) and (4D) into section 12, to change the considerations that are to apply when the Board and the Scottish Ministers are recommending or, as the case may be, imposing licence conditions on the release of prisoners.

178. Where the Board has or, as the case may be, the Scottish Ministers have information that the prisoner's being released, re-released or remaining released may have an adverse impact on the safety and security or on the wellbeing of a victim, a member of a victim's family, or any other identified person or group of persons, then the Board or Ministers must consider whether an exclusion zone condition should be included in the prisoner's licence. An "exclusion zone condition" is defined as a condition which prohibits the released prisoner from entering a place or area specified in the condition (see new section 12(4D). "Victim" is defined as a person against or in respect of whom an offence has been committed by the prisoner (again, see new section 12(4D)).

PART 5 – SPECIAL MEASURES IN CIVIL CASES

179. This Part of the Act amends the Vulnerable Witnesses (Scotland) Act 2004 ("the 2004 Act") so that the special measures that a court might take in relation to a vulnerable witness in civil proceedings are available in all civil proceedings, rather than just certain proceedings. It also amends the 2004 Act: to make the special measure, of prohibiting a party to the proceedings from conducting the case in person, available in a wider range of cases; and to make special measures available where a party to the proceedings, who is likely to attend or participate in the proceedings, is also to be treated as a vulnerable witness.

Vulnerable witnesses

Section 58 – vulnerable witnesses

180. Section 11B of the 2004 Act will be inserted into that Act by section 4(3) of the Children (Scotland) Act 2020 when that section is brought into force. Section 11B makes provision requiring the court in certain civil proceedings to treat a person who is giving, or is to give, evidence in or for the purposes of those proceedings as a vulnerable witness.

181. Where a person is deemed a vulnerable witness under section 11B, the court can order certain special measures to apply to their participation in the proceedings (such as taking their evidence by live television link) to better enable the witness to give evidence and to protect the witness from certain risks if special measures were not used.

182. The civil proceedings to which section 11B applies are proceedings (other than "relevant proceedings") in which the court is considering making an order under section 11(1) of the Children (Scotland) Act 1995. An order under section 11(1) of that Act is one relating to parental responsibilities, parental rights, guardianship or the administration of a child's property. "Relevant proceedings" are proceedings under Part 10 and section 154 of the Children's Hearings (Scotland) Act 2011. Section 11A of the 2004 Act applies to relevant proceedings and, like section 11B, makes provision to treat certain people as vulnerable witnesses.

183. In proceedings covered by section 11B of the 2004 Act, a person will be deemed to be a vulnerable witness if they are protected by a civil protection order (such as a non-harassment order) from conduct by a party to the proceedings, or where they are the victim or complainer in respect of certain criminal offences committed or alleged to have been committed by a party to the proceedings.

184. Section 58(2)(a) will amend section 11B so that the proceedings to which that section applies will be <u>all</u> civil proceedings, other than relevant proceedings. As a result, it will no longer matter whether the court is considering making an order under section 11(1) of the Children (Scotland) Act 1995. In all civil proceedings, other than relevant proceedings, a person to whom subsection (3) of section 11B applies will be deemed to be a vulnerable witness. Section 58(2)(c) replaces the existing section 11B(3) to extend the range of persons who will benefit from this protection. Persons who are protected by a civil protection order (such as a non harassment order) are currently protected. The new section 11B(3) extends the protection to persons who have applied for such an order, clarifies that interim orders are included, and adds lawburrows – a type of civil order in which a person is required to lodge a guarantee against harm to another person - to the list of relevant orders. In addition, the new section 11B(3) extends the protection to persons who have brought an action for damages in relation to personal injuries they have sustained which are attributable to sexual abuse or harassment by a party to the proceedings. Section 58(3) amends section 22D(5)(a)(i) of the 2004 Act to make consequential changes reflecting the changes being made in section 11B.

Section 59 – prohibition on personal conduct of case

185. Section 18 of the 2004 Act lists the special measures for vulnerable witnesses that are available to the court in the case of child witnesses and other vulnerable witnesses under sections 12 and 13 of the 2004 Act. Sections 22B to 22D of the 2004 Act (which will be inserted into that Act by section 4(5) of the Children (Scotland) Act 2020 when it is brought into force)

make provision for a new special measure for vulnerable witnesses to be available to the court in certain proceedings. That new special measure is prohibiting one or more of the parties to the proceedings from personally conducting the case. This would mean, for example, that a person being sued for historic child abuse, say, might be prohibited from defending the case in person, and so could not personally cross-examine the person who alleges they were abused. Instead, the person being sued would need to be represented by a lawyer.

186. This prohibition is available to the court only in the case of relevant proceedings to which section 11A of the 2004 Act applies, or in the case of proceedings to which section 11B applied before it was amended by section 58 of this Act (being proceedings, other than relevant proceedings, in which the court is considering making an order under section 11(1) of the Children (Scotland) Act 1995).

187. Section 59 amends the 2004 Act so that this special measure will be available in the case of all proceedings. To achieve this, section 59(2) amends section 18(1) of the 2004 Act to add reference to the special measure of prohibiting one or more of the parties to the proceedings from personally conducting the case. As a consequence, section 59(3) amends section 22B of the 2004 Act to ensure it will operate in relation to all civil proceedings and in relation to child witnesses as well as other vulnerable witnesses by repealing section 22B(2), which otherwise limits the application of section 22B to certain proceedings only. A new version of section 22B(1) is inserted in place of the existing version and section 22B(3) is repealed as the matter it deals with is now dealt with in the new subsection (1).

188. Finally, section 59(4) amends section 22D of the 2004 Act to replace the current reference to proceedings other than relevant proceedings in relation to which the court is considering making an order under section 11(1) of the Children (Scotland) Act 1995, with a reference to civil proceedings other than relevant proceedings. The effect of this is that the presumption in favour of applying the special measure of prohibiting a party to the proceedings from personally conducting the case applies in a wider range of proceedings.

Section 60 – register of solicitors for section 22B of the Vulnerable Witnesses (Scotland) Act 2004

189. Under section 7 of the Children (Scotland) Act 2020, the Scottish Ministers are required to establish and maintain a register of solicitors who may be appointed by a court under section 22B(6) of the 2004 Act. That provision comes into play where the court orders that the special measure of prohibiting a party to certain proceedings from conducting the case personally is to be taken. Where that special measure is to be taken, and the court is aware the party does not have a solicitor and is not satisfied that the party intends to appoint one, the court is under a duty to appoint a solicitor to represent that party.

190. Section 22B(7) provides that the solicitor appointed must be on the register established and maintained under section 7 of the 2020 Act.

191. Given the amendments made by sections 58 and 59, to the effect that the vulnerable witnesses special measures will apply and be available in all civil proceedings, and in particular, given that the special measure of prohibiting a party from personally conducting the case will now be available in all civil proceedings and not just those relating to children, section 60 moves the provision on the register of solicitors from the 2020 Act, which is generally about

children only, into the 2004 Act. It does this by repealing section 7 and re-enacting it as new section 22E in the 2004 Act. The substantive content of the section is substantially the same, subject to the following changes:

- new section 22E(2)(b) and (4) clarify that the register of solicitors may be divided into parts that apply in relation to different categories of civil proceedings,
- new section 22E(2)(a)(iii) requires that the regulations establishing the register must make provision for the remuneration of solicitors appointed from the register – previously inclusion of provision on this point was discretionary, and
- new section 22E(4) sets out requirements for the report on the consultation which the Scottish Ministers are obliged to carry out prior to making regulations.

Vulnerable parties

Section 61 – vulnerable parties

192. New sections 11B and 11C of the Children (Scotland) Act 1995 will be inserted by section 8 of the Children (Scotland) Act 2020 (when that section is brought into force). The new sections make provision requiring the court to consider the use of special measures to reduce distress in relation to certain vulnerable parties where distress may be caused by attending or participating in hearings in certain court proceedings. Those proceedings are civil proceedings in which the court is considering making an order under section 11(1) of the Children (Scotland) Act 1995.

193. Section 61 of this Act repeals section 8 of the 2020 Act. It also amends section 15(3)(a), which provides that where a party is considering the use of special measures to take the evidence of a vulnerable witness, or the court is considering making an order in this regard, the views of the witness are to be taken into account. Section 61(3)replaces the existing presumption that, where the witness is a child, the child is capable of forming a view if aged 12 or older with a new presumption that the child is capable of forming a view unless the contrary is shown.

194. Section 61(4) then provides for the provisions of the proposed new sections 11B and 11C of the Children (Scotland) Act 1995 to be inserted as new sections 22F and 22G of the 2004 Act instead. In doing so, it amends those provisions to expand the range of proceedings to which they apply so that they will apply, and special measures for vulnerable parties will be available, in all civil proceedings (other than relevant proceedings) and not just those relating to children. It makes additional provision, in new section 22F(6), for the court to have regard to the best interests of the party, and to take account of any views expressed by the party and, if the party is a child, the child's parent. Where the party is a child, they are to be presumed to be of sufficient age and maturity to form a view unless the contrary is shown, and their view is to be given greater weight than that of their parent.

195. As is the case with section 7 of the 2020 Act, the changes being made by the other sections in this Part of the Act to the 2004 Act so that it applies in all civil proceedings mean that the provisions on vulnerable parties are better placed in the 2004 Act as they are no longer limited to proceedings relating to children.

PART 6 – CRIMINAL JURIES AND VERDICTS

196. The sections in this Part of the Act will make provision for juries that fall below 15 jurors to continue provided at least 12 jurors remain, and for the number of jurors required to constitute a majority in favour of a guilty verdict. Provision is also made to abolish the not proven verdict, to alter the form and manner of jury affirmation, to provide for support to jurors with communication needs due to disability, and to permit research into juries.

Solemn proceedings

Section 62 – jury size and quorum

197. Currently, the default size of juries in criminal trials (15 jurors) is provided for under the common law. Where, during the trial, a juror dies or is discharged by the court for any reason (such as illness), section 90(1) of the Criminal Procedure (Scotland) Act 1995 governs what happens and provides that the case can proceed before the jury provided at least 12 jurors remain.

198. This section will substitute a new section for section 90 of the 1995 Act. The new version of section 90 will provide that, where a juror dies or is discharged by the court for any reason, the case can proceed before the jury provided at least 12 jurors remain. In a change from the current position under section 90(1), the ability of the trial to proceed does not depend on an application being made by the prosecution or the accused. Instead, the court can itself determine that the trial can proceed provided, having given the prosecution and the accused an opportunity to make representations, the court is satisfied that it is in the interests of justice.

Section 63 – form of jury affirmation

199. Affirmation is, for jurors in criminal trials, a non-religious alternative to taking the oath. The form of affirmation is currently governed by section 6 of the Oaths Act 1978 and the Criminal Procedure Rules[5] and requires a juror who is affirming to do so individually. This differs from the position where jurors are taking the oath, where they do so all together. The amendment made by section 63 would allow jurors choosing to affirm to do so collectively and without having to say their names in court, as they currently have to do.

Section 64 – jury service: assistance for jurors with communication

200. This section will amend the 1995 Act to insert a new section 88A into that Act so that jurors who require assistance with communication because of a physical disability, such as deafness or blindness, can be given that assistance by a court appointed person (a "juror's communication supporter"). A supporter will be able to assist the juror during the trial and, if necessary, when the jury is considering its verdict.[6]

201. Before appointing a person as a supporter, the prosecution and the accused must be given an opportunity to make representations (subsections (1) and (7)).

[5] Act of Adjournal (Criminal Procedure Rules) 1996 (SI 1996/513 (S. 47)), rule 14.3 and Form 14.3.
[6] See the amendments of section 99 of the 1995 Act in subsection (3) of section 34B.

202. The supporter would be appointed before the charges were read to the jury (subsection (2)). Where a supporter is appointed, the supporter will need to take the oath or affirm (subsection (4)).

203. Subsection (3) provides that more than one supporter may be appointed for a juror (perhaps to allow them to work in shifts to prevent fatigue and maintain accuracy), and that a supporter may be appointed to support more than one juror. If a supporter ceases to act as such, for whatever reason (for example, if the original supporter became ill), a person can be appointed as a replacement and that new supporter must then take the oath or affirm (subsections (5) and (6)).

204. Section 64 also amends section 99 of the 1995 Act. That section governs the circumstances around access to the jury room in which the jury are enclosed to consider their verdict. Subsection (3) of section 64 inserts two new subsections into section 99 (subsections (2A) and (2B)) which together have the effect that the juror's communication supporter, appointed under new section 88A, may be present in the jury room so that communication support can continue to be provided to the juror.

Section 65 – verdict of guilty or not guilty and majority required for guilty verdict

205. The common law currently provides for the verdicts available in a criminal trial. Those verdicts are guilty, not guilty and not proven. Both not guilty and not proven result in the accused being acquitted. The common law also provides that, where there are 15 jurors, a simple majority of jurors can return a guilty verdict. Where fewer than 15 jurors remain, section 90(2) of the 1995 Act provides for how many jurors constitute a majority. It provides that at least 8 of the remaining jurors must be in favour of a guilty verdict before the jury can return such a verdict. Otherwise the jury is deemed to have returned a verdict of not guilty.

206. Section 65 abolishes the not proven verdict in solemn criminal trials. It also puts the law on what constitutes a majority of jurors for the purposes of returning a verdict of guilty onto a statutory footing and changes what constitutes a majority so that a two-thirds majority is required.

207. New section 99A (being inserted into the 1995 Act before section 100), makes provision for both the verdicts available to the jury and for jury majority decisions.

208. First, it provides that the only verdicts available to a jury are guilty or not guilty. A verdict of not proven will no longer be possible.

209. Secondly, subsections (2) and (4) of new section 99A provide that a jury can return a verdict of guilty only if a majority of them are in favour, and governs what will constitute a majority, depending on the size of the jury. Where a full jury of 15 is involved, or where one juror has died or been discharged, then at least 10 jurors are required to be in favour of a guilty verdict. Where 2 jurors have died or been discharged, then at least 9 jurors are required to be in favour of a guilty verdict. In any other case (so where the jury consists of 12 jurors), at least 8 jurors are required to be in favour of a guilty verdict. New section 99A(3) provides that if a majority (as defined in subsection (4)) is not in favour of a guilty verdict, then the jury must return a verdict of not guilty.

210. New section 99A, being concerned only with the verdicts available to the jury, and the number of jurors who must, depending on the size of the jury, be in favour of a guilty verdict, has no effect on the ability of a jury to deliver a verdict on a part of a charge (after deleting elements of it).[7]

Summary proceedings

Section 66 – verdict of guilty or not guilty

211. As noted above in relation to trials before a judge and jury, the common law governs the verdicts that are available to a judge sitting in summary proceedings without a jury, those verdicts being the same – guilty, not guilty and not proven.

212. This section changes that and does so by inserting new section 161A into the 1995 Act. That new section provides that the only verdicts available to a judge in summary proceedings are guilty or not guilty. A verdict of not proven will no longer be possible.

Research into juries

Sections 67 and 68 – research into juries

213. Sections 67 and 68 make provision for research into juries in solemn trials in Scotland.

214. Section 8 of the Contempt of Court Act 1981 provides that (with narrow exceptions) it is a contempt of court, "to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings". The purpose of section 8 is to protect the confidentiality of jury deliberations.

215. It does allow for some limited research with real jurors. For example, jurors can be asked about their experience as jurors (other than what happened in the course of deliberations), their personal understanding of legal terms or concepts, or about their general views and attitudes. However, jurors cannot be asked about or disclose the substantive content of their deliberations. This prohibits researchers asking jurors about the evidential factors, credibility assessments and assumptions that informed their decision-making, or about the beliefs and attitudes that they or other jurors expressed during deliberations.

216. Section 67 amends section 8 of the 1981 Act to make it clear that it is not a contempt of court for a juror to disclose information about statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations provided that is done with the leave of the Lord Justice General under new section 8A, being inserted into the 1981 Act by section 67(3). Under that new section, the Lord Justice General would have power to permit jurors to disclose this information for the purposes of research into juries. Such permission could be granted subject to conditions and could be varied or withdrawn.

217. Section 68 applies where, in accordance with leave granted under section 8A of the 1981 Act, the Scottish Ministers carry out or commission research into juries and, for the purposes of that research particulars about statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations are solicited, obtained, disclosed or published.

[7] The law governing the ability of the jury to delete parts of a charge and return a verdict on the remaining part is largely to be found in the common law.

218. In such cases, the Scottish Ministers must publish a report on the research and lay a copy of the report before the Scottish Parliament. They must also publish their response to the report, including any recommendations they are making. The report and Ministers' response must each be published and laid in the Parliament "as soon as reasonably practicable" after the research has been carried out. Depending on the circumstances this may mean the report and the response to it are published and laid at the same time as each other, or that they are published and laid at different times.

PART 7 – SEXUAL OFFENCES COURT

Chapter 1 – Establishment, jurisdiction and Judges of the Sexual Offences Court

219. This Chapter creates the Sexual Offences Court, sets out its powers and competence, and makes provision about the cases it can hear.

Establishment

Section 69 – Sexual Offences Court

220. Section 69 creates a new court within the Scottish justice system, to be known as the Sexual Offences Court, and provides for it to consist of the Lord Justice General, the Lord Justice Clerk, and judges to be known as Judges of the Sexual Offences Court.

Jurisdiction and competence

Sections 70 and 71 and schedule 4 – jurisdiction and competence: general, and jurisdiction: sexual offences

221. Section 70 sets out the general parameters of the Sexual Offences Court's jurisdiction. It provides for the Court to hear and determine cases as set out in the Act or elsewhere in legislation. There is currently no other legislation which gives the Court powers to hear cases. Subsection (2) provides for cases in the Court to be heard by the Judges who form the Court, as specified in section 69. The Court may sit with only one of those Judges, or with any combination of them. Subsection (3) ensures that the Court has the powers necessary to hear and determine the cases before it, while subsection (4) provides that those powers are subject to any restrictions set out elsewhere in the statute book.

222. Section 71 sets out which offences the Sexual Offences Court may hear. Subsection (1) provides for the Court to try any sexual offence which is triable on indictment in any place in Scotland. There is a definition of "sexual offence" in subsection (5), which defines a sexual offence as being an offence listed in schedule 4 of the Act, an attempt or conspiracy to commit one of those offences, or aiding, abetting, counselling, procuring, or inciting the commission of one of those offences. The Scottish Ministers can amend the list of offences by way of regulations.[8] There is no geographical restriction, within Scotland, to the cases the Sexual Offences Court may hear.

223. Subsection (2) provides further detail about the cases which may be heard by the Sexual Offences Court. Subsection (2) provides that, if an accused person is charged with more than one offence, the Sexual Offences Court may try all of those offences, provided at least one of them is a sexual offence as defined in section 71(5). This is subject to subsection (4), which

[8] Those regulations will be subject to the affirmative procedure. See section 67(2) and section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (legislation.gov.uk).

provides that the Sexual Offences Court does not have jurisdiction to hear cases of treason, or breach of duty by magistrates. The High Court of Justiciary has exclusive jurisdiction to try these offences.

224. Schedule 4 sets out the common law and statutory offences which are sexual offences for the purposes of section 71. In paragraph 16 of schedule 4, an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018 (abusive behaviour towards partner or ex-partner) is only classed as a sexual offence for the purposes of section 71 if it is apparent from the indictment that there was a substantial sexual element to the alleged commission of the offence.

Judges of the Sexual Offences Court

Section 72 – Judges of the Sexual Offences Court: Lord Commissioners of Justiciary and temporary judges

225. Section 72 makes provision for Lord Commissioners of Justiciary and temporary judges to also hold office as Judges of the Sexual Offences Court. The relevant persons must have completed a training approved by the Lord Justice General around trauma-informed practice, which is defined in section 114 of the Act. No further appointment process is prescribed. Subsection (2) makes clear that if the person no longer holds office as Lord Commissioner or temporary judge, then they no longer hold the office of Judge of the Sexual Offences Court. Similarly, subsection (3) provides that suspension from office as Lord Commissioner or temporary judge means that the person is also suspended as Judge of the Sexual Offences Court.

Section 73 – Judges of the Sexual Offences Court: re-employment of former judges

226. Section 20E of the Judiciary and Courts (Scotland) Act 2008 provides for certain former judges to be appointed by the Lord President to sit as judges of the Court of Session and the High Court of Justiciary. Appointment under that section is for a period or occasion specified by the Lord President and is only to be made where the Lord President considers it reasonably necessary in order for the relevant court to carry out its business.

227. Section 73 amends section 20E of the Judiciary and Courts (Scotland) Act 2008 to provide that, where the relevant judge has carried out the training which is required of judges of the Sexual Offences Court, they may also be appointed to sit as judges of that court under section 20E.

Section 74 – appointment of Judges of the Sexual Offences Court

228. Section 74 deals with the appointment of sheriffs and sheriffs principal to office as Judges of the Sexual Offences Court. Appointment is by the Lord Justice General.

229. Subsection (2) sets out the requirements for appointment. These are that the person has completed training approved by the Lord Justice General around trauma-informed practice, which is defined in section 114 of the Act, and that the Lord Justice General is satisfied that the person has the necessary skills and experience for the role.

230. Under subsection (3), appointment as a Judge of the Sexual Offences Court is for 5 years. A person appointed as Judge of the Sexual Offences Court will continue to hold their existing judicial position in addition to their role in the Sexual Offences Court, meaning that they can hear cases in other courts during their appointment to the Sexual Offences Court.

231. Subsection (4) provides for what happens if a Judge of the Sexual Offences Court appointed under section 74 ceases to hold their existing position as a sheriff principal or sheriff. In that situation, they will automatically cease to hold their position as Judge of the Sexual Offences Court as well. Similarly, under subsection (5), if suspended from their existing position they will automatically be suspected as a Judge of the Sexual Offences Court in addition.

Section 75 – remuneration and expenses of Judges of the Sexual Offences Court

232. Section 75 makes provision for the Scottish Courts and Tribunals Service ("the SCTS") to pay remuneration and allowances to sheriffs and sheriffs principal appointed to the office of Judge of the Sexual Offences Court. The rate of remuneration and allowances is to be determined by the Scottish Ministers and may be different for different persons or descriptions of persons. For example, sheriffs principal may be paid more than sheriffs for carrying out the functions of a Judge of the Sexual Offences Court. Subsection (3) provides for the SCTS to also reimburse Judges of the Sexual Offences Court for any expenses incurred in carrying out their duties. The SCTS is given the power to determine the circumstances in which expenses are to be paid, which may be different for different persons.

Chapter 2 – Organisation of business

President and Vice President of the Sexual Offences Court

Sections 76 and 77 – President and Vice President of the Sexual Offences Court, and incapacity and suspension

233. Section 76 makes provision about the offices of President and Vice President of the Sexual Offences Court. The Lord Justice General may choose to take on the role of President. If the Lord Justice General does not choose to do so, then he or she must appoint the Lord Justice Clerk or one of the Judges of the Sexual Offences Court to the role. Only Judges of the Sexual Offences Court who hold the office of Lord Commissioner of the Justiciary are eligible for appointment as President. Judges of the Sexual Offences Court who hold the office of temporary judge, sheriff principal, or sheriff, or who are appointed to sit as judges under section 20E of the Judiciary and Courts (Scotland) Act 2008, are not eligible.

234. The Lord Justice General must also, under subsection (3), appoint a person to the role of Vice President. This can be either the Lord Justice Clerk, if the Lord Justice Clerk has not been appointed as President, or one of the Judges of the Sexual Offences Court. There is no restriction on which of the Judges of the Sexual Offences Court might be appointed to the role of Vice President. However, the President and the Vice President must not be the same person.

235. Subsection (6) provides that both the President and the Vice President are appointed for a period specified by the Lord Justice General. Either of them may resign from the role by giving notice to the Lord Justice General. If the Lord Justice General resigns from the role of President, this is done by publishing notice to that effect. The Lord Justice General also has the power to remove the President or the Vice President from position at any time, under subsection (7). Subsection (8) provides that if the President or Vice President is suspended from their judicial office, then they will automatically be suspended from the role of President or Vice President. (This follows on from section 74, which provides that they are also suspended as a Judge of the Sexual Offences Court where they have been appointed under that section.)

236. Section 77 makes further provision for what happens in the event that the President, or both the President and the Vice President, are suspended from office or unable to perform their duties. Inability to perform their duties might arise as a result of illness, for example.

237. Subsection (2) provides that where the President is suspended or unable to perform the role, the Vice President must carry out their duties and is to be treated as though they were the President. Subsection (4) makes provision for situations where both the President and the Vice President are suspended or unable to perform the duties of the President. In this case, the Lord Justice General is given the power to act as President, if the Lord Justice General does not already hold the role. If the Lord Justice General is the President and is suspended or unable to perform the duties, or if the Lord Justice General is not the President but chooses not to perform the duties during a period of suspension or incapacity of the President, then the Lord Justice General must direct for the duties to be performed by either the Lord Justice Clerk (if the Lord Justice Clerk is not the person suspended or unable to perform the duties), or another Judge of the Sexual Offences Court.

Disposal of business

Section 78 – President's responsibility for efficient disposal of business

238. Section 78 places a responsibility on the President of the Sexual Offences Court to ensure that cases in the Court are dealt with efficiently and sets out ways in which this is to be achieved. The responsibility is subject to section 2(2)(a) and (2A) of the Judiciary and Courts (Scotland) Act 2008, which places a similar responsibility on the Lord President in respect of the Scottish courts generally, including the Sexual Offences Court. This ensures that the Sexual Offences Court remains subject to such directions as the Lord President may give in respect of the courts.

Sittings

Section 79 – sittings of the Sexual Offences Court

239. Section 79 sets out when and where the Sexual Offences Court may sit. In subsection (3), a power is given to the President of the Sexual Offences Court to make an order which sets out the number of sittings to take place at each place where the Court sits, and when those sittings are to take place. This power is subject to the requirement, in subsection (4), to consult with the Lord Justice General and the Lord Advocate. It is also subject to section 2(2)(a) and (2A) of the Judiciary and Courts (Scotland) Act 2008, which gives the Lord President overarching responsibility in respect of court business in Scotland. Subsection (7) gives a power to the Lord Advocate to require further sittings of the Sexual Offences Court, in addition to those specified in an order.

Transfer of cases

Sections 80 and 81 – transfer of cases to the Sexual Offences Court, and from the Sexual Offences Court

240. Sections 80 and 81 deal with the transfer of cases to or from the Sexual Offences Court. Section 80 inserts a new section 288BZA into the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"). This section is for proceedings which have been raised in the High Court of Justiciary or the sheriff court. Subsection (4) allows either the prosecutor, or the prosecutor

jointly with the accused person, to make an application for the case to be transferred to the Sexual Offences Court. Section 38 will apply here to ensure that only cases where the Sexual Offences Court has jurisdiction can be transferred under this section.

241. If an application is made under subsection (4), then the High Court or the sheriff court in which the proceedings were raised may make an order transferring proceedings to the Sexual Offences Court. Subsection (5) provides that if there is an accused person in the proceedings who was not party to the application to transfer, then the court must allow that person the opportunity to make representations about whether or not the case should be transferred.

242. Section 288BZA(6) sets out the timescales for an application for transfer to the Sexual Offences Court. The application can be made at any time after the accused person has been served with an indictment to the court, up until the day the court first sets a date for the trial diet. This time limit does not change if that trial diet is later changed to a different date. However, under subsection (6)(b), applications to transfer can continue to be made up until the day before the trial diet actually commences, if the person making the application can demonstrate a reason for making the application late.

243. Subsection (9) of section 288BZA provides that section 74 of the 1995 Act applies to decisions to either make, or not make, an order transferring proceedings to the Sexual Offences Court, regardless of when that decision was made. The application of section 74 means that a decision to make, or not make, a transfer order can be subject to an appeal to the High Court of Justiciary by a party to the case who is not satisfied with the decision.

244. Subsection (10) of section 288BZA provides for a first diet or preliminary hearing in the court in which the proceedings were raised to be treated as the preliminary hearing of the Sexual Offences Court, for the purpose of section 65 of the 1995 Act. This means that the time limits which apply in cases by virtue of that section will continue to apply to proceedings which are transferred, and the case is treated as continuing rather than starting again in the Sexual Offences Court.

245. Section 81 deals with the transfer of cases out of the Sexual Offences Court, to either the High Court of Justiciary or a sheriff court. The procedure for the transfer of proceedings from the Sexual Offences Court is essentially the same as the procedure for transfer to the Sexual Offences Court.

Rights of audience

Sections 82, 83, 84, and 85 – rights of audience of solicitors and advocates, statement of training requirement for prosecutors, and review of rights of audience

246. Sections 82 and 83 set out the requirements for solicitors and advocates respectively to have the right to appear in the Sexual Offences Court.

247. Section 82(4) provides that for a solicitor to have a right of audience in the Sexual Offences Court; they must complete a course of training on trauma-informed practice which has been approved by the Lord Justice General. Where the proceedings relate to a charge of one or more of the offences set out in subsection (3), subsection (2) provides that only solicitor-advocates who meet the training requirement are entitled to appear in the Court. The offences set out in subsection (3) are murder, rape, attempted murder or rape, certain offences under section 1(1) of the Domestic Abuse (Scotland) Act 2018, offences with a minimum sentence of 5 years' or more imprisonment, or offences in relation to which the accused is being retried

following an application under section 4(3)(b) of the Double Jeopardy (Scotland) Act 2011. Subsection (8) gives the Scottish Ministers a power to modify, by regulations, the offences in relation to which solicitors who are not also solicitor-advocates do not have a right of audience. Subsection (9) sets out the persons who the Scottish Ministers must consult before making any such regulations. The Law Society of Scotland is required, under subsection (5), to keep and publish a record of solicitors who have rights of audience in the Sexual Offences Court.

248. Section 82 does not apply to prosecutors appearing on behalf of the Crown.

249. Section 83 provides that for an advocate to have a right of audience in the Sexual Offences Court; they must complete a course of training on trauma-informed practice which has been approved by the Lord Justice General. The Faculty of Advocates is required, under subsection (3), to keep a record of advocates who have rights of audience in the Sexual Offences Court. This section does not apply to prosecutors appearing on behalf of the Crown.

250. Section 84 places a requirement on the Lord Advocate to publish a statement setting out what, if any, training requirement in respect of trauma-informed practice will apply to prosecutors who will appear in the Sexual Offences Court on behalf of the Crown.

251. Section 85 requires the Scottish Ministers to carry out a review in relation to legal representation in the Sexual Offences Court, as soon as reasonably practicable after the end of the period of 5 years beginning when Part 7 of the Act comes fully into force. The review is to cover, in particular, rights of audience, legal representation, and legal aid, and the Scottish Ministers must publish a report setting out its findings, with a copy of the report being laid before the Scottish Parliament. Subsection (2) sets out the persons who the Scottish Ministers must consult in carrying out the review.

Chapter 3 – Administration

252. This Chapter deals with matters of an administrative nature in the Sexual Offences Court, namely the appointment of a Clerk and Deputy Clerks of the Court, and the handling of court records.

Clerks

Sections 86, 87, and 88 – Clerk and Deputy Clerks of the Sexual Offences Court

253. Section 86 provides for the appointment of the Clerk of the Sexual Offences Court by the Scottish Courts and Tribunals Service ("SCTS"). The person appointed must already hold, or have held, one of the administrative offices listed in subsection (4), and subsection (2) provides that, if they currently hold one of those offices, they will continue to hold it in addition to the role of Clerk of the Sexual Offences Court. Subsection (3) gives SCTS the discretion to determine the duration of the appointment, and the terms and conditions which will apply.

254. Section 87 allows SCTS to appoint Deputy Clerks of the Sexual Offences Court. Subsection (2) provides that the number of Deputy Clerks is for SCTS to determine, which gives SCTS the discretion to appoint as many Deputy Clerks as they consider necessary to carry out court business. SCTS is also given the discretion to determine the duration of appointments, and the applicable terms and conditions. Subsection (4) provides that persons appointed to the role of Deputy Clerk of the Sexual Offences Court can hold the role of clerk in another court – which allows them to hold another role when appointed to the Sexual Offences Court or take up another role following appointment.

255. Section 88 sets out further detail around the role of the Clerk and Deputy Clerks of the Sexual Offences Court. Subsection (1) provides that before they can be appointed to either position, a person must complete training on trauma-informed practice in sexual offence cases, as approved by the Lord Justice General. Subsections (5) and (6) provide for periods when there is no one holding the role of Clerk, or the person holding the role is unable to carry out the role – for example if they are ill. SCTS is given the power to arrange for the role of the Clerk to be carried out by a Deputy Clerk, or by any other member of staff of SCTS.

Sexual Offences Court records

Sections 89 and 90 – records, authentication and electronic form

256. Section 89 amends the Public Records (Scotland) Act 1937, by inserting a new section which provides for the transmission of the records of the Sexual Offences Court to the Keeper of the Records of Scotland. The details of transmission are to be detailed in an act of adjournal, which can be made by the High Court of Justiciary to regulate matters in the criminal courts.

257. Section 90 makes provision about the authentication of records of the Sexual Offences Court and allows for records of the Sexual Offences Court to be made and kept in electronic form.

Chapter 4 – Procedure

258. This Chapter makes provision for the court procedure which will apply to proceedings in the Sexual Offences Court, by applying the provisions of the 1995 Act, as they apply in the High Court of Justiciary, to such proceedings generally, and making certain bespoke provision.

Procedure

Section 91 – Sexual Offences Court procedure

259. Section 91 establishes the overarching procedure which is to be used in respect of proceedings in the Sexual Offences Court. It does this by providing, in subsection (1), that the provisions of the 1995 Act are to apply in proceedings in the Sexual Offences Court, as though the proceedings were taking place in the High Court of Justiciary. The 1995 Act contains detailed provisions about criminal proceedings in the High Court of Justiciary, the sheriff courts, and justice of the peace courts. The provisions relating to the High Court, and to proceedings on indictment generally, will therefore apply in respect of proceedings in the Sexual Offences Court, as though references to the High Court or the court were references to the Sexual Offences Court.

260. The 1995 Act provisions will not apply in the Sexual Offences Court to the extent that they are inconsistent with any provision made in the Act, or in regulations made by the Scottish Ministers setting out further procedure for the Sexual Offences Court.

261. Subsection (2) gives the Scottish Ministers the power to make regulations setting out further detail about procedure in the Sexual Offences Court, for the purpose of ensuring its proper functioning. The Scottish Ministers are required to consult the Lord Justice General before making any such regulations. Regulations under subsection (2) will be subject to the affirmative procedure.[9]

[9] See section 67(2) and section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (legislation.gov.uk).

262. Subsection (5) gives the High Court of Justiciary the power to make acts of adjournal for the purposes of setting out further detail around the procedure which will apply in proceedings in the Sexual Offences Court. This is in addition to the existing power to make acts of adjournal which the High Court has under section 305 of the 1995 Act and allows for acts of adjournal to modify legislation as required.

Prohibition on personal conduct of defence, etc.

Section 92, 93, 94, 95, 96 and 97 – prohibition on personal conduct of defence, vulnerable witnesses, ground rules hearings, pre-recording of evidence, taking evidence by commissioner and giving evidence in the form of a prior statement

263. Sections 92 to 97 set out procedural rules which will apply in the Sexual Offences Court in addition to the procedure set out in the 1995 Act. Section 91(1) means that, where these provisions conflict with anything in the 1995 Act, these provisions will take precedence.

264. Section 92 provides that an accused person may not conduct their own case at a hearing, or for the purposes of a hearing, if a witness will be giving evidence at that hearing. This means that an accused person will require to instruct a solicitor to conduct their case at such hearings, and for the purposes of such hearings.

265. Subsections (2) to (5) make provision for the appointment by the Sexual Offences Court of a solicitor to represent the accused person at such hearings. The Court is required to appoint a solicitor where the Court becomes aware that the accused person has not instructed one to appear at a hearing where a witness will be giving evidence, or to act for the accused person for the purposes of such a hearing, if the Court does not believe that the accused intends to do so. Subsection (5) ensures that if a solicitor is appointed by the Court to act for an accused person, the accused person is not able to dismiss the solicitor. If the Court determines that the solicitor is not able to act upon the instructions of the accused person, or act in that person's best interests, for example due to a conflict of interest, the Court may replace the solicitor with another solicitor.

266. Section 93 provides for the modification of the 1995 Act in respect of its application to proceedings in the Sexual Offences Court. Paragraph (a) of subsection (2) inserts a new section 271AZA into the 1995 Act, which will apply in respect of such proceedings. Section 271AZA provides for a particular type of hearing, to be known as a vulnerable witness ground rules hearing, to take place where a vulnerable witness, as defined in section 271 of the 1995 Act as modified, is to give evidence at any hearing in the Sexual Offences Court. The hearing may, under existing Court Rules, be amalgamated with another hearing, to allow for efficiency. The hearing will allow a Judge of the Sexual Offences Court to determine how evidence is to be given and make any orders necessary to put measures in place to protect the wellbeing of the witness.

267. Paragraph (b) of subsection (2) modifies section 271I of the 1995 Act. This section provides for ground rules hearings (as distinct from vulnerable witness ground rules hearings, provided for in new section 271AZA) to take place when a court makes an order for a vulnerable witness to give evidence by way of a commissioner. The modifications in paragraph (b) remove references to ground rules hearings from section 271I of the 1995 Act in relation to proceedings in the Sexual Offences Court, because a vulnerable witness ground rules hearing will take place by virtue of section 271AZA when a vulnerable witness will be giving evidence, so provision for a further ground rules hearing under section 271I is not required.

268. Section 94 provides that the Sexual Offences Court must ensure that all vulnerable complainers who give evidence to the Court are able to do so in advance of the relevant hearing. A definition of "complainer" is provided in subsection (7)(a), as being the person against whom the offence to which the proceedings relate is alleged to have been committed. Paragraph (b) of subsection (7) sets out that a complainer is a vulnerable complainer if the offence which is alleged to have been committed against them is a sexual offence.

269. Subsection (2) sets out what the Sexual Offences Court must do in order to ensure that a vulnerable complainer's evidence can be given in advance. The Court must authorise either the vulnerable complainer's evidence being taken by a commissioner, in accordance with section 95, the admission of the record of a prior examination of the vulnerable complainer as the vulnerable complainer's evidence in accordance with section 96, or the vulnerable complainer's evidence in chief being taken by a statement in accordance with section 97. The definition of "prior examination" in subsection (8) provides that it is a hearing where the vulnerable complainer gave evidence before a commissioner. In addition to making an order authorising one of these measures, the Sexual Offences Court must not, under paragraph (b) of subsection (2), authorise the giving of evidence in such a way, or the use of such a measure, as would mean that there was a question over whether all of the vulnerable complainer's evidence could in fact be given in advance by way of the measure authorised.

270. Subsections (3) and (4) set out the circumstances in which the Court may decide not to comply with the rule in subsection (1). Subsection (3) provides an exception where the vulnerable complainer giving evidence in advance would give rise to a significant risk of prejudice to the fairness of the hearing or to the interests of justice, and that risk outweighs the risk of prejudice to the vulnerable complainer if that complainer were to give evidence in person. Subsection (4) provides an exception where the vulnerable complainer, having had access to information to help them make the decision, as prescribed by act of adjournal, wishes to give evidence at the hearing. If the vulnerable complainer is aged under 18, the exception only applies if the Sexual Offences Court considers it would be in the vulnerable complainer's best interests to do so.

271. Subsection (5) applies section 271A of the 1995 Act in relation to a vulnerable complainer giving evidence in the Sexual Offences Court. Section 271A sets out various administrative matters around the giving of evidence by a vulnerable witness generally, such as a requirement to notify the court specifying which measure for giving evidence is considered appropriate and allowing other parties to object to such measures.

272. Section 95 sets out the detail around what will happen when the Sexual Offences Court makes an order under section 94 for a vulnerable complainer to give evidence by way of a commissioner. The Sexual Offences Court is to set a date for proceedings before the commissioner at the same time as appointing the commissioner and can direct that those proceedings must take place by way of a live television link between the commissioner and the vulnerable complainer.

273. Subsection (4) provides that the proceedings must be recorded – and subsection (6) provides that such recording constitutes evidence without being sworn to by a witness. Subsection (5) provides that the accused may not be present in the room where the proceedings are taking place, or in the room from which the vulnerable complainer is giving evidence by television link. The Sexual Offences Court may authorise an exception to this prohibition, but only if the accused demonstrates special cause. The accused may, however, watch and hear the proceedings in a manner that the Sexual Offences Court determines.

274. Subsections (7) and (8) make provision for a vulnerable witness to pre-record their evidence before a commissioner, in accordance with the rest of section 95, before an indictment has been served on an accused person, meaning that the evidence can be taken at an earlier point in time.

275. Subsection (9) applies various sections of the 1995 Act to proceedings before a commissioner in the Sexual Offences Court, subject to the modifications in subsection (10). These provisions are of an administrative nature.

276. Section 96 sets out the detail around what will happen when the Sexual Offences Court makes an order under section 94 for the record of a prior examination of a vulnerable complainer to be taken by the Sexual Offences Court as the entirety of the vulnerable complainer's evidence. The definition of "prior examination", in section 94(8), also applies here.

277. Subsection (2) provides that where a record of a prior examination is lodged by the prosecution in accordance with section 96, it is to be taken by the Sexual Offences Court as the vulnerable complainer's evidence, and the vulnerable complainer does not require to speak or be questioned in court about their evidence. This is subject to subsection (6).

278. Subsection (3) provides that the record of a prior examination does not need to be affirmed by witnesses in order to be admissible. Subsection (4) sets out more detail about what evidence can be admitted as a prior examination. It clarifies that only evidence that was previously given before a commissioner in separate court proceedings can be admitted this way. If those separate proceedings were in the High Court of Justiciary or the sheriff court, then the evidence must have been given under section 271I of the Criminal Procedure (Scotland) Act 1995 in order to be admissible under this section. If the separate proceedings took place in the Sexual Offences Court, then the evidence must have been given under section 95 of the Act in order to be admissible under this section.

279. Subsections (5) and (6) provide that, where a vulnerable complainer lodges a notice specifying that they intend to give evidence by way of admission of a prior record, the Sexual Offences Court may allow questioning of the vulnerable complainer to take place if the Sexual Offences Court is satisfied that all of the conditions set out in subsection (6) are met. The conditions are: that there are relevant questions to ask the vulnerable complainer, which were not asked in the prior examination and which could not reasonably have been expected to have been asked in the prior examination; that not allowing the questioning would create a significant risk of prejudice to the fairness of the trial or to the interests of justice; and that the risk of prejudice to fairness would significantly outweigh the risk of prejudice to the interests of the vulnerable complainer which would be created if the questioning were to be allowed.

280. Subsection (7) allows for an application to question the vulnerable complainer to be granted either fully or partially. This means that, for example, only certain questions may be permitted, while others would not be permitted. Subsections (8) and (9) makes provision for how the questioning is to take place if an application is granted. Subsection (8) requires that the Sexual Offences Court appoint a Judge of that court as commissioner and set a date for the hearing at which the questioning will take place. Subsection (9) provides that section 95 will apply to that hearing. This means that where a vulnerable complainer who has given their evidence by way of the admission of a record of a prior examination is to be questioned, it will be done before a commissioner in the same way as if the Sexual Offences Court had made an order under section 94 for that vulnerable complainer to give all of their evidence before a commissioner under section 95.

281. Section 97 sets out the detail around what will happen when the Sexual Offences Court makes an order under section 94 for a vulnerable complainer to give evidence by prior statement. A definition of "statement" is contained in subsection (7), and includes any representation of fact or opinion, however that is expressed. It also includes statements made in a precognition on oath, but not in a precognition which is not made on oath.

282. Subsection (2) provides that a statement is admissible as the vulnerable complainer's evidence in chief, in whole or in part, without any further input to the Sexual Offences Court being required from the complainer. Subsection (3) makes further provision for the admissibility of the statement, subject to subsection (4), which requires that the statement be contained in a document, and that the vulnerable complainer would have been deemed a competent witness at the time the statement was made. Subsection (5) provides that the requirements of subsection (4) do not apply when the statement is sufficiently authenticated and was either contained in a precognition on oath or was made in court proceedings. A definition of "document" is contained in subsection (7), and includes documents in writing, maps, plans, graphs, drawings, photographs, and audio or visual recordings. Subsection (7) also explains that a statement is contained in a document if the person who made the statement made it personally, or if the statement is recorded in the document by a person with direct personal knowledge of the making of the statement.

Art and part and aiding and abetting

Section 98 – statutory offences: art and part and aiding and abetting

283. Section 98 makes clear that the Sexual Offences Court has the power to convict an accused person of a statutory offence where the accused person is found guilty of committing that offence on an art and part basis – that is, where they participated in the commission of the offence, regardless of the specifics of their involvement. Subsection (2) clarifies that aiding or abetting, counselling, procuring, or inciting the commission of a statutory offence are all to be treated in the same way as the commission of the crime would be treated, for the purposes of sentencing in the Sexual Offences Court.

Sentencing

Section 99 – sentencing power of the Sexual Offences Court

284. Section 99 provides that the Sexual Offences Court has the same sentencing power as the High Court of Justiciary in respect of persons it convicts of offences. This includes the power to impose an Order for Lifelong Restriction.

Double jeopardy

Section 100 – exception to rule against double jeopardy in the Sexual Offences Court: new evidence

285. Section 100 amends the Double Jeopardy (Scotland) Act 2011 ("the 2011 Act") so that its provisions apply in the Sexual Offences Court.

286. Section 4 of the 2011 Act sets out the "new evidence" exception to the double jeopardy rule. It provides that where an accused person has been acquitted in the High Court, the High Court might, on application, grant authority to bring a new prosecution in the High Court if there is new evidence that the accused person committed the offence charged. Subsection (2)(a)

adds reference to the Sexual Offences Court to section 4(1) of the 2011 Act, meaning that the "new evidence" exception will apply where an accused person is acquitted in the Sexual Offences Court in the same way that it applies to an accused person acquitted in the High Court. Subsection (2)(b) amends section 4(3)(b)(ii) of the 2011 Act, to ensure that retrials can take place in the Sexual Offences Court if that is where the original trial was heard.

287. Section 9(2) of the 2011 Act provides that where the accused makes a plea in bar of trial, on the basis that the charge arises out of acts for which the accused has already been tried, the plea must be remitted to the High Court for a decision. Subsection (3) amends section 9(2) of the 2011 Act to apply this requirement in the Sexual Offences Court, to ensure that the High Court retains sole authority to grant the right to bring a retrial under that section.

PART 8 – SPECIAL MEASURES FOR VULNERABLE WITNESSES UNDER THE 1995 ACT

Section 101 – vulnerable witnesses under the 1995 Act: admission of the record of a prior examination as evidence in full

288. Section 101 amends Part XII of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"). Section 271H of the 1995 Act sets out special measures which may be authorised, under sections 271A, 271C or 271D, in the High Court or sheriff court for the purposes of taking the evidence of a vulnerable witness. Section 101(2) adds the admission of the record of a hearing at which the vulnerable witness gave evidence before a commissioner, in accordance with section 271IA, to the list of special measures which might be authorised.

289. Section 101(3) inserts new section 271IA into the 1995 Act. This sets out the procedure to be followed when the admission of the record of a prior examination of a vulnerable witness is authorised as the special measure by which that witness's evidence is to be taken by the High Court or sheriff court. Subsections (1) and (2) of the new section provide that, where this special measure is used, the vulnerable witness will not be required to give further evidence in court, and the evidence does not require to be confirmed by a witness. Subsection (3) provides that the prior examination must have taken place before a commissioner either under section 271I of the 1995 Act, in proceedings taking place in the High Court or sheriff court, or under section 95 of the Act, in proceedings taking place in the Sexual Offences Court.

290. Subsections (4) and (5) ensure that, where a vulnerable witness lodges a notice specifying that they intend to give evidence by way of admission of a prior record, the court may allow questioning of the vulnerable witness to take place if the court is satisfied that all of the conditions set out in subsection (5) are met. The conditions are: that there are relevant questions to ask the vulnerable witness, which were not asked in the prior examination, and which could not reasonably have been expected to have been asked in the prior examination; that not allowing the questioning would create a significant risk of prejudice to the fairness of the trial, or to the interests of justice; and that the risk of prejudice to fairness would significantly outweigh the risk of prejudice to the interests of the vulnerable witness which would be created if the questioning were to be allowed. Subsection (6) allows for an application to question the vulnerable witness to be granted either fully or partially. This means that, for example, only certain questions may be permitted, while others would not be permitted.

291. Subsections (7) and (8) make provision for how the questioning is to take place if an application is granted. Subsection (7) requires that the court appoint a judge as commissioner to take the evidence of the vulnerable witness unless an exception set out in subsection (8) is justified. Subsection (8) provides that an exception is justified where the vulnerable witness is under 18 and, having had access to relevant information, wishes to give evidence at the court hearing instead of before a commissioner, and the court considers it would be in the vulnerable witness's best interest to do so. Alternatively, if the vulnerable witness is aged 18 or over, then an exception is justified if, having had access to relevant information, the vulnerable witness wishes to give evidence at the hearing instead of before a commissioner. Subsection (9) provides that, where questioning of the vulnerable witness takes places before a commissioner, section 271I of the 1995 Act will apply to that hearing. This means that where a vulnerable witness who has given their evidence by way of the admission of a record of a prior examination is to be questioned, it will be done before a commissioner in the same way as if the court had made an order for that vulnerable witness to give all of their evidence before a commissioner under section 271I.

Section 102 – child witnesses under the 1995 Act: exception to presumption in favour of special measures

292. This section makes amendments to sections 271BZA(8), 271BZB(5), and 271BZC(2) of the Criminal Procedure (Scotland) Act 1995, relating to special measures for child witnesses. The sections all allow for exceptions to be granted to the presumption in favour of pre-recording evidence which applies in relation to children giving evidence in court. An exception may be granted under these sections in certain circumstances to allow children to give evidence in person. Previously the exceptions were limited to children aged 12 or over. Section 102 of the Act changes that so that all children aged 18 and under are subject to the same treatment and may be eligible for an exception.

Section 103 – vulnerable witnesses under the 1995 Act: supplementary provision in relation to child witnesses

293. Section 271E of the Criminal Procedure (Scotland) Act 1995 requires that parties and the court have regard to the views of vulnerable witnesses when applying for, or ordering the use of, special measures for those witnesses. Subsection (3) of that section provides that in the case of child witnesses the child is to be assumed to be of sufficient age and maturity to form a view if aged 12 or older. It also requires the court to give greater weight to the views of the child than to any conflicting view offered by their parent. Section 103 repeals subsection (3), meaning the court will have discretion in considering views offered by child witnesses.

PART 9 – SEXUAL OFFENCES CASES: FURTHER REFORMS

Anonymity for victims

Section 104 – sexual offences cases: anonymity and restriction on publications

294. Subsections (1) and (2) of this section will insert a new Chapter (Chapter 2B) into Part 6 of the Criminal Justice (Scotland) Act 2016 to make provision, through a prohibition on the publication of information likely to lead to the identification of victims of certain offences, for the lifelong anonymity of such victims.

295. New Chapter 2B consists of sections 106C to 106H.

Section 106A – restriction on publications relating to listed offences

296. New section 106A(1) prohibits the publication of information if it would be likely to lead to the identification of a person who is the victim of certain sexual and related offences. Those offences are set out at subsection (5). The prohibition applies whether the offence was committed, or was suspected to have been committed, before or after this new section comes into force (see subsection (8)). Subsection (2) sets out in more detail the sort of information that will be covered by the prohibition on publication. The list in subsection (2) is non-exhaustive.

297. The prohibition in subsection (1) applies from the point the offence is committed for the lifetime of the victim (as provided for by subsection (3)). There are certain exceptions to the prohibition on publication. Subsection (4) provides that the prohibition doesn't prevent the victim themselves from publishing the information. But a victim who self-publishes information will not be covered by the exception to the extent that information they publish would be likely to lead to the identification of another person who is a victim of a relevant

offence. A victim who is an adult is also able to consent to the publication of the information by another (see section 106D(3) and (4)). See also sections 106B and 106C for situations where the court may dispense with restrictions.

298. The Scottish Ministers may, by regulations subject to the affirmative procedure,[10] amend the list of offences in subsection (5).

299. Subsection (8) contains definitions of expressions used in this section and in the other sections in new Chapter 2B including, in particular, the meaning of "publication", which includes, as well as traditional forms of print and broadcast media, social media and other publicly accessible online forms of communication, such as X (formerly known as Twitter).

Section 106B – power to dispense with restriction: child victims

300. Whereas an adult victim can consent to the publication of information likely to lead to their identification as a victim of an offence, information about a child victim (being a person under 18 years of age) cannot be published by a third party without committing the offence in section 106D even where the child victim purports to give consent. Instead, the sheriff may, on an application by a person who wishes to publish information relating to a child victim, dispense with the restriction imposed by section 106A. Before making a decision on such an application, the applicant and the child victim must be given an opportunity to make representations to the sheriff. The sheriff can grant the order sought (a) if satisfied that the child victim understands the nature of the order sought, appreciates what the effect of making the order will be, and consents to the publication of the identifying information, and (b) if satisfied that there is no good reason why the order should not be made. But the child victim can withdraw consent to publication by giving the applicant written notice before the information is published.

Section 106C – power to dispense with restriction: conviction for relevant offence

301. The restriction imposed by section 106A(1) can also be dispensed with if a person, who is a victim of an offence, is convicted of certain offences ("relevant offences"). The restriction is not, however, dispensed with automatically on conviction of a relevant offence. It is for the convicting court to decide whether to do this, and it may do so if satisfied (a) that there is a connection between the conduct of which the person has been convicted and the allegation that the person was the victim of an offence listed in section 106A(5), and (b) that it is in the interests of justice to dispense with the restriction.

302. The relevant offences which can trigger the restriction under section 106A(1) being dispensed with are perjury, attempting to pervert the course of justice and making false statements and declarations (under section 44 of the Criminal Law (Consolidation) (Scotland) Act 1995).

Section 106D – offence and defences

303. By virtue of section 106D(1) it is an offence to publish information in breach of the restriction imposed by section 106A(1). By virtue of section 106D(2) it is also an offence to attempt or conspire to do so or to aid, abet, counsel or procure the publication of information in breach of the restriction. These provisions do not apply where the restriction has been dispensed with on the order of the sheriff under section 106B (in the case of a child victim) or where the court has made an order under section 106C.

[10] See section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (legislation.gov.uk).

304. A number of defences are available to a person accused of an offence under this section. Under subsections (3) and (4), a person who publishes information with the written consent of the person to whom the information relates, does not commit the offence provided the person to whom the information relates is 18 years old or over and their consent was not withdrawn before the information was published. The person charged must however have taken reasonable steps to establish that the person to whom the information published relates was over 18. While a child victim could purport to consent to publication, the person publishing would not be able to rely on that as a defence to a charge under subsection (1).

305. Subsection (5) provides a defence where the person charged has published information that was already in the public domain (including where the person to whom the information relates was 18 or over and published the information themselves (as mentioned in section 106A(4)). In addition, where the information was originally published by someone other than the person to whom it relates, the secondary publisher has a defence if they had no reason to believe that the conditions mentioned in subsection (4) were not met in relation to that original publication.

306. Finally, a person who publishes information has a defence if they were not aware, and neither suspected nor had reason to suspect, that the information they published included any information to which the restriction in section 106C(1) applies.

307. Section 106D(7) to (9) make provision for how various elements of the possible defences in subsections (3) to (6) can be established.

Section 106E – individual culpability where organisation commits offence under section 106D

308. Under section 106E, where an offence under section 106D is committed by an organisation, such as a company or a partnership, and the commission of the offence involved the consent, connivance or neglect on the part of a "responsible individual", then that individual also commits the offence. Section 106E(3) and (4) set out who "responsible individuals" are in relation to each type of organisation that might commit the offence.

Section 106F – Crown application: offence under section 106D

309. By virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010, the Criminal Justice (Scotland) Act 2016 applies to the Crown. However, in line with usual practice for Acts of the Scottish Parliament, section 106F has the effect that the Crown cannot be found criminally liable for the offence created by section 106D(1). However, through the mechanism in subsection (2), any unlawful conduct on the part of Crown bodies can be declared unlawful by the Court of Session. Section 106F(3) has the effect that this section does not exempt civil servants etc. from criminal prosecution.

310. Subsections (3) to (5) of section 104 also amend the 1995 Act to insert a new section 47A into it.

311. Section 47 of the 1995 Act governs reporting restrictions where criminal proceedings involve children. New section 47A would disapply section 47 where proceedings are taken against any person in respect of an offence listed in section 106A(5) of the Criminal Justice (Scotland) Act 2016 and the person who is the victim of the offence is a child.

312. This is to ensure that the lifelong right of anonymity for child victims of sexual offences (and the limited other offences covered by section 106A(5)) will take precedence over the existing, more limited provision in section 47 of the 1995 Act. Under that section, the reporting

restrictions relating to child victims apply only to newspaper reporting and do not cover the wider forms of publication (include online publication) that new sections 106A to 106F of the 2016 Act cover. In addition, the restrictions under section 47 generally cease to apply on the child reaching the age of 18.

Restrictions on evidence relating to sexual offences

Section 105 – restrictions on evidence relating to sexual offences

313. Under section 274 of the 1995 Act, where a person is accused of a sexual offence listed in section 288C of that Act, the court must not admit evidence or allow questioning which shows or tends to show that the complainer:

- is not of good character (whether in relation to sexual matters or otherwise)
- has, at any time, engaged in sexual behaviour not forming part of the subject-matter of the charge
- has, at any time (other than shortly before, at the same time as or shortly after the acts which form part of the subject-matter of the charge), engaged in behaviour, not being sexual behaviour, as might found the inference that the complainer is likely to have consented to those acts or is not a credible or reliable witness, or
- has, at any time, been subject to any condition or predisposition as might found such an inference.

314. But section 275(1) of the 1995 Act provides that the court can admit such evidence or questioning if, on the application of the accused or the prosecutor, the court is satisfied that:

- the evidence or questioning will relate only to a specific occurrence or occurrences of sexual or other behaviour or to specific facts demonstrating the complainer's character or any condition or predisposition to which the complainer is or has been subject
- that occurrence or those occurrences of behaviour or facts are relevant to establishing whether the accused is guilty of the offence charged, and
- the probative value of the evidence sought to be admitted or elicited is significant and is likely to outweigh any risk of prejudice to the proper administration of justice arising from its being admitted or elicited.

315. For the purposes of section 275(1), "the proper administration of justice" includes appropriate protection of the complainer's dignity and privacy.

316. Section 105 amends section 274 to expand the range of offences in relation to which sections 274 and 275 apply. In addition to offences to which section 288C of the 1995 Act applies (broadly, sexual offences), it adds two new categories of offence, namely—

- offences to which section 288DC(1)(a) of the 1995 Act applies (that is, offences under section 1(1) of the Domestic Abuse (Scotland) Act 2018), where it is apparent from the offence as charged that the alleged abusive behaviour included behaviour that could constitute an offence to which section 288C applies, and

- offences in connection with which a docket is included in the indictment or complaint (under section 288BA of the 1995 Act or under common law) but only if the alleged behaviour specified in the docket included behaviour that could constitute an offence to which section 288C applies.

317. As a consequence of the expansion of the range of offences to which section 274 applies, it is necessary to amend the definition of "complainer" and section 105(2)(c) amends section 274(2) to achieve this.

Independent legal representation for complainers

Section 106 – applications to admit certain evidence relating to sexual offences: rights of complainers

318. As explained above, sections 274 and 275 of the 1995 Act deal with evidence or questioning that may be admitted or allowed in certain cases, with section 275(1) providing that the court can admit evidence or questioning otherwise prohibited by section 274 if, on the application of the accused or the prosecutor, the court is satisfied as to certain matters.

319. Currently, the complainer has no right to oppose or make representations to the court in relation to an application made for the purposes of section 275(1). However, following the judgment of the court in the case of *RR, Petitioner v HMA*,[11] the Crown has been required to ascertain the complainer's position in relation to any application under section 275 and to present that position to the court. The court held that the Crown was bound by section 1 of the Victims and Witnesses (Scotland) Act 2014, which requires the Crown, among others, to have regard, in exercising its functions, to the principle that a victim of crime should be able to obtain information about what is happening in the criminal investigation or proceedings and, in so far as it would be appropriate to do so, should be able to participate effectively in that investigation and those proceedings.

320. Section 106 will amend the 1995 Act so that, when an application is made for the purposes of section 275(1), the prosecutor must inform the complainer, give the complainer an explanation of the application and of the evidence or questioning proposed, and make the complainer aware of the rights available to a legal representative of the complainer under new section 275ZA.

321. Section 275ZA gives the complainer's legal representative, on giving the prosecutor notice that they are acting for the complainer, the right to make representations to the court on the application. The complainer's legal representative is required to give the court and prosecutor written notice of the fact that they have been engaged. If the legal representative withdraws or is dismissed, they must give the court and prosecutor written notice of that.

322. Section 106(3) also inserts new sections 275ZB and 275ZC in the 1995 Act. Section 275ZB requires the prosecutor to send the complainer's legal representative a copy of the application under section 275(1) and a copy of the complaint or indictment to the extent that it relates to the application. If the complainer's legal representative then requests a copy of any evidence referred to in, or relevant to, the application, the prosecutor must notify the accused. The accused or the prosecutor may object to the evidence being sent, provided they do so within the objection period described in subsection (6). If there is no objection within that period, the

[11] [2021] HCJAC 21 – 2021hcjac21.pdf (scotcourts.gov.uk).

prosecutor must send the evidence to the complainer's legal representative. If there is an objection, the prosecutor must apply to the court for a ruling on whether the evidence should be sent or the objection upheld. The court may, after giving the prosecutor, the accused and the complainer's legal representative the opportunity to make representations, either uphold the objection or require the prosecutor to send the evidence.

323. Where evidence is disclosed to the complainer's legal representative, section 275ZC places a duty of confidentiality on the legal representative and the complainer in respect of that evidence. The evidence may be used or disclosed for the purposes of making, or preparing to make, representations to the court in relation to the application under section 275(1). It is an offence to use or disclose the evidence for any other purposes unless the evidence is already in the public domain.

324. Section 106(4), (5) and (6) make connected amendments to the 1995 Act. Subsection (4) amends section 275B so that an application under section 275(1) must, in solemn proceedings in the High Court of Justiciary, be made no later than 21 days before the preliminary hearing, in solemn proceedings in the sheriff court, no later than 21 days before the first diet, and, in summary proceedings, no later than 21 days before the intermediate diet, if one is fixed, failing which 21 days before the trial diet.

325. Subsection (5) amends section 271I of the 1995 Act so that, in proceedings in which evidence is to be taken by a commissioner, an application under section 275(1) must be made no later than 21 days before the proceedings.

326. Subsection (6) amends section 74 of the 1995 Act, which provides for appeals from decisions made at preliminary hearings in the Hight Court or first diets in the sheriff court, so that the complainer's legal representative can appeal a decision to grant an application made for the purposes of section 275(1).

Non-harassment orders

Section 107 – circumstances in which non-harassment order must be considered by the court

327. Sections 234A and 234AZA of the 1995 Act govern when the court may or must consider making a non-harassment order in certain cases. In particular, section 234AZA applies in domestic abuse cases and requires the court to consider making a non-harassment order without the prosecutor having applied for it. In addition, if the court decides not to make such an order, the court must explain why not.

328. Section 107 amends section 234AZA to expand the range of offences to which that section applies. In addition to offences under section 1(1) of the Domestic Abuse (Scotland) Act 2018 and offences that are aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, section 234AZA will now also apply to—

- offences to which section 288C of the 1995 Act applies (sexual offences),
- offences of stalking (see sections 39 and 39A of the Criminal Justice and Licensing (Scotland) Act 2010), and
- offences under section 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (disclosing, or threatening to disclose, an intimate photograph or film).

329. Section 107(2)(b) makes a consequential amendment of section 234AZA(3)(a). That paragraph provides that in a domestic abuse case, a non-harassment order can be made in favour of a child usually residing with the accused, with the victim, or with the accused and the victim. The amendment has the effect of restricting the power to the offences to which it already applies, so that it does not apply to the new offences being added to section 234AZA.

PART 10 – NON-HARASSMENT ORDERS

Section 108 – non-harassment orders: domestic abuse cases

330. Section 108 amends section 234AZA of the 1995 Act so that, in cases involving the offences listed in section 234AZA(2)(c)(i) or (ii) (that is, offences under section 1(1) of the Domestic Abuse (Scotland) Act 2018 and offences that are aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016), the court must, in considering the question of whether to make a non-harassment order, have regard to any prior bail conditions imposed on the person preventing contact with the victim.

PART 11 – ENFORCEMENT OF PROTECTIVE ORDERS MADE OUTWITH SCOTLAND

Section 109 – offences relating to protective orders made outwith Scotland

331. Section 109 makes provision for the enforcement in Scotland of certain protective orders made in other parts of the United Kingdom ("relevant UK orders"). It does so by creating two new criminal offences, namely—

- knowingly and without reasonable excuse—
  - doing anything which a person is prohibited from doing by a "relevant UK order", or
  - failing to do something which the person is required to do by such an order, and
- knowingly and without reasonable excuse aiding, abetting, counselling, procuring or inciting another person—
  - to do anything the other person is prohibited from doing by a relevant UK order, or
  - to fail to do something which the other person is required to do by such an order.

332. In the case of both offences, an offence may be committed only if the conduct or failure to act would have constituted an "equivalent offence", that is, an offence under the law of the country applicable to the relevant UK order concerned.

333. Subsection (5) sets out the maximum penalties that may be imposed for the offences noting, however, that the maximum that may be imposed in any particular case may not exceed the maximum penalty applicable to the equivalent offence (see subsection (6)).

334. Subsection (4) lists the orders that are "relevant UK orders" for the purposes of section 109. In addition to those listed, subsection (4)(g) gives the Scottish Ministers power by regulations to specify additional orders as relevant orders. Regulations under section 109(4)(g)(ii) are subject to the affirmative procedure (see subsection (8)).

PART 12 – DOMESTIC ABUSE CASES

Section 110 – review in relation to connected proceedings

335. Section 110 requires the Scottish Ministers to carry out a review in relation to proceedings for an offence involving domestic abuse where there are any other related or connected proceedings. The review must be carried out within the period of 2 years beginning with the day on which section 110 comes into force.

336. "Offence involving domestic abuse" is defined in subsection (6) as—

- an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018 (abusive behaviour towards partner or ex-partner),
- an offence under section 17 of the Domestic Abuse (Protection) (Scotland) Act 2021 (breach of domestic abuse protection order), and
- any other offence where the offence is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (aggravation where abuse of partner or ex-partner).

337. "Related or connected proceedings" is defined non-exhaustively in subsection (3) as including proceedings which may result in a sheriff making an order under section 11 (court orders relating to parental responsibilities etc.) of the Children (Scotland) Act 1995, where the subject of the proceedings is a child of the alleged offender.

338. The review must, in particular, consider whether, more information should be shared between the court dealing with the domestic abuse offence and any other court dealing with related or connected proceedings, and whether the court dealing with the domestic abuse offence should also have jurisdiction over any related or connected proceedings.

339. In carrying out the review, the Scottish Ministers must consult the Lord President, the Scottish Courts and Tribunals Service, persons representing victims of domestic abuse (or victims themselves) and such other persons as Ministers consider appropriate.

340. The Scottish Ministers must publish a report of the review and lay a copy of the report before the Scottish Parliament, all as soon as reasonably practicable after completing the review.

PART 13 – FINAL PROVISIONS

Section 111 – review of operation of Act

341. Section 111 places a duty on Scottish Ministers to undertake 2 reviews of the operation of the Act. The first review period is the period of 5 years beginning with Royal Assent. The first review must be undertaken as soon as reasonably practicable after that. The second review period is the subsequent period of 5 years, and the second review must be undertaken as soon as reasonably practicable after that. Subsection (3) sets out the consultation requirements that apply when the Scottish Ministers undertake each review. Subsections (1)(b) and (2) require the Scottish Ministers, after carrying out each review, to prepare and publish a report, and lay it before the Scottish Parliament as soon as reasonably practicable after its preparation. The report is set out the findings of the review, any changes that have been made to the law of

corroboration which have taken place during the review period (either by legislation or in the courts), and any actions that have been taken during the review period which were intended to improve the experiences of victims and witnesses in the justice system – with a particular focus on the experiences of women victims and witnesses.

Section 112 – regulations

342. Section 112 makes provision about the powers of the Scottish Ministers to make regulations under the Act. Subsection (1) provides for each regulation-making power to include the power to make various types of ancillary provision (namely, incidental, supplementary, consequential, transitional, transitory and saving provision), and to make different provision for different purposes. Subsections (2) to (4) specify the parliamentary procedure that applies to different sets of regulations.

343. However, this section does not apply to the power to make commencement regulations under section 116(2) or to the regulation-making powers being inserted into other Acts by the Act. They are subject to separate provision.

344. Further information on the regulation-making powers contained in the Act can be found in the accompanying Delegated Powers Memorandum, published at introduction.

Section 113 – ancillary provision

345. Section 113 enables the Scottish Ministers, by regulations, to make various types of ancillary provision if they think it appropriate to give full effect to the Act or any provision made under it. This includes power to modify any other legislation (whether primary or secondary) as well as the Act itself. It also includes, by virtue of section 112(1)(b), power to make different provision for different purposes.

346. Regulations made under this section which amend the text of primary legislation are subject to the affirmative procedure (by virtue of section 112(4)(a)).[12] Otherwise, they are subject to the negative procedure (by virtue of section 112(4)(b)).[13]

Section 114 – interpretation

347. Section 114 defines certain expressions that are used throughout the Act, including setting out the meaning of "trauma-informed practice".

Section 115 – modification of enactments

348. Section 115 introduces schedule 5 of the Act, which contains modifications of certain enactments. The various modifications are explained below.

349. Paragraph 1 of schedule 5 amends the Legal Aid (Scotland) Act 1986 so that criminal legal aid will be available for proceedings in the Sexual Offences Court, including where a solicitor has been appointed to conduct the case on the accused's behalf under section 92 of this Act.

[12] See section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (legislation.gov.uk).
[13] See section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 (legislation.gov.uk).

350. Paragraph 2 of the schedule amends the Judiciary and Courts (Scotland) Act 2008 so that the Lord President's responsibility as head of the Scottish judiciary extends to the Sexual Offences Court. In addition, the definition of "judicial office holder" in section 43 of that Act is amended so that it includes Judges of the Sexual Offences Court and section 62 is amended so that the duty on the SCTS to provide support extends to providing support to the President of the Sexual Offences Court.

351. The Courts Reform (Scotland) Act 2014 is amended by paragraph 3 of the schedule so that proceedings under section 106D of the Criminal Justice (Scotland) Act 2016 (proceedings to dispense with anonymity in relation to child victims) are "civil proceedings" for the purposes of section 44 of the 2014 Act, as a result of which they will be proceedings that it will be competent for a summary sheriff to preside over.

Section 116 – commencement

352. Section 116 sets out when the provisions of the Act will come into effect as a matter of law. It provides that the sections on regulations, ancillary provision, interpretation and the short title, as well as the commencement section itself, will automatically take effect on the day after the Act receives Royal Assent. All other sections of the Act will take effect in accordance with regulations made by the Scottish Ministers. Those regulations will require to be laid before the Scottish Parliament but, by virtue of section 112(5), they will not otherwise be subject to any parliamentary procedure.[14]

353. In addition, this section provides that commencement regulations may include transitional, transitory or saving provision and may make different provision for different purposes. This means that the Scottish Ministers may bring different provisions into force on different days or bring a provision into force for one purpose on one day and for remaining purposes on a later day. In particular, they may bring a provision into force on different days for different courts or descriptions of court. For example, the Scottish Ministers could bring section 106 (applications to admit certain evidence relating to sexual offences: rights of complainers) into force for the High Court earlier than for the sheriff court. Alternatively, they may bring a provision into force on different days for different proceedings or types of proceedings. For example, the Scottish Ministers could bring the Part 7 provisions (Sexual Offences Court) into force for proceedings relating to certain types of offence earlier than for proceedings relating to other types of offence. Or they may bring a provision into force on different days for different descriptions of witness. For example, the Scottish Ministers could bring section 93 (vulnerable witness ground rules hearings in the Sexual Offences Court) into force for complainers earlier than for other vulnerable witnesses.

354. Finally, commencement regulations may make different provision for different areas. So, for example, the Scottish Ministers could bring section 106 into force on different days for different parts of Scotland.

Section 117 – short title

355. Section 117 provides that the short title of the Act is the Victims, Witnesses, and Justice Reform (Scotland) Act 2025.

[14] See section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 (legislation.gov.uk).

PARLIAMENTARY HISTORY

356. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

Proceedings and reports	***Reference***
INTRODUCTION	
Bill as introduced (25 April 2023)	SP Bill 26 Victims, Witnesses, and Justice Reform (Scotland) Bill [as introduced] Session 6 (2023)
Policy Memorandum	SP Bill 26-PM Victims, Witnesses, and Justice Reform (Scotland) Bill [policy memorandum] Session 6 (2023)
Explanatory Notes	SP Bill 26-EN Victims, Witnesses, and Justice Reform (Scotland) Bill [explanatory notes] Session 6 (2023)
Financial Memorandum	SP Bill 26-FM Victims, Witnesses, and Justice Reform (Scotland) Bill [financial memorandum] Session 6 (2023)
Delegated Powers Memorandum	SP Bill 26-DPM Victims, Witnesses, and Justice Reform (Scotland) Bill [delegated powers memorandum] Session 6 (2023)
Statements of Legislative Competence	SP Bill 26-LC Victims, Witnesses, and Justice Reform (Scotland) Bill [legislative competence] Session 6 (2023)
STAGE 1	
Criminal Justice Committee	
Criminal Justice Committee, Stage 1 evidence session (27 September 2023)	SP OR Criminal Justice Committee 27 September 2023, col 1-34
Criminal Justice Committee, Stage 1 evidence session (4 October 2023)	SP OR Criminal Justice Committee 4 October 2023, col 1-50
Criminal Justice Committee, Stage 1 evidence session (25 October 2023)	SP OR Criminal Justice Committee 25 October 2023, col 1-32
Criminal Justice Committee, Stage 1 evidence session (1 November 2023)	SP OR Criminal Justice Committee 1 November 2023, col 1-50
Criminal Justice Committee, Stage 1 evidence session (29 November 2023)	SP OR Criminal Justice Committee 29 November 2023, col 1-32

Proceedings and reports	***Reference***
Criminal Justice Committee, Stage 1 evidence session (6 December 2023)	SP OR Criminal Justice Committee 6 December 2023, col 1-22
Criminal Justice Committee, Stage 1 private informal evidence session (6 December 2023)	Transcript of private informal session held by the Criminal Justice Committee on 6 December, col 1-39
Criminal Justice Committee, Stage 1 evidence session (13 December 2023)	SP OR Criminal Justice Committee 13 December 2023, col 1-46
Criminal Justice Committee, Stage 1 evidence session (10 January 2024)	SP OR Criminal Justice Committee 10 January 2024, col 1-64
Criminal Justice Committee, Stage 1 private meeting with families bereaved by crime (16 January 2024)	Clerks' note of private meeting held by the Criminal Justice Committee on 16 January 2024
Criminal Justice Committee, Stage 1 evidence session (17 January 2024)	SP OR Criminal Justice Committee 17 January 2024, col 1-78
Criminal Justice Committee, Stage 1 evidence session (24 January 2024)	SP OR Criminal Justice Committee 24 January 2024, col 1-68
Criminal Justice Committee, Stage 1 evidence session (31 January 2024)	SP OR Criminal Justice Committee 31 January 2024, col 1-70
Criminal Justice Committee, Stage 1 evidence session (6 February 2024)	SP OR Criminal Justice Committee 6 February 2024, col 1-22
Criminal Justice Committee, Stage 1 evidence session (7 February 2024)	SP OR Criminal Justice Committee 7 February 2024, col 1-58
Criminal Justice Committee, Stage 1 report (29 March 2024)	Criminal Justice Committee 2nd report, 2024, Victims, Witnesses, and Justice Reform (Scotland) Bill Stage 1 report (SPP 560)
Scottish Government response to Criminal Justice Committee Stage 1 report (16 April 2024)	Letter dated 16 April 2024 from the Cabinet Secretary for Justice and Home Affairs to the Convener of the Criminal Justice Committee
Delegated Powers and Law Reform Committee	
Delegated Powers and Law Reform Committee, Stage 1 scrutiny (24 October 2023)	SP M Delegated Powers and Law Reform Committee 24 October 2023, para 6

Proceedings and reports	***Reference***
Correspondence resulting from Stage 1 scrutiny sent from the Delegated Powers and Law Reform Committee to the Scottish Government (27 October 2023)	Letter dated 27 October 2023 from the Convener of the Delegated Powers and Law Reform Committee to the Cabinet Secretary for Justice and Home Affairs
Scottish Government response to correspondence resulting from Stage 1 scrutiny sent from the Delegated Powers and Law Reform Committee (21 November 2023)	Letter dated 21 November 2023 from the Cabinet Secretary for Justice and Home Affairs to the Convener of the Delegated Powers and Law Reform Committee
Delegated Powers and Law Reform Committee, Stage 1 scrutiny (19 December 2023)	SP M Delegated Powers and Law Reform Committee 19 December 2023, para 5
Delegated Powers and Law Reform Committee, Stage 1 report (22 December 2023)	Delegated Powers and Law Reform Committee 78th report, 2023, Victims, Witnesses, and Justice Reform (Scotland) Bill Stage 1 report (SPP 498)
Finance and Public Administration Committee	
Correspondence about Stage 1 scrutiny from the Finance and Public Administration Committee to the Criminal Justice Committee (2 November 2023)	Letter dated 2 November 2023 from the Convener of the Finance and Public Administration Committee to the Convener of the Criminal Justice Committee
Correspondence about Stage 1 scrutiny from the Finance and Public Administration Committee to the Scottish Government (2 November 2023)	Letter dated 2 November 2023 from the Convener of the Finance and Public Administration Committee to the Cabinet Secretary for Justice and Home Affairs
Scottish Government response to correspondence about Stage 1 scrutiny from the Finance and Public Administration Committee (4 December 2023)	Letter dated 4 December 2023 from the Cabinet Secretary for Justice and Home Affairs to the Convener of the Finance and Public Administration Committee
Consideration by the Parliament	
Chamber, Stage 1 debate and vote on the Bill's general principles and financial resolution	SP OR 23 April 2024, col 25-79; col 82-84
STAGE 2	
Criminal Justice Committee	
Criminal Justice Committee, Stage 2 evidence session (4 December 2024)	SP OR Criminal Justice Committee 4 December 2024, col 1-53

Proceedings and reports	***Reference***
Criminal Justice Committee, Stage 2 evidence session (11 December 2024)	SP OR Criminal Justice Committee 11 December 2024, col 1-22
Criminal Justice Committee, Stage 2 evidence session (26 February 2025)	SP OR Criminal Justice Committee 26 February 2025, col 1-29
First Marshalled List of Amendments for Stage 2	SP Bill 26-ML Victims, Witnesses, and Justice Reform (Scotland) Bill [1st marshalled list of amendments for Stage 2] Session 6 (2025)
First Groupings of Amendments for Stage 2	SP Bill 26-G Victims, Witnesses, and Justice Reform (Scotland) Bill [1st groupings of amendments for Stage 2] Session 6 (2025)
Criminal Justice Committee, Stage 2 proceedings (consideration of amendments), day 1 (12 March 2025)	SP OR Criminal Justice Committee 12 March 2025, col 1-70
Second Marshalled List of Amendments for Stage 2	SP Bill 26-ML2 Victims, Witnesses, and Justice Reform (Scotland) Bill [2nd marshalled list of amendments for Stage 2] Session 6 (2025)
Second Groupings of Amendments for Stage 2	SP Bill 26-G2 Victims, Witnesses, and Justice Reform (Scotland) Bill [2nd groupings of amendments for Stage 2] Session 6 (2025)
Criminal Justice Committee, Stage 2 proceedings (consideration of amendments), day 2 (19 March 2025)	SP OR Criminal Justice Committee 19 March 2025, col 1-60
Third Marshalled List of Amendments for Stage 2	SP Bill 26-ML3 Victims, Witnesses, and Justice Reform (Scotland) Bill [3rd marshalled list of amendments for Stage 2] Session 6 (2025)
Third Groupings of Amendments for Stage 2	SP Bill 26-G3 Victims, Witnesses, and Justice Reform (Scotland) Bill [3rd groupings of amendments for Stage 2] Session 6 (2025)
Criminal Justice Committee, Stage 2 proceedings (consideration of amendments), day 3 (26 March 2025)	SP OR Criminal Justice Committee 26 March 2025, col 1-58
Fourth Marshalled List of Amendments for Stage 2	SP Bill 26-ML4 Victims, Witnesses, and Justice Reform (Scotland) Bill [4th marshalled list of amendments for Stage 2] Session 6 (2025)
Fourth Groupings of Amendments for Stage 2	SP Bill 26-ML4 Victims, Witnesses, and Justice Reform (Scotland) Bill [4th marshalled list of amendments for Stage 2] Session 6 (2025)

Proceedings and reports	***Reference***
Criminal Justice Committee, Stage 2 proceedings (consideration of amendments), day 4 (2 April 2025)	SP OR Criminal Justice Committee 2 April 2025, col 1-64
Delegated Powers and Law Reform Committee	
Delegated Powers and Law Reform Committee, Post-Stage scrutiny (20 May 205)	SP M Delegated Powers and Law Reform Committee, 20 May 2025, para 7
Delegated Powers and Law Reform Committee, Post-Stage report (29 May 2025)	Delegated Powers and Law Reform Committee 39th report, 2025, Victims, Witnesses, and Justice Reform (Scotland) Bill Stage 2 report (SPP 565)
Bill as amended at Stage 2 and revised documents	
Bill as amended at Stage 2	SP Bill 26A Victims, Witnesses, and Justice Reform (Scotland) Bill [as amended at Stage 2] Session 6 (2025)
Supplementary Delegated Powers Memorandum	SP Bill 26A-DPM Victims, Witnesses, and Justice Reform (Scotland) Bill [supplementary delegated powers memorandum] Session 6 (2025)
Supplementary Financial Memorandum	SP Bill 26A-FM Victims, Witnesses, and Justice Reform (Scotland) Bill [supplementary financial memorandum] Session 6 (2025)
Revised Explanatory Notes	SP Bill 26A-EN Victims, Witnesses, and Justice Reform (Scotland) Bill [explanatory notes as revised at Stage 2] Session 6 (2025)
STAGE 3	
Marshalled List of Amendments for Stage 3	SP Bill 26A-ML Victims, Witnesses, and Justice Reform (Scotland) Bill [marshalled list of amendments selected for Stage 3] Session 6 (2025)
Supplement to Marshalled List of Amendments for Stage 3	SP Bill 26A-ML Victims, Witnesses, and Justice Reform (Scotland) Bill [supplement to marshalled list of amendments selected for Stage 3] Session 6 (2025)
Groupings of Amendments for Stage 3	SP Bill 26A-G Victims, Witnesses, and Justice Reform(Scotland) Bill [groupings of amendments selected for Stage 3] Session 6 (2025)
Chamber, Stage 3 proceedings, day 1 (consideration of amendments)	SP OR 16 September 2025, col 13-160
Chamber, Stage 3 proceedings, day 2 (debate and vote)	SP OR 17 September 2025, col 35-55; col 66-68
Bill as passed (17 September 2025)	SP Bill 26B Victims, Witnesses, and Justice Reform (Scotland) Bill [as passed] Session 6 (2025)
ROYAL ASSENT	
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