



Coronavirus (Recovery and Reform) (Scotland) Bill

Submitted by:

Organisation **Victim Support Scotland**

Date submitted: **February 2022**

Victim Support Scotland is Scotland's leading agency providing practical and emotional support to everyone in the aftermath of crime. Our services are available within the Scottish courts, in our offices throughout the country, and via our telephone helpline and webchat facility on our website.

Throughout the pandemic, Victim Support Scotland has been vocal in our concerns for people impacted by crime with the pandemic exasperating an already traumatic experience for many people.

Our response to this consultation is therefore split into two sections: Section 1 deals with our overall thoughts/views and experiences of what the impact of Covid has been on the sector and on victims and witnesses which has a bearing on this Bill; Section 2 answers specific questions in relation to this Bill and the impact on the justice system.

Section 1 - views of impact of Covid on victims, witnesses and the justice sector.

1.1 Emotional Impact of Backlog, Delays, and Adjournments

The COVID pandemic exacerbated an already-existing problem in the justice system: delays to trials and repeated adjournments (often at the last minute) leading to a backlog of cases. Currently, there are delays of up to four years; the impact this has on the mental health of victims, witnesses and their families is severe.

Increased trial delays are compounding an already difficult situation, leaving many in limbo with uncertainty of when trials are going ahead. Many witnesses have to put their lives on hold until the court date, only to show up and being repeatedly turned away on the day that a trial is due to commence, setting them back to square one. Many victims feel unable to move forward in their lives until the trial, and so this constant extension often results in re-traumatisation, as they have to remember their experience of the crime to ensure they give clear evidence.

“This is the fourth time it’s [the trial] been adjourned. The complete exhaustion I feel is overwhelming, I just want this to be done. I feel like I have to put my whole life on hold until the next time, only to be told that its once again adjourned. How do you plan for life like that?”-VSS service user

Such elongated case processes and trial adjournments are leading to people experiencing mental health difficulties and some victims are losing trust in and withdrawing from the justice process altogether. In the future, this could mean that victims are less likely to report a crime in the future. At the peak of the pandemic in 2020, Victim Support Scotland saw a dramatic increase in safeguarding reports of our service users feeling suicidal. Numbers have remained high compared to pre-pandemic levels.

Since victims rely on hearing outcomes to know what is being put in place to protect them, and also, what comes next in both the case and in their lives, extending cases and delaying them time and time again has led to increased feelings of anxiety and fear.

“The last court case my abuser had to attend was pushed, they were free and came home, because I hadn’t put any further restrictions, but no one had called me to say that was happening. The court cases kept getting pushed [back] and pushed [back], and every week I had that anxiety, hearing keys rattling [at the door], thinking they were coming back that day.” - VSS service user

Victim Support Scotland calls for immediate action to be taken in order to deal with the backlog of cases. One solution is for courts and tribunals continue to be offered virtually as well as in person if this means that there will be a decrease in the number of adjournments victims have to face surrounding their cases.

1.2 Virtual Trials

Even prior to the pandemic, Victim Support Scotland supported the practice of virtual trials and giving evidence on commission. For this Bill, we are supportive of a permanent change that will expand the use of virtual court proceedings. The feedback we’ve had on virtual trials and giving evidence virtually throughout the pandemic has been overwhelmingly positive from vulnerable witnesses, who want to give their evidence away from the courtroom, especially to avoid seeing the accused or the accused’s family. Attending court is a traumatising experience which decades of research can attest to, so being able to give your best evidence outside of a traumatic environment is preferred. It has shown to lessen victims’ trauma and anxiety; they feel safer, give better evidence, and don’t have to go to a court where their trial or hearing is postponed (following up from the aforementioned section on multiple adjournments). VSS service delivery staff members noted:

*“I have found that **they [do we mean the victim here? Can we put this in a different way? Keen to avoid ‘they; in language]**. are relieved that they do not have to actually enter a court building and run the risk of seeing the accused. They are obviously nervous but seem a little more relaxed when in the waiting area, which is much less formal than a witness room in a court building.”*

"I recently had a witness in court, who was meant to have evidence on commission put in place for her prior to the trial. This would have been extremely beneficial as firstly, she was extremely vulnerable, secondly, she had to travel a long distance every morning for the trial, whilst suffering severe pain from an injury. The court said that this could not be done as there was not enough time to put in an application before beginning the trial. However, due to COVID, the case was adjourned and an application has now been made for her to give her evidence on commission next year. If this has been done in the first place, this would have been a trial dealt with, and the witness would not have been put through the traumatic experience that she was."
[can we attribute this quote? VSS support worker?]

We agree that assessing the suitability of giving evidence remotely is needed, but also want to highlight that those provisions are already in place due to the [Vulnerable Witness Legislation of 2004](#). The suitability of a court environment is also needed, as courts themselves can have accessibility issues and virtual trials may actually provide a more inclusive space.

Commented [MF1]: Wondering if referencing this is a bit out of date now?

Part of a trauma-informed justice system is ensuring that people affected by crime have different options to make decisions and choices for themselves on how and where to give evidence. The continuation of virtual trials and evidence on commission will provide that, as well as help with the backlog and allow for a more inclusive approach.

1.3 Early Release of Prisoners

Though Covid emergency legislation, early release of prisoners became possible; we are not in agreement that this should be extended. There needs to be a more trauma-informed, victim-centred approach to how to deal with these circumstances; plans need to be put in place for any future public health concerns. Emergency release numbers from the time the last bill was enforced show that of the 348 people who were granted early released under emergency power during the pandemic, 142 reoffended within six months. It is therefore absolutely imperative to take into consideration victim safety and security when considering the early release of prisoners. Is the prisoner going back to the victim's home? Is the prisoner a risk to that victim and/or the public? What harm will it cause the victim—physically and mentally—if the prisoner is released?

"I was told the information that the perpetrator was being charged with, but no information as to what was going to happen next. I didn't know if the perpetrator was being detained or whether he was back at his home, just around the corner from me and my family. Turned out he was back at home, under absolutely no restrictions, which led to further physical and verbal harassment on my family for almost a year until I decided to move us out of the town I had lived in for 40 years." -VSS service user

"After two days he was released to the home address where I was staying. This was rectified but the total distress and fear this caused me was horrendous." -VSS service user

Personal safety is a huge issue for victims, and the fear and lack of security they feel when a perpetrator is released has been echoed across all victim support organisations. For Victim Support Scotland, the Victims' Fund has been inundated in the last year with requests for security and safety equipment, which made up the biggest expense of the overall £495,000 used from the fund to financially support victims since April 2020.

Victims already struggle with the idea that their perpetrators can be released after only serving some of their sentence, especially because communication between the criminal justice system and the people affected by crime is severely lacking and in need of major improvement. If early release of prisoners does keep going ahead, we ask for clear communication for the victims on 1) exactly how long a perpetrator will be serving their sentence, and b) what that looks like, and c) what support is being put in place for people.

This leads to the next barrier victims face that predates the pandemic: the Victim Notification Scheme (VNS). Victim Support Scotland has for many years been advocating for changes to the VNS, which, established in 2004, provides victims of certain crimes with the right to receive information about the offender's progression within prison and eventual release. Despite the good intentions this scheme was aimed for, it is outdated and not trauma-informed. We have heard superfluous accounts of victims of crime and their families receiving letters about the release of prisoners with no prior warning or offer of follow-up support.

"More communication is needed between VIA, the courts and witness service to ensure everyone is kept in the loop and actions agreed/arranged are carried out and put into place where possible in order to make it easier for someone who is already under a huge amount of stress, to feel supported when they are at their most vulnerable." -Victim Support Scotland
staffer – do we mean support worker? Wouldn't use 'staffer' here

Section 2 – VSS response to specific questions in relation to the Coronavirus Bill.

Supporting provisions (Part 5, Clauses 43-44)

Do you support these provisions?

Clause 43—Criminal procedure time limits: consequential modifications

Our understanding is that the bill puts forth the notion to extend the time limit of criminal procedures to "any period", rather than the time limit a case would take pre-pandemic. There were longer criminal procedure time limits put in place in response to the pandemic. VSS does support them **to them an extent**. On one hand, not having a time limit directly impacts victim mental health and wellbeing and ability to move forward with their lives. Delays and multiple adjournments were already a problem prior to COVID, but the pandemic exacerbated it. This being said, having open-ended criminal procedure time limits is the necessary safeguard at the moment to make sure cases don't get dropped altogether, as our biggest concern is that cases will time out and victims won't receive justice. Therefore, until the system is back under control, it is an unfortunate necessity.

Clause 44—Effect of early release from prison or young offenders institution by virtue of regulations

As per above in relation to 1.3

Schedule: Temporary Justice Measures

Do you support these provisions?

For *ATTENDING A COURT OR TRIBUNAL Suspension of requirement to physically attend, and for Attending by electronic means*

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PART 3 25 FAILURE TO APPEAR BEFORE COURT FOLLOWING POLICE LIBERATION *Power for court to reschedule due to coronavirus*

It is important to note that both victims and support workers have also seen evidence of accused persons and perpetrators taking advantage of COVID-19 to continue to adjourn, saying they have symptoms, need to self-isolate, or need to take a test in an effort to get out of appearing at court. Further investigations have at times revealed that this is not true. It appears that this is a widespread issue across the country and the Faculty of Advocates described this

phenomena and their compounding impacts to the Criminal Justice Committee of the Scottish Parliament in a round-table evidence session on the 8th September 2021 (from the Victims Voices paper Victims Task Force paper in November 2021).

PART 5 30 CRIMINAL PROCEDURE TIME LIMITS

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PART 7 PRISONS AND YOUNG OFFENDERS INSTITUTIONS

Power to release early

Though the previous COVID bill put in an emergency release of prisoners; we are not in agreement that this should be extended. There needs to be a more trauma-informed, victim-centred approach to how to deal with these circumstances; even if they are young offenders. Emergency release numbers from the time the last bill was enforced show that of the 348 people who were granted early released under emergency power during the pandemic, 142 reoffended within six months. It is therefore absolutely imperative to take into consideration victim safety and security when considering the early release of prisoners. Is the prisoner going back to the victim’s home? Is the prisoner a risk to that victim and/or the public? What harm will it cause the victim—physically and mentally—if the prisoner is released?

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