

Making the justice system better for victims

Tell us what you think

June 2022



Scottish Government
Riaghaltas na h-Alba
gov.scot

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Tell us what you think

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1. Do you think the idea is a good one?

Yes

No

Not sure



What is this consultation about?



A consultation is when the Scottish Government asks people for their views before important changes are made.

This consultation is about making the **justice system** better for **victims**.

The **justice system** means the people and organisations that deal with crime.

This includes the police and courts.

A **victim** is a person who has been harmed as a result of a **crime**.

A **crime** happens when someone does something that breaks the law.



Some parts of this consultation are about all types of crime.

Some parts are about **sexual offences**.

Sexual offences include rape and sexual assault.

Rape is when someone makes you have sex with them when you do not want to.





Victims have told us that we can make the justice system better for them.

Victims have said more needs to be done to make sure

- they are listened to
- they feel safe
- they are treated with kindness
- they get the right information at the right time



It is important for us to do this so that people trust the justice system.

Some of the changes might need new laws.



We would like to know what you think about these changes.

Please give us your answers to the online consultation [here](#).



You do not need to answer all questions - only the ones you want to.

You can get someone to help you answer the questions.



August

19

2022

Please give us your answers before 19 August 2022.



If you need any more information about the consultation please email:

victimsconsultation@gov.scot



The rest of this document gives you information about what is in the consultation.

A new Victims' Commissioner



The Scottish Government thinks that there should be a Victims' Commissioner in Scotland.

This is a person who makes sure that the justice system is working for victims.



We think the Victims' Commissioner should be independent.

This means that they are not part of the Scottish Government.



We have some ideas about what the Victims' Commissioner could do.

These are:

- making sure that everyone knows how victims should be treated in the justice system



- making sure that organisations in the justice system treat victims properly



- telling the Scottish Government and organisations in the justice system how they can make things better for victims



We need to decide if the Victims' Commissioner is only for victims of crime or if they could look at other areas including:

- the children's hearings system which helps to protect and support children and young people



- cases where a person from Scotland has been a victim of crime in another country



- the civil court



The **civil court** is different to the criminal court.

It does not decide if a person has broken the law.

It helps to sort out disagreements or arguments between people.

It can stop a person from contacting someone they have harmed.



We need to make sure that the Victims' Commissioner is doing a good job.

This could mean writing rules that say what the Victims' Commissioner must do.



This could mean telling organisations how to work with the Victims' Commissioner.



We do not think that the Victims' Commissioner should work on single cases.

We do not think that they should deal with complaints or give legal advice.

We think that there are other people and organisations who already do this.



We would like to know what you think about what the Victims' Commissioner will do.

Making the justice system more trauma informed



Trauma can happen to people after a bad or frightening event.

Trauma can make people:

- feel sad or upset
- feel scared
- have nightmares or bad memories
- drink alcohol or use drugs to help cope with how they are feeling



The Scottish Government thinks that organisations in the justice system should be **trauma informed**.

This means organisations:

- understand how trauma can make victims feel
- understand how trauma can make victims behave



Trauma informed also means that victims:

- are listened to
- get the right information at the right time
- feel safe
- are treated with kindness



One way to do this is to write new rules saying that organisations must be trauma informed.

Guidance could also help organisations be trauma informed.

Other ways to help victims at court



Evidence means information that is given to a court to see if someone is guilty or not guilty of a crime.

Victims have said that giving evidence in court can be stressful and upsetting.

We are looking at ways to help with this.



Some domestic abuse trials are being held online so victims do not have to be in court in person.

This is called a **virtual trial**.

We are asking if more trials should be virtual trials.



The High Court is where the trials for the most serious cases happen.

Ground Rules Hearings happen in some High Court cases.



These are hearings to help the court make sure the victim is treated fairly at trial.

A **hearing** is a formal meeting where a court makes a decision.

We are asking if all High Court cases should have Ground Rules Hearings.



Victims have said that delays to court cases are very upsetting.

We are asking if there is anything that can be done to reduce delays.



Victims have said it can be hard to get information about cases.

We are asking how information can be shared better.

Special measures in civil court cases



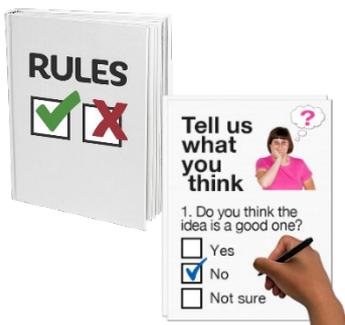
Special measures are when victims and witnesses in the criminal courts can get extra support when they give evidence.

Special measures include:

- having a supporter in court with you
- using a screen so you don't have to see the person who has caused you harm or upset you
- using a TV link so you can give evidence from a different place to the court room



The law says special measures can be used at some parts of civil court cases.



The Scottish Government wants to know if you think the rules should be changed so that special measures can be used at more parts of civil court cases.

Review of defence statements



An **accused** is a person who is charged with committing a crime.

If the accused says they did not commit the crime then there will be a trial.



The accused has to tell the court what their defence is before the trial happens.

This is called a **defence statement**.



The Scottish Government has been told that:

- there should be a review of the rules about defence statements
- defence statements are often sent to the court too late
- there is not enough information in defence statements



The Scottish Government would like to know if you think there should be a review of defence statements.

Anonymity for victims in sexual offence cases



The Scottish Government thinks that there should be a **right to anonymity** for victims in sexual offence cases.

A **right to anonymity** means that it is against the law to publish information that identifies the victim.

A right to anonymity helps protect victims' privacy.



Information that identifies the victim includes:

- their name or where they live
- where they work
- photographs of them



This means that it will be against the law to include this information in reports about the case, including reports:

- in newspapers
- on TV, radio and on websites
- on social media



There are some things we need to think about before we change the law to include this right to anonymity.

We need to think about when the right to anonymity starts and when it ends.



We need to decide if the right to anonymity should be for:

- all sexual offence cases
- certain kinds of sexual offence cases



We need to decide:

- if the new law should be different for children
- what the punishment is for breaking the new law
- if there are reasons why the right to anonymity is not used



We would like to hear your views about changing the law to include a right to anonymity for sexual offence victims.

Victims' right to have a lawyer



There are rules about victims' privacy in sexual offence cases.

The rules say that the court decides if certain types of evidence are allowed to be released.



This includes evidence about:

- who the victim has had a sexual relationship with in the past
- the victim's mental health
- bad things that the victim might have done

The court has to decide if this evidence can be spoken about at the trial.



It is important that victims can give their views to help the court make this decision.



The Scottish Government is asking if there needs to be a new law:

- to help victims understand the rules
- to help victims give their views to the court



This new law would give victims a legal right to get their own lawyer at no cost.

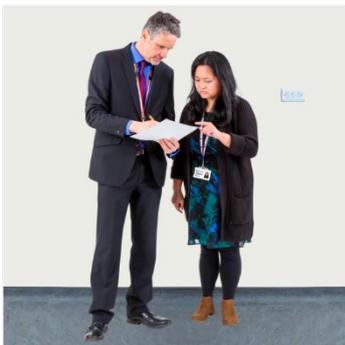
The lawyer can help the victim understand these rules.

The lawyer can tell the court if they think the evidence should be spoken about during the trial.



We would like to hear your views about legal representation for victims in sexual offence cases.

A new court for sexual offence cases



There has been a review of how sexual offence cases are managed by the courts.

The review has said there should be a new court to deal with **serious sexual offences**.

Serious sexual offences are crimes like rape and attempted rape.



The review said:

- that this new court should be separate from the High Court and the Sheriff Court

These are the courts where trials for serious sexual offence cases take place just now.



- people working in the new court would have special training about dealing with victims of sexual offences



- all victims in the new court would have their evidence recorded before the trial

Here are some of the arguments for creating a new court:



- better training for the people working there
- better experience for victims
- cases will be dealt with quicker
- there is a sexual offences court in New Zealand that is working well



Here are some of the arguments against creating a new court:

- some people think that serious cases like rape should be heard in the High Court
- very serious cases – for example cases which involve both rape and murder - would still have to be heard in the High Court



This would mean that not everyone will have access to the special features of a new court.

- the special features of the new court could be included in the High Court instead of having a new court
- it might not make much difference in how quickly cases can be heard
- judges who only work in a new court could lose the experience of other types of cases



Tell us what you think

1. Do you think the idea is a good one?

Yes

No

Not sure

The Scottish Government would like to hear your views about creating a new sexual offences court.

Juries in sexual offence trials



A **jury** is a group of people who listen to what is said in court during a trial.

The jury decides if the accused person committed the crime.

A **juror** is a member of the jury.



Serious sexual offence trials always have a jury.

Some people think this is right.

They think that it is best for all trials about serious crime to have a jury.



Other people think this is wrong.



They think that a judge should decide what happened in serious sexual offence cases.

Why some people think there should be a judge in serious sexual offence trials



- people are more likely to be found guilty if there is a judge

This might be because of what jurors think about sexual crimes.



- jurors sometimes do not understand important legal issues that often come up in serious sexual offence cases



- jurors might believe 'rape **myths**'.

A **myth** is something that is not true.

Jurors might believe ideas that it was the woman's fault that she was raped.



- some judges have had court cases where there was enough evidence to convict the accused but the jury did not find them guilty

- juries might not understand how trauma can affect a victim

- serious sexual offence cases can be upsetting for jurors





- a trial without a jury will take less time

This is better for the victim and will help trials to be done more quickly.



- judges have to give reasons for their decision – juries do not have to

Why some people think there should be a jury in serious sexual offence trials



- it is better for a jury of 15 different people to make an important decision instead of one judge
- a jury is fairer and people have confidence in their decision
- being on a jury helps people have an important role in the justice system
- it is better to do more to help jurors understand serious sexual offences than to not have juries
- there is more diversity with a jury system





- people being found not guilty in serious sexual offence cases might not be because of what jurors' think

It can be difficult to get evidence in these kinds of cases.



- judges might have fixed ideas or beliefs and there is no one to challenge them



The Scottish Government would like to hear your views about juries in serious sexual offence cases.

How will the changes affect people?



The Scottish Government must find out if changes will affect people more because:

- they are disabled
- of their sex or sexual orientation
- of their age
- they are married or in a civil partnership
- they are pregnant
- of their race or religion



Tell us what you think



1. Do you think the idea is a good one?

Yes

No

Not sure



The Scottish Government would like to hear your views about how these changes will affect people.



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