

Victims, Witnesses, and Justice Reform (Scotland) Bill: factsheet

Independent legal representation

This page provides more information on the measures in the [Victims, Witnesses, and Justice Reform \(Scotland\) Bill](#) that provide a right to state-funded independent legal representation (ILR) for complainers when applications are made to lead evidence of their sexual history or character in sexual offence cases.

It covers:

- background to these types of applications
- the current rights of complainers in relation to these applications
- what the Bill does
- the funding and delivery model for the measures

Background

In Scotland there are restrictions on what evidence can be led in trials for certain sexual offences.

Under [Section 274 of the Criminal Procedure \(Scotland\) Act 1995](#) (the 1995 Act), the court must not admit any evidence which shows particular behaviour or sexual history of the complainer in sexual offence cases.

The rule is designed to protect complainers from having to give evidence about irrelevant, sensitive and private matters, or being asked distressing questions when this is not necessary.

There are exceptions to this rule. The court can allow such evidence if an application is made by the defence or prosecution under [section 275 of the 1995 Act](#) and the court is satisfied of certain requirements under the legislation. These applications are known as 'section 275 applications'.

Current rights

At present there is no statutory requirement on the court to notify the complainer of the section 275 application. The complainer also does not have a statutory right to tell the court that they oppose the application or to have their views heard. The complainer's role in the court process is a witness, which means that they do not have legal representation during proceedings.

The [Appeal Court ruled that the complainer should have the right to be notified of the application](#) and be able to communicate their views on it. It is currently the responsibility of the Crown Office and Procurator Fiscal Service (COPFS) to present the complainer's position to the court.

What the Bill does

The Bill will give complainers a right to state-funded independent legal advice and representation when a section 275 application is made.

The Bill covers the specific rights of complainers, and what the court procedure should be in relation to section 275 applications and ILR.

It provides complainers with a right to:

- be told when a section 275 application is made
- information about the application, including what evidence is being sought and what the proposed questioning is
- state-funded ILR, including the right for the independent legal representative to make representations on behalf of the complainer, on the accuracy of the application and whether the evidence should be admitted
- appeal certain decisions in relation to section 275 applications and the right to ILR when making these appeals

Should the complainer decide not to make use of ILR, COPFS could still provide the complainer's views to the court as is currently the case.

The Bill provides for other certain duties to be carried out by COPFS, including providing information about the application to the complainer and their legal representative.

The Bill also amends the existing timescales to submit a section 275 application. This is to enable sufficient time for the application to be considered, and allow the rights and duties proposed by the Bill to be carried out.

Funding and delivery model

Should the Parliament pass the Bill, we will bring forward secondary legislation that provides for ILR to be funded through legal aid. This will be available to all complainers in relation to section 275 applications without assessment of their financial position.

The delivery model for ILR is not set out in the Bill but is being considered separately. We are working with stakeholders on how best to implement ILR. Any model will need to be tested and adapted against service demand and any wider changes from the implementation of other Bill provisions.