

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

## Right to anonymity

This page provides more information on the proposals within the [Victims, Witnesses, and Justice Reform \(Scotland\) Bill](#) to ensure the identities of victims of sexual offences and some other offences are kept secret through the introduction of an automatic right of anonymity. An automatic right of anonymity will help protect the dignity of victims and reduce trauma.

It covers:

- existing legal framework for anonymity in Scotland
- non-statutory protections for anonymity
- background and reasons for creating a legal right to anonymity
- what the Bill does
- approaches in other jurisdictions around the world

## Existing legal framework for anonymity in Scotland

### *Adults*

At the moment Scotland differs from the rest of the United Kingdom and many countries around the world in that it does not provide for a statutory automatic right to anonymity in sexual offence cases.

In Scotland, a complainer is the legal term for a person who says they are a victim of a criminal offence. A victim in cases of rape and other sexual offences usually give evidence under “closed court” conditions, where the public is excluded from the court during the giving of their evidence.

This exclusion does not apply to journalists whose presence is allowed as an important aspect of open justice.

There can be a legal right of anonymity for sexual offence victims, but this requires an order by a court to be made under section 11 of the Contempt of Court Act 1981 (“the 1981 Act”), to protect a person's identity in a given case.

This does not happen in the majority of cases at present. Research set out by academic Dr Andrew Tickell in his 2020 paper for Glasgow Caledonian University [‘Why don't sexual offence complainers have a right to anonymity in Scotland?’](#), found that in 2018/19, while 1,762 people were proceeded against in Scotland's criminal courts for sexual offences, including 324 people charged with rape or attempted rape, only 8 orders were made under section 11 of the 1981 Act.

### *Children*

Certain anonymity protections exist for children who are currently participating in the Scottish criminal justice system.

Under section 47 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), all child accused, victims and witnesses are given automatic anonymity protection in respect of newspaper reports and sound and television programmes.

There are exceptions to this general rule. Where the child is a witness and the alleged perpetrator(s) is aged 18 or older, then the anonymity requirements will only apply if the court directs. In addition, the court, at any stage of the proceedings, and Scottish Ministers, after the proceedings end, have the power to lift these restrictions if satisfied it is in the public interest to do so.

Reforms to anonymity relating to child accused, victims and witnesses in general terms (so not specific to sexual offences), are being taken forward separately through the [Children \(Care and Justice\) \(Scotland\) Bill](#), introduced to the Scottish Parliament on 13 December 2022.

It is Scottish Government policy that child victims of sexual offences should benefit from the provisions on automatic anonymity in the Victims, Witnesses and Justice (Reform) Bill (VW&JR Bill). The particular traumatic nature of these offences and their impact on a victim, especially where that victim is a child, means that a separate approach is appropriate and as such it is planned that the provisions in the VW&JR Bill will take precedence in this area.

### **Non statutory protections for anonymity in Scotland**

There is a long-standing protocol operated by the media not to name victims in sexual offence cases. This is not set out in the law, but is an approach that the media have taken because they consider it is right not to publicly name sexual offence victims.

This approach is supplemented by an Editors' Code of Practice ('the Code') published by the Independent Press Standards Organisation ('IPSO'), which is a voluntary regulator for the press in the UK. The Code places restrictions on the reporting of sexual offences to protect the identity of victims.

For example, paragraph 11 of the [Editors' Code of Practice](#) states that:

"The press must not identify or publish material likely to lead to the identification of a victim of sexual assault unless there is adequate justification and they are legally free to do so. Journalists are entitled to make enquiries but must take care and exercise discretion to avoid the unjustified disclosure of the identity of a victim of sexual assault."

The Code relies on the voluntary self-regulation of an editor or publisher as, without a section 11 order made by the court, there is no legal prohibition in Scotland to publish identifying information of a victim in a sexual offence case.

This means if the court has not made an order under section 11 of the 1981 Act, any person can lawfully post information publicly about the identity of a victim in a sexual offence case.

## Background and reasons for creating a legal right to anonymity

While the non-statutory approach of the media has worked well over many years, the rise in the use of social media, where anyone with a smart phone can publish information which can be read publicly across the world, presents real challenges in ensuring victims' identities are not made public.

[Lady Dorrian's Review into Improving the Management of Sexual Offence Cases](#) recommended the introduction of a statutory right to anonymity for complainers in sexual offence cases, concluding that the current arrangements in Scotland are not satisfactory.

The report, which was published in March 2021, highlighted in particular the difficulties of the social media world we now live in as a reason to take action now, and concluded:

"The rise of "new" or "citizen" journalists, and the vast increase in the use of social media, suggest that the tools hitherto relied upon in Scotland are no longer adequate and that legislation is required to ensure the adequate protection of the identities of complainers making allegations of rape and sexual assault. The introduction of legislation providing anonymity to such individuals is accordingly recommended."

The Scottish Government welcomed the Review's recommendation in this area and committed in its Programme for Government 2021-22 to introduce legislation to protect the anonymity of all complainers of sexual crimes.

A public consultation [Improving victims' experiences of the justice system](#) subsequently ran from 12 May to 19 August 2022 which asked for views on potential reforms to empower and protect victims of crime, including legislating for an automatic right of anonymity.

There was broad support for the anonymity reforms during the consultation feedback, in order to provide welcome legal certainty for victims that their privacy and dignity will be protected, which in turn may increase confidence to report offending behaviour to the police and take part in the criminal justice process.

### What the Bill does

The Bill enshrines into law an automatic lifelong right of anonymity for victims of sexual and other qualifying offences.

The anonymity protections:

- automatically start from the moment a relevant offence is committed, with no positive action required by the victim to gain the right, for example, reporting the matter to the police, or making a disclosure to a specialist support service -this provides privacy for victims at the earliest possible point
- mean that any third party publication of identifying information about a victim of a relevant offence is not allowed during the lifetime of the victim, unless that third party has written consent from the victim. This includes publication by individuals on social media as well more traditional media outlets, such as newspapers and television programmes

- expire upon the death of the victim, which has the advantage of simplicity and certainty for the victim during their lifetime, while also representing a natural end point.
- empower victims - adults or children – to self-publish their story if they wish without any legal restriction or fear of committing a criminal offence
- enable adult victims to unilaterally waive their anonymity through a third party publisher as long as the victim provides written consent to the publisher (and this consent is freely given). This does not require the involvement of a court
- provide extra safeguards for children (aged under 18) when it comes to potential publication of identifying information by third party publishers wishing to tell a child victim's story, such as newspapers or television programmes, through a requirement of a court order
- cover sexual offences, offences with a significant sexual element and other offences which share the same underlying concerns of vulnerability and privacy, namely: human trafficking, modern slavery, female genital mutilation, virginity testing and hymenoplasty
- creates a new criminal offence of breaching anonymity with a maximum penalty on conviction on indictment (i.e. before a jury) of 2 years' imprisonment and/or an unlimited fine
- provide safeguards against unfairly criminalising the innocent sharing or republishing of material by people through statutory defences to the offence of breaching anonymity, due to the social media age we are now living in and the ease by which information can be shared online by secondary publishers. For example, people who might reasonably have believed that the victim had waived their right to anonymity (e.g. posting a link to a news story where, unbeknownst to the person posting the link, the original publisher had in fact breached the victim's right to anonymity)

### **Approaches in other jurisdictions around the world**

Placing anonymity on a statutory footing will bring Scotland into line with the rest of the UK and a number of countries internationally.

Many countries around the world have legislative to provide anonymity for victims of sexual offences, including Australia, Ireland, Canada, India and New Zealand. The public consultation [Improving victims' experiences of the justice system](#) sets out the approach taken by different countries in more detail