

# **Victims, Witnesses, and Justice Reform (Scotland) Bill - Equality Impact Assessment Results**

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# Victims, Witnesses, and Justice Reform (Scotland) Bill - Equality Impact Assessment Results

## Introduction

This document summarises the results from the equality impact assessment (“EQIA”) carried out in respect of the Victims, Witnesses, and Justice Reform (Scotland) Bill (“the Bill”).

The Scottish Government acknowledges that there are different words to describe those who have experienced crime, particularly sexual offences. Views on which terms are used can be strongly held. Some terms, for example ‘complainer’ are used when describing a person in a legal setting; ‘victim’ or ‘survivor’ are more commonly used when referring to a person in a broader context not restricted to the legal system. The EQIA uses a mix of these terms with the choice of term influenced by the context.

## Background

The Bill responds to concerns raised about the need to improve the experiences of victims, witnesses and vulnerable parties within Scotland’s justice system, especially the victims of sexual crime. At the same time, it continues to safeguard the operation and principles of the system and protects the rights of those accused of crime.

The Bill contains a package of reforms which collectively form a transformed approach to how victims are treated in more sensitive and responsive justice system.

In particular, the Bill:

- strengthens the rights of victims of crime and embeds trauma-informed practice across the justice system
- improves the experience of vulnerable parties and witnesses in civil cases
- looks to address longstanding concerns and difficulties in how justice operates for victims of the most serious sexual crimes

The Bill has been informed by the work of the Victims’ Taskforce<sup>1</sup>, Lady Dorrian’s Review into Improving the Management of Sexual Offence Cases<sup>2</sup> and independent jury research published in October 2019<sup>3</sup>, as well as formal public consultations on improving victims’ experiences of the justice system<sup>4</sup> and on the not proven verdict and related reforms<sup>5</sup>, and widespread engagement with stakeholders.

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<sup>1</sup> [Victims Taskforce - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>2</sup> [Improving-the-management-of-Sexual-Offence-Cases.pdf \(scotcourts.gov.uk\)](http://scotcourts.gov.uk)

<sup>3</sup> [Scottish Jury Research - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>4</sup> [Improving victims' experiences of the justice system: consultation - Scottish Government - Citizen Space](#)

<sup>5</sup> [The not proven verdict and related reforms - Scottish Government - Citizen Space \(consult.gov.scot\)](http://consult.gov.scot)

Further information about the background and the policy intention of the Bill is set out in the Policy Memorandum which accompanies the Bill.

A summary of the policy content of the Bill and the specific aim of each policy is summarised below.

### **Establishing a Victims and Witnesses Commissioner for Scotland**

The Bill will establish an independent Victims and Witnesses Commissioner for Scotland to promote and support the rights and interests of victims and witnesses. Part of the Commissioner's role will be to monitor criminal justice agencies' compliance with the Victims Code<sup>6</sup> and Standards of Service for Victims and Witnesses<sup>7</sup>.

### **Embedding trauma-informed practice across the justice system**

The Bill aims for the justice system to treat victims and witnesses more compassionately. This means engaging with people in ways that understand the impact trauma can have on them and try to avoid the risk of re-traumatising them. This is intended to help people to give their best evidence and support their recovery.

### **Special measures for vulnerable parties and witnesses in civil cases**

The Bill extends special measures to non-evidential hearings and ban personal self-representation in certain circumstances. This will better protect vulnerable parties and witnesses in civil cases.

### **Abolition of the not proven verdict and related reforms**

The Bill will abolish the not proven verdict in all criminal trials in Scotland. This is intended to increase public confidence that criminal verdicts are returned on a sound, rational basis while ensuring balance and fairness to all parties.

The Bill recognises the complex and interlinked nature of the jury system. It also contains related reforms to reduce juror numbers (from 15 to 12) and change the majority required for a conviction.

### **Creating a Sexual Offences Court**

The Bill will create a new Sexual Offences Court, which is distinct from existing court structures. This is intended to improve the experiences of complainers in serious sexual offence cases.

The new Court will place an emphasis on increased pre-recording of evidence and improved judicial case management. It will introduce a requirement for specialist training for all personnel. In addition, the Court will also provide a framework within

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<sup>6</sup> [Victims' code for Scotland - gov.scot \(www.gov.scot\)](https://www.gov.scot/victims-code)

<sup>7</sup> [Standards of Service for Victims and Witnesses 2022-23 | COPFS](#)

which to develop and implement best practice in the management of sexual offences cases.

### **Lifelong anonymity for complainers in sexual and certain other offences**

These provisions will protect the dignity of victims by providing an automatic lifelong right of anonymity for complainers of sexual offences and limited other offences (human trafficking, modern slavery, female genital mutilation, and the carrying out of hymenoplasty and virginity testing).

Preserving the anonymity of complainers in such cases serves an important protective function. It will help to minimise the re-traumatisation of victims before, during and after the court process and, in turn, increase the confidence of victims to come forward and report such crimes in the first instance.

### **Right to independent legal representation for complainers when applications to lead sexual history and/or 'bad character' evidence are made in sexual offence cases**

The Bill creates an automatic right to publicly funded independent legal representation for complainers when applications are made to lead evidence of their sexual history or 'bad character' in sexual offence cases.

This is intended to improve the complainer's experience in sexual offence trials, in particular their understanding and ability to provide their views and be heard in court in respect of an especially intrusive aspect of criminal procedure.

### **Piloting single judge trials for cases of rape and attempted rape**

The Bill gives Ministers powers to conduct a time-limited pilot of single judge trials for cases of rape and attempted rape, removing the jury as a decision-maker in these cases.

Conducting the pilot will provide evidence to inform debate into the effectiveness of single judge rape trials. The pilot will also provide an insight into the extent to which single judge rape trials can improve the experience of complainers and increase the efficiency of cases through the court system.

## **Scope of the EQIA**

The EQIA process looks at the impacts that the policies in the Bill may have on people with the nine protected characteristics, which are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race

- religion or belief
- sex
- sexual orientation.

Potential impacts have been considered in the context of the public sector equality duty, which requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people, when carrying out their activities.

Both consultations which have been used to inform the Bill sought views on any equality impacts that the proposals set out in each consultation may have, and an event for people with learning disabilities was held in conjunction with People First Scotland and the SOLD Network as part of the consultation on improving victims' experiences. Feedback provided in the consultation responses and at the event has been considered as part of the EQIA process. Equality impacts have also been discussed during engagement with stakeholders and considered by officials during policy development.

Framing sessions involving policy officials and analysts from the Scottish Government's Justice Analytical Services Division have taken place, at which the policy aims, potential barriers to the desired outcomes being achieved and evidence which should be considered in terms of equality impacts were discussed and used to inform the EQIA process.

This document draws together the main findings from the EQIA process and considers the impact of the Bill on people with protected characteristics.

## **Key findings**

The Bill is intended to improve the experience of victims, witnesses and vulnerable parties in the criminal and civil justice systems. It is anticipated that the planned reforms will have a positive impact on these groups, regardless of protected characteristics.

The EQIA has, however, highlighted that there may be greater impacts on some of the protected characteristic groups. This is, for the most part, due to some groups being more likely to be a victim of crime, either in general or for specific offences which are the focus of sections of the Bill. There may also be a greater impact on certain groups because of their experiences and perceptions of the justice system.

The most notable differential impact concerns the protected characteristic of sex. This arises from fact that several provisions relate to sexual offences, of which women and girls are more likely to be victims and men are more likely to be accused.

The main findings in respect of the provisions which relate to sexual offences are:

## **Creating a Sexual Offences Court**

The new Sexual Offences Court will bring about improvements in practice and procedure which will have a positive impact on several groups with protected characteristics. The data shows that that the burden of sexual violence victimisation falls disproportionately on women, young people, disabled people (particularly people with learning disabilities), and people who identify as LGBT+. Consequently, these groups have a greater chance of being a complainer in a sexual offences case and are therefore more likely to benefit from the specialist, trauma-informed approaches implemented through the Court.

More effective use of court and judicial resources as well as improvements to case management introduced through the Court will also impact positively on those proceeded against for sexual offences by reducing the time it takes for cases to come to trial. Evidence suggests that this could lead to an improved experience for an accused, particularly where they are on remand. This benefit is likely to be felt disproportionately by men who are overwhelmingly the accused in sexual offence cases and for young people for whom the experience of waiting for trial as an accused is known to be particularly disruptive.

## **Piloting single judge trials for cases of rape and attempted rape**

The Bill contains enabling powers for a pilot of single judge rape trials for cases of rape and attempted rape to take place. The criteria for the pilot are yet to be determined and will be subject to Parliamentary scrutiny through the affirmative procedure process.<sup>8</sup> Any effects on complainers arising from the pilot will have a greater impact on women and girls, who make up the majority of complainers in rape and attempted rape cases.

Some consultation responses highlighted the need for consideration to be given to the impact of the measures on the accused (the majority of whom are men). It has been assessed that the measures are compatible with the European Convention on Human Rights (ECHR) and highlighted that human rights will be a key consideration in the design and development of the pilot to ensure that the treatment of the accused and all trials conducted as part of the pilot proceed in a manner that is compatible with the ECHR. Increased efficiency in the management of cases and the requirement on judges to produce written reasons for verdicts are expected to impact positively on accused in cases that feature within the pilot.

## **Independent legal representation for complainers when applications to lead sexual history and/or 'bad character' evidence are made in sexual offence cases**

As well as women and girls being more likely to be complainers in sexual offence cases, women are more likely to be the subject of the applications made to lead evidence in relation to sexual history or 'bad character' evidence – to which these measures specifically refer. There is also potential impact on men (who, again, are the overwhelming majority of accused persons in sexual offence cases) as any

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<sup>8</sup> [Affirmative | Scottish Parliament Website](#)

applications they, as the accused, make to lead such evidence will now be subject to additional procedure and potentially additional challenge<sup>9</sup>. Furthermore, the provisions giving complainers the right to appeal might have the effect of delaying trials, which would be another impact on the accused.

### **Lifelong anonymity for complainers in sexual and certain other offences**

As well as applying to sexual offence cases, the statutory right to anonymity applies to certain other offences, including human trafficking and female genital mutilation. Women and girls of particular national origins are evidenced as suffering a greater prevalence of these offences and may therefore proportionally benefit more from these reforms.

There are also safeguards in these provisions that specifically protect children and young people. The provisions enable adult victims to unilaterally elect to waive their anonymity through a third-party publisher by providing freely given written consent to the publisher. Additional protections are, however, provided for children and young people (aged under 18). The Bill requires judicial oversight for the waiving of anonymity by a child where a third party wishes to publish identifying information.

The Bill provides that any third-party publisher wishing to tell a child victim's story on their behalf must apply to the sheriff court for an order to dispense with the anonymity restrictions. Following the receipt of any such application, a sheriff may order the lifting of anonymity where: the child to whom the information relates understands the nature of the court order sought; appreciates what the effect of making such an order would be; and gives their consent to the making of an order.

As an additional safeguard, the Bill provides the court must also ensure it is satisfied there is no other good reason why an order dispensing with the child's anonymity should not be made. This may include, for example, because the court does not consider that the order would be in the best interests of the child.

The additional protections reflect that a child may be particularly vulnerable and lack the maturity to fully understand what they are consenting to if they are approached by a third party wishing to tell their story, irrespective of whether the child has already self-published some details or not. This approach also recognises that the situation is different where a third-party publisher is involved, which has the potential to lead to undue influence over a vulnerable child. As such, the Bill operates an additional safeguard that self-publishing by a child does not amount to an absolute waiver of anonymity.

The main findings in relation to the measures which have a wider focus than sexual offences are described below.

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<sup>9</sup> Applications can be made by the prosecution and the accused under section 275 of the Criminal Procedure (Scotland) Act 1995.

## **Abolition of the not proven verdict and related reforms**

Although it relates to all criminal offences (not just sexual offences), moving to a two-verdict system is anticipated to have a differential impact in relation to the protected characteristic of sex. This policy should also have a positive impact on both complainers and accused persons. The not proven verdict - which this Bill seeks to abolish - is used proportionately more in rape and attempted rape cases. The evidence considered in the EQIA has found that removing this verdict should have a positive impact on women and girls - who make up the majority of complainers in these cases - as it should simplify and clarify the outcomes of trials and eliminate the trauma and injustice that survivors (predominantly women and girls) have reported feeling because of a not proven verdict.

A move to a two-verdict system will also remove the option of an ambiguous verdict that has no clear explanation, so would eliminate the lingering stigma that some believe is associated with the verdict, assumed to particularly impact men who make up the majority of the accused in rape and attempted rape cases.

It is noted that a minority of stakeholders believe that increasing the jury majority required for conviction could be a barrier to justice for rape complainers - the majority of whom are women and girls - although it is not possible to predict the impact of simultaneously abolishing the not proven verdict while increasing the proportion of jurors required for conviction; and unanimous or near unanimous decision making is typical in other countries with a common law tradition.

The rationale for the increase in jury is set out in the Bill's Policy Memorandum and it is highlighted that this measure is part of the wider package of reforms in the Bill, many of which will support complainers and help them to give their best evidence. Any changes to the system would apply to all crimes and offences, so changing the verdicts and majority required would not be an appropriate tool to try and impact the balance for any particular crime. However, other non-legislative work being taken forward by the judiciary to address the impact of rape myths on jury decision-making through the development of standardised instructions which address common rape myths and preconceptions among jurors should also contribute to mitigating these concerns.

## **Special measures for vulnerable parties and witnesses in civil cases**

The provisions which extend special measures in civil cases may also have a differential impact in relation to sex. The policy reflects that parties in civil cases may be vulnerable because of factors such as domestic abuse and may therefore need protection. As most victims of domestic abuse are women, they may proportionately benefit more from these provisions.

## **Embedding trauma-informed practice across the justice system**

Some groups are more likely to have been the victims of crime, to be vulnerable to trauma, or both - notably women, children and young people, and disabled people. There is also evidence to suggest that female victims of sexual crime and young victims and witnesses find aspects of the justice system particularly traumatising.



The policies intended to recognise the impact of trauma and seeking to minimise re-traumatisation may therefore impact more on these groups.

Evidence suggests that particular groups, including women, older people, disabled people and LGBT+ people, may have less confidence in the justice system. As the Bill intends to improve victims' experiences of the system and, therefore, increase confidence in it, there may be a greater impact on the groups who currently report less confidence in the system and its processes.

### **Establishing a Victims and Witnesses Commissioner for Scotland**

While the creation of a new office of Victims and Witnesses Commissioner in itself will not have a direct impact on any of the protected characteristics, the Commissioner is able to carry out work relating to equality matters through engagement, research, and investigation.

One of the main functions of the Commissioner will be to monitor the criminal justice agencies' compliance with their Standards of Service and the Victims' Code for Scotland, which both contain specific sections relating to children and young people. Both the Standards of Service and Victims' Code make specific reference to the rights of 'deemed vulnerable witnesses', which includes victims and witnesses who are aged under 18, as well as victims of sexual offences (who are mostly women and girls). It is likely, therefore, that the Commissioner will be required to engage with these groups to effectively fulfil these functions, and to promote their rights and interests.

As independence is a key tenet of the Commissioner's role however, it will be for the Commissioner to determine what topics to focus on in the course of their work.

### **Further information on findings relating to protected characteristics**

The EQIA process looked at the demographics of victims of crime in general and specifically at the demographics of victims in sexual offences as several of the provisions in the Bill are applicable to sexual crime. It also looked at other specific crime types relevant to the provisions, such as female genital mutilation and human trafficking, as well as domestic abuse which is assessed to be of relevance to the provisions on special measures in civil cases.

As some of the provisions relate to the civil system and separately to jury reforms, evidence relating to these two areas was also considered.

The data cited in the following sections is intended to give a general indication of protected characteristics among people who come into contact with the justice system and would be impacted by at least some of the provisions in the Bill.

It is noted that some of the data considered as part of the EQIA process is self-selecting in nature and therefore the findings cannot be extrapolated to a wider population outwith the respondent sample. However, the responses provide valuable

evidence of a range of opinions and perspectives, particularly from those with direct experience of the justice system.

It is also noted that some of the evidence cited is based on relatively small sample sizes but that it provides rich qualitative data and detailed accounts of individual experiences of the system.

## Age

### **Evidence suggests that the likelihood of being a victim of crime in general and sexual crime in particular decreases with age**

The Scottish Crime and Justice Survey found that almost one-fifth (18.3%) of 16- to 24-year-olds were a victim of crime in 2019/20, compared with just 6.9% of those aged 60 or over.<sup>10</sup>

This also appears to be the case in terms of sexual offences. The specific age of the victim of sexual offending cannot generally be determined from data supplied by Police Scotland. However, many of the sexual crime codes used by the police to record crime are based on specific age groupings in line with the legislation (for example, sexual assault of older male child (13-15 years)). Adding up all these crime codes shows that at least 37% of the 15,049 sexual crimes recorded in 2021-22 by the police related to a victim under the age of 18. This proportion is similar to recent years.<sup>11</sup>

The Scottish Crime and Justice Survey also found that the likelihood of being a victim of sexual crime differs across age groups, with the likelihood generally decreasing with age. Over half (54.6%) of victims of serious sexual assault experienced their first (or only) incident between the ages of 16 and 20. 17.5% were aged 21-25, and 10.7% were aged 26-30. Respondents to the survey aged 60 and over were less likely to report having experienced serious sexual assault than all other age groups. However, the proportion of those aged 60 and over experiencing serious sexual assault since the age of 16 has increased between 2008/09 and 2018/20 (from 1.2% to 2.0%).<sup>12</sup>

Female genital mutilation is a qualifying offence for the new right to statutory anonymity and evidence suggests that “procedures are mostly carried out on young girls sometime between infancy and age 15, and occasionally on adult women.”<sup>13</sup>

The Scottish Health Survey 2019 found that the prevalence of adverse childhood experience (ACE) involving sexual abuse was higher among women than among

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<sup>10</sup> Table A1.6: Prevalence of SCJS crime, by demographic and area characteristics, page 205 of [Scottish Crime and Justice Survey 2019/20: Main Findings \(www.gov.scot\)](http://www.gov.scot)

<sup>11</sup> [Sexual Crimes - Recorded Crime in Scotland, 2021-2022 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>12</sup> Figure 9.13, Age when first (or only) incident of serious sexual assault happened, page 186 of [Scottish Crime and Justice Survey 2019/20: Main Findings \(www.gov.scot\)](http://www.gov.scot)

<sup>13</sup> [Section 1 Background and Context - Scotland's national action plan to prevent and eradicate FGM - gov.scot \(www.gov.scot\)](http://www.gov.scot)

men (10% and 4% respectively), also highlighting intersectionality between age and sex in relation to sexual offences victims.<sup>14</sup>

An HM Inspectorate of Prosecution review of 173 complainers who were the subject of a section 275 application - the type of application which independent legal representation is to be provided for - found that the complainers were generally younger.<sup>15</sup> While this is only a small sample, it largely mirrors the findings from the Scottish Crime and Justice Survey and Police Scotland data in terms of the demographics of victims of sexual offences.

When looking at domestic abuse, which is anticipated to be of relevance to the measures to extend special measures in civil cases, statistics from 2021/22 show that female victims in the 26-30 and 31-35 age groups had the highest incident rate of domestic abuse recorded by the police.<sup>16</sup>

### **Evidence suggests that children and young people may find the justice system more traumatic than older age groups**

In a report by the Everyday Heroes Participation Programme, children and young people with experience of gender-based violence or abuse identified a need for changes to justice processes to make them more child-friendly and reduce trauma. These included a more personalised, victim-centred approach, more accessible communication, fixed times for giving evidence, access to support from a known and trusted person, and a more comfortable court environment.<sup>17</sup>

A small New Zealand study conducted with complainers under 18, and parents of complainers under 18, in sexual offence cases identified a range of factors that contributed to young people's distress in court, and factors that could contribute to a more positive experience. Factors that contributed to distress included delays to trials and finding cross-examination confusing and stressful.<sup>18</sup> This echoes findings cited in the Evidence and Procedure Review Report, which highlighted that traditional, adversarial court processes can be especially distressing and potentially damaging for children, particularly when they are required to recount – and are cross-examined on – traumatic experiences.<sup>19</sup>

A meta-analysis has found that child witnesses and victims of violence develop rates of PTSD 'similar to the rates of combat soldiers returning from war' – the overall rate was 15.9%, but among girls exposed to interpersonal trauma it rose to 32.9%.<sup>20</sup> Responses to the consultation on improving victims' experiences of the justice

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<sup>14</sup> [Chapter 8: Adverse Childhood Experiences - Scottish Health Survey 2019 - volume 1: main report - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>15</sup> [Inspection of COPFS practice in relation to sections 274 and 275 of the Criminal Procedure \(Scotland\) Act 1995 \(www.gov.scot\)](http://www.gov.scot)

<sup>16</sup> [Key points - Domestic abuse: statistics recorded by the police in Scotland - 2021/22 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>17</sup> [everyday-heroes-briefing2-Justice.pdf \(ed.ac.uk\)](http://ed.ac.uk)

<sup>18</sup> [The Experiences of Young Complainant Witnesses in Criminal Court Trials for Sexual Offences: Psychiatry, Psychology and Law: Vol 25, No 3 \(tandfonline.com\)](http://tandfonline.com)

<sup>19</sup> [Evidence and Procedure Review Report, 2015](http://www.gov.scot)

<sup>20</sup> [Rates of post-traumatic stress disorder in trauma-exposed children and adolescents: meta-analysis - PubMed \(nih.gov\)](http://nih.gov)

system also highlighted that children and young people were among those considered to be most likely to find the justice experience itself to be traumatising or retraumatising.<sup>21</sup>

### **Evidence suggests that, while younger people may be more likely to be a victim of crime, older adults are generally less confident in the justice system**

In the Scottish Crime and Justice Survey, younger adults (those aged 16 to 24) were more likely to be confident than those aged 60 and over for most of the measures exploring views on the justice system. Adults aged 60 and over were less likely than young adults (age 16-24) to say that they were confident that the Scottish criminal justice system allows all victims of crime to seek justice regardless of who they are (64% compared to 77%). Adults aged 60 and over were also less likely than young adults (age 16-24) to say that they were confident that the justice system provides victims of crime with the services and support they need (45% compared to 66%).<sup>22</sup>

### **Disability**

A Scottish Government Justice Analytical Services study from January 2023 found that number of crimes with a disability aggravator doubled from 260 in 2014-15 to 552 in 2021-22).<sup>23</sup>

### **Evidence suggests that that disabled people are more likely than non-disabled people to have experienced both crime in general and sexual crime, and to have been in contact with the civil justice system**

The Scottish Crime and Justice Survey estimates that 15% of disabled people were victims of at least one crime in 2019/20, compared to 11% of non-disabled people<sup>24</sup>, while the Scottish Household Survey found that in 2020-21 disabled adults were more likely to have experienced discrimination (11%) and harassment (7%) in the previous 12 months than non-disabled adults (5% and 4%, respectively).<sup>25</sup>

Data published by COPFS highlights an increase in charges with an aggravation of prejudice relating to disability, with the number of charges reported increasing year on year since the legislation was introduced, except for a small fall in 2016-17.<sup>26</sup> In 2021-22, 666 such charges were reported, 44% more than in 2020-21, and the highest number of charges reported since the legislation creating this aggravation came into force in 2010.<sup>27</sup>

In terms of sexual offences, the Scottish Crime and Justice Survey found that a larger proportion of disabled people (7.6%) aged 16 or older had, at the time of the

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<sup>21</sup> [Improving victims' experiences of the justice system: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/improving-victims-experiences-of-the-justice-system-consultation-analysis-2021-22/pages/10-12.aspx)

<sup>22</sup> [3. Focus on violent crime - Scottish Crime and Justice Survey 2019/20: main findings - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/3-focus-on-violent-crime-scottish-crime-and-justice-survey-2019-20-main-findings/pages/10-12.aspx)

<sup>23</sup> [An updated study into the characteristics of police recorded hate crime in Scotland \(www.gov.scot\)](https://www.gov.scot/publications/an-updated-study-into-the-characteristics-of-police-recorded-hate-crime-in-scotland/pages/10-12.aspx)

<sup>24</sup> [Scottish Crime and Justice Survey 2019/20: Main Findings \(www.gov.scot\)](https://www.gov.scot/publications/scottish-crime-and-justice-survey-2019-20-main-findings/pages/10-12.aspx)

<sup>25</sup> [scottish-household-survey-2020-telephone-survey-key-findings.pdf \(www.gov.scot\)](https://www.gov.scot/publications/scottish-household-survey-2020-telephone-survey-key-findings/pages/10-12.aspx)

<sup>26</sup> [hate-crime-2021-22-publication-final.pdf \(copfs.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/101111/hate-crime-2021-22-publication-final.pdf)

<sup>27</sup> [Offences \(Aggravation by Prejudice\) \(Scotland\) Act 2009 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2009/12/section/1)

survey, experienced a serious sexual assault (as defined in the survey) since becoming an adult, compared to people who are not disabled (2.4%). In the last 12 months before the survey a larger proportion of disabled people (0.7%) had experienced a serious sexual assault compared to 0.1% of people who are not disabled.<sup>28</sup>

The survey also found that a larger proportion of disabled people (13.9%) had experienced a less serious sexual assault since age 16, compared to 9% of non-disabled people. In the last 12 months prior to the survey there was no significant difference in the proportion of disabled people and non-disabled people who had experienced a less serious sexual assault.<sup>29</sup>

Civil justice statistics show an estimated 36% of disabled people experienced a civil law problem compared with 26% of non-disabled people.<sup>30</sup>

**Evidence suggests that people with a learning disability are more at risk of gender-based violence and sexual crime and may face barriers to reporting offences.**

Public Health Scotland has published information about gender-based violence and learning disability which states that children with a learning disability are at greater risk of experiencing physical, emotional and sexual abuse, and that people with a learning disability can have a 10 to 12 times greater risk of sexual assault.<sup>31</sup>

The information provided by Public Health Scotland states that people with a learning disability are more at risk of abuse for a number of reasons, including:

- being targeted by perpetrators because of their learning disability
- lack of access to information and education on relationships and sexual health
- perceptions that people with learning disabilities do not want sexual relationships or will not be sexually exploited
- being socially isolated
- not being asked about relationships or sexual health, or knowing who to talk to
- lacking the communication skills to describe abuse and tell others when it is happening

As part of research focused on disabled women's reproductive rights in Scotland, the study 'Our Bodies, Our Rights' observed that the scale of gender-based violence and intimate partner violence reported was noticeable. All 12 women with learning disabilities who participated in focus groups for the research reported experiences of intimate partner violence, including physical violence, rape, forced prostitution and gang rape. This was in addition to experience of parental abuse and violent victimisation as children and adults, sexual violence as children, and violence

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<sup>28</sup> Scottish Crime and Justice Survey SCJS 2018/20 - Data Tables - Volume 7 - sexual victimisation

<sup>29</sup> *ibid*

<sup>30</sup> [3. Civil justice problems - Civil justice statistics in Scotland 2020-21 - gov.scot \(www.gov.scot\)](#)

<sup>31</sup> [Gender based violence and learning disability - Gender based violence - Health topics - Public Health Scotland](#)

experienced in care settings, long-stay hospitals and residential facilities by staff and residents.<sup>32</sup>

### **Evidence suggests disabled people are less likely to have confidence in the justice system and access to appropriate support, and may be less likely to report offences**

The Scottish Crime and Justice Survey 2019/20 estimates that 75% of adults were confident everyone has access to the Scottish justice system if they need it. When comparing the confidence of disabled and non-disabled people, however, the survey found that it was lower for the latter (71% compared to 76%).<sup>33</sup>

The survey also found that disabled people were less likely than non-disabled people to say that they are confident that justice system allows all victims of crime to seek justice regardless of who they are (62% compared to 69%), and that the system provides victims of crime with the services and support they need (48% compared to 56%).<sup>34</sup>

The Scottish Crime and Justice Surveys 2018 to 2020 found that disabled people were less likely to report sexual offences to the police. The surveys asked those who had experienced forced sexual intercourse since age 16 if the police had been informed about the most recent occasion of forced sexual intercourse. While 77% of those asked said they had not informed the police about the most recent occasion of forced intercourse, the split between disabled and non-disabled people was stark: 85.3% of the former said they had not informed the police compared to 67.5% of the latter.<sup>35</sup>

Women with learning disabilities in 'Our Bodies, Our Rights' said that, because violence was so much a part of their lives for as long as they could remember, they considered it to be normal and did not see it as something to be reported. Where women did report, they said they were not believed and were not put in contact with supportive services or organisations such as Rape Crisis or Women's Aid.<sup>36</sup>

### **Gender reassignment**

In 2021-22, 84 charges were reported with an aggravation of prejudice relating to transgender identity, 87% more than the 45 charges reported in 2020-21. This is the largest annual increase since this aggravation was introduced in 2010.<sup>37</sup>

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<sup>32</sup> [Wiseman, P. and Ferrie, J. \(2018\) Our Bodies, Our Rights: Research Report, Scottish Learning Disabilities Observatory, University of Glasgow and Engender](#) summarised in [Batchelor, S. Armstrong, S and MacLellan, D. \(2019\) Taking Stock of Violence in Scotland - Chapter 7 Gender based violence](#)

<sup>33</sup> [Scottish Crime and Justice Survey 2019/20: Main Findings \(www.gov.scot\)](#)

<sup>34</sup> [ibid](#)

<sup>35</sup> [Scottish Crime and Justice Survey SCJS 2018/20 - Data Tables - Volume 7 - sexual victimisation](#)

<sup>36</sup> [Wiseman, P. and Ferrie, J. \(2018\) Our Bodies, Our Rights: Research Report, Scottish Learning Disabilities Observatory, University of Glasgow and Engender](#) summarised in [Batchelor, S. Armstrong, S and MacLellan, D. \(2019\) Taking Stock of Violence in Scotland - Chapter 7 Gender based violence](#)

<sup>37</sup> [Hate Crime in Scotland 2021-22 \(COPFS\)](#)



A Scottish Government Justice Analytical Services study from January 2023 found that the number of transgender identity aggravated hate crimes has more than tripled from 2014/15 to 2021/22 (from 53 to 185). The study also found for transgender identity aggravated crimes, the majority of victims were female or an all-female group, while in all other hate crimes the majority of victims were male or an all-male group.<sup>38</sup>

A 2022 UK-wide survey by Galop looking at LGBT+ people and sexual violence found that 53% of respondents felt that their LGBT+ identity was linked to, or the reason for, at least one instance of sexual violence to which they were subjected. Of the total respondents to the survey, 43.5% indicated that they have a trans history.<sup>39</sup>

### **Evidence suggests that transgender people may have less confidence in the justice system**

The Galop survey found that the vast majority of LGBT+ sexual violence survivors surveyed did not report to the police, with only 12% reporting their most significant experience of sexual violence. The survey found that there were multiple factors that deterred them from doing so, including being worried that the police would discriminate against them because of their LGBT+ identity (25%), fearing that they would not be taken seriously (51%) and thinking that the police would not be able to do anything (56%).<sup>40</sup>

A Scottish LGBT Equality Report from 2013, of which 10% of respondents identified as transgender, found that a majority of LGBT+ people in Scotland still ‘never’ or only ‘sometimes’ feel able to be open about their sexual orientation or gender identity when accessing services in general (71%), for fear of the prejudice they might face. A number of respondents highlighted problems with disadvantage in Scotland’s policing and justice system. The main examples given included staff not being adequately trained on LGBT+ issues, police officers and the public not fully understanding what constitutes a hate crime, and a lack of progress on tackling hate crimes against LGBT+ people in Scotland.<sup>41</sup> While this research is now a decade old, with only a small percentage of respondents identifying as transgender, the Galop survey suggests that transgender people are still experiencing the same issues.

### **Pregnancy and maternity**

The Scottish Government’s Pregnancy and Maternity Evidence Review, published in 2013, quotes research and evidence that pregnant women face an “increased risk” of domestic abuse, and that “abuse often starts in pregnancy and gets worse when the child is new-born”.<sup>42</sup>

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<sup>38</sup> [An updated study into the characteristics of police recorded hate crime in Scotland \(www.gov.scot\)](http://www.gov.scot)

<sup>39</sup> [LGBT+ People & Sexual Violence Report - Galop](#)

<sup>40</sup> *ibid*

<sup>41</sup> [The-Scottish-LGBT-Equality-Report.pdf \(equality-network.org\)](#)

<sup>42</sup> [9 Victims of Crime - Scottish Government Equality Outcomes: Pregnancy and Maternity Evidence Review - gov.scot \(www.gov.scot\)](#)

## Marriage and civil partnership

No relevant evidence found.

## Race

Data held by COPFS shows that while the proportion of crime charges that contain a racial element has generally decreased over the last ten years (75% in 2012-13 to 55% in 2021-22), the majority of hate crime charges still contain a racial element.<sup>43</sup>

The 2019 Scottish Household Survey found that minority ethnic adults were more likely to have experienced discrimination in the previous 12 months (19%) compared to white adults (8%).<sup>44</sup>

### **There is evidence to suggest that certain offences which are covered by provisions in the Bill may impact more on some minority ethnic groups**

A scoping study carried out by the Scottish Refugee Council, “Tackling Female Genital Mutilation (FGM) and A Scottish Model of Intervention,” reports that the number of communities potentially affected by FGM has increased in Scotland. The report states that

“the number of children born into potentially affected communities in Scotland has increased significantly over the last decade, with 363 girls born in Scotland to mothers born in an FGM-practising country in 2012, representing a fivefold increase over the last decade.”<sup>45</sup>

An Equality and Human Rights Commission (EHRC) research report from 2011 investigating the experiences of victims trafficked into commercial sexual exploitation (CSE) in Scotland, highlights the importance of trauma-informed approaches when working with victims and survivors of CSE.<sup>46</sup>

Some evidence suggests that minority ethnic women and girls experience higher rates of gender-based violence and domestic abuse and face greater barriers to accessing support services.<sup>47</sup>

## Religion or belief

There were 512 religiously aggravated charges reported in 2021-22, 16% fewer than in 2020-21. The number of charges reported with an element of religious aggravation in 2021-22 is lower than in any year since 2004-05.

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<sup>43</sup> [hate-crime-2021-22-publication-final.pdf \(copfs.gov.uk\)](#)

<sup>44</sup> [Scottish Household Survey Key Findings \(theapsgroup.scot\)](#)

<sup>45</sup> [Tackling-Female-Genital-Mutilation-in-Scotland-A-Scottish-model-of-intervention.pdf \(scottishrefugeecouncil.org.uk\)](#)

<sup>46</sup> [RR82\\_F.indd \(equalityhumanrights.com\)](#)

<sup>47</sup> [Counting the cost: BME women and gender-based violence in the UK - Siddiqui - 2018 - IPPR Progressive Review - Wiley Online Library](#)



## Sex

### Women and girls are more likely to be victims of sexual offences than men

The Scottish Crime and Justice Survey found that experiences of serious sexual assault since the age of 16 varied by gender, age, and victim status. The survey found a greater proportion of women than men have experienced serious sexual assault (as defined in the survey) both since the age of 16 (6.1% compared with 0.8%) and in the 12 months prior to interview (0.4% compared with 0.1%).<sup>48</sup>

The survey also found women were more likely than men to have experienced less serious sexual assault (as defined in the survey) since the age of 16 (16.2% compared with 3.6%) and in the 12 months prior to interview (2.5% compared with 0.8%).<sup>49</sup>

The most recent National Survey of Sexual Attitudes and Lifestyles found that, among respondents in Scotland, 10% of women had been raped since the age of 13, and 19% had been a victim of attempted rape. For men, the figures were 2% and 4% respectively.<sup>50</sup>

Rape Crisis Scotland provides statistics that 89% of survivors who report sexual assault to their centres are women compared to 2.7% male.<sup>51</sup>

In relation to the provisions on independent legal representation, a review of 173 complainers who were the subject of a section 275 application in sexual offence cases (to which the provisions on independent legal representation apply), found that 163 (94%) were female and 10 (6%) were male.<sup>52</sup>

Responses to the consultation on improving victims' experiences of the justice system highlighted that embedding trauma-informed practice was seen as especially beneficial for female survivors of sexual assault and domestic abuse.<sup>53</sup>

### Men are more likely to be the accused in sexual offence cases

The Scottish Crime and Justice Survey found that, between 2018 and 2020, the vast majority of people who reported being a victim of sexual assault stated that the offender was male. In cases of less serious sexual assault such as indecent exposure and sexual threats, the offender was identified as male in at least 92% of cases. In cases of more serious sexual assault such as attempted and forced sexual intercourse, the offender was identified as male in at least 89% of cases.<sup>54</sup>

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<sup>48</sup> [Scottish Crime and Justice Survey 2019/20: Main Findings \(www.gov.scot\)](https://www.gov.scot/publications/scjs-2019-20-main-findings/pages/100.aspx)

<sup>49</sup> *ibid*

<sup>50</sup> [Natsal-3: Key findings from Scotland](https://www.gov.scot/publications/natsal-3-key-findings-from-scotland/pages/100.aspx)

<sup>51</sup> [SRG-Police-Responses-in-Scotland-Report---RGB-spreads.pdf \(rapecrisisscotland.org.uk\)](https://www.rapecrisisscotland.org.uk/wp-content/uploads/2019/04/SRG-Police-Responses-in-Scotland-Report---RGB-spreads.pdf)

<sup>52</sup> [Inspection of COPFS practice in relation to sections 274 and 275 of the Criminal Procedure \(Scotland\) Act 1995 \(www.gov.scot\)](https://www.gov.scot/publications/inspection-of-copfs-practice-in-relation-to-sections-274-and-275-of-the-criminal-procedure-(scotland)-act-1995/pages/100.aspx)

<sup>53</sup> [Improving victims' experiences of the justice system: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/improving-victims-experiences-of-the-justice-system-consultation-analysis/pages/100.aspx)

<sup>54</sup> [Scottish Crime and Justice Survey 2019/20: associated data tables - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scjs-2019-20-associated-data-tables-volume-7-sexual-victimisation/pages/100.aspx), Data Tables – Volume 7 – sexual victimisation

Criminal proceedings statistics show that the majority of people convicted of sexual crimes are male. In 2019/20, 1,174 males and 30 females were convicted<sup>55</sup>. 97.5% of people convicted for sexual crimes in 2019/20 were male. In the following year, which was affected by the Covid-19 pandemic, 785 men and 32 women were convicted for sexual crimes.<sup>56</sup> 96% of people convicted for sexual crimes in 2020/21 were male.

Rape Crisis Scotland statistics provide that the sex of the abuser (where known) in cases dealt with at their centres is 96.13% male compared to 3.67% female.<sup>57</sup>

### **Women are more likely to be a victim of domestic abuse than men**

Data recorded by Police Scotland shows that where the victim's gender was known, the majority of victims of domestic abuse in 2021-22 (83%) was female. Over four-in-five incidents (81%) of domestic abuse in 2020-21 had a female victim and a male suspected perpetrator.<sup>58</sup>

The Scottish Crime and Justice Survey 2019-20 found that, from the age of 16, women were almost twice as likely as men to have experienced partner abuse (21.2% and 11.2% respectively), similar to the position in previous years. A higher proportion of women than men reported psychological abuse, physical abuse, and both psychological and physical abuse since the age of 16.<sup>59</sup>

### **There is evidence to suggest that the not proven verdict can have a particularly traumatic impact on complainers and is used proportionally more in rape and attempted rape cases, in which most complainers are women and girls**

Criminal proceedings statistics show there are higher rates of not proven acquittals for rape and attempted rape cases. In 2019-20, the proportion of not proven acquittals for people proceeded against in court for all crimes and offences was 1% (or 5% if summary cases not heard by juries are excluded since rape trials are heard before a jury). For rape and attempted rape the proportion of not proven acquittals was 25%. Of those acquitted for rape and attempted rape, a higher proportion were acquitted not proven compared to other crimes (44% of acquittals were not proven compared to 20% across all crimes and offences).<sup>60</sup>

Jury research engagement events held across the country throughout late 2019 and 2020 demonstrated the impact not proven verdicts can have on complainers/survivors. The survivors who participated in the engagement process gave powerful testimony about their anger that the not proven verdict exists and the impact it had on them. Survivors and their representative organisations also disputed

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<sup>55</sup> [Criminal Proceedings in Scotland, 2019-20 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>56</sup> [Supporting documents - Criminal proceedings in Scotland: 2020-2021 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>57</sup> [RCS-Annual-report-2020-2021-web-pages.pdf \(rapecrisisScotland.org.uk\)](http://rapecrisisScotland.org.uk)

<sup>58</sup> [Key points - Domestic abuse: statistics recorded by the police in Scotland - 2021/22 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>59</sup> [Scottish Crime and Justice Survey 2019/20: Main Findings \(www.gov.scot\)](http://www.gov.scot)

<sup>60</sup> [Criminal Proceedings in Scotland, 2019-20 - Criminal Proceedings in Scotland, 2019-20 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

the benefits of jurors signalling to complainers that they were believed while simultaneously opting to acquit.<sup>61</sup>

Subsequent research explored the experience of being a complainer in a criminal trial that results in an acquittal verdict, with particular focus on the experience of receiving a not proven verdict. Participants in the interviews were clear that there were a number of challenges posed to complainers – and particularly complainers of sexual offences – with the process of jury decision-making and jurors’ use of the not proven verdict in particular.<sup>62</sup>

### **Evidence relating to female genital mutilation highlights intersectionality between sex, race, religion and age**

Female genital mutilation (FGM), which is a qualifying offence for the statutory right to anonymity, is internationally recognised as a violation of the fundamental rights of women and girls.<sup>63</sup> Scotland's national action plan to prevent and eradicate FGM notes, “FGM reflects deep-rooted inequality between the sexes, and constitutes an extreme form of discrimination against women. It is nearly always carried out on minors and is a violation of the rights of children.”<sup>64</sup>

A scoping study carried out by the Scottish Refugee Council published in 2014, “Tackling Female Genital Mutilation in Scotland, A Scottish Model of Intervention,” presents the following findings from key informant interviews:

“A number of respondents spoke about the importance of contextualising FGM as a form of violence against women and girls, acknowledging the role of gender, power and control in the perpetuation of the practice, and ‘the need to situate FGM and analyse it within the wider continuum of honour-based violence’.”<sup>65</sup>

The study also reports that the number of communities potentially affected by FGM has increased in Scotland. The report states that

“the number of children born into potentially affected communities in Scotland has increased significantly over the last decade, with 363 girls born in Scotland to mothers born in an FGM-practising country in 2012, representing a fivefold increase over the last decade.”<sup>66</sup>

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<sup>61</sup> [Supporting documents - Jury research - engagement events: summary of discussions - gov.scot \(www.gov.scot\)](https://www.gov.scot/supporting-documents-jury-research-engagement-events-summary-discussions)

<sup>62</sup> [WRAP-91104-Law-Research-Report-Munro-2020.pdf \(warwick.ac.uk\)](https://www.warwick.ac.uk/wrap/91104-law-research-report-munro-2020.pdf)

<sup>63</sup> [Tackling-Female-Genital-Mutilation-in-Scotland-A-Scottish-model-of-intervention.pdf \(scottishrefugeecouncil.org.uk\)](https://scottishrefugeecouncil.org.uk/tackling-female-genital-mutilation-in-scotland-a-scottish-model-of-intervention.pdf), at page 6)

<sup>64</sup> [Section 1 Background and Context - Scotland's national action plan to prevent and eradicate FGM - gov.scot \(www.gov.scot\)](https://www.gov.scot/section-1-background-and-context-scotland-s-national-action-plan-to-prevent-and-eradicate-fgm)

<sup>65</sup> [Tackling-Female-Genital-Mutilation-in-Scotland-A-Scottish-model-of-intervention.pdf \(scottishrefugeecouncil.org.uk\)](https://scottishrefugeecouncil.org.uk/tackling-female-genital-mutilation-in-scotland-a-scottish-model-of-intervention.pdf), at page 20)

<sup>66</sup> [Tackling-Female-Genital-Mutilation-in-Scotland-A-Scottish-model-of-intervention.pdf \(scottishrefugeecouncil.org.uk\)](https://scottishrefugeecouncil.org.uk/tackling-female-genital-mutilation-in-scotland-a-scottish-model-of-intervention.pdf)

**Evidence suggests that victims of sexual offences and domestic abuse – who are predominantly women and girls - may have less confidence in the justice system and may be particularly vulnerable to re-traumatisation by justice processes**

Reports from Rape Crisis Scotland's Survivor Reference group have highlighted that for survivors of sexual crime the experience of court was re-traumatising. Other factors that could contribute to distress included poor communication, delays to trials, and problematic attitudes to sexual violence among the police.<sup>67</sup>

This was echoed in the Scottish Centre for Crime and Justice Research's 'Justice Journeys' report, which documents the experiences of victims and survivors of rape and serious sexual assault as they navigated the Scottish criminal justice system. While positive experiences were identified, victims and survivors reported facing challenges at each stage of the criminal justice process. This included: disparities between their expectations and experiences; inadequate communication from officials; the lengthy duration of the process and the uncomfortable physical environments of police stations and courts; concerns about personal safety; feeling marginal to the process; perceptions of the system being weighted in favour of the accused; and belief that the current system does not adequately represent their interests.<sup>68</sup>

A 2022 online survey of women's experiences of the criminal justice system since the introduction of the Domestic Abuse (Scotland) Act 2018 found that women report a sense of alienation and exclusion from the justice process, and that perpetrators continue to exploit the processes and procedures of the criminal justice system to further their abuse. Women reported feeling like the court process had been a waste of time, that the sentences (where applicable) were too lenient, their experiences of abuse were minimised, and that they were not valued within the criminal justice system.<sup>69</sup>

A 2021 study on domestic abuse victims' experiences of the criminal justice process in Scotland found that victims (who are majority women) reported negative experiences.<sup>70</sup> The findings included:

- most support for victims is focused on preparation for attendance at court but a minority of cases proceed to trial
- victims of domestic abuse still do not feel safe going to court
- victims of domestic abuse still do not feel listened to in the justice process
- communication is misaligned with victims' needs
- waiting for and at court is a traumatic experience that causes tertiary victimisation
- the trauma of waiting and feeling out of control induces further anxiety about court attendance which in turn impacts upon victims' ability to be heard;

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<sup>67</sup> [www.rapecrisisscotland.org.uk/resources/SRG---First-Meeting-FINAL-info-breakdown-web-version.pdf](http://www.rapecrisisscotland.org.uk/resources/SRG---First-Meeting-FINAL-info-breakdown-web-version.pdf)

<sup>68</sup> [Justice Journeys Report Aug 2019 FINAL \(sccjr.ac.uk\)](https://www.sccjr.ac.uk/justice-journeys-report-aug-2019-final)

<sup>69</sup> [Domestic-Abuse-Scotland-Act-2018-and-the-Criminal-Justice-System.pdf \(sccjr.ac.uk\)](https://www.sccjr.ac.uk/domestic-abuse-scotland-act-2018-and-the-criminal-justice-system)

<sup>70</sup> [Dr-Emma-E.-Forbes.pdf \(sccjr.ac.uk\)](https://www.sccjr.ac.uk/dr-emma-e-forbes)

- reducing the waiting times and improving communication could provide a more supportive response
- public condemnation and criminalisation of domestic abuse does not mean that all lived experience of domestic abuse is recognised and understood - many women experience ongoing abuse throughout the court process

These findings are echoed in Scottish Government reports relating to the Domestic Abuse (Scotland) Act 2018 published in January 2023, including a report which considers the experiences of male victims of domestic abuse.<sup>71 72 73</sup>

## Sexual orientation

Sexual orientation is the second most reported hate crime aggravator (32%), and (except for 2014-15) the number of charges reported has increased each year since the legislation introducing this aggravation came into force in 2010, except for a fall in 2014-15.<sup>74</sup>

A Scottish Government Justice Analytical Services study from January 2023 found that the number of recorded crimes with a sexual orientation aggravator increased over 67% from 1,110 in 2014-15 to 1,855 in 2021-22.<sup>75</sup>

The 2019 Scottish Household Survey found that lesbian, gay or bisexual adults were more likely to have experienced discrimination in the previous 12 months (22%) compared to the general population (8%).<sup>76</sup>

The Scottish LGBT Equality Report 2013 found that 7% of respondents had experienced sexual assault. More than two-thirds of the survey respondents (68%) had faced verbal abuse and 16% had been physically assaulted for being LGBT+.<sup>77</sup>

A 2022 UK-wide survey by Galop looking at LGBT+ people and sexual violence found that 53% of respondents felt that their LGBT+ identity was linked to, or the reason for, at least one instance of sexual violence to which they were subjected.<sup>78</sup>

## Evidence suggests that LGBT+ people may have less confidence in the justice system

The Galop survey found that the vast majority of LGBT+ sexual violence survivors surveyed did not report to the police, with only 12% reporting their most significant experience of sexual violence. The survey found that there were multiple factors that

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<sup>71</sup> [Overview of Findings - Domestic Abuse \(Scotland\) Act 2018: interim reporting requirement - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/domestic-abuse-scotland-act-2018-interim-reporting-requirement/summary/pages/10-11/index.html)

<sup>72</sup> [Supporting documents - Domestic abuse court experiences - perspectives of victims and witnesses: research findings - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/domestic-abuse-court-experiences-perspectives-victims-witnesses-research-findings/summary/pages/10-11/index.html)

<sup>73</sup> [Supporting documents - Domestic Abuse \(Scotland\) Act 2018 - male victims' experiences of the criminal justice system: emerging findings - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/domestic-abuse-scotland-act-2018-male-victims-experiences-criminal-justice-system-emerging-findings/summary/pages/10-11/index.html)

<sup>74</sup> [Hate Crime in Scotland 2021-22 \(COPFS\)](https://www.gov.scot/publications/hate-crime-scotland-2021-22-copfs/summary/pages/10-11/index.html)

<sup>75</sup> [An updated study into the characteristics of police recorded hate crime in Scotland \(www.gov.scot\)](https://www.gov.scot/publications/updated-study-characteristics-police-recorded-hate-crime-scotland/summary/pages/10-11/index.html)

<sup>76</sup> [Scottish Household Survey Key Findings \(theapgroup.scot\)](https://www.theapgroup.scot/publications/scottish-household-survey-key-findings/summary/pages/10-11/index.html)

<sup>77</sup> [The Scottish LGBT Equality Report.pdf \(equality-network.org\)](https://www.equality-network.org/reports/the-scottish-lgbt-equality-report-2013/)

<sup>78</sup> [LGBT+ People & Sexual Violence Report - Galop](https://www.galop.org.uk/reports/lgbt-people-sexual-violence-report/)

deterred them from doing so, including being worried that the police would discriminate against them because of their LGBT+ identity (25%), fearing that they would not be taken seriously (51%) and thinking that the police would not be able to do anything (56%).<sup>79</sup>

The Scottish LGBT Equality Report found that a majority of LGBT+ people in Scotland still 'never' or only 'sometimes' feel able to be open about their sexual orientation or gender identity when accessing services in general (71%), for fear of the prejudice they might face. A number of respondents highlighted problems with disadvantage in Scotland's policing and justice system. The main examples given included staff not being adequately trained on LGBT+ issues, police officers and the public not fully understanding what constitutes a hate crime, and a lack of progress on tackling hate crimes against LGBT+ people in Scotland.<sup>80</sup> While this research is now a decade old the Galop survey suggests that LGBT+ people are still experiencing the same issues.

## Conclusion

The EQIA has found that the Bill will have a positive impact on victims and vulnerable parties, regardless of protected characteristics.

The EQIA has also found that across a range of protected characteristics, people with these characteristics are more likely to be victims of crime – in particular sexual offences, which are of relevance to several measures in the Bill - and have negative experiences and perceptions of the justice system.

The Bill will minimise re-traumatisation and lead to increased confidence in the justice system which, in turn, may lead to increased reporting and reduced re-victimisation, so will bring greater benefits to those groups whom evidence suggests are more likely to be victims of crime and have less confidence in the justice system. In that respect, people who may particularly benefit from the Bill are: children and young people; women and girls; minority ethnic communities (in particular women and girls from these communities); disabled people (in particular people with learning disabilities); and people who identify as LGBT+.

The Bill has been considered in the context of the public sector equality duty and it has been assessed that the Bill will not discriminate against people because of any protected characteristics they have.

The EQIA has found that the most significant differential impact on a protected characteristic is in relation to the provisions which focus on sexual offence cases and on the protected characteristic of sex. This is due to the fact that the majority of victims in these cases are women and girls, and the majority of accused are men. Where differential effects have been identified, these are assessed to be positive as they should improve the individual's experience of the justice system.

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<sup>79</sup> *ibid*

<sup>80</sup> [The-Scottish-LGBT-Equality-Report.pdf \(equality-network.org\)](#)

Concerns have been noted about the impact that sexual offence provisions may have on the accused. These concerns have been considered in terms of human rights and the reforms are assessed to be compliant with the European Convention on Human Rights (ECHR). Further details about the human rights impacts can be found in the Policy Memorandum that accompanies the Bill.

Concerns have also been noted in respect of the impact on complainers in sexual offence cases (who are predominantly women and girls) in relation to changes to the majority needed for a verdict in jury trials. As set out above in the Bill's Policy Memorandum, it is not considered that retaining the simple majority would deliver the appropriate balance in safeguarding the delivery of justice and fairness for all. These measures should be seen as part of the wider package of reforms in the Bill, many of which will support complainers and help them to give their best evidence. In addition, other non-legislative work being taken forward by the judiciary to address the impact of rape myths on jury decision making through the development of standardised instructions which address common rape myths and preconceptions among jurors should also contribute to mitigating these concerns.

Operational considerations will be required in relation to some measures when implemented to ensure that there are no unintended negative consequences in terms of discrimination. For example, in relation to the provisions to extend special measures in civil cases, where a disabled person uses a special measure, such as giving evidence by video link, there may be a need to check in individual cases that the measure will work appropriately and to provide any additional support required to ensure that it does.

Overall, the EQIA has identified no significant negative impacts associated with the policy content of the Bill and the Scottish Government has concluded that no changes to the Bill policies are necessary as result.

The Scottish Government will continue to work with stakeholders and organisations with an interest in the Bill to ensure full account is taken of equality issues as the Bill progresses through Parliament.





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