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Abusive Behaviour and Sexual Harm (Scotland) Bill: Stage 3

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Stage 3 proceedings on the Abusive Behaviour and Sexual Harm (Scotland) Bill are scheduled to take place on 22 March 2016.

This briefing considers a number of the key issues raised during the Justice Committee's stage 1 consideration of the Bill and also considers some of the key amendments lodged at stage 2 in relation to those issues. The briefing focusses on provisions in the Bill dealing with: domestic abuse; the disclosure or threatened disclosure of intimate images ("revenge porn"); and statutory jury directions relating to sexual offences.

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INTRODUCTION

In June 2014, the Scottish Government published Equally Safe: Scotland's Strategy for Preventing and Eradicating Violence Against Women and Girls ("the Strategy"). The Strategy was co-produced with COSLA and set out the Government's ambition to "create a strong and flourishing Scotland where all individuals are equally safe and respected and where women and girls live free from abuse and the attitudes that help to perpetuate it." (Scottish Government 2014)

Priorities, which were identified in seeking to achieve this aim, included that interventions should be early and effective thereby preventing violence and maximising the safety and wellbeing of women and girls; and that men should desist from all forms of violence against women and girls and perpetrators of such violence receive a robust and effective response.

In March 2015, the Scottish Government published the consultation Equally Safe – Reforming the criminal law to address domestic abuse and sexual offences. (Scottish Government 2015)

The consultation sought views on whether a specific criminal offence of domestic abuse would make the prosecution of domestic abuse more effective and better reflect the true nature of this crime. The consultation also sought views on a proposal to create a specific criminal offence to address the problem of the non-consensual sharing or distribution of private, intimate images, often by ex-partners, sometimes referred to as "revenge porn." The consultation also sought views on three specific reforms which are intended to improve how the justice system addresses crimes of domestic abuse and sexual offending:

- introducing statutory jury directions for sexual offence cases;
- allowing cases of sexual offences against children committed elsewhere in the UK to be prosecuted in Scotland; and
- expanding the disposals available to the court to protect victims from harassment where the court is satisfied that a person did commit an offence, but they are unfit to stand trial by reason of a mental or physical condition.

The Abusive Behaviour and Sexual Harm (Scotland) Bill was introduced in the Parliament on 8 October 2015.

The Bill includes, amongst other things, provisions setting out a new domestic abuse aggravator; a new offence for the non-consensual sharing of private and intimate images ("revenge porn"); a requirement for juries in sexual offence cases to be given specific directions by the trial judge where certain conditions apply; and reforms to the system of civil orders available to protect communities from those who may commit sexual offences.

PARLIAMENTARY CONSIDERATION

The Parliament's Justice Committee was designated as lead committee on the Bill and published its stage 1 report on 21 January 2016. The Scottish Government produced a written response to the stage 1 report on 26 January. The Bill completed stage 1 (consideration of general principles) with the stage 1 debate on 28 January 2016.

Stage 2 consideration of the Bill was carried out by the Justice Committee at its meetings on 1 March and 8 March 2016. Stage 3 proceedings are scheduled to take place on 22 March 2016.

RECOMMENDATIONS AT STAGE 1 AND KEY AMENDMENTS AT STAGE 2

Domestic abuse

The Bill as introduced provides for a new statutory aggravation where an offence involved abuse of a person's partner or ex-partner, and requires the courts to take account of the aggravation when sentencing offenders. The aggravation will apply where it is libelled in an indictment or specified in a complaint that an offence is aggravated by involving abuse of the partner or ex-partner of the person committing it and the offence is then proven to be aggravated. An offence will be aggravated if in committing the offence the person intends to cause a partner or ex-partner to suffer physical or psychological harm or where a person is reckless as to causing the partner or ex-partner to suffer physical or psychological harm. Psychological harm includes fear, alarm or distress. The aggravation does not require a pattern of behaviour to have taken place and will apply in situations where the offence is a first offence.

Justice Committee position

The Justice Committee supported the Scottish Government's proposals in this area and agreed with the bulk of evidence received that this provision will help underline that the criminal justice system should treat any case of partner abuse with the seriousness that it deserves.

Evidence

The vast majority of evidence received by the Committee that expressed a view on the domestic abuse aggravator in section 1 of the Bill, supported it. Allowing for some reservations as to particular aspects of its wording, most stakeholders appeared to view the wording of section 1 as robust. Police Scotland, which would of course have to rely on the provision in practice, described it as "clear and concise" and reflective of "tried and tested" legislation on other aggravations that the police are accustomed to applying.

However, the most significant dissent towards the new provision came from the Law Society of Scotland which argued that the aggravation would in practice "be difficult to prove", because of the requirement to establish intention or recklessness.

Amendments

Echoing the Law Society's concerns, Margaret Mitchell MSP brought forward a probing amendment at stage 2 which sought to restrict the test for the domestic abuse aggravation to intent rather than "intent or recklessness" to cause a partner or ex-partner to suffer physical or psychological harm. Ms Mitchell stated:

> "Although I believe that the intent test is robust and objective, I have concerns that the adoption of the recklessness test for a first offence, as opposed to a second offence or

> subsequent offences where a pattern of behaviour has been established, is potentially more subjective.
>
> The point of lodging the amendment and raising the matter is purely to generate more discussion about it and to hear the cabinet secretary's comments on it, particularly on the first offence and recklessness issues." (Scottish Parliament 2016)

In response, the Cabinet Secretary for Justice stated that the amendment would have the effect of restricting the circumstances in which the aggravation would operate i.e. it would only be offences involving abuse of a partner or ex-partner where it was proven that the accused intended, in committing the offence, to cause their partner or ex-partner to suffer physical or psychological harm. The Cabinet Secretary stated:

> "We have taken the approach in the bill because we consider that where, for example, a person commits a sexual offence against their partner or ex-partner, or assaults them, it should not be open to them to argue that the aggravation should not apply because it was not their intent to cause their partner physical or psychological harm. We consider it appropriate that in circumstances where it is a foreseeable consequence of someone's actions that their partner or ex-partner was going to suffer physical or psychological harm, the aggravation should operate. That means that recklessness should be included." (Scottish Parliament 2016)

Ms Mitchell reiterated that the amendment was merely a probing amendment and withdrew it but asked that the Cabinet Secretary consider at stage 3 the issue of a first offence being subject to the domestic abuse aggravation.

Disclosing, or threatening to disclose, an intimate photograph or film

Provisions in the Bill

The provisions in the Bill will make it a criminal offence for a person to share, publish or distribute private, intimate images relating to another person without that person's consent. It will also be an offence to threaten to disseminate intimate images. The distribution of such images in the circumstances outlined is often referred to as "revenge porn".

"Revenge porn" has become a generally accepted term for the non-consensual publication of explicit images by an individual of an ex-partner, usually, although not exclusively, via websites which specifically cater for this type of material. (The Justice Committee was made aware during stage 1 of views that "revenge porn" is an insensitive or inapproriate term, best avoided).

Photographs and videos on such sites often link to a person's social media accounts with the aim of prompting unsolicited contact and causing distress to victims. There have been cases in which the names and contact details of victims have been posted together with such private images. Depending on the facts and circumstances of a particular case, there are already a number of criminal offences which can be used to prosecute people who publish or share private images of a partner or former partner without their consent; for example, breach of the peace, threatening or abusive behaviour, stalking and improper use of a public electronic communications network.

The Policy Memorandum to the Bill acknowledged that in some cases there may already be criminal remedies to address this type of conduct. It cited a mixture of common and statute law crimes including blackmail, threatening or abusive behaviour, stalking, and improper use of a public communications network. However:

> "…in the absence of an offence specifically concerned with the sharing of intimate images the exact scope of the law in this area can be seen by many as being unclear. Victims of this kind of behaviour may not be aware that a criminal offence has been committed against them, and potential perpetrators may not be aware that what they are doing is criminal. Even where a successful prosecution has taken place, a victim may consider that the prosecution of the perpetrator for an offence such as threatening and abusive behaviour does not fully reflect their particular experience.
>
> By providing for a new offence concerning the sharing of private, intimate images, we intend to make clear that it is unlawful to share private, intimate images of another person without their consent."

Justice Committee position

In its stage 1 report, the Justice Committee supported the introduction of a new offence of the non-consensual sharing of intimate images, as set out in section 2 of the Bill on the basis that the behaviour the offence would address can be enormously hurtful and humiliating, and that treating it as criminal is not disproportionate. The Committee also noted evidence that some of the conduct encompassed in the proposed offence may already be criminal. The Committee did not see this as eliminating the need for the new offence, as some such conduct may not currently be criminal, or may not be subject to sufficiently stringent sanctions under existing law. The drafting of a new law provides an opportunity to set out the parameters of the offending behaviour with greater clarity and consistency. It also sends a clear message about the unacceptability of conduct that modern technology has rendered disturbingly easy to undertake, and may therefore have a deterrent effect.

The Committee also noted differing views in evidence (discussed below) as to whether the proposed restriction of the section 2 offence to photographs or film was appropriate. Some witnesses considered it important that the focus of the offence remain on images of the body which, they considered, had particular power to humiliate. Others saw merit in including, for instance, text or voice recordings of intimate conversations. A clear majority of the Committee supported the approach set out in the Bill, and were mindful of the risks of unintended consequences if the Bill took too wide an approach. However, the Committee asked the Scottish Government to keep an open mind on this issue, in the light of the evidence it received.

In response, the Scottish Government emphasised that the decision to restrict the offence to the sharing of intimate images was taken as almost all the cases which it was aware of have involved the sharing of images, which may enable a complete stranger to identify the victim, and this is especially likely to cause distress. The Government did however, state that it was happy to continue to monitor this to assess whether there is a need to reconsider the scope of the offence in the future.

Evidence

The overhwelming majority of the evidence received by the Committee at stage 1 supported the creation of a new offence in principle and many stakeholders saw it as very important that it become law. However, as noted above, a number of stakeholders were concerned that the scope of the offence was too narrow and that it should be amended to include other forms of written and audio communication such as texts, letters and voice-mail recordings).

Scottish Women's Aid (SWA) was one such stakeholder and pointed to the Policy Memorandum which stated that the unlawful sharing of such media may be prosecuted using the Communications Act 2003 ("the 2003 Act") or the offence of threatening and abusive behaviour in the Criminal Justice and Licensing (Scotland) Act 2010.

SWA argued that the 2003 Act is not an "adequate substitute" as the offence at section 27 of the Act can only be tried under summary procedure and not solemn procedure which limits the custodial and financial penalties which can be imposed. The proposed offence in the Bill can be tried under both summary and solemn procedure. As a result, SWA argue that women who are subject to abuse by having private written and audio communications shared without their consent would have a lesser protection and that perpetrators of such abuse may tailor their behaviour to accommodate this perceived gap.

In contrast, a number of stakeholders felt that the scope of the offence was too wide and could potentially criminalise what was perceived to be relatively innocent (or naive) behaviour. For example, Michael Meehan of the Faculty of Advocates invited the Committee to reflect on the interplay between the Bill's definition of intimate image and the fact that the offence could be committed without any intention to cause fear, alarm or distress; recklessness being sufficient:

> "I will give an example. A person comes home to find his flatmate asleep on the couch wearing only his boxer shorts and takes a picture of the flatmate. If he was to show that to another flatmate, he would be guilty of an offence under the Bill. The Bill provides no defence to that. […] A person might think —this is amusing and take a photograph to record the amusing moment. The last thing that that person intended to do was to cause fear, alarm or distress. However. because that requirement [that the offence can only be committed by intent] is not there, taking that photograph would be criminal conduct."

In response, the Crown Agent, Catherine Dyer, appeared not to disagree that the circumstances set out by Mr Meehan might potentially be a crime, describing the situation as "probably an intrusion". However, she asked the Committee to focus on:

> "…the impact on the victim. There has to be a victim. It is not to do with jokes. There must be a person who indicates that the exposure was harmful, upsetting and distressing to them." (Scottish Parliament 2016a)

Amendments

The scope of the offence

An amendment to expand the scope of the disclosure offence in the Bill was brought forward at stage 2 by Margaret McDougall MSP. The amendment sought to have sound recordings containing intimate content or intimate written communications included within the scope of the offence. Accordingly, subsequent amendments would replace "photograph or film" in the Bill with "an item".

Ms McDougall stated:

> "If we cover disclosure only of photograph or film, there will be a loophole in the bill. When it comes to sharing, for example, screenshots of intimate text-based conversations or the sharing of intimate content in the form of texts or sound on the internet or social media, as Scottish Women's Aid stated, by specifying photographs and films the bill excludes the sharing of private and intimate written and audio communications.
>
> The exposure of the threat of sharing those has the same outcome - it is designed to humiliate and control the victim. Sometimes, text and images are sent at the same time. Will we criminalise the image but not the abusive and threatening text? For example, the sharing of an intimate image on Facebook without consent would be a prosecutable offence under the bill. However, if someone were to share an intimate conversation or a screenshot of an intimate conversation, that would not be covered. I would argue that the

> sharing of that type of content could have the same effect as sharing intimate images without consent; it could cause just as much fear, alarm or distress to the victim and arguably would be designed to do so." (Scottish Parliament 2016)

In response, the Cabinet Secretary for Justice reiterated the Scottish Government's view that almost all the cases which it was aware of have involved the sharing of images which may enable a complete stranger to identify the victim, and that this is especially likely to cause distress. The Cabinet Secretary also stated that the Government's understanding was that the amendments brought forward by Margaret McDougall may unintentionally criminalise behaviour in certain circumstances.

> "On the question of unintended consequences, I note that these amendments apply not only to intimate recordings - written or spoken by the victim - but also those directed to or left for the victim. A perverse effect of that is that a person could face criminal liability for publishing or disclosing a communication that they themselves had written, or a voicemail message that they had left.
>
> More generally, although it is hard to envisage circumstances in which someone would have legitimate reason to share intimate photographs or films of their partner or ex-partner with a third party without their consent, it is easier to imagine circumstances in which they might wish to share a written message or voice message with a friend.
>
> They may, for example, be confused or even fearful because of what they might consider to be disturbing sexual content in a message sent to them. They may wish to seek advice about what to do about that and, if these amendments are agreed to, they could be criminally liable in those circumstances." (Scottish Parliament 2016)

The Cabinet Secretary urged Committee members not to support the amendments and, following a division, the amendments were disagreed to.

The issue of recklessness

A probing amendment brought forward by Margaret Mitchell MSP sought to remove recklessness from the circumstances in which the offence could be committed and restrict those circumstances to ones in which it was proven that the accused had intended to cause the person featured in a photograph or film fear, alarm or distress. Ms Mitchell lodged the amendment in light of the fact that both the Law Society of Scotland and the Faculty of Advocates had expressed concern about the inclusion of recklessness within the mens rea of the offence as being too wide.

During stage 1 evidence, Grazia Robertson from the Law Society of Scotland stated:

> "There should be intention to cause harm or humiliation rather than recklessness. The term recklessness is too wide. I do not like the term revenge porn but I think that we all understand what it means. The issue is not the porn: it is the revenge element. Revenge is crucial in order for it to be that type of offence; if a person has exposed images that we find embarrassing, humiliating or upsetting, for example, that would be more of a privacy offence." (Scottish Parliament 2016a)

In response to Ms Mitchell's amendment, the Cabinet Secretary stated that the Government had decided to include recklessness as it should not be open to an accused to escape criminal liability because, although they might have been well aware that the disclosure of an intimate image would cause the person who appeared in the image to suffer fear, alarm or distress, that was not their intention:

> "We consider it appropriate that the offence is committed in circumstances in which it is a foreseeable consequence of someone's decision to disclose or threaten to disclose an intimate image that they will cause the person who appears in the image to suffer fear, alarm or distress.
>
> That is what the bill provides by having recklessness as well as intent as the mens rea of the offence. We do not consider that it should be open to offenders to argue that they are not guilty of the offence because, although they were reckless as to whether, in disclosing an intimate image, they might cause the person to suffer fear, alarm or distress, it cannot be proven that that was their intention." (Scottish Parliament 2016)

Ms Mitchell was content that the discussion had been useful in highlighting the issue and providing clarity on why recklessness had been included in this section of the bill and withdrew the amendment.

The section 2(5) defence and "upskirting"

Section 2(5) of the Bill provides for a defence in a situation where the film or photograph was taken in a place to which members of the public had access (whether or not on payment of a fee), and members of the public were present. The Policy Memorandum to the Bill explains that this ensures that the offence does not extend to, for example, photographs taken by members of the public of a naked protestor, or of a streaker at a sporting event.

For a number of witnesses who provided evidence to the Committee, the trouble with this exception was that it went too far, and that the Government had unwittingly created a loophole for peeping Toms. It would appear that the effect of this provision is that there would be a defence in the case of photographs taken in parks, on beaches or (depending on the premises) in changing rooms. The Committee's attention was drawn to the practice of "upskirting"; taking photographs of intimate body parts without the consent, or knowledge, of the subject. Recent changes to the law have made clear that the practice itself is illegal, but stakeholders expressed concern that the distribution of images obtained from it appeared not to be covered by the Bill because of the section 2(5) defence.

To that end, Elaine Murray MSP brought forward an amendment to ensure that the bill would cover the distribution without consent of "upskirting" and "downblousing" images. Ms Murray pointed out that such images often end up on websites that are dedicated to the sharing of non-consensually taken private sexual photographs. Ms Murray acknowledged that, although the taking of such non-consensual images is prohibited under the Sexual Offences (Scotland) Act 2009, there is no provision to prevent their distribution.

In response, the Cabinet Secretary stated that the effect of the amendment would be that the public place defence would only be available where the subject of the film or photograph consented to being in an intimate situation in a public place, for example, where a person deliberately chooses to streak at a sporting event or a person is at a naturist resort. The defence would not be available where a person distributes an image showing, for example, a subject of a photograph or film who has been sexually assaulted or stripped against their will in a public place:

He went on to say:

> "That said, we think that the exact wording of amendment 4 does not quite achieve what we consider to be the intended effect. In particular, we think that someone who is exposed in a public place cannot always be said to have consented to be in an intimate situation, as that implies that someone else is always involved in their being in an

intimate situation. Instead, we think that it would be more accurate to say that, on that occasion, they chose to be in an intimate situation.

Therefore, we do not think that the amendment is worded correctly. The member has said that the amendment is intended to ensure that so-called upskirting or downblousing photographs taken in public places are covered by the offence. However, it is not clear to us that the amendment achieves that, as it is not clear that people who are photographed in such situations are in an intimate situation, as defined at section 3(1). In such cases, the person taking the photograph or film has operated equipment in such a way as to record an image of a person's genitals, buttocks or breasts in circumstances where they would not otherwise be visible. Therefore, it is not clear that there was any exposure on the part of the person being recorded, either consensual or otherwise." (Scottish Parliament 2016a)

The Cabinet Secretary reiterated the Government's response to the Committee's stage 1 report that if the distribution of voyeuristic upskirting images were to be made an offence, this would be best achieved by building on the voyeurism offence in the Sexual Offences (Scotland) Act 2009. He also stated that the Government would appreciate some more time to consider the impact of restricting the defence to ensure that there are no unintended consequences which would allow perpetrators to evade justice. He stated that he would be happy to work with Ms Murray to see whether a workable amendment could be developed to address the issues which had been highlighted. On that basis, Ms Murray withdrew the amendment.

Jury directions relating to sexual offences

Concerns have been raised in the past that members of juries in sexual offence cases may hold certain preconceptions about the precise nature of sexual violence which may in turn, make understanding victims' responses to such crimes more problematic. The Policy Memorandum to the Bill states:

> "It is thought that some members of the public imagine that a sexual assault is almost always violent and that, if assaulted, a victim would be very likely to respond by trying to physically resist their attacker."

Prior to the decision of the High Court of Justiciary in Lord Advocate's Reference (No 1 of 2001) a defining element of rape was that sexual intercourse took place against the will of the victim.

To prove that intercourse was against the will of the victim it was necessary for the prosecution to show that the accused used, or threatened to use, force. This understanding of the law changed when in Lord Advocate's Reference, the Court held that rape is defined as a man having sexual intercourse with a woman without her consent, regardless of whether or not force was used.

Currently under Scots law, a sexual offence is committed when a person engages in sexual activity with another person without consent. Therefore, there is no requirement that the offender must use physical force to overcome their victim, or that the victim must attempt to physically resist their assailant for an offence to be committed.

It has also been suggested that some members of the public (i.e. jurors) may regard the fact that a significant amount of time has passed between the time of an alleged sexual crime taking place and a report being made to the police as being evidence that the allegation is false. This is despite the fact that there may be very good reasons for such a delay to have occurred.

Provisions in the bill

The Bill introduces, for the first time in Scotland, statutory jury directions which must be given by the judge in sexual offence trials where certain conditions apply. The Bill provides for two statutory jury directions:

- Where evidence is led at trial which suggests that a person did not tell or delayed in telling anyone about the offence, or did not report or delayed reporting the offence to the police, the judge, in charging the jury, must advise that there can be good reasons why a victim of a sexual offence may not tell others about it or report it to the police, or may delay in doing so, and that this does not necessarily indicate that an allegation is false

- Where evidence is given which suggests that sexual activity took place without physical resistance on the part of the victim, the judge, in charging the jury, must advise that a person might not physically resist the sexual activity and that the absence of physical resistance on the part of the victim does not necessarily indicate that the allegation is false. It also provides that where evidence is given which suggests that the sexual activity took place without the accused using physical force to overcome the will of the victim, the judge must advise that a person may commit a sexual offence without using physical force and its absence does not necessarily indicate that the allegation is false.

The Bill provides that a direction need not be given if the judge considers that the circumstances of the case are such that no reasonable jury could consider the fact that there was a delay or failure to report the offence, or tell another person about the offence, to be relevant to the question of whether the offence has been proven. This may be the case where, for example, the offence is alleged to have been committed against someone who was a very young child at the time the offence was alleged to have been committed and could not understand that an offence had been committed against them.

Evidence

The inclusion of jury directions proved to be the most contentious aspect of the Bill. Opinion was split between those who felt that jury directions were wrong in principle in that they forced judges to give particular directions in particular circumstances, rather than letting the judge decide whether directions were appropriate given the particular circumstances of the case. It was also suggested that the introduction of statutory jury directions represented an unprecedented intrusion into the long held constitutional separation of powers. It was further suggested that the use of expert witnesses who could provide juries with expert testimony in relation to the circumstances pertaining to particular sexual offence cases would negate the need for such directions.

In evidence to the Committee, Lord Carloway explained that by “constitutional divide”, he meant a risk of a breach in the line between the role of politicians and the role of judges. Lord Carloway’s fears in relation to statutory directions are to some extent supported by evidence the Committee received supporting the reforms but arguing that it would only be fair to make statutory provision for various other directions, on a wide variety of matters, in order to address various other misconceptions perceived to lurk in the minds of juries. Of course, no such proposals could come into being without the future agreement of Parliament.

Supporters of statutory directions tended to say that there was no good reason why they should be opposed, because all they did was provide information to the jury that is factual, uncontroversial, and unobjectionable.

The submission from Rape Crisis Scotland described the content of the two directions as factual information which will assist juries in assessing the truth. Sandy Brindley of Rape Crisis Scotland commented that:

> "If the justice system is about justice and getting to the truth, I do not see why there would be an issue with giving people factual information that would assist them in interpreting the evidence that they are hearing."

The view of the Scottish Human Rights Commission was that the proposals did not raise any significant concerns in relation to human rights law, and may even have a positive impact in terms of Convention compliance. The SHRC submission discussed the relevance of Article 6 (right to a fair trial) of the European Convention on Human Rights, concluding that jury directions of the type set out in section 6 of the Bill amount to uncontroversial statements which may indeed serve to address misconceptions held by some members of the public around the behaviour of victims of sexual assault. The Commission did not consider that these statements, if delivered appropriately, would prejudice an accused's Article 6 rights.

Amendments

An amendment brought forward by Margaret Mitchell MSP sought to remove the section in the Bill on jury directions in its entirety.

Ms Mitchell repeated the arguments put forward by those stakeholders opposed to their introduction and stated that the introduction of jury directions represented a "dangerous precedent" and went on to say:

> "…the issues that the statutory jury directions seek to address can adequately be dealt with by the use of expert witnesses. The only reason that expert witnesses are not being used relates to the cost implications - a fact that was acknowledged by both Catherine Dyer, the chief executive of the Crown Office and Procurator Fiscal Service, and Lord Carloway, the then Lord Justice Clerk.
>
> Furthermore, given that the Scottish Government is in the process of undertaking jury research, there is a strong case for waiting for the results of that research, which would provide important evidence about how juries reach decisions and whether those misconceptions exist.
>
> I therefore ask the Scottish Government to think again about interfering with judicial independence and urge it to remove the provisions from the bill."

In response, the Cabinet Secretary for Justice stated that the provisions had been included in the Bill:

> "…to deal with the important underlying issue that some members of the public, and thus, some members of a jury, will hold preconceived and ill-founded attitudes towards how sexual offences are committed and how someone who is subjected to a sexual offence is likely to act both when the offence takes place and afterwards."

He went on to say that the intent behind the introduction of jury directions was simple: the Government wanted the focus of the jury to be on the evidence before them and that any preconceived and ill-founded attitudes that may be held should not play a part in the jury's decision.

The Cabinet Secretary was also keen to point out that if no issues relating to a delay in reporting a sexual offence are raised at trial, the jury direction is not required. This would also be the case where an issue relating to a delay may have been raised in evidence but the judge considers

that no reasonable jury would think that the issue of delay was material as to whether the offence was committed. Similar discretion is available to the judge in relation to a lack of force or physical resistance. For those reasons, the Cabinet Secretary urged the Committee not to support the amendment.

Ms Mitchell was not persuaded by the Cabinet Secretary's argument and pressed the amendment to remove jury directions from the Bill. Following a division, the amendment was disagreed to by 7 votes to 2 with Ms Mitchell and the Convener, Christine Grahame MSP, voting in favour of the amendment.

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