

# DRAFT VICTIMS BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the draft Victims Bill as published in Draft on 25 May 2022 (Bill [Bill or Chapter Number]).

These Explanatory Notes have been prepared by the Ministry of Justice in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.

These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The purpose of this Bill is to improve the end-to-end support for victims of crime so that they get the support needed to cope and recover from the impact of crime and feel able to engage and remain engaged in the criminal justice system. Together the measures will amplify victims' voices in the criminal justice process, strengthen transparency and accountability of criminal justice agencies and improve support for victims.
- 2 Clause 1 creates a definition of a victim for the purposes of this Bill.
- 3 Clauses 2 to 4 contain measures requiring the Secretary of State to issue a code of practice (Victims' Code) on the standards of services that must be provided to victims of crime and set out the procedure for doing so. In particular they:
  - set out four key principles that must be reflected in the provision of services set out in the Victims' Code, and provide a power for the Secretary of State to set out other matters which must be reflected in the Victims' Code in regulations;
  - make provision for the Victims' Code to set out who is entitled to receive services and any restrictions;
  - require consultation on changes to the Victims' Code, except where these are considered to be minor; and
  - Prevent any changes to the Victims' Code which would significantly reduce the services which must be provided to victims of crime.
- 4 Clause 5 contains measures to enhance scrutiny of the service victims receive. In particular, it:
  - places a duty on specified criminal justice bodies within a police area (police, CPS, courts, prisons, probation and Youth Offending Teams) to keep under review their own compliance with the Code, and enhance the role of Police and Crime Commissioners (PCCs) by placing them under an overarching duty to keep under review the bodies' compliance with the Victims' Code;
  - strengthens the mechanisms for reviewing compliance with the Code through improved data collection and sharing and creating a duty for the specified criminal justice bodies and PCCs to take into account victims' experiences.
- 5 Clauses 6-10 contain measures to improve victim support services. In particular, they:
  - place a duty on specified authorities (including local authorities, Police and Crime Commissioners and Integrated Care Boards) to collaborate with each other when commissioning victim support services in order to facilitate more holistic and better coordinated victim support services;
  - define Independent Sexual Violence Advisors (ISVAs) and Independent Domestic Violence Advisors (IDVAs), introduce guidance setting out recommended minimum standards and best practice for ISVAs and IDVAs, and place a duty on ISVAs, IDVAs and other persons whose functions relate to victims of criminal conduct, or any aspect of the criminal justice system, to have due regard to this guidance, and how this relates to their role.
- 6 Clauses 11 – 13 contain further measures to enhance oversight of the services victims receive. In particular, they:
  - amend the role of the Victims' Commissioner (VC) to require their annual report to be laid in Parliament and require that agencies respond to recommendations made in

the VC's annual report, and to remove the current duty on the VC to keep under review the operation of the Victims' Code;

- give specified Ministers the power to direct regular joint thematic inspections by criminal justice inspectorates on victims' experiences to ensure a clearer and sharper focus on delivering an improved experience for victims; and
- remove the need for a victim of crime to raise a complaint via an MP before it can be escalated to the Parliamentary Commissioner for Administration and Health Services Ombudsman (PHSO).

## Policy background

- 7 In 2019/20, it was estimated that 6.6% of 10-15-year olds and around one in five adults (19.3%) in England and Wales were victims of crime.<sup>1</sup>
- 8 In 2019, the Conservative Party's manifesto committed to pass a Victims Law which would guarantee victims' rights and the level of support they can expect.
- 9 In December 2021, the Government launched a public consultation "Delivering justice for victims: A consultation on improving victims' experiences of the justice system" to inform development of this law. This consulted broadly on how to improve what victims can expect from the criminal justice system and how to improve aspects of victim support services. The consultation ran for eight weeks and received over 600 responses. Its aim was to better understand the experiences of victims and harness expertise from frontline practitioners and experts to ensure that the Bill and accompanying measures improve support for victims throughout the criminal justice system.
- 10 The Government's response to the consultation set out the legislative and non-legislative measures planned to improve victims' experiences of the justice system. The Victims Bill will facilitate a more consolidated framework to better support victims through the following legislative measures:
  - placing the overarching principles of the Victims' Code in primary legislation
  - enhancing local oversight of delivery of the Victims' Code through better data collection and an enhanced role of Police and Crime Commissioners (PCCs)
  - introducing a duty on PCCs, local authorities and Integrated Care Boards to collaborate locally, to facilitate more holistic and better coordinated victim support services
  - placing Independent Sexual Violence Advisors (ISVAs) and Independent Domestic Violence Advisors (IDVAs) on a statutory footing by requiring persons who work with victims of criminal conduct, or any aspect of the criminal justice system to have regard to guidance about how to work with them.

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<sup>1</sup> For the April 2019 to March 2020 period. Crime in England and Wales: Appendix tables, summary table 2 and table A11 – Office for National Statistics, <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/crimeinenglandandwalesappendixtables>

- updating the role of the Victims' Commissioner, including a requirement for departments and agencies with a responsibility to meet the requirements under the Victims' Code to respond to relevant annual report recommendations
  - bolstering national oversight through a requirement for regular joint thematic inspections on victims' experiences
  - removing the need for a victim of crime to raise a complaint via an MP before it can be escalated to the PHSO
- 11 The draft Bill is being published for pre-legislative scrutiny. The Government will consider the feedback from the Committee before introducing the final Bill to Parliament.

## The Victims' Code

- 12 Under section 32 of the Domestic Violence, Crime and Victims Act 2004 the Secretary of State must issue a code of practice for services that must be provided to victims of criminal conduct by those persons working in the criminal justice system or having some function related to it. The first Code of Practice for Victims of Crime (Victims' Code) came into effect in 2006. It has been updated several times. The latest revised Victims' Code, which was laid before Parliament in November 2020 and came into force on 1 April 2021, sets out 12 overarching services which eligible victims are entitled to receive and are referred to as 'rights' in the Code.
- 13 "Delivering justice for victims: A consultation on improving victims' experiences of the justice system" consulted on proposals to place the key principles of the Code in primary legislation and the detail of the Code in regulations and guidance, with the intent of raising the profile of the Victims' Code.
- 14 Respondents to the consultation were in favour of these proposals. This Bill will repeal and restate the Code provisions of the 2004 Act and will set out in primary legislation the key principles that must be reflected in the services provided for by the Victims' Code.
- 15 The Bill will also create a power for the Secretary of State to make regulations which may stipulate further matters for which the Victims' Code should make provision. The intention is that the regulations will set out the key entitlements and require the Victims' Code to make provision for services in respect of these. By placing these entitlements in regulations, rather than on the face of the Bill, flexibility is retained to review and amend provision about the entitlements so as to ensure that these continue to best serve victims over time.
- 16 The Victims' Code will remain as a statutory code which will set out in detail the services that must be provided to victims of crime. The Code will need to reflect the key principles as set out in the Bill and the further detail provided for in the regulations. The Code will explain who is entitled to access services and provide information about how they will be delivered. Although the Victims' Code requires a public consultation before any changes can be made to it, this Bill will allow for changes that the Secretary of State deems to be minor changes, such as clarifications or corrections, to be made to the Victims' Code without consultation.

## Victim support services

- 17 Victims are likely to experience a range of impacts following a crime and may require advice, recovery and support services, which could be medical, therapeutic, practical and/or emotional. The Victims' Code sets out the entitlement for victims to be referred to support services.
- 18 The Government consulted on whether more formalised collaboration structures could help to improve service provision for victims of certain crimes (domestic abuse, sexual violence, and other serious violence), because currently there is no framework or structure that brings together the range of public sector bodies who provide support services to victims outside of safe

accommodation.

- 19 This Bill will place a new duty on local authorities, Police and Crime Commissioners (PCCs) and Integrated Care Boards to collaborate when commissioning support services for victims of domestic abuse, sexual abuse and serious violence (excluding services for victims living in safe accommodation, which are covered by a separate legislative framework in Part 4 of the Domestic Abuse Act 2020), to facilitate more holistic and coordinated support services.
- 20 It will require them to prepare, publish and implement a joint local strategy to set out the aims and approach for commissioning relevant services from each agency and an explanation of how the duty requirements have been met. When preparing the strategy, they will be required to have regard to particular issues and consult certain groups, set out in more detail below. This is to ensure that strategies are informed by relevant needs assessments, needs of victims who may experience barriers to using generic support services, existing local and national provision, and victims' voices and sector expertise.
- 21 This will be underpinned by guidance to address practical issues in relation to carrying out this duty, such as local partnership structures that may work for collaboration and information to support strategy production and non-legislative oversight structures to consider the published strategies and solutions to local challenges.

## **Independent Advisors**

- 22 Depending on their varying needs and experiences, victims of domestic and sexual abuse may require a range of support which, if appropriate, can be provided by Independent Domestic Violence Advisors (IDVAs) and Independent Sexual Violence Advisors (ISVAs). These advisors provide support to help victims cope, recover and engage with the criminal justice system (if they choose to do so). The type and level of support provided by these advisors varies from case to case depending on the needs of the individual and their situation.
- 23 The "Delivering justice for victims: A consultation on improving victims' experiences of the justice system", consulted on how to strengthen these victim advocate roles, with a focus on ISVAs and IDVAs, looking into how to promote better join-up across agencies, reviewing the standards they operate under, alongside guidance and frameworks.
- 24 In response to the consultation feedback, this Bill will create a definition of ISVAs and IDVAs. The aim of this definition is to ensure greater consistency across the sector, while ensuring innovation and protecting specialisms across these roles as well as promoting increased awareness of ISVAs and IDVAs by victims and those who work alongside them.
- 25 Linked to this definition, the Bill will also create a duty for the Secretary of State to issue guidance about ISVAs and IDVAs. This guidance will improve clarity on the functions of these roles, how they work with victims with specific needs, and how other individuals and agencies can best work with ISVAs and IDVAs to support victims in a holistic way.
- 26 A duty will therefore also be created for ISVAs, IDVAs, and those that have a function relating to victims of criminal conduct, or any aspect of the criminal justice system, to have due regard to this guidance, fostering greater collaboration, and working effectively together to support victims.

## **The role of the Victims' Commissioner**

- 27 The Secretary of State is required to appoint a Commissioner for Victims and Witnesses, as set out in Clause 48 of the Domestic Violence, Crime and Victims Act 2004. The consultation consulted on the most critical functions for an effective Victims' Commissioner.
- 28 This Bill will amend the role of the Victims' Commissioner to aid promotion of the interests of victims and witnesses in line with the responses to the consultation, and to ensure that the role is

aligned with the responsibilities of other agencies and organisations that have a role in overseeing the treatment of victims.

- 29 This Bill will make provision for PCCs and agencies to monitor data on Victims' Code compliance and victim feedback. To reflect this, the Bill will also transfer the power to keep under review the operation of the Victims' Code from the Victims' Commissioner to PCCs. The Victims' Commissioner will continue to play a vital role in improving Code compliance nationally through their other functions, for example in publishing reports and making recommendations, advising Ministers and through their role on the National Criminal Justice Board. The Victims' Commissioner will also retain the explicit power to 'make recommendations around changes to the Code', as set out in statute.
- 30 To ensure the ongoing visibility of the Victims' Commissioner and increase parliamentary and public focus on victims' experiences, the Bill will create a requirement for the Victims' Commissioner's annual report to be laid before Parliament.
- 31 The Bill will also place a duty on specified relevant criminal justice agencies and Government departments to respond to any recommendations made to them in the Victims' Commissioner's annual report within 56 days of it being published. The response will have to set out the actions taken or proposed actions in response to the recommendation, or set out why the agency has not taken, or does not propose to take, action in response to the recommendation. These responses must be published, and a copy sent to the Victims' Commissioner and the Secretary of State.

## Monitoring the Victims' Code

- 32 The Bill will place a duty on relevant criminal justice bodies to collect data and keep their compliance with the Victims' Code under review at a local level. This duty will help ensure there is effective and consistent oversight, providing a clear picture of compliance with the Code for criminal justice bodies to drive up standards on the service to victims. This requirement will apply to the following criminal justice bodies:

- The Police
- The Crown Prosecution Service (CPS)
- Her Majesty's Courts and Tribunals Service (HMCTS)
- Her Majesty's Prison and Probation Service (HMPPS)
- Youth Offending Teams.

- 33 This Bill will transfer the function of reviewing the operation of the Code from the Victims' Commissioner to PCCs by placing a duty on PCCs to keep under review relevant criminal justice bodies' compliance with the Code. The Bill contains a power to issue guidance in respect of the duties placed on the criminal justice bodies and PCCs under this section.
- 34 The Bill will also place a duty on each of the relevant criminal justice bodies and PCCs to ensure they take into account the experiences of victims as far as it is possible to do so in order to contextualise and add to the Code compliance data.
- 35 In order to exercise these functions, the Bill will place a duty on the criminal justice bodies to share the data obtained pursuant to this section with one another and with PCCs in order to support them in their duties to keep compliance with the Victims Code under review.

## Joint thematic inspections of victims' issues

- 36 The criminal justice inspectorates all have a responsibility for assessing the efficiency and effectiveness

of the criminal justice agencies they have responsibility for overseeing. Each inspectorate currently has its high-level functions set out in differing pieces of legislation. This legislation includes provision on how the inspectorates act jointly. This broadly sets out that the inspectors shall act together to prepare a joint inspection programme setting out what inspections they propose to carry out to effectively discharge their functions. It also states that the Home Secretary, Lord Chancellor and the Attorney General may jointly direct when a joint inspection programme is prepared and what form it should take. It is envisaged that the inspectorates will continue to agree and set out their proposed joint inspection programme in a Joint Business Plan, which typically covers a period of two years.

- 37 The inspectorates do already work together effectively to undertake joint thematic inspections. However, the Government wants to ensure that their programme of work regularly includes a focus on victims' issues. Therefore, the Bill will introduce the ability for relevant Ministers to direct joint thematic inspections by criminal justice inspectorates to assess the experiences and treatment of victims throughout the entire criminal justice process. The policy intention of these joint thematic inspections is to make inspectorates more effective at: identifying key issues in relation to victims across the whole system; understanding the cause of these issues and the best ways to address them and making recommendations that will ensure improvements in the service provided to victims.
- 38 This requirement will apply to the following inspectorates:
- HMI Constabulary and Fire and Rescue Services (HMICFRS) who hold responsibility for assessing the effectiveness of police forces and fire and rescue services
  - HM Crown Prosecution Service Inspectorate (HMCPISI) who hold responsibility for assessing the effectiveness of the CPS and the Serious Fraud Office
  - HMI Probation (HMIP) who inspect probation and youth offending services
  - HMI Prisons (HMIP) who inspect prisons and young offender institutions.
- 39 The Bill will create a new power for the Secretary of State (which in practice is envisaged to be the Secretary of State for Justice (if relevant in addition to the Lord Chancellor) and Home Secretary), Lord Chancellor and Attorney General acting jointly, to require any of the above inspectorates to carry out a joint inspection assessing victims' experiences and treatment. Under this power, it can be specified what key issues should be considered whilst carrying out that inspection and when this should be carried out. It is intended that the direction will specify only for the inspection to take place within a given joint inspection business plan cycle.
- 40 A joint victims' inspection can also include an inspection of HM Courts and Tribunals Service (HMCTS) in relation to their criminal jurisdiction and victims as long as the inspection includes matters other than those engaging judicial independence.

## **Removal of MP filter in relation to victims' complaints referred to the Parliamentary Commissioner for Administration**

- 41 The Parliamentary and Health Service Ombudsman (PHSO) combines the two statutory roles of Parliamentary Commissioner for Administration (PC) and Health Service Commissioner for England. The PC can investigate and make final decisions on, all complaints made against a specified set of government organisations.
- 42 The Bill will remove the need to refer a complaint via a person's MP for any victim of crime making a complaint to the PC and replace it with a dual access system. Under this process, a complaint can be made directly to the PC by:
- The person affected,



- A person authorised by them (including an MP), or
- Where they are deceased or otherwise unable to make the complaint or authorise another person to do so, their personal representative or another person (e.g. a family member) the PC assesses as suitable to represent them.

43 These measures will continue to allow for the affected person’s MP to be kept informed of the results of an investigation or a statement of the PC’s reasons for not conducting an investigation, even if the complaint was not made by the MP on their behalf, but only if the affected person has consented to the report or statement being sent to an MP. Where the PC makes a finding that there has been maladministration or a failure to perform a relevant duty, the PC may lay a special report before Parliament. This is consistent with the PC’s function, which is to assist Parliament in its scrutiny role.

44 Removal of the ‘MP filter’ will be an exception for victims of crime, for whom approaching an MP to share a potentially traumatic experience is more likely to be a barrier to making a complaint. This does not constitute an indication that the Government intends to remove the MP filter more widely.

## Legal background

### *Clauses 2-4*

45 The legislation providing for a code of practice (Victims’ Code) and the procedure for doing so is set out in primary legislation. The current provisions are sections 32 to 34 of the Domestic Violence, Crime and Victims Act 2004. This Bill restates these provisions in the 2004 Act in addition to setting out the key principles that must be reflected in the provision of services set out in the Victims’ Code and giving the Secretary of State a power to make regulations setting out further matters which the Victims’ Code must reflect. It also includes a new procedure for making minor amendments to the Victims’ Code.

### *Clause 11*

46 The legislation relating to the Commissioner for Victims and Witnesses is set out in primary legislation. The current provisions are sections 48 to 54 of the Domestic Violence, Crime and Victims Act 2004. This Act will continue to be the main Act dealing with the Victims’ Commissioner, and this Bill inserts new provisions (see clause 11) into the 2004 Act.

### *Clause 12*

47 The relevant legislation relating to joint inspections in respect of the following inspectorates is set out in primary legislation as follows:

- Police Act 1996 sections 54-56 and Schedule 4A in respect of HMI Constabulary and Fire and Rescue Services
- Crown Prosecution Service Inspectorate Act 2000 sections 1 and 2 and the Schedule
- Criminal Justice and Court Services Act 2000 sections 6 and 7 and Schedule 1A
- Prison Act 1952 section 5A and Schedule A1.

48 These Acts will continue to be the main Acts dealing with inspectorate powers, and this Bill inserts new provisions (see clause 12) into the schedules of the above Acts.

### *Clause 13*

49 The legislation relating to the PC is set out in primary legislation. The relevant provisions for the

purposes of this Bill are sections 5, 6 and 10 of the Parliamentary Commissioner Act 1967. This Act will continue to be the main Act dealing with complaints referred to the PC in relation to government departments, and this Bill inserts new provisions (see clause 13) into the 1967 Act.

## Territorial extent and application

- 50 Clause 16 sets out the territorial extent of the Bill (the jurisdiction of which the law forms a part). The provisions of the Bill extend to England and Wales (with the exception of Clause 13 where amendments to the existing system for victims' complaints to the Parliamentary Commissioner will apply UK-wide for complaints within the Parliamentary Commissioner's jurisdiction). Clauses 1-5 and 9-12 will apply to England and Wales. Clauses 6-8 will apply to England only.
- 51 It is the view of the UK Government that clauses 9 and 10 fall within the legislative competence of the National Assembly of the Senedd Cymru. Conversations are therefore on-going with the Welsh Government over securing Legislative Consent Motion support for these clauses
- 52 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

# Commentary on provisions of Bill

## Meaning of “victim”

### Clause 1: “Victim”

- 53 Clause 1 defines a “victim” for the purpose of the Bill.
- 54 Subsection (1) defines a victim as a person who has suffered harm as a result of being subjected to or witnessing criminal conduct. Subsection (3) states that criminal conduct means conduct that could be prosecuted under criminal law.
- 55 Subsection (2) defines harm as including physical, mental or emotional harm and economic loss.
- 56 Subsection (4) provides that a person can be a victim of criminal conduct for the purposes of this Section, irrespective of whether or not an offender is charged or convicted. This ensures that the provisions of the Code issued under clause 2 can require the provision of services to victims at all stages of the criminal justice process and to victims of offences in respect of which no criminal proceedings are eventually brought or where criminal proceedings result in a not-guilty verdict.

## The Victims’ Code

### Clause 2: Code of practice for victims

- 57 Clause 2 restates, with amendments, the provisions of section 32 of the Domestic Violence, Crime and Victims Act 2004 (The 2004 Act) that relate to issuing a Code of Practice (subsection (1)) in respect of the services provided to victims of crime by persons who have functions relating to victims or the criminal justice system as a whole.
- 58 Subsection (2) inserts a new clause into the re-stated provisions of the 2004 Act stating the key principles that must be reflected in the services provided under the Victims’ Code.
- 59 These principles are that victims of criminal conduct should:
- be provided with information to help them understand the criminal justice process;
  - be able to access services which support them;
  - have the opportunity to make their views heard in the criminal justice process; and
  - be able to challenge decisions which have a direct impact on them.
- 60 Subsection (2) also gives the Secretary of State a power to make regulations specifying any other matters which must be reflected in the Code. Subsections (3)-(5), as restated from the 2004 Act allow the Code, among other things, to:
- differentiate between different types of victims, for example so that particularly vulnerable victims might receive a faster service, or a service tailored to their needs;
  - benefit persons other than the victim, such as the relatives of deceased victims or parents of juveniles;
  - allow for regional variations in the way that services are provided to victims so that the code can reflect local practices.
- 61 Subsection (6) provides that the Code may not require anything to be done by a person acting in a judicial capacity or by a member of the Crown Prosecution Service when exercising a discretion.

### Clause 3: Procedure

- 62 Clause 3 restates the procedure for issuing and amending the Code as set out under section 33 of the Domestic Violence, Crime and Victims Act 2004. However, historic references to the Secretary of State for Justice and the Secretary of State for the Home Department have been amended to refer instead to “the Secretary of State”, which is defined in the Interpretation Act 1978 as meaning “one of Her Majesty’s Principal Secretary of State”. In practice this power is expected to be exercised by the Secretary of State for Justice acting in consultation with the Secretary of State for the Home Department.
- 63 Subsections (10)-(12) create a new secondary procedure for making amendments to the Victims’ Code which can be used where the Secretary of State considers the revisions to be minor. Such amendments can be made without a public consultation and include corrections, clarifications and revisions which reflect changes to the law or practice or procedure of the criminal justice system. Under this procedure, the Secretary of State must consult the Attorney General; lay a revised code before Parliament and stipulate by order when the revised Victims’ Code will come into force.

#### Clause 4: Effect of non-compliance

- 64 Clause 4 restates section 34 of the Domestic Violence, Crime and Victims Act 2004 and provides that a failure to comply with the Code does not, in itself, give rise to any liability to criminal or civil proceedings.

### Oversight of the treatment of victims

#### Clause 5: Review of compliance with Victims’ Code

- 65 Clause 5 uses the definition “elected local policing body” to define Police and Crime Commissioners (PCCs). “Elected local policing body” has the meaning given by section 101 of the Police Act 1996, namely; (a) a police and crime commissioner, and (b) the Mayor's Office for Policing and Crime. This is in contrast to the Clause 6 duty which applies to “local policing bodies”; the difference being that “elected local policing bodies” does not include the Common Council for the city of London Police area. This is because the Clause 5 duties will be discharged within PCC-chaired Local Criminal Justice Boards (LCJB). The city of London does not have its own LCJB, but is instead included within the London Criminal Justice Board. In addition, when criminal justice bodies break their data down to force area, London includes both City of London and the metropolitan police area. This approach has been confirmed as appropriate by the Association of Police and Crime Commissioners and the Home Office. For the purposes of Clause 5, elected local policing bodies are referred to hereafter as PCCs.
- 66 Clause 5 places a duty on PCCs and local criminal justice bodies to review compliance with the Victims’ Code. The duty is placed on local criminal justice bodies so as to enables PCCs to take the role of overseeing compliance with the Victims’ Code within each police area.
- 67 Subsection (1) places a duty on PCCs in each police area to keep under review how the local criminal justice bodies for the police area are complying with the Victims’ Code.
- 68 Subsection (3) places a duty on local criminal justice bodies for a police area to keep under review how they comply with the Victims’ Code , including placing specific duties on them to collect and share specified descriptions of data about the body’s compliance with the victims’ code with each other and with PCCs.
- 69 Subsections (3)(b) and (c), together with subsection (9), state that the criminal justice bodies’ duty to disclose information is limited to the disclosure of information required to enable the effective discharge of functions under this section and that duty does not require disclosure in contravention of the data protection legislation.
- 70 Together with subsection (12), subsections 3(b) and (c) create a power for the Secretary of State to specify in regulations the descriptions of data that should be collected and shared.

- 71 Subsection (4) places a duty on each local criminal justice body and PCCs to take into account the experiences of victims in the area as far as it is possible to do so in order to keep under review their compliance with the Victims' Code. This may include information collected by the bodies themselves or from elsewhere and may require the collection of new information where this is not available from existing sources.
- 72 Subsection (5) places a duty on the Secretary of State to consult such persons (if any) as the Secretary of State considers appropriate before making regulations. This does not create a statutory duty to conduct a public consultation and the nature and extent of consultation required is therefore left to the discretion of the Secretary of State. Subsection (6) requires the Secretary of State to issue guidance about how local criminal justice bodies and PCCs are to exercise their functions under this section, including the duties set out above to keep under review compliance with the Victims' Code and to take into account information about the experiences of victims in the area. The Secretary of State is required to consult such persons (if any) as the Secretary of State considers appropriate before issuing guidance. This does not constitute a statutory duty to conduct a public consultation and the nature and extent of consultation required is therefore left to the discretion of the Secretary of State.
- 73 Subsection (7) sets out a non-exhaustive list of matters for which the guidance will make provision including the holding of meetings between elected local policing bodies and local criminal justice bodies.
- 74 Subsections (8), (10) and (11) list the various criminal justice bodies who must have regard to the guidance under subsection (6). Some of the references are to Ministers, because legislation confers the relevant functions on Ministers, and they are then delegated to officials and public bodies. In practice the criminal justice bodies will be the police, the Crown Prosecution Service, Her Majesty's Courts and Tribunals Service, Her Majesty's Prison and Probation Service, and Youth Offending Teams

## Victim support services

### Clause 6: Duties to collaborate in the provision of victim support services

- 75 Subsection (1) places a duty on a number of authorities (as defined in Clause 7) working in a police area in England (the area for which a Police and Crime Commissioner is responsible as listed in schedule 1 Police Act 1996, as well as the metropolitan police district and the City of London police area) to collaborate when exercising their existing victim support functions. "Victim support functions" is defined in subsection (12) and is intended to describe the existing functions undertaken by the relevant authorities in relation to the commissioning and provision of victim support services. This duty will not include new requirements to commission services. Victim support services is defined in Clause 8 – see further information below).
- 76 Subsection (2) provides that this duty includes a requirement that the relevant authorities in a police area work together to prepare and implement a joint local strategy to set out the aims and approach for commissioning relevant services, as well as setting out how local areas are meeting the duty requirements.
- 77 Subsection (3) requires the relevant authorities to seek the views of those appearing to them to represent the interests of victims; those providing victim support services; and others as they consider appropriate (for example, educational authority for the area). Consultation with these persons will provide the relevant authorities with valuable insight to inform the preparation and implementation of local strategies. This does not create a statutory duty to conduct a public consultation and the nature and extent of consultation required is therefore left entirely to the discretion of the relevant authorities.

- 78 Subsection (4) requires the relevant authorities to consider the following to inform development of the strategy: relevant needs assessments (which may be carried out as part of existing commissioning processes); the particular needs of those with protected characteristics which mean that they may experience barriers to using generic support services (such as children, lesbian, gay, bisexual and transgender (LGBT) victims, ethnic minority victims, deaf or disabled victims, and victims with specific needs due to their sex); existing local and national provision (in order to be aware of what is already available to victims in their local area and avoid duplication).
- 79 Subsection (5) puts a requirement on the relevant authorities to publish the strategy, keep the strategy under review and revise it from time to time.
- 80 Subsection (6) is intended to ensure that the relevant authorities consider whether sharing information may assist them in the effective discharge of functions under this section. As subsection (10) and (11) make clear this does not require information to be disclosed if the disclosure would contravene the data protection legislation, but it clarifies the lawful basis for disclosure under that legislation.
- 81 Subsection (7) ensures that the duties that apply to the preparation of the initial strategy also apply to the preparation of a revised strategy.
- 82 Subsection (8) places the Secretary of State under a duty to issue guidance to the relevant authorities on how to carry out their obligations under this duty; and subsection (9) places the relevant authorities under a duty to have regard to any such guidance. The purpose of this guidance is to support the relevant authorities in discharging their functions under Clause 6, and it will advise on issues such as local partnership structures that may work for collaboration and how joint activity may be convened in practice (such as through a convening role by PCCs), alongside information to support strategy production. Before issuing any guidance, the Secretary of State must consult persons they consider appropriate (if any), which is expected to include interested stakeholders and practitioners to accurately reflect what further explanation and practical guidance may be beneficial.

### Clause 7: “Relevant authorities”

- 83 Clause 7 sets out which authorities will be subject to the duty to collaborate in the commissioning and provision of victim support services.
- 84 Subsection (1) explains that the relevant authorities are local policing bodies (meaning Police and Crime Commissioners, the Mayor’s Office for Policing and Crime in relation to the Metropolitan Police district and the Common Council in relation to the City of London police area; as created by the Police Reform and Social Responsibility Act 2011); Integrated Care Boards (as created by the Health and Care Act 2022); and tier one local authorities (as defined in the Domestic Abuse Act 2021 and meaning the county council or the district council where there is no county council, and the Greater London Authority rather than individual London boroughs, and the Council of the Isles of Scilly).
- 85 The exercise of the duty will be organised by reference to police area, because it is expected that the PCC may convene the collaborative activity in local areas and bring local partners together. The relevant authorities are those responsible for functions falling all or part within a police area. The relevant police area in each instance will be that attaching to the local policing body as defined in section 101(1) of the Police Act 1996, namely that listed in schedule 1 of the Police Act 1996), the Metropolitan Police district and the City of London police area. For integrated care boards and local authorities, these could fall fully or partly within the police area meaning at the local level that the same commissioning team may be required to liaise with one or more PCC as appropriate in relation to the effective discharge of this duty.

## Clause 8: “Victim support services”

- 86 This clause creates a definition of victim support services for the purpose of the duty created in Clause 6. Subsections (1) and (2) define victim support services as services that are provided to support victims of domestic abuse, a sexual offence or serious violence, where there has been criminal conduct. Victim support services can include advice, recovery and support services, which could be medical, therapeutic, practical and/or emotional. This duty is intended to require the relevant authorities to target this collaborative effort towards victims of these categories of crime, which are particularly traumatic offences with a high number of victims each year.
- 87 Excluded support services are those that are available under separate regimes, namely those offered in accommodation-based settings as per section 57 of the Domestic Abuse Act (2021) (subsections (1) and (3a)) and those relating to terrorism, as victims of terrorism are supported by the Home Office CONTEST strategy and funding commitments.
- 88 Subsection (3) and (4) explain that domestic abuse for these purposes has the same meaning as that in s.1 in the Domestic Abuse Act 2021 and sexual offence means an offence as stated in Schedule 3 of the Sexual Offences Act 2003 (but any reference in the schedule appearing to pose additional conditions for this to count as an “offence” such as a requirement that an offender has been sentenced or imprisonment has been ordered for a certain number of years can be ignored for these purposes).
- 89 Subsection (5) and (6) explain what is meant by serious violence. Violence for these purposes includes violence against property and threats of violence; and the decision as to whether violence is serious should be based on penalties and victim impact and should be made by the relevant authorities. Terrorism within the meaning of the Terrorism Act (2000) is not included (for the reasons explained in paragraph 89).

## Independent Advisors

### Clause 9: Guidance about independent advisors

- 90 Subsection (1) of this clause creates a duty on the Secretary of State to issue guidance on the roles and functions of Independent Domestic Violence Advisors (IDVAs) and Independent Sexual Violence Advisors (ISVAs). As set out in subsection (3), this guidance will include matters such as the key functions of these roles alongside recommended minimum standards and best practice. It will also set out recommended and expected interactions with those who work with ISVAs and IDVAs in order to work collaboratively to meet the needs of victims. The guidance itself will primarily make provision for primary victims, but may also make provision for services to support other victims such as those described in clause 10(1)(a) and (2)(a), as well as victims of other specified descriptions of offence
- 91 Subsection (2) defines an Independent Domestic Abuse Advisor to mean a person who provides services to support victims of domestic abuse and their children. It also defines an Independent Sexual Abuse Advisor to mean a person who provides support services for victims of sexual offences. These definitions are deliberately broad in view of the wide range of services provided by these advisors. The definitions describe (but do not limit) the scope of services which might be provided, but do not prescribe eligibility for advisor services.
- 92 Subsections (4) and (5) states that the guidance about IDVAs and ISVAs may make provision about primary victims as defined in sections 10(1) and 10(2). The guidance will be focussed on services provided to primary victims, without limiting the possibility of advisors providing services beyond this category of victims.
- 93 Subsection (6) creates a duty on anyone who has a function which is related to victims of crime or the criminal justice system to have regard to the guidance. This captures a wide range of

persons, but the guidance will only have effect when those persons are exercising functions in relation to these advisors.

### Clause 10: Interpretation of section 9

94 This clause defines a victim as a victim of domestic abuse and a victim of sexual violence for the purposes of clause 9.

## The Role of the Victims' Commissioner

### Clause 11: Commissioner for Victims and Witnesses

95 Subsection (1) amends the Domestic Violence, Crime and Victims Act 2004 (the 2004 Act) through the following actions.

96 Subsection (2) removes subsection (1)(c) from section 49 of the 2004 Act which requires the Victims' Commissioner (VC) to keep the Victims' Code under review. It also amends subsection (2)(c) to provide that the VC can make recommendations at any point in time and is not limited to just making recommendations in the annual report. Subsection (2) also provides that the VC can include within the annual report recommendations to any authority within the VC's remit. Subsection (2) also requires the Commissioner to lay the annual report before Parliament.

97 Subsection (3) requires criminal justice agencies or Government departments who are named directly in the Commissioner's annual report to respond to any recommendations made to them. The relevant person(s) must prepare comments on any recommendations made in the report, with an explanation of:

- the action that has been, or is proposed to be taken in response to the recommendation, or;
- why action has not been or is not proposed to be taken in response to the recommendations.

The relevant person(s) is the authority the recommendations are made about, or in the event the authority is a Government department with a responsible Minister, that Minister. The response must be published in a manner considered appropriate by the relevant person(s), within 56 days of the VC's report being published. Anything published must be sent to the Commissioner and where the authority is a Government department in the charge of a Minister, the Secretary of State.

98 Subsection (4) ensures that Schedule 9 of the 2004 Act includes the authorities that may be responsible for responding as per subsection (3) above.

## Joint thematic inspections on victims' experiences

### Clause 12: Joint inspections relating to victims

99 Subsection (1) adds provisions to the Prisons Act 1952 (which covers provision for Her Majesty's Chief Inspector of Prisons) to provide for the Secretary of State, Lord Chancellor, and the Attorney General to jointly require that the criminal justice inspectorates' joint inspection programme includes provision for inspections at specified times, of specified matters relating to the treatment of victims. It also sets out that "specified" means specified in the direction, and "victim" has the meaning given to it by section 1 of the Victims and Parliamentary Commissioner for Administration Act 2022.

100 Subsection (2) provides for the same provisions to be added to the Police Act 1996, which covers provision for Her Majesty's Inspectors of Constabulary.

*These Explanatory Notes relate to the draft Victims Bill as published in Draft on 25 May 2022 (Bill [AUTOGENERATED])*



101 Subsection (3) provides for the same provisions to be added to the Crown Prosecution Service Inspectorate Act 2000, which covers provision for Her Majesty’s Chief Inspector of the Crown Prosecution Service.

102 Subsection (4) provides for the same provisions to be added to the Criminal Justice and Court Services Act 2000, which covers provision for the inspectorate of probation for England and Wales.

## Parliamentary Commissioner for Administration

### Clause 13: Parliamentary Commissioner for Administration

103 Subsection (1) amends the Parliamentary Commissioner for Administration Act 1967 through the following actions.

104 Subsection (2) provides for complainants who claim to have sustained injustice due to the maladministration of a government department or other authority to which the Act applies, to go directly to the Commissioner, rather than going through a member of the House of Commons where, in the complainant’s opinion, the complaint relates to their experience as a victim of crime. Subsection (2) also provides for all other complaints to be referred to a member of the House of Commons in the usual way.

105 Subsection (3) provides for complaints who claim that a duty under the Victims’ Code has been breached or a person has failed to comply with a duty to victims under sections 35-44 of the Domestic Violence, Crime and Victims Act 2004, to go directly to the Commissioner, rather than going through a member of the House of Commons where, in the complainant’s opinion, the complaint relates to their experience as a victim of crime. Again, subsection (3) also provides for all other complaints to be referred to a member of the House of Commons in the usual way.

106 Subsection (4) provides that “victim” has the meaning given by clause 1 of this Bill.

107 Subsection (5) provides that a complaint under subsections (2) and (3) above may be made directly by a person authorised to act on behalf of the aggrieved person (and this may be a member of the House of Commons). It also provides that a personal representative or a member of their family or other individual suitable to represent them can make the complaint, where a person is unable to authorise another person to act on their behalf. Lastly, it provides that a complaint under subsections (2) and (3) above must be made to the Commissioner within 12 months from the first notice of the matters alleged in the complaint.

108 Subsection (6) sets out where the report or statement on the complaint should be sent. This is to the person who made the complaint. Subsection (6)(b) allows for the report or statement to also be sent to a member of the House of Commons with the consent of the person who makes the complaint. Lastly, subsection (6)(c) provides that a report or statement by the Commissioner to the person who made the complaint or a member of the House of Commons (where the person who made the complaint is not an MP but consents to the Commissioner sending the report or statement to their MP) shall be absolutely privileged.

## Commencement

109 Clause 17 states when each provision in this Act comes into force. Some provisions commence on the day on which this Act is passed; others at two months from the date on which the Act is passed; and remaining provisions come into force on a day the Secretary of State appoints by regulation.

## Financial implications of the Bill

110 An Impact Assessment has been prepared for the Bill and covers the implications on bodies and organisations which derive from this Bill. The main public sector financial implications fall to:

- Police and Crime Commissioners – with the cost to monitor compliance with the Victims’ Code and give regard to feedback estimated to be between £0 and £3.5m per year, and the cost to collaborate when commissioning support services for victims estimated to be £0.17m to £0.18m per year, with a best estimate of £0.17m.
- Criminal justice inspectorates – with the cost of a regular joint thematic inspection estimated as £1m, currently assumed that these inspections will take place around every 3 years.
- Local authorities - with the cost to collaborate when commissioning support services for victims estimated to be £0.29m to £0.34m per year, with a best estimate of £0.31m.
- Integrated Care Boards – with the cost to collaborate when commissioning support services for victims estimated to be £0.0m to £0.19m per year, with a best estimate of £0.09m.

111 The other options in this Bill (placing the Victims’ Code into legislation, amending the role of the Victims’ Commissioner, removing the ‘MP filter’, and placing ISVAs and IDVAs on a statutory footing) are currently estimated to be of no cost.

112 All of these figures are estimated based on a number of assumptions about implementation which are subject to change. Further details of the costs and benefits of individual provisions are set out in the Impact Assessment published alongside the Bill.

113 A money resolution is required for this Bill. A money resolution is required where a Bill authorises new charges on the public revenue (broadly speaking, new public expenditure). For this Bill the potential increases in public expenditure is mainly attributable to new or expanded functions conferred on public authorities. This includes expenditure on Police and Crime Commissioners, local authorities, and Integrated Care Boards under Clauses 6-8 in relation to the requirement to collaborate when commissioning support services for victims. Further expenditure may be required for Police and Crime Commissioners under Clause 5 and their need to monitor Victims’ Code compliance and give regard to victim feedback. Clause 12, requiring regular joint thematic inspections on victims’ issues give rise for potential increases in the sums provided to the criminal justice inspectorates.

## Compatibility with the European Convention on Human Rights

114 The Government does not consider that the Bill raises any significant issues in relation to the European Convention on Human Rights (ECHR) and the Lord Chancellor and Secretary of State for Justice, the Rt. Hon. Dominic Raab MP, has made a statement under section 19(1)(a) of the Human Rights Act 1998 that the Bill is compatible with the ECHR.

## Related documents

115 The following documents are relevant to the Bill and can be read at the stated locations:

- [Delivering justice for victims: Government consultation](#), HM Government, December 2021.
- [Delivering justice for victims: Response to consultation](#), HM Government, May 2022.

## Annex A - Territorial extent and application in the United Kingdom

Below sets out the territorial extent and application for the provisions within the Bill. The provisions of the Bill extend to England and Wales. With the exception of Clause 13 where amendments to the existing system for victims' complaints to the Parliamentary Commissioner will apply UK-wide for those complaints which relate to reserved matters within the Parliamentary Commissioner's jurisdiction.

Clauses 1-5 and 9-12 will apply to England and Wales. Clauses 6-8 will apply to England only. Clause 13 will apply UK-wide.<sup>2</sup>

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	No	No	No
Clause 2	Yes	Yes	No	No	No
Clause 3	Yes	Yes	No	No	No
Clause 4	Yes	Yes	No	No	No
Clause 5	Yes	Yes	No	No	No
Clause 6	Yes	No	No	No	No
Clause 7	Yes	No	No	No	No
Clause 8	Yes	No	No	No	No
Clause 9	Yes	Yes	No	No	Yes
Clause 10	Yes	Yes	No	No	Yes
Clause 11	Yes	Yes	No	No	No
Clause 12	Yes	Yes	No	No	No
Clause 13	Yes	Yes	Yes	Yes	No

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<sup>2</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the Senedd Cymru or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

## Subject matter and legislative competence of devolved legislatures

116 It is the view of the UK Government that Clauses 9 and 10 fall within the legislative competence of the Senedd Cymru. These clauses create a definition of an Independent Sexual Violence Advisor and an Independent Domestic Violence Advisor and creates a power for the Secretary of State to issue guidance about these roles. The clauses state that any persons having functions relating to victims must have due regard to this guidance. Where this includes bodies with functions which fall within the devolved competence in Wales, this falls into an area of devolved competence.

117 Conversations are ongoing with the Welsh Government and a legislative consent motion shall be sought upon formal introduction of the Bill.

# DRAFT VICTIMS BILL

## EXPLANATORY NOTES

These Explanatory Notes relate to the draft Victims Bill as published in Draft on 25 May 2022 (Bill [AUTOGENERATED]).

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