

Criminal Justice Committee

Victims Witnesses and Justice Reform (Scotland) Bill

Glossary of Terms

Introduction

A glossary is an alphabetical list of words or terms on a specific subject, with an explanation of what those words or terms mean.

This glossary of terms is based on the version provided by the Scottish Government on pages 130 to 135 of the [Policy Memorandum](#) which accompanies [the Bill](#), with one additional term included here.

This glossary is being provided to help those responding to the Criminal Justice Committee's Call for Views on the Bill understand various legal terms used in the Call for Views, the Bill and its accompanying documents.

Terms

Accused – a person charged with committing a crime or offence.

Act of Adjournal – court procedure and practice rules created by the criminal courts through their own legislation.

Act of Sederunt – court procedure and practice rules created by the civil courts through their own legislation.

Acquittal – an outcome after a trial which means that the accused is not convicted of the offence. In Scotland this can be through either a not guilty or not proven verdict.

Admission – a statement by the accused admitting an offence or a fact.

Advocate – a type of lawyer who specialises in the preparation and presentation of court cases and has rights of audience in the higher courts in Scotland such as the High Court of Justiciary for criminal cases and the Court of Session for civil cases. Advocates are regulated by the Faculty of Advocates.

Advocate Depute – a lawyer who prosecutes cases and who is appointed by the Lord Advocate.

Appeal – a challenge to a conviction and/or sentence, or court order.

Appellant – a person challenging a conviction and/or sentence, or court order.

Beyond reasonable doubt – the standard of proof in a criminal case. The standard judicial direction for this as set out in the Jury Manual is “....a doubt, arising from the

evidence, based on reason, not on sympathy or prejudice, or on some fanciful doubt or theoretical speculation. It's the sort of doubt that would make you pause or hesitate before taking an important decision in the practical conduct of your own lives. Proof beyond reasonable doubt is less than certainty, but it's more than a suspicion of guilt, and more than a probability of guilt. This doesn't mean that every fact has to be proved beyond reasonable doubt. What it means is that, looking at the evidence as a whole, you've to be satisfied of the guilt of the accused beyond reasonable doubt."

Charge – the crime that the accused is believed to have committed.

Civil case – court proceedings that are not criminal prosecutions.

Common law – a system of laws based on custom and court decisions (also known as "precedent") rather than on written laws made by a parliament. Common law forms a large part of the legal system in Scotland.

Complainer – a person who, in criminal proceedings, claims to have been the victim of an offence.

Consent – in Scottish criminal law, consent in a sexual offence case means that the complainer freely agreed to have a particular type of sexual contact with the accused. Most sexual offences require proof that the accused acted without the complainer's consent.

Contempt of court – behaviour that interferes with court proceedings or possible outcome of a court case, punishable by a fine and/or imprisonment.

Conviction – when a person pleads guilty or is found guilty of a crime.

Corroboration – the requirement in Scottish criminal law that an accused cannot be convicted of a crime unless there are at least two separate sources of evidence that (a) the crime was committed; and (b) the accused was the person who committed the crime.

Cross-examination – when a witness is questioned in court by other lawyers after giving their evidence-in-chief. For example, when a prosecution witness is questioned by the lawyer representing the accused.

Crown – an alternative term for the Crown Office and Procurator Fiscal Service.

Crown Office and Procurator Fiscal Service – the organisation responsible for the prosecution of crime and investigation of deaths in Scotland.

Defence (lawyer/counsel) – the lawyer who represents the accused.

Deliberations – the process of discussion by which juries reach a verdict.

Diet – a court hearing.

Directions – the instructions given by a judge to a jury at the end of a criminal trial that tell the jury the legal tests that they should apply during their deliberations.

Evidence – what a witness says when they're asked questions in court. Evidence can also be physical items that are used in the case, including documents, clothing, and photographs.

Evidence by commission – when a witness gives their evidence in advance of the trial. This is filmed and played during the trial.

Evidence-in-chief – when a witness is questioned in court by the person who asked them to come to court.

First diet – a hearing in a Sheriff Court case when the Crown and defence lawyers tell the court if they are ready for the case to go to trial.

Floating trial – a High Court case where the date and location of the trial can vary.

High Court – the supreme criminal court of Scotland, where the most serious criminal cases are heard.

Hung juries – in some countries where a jury is required to reach a certain majority in order to return a verdict, and cannot do so, it is referred to as a hung jury. Hung juries are not a feature of the current Scottish system as they have 15 members and return verdicts by a simple majority of votes.

Indictment – a document listing the charges against the accused.

Interdict – an order granted by the civil courts to prevent a person from doing something. In relation to domestic abuse, an interdict could, for example, prohibit a person from approaching or contacting a person at risk.

Judge – the legal expert who is in charge of court proceedings.

Judiciary – the collective name for the judges and panel members who sit in the courts of Scotland and make decisions about criminal and civil cases.

Jurisdiction – the power a court has to hear cases and decide what will happen in the case; the territory covered by the court.

Lord Advocate – the senior Scottish Law Officer who is the head of the Crown Office and Procurator Fiscal Service. The Lord Advocate is also a Minister in the Scottish Government.

Lord Justice Clerk – the second-most senior judge in Scotland.

Lord Justice General – the most senior judge in Scotland, who holds this title and also the title of Lord President. The title of Lord Justice General relates to criminal business.

Lord President – the most senior judge in Scotland, who holds this title and also the title of Lord Justice General. The title of Lord President relates to civil business.

Majority required – the number of jurors required to support a verdict before it can be returned.

Mock jury research – an established type of research in which members of the public who are eligible to serve on a jury are asked to come to a verdict based on viewing a fictional filmed trial simulation rather than a real criminal trial.

Miscarriage of justice – when a court proceeding has an unfair outcome, for example a person is convicted of a crime they did not commit.

Offender – a person who has been convicted of committing a crime.

Open justice – a principle that requires criminal proceedings to be conducted in a transparent way and allows public scrutiny.

Perjury – a crime that is committed if a person deliberately lies when giving evidence in court.

Person centred – when the person is placed at the centre of the service, their needs are understood and they can participate effectively in proceedings.

Practice note – a document issued by a member of the judiciary which sets out a practice that the court is going to take or inform practitioners such as lawyers about a practice that the court expects them to take.

Preliminary hearing – a hearing in a High Court case when the Crown and defence lawyers tell the court if they are ready for the case to go to trial.

Presumption of innocence – fundamental principle of the criminal justice system which states that every accused person is presumed innocent until proved guilty and is not required to prove his or her innocence.

Procurator Fiscal – a lawyer who works for the Crown Office and Procurator Fiscal Service.

Prosecutor – a lawyer who presents the case against the accused in a criminal trial

Right of audience – means the ability of a lawyer to conduct legal proceedings in court, i.e., to represent a client in court and to address the court. Whether a lawyer has a right of audience depends on what legal qualification they hold (solicitor, solicitor advocate or advocate) and on the type of court.

Scottish Courts and Tribunals Service – an independent body that provides administrative support to the Scottish courts, judges and tribunals.

Sheriff – a judge who is in charge of court proceedings in the Sheriff Court.

Sheriff principal – the head of each of Scotland’s six sheriffdoms (areas) who are responsible for managing the business in the sheriff courts in their own area.

Simple majority – a rule requiring a majority of jurors to support a verdict before it can be returned.

Solemn cases/proceedings/procedure – criminal cases which are determined at trial by a jury, either in the High Court or a sheriff court. These cases are usually considered to be more serious.

Solicitor – a type of lawyer who is regulated by the Law Society of Scotland. They can provide legal advice on a range of matters and have rights of audience to appear in court in certain cases.

Solicitor advocate – a solicitor who has been granted extended rights of audience before the higher courts, similar to those held by advocates.

Special measures – measures such as a live television link, a screen, or a supporter to help vulnerable people when they appear in court. In relation to evidential hearings, another special measure which may be available is the taking of evidence by a commissioner.

Statutory defence – a defence which is created in written laws.

Statutory offence – offences which are created through written laws.

Summary cases/proceedings/procedure – criminal cases that are considered less serious and are determined at trial by a Sheriff or a Justice of the Peace. Juries are not used for summary cases.

Standard of proof – the level of certainty needed to prove a legal claim. In a criminal trial this is “beyond reasonable doubt”.

Survivor – alternative term for a victim. The term ‘survivor’ is commonly used when speaking about victims of sexual offences.

Trauma informed – providing a service that recognises the impact that trauma can have on a person and that puts in place measures to avoid re-traumatisation.

Trial/trial diet – proceedings that take place in a court if an accused pleads not guilty. The court hears evidence about the alleged crime and at the end of the trial a judge or jury will decide if the prosecutor has proven the guilt or not.

Unanimity and near unanimity – a rule requiring that either all, or in the case of near unanimity almost all, jurors support a verdict before it can be returned.

Victim – a person who has been directly affected by a crime.