

**PE1727/E**

Scottish Government submission of 18 October 2019

The petitioner calls for the Scottish Government to introduce legislation that would confer a legal duty on all citizens in Scotland to report a crime they have witnessed. The petitioner specifically suggests the introduction of a 'law of omission bill' to incorporate moral and civil omissions with criminal omissions making them legally enforceable.

It might be helpful to explain in the first instance, with some exceptions, there is no blanket legal duty placed on individuals or other bodies to report a crime which they have witnessed in Scots law.

The petition appears to apply to all types of crime and as the petitioner themselves recognises, there are a number of practical difficulties with such an approach. I have set some of these out below.

While of course it is vital that perpetrators are held to account for their crimes, we are mindful of the importance of not inadvertently placing barriers in the way of those who would seek access to support services but who would be dissuaded from doing so if they thought those services may have a duty to report to the police. There are therefore important issues around safety, equality and the potential to create barriers that require very careful consideration.

An interventionist approach may have the undesirable effect of driving already hidden criminal practices or activity even further underground and make victims less likely to seek medical care, engage with social services, or speak to trusted individuals, like teachers.

There is also the risk that introducing mandatory reporting as a legal duty will make victims feel criminalised, as well as criminalising entire communities. Careful consideration must be given to whether such an approach would encourage stigmatisation of people which may then deter potential victims from seeking help from public sector bodies.

There is also the issue that mandatory reporting will create more responsibilities for professionals without any real evidence that it will be beneficial in the long term. For example, there are already existing provisions and conventions in place, such as current General Medical Council guidance 'Protecting Children and Young People,' which says that health practitioners must tell an appropriate agency if they are concerned that a child or young person is at risk of, or suffering abuse or neglect, unless it is not in their best interests to do so. Provisions like this may be sufficient without introducing a mandatory duty to report which will remove agency from professionals who should be able and capable to make judgements on when to report based on individual cases.

As narrated in the SPICe briefing which accompanies the petition, mandatory reporting for certain types of crime may prove difficult or have a detrimental effect on the victim and family members, including children. It may also cause practical difficulties for investigating authorities. The obvious example provided in this regard is domestic

abuse, and I would seek to echo the difficulties articulated in the SPICe briefing. In instances of domestic abuse where victims are subject to coercive and controlling behaviour, they and their non-abusing family members may feel unable or fearful to report that a crime has been committed.

It is critical that victims of domestic abuse have the confidence to report offending behaviour, in the knowledge that their disclosures will be handled sensitively. Fostering trust in every part of the criminal justice process is integral to building such confidence and it would not be desirable to exert pressure on a victim to report before they are ready, or criminalise a victim of domestic abuse for failing to report instances of a partner or ex-partner's offending behaviour, should the crime(s) subsequently come to light.

An important consideration also highlighted by the SPICe briefing is the increased burden mandatory reporting may cause for the police. The example provided is that of littering, which is a criminal offence. Creating a mandatory duty to report all crime a person witnesses may have the result that our investigating authorities become overburdened with reports of less serious criminal behaviour, which could divert resources from the investigation of more serious offences.

It is also important to consider the potential difficulties with the enforceability of such a law, which would require proof of a negative/omission to the requisite criminal standard – that is, corroborated evidence of someone's failure to report a crime they have witnessed. Even if such evidence did come to light, a live issue would be the public interest in seeking to impose some form of sanction upon such an individual, who would no doubt be considered an essential witness to the substantive crime and therefore their cooperation, trust and engagement with the criminal justice system would be required, rather than potentially further alienating an already reluctant victim or witness.

We monitor the effectiveness of our criminal law on an on-going basis in conjunction with criminal justice partners. However, for all of these reasons, the Scottish Government has no plans to amend the law to introduce a mandatory duty to report crime at this time.

The Committee have also requested answers to specific questions be provided, which I have addressed in the annex to this letter.

## Annex

- **How does the Scottish Government encourage citizens to take responsibility in preventing crime?**

*Justice in Scotland: vision and priorities*<sup>1</sup> is a document setting out Scottish Government's plan for a just, safe and resilient Scotland, with established priorities for 2017 to 2020.

Two of those priorities are:

- we will enable our communities to be safe and supportive, where individuals exercise their rights and responsibilities; and
- we will work to quickly identify offenders and ensure responses are proportionate, just, effective and promote rehabilitation.

Through initiatives like early intervention and community engagement by justice leaders citizens are encouraged to participate in and take personal responsibility for crime prevention.

The Scottish Government also makes use of our online resources to ensure victims and witnesses of crime know what the law is; how to get support; and how to report a crime. For example, I would draw the Committee's attention to our domestic abuse content at the undernoted links:

<https://www.mygov.scot/domestic-abuse/>  
<https://safer.scot/>

- **What legislation is currently in place that requires citizens to report crimes in Scotland?**

As narrated in the SPICe briefing which accompanies the petition, the following legislation imposes legal duties to report:

- Part 7 of the Proceeds of Crime Act 2002, which obliges an individual to report to the national crime agency where there are reasonable grounds to know or suspect that a person is engaged in money laundering. The SPICe briefing notes although this requirement to submit what are known as "suspicious activity reports" applies to any individual, such reports are mostly made by businesses in the regulated sector, such as banks, other financial institutions and accountants.
- Section 38 of the Human Trafficking and Exploitation (Scotland) Act 2015 places a duty on specified Scottish public authorities to notify the Chief Constable about a person who is or appears to be a victim of human trafficking or slavery, servitude and forced or compulsory labour. Although we note this reporting provision is not yet in force.

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<sup>1</sup> <https://www.gov.scot/publications/justice-scotland-vision-priorities/pages/1/>

A further example of legislation containing a duty to report is section 19 of the Terrorism Act 2000, where a person is obliged to report to the police where they suspect or believe another person is involved in terrorist financing, as per sections 15-18 of the Act.

It might also be worth highlighting there is a non-statutory duty to report in respect of medical professionals treating knife wounds and gunshot wounds by virtue of General Medical Council Guidance (GMC) "*Confidentiality: reporting gunshot and knife wounds.*"<sup>2</sup>

Similarly, as already highlighted in the Scottish Government's response to petition PE1727, there is current GMC guidance *Protecting children and Young People*<sup>3</sup> which requires healthcare professionals to report to an appropriate agency if they are concerned a child or young person is at risk of or is suffering abuse or neglect, unless it is not in their best interests to do so.

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<sup>2</sup> <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality---reporting-gunshot-and-knife-wounds>

<sup>3</sup> <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/protecting-children-and-young-people>