

VICTIMS AND WITNESSES (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Victim statements

Section 23 – Victim statements

53. Victim statements allow victims and close relatives to tell the court about the way in which, and the degree to which, an offence (or apparent offence) has affected and, as the case may be, continues to affect them. Section 14 of the Criminal Justice (Scotland) Act 2003 (“the 2003 Act”) sets out the arrangements for the submission of victim statements in court. In solemn proceedings, a victim statement was previously laid before the court when moving for sentence and in summary proceedings the statement was previously laid when a guilty plea was tendered or the accused was convicted. Section 23 of the Act allows victim statements to be submitted to the court, in solemn proceedings, at any time after the prosecutor moves for sentence or, in summary proceedings, at any time after the accused pleads guilty or is found guilty. In both solemn and summary proceedings, the victim statement must be lodged before sentence is passed. This is to ensure that, if the statement is not available at the time of moving for sentence or at the time of the guilty plea, this does not prejudice the victim in the case.
54. [Section 23](#) also makes a number of changes to the arrangements for victim statements in relation to children. Previously, children aged 14 and over could make a victim statement in their own right. This section lowers this minimum age to allow children aged 12 and over to make such statements in their own right. Previously under the 2003 Act, children under the age of 14 could not have a statement made on their behalf by a carer in the event that their relative was the victim of an offence but has subsequently died. This was because children under the age of 14 were excluded from being classed as qualifying persons in terms of section 14(8) of the 2003 Act. Section 23 amends section 14(8) of the 2003 Act to remove the provision which excludes children from being classed as qualifying persons.
55. [Section 23](#) also adds new subsections (11A) to (11E) to section 14 of the 2003 Act to provide for the case where a child under the age of 12 has an opportunity to make a victim statement, either as the victim of an offence or as a qualifying person in relation to a victim of an offence. In those circumstances, the statement must be made by a carer of the child on behalf of the child. Subsections (11B) and (11E) provide definitions of “carer of the child”, “cared for” and “cares for”. Subsections (11C) and (11D) provide for the situation where more than one person comes within the meaning of “carer of the child”.
56. Victim statements under section 14 of the 2003 Act were previously made in writing. Section 23(7) provides for alternative formats of victim statement to be piloted, and then extended more widely if appropriate, by inserting new subsections (13) to (16) into section 14 of the 2003 Act. New subsection (13) allows the Scottish Ministers

*These notes relate to the Victims and Witnesses (Scotland) Act
2014 (asp 1) which received Royal Assent on 17 January 2014*

to prescribe the form and manner in which victim statements may be made. New subsection (14) allows the Scottish Ministers, in an order under subsection (13), to make incidental, supplementary or consequential provision and to modify any enactment (including the 2003 Act). New subsection (15) sets out that an order made under subsection (13) can have effect for a specified period of time. New subsection (16) states that an order under subsection (13) which is to have effect for a specified period of time under subsection (15) may be restricted so that it applies only in relation to specified geographic areas. Any order under new subsection (13) of section 14 of the 2003 Act is subject to the negative procedure unless it amends or repeals any part of an Act (see section 88 of the 2003 Act, as amended by section 23(14) of the Act).

57. Subsections (8) to (13) of section 23 make various amendments to section 16 of the 2003 Act, which relates to a victim's right to receive certain forms of information, mainly concerning the release of an offender.
58. Previously, section 16(5) of the 2003 Act provided that, if a person who would be entitled to receive information under section 16 has died, certain qualifying persons listed in section 14(10) of the 2003 Act are entitled to receive such information. Section 23(9) of the Act provides that, in those circumstances, if any of the relevant qualifying persons are under 12, the carer of that person is entitled to receive the information. Furthermore, section 23(9) provides that, if a person who would be entitled to receive information under section 16 of the 2003 Act is under 12, that person's carer is entitled to receive the information. Subsections (10) to (12) of section 23 of the Act make consequential changes to subsections (6) to (8) of section 16 of the 2003 Act. Subsection (13) of section 23 of the Act inserts new subsection (9) into section 16 of the 2003 Act. Under new subsection (9), the Scottish Ministers may amend, by order, the age specified in section 16 of the 2003 Act below which the carer of the child is entitled to information rather than the child and the persons who may receive information.