

VICTIMS AND WITNESSES (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Interviews

Section 7 - Interviews with children: guidance

26. This section provides that police officers and social workers must have due regard to guidance issued by the Scottish Ministers when carrying out joint investigative interviews with a child witness under the age of 18 in relation to criminal proceedings or a matter which may lead to criminal proceedings. Subsection (4) allows the Scottish Ministers to modify by order the list of persons to whom the obligation applies. Defining “child” as anyone under 18 is in line with the EU Directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU) (which defines “child witness” for the purposes of criminal proceedings as any person below 18 years of age) and various other Directives (for example, on trafficking of human beings and child sexual exploitation). Lord Carloway’s Report into criminal law and practice also recommends that “for the purposes of arrest, detention and questioning, a child should be defined as anyone under the age of 18 years.”

Section 8 – Certain sexual offences: victim’s right to specify gender of interviewer

27. This section allows victims or alleged victims of certain types of offence to specify the gender of the investigating officer who is to carry out the interview. The types of offences are sexual offences; human trafficking; an offence the commission of which involves domestic abuse and stalking.
28. Subsection (4) provides that the investigating officer need not comply with a request for a specified gender of interviewer if doing so would be likely to prejudice the criminal investigation (for example, if the investigation is time critical and no officers of the specified gender are currently available), or if doing so would not be reasonably practicable. Subsection (6) provides that any failure to comply has no effect on any relevant criminal proceedings.
29. The section also allows the Scottish Ministers to modify by order the list of types of offences to which this section applies and the definition of “investigating officer”.