

*These draft Regulations supersede those laid on 4th November 2015 and published on 6th November 2015 (ISBN 9780111029770). It is being issued free of charge to all known recipients of those draft Regulations.*

*Draft Regulations laid before the Scottish Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 for approval by resolution of the Scottish Parliament.*

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## DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2015 No.**

## **CRIMINAL LAW**

### **The Victims' Rights (Scotland) Regulations 2015**

*Made - - - - 2015*

*Coming into force in accordance with regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(1) and all other powers enabling them to do so.

#### **Citation, commencement, extent and interpretation**

- 1.—(1) These Regulations may be cited as the Victims' Rights (Scotland) Regulations 2015.
- (2) These Regulations come into force six days after the day on which they are made.
- (3) These Regulations extend to Scotland only.
- (4) In these Regulations, “the Act” means the Victims and Witnesses (Scotland) Act 2014(2).

#### **Further general principles**

2. After section 1 of the Act, insert—

##### **“Further general principles applicable to victims**

**1A.**—(1) Each person mentioned in section 1(2) must have regard to the principles mentioned in subsection (2) in carrying out functions conferred on the person by or under any enactment in so far as those functions relate to a person who is or appears to be a victim in relation to a criminal investigation or criminal proceedings.

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- (1) [1972 c.68](#). Section 2(2) was amended by the Scotland Act 1998 ([c.46](#)) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 ([c.51](#)) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 ([c.7](#)), Schedule 1, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
- (2) [2014 asp 1](#).

- (2) The principles are—
- (a) that victims should be treated in a respectful, sensitive, tailored, professional and non-discriminatory manner,
  - (b) that victims should, as far as is reasonably practicable, be able to understand information they are given and be understood in any information they provide,
  - (c) that victims should have their needs taken into consideration,
  - (d) that, when dealing with victims who are children, the best interests of the child should be considered, taking into account the child's age, maturity, views, needs and concerns, and
  - (e) that victims should be protected from—
    - (i) secondary and repeat victimisation,
    - (ii) intimidation, and
    - (iii) retaliation.
- (3) In this section, “child” means a person under 18 years of age.”.

### **Complaints process for victims**

3. After section 3 of the Act, insert—

*“Complaints*

#### **Complaints**

**3A.**—(1) A competent authority must provide a complaints process by which a person who is or appears to be a victim in relation to an offence or alleged offence, may challenge—

- (a) an alleged breach by that competent authority of that person's rights under this Act, or
- (b) an alleged breach of that competent authority's obligations under this Act.

(2) The obligation in subsection (1) does not apply where the competent authority is subject to a complaints process, provided in or under any enactment, which would allow a person who is or appears to be a victim in relation to an offence or alleged offence to challenge the matters in subsection (1)(a) and (b).”.

### **Provision of information and support to victims**

4. After section 3A of the Act, insert—

*“Provision of information to victims*

#### **The Victims' Code for Scotland**

**3B.**—(1) The Scottish Ministers must prepare and publish a document, known as the Victims' Code for Scotland, setting out the following information (or directing the reader as to where that information is set out)—

- (a) the types of support that victims may obtain and from whom that support can be obtained,
- (b) the procedures for making complaints with regard to a criminal offence and the victim's role in connection with such procedures,

- (c) how and under what conditions victims may obtain protection, including special measures under sections 271 to 271M of the 1995 Act and measures under section 9C of this Act,
  - (d) how and under what conditions victims may access legal advice, legal aid or any other sort of advice which the Scottish Ministers consider relevant to the needs of victims,
  - (e) how and under what conditions victims may obtain compensation,
  - (f) how and under what conditions victims are entitled to interpretation and translation,
  - (g) in relation to a criminal offence which was not committed in Scotland, any measures, procedures or arrangements, which are available to protect victims' interests in Scotland,
  - (h) the available procedures for making complaints against any competent authority in relation to a breach of victims' rights under this or any other enactment,
  - (i) the contact details for all competent authorities,
  - (j) the available restorative justice services, and
  - (k) how and under what conditions victims may be reimbursed for the reasonable expenses incurred by them as a result of their participation in criminal proceedings.
- (2) The Victims' Code for Scotland may include such other information as the Scottish Ministers consider relevant to the needs of victims.
- (3) Subsection (4) applies where—
- (a) a competent authority, other than the Scottish Ministers, receives a request for translation of the Victims' Code for Scotland by virtue of section 3F and transmits that request to the Scottish Ministers, or
  - (b) a person who is or appears to be a victim in relation to an offence or alleged offence, and who does not understand or speak English, requests that the Scottish Ministers translate the Victims' Code for Scotland into a language which that person understands.
- (4) The Scottish Ministers must—
- (a) translate the Code into the language required by the authority or, as the case may be, the person, and
  - (b) provide a copy of the translated Code to the authority or, as the case may be, the person.
- (5) The Scottish Ministers must keep the Victims' Code for Scotland under review and may modify it from time to time.
- (6) Where under subsection (5) the Scottish Ministers modify the Victims' Code for Scotland they must publish the modified Code.

### **Victims' right to receive information**

**3C.**—(1) The chief constable of the Police Service of Scotland must ensure that, as soon as reasonably practicable after a constable identifies a person who is or appears to be a victim in relation to an offence or alleged offence, a constable informs the person that the person may request, from any competent authority—

- (a) a copy of the Victims' Code for Scotland, and
- (b) information relating to the rights of victims.

(2) Subsection (3) applies where a person who is or appears to be a victim in relation to an offence or alleged offence requests from a competent authority a copy of the Victims' Code for Scotland.

(3) As soon as reasonably practicable after the request is made, the authority must—

- (a) provide the person with a copy of the Code, or
- (b) advise the person where a copy of the Code may be obtained.

(4) Subsection (5) applies where a person who is or appears to be a victim in relation to an offence or alleged offence requests from a competent authority information relating to the rights of victims.

(5) As soon as reasonably practicable after the request is made, the authority must—

- (a) provide the person with such information held by, or accessible to, the authority which the authority considers relevant to the request, and
- (b) provide the person with contact details for any other competent authority which the authority considers may hold or be able to access information relevant to the request.

(6) Where, by virtue of this section, a competent authority is to provide a person with a copy of the Victim's Code for Scotland or information relating to the rights of victims, the authority may do so by such means as the authority considers appropriate having regard to the needs of the person.

(7) For the purposes of this section—

- (a) a request made by a person who is or appears to be a victim in relation to an offence or alleged offence to a constable or a member of police staff is deemed to be a request made to the chief constable of the Police Service of Scotland, and
- (b) a request made by a person who is or appears to be a victim in relation to an offence or alleged offence to a procurator fiscal is deemed to be a request made to the Lord Advocate.

#### *Provision of support to victims*

### **Referral to providers of victim support services**

**3D.**—(1) The chief constable of the Police Service of Scotland must ensure that, as soon as reasonably practicable after a constable identifies a person who is or appears to be a victim in relation to an offence or alleged offence, a constable informs the person that—

- (a) the person may request a referral to providers of victim support services from any competent authority, and
- (b) the person may contact providers of victim support services directly without referral.

(2) Where a person who is or appears to be a victim in relation to an offence or alleged offence makes a request of a competent authority to be referred to providers of victim support services, the authority must, subject to the views of the person—

- (a) disclose the person's details to such providers of victim support services as the authority considers appropriate to the person's needs, or
- (b) provide the person with the name, address and telephone number of the providers of victim support services referred to in paragraph (a).

(3) Subsections (1) and (2) apply in relation to a person who is or appears to be a victim in relation to an offence or alleged offence regardless of whether or not the person has made a complaint about that offence or alleged offence.

(4) For the purposes of this section—

- (a) a request made by a person who is or appears to be a victim in relation to an offence or alleged offence to a constable or a member of police staff is deemed to be a request made to the chief constable of the Police Service of Scotland, and
- (b) a request made by a person who is or appears to be a victim in relation to an offence or alleged offence to a procurator fiscal is deemed to be a request made to the Lord Advocate.

(5) In this section, “victim support services” means the provision of—

- (a) information, advice and support to victims including information on compensation for criminal injuries, and the participation of victims in criminal proceedings,
- (b) information about any relevant specialist support services in place,
- (c) emotional and, where available, psychological support,
- (d) advice relating to financial and practical issues arising from the crime,
- (e) advice relating to the risk and prevention of—
  - (i) secondary and repeat victimisation,
  - (ii) intimidation, and
  - (iii) retaliation, and
- (f) such other services as a competent authority considers appropriate to the needs of victims.”.

#### **Assisting a victim to communicate**

5. After section 3D of the Act, insert—

*“Assistance to communicate*

#### **Victims’ right to understand and be understood**

**3E.**—(1) Subsection (2) applies in relation to any contact—

- (a) between a person who is or appears to be a victim in relation to an offence or alleged offence and a competent authority, and
- (b) which is for the purposes of a relevant function.

(2) The authority must take such measures as the authority considers appropriate in order to assist the person—

- (a) to understand the information given to the person by the authority, and
- (b) to be understood in the person’s interaction with the authority.

(3) Subsection (4) applies in relation to any communication, in any form—

- (a) between a person who is or appears to be a victim in relation to an offence or alleged offence and a competent authority, and
- (b) which is for the purposes of a relevant function.

(4) The authority must ensure that communications—

- (a) are as clear and easy to understand as possible, and
  - (b) take into account any personal characteristics of the person which may affect the person's ability to understand the communication and be understood in responding to the communication.
- (5) Subsection (6) applies in relation to the first contact—
- (a) between a person who is or appears to be a victim in relation to an offence or alleged offence and a competent authority, and
  - (b) which is for the purposes of a relevant function.
- (6) Where the authority considers that the person requires assistance to communicate, the authority must allow the person to be assisted by someone of the person's choice unless—
- (a) the authority considers that such assistance would be contrary to the interests of the person or prejudicial to any criminal proceedings, or
  - (b) the assistance is required for the purposes of the person giving evidence at a hearing in relevant criminal proceedings.
- (7) For the purposes of this section—
- (a) any contact between a person who is or appears to be a victim in relation to an offence or alleged offence (V) and a constable or a member of police staff is deemed to be contact between V and the chief constable of the Police Service of Scotland,
  - (b) any contact between V and a procurator fiscal is deemed to be contact between V and the Lord Advocate,
  - (c) any communication between a constable or a member of police staff and V is deemed to be communication between the chief constable of the Police Service of Scotland and V, and
  - (d) any communication between a procurator fiscal and V is deemed to be communication between the Lord Advocate and V.
- (8) In this section—
- “a hearing in relevant criminal proceedings” means any hearing in the course of any criminal proceedings in the High Court, sheriff court or justice of the peace court in relation to an offence or alleged offence,
- “a relevant function” is—
- (a) in the case of the Lord Advocate, any function relating to the investigation and prosecution of crime,
  - (b) in the case of the Scottish Ministers, any function conferred on the Scottish Ministers under this Act or section 16, 17 or 17A of the 2003 Act,
  - (c) in the case of any other competent authority, any function.

### **Victims' right to interpretation and translation**

**3F.—**(1) Subsection (2) applies where a person who is or appears to be a victim in relation to an offence or alleged offence, and who does not understand or speak English, makes a request to a competent authority for an interpreter for the purposes of—

- (a) being interviewed or questioned by a competent authority in the course of a criminal investigation or criminal proceedings in relation to the offence or alleged offence (other than at a hearing in relevant criminal proceedings), or
- (b) making a complaint about the offence or alleged offence.

- (2) The authority must ensure that the person is provided with an interpreter in order to enable the person to—
- (a) understand any questions being asked by the authority,
  - (b) understand any information being given to the person,
  - (c) give answers and provide information which the authority can understand, and
  - (d) otherwise communicate effectively with the authority.
- (3) Subsection (4) applies where—
- (a) a person who is or appears to be a victim in relation to an offence or alleged offence, and who does not understand or speak English, has been cited by a prosecutor to give evidence at, or for the purposes of, a hearing in relevant criminal proceedings in relation to the offence or alleged offence, and
  - (b) the person has made a request to the prosecutor for an interpreter for the purposes of that hearing.
- (4) The prosecutor must ensure that the person is provided with an interpreter in order to enable the person to—
- (a) understand the questions being asked,
  - (b) understand any information being given to the person,
  - (c) give answers which the court can understand, and
  - (d) otherwise communicate effectively with the court.
- (5) Subsection (6) applies where—
- (a) information is to be provided by a competent authority to a person who is or appears to be a victim in relation to an offence or alleged offence, and who does not understand or speak English,
  - (b) the information is to be provided for the purposes of a relevant function,
  - (c) the information—
    - (i) is considered by the competent authority to be essential to the person's participation in the criminal investigation or criminal proceedings in relation to the offence or alleged offence, or
    - (ii) must be provided by the competent authority to the person under any enactment, and
  - (d) the person has requested that the information is translated into a language which the person understands.
- (6) The authority must ensure that the information is translated (either orally or in writing) into a language which the person understands.
- (7) In considering whether information is essential for the purposes of subsection (5)(c)(i), the competent authority must take into account the views of the person to whom the information is to be provided.
- (8) Interpretation or translation provided to a person under this section must be provided free of charge.
- (9) For the purposes of this section—
- (a) a request made by a person who is or appears to be a victim in relation to an offence or alleged offence to a constable or a member of police staff is deemed to be a request made to the chief constable of the Police Service of Scotland, and

- (b) a request made by a person who is or appears to be a victim in relation to an offence or alleged offence to a procurator fiscal is deemed to be a request made to the Lord Advocate.
- (10) In this section—
- “a hearing in relevant criminal proceedings” means any hearing in the course of any criminal proceedings in the High Court, sheriff court or justice of the peace court in relation to an offence or alleged offence,
- “prosecutor” means Lord Advocate, Crown Counsel or procurator fiscal,
- “a relevant function” is—
- (a) in the case of the Lord Advocate, any function relating to the investigation and prosecution of crime,
- (b) in the case of the Scottish Ministers, any function conferred on the Scottish Ministers under this Act or section 16, 17 or 17A of the 2003 Act,
- (c) in the case of any other competent authority, any function.”.

### **Acknowledgement of complaints**

6. After section 3F of the Act, insert—

*“Acknowledgement of complaints*

#### **Written acknowledgement of complaints**

**3G.**—(1) This section applies where a person who is or appears to be a victim in relation to an offence or alleged offence makes a complaint about the offence or alleged offence to a constable.

(2) The chief constable of the Police Service of Scotland must ensure that, as soon as reasonably practicable after the complaint is made, the person is provided with written acknowledgement of the complaint which states the basic elements of the offence or alleged offence complained of.

(3) Written acknowledgement of a complaint may be given by such means as the chief constable of the Police Service of Scotland considers appropriate.”.

### **Reimbursement of expenses**

7. After section 3G of the Act, insert—

*“Reimbursement of expenses*

#### **Victims' right to reimbursement of expenses**

**3H.**—(1) The Lord Advocate must establish a process for the reimbursement of relevant expenses.

(2) The Lord Advocate must make and publish guidance about the process established under subsection (1).

(3) The Lord Advocate must keep the guidance published under subsection (2) under review and may modify it from time to time.



(4) Where, under subsection (3), the Lord Advocate modifies the guidance published under subsection (2), the Lord Advocate must publish the modified guidance.

(5) In this section—

“a hearing in relevant criminal proceedings” means any hearing in the course of any criminal proceedings in the High Court, sheriff court or justice of the peace court in relation to an offence or alleged offence,

“relevant expenses” means the reasonable expenses incurred—

- (a) by a person who is or appears to be a victim in relation to an offence or alleged offence, and
- (b) which are as a result of the person’s participation in a hearing in relevant criminal proceedings in relation to the offence or alleged offence.”.

### **Return of property**

8. After section 3H of the Act, insert—

*“Return of property*

#### **Victims’ right to return of property**

**3I.**—(1) Subsection (2) applies where the property of a person who is or appears to be a victim in relation to an offence or alleged offence—

- (a) has been seized in the course of a criminal investigation or criminal proceedings in relation to the offence or alleged offence, and
- (b) is being held by a competent authority.

(2) The authority must arrange for the property to be returned to the person—

- (a) where the property is no longer required for the purposes of the criminal investigation or criminal proceedings, and
- (b) the authority is satisfied that there is no other reason to retain the property.

(3) The Lord Advocate and the chief constable of the Police Service of Scotland must jointly make and publish guidance about the process by which property is to be returned under subsection (2).

(4) The Lord Advocate and the chief constable of the Police Service of Scotland must jointly keep the guidance published under subsection (3) under review and may jointly modify it from time to time.

(5) Where under subsection (4) the Lord Advocate and the chief constable of the Police Service of Scotland jointly modify the guidance published under subsection (3) the Lord Advocate and the chief constable must jointly publish the modified guidance.”.

### **Offences committed in another Member State**

9. After section 3I of the Act, insert—

*“Offences committed in another Member State*

#### **Offences committed in another Member State**

**3J.** Where—

- (a) a person who is or appears to be a victim in relation to an offence or alleged offence committed in a Member State of the EU other than the United Kingdom makes a complaint about that offence to a constable, and
- (b) criminal proceedings for that offence or alleged offence cannot be raised in Scotland,

the chief constable of the Police Service of Scotland must ensure that the complaint is transmitted without undue delay to the appropriate authority of the Member State in which the offence or alleged offence was committed.”

#### **Rules: review of decisions not to prosecute**

10. In section 4(1) of the Act—
- (a) after “in relation to an offence”, insert “or alleged offence”; and
  - (b) after “a person for the offence”, insert “or alleged offence”.

#### **Restorative justice**

11. In section 5(1)(a) of the Act—
- (a) after “in relation to an offence”, insert “or alleged offence”; and
  - (b) after “committed the offence”, insert “or alleged offence”.

#### **Certain offences: victim’s right to specify gender of interviewer**

12. In section 8(1) of the Act, after “offence”, insert “or alleged offence”.

#### **Protection of victims during criminal investigations**

13. After section 9 of the Act, insert—

*“Criminal investigations*

##### **Victims’ right to protection during criminal investigations**

**9A.—**(1) During a criminal investigation into an offence or alleged offence, the chief constable of the Police Service of Scotland must ensure that—

- (a) a relevant interview is conducted without undue delay after a complaint about the offence or alleged offence has been made to a constable,
- (b) the number of relevant interviews is kept to a minimum,
- (c) relevant interviews are carried out only where strictly necessary for the purposes of the criminal investigation,
- (d) during a relevant interview, the person who is or appears to be a victim in relation to the offence or alleged offence is permitted to be accompanied by the person’s chosen legal representative and a person of the person’s choice, unless a constable makes a reasoned decision to the contrary, and
- (e) medical examinations of the person who is or appears to be a victim in relation to the offence or alleged offence are kept to a minimum and are carried out only where strictly necessary for the purposes of the investigation.

(2) In this section, a “relevant interview” means an interview of a person who is or appears to be the victim in relation to an offence or alleged offence conducted or arranged by a constable for the purposes of a criminal investigation into the offence or alleged offence.

### **Individual assessment of victims in criminal investigations**

**9B.**—(1) The chief constable of the Police Service of Scotland must ensure that a person who is or appears to be a victim in relation to an offence or alleged offence is assessed by a constable in order to determine whether the person—

- (a) has protection needs, and
- (b) would benefit from the use of any of the measures listed in section 9C(3) during a relevant interview.

(2) The assessment of a person under subsection (1) must be carried out for the purposes of a criminal investigation in relation to the offence or alleged offence—

- (a) as soon as reasonably practicable after a constable identifies that person as a person who is or appears to be a victim in relation to the offence or alleged offence, and
- (b) as soon as reasonably practicable after any material change in the matters specified in subsection (4).

(3) For the purposes of an assessment under subsection (1), the following persons must always be considered to have protection needs—

- (a) persons under 18 years of age, and
- (b) any person who would be a deemed vulnerable witness within the meaning of section 271(5) of the 1995 Act if they were to give evidence at, or for the purposes of, a hearing in relevant criminal proceedings.

(4) For the purposes of an assessment of a person under subsection (1), the constable must consider—

- (a) the views of the person,
- (b) the nature and circumstances of the offence or alleged offence,
- (c) the nature of the evidence which the person is likely to give,
- (d) the relationship (if any) between the person and the person suspected or accused of the offence or alleged offence,
- (e) the person’s age and maturity,
- (f) any behaviour towards the person on the part of—
  - (i) the person suspected or accused of the offence or alleged offence,
  - (ii) members of the family, or associates, of the person suspected or accused of the offence or alleged offence,
  - (iii) any other person who is likely to be a suspect or an accused in relation to the offence or alleged offence,
  - (iv) any other person who is likely to be a witness in criminal proceedings in relation to the offence or alleged offence, and
- (g) such other matters as the constable considers to be relevant.

(5) For the purposes of this section and section 9C, a person has protection needs if they are vulnerable to—

- (i) secondary and repeat victimisation,

- (ii) intimidation, and
- (iii) retaliation.

(6) In this section—

“a hearing in relevant criminal proceedings” means any hearing in the course of any criminal proceedings in the High Court, sheriff court or justice of the peace court in relation to an offence or alleged offence,

“relevant interview” has the same meaning as in section 9A(2).

### **Measures to assist victims in criminal investigations**

**9C.**—(1) Subsection (2) applies where an assessment of a person under section 9B(1) finds that the person—

- (a) has protection needs, and
- (b) would benefit from the use of the measures listed in subsection (3) during a relevant interview.

(2) Where this subsection applies, the measures listed in subsection (3) may be used for the purposes of any relevant interview.

(3) The measures are—

- (a) conducting the relevant interview in premises designed or adapted for that purpose,
- (b) conducting the relevant interview by or through professionals trained for that purpose,
- (c) ensuring that all relevant interviews are conducted by the same person or persons.

(4) The constable who is conducting or arranging the relevant interview must determine which, if any, of the measures listed in subsection (3) are to be used having regard to—

- (a) the needs and views of the person who is or appears to be a victim in relation to the offence or alleged offence,
- (b) the interests of justice, and
- (c) any practical constraints on the use of any of the measures in those circumstances.

(5) In this section, “relevant interview” has the same meaning as in section 9A(2).”.

### **Protection of victims during criminal investigations and criminal proceedings**

14. After section 9C of the Act, insert—

#### *“Protection of victims*

#### **Right to avoid contact between victim and offender**

**9D.**—(1) A competent authority must take reasonable steps to enable a person who is or appears to be a victim in relation to an offence or alleged offence, or any of that person’s family members, to avoid contact with the person suspected, accused or convicted of the offence or alleged offence during a relevant interaction with a competent authority.

(2) Subsection (1) does not apply—

- (a) where such contact is necessary for the purposes of criminal investigations or criminal proceedings,

- (b) where the identity of the person suspected, accused or convicted of the offence or alleged offence is not known to the competent authority, or
  - (c) in relation to the giving of evidence by any person at a hearing in relevant criminal proceedings.
- (3) For the purposes of this section—
- (a) an interaction between a person and a constable or a member of police staff is deemed to be an interaction between that person and the chief constable of the Police Service of Scotland, and
  - (b) an interaction between a person and a procurator fiscal is deemed to be an interaction between that person and the Lord Advocate.
- (4) In this section—
- “a hearing in relevant criminal proceedings” means any hearing in the course of any criminal proceedings in the High Court, sheriff court or justice of the peace court in relation to an offence or alleged offence,
- “a relevant interaction with a competent authority” means any interaction with a competent authority which—
- (a) is for the purposes of criminal investigations or criminal proceedings, and
  - (b) takes place within a police station, prosecutor’s office or court building,
- “family members”, in relation to a person who is or appears to be a victim, means—
- (a) anyone who is married to, or is in a civil partnership with, the person,
  - (b) anyone who is living together with the person, as if they are married, and has been so living together with the person for a minimum period of 6 months,
  - (c) children and step-children of the person and anyone whom the person cares for, as defined in paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010(3),
  - (d) parents and step-parents of the person,
  - (e) siblings of the person,
  - (f) grandparents and great-grandparents of the person,
  - (g) grandchildren and great-grandchildren of the person, and
  - (h) where the person is deceased, anyone who was a family member of the person under paragraphs (a) to (g) immediately before the person’s death.

### **Victims’ right to protection of privacy**

**9E.**—(1) Subsection (2) applies during any interaction between—

- (a) a competent authority, and
- (b) a person who is or appears to be a victim in relation to an offence or alleged offence or any of that person’s family members,

which is for the purposes of a relevant function.

(2) The authority must take reasonable steps to—

- (a) protect the privacy of that person,
- (b) where that person or family member is a child, prevent disclosure of any information that could lead to the identification of the child, and

(c) prevent the disclosure of any images of the person or any of the person's family members.

(3) This section is without prejudice to any other obligation placed, or power conferred, on a competent authority, either at common law or in any enactment, to—

- (a) protect the privacy of a person who is or appears to be a victim in relation to an offence or alleged offence or that person's family members,
- (b) prevent the identification of a person who is or appears to be a victim in relation to an offence or alleged offence or that person's family members,
- (c) disclose, or order or permit the disclosure of, any information about a person who is or appears to be a victim in relation to an offence or alleged offence or that person's family members.

(4) This section does not apply to the giving of evidence in a hearing in relevant criminal proceedings by—

- (a) a person who is or appears to be a victim in relation to an offence or alleged offence, or
- (b) any of that person's family members.

(5) For the purposes of this section, any interaction between—

- (a) a person who is or appears to be a victim in relation to an offence or alleged offence or any of that person's family members, and
- (b) a constable or a member of police staff,

is deemed to be an interaction between that person or family member and the chief constable of the Police Service of Scotland.

(6) For the purposes of this section, any interaction between—

- (a) a person who is or appears to be a victim in relation to an offence or alleged offence or any of that person's family members, and
- (b) a procurator fiscal,

is deemed to be an interaction between that person or family member and the Lord Advocate.

(7) In this section—

“child” means a person under 18 years of age,

“family members”, in relation to a person who is or appears to be a victim, means—

- (a) anyone who is married to, or is in a civil partnership with, the person,
- (b) anyone who is living together with the person, as if they are married, and has been so living together with the person for a minimum period of 6 months,
- (c) children and step-children of the person and anyone whom the person cares for, as defined in paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010,
- (d) parents and step-parents of the person,
- (e) siblings of the person,
- (f) grandparents and great-grandparents of the person,
- (g) grandchildren and great-grandchildren of the person, and
- (h) where the person is deceased, anyone who was a family member of the person under paragraphs (a) to (g) immediately before the person's death,

“a hearing in relevant criminal proceedings” means any hearing in the course of any criminal proceedings in the High Court, sheriff court or justice of the peace court in relation to an offence or alleged offence,

“a relevant function” is—

- (a) in the case of the Lord Advocate, any function relating to the investigation and prosecution of crime,
- (b) in the case of the Scottish Ministers, any function conferred on the Scottish Ministers under this Act or section 16, 17 or 17A of the 2003 Act,
- (c) in the case of any other competent authority, any function.”.

### **Right to receive information concerning release of offender**

15. After section 27 of the Act, insert—

#### **“Notification of victims in relation to release etc. of short term prisoners**

27A.—(1) Where a person (“A”) is sentenced to imprisonment or detention for a period of less than 18 months in respect of an offence, the Scottish Ministers must, if any person who is or appears to be a victim in relation to the offence (“V”) so requests, notify V of A’s—

- (a) lawful release, or
- (b) escape from prison.

(2) Subsection (1) does not apply where the Scottish Ministers consider that there is an identified risk of harm to A if notification occurs.

(3) Notification for the purposes of subsection (1)—

- (a) must include—
  - (i) the date of the release or escape, and
  - (ii) in the case of release, any licence conditions which have been imposed on A under the 1989 Act or the 1993 Act for the protection of V,
- (b) must be given—
  - (i) where the request is made before release or escape, as soon as reasonably practicable after the release or escape occurs,
  - (ii) where the request is made after the release or escape, as soon as reasonably practicable after the request is made.

(4) In this section—

“the 1989 Act” means the Prisons (Scotland) Act 1989(4),

“the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993(5),

“lawful release” means release under or by virtue of the 1989 Act or the 1993 Act, other than temporary release,

“prison” includes a young offenders institution. ”.

### **Exercise of functions where victim is a child or deceased**

16. After section 29 of the Act insert—

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(4) 1989 c. 45.

(5) 1993 c. 9.

*“Child victims*

**Exercise of functions where victim is a child**

- 29A.**—(1) This section applies where, under section 3C, 3D, 3E, 3F, 3G, 6 or 27A—
- (a) a competent authority is to exercise a function in relation to, or at the request of, a person who is or appears to be a victim in relation to an offence or alleged offence, and
  - (b) the person is a child.
- (2) If the competent authority considers that it is in the best interests of the child to exercise the function in relation to, or at the request of, the child, the function—
- (a) is exercisable in relation to, or at the request of, the child, and
  - (b) is also exercisable in relation to, or at the request of, the child’s parent if the authority considers that it is in the best interests of the child to do so.
- (3) If the competent authority considers that it is not in the best interests of the child to exercise the function in relation to, or at the request of, the child, the function—
- (a) is not exercisable in relation to, or at the request of, the child, and
  - (b) is instead exercisable in relation to, or at the request of, the child’s parent if the authority considers that it is in the best interests of the child to do so.
- (4) If, for the purposes of subsection (2)(b) or (3)(b), the competent authority considers that it is not in the best interests of the child to exercise the function in relation to, or at the request of, the child’s parent—
- (a) the function is not so exercisable, and
  - (b) the function may instead be exercisable in relation to, or at the request of, such person as the authority considers appropriate having regard to the age, maturity, views, needs and concerns of the child.
- (5) Subsections (2)(b) and (3)(b) do not require a competent authority to exercise a function in relation to a parent of a child if, having taken reasonable steps to determine the parent’s whereabouts, the parent’s whereabouts are unknown to the authority.
- (6) In this section—
- “child” means a person under 18 years of age,
- “parent”, in relation to a child, means any person holding parental responsibilities for that child within the meaning of the Children (Scotland) Act 1995.

*Deceased victims*

**Application of Act where victim’s death caused by offence**

- 29B.**—(1) Subject to subsections (2) and (3), references in this Act to a person who is or appears to be a victim include—
- (a) where the reference is in relation to any criminal investigation or criminal proceedings, a qualifying relative of a person whose death was (or appears to have been) caused by the offence or alleged offence which is the subject of the criminal investigation or criminal proceedings, and
  - (b) where the reference is in relation to an offence or alleged offence, a qualifying relative of a person whose death was (or appears to have been) caused by the offence or alleged offence.



- (2) This section does not apply in relation to sections 2, 6, 8, 9D, 9E and 26.
- (3) Where, by virtue of subsection (1), a function of a competent authority under section 3C, 3D, 3G or 27A is exercisable in relation to, or at the request of, a qualifying relative of a deceased person—
  - (a) the function is exercisable only in relation to, or at the request of, a person who is one of the four highest listed relatives in the definition of “qualifying relative” in subsection (5), and
  - (b) the competent authority—
    - (i) may decline to exercise the function in relation to, or at the request of, a person who is one of those qualifying relatives, if it considers it inappropriate to exercise the function in relation to, or at the request of, that person, and
    - (ii) is not required to exercise the function in relation to a person who is one of those qualifying relatives if, having taken reasonable steps to ascertain that person’s whereabouts, that person’s whereabouts are unknown to the authority.
- (4) For the purposes of determining which relatives are highest listed in the definition of “qualifying relative”, the elder of any two persons described in any one of paragraphs (a) to (g) of the definition is to be taken to be the higher listed relative regardless of gender.
- (5) In this section, “qualifying relative” means—
  - (a) anyone who was married to, or was in a civil partnership with, the person immediately before the person’s death,
  - (b) anyone who had been living together with the person, as if they were married, for a minimum period of 6 months immediately before the person’s death,
  - (c) children and step-children of the person and anyone whom the person cared for, as defined in paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010, immediately before the person’s death,
  - (d) parents and step-parents of the person,
  - (e) siblings of the person,
  - (f) grandparents and great-grandparents of the person, and
  - (g) grandchildren and great-grandchildren of the person.”.

### **Interpretation of the Victims and Witnesses (Scotland) Act 2014**

17. In section 32 of the Act—

(a) after the definition of “the 2003” Act insert—

““competent authority” means each of the following persons—

- (a) the Lord Advocate,
- (b) the Scottish Ministers,
- (c) the chief constable of the Police Service of Scotland,
- (d) the Scottish Courts and Tribunals Service,
- (e) the Parole Board for Scotland,

“a member of police staff” means a member of police staff appointed under section 26 of the Police and Fire Reform (Scotland) Act 2012(6),” and

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(6) 2012 asp 8.

(b) after the definition of the Mental Health Act, insert—

““procurator fiscal” has the same meaning as in section 307(1) of the 1995 Act.”.

St Andrew's House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement, in part, Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime. The Regulations amend the Victims and Witnesses (Scotland) Act 2014 (“the 2014 Act”) using the powers in section 2(2) of the European Communities Act 1972 and they extend to Scotland only.

In order to confer rights on a victim both prior to and following the conviction of the person accused of the offence and to avoid any conflict with the presumption of that person’s innocence, the Regulations refer to a victim as a person who is or appears to be a victim in relation to an offence or alleged offence. Regulation 17 of the Regulations adds a definition of “competent authority” to section 32 of the 2014 Act and this term is used throughout the amendments made by the Regulations.

Regulation 2 inserts new section 1A into the 2014 Act which creates a list of general principles in addition to those currently in section 1 of the Act. The persons who must have regard to the general principles in section 1 of the 2014 Act must now also have regard to the section 1A general principles in carrying out functions in relation to a victim.

Regulation 3 inserts new section 3A into the 2014 Act. Section 3A obliges a competent authority to provide a complaints process by which a victim may challenge an alleged breach of the victim’s rights under the 2014 Act or an alleged breach of the authority’s obligations under the Act. This obligation does not apply where the competent authority is subject to an existing statutory complaints process which enables the types of complaint described in subsection (1).

Regulation 4 inserts new sections 3B to 3D into the 2014 Act. Section 3B obliges the Scottish Ministers to prepare, publish and keep under review the Victims’ Code for Scotland (“the Code”). The Code must include the various heads of information about victims’ rights listed in subsection (1) (a) to (k) and any other information the Scottish Ministers consider relevant. The Code may either include this information directly or guide the reader as to where this information can be accessed. The Scottish Ministers are obliged to translate the Code into other languages on request from a competent authority or a victim (subsection (4)) and must keep the Code under review (subsection (5)).

Section 3C creates a right for victims to receive a copy of the Code and other information about victims’ rights. Subsection (1) obliges the chief constable of the Police Service of Scotland (“the chief constable”) to ensure that victims are informed of their right to request, from any competent authority, a copy of the Code and other information relating to victims’ rights. Where a victim requests a copy of the Code, the competent authority is obliged to provide a copy of the Code or advise the victim where a copy of the Code may be obtained (subsection (3)). Where a victim requests information relating to victims’ rights, the competent authority must provide the victim with information the authority considers relevant to the request and direct the victim to any other competent authority which may hold or be able to access information relevant to the request (subsection (5)).

Section 3D makes provision for a competent authority to facilitate the referral of victims to providers of victim support services. Subsection (1) obliges the chief constable to ensure that a victim is informed of the right to request, from any competent authority, a referral to providers of victim support services and the right to contact providers of victim support services directly without referral. Subsection (2) obliges a competent authority to refer a victim to providers of victim support services on the request of the victim. Subsection (5) provides a definition of victim support services.

Regulation 5 inserts new sections 3E and 3F into the 2014 Act. Section 3E provides a right for victims to understand and be understood in the context of certain forms of contact and communication with competent authorities. Section 3E(2) obliges a competent authority to take measures to assist a victim to understand information given to the victim by the competent authority and to be understood in the victim's interaction with the competent authority. Subsection (4) obliges a competent authority to ensure that communications with a victim are as clear and easy to understand as possible and take into account the personal characteristics of the victim. Subsection (6) obliges a competent authority, on first contact with a victim, to allow the victim to be assisted by a person of the victim's choice where the victim requires assistance to communicate. The obligation in subsection (6) does not apply where the competent authority considers that it would be contrary to the interests of justice or assistance is required for the purposes of the person giving evidence in court, where other general assistance for victims is available.

The obligations in section 3E are limited so that they only apply to the relevant functions of competent authorities. The Lord Advocate is bound by the obligations in section 3E with regard to the Lord Advocate's functions in relation to the investigation and prosecution of crime – the intention being to identify the Crown Office and Procurator Fiscal Service (COPFS) as the body to which the section 3E obligations should apply. The Scottish Ministers are bound by the obligations in section 3E in relation to any functions under the 2014 Act or sections 16, 17 and 17A of the 2003 Act. These functions of the Scottish Ministers are performed, mainly but not exclusively, by the Scottish Prison Service (SPS). The obligations in section 3E cannot be placed specifically on SPS as it is an executive agency of the Scottish Ministers, and the same is true of COPFS, which is a Ministerial Department, headed up by the Lord Advocate. The duties in section 3E will apply to the remaining competent authorities in relation to any of their functions.

Section 3F creates rights for victims to interpretation for the purposes of questioning, interviewing, making a complaint about an offence or alleged offence and giving evidence. Section 3F also creates a right for victims to obtain translation of essential information. Subsection (2) obliges a competent authority to ensure that a victim is provided with an interpreter on request for the purposes of the authority interviewing or questioning the victim other than in a court hearing and for the purposes of the victim making a complaint about an offence. Subsection (4) obliges a prosecutor to ensure that a victim is provided with an interpreter on request for the purposes of giving evidence at or for the purposes of a court hearing, where the victim has been cited as a prosecution witness.

Section 3F(6) provides that, where a competent authority is to provide certain essential information to a victim, and the victim requests that it is translated into a language that the victim understands, the competent authority must ensure that the information is translated. Similar to the position in section 3E, the obligation in section 3F(6) is restricted so that it only applies to certain functions of the Lord Advocate and Scottish Ministers. Interpretation or translation provided under section 3F must be provided free of charge (subsection (8)).

Sections 3C(7), 3D(4) and 3F(9) provide that a request made by a victim to a constable or a member of police staff is to be deemed to be a request made by the victim to the chief constable of the Police Service of Scotland. This is to ensure that the chief constable has a duty to respond to all requests under sections 3C, 3D and 3F(1) and (5) whether they are made directly to the chief constable or to constables or members of police staff. The chief constable has power to delegate functions under section 18 of the Police and Fire Reform (Scotland) Act 2012.

Sections 3C(7), 3D(4) and 3F(9) also provide that a request made by a victim to a procurator fiscal is to be deemed to be a request made by the victim to the Lord Advocate. This is to ensure that the Lord Advocate has a duty to respond to all requests under sections 3C, 3D and 3F(1) and (5) whether they are made directly to the Lord Advocate or to a procurator fiscal.

Regulation 6 inserts new section 3G into the 2014 Act. Section 3G obliges the chief constable to ensure that, where a victim makes a complaint about an offence or alleged offence, the victim is provided with written acknowledgement of that complaint.

Regulation 7 inserts new section 3H into the 2014 Act. Section 3H obliges the Lord Advocate to establish a process for the reimbursement of the reasonable expenses incurred by a victim as a result of the victim's participation in a court hearing. The Lord Advocate is also obliged to make and publish guidance about this process.

Regulation 8 inserts new section 3I into the 2014 Act. Section 3I obliges a competent authority which, for the purposes of a criminal investigation or criminal proceedings, holds property belonging to a victim, to return that property to the victim when it is no longer necessary to retain it. The Lord Advocate and the chief constable must jointly make and publish guidance about the process by which such property is to be returned to the victim.

Regulation 9 inserts new section 3J into the 2014 Act. Section 3J obliges the chief constable to ensure that, where a victim makes a complaint about an offence or alleged offence committed in another Member State and proceedings cannot be raised in Scotland, the complaint is transmitted to the relevant Member State.

Regulations 10, 11 and 12 amend sections 4, 5 and 8 of the 2014 Act to ensure that references to "offence" in those sections are expanded so that reference is also made to "alleged offence". This is to make it clear that the reference to "offence" in the context of criminal investigations or criminal proceedings that have yet to conclude, does not imply that an offence has been committed. These amendments are designed to make it clear that the obligations under sections 4, 5 and 8 do not conflict with the presumption of innocence and to provide uniform terminology throughout the 2014 Act following the amendments made by the Regulations.

Regulation 13 inserts new sections 9A to 9C into the 2014 Act. Section 9A provides a number of safeguards for victims which the chief constable must ensure are in place during criminal investigations. These safeguards include conducting interviews without delay after the complaint is made, keeping interviews and medical examinations to a minimum and only interviewing the victim where necessary. In addition, during an interview, the victim must be permitted to be accompanied by a person of the victim's choice and the victim's chosen legal representative. This right to be accompanied can be overridden where a constable makes a reasoned decision to the contrary.

Section 9B makes provision for an assessment of the needs of victims in the context of criminal investigations. Subsection (1) obliges the chief constable to ensure a victim is assessed by a constable to determine whether the victim has protection needs and whether the victim would benefit from certain measures during the investigation. Protection needs are defined in subsection (5) as a vulnerability to secondary and repeat victimisation, intimidation and retaliation. Where a victim is under the age of 18 or would be a deemed vulnerable witness as defined in section 271(5) of the Criminal Procedure (Scotland) Act 1995 were the victim to give evidence in criminal proceedings, that victim is to be considered as having protection needs (subsection (3)). In those circumstances, the assessment of that victim is limited to whether the victim would benefit from certain measures during the investigation. Subsection (4) provides a list of matters which must be considered for the purposes of the assessment of the victim.

Section 9C provides for the use of certain measures where a victim has been assessed, under section 9B, as having protection needs and the assessment also finds that the victim would benefit from the use of these measures. Subsection (2) provides that, in these circumstances, the measures listed in subsection (3) may be used for the purposes of an interview of the victim by a constable. The measures listed in subsection (3) are: conducting the interview in specially designed or adapted premises; conducting the interview by or through trained professionals; and ensuring that all interviews are conducted by the same person or persons. The constable conducting the interview must have regard to the needs and views of the victim, the interests of justice and any practical constraints when determining which measures to use.

Regulation 14 inserts new sections 9D and 9E into the 2014 Act. Section 9D obliges a competent authority to take reasonable steps to enable a victim and the victim's family to avoid contact with the person suspected, accused or convicted of the offence in question. This obligation only applies

to interactions between the victim (or the victim's family members) and the competent authority which are for the purposes of a criminal investigation or criminal proceedings and take place in a police station, prosecutor's office or court building. The obligation does not apply in the three circumstances narrated in subsection (2).

Section 9E obliges a competent authority to take reasonable steps to protect the privacy of victims; to prevent disclosure of information which could lead to the identification of a child victim or a child who is a family member of the victim; and to prevent disclosure of images of the victim or the victim's family. This obligation is without prejudice to other statutory obligations to protect the privacy, or prevent the identification of a victim or the victim's family or to disclose information about a victim or the victim's family. Similar to the position in sections 3E and 3F, the obligation in section 9E(2) is restricted so that it only applies to certain functions of the Lord Advocate and Scottish Ministers.

Sections 9D(3) and 9E(5) provide that an interaction between a victim (or any of the victim's family members) and a constable or a member of police staff is to be deemed to be an interaction between the victim (or family member) and the chief constable. This is to ensure that the chief constable has a duty to take reasonable steps to enable the avoidance of contact with the offender, or alleged offender, where a victim or the victim's family interact with a constable or member of police staff. Similarly, this ensures that the chief constable has a duty to take reasonable steps to protect the privacy of a victim and the victim's family where the victim or the victim's family interact with a constable or a member of police staff. The chief constable has power to delegate functions under section 18 of the Police and Fire Reform (Scotland) Act 2012.

Sections 9D(3) and 9E(6) make similar provision in relation to the Lord Advocate and procurators fiscal. This is to ensure that the Lord Advocate has a duty to take reasonable steps to enable the avoidance of contact with the offender, or alleged offender, where a victim or the victim's family interact with a procurator fiscal. Similarly, this is to ensure that the Lord Advocate has a duty to take reasonable steps to protect the privacy of a victim and the victim's family where the victim or the victim's family interact with a procurator fiscal.

Regulation 15 inserts new section 27A into the 2014 Act. Section 27A provides for information about the release or escape of a prisoner sentenced to imprisonment or detention for less than 18 months to be given to a victim following a request by the victim. This obligation applies to the release of a prisoner under the Prisons (Scotland) Act 1989 or the Prisoners and Criminal Proceedings (Scotland) Act 1993 and to the escape of the prisoner from prison. Information must also be provided to the victim about any licence conditions imposed on the prisoner under the 1989 Act or 1993 Act for the protection of the victim.

Regulation 16 inserts new sections 29A and 29B into the 2014 Act. Section 29A provides for certain of the functions conferred on competent authorities in the 2014 Act as amended (sections 3C, 3D, 3E, 3F, 3G, 6 and 27A) to be exercised in relation to, or at the request of, the parents of a victim where the victim is under the age of 18. Functions may be exercised in relation to, or at the request of, the victim's parents either in addition to or instead of the victim depending on the best interests of the victim. If the competent authority considers that it is not in the best interests of the child for a function to be exercised in relation to, or at the request of, the child's parents the function may instead be exercised in relation to, or at the request of, a person whom the authority considers appropriate.

Section 29B provides that where the victim has died as a result of the offence or alleged offence, references to the victim include qualifying relatives of the victim. Certain functions of competent authorities in the 2014 Act (the functions in sections 3C, 3D, 3G and 27A) are only exercisable in relation to the four highest listed relatives in the definition of "qualifying relatives" in subsection (5). A competent authority may decline to exercise any of those functions in relation to, or at the request of, any one of those four qualifying relatives if it is inappropriate to so exercise the function (subsection (3)(b)(i)). A competent authority is not required to exercise any of those functions in relation to any one of those four qualifying relatives where that relative's whereabouts are unknown (subsection (3)(b)(ii)).

Regulation 17 amends section 32 of the 2014 Act to insert definitions of “competent authority”, “a member of police staff” and “procurator fiscal”.

A Business Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from Criminal Justice Division, St. Andrews House, Regent Road, Edinburgh EH1 3DG.