

## **POLICY NOTE**

### **THE VICTIMS AND WITNESSES (SCOTLAND) ACT 2014 (COMMENCEMENT NO. 2 AND TRANSITIONAL PROVISION) ORDER 2014**

#### **SSI 2014/210 (C. 17)**

1. The above instrument is made in exercise of the powers conferred by section 34(2) and (3) of the Victims and Witnesses (Scotland) Act 2014 (“the 2014 Act”).

#### **Policy objectives**

2. The 2014 Act introduces various measures to improve the support and information available to victims and witnesses of crime in Scotland, and is being implemented in stages. This instrument (the first relating to measures affecting the criminal justice system) brings into force sections 8, 23 (except subsections (7) and (14)), 27, 28 and 29. It also commences sections 2, 6, and 26, but only for the purposes of allowing subordinate legislation to be made in advance of these provisions being commenced fully in a subsequent commencement order.

#### **Transitional provision – Eligibility to receive information, and make representations, concerning the release etc. of offenders**

3. Section 23 includes a change to the age at which individuals can receive information about the release etc. of offenders under section 16 of the Criminal Justice (Scotland) Act 2003 (“the 2003 Act”), lowering this from 14 to 12. Individuals under the age specified cannot register to receive information in their own right, but a parent or carer can register to receive information on their behalf. Such information is supplied in practice through the Victim Notification Scheme (“VNS”), which is administered by the Scottish Prison Service.
4. This change requires transitional provision to be made in relation to those who, before the commencement date of 13 August 2014, registered to receive information on behalf of a child. Otherwise, registered parents/carers of children aged 12 or 13 would immediately lose their entitlement to receive information under section 16 of the 2003 Act, and registered parents/carers of children under 12 would have their entitlement to information significantly altered (i.e. no longer being entitled to receive information until their child is 14).
5. If individuals have registered to receive information through the VNS, it is considered preferable that the conditions relating to this are not significantly altered where doing so would, as in this case, require them to make a further and unexpected decision in relation to a potentially sensitive subject.
6. Article 3(1), (2), (4) and (5) of the Order therefore makes transitional provision to preserve the current entitlement of those already registered to receive information on behalf of a child, although the information they will receive under section 16 of the 2003 Act will be as

modified by section 27 of the 2014 Act. Parents and carers who, before 13 August 2014, registered to receive information will be able to continue to receive information until the child is 14 (i.e. the VNS will generally operate as it did before that date). However, in order to avoid putting the children in question at a disadvantage, if they wish to register in their own right once they are aged 12 or older, they can do so, and information will then be sent to them directly.

7. Section 17 of the 2003 Act provides for certain individuals to be given an opportunity to make written representations in relation to the release of a prisoner on licence. Eligibility to make such representations is linked to the eligibility to receive information under section 16 of the 2003 Act. Accordingly, transitional provision is made in relation to parents or carers who, before 13 August 2014, registered to be given an opportunity to make such representations on behalf of a child. They will continue to be entitled to make representations under section 17 of the 2003 Act until the child is 14, unless the child is 12 or 13 and chooses to register to make representations on his or her own behalf. They will also be entitled to be given (where applicable) the opportunity to make the new forms of representations introduced by sections 28 and 29 of the 2014 Act, namely oral representations under section 17(1)(b) of the 2003 Act in relation to the release on licence of an individual serving a sentence of life imprisonment and written representations under section 17A of the 2003 Act in relation to the temporary release of a prisoner.
8. For all those registering to receive information (or to be given an opportunity to make representations) on or after 13 August 2014, the new age limits will apply.
9. Transitional provision is also made in relation to all other individuals who, before 13 August 2014, registered to receive information under section 16 of the 2003 Act or to be given an opportunity to make representations under section 17 of the 2003 Act. Article 3(3) and (6) of the Order provides that, where immediately before 13 August 2014 an individual is entitled to receive information or make representations under section 16 or 17 of the 2003 Act, his or her entitlement continues after that date, and encompasses the changes made by the 2014 Act.
10. So, an individual who immediately before 13 August 2014 is entitled to receive information under section 16 of the 2003 Act will continue to be entitled to receive information under that section, but as modified by section 27 of the 2014 Act. Similarly, an individual who immediately before 13 August 2014 is entitled to make representations under section 17 of the 2003 Act will continue to be so entitled, but will also be entitled to make the new forms of representations introduced by sections 28 and 29 of the 2014 Act (see paragraph 7).

#### **Transitional provision – Oral representations before release of certain prisoners on licence**

11. As mentioned, the Order enables individuals who, immediately before 13 August 2014, are entitled to make representations under section 17 of the 2003 Act, to benefit from the changes made by section 28 of the 2014 Act (where applicable). Section 28 amends section 17 of the 2003 Act to allow oral representations to be made to the Parole Board for Scotland (“PBS”) in

relation to the release of prisoners serving a sentence of life imprisonment. Article 3(7) of the Order makes transitional provision to deal with cases where an individual would be eligible to make oral representations under section 17 of the 2003 Act (as amended), but the relevant decision by PBS is to be made soon after the commencement date.

12. In such cases, there would be insufficient time to arrange for oral representations to be made. To address this, article 3(7) provides that the opportunity to make oral representations will only be given to individuals where the decision is to be taken on or after 13 September 2014. This will ensure that, following commencement on 13 August 2014, PBS can offer the opportunity to give oral representations to relevant individuals, with sufficient time for such representations to be made before the decision on release is taken. This does not, of course, affect an individual's right to be given an opportunity to make written representations under section 17 of the 2003 Act.

### **Consultation**

13. A public consultation paper, "Making Justice Work for Victims and Witnesses"<sup>1</sup>, was published prior to the development and introduction of the Bill for the 2014 Act. This closed in July 2012, and non-confidential responses<sup>2</sup> and an analysis<sup>3</sup> are available.
14. In addition, informal consultation with stakeholders (including various victim support groups and the justice organisations affected by the legislation) was undertaken throughout the Bill process, and continues in relation to the implementation of the 2014 Act.

### **Impact assessments**

15. An Equality Impact Assessment was carried out prior to introduction of the Bill<sup>4</sup>.

**Justice Directorate**  
**Scottish Government**  
**July 2014**

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<sup>1</sup> <http://www.scotland.gov.uk/Publications/2012/05/8645/0>

<sup>2</sup> <http://www.scotland.gov.uk/Publications/2012/09/3650/0>

<sup>3</sup> <http://www.scotland.gov.uk/Publications/2013/01/8185/0>

<sup>4</sup> <http://www.scotland.gov.uk/Publications/2013/02/3668/0>