

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 on 13 August 2014 the following sections:

- **Section 8 – Certain offences: victim's right to specify gender of interviewer**

Section 8 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.

- **Section 23 (except subsections (7) and (14)) – Victim statements**

Section 23 makes changes to the timing of the submission of victim statements; the age at which individuals can submit victim statements in their own right (changing this from 14 to 12); and the age at which individuals can receive information about the release of offenders under section 16 of the Criminal Justice (Scotland) Act 2003 (“the 2003 Act”). Section 23 also enables the Scottish Ministers to prescribe the form and manner in which victim statements may be made. However, the relevant provisions (subsections (7) and (14)) are not being commenced in this instrument, pending further detailed consideration of how this order-making power may be used.

- **Section 27 - Victim's right to receive information about release of offender etc.**

Section 27 amends section 16 of the 2003 Act to enable all eligible victims, rather than those who are victims of a limited number of offences, to receive information about the release of offenders.

- **Section 28 - Life prisoners: victim's right to make oral representations before release on licence**

Section 28 enables victims to make oral representations to the Parole Board for Scotland when prisoners serving a term of life imprisonment become eligible for release on licence.

- **Section 29 - Temporary release: victim's right to make representations**

Section 29 enables victims who are eligible to receive information under section 16 of the 2003 Act to make written representations about the licence conditions that may be imposed when a prisoner first becomes eligible for temporary release from prison.

3. The instrument also commences sections 2 (standards of service), 6 (disclosure of information about criminal proceedings), and 26 (victim surcharge), 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.
4. In addition, the instrument makes transitional provision in relation to sections 23, 27, 28 and 29 of the 2014 Act. An explanation of these transitional provisions is set out below.

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

5. Section 16 of the 2003 Act provides for victims to receive information about the release etc. of offenders, where the offender has been sentenced to imprisonment for a period of 18 months or more. The information relates to the circumstances in which a prisoner leaves prison, due to, for example, temporary release, escape, release on licence or parole, the prisoner's death or end of sentence. Such information is supplied in practice through the Victim Notification Scheme ("VNS"), which is administered by the Scottish Prison Service.
6. Section 23 of the 2014 Act includes a change to the age at which individuals can receive information about the release etc. of offenders under section 16 of 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.
7. 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).
8. 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.
9. Article 3(1) and (2) of the Order therefore makes transitional provision to preserve the current entitlement of those already registered to receive information on behalf of a child. Despite

the “specified amendments” set out in article 3(8) (on which more detail is provided in the annex to this note), 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). Although, the information they will receive under section 16 of the 2003 Act will be as modified by section 27 of the 2014 Act. 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.

10. 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, article 3(4) and (5) of the Order makes transitional provision 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. Despite the “specified amendments” set out in article 3(8) (on which more detail is provided in the annex to this note), 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.
11. 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.
12. 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.
13. 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 10).

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

14. 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.
15. 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

16. A public consultation paper, “Making Justice Work for Victims and Witnesses”¹, was published prior to the development and introduction of the Bill for the 2014 Act. This closed in July 2012, and non-confidential responses² and an analysis³ are available.
17. 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

18. An Equality Impact Assessment was carried out prior to introduction of the Bill⁴.

**Justice Directorate
Scottish Government
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¹ <http://www.scotland.gov.uk/Publications/2012/05/8645/0>

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

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

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

ANNEX

DETAIL ON THE DEFINITION OF “SPECIFIED AMENDMENTS” IN ARTICLE 3(8)

1. Paragraphs 9 and 10 of the policy note explain that article 3(1), (2), (4) and (5) of the Order makes transitional provision to preserve existing rights under sections 16 and 17 of the 2003 Act to receive information, and make representations, on behalf of a child under 14 years of age. Such provision applies despite the “specified amendments” set out in article 3(8) of the Order.
2. Accordingly, the definition of “specified amendments” in article 3(8) includes reference only to those amendments made by section 23 of the 2014 Act which affect a person’s current entitlement to receive information on behalf of a child under 14 years of age, either under section 16(1) (by virtue of subsection (5)(b)(ii)) or (7) of the 2003 Act. Because eligibility to make representations under section 17 of the 2003 Act is dependent on the eligibility to receive information under section 16 of that Act, the “specified amendments” also affect a person’s current entitlement to make representations on behalf of a child under 14 years of age.
3. The “specified amendments” are therefore those amendments made by -
 - section 23(1) and (4) of the 2014 Act to section 14 of the 2003 Act (victim statements), so far as they apply in relation to section 16(5)(a) of the 2003 Act, and
 - section 23(8) to (12) of the 2014 Act to section 16 of the 2003 Act.
4. Further explanation as to why subsections (1) and (4) of section 23 fall under the definition of “specified amendments”, but subsections (2) and (3) of that section do not, is provided below.

Section 23(1) and (4) of the 2014 Act

5. Section 23(1) and (4) of the 2014 Act amends the definition of “qualifying person” in section 14(8) of the 2003 Act. The definition of “specified amendments” in article 3(8) includes reference to these amendments because the “qualifying person” definition applies also in relation to section 16(5)(a) of the 2003 Act (by virtue of section 16(6) of that Act). Together with the amendments made by section 23(9) and (11) of the 2014 Act in particular, they affect a person’s existing right to receive information under section 16(7) (as read with section 16(5)(a)) of the 2003 Act on behalf of a child under 14 years of age.
6. Although the amendments to the “qualifying person” definition apply also in relation to section 16(5)(b)(i) of the 2003 Act (by virtue of section 16(6) of that Act, as amended), they have no bearing on existing rights to receive information on behalf of a child under 14 years of age. Section 16(5)(b)(i) of the 2003 Act provides for a qualifying person to receive information on behalf of a person who is incapable by reason of mental disorder or inability

to communicate. However, at present, a qualifying person does not include a child under 14 years of age by virtue of section 14(8) of the 2003 Act. Therefore, the definition of “specified amendments” in article 3(8) includes reference to the amendments made by section 23(1) and (4) of the 2014 Act only in so far as they apply in relation to section 16(5)(a) of the 2003 Act.

Section 23(2) and (3) of the 2014 Act

7. Section 23(2) of the 2014 Act amends section 14(5) of the 2003 Act, to extend the time within which victim statements must be laid before the court. This has no bearing on the right to receive information under section 16 of the 2003 Act, therefore the definition of “specified amendments” in article 3(8) does not include reference to this amendment.
8. Section 23(3) of the 2014 Act amends section 14(6)(b) of the 2003 Act. Only the amendment to section 14(6)(b)(i) applies in relation to section 16 of the 2003 Act, by virtue of a cross-reference to that provision in section 16(5)(b)(i). As mentioned above, section 16(5)(b)(i) provides for a qualifying person to receive information on behalf of a person who is incapable by reason of mental disorder or inability to communicate. The amendment excepts from that provision qualifying persons who have not attained the age of 12 years. However, given that a qualifying person currently does not include a child under 14 years of age, the amendment does not affect a person’s right to receive information on behalf of a child under 14 years of age and is therefore not included in the definition of “specified amendments”.