



# Criminal Justice (Scotland) Act 2003

## 2003 asp 7

### PART 2 **S**

#### VICTIMS' RIGHTS

#### 14 **Victim statements** **S**

- (1) This section applies only where proceedings in respect of an offence are to be taken, or are likely to be taken, in a prescribed court or class of court.
- (2) In so far as is reasonably practicable, a natural person against whom a prescribed offence has been (or appears to have been) perpetrated is—
  - (a) after a decision has been taken to bring proceedings in respect of that offence; or
  - (b) if a procurator fiscal so determines, before any such decision has been taken, to be afforded an opportunity to make a statement (to be known as a “victim statement”) as to the way in which, and degree to which, that offence (or apparent offence) has affected and as the case may be continues to affect, that person; but this subsection is subject to subsection (6).
- (3) Where a person who has made a victim statement by virtue of subsection (2) (or that subsection and subsection (6)) so requests and sentence may yet fall to be imposed in respect of the offence (or apparent offence), that person is to be afforded an opportunity to make a statement supplementary to, or in amplification of, the victim statement.
- (4) A copy of any—
  - (a) victim statement made; or
  - (b) statement made by virtue of subsection (3) in relation to a victim statement,is, if the accused tenders a plea of guilty to, or is found guilty of, the offence in question, to be provided forthwith to the accused by the prosecutor.
- (5) A prosecutor must—
  - (a) in solemn proceedings, when [<sup>F1</sup>or after] moving for sentence as respects an offence [<sup>F2</sup>but before sentence is imposed]; and
  - (b) in summary proceedings, when [<sup>F3</sup>or after] a plea of guilty is tendered in respect of, or the accused is convicted of, an offence [<sup>F4</sup>but before sentence is imposed],

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lay before the court any victim statement which relates (whether in whole or in part) to the offence in question, and the court must in determining sentence have regard to so much of—

- (i) that statement; and
- (ii) any statement made by virtue of subsection (3) in relation to that statement, as it considers to be relevant to that offence.

(6) Where—

(a) because a person has died no such opportunity as is mentioned in subsection (2) can be afforded that person then subsections (2) and (3) apply as if the references in them to the person and to how the offence (or apparent offence) affected, or continues to affect, the person—

(i) were references to any or all of the four qualifying persons highest listed in subsection (10) and to how the offence (or apparent offence) affected, or continues to affect, the maker of the statement; and

(ii) without prejudice to sub-paragraph (i), where the person died a child (that is to say not having attained the age of sixteen years), included references to any other person who, immediately before the offence (or apparent offence) was perpetrated, cared for the child (that expression being construed in accordance with the definition of “person who cares for” in [F5]paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010] (asp 8)) and to how the offence (or apparent offence) affected, or continues to affect, that other person; or

(b) a person who (but for this paragraph and other than by virtue of paragraph (a)) would be afforded such an opportunity as is so mentioned is—

(i) incapable, by reason of mental disorder or inability to communicate, of making a victim statement, subsections (2) and (3) apply as if the person to be afforded an opportunity were not the incapable person but the qualifying person highest listed in subsection (10) [F6(taking no account of qualifying persons who have not attained the age of 12 years)]; F7...

F8(ii) .....

and as if the other references in those subsections to a person continued to be to the incapable person F9....

(7) For the purposes of subsection (6)(b)(i), inability to communicate by reason only of a lack or deficiency in a faculty of communication is to be disregarded if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise).

(8) In subsection (6), “qualifying person” means a person whose relationship to the victim is listed in subsection (10), who is [F10not] incapable as mentioned in subparagraph (i) of paragraph (b) of subsection (6) F11... and who is not a person referred to by subsection (9).

(9) This subsection refers to a person accused of, or reasonably suspected of being the perpetrator of, or of having been implicated in, the offence (or apparent offence) in question.

(10) The list is—

- (a) spouse [F12or civil partner];

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- (b) cohabitee;
- (c) son or daughter or any person in relation to whom the victim has or had parental responsibilities or rights vested by, under or by virtue of the Children (Scotland) Act 1995 (c. 36);
- (d) father or mother or any person in whom parental responsibilities or rights are or were vested by, under or by virtue of that Act in relation to the victim;
- (e) brother or sister;
- (f) grandparent;
- (g) grandchild;
- (h) uncle or aunt;
- (i) nephew or niece,

and the elder of any two persons described in any one of paragraphs (a) to (i) is to be taken to be the higher listed person, regardless of sex.

[<sup>F13</sup>(11) In subsection (10)(b), “cohabitee” means a person who has lived with the victim—

- (a) as if in a married relationship; or
- (b) in a relationship which had the characteristics of the relationship between civil partners,

for at least six months and was so living immediately before the offence (or apparent offence) was perpetrated.]

[<sup>F14</sup>(11A) Where a child who has not attained the age of 12 years has (but for this subsection) the opportunity to make a statement by virtue of subsection (2), (3) or (6)(a)(i)—

- (a) any statement made by virtue of the subsection must instead be made by a carer of the child, but
- (b) those subsections otherwise apply as if references in them to a person and to the maker of a statement are to the child.

(11B) For the purposes of subsection (11A), “carer of the child” means—

- (a) a person who cared for the child when the offence (or apparent offence) was perpetrated,
- (b) a person who cares for the child when the statement is made,
- (c) a person who has cared for the child at any other time.

(11C) If more than one person comes within the meaning of “carer of the child” the persons may agree which carer is to make the statement after, so far as practicable and having regard to the age and maturity of the child—

- (a) giving the child an opportunity to express any views on which carer is to make the statement, and
- (b) taking account of any views expressed by the child.

(11D) If no agreement is reached in accordance with subsection (11C)—

- (a) the statement may be made by each person coming within the description in subsection (11B)(a), and
- (b) if there is no such person, the statement may be made by each person coming within the description in subsection (11B)(b).

(11E) In subsection (11B), the expressions “cared for” and “cares for” are to be construed in accordance with the definition of “someone who cares for” in paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010.]

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(12) The Scottish Ministers may by order (either or both)—

- (a) amend [<sup>F15</sup>this section] by substituting for the age for the time being specified [<sup>F16</sup>in any part of this section] such other age as they think fit;
- (b) amend the list in subsection (10).

[<sup>F17</sup>(13) A victim statement, or a statement made by virtue of subsection (3) in relation to a victim statement, may be made in such form and manner as may be prescribed.

(14) An order under subsection (13) may—

- (a) include such incidental, supplementary or consequential provision as the Scottish Ministers consider appropriate,
- (b) modify any enactment (including this Act).

[<sup>F18</sup>(15) An order under subsection (1), (2) or (13) may make different provision for different purposes including—

- (a) in the case of an order under subsection (1), provision to prescribe a court or class of court only in relation to a specific offence or offences triable in that court;
- (b) in the case of an order under subsection (2), provision to prescribe an offence—
  - (i) by reference to the nature of the offence; or
  - (ii) only insofar as it is triable in a specific court or class of court;
- (c) in the case of an order under subsection (1), (2) or (13), provision of temporary or local effect.]

[<sup>F18</sup>(16) An order under subsection (2) may prescribe all offences triable in a prescribed court.]]

#### Textual Amendments

- F1** Words in s. 14(5)(a) inserted (13.8.2014 for specified purposes, 10.2.2021 in so far as not already in force) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(2)(a)(i)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3); S.S.I. 2020/405, art. 2(a)
- F2** Words in s. 14(5)(a) inserted (13.8.2014 for specified purposes, 10.2.2021 in so far as not already in force) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(2)(a)(ii)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3); S.S.I. 2020/405, art. 2(a)
- F3** Words in s. 14(5)(b) inserted (13.8.2014 for specified purposes, 10.2.2021 in so far as not already in force) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(2)(b)(i)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3); S.S.I. 2020/405, art. 2(a)
- F4** Words in s. 14(5)(b) inserted (13.8.2014 for specified purposes, 10.2.2021 in so far as not already in force) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(2)(b)(ii)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3); S.S.I. 2020/405, art. 2(a)
- F5** Words in s. 14(6)(a)(ii) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, **sch. 1 para. 12(a)**
- F6** Words in s. 14(6)(b)(i) inserted (13.8.2014 for specified purposes, 10.2.2021 in so far as not already in force) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(3)(a)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3); S.S.I. 2020/405, art. 2(a)
- F7** Word in s. 14(6)(b) repealed (13.8.2014 for specified purposes, 10.2.2021 in so far as not already in force) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(3)(b)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3); S.S.I. 2020/405, art. 2(a)
- F8** S. 14(6)(b)(ii) repealed (13.8.2014 for specified purposes, 10.2.2021 in so far as not already in force) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(3)(c)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3); S.S.I. 2020/405, art. 2(a)

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- F9** Words in s. 14(6)(b) repealed (13.8.2014 for specified purposes, 10.2.2021 in so far as not already in force) by **Victims and Witnesses (Scotland) Act 2014 (asp 1), ss. 23(3)(d), 34; S.S.I. 2014/210, art. 2, sch. (with art. 3); S.S.I. 2020/405, art. 2(a)**
- F10** Word in s. 14(8) substituted (13.8.2014 for specified purposes, 10.2.2021 in so far as not already in force) by **Victims and Witnesses (Scotland) Act 2014 (asp 1), ss. 23(4)(a), 34; S.S.I. 2014/210, art. 2, sch. (with art. 3); S.S.I. 2020/405, art. 2(a)**
- F11** Words in s. 14(8) repealed (13.8.2014 for specified purposes, 10.2.2021 in so far as not already in force) by **Victims and Witnesses (Scotland) Act 2014 (asp 1), ss. 23(4)(b), 34; S.S.I. 2014/210, art. 2, sch. (with art. 3); S.S.I. 2020/405, art. 2(a)**
- F12** Words in s. 14(10)(a) inserted (5.12.2005) by **Civil Partnership Act 2004 (c. 33), ss. 261(2), 263, Sch. 28 para. 67(2); S.S.I. 2005/604, art. 2(c)**
- F13** S. 14(11) substituted (5.12.2005) by **Civil Partnership Act 2004 (c. 33), ss. 261(2), 263, Sch. 28 para. 67(3); S.S.I. 2005/604, art. 2(c)**
- F14** S. 14(11A)-(11E) inserted (13.8.2014 for specified purposes, 10.2.2021 in so far as not already in force) by **Victims and Witnesses (Scotland) Act 2014 (asp 1), ss. 23(5), 34; S.S.I. 2014/210, art. 2, sch. (with art. 3); S.S.I. 2020/405, art. 2(a)**
- F15** Words in s. 14(12)(a) substituted (13.8.2014 for specified purposes, 10.2.2021 in so far as not already in force) by **Victims and Witnesses (Scotland) Act 2014 (asp 1), ss. 23(6)(a), 34; S.S.I. 2014/210, art. 2, sch. (with art. 3); S.S.I. 2020/405, art. 2(a)**
- F16** Words in s. 14(12)(a) substituted (13.8.2014 for specified purposes, 10.2.2021 in so far as not already in force) by **Victims and Witnesses (Scotland) Act 2014 (asp 1), ss. 23(6)(b), 34; S.S.I. 2014/210, art. 2, sch. (with art. 3); S.S.I. 2020/405, art. 2(a)**
- F17** S. 14(13)-(16) inserted (10.2.2021) by **Victims and Witnesses (Scotland) Act 2014 (asp 1), ss. 23(7), 34; S.S.I. 2020/405, art. 2(a)**
- F18** S. 14(15)(16) substituted (18.3.2021) by **The Criminal Justice (Scotland) Act 2003 (Supplemental Provisions) Order 2021 (S.S.I. 2021/150), arts. 1(2), 2(2)**

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**Changes and effects yet to be applied to :**

- specified provision(s) and purposes Appointed Day(s) by [S.S.I. 2003/439 art. 23Sch.](#) (Effect not applied to [legislation.gov.uk](#). This S.S.I. is revoked (1.10.2003) by S.S.I. 2003/475, art. 4)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 16D inserted by [2023 asp 4 s. 14\(3\)](#)
- s. 16ZA inserted by [2023 asp 4 s. 14\(2\)](#)
- s. 17E(6) inserted by [2023 asp 4 s. 14\(7\)\(d\)](#)
- s. 17DA inserted by [2023 asp 4 s. 14\(6\)](#)
- s. 17ZA inserted by [2023 asp 4 s. 14\(4\)](#)
- s. 18A(5) inserted by [2023 asp 4 s. 14\(8\)\(b\)](#)