# Victims and Witnesses (Scotland) Act 2014

**2014 asp 1**

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 12th December 2013 and received Royal Assent on 17th January 2014**

An Act of the Scottish Parliament to make provision for certain rights and support for victims and witnesses, including provision for implementing Directive 2012/29/EU of the European Parliament and the Council; and to make provision for the establishment of a committee of the Mental Welfare Commission with functions relating to persons who were placed in institutional care as children.

*General principles*

**1 General principles**

(1) Each person mentioned in subsection (2) must have regard to the principles mentioned in subsection (3) 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 or witness in relation to a criminal investigation or criminal proceedings.

(2) The persons are—
- (a) the Lord Advocate,
- (b) the Scottish Ministers,
- (c) the chief constable of the Police Service of Scotland,
- (d) the Scottish Court Service,
- (e) the Parole Board for Scotland.

(3) The principles are—
- (a) that a victim or witness should be able to obtain information about what is happening in the investigation or proceedings,
- (b) that the safety of a victim or witness should be ensured during and after the investigation and proceedings,
- (c) that a victim or witness should have access to appropriate support during and after the investigation and proceedings,
- (d) that, in so far as it would be appropriate to do so, a victim or witness should be able to participate effectively in the investigation and proceedings.

**Status:** *Point in time view as at 30/01/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:*** *There are currently no known outstanding effects for the Victims and Witnesses (Scotland) Act 2014. (See end of Document for details)*

(4) The Scottish Ministers may by order modify subsection (2).

(5) An order under subsection (4) is subject to the affirmative procedure.

**Commencement Information**

**I1** S. 1 in force at 30.1.2015 by S.S.I. 2014/359, art. 2, **Sch.**

*Standards of service*

## 2 Standards of service

(1) Each person mentioned in subsection (2) must set and publish standards in relation to—

(a) the carrying out of the functions of the person mentioned in subsection (3) in relation to a person who is or appears to be a victim or witness in relation to a criminal investigation or criminal proceedings,

(b) the person's procedure for making and resolving complaints about the way in which the person carries out those functions.

(2) The persons are—

(a) the Lord Advocate,

(b) the Scottish Ministers,

(c) the chief constable of the Police Service of Scotland,

(d) the Scottish Court Service,

(e) the Parole Board for Scotland.

(3) The functions are—

(a) in the case of the Lord Advocate, functions relating to the investigation and prosecution of crime,

(b) in the case of the Scottish Ministers, functions relating to prisons and young offenders institutions and persons detained in them,

(c) in the case of any other person mentioned in subsection (2), any functions.

(4) Before a person mentioned in subsection (2) ("the publisher") publishes standards under subsection (1), the publisher must consult—

(a) every other person mentioned in subsection (2), and

(b) such other persons as appear to the publisher to have a significant interest in the standards.

(5) The Scottish Ministers may by order—

(a) modify subsection (2),

(b) so far as is necessary or expedient in consequence of any modification made under paragraph (a), modify subsection (1), (3) or (6).

(6) In this section—

"prison" and "young offenders institution" have the meanings given by section 307(1) of the 1995 Act,

"victim" includes a prescribed relative of a victim.

(7) In subsection (6), "prescribed" means prescribed by the Scottish Ministers by order.

(8) An order under subsection (5) is subject to the affirmative procedure.

(9) An order under subsection (6) is subject to the negative procedure.

**Commencement Information**

**I2** S. 2 in force at 13.8.2014 for specified purposes by S.S.I. 2014/210, art. 2, **Sch.**

**I3** S. 2 in force at 30.1.2015 in so far as not already in force by S.S.I. 2014/359, art. 2, **Sch.** (with art. 3)

## 3 Reports

(1) This section applies where a person publishes standards under section 2(1).

(2) The person must prepare and publish a report in relation to the matters mentioned in subsection (3)—

(a) before the end of the period of 12 months beginning with the day on which standards are first published under section 2(1), and

(b) as soon as practicable following—

(i) the expiry of the period of 12 months beginning with the day on which a report is published under paragraph (a), and

(ii) each subsequent period of a year.

(3) The matters are—

(a) an assessment of how, and the extent to which, the standards have been met during the period of the report,

(b) an explanation of how the person intends to meet the standards during the year after the period of the report,

(c) a description of any modification of the standards made during the period of the report, and

(d) a description of any modification of the standards that the person proposes to make during the year after the period of the report.

(4) The Scottish Ministers may by regulations prescribe information (in addition to that required under subsection (3)) that reports prepared under subsection (2) must contain.

(5) Regulations under subsection (4) are subject to the negative procedure.

**Commencement Information**

**I4** S. 3 in force at 30.1.2015 by S.S.I. 2014/359, art. 2, **Sch.**

**Status:** *Point in time view as at 30/01/2015. This version of this Act contains provisions that are not valid for this point in time.*
**Changes to legislation:** *There are currently no known outstanding effects for the Victims and Witnesses (Scotland) Act 2014. (See end of Document for details)*

VALID FROM 01/07/2015

*Rules: review of decision not to prosecute*

**4 Rules: review of decision not to prosecute**

(1) The Lord Advocate must make and publish rules about the process for reviewing, on the request of a person who is or appears to be a victim in relation to an offence, a decision of the prosecutor not to prosecute a person for the offence.

(2) Rules under subsection (1) may in particular make provision for or in connection with—
- (a) the circumstances in which reviews may be carried out,
- (b) the manner in which a request for review must be made,
- (c) the information that must be included in a request for review,
- (d) the matters to be taken into account by the Lord Advocate when carrying out reviews,
- (e) the process to be followed by the Lord Advocate when carrying out reviews.

(3) In this section, "prosecutor" means Lord Advocate, Crown Counsel or procurator fiscal.

VALID FROM 24/02/2021

*Restorative justice*

**5 Restorative justice**

(1) The Scottish Ministers may issue guidance about—
- (a) the referral of a person who is or appears to be a victim in relation to an offence **[**[F1]or alleged offence**]** and a person who has or is alleged to have committed the offence **[**[F2]or alleged offence**]** to restorative justice services, and
- (b) the provision of restorative justice services to those persons.

(2) Any person, or description of person, prescribed by the Scottish Ministers by order must have regard to any guidance issued by the Scottish Ministers under subsection (1).

(3) In this section, "restorative justice services" means any process in which the persons such as are mentioned in subsection (1)(a) participate with a view to resolving any matter arising from the offence or alleged offence with the assistance of a person who is unconnected with either person or the offence or alleged offence.

(4) An order under subsection (2) is subject to the negative procedure.

**Textual Amendments**

**F1** Words in s. 5(1)(a) inserted (23.12.2015) by The Victims' Rights (Scotland) Regulations 2015 (S.S.I. 2015/444), regs. 1(2), **11(a)**

**F2** Words in s. 5(1)(a) inserted (23.12.2015) by The Victims' Rights (Scotland) Regulations 2015 (S.S.I. 2015/444), regs. 1(2), **11(b)**

*Disclosure of information*

## 6 Disclosure of information about criminal proceedings

(1) A person mentioned in subsection (2) (a "requester") may at any time request a qualifying person to disclose to the requester qualifying information in relation to an offence or alleged offence and any criminal investigation or criminal proceedings relating to it.

(2) The persons are—

(a) a person who appears to be a victim of the offence or alleged offence,

(b) in the case where the death of a person mentioned in paragraph (a) was (or appears to have been) caused by the offence or alleged offence, a prescribed relative of the person,

(c) a person who is to give, or is likely to give, evidence in criminal proceedings which have been, or are likely to be, instituted against a person in respect of the offence or alleged offence,

(d) a person who has given a statement in relation to the offence or alleged offence to a constable or the prosecutor.

(3) Where a request is made under subsection (1), the qualifying person must disclose to the requester any qualifying information which the person holds.

(4) In the case where the qualifying information falls within paragraph (a), (b) or (c) of subsection (7), a qualifying person must not comply with a request under subsection (1) in so far as disclosure of the qualifying information would require disclosure of information supplied by a Minister of the Crown or a department of the Government of the United Kingdom that is held in confidence by the person.

(5) A qualifying person need not comply with a request under subsection (1) in so far as the qualifying person considers that it would be inappropriate to disclose any qualifying information.

(6) In this section—

"prescribed" means prescribed by the Scottish Ministers by order,

"qualifying information" means information that—

(a) falls within subsection (7),

(b) relates to the offence or alleged offence, and

(c) is specified in the request under subsection (1),

"qualifying person" means—

(a) the chief constable of the Police Service of Scotland,

(b) a prosecutor (as defined in section 307(1) of the 1995 Act),

(c) the Scottish Court Service.

(7) Information falls within this subsection if it is—

(a) a decision not to proceed with a criminal investigation and any reasons for it,

(b) a decision to end a criminal investigation and any reasons for it,

(c) a decision not to institute criminal proceedings against a person and any reasons for it,

(d) the place in which a trial is to be held,

(e) the date on which and time at which a trial is to be held,

(f) the nature of charges libelled against a person,

(g) the place in which the hearing of an appeal arising from a trial is to be held,

(h) the date on which and time at which the hearing of an appeal arising from a trial is to be held,

(i) the stage that criminal proceedings have reached,

(j) the final decision of a court in a trial or any appeal arising from a trial, and any reasons for it.

(8) The Scottish Ministers may by order modify—

(a) the definition of "qualifying person" in subsection (6),

(b) subsection (7).

(9) An order under—

(a) subsection (2)(b) is subject to the negative procedure,

(b) subsection (8) is subject to the affirmative procedure.

**Commencement Information**

**I5** S. 6 in force at 13.8.2014 for specified purposes by S.S.I. 2014/210, art. 2, **Sch.**

**I6** S. 6(1)-(6) (8) (9) in force at 30.1.2015 in so far as not already in force by S.S.I. 2014/359, art. 2, **Sch.**

**I7** S. 6(7)(a)-(c) in force at 30.1.2015 for specified purposes by S.S.I. 2014/359, art. 2, **Sch.**

**I8** S. 6(7)(d)-(j) in force at 30.1.2015 for specified purposes by S.S.I. 2014/359, art. 2, **Sch.** (with art. 1(3))

*Interviews*

VALID FROM 01/09/2015

**7 Interviews with children: guidance**

(1) Subsection (2) applies where the persons mentioned in subsection (3) are jointly carrying out an interview with a child in relation to—

(a) criminal proceedings which have been instituted against some other person, or

(b) a matter which might result in criminal proceedings being instituted against some other person.

(2) The persons must have due regard to any guidance issued by the Scottish Ministers about the carrying out of interviews with a child in relation to those matters.

(3) The persons are—

(a) a constable,
(b) a social worker (as defined in section 77 of the Regulation of Care (Scotland) Act 2001).

(4) The Scottish Ministers may by order modify subsection (3).

(5) An order under subsection (4) is subject to the negative procedure.

(6) In this section, "child" means a person under 18 years of age.

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

(1) This section applies where an investigating officer intends to carry out a relevant interview with a person who is or appears to be the victim of an offence of a type mentioned in subsection (5).

(2) Before the relevant interview takes place, the investigating officer must give the person who is to be interviewed the opportunity to specify the gender of the investigating officer who is to carry out the interview.

(3) If the person who is to be interviewed specifies a gender under subsection (2), the relevant interview may be carried out only by an investigating officer of that gender.

(4) The investigating officer need not comply with subsection (2) if—
(a) complying with it would be likely to prejudice a criminal investigation, or
(b) it would not be reasonably practicable to do so.

(5) The types of offence are—
(a) an offence listed in any of paragraphs 36 to 59ZL of Schedule 3 to the Sexual Offences Act 2003,
(b) an offence under section 22 of the 2003 Act (traffic in prostitution etc.),
(c) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation),
(d) an offence the commission of which involves domestic abuse,
(e) stalking.

(6) Failure to comply with subsection (2) in relation to a particular relevant interview has no effect on any criminal proceedings to which the interview relates.

(7) The Scottish Ministers may by order modify subsection (5).

(8) In this section—
"investigating officer" means—
(a) a constable, or
(b) a person of such other description as the Scottish Ministers may by order prescribe,
"relevant interview" means—
(a) questioning of a person in the course of criminal proceedings which have been instituted in relation to another person, or
(b) questioning of a person with a view to instituting criminal proceedings against another person.

(9) Any reference in this section (other than subsection (10)) to an investigating officer includes a reference to two or more investigating officers acting jointly.

(10) An order under subsection (7) or paragraph (b) of the definition of "investigating officer" in subsection (8) is subject to the negative procedure.

**Commencement Information**

**I9** S. 8 in force at 13.8.2014 by S.S.I. 2014/210, art. 2, **Sch.**

VALID FROM 01/04/2022

*Medical examinations*

**9 Certain medical examinations: gender of medical examiner**

**[**(1) This section applies where a forensic medical examination is to be carried out by virtue of section 2 of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021.**]**

(2) Before a medical examination of the person [F3]... is carried out by a registered medical practitioner **[**, the person must be given**]** an opportunity to request that any such medical examination be carried out by a registered medical practitioner of a **[**sex**]** specified by the person.

(3) If the person makes such a request, [F4]... the registered medical practitioner who is to (or, but for the request, would) carry out the examination is **[**to be**]** informed of the nature of the request.

(4) In this section, references to a registered medical practitioner include references to a person of such other description as the Scottish Ministers may by order prescribe.

(5) An order under subsection (4) is subject to the negative procedure.

**Textual Amendments**

**F3** Words in s. 9(2) repealed (1.4.2022) by Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (asp 3), s. 20(2), **sch. para. 5(3)(b)(i)** (with s. 3); S.S.I. 2022/24, reg. 2

**F4** Words in s. 9(3) repealed (1.4.2022) by Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (asp 3), s. 20(2), **sch. para. 5(3)(c)(i)** (with s. 3); S.S.I. 2022/24, reg. 2

**Commencement Information**

**I10** S. 9 in force at 1.4.2022 by S.S.I. 2022/22, **art. 2**

VALID FROM 01/09/2015

*Vulnerable witnesses*

**10 Vulnerable witnesses: main definitions**

In section 271 of the 1995 Act (vulnerable witnesses: main definitions)—

(a) for subsection (1), substitute—

"(1) For the purposes of this Act, a person who is giving or is to give evidence at, or for the purposes of, a hearing in relevant criminal proceedings is a vulnerable witness if—

(a) the person is under the age of 18 on the date of commencement of the proceedings in which the hearing is being or is to be held,

(b) there is a significant risk that the quality of the evidence to be given by the person will be diminished by reason of—

(i) mental disorder (within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003), or

(ii) fear or distress in connection with giving evidence at the hearing,

(c) the offence is alleged to have been committed against the person in proceedings for—

(i) an offence listed in any of paragraphs 36 to 59ZL of Schedule 3 to the Sexual Offences Act 2003,

(ii) an offence under section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution etc.),

(iii) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation),

(iv) an offence the commission of which involves domestic abuse, or

(v) an offence of stalking, or

(d) there is considered to be a significant risk of harm to the person by reason only of the fact that the person is giving or is to give evidence in the proceedings.",

(b) after subsection (1), insert—

"(1AA) The Scottish Ministers may by order subject to the affirmative procedure modify subsection (1)(c).",

(c) subsection (1A) is repealed,

(d) in subsection (2), after "(1)(b)" insert " or (d) ", and

(e) after subsection (4), insert—

"(4A) In determining whether a person is a vulnerable witness under subsection (1)(b) or (d), the court must—

(a) have regard to the best interests of the witness, and

(b) take account of any views expressed by the witness.".

**Status:** *Point in time view as at 30/01/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:*** *There are currently no known outstanding effects for the Victims and Witnesses (Scotland) Act 2014. (See end of Document for details)*

**11 Child and deemed vulnerable witnesses**

(1) In section 71(2XA) of the 1995 Act (first diet), for "child" substitute " vulnerable ".

(2) In section 72(6)(b)(ii) of the 1995 Act (preliminary hearing procedure), for "child" substitute " vulnerable ".

(3) In section 271(5) of the 1995 Act (definitions for sections 271A to 271M of the 1995 Act)—

(a) before the definition of "court", insert—

""child witness" means a vulnerable witness referred to in subsection (1)(a),", and

(b) after that definition, insert—

""deemed vulnerable witness" means a vulnerable witness referred to in subsection (1)(c),".

(4) In section 271A of the 1995 Act (child witnesses)—

(a) in subsection (1)—

(i) after "child witness", where it first occurs, insert " or a deemed vulnerable witness ", and

(ii) the word "child", where it second occurs, is repealed,

(b) in subsection (2)—

(i) after "child witness", where it first occurs, insert " or a deemed vulnerable witness ",

(ii) for "child", where it second occurs, substitute " vulnerable ", and

(iii) in each of paragraphs (a) and (b), the word "child" is repealed,

(c) in each of subsections (3) and (4), for "child" substitute " vulnerable ",

(d) after subsection (3), insert—

"(3A) In the case where a vulnerable witness notice under subsection (2)(a) specifies only a standard special measure, subsection (3)(a) does not apply.".

(e) in subsection (5)—

(i) for "child", where it first occurs, substitute " vulnerable ", and

(ii) in paragraphs (a), (b) and (c), the word "child", in each place where it occurs, is repealed,

(f) in subsection (5A)—

(i) in paragraph (a), for "child" substitute " vulnerable ", and

(ii) in paragraph (b), for "child" substitute " vulnerable ",

(g) in subsection (6)—

(i) in paragraph (a), after "child witness" insert " or a deemed vulnerable witness ",

(ii) in paragraph (b), for "child", where it first occurs, substitute " vulnerable ",

(iii) in paragraph (b), the word "child", where it second occurs, is repealed,

(iv) in paragraph (c), for "child", where it first occurs, substitute " vulnerable ", and

(v) in paragraph (c), the word "child", where it second occurs, is repealed,

(h) in subsection (7)(a)—
(i) for "child", where it first occurs, substitute " vulnerable ", and
(ii) the word "child", where it second occurs, is repealed,
(i) in subsection (8A)(a)—
(i) in sub-paragraph (i), for "child" substitute " vulnerable ", and
(ii) in paragraph (ii), the word "above", where it second occurs, is repealed,
(j) in subsection (9), the word "child", in each place where it occurs, is repealed,
(k) in subsection (10), the word "child", in each place where it occurs, is repealed,
(l) in subsection (11)(a), the word "child" is repealed, and
(m) in subsection (13), for "child" substitute " vulnerable ".

(5) The title of section 271A of the 1995 Act becomes " **Child and deemed vulnerable witnesses** ".

(6) The title of section 271C of the 1995 Act becomes " **Vulnerable witness application** ".

(7) In section 271E(1)(a) of the 1995 Act (party considering vulnerable witness notice or application), for "child" substitute " vulnerable ".

(8) In section 271F(2)(a) of the 1995 Act (modifications of section 271 in relation to accused giving evidence as a child witness)—
(a) in paragraph (a)(i), for "child witness (except in the phrase "child witness notice")" substitute " witness ", and
(b) in paragraph (a)(ii), the word "child" is repealed.

(9) In section 288E of the 1995 Act (prohibition of personal conduct of defence in certain cases involving child witnesses under the age of 12), in each of subsections (5) and (7) for "child" substitute " vulnerable ".

**12 Child and deemed vulnerable witnesses: standard special measures**

In section 271A of the 1995 Act (the standard special measures)—
(a) in subsection (14)—
(i) in paragraph (a), the words from "where" to the end are repealed, and
(ii) in paragraph (c), the words from "in", where it second occurs, to the end are repealed, and
(b) after that subsection, insert—

"(15) The Scottish Ministers may, by order subject to the affirmative procedure—
(a) modify subsection (14),
(b) in consequence of any modification made under paragraph (a)—
(i) prescribe the procedure to be followed when standard special measures are used, and
(ii) so far as is necessary, modify sections 271A to 271M of this Act.".

**Status:** *Point in time view as at 30/01/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:*** *There are currently no known outstanding effects for the Victims and Witnesses (Scotland) Act 2014. (See end of Document for details)*

**13 Objections to special measures: child and deemed vulnerable witnesses**

In section 271A of the 1995 Act (child witnesses)—

(a) after subsection (4), insert—

"(4A) Any party to the proceedings may, not later than 7 days after a vulnerable witness notice has been lodged, lodge with the court a notice (referred to in this section as an "objection notice") stating—

(a) an objection to any special measure (other than a standard special measure) specified in the vulnerable witness notice that the party considers to be inappropriate, and

(b) the reasons for that objection.

(4B) The court may, on cause shown, allow an objection notice to be lodged after the period referred to in subsection (4A).

(4C) If an objection notice is lodged in accordance with subsection (4A) or (4B)—

(a) subsection (5)(a)(ii) does not apply to the vulnerable witness notice, and

(b) the court must make an order under subsection (5A).",

(b) in subsection (5), for "later than 7" substitute " earlier than 7 days and not later than 14 ", and

(c) in subsection (13), after "notice" insert " or an objection notice ".

**14 Child witnesses**

(1) In section 271B of the 1995 Act (further special provision for child witnesses under the age of 12), for subsection (3), substitute—

"(3) Subsection (4) applies if the child witness expresses a wish to be present in the court-room for the purpose of giving evidence.

(4) The court must make an order under section 271A or, as the case may be, 271D which has the effect of requiring the child witness to be present in the court-room for the purpose of giving evidence unless the court considers that it would not be appropriate for the child witness to be present there for that purpose.

(5) Subsection (6) applies if the child witness—

(a) does not express a wish to be present in the court-room for the purpose of giving evidence, or

(b) expresses a wish to give evidence in some other way.

(6) The court may not make an order under section 271A or 271D having the effect mentioned in subsection (4) unless the court considers that—

(a) the giving of evidence by the child witness in some way other than by being present in the court-room for that purpose would give rise to a significant risk of prejudice to the fairness of the trial or otherwise to the interests of justice, and

(b) that risk significantly outweighs any risk of prejudice to the interests of the child witness if the order were to be made.".

(2) In section 271A(5) of the 1995 Act (orders authorising special measures), for "271B(3)" substitute " 271B ".

(3) In section 271D of the 1995 Act (review of arrangements for child witnesses and certain other witnesses), after subsection (6), add—

"(7) This section is subject to section 271B.".

**15 Reporting of proceedings involving children**

In section 47 of the 1995 Act (restriction on report of proceedings involving children), in each of subsections (1), (2) and (3)(a), for "16", wherever it occurs, substitute " 18 ".

**16 Other vulnerable witnesses: assessment and application**

(1) After section 271B of the 1995 Act, insert—

"**271BA Assessment of witnesses**

(1) This section applies where a party intends to cite a witness other than a child witness or a deemed vulnerable witness to give evidence at, or for the purposes of, a hearing in relevant criminal proceedings.

(2) The party intending to cite the witness must take reasonable steps to carry out an assessment under subsection (3).

(3) An assessment must determine whether the person—
(a) is likely to be a vulnerable witness, and
(b) if so, what special measure or combination of special measures ought to be used for the purpose of taking the person's evidence.

(4) In determining under subsection (3)(a) whether a person is likely to be a vulnerable witness the party must—
(a) take into account the matters mentioned in section 271(2),
(b) have regard to the best interests of the person, and
(c) take account of any views expressed by the person.".

(2) In section 271C(1) of the 1995 Act (citation of vulnerable witnesses)—
(a) after "witness", where it first occurs, insert " or a deemed vulnerable witness ", and
(b) before "considers" insert " and, having carried out an assessment under section 271BA, ".

**17 Objections to special measures: other vulnerable witnesses**

In section 271C of the 1995 Act (other vulnerable witnesses)—
(a) after subsection (4), insert—

"(4A) Any party to the proceedings may, not later than 7 days after a vulnerable witness application has been lodged, lodge with the

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court a notice (referred to in this section as "an objection notice") stating—

(a) an objection to any special measure specified in the vulnerable witness application that the party considers to be inappropriate, and

(b) the reasons for that objection.

(4B) The court may, on cause shown, allow an objection notice to be lodged after the period referred to in subsection (4A).

(4C) If an objection notice is lodged in accordance with subsection (4A) or (4B)—

(a) subsection (5) does not apply to the vulnerable witness application, and

(b) the court must make an order under subsection (5A).",

(b) in subsection (5), for "later than 7" substitute " earlier than 7 days and not later than 14 ", and

(c) in subsection (11)—

(i) after "application", where it first occurs, insert " or an objection notice ", and

(ii) after "application", where it second occurs, insert " or, as the case may be, the notice ".

**18 Review of arrangements for vulnerable witnesses**

In section 271D(1)(a) of the 1995 Act (application for review of arrangements for vulnerable witnesses), for "the party citing or intending to cite the witness" substitute " any party to the proceedings ".

**19 Temporary additional special measures**

After section 271H of the 1995 Act, insert—

"**271HA Temporary additional special measures**

(1) The Scottish Ministers may, by order subject to the affirmative procedure, specify additional measures which for the time being are to be treated as special measures listed in section 271H(1).

(2) An order under subsection (1)

(3) An order under subsection (1) must specify—

(a) the area in which the additional measures may be used,

(b) the period during which the additional measures may be used, and

(c) the procedure to be followed when the additional measures are used.".

**20 Special measures: closed courts**

(1) In section 271H(1) of the 1995 Act (the special measures), after paragraph (e) insert—

"(ea) excluding the public during the taking of the evidence in accordance with section 271HB of this Act,".

(2) After section 271HA of the 1995 Act (inserted by section 19), insert—

"**271HB Excluding the public while taking evidence**

(1) This section applies where the special measure to be used in respect of a vulnerable witness is excluding the public during the taking of the evidence of the vulnerable witness.

(2) The court may direct that all or any persons other than those mentioned in subsection (3) are excluded from the court during the taking of the evidence.

(3) The persons are—

(a) members or officers of the court,

(b) parties to the case before the court, their counsel or solicitors or persons otherwise directly concerned in the case,

(c) *bona fide* representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings,

(d) such other persons as the court may specially authorise to be present.".

(3) In section 271F(8)(a) of the 1995 Act (special measures not applying in relation to a vulnerable witness who is the accused), after "271H(1)(c)" insert " and (ea) ".

**21 Power to prescribe further special measures**

In section 271H of the 1995 Act (the special measures)—

(a) in subsection (1), paragraph (f) is repealed,

(b) after subsection (1), insert—

"(1A) The Scottish Ministers may, by order subject to the affirmative procedure—

(a) modify subsection (1),

(b) in consequence of any modification made under paragraph (a)—

(i) prescribe the procedure to be followed when special measures are used, and

(ii) so far as is necessary, modify sections 271A to 271M of this Act.", and

(c) subsection (2) is repealed.

**22 Vulnerable witnesses: civil proceedings**

In section 11(1) of the Vulnerable Witnesses (Scotland) Act 2004 (vulnerable witnesses: civil proceedings)—

(a) in paragraph (a), for "16" substitute " 18 ",

(b) the word "or" immediately after that paragraph is repealed, and

(c) after paragraph (b), insert ", or

**Status:** *Point in time view as at 30/01/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:*** *There are currently no known outstanding effects for the Victims and Witnesses (Scotland) Act 2014. (See end of Document for details)*

(c) the person is of such description or is a witness in such proceedings as the Scottish Ministers may by order subject to the affirmative procedure prescribe.".

*Victim statements*

**23 Victim statements**

(1) Section 14 of the 2003 Act (victim statements) is amended in accordance with subsections (2) to (7).

(2) In subsection (5)—

(a) in paragraph (a)—

(i) after "when", insert " or after ", and

(ii) after "offence", insert " but before sentence is imposed ",

(b) in paragraph (b)—

(i) after "when", insert " or after ", and

(ii) after "offence", insert " but before sentence is imposed ".

(3) In subsection (6)(b)—

(a) in sub-paragraph (i), after "subsection (10)" insert " (taking no account of qualifying persons who have not attained the age of 12 years) ",

(b) the word "or" immediately after sub-paragraph (i) is repealed,

(c) sub-paragraph (ii) is repealed, and

(d) after that sub-paragraph, the words "or as the case may be to the child" are repealed.

(4) In subsection (8)—

(a) for "neither" substitute " not ", and

(b) the words "nor a child such as is mentioned in sub-paragraph (ii) of that paragraph" are repealed.

(5) After subsection (11), insert—

"(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.".

(6) In subsection (12)(a)—

(a) for "subsection (6)(b)(ii)" substitute " this section ", and

(b) for "there" substitute " in any part of this section ".

(7) After subsection (12), insert—

"(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).

(15) An order under subsection (13) may be made so as to have effect for a period specified in the order.

(16) An order under subsection (13) containing provision of the type mentioned in subsection (15) may provide that its provisions are to apply only in relation to one or more areas specified in the order.".

(8) Section 16 of the 2003 Act (victim's right to receive information concerning release etc. of offender) is amended in accordance with subsections (9) to (13).

(9) In subsection (5)—

(a) in paragraph (a)—

(i) after "person", insert " to be given the information ", and

(ii) after "Act", insert " (except that, in the case where a qualifying person is a child who has not attained the age of 12 years, paragraph (a)(i) of the said section 14(6) is to be construed as if the reference to the qualifying person were to a person who cares for the child) ",

(b) in paragraph (b)(ii)—

(i) after "child", insert " who has not attained the age of 12 years ",

(ii) the words from "such" to "paragraph (b)" are repealed,

(iii) after "person" insert " to be given the information ", and

(iv) for the words from "mentioned", where it second occurs, to "cares"," substitute " references to the person who cares for the child ",

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***Changes to legislation:*** *There are currently no known outstanding effects for the Victims and Witnesses (Scotland) Act 2014. (See end of Document for details)*

(c) in paragraph (b)(i), after "sub-paragraph", where it second occurs, insert " (taking him to be the person "afforded an opportunity") ", and

(d) in paragraph (b) the words "(taking him to be the person "afforded an opportunity")" are repealed.

(10) In subsection (6)—

(a) for "and (8) to (12)" substitute " to (11) ", and

(b) after "relation to", where it first occurs, insert " paragraphs (a) and (b)(i) of ".

(11) Subsection (7) is repealed.

(12) In subsection (8), for "(7)" substitute " (5)(a) and (b)(ii) ".

(13) After subsection (8), add—

"(9) The Scottish Ministers may by order amend this section by substituting for—

(a) the person for the time being specified in any part of this section to whom information may be made available such other person as they think fit,

(b) the age for the time being specified in any part of this section such other age as they think fit.".

(14) In section 88(2) of the 2003 Act (orders), at the beginning of paragraph (b) insert " 14(13) or ".

**Commencement Information**

**I11** S. 23(1)-(6) in force at 13.8.2014 for specified purposes by S.S.I. 2014/210, art. 2, **Sch.** (with art. 3)

**I12** S. 23(8)-(13) in force at 13.8.2014 by S.S.I. 2014/210, art. 2, **Sch.** (with art. 3)

*Sentencing*

PROSPECTIVE

**24 Duty to consider making compensation order**

In section 249 of the 1995 Act (compensation order against convicted person), after subsection (4) insert—

"(4A) In any case where it would be competent for the court to make a compensation order, the court must consider whether to make a compensation order.

(4B) Before making a compensation order, the court must take steps to ascertain the views and wishes of the victim.

(4C) No compensation order may be made where the victim notifies the court that the victim does not wish to receive compensation from the person convicted of the offence.

(4D) For the purposes of subsections (4B) and (4C), "victim" has the meaning given by subsections (1A) and (1C).".

VALID FROM 25/08/2020

**25 Restitution order**

After section 253 of the 1995 Act, insert—

*"Restitution order*

**253A Restitution order where conviction of police assault etc.**

(1) This section applies where a person ("P") is convicted of an offence under section 90(1) of the Police and Fire Reform (Scotland) Act 2012 (police assault etc.).

(2) The court, instead of or in addition to dealing with P in any other way, may make an order to be known as a restitution order requiring P to pay an amount not exceeding the prescribed sum (as defined in section 225(8)).

(3) The Scottish Ministers may by regulations amend subsection (2) so as to substitute for the amount for the time being specified such other amount as may be prescribed by, or determined in accordance with, the regulations.

(4) Any amount paid in respect of a restitution order is to be paid to the clerk of any court or any other person (or class of person) authorised by the Scottish Ministers for the purpose.

(5) Regulations under subsection (3) are subject to the negative procedure.

**253B The Restitution Fund**

(1) A person to whom any amount is paid under section 253A in respect of a restitution order must pay the amount to the Scottish Ministers.

(2) The Scottish Ministers must pay any amount received by virtue of subsection (1) into a fund to be known as the Restitution Fund.

(3) The Scottish Ministers must establish, maintain and administer the Restitution Fund for the purpose of securing the provision of support services for persons who have been assaulted as mentioned in section 90(1) of the Police and Fire Reform (Scotland) Act 2012 ("victims").

(4) Any payment out of the fund may be made only to—
   (a) a person who provides or secures the provision of support services for victims, or
   (b) the Scottish Ministers or, with the consent of the Scottish Ministers, a person specified by order by virtue of subsection (5) in respect of outlays incurred in administering the fund.

(5) The Scottish Ministers may delegate to such person as they may specify by order the duties imposed on them by subsection (3) of establishing, maintaining and administering the Restitution Fund.

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***Changes to legislation:*** *There are currently no known outstanding effects for the Victims and Witnesses (Scotland) Act 2014. (See end of Document for details)*

(6) The Scottish Ministers may by order make further provision about the administration of the Restitution Fund including provision for or in connection with—
  (a) specifying persons or classes of person to or in respect of whom payments may be made out of the fund (but subject to subsection (4)),
  (b) the making of payments out of the fund,
  (c) requiring financial or other records to be kept,
  (d) the making of reports to the Scottish Government containing such information and in respect of such periods as may be specified.

(7) An order under subsection (5) or (6) is subject to the affirmative procedure.

(8) In this section, "support services", in relation to a victim, means any type of service or treatment which is intended to benefit the physical or mental health or wellbeing of the victim.

**253C Restitution order, fine and compensation order: order of preference**

(1) Subsection (2) applies where a court considers in relation to an offence that it would be appropriate—
  (a) to make a restitution order,
  (b) to impose a fine, and
  (c) to make a compensation order.

(2) If the person convicted of the offence ("P") has insufficient means to pay an appropriate amount under a restitution order, to pay an appropriate fine and to pay an appropriate amount in compensation, the court should prefer a compensation order and then a restitution order over a fine.

(3) Subsection (4) applies where a court considers in relation to an offence that it would be appropriate—
  (a) to make a restitution order, and
  (b) to impose a fine or make a compensation order.

(4) If P has insufficient means to pay an appropriate amount under a restitution order and to pay an appropriate fine or, as the case may be, an appropriate amount in compensation, the court should prefer a compensation order and then a restitution order over a fine.

**253D Application of receipts**

(1) This section applies where the court makes a restitution order in relation to a person ("P") convicted of an offence and also in respect of the same offence or different offences in the same proceedings—
  (a) imposes a fine and makes a compensation order, or
  (b) imposes a fine or makes a compensation order.

(2) A payment by P must be applied in the following order—
  (a) the payment must first be applied in satisfaction of the compensation order,

(b) the payment must next be applied in satisfaction of the restitution order,

(c) the payment must then be applied in satisfaction of the fine.

**253E Enforcement: application of certain provisions relating to fines**

(1) The provisions of this Act specified in subsection (2) apply in relation to restitution orders as they apply in relation to fines but subject to the modifications mentioned in subsection (2) and to any other necessary modifications.

(2) The provisions are—

(a) section 211(3) and (7),

(b) section 212,

(c) section 213 (with the modification that subsection (2) is to be read as if the words "or (4)" were omitted),

(d) section 214(1) to (4) and (6) to (9) (with the modification that subsection (4) is to be read as if the words from "unless" to "decision" were omitted),

(e) sections 215 to 217,

(f) subject to subsection (3) below, section 219(1)(b), (2), (3), (5), (6) and (8),

(g) sections 220 to 224,

(h) section 248B.

(3) In the application of the provisions of section 219 mentioned in subsection (2)(f) for the purposes of subsection (1)—

(a) a court may impose imprisonment in respect of a fine and decline to impose imprisonment in respect of a restitution order but not vice versa,

(b) where a court imposes imprisonment both in respect of a fine and a restitution order, the amounts in respect of which imprisonment is imposed are to be aggregated for the purposes of section 219(2).".

**26 Victim surcharge**

After section 253E of the 1995 Act (inserted by section 25), insert—

*"Victim surcharge*

**253F Victim surcharge**

(1) This section applies where—

(a) a person ("P") is convicted of an offence other than an offence, or offence of a class, that is prescribed by regulations by the Scottish Ministers,

(b) the court does not make a restitution order, and

(c) the court imposes a sentence, or sentence of a class, that is so prescribed.

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(2) Except in such circumstances as may be prescribed by regulations by the Scottish Ministers, the court, in addition to dealing with P in any other way, must order P to pay a victim surcharge of such amount as may be so prescribed.

(3) Despite subsection (2), if P is convicted of two or more offences in the same proceedings, the court must order P to pay only one victim surcharge in respect of both or, as the case may be, all the offences.

(4) Any sum paid in respect of a victim surcharge is to be paid to the clerk of any court or any other person (or class of person) authorised by the Scottish Ministers for the purpose.

(5) Regulations under this section may make different provision for different cases and in particular may include provision—
   (a) prescribing different amounts for different descriptions of offender,
   (b) prescribing different amounts for different circumstances.

(6) Where provision is made by virtue of subsection (5), the Scottish Ministers may by regulations make provision for determining which victim surcharge is payable in the circumstances mentioned in subsection (3).

(7) Regulations under this section are subject to the affirmative procedure.

**253G The Victim Surcharge Fund**

(1) A person to whom any sum is paid under section 253F(4) in respect of a victim surcharge must pay the sum to the Scottish Ministers.

(2) The Scottish Ministers must pay any sum received by virtue of subsection (1) into a fund to be known as the Victim Surcharge Fund.

(3) The Scottish Ministers must establish, maintain and administer the Victim Surcharge Fund for the purpose of securing the provision of support services for persons who are or appear to be the victims of crime and prescribed relatives of such persons.

(4) Any payment out of the fund may be made only to—
   (a) a person who is or appears to be the victim of crime,
   (b) a prescribed relative of a person who is or appears to be the victim of crime,
   (c) a person who provides or secures the provision of support services for persons who are or appear to be victims of crime, or
   (d) the Scottish Ministers or, with the consent of the Scottish Ministers, a person specified by order by virtue of subsection (5) in respect of outlays incurred in administering the fund.

(5) The Scottish Ministers may delegate to such person as they may specify by order the duties imposed on them by subsection (3) of establishing, maintaining and administering the Victim Surcharge Fund.

(6) The Scottish Ministers may by regulations make further provision about the administration of the Victim Surcharge Fund including provision for or in connection with—
   (a) the making of payments out of the fund,

(b) the keeping of financial and other records,

(c) the making of reports to the Scottish Government containing such information and in respect of such periods as may be specified.

(7) An order under subsection (5) and regulations under subsection (6) are subject to the affirmative procedure.

(8) In this section—

"prescribed" means prescribed by the Scottish Ministers by regulations,

"support services", in relation to a person who is or appears to be the victim of crime, means any type of service or treatment which is intended to benefit the physical or mental health or wellbeing of the person or a prescribed relative of the person.

(9) Regulations under subsections (3), (4) and (8) are subject to the negative procedure.

**253H Application of receipts**

(1) This section applies where the court orders the payment of a victim surcharge in relation to a person ("P") convicted of an offence and also in respect of the same offence or different offences in the same proceedings—

(a) imposes a fine and makes a compensation order, or

(b) imposes a fine or makes a compensation order.

(2) A payment by P must be applied in the following order—

(a) the payment must first be applied in satisfaction of the compensation order,

(b) the payment must next be applied in satisfaction of the victim surcharge,

(c) the payment must then be applied in satisfaction of the fine.

**253J Enforcement: application of certain provisions relating to fines**

(1) The provisions of this Act specified in subsection (2) apply in relation to victim surcharges as they apply in relation to fines but subject to the modifications mentioned in subsection (2) and to any other necessary modifications.

(2) The provisions are—

(a) section 211(3) and (4),

(b) section 212,

(c) section 213 (with the modification that subsection (2) is to be read as if the words "or (4)" were omitted),

(d) section 214(1) to (4) and (6) to (9) (with the modification that subsection (4) is to be read as if the words from "unless" to "decision" were omitted),

(e) sections 215 to 218,

(f) subject to subsection (3) below, section 219(1)(b), (2), (3), (5), (6) and (8),

(g) sections 220 to 224,

(h) section 248B.

**Status:** *Point in time view as at 30/01/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:*** *There are currently no known outstanding effects for the Victims and Witnesses (Scotland) Act 2014. (See end of Document for details)*

(3) In the application of the provisions of section 219 mentioned in subsection (2)(f) for the purposes of subsection (1)—

(a) a court may impose imprisonment in respect of a fine and decline to impose imprisonment in respect of a victim surcharge but not vice versa,

(b) where a court imposes imprisonment both in respect of a fine and a victim surcharge, the amounts in respect of which imprisonment is imposed are to be aggregated for the purposes of section 219(2).”.

**Commencement Information**

**I13** S. 26 in force at 13.8.2014 for specified purposes by S.S.I. 2014/210, art. 2, **Sch.**

*Release of offender: victim's rights*

## 27 Victim's right to receive information about release of offender etc.

In section 16 of the 2003 Act (victim's right to receive information about release of offender etc.)—

(a) in subsection (1), for the words from “a”, where it first occurs, to “offence)” substitute “ an offence ”, and

(b) in subsection (3), for paragraph (d) substitute—

“(d) that the convicted person is for the first time entitled to be considered for temporary release by virtue of rules under section 39(6) of the 1989 Act,”.

**Commencement Information**

**I14** S. 27 in force at 13.8.2014 by S.S.I. 2014/210, art. 2, **Sch.** (with art. 3)

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

In section 17 of the 2003 Act (release on licence: right of victim to receive information and make representations)—

(a) in subsection (1)—

(i) the words from “be”, where it first occurs, to the end become paragraph (a) of the subsection, and

(ii) after that paragraph, add—

“(b) if the convicted person is serving a sentence of life imprisonment, be afforded an opportunity to make oral representations to a member of the Parole Board for Scotland who is not dealing with the convicted person's case as respects such release and as to conditions which might be specified in the licence in question.”,

(b) in subsection (4)—

(i) after “how” insert “ written ”, and

(ii) at the end add " and how oral representations under that subsection should be made ",

(c) after subsection (10), insert—

"(10A) In complying with the duty imposed on them by subsection (5), the Scottish Ministers may fix different times in relation to written and oral representations respectively.", and

(d) after subsection (12), add—

"(13) The Scottish Ministers may by order modify the description or descriptions of convicted person for the time being specified in subsection (1)(b).".

**Commencement Information**

**I15** S. 28 in force at 13.8.2014 by S.S.I. 2014/210, art. 2, **Sch.** (with art. 3)

## 29 Temporary release: victim's right to make representations

After section 17 of the 2003 Act, insert—

"**17A Temporary release: victim's right to make representations about conditions**

(1) This section applies where by virtue of subsection (1) or (5) of section 16 a person (the "victim") is given the information mentioned in subsection (3)(d) of that section as respects a convicted person.

(2) On the first occasion on which the convicted person is entitled to be considered for temporary release by virtue of rules under section 39(6) of the 1989 Act, the Scottish Ministers must give the victim an opportunity to make written representations to them about any conditions that the victim considers should be imposed in relation to the temporary release.

(3) Subsection (2) applies only if the victim has notified the Scottish Ministers that the victim wishes to be given the opportunity to make representations under that subsection.

(4) The Scottish Ministers must—

(a) fix a time within which any written representations under subsection (2) require to be made to them if they are to be considered by them, and

(b) notify the victim of the time fixed.".

**Commencement Information**

**I16** S. 29 in force at 13.8.2014 by S.S.I. 2014/210, art. 2, **Sch.** (with art. 3)

**Status:** *Point in time view as at 30/01/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:*** *There are currently no known outstanding effects for the Victims and Witnesses (Scotland) Act 2014. (See end of Document for details)*

*National Confidential Forum*

**30 National Confidential Forum**

After section 4 of the Mental Health Act, insert—

"**4ZA National Confidential Forum**

(1) The Commission must establish and maintain a committee to be known as the National Confidential Forum ("NCF") for the purpose of carrying out the following functions (referred to in this Act as "NCF functions")—
  (a) the general functions mentioned in section 4ZB,
  (b) the functions conferred on NCF in schedule 1A.

(2) Schedule 1A makes further provision about NCF.

**4ZB General functions of NCF**

The general functions of NCF are—
  (a) to provide means for persons who were placed in institutional care as children to describe in confidence (such descriptions being referred to in this Act as "testimony")—
    (i) experiences of that care,
    (ii) any abuse experienced during the period spent in that care,
  (b) to acknowledge testimony by enabling it to be given at hearings established by NCF or by written or other means,
  (c) based on testimony received—
    (i) to identify any patterns and trends in the experiences of persons placed in institutional care as children (including the causes, nature, scale and circumstances of any abuse experienced), and
    (ii) to make recommendations about policy and practice which NCF considers will improve institutional care (including by protecting children from, and preventing or reducing the incidence of, abuse),
  (d) while preserving the anonymity of participants, establishments providing institutional care and other persons, to prepare reports of the testimony it receives and its recommendations in relation to them,
  (e) to provide information about advice and assistance available to persons giving, or proposing to give, testimony.

**4ZC Carrying out NCF functions**

(1) The Commission must delegate the NCF functions to NCF.

(2) The person appointed to chair NCF (the "NCF Head") must account to the Commission for the carrying out of the NCF functions.

(3) Subsections (1) and (2) do not affect the responsibility of the Commission for the carrying out of the NCF functions.

**4ZD Modifications in relation to NCF**

(1) The following modifications of this Part apply in relation to the NCF functions—

(a) sections 5, 6, 9, 9A, 10, 16 and 19 do not apply,

(b) in section 17(1), references to the Commission (except in the phrase "Commission Visitor") are to be read as if they were references to NCF,

(c) sub-paragraph (2) of paragraph 11 of schedule 1A applies in relation to the Commission's annual report mentioned in section 18(1) as it applies in relation to a report prepared under that paragraph,

(d) section 20 is to be read as if after subsection (1) there were inserted—

"(1A) For the purposes of the law of defamation—

(a) any statement made in good faith by NCF, its members or NCF staff in carrying out any of the NCF functions is privileged,

(b) any statement made by an eligible person in accordance with arrangements made by NCF under paragraph 8(2) of schedule 1A is privileged.

(1B) A word or expression used in subsection (1A) has the same meaning as it has in schedule 1A.".

(2) Section 1 of the Public Records (Scotland) Act 2011 is to be read as if after subsection (8) there were inserted—

"(8A) The Mental Welfare Commission for Scotland must have a separate records management plan in relation to the public records created in carrying out the NCF functions (within the meaning of section 4ZA(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003).".".

**Commencement Information**

**I17** S. 30 is partly in force; s. 30 not in force at Royal Assent; s. 30 in force for certain purposes at 18.1.2014, see s. 34(1)

**I18** S. 30 in force at 1.7.2014 in so far as not already in force by S.S.I. 2014/117, **art. 3**

## 31 NCF: constitution and operation

(1) In schedule 1 to the Mental Health Act—

(a) in paragraph 2A(1)(b), for "6 nor more than 8" substitute " 7 nor more than 9 ",

(b) omit the word "and" immediately preceding paragraph 2B(2)(b), and

(c) at the end of that paragraph, insert "and

(c) one person who has such skills, knowledge and experience as the Scottish Ministers consider to be relevant in relation to the carrying out of the NCF functions.".

(2) After schedule 1 to the Mental Health Act, insert—

***Status:*** *Point in time view as at 30/01/2015. This version of this Act contains provisions that are not valid for this point in time.*
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"SCHEDULE 1A

*(introduced by section 4ZA(2))*

NATIONAL CONFIDENTIAL FORUM

## PART 1

MEMBERS OF NCF ETC.

*Membership*

1 (1) NCF is to consist of—
(a) the NCF Head, appointed by the Scottish Ministers, and
(b) at least 2 other members, appointed by the Scottish Ministers.

(2) The Scottish Ministers must, when appointing a person under sub-paragraph (1)(a) or (b), have regard to the recommendation of the selection panel mentioned in paragraph 2(1).

(3) Each member—
(a) is to be appointed for such period as the Scottish Ministers think fit, and
(b) holds and vacates office in accordance with the terms of appointment.

(4) A member may by written notice to the Scottish Ministers resign office as a member.

(5) The Scottish Ministers must, as soon as practicable after receiving a resignation notice, inform the Commission of the notice.

*Membership selection panel*

2 (1) The selection panel is to consist of—
(a) a representative of the Scottish Ministers,
(b) the person appointed in accordance with paragraph 2A(1)(a) of schedule 1 to chair the Commission, and
(c) other persons of such number and description as may be determined by the Scottish Ministers.

(2) The selection panel may recommend for appointment only persons who the panel consider to have such skills, knowledge and experience as the panel consider to be relevant to the carrying out of the NCF functions.

(3) The selection panel may not recommend for appointment persons who are members of the Commission.

(4) The selection panel is to determine the selection process to be applied in determining persons to be recommended for appointment.

***Status:*** *Point in time view as at 30/01/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:*** *There are currently no known outstanding effects for the Victims and Witnesses (Scotland) Act 2014. (See end of Document for details)*

*NCF staff*

3 (1) This paragraph applies where—
(a) the Commission proposes, in accordance with paragraph 7(1)(b) of schedule 1, to appoint a member of staff, and
(b) the employment of that person is to relate to the carrying out of NCF functions.

(2) The person may be appointed only if—
(a) the person has been recommended for appointment by the NCF Head,
(b) the terms of the person's appointment would prevent the person from carrying out any other function conferred on the Commission during the period when the Commission is required to establish and maintain NCF.

*NCF powers and procedure*

4 (1) NCF may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the carrying out of the NCF functions.

(2) It is for the NCF Head to determine NCF's procedure, having regard to the views of the other NCF members.

(3) In carrying out its functions and in determining its procedure, NCF must have regard to the need to avoid any unnecessary costs to public funds, eligible persons and others.

(4) The validity of any proceedings of NCF is not affected by—
(a) any vacancy in its membership,
(b) any defect in the appointment of a member.

(5) Members of the Scottish Government and persons authorised by the Scottish Government may not attend or take part in meetings of NCF.

*Application of schedule 1 to NCF*

5 (1) The provisions of schedule 1 mentioned in sub-paragraph (2) do not apply in relation to NCF.

(2) The provisions are—
(a) paragraph 7D,
(b) paragraph 7E,
(c) paragraph 7G.

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## PART 2

### DELEGATION OF FUNCTIONS

*Delegation by NCF*

6 (1) NCF must delegate the NCF functions to the persons mentioned in sub-paragraph (3), to the extent determined by the NCF Head.

(2) NCF may otherwise delegate the NCF functions to those persons, to the extent determined by NCF.

(3) Those persons are—
- (a) the NCF Head,
- (b) any other member of NCF,
- (c) any member of NCF staff.

(4) This paragraph does not affect—
- (a) NCF's responsibility for the delegated functions, or
- (b) the NCF Head's accountability for the carrying out of the NCF functions under section 4ZC(2).

## PART 3

### ELIGIBILITY TO PARTICIPATE IN FORUM

*Eligibility*

7 (1) NCF may receive testimony from any eligible person whose application to provide testimony has been accepted by NCF.

(2) An "eligible person" is a person who—
- (a) is 16 years of age or over,
- (b) was placed in an establishment providing institutional care during the person's childhood, and
- (c) is no longer in that care.

(3) In this schedule "institutional care" means a care or health service which meets the conditions in sub-paragraph (4) and is of a description or type prescribed by order made by the Scottish Ministers.

(4) The conditions are that the care or health service—
- (a) was provided to children in Scotland at some time (whether or not the service is still provided),
- (b) included residential accommodation for the children, and
- (c) was provided by a body corporate or unincorporated.

(5) An order under sub-paragraph (3) may not prescribe a service provided at premises used wholly or mainly as a private dwelling.

(6) An order under sub-paragraph (3) is subject to the affirmative procedure.

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## PART 4

### CONDUCT OF HEARINGS ETC.

*Testimony given to NCF*

8 (1) NCF must make provision for receiving testimony under paragraph 7(1).

(2) NCF must make arrangements for testimony to be given—
- (a) at a hearing established by NCF (a "forum hearing"), or
- (b) by other means of communication (whether oral or written).

(3) Where NCF receives testimony at a forum hearing it must ensure that—
- (a) at least 2 members of NCF are present while the forum hearing is receiving the testimony, and
- (b) the forum hearing is held in private.

(4) For the purposes of sub-paragraph (3), a forum hearing is held in private if the only persons present are—
- (a) the person giving the testimony,
- (b) any person accompanying that person whose attendance has been approved by NCF,
- (c) members of NCF,
- (d) NCF staff.

(5) It is otherwise for NCF to determine procedures for receiving testimony, taking account of—
- (a) any procedure determined under paragraph 4(2), and
- (b) the duty in paragraph 4(3).

*Recording of testimony*

9 (1) NCF may record testimony and any other information received from eligible persons in such manner as it thinks fit.

(2) NCF must as soon as reasonably practicable after receiving any information from an eligible person take such steps as it thinks fit to organise the information in such a way as to preserve the anonymity of—
- (a) the person providing the information,
- (b) any individual mentioned in the testimony, and
- (c) any establishment providing institutional care mentioned in the testimony.

*Payment of expenses*

10 NCF may require the Commission to pay such expenses as NCF considers reasonable—
- (a) to eligible persons, and
- (b) to persons accompanying eligible persons to forum hearings.

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## PART 5

### REPORTING

*Reports by NCF*

11 (1) NCF may prepare—
(a) reports based on testimony received,
(b) reports setting out, in relation to the testimony, matters it identifies and recommendations made by virtue of section 4ZB(c).

(2) A report prepared under this paragraph must not identify or include information which creates a real risk of identifying—
(a) a person who has been in institutional care during childhood,
(b) a person alleged to have experienced or committed abuse,
(c) an establishment providing institutional care.

(3) Sub-paragraph (2) does not prevent a report from including information which is otherwise in the public domain.

(4) It is otherwise for NCF to determine the form and content of a report prepared under this paragraph.

*Annual NCF reports*

12 (1) As soon as practicable after 31 March in each year, NCF must submit to the Scottish Ministers a report on the discharge of the NCF functions during the period of 12 months ending on 31 March.

(2) NCF must consult the Commission before preparing a report under this paragraph.

(3) Sub-paragraph (2) of paragraph 11 applies in relation to a report prepared under this paragraph as it applies in relation to a report prepared under that paragraph.

(4) NCF must send a copy of each report prepared under this paragraph to the Commission.

(5) The Scottish Ministers must lay before the Scottish Parliament a copy of each report submitted to them under sub-paragraph (1).

### CONFIDENTIALITY

*Disclosure of information*

13 (1) This paragraph applies to—
(a) the Commission,
(b) a person who is or has been a member of the Commission,
(c) NCF,
(d) a person who is or has been a member of NCF,

(e) a person who is or has been an employee of the Commission,

(f) a person who has been given information by a person carrying out NCF functions for the purpose of storing or preserving that information.

(2) A person must not disclose any information which—

(a) has been provided to the person in connection with the carrying out of the NCF functions, and

(b) is not otherwise in the public domain.

(3) Sub-paragraph (2) does not prevent disclosure of any information by the person in so far as—

(a) the disclosure is to another person mentioned in sub-paragraph (1) and is necessary for the purpose of enabling or assisting the carrying out by NCF or the Commission of any of its functions under this Act,

(b) the disclosure is necessary for the purpose of enabling—

(i) NCF to prepare a report in accordance with paragraph 11 or 12, or

(ii) the Commission to prepare its annual report mentioned in section 18(1),

(c) the disclosure is in accordance with sub-paragraph (4), (5) or (6).

(4) A member of NCF must disclose to a constable information received by that member to the extent that it is, in the opinion of the member acting in good faith, reasonably necessary to prevent the commission of an offence involving the abuse of a child.

(5) A member of NCF may disclose to a constable information received by that member to the extent that—

(a) it relates to an allegation made by a person who has given testimony that an offence involving the abuse of a child has been committed, and

(b) it is, in the opinion of the member acting in good faith, in the public interest to do so.

(6) A court may order disclosure of information in, or for the purposes of, civil or criminal proceedings (including the purposes of the investigation of any offence or suspected offence) if it is satisfied that—

(a) the disclosure is necessary in the interests of justice, and

(b) the extent of the disclosure is necessary in the interests of justice.

## PART 7

### GENERAL

14 In this schedule—

"child" means a person who is under 18 years of age,

"childhood" means the period when a person is under 18 years of age,

"eligible person" has the meaning given by paragraph 7(2),

"forum hearing" has the meaning given by paragraph 8(2),

institutional care" has the meaning given by paragraph 7(3),

"NCF staff" means persons appointed in accordance with paragraph 3.".

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***Changes to legislation:*** *There are currently no known outstanding effects for the Victims and Witnesses (Scotland) Act 2014. (See end of Document for details)*

(3) In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (specified authorities), before the entry for "Accounts Commission for Scotland" (and the italic cross-heading immediately preceding it), insert— " NCF Head and any other member of the National Confidential Forum established under section 4ZA(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 ".

**Commencement Information**

**I19** S. 31 partly in force; s. 31 not in force at Royal Assent; s. 31(2) in force for certain purposes at 18.1.2014 and s. 31(1)(3) in force at 18.1.2014, see s. 34(1)

**I20** S. 31(2) in force at 16.5.2014 for specified purposes by S.S.I. 2014/117, **art. 2**

**I21** S. 31(2) in force at 1.7.2014 in so far as not already in force by S.S.I. 2014/117, **art. 3**

*General*

## 32 Interpretation

In this Act—

"the 1995 Act" means the Criminal Procedure (Scotland) Act 1995,

"the 2003 Act" means the Criminal Justice (Scotland) Act 2003,

"the Mental Health Act" means the Mental Health (Care and Treatment) (Scotland) Act 2003.

## 33 Ancillary provision

(1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) An order under this section may modify any enactment (including this Act).

(3) An order under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.

(4) Otherwise, an order under subsection (1) is subject to the negative procedure.

## 34 Commencement

(1) This section and sections 30 so far as it inserts the new section 4ZA, 31(1), 31(2) so far as it inserts paragraphs 1, 2 and 5 of the new schedule 1A, 31(3), 32, 33 and 35 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may contain transitory or transitional provision or savings.

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## 35 Short title

The short title of this Act is the Victims and Witnesses (Scotland) Act 2014.

**Status:**
Point in time view as at 30/01/2015. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**
There are currently no known outstanding effects for the Victims and Witnesses (Scotland) Act 2014.