



# Victims and Witnesses (Scotland) Act 2014

2014 asp 1

## *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).”.

### **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—

“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 subparagraph (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.

**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.

## 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.

## 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.

## 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).

## PART 6

### CONFIDENTIALITY

#### Disclosure of information

- 13 (1) This paragraph applies to—
- (a) the Commission,

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*Status: This is the original version (as it was originally enacted).*

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- (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

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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.”.

- (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”.