

# VICTIMS AND WITNESSES (SCOTLAND) ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *National Confidential Forum*

#### *Section 30*

#### **Further modifications in relation to NCF**

93. **Section 30** inserts section 4ZD into the Mental Health Act.
94. Section 4ZD(1)(a) sets out which functions and duties currently undertaken by the Commission will not apply to the Forum. In particular, the duty to monitor Part 1 of the Mental Health Act, to bring to the attention of the Scottish Ministers matters concerning the operation of that legislation and to advise on such matters do not apply to the Forum. The functions of the Commission relating to the publishing of information (including statistical information), particularly about investigations and inquiries, are also expressly disapplied by section 4ZD(1)(a).
95. Section 4ZD(1)(c) prevents the Commission from publishing anything in its annual reports which creates a real risk of identifying: a person in institutional care as a child, a person who experienced or committed abuse or an establishment providing institutional care. This does not apply where the information is already in the public domain.
96. Section 4ZD(1)(d) inserts section 20(1A) into the Mental Health Act to offer protection to the Forum, its members and staff, and participants from an action for defamation.
97. The effect of this protection is that the Forum, and its members and staff, will not be able to be sued for defamation as a result of statements they make, in good faith, while carrying out the work of the Forum. This is akin to the protection provided to members and staff of the Commission.
98. The protection offered to participants in the Forum from an action for defamation is in relation to any statement they make to the Forum and is, therefore, a higher level of protection than that offered to the Forum, its members and staff. This level of protection is to ensure that people who come forward to participate in the Forum can be assured in advance that what they say in information provided to the Forum cannot be used by anyone to found an action of defamation.
99. Section 4ZD(2) amends the Public Records (Scotland) Act 2011 to insert a new subsection (8A) into section 1 of that Act to require the Commission to prepare a records management plan in relation to the NCF functions. This is to be separate from the Commission's records management plan to further safeguard the confidentiality of testimony and other information given to the Forum by people placed in institutional care as children.