

VICTIMS AND WITNESSES (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

National Confidential Forum

Section 30

National Confidential Forum

82. **Section 30** establishes the National Confidential Forum (“the Forum”; “NCF”) as part of the Mental Welfare Commission for Scotland (“the Commission”).
83. The legislation under which the Commission currently operates (Part 2 of, and schedule 1 to, the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the Mental Health Act”) as amended by the Public Services Reform (Scotland) Act 2010) is amended accordingly. Sections 4ZA, 4ZB, 4ZC, 4ZD and schedule 1A (comprising Parts 1-7) are inserted into the Mental Health Act.
84. **Section 30** inserts section 4ZA into the Mental Health Act to require the Commission to establish and maintain a committee of the Commission to be known as the National Confidential Forum.

General functions of NCF

85. **Section 30** sets out the general functions of the Forum in a new section 4ZB of the Mental Health Act (referred to as the “NCF functions”). The principal function of the Forum is to give people who were placed in institutional care as children the opportunity to describe, in confidence, their experiences of that care, including any abuse experienced during the time spent in care. The descriptions of being in care which people will recount to the members of the Forum are referred to as “testimony”.
86. The Forum is to acknowledge the experiences of people placed in institutional care as children by enabling them to give testimony at hearings of the Forum or in other ways, for example, in writing or by video or phone link.
87. A further function of the Forum is to identify patterns and trends in relation to institutional child care provision, including issues concerning abuse, based on the information provided to it by participants and, subsequently, to make recommendations for the improvement of institutional child care provision in the future.
88. The Forum is also empowered to produce reports on its work and any recommendations arising from the information it receives from people placed in institutional care as children. These reports will be available to the public but the identity of participants in the Forum, other persons and institutions will not be disclosed.

89. The final function of the Forum is to provide people who are considering taking part in hearings of the Forum (and those who do take part in such hearings) with information about sources of assistance and advice.

Carrying out NCF functions

90. **Section 30** inserts section 4ZC into the Mental Health Act to require, in section 4ZC(1), the Commission to delegate the functions, set out above, to the Forum. This requires the NCF functions to be delegated to a distinct entity within the Commission, enabling a significant degree of operational independence for the Forum within the accountability structure of the Commission.
91. Section 4ZC(2) provides that the person appointed to chair the Forum (the “NCF Head”) is to account to the Commission for the work of the Forum in discharging its functions effectively.
92. Section 4ZC(3) makes explicit that, despite the delegation of functions and the accountability of the Head of NCF, the Commission will retain responsibility for ensuring that the Forum carries out its functions.

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.