

BAIL AND RELEASE FROM CUSTODY (SCOTLAND) ACT 2023

EXPLANATORY NOTES

THE ACT: SECTION BY SECTION

Part 2: Release from custody

Section 14—Provision of information to victim support organisations

77. Section 14 will amend the Criminal Justice (Scotland) Act 2003 (“the 2003 Act”) and the Victims and Witnesses (Scotland) Act 2014 (“the 2014 Act”) so that information about prisoners and offenders subject to certain mental health disposals, which can be provided to victims of the offences they have committed, can also be provided to “victim support organisations” providing assistance to those victims.
78. Section 14(2) inserts a new section 16ZA into the 2003 Act. Under this section, victim support organisations can be provided with the information mentioned in section 16(3) where either the victim has requested this or the organisation itself has done so and the Scottish Ministers are satisfied that the victim consents to the organisation being given the information. A “victim support organisation” (called a “supporter” in the section) is a person of a description prescribed by the Scottish Ministers by regulations under section 16ZA(2)(a) who provides support services to a victim of crime. “Support services” is defined in section 16ZA(5). Section 16ZA(6) provides Ministers with a regulation-making power under which that definition can be amended.
79. The information that can be provided to a victim support organisation is set out in section 16(3) of the 2003 Act and is information about the dates on which the prisoner is to be or may be released from prison, whether or not the prisoner has died, if the prisoner has been transferred outside Scotland, if the prisoner is unlawfully at large, the date a prisoner released or unlawfully at large is returned to prison, and if the prisoner is made subject to various orders relating to mental health and detained in hospital rather than prison.
80. Section 14 also inserts a new section 17ZA into the 2003 Act. This makes provision for victim support organisations which is equivalent to that made in relation to victims of crime by section 17 of the 2003 Act, other than in one respect. Section 17 requires a victim to be provided with the opportunity to make representations to the Scottish Ministers and the Parole Board where a prisoner is being considered for release. To facilitate that, the victim is informed of a number of matters, including dates by which such representations need to be made. Section 17ZA will enable victim support organisations to receive such information so that they can provide support services to victims. As with section 16ZA, the Scottish Ministers and the Parole Board will be required to provide the information to a victim support organisation where the victim request this or where the organisation itself does so and the victim consents. But a victim support organisation does not, by virtue of section 17ZA, have the right to be given an opportunity to make representations about the release of a prisoner. Only the victim has that right.

*These notes relate to the Bail and Release from Custody (Scotland)
Act 2023 (asp 4) which received Royal Assent on 1 August 2023*

81. Further amendments are made to section 17A of the 2003 Act, which deals with the victim's right to information where a prisoner is being considered for temporary release, so that a victim support organisation can also be given this information. As with sections 17 and 17ZA, however, only the victim will have the right to be given an opportunity to make representations about the release.
82. Section 14 also inserts two new sections into the 2003 Act which make provision for information to be provided to victim support organisations where the offender involved has been made subject to certain mental health orders under the criminal justice system (instead of being sentenced to imprisonment).
83. Under new section 16D, a victim support organisation (a "supporter") can be provided with the information mentioned in section 16C(2) of the 2003 Act about an offender who has been made subject to a compulsion order and a restriction order.¹ The information in section 16C(2) is similar to the sort of information mentioned in section 16(3) which is provided in relation to prisoners, but tailored to the particular circumstances of an offender subject to the relevant mental health orders. So it includes information as to whether an order has been varied or revoked, whether the offender has been conditionally discharged (and the conditions of that conditional discharge), or whether the offender, having been released, has been recalled to hospital. As with new section 16ZA, the organisation can be given information where either the victim has requested this or the organisation itself has done so and the Scottish Ministers are satisfied that the victim consents.
84. Under new section 17DA, the supporter can be given information about decisions mentioned in section 17B(5) of the 2003 Act made in relation to the offender if nominated by the victim to receive that information or if the supporter asks for it (and the Scottish Ministers are satisfied that the victim has consented to the supporter being given the information). Those decisions are - a decision by the offender's responsible medical officer to suspend, for the first time, the offender's detention without imposing a supervision requirement; a decision by the Mental Health Tribunal about what (if any) conditions to impose on the patient's conditional discharge; and a decision by the Scottish Ministers to impose, alter or remove a condition which is (or would be) relevant to the victim.
85. Section 17DA also gives the supporter the right to information that the victim would be entitled to receive under section 17D, namely that the Court of Session has, on appeal against a decision of the Mental Health Tribunal mentioned in section 17B(5), made an order which requires the offender to continue to be detained and that the compulsion order, restriction order, hospital direction or transfer for treatment direction to which the offender is subject is to continue in effect.
86. The 2003 Act provisions relate to prisoners serving sentences of 18 months or more and to prisoners serving life sentences. Section 27A of the 2014 Act makes provision where prisoners are serving sentences of less than 18 months. Section 27A gives victims the right to be informed of the prisoner's release from prison or if the prisoner has escaped from prison.
87. Section 14(7) will amend the 2014 Act to insert a new section 27B which will make provision similar to section 16ZA of the 2003 Act for the provision of information to victim support organisations where prisoners are serving less than 18 months. As with section 16ZA, a victim support organisation will be provided with information where either the victim has requested this or the organisation itself has done so and the Scottish Ministers are satisfied that the victim consents. The information provided by virtue of section 27B is the same information as is provided under section 27A, namely information about the prisoner's release or escape from prison.

¹ Under Part 6 of the Criminal Procedure (Scotland) Act 1995.