

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 2 – Victims’ Rights

Section 14 – Victim statements

56. *Section 14* confers upon victims of certain crimes the right to make a statement about the effect of the crime upon them, which will be normally be submitted to the court after a conviction and prior to sentencing.
57. Subsection (1) provides that the Scottish Ministers are to prescribe by affirmative order those courts or class of court in which the victim is to have the right to make a statement to the court. In addition this section includes a power for Scottish Ministers to prescribe by negative order the offences in respect of which the victim is to have the right to make a statement.
58. Subsection (2) provides that a person who has been (or is alleged to have been) the victim of a prescribed offence, has the right to make a statement (a “victim statement”). The right to make a victim statement arises either after a decision has been made by the procurator fiscal to bring proceedings in respect of the offence or before such a decision has been made if the procurator fiscal so decides. The victim statement should deal with the way and degree to which the offence (or apparent offence) has affected, and may be continuing to affect, that person. Subsection (2) is subject to subsection (6), which makes provision for the procedure to be followed where the victim is under 14, has died or is mentally or physically incapable of making such a statement.
59. Subsection (3) provides that where a person has made a victim statement and the sentence has not yet been passed, that person has the right to make a statement which is supplementary to or amplifies the victim statement. This will permit the victim to provide the court with the most up-to-date information concerning the effect of the offence on them.
60. Subsection (4) provides for the accused to receive a copy of the victim statement or statements from the prosecutor only after a plea of guilt or finding of guilt. If there is a dispute between the Crown and the defence about information contained in the victim statement, the Court may call a proof and hear evidence.
61. Subsection (5) provides that once the offender pleads or is found guilty the prosecutor must place the victim statement and any supplementary victim statement before the court and thereafter the court must have regard to information contained in the victim statement or statements, which is relevant to the offence(s) of which the accused has been convicted in determining sentence on the offender. Where an offender has been found not guilty in relation to some of the charges brought, the Court must disregard information in the victim statement that relates only to the unproven charges. In practice, the court must read the whole victim statement, disregard any information that it considers is not relevant and have regard only to relevant information in determining the sentence to be given to the offender.

62. Subsection (6) makes provision for the circumstances where the victim is either unable to make a statement because the victim has died, is incapable of exercising the right to make a statement because of mental or physical incapacity or is under the age of 14.
63. Where the victim has died, the victim's right to make a statement transfers to that victim's 4 qualifying nearest relatives taken from the list in subsection (10). Where the victim died whilst under 16, in addition to the 4 qualifying nearest relatives the child's carer (this being defined in accordance with the definition of "person who cares for the child" in section 2(28) of the Regulation of Care (Scotland) Act 2001) has the right to make a statement.
64. Where the victim is incapable of giving a statement due to mental or physical incapacity, the right to make a statement transfers to that victim's qualifying nearest relative according to the list in subsection (10). Subsection (7) provides that an inability to communicate which can be addressed by human or mechanical aid can be disregarded.
65. If the victim is a child under 14 years old, the right to make a statement may be exercised by the child's carer as defined in the Regulation of Care (Scotland) Act 2001. The Scottish Ministers have the power under subsection (13) to amend by affirmative order the age at which the victim is to have the right to make a statement.
66. Subsection (8) defines "qualifying person" for the purpose of subsection (6) by reference to subsections (9) and (10) but excluding persons who cannot make a victim statement because they are incapable or a child under the age of 14. Subsection (10) lists certain persons with a family relationship to the victim. This includes those who are not the mother, father or child of the victim, but who enjoyed a parent-child relationship with the victim, as defined under the provisions of the Children (Scotland) Act 1995. Subsection (10) also provides for cohabitants (defined in subsection (11)). The Scottish Ministers have the power under subsection (12) to amend by affirmative order the list of qualifying persons contained in subsection (10). Subsection (9) excludes a person who is on that list from being a "qualifying person" if they are accused or suspected of being the perpetrator of or having been implicated in the offence (or apparent offence) in question.

Section 15: Prohibition of personal conduct of defence in proofs ordered in relation to victim statements in cases of certain sexual offences

67. Subsection (2) amends the Criminal Procedure (Scotland) Act 1995 to prohibit the accused in certain sexual offence cases from personally questioning a victim on the content of their victim statement in any proof on the victim statement called after the accused is found or pleads guilty. The provisions that are being amended were inserted into the 1995 Act by the Sexual Offences (Procedures and Evidence) Act 2002, which made provision to prevent the accused questioning the victim in relation to these offences during the trial.
68. **Section 15** also amends the 1995 Act to give the court power to appoint a solicitor for the purposes of his/her defence at any such proof on the victim statement if he/she does not have a solicitor for the reasons specified in section 288D(2)(a) of the 1995 Act.

Section 16: Victim's right to receive information concerning release etc. of offender

69. **Section 16** confers rights on victims of certain crimes to receive from the Scottish Ministers certain information regarding their assailant's release into the community, where their assailant has been sentenced to prison for a period of 4 years or more, life imprisonment or detention for life. This includes children under the age of 18 who have been sentenced to be detained without limit of time for murder or on conviction by indictment. Specifically subsection (3) provides that victims should be informed:
 - of the date of the offender's release (unless on temporary release);
 - of the date of death if the offender dies before release;

*These notes relate to the Criminal Justice (Scotland) Act
2003 (asp 7) which received Royal Assent on 26 March 2003*

- if the offender has been transferred outwith Scotland;
 - if the offender has become eligible for temporary release ;
 - if the offender has escaped or absconded from custody; and
 - if the offender is unlawfully at large.
70. Subsection (1) provides for the circumstances under which information is to be provided to victims of such offences as are prescribed by the Scottish Ministers. The victim must indicate that they wish to receive the information. Where a victim qualifies they have the right to receive information unless the Scottish Ministers decide that exceptional circumstances make disclosure inappropriate.
71. Subsections (5) and (6) replicate for the purposes of section 16, the arrangements included in section 14 to transfer the right of the victim under section 16 to an eligible relative or carer where the victim is dead, under 14 or incapable of exercising the right.

Section 17: Release on licence: right of victim to receive information and make representations

72. **Section 17** confers on victims who are eligible to receive information under section 16 the right to receive certain information relevant to the release of the offender.
73. Subsection (1) gives the victim the right to make written representations to the Scottish Ministers concerning release of their assailant. The rights set out in subsection (1) arise where the victim has indicated to the Scottish Ministers a wish under subsection (2) to make such representations. The right does not exist unless the offender has reached the age of 16 by the date on which the case is referred to the Parole Board by the Scottish Ministers (subsection (3)). Subsection (4) provides that the Scottish Ministers will issue guidance on the form of such representations.
74. Subsection (5) provides that when the Scottish Ministers refer a case to the Parole Board for a decision on release they must fix a time within which written representations must be made to the Board for consideration and advise the victim accordingly. The Scottish Ministers will pass on the victim's representations to the Parole Board.
75. Subsection (6) lists certain information that the Board must inform the victim, even if representations have not been made, of their decision provided the victim has under subsection (11) intimated that they wish to receive it. The information listed is whether the Board has recommended or directed release. If the Board has recommended release it must inform the victim whether licence conditions have been set and, if any of them relate to contact with the victim or the victim's family, what those conditions are, together with any additional information which the Board feels it is appropriate to provide.
76. Subsections (7) and (8) deal with the situation where the offender's release on licence is automatic and the Parole Board's role is to make recommendations to the Scottish Ministers on licence conditions. Subsection (7) requires the Scottish Ministers to fix a time within which written representations must be made to the Board for consideration and to advise the victim accordingly.
77. Subsection (8) provides that in a case to which subsection (7) applies, even if representations have not been made, the Board is obliged to inform the victim (provided the victim has indicated under subsection (11) that they wish to receive the information) if it has recommended licence conditions and, if any of them relate to contact with the victim or the victim's family, what those conditions are.
78. Subsections (9) and (10) deal with the circumstances where the offender's case is not considered by the Parole Board and decisions upon licence conditions are taken by the Scottish Ministers. Subsection (9) provides that the Scottish Ministers are required to

fix a time within which written representations must be made to them for consideration and to advise the victim accordingly.

79. Subsection (10) provides that, in a case to which subsection (9) applies, whether or not representations have been made (and the victim has indicated under subsection (11) that they wish to receive the information), the Scottish Ministers must inform the victim whether licence conditions have been set and, if any of them relate to contact with the victim or the victim's family, what those conditions are.
80. Subsection (12) specifies that section 17 does not apply:
- if the offender is released on compassionate grounds under the Prisoners and Criminal Proceedings (Scotland) Act 1993; or
 - retrospectively, if the Scottish Ministers use the power contained in section 16(4) (a) to change the length of time for which offenders must be sentenced in order for their victims to become eligible to receive information.

Section 18: Disclosure of certain information relating to victims of crime

81. **Section 18** enables the police to pass information regarding a victim, with the victim's consent to certain bodies for the purposes of providing the victim with counselling and support. The Scottish Ministers will require to prescribe by statutory instrument the bodies to whom the police may pass information.
82. Subsection (1) provides that a constable may pass certain information to the body or bodies prescribed by the Scottish Ministers. This information may include the person's name, address, telephone number, e-mail address and age, plus any other information which the constable deems appropriate as long as it does not include similar information (such as name and address) relating to the alleged perpetrator. The information provided may indicate that the case is one likely to be disposed of by a children's hearing.
83. Subsection (2)(a) provides that, where the victim of the crime has died, information on any one or more of the qualifying nearest persons as defined in section 14(8) who the constable considers would derive benefit from the counselling or support may be provided to the prescribed bodies again only with the consent of the person concerned.
84. Subsection (2)(b) provides that, where the victim of crime died as a child, information on a person who cared for that victim may be provided, for the purposes of counselling or support, to such bodies prescribed by the Scottish Ministers, again with that person's consent. A "person who cares for" another person is defined in section 2(28) of the Regulation of Care (Scotland) Act 2001 as "someone who, being an individual, provides on a regular basis a substantial amount of care for that person, not having contracted to do so and not doing so for payment or in the course of providing a care service".