Victims and Witnesses (Scotland) Act 2014

2014 asp 1

Victim statements

23   Victim statements

(1) Section 14 of the 2003 Act (victim statements) is amended in accordance with subsections (2) to (7).

(2) In subsection (5)—
    (a)   in paragraph (a)—
        (i) after "when", insert " or after ", and
        (ii) after "offence", insert " but before sentence is imposed ",
    (b)   in paragraph (b)—
        (i) after "when", insert " or after ", and
        (ii) after "offence", insert " but before sentence is imposed ".

(3) In subsection (6)(b)—
    (a)   in sub-paragraph (i), after "subsection (10)" insert " (taking no account of qualifying persons who have not attained the age of 12 years) ",
    (b)   the word "or" immediately after sub-paragraph (i) is repealed,
    (c)   sub-paragraph (ii) is repealed, and
    (d)   after that sub-paragraph, the words "or as the case may be to the child" are repealed.

(4) In subsection (8)—
    (a)   for "neither" substitute " not ", and
    (b)   the words "nor a child such as is mentioned in sub-paragraph (ii) of that paragraph" are repealed.

(5) After subsection (11), insert—

"(11A) Where a child who has not attained the age of 12 years has (but for this subsection) the opportunity to make a statement by virtue of subsection (2), (3) or (6)(a)(i)—

  (a) any statement made by virtue of the subsection must instead be made by a carer of the child, but

  (b) those subsections otherwise apply as if references in them to a person and to the maker of a statement are to the child.

 (11B) For the purposes of subsection (11A), "carer of the child" means—

  (a) a person who cared for the child when the offence (or apparent offence) was perpetrated,

  (b) a person who cares for the child when the statement is made,

  (c) a person who has cared for the child at any other time.

 (11C) If more than one person comes within the meaning of "carer of the child" the persons may agree which carer is to make the statement after, so far as practicable and having regard to the age and maturity of the child—

  (a) giving the child an opportunity to express any views on which carer is to make the statement, and

  (b) taking account of any views expressed by the child.

 (11D) If no agreement is reached in accordance with subsection (11C)—

  (a) the statement may be made by each person coming within the description in subsection (11B)(a), and

  (b) if there is no such person, the statement may be made by each person coming within the description in subsection (11B)(b).

 (11E) In subsection (11B), the expressions "cared for" and "cares for" are to be construed in accordance with the definition of "someone who cares for" in paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010.".

(6) In subsection (12)(a)—

 (a) for "subsection (6)(b)(ii)" substitute " this section ", and

 (b) for "there" substitute " in any part of this section ".

(7) After subsection (12), insert—

 "(13) A victim statement, or a statement made by virtue of subsection (3) in relation to a victim statement, may be made in such form and manner as may be prescribed.

 (14) An order under subsection (13) may—

  (a) include such incidental, supplementary or consequential provision as the Scottish Ministers consider appropriate,

  (b) modify any enactment (including this Act).

 (15) An order under subsection (13) may be made so as to have effect for a period specified in the order.

 (16) An order under subsection (13) containing provision of the type mentioned in subsection (15) may provide that its provisions are to apply only in relation to one or more areas specified in the order.".

(8) Section 16 of the 2003 Act (victim's right to receive information concerning release etc. of offender) is amended in accordance with subsections (9) to (13).

(9) In subsection (5)—

- (a) in paragraph (a)—
    - (i) after "person", insert " to be given the information ", and
    - (ii) after "Act", insert " (except that, in the case where a qualifying person is a child who has not attained the age of 12 years, paragraph (a)(i) of the said section 14(6) is to be construed as if the reference to the qualifying person were to a person who cares for the child) ",
- (b) in paragraph (b)(ii)—
    - (i) after "child", insert " who has not attained the age of 12 years ",
    - (ii) the words from "such" to "paragraph (b)" are repealed,
    - (iii) after "person" insert " to be given the information ", and
    - (iv) for the words from "mentioned", where it second occurs, to "cares"," substitute " references to the person who cares for the child ",
- (c) in paragraph (b)(i), after "sub-paragraph", where it second occurs, insert " (taking him to be the person "afforded an opportunity") ", and
- (d) in paragraph (b) the words "(taking him to be the person "afforded an opportunity")" are repealed.

(10) In subsection (6)—
- (a) for "and (8) to (12)" substitute " to (11) ", and
- (b) after "relation to", where it first occurs, insert " paragraphs (a) and (b)(i) of ".

(11) Subsection (7) is repealed.

(12) In subsection (8), for "(7)" substitute " (5)(a) and (b)(ii) ".

(13) After subsection (8), add—

"(9) The Scottish Ministers may by order amend this section by substituting for—
- (a) the person for the time being specified in any part of this section to whom information may be made available such other person as they think fit,
- (b) the age for the time being specified in any part of this section such other age as they think fit.".

(14) In section 88(2) of the 2003 Act (orders), at the beginning of paragraph (b) insert " 14(13) or ".

Commencement Information

I1	S. 23(1)-(6) in force at 13.8.2014 for specified purposes by S.S.I. 2014/210, art. 2, **Sch.** (with art. 3)
I2	S. 23(1)-(6) in force at 10.2.2021 in so far as not already in force by S.S.I. 2020/405, **art. 2(a)**
I3	S. 23(7)(14) in force at 10.2.2021 by S.S.I. 2020/405, **art. 2(a)**
I4	S. 23(8)-(13) in force at 13.8.2014 by S.S.I. 2014/210, art. 2, **Sch.** (with art. 3)

Changes to legislation:
There are currently no known outstanding effects for the Victims and Witnesses (Scotland) Act 2014, Cross Heading: Victim statements.