

Final Business and Regulatory Impact Assessment

Title of Proposal

The Victims' Rights (Scotland) Regulations 2015.

Purpose and intended effect

- **Background**

Council Directive [2012/29/EU](#) *establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, was agreed and entered into force on 25 October 2012. It is commonly known as the Victims' Rights Directive ('the Directive').

Minimum standards throughout the EU will help ensure all victims of crime:

- receive appropriate protection and support;
- can participate in criminal proceedings; and
- are recognised and treated in a respectful, sensitive and professional manner.

- **Objective**

The Scottish Government's objective is to transpose the requirements of the Directive into Scots law. In doing so it will meet its duties under section 57(2) of the Scotland Act 1998 to ensure that legislation is compatible with Community Law.

The Directive is designed to establish and protect minimum standards in regard to victims of crime. In particular it confers rights on victims around provision of information and support, participation in criminal proceedings, protection of victims and recognition of victims with specific protection needs.

The Scottish Government recognises that providing more help and support for victims is key to building a better criminal justice system and that meeting the needs of victims should be of paramount importance in the criminal justice system's response to crime.

It is in keeping with the Scottish Government's national outcomes of (1) our public services are high quality, continually improving, efficient and responsive to local people's needs, (2) we live our lives safe from crime, disorder and danger and (3) we have tackled the significant inequalities in Scottish society. It also demonstrates that Scotland is a reliable partner at European level.

It is not, however, the Scottish Government's objective to transpose the requirements in such a way as to require services beyond those essential to meet our obligations under the Directive.

- **Rationale for Government intervention**

The Directive is addressed to Member States. Justice is, with some exceptions (e.g. extradition), a devolved competence, so it falls to Scottish Ministers to transpose the requirements of the Directive into law in Scotland.

If Scotland does not transpose the Directive adequately the Scottish Government will be in breach of its obligations under the Scotland Act 1998, namely not to act except in accordance with the law of the European Union. It would be in breach of the UK's requirements to transpose the Directive and would share in any infraction proceedings against the UK, including any financial penalty imposed. It may also suffer reputational damage.

Transposing this Directive will contribute to helping communities to flourish, becoming stronger, safer places to live, offering improved opportunities and a better quality of life.

Consultation

- **Within Government**

Within Government consultation has taken place with the Ministry of Justice in the UK Government and Department of Justice in Northern Ireland. Consultation has also taken place with officials in the Scottish Government dealing with Victims and Witnesses and Legal Aid. Input from these teams has fed into the development of the proposals to ensure consistency and complementarity with wider Scottish Government criminal justice policies and processes.

- **Public Consultation**

Consultation has taken place with the Scottish Courts and Tribunals Service ('SCTS'), the Crown Office and Procurator Fiscal Service ('COPFS'), Police Scotland, the Parole Board for Scotland ('PBS') and the Scottish Prison Service ('SPS') in preparing the draft Regulations. We have also engaged with victim support organisations, in particular Victim Support Scotland ("VSS"), during the development of the Regulations to discuss the general approach being taken. As the Scottish Government carried out a widespread consultation for the Victims and Witnesses (Scotland) Act 2014 ("the 2014 Act"), including on areas such as the right to special measures, the right to case information and other elements which are also key aspects of the Directive, we did not consider it appropriate or proportionate to carry out further public consultation. Continuing the practice established during development of the 2014 Act, however, we have attended workshops held under the auspices of the Victims Organisations Collaborative Forum Scotland (VOCFS) to prepare the Victims Code for Scotland.

- **Business/ Third Sector**

The Regulations do not create regulatory requirements on business.

The new regulatory requirements will introduce no additional financial or administrative burdens on business or the third sector.

Options

(1) Do nothing – fail to transpose the Directive.

(2) Transpose the Directive, taking advantage of opportunities to lessen impact and avoid undue legislative and administrative burdens.

(3) Transpose the Directive without taking advantage of such opportunities – for example by investing in court premises and police stations to remove all risk of victim and offender contact within premises where criminal proceedings are conducted.

Sectors and groups affected

Whichever option is chosen, the sectors affected will be victims of crime (and in certain circumstances their families) and the organisations responsible for the protection and support of victims, which in Scotland would be COPFS, SCTS, Police Scotland, PBS and SPS.

As the Directive introduces new EU obligations, there will be impacts on all these groups under the latter two options.

Benefits

(1) This represents the “no change” option and thus has no benefits to offer over the current arrangements. Any perceived benefit in terms of reduced burdens over options (2) and (3) would be short-lived as infraction proceedings and continued fines would force us to abandon this option.

(2) With this option victims of crime will benefit from having clear, identifiable and enforceable rights. These rights will be spelled out for victims in the Victims’ Code, setting out clearly what their entitlements are and who they can turn to for help and support.

(3) This option would offer similar benefits as option (2) above. However, by going beyond the minimum requirements of implementing the Directive we could place undue administrative and significant, additional financial burdens on the organisations responsible for the protection and support of victims which could have a detrimental impact on their ability to carry out their statutory duties and divert resources from where they could otherwise be better used.

Costs

(1) If Scotland does not transpose the Directive adequately the Scottish Government will be in breach of the Scotland Act 1998 and share in the cost of any infraction proceedings against the UK. While the size of any fines is difficult to predict it is worth noting that any fines levied in infraction proceedings would be on the basis of the co-efficient applicable in the case of the UK as a Member State. Thus if an infraction arose because Scotland alone in the UK failed to transpose adequately, the fines would be calculated on the size of the UK but payable entirely from the Scottish block grant. Moreover fines would continue until Scots law was brought into compliance with the Directive's requirements. Fines may be as high as €670,000 per day, with the specified minimum lump sum currently set at €9,982,000 for the UK.

In the event of failure to transpose Scotland would also suffer reputational damage, both in the EU and within the UK.

(2) Costs for this option fall mainly on the criminal justice agencies responsible for implementing the Regulations. By far the most significant new cost generated by the Regulations, for activities not currently carried out operationally, is for the design and production of the new Victims' Code for Scotland, which is estimated to cost £3,000. There will also be additional costs in updating and translating the code. These costs will be met by the Scottish Government. The Police Service of Scotland indicate that implementation of the written acknowledgement will incur annual costs of £7,000.

The costs of ensuring that each agencies' internal guidance, training and processes are in place by the transposition deadline of 16 November 2015 will be met from existing budgets. Extension of the Victim Notification Scheme may also incur some additional operational costs and discussions are ongoing with stakeholders.

The 2014 Act already goes some way towards transposing the Directive – the costs of those measures form part of the Act's financial memorandum.

(3) Costs would be dependent on the additional provisions and legislative burdens implemented.

The costs involved in refurbishing or even rebuilding of all of Scotland's almost 300 police stations and 50 separate court premises to guarantee that victims can avoid contact with offenders would be significant. Considering that we already have measures in place to avoid contact between victims and offenders in terms of special measures, separate waiting rooms, bail conditions and non-harassment orders, it would be more proportionate to require criminal justice agencies to take what reasonable steps they can to avoid contact between offender and victim and to ensure that all *new* court premises comply with the recommendations in Article 19(2) where appropriate.

Furthermore, it is not considered this option would be consistent with the principles of better regulation, a key priority for the Scottish Government, particularly in terms of ensuring consistency with other Member States, and ensuring EU Obligations are transposed without gold plating.

Scottish Firms Impact Test

The Scottish Government felt that it would be disproportionate to carry out individual business interviews as the proposals have no regulatory or negative financial impact on the private sector.

Competition Assessment

Using the Competition & Markets Authority Competition Filter questions we have concluded that the proposals will neither directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously as the proposals will have no regulatory effect on business.

Test run of business forms

No new business forms are proposed.

Legal Aid Impact Test

Access to Justice team is aware of these proposals and have expressed no concerns.

The Scottish Legal Aid Board advises there may be an increase in uptake of Advice and Assistance (A&A) as a result of greater awareness. However, there is no data on how many people are accessing A&A for advice around being a victim or witness at the moment and therefore no way of knowing for sure how much of an increase there might be. The Board also notes that VIA provides publicly funded advice in this area, which may mean that any increase in A&A would likely be limited.

Enforcement, sanctions and monitoring

The duty to help ensure all victims of crime can receive appropriate protection and support, can participate in criminal proceedings and are recognised and treated in a respectful, sensitive and professional manner will fall on COPFS, SCS, Police Scotland, PBS, and SPS. Enforcement of these provisions would come firstly through the complaints procedures of these bodies and ultimately the courts.

The task of monitoring the effect of the regulations would devolve on those who ensure the provision of these services – COPFS, SCS, Police Scotland, PBS and SPS.

Implementation and delivery plan

The Directive has already been partially implemented through the 2014 Act and the remainder will be implemented through these Regulations. The provisions in the Regulations will come into force on 16 November 2015 or as soon as is practical thereafter.

- **Post-implementation review**

As long as the Directive is in force, transposing legislation is required in order to give effect to the Directive's provisions and provide for their enforcement in Scotland.

The Scottish Government's Victims and Witnesses Team will monitor the practical application of the measures (including the Victims Code) and seek feedback from other sectors and groups affected to assess how the measures are working in practice and to consider whether further provision is required.

Summary and recommendation

Option (2) is being recommended. This fulfils our duty to transpose the Framework Directive without entailing additional, unquantifiable costs.

- **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
Option 1 – do nothing	None	This position is not tenable and would be brought to an end by either judicial review/compatibility proceedings within Scotland or infraction proceedings, both of which Scotland would lose, with concomitant expense. In the event of infraction proceedings, fines of a lump sum (specified minimum €9,982,000) and daily amounts of up to €670,000.
Option 2 – implement the Directive without adding requirements		£3,000 estimate for printing/publication costs of the Victims code. £7,000 annual costs for Police Scotland written acknowledgement. There will be initial costs for each Scottish Criminal Justice Agency to ensure that internal guidance and processes meet the legal requirements, training thereon and thereafter ongoing costs for integration of the work. This will all be met within existing budgets.
Option 3 – implement adding requirements to those in the Directive	Introduces additional layers of bureaucracy and regulation that are not required in implementation of the Directive.	Significant additional costs to refurbish or rebuild all existing Scottish court buildings and police stations to guarantee victims avoid all contact with offenders.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Paul Wheelhouse
Minister for Community Safety and Legal Affairs

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