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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2015 No.**

**The Victims' Rights (Scotland) Regulations 2015**

**Protection of victims during criminal investigations**

13. After section 9 of the Act, insert—

*“Criminal investigations*

**Victims' right to protection during criminal investigations**

**9A.**—(1) During a criminal investigation into an offence or alleged offence, the chief constable of the Police Service of Scotland must ensure that—

- (a) a relevant interview is conducted without undue delay after a complaint about the offence or alleged offence has been made to a constable,
- (b) the number of relevant interviews is kept to a minimum,
- (c) relevant interviews are carried out only where strictly necessary for the purposes of the criminal investigation,
- (d) during a relevant interview, the person who is or appears to be a victim in relation to the offence or alleged offence is permitted to be accompanied by the person's chosen legal representative and a person of the person's choice, unless a constable makes a reasoned decision to the contrary, and
- (e) medical examinations of the person who is or appears to be a victim in relation to the offence or alleged offence are kept to a minimum and are carried out only where strictly necessary for the purposes of the investigation.

(2) In this section, a “relevant interview” means an interview of a person who is or appears to be the victim in relation to an offence or alleged offence conducted or arranged by a constable for the purposes of a criminal investigation into the offence or alleged offence.

**Individual assessment of victims in criminal investigations**

**9B.**—(1) The chief constable of the Police Service of Scotland must ensure that a person who is or appears to be a victim in relation to an offence or alleged offence is assessed by a constable in order to determine whether the person—

- (a) has protection needs, and
- (b) would benefit from the use of any of the measures listed in section 9C(3) during a relevant interview.

(2) The assessment of a person under subsection (1) must be carried out for the purposes of a criminal investigation in relation to the offence or alleged offence—

- (a) as soon as reasonably practicable after a constable identifies that person as a person who is or appears to be a victim in relation to the offence or alleged offence, and

- (b) as soon as reasonably practicable after any material change in the matters specified in subsection (4).
- (3) For the purposes of an assessment under subsection (1), the following persons must always be considered to have protection needs—
- (a) persons under 18 years of age, and
  - (b) any person who would be a deemed vulnerable witness within the meaning of section 271(5) of the 1995 Act if they were to give evidence at, or for the purposes of, a hearing in relevant criminal proceedings.
- (4) For the purposes of an assessment of a person under subsection (1), the constable must consider—
- (a) the views of the person,
  - (b) the nature and circumstances of the offence or alleged offence,
  - (c) the nature of the evidence which the person is likely to give,
  - (d) the relationship (if any) between the person and the person suspected or accused of the offence or alleged offence,
  - (e) the person's age and maturity,
  - (f) any behaviour towards the person on the part of—
    - (i) the person suspected or accused of the offence or alleged offence,
    - (ii) members of the family, or associates, of the person suspected or accused of the offence or alleged offence,
    - (iii) any other person who is likely to be a suspect or an accused in relation to the offence or alleged offence,
    - (iv) any other person who is likely to be a witness in criminal proceedings in relation to the offence or alleged offence, and
  - (g) such other matters as the constable considers to be relevant.
- (5) For the purposes of this section and section 9C, a person has protection needs if they are vulnerable to—
- (i) secondary and repeat victimisation,
  - (ii) intimidation, and
  - (iii) retaliation.
- (6) In this section—
- “a hearing in relevant criminal proceedings” means any hearing in the course of any criminal proceedings in the High Court, sheriff court or justice of the peace court in relation to an offence or alleged offence,
- “relevant interview” has the same meaning as in section 9A(2).

### **Measures to assist victims in criminal investigations**

**9C.—**(1) Subsection (2) applies where an assessment of a person under section 9B(1) finds that the person—

- (a) has protection needs, and
- (b) would benefit from the use of the measures listed in subsection (3) during a relevant interview.

(2) Where this subsection applies, the measures listed in subsection (3) may be used for the purposes of any relevant interview.

- (3) The measures are—
  - (a) conducting the relevant interview in premises designed or adapted for that purpose,
  - (b) conducting the relevant interview by or through professionals trained for that purpose,
  - (c) ensuring that all relevant interviews are conducted by the same person or persons.
- (4) The constable who is conducting or arranging the relevant interview must determine which, if any, of the measures listed in subsection (3) are to be used having regard to—
  - (a) the needs and views of the person who is or appears to be a victim in relation to the offence or alleged offence,
  - (b) the interests of justice, and
  - (c) any practical constraints on the use of any of the measures in those circumstances.
- (5) In this section, “relevant interview” has the same meaning as in section 9A(2).”.