
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

The Victims' Rights (Scotland) Regulations 2015

Protection of victims during criminal investigations and criminal proceedings

14. After section 9C of the Act, insert—

“Protection of victims

Right to avoid contact between victim and offender

9D.—(1) A competent authority must take reasonable steps to enable a person who is or appears to be a victim in relation to an offence or alleged offence, or any of that person's family members, to avoid contact with the person suspected, accused or convicted of the offence or alleged offence during a relevant interaction with a competent authority.

(2) Subsection (1) does not apply—

- (a) where such contact is necessary for the purposes of criminal investigations or criminal proceedings,
- (b) where the identity of the person suspected, accused or convicted of the offence or alleged offence is not known to the competent authority, or
- (c) in relation to the giving of evidence by any person at a hearing in relevant criminal proceedings.

(3) For the purposes of this section—

- (a) an interaction between a person and a constable or a member of police staff is deemed to be an interaction between that person and the chief constable of the Police Service of Scotland, and
- (b) an interaction between a person and a procurator fiscal is deemed to be an interaction between that person and the Lord Advocate.

(4) 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,

“a relevant interaction with a competent authority” means any interaction with a competent authority which—

- (a) is for the purposes of criminal investigations or criminal proceedings, and
- (b) takes place within a police station, prosecutor's office or court building,

“family members”, in relation to a person who is or appears to be a victim, means—

- (a) anyone who is married to, or is in a civil partnership with, the person,
- (b) anyone who is living together with the person, as if they are married, and has been so living together with the person for a minimum period of 6 months,

- (c) children and step-children of the person and anyone whom the person cares for, as defined in paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010(1),
- (d) parents and step-parents of the person,
- (e) siblings of the person,
- (f) grandparents and great-grandparents of the person,
- (g) grandchildren and great-grandchildren of the person, and
- (h) where the person is deceased, anyone who was a family member of the person under paragraphs (a) to (g) immediately before the person's death.

Victims' right to protection of privacy

9E.—(1) Subsection (2) applies during any interaction between—

- (a) a competent authority, and
- (b) a person who is or appears to be a victim in relation to an offence or alleged offence or any of that person's family members,

which is for the purposes of a relevant function.

(2) The authority must take reasonable steps to—

- (a) protect the privacy of that person,
- (b) where that person or family member is a child, prevent disclosure of any information that could lead to the identification of the child, and
- (c) prevent the disclosure of any images of the person or any of the person's family members.

(3) This section is without prejudice to any other obligation placed, or power conferred, on a competent authority, either at common law or in any enactment, to—

- (a) protect the privacy of a person who is or appears to be a victim in relation to an offence or alleged offence or that person's family members,
- (b) prevent the identification of a person who is or appears to be a victim in relation to an offence or alleged offence or that person's family members,
- (c) disclose, or order or permit the disclosure of, any information about a person who is or appears to be a victim in relation to an offence or alleged offence or that person's family members.

(4) This section does not apply to the giving of evidence in a hearing in relevant criminal proceedings by—

- (a) a person who is or appears to be a victim in relation to an offence or alleged offence, or
- (b) any of that person's family members.

(5) For the purposes of this section, any interaction between—

- (a) a person who is or appears to be a victim in relation to an offence or alleged offence or any of that person's family members, and
- (b) a constable or a member of police staff,

is deemed to be an interaction between that person or family member and the chief constable of the Police Service of Scotland.

(6) For the purposes of this section, any interaction between—

- (a) a person who is or appears to be a victim in relation to an offence or alleged offence or any of that person's family members, and
- (b) a procurator fiscal,

is deemed to be an interaction between that person or family member and the Lord Advocate.

(7) In this section—

“child” means a person under 18 years of age,

“family members”, in relation to a person who is or appears to be a victim, means—

- (a) anyone who is married to, or is in a civil partnership with, the person,
- (b) anyone who is living together with the person, as if they are married, and has been so living together with the person for a minimum period of 6 months,
- (c) children and step-children of the person and anyone whom the person cares for, as defined in paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010,
- (d) parents and step-parents of the person,
- (e) siblings of the person,
- (f) grandparents and great-grandparents of the person,
- (g) grandchildren and great-grandchildren of the person, and
- (h) where the person is deceased, anyone who was a family member of the person under paragraphs (a) to (g) immediately before the person's death,

“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,

“a relevant function” is—

- (a) in the case of the Lord Advocate, any function relating to the investigation and prosecution of crime,
- (b) in the case of the Scottish Ministers, any function conferred on the Scottish Ministers under this Act or section 16, 17 or 17A of the 2003 Act,
- (c) in the case of any other competent authority, any function.”.