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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2015 No.**

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

**Assisting a victim to communicate**

5. After section 3D of the Act, insert—

*“Assistance to communicate*

**Victims' right to understand and be understood**

**3E.**—(1) Subsection (2) applies in relation to any contact—

- (a) between a person who is or appears to be a victim in relation to an offence or alleged offence and a competent authority, and
- (b) which is for the purposes of a relevant function.

(2) The authority must take such measures as the authority considers appropriate in order to assist the person—

- (a) to understand the information given to the person by the authority, and
- (b) to be understood in the person's interaction with the authority.

(3) Subsection (4) applies in relation to any communication, in any form—

- (a) between a person who is or appears to be a victim in relation to an offence or alleged offence and a competent authority, and
- (b) which is for the purposes of a relevant function.

(4) The authority must ensure that communications—

- (a) are as clear and easy to understand as possible, and
- (b) take into account any personal characteristics of the person which may affect the person's ability to understand the communication and be understood in responding to the communication.

(5) Subsection (6) applies in relation to the first contact—

- (a) between a person who is or appears to be a victim in relation to an offence or alleged offence and a competent authority, and
- (b) which is for the purposes of a relevant function.

(6) Where the authority considers that the person requires assistance to communicate, the authority must allow the person to be assisted by someone of the person's choice unless—

- (a) the authority considers that such assistance would be contrary to the interests of the person or prejudicial to any criminal proceedings, or
- (b) the assistance is required for the purposes of the person giving evidence at a hearing in relevant criminal proceedings.

(7) For the purposes of this section—

- (a) any contact between a person who is or appears to be a victim in relation to an offence or alleged offence (V) and a constable or a member of police staff is deemed to be contact between V and the chief constable of the Police Service of Scotland,
  - (b) any contact between V and a procurator fiscal is deemed to be contact between V and the Lord Advocate,
  - (c) any communication between a constable or a member of police staff and V is deemed to be communication between the chief constable of the Police Service of Scotland and V, and
  - (d) any communication between a procurator fiscal and V is deemed to be communication between the Lord Advocate and V.
- (8) 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 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.

### **Victims' right to interpretation and translation**

**3F.**—(1) Subsection (2) applies where a person who is or appears to be a victim in relation to an offence or alleged offence, and who does not understand or speak English, makes a request to a competent authority for an interpreter for the purposes of—

- (a) being interviewed or questioned by a competent authority in the course of a criminal investigation or criminal proceedings in relation to the offence or alleged offence (other than at a hearing in relevant criminal proceedings), or
- (b) making a complaint about the offence or alleged offence.

(2) The authority must ensure that the person is provided with an interpreter in order to enable the person to—

- (a) understand any questions being asked by the authority,
- (b) understand any information being given to the person,
- (c) give answers and provide information which the authority can understand, and
- (d) otherwise communicate effectively with the authority.

(3) Subsection (4) applies where—

- (a) a person who is or appears to be a victim in relation to an offence or alleged offence, and who does not understand or speak English, has been cited by a prosecutor to give evidence at, or for the purposes of, a hearing in relevant criminal proceedings in relation to the offence or alleged offence, and
- (b) the person has made a request to the prosecutor for an interpreter for the purposes of that hearing.

(4) The prosecutor must ensure that the person is provided with an interpreter in order to enable the person to—

- (a) understand the questions being asked,
  - (b) understand any information being given to the person,
  - (c) give answers which the court can understand, and
  - (d) otherwise communicate effectively with the court.
- (5) Subsection (6) applies where—
- (a) information is to be provided by a competent authority to a person who is or appears to be a victim in relation to an offence or alleged offence, and who does not understand or speak English,
  - (b) the information is to be provided for the purposes of a relevant function,
  - (c) the information—
    - (i) is considered by the competent authority to be essential to the person's participation in the criminal investigation or criminal proceedings in relation to the offence or alleged offence, or
    - (ii) must be provided by the competent authority to the person under any enactment, and
  - (d) the person has requested that the information is translated into a language which the person understands.
- (6) The authority must ensure that the information is translated (either orally or in writing) into a language which the person understands.
- (7) In considering whether information is essential for the purposes of subsection (5)(c)(i), the competent authority must take into account the views of the person to whom the information is to be provided.
- (8) Interpretation or translation provided to a person under this section must be provided free of charge.
- (9) For the purposes of this section—
- (a) a request made by a person who is or appears to be a victim in relation to an offence or alleged offence to a constable or a member of police staff is deemed to be a request made to the chief constable of the Police Service of Scotland, and
  - (b) a request made by a person who is or appears to be a victim in relation to an offence or alleged offence to a procurator fiscal is deemed to be a request made to the Lord Advocate.
- (10) 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,
- “prosecutor” means Lord Advocate, Crown Counsel or procurator fiscal,
- “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.”.