

## POLICY NOTE

### THE CRIMINAL JUSTICE (SCOTLAND) ACT 2003 (SUPPLEMENTAL PROVISIONS) (SCOTLAND) ORDER 2021

SSI 2021/XXX

#### Summary Box

Section 14 of the Criminal Justice (Scotland) Act 2003 (“the 2003 Act”) provides that victims of prescribed offences are to be given the opportunity, in criminal proceedings in a prescribed court, to make a victim statement about how the offence has affected and, as the case may be, continues to affect them. The Scottish Ministers have a power to prescribe the courts in which statements can be made (section 14(1)) and a separate power to prescribe the offences in relation to which statements can be made (section 14(2)).

Section 14 does not provide that different provision can be made under these powers for different purposes. As a result, the Scottish Ministers cannot use these powers to prescribe courts by reference to certain offences triable in those courts and cannot use these powers to prescribe offences by reference to the courts they are triable in.

Section 14(13) of the 2003 Act enables the Scottish Ministers to prescribe the form and manner in which victim statements may be made. Subsections (13) to (16) of section 14 were inserted by section 23(7) of the Victims and Witnesses (Scotland) Act 2014 (“the 2014 Act”).

This Order will allow the three powers relating to victim statements contained in Section 14 of the 2003 Act: the power to prescribe courts; the power to prescribe offences; and the power to prescribe the form and manner of victim statements, to be used flexibly to make different provisions for different purposes.

This will enable the Scottish Ministers to use the powers in section 14 to pilot changes to the current victim statement scheme to provide more victims with the opportunity to make a victim statement. It will also enable the Scottish Ministers to explore different ways for victim statements to be made (e.g. recorded) and thereafter bring more permanent changes into force following any pilot scheme introduced under these powers.

#### Policy Objectives

The Victims and Witnesses (Scotland) Act 2014 (Commencement No. 7 and Transitional Provisions) Order 2020 will commence section 23(7) and (14) of the 2014 Act on 10th February 2021. Section 23(7) of the 2014 Act inserts subsections (13) to (16) into section 14 of the 2003 Act which empower the Scottish Ministers to prescribe the form and manner of victim statements. By the time the Supplemental Provisions Order comes into force section 23(7) and (14) will be in force and section 14 will have been amended accordingly.

Section 14 of the 2003 Act provides for victims of prescribed offences to be given the opportunity to make a statement to the court as to how the offence has affected them. This

only applies to a prescribed court. The Scottish Ministers are given powers in section 14(1) and 14(2) respectively to prescribe the courts in which a victim statement may be made and the offences in relation to which a victim statement may be made. The Scottish Ministers are also given powers in section 14(13) to prescribe the form and manner in which a victim statement may be made.

Section 14 does not enable the powers in section 14(1) and (2) to be used in conjunction in order to prescribe offences insofar as they are charged in a specific court or to allow courts to be prescribed for specific offences only. If we prescribe a court then a victim statement may be made for every prescribed offence charged in that court. If we prescribe an offence then a victim statement may be made for that offence in every prescribed court.

Similarly, the power in section 14(13) of the 2003 Act to prescribe the form and manner of a victim statement cannot be used to make different provision for different circumstances. If the Scottish Ministers prescribe that victim statements can be made orally, then that would apply to every offence in relation to which a victim statement can be made. The introduction of pilot projects for victim statements would not be possible under section 14 in its current form.

This Order will address these issues by allowing the three powers in section 14 of the 2003 Act – the power to prescribe courts, the power to prescribe offences and the power to prescribe the form and manner of victim statements – to be used flexibly. For example, Scottish Ministers would be able to use the powers in section 14(1) and (2) in conjunction so as to prescribe a court for the purposes of certain offences triable in that court, or prescribe an offence insofar as it is triable in a certain court. It will also enable the Scottish Ministers to prescribe the form and manner of victim statements made for specific offences.

The intention behind the Supplemental Provisions Order is to enable the powers in section 14 of the 2003 Act to be used more flexibly so as to enable victim statements to be made in relation to specific offences being tried in a specific court. This added flexibility will also enable the Scottish Ministers to use the powers in section 14 of the 2003 Act to trial victim statements in a specific prescribed court for a specific prescribed offence and in a specific prescribed manner.

## **Consultation**

A full 12 week public consultation on widening the scope of the current victim statement scheme, ran from 1 September 2019 until 29 November 2019.

A public consultation workshop was held on 1 November 2019. The workshop was attended by representatives from, amongst others, the Scottish Government, COPFS, Victim Support Scotland (VSS) the Law Society, Police Scotland, Children 1st, Petal, The Manda Centre, Scottish Women's Aid as well as people with lived experience of the scheme. Individual meetings were also held with Victim Support Scotland staff and volunteers and Community Justice Scotland.

No further specific consultation has taken place on this Supplemental Provisions Order but we will engage with key stakeholders and victims' organisations in advance of using the powers that they enable.

## **Impact Assessments**

An Equality Impact Assessment has been completed on the draft SSIs and is attached. There are no equality impact issues.

## **Financial Effects**

The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Justice Directorate

*January 2021*