



Criminal Justice (Scotland) Act 2003

2003 asp 7

PART 2

VICTIMS' RIGHTS

14 Victim statements

- (1) This section applies only where proceedings in respect of an offence are to be taken, or are likely to be taken, in a prescribed court or class of court.
- (2) In so far as is reasonably practicable, a natural person against whom a prescribed offence has been (or appears to have been) perpetrated is—
 - (a) after a decision has been taken to bring proceedings in respect of that offence; or
 - (b) if a procurator fiscal so determines, before any such decision has been taken, to be afforded an opportunity to make a statement (to be known as a “victim statement”) as to the way in which, and degree to which, that offence (or apparent offence) has affected and as the case may be continues to affect, that person; but this subsection is subject to subsection (6).
- (3) Where a person who has made a victim statement by virtue of subsection (2) (or that subsection and subsection (6)) so requests and sentence may yet fall to be imposed in respect of the offence (or apparent offence), that person is to be afforded an opportunity to make a statement supplementary to, or in amplification of, the victim statement.
- (4) A copy of any—
 - (a) victim statement made; or
 - (b) statement made by virtue of subsection (3) in relation to a victim statement, is, if the accused tenders a plea of guilty to, or is found guilty of, the offence in question, to be provided forthwith to the accused by the prosecutor.
- (5) A prosecutor must—
 - (a) in solemn proceedings, when moving for sentence as respects an offence; and
 - (b) in summary proceedings, when a plea of guilty is tendered in respect of, or the accused is convicted of, an offence,

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lay before the court any victim statement which relates (whether in whole or in part) to the offence in question, and the court must in determining sentence have regard to so much of—

- (i) that statement; and
- (ii) any statement made by virtue of subsection (3) in relation to that statement, as it considers to be relevant to that offence.

(6) Where—

(a) because a person has died no such opportunity as is mentioned in subsection (2) can be afforded that person then subsections (2) and (3) apply as if the references in them to the person and to how the offence (or apparent offence) affected, or continues to affect, the person—

(i) were references to any or all of the four qualifying persons highest listed in subsection (10) and to how the offence (or apparent offence) affected, or continues to affect, the maker of the statement; and

(ii) without prejudice to sub-paragraph (i), where the person died a child (that is to say not having attained the age of sixteen years), included references to any other person who, immediately before the offence (or apparent offence) was perpetrated, cared for the child (that expression being construed in accordance with the definition of “person who cares for” in section 2(28) of the Regulation of Care (Scotland) Act 2001 (asp 8)) and to how the offence (or apparent offence) affected, or continues to affect, that other person; or

(b) a person who (but for this paragraph and other than by virtue of paragraph (a)) would be afforded such an opportunity as is so mentioned is—

(i) incapable, by reason of mental disorder or inability to communicate, of making a victim statement, subsections (2) and (3) apply as if the person to be afforded an opportunity were not the incapable person but the qualifying person highest listed in subsection (10); or

(ii) a child who has not attained the age of fourteen years, those subsections apply as if the person to be afforded an opportunity were not that person but such other person as is mentioned in paragraph (a) (ii),

and as if the other references in those subsections to a person continued to be to the incapable person or as the case may be to the child.

(7) For the purposes of subsection (6)(b)(i), inability to communicate by reason only of a lack or deficiency in a faculty of communication is to be disregarded if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise).

(8) In subsection (6), “qualifying person” means a person whose relationship to the victim is listed in subsection (10), who is neither incapable as mentioned in sub-paragraph (i) of paragraph (b) of subsection (6) nor a child such as is mentioned in sub-paragraph (ii) of that paragraph and who is not a person referred to by subsection (9).

(9) This subsection refers to a person accused of, or reasonably suspected of being the perpetrator of, or of having been implicated in, the offence (or apparent offence) in question.

(10) The list is—

- (a) spouse;

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- (b) cohabitee;
- (c) son or daughter or any person in relation to whom the victim has or had parental responsibilities or rights vested by, under or by virtue of the Children (Scotland) Act 1995 (c. 36);
- (d) father or mother or any person in whom parental responsibilities or rights are or were vested by, under or by virtue of that Act in relation to the victim;
- (e) brother or sister;
- (f) grandparent;
- (g) grandchild;
- (h) uncle or aunt;
- (i) nephew or niece,

and the elder of any two persons described in any one of paragraphs (a) to (i) is to be taken to be the higher listed person, regardless of sex.

- (11) In subsection (10)(b), “cohabitee” means a person, whether or not of the same sex as the victim, who has lived with the victim, as if in a married relationship, for at least six months and was so living immediately before the offence (or apparent offence) was perpetrated.
- (12) The Scottish Ministers may by order (either or both)—
- (a) amend subsection (6)(b)(ii) by substituting for the age for the time being specified there such other age as they think fit;
 - (b) amend the list in subsection (10).

15 Prohibition of personal conduct of defence in proofs ordered in relation to victim statements in cases of certain sexual offences

- (1) The 1995 Act is amended as follows.
- (2) In section 288C(1) (prohibition of personal conduct of defence in cases of certain sexual offences), at the end there is added “ or in any proof ordered in relation to a statement made by virtue of subsection (2) (or by virtue of that subsection and subsection (6)) of section 14 of the Criminal Justice (Scotland) Act 2003 (asp 7) ”.
- (3) In section 288D(2)(a) (appointment by court of solicitor in such cases), at the end there is added “ or as the case may be at any proof ordered as is mentioned in section 288C(1) of this Act ”.

VALID FROM 01/04/2005

[^{F1}15A Application of sections 271 to 271M of the 1995 Act in proofs ordered in relation to victim statements

- (1) Sections 271 to 271M of the 1995 Act (which make provision as to the use of special measures for taking the evidence of vulnerable witnesses) apply in relation to a person who is giving or is to give evidence at or for the purposes of any proof ordered in relation to—
- (a) a victim statement made by virtue of subsection (2) (or by virtue of that subsection and subsection (6)) of section 14 of this Act, or

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- (b) a statement made by virtue of subsection (3) of that section in relation to such a victim statement,
as they apply to a person who is giving or is to give evidence at, or for the purposes of, a trial.
- (2) For that purpose, any reference in those sections to the trial or trial diet is to be read as a reference to the proof.
- (3) Where—
- (a) any person who is giving or is to give evidence at any proof ordered in relation to any such statement as is mentioned in subsection (1) above gave evidence at or for the purposes of any trial in respect of the offence to which the statement relates, and
- (b) a special measure or combination of special measures was used by virtue of sections 271A, 271C or 271D of the 1995 Act for the purpose of taking the person's evidence at the trial,
that special measure or, as the case may be, combination of special measures is to be treated as having been authorised, by virtue of the same section of the 1995 Act, to be used for the purpose of taking the person's evidence at or for the purposes of the proof.
- (4) Subsection (3) above does not affect the operation, by virtue of subsection (1) above, of section 271D of the 1995 Act.]

Textual Amendments

- F1** S. 15A inserted (for specified purposes at 1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007, otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp3), {ss. 3}, 25; [S.S.I. 2005/168, art. 2, Sch. \(with art. 4\)](#); [S.S.I. 2005/590, art. 2, Sch. \(with art. 4\)](#); [S.S.I. 2006/59, art. 2, Sch. \(with art. 4\)](#); [S.S.I. 2007/101, art. 2, Sch. \(with art. 4\)](#); [S.S.I. 2007/329, art. 2, Sch. \(with art. 4\)](#); [S.S.I. 2008/57, art. 2 \(with art. 3\)](#)

16 Victim's right to receive information concerning release etc. of offender

- (1) Subject to subsection (2), the Scottish Ministers must, unless they consider that there are exceptional circumstances which make it inappropriate to do so, give any natural person against whom a prescribed offence (or, if they so prescribe, any offence) has been perpetrated such information as is described in subsection (3), being information in relation to any person who has been convicted of that offence and sentenced in respect of it—
- (a) to imprisonment or detention for a period of four or more years;
- (b) to life imprisonment or detention for life; or
- (c) under section 205(2) (punishment for murder where convicted person under 18) or 208 (detention of children convicted on indictment) of the 1995 Act, to detention without limit of time,
provided that the person to be given the information wishes to receive it and has so intimated.
- (2) Subsection (1) does not apply where the convicted person is released before attaining the age of sixteen years.

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- (3) The information mentioned in subsection (1) is—
- (a) the date on which the convicted person is, under or by virtue of the 1989 Act or the 1993 Act, released (other than by being granted temporary release);
 - (b) if the convicted person dies before that date, the date of death;
 - (c) that the convicted person has been transferred to a place outwith Scotland;
 - (d) that the convicted person has, by virtue of the 1989 Act, become eligible for temporary release; and
 - (e) that the convicted person is unlawfully at large from a prison or young offenders institution.
- (4) The Scottish Ministers may by order—
- (a) amend subsection (1)(a) by substituting, for the period for the time being specified there, a different period; or
 - (b) amend subsection (3) by adding descriptions of information.
- (5) Where information would fall to be given to a person under subsection (1) but that person—
- (a) has died, that subsection applies as if references in it to the person were to be construed as mentioned in sub-paragraphs (i) and (ii) of paragraph (a) of section 14(6) of this Act; or
 - (b) in a case other than is mentioned in paragraph (a)—
 - (i) is incapable as mentioned in sub-paragraph (i) of paragraph (b) of the said section 14(6), that subsection applies as if references in it to the person were to be construed as mentioned in that sub-paragraph; or
 - (ii) is a child such as is mentioned in sub-paragraph (ii) of the said paragraph (b), that subsection applies as if references in it to the person were to be construed as mentioned in that sub-paragraph, (taking him to be the person “afforded an opportunity”).
- (6) Subsections (7) and (8) to (12) of section 14 apply in relation to subsection (5) as they apply in relation to subsection (6) of that section.

17 Release on licence: right of victim to receive information and make representations

- (1) Subject to subsections (2), (3) and (12), a person entitled to receive information under section 16 of this Act (the “victim”) as respects a convicted person must in accordance with this section, before any decision is taken to release the convicted person on licence, be afforded an opportunity to make written representations to the Scottish Ministers as respects such release and as to conditions which might be specified in the licence in question.
- (2) Subsection (1) applies only where the victim wishes to be afforded the opportunity and has so intimated.
- (3) Subsection (1) does not apply where the convicted person has not attained the age of sixteen years by the date on which the case is referred to the Parole Board for Scotland by the Scottish Ministers.
- (4) The Scottish Ministers are to issue guidance as to how representations under subsection (1) should be framed.

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- (5) Where it falls to the Board to recommend whether, or direct that, the convicted person be released, the Scottish Ministers must, as soon as practicable after they commence a review of the case for the purposes of referring it to the Board for the Board to consider what recommendation to make or whether to make such a direction, fix a time within which any representations under subsection (1) require to be made to them if they are to be considered by the Board; and they must notify the victim accordingly.
- (6) Whether or not representations are made under subsection (1), in a case to which subsection (5) applies the Board must, subject to subsection (11)—
- (a) inform the victim as to whether or not it has recommended or directed release;
 - (b) if it has recommended or directed release, inform the victim as to whether it has also recommended that the person released comply with conditions; and
 - (c) inform the victim of the terms of any such conditions which relate to contact with the victim or with members of the victim's family,
- and the Board may provide the victim with such other information as it considers appropriate having regard to the circumstances of the case.
- (7) Where subsection (5) does not apply but it falls to that Board to recommend conditions to be included in the licence, the Scottish Ministers are under the same duties as they are under that subsection.
- (8) Whether or not representations are made under subsection (1), in a case to which subsection (7) applies the Board must inform the victim, subject to subsection (11)—
- (a) as to whether it has recommended that the person released comply with conditions; and
 - (b) as is mentioned in subsection (6)(c).
- (9) Where neither subsection (5) nor (7) applies, the Scottish Ministers must fix a time within which any representations under subsection (1) require to be made to them if they are to be considered by them; and they must notify the victim accordingly.
- (10) Whether or not representations are made under subsection (1), in a case to which subsection (9) applies the Scottish Ministers must inform the victim, subject to subsection (11)—
- (a) as to whether the person released is to comply with conditions; and
 - (b) as is mentioned in subsection (6)(c).
- (11) Subsections (6), (8) and (10) apply only where the victim has intimated a desire to receive the information in question.
- (12) This section does not apply—
- (a) as respects release under section 3 of the 1993 Act (release on compassionate grounds); or
 - (b) where the entitlement mentioned in subsection (1) arises by virtue of section 16(4)(a).

18 Disclosure of certain information relating to victims of crime

- (1) Where it appears to a constable that an offence has been perpetrated against a natural person the constable may, with the person's consent, disclose to a prescribed body (being a body which appears to the Scottish Ministers to provide counselling or other support to those who have been victims of crime), with a view to its providing such counselling or support to the person, any or all of the following information—

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- (a) the person's—
 - (i) name;
 - (ii) address;
 - (iii) telephone number;
 - (iv) e-mail address;
 - (v) age;
 - (b) such information regarding the offence (or apparent offence) as the constable considers appropriate provided that the information does not include such information in relation to the alleged perpetrator as is mentioned in sub-paragraphs (i) to (v) of paragraph (a) (though it may include information as to whether the case is one likely to be disposed of by a children's hearing).
- (2) Where the person against whom the offence was perpetrated has died, subsection (1) shall be construed as if it relates not to that person but to any one or more of—
- (a) the qualifying persons (as defined in subsection (8) of section 14); and
 - (b) where the circumstances are as mentioned in sub-paragraph (ii) of subsection (6)(a) of that section, any such other person as is mentioned in that sub-paragraph,
- who the constable considers would derive benefit from the counselling or support in question.

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