



# Bail and Release from Custody (Scotland) Act 2023

2023 asp 4

## PART 2

### RELEASE FROM CUSTODY

#### 14 Provision of information to victim support organisations

- (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.
- (2) After section 16 (victim's right to receive information concerning release etc. of offender) insert—

#### **“16ZA Provision of information to person supporting victim**

- (1) This section applies where—
  - (a) a person entitled to receive information under section 16 (the “victim”) intimates to the Scottish Ministers that a person to whom subsection (2) applies (the “supporter”) is to be given, as well as or instead of the victim, the information described in section 16(3) in relation to the person convicted of the offence perpetrated against the victim, or
  - (b) a supporter intimates to the Scottish Ministers that they wish to be given that information and Ministers are satisfied that the victim consents to the supporter being given the information.
- (2) This subsection applies to a person—
  - (a) of a description prescribed by the Scottish Ministers by regulations, and
  - (b) who is providing support services to the victim in relation to the offence perpetrated against the victim.
- (3) The Scottish Ministers must, unless they consider that there are exceptional circumstances which make it inappropriate to do so, give the supporter such information as is described in section 16(3).

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*Status: This is the original version (as it was originally enacted).*

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- (4) Subsection (3) does not apply where the person convicted of the offence perpetrated against the victim is released before attaining the age of 16 years.
- (5) In this section, “support services”—
- (a) means any type of service or treatment which is intended to benefit the physical or mental health or wellbeing of the victim, and
  - (b) includes—
    - (i) providing the victim with information (including information provided under subsection (3)),
    - (ii) assisting the victim with safety planning,
    - (iii) assisting the victim with the making of representations under this Part.
- (6) The Scottish Ministers may by regulations modify the definition of “support services” in subsection (5).
- (7) Regulations under subsection (2)(a) and (6) may—
- (a) include incidental, supplementary, consequential, transitional, transitory or saving provision,
  - (b) modify enactments (including this Act).
- (8) Regulations—
- (a) under subsection (2)(a)—
    - (i) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
    - (ii) are otherwise subject to the negative procedure,
  - (b) under subsection (6) are subject to the affirmative procedure.”.
- (3) After section 16C (information to be given under section 16A) insert—

**“16D Provision of information concerning offender subject to compulsion order to person supporting victim**

- (1) This section applies where—
- (a) a person entitled to ask to be given information under section 16A (the “victim”) intimates to the Scottish Ministers that a person to whom subsection (2) applies (the “supporter”) is to be given, as well as or instead of the victim, the information described in section 16C about the person referred to in section 16A as O, or
  - (b) a supporter intimates to the Scottish Ministers that they wish to be given that information and Ministers are satisfied that the victim consents to the supporter being given the information.
- (2) This subsection applies to a person—
- (a) of a description prescribed by the Scottish Ministers by regulations, and
  - (b) who is providing support services to the victim in relation to the offence in respect of which O has been made subject to a compulsion order and a restriction order.
- (3) The Scottish Ministers must give the information about O described in section 16C to the supporter.

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*Status: This is the original version (as it was originally enacted).*

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- (4) But the Scottish Ministers—
- (a) need not give the supporter information under this section if they consider there to be exceptional circumstances which make it inappropriate to do so,
  - (b) are not to give the supporter information about the terms of a condition in accordance with section 16C(2)(h) unless the condition is relevant to the victim as described in section 18A(3).
- (5) Subsection (3) does not apply where O has not attained the age of 16 years.
- (6) If the compulsion order or restriction order to which O has been made subject is revoked, subsection (3) ceases to apply when the Scottish Ministers give the victim or, as the case may be, the supporter the information that—
- (a) the order has been revoked, and
  - (b) the decision to revoke it is final.
- (7) In this section, “support services” has the same meaning as in section 16ZA(5).
- (8) Regulations under subsection (2)(a)—
- (a) may—
    - (i) include incidental, supplementary, consequential, transitional, transitory or saving provision,
    - (ii) modify enactments (including this Act),
  - (b) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
  - (c) are otherwise subject to the negative procedure.”.
- (4) After section 17 (release on licence: right of victim to receive information and make representations) insert—

**“17ZA Release on licence: provision of information to person supporting victim**

- (1) This section applies where—
- (a) a person entitled to receive information under section 16 (the “victim”) as respects a convicted person intimates that they wish a person entitled to receive information under section 16ZA (the “supporter”) to be informed before any decision is taken to release the convicted person, or
  - (b) the supporter intimates that they wish to be so informed and the Scottish Ministers are satisfied that the victim consents to the supporter being so informed.
- (2) The Scottish Ministers must, whether or not the victim has intimated the wish to be afforded the opportunity to make representations under section 17(1), give the supporter—
- (a) notice as mentioned in section 17(5), (7) and (9), and
  - (b) the information mentioned in section 17(10).

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- (3) The Parole Board for Scotland must give the supporter the information mentioned in section 17(6) and (8) (whether or not the victim has intimated the desire to receive that information).
- (4) Subsections (2) and (3) do not apply where the convicted person has not attained the age of 16 years by the date on which the case is referred to the Parole Board by the Scottish Ministers.
- (5) This section does not apply—
  - (a) as respects release under section 3 of the 1993 Act (release on compassionate grounds),
  - (b) where the victim’s entitlement to receive information under section 16 arises by virtue of section 16(4)(a).”.
- (5) In section 17A (temporary release: victim’s right to make representations about conditions)—
  - (a) for subsection (1) substitute—
    - “(1) This section applies where—
      - (a) by virtue of subsection (1) or (5) of section 16 a person (the “victim”), or
      - (b) by virtue of section 16ZA(3), a person entitled to receive information under that section (the “supporter”),
 is given the information mentioned in section 16(3)(d) as respects a convicted person.”,
    - (b) in subsection (4)(b), after “victim” insert “or, as the case may be, the supporter”.
- (6) After section 17D (right to information after section 17B decision) insert—

**“17DA Section 17B decision: provision of information to person supporting victim**

- (1) This section applies where—
  - (a) a person entitled to receive information under section 17D (the “victim”) intimates to the Scottish Ministers that a person to whom subsection (2) applies (the “supporter”) is to receive, as well as or instead of the victim, the information, or
  - (b) a supporter intimates to the Scottish Ministers that they wish to receive that information and Ministers are satisfied that the victim consents to the supporter receiving the information.
- (2) This subsection applies to a person—
  - (a) of a description prescribed by the Scottish Ministers by regulations, and
  - (b) who is providing support services to the victim in relation to the offence in respect of which the person referred to in section 17B as O has been made subject to—
    - (i) a hospital direction,
    - (ii) a transfer for treatment direction, or, as the case may be,
    - (iii) a compulsion order and a restriction order.

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*Status: This is the original version (as it was originally enacted).*

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- (3) The Scottish Ministers must, unless they consider that there are exceptional circumstances which make it inappropriate to do so, inform the supporter that the decision under section 17B has been taken.
- (4) Subsection (5) applies where—
- (a) in accordance with subsection (3), the Scottish Ministers have informed the supporter that the Tribunal has decided to make an order revoking a compulsion order or restriction order, and
  - (b) by virtue of section 196 of the Mental Health Act, the Tribunal's order does not have effect because the Court of Session has made an order under section 323(1) of that Act.
- (5) The Scottish Ministers must—
- (a) inform the supporter that the Court of Session has made an order under section 323(1) of the Mental Health Act, and
  - (b) give the supporter the information that they would have had to give the supporter by virtue of section 16C(4) had the Court not made that order.
- (6) In this section, “support services” has the same meaning as in section 16ZA(5).
- (7) Regulations under subsection (2)(a)—
- (a) may—
    - (i) include incidental, supplementary, consequential, transitional, transitory or saving provision,
    - (ii) modify enactments (including this Act),
  - (b) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
  - (c) are otherwise subject to the negative procedure.”.
- (7) In section 17E (information sharing in respect of mentally-disordered offenders)—
- (a) in subsection (1)—
    - (i) for “or 16A” substitute “, 16ZA, 16A or 16D”,
    - (ii) after “(“V”)” insert “or, as the case may be, a supporter”,
  - (b) in subsection (3), after “17D” insert “or to a supporter under section 16ZA, 16D or 17DA”,
  - (c) in subsection (5), for “or 16A” substitute “16ZA, 16A or, as the case may be, 16D”,
  - (d) after subsection (5) insert—
    - “(6) In this section, “supporter” is to be construed in accordance with section 16ZA, 16D or, as the case may be, 17DA.”.
- (8) In section 18A (interpretation)—
- (a) in subsection (3)—
    - (i) after “16A(3)(b)” insert “, 16D(4)(b)”,
    - (ii) in paragraph (b), after “V” insert “or, as the case may be, a supporter”,
  - (b) after subsection (4) insert—
    - “(5) In this section, “supporter” is to be construed in accordance with section 16D or, as the case may be, 17DA.”.

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*Status: This is the original version (as it was originally enacted).*

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- (9) In section 18B (power to modify Part)—
- (a) in subsection (1)(a), for “16A and 16B,” substitute “16ZA, 16A, 16B, 16D(5) and 17ZA(4),”;
  - (b) in subsection (2)(a), for “section 16A” substitute “sections 16A and 16D”;
  - (c) in subsection (3), after “16A” in both places insert “, 16D”.
- (10) In section 87(1) (interpretation), in the definition of “prescribed”, for “section” substitute “sections 16ZA(2)(a), 16D(2)(a), 17DA(2)(a) and”.
- (11) The Victims and Witnesses (Scotland) Act 2014 is amended as follows.
- (12) After section 27A (notification of victims in relation to release etc. of short-term prisoners) insert—

**“27B Provision of information to person supporting victim**

- (1) This section applies where—
- (a) a person entitled to receive information under section 27A (“V”) intimates to the Scottish Ministers that a person to whom subsection (2) applies (the “supporter”) is to be given, as well as or instead of V, the information described in section 27A(1) in relation to the person sentenced to imprisonment or detention (“A”), or
  - (b) a supporter intimates to the Scottish Ministers that they wish to be given that information and Ministers are satisfied that V consents to the supporter being given the information.
- (2) This subsection applies to a person—
- (a) of a description prescribed by the Scottish Ministers by regulations, and
  - (b) who is providing support services to V in relation to the offence perpetrated against V by A.
- (3) The Scottish Ministers must notify the supporter of the matters mentioned in section 27A(1).
- (4) Section 27A(2) and (3) apply to notification under subsection (3) as they apply to notification under section 27A(1).
- (5) In this section, “support services” has the same meaning as in section 16ZA(5) of the 2003 Act.
- (6) Regulations under subsection (2)(a) may—
- (a) include incidental, supplementary, consequential, transitional, transitory or saving provision,
  - (b) modify enactments (including this Act).
- (7) Regulations under subsection (2)(a)—
- (a) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
  - (b) are otherwise subject to the negative procedure.”.