
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

The Victims' Rights (Scotland) Regulations 2015

Exercise of functions where victim is a child or deceased

16. After section 29 of the Act insert—

“Child victims

Exercise of functions where victim is a child

29A.—(1) This section applies where, under section 3C, 3D, 3E, 3F, 3G, 6 or 27A—

- (a) a competent authority is to exercise a function in relation to, or at the request of, a person who is or appears to be a victim in relation to an offence or alleged offence, and
- (b) the person is a child.

(2) If the competent authority considers that it is in the best interests of the child to exercise the function in relation to, or at the request of, the child, the function—

- (a) is exercisable in relation to, or at the request of, the child, and
- (b) is also exercisable in relation to, or at the request of, the child's parent if the authority considers that it is in the best interests of the child to do so.

(3) If the competent authority considers that it is not in the best interests of the child to exercise the function in relation to, or at the request of, the child, the function—

- (a) is not exercisable in relation to, or at the request of, the child, and
- (b) is instead exercisable in relation to, or at the request of, the child's parent if the authority considers that it is in the best interests of the child to do so.

(4) If, for the purposes of subsection (2)(b) or (3)(b), the competent authority considers that it is not in the best interests of the child to exercise the function in relation to, or at the request of, the child's parent—

- (a) the function is not so exercisable, and
- (b) the function may instead be exercisable in relation to, or at the request of, such person as the authority considers appropriate having regard to the age, maturity, views, needs and concerns of the child.

(5) Subsections (2)(b) and (3)(b) do not require a competent authority to exercise a function in relation to a parent of a child if, having taken reasonable steps to determine the parent's whereabouts, the parent's whereabouts are unknown to the authority.

(6) In this section—

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

“parent”, in relation to a child, means any person holding parental responsibilities for that child within the meaning of the Children (Scotland) Act 1995.

Deceased victims

Application of Act where victim's death caused by offence

29B.—(1) Subject to subsections (2) and (3), references in this Act to a person who is or appears to be a victim include—

- (a) where the reference is in relation to any criminal investigation or criminal proceedings, a qualifying relative of a person whose death was (or appears to have been) caused by the offence or alleged offence which is the subject of the criminal investigation or criminal proceedings, and
- (b) where the reference is in relation to an offence or alleged offence, a qualifying relative of a person whose death was (or appears to have been) caused by the offence or alleged offence.

(2) This section does not apply in relation to sections 2, 6, 8, 9D, 9E and 26.

(3) Where, by virtue of subsection (1), a function of a competent authority under section 3C, 3D, 3G or 27A is exercisable in relation to, or at the request of, a qualifying relative of a deceased person—

- (a) the function is exercisable only in relation to, or at the request of, a person who is one of the four highest listed relatives in the definition of “qualifying relative” in subsection (5), and
- (b) the competent authority—
 - (i) may decline to exercise the function in relation to, or at the request of, a person who is one of those qualifying relatives, if it considers it inappropriate to exercise the function in relation to, or at the request of, that person, and
 - (ii) is not required to exercise the function in relation to a person who is one of those qualifying relatives if, having taken reasonable steps to ascertain that person's whereabouts, that person's whereabouts are unknown to the authority.

(4) For the purposes of determining which relatives are highest listed in the definition of “qualifying relative”, the elder of any two persons described in any one of paragraphs (a) to (g) of the definition is to be taken to be the higher listed relative regardless of gender.

(5) In this section, “qualifying relative” means—

- (a) anyone who was married to, or was in a civil partnership with, the person immediately before the person's death,
- (b) anyone who had been living together with the person, as if they were married, for a minimum period of 6 months immediately before the person's death,
- (c) children and step-children of the person and anyone whom the person cared for, as defined in paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010, immediately before the person's death,
- (d) parents and step-parents of the person,
- (e) siblings of the person,
- (f) grandparents and great-grandparents of the person, and
- (g) grandchildren and great-grandchildren of the person.”.