

POLICY NOTE

THE VICTIMS AND WITNESSES (SCOTLAND) ACT 2014 (PRESCRIBED RELATIVES) ORDER 2014

SSI 2014/360

1. The above instrument was made in exercise of the powers conferred by sections 2 and 6 of the Victims and Witnesses (Scotland) Act 2014 (“the 2014 Act”). The instrument is subject to the negative procedure.

Policy Objectives

2. The 2014 Act introduces various measures to improve the support and information available to victims and witnesses of crime in Scotland, and is being implemented in stages.
3. The policy objective of this instrument is to define those relatives of victims to which the measures introduced by sections 2 (Standards of service) and 6 (Disclosure of information about criminal proceedings) of the 2014 Act apply.
4. Section 2 of the 2014 Act requires the police, Crown Office and Procurator Fiscal Service (COPFS), Scottish Court Service (SCS), Scottish Prison Service and Parole Board for Scotland to set and publish standards in relation to the functions which those organisations carry out in relation to victims (including prescribed relatives of victims) and witnesses.
5. Section 2 allows the Scottish Ministers to prescribe, by way of an order subject to the negative procedure, the relatives of victims to which the standards apply. The intention is to ensure certain relatives of a victim are covered by the standards in the same way that a victim would be, in recognition of the impact a criminal offence can have on those in a close relationship with the victim.
6. Section 6 of the 2014 Act provides victims, witnesses and, where a victim died as a result of an offence, certain relatives of victims, with a new right to request certain information from the police, COPFS and SCS. The type of information that may be requested includes a decision not to proceed with a criminal investigation and any reason for it, a decision not to institute criminal proceedings and any reasons for it, and details about the trial and the nature of the charges libelled against a person. This measure is intended to ensure victims and witnesses are able to keep up-to-date with the progress of a case.
7. Section 6 allows the Scottish Ministers to prescribe, by way of an order subject to the negative procedure, the relatives of a victim to which the rights under section 6 apply, though only where the victim has died of the offence in question.

8. To ensure consistency in approach for victims and witnesses, the same list of prescribed relatives has been developed for the purposes of both section 2 and section 6 (with one exception, see paragraph 11 below) and is legislated for in a single order subject to the negative procedure.
9. Turning to the instrument itself, article 2(1) sets out the prescribed relatives for the purposes of sections 2 and 6 of the 2014 Act, capturing the key familial relationships. Article 2(1) of the instrument also defines those persons who have charge of an individual's welfare needs under separate statutory provisions. In addition, article 2(1) provides for the reciprocal operation of the statutory definitions (for example, where the deceased victim is a foster parent, their foster child will be considered as a prescribed relative).
10. Article 2(2) of the instrument is to provide for those whose relationship has ended, only as a result of the victim's death, to be prescribed relatives. Thus, where a marriage, a guardianship or foster care arrangement is ended by the victim's death, the spouse, the guardian or foster carer would continue to be a prescribed relative notwithstanding the end of that relationship.
11. Article 2(3) of the instrument excludes the accused from being a prescribed relative for the purpose of requesting information under section 6 of the 2014 Act in relation to the case in which they are the accused, where they could also fall under the definition of a prescribed relative of the victim. The accused is not excluded as a prescribed relative in relation to standards of service as section 2 applies in general to victims, prescribed relatives of victims and witnesses, and not in relation to a specific offence. As such, if the accused were to be excluded as a prescribed relative for the purpose of section 2, relatives of victims who happened to be an accused in an unrelated case would also be excluded from being covered by the standards of service.
12. In the future, the Scottish Ministers may utilise the order-making powers in sections 2 and 6 to modify the list of prescribed relatives. This will allow for the Scottish Ministers to respond to future developments in legislation and changes to the recognised definitions of familial relationships, as required.

Development of the list of prescribed relatives

13. In identifying the key familial relationships, consideration was given to existing legislation and related materials on the categories of individual who should be, or are, treated as relatives of a victim. In particular:
 - article 2(1)(a)(ii) of the EU Directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU)¹ requires that families

¹ <http://db.eurocrim.org/db/en/doc/1828.pdf>

of those persons who die as a result of a criminal offence, and who have suffered harm as a result, be treated as victims;

- section 14(6)(a) of the Criminal Justice (Scotland) Act 2003² (“the 2003 Act”) allows any or all of the four qualifying persons listed highest in section 14(10) of the 2003 Act to make a victim impact statement where the victim has died as a result of the offence;
- section 14(1) of the Damages (Scotland) Act 2011³ defines, for the purposes of entitlement to raise a claim for damages, “relative” in relation to a person who has died;
- the Code of Practice for Victims of Crime in England and Wales⁴, issued by the Secretary of State for Justice under section 32 of the Domestic Violence, Crime and Victims Act 2004, specifies who is entitled to receive services under the Code and the term ‘close relatives’ is defined in the Glossary;
- Police Scotland has advised of individuals who will be treated as relatives in line with current policing practice; and Victim Support Scotland has given an indication of whom it might regard as relatives for these purposes.

14. As well as taking into consideration precedent and current Scottish Government policy in areas such as family law and equalities, the list was developed in consultation with the justice organisations on which the duty falls. The police and COPFS are already experienced in liaising closely with victims and their families, particularly where an allegation of a serious crime is involved, and the measures in section 6 of the 2014 Act should build upon that existing practice.
15. Furthermore, a targeted consultation was undertaken with key victim support groups, including Victim Support Scotland, Scottish Women’s Aid, Rape Crisis Scotland and others represented on the Victims Organisations Collaboration Forum Scotland. A number of responses were received, which were analysed and, where appropriate, taken into account when finalising the list.
16. In prescribing relatives for the purpose of section 6 of the 2014 Act, consideration was given to the sensitive nature of some of the information that the named organisations would be obliged to disclose, if requested to do so, and the operational requirements around verifying that the requestor is who they say they are. It is considered that the definitions listed can be readily verified by the named organisations.

² <http://www.legislation.gov.uk/asp/2003/7/section/14>

³ <http://www.legislation.gov.uk/asp/2011/7/section/14>

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254459/code-of-practice-victims-of-crime.pdf

17. It was considered appropriate to utilise a generic definition of the key familial relationships, for example, parent, child etc., rather than providing statutory based definitions, in order to provide an acceptable level of discretion for the named organisations when considering a request for information under section 6 of the 2014 Act.
18. In considering how to define those persons who are or have been living together with the victim as if they were married, reference was made to how this relationship is defined and measured elsewhere in legislation and related materials to ensure a consistent approach. Section 14(11) of the 2003 Act uses a minimum period of 6 months cohabitation in determining those who can receive information about the release of an offender (operated through the Victim Notification Scheme), where the victim has died, as applied by section 16 of the 2003 Act. Given both section 16 of the 2003 Act and section 6 of the 2014 Act relate to the provision of information to a victim or relative of a victim, it was considered appropriate that the minimum period for cohabitation be defined in the same terms. Furthermore, it was necessary to set out in the instrument a period that would allow the named organisations to verify the relationship and 6 months was considered a proportionate length of time.

Consultation

19. A public consultation paper, “Making Justice Work for Victims and Witnesses”⁵, was published prior to the development and introduction of the Bill for the 2014 Act. This closed in July 2012, and non-confidential responses⁶ and an analysis⁷ are available.
20. In addition, consultation with stakeholders (including various victim support groups and the named organisations affected by the legislation) was undertaken throughout the Bill process, and will continue in relation to the implementation of the 2014 Act.
21. For the purposes of this instrument, as detailed at paragraphs 14 and 15, a targeted consultation with the named justice organisations and various victim support organisations was carried out.

Impact Assessments

22. An Equality Impact Assessment (EQIA) was carried out for the purposes of the Victims and Witnesses (Scotland) Bill (“the Bill”), and it was determined that the Bill would be unlikely to have any significant differential effect on the protected characteristics. In addition, an EQIA was carried out for the purposes of this instrument; the final results of which were in the same terms as the EQIA carried out for the purposes of the Bill and

⁵ <http://www.scotland.gov.uk/Publications/2012/05/8645/0>

⁶ <http://www.scotland.gov.uk/Publications/2012/09/3650/0>

⁷ <http://www.scotland.gov.uk/Publications/2013/01/8185/0>

identified no significant differential effect on the basis of the protected characteristics. The results of the EQIA will be published on the Scottish Government website.

23. In terms of Strategic Environmental Assessment and the Scottish Government's statutory obligations under the Environmental Assessment (Scotland) Act 2005, it is considered that the Order is likely to have no or minimal effects on the environment and can be exempted under Section 7 of the 2005 Act. A pre-screening notification has therefore been submitted to the Consultation Authorities, which once processed will be added to the SEA Database.

Financial Effects

24. A Financial Memorandum was completed for the purposes of the Bill. As this instrument is simply defining relatives for the purposes of section 2 and 6, and not introducing substantive policy, it is not considered to have any significant financial implications on the justice organisations affected.
25. 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
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