

POLICY NOTE

THE VICTIMS AND WITNESSES (SCOTLAND) ACT 2014 (COMMENCEMENT NO. 8) ORDER 2021

SSI 2021/39 (C. 2)

THE RESTORATIVE JUSTICE (PRESCRIBED PERSONS) (SCOTLAND) ORDER 2021

SSI 2021/40

The Victims and Witnesses (Scotland) Act 2014 (Commencement No 8) Order 2021 (“the Commencement Order”) is required in order to bring section 5 of the Victims and Witnesses (Scotland) Act 2014 (“**the 2014 Act**”) into force.

The Restorative Justice (Prescribed Persons) (Scotland) Order 2021 (“the Prescribed Persons Order”) is made in exercise of the powers conferred by section 5(2) of the 2014 Act. The instrument is subject to negative procedure.

This is being done in accordance with section 4 of the Interpretation and Legislative Reform, (Scotland) Act 2010 (“**the 2010 Act**”) so that both the Commencement Order and the Prescribed Persons Order come into force at the same time.

Summary Box

Section 5 of the 2014 Act relates to the publication of Restorative Justice Guidance by the Scottish Ministers. Section 5(1) enables the Scottish Ministers to issue guidance on the referral of persons to restorative justice and the provision of restorative justice. Section 5(2) enables the Scottish Ministers to prescribe the persons who must have regard to the guidance.

The Commencement Order is required in order to bring section 5 of the 2014 Act into force.

The Prescribed Persons Order is made under section 5(2) of the 2014 Act. The Prescribed Persons Order prescribes persons who must have regard to any restorative justice guidance issued by the Scottish Ministers under section 5(1) of the 2014 Act.

Policy Objectives

Restorative justice is a process of independent, facilitated contact, which supports constructive dialogue between a victim and the person who has caused the harm (whether this be an adult, a child, a young person or a representative of a corporate or other body). The process is entered into voluntarily by both the person harmed and the person who has caused the harm.

The current Restorative Justice Guidance was published in October 2017. The Guidance is for service providers and facilitators. It outlines the key principles of restorative justice and

aims to ensure that where restorative justice processes are available, these are delivered in a coherent, consistent, victim-focused manner across Scotland.

These instruments will enable the Scottish Ministers to place this restorative justice guidance on a statutory footing by commencing Section 5 of the 2014 Act. The Prescribed Persons Order places no obligation on any of the persons or organisations listed to deliver, or be involved with, Restorative Justice. However, when and if they become involved in the design or delivery of restorative justice services, the Order provides that they should have regard to the Guidance. This will aid the delivery of a consistent and quality restorative justice service across Scotland.

The Prescribed Persons Order is being made under section 5 prior to section 5 being commenced via the Commencement Order. This is being done in accordance with section 4 of the 2010 Act which enables a power to make subordinate legislation to be exercised prior to the commencement of the provision of the relevant Act which confers the power. The power can only be exercised in this way if it is necessary or expedient to do so for the purpose of bringing the Act into force or giving full effect to the Act at or after the time when the power comes into force. The subordinate legislation made cannot come into force before the provision conferring the power to make it comes into force.

The Scottish Ministers consider that it is expedient to exercise the power in section 5(2) of the 2014 Act in this way as it will place the prescribed persons under a duty to have regard to the guidance as soon as the statutory power to issue guidance is in force. If the Prescribed Persons Order is not in force at the time section 5 comes into force, any guidance issued by the Scottish Ministers at that time would be issued with nobody under any obligation to consider it. Using the power in section 5 in accordance with section 4 of the 2010 Act is therefore expedient for the purpose of bringing the Act into force as it ensures guidance issued under section 5(1) of the 2014 Act will be considered by the prescribed persons as soon as section 5 comes into force.

Consultation

A public consultation paper, ‘Making Justice Work for Victims and Witnesses’¹ was published in July 2012 prior to the introduction of the Victims and Witnesses Bill, which led to the 2014 Act.

Consultation with Restorative Justice stakeholders has been ongoing since the passing of the Victims and Witnesses (Scotland) Act. In particular the Delivery of Restorative Justice in Scotland: Guidance² was developed in close consultation with the Restorative Justice Forum.

A short questionnaire was issued to stakeholders in November 2020 seeking feedback on a draft proposed list of prescribed persons that should have regard to the Guidance. The list of prescribed persons identified in these instruments takes account of the feedback received from the 33 respondents to the survey.

¹ <http://www.gov.scot/Publications/2012/05/8645/0>

² Delivery of restorative justice in Scotland: guidance - gov.scot (www.gov.scot)

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
Directorate for Justice

January 2021