

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 2 – Victims’ Rights

Section 14 – Victim statements

56. *Section 14* confers upon victims of certain crimes the right to make a statement about the effect of the crime upon them, which will normally be submitted to the court after a conviction and prior to sentencing.
57. Subsection (1) provides that the Scottish Ministers are to prescribe by affirmative order those courts or class of court in which the victim is to have the right to make a statement to the court. In addition this section includes a power for Scottish Ministers to prescribe by negative order the offences in respect of which the victim is to have the right to make a statement.
58. Subsection (2) provides that a person who has been (or is alleged to have been) the victim of a prescribed offence, has the right to make a statement (a “victim statement”). The right to make a victim statement arises either after a decision has been made by the procurator fiscal to bring proceedings in respect of the offence or before such a decision has been made if the procurator fiscal so decides. The victim statement should deal with the way and degree to which the offence (or apparent offence) has affected, and may be continuing to affect, that person. Subsection (2) is subject to subsection (6), which makes provision for the procedure to be followed where the victim is under 14, has died or is mentally or physically incapable of making such a statement.
59. Subsection (3) provides that where a person has made a victim statement and the sentence has not yet been passed, that person has the right to make a statement which is supplementary to or amplifies the victim statement. This will permit the victim to provide the court with the most up-to-date information concerning the effect of the offence on them.
60. Subsection (4) provides for the accused to receive a copy of the victim statement or statements from the prosecutor only after a plea of guilt or finding of guilt. If there is a dispute between the Crown and the defence about information contained in the victim statement, the Court may call a proof and hear evidence.
61. Subsection (5) provides that once the offender pleads or is found guilty the prosecutor must place the victim statement and any supplementary victim statement before the court and thereafter the court must have regard to information contained in the victim statement or statements, which is relevant to the offence(s) of which the accused has been convicted in determining sentence on the offender. Where an offender has been found not guilty in relation to some of the charges brought, the Court must disregard information in the victim statement that relates only to the unproven charges. In practice, the court must read the whole victim statement, disregard any information that it considers is not relevant and have regard only to relevant information in determining the sentence to be given to the offender.

*These notes relate to the Criminal Justice (Scotland) Act
2003 (asp 7) which received Royal Assent on 26 March 2003*

62. Subsection (6) makes provision for the circumstances where the victim is either unable to make a statement because the victim has died, is incapable of exercising the right to make a statement because of mental or physical incapacity or is under the age of 14.
63. Where the victim has died, the victim's right to make a statement transfers to that victim's 4 qualifying nearest relatives taken from the list in subsection (10). Where the victim died whilst under 16, in addition to the 4 qualifying nearest relatives the child's carer (this being defined in accordance with the definition of "person who cares for the child" in section 2(28) of the Regulation of Care (Scotland) Act 2001) has the right to make a statement.
64. Where the victim is incapable of giving a statement due to mental or physical incapacity, the right to make a statement transfers to that victim's qualifying nearest relative according to the list in subsection (10). Subsection (7) provides that an inability to communicate which can be addressed by human or mechanical aid can be disregarded.
65. If the victim is a child under 14 years old, the right to make a statement may be exercised by the child's carer as defined in the Regulation of Care (Scotland) Act 2001. The Scottish Ministers have the power under subsection (13) to amend by affirmative order the age at which the victim is to have the right to make a statement.
66. Subsection (8) defines "qualifying person" for the purpose of subsection (6) by reference to subsections (9) and (10) but excluding persons who cannot make a victim statement because they are incapable or a child under the age of 14. Subsection (10) lists certain persons with a family relationship to the victim. This includes those who are not the mother, father or child of the victim, but who enjoyed a parent-child relationship with the victim, as defined under the provisions of the Children (Scotland) Act 1995. Subsection (10) also provides for cohabitees (defined in subsection (11)). The Scottish Ministers have the power under subsection (12) to amend by affirmative order the list of qualifying persons contained in subsection (10). Subsection (9) excludes a person who is on that list from being a "qualifying person" if they are accused or suspected of being the perpetrator of or having been implicated in the offence (or apparent offence) in question.