



Criminal Justice (Scotland) Act 2003

2003 asp 7

PART 2

VICTIMS' RIGHTS

14 Victim statements

- (1) This section applies only where proceedings in respect of an offence are to be taken, or are likely to be taken, in a prescribed court or class of court.
- (2) In so far as is reasonably practicable, a natural person against whom a prescribed offence has been (or appears to have been) perpetrated is—
 - (a) after a decision has been taken to bring proceedings in respect of that offence; or
 - (b) if a procurator fiscal so determines, before any such decision has been taken, to be afforded an opportunity to make a statement (to be known as a “victim statement”) as to the way in which, and degree to which, that offence (or apparent offence) has affected and as the case may be continues to affect, that person; but this subsection is subject to subsection (6).
- (3) Where a person who has made a victim statement by virtue of subsection (2) (or that subsection and subsection (6)) so requests and sentence may yet fall to be imposed in respect of the offence (or apparent offence), that person is to be afforded an opportunity to make a statement supplementary to, or in amplification of, the victim statement.
- (4) A copy of any—
 - (a) victim statement made; or
 - (b) statement made by virtue of subsection (3) in relation to a victim statement,is, if the accused tenders a plea of guilty to, or is found guilty of, the offence in question, to be provided forthwith to the accused by the prosecutor.
- (5) A prosecutor must—
 - (a) in solemn proceedings, when [^{F1}or after] moving for sentence as respects an offence [^{F2}but before sentence is imposed] ; and
 - (b) in summary proceedings, when [^{F3}or after] a plea of guilty is tendered in respect of, or the accused is convicted of, an offence [^{F4}but before sentence is imposed],

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lay before the court any victim statement which relates (whether in whole or in part) to the offence in question, and the court must in determining sentence have regard to so much of—

- (i) that statement; and
- (ii) any statement made by virtue of subsection (3) in relation to that statement, as it considers to be relevant to that offence.

(6) Where—

(a) because a person has died no such opportunity as is mentioned in subsection (2) can be afforded that person then subsections (2) and (3) apply as if the references in them to the person and to how the offence (or apparent offence) affected, or continues to affect, the person—

(i) were references to any or all of the four qualifying persons highest listed in subsection (10) and to how the offence (or apparent offence) affected, or continues to affect, the maker of the statement; and

(ii) without prejudice to sub-paragraph (i), where the person died a child (that is to say not having attained the age of sixteen years), included references to any other person who, immediately before the offence (or apparent offence) was perpetrated, cared for the child (that expression being construed in accordance with the definition of “person who cares for” in [F5]paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010] (asp 8)) and to how the offence (or apparent offence) affected, or continues to affect, that other person; or

(b) a person who (but for this paragraph and other than by virtue of paragraph (a)) would be afforded such an opportunity as is so mentioned is—

(i) incapable, by reason of mental disorder or inability to communicate, of making a victim statement, subsections (2) and (3) apply as if the person to be afforded an opportunity were not the incapable person but the qualifying person highest listed in subsection (10) [F6(taking no account of qualifying persons who have not attained the age of 12 years)]; [F7]or

(ii) [F8]a child who has not attained the age of fourteen years, those subsections apply as if the person to be afforded an opportunity were not that person but such other person as is mentioned in paragraph (a) (ii),]

and as if the other references in those subsections to a person continued to be to the incapable person [F9]or as the case may be to the child].

(7) For the purposes of subsection (6)(b)(i), inability to communicate by reason only of a lack or deficiency in a faculty of communication is to be disregarded if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise).

(8) In subsection (6), “qualifying person” means a person whose relationship to the victim is listed in subsection (10), who is [F10]neither[[F10]not] incapable as mentioned in sub-paragraph (i) of paragraph (b) of subsection (6) [F11]nor a child such as is mentioned in sub-paragraph (ii) of that paragraph] and who is not a person referred to by subsection (9).

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(9) This subsection refers to a person accused of, or reasonably suspected of being the perpetrator of, or of having been implicated in, the offence (or apparent offence) in question.

(10) The list is—

- (a) spouse [^{F12}or civil partner];
- (b) cohabitee;
- (c) son or daughter or any person in relation to whom the victim has or had parental responsibilities or rights vested by, under or by virtue of the Children (Scotland) Act 1995 (c. 36);
- (d) father or mother or any person in whom parental responsibilities or rights are or were vested by, under or by virtue of that Act in relation to the victim;
- (e) brother or sister;
- (f) grandparent;
- (g) grandchild;
- (h) uncle or aunt;
- (i) nephew or niece,

and the elder of any two persons described in any one of paragraphs (a) to (i) is to be taken to be the higher listed person, regardless of sex.

[^{F13}(11) In subsection (10)(b), “cohabitee” means a person who has lived with the victim—

- (a) as if in a married relationship; or
- (b) in a relationship which had the characteristics of the relationship between civil partners,

for at least six months and was so living immediately before the offence (or apparent offence) was perpetrated.]

[^{F14}(11A) Where a child who has not attained the age of 12 years has (but for this subsection) the opportunity to make a statement by virtue of subsection (2), (3) or (6)(a)(i)—

- (a) any statement made by virtue of the subsection must instead be made by a carer of the child, but
- (b) those subsections otherwise apply as if references in them to a person and to the maker of a statement are to the child.

(11B) For the purposes of subsection (11A), “carer of the child” means—

- (a) a person who cared for the child when the offence (or apparent offence) was perpetrated,
- (b) a person who cares for the child when the statement is made,
- (c) a person who has cared for the child at any other time.

(11C) If more than one person comes within the meaning of “carer of the child” the persons may agree which carer is to make the statement after, so far as practicable and having regard to the age and maturity of the child—

- (a) giving the child an opportunity to express any views on which carer is to make the statement, and
- (b) taking account of any views expressed by the child.

(11D) If no agreement is reached in accordance with subsection (11C)—

- (a) the statement may be made by each person coming within the description in subsection (11B)(a), and

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- (b) if there is no such person, the statement may be made by each person coming within the description in subsection (11B)(b).
- (11E) In subsection (11B), the expressions “cared for” and “cares for” are to be construed in accordance with the definition of “someone who cares for” in paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010.]
- (12) The Scottish Ministers may by order (either or both)—
- (a) amend [F15subsection (6)(b)(ii)][F15this section] by substituting for the age for the time being specified [F16there][F16in any part of this section] such other age as they think fit;
 - (b) amend the list in subsection (10).

Textual Amendments

- F1** Words in s. 14(5)(a) inserted (13.8.2014 for specified purposes) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(2)(a)(i)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F2** Words in s. 14(5)(a) inserted (13.8.2014 for specified purposes) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(2)(a)(ii)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F3** Words in s. 14(5)(b) inserted (13.8.2014 for specified purposes) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(2)(b)(i)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F4** Words in s. 14(5)(b) inserted (13.8.2014 for specified purposes) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(2)(b)(ii)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F5** Words in s. 14(6)(a)(ii) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, **sch. 1 para. 12(a)**
- F6** Words in s. 14(6)(b)(i) inserted (13.8.2014 for specified purposes) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(3)(a)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F7** Word in s. 14(6)(b) repealed (13.8.2014 for specified purposes) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(3)(b)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F8** S. 14(6)(b)(ii) repealed (13.8.2014 for specified purposes) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(3)(c)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F9** Words in s. 14(6)(b) repealed (13.8.2014 for specified purposes) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(3)(d)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F10** Word in s. 14(8) substituted (13.8.2014 for specified purposes) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(4)(a)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F11** Words in s. 14(8) repealed (13.8.2014 for specified purposes) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(4)(b)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F12** Words in s. 14(10)(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263, **Sch. 28 para. 67(2)**; S.S.I. 2005/604, **art. 2(c)**
- F13** S. 14(11) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263, **Sch. 28 para. 67(3)**; S.S.I. 2005/604, **art. 2(c)**
- F14** S. 14(11A)-(11E) inserted (13.8.2014 for specified purposes) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(5)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F15** Words in s. 14(12)(a) substituted (13.8.2014 for specified purposes) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(6)(a)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F16** Words in s. 14(12)(a) substituted (13.8.2014 for specified purposes) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(6)(b)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)

15 Prohibition of personal conduct of defence in proofs ordered in relation to victim statements in cases of certain sexual offences

- (1) The 1995 Act is amended as follows.

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- (2) In section 288C(1) (prohibition of personal conduct of defence in cases of certain sexual offences), at the end there is added “ or in any proof ordered in relation to a statement made by virtue of subsection (2) (or by virtue of that subsection and subsection (6)) of section 14 of the Criminal Justice (Scotland) Act 2003 (asp 7) ”.
- (3) In section 288D(2)(a) (appointment by court of solicitor in such cases), at the end there is added “ or as the case may be at any proof ordered as is mentioned in section 288C(1) of this Act ”.

^{F17}15A Application of sections 271 to 271M of the 1995 Act in proofs ordered in relation to victim statements

.....

Textual Amendments

F17 S. 15A repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), ss. 89, 206\(1\); S.S.I. 2011/178, art. 2, sch.](#)

16 Victim’s right to receive information concerning release etc. of offender

- (1) Subject to subsection (2), the Scottish Ministers must, unless they consider that there are exceptional circumstances which make it inappropriate to do so, give any natural person against whom [^{F18}an offence] has been perpetrated such information as is described in subsection (3), being information in relation to any person who has been convicted of that offence and sentenced in respect of it—
 - (a) to imprisonment or detention for a period of [^{F19}18 months or more];
 - (b) to life imprisonment or detention for life; or
 - (c) under section 205(2) (punishment for murder where convicted person under 18) or 208 (detention of children convicted on indictment) of the 1995 Act, to detention without limit of time,provided that the person to be given the information wishes to receive it and has so intimated.
- (2) Subsection (1) does not apply where the convicted person is released before attaining the age of sixteen years.
- (3) The information mentioned in subsection (1) is—
 - (a) the date on which the convicted person is, under or by virtue of the 1989 Act or the 1993 Act, released (other than by being granted temporary release);
 - (b) if the convicted person dies before that date, the date of death;
 - (c) that the convicted person has been transferred to a place outwith Scotland;
 - [^{F20}(d) that the convicted person is for the first time entitled to be considered for temporary release by virtue of rules under section 39(6) of the 1989 Act,]
 - (e) that the convicted person is unlawfully at large from a prison[^{F21}, young] offenders institution [^{F22}or hospital][^{F23}; ^{F24} ...
 - (f) where the convicted person—
 - (i) was released as described in paragraph (a) or was unlawfully at large as described in paragraph (e), and

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- (ii) subsequently has been returned to a prison^{F25}, young] offenders institution [^{F26}or hospital] to continue serving the sentence, the date of the person's return.]
- ^{F27}(g) where the convicted person is liable to be detained in a hospital under a hospital direction or transfer for treatment direction—
- (i) that a certificate has been granted, for the first time, under the Mental Health Act which suspends the person's detention and does not impose a supervision requirement,
- (ii) that the certificate mentioned in sub-paragraph (i) has been revoked.]
- (4) The Scottish Ministers may by order—
- (a) amend subsection (1)(a) by substituting, for the period for the time being specified there, a different period; ^{F28} ...
- (b) amend subsection (3) by adding descriptions of information^{F29}; or
- (c) modify section 18A, by adding, amending or repealing definitions of terms used in the descriptions of information in subsection (3) of this section.]
- (5) Where information would fall to be given to a person under subsection (1) but that person—
- (a) has died, that subsection applies as if references in it to the person [^{F30}to be given the information] were to be construed as mentioned in sub-paragraphs (i) and (ii) of paragraph (a) of section 14(6) of this Act [^{F31}(except that, in the case where a qualifying person is a child who has not attained the age of 12 years, paragraph (a)(i) of the said section 14(6) is to be construed as if the reference to the qualifying person were to a person who cares for the child)] ; or
- (b) in a case other than is mentioned in paragraph (a)—
- (i) is incapable as mentioned in sub-paragraph (i) of paragraph (b) of the said section 14(6), that subsection applies as if references in it to the person were to be construed as mentioned in that sub-paragraph [^{F32}(taking him to be the person “afforded an opportunity”)] ; or
- (ii) is a child [^{F33}who has not attained the age of 12 years]^{F34} ..., that subsection applies as if references in it to the person [^{F35}to be given the information] were to be construed as [^{F36}references to the person who cares for the child]
- ^{F37}
- (6) Subsections (7) [^{F38}to (11)] of section 14 apply in relation to [^{F39}paragraphs (a) and (b) (i) of] subsection (5) as they apply in relation to subsection (6) of that section.
- ^{F40}(7)
- (8) In subsection [^{F41}(5)(a) and (b)(ii)] , the reference to a person who cares for the child is to be construed in accordance with [^{F42}paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010] (asp 8).
- ^{F43}(9) The Scottish Ministers may by order amend this section by substituting for—
- (a) the person for the time being specified in any part of this section to whom information may be made available such other person as they think fit,
- (b) the age for the time being specified in any part of this section such other age as they think fit.]

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Textual Amendments

- F18** Words in s. 16(1) substituted (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), [ss. 27\(a\)](#), 34; [S.S.I. 2014/210](#), [art. 2](#), [sch.](#) (with [art. 3](#))
- F19** Words in s. 16(1)(a) substituted (15.5.2008) by [The Victim Notification Scheme \(Scotland\) Order 2008 \(S.S.I. 2008/185\)](#), [art. 2\(a\)](#)
- F20** S. 16(3)(d) substituted (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), [ss. 27\(b\)](#), 34; [S.S.I. 2014/210](#), [art. 2](#), [sch.](#) (with [art. 3](#))
- F21** Word in s. 16(3)(e) substituted (5.5.2017 for specified purposes, 15.9.2017 for specified purposes, 30.9.2017 in so far as not already in force) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 54\(2\)\(a\)\(i\)](#), 61(2); [S.S.I. 2017/126](#), [art. 2](#), [sch.](#); [S.S.I. 2017/234](#), [art. 2\(1\)\(a\)\(2\)\(a\)](#) (with [arts. 3, 4](#))
- F22** Words in s. 16(3)(e) inserted (5.5.2017 for specified purposes, 15.9.2017 for specified purposes, 30.9.2017 in so far as not already in force) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 54\(2\)\(a\)\(ii\)](#), 61(2); [S.S.I. 2017/126](#), [art. 2](#), [sch.](#); [S.S.I. 2017/234](#), [art. 2\(1\)\(a\)\(2\)\(a\)](#) (with [arts. 3, 4](#))
- F23** S. 16(f) and preceding word inserted (15.5.2008) by [The Victim Notification Scheme \(Scotland\) Order 2008 \(S.S.I. 2008/185\)](#), [art. 2\(b\)\(ii\)](#)
- F24** Word in s. 16(3) repealed (5.5.2017 for specified purposes, 15.9.2017 for specified purposes, 30.9.2017 in so far as not already in force) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 54\(2\)\(b\)](#), 61(2); [S.S.I. 2017/126](#), [art. 2](#), [sch.](#); [S.S.I. 2017/234](#), [art. 2\(1\)\(a\)\(2\)\(a\)](#) (with [arts. 3, 4](#))
- F25** Word in s. 16(3)(f) substituted (5.5.2017 for specified purposes, 15.9.2017 for specified purposes, 30.9.2017 in so far as not already in force) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 54\(2\)\(c\)\(i\)](#), 61(2); [S.S.I. 2017/126](#), [art. 2](#), [sch.](#); [S.S.I. 2017/234](#), [art. 2\(1\)\(a\)\(2\)\(a\)](#) (with [arts. 3, 4](#))
- F26** Words in s. 16(3)(f) inserted (5.5.2017 for specified purposes, 15.9.2017 for specified purposes, 30.9.2017 in so far as not already in force) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 54\(2\)\(c\)\(ii\)](#), 61(2); [S.S.I. 2017/126](#), [art. 2](#), [sch.](#); [S.S.I. 2017/234](#), [art. 2\(1\)\(a\)\(2\)\(a\)](#) (with [arts. 3, 4](#))
- F27** S. 16(3)(g) inserted (5.5.2017 for specified purposes, 15.9.2017 for specified purposes, 30.9.2017 in so far as not already in force) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 54\(2\)\(d\)](#), 61(2); [S.S.I. 2017/126](#), [art. 2](#), [sch.](#); [S.S.I. 2017/234](#), [art. 2\(1\)\(a\)\(2\)\(a\)](#) (with [arts. 3, 4](#))
- F28** Word in s. 16(4) repealed (5.5.2017 for specified purposes, 15.9.2017 for specified purposes, 30.9.2017 in so far as not already in force) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 54\(3\)\(a\)](#), 61(2); [S.S.I. 2017/126](#), [art. 2](#), [sch.](#); [S.S.I. 2017/234](#), [art. 2\(1\)\(a\)\(2\)\(a\)](#) (with [arts. 3, 4](#))
- F29** S. 16(4)(c) and word inserted (5.5.2017 for specified purposes, 15.9.2017 for specified purposes, 30.9.2017 in so far as not already in force) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 54\(3\)\(b\)](#), 61(2); [S.S.I. 2017/126](#), [art. 2](#), [sch.](#); [S.S.I. 2017/234](#), [art. 2\(1\)\(a\)\(2\)\(a\)](#) (with [arts. 3, 4](#))
- F30** Words in s. 16(5)(a) inserted (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), [ss. 23\(9\)\(a\)\(i\)](#), 34; [S.S.I. 2014/210](#), [art. 2](#), [sch.](#) (with [art. 3](#))
- F31** Words in s. 16(5)(a) inserted (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), [ss. 23\(9\)\(a\)\(ii\)](#), 34; [S.S.I. 2014/210](#), [art. 2](#), [sch.](#) (with [art. 3](#))
- F32** Words in s. 16(5)(b)(i) inserted (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), [ss. 23\(9\)\(c\)](#), 34; [S.S.I. 2014/210](#), [art. 2](#), [sch.](#) (with [art. 3](#))
- F33** Words in s. 16(5)(b)(ii) inserted (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), [ss. 23\(9\)\(b\)\(i\)](#), 34; [S.S.I. 2014/210](#), [art. 2](#), [sch.](#) (with [art. 3](#))
- F34** Words in s. 16(5)(b)(ii) repealed (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), [ss. 23\(9\)\(b\)\(ii\)](#), 34; [S.S.I. 2014/210](#), [art. 2](#), [sch.](#) (with [art. 3](#))
- F35** Words in s. 16(5)(b)(ii) inserted (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), [ss. 23\(9\)\(b\)\(iii\)](#), 34; [S.S.I. 2014/210](#), [art. 2](#), [sch.](#) (with [art. 3](#))
- F36** Words in s. 16(5)(b)(ii) substituted (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), [ss. 23\(9\)\(b\)\(iv\)](#), 34; [S.S.I. 2014/210](#), [art. 2](#), [sch.](#) (with [art. 3](#))
- F37** Words in s. 16(5)(b) repealed (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), [ss. 23\(9\)\(d\)](#), 34; [S.S.I. 2014/210](#), [art. 2](#), [sch.](#) (with [art. 3](#))
- F38** Words in s. 16(6) substituted (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), [ss. 23\(10\)\(a\)](#), 34; [S.S.I. 2014/210](#), [art. 2](#), [sch.](#) (with [art. 3](#))

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- F39** Words in s. 16(6) inserted (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(10)(b)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F40** S. 16(7) repealed (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(11)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F41** Words in s. 16(8) substituted (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(12)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F42** Words in s. 16(8) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, **sch. 1 para. 12(b)**
- F43** S. 16(9) added (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 23(13)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)

[^{F44}16A **Victim's right to receive information concerning offender subject to compulsion order**

- (1) Subsection (2) applies where—
- an offence has been perpetrated against a natural person,
 - another person (“O”) has been made subject to a compulsion order and a restriction order in proceedings in respect of that offence,
 - a person has asked to be given information about O under this section and that person is, or was at the time of asking, a person entitled to ask to be given the information (see section 16B), and
 - O has attained the age of 16 years.
- (2) The Scottish Ministers must give the information about O described in section 16C to the person mentioned in subsection (1)(c).
- (3) But the Scottish Ministers—
- need not give a person information under this section if they consider there to be exceptional circumstances which make it inappropriate to do so,
 - are not to give a person information about the terms of a condition in accordance with section 16C(2)(h) unless the condition is relevant to that person as described in section 18A(3).
- (4) If the compulsion order or the restriction order mentioned in subsection (1)(b) is revoked, subsection (2) ceases to apply when the Scottish Ministers give the person mentioned in subsection (1)(c) the information that—
- the order has been revoked, and
 - the decision to revoke it is final.

Textual Amendments

- F44** **Ss. 16A-16C** inserted (15.9.2017 for specified purposes) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 55(2)**, 61(2); S.S.I. 2017/234, art. 2(1)(b)(3) (with arts. 5-8)

16B **Person entitled to ask to be given information under section 16A**

- (1) The reference in section 16A(1)(c) to a person entitled to ask to be given information under that section is to—
- the natural person (“V”) against whom the offence mentioned in section 16A(1)(a) (“the relevant offence”) was perpetrated,

Status: Point in time view as at 15/09/2017.

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- (b) if V is dead—
 - (i) any or all of the four qualifying persons highest listed in section 14(10), and
 - (ii) if V died before attaining the age of 16 years, any other person who cared for V immediately before the relevant offence was perpetrated, or
 - (c) if V has attained the age of 12 years and is incapable for the purposes of this section, the qualifying person highest listed in section 14(10).
- (2) If a person (including V) who would be entitled to ask to be given information by virtue of subsection (1) has not attained the age of 12 years—
- (a) the person is not entitled to ask to be given the information, and
 - (b) someone who cares for the person is entitled to ask to be given it instead.
- (3) For the purposes of this section—
- (a) the references to a qualifying person are to a person—
 - (i) whose relationship to V is listed in subsection (10) of section 14 (read with the other subsections of that section),
 - (ii) who is not incapable for the purposes of this section, and
 - (iii) who is not a person accused of, or reasonably suspected of being the perpetrator of, or having been implicated in the perpetration of, the relevant offence,
 - (b) when determining who is the qualifying person highest listed in section 14(10), if two or more persons have the same relationship to V they are to be listed according to age with the eldest being the highest listed of them,
 - (c) the expressions “cared for” and “cares for”, are to be construed in accordance with the definition of “someone who cares for” in paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010,
 - (d) a person is to be considered incapable for the purposes of this section if the person would be considered incapable of making a victim statement by virtue of section 14(6)(b)(i) and (7).

Textual Amendments

F44 Ss. 16A-16C inserted (15.9.2017 for specified purposes) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 55(2), 61(2)**; [S.S.I. 2017/234](#), **art. 2(1)(b)(3)** (with [arts. 5-8](#))

16C Information to be given under section 16A

- (1) This section sets out the information that is to be given under section 16A about the person referred to in that section as O.
- (2) The following information is to be given in any case—
 - (a) that the compulsion order to which O is subject and which is mentioned in section 16A(1)(b) has been revoked,
 - (b) that the restriction order to which O is subject and which is mentioned in section 16A(1)(b) has been revoked,
 - (c) where the order mentioned in paragraph (a) or the order mentioned in paragraph (b) has been revoked, that the decision to revoke it—
 - (i) is being appealed against, or

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- (ii) cannot competently be appealed against and is therefore final,
 - (d) the date of O's death,
 - (e) that the compulsion order has been varied by way of a modification of the measures specified in it,
 - (f) that O has been transferred to a place outwith Scotland,
 - (g) that the Mental Health Tribunal has made an order under section 193(7) of the Mental Health Act conditionally discharging O,
 - (h) the terms of any conditions imposed on O on conditional discharge under section 193(7) or section 200(2) of the Mental Health Act (including under section 193(7) as applied by section 201(3) or 204(3) of that Act),
 - (i) that the Scottish Ministers have recalled O to hospital under section 202 of the Mental Health Act.
- (3) The following information is to be given in a case where the compulsion order authorises O's detention in hospital—
- (a) that O is unlawfully at large from hospital,
 - (b) that O has returned to hospital having been unlawfully at large,
 - (c) that a certificate has been granted, for the first time, under the Mental Health Act which suspends O's detention and does not impose a supervision requirement,
 - (d) that the certificate mentioned in paragraph (c) has been revoked.
- (4) The following information is to be given in a case where the order mentioned in paragraph (a) or the order mentioned in paragraph (b) of subsection (2) has been revoked and that decision is appealed against—
- (a) that the Court of Session has decided to allow, or not allow, the appeal against the decision to revoke the order in question,
 - (b) that the Court of Session's decision—
 - (i) has been appealed against to the Supreme Court, or
 - (ii) has not been appealed against to the Supreme Court before the expiry of the time allowed to appeal to the Supreme Court, and therefore if the Court of Session has not allowed the appeal the decision to revoke the order in question is final,
 - (c) that the Supreme Court has decided to allow, or not allow, the appeal against the Court of Session's decision,
 - (d) if the Supreme Court's decision means that the decision to revoke the order in question has not been set aside, that the latter decision is final,
 - (e) if the Court of Session's decision or the Supreme Court's decision means that O is once more subject to the order in question, that fact.]

Textual Amendments

F44 Ss. 16A-16C inserted (15.9.2017 for specified purposes) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. 55(2), 61(2); S.S.I. 2017/234, art. 2(1)(b)(3) (with arts. 5-8)

Status: Point in time view as at 15/09/2017.

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17 **Release on licence: right of victim to receive information and make representations**

- (1) Subject to subsections (2), (3) and (12), a person entitled to receive information under section 16 of this Act (the “victim”) as respects a convicted person must in accordance with this section, before any decision is taken to release the convicted person on licence,
 - [^{F45}(a)] be afforded an opportunity to make written representations to the Scottish Ministers as respects such release and as to conditions which might be specified in the licence in question.
 - [^{F46}(b)] if the convicted person is serving a sentence of life imprisonment, be afforded an opportunity to make oral representations to a member of the Parole Board for Scotland who is not dealing with the convicted person's case as respects such release and as to conditions which might be specified in the licence in question.]
- (2) Subsection (1) applies only where the victim wishes to be afforded the opportunity and has so intimated.
- (3) Subsection (1) does not apply where the convicted person has not attained the age of sixteen years by the date on which the case is referred to the Parole Board for Scotland by the Scottish Ministers.
- (4) The Scottish Ministers are to issue guidance as to how [^{F47}written] representations under subsection (1) should be framed [^{F48}and how oral representations under that subsection should be made].
- (5) Where it falls to the Board to recommend whether, or direct that, the convicted person be released, the Scottish Ministers must, as soon as practicable after they commence a review of the case for the purposes of referring it to the Board for the Board to consider what recommendation to make or whether to make such a direction, fix a time within which any representations under subsection (1) require to be made to them if they are to be considered by the Board; and they must notify the victim accordingly.
- (6) Whether or not representations are made under subsection (1), in a case to which subsection (5) applies the Board must, subject to subsection (11)—
 - (a) inform the victim as to whether or not it has recommended or directed release;
 - (b) if it has recommended or directed release, inform the victim as to whether it has also recommended that the person released comply with conditions; and
 - (c) inform the victim of the terms of any such conditions which relate to contact with the victim or with members of the victim's family,and the Board may provide the victim with such other information as it considers appropriate having regard to the circumstances of the case.
- (7) Where subsection (5) does not apply but it falls to that Board to recommend conditions to be included in the licence, the Scottish Ministers are under the same duties as they are under that subsection.
- (8) Whether or not representations are made under subsection (1), in a case to which subsection (7) applies the Board must inform the victim, subject to subsection (11)—
 - (a) as to whether it has recommended that the person released comply with conditions; and
 - (b) as is mentioned in subsection (6)(c).

Status: Point in time view as at 15/09/2017.

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- (9) Where neither subsection (5) nor (7) applies, the Scottish Ministers must fix a time within which any representations under subsection (1) require to be made to them if they are to be considered by them; and they must notify the victim accordingly.
- (10) Whether or not representations are made under subsection (1), in a case to which subsection (9) applies the Scottish Ministers must inform the victim, subject to subsection (11)—
- (a) as to whether the person released is to comply with conditions; and
 - (b) as is mentioned in subsection (6)(c).
- [^{F49}(10A) In complying with the duty imposed on them by subsection (5), the Scottish Ministers may fix different times in relation to written and oral representations respectively.]
- (11) Subsections (6), (8) and (10) apply only where the victim has intimated a desire to receive the information in question.
- (12) This section does not apply—
- (a) as respects release under section 3 of the 1993 Act (release on compassionate grounds); or
 - (b) where the entitlement mentioned in subsection (1) arises by virtue of section 16(4)(a).
- [^{F50}(13) The Scottish Ministers may by order modify the description or descriptions of convicted person for the time being specified in subsection (1)(b).]

Textual Amendments

- F45** S. 17(1)(a): words in s. 17(1) renumbered as s. 17(1)(a) (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 28(a)(i)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F46** S. 17(1)(b) added (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 28(a)(ii)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F47** Word in s. 17(4) inserted (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 28(b)(i)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F48** Words in s. 17(4) added (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 28(b)(ii)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F49** S. 17(10A) inserted (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 28(c)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)
- F50** S. 17(13) added (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 28(d)**, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)

[^{F51}17A Temporary release: victim's right to make representations about conditions

- (1) This section applies where by virtue of subsection (1) or (5) of section 16 a person (the “victim”) is given the information mentioned in subsection (3)(d) of that section as respects a convicted person.
- (2) On the first occasion on which the convicted person is entitled to be considered for temporary release by virtue of rules under section 39(6) of the 1989 Act, the Scottish Ministers must give the victim an opportunity to make written representations to them about any conditions that the victim considers should be imposed in relation to the temporary release.

Status: Point in time view as at 15/09/2017.

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- (3) Subsection (2) applies only if the victim has notified the Scottish Ministers that the victim wishes to be given the opportunity to make representations under that subsection.
- (4) The Scottish Ministers must—
 - (a) fix a time within which any written representations under subsection (2) require to be made to them if they are to be considered by them, and
 - (b) notify the victim of the time fixed.]

Textual Amendments

F51 S. 17A inserted (13.8.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), ss. 29, 34; S.S.I. 2014/210, art. 2, sch. (with art. 3)

[^{F52}17B **Mentally-disordered offender: victim's right to make representations**

- (1) A person (“V”) who is to be given information about another person (“O”) under section 16 or 16A, must be afforded an opportunity to make representations—
 - (a) in a case where O is subject to a hospital direction or a transfer for treatment direction, before a decision of a type described in subsection (4) is taken in relation to O,
 - (b) in a case where O is subject to a compulsion order and a restriction order, before a decision of a type described in subsection (5) is taken in relation to O.
- (2) Representations under this section must be about how the decision in question might affect V or members of V's family.
- (3) Subsection (1) does not apply unless V has intimated to the Scottish Ministers a wish to be afforded an opportunity to make representations about O under this section.
- (4) For the purpose of subsection (1)(a), the type of decision is a decision by O's responsible medical officer about granting for the first time a certificate under the Mental Health Act which suspends O's detention and does not impose a supervision requirement.
- (5) For the purpose of subsection (1)(b), the types of decision are a decision—
 - (a) by O's responsible medical officer about granting for the first time a certificate under the Mental Health Act which suspends O's detention and does not impose a supervision requirement,
 - (b) by the Mental Health Tribunal under section 193 of the Mental Health Act (including a decision under that section as applied by section 201(3) or 204(3) of that Act),
 - (c) by the Scottish Ministers under section 200 of the Mental Health Act about imposing, altering or removing a condition which is (or would be) relevant to V as described in section 18A(3).
- (6) The Scottish Ministers need not afford V an opportunity to make representations before taking a decision of the type described in subsection (5)(c) if it is not reasonably practicable to afford V that opportunity.

Status: Point in time view as at 15/09/2017.

Changes to legislation: Criminal Justice (Scotland) Act 2003, Part 2 is up to date with all changes known to be in force on or before 26 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F52 Ss. 17B-17D inserted (15.9.2017 for specified purposes) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. 56(2), 61(2); S.S.I. 2017/234, art. 2(1)(c)

17C Making representations under section 17B

- (1) Representations under section 17B—
 - (a) may be made orally in relation to a decision of a type described in section 17B(5)(b),
 - (b) otherwise, must be made in writing.
- (2) The Scottish Ministers are to issue guidance as to how—
 - (a) written representations under section 17B should be framed, and
 - (b) oral representations under that section should be made.

Textual Amendments

F52 Ss. 17B-17D inserted (15.9.2017 for specified purposes) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. 56(2), 61(2); S.S.I. 2017/234, art. 2(1)(c)

17D Right to information after section 17B decision

- (1) Subsection (2) applies where—
 - (a) before a decision was taken, a person (“V”) was afforded an opportunity to make representations under section 17B,
 - (b) the decision has since been taken,
 - (c) the Scottish Ministers are not required under section 16A to give any information to V as a result of the decision, and
 - (d) V has intimated to the Scottish Ministers a wish to receive information under this section.
- (2) The Scottish Ministers must, unless they consider that there are exceptional circumstances which make it inappropriate to do so, inform V that the decision has been taken.
- (3) Subsection (4) applies where—
 - (a) in accordance with subsection (2), the Scottish Ministers have informed V 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.
- (4) The Scottish Ministers must—
 - (a) inform V that the Court of Session has made an order under section 323(1) of the Mental Health Act, and
 - (b) give V the information that they would have had to give V by virtue of section 16C(4) had the Court not made that order.]

Status: Point in time view as at 15/09/2017.

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Textual Amendments

F52 Ss. 17B-17D inserted (15.9.2017 for specified purposes) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. 56(2), 61(2); S.S.I. 2017/234, art. 2(1)(c)

[^{F53}17E Information sharing in respect of mentally-disordered offenders

- (1) Where the Scottish Ministers are subject to a duty under section 16 or 16A to give a person (“V”) information about another person (“O”), they must give notice to—
 - (a) O's responsible medical officer, and
 - (b) if O is subject to a compulsion order, the Mental Health Tribunal.
- (2) A notice under subsection (1) is to request that the recipient of the notice provide the Scottish Ministers with information in such circumstances as may be specified in the notice.
- (3) The information that the Scottish Ministers may request in a notice under subsection (1) must be information about O which they will require in order to fulfil their duty to give information to V under section 16, 16A or 17D.
- (4) The recipient of a notice under subsection (1) must provide the Scottish Ministers with the information requested in the notice in the circumstances specified in it.
- (5) If the Scottish Ministers cease to be required to give anyone information about O under section 16 or 16A—
 - (a) they must intimate that fact to anyone to whom they sent a notice in relation to O in accordance with subsection (1), and
 - (b) on receiving that intimation, subsection (4) ceases to apply to the person who received the intimation.]

Textual Amendments

F53 S. 17E inserted (15.9.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. 57(2), 61(2); S.S.I. 2017/234, art. 2(1)(d)

18 Disclosure of certain information relating to victims of crime

- (1) Where it appears to a constable that an offence has been perpetrated against a natural person the constable may, with the person's consent, disclose to a prescribed body (being a body which appears to the Scottish Ministers to provide counselling or other support to those who have been victims of crime), with a view to its providing such counselling or support to the person, any or all of the following information—
 - (a) the person's—
 - (i) name;
 - (ii) address;
 - (iii) telephone number;
 - (iv) e-mail address;
 - (v) age;
 - (b) such information regarding the offence (or apparent offence) as the constable considers appropriate provided that the information does not include such

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information in relation to the alleged perpetrator as is mentioned in sub-paragraphs (i) to (v) of paragraph (a) (though it may include information as to whether the case is one likely to be disposed of by a children's hearing).

(2) Where the person against whom the offence was perpetrated has died, subsection (1) shall be construed as if it relates not to that person but to any one or more of—

- (a) the qualifying persons (as defined in subsection (8) of section 14); and
- (b) where the circumstances are as mentioned in sub-paragraph (ii) of subsection (6)(a) of that section, any such other person as is mentioned in that sub-paragraph,

who the constable considers would derive benefit from the counselling or support in question.

^{F54} 18A Interpretation of Part

(1) In this Part—

“Mental Health Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003,

“Mental Health Tribunal” means the Mental Health Tribunal for Scotland,

“transfer for treatment direction” means a direction made under section 136 of the Mental Health Act.

(2) A reference in this Part—

- (a) to a certificate under the Mental Health Act which suspends a person's detention and does not impose a supervision requirement is to a certificate under subsection (2) of section 224 of that Act which does not include a condition under subsection (7)(a) of that section,
- (b) to such a certificate being granted for the first time is to such a certificate being granted for the first time—
 - (i) since the person was detained under the particular order or direction which authorises the person's detention in a hospital (or would do, but for the certificate's being granted), or
 - (ii) in a case where the person, while subject to that order or direction, has been recalled to hospital under section 202 of the Mental Health Act, since the person was so recalled (or most recently so recalled if it has happened more than once).

(3) For the purposes of sections 16A(3)(b) and 17B(5)(c), a condition is relevant to a person (“V”) if—

- (a) the condition is a restriction on the person referred to in the section in question as O contacting an individual or being in a place, and
- (b) V has made a valid request to the Scottish Ministers to be informed about any condition which restricts O from—
 - (i) contacting that individual, or (as the case may be)
 - (ii) being in that place or any wider area within which the place in question falls.

(4) The Scottish Ministers may treat a request as invalid for the purposes of subsection (3) if or so far as—

- (a) it is a request to be informed about any condition which restricts O from being in a place, and

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- (b) the place referred to in the request—
- (i) is not one which V or any member of V's family is regularly at or in, or
 - (ii) covers an unreasonably large area having regard to the places where V and members of V's family regularly go.]

Textual Amendments

- F54** S. 18A inserted (5.5.2017 for specified purposes, 15.9.2017 in so far as not already in force) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 58(2)**, 61(2); [S.S.I. 2017/126, art. 2, sch.](#); [S.S.I. 2017/234, art. 2\(1\)\(e\)](#)

Status:

Point in time view as at 15/09/2017.

Changes to legislation:

Criminal Justice (Scotland) Act 2003, Part 2 is up to date with all changes known to be in force on or before 26 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.