

Victims' Rights (Scotland) Regulations 2015 [draft]

WRITTEN SUBMISSION FROM CHILDREN 1ST

Children 1st has campaigned for reform of the Scottish justice system to better meet the needs of child victims and witnesses for nearly 15 years. CHILDREN 1ST has heard and continues to hear first-hand through families we work with in our abuse and trauma recovery services, that the current arrangements for child victims and witnesses are often unsatisfactory, unjust and damaging to children and young people. CHILDREN 1ST staff members have informally supported many children and young people throughout their time of being a child witness, many of whom have been sexually abused. Children 1st also chairs "Justice for Children"; a Child Witness Reform Group established due to strong lay and professional concern that the interests of children should be compatible with and indeed enhanced by the Scottish justice system.

Children 1st welcomes the opportunity to comment on the Draft Regulations which will give effect to the EU Directive on establishing minimum standards on the rights, support and protection of victims of crime – thereby creating enforceable rights for victims and ensuring obligations of competent authorities are enshrined in Scots law. We are pleased that a Child's Rights and Wellbeing Impact Assessment was conducted on these Regulations.

We note that the EU Directive directs member states on minimum standards and rights for victims of crime. While we welcome Scotland's commitment to enshrine these standards into Scots law, we consider that Scotland can and should strive to go further than minimum rights, and work towards a more progressive policy to ensure our Justice system supports and protects the most vulnerable – child victims of crime.

Our response to the consultation on the Regulations focuses on a number of points relating to child victims of crime and their support needs. In summary:

- We welcome the amendment to the Victims and Witnesses (Scotland) Act (the "Act") to ensure that the 'best interests' of the child are considered in cases involving child victims.
- We welcome the creation of a Victims' Code, however urge Scottish Ministers to ensure a child friendly version is created as soon as possible so child victims can fully understand their rights and what support is available.
- We support the requirement to provide information to victims about support services that are available. In particular, we consider that it is vital that all child victims are directed to appropriate and available specialist support services as quickly as possible. Children 1st believes that all children and young people who have experienced trauma, such as sexual abuse or domestic abuse, have a right to recovery, and should be able to access these specialist support services at the point of need.

- The EU Directive provides minimum standards for Scotland to adhere to and we are pleased that the Regulations seek to adopt these standards. However, Children 1st believes that Scotland can and should go further than these minimum standards to ensure that the needs of child victims of crime are met.

General Principles and Child Victims

We warmly welcome the inclusion to the Act of section “1 A(d) that, when dealing with victims who are children, the best interests of the child should be considered, taking into account the child’s age, maturity, views, needs and concerns”. This provision should ensure that the Lord Advocate, Scottish Ministers, Police, Scottish Court Service and the Parole Board have specific regard to this general principle when dealing with victims who are children. Furthermore competent authorities can, under the new Regulations, exercise certain of their functions in relation to, or at the request of the child’s parent if it considers that it is in the best interests of the child. Although we understand that the definition of ‘parent’ in the regulations refers to any person holding parental responsibilities for that child within the meaning of the Children Scotland Act, 1995 it would be helpful to clarify the rights of informal kinship carers who do not have (or do not yet have) parental responsibilities in this context.

The Victims’ Code

We welcome Regulation 4 which obliges the Scottish Ministers to produce a Victims’ Code for Scotland to set out victims’ rights clearly and simply and in one place. Children 1st are pleased to have been informally consulted by the Scottish Government in the initial stages of producing this Victims’ Code and we are encouraged to learn through meeting with Scottish Government officials that our request for a child friendly version of the Victims’ Code will be considered next year. We remain clear that there must be a child friendly version of this Victims’ Code with a suitable format to help ensure all children who are victims of crime can understand what their rights are and who can help them. We urge the Scottish Government to move forward with the creation of this child friendly version as soon as possible. The EU Directive states that information and advice should be given by a range of media and in a manner which must be understood by the victim. Appropriate action must be taken by member states to assist victims to understand and be understood from the first contact. The Directive also makes it clear that a child’s best interests must be a ‘primary consideration’.

We particularly welcome section 3B(1) (a) of Regulation 4 that states the Victims’ Code must set out the types of support that victims may obtain and from whom that support can be obtained. We also welcome section 3b (1) (c) of Regulation 4 which states this Code must outline who and under what conditions victims may obtain special measures. We know from our experience of working with children and young people who are victims of crime that some feel they do not receive enough clear, timely and easy to understand information about what their rights are, what support is available during their case and what sort of measures they can receive to help give evidence in court. Having a Victims’ Code that clearly explains these questions, that is easy to understand for children and is widely available will be positive.

Provision of support to victims

It is positive that the Regulations put into law that authorities must provide information to victims about relevant victim support services, which includes specific information about relevant specialist support services in place, and emotional, and psychological support. It is vital all child victims are directed to appropriate and available specialist support services that can help them recover from trauma, as soon as possible. Through our experiences of working with children in our abuse and trauma recovery services we know that with skilled therapeutic support children can slowly heal and make sense of what has happened to them but it is vital that children receive this type of specialist support as soon as possible. Our work in supporting children and young people in the period between them making a statement to Police and giving evidence in court, which is often 12-18 months later, that support to help a young person improve their confidence, can greatly assist to prepare them for giving their evidence within the court process. Young people and their families frequently cite that with consistent support through the period of their wait, they were helped to be as calm and prepared as possible. This is particularly relevant because for many victims, giving evidence and the court process itself can be traumatising. It is therefore important that authorities do not just provide the information to victims, but ensure that there are enough services to meet demand and ensure that there are not barriers to accessing these services.

Assistance to communicate

Whilst we welcome the addition of a new section (3E) obliging a competent authority to take appropriate measures to ensure that a victim understands and is understood in certain actions with a competent authority, we would welcome clarification as to how competent authorities will ensure that children and young people are assisted to understand the information given to them, and in turn for children and young people to be understood. Children 1st would like to highlight that it is vital that specific consideration should be given to child victims here as their ability to understand and to communicate will greatly differ according to their age and stage of development and if they have suffered trauma, for example if they are victim of sexual abuse. This is particularly important given that research shows that children with learning difficulties and disabilities are at an increased risk of abuse and for many, their additional needs will impact their communication, and/or comprehension. We consider it important that children are supported by appropriate staff who are trained in child communication and understand the impact of trauma on children.

We note that subsection (b) states that where an authority considers that a person requires assistance to communicate, the authority must, subject to two exceptions, allow the person to be assisted by someone of the person's choice. This must be carefully considered in terms of children as the onus is on the victim to organise support and identify an appropriate person.

Further measures to meet the needs of vulnerable child victims and witnesses in Scotland

As noted above, Children 1st considers that Scotland could and should go further than the minimum standards set out in the EU Directive. We believe that there are a

number of areas that have not been met by the Act or the Regulations and in order for Scotland to be world-leading and the best place in the world to grow up there are a number of changes that should be urgently considered.

1. We recommend that intermediaries are introduced as an interim step (in advance of further, more systemic changes) using the powers under section 21 of the Victims and Witnesses (2014) Act to prescribe further special measures. Intermediaries are highly-trained individuals in child communication who relay questions to children from advocates and lawyers during cross-examination to ensure that children can understand what they are being asked. Intermediaries are currently used in differing models in England and Wales and other jurisdictions such as South Africa. Scotland is notably behind many other areas of the world due to the lack of intermediaries in the current criminal justice system.
2. There should be full consideration of how child-centred and child-focused models can be adapted for implementation in Scotland, such as elements of the 'Barnehus model' used with child victims and witnesses in Norway, with the aim of seeing real change to access to justice and improvements in the experiences of child victims and witnesses in Scotland. The development of a model for Scotland should include consideration of the following elements:
 - Support for child victims and witnesses by appropriate staff who are trained in child communication and understand the impact of trauma on children.
 - A custom built, child-friendly centre making the experience less traumatic for children, and more focused on their needs.
 - A process for initially speaking out about abuse and a professional response that is child-centred and at the child's own pace.
 - Highly trained interviewers, familiar with child communication and protection best practice, who take into account children's rights and their individual needs and make efforts to ensure that evidence is collected at the start and used later, without the need for the child to repeat their experiences.
 - A child attends just one forensic interview hearing which is observed and guided by a judge and legal representatives for the defence, prosecution and victim. The interview consists of a structured approach according to established protocols. The interviewer is the only person who questions the child witness and all other people are in another room watching via video link.
 - The hearing happens as soon as possible following the child's complaint.
 - Steps are taken to consider how an inquisitorial approach could be used with children and young people. At the very least cross-examination should be kept to a minimum, is pre-recorded, with any questions reviewed for suitability beforehand.
 - Reduction of waiting times and delays for children and families.

- Access to family support and advocacy workers to keep children and young people and their families informed throughout the process.
- Access to therapeutic and medical support as required that includes intensive trauma recovery support. Medical examinations and support services should be located in one place and should take into account the overall wellbeing of the child or young person. Holistic aftercare support should be provided following a child's interaction with the justice system.
- Family and child to have a support worker or advocacy worker who will keep them informed throughout the process.
- Accessibility for people in a variety of locations across Scotland, including those in remote and rural areas.

Children 1st
1 December 2015

WRITTEN SUBMISSIN FROM THE FACULTY OF ADVOCATES

1. The Draft Regulations appear broadly to meet the requirements of Directive 2012/29/EU and codify much of what is already performed by Police Scotland and COPFS. However we anticipate that much of the detail will appear in the "Victims' Code", which is yet to be produced.
2. We consider that the meaning of a "criminal investigation" in the Directive - using a purposive interpretation - is wider than set out in Regulation 9A which appears to be restricted to a "relevant interview". What of: identification parades, searches and seizures of property, *locus* visits etc., which are part of an investigation? What of a precognition by the Crown prior to service of an Indictment, which is also arguably covered?
3. Whether the aim of the measures, as set out in the policy statement of "*clear, enforceable, rights... etc.*", has been achieved, is perhaps debatable. There is to be a complaints process (Reg. 3A) if a victim apprehends that their rights have been breached. (Perhaps the complaints process ought also to be in respect of a prospective breach in order for the competent authority to remedy the matter at the earliest point). Unsurprisingly there does not appear to be a recognised mode of redress; and there is no independent body to which complaint may be made.
4. We consider that a "Victims' Commissioner" might now be considered in order to: (a) coordinate the various rights and obligations across the competent authorities; (b) deal with complaints that have not been satisfactorily resolved; (c) to review the Code; and (d) enforce the Regulations. (We note that the Victims' Commissioner (Scotland) Bill 2010, fell, but that such a body has been introduced in England and Wales and elsewhere).

Faculty of Advocates
1 December 2015

WRITTEN SUBMISSION FROM SCOTLAND'S CAMPAIGN AGAINST IRRESPONSIBLE DRIVERS

SCID welcomes the opportunity to respond to the Justice Committees call for evidence on the draft legislation; Victims' Rights (Scotland) Regulations.

It may be helpful to provide a brief background on SCID.

SCID, (Scottish Campaign against Irresponsible Drivers)¹ was formed in 1985 by Wendy Moss as a result of a fatal road crash in which her only son was killed. Since that time SCID has helped and advised hundreds of Scottish families who have lost a loved one as a result of a road crash.

SCID Objectives:

- To help and advise victim families of road crashes
- To seek to restructure the Law as it applies to Criminal Traffic Offences which have caused death or injury
- To deter irresponsible drivers by the imposition of more relevant sanctions
- To encourage drivers, through education, to adopt safer standards.

Background

In 2012, the European Parliament and the Council reached an agreement about a Directive (Directive 2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, as part of a legislative package which aims at strengthening the rights of victims in the EU and which also includes a proposal for a Regulation on mutual recognition of protection measures in civil matters and a communication on strengthening victims' rights in the EU.

Part of the Directive addresses road victims. Article 2 (1) defines road victims as:

- a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;*
- family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.*

1. The proposed draft **Victims' Rights (Scotland) Regulations 2015** does not meet the underlying purpose of the Directive (*as set out in paragraph 6 of the Scottish Government's [policy note](#)*); of *"creating clear enforceable rights for victims, codifying many of the administrative practices which victims currently rely upon"*

For the past 6 years SCID has been campaigning on behalf of families bereaved and victims injured by culpable drivers, for the right to opt-in to a system whereby they can receive information, if they wish, of when offenders apply to the court to have their driving licence restored before the period on disqualification imposed by the court has been completed².

¹ www.SCID.org.uk

² <https://www.gov.uk/driving-disqualifications/apply-to-reduce-your-disqualification-period>

Victims' injured and families bereaved by road crashes have no knowledge that the penalty of disqualification imposed on offenders by the courts will not be fulfilled and thus have no input into the process. These victims suffer secondary victimisation when reading in newspapers or hearing in the media that an offender's ban has been rescinded.

The absence of an "opt-in" system to inform families who have been bereaved or victims seriously injured in road crashes by these drivers, **discriminates against victims; leaving victims with no remedy.**

Statistics	2010	2011	2012	2013
Number of Convicted persons that applied for early removal of disqualification from driving*	336	323	311	234
Number of Convicted persons that applied for early removal of disqualification and were successful*	222	235	228	183
*RE: FOI2014248 Request for information 21 st January 2015 (Scottish Court Service)				
Number of victims informed of offenders application for early removal of disqualification.	0	0	0	0

While the UK ruling allows offenders who have killed or maimed innocent road users to apply for early restoration of their driving licence, this should not be a passive process but should be the subject of equal transparency within the rights of victims and of consideration of the public interest before a determination is made by the court.

A comparison and scrutiny of victims' rights within the Criminal Justice System must be drawn between:

- (a) The current Victim Notification Scheme (VNS) which allows victims of all crimes to "opt-in" to be informed, if they wish, of the release of an offender sentenced to 18 months or more in prison and entitles victims to information about the offender being considered either for parole or release on Home Detention Curfew; and
- (b) The absence of an opt-in system which denies bereaved families and victims seriously injured of the right to be told, if they wish, when offenders sentenced to a driving disqualification of 2+ years apply to the court for early restoration of their driving licence.

The sentencing of offenders who kill and maim innocent road users by careless and illegal driving is unique in that the majority of offenders receive community service and a mandatory disqualification from driving. These victims will not be eligible to participate in the VNS and additionally, under current law, are excluded from the right to know (and have any input) when an offender applies to the court to have their driving licence rescinded.

Over the past six years there has been much correspondence coming and going between SCID and the Scottish Government on this issue. It appears the proposed “opt-in” system is a devolved matter. This being the case, there was the suggestion by the Scottish Government that an administrative process would be explored to resolve the issue. An administrative process was deemed to be not financially viable, due of the low numbers of bereaved families who would be eligible to opt-in to such a system. While SCID agrees the numbers of bereaved families who would be eligible to opt-in to a system are very low we do not agree that this is a reason to discriminate against these families and it is not compliant with the “Directive”. Additionally, consideration has not been given by the Scottish Government to the numbers of victims seriously injured by culpable drivers who would be eligible to opt-in to the system.

The draft **Victims’ Rights (Scotland) Regulations 2015** states under - ***Right to receive information concerning release of offender:***

15. After section 27 of the Act, insert— “Notification of victims in relation to release etc. of short term prisoners.” calls for an amendment to include the right of victims of road crashes to be notified when offenders apply to the court for early restoration of driving licence and have some input into the process.

Only then will; every victim of culpable drivers be treated with respect and dignity and benefit from a range of rights in line with their individual needs.

Margaret Dekker
SCID Researcher/secretary
29 November 2015

WRITTEN SUBMISSION FROM THE SCOTTISH PRISON SERVICE

Thank you for providing SPS with an opportunity to provide evidence to the Justice Committee on the draft Victims' Rights (Scotland) Regulations. The Committee will be aware that SPS is an Agency of the Scottish Government and that I am accountable to Scottish Ministers for the operation of SPS; for advising them on policy on prisons; for the management of SPS; and for planning its future development. I confirm, as part of the Justice family, we have been working closely with colleagues in the Scottish Government, and other Agencies, on the areas of the Regulations which impact on us.

The main impact on SPS from the Regulations will be the "*Right to receive information concerning the release of an offender*". This is a new right for victims of offenders sentenced to less than 18 months in prison and creates a new obligation upon SPS. The Committee will be aware that the Victim's Rights Directive obliges Member States to give victims the basic right to be informed when an offender escapes or is released from custody. This right is not qualified by reference to the length of sentence an offender receives and I agree that the current Victims' Notification Scheme (VNS) does not extend far enough. The extension of the right to receive information on the release or escape of an offender to all victims is a pragmatic, manageable and supportive step.

It is difficult to assess the precise impact of extending this information to all victims, however, SPS had already agreed resources to manage the impact of the Victims and Witnesses (Scotland) Act 2014 and any further legislative changes arising from the implementation of the Victim's Rights Directive. The increase in the number of victims requesting this information will be gradual and resources will be deployed incrementally as the number of victims seeking this information increases.

SPS fully supports these Regulations which further put victims' interests at the heart of the on-going improvements to the justice system, giving an increased number of victims access to opportunities to receive information.

Colin McConnell
Chief Executive
18 November 2015

WRITTEN SUBMISSION FROM SCOTTISH WOMEN'S AID

Foreword

Scottish Women's Aid ("SWA") is the lead organisation in Scotland working to end domestic abuse. We play a vital role in campaigning and lobbying for effective responses to domestic abuse.

We provide advice, information, training and publications to our 37 member groups and to a wide variety of stakeholders. Our members are local Women's Aid groups which provide specialist services, including safe refuge accommodation, information and support to women, children and young people.

An important aspect of our work is ensuring that women and children with experience of domestic abuse get both the services they need and an appropriate response from the civil and criminal justice systems.

We welcome the opportunity to comment on these draft Regulations.

Regulation 2

In furtherance of the provisions of Article 1 of the Directive and the objectives set out in that Article and Recital 10, Regulation 2 requires the addition of wording to the effect that the exercise of the rights under the Act and the provision of support is not conditional on a victim's residence status, citizenship or nationality.

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=en>

Recital 10 of the Directive states "*This Directive does not address the conditions of the residence of victims of crime in the territory of the Member States. Member States should take the necessary measures to ensure that the rights set out in this Directive are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality. Reporting a crime and participating in criminal proceedings do not create any rights regarding the residence status of the victim.*"

Reference is also made to pages 8 and 9 of the European Commission's DG Justice Guidance document on Directive's transposition and implementation.

http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf

Regulation 3- Complaints process

This Regulation should follow the wording of Article 3 of the Directive in that the complaints processes should enable the victim to make the complaint in a language that they understand or by receiving the necessary linguistic assistance.

Regulation 4- Provision of information and support to victims

3B -The Victims' Code for Scotland

In the listing of information that the Victims' Code for Scotland will either contain or signpost to, in pursuance of Articles 6 and 8 of the Directive and also page 24 of the Guidance paper, subsection 3B(a) should be expanded to clarify that support is available whether or not the victim reports the crime, as follows:

*"...(a) the types of support that victims may obtain and from whom that support can be obtained, **regardless as to whether or not the crime has been reported.**"*

Also, the following bullet points should be added to the list

- *"any decision not to proceed with or to end an investigation or not to prosecute the offender*
- *the criminal proceedings instituted"*

Further, in relation to provision of information and support to victims and referral to providers of support services, we would draw the Committee's attention to the obligations placed on the Scottish Government under Articles 8 and 9 of the Directive, in terms of ensuring that victims have access to specialist support services, and the right of women and children victims of gender-based violence to access specialist. This is referred to in the wording of Recital 17 *"Violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately, is understood as gender-based violence. It may result in physical, sexual, emotional or psychological harm, or economic loss, to the victim. Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called 'honour crimes'. Women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence."*

Regulation 5- Assisting victims to communicate

3E- Victims' right to understand and to be understood

Article 3(3) of the Directive states *"...3. Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.."*

This intention is not reflected in 3E(6) which states that this right is conditional upon the competent authority considering that the person requires assistance to communicate. The Directive and accompanying Guidance do not appear to contain any such qualification of this particular right and the Guidance document states, at page 12 in its commentary on Article 3 *"...Paragraph 3 gives victims the right to be accompanied by a person of their choice in their first contact with the authorities if they need assistance due to the impact of the crime or if the victim has difficulties understanding proceedings or to be understood. The purpose of this right is to practically assist the victim and to provide moral support when reporting a crime..."*

Therefore, the Regulations should state that either the competent authority, or the victim themselves, must identify that this particular form of assistance should be provided

3F- Victims' right to interpretation and translation

In setting out these rights, Article 7 of the Directive states at paragraph 3 *"...Translations of such information shall include at least any decision ending the criminal proceedings related to the criminal offence suffered by the victim, and upon the victim's request, reasons or a brief summary of reasons for such decision, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law."* This information should be inserted into 3F

Regulation 13- Protection of victims during criminal proceedings

9A- Victims' right to protection during criminal investigation

This implements Article 20 of the Directive, but that Article does not limit such protection to interviews carried out solely by the police. The victim may meet the Fiscal or VIA service prior to the trial, will be precognosed by the Crown in solemn cases and in sexual offence cases, there may be meetings between the Crown and the victim prior to trial. The victim must be able to be accompanied by a person of their choice at all and any meetings with competent authorities, unless there is a very good reason, based on, a possible contrary interest or prejudice to the proceedings and the section should be amended to reflect this position.

Regulation 15 Right to receive information concerning release of offender

“Notification of victims in relation to release etc. of short term prisoners

The new section, 27A, enabling a victim to now obtain, on request, information about the release of, including license conditions imposed, or escape of, a prisoner sentenced to imprisonment or detention for less than 18 months, is welcome and will be of use to women experiencing domestic abuse.

While noting that this new section does not allow for the provision of information currently provided in sections 16 and 17 of the Criminal Justice (Scotland) Act 2003, such as the death or transfer of a prisoner, information under section 16 that the convicted person has become eligible for *temporary* release is something that would be valuable for victims, particularly women, children and young people experiencing domestic abuse, in terms of safety planning and accessing refuge and other alternative temporary and permanent housing options.

Article 25 and Recital 61- Training of Practitioners

The Regulation does not address this and we would welcome the Scottish Government’s intentions to progress their work to ensure that all “*officials*” and “*practitioners*” in the criminal justice system coming into contact with women, children and young people experiencing domestic and sexual abuse, including, but not limited to those specifically mentioned in the Directive (police, court staff, judges, prosecutors and legal professionals) receive targeted, specialist training from experienced, specialist support organisations such as Scottish Women’s Aid.

Louise Johnson
National Worker - Legal Issues
1 December 2015