POLICY NOTE

THE VICTIMS AND WITNESSES (SCOTLAND) ACT 2014
(COMMENCEMENT NO. 3 AND TRANSITIONAL PROVISION) ORDER 2014

SSI 2014/359 (C. 32)

1. The above instrument was made in exercise of the powers conferred by section 34(2) and (3) of the Victims and Witnesses (Scotland) Act 2014 ("the 2014 Act"). The instrument is laid before Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Policy Objectives

2. The 2014 Act introduces various measures to improve the support and information available to victims and witnesses of crime in Scotland, and is being implemented in stages. This instrument (the second relating to measures affecting the criminal justice system) brings into force on 30 January 2015 the following sections of the 2014 Act (in so far as not already commenced):

- **Section 1- General principles**

Section 1 places a duty on each of:

- the Lord Advocate
- the Scottish Ministers
- the chief constable of the Police Service of Scotland
- the Scottish Court Service
- the Parole Board for Scotland

to have regard to four general principles whilst carrying out any statutory functions they have in relation to victims and witnesses.

The general principles are intended to capture the areas the Scottish Government considers vital to improving the experience of victims and witnesses and focus on providing access to information and support, ensuring safety and facilitating effective participation in the justice system.

- **Section 2 – Standards of Service**

Section 2 places a duty on each of:

- the Lord Advocate
- the Scottish Ministers
- the chief constable of the Police Service of Scotland
- the Scottish Court Service
- the Parole Board for Scotland

to set and publish standards in relation to the functions which those organisations carry out in relation to victims, witnesses and certain relatives of victims (to be prescribed by the Scottish Ministers) and set out their complaints procedure.

The references to the Lord Advocate and the Scottish Ministers are intended to identify the Crown Office and Procurator Fiscal Service ("COPFS") and the Scottish Prison Service ("SPS") respectively as the particular bodies to which this duty applies. As COPFS is a Ministerial department and SPS is an executive agency, this duty cannot be placed directly on them.

The standards are intended to inform victims and witnesses as to what to expect in their interaction with these organisations and will contain information specific to the functions of each organisation. Prior to publishing the standards, the organisations must consult with each other and others with a significant interest.

Section 2 of the 2014 Act was commenced for the purpose of making an order under section 2(6) of the 2014 Act on 13 August 2014 by the Victims and Witnesses (Scotland) Act 2014 (Commencement No. 2 and Transitional Provision) Order 2014. This was to allow for the relevant order (The Victims and Witnesses (Scotland) Act 2014 (Prescribed Relatives) Order 2014), prescribing relatives for the purpose of section 2, to be laid and come into force at the same time as section 2 is commenced in full.

- **Section 3 – Reports**

Section 3 of the 2014 Act applies where the named justice organisations (detailed above in relation to section 2) publish standards of service. Following publication of the standards, those organisations will be required to prepare and publish a report, annually, on how the standards have been met over the reporting period, how the organisation intends to continue to meet them, any modifications made during the reporting period and any proposed modifications the organisation intends to make during the following reporting period.

The first report must be published within 12 months of the standards being published – this period was set as a maximum to allow reports to be published earlier to tie in with the organisations' annual reports, if desired.

- **Section 6 - Disclosure of information about criminal proceedings**

Section 6 of the 2014 Act provides victims, witnesses and, where the victim died as a result of an offence, certain relatives of victims (to be prescribed by the Scottish Ministers), with a new right to request certain information relating to the criminal investigation or proceedings in which they are involved. This is to ensure victims and witnesses are able to keep up-to-date with the progress of a case.

The obligation to disclose this information, on request, falls to the chief constable of the Police Service of Scotland, the Scottish Court Service and any prosecutor. The type of

information that may be requested includes a decision not to proceed with a criminal investigation and any reason for it, a decision not to institute criminal proceedings and any reasons for it, and details about the trial and the nature of the charges libelled against a person.

Section 6 of the 2014 Act was commenced for the purpose of making an order under section 6(2)(b) of the 2014 Act on 13 August 2014, by the Victims and Witnesses (Scotland) Act 2014 (Commencement No. 2 and Transitional Provision) Order 2014. This was to allow for the relevant order (The Victims and Witnesses (Scotland) Act 2014 (Prescribed Relatives) Order 2014), prescribing relatives for the purpose of section 6, to be laid and come into force at the same time as section 6 is commenced in full.

Transitional provisions: Standards of service

3. Article 3 of the instrument makes transitional provision in relation to section 2 of the 2014 Act so as to allow the named organisation the opportunity to consult in accordance with section 2(4), prior to publishing standards of service in accordance with section 2(1). Consequently, standards of service must be published by those justice organisations no later than 30 April 2015. The named organisations have already begun the process of consultation so as to involve, for example, victim support organisations, in the early stages of drafting the standards.

Approach to commencement of section 6

4. As set out above, section 6 of the 2014 Act requires the police, the Scottish Court Service and any prosecutor to disclose certain information to victims and witnesses, on request.

5. In commencing section 6, consideration has been given to the needs of victims and witnesses whilst being mindful of the operational constraints on those named organisations and the need to protect the on-going administration of justice from significant disruption (which is also in the interests of victims and witnesses).

6. In relation to the right to request information about a decision not to proceed with a criminal investigation and any reasons for it, a decision to end a criminal investigation and any reasons for it, and a decision not to institute criminal proceedings and any reasons for it, the commencement order provides that the right applies to decisions taken on or after the day the order comes into force. To enable the capturing of this information and the handling of requests, the relevant justice organisations have put in place various updates to IT systems and operating procedures. If the right to request this information applied to cases closed prior to these systems being put in place, it would present significant and disproportionate operational difficulties for the organisations required to respond to such requests.

7. For the same reason, the right to request certain information about the trial, in particular, the final decision of a court in a trial or any appeal arising from a trial and any reasons for it, is limited to cases that have not concluded before the day the order comes into force. This will ensure cases currently in the system, and future cases, are covered by the provisions, but exclude those cases that have concluded and for which it would be problematic for the organisations to retrospectively gather the information.

8. A definition of when criminal proceedings are to be taken as concluded, for the purpose of the commencement of sections 6(7)(d) to (j) of the Act, is provided at article 1(3) of this instrument, so as to clearly identify the proceedings to which the right to information under section 6 applies.

9. A protocol for information sharing is currently being finalised between the justice organisations, to ensure victims and witnesses know which organisation to contact for the various pieces of information that can be requested.

Consultation

10. A public consultation paper, "Making Justice Work for Victims and Witnesses"[1], was published prior to the development and introduction of the Bill for the 2014 Act. This closed in July 2012, and non-confidential responses[2] and an analysis[3] are available.

11. In addition, consultation with stakeholders (including various victim support groups and the justice organisations affected by the legislation) was undertaken throughout the Bill process, and continues in relation to the implementation of the 2014 Act.

Equality Impact Assessment

12. An Equality Impact Assessment (EQIA) was carried out for the purposes of the Victims and Witnesses (Scotland) Bill, and it was determined that the Bill would be unlikely to have any significant differential effect on the protected characteristics. The results of the EQIA were published on the Scottish Government website[4].

Scottish Government
Justice Directorate
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[1] http://www.scotland.gov.uk/Publications/2012/05/8645/0
[2] http://www.scotland.gov.uk/Publications/2012/09/3650/0
[3] http://www.scotland.gov.uk/Publications/2013/01/8185/0
[4] http://www.scotland.gov.uk/Publications/2013/02/3668