

Widening the scope of the current victim statement scheme

Scottish Government Consultation

September 2019

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Widening the scope of victim statements

1. Introduction

In Scotland, victims of the most serious crimes may be eligible to make a [victim statement](#). This is a written statement that gives a victim the chance to tell the court – in their own words – how a crime has affected them physically, emotionally and financially. In reaching their sentencing decision the Judge or Sheriff will take into account a number of different factors, reports and other information available to them, including the victim statement.

We have committed to consulting on the details of widening the range of serious crimes which carry the right to make a victim statement.

2. Why we are consulting

The purpose of this consultation is to seek your views on proposed changes to the victim statement scheme.

The current list of offences in relation to which a statement can be made was prescribed in 2009. Since then a number of new, serious offences have come into force in Scotland in relation to which a victim statement cannot be made, for example stalking and the domestic abuse aggravation. In addition, the courts in which a victim statement can be taken into account are limited to solemn proceedings¹.

Currently, the statement can only be presented in writing, however [section 23 of the Victims & Witnesses \(Scotland\) Act 2014](#) (the 2014 Act) provides powers to pilot (and extend more widely if appropriate) different ways for a victim statement to be made, for example by pre-recording it so it can be played in court.

We are committed to putting victims of crime at the centre of the justice system and to improving support, advice and information for victims and their families.

This consultation is a key part of ensuring that victims' voices are represented. It will help us decide how the current list of offences should be updated and which offences should be included. It will also help us consider whether we should pilot new ways for victim statements to be made to the court and obtain views on any other aspects of the current process which you consider could be improved.

3. Legislative background

[Section 14 of the Criminal Justice \(Scotland\) Act 2003](#) (the 2003 Act) gives victims of certain crimes the right to make a statement about the crime's impact on them, to be submitted to the court after a conviction and prior to sentencing to inform the Judge or Sheriff as they make their sentencing decision. Section 14 provides for the Scottish Ministers to prescribe the courts/class of court in which the victim can make a statement and the offences to which the right applies.

¹ Solemn proceedings involve the most serious of criminal cases and may ultimately lead to a trial on indictment, either before a judge in the High Court or before a sheriff in one of the sheriff courts. Trials under solemn procedure are conducted with a jury.

Between 2003 and 2005, a pilot victim statement scheme was carried out in the Sheriff courts of Ayr, Edinburgh and Kilmarnock and in the High Court at Edinburgh and Kilmarnock. An [evaluation of the pilot](#) in 2007, found that the majority of victims who completed the evaluation were glad that they had made a statement and that the take-up rate varied considerably depending upon the severity of the crime (the overall take-up rate was just under 15%, but when individual offences were looked at the rate varied from 60% for murder to nil for some offences). This accorded with reasons given for not making a statement, where 53% of respondents who did not make a statement said they did not feel like a victim or thought that the impact of the crime was not serious.

The pilot led to the [Victim Statements \(Prescribed Offences\) \(No.2\) \(Scotland\) Order 2009](#) and the [Victim Statements \(Prescribed Courts\) \(Scotland\) Order 2009](#) which purposely limited victim statements to solemn proceedings and more serious offences.

Section 14 of the 2003 Act also specifies people who can make a victim statement and, in most cases, this is a person who has been the victim of an offence. However in some cases, such as where the victim is deceased or where the victim is a child under the age of 12, another person can make a victim statement – a list of qualifying persons can be found at Section 14 (10) of the 2003 Act.

The list of offences in relation to which a victim is currently given the opportunity to make a victim statement is summarised below (the full list is detailed at Annex A):

- non-sexual crimes of violence (e.g. murder/homicide);
- sexual crimes of violence and indecent crimes (e.g. rape);
- housebreaking;
- racially motivated crimes;
- certain road traffic offences (causing death by dangerous, careless or inconsiderate driving; or causing death by driving without a licence or without insurance);
- fire-raising; and
- conspiring, inciting, aiding, abetting, counselling or procuring any of the above mentioned crimes.

4. Extending eligibility to make a victim statement

Based on our engagement with stakeholders, including the Crown Office and Procurator Fiscal Service (COPFS), the Scottish Courts and Tribunals Service and Victim Support Scotland, we have identified a list of other offences, which we suggest should carry the right for a victim statement to be made when heard under solemn proceedings. These are as follows:

- Stalking - [Section 39 of The Criminal Justice and Licensing \(Scotland\) Act 2010](#)
- Human trafficking / exploitation and modern slavery - [Sections 1, 4 & 5 of The Human Trafficking & Exploitation \(Scotland\) Act 2015](#)
- Forced marriage - [Section 122 of the Anti-Social Behaviour, Crime and Policing Act 2014](#)

- Breach of a forced marriage protection order - [Section 9 of the Forced Marriages etc. \(Protection and Jurisdiction\) \(Scotland\) Act 2011](#)
- Domestic abuse aggravation - [Section 1 of The Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#)
- Intimate image abuse - [Section 2 of The Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#)
- Causing serious injury by dangerous driving - [Section 1A of the Road Traffic Act 1988](#)
- Causing death by driving while disqualified – [Section 3ZC of the Road Traffic Act 1998](#)
- Causing serious injury by driving while disqualified - [Section 3ZD of the Road Traffic Act 1998](#)
- Offences aggravated by religious prejudice - [Section 74 of The Criminal Justice \(Scotland\) Act 2003](#)
- Offences aggravated by prejudice relating to disability - [Section 1 of the Offences \(Aggravation by Prejudice\)\(Scotland\) Act 2009](#)
- Offences aggravated by prejudice relating to sexual orientation or transgender identity - [Section 2 of the Offences \(Aggravation by Prejudice\)\(Scotland\) Act 2009](#) • Abusive behaviour towards partner or ex-partner – [Section 1 of the Domestic Abuse \(Scotland\) Act 2018](#)
- Involvement in / directing serious and organised crime - [s28/s30 of the Criminal Justice and Licensing \(Scotland\) Act 2010](#)

We would welcome your views on a number of different options for expanding eligibility to make a victim statement. These options consider both the offences committed and the types of proceedings to which eligibility could be linked.

Option A could be to extend the list of offences for which a victim is currently given the opportunity to make a victim statement to include the offences listed above.

Option B could be for victims to be afforded the opportunity to make a victim statement for all cases heard under solemn proceedings. In practical terms this would mean prescribing that a statement can be made where proceedings in respect of an offence are taken or are likely to be taken in a High Court or sheriff courts sitting as courts of solemn jurisdiction.

A benefit of adopting Option B would be that any new offences that come into force in Scotland that are heard under solemn proceedings would automatically carry the right to make a victim statement, without the need to wait for a periodic review and update of the list of prescribed offences.

Option C could be to consider extending eligibility to all solemn proceedings (as per option B) but also include a list of prescribed offences, such as domestic abuse and stalking that would be eligible for a victim statement, even if they were tried as summary proceedings².

² Summary proceedings are used for less serious offences (with the charges set out in a complaint) and may ultimately lead to a trial before a sheriff or, in justice of the peace courts, before a bench of one or more lay justices. Trials under summary procedure are conducted without a jury.

This approach would, however, be more complex, take more time to implement and would likely require significant additional resources, compared to options A or B.

A further consideration could be to allow for a victim statement to be made for any offence regardless of the nature of the offence, or court in which it is to be heard. As per option C, this approach would be complex and incur significant resource requirements. The results of the pilot in 2003-2005 also suggest that there is less demand to make a victim statement for less serious crimes. We do not, therefore, propose to pursue this option at this time.

Question 1. Do you have a favoured option for how we could extend eligibility to make a victim statement?

Option A - expanding eligibility to include the list of serious offences at section 4

Option B - expanding eligibility to all cases heard under solemn proceedings

Option C – as per Option B but also including a list of offences which would be eligible for a victim statement even if they were tried as summary proceedings

Please provide a reason for choosing your favoured option.

If you favour option A, are there other offences we should consider adding to the list set out at section 4?

If you favour option C, which offences do you think should be considered for inclusion so they would be eligible for a victim statement even if tried as summary proceedings?

The Faculty of Advocates considers this is a matter for those involved in the development of policy and practice in this area and does not express a view.

Question 2. To help us decide how to extend the list of current offences for which a victim statement can be made, we need to identify any potential impacts that the changes may have.

Do you envisage any potential implications for you/your organisation if the list of current offences that are eligible to make a victim statement was extended?

Yes

No

If yes, please provide further details of any potential implications you envisage.

The Faculty of Advocates considers this is a matter for those involved in the development of policy and practice in this area and does not express a view.

5. Other forms of victim statement

A victim statement must currently be completed in writing by the victim and then submitted to COPFS.

During the passage of the 2014 Act, alternative forms of making a statement were considered. For example, pre-recorded video statements which could be helpful for those who may find it difficult to express themselves in writing.

At the time, various concerns were raised by stakeholders about implementing such changes. For example victim support organisations voiced concerns related to the potential emotional impact of making a video on victims themselves, even for those who were initially keen to record a statement.

In response to these concerns, the manner in which statements could be presented wasn't extended, however provision was included in the 2014 Act to specify by Order the form and manner in which victim statements may be made. The provision also allows for piloting of any proposed changes which could be rolled out more widely should they prove successful.

This consultation provides an opportunity to revisit whether there is now an appetite to explore alternative forms of making a victim statement.

Question 3. Victim statements must currently be made in writing by the victim. Do you think we should look at piloting new ways for victim statements to be made?

Yes

No

If no, please set out your reasons why we shouldn't look at piloting different ways for victim statements to be made.

The Faculty of Advocates considers this is a matter for those involved in the development of policy and practice in this area and does not express a view.

If yes, which of the following formats do you think should be explored (please select all that apply)?

- Victims reading their statement in court
- Pre-recording the statement on video
- Pre-recording the statement with audio only
- The judge reading the statement aloud to the court
- Other options (provide details)

Why do you think this option / these options would be beneficial to the victim?

Question 4. To help us decide whether we should pilot news ways for victim statements to be made, we need to identify any potential impacts that any changes may have.

Do you envisage any potential implications for you/your organisation if we were to pilot different ways of victim statement being made?

Yes **YES**

No

If yes please provide further details of any potential implications you envisage.

The Faculty of Advocates wishes to highlight possible difficulties that may arise where, either (a) the victims read their statement in court or, (b) the victims pre-record their statement on video or in audio form only.

It is the experience of members of the Faculty of Advocates that Victim Statements often contain accusations or information that, for reasons of plea adjustment or, because of the manner in which evidence has been established in court, are not relevant to the charge of which the accused has been convicted. In addition, Victim Statements often contain material that the Victim Impact Statement Information Booklet specifically advises should not be included; such as long descriptions of the original crime and descriptions of previous incidents.

The problem identified by members of the Faculty of Advocates, through direct experience and inquiry, is that once the Victim Statement has been prepared, no mechanism currently exists within COPFS to assess whether: (a) it contains material of relevance to the crime of which the accused is convicted; (b) it is consistent with the Crown narrative; (c) it is consistent with the evidence presented in court; (d) complies with the guidance contained in the Victim Impact Statement Information Booklet. Defence practitioners require to take particular care over this issue to ensure that the Victim Impact Statement presented to the sentencing judge does not contain material that would be irrelevant and possibly prejudicial to their client at a critical stage in the process.

If a victim of crime is to present their Victim Statement either in court in person or by means of a pre-recorded statement then it is essential that this is managed to ensure that the difficulties identified above do not happen in court at the time the Statement is given. Currently, the difficulties that emerge as a result of the problems highlighted above are managed in court, on an ad-hoc basis, by the issue being explored by counsel for the defence or prosecution with the trial judge; or, by the prosecution and defence having a discussion over the content of the material at the stage the Victim Impact Statement is produced. In practice, this often occurs at the end of the case. Thus, often the defence have, and are permitted, very little notice, and very little time, to consider the contents of the Statement against that to which the accused has either pleaded guilty or of which the accused has been convicted.

The Faculty foresee that it could be counterproductive to the whole process and distressing to a victim of crime if, when they read out their Victim Impact Statement, or their video was played, the content of their statement was challenged

in court or, the contents changed at a very late stage, excluding material they consider essential to the judge's decision on sentence. Supportive and careful management of this exercise, involving a clear explanation of the process involved, would be essential to ensure the success of any change in the way the victim's views are provided, either in person or on video.

In addition to the possible difficulties identified for the victims of crime, the Faculty of Advocates would also wish to draw attention to the problems that may arise from the perspective of an accused person and his legal representative should the content of a Victim Impact Statement that is read out or played in court contain material that is inconsistent, prejudicial or irrelevant to an agreed narrative or conviction.

The stage at which the Victim Impact statement is presented in court is often one of the most highly charged moments in the whole criminal process. If inconsistent, prejudicial or irrelevant material is presented, there is a real possibility that difficulties may arise in the professional relationship the accused has with his or her legal representative. This, in turn, raises the possibility of delay, and disruption, to the process of sentencing.

6. Other considerations

We are also seeking views on any other aspects of the current victim statement scheme which you consider could be improved.

For example, from discussions with stakeholders during the development of this consultation we received comments on issues such as: the format and structure of the current victim statement form which the victim is required to complete; the emotional impact on victims of completing the statement; and support that is available to victims to help them do this.

Examples of victim statement schemes in other jurisdictions are provided in Annex B.

Question 5. Are there any other aspects of the current victim statement scheme which you consider could be improved?

Yes

No

If yes, please provide further details of what could be improved.

Reference is made to Answer 4 above

Another potential issue we are aware of relates to developments in criminal law in some areas whereby people who are recognised as victims in the relevant legislation may not

always be captured by the definition of who is currently eligible to make a victim statement (as set out in section 14 of the 2003 Act).

For example, a new statutory aggravation related to a child provided for in the [Domestic Abuse \(Scotland\) Act 2018](#) which can be attached to the domestic abuse offence (we propose adding this offence to the list of victim statement eligibility). This applies where an offence of domestic abuse is committed by a partner towards their partner or ex-partner which includes using the child as an 'instrument' of the abuse, the child is present during the abuse or the child is likely to be adversely affected.

In this context, the child, in some circumstances, may be considered a victim and would therefore be entitled to make a statement under the existing scheme. However, in other circumstances, depending on the manner in which the aggravation is triggered, then the entitlement to make a victim statement would not apply.

We are also aware of other circumstances in which the current eligibility set out the 2003 Act does not reflect those people who were in reality most closely connected to a deceased victim, or most directly affected by the offence.

An amendment to section 14 of the 2003 Act to address these issues would require primary legislation and, as such, it is not something we plan to do alongside changes to the scope of the current scheme. We are interested in views, however, as to whether this is something we should explore in the future to ensure a wider category of victims can be captured by the scheme.

Question 6. Do you have any views on whether we should consider amending the definition of who is eligible to make a victim statement (as set out in section 14 of the 2003 Act), to help ensure all relevant victims are able to make a statement if they wish?

This would, for example, ensure the statutory aggravation related to a child in the Domestic Abuse (Scotland) Act 2018, would trigger the right for a child named as being involved in the offence to make a victim statement.

The Faculty of Advocates considers this is a matter for those involved in the development of policy and practice in this area and does not express a view.

7. Impact assessments

We propose to carry out impact assessments alongside the development of any new legislation which would be required to implement changes to the current victim statement scheme.

These include a Data Protection Impact Assessment and an Equality Impact Assessment (related to the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation). We would be interested in your views on these areas to help us in developing these assessments.

Question 7. Are there any data protection related issues that you feel could arise from the proposals set out in this paper?

Yes

No

If yes please provide further details.

The Faculty of Advocates considers this is a matter for those involved in the development of policy and practice in this area and does not express a view.

Question 8. Are there any equality related issues that you feel could arise from the proposals set out in this paper?

Yes

No

If yes please provide further details.

The Faculty of Advocates considers this is a matter for those involved in the development of policy and practice in this area and does not express a view.

Responding to this Consultation

We are inviting responses to this consultation by 24 November 2019.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/justice/current-victim-statement-scheme>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 24 November 2019.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Victims and Witnesses Policy Team
Scottish Government
GWR, St Andrews House
Edinburgh, EH1 3DG

You can also email your response to victim.statement.consultation@gov.scot

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be

handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at victim.statement.consultation@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Annex A

Current list of prescribed offences where a victim statement can be made (taken from the [Victim Statements \(Prescribed Offences\) \(No.2\) \(Scotland\) Order 2009](#))

Non-sexual crimes of violence

1. Murder.
2. Culpable homicide.
3. Abduction.
4. Assault.
5. Robbery.
6. Cruel and unnatural treatment.
7. An offence under section 12 of the Children and Young Persons (Scotland) Act 1937 (c. 37) (cruelty to persons under 16).
8. An offence under section 41(1)(a) of the Police (Scotland) Act 1967 (c. 77) (assault on constables etc.) but only in respect of an assault on a constable. ***Sexual crimes of violence and indecent crimes***

9. Rape.
10. Sodomy.
11. Abduction of a woman or girl with intent to rape.
12. Assault with intent to rape or ravish.
13. Indecent assault.
14. Lewd, indecent or libidinous behaviour or practices.
15. An offence under section 311 or 313 of the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#).
16. An offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39):—
 - (a) sections 1–3 (incest and related offences);
 - (b) section 5 (unlawful sexual intercourse with a girl under the age of 16);
 - (c) section 6 (indecent behaviour towards a girl between the ages of 12 and 16);

- (d) section 7(1), (2) and (3) (procuring);
 - (e) section 8 (abduction and unlawful detention);
 - (f) section 10 (seduction, prostitution etc. of a girl under the age of 16);
 - (g) section 13(5)(b) or (c) (homosexual offences).
17. An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (c. 44) (abuse of position of trust).
 18. Any offence where there was a significant sexual aspect to the offender's behaviour in committing the offence. **Housebreaking etc.**
 19. Theft by housebreaking.

Racially motivated crimes

20. An offence under section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 (racially-aggravated harassment).
21. An offence under section 96 of the Crime and Disorder Act 1998 (c. 37) (offences racially aggravated).

Road Traffic Offences

22. An offence under section 1 of the Road Traffic Act 1988 (c. 52) (causing death by dangerous driving).
23. An offence under section 2B of that Act (causing death by careless or inconsiderate driving).
24. An offence under section 3A of that Act (causing death by careless driving when under the influence of drink or drugs).
25. An offence under section 3ZB of that Act (causing death by driving: unlicensed, disqualified or uninsured drivers). **Other**
26. Fireraising.

Inchoate offences

27. An offence of conspiring or inciting the commission of an offence specified in paragraphs 1 to 26 of this Schedule.
28. An offence of aiding, abetting, counselling or procuring the commission of such an offence.

Annex B Examples of victim statement schemes in other jurisdictions

England And Wales

All victims who report a crime are entitled to make a Victim Personal Statement (VPS) at the same time as giving a witness statement to the police.

The Victims Commissioner reported that in 2018/2019, victims were given an opportunity to make statements in 14% of all incidents and 55% of those victims went on to make statements. This is down 2% on the previous year.

VPS are usually taken by the police, but the Victims' Code also allows for the VPS to be taken by "an organisation offering victim support services or another service provider" if arranged by the police. Statements are usually recorded in the same way as the witness statement. A victim has the right to read the statement out in court.

Northern Ireland

Any direct victim of a crime is eligible to make a VPS in Northern Ireland.

The statement is made in writing and the victim is not entitled to read their statement aloud in court. The judge may refer to, or make public, as part of their sentencing comments, part(s) of the VPS.

Republic of Ireland

Victims in all criminal cases are eligible to make Victim Impact Statements.

There is no set form of Victim Impact Statement. It can be handwritten, typed, or given orally in court. If the statement is written or typed the victim should then give the statement to the Gardaí (police).

New Zealand

All victims of crime are entitled to make a Victim Impact Statement.

The Statements are usually presented to the judge in writing. However, some or all of the statement can be read aloud in court, either by the prosecutor or by the victim or someone else on their behalf. The judge usually must allow this if the case involves a sexual or violent offence, and in other cases the judge has a discretion to allow it. The prosecutor can also ask the judge to allow some or all of the victim impact statement to be presented in some other way, such as an audio recording of the victim speaking.



Victim Statement Consultation

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- Organisation **ORGANISATION**

Full name or organisation's name

Faculty of Advocates

Phone number

0131 226 5071

Address

Parliament House, Parliament Square, Edinburgh

Postcode

EH1 1RF

Email

Andrew.tregoning@advocates.org.uk

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
-
-

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes YES
- No

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