
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2021 No.

CRIMINAL LAW

The Criminal Justice (Scotland) Act 2003 (Supplemental Provisions) Order 2021

Made - - - - 2021
Coming into force - - 2021

The Scottish Ministers make the following Order in exercise of the powers conferred by section 84(1) of the Criminal Justice (Scotland) Act 2003(a) and all other powers enabling them to do so.

In accordance with section 88(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1.—(1) This Order may be cited as the Criminal Justice (Scotland) Act 2003 (Supplemental Provisions) Order 2021.

(2) This Order comes into force on the day after the day on which it is made.

Supplemental provisions amending the Criminal Justice (Scotland) Act 2003

2.—(1) The Criminal Justice (Scotland) Act 2003 is amended as follows.

(2) In section 14 (victim statements)(b), for subsections (15) and (16) substitute—

“(15) An order under subsection (1), (2) or (13) may make different provision for different purposes including—

- (a) in the case of an order under subsection (1), provision to prescribe a court or class of court only in relation to a specific offence or offences triable in that court;
- (b) in the case of an order under subsection (2), provision to prescribe an offence—
 - (i) by reference to the nature of the offence; or
 - (ii) only insofar as it is triable in a specific court or class of court;
- (c) in the case of an order under subsection (1), (2) or (13), provision of temporary or local effect.

(16) An order under subsection (2) may prescribe all offences triable in a prescribed court.”

(a) 2003 asp 7.

(b) Section 14 was relevantly amended by section 23 of the Victims and Witnesses (Scotland) Act 2014 (asp 1).

(3) In section 88(2)(a) (orders) , after “14(1)” insert “or (2)”.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes supplemental provision which the Scottish Ministers consider expedient for the purposes of the Criminal Justice (Scotland) Act 2003 (“the 2003 Act”).

Section 14 of the 2003 Act provides for victims of prescribed offences to be given the opportunity to make a statement to the court as to how the offence has affected them and, as the case may be, continues to affect them. This opportunity is only to be afforded to the victim where proceedings are in a prescribed court. The Scottish Ministers are given powers in section 14 (subsections (1) and (2) respectively) to prescribe courts and offences for the purposes of section 14. The Scottish Ministers are also given powers in subsection (13) to prescribe the form and manner in which a victim statement may be made.

Section 14 of the 2003 Act does not enable the powers in section 14(1) and (2) to be used in conjunction so as to allow the Scottish Ministers to prescribe offences insofar as they are charged in a specific court or to allow courts to be prescribed for specific offences only. If the Scottish Ministers prescribe a court under section 14(1) then a victim statement may be made for every prescribed offence charged in that court. If the Scottish Ministers prescribe an offence under section 14(2) then a victim statement can be made for that offence in every prescribed court. The Scottish Ministers could not restrict a prescribed offence to a specific court without enabling a victim statement to be made in that court for every prescribed offence.

Similarly, the power in section 14(13) of the 2003 Act to prescribe the form and manner of a victim statement cannot be used to make different provision for different circumstances. If the Scottish Ministers prescribe that victim statements can be made orally, then that would apply to every offence in relation to which a victim statement can be made. The Scottish Ministers could not prescribe that victim statements can be made orally but only in relation to specific offences.

Article 2(2) of this Order addresses these issues by providing that the three powers in section 14 of the 2003 Act highlighted above – the power to prescribe courts, the power to prescribe offences and the power to prescribe the form and manner of victim statements – can be used to make different provision for different purposes. This would enable the Scottish Ministers to use the powers in section 14(1) and (2) in conjunction so as to prescribe a court for the purposes of certain offences tried in that court or to prescribe an offence but only where it is tried in a specific court. It would also enable the Scottish Ministers to prescribe that victim statements can be made orally but only for specific offences.

Article 2(2) will allow the powers in section 14 of the 2003 Act to be used to trial victim statements in a specific prescribed court for a specific prescribed offence without inadvertently enabling victim statements to be made for all prescribed offences in that specific court or for that specific offence in all prescribed courts.

Article 2(3) amends the parliamentary procedure applicable to orders made under section 14(2) of the 2003 Act from negative to affirmative to ensure greater scrutiny for orders made under section 14(2). Matching the parliamentary procedures applicable to the powers in section 14(1) and (2) removes the need for the Scottish Ministers to rely on the provisions of section 33 of the Interpretation and Legislative Reform (Scotland) Act 2010 where one order is to be made under section 14(1) and (2) combined.

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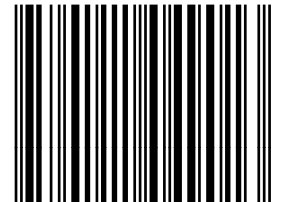
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, the Queen’s Printer for Scotland.

£4.90

S202101251020 01/2021 19585

<http://www.legislation.gov.uk/id/sdsi/2021/9780111049013>

ISBN 978-0-11-104901-3



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