



Children 1st response to the Draft Victims' Rights (Scotland) Regulations 2015

November 2015

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 stem.

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.