



RCNI Briefing Note
Criminal Justice (Victims of Crime) Act 2017
July 2018

RCNI briefing: Criminal Justice (Victims of Crime) Act 2017

Introduction

This Act is now almost completely in force¹. An electronic version of it may be accessed online through the weblink below.²

Many of the amendments recommended by RCNI and other organisations, particularly the Victims' Rights Alliance (VRA), have been taken on board in the Act by Government. This happened through a lengthy process of consultation, advocacy, discussion and reappraisal, which is reflected in the Oireachtas debates themselves. We are encouraged by the positive response to our suggestions on all sides of the Dáil and the Seanad, and we note that this Act is regarded by Government as well as Opposition parties, as a starting point – a beginning, not an end. In general, RCNI feels that this Act does a reasonable job of transposing the EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA³.

This Briefing follows the order of the Act, which is divided into several Parts. It is not intended to be exhaustive, but to list the main provisions under each Part. Note that the wording of the Act is paraphrased for simplicity and ease of reference; where the actual wording of the statute is used, it will be in quotation marks.

Part 1: Preliminary

Section 2: Interpretation

This is the definition section of the Act. The most important definitions are:

“family member”: this is very broad. It covers spouses, civil partners, cohabitants, step children, half siblings, any person who is {or was if victim is now dead) dependent on the victim, and also, any person who has (or had if the victim is now dead), such a close connection with the victim that he or she should be treated as that victim's family member, in the view of a judge, Garda (AGS), or someone employed by the DPP's office, Irish Prison Service, or Garda Ombudsman Commission (GSOC), among others.

“protection measure”: anything which is meant to keep victim safe and well by limiting or preventing altogether, “contact with, or repeat victimisation, retaliation, intimidation of, the victim” by the person accused of the crime, or others acting on his/her behalf. It includes advice about personal safety, orders under the Domestic Violence Act 1996, anti-harassment orders, applications to remand the accused in custody or put suitable conditions on his/her bail;

¹ Some courts have not yet been equipped with video-link and/or screens. The Act will be amended to apply to these courts also once the relevant equipment is in place.

² <http://www.irishstatutebook.ie/eli/2017/act/28/enacted/en/html>

³ Available online through this weblink: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2012.315.01.0057.01.ENG&toc=OJ:L:2012:315:TOC

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“secondary victimisation” means victimisation which happens as part of the response of “institutions and individuals” to victims;

“special measure” means one of a closed list of devices and procedures intended to make it easier for victims to give evidence, under Sections 17 and 19 of the Act [such as video-link evidence, use of screens e.g];

“specific protection need” means a need which is identified by AGS or GSOC as part of an individual assessment of each victim’s needs[under Sections 15 and 16 of the Act]; and

“victim” – is a natural person who has suffered harm, “including physical, mental or emotional harm or economic loss”, which was directly caused by an offence. Note that under Section 4(2), for the Act to apply, it does not have to be proved that an offence has been committed, nor does it have to be proved that the person concerned suffered any harm caused by an offence. Mere assertion that harm has been directly caused by an offence, is enough. Where the victim has died as a result of the crime, the term “victim” means a “family member” as defined above, provided that s/he is not being investigated or has not been charged with that crime.

Note also the effect of Section 4(1): With the exception of the right to request information about any decision not to prosecute, or not to continue prosecuting, an accused person under Section 8(2) (c), (d), (e) or (f), the Act applies to proceedings already in being at the time that it is commenced (brought into force).

Part 2: Right to Information

Section 7: Information on first contact

Section 7 (1) - At the moment of first contact, victims are entitled to information from AGS or GSOC on 15 different topics. The most important of these are:

- (a) Information about “appropriate specialist services (which may include psychological support services)”;
- (b) How to make a complaint to AGS or GSOC about the crime;
- (c) Where/how to enquire about this complaint;
- (h) How a victim might be protected, including via protection measures;
- (k) How to make a Victim Impact Statement;
- (l) Where and how to make a complaint about any State agency: AGS, GSOC, DPP, the Courts Service in particular;
- (n) The kind of case in which legal advice and legal aid may be available to victims: this is relevant to victims of sexual crime, as they have a right to separate legal representation on

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applications for leave to adduce evidence of their “previous sexual history”, under Section 4A of the Criminal Law (Rape) Act 1981 as amended;

Other information rights include the right to be told about interpretation, about special arrangements and procedures for child victims (also often relevant to victims of sexual violence), arrangements for victim compensation, payment of victim expenses involved in going to Court, and details of any restorative justice schemes available.

Section 7(4) – (8): Accompaniment

These subsections deal with victims’ rights to be accompanied by a person of their choice and/or their legal representative, when making first contact with AGS or GSOC. Where someone from AGS or GSOC objects to an individual accompanying person, s/he must tell the victim that s/he still has the right to be accompanied and can make arrangements to have someone else replace that person. They can only object if it would be contrary to the victim’s best interests or would damage any investigation or prosecution, to have that person present.

Section 7(9): Referral

Whenever a victim consents, someone from AGS or GSOC may refer the victim to be referred to an appropriate, and “where relevant specialist, service which provides support for victims”.

Section 8: Information regarding investigations and criminal proceedings

This section lists the information rights of victims who have made a formal complaint to either AGS or GSOC. Note the following in particular:

Victims must be informed about their right to request certain information about the progress of their case (Section 8(1));

Victims have the right to request the following information from AGS, DPP, GSOC or the Irish Prison Service (IPS) as the case may be (Section 8(2)):

- Information about significant developments in the case, including any arrests, charges, bail position including any conditions, date and place of trial (if any) and nature of any offences charged (if any);
- Information about any decision to discontinue or not to proceed with any investigation, and a summary of the reasons for this decision. This also applies to decisions to “divert” the prosecution of any young people under 18;
- Where a person is convicted, the date and place of any sentencing or appeal hearing, the details of the sentence itself including any additional orders made at the time (such as for compensation, or the conditions attached to a post-release supervision order to give two examples);
- Any release, including by escape, from custody pending trial;

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- Convicted person's release date from prison
- Any temporary release, transfer, escape, or death of the person(s) convicted in their case. This also applies to person(s) detailed in child detention schools or other designated centre, and
- A copy of any statement(s) made by victim to AGS or GSOC, including a Victim Impact Statement.

Section 9: Decisions regarding prosecution of offences

This Section gives victims the right to be informed of their right to request a review of any decision not to prosecute in their case as well as the procedure for making such a request.

Section 10: Review of decisions in relation to prosecution

The general rule under this Section is that a victim has 28 days after receiving information about a decision not to prosecute in their case, to request a review of that decision. In the case of decisions made by the DPP, the victim has 28 days after receiving the decision to request reasons for that decision, and the **further** period of 28 days for requesting a review runs from the date on which those reasons are sent to the victim. Either AGS or DPP may extend the period for making the request for a review if it is satisfied that "circumstances exist that warrant that extension".

Section 11: Limitation on provision of information

This means that information will not be provided to a victim if its release could damage an investigation or prosecution, endanger anyone, or endanger the security of the State. These decisions to withhold information can only be made by certain designated senior officers, and the reasons for each of them must be recorded.

Part 3 – Protection of Victims during Investigation and Criminal Proceedings

Sections 12 and 14 – Complaints and Conduct of interviews and medical examinations, respectively

Accompaniment when making a complaint to OR attending interview to give statement to, AGS:

As with Sections 7(4) to (8) above, these Sections set out in detail victims' rights to be accompanied by a person of their choice and/or their legal representative, when making a complaint or making a statement to, AGS or GSOC. Where someone from AGS or GSOC objects to an individual accompanying person, s/he must tell the victim that s/he still has the right to be accompanied and can make arrangements to have someone else replace that person. They can only object if it would be contrary to the victim's best interests or would damage any investigation or prosecution, to have that person present.

Section 12 – Acknowledgement of complaint/translation of acknowledgement – This Section also provides for victims to be given a written acknowledgement of their complaint together with contact details for any queries, in translation if needs be.

Section 14 – Also provides for victims to be offered an interview by the investigator (AGS or GSOC) as soon as possible, and for such interviews to be carried out only where necessary. Similarly, medical examinations of victims arranged by AGS or GSOC must be limited to those which are “strictly necessary for the purpose of the investigation.”

Sections 15 and 16: Assessment of victim and application of protection measures and special measures during investigation, respectively

Section 15 means that every victim must be assessed by AGS or GSOC to find out if they have any protection needs, whether they could benefit from any protection measures, and whether because of their particular vulnerability to “secondary and repeat victimization, intimidation and retaliation”, benefit from special measures during the course of the investigation, the criminal proceedings or both. There is a detailed list of factors which must be taken into account in the assessment. These include the “particular vulnerability” of victims of “sexual violence or exploitation”. The results of these assessments must be set out in a report which is then transmitted to the official prosecuting the case. The views of the victim must be taken into account in the report, and every child victim is **presumed** to have protection needs. In making an assessment of a child’s protection needs, the AGS or GSOC officer must take account of the best interests of the child and their own views, to the extent that this is possible having regard to his/her age and maturity, and any concerns raised by a parent or guardian not under investigation themselves for the relevant crime.

Section 16 sets out in detail the procedures for implementing protection measures during investigation, and for ensuring that any report which recommends special measures in court, is made available to the prosecutor. It also provides for further assessments if circumstances change after the first one is completed.

Sections 17 and 18: Special measures during investigation and Appropriate persons, respectively

Section 17 - This list of special measures includes obligations to ensure interviews are carried out by appropriately trained interviewers in suitable premises, and where possible, in each case by the same interviewer. In the case of victims of sexual violence, the victim should be offered an AGS or GSOC interviewer of the same sex, where s/he so requests. There are some constraints on this list, related to pressure of time, to the risk of harm to anyone and to possible damage to the investigation or to criminal proceedings.

Section 18 – This sets out the procedure for accompaniment of child victims where the child’s parent or guardian for whatever reason(s), cannot be present. In these circumstances, a child may be accompanied by a relative or other person who is over the age of 18 as their “appropriate person” – either to interview by AGS or GSOC or in court.

Section 19: Special measures during criminal proceedings

Wherever AGS or GSOC have identified specific protection needs of a victim during the Section 15 assessment, the prosecutor must take account of these needs when deciding whether to make an application for certain special measures in court, namely the exclusion of the public or some part of it, from the court, and orders from the judge (“directions”) about the questioning of the victim in respect of his or her private life, **in addition to** certain special measures listed in Part III of the Criminal Evidence Act 1992 as amended. This list includes giving evidence by video-link, the use of screens in court and the use of intermediaries at court.

Section 20: Power to exclude public

This Section sets out the right of the prosecutor to apply for the exclusion of the public, or any member of it, from the court, other than press representatives and court staff. Before s/he can exclude the public or any member of it from the court, the judge must be satisfied that it is necessary to protect the victim from “secondary and repeat victimization, intimidation or retaliation”, given the “nature and circumstances” of the case, and that it would not be contrary to the interests of justice to exclude the public, or any member of it, from the court.

Section 21: Questioning in respect of private life of victim

Once again, before s/he can make an order restricting questioning of the victim in respect of his/her private life which is “unrelated to the offence”, the judge must be satisfied that it is necessary to protect the victim from “secondary and repeat victimization, intimidation or retaliation”, given the “nature and circumstances” of the case, and that it would not be contrary to the interests of justice to make such an order.

Sections 22-25: Interpretation and Translation

These Sections set out the conditions under which a victim may access assistance if s/he finds it difficult or impossible to understand information given to them by AGS/GSOC/DPP/IPS or the Courts Service (CS). All communication, written or oral, should in “simple and accessible language” and should “take into account the personal characteristics of the victim including any disability”, which might affect their ability to understand what they are being told. This provision is surely wide enough to allow for special arrangements to be made to enable victims with a visual or aural disability to be facilitated with assistance. There is a separate provision for the use of interpreters during investigation, at the victim’s request or wherever the AGS or GSOC officer discerns a need for it. Victims may also request, or be given an interpreter at court, iff an AGS or DPP officer perceives a need for one. They may also be supplied with translations of any document which a victim would see in the usual course of events, such as a copy of their own statement or victim impact statement.

A request for translation or interpretation may be refused, if the AGS/GSOC/DPP officer does not think that one is actually needed, because the victim can understand English well enough to know what is going on or to express themselves in evidence (as the case may be) or for certain other reasons related to the risk of harm to any person, the security of the state, or to any investigation or prosecution. If that happens, the victim must be supplied with the reasons for the refusal in writing.

S/he has the right to request a review of that refusal, within 7 days after receiving the notification in writing. This time may be extended where the appropriate officer (AGS/DPP/GSOC) is satisfied that the circumstances warrant such an extension. Finally, it is specified that a refusal to supply interpretation or translation services must not prevent criminal proceedings from going ahead.

Part 4: Amendments

Section 30: Amendment of Criminal Evidence Act 1992: [n b these amendments mostly relate to Special Measures in Court]⁴

This Section contains a list of amendments to Part III of the Criminal Evidence Act 1992, almost all relating to special measures in court. Section numbers below in *italics* are the relevant Section numbers in the **Criminal Evidence Act 1992**.

Note that the special measures do not apply to accused persons in any case, and they do not always apply to witnesses other than victims of the crime. Note also that in every case, the issue of special measures is decided by the judge. Generally speaking, if a victim is either under 18 or has a “mental disorder” as defined in the Act, s/he is more likely to be able to benefit from special measures.

Section 12 CEA 1992 as amended

Interpretation and application – Part III

This is the definition section in this Part III of the 1992 Act. Some key definitions are identified below:

“family member”: is defined as in the Criminal Justice (Victims of Crime) Act 2017;

“relevant offence” replaces the earlier expression in the 1992 Act, “an offence to which this Part applies”. However, the substance is much the same. A relevant offence is a sexual offence, or one involving violence or the threat of violence to anyone, or one of a closed list of offences under the Child Trafficking and Pornography Act 1998 and the Criminal Law (Human Trafficking) Act 2008, respectively;

“victim” is defined as in the Criminal Justice (Victims of Crime) Act 2017, and it is also specified that this Part III can apply although no offence is proven, and whether or not it has been proved that the victim suffered harm caused by an offence.

Section 13 CEA 1992 as amended – Evidence through television link [“Video-link”]

This section deals with giving evidence by “live television link” (video-link). Its use is now broadened to include victims of **non-relevant** offences, subject to the provisions of Section 14AA (see below further). In addition, witnesses and victims of a relevant offence who are under 18 and those with a mental disorder, may give evidence by video-link unless the judge sees “good reason to the contrary”. Any witness or victim over 18 with no mental disorder who wishes to give evidence by video-link can only do so “with the leave of the court”.

Section 14 CEA 1992 as amended – Evidence through Intermediary

⁴ An amended version of Criminal Evidence Act 1992 incorporating all these changes may be accessed via this web-link: <http://revisedacts.lawreform.ie/eli/1992/act/12/revised/en/pdf?annotations=true>

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This section allows for questions to be put to a victim or other witness of a relevant offence, via an intermediary, if s/he is under 18 or has a mental disorder as defined in the Act and the judge is satisfied that the interests of justice require this, “having regard to the age or mental condition of the witness”. The 2017 Act broadens its application out to victims of non-relevant offences, once again subject to the provisions of Section 14AA (see further below) are met.

Section 14A CEA 1992 as amended – Placement of screens etc for giving of evidence

This new section allows for screens to be placed between the witness or victim of a relevant offence who is under 18 and the accused, so that the witness cannot see the accused, “unless the court is satisfied....that [placing a screen would be] contrary to the interests of justice”. A victim of a non-relevant offence, whether s/he is over or under 18, may have a screen placed in the same way, if the judge is satisfied that the interests of justice so require and subject to the provisions of Section 14AA (see further below). Note that this section applies only when a victim or witness is to give evidence “other than by live television link”, and that it does not apply at all to victims or witnesses with a mental disorder.

Section 14AA CEA 1992 as amended – Matters to be taken into account under sections 13, 14 and 14A regarding victims

This section applies whenever a **victim of a non-relevant offence** is having an application made on his or her behalf for the following special measures only: giving evidence by video-link, having questions put through an intermediary, or having a screen placed between him/her and the accused person so that the victim cannot see the accused when giving evidence. It stipulates that when deciding to grant permission for any of these measures to be used in case involving a victim of a non-relevant offence, the judge must consider the need to protect the victim from “secondary and repeat victimization, intimidation or retaliation”, and must do so by taking into account both “the nature and circumstances of the case” and the “personal characteristics” of the victim.

Section 14B CEA 1992 as amended – Wigs and gowns

This section provides that whenever a victim or witness of a relevant offence who is under 18 is giving evidence, both judges and lawyers should appear without wigs or gowns. This also applies if a victim of a non-relevant offence who is under 18, is giving evidence, again subject to Section 14AA above. Wigs and gowns should not be worn either if the witness or victim, as the case may be, has a mental disorder as defined in the Act.

Section 14(C) CEA 1992 as amended – Protection against cross-examination by accused

This section operates to prevent victims and other witnesses of relevant offences, if they are under 18, from being cross-examined in person by the accused. In the case of witnesses and victims under 18, the judge “shall”, that is must, order that any cross-examination be conducted by a lawyer on behalf of the accused unless s/he thinks that the interests of justice require the cross-examination to be carried out by the accused in person. If a victim (not another witness) of a **sexual offence only** who is over 18 wishes to avail of this protection, the judge “may” (not must) order that any cross-examination be conducted by a lawyer on behalf of the accused unless s/he thinks that the interests

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of justice require the cross-examination to be carried out by the accused in person. This protection is therefore not available to victims of non-relevant offences, and also, not available to victims over 18 of relevant offences which are not sexual in nature.

Section 16(1)(b) CEA 1992 as amended – Video-recording as evidence at trial

This section provides for pre-recorded (video) statements made to a member of An Garda Síochána or other competent person, to be admitted at trial as evidence of anything about which oral evidence could have been given, provided that in all the circumstances, the judge is satisfied that this does not mean any unfairness for the accused person, and provided also that the victim or witness, as applicable, is available at court to be cross-examined (generally by video-link). It applies **only** to victims of any offence who are under 18, as well as to witnesses and victims under 18 of sexual offences, and/or one or more of a closed list of offences under the Child Trafficking and Pornography Act 1998 and the Criminal Law (Human Trafficking) Act 2008, respectively. It also applies to witnesses, or victims as the case may be, who have a “mental disorder” as defined in the Act.

Section 19 CEA 1992 as amended – Application of Part III to persons with a [mental disorder]

As outlined above, this section applies certain special measures available to persons under 18 to persons with a mental disorder, as defined in the Act⁵. These special measures are the use of intermediaries, the absence of wigs and gowns, and the use of pre-recorded statements.

Ref: RCNI/LPD/2

Date: 17 July 2018

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⁵ “mental disorder”: “includes a mental illness, mental disability, dementia or any disease of the mind” – see Section 5(6) of the Criminal Justice Act 1993, as substituted by Section 4 of the Criminal Procedure Act 2010.