



# Domestic Violence, Crime and Victims Act 2004

## 2004 CHAPTER 28

### PART 3

#### VICTIMS ETC

### CHAPTER 1

#### THE VICTIMS' CODE

## 32 Code of practice for victims

- (1) The Secretary of State [<sup>F1</sup>for Justice] must issue a code of practice as to the services to be provided to a victim of criminal conduct by persons appearing to him to have functions relating to—
  - (a) victims of criminal conduct, or
  - (b) any aspect of the criminal justice system.
- (2) The code may restrict the application of its provisions to—
  - (a) specified descriptions of victims;
  - (b) victims of specified offences or descriptions of conduct;
  - (c) specified persons or descriptions of persons appearing to the Secretary of State [<sup>F1</sup>for Justice] to have functions of the kind mentioned in subsection (1).
- (3) The code may include provision requiring or permitting the services which are to be provided to a victim to be provided to one or more others—
  - (a) instead of the victim (for example where the victim has died);
  - (b) as well as the victim.
- (4) The code may make different provision for different purposes, including different provision for—

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- (a) different descriptions of victims;
  - (b) persons who have different functions or descriptions of functions;
  - (c) different areas.
- (5) The code may not require anything to be done by—
- (a) a person acting in a judicial capacity;
  - (b) a person acting in the discharge of a function of a member of the Crown Prosecution Service which involves the exercise of a discretion.
- (6) In determining whether a person is a victim of criminal conduct for the purposes of this section, it is immaterial that no person has been charged with or convicted of an offence in respect of the conduct.
- (7) In this section—
- “criminal conduct” means conduct constituting an offence;
  - “specified” means specified in the code.

#### Textual Amendments

**F1** Words in s. 32 inserted (22.8.2007) by [The Secretary of State for Justice Order 2007 \(S.I. 2007/2128\)](#), arts. 1(2), 8, **Sch. para. 10(2)**

#### Modifications etc. (not altering text)

**C1** [S. 32](#): functions transferred (22.8.2007) by [The Secretary of State for Justice Order 2007 \(S.I. 2007/2128\)](#), arts. 1(2), **4(2)(a)** (with art. 7)

### 33 Procedure

- (1) Subsections (2) to (7) apply in relation to a code of practice required to be issued under section 32.
- (2) The Secretary of State [<sup>F2</sup>for Justice] must prepare a draft of the code.
- (3) In preparing the draft the Secretary of State [<sup>F2</sup>for Justice] must consult the Attorney General and the [<sup>F3</sup>Secretary of State for the Home Department].
- (4) After preparing the draft the Secretary of State [<sup>F2</sup>for Justice] must—
- (a) publish the draft;
  - (b) specify a period during which representations about the draft may be made to him.
- (5) The Secretary of State [<sup>F2</sup>for Justice] must—
- (a) consider in consultation with the Attorney General and the [<sup>F3</sup>Secretary of State for the Home Department] any representations made to him before the end of the specified period about the draft;
  - (b) if he thinks it appropriate, modify the draft in the light of any such representations.
- (6) After the Secretary of State [<sup>F2</sup>for Justice] has proceeded under subsection (5) he must lay the code before Parliament.
- (7) When he has laid the code before Parliament the Secretary of State [<sup>F2</sup>for Justice] must bring it into operation on such day as he appoints by order.

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- (8) The Secretary of State [F<sup>2</sup>for Justice] may from time to time revise a code previously brought into operation under this section; and subsections (2) to (7) apply to a revised code as they apply to the code as first prepared.
- (9) But the Secretary of State [F<sup>2</sup>for Justice] may revise a code under subsection (8) only if it appears to him that the proposed revisions would not result in—
- (a) a significant reduction in the quality or extent of the services to be provided under the code, or
  - (b) a significant restriction in the description of persons to whom services are to be provided under the code.

#### Textual Amendments

- F2** Words in s. 33 inserted (22.8.2007) by [The Secretary of State for Justice Order 2007 \(S.I. 2007/2128\)](#), arts. 1(2), 8, **Sch. para. 10(2)**
- F3** Words in s. 33 substituted (22.8.2007) by [The Secretary of State for Justice Order 2007 \(S.I. 2007/2128\)](#), arts. 1(2), 8, **Sch. para. 10(3)**

#### Modifications etc. (not altering text)

- C2** S. 33: functions transferred (22.8.2007) by [The Secretary of State for Justice Order 2007 \(S.I. 2007/2128\)](#), arts. 1(2), 4(2)(a), 5(2)(a) (with art. 7)

### 34 Effect of non-compliance

- (1) If a person fails to perform a duty imposed on him by a code issued under section 32, the failure does not of itself make him liable to criminal or civil proceedings.
- (2) But the code is admissible in evidence in criminal or civil proceedings and a court may take into account a failure to comply with the code in determining a question in the proceedings.

## CHAPTER 2

### REPRESENTATIONS AND INFORMATION

#### *Imprisonment or detention*

### 35 Victims' rights to make representations and receive information

- (1) This section applies if—
- (a) a court convicts a person (“the offender”) of a sexual [F<sup>4</sup>, violent or terrorism] offence, and
  - (b) a relevant sentence is imposed on him in respect of the offence.
- (2) But section 39 applies (instead of this section) if a hospital direction and a limitation direction are given in relation to the offender.
- (3) The local probation board for the area in which the sentence is imposed [F<sup>5</sup>, or the provider of probation services operating in the local justice area in which the sentence is imposed, ] must take all reasonable steps to ascertain whether a person who appears

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to the board to be the victim of the offence or to act for the victim of the offence wishes—

- (a) to make representations about the matters specified in subsection (4);
- (b) to receive the information specified in subsection (5).

[<sup>F6</sup>(3A) The provider of probation services mentioned in subsection (3) is the provider of probation services identified as such by arrangements under section 3 of the Offender Management Act 2007.]

(4) The matters are—

- (a) whether the offender should be subject to any licence conditions or supervision requirements in the event of his release;
- (b) if so, what licence conditions or supervision requirements.

(5) The information is information about any licence conditions or supervision requirements to which the offender is to be subject in the event of his release.

(6) If a person whose wishes have been ascertained under subsection (3) makes representations to the local probation board [<sup>F7</sup>or provider of probation services] mentioned in that subsection or the [<sup>F8</sup>relevant probation body] about a matter specified in subsection (4), the [<sup>F8</sup>relevant probation body] must forward those representations to the persons responsible for determining the matter.

(7) If a local probation board [<sup>F9</sup>or a provider of probation services] has ascertained under subsection (3) that a person wishes to receive the information specified in subsection (5), the [<sup>F10</sup>relevant probation body] must take all reasonable steps—

- (a) to inform the person whether or not the offender is to be subject to any licence conditions or supervision requirements in the event of his release,
- (b) if he is, to provide the person with details of any licence conditions or supervision requirements which relate to contact with the victim or his family, and
- (c) to provide the person with such other information as the [<sup>F10</sup>relevant probation body] considers appropriate in all the circumstances of the case.

[<sup>F11</sup>(8) In this section “the relevant probation body” is—

- (a) in a case where the offender is to be supervised on release by an officer of a local probation board or an officer of a provider of probation services, that local probation board or that provider of probation services (as the case may be);
- (b) in any other case—
  - (i) if the prison or other place in which the offender is detained is situated in the area of a local probation board, that local probation board; and
  - (ii) if that prison or other place is not in such an area, the provider of probation services operating in the local justice area in which the prison or other place in which the offender is detained is situated, that is identified as the relevant probation body by arrangements under section 3 of the Offender Management Act 2007.]

#### Textual Amendments

**F4** Words in s. 35(1)(a) substituted (12.4.2019) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(3), **Sch. 4 para. 10(a)** (with s. 25(3)(4))

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| <b>F5</b>  | Words in s. 35(3) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, <b>Sch. 1 para. 20(3)(a)</b>        |
| <b>F6</b>  | S. 35(3A) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, <b>Sch. 1 para. 20(3)(b)</b>                |
| <b>F7</b>  | Words in s. 35(6) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, <b>Sch. 1 para. 20(3)(c)(i)</b>     |
| <b>F8</b>  | Words in s. 35(6) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, <b>Sch. 1 para. 20(3)(c)(ii)</b> |
| <b>F9</b>  | Words in s. 35(7) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, <b>Sch. 1 para. 20(3)(d)(i)</b>     |
| <b>F10</b> | Words in s. 35(7) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, <b>Sch. 1 para. 20(3)(d)(ii)</b> |
| <b>F11</b> | S. 35(8) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, <b>Sch. 1 para. 20(3)(e)</b>              |

### *Hospital orders*

## **36 Victims' rights: preliminary**

- (1) This section applies if the conditions in subsections (2) and (3) are met.
  - (2) The first condition is that one of these applies in respect of a person (“the patient”) charged with a sexual [<sup>F12</sup>, violent or terrorism] offence—
    - (a) the patient is convicted of the offence;
    - (b) a verdict is returned that the patient is not guilty of the offence by reason of insanity;
    - (c) a finding is made—
      - (i) under section 4 of the Criminal Procedure (Insanity) Act 1964 (c. 84) that the patient is under a disability, and
      - (ii) under section 4A of that Act that he did the act or made the omission charged against him as the offence.
  - (3) The second condition is that a hospital order [<sup>F13</sup>, whether with or without a restriction order,] is made in respect of the patient by a court dealing with him for the offence.
  - (4) The local probation board for the area in which the determination mentioned in subsection (2)(a), (b) or (c) is made [<sup>F14</sup>or the provider of probation services operating in the local justice area in which the determination mentioned in subsection (2)(a), (b) or (c) is made ] must take all reasonable steps to ascertain whether a person who appears to the board to be the victim of the offence or to act for the victim of the offence wishes—
    - (a) to make representations about the matters specified in subsection (5);
    - (b) to receive the information specified in subsection (6).
- [<sup>F15</sup>(4A) The provider of probation services mentioned in subsection (4) is the provider of probation services identified as such by arrangements under section 3 of the Offender Management Act 2007.]
- (5) The matters are—
    - (a) whether the patient should be subject to any conditions in the event of his discharge from hospital [<sup>F16</sup>while a restriction order is in force in respect of him];

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- (b) if so, what conditions [F17;
  - (c) what conditions he should be subject to in the event of his discharge from hospital under a community treatment order].
- (6) The information is information about any conditions to which the patient is to be subject in the event of his discharge from hospital.

#### Textual Amendments

- F12** Words in s. 36(2) substituted (12.4.2019) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(3), **Sch. 4 para. 10(b)** (with s. 25(3)(4))
- F13** Words in s. 36(3) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 2(2)** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)
- F14** Words in s. 36(4) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(4)(a)**
- F15** S. 36(4A) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(4)(b)**
- F16** Words in s. 36(5)(a) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 2(3)(a)** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)
- F17** S. 36(5)(c) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 2(3)(b)** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)

#### [F18] 36A Supplemental provision for case where no restriction order made

- (1) This section applies if, in a case where section 36 applies, the hospital order in respect of the patient was made without a restriction order.
- (2) Subsection (3) applies if a person who appears to the local probation board or provider of probation services mentioned in section 36(4) to be the victim of the offence or to act for the victim of the offence, when his wishes are ascertained under section 36(4), expresses a wish—
  - (a) to make representations about a matter specified in section 36(5), or
  - (b) to receive the information specified in section 36(6).
- (3) The local probation board or the provider of probation services must—
  - (a) notify the managers of the hospital in which the patient is detained of that person's wish and of that person's name and address, and
  - (b) notify that person of the name and address of the hospital.
- (4) Subsection (5) applies if a person who appears to the local probation board or provider of probation services mentioned in section 36(4) to be the victim of the offence or to act for the victim of the offence, subsequently to his wishes being ascertained under section 36(4), expresses a wish to do something specified in subsection (2)(a) or (b).
- (5) The local probation board or provider of probation services mentioned in section 36(4) must take all reasonable steps—
  - (a) to ascertain whether the hospital order made in respect of the patient continues in force and whether a community treatment order is in force in respect of him, and
  - (b) if the board or provider ascertains that the hospital order does continue in force—

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- (i) to notify the managers of the relevant hospital of that person's wish, and
  - (ii) to notify that person of the name and address of the hospital.
- (6) The relevant hospital is—
- (a) the hospital in which the patient is detained, or
  - (b) if a community treatment order is in force in respect of the patient, the responsible hospital.]

#### Textual Amendments

**F18** S. 36A inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), Sch. 6 para. 3 (as amended by S.I. 2008/912, Sch. 1 para. 24(2)(a)) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), 2(o) (with art. 3, Sch.)

### 37 [F19] Representations where restriction order made]

- (1) This section applies [F20]if, in a case where section 36 applies, the hospital order in respect of the patient was made with a restriction order].
- (2) If—
- (a) a person makes representations about a matter specified in section 36(5) to the local probation board [F21]or provider of probation services] mentioned in section 36(4) or the [F22]relevant probation body], and
  - (b) it appears to the [F22]relevant probation body] that the person is the victim of the offence or acts for the victim of the offence,
- the [F22]relevant probation body] must forward the representations to the persons responsible for determining the matter.
- (3) The duty in subsection (2) applies only while the restriction order made in respect of the patient is in force.
- (4) The Secretary of State must inform the [F23]relevant probation body] if he is considering—
- (a) whether to give a direction in respect of the patient under section 42(1) of the Mental Health Act 1983 (c. 20) (directions lifting restrictions),
  - (b) whether to discharge the patient under section 42(2) of that Act, either absolutely or subject to conditions, or
  - (c) if the patient has been discharged subject to conditions, whether to vary the conditions.
- (5) [F24]The First-tier Tribunal or the Mental Health Review Tribunal for Wales] must inform the [F25]relevant probation body] if—
- (a) an application is made to the tribunal by the patient under section 69, 70 or 75 of the Mental Health Act 1983 (applications concerning restricted patients), or
  - (b) the Secretary of State refers the patient's case to the tribunal under section 71 of that Act (references concerning restricted patients).
- (6) Subsection (7) applies if—
- (a) the [F26]relevant probation body] receives information under subsection (4) or (5), and



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- (b) a person who appears to the [<sup>F26</sup>relevant probation body] to be the victim of the offence or to act for the victim of the offence—
- (i) when his wishes were ascertained under section 36(4), expressed a wish to make representations about a matter specified in section 36(5), or
  - (ii) has made representations about such a matter to the [<sup>F26</sup>relevant probation body] or the local probation board [<sup>F27</sup>or provider of probation services] mentioned in section 36(4).
- (7) The [<sup>F28</sup>relevant probation body] must provide the information to the person.
- [<sup>F29</sup>(8) In this section, “the relevant probation body” is—
- (a) in a case where the patient is to be discharged subject to a condition that he reside in a particular area, which is or is part of the area of a local probation board, that local probation board;
  - (b) in a case where the patient is to be discharged subject to a condition that he reside in a particular area other than one mentioned in paragraph (a), the provider of probation services operating in that area that is identified as the relevant probation body by arrangements under section 3 of the Offender Management Act 2007;
  - (c) in any other case—
    - (i) if the hospital in which the patient is detained is situated in the area of a local probation board, that area; and
    - (ii) if that hospital is not so situated, the provider of probation services operating in the local justice area in which the hospital in which the patient is detained is situated that is identified as the relevant probation body by arrangements under section 3 of the Offender Management Act 2007.]

#### Textual Amendments

- F19** S. 37 title substituted (3.11.2008) by virtue of [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 4](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)
- F20** Words in s. 37(1) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 4](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)
- F21** Words in s. 37(2)(a) inserted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\)](#), arts. 1, 3, [Sch. 1 para. 20\(5\)\(a\)\(i\)](#)
- F22** Words in s. 37(2) substituted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\)](#), arts. 1, 3, [Sch. 1 para. 20\(5\)\(a\)\(ii\)](#)
- F23** Words in s. 37(4) substituted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\)](#), arts. 1, 3, [Sch. 1 para. 20\(5\)\(b\)](#)
- F24** Words in s. 37(5) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), arts. 1(1), 9(1), [Sch. 3 para. 205](#)
- F25** Words in s. 37(5) substituted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\)](#), arts. 1, 3, [Sch. 1 para. 20\(5\)\(c\)](#)
- F26** Words in s. 37(6) substituted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\)](#), arts. 1, 3, [Sch. 1 para. 20\(5\)\(d\)\(i\)](#)
- F27** Words in s. 37(6) inserted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\)](#), arts. 1, 3, [Sch. 1 para. 20\(5\)\(d\)\(ii\)](#)
- F28** Words in s. 37(7) substituted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\)](#), arts. 1, 3, [Sch. 1 para. 20\(5\)\(e\)](#)



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**F29** S. 37(8) substituted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\)](#), arts. 1, 3, [Sch. 1 para. 20\(5\)\(f\)](#)

### **[<sup>F30</sup>37A Representations where restriction order not made**

- (1) This section applies if, in a case where section 36 applies, the hospital order in respect of the patient was made without a restriction order.
- (2) Subsection (3) applies if—
  - (a) a person makes representations about a matter specified in section 36(5) to the managers of the relevant hospital, and
  - (b) it appears to the managers that the person is the victim of the offence or acts for the victim of the offence.
- (3) The managers must forward the representations to the persons responsible for determining the matter.
- (4) The responsible clinician must inform the managers of the relevant hospital if he is considering making—
  - (a) an order for discharge in respect of the patient under section 23(2) of the Mental Health Act 1983,
  - (b) a community treatment order in respect of the patient, or
  - (c) an order under section 17B(4) of the Mental Health Act 1983 to vary the conditions specified in a community treatment order in force in respect of the patient.
- <sup>F31</sup>(5) .....
- (6) [<sup>F32</sup>The First-tier Tribunal or the Mental Health Review Tribunal for Wales] must inform the managers of the relevant hospital if—
  - (a) an application is made to the tribunal under section 66 or 69 of the Mental Health Act 1983, or
  - (b) the patient's case is referred to the tribunal under section 67 of that Act.
- (7) Subsection (8) applies if—
  - (a) the managers of the relevant hospital receive information under subsection (4)<sup>F33</sup>... or (6), and
  - (b) a person who appears to the managers to be the victim of the offence or to act for the victim of the offence—
    - (i) when his wishes were ascertained under section 36(4), expressed a wish to make representations about a matter specified in section 36(5), or
    - (ii) has made representations about such a matter to the managers of the hospital in which the patient was, at the time in question, detained.
- (8) The managers of the relevant hospital must provide the information to the person.
- (9) The relevant hospital has the meaning given in section 36A(6).]

#### **Textual Amendments**

**F30** S. 37A inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 5](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)

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- F31** S. 37A(5) omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. 39(4)(e)(i), 306(4); S.I. 2012/1319, art. 2(3)
- F32** Words in s. 37A(6) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), arts. 1(1), 9(1), Sch. 3 para. 206
- F33** Words in s. 37A(7)(a) omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. 39(4)(e)(ii), 306(4); S.I. 2012/1319, art. 2(3)

### 38 [F34] Information where restriction order made

- (1) This section applies [F35]if, in a case where section 36 applies, the hospital order in respect of the patient was made with a restriction order].
- (2) Subsection (3) applies if a person who appears to the [F36]relevant probation body] to be the victim of the offence or to act for the victim of the offence—
  - (a) when his wishes were ascertained under section 36(4), expressed a wish to receive the information specified in section 36(6), or
  - (b) has subsequently informed the [F36]relevant probation body] that he wishes to receive that information.
- (3) The [F37]relevant probation body] must take all reasonable steps—
  - (a) to inform that person whether or not the patient is to be subject to any conditions in the event of his discharge;
  - (b) if he is, to provide that person with details of any conditions which relate to contact with the victim or his family;
  - (c) if the restriction order in respect of the patient is to cease to have effect, to notify that person of the date on which it is to cease to have effect;
  - (d) to provide that person with such other information as [F38]the body] considers appropriate in all the circumstances of the case.
- (4) The Secretary of State must inform the [F39]relevant probation body]—
  - (a) whether the patient is to be discharged;
  - (b) if he is, whether he is to be discharged absolutely or subject to conditions;
  - (c) if he is to be discharged subject to conditions, what the conditions are to be;
  - (d) if he has been discharged subject to conditions—
    - (i) of any variation of the conditions by the Secretary of State;
    - (ii) of any recall to hospital under section 42(3) of the Mental Health Act 1983 (c. 20);
  - (e) if the restriction order is to cease to have effect by virtue of action to be taken by the Secretary of State, of the date on which the restriction order is to cease to have effect.
- (5) Subsections (6) and (7) apply (instead of subsection (4)) if—
  - (a) an application is made to [F40]the First-tier Tribunal or the Mental Health Review Tribunal for Wales] by the patient under section 69, 70 or 75 of the Mental Health Act 1983 (c. 20) (applications concerning restricted patients), or
  - (b) the Secretary of State refers the patient's case to [F40]the First-tier Tribunal or the Mental Health Review Tribunal for Wales] under section 71 of that Act (references concerning restricted patients).
- (6) The tribunal must inform the [F41]relevant probation body]—

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- (a) of the matters specified in subsection (4)(a) to (c);
  - (b) if the patient has been discharged subject to conditions, of any variation of the conditions by the tribunal;
  - (c) if the restriction order is to cease to have effect by virtue of action to be taken by the tribunal, of the date on which the restriction order is to cease to have effect.
- (7) The Secretary of State must inform the [<sup>F42</sup>relevant probation body] of the matters specified in subsection (4)(d) and (e).
- (8) The duties in subsections (3) to (7) apply only while the restriction order is in force.
- (9) The [<sup>F43</sup>relevant probation body] has the meaning given in section 37(8).

#### Textual Amendments

- F34** S. 38 title substituted (3.11.2008) by virtue of Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 6** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)
- F35** Words in s. 38(1) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 6** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)
- F36** Words in s. 38(2) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(6)(a)**
- F37** Words in s. 38(3) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(6)(b)(i)**
- F38** Words in s. 38(3)(d) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(6)(b)(ii)**
- F39** Words in s. 38(4) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(6)(c)**
- F40** Words in s. 38(5)(a)(b) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), arts. 1(1), 9(1), **Sch. 3 para. 207**
- F41** Words in s. 38(6) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(6)(d)**
- F42** Words in s. 38(7) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(6)(e)**
- F43** Words in s. 38(9) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(6)(f)**

#### [<sup>F44</sup>38A Information where restriction order not made

- (1) This section applies if, in a case where section 36 applies, the hospital order in respect of the patient was made without a restriction order.
- (2) The responsible clinician must inform the managers of the relevant hospital—
- (a) whether he is to make an order for discharge in respect of the patient under section 23(2) of the Mental Health Act 1983;
  - (b) whether he is to make a community treatment order in respect of the patient;
  - (c) if a community treatment order is to be made in respect of the patient, what conditions are to be specified in the order;
  - (d) if a community treatment order is in force in respect of the patient, of any variation to be made under section 17B(4) of the Mental Health Act 1983 of the conditions specified in the order;

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- (e) if a community treatment order in respect of the patient is to cease to be in force, of the date on which it is to cease to be in force;
- (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, it does not appear to the responsible clinician that the conditions set out in subsection (4) of that section are satisfied, of the date on which the authority for the patient's detention is to expire.

<sup>F45</sup>(3) .....

(4) Subsection (5) applies if—

- (a) an application is made to [<sup>F46</sup>the First-tier Tribunal or the Mental Health Review Tribunal for Wales] under section 66 or 69 of the Mental Health Act 1983,
- (b) the patient's case is referred to [<sup>F46</sup>the First-tier Tribunal or the Mental Health Review Tribunal for Wales] under section 67 of that Act, or
- (c) the managers of the relevant hospital refer the patient's case to [<sup>F46</sup>the First-tier Tribunal or the Mental Health Review Tribunal for Wales] under section 68 of that Act.

(5) The tribunal must inform the managers of the relevant hospital if it directs that the patient is to be discharged.

(6) Subsection (7) applies if a person who appears to the managers of the relevant hospital to be the victim of the offence or to act for the victim of the offence—

- (a) when his wishes were ascertained under section 36(4), expressed a wish to receive the information specified in section 36(6), or
- (b) has subsequently informed the managers of the relevant hospital that he wishes to receive that information.

(7) The managers of the relevant hospital order must take all reasonable steps—

- (a) to inform that person whether the patient is to be discharged under section 23 or 72 of the Mental Health Act 1983;
- (b) to inform that person whether a community treatment order is to be made in respect of the patient;
- (c) if a community treatment order is to be made in respect of the patient and is to specify conditions which relate to contact with the victim or his family, to provide that person with details of those conditions;
- (d) if a community treatment order is in force in respect of the patient and the conditions specified in the order are to be varied under section 17B(4) of the Mental Health Act 1983, to provide that person with details of any variation which relates to contact with the victim or his family;
- (e) if a community treatment order in respect of the patient is to cease to be in force, to inform that person of the date on which it is to cease to be in force;
- (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, the authority for the patient's detention is not to be renewed, to inform that person of the date on which the authority is to expire;
- (g) to provide that person with such other information as the managers of the relevant hospital consider appropriate in all the circumstances of the case.

(8) The relevant hospital has the meaning given by section 36A(6).]

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#### Textual Amendments

- F44** Ss. 38A, 38B inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), **Sch. 6 para. 7** (as amended by [S.I. 2008/912, Sch. 1 para. 24\(2\)\(b\)](#)) (with s. 50(8)-(13)); [S.I. 2008/1900](#), arts. 1(1), **2(o)** (with art. 3, Sch.)
- F45** [S. 38A\(3\)](#) omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 39(4)(e)(i)**, 306(4); [S.I. 2012/1319](#), art. 2(3)
- F46** Words in s. 38A(4)(a)-(c) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), arts. 1(1), 9(1), **Sch. 3 para. 208**

#### [<sup>F47</sup> **38B** Removal of restriction

- (1) This section applies if, in a case where section 36 applies—
  - (a) the hospital order in respect of the patient was made with a restriction order, and
  - (b) the restriction order ceases to have effect while the hospital order continues in force.
- (2) Subsection (3) applies if a person who appears to the relevant probation body to be the victim of the offence or to act for the victim of the offence—
  - (a) when his wishes were ascertained under section 36(4), expressed a wish to make representations about a matter specified in section 36(5) or to receive the information specified in section 36(6), or
  - (b) has subsequently informed the relevant probation body that he wishes to make representations about such a matter or to receive that information.
- (3) The relevant probation body must take all reasonable steps—
  - (a) to notify the managers of the relevant hospital of an address at which that person may be contacted;
  - (b) to notify that person of the name and address of the hospital.
- (4) While the hospital order continues in force, the patient is to be regarded as a patient in respect of whom a hospital order was made without a restriction order; and sections 37A and 38A are to apply in relation to him accordingly.
- (5) The relevant hospital has the meaning given in section 36A(6).
- (6) The relevant probation body has the meaning given in section 37(8).]

#### Textual Amendments

- F47** Ss. 38A, 38B inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), **Sch. 6 para. 7** (as amended by [S.I. 2008/912, Sch. 1 para. 24\(2\)\(b\)](#)) (with s. 50(8)-(13)); [S.I. 2008/1900](#), arts. 1(1), **2(o)** (with art. 3, Sch.)

### *Hospital directions*

#### **39** Victims' rights: preliminary

- (1) This section applies if—

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- (a) a person (“the offender”) is convicted of a sexual [<sup>F48</sup>, violent or terrorism] offence,
  - (b) a relevant sentence is imposed on him in respect of the offence, and
  - (c) a hospital direction and a limitation direction are given in relation to him by a court dealing with him for the offence.
- (2) The local probation board for the area in which the hospital direction is given [<sup>F49</sup>, or the provider of probation services operating in the local justice area in which the hospital direction is given,] must take all reasonable steps to ascertain whether a person who appears to the board to be the victim of the offence or to act for the victim of the offence wishes—
- (a) to make representations about the matters specified in subsection (3);
  - (b) to receive the information specified in subsection (4).
- [<sup>F50</sup>(2A) The provider of probation services mentioned in subsection (2) is the provider of probation services identified as such by arrangements under section 3 of the Offender Management Act 2007.]
- (3) The matters are—
- (a) whether the offender should, in the event of his discharge from hospital [<sup>F51</sup>while he is subject to a limitation direction], be subject to any conditions and, if so, what conditions;
  - [<sup>F52</sup>(aa) what conditions he should be subject to in the event of his discharge from hospital under a community treatment order;]
  - (b) whether the offender should, in the event of his release from hospital, be subject to any licence conditions or supervision requirements and, if so, what licence conditions or supervision requirements;
  - (c) if the offender is transferred to a prison or other institution in which he might have been detained if he had not been removed to hospital, whether he should, in the event of his release from prison or another such institution, be subject to any licence conditions or supervision requirements and, if so, what licence conditions or supervision requirements.
- (4) The information is—
- (a) information about any conditions to which the offender is to be subject in the event of his discharge;
  - (b) information about any licence conditions or supervision requirements to which the offender is to be subject in the event of his release.

#### Textual Amendments

- F48** Words in s. 39(1)(a) substituted (12.4.2019) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(3), **Sch. 4 para. 10(c)** (with s. 25(3)(4))
- F49** Words in s. 39(2) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(7)(a)**
- F50** S. 39(2A) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(7)(b)**
- F51** Words in s. 39(3)(a) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 8(a)** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)
- F52** S. 39(3)(aa) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 8(b)** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)

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## 40 Representations

- (1) This section applies if section 39 applies.
- (2) If—
  - (a) a person makes representations about a matter specified in section 39(3) to the local probation board [<sup>F53</sup>or provider of probation services] mentioned in section 39(2) or the [<sup>F54</sup>relevant probation body], and
  - (b) it appears to the [<sup>F54</sup>relevant probation body] that the person is the victim of the offence or acts for the victim of the offence,
 

the [<sup>F54</sup>relevant probation body] must forward the representations to the persons responsible for determining the matter.
- (3) If the representations are about a matter specified in section 39(3)(a), the duty in subsection (2) applies only while the limitation direction given in relation to the offender is in force.
- (4) The Secretary of State must inform the [<sup>F55</sup>relevant probation body] if he is considering—
  - (a) whether to give a direction in respect of the offender under section 42(1) of the Mental Health Act 1983 (c. 20) (directions lifting restrictions),
  - (b) whether to discharge the offender under section 42(2) of that Act, either absolutely or subject to conditions, or
  - (c) if the offender has been discharged subject to conditions, whether to vary the conditions.
- (5) [<sup>F56</sup>The First-tier Tribunal or the Mental Health Review Tribunal for Wales] must inform the [<sup>F57</sup>relevant probation body] if—
  - (a) an application is made to the tribunal by the offender under section 69, 70 or 75 of the Mental Health Act 1983 (applications concerning restricted patients), or
  - (b) the Secretary of State refers the offender’s case to the tribunal under section 71 of that Act (references concerning restricted patients).
- (6) Subsection (7) applies if—
  - (a) the [<sup>F58</sup>relevant probation body] receives information under subsection (4) or (5), and
  - (b) a person who appears to the [<sup>F58</sup>relevant probation body] to be the victim of the offence or to act for the victim of the offence—
    - (i) when his wishes were ascertained under section 39(2), expressed a wish to make representations about a matter specified in section 39(3) (a), or
    - (ii) has made representations about such a matter to the [<sup>F58</sup>relevant probation body] or the local probation board [<sup>F59</sup>or provider of probation services] mentioned in section 39(2).
- (7) The [<sup>F60</sup>relevant probation body] must provide the information to the person.
- [<sup>F61</sup>(8) For the purposes of this section, “the relevant probation body” is—
  - (a) in a case where the offender is to be discharged from hospital subject to a condition that he reside in a particular area, which is or is part of the area of a local probation board, that local probation board;
  - (b) in a case where the offender is to be discharged from hospital subject to a condition that he reside in a particular area other than one mentioned in



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paragraph (a), the provider of probation services operating in that area that is identified as the relevant probation body by arrangements under section 3 of the Offender Management Act 2007;

- (c) in a case where the offender is to be supervised on release by an officer of a local probation board or an officer of a provider of probation services, that local probation board or that provider of probation services (as the case may be);
- (d) in any other case—
  - (i) if the hospital, prison or other place in which the offender is detained is situated in the area of a local probation board, that area; and
  - (ii) if that hospital, prison or other place is not so situated, the provider of probation services operating in the local justice area in which the hospital, prison or other place in which the offender is detained is situated, that is identified as the relevant probation body by arrangements under section 3 of the Offender Management Act 2007.]

#### Textual Amendments

- F53** Words in s. 40(2)(a) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(8)(a)(i)**
- F54** Words in s. 40(2) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(8)(a)(ii)**
- F55** Words in s. 40(4) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(8)(b)**
- F56** Words in s. 40(5) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), arts. 1(1), 9(1), **Sch. 3 para. 209**
- F57** Words in s. 40(5) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(8)(c)**
- F58** Words in s. 40(6) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(8)(d)(i)**
- F59** Words in s. 40(6)(b)(ii) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(8)(d)(ii)**
- F60** Words in s. 40(7) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(8)(e)**
- F61** S. 40(8) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(8)(f)**

## 41 Information

- (1) This section applies if section 39 applies.
- (2) Subsection (3) applies if a person who appears to the [<sup>F62</sup>relevant probation body] to be the victim of the offence or to act for the victim of the offence—
  - (a) when his wishes were ascertained under section 39(2), expressed a wish to receive the information specified in section 39(4), or
  - (b) has subsequently informed the [<sup>F62</sup>relevant probation body] that he wishes to receive that information.
- (3) The [<sup>F63</sup>relevant probation body] must take all reasonable steps—
  - (a) to inform that person whether or not the offender is to be subject to any conditions in the event of his discharge;

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- (b) if he is, to provide that person with details of any conditions which relate to contact with the victim or his family;
  - (c) if the limitation direction in respect of the offender is to cease to have effect, to notify that person of the date on which it is to cease to have effect;
  - (d) to inform that person whether or not the offender is to be subject to any licence conditions or supervision requirements in the event of his release;
  - (e) if he is, to provide that person with details of any licence conditions or supervision requirements which relate to contact with the victim or his family;
  - (f) to provide that person with such other information as the board considers appropriate in all the circumstances of the case.
- (4) The Secretary of State must inform the [<sup>F64</sup>relevant probation body]—
- (a) whether the offender is to be discharged;
  - (b) if he is, whether he is to be discharged absolutely or subject to conditions;
  - (c) if he is to be discharged subject to conditions, what the conditions are to be;
  - (d) if he has been discharged subject to conditions—
    - (i) of any variation of the conditions by the Secretary of State;
    - (ii) of any recall to hospital under section 42(3) of the Mental Health Act 1983 (c. 20);
  - (e) if the limitation direction is to cease to have effect by virtue of action to be taken by the Secretary of State, of the date on which the limitation direction is to cease to have effect.
- (5) Subsections (6) and (7) apply (instead of subsection (4)) if—
- (a) an application is made to [<sup>F65</sup>the First-tier Tribunal or the Mental Health Review Tribunal for Wales] by the offender under section 69, 70 or 75 of the Mental Health Act 1983 (c. 20) (applications concerning restricted patients), or
  - (b) the Secretary of State refers the offender’s case to [<sup>F65</sup>the First-tier Tribunal or the Mental Health Review Tribunal for Wales] under section 71 of that Act (references concerning restricted patients).
- (6) The tribunal must inform the [<sup>F66</sup>relevant probation body]—
- (a) of the matters specified in subsection (4)(a) to (c);
  - (b) if the offender has been discharged subject to conditions, of any variation of the conditions by the tribunal;
  - (c) if the limitation direction is to cease to have effect by virtue of action to be taken by the tribunal, of the date on which the limitation direction is to cease to have effect.
- (7) The Secretary of State must inform the [<sup>F67</sup>relevant probation body] of the matters specified in subsection (4)(d) and (e).
- (8) The duties in subsections (3)(a) to (c) and (4) to (7) apply only while the limitation direction is in force.
- (9) The [<sup>F68</sup>relevant probation body] has the meaning given in section 40(8).

#### Textual Amendments

- F62** Words in s. 41(2) substituted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\)](#), arts. 1, 3, [Sch. 1 para. 20\(9\)\(a\)](#)

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- F63** Words in s. 41(3) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(9)(b)**
- F64** Words in s. 41(4) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(9)(c)**
- F65** Words in s. 41(5)(a)(b) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), arts. 1(1), 9(1), **Sch. 3 para. 210**
- F66** Words in s. 41(6) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(9)(d)**
- F67** Words in s. 41(7) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(9)(e)**
- F68** Words in s. 41(9) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(9)(f)**

### [<sup>F69</sup>41A Removal of restriction

- (1) This section applies if, in a case where section 39 applies—
  - (a) the limitation direction in respect of the offender ceases to be in force, and
  - (b) he is treated for the purposes of the Mental Health Act 1983 as a patient in respect of whom a hospital order has effect.
- (2) Subsection (3) applies if a person who appears to the relevant probation body to be the victim of the offence or to act for the victim of the offence—
  - (a) when his wishes were ascertained under section 39(2), expressed a wish to make representations about a matter specified in section 39(3) or to receive the information specified in section 39(4), or
  - (b) has subsequently informed the relevant probation body that he wishes to make representations about such a matter or to receive that information.
- (3) The relevant probation body must take all reasonable steps—
  - (a) to notify the managers of the relevant hospital of an address at which that person may be contacted;
  - (b) to notify that person of the address of the hospital.
- (4) The offender is to be regarded as a patient in respect of whom a hospital order was made without a restriction order; and sections 37A and 38A are to apply in relation to him accordingly.
- (5) The relevant hospital has the meaning given in section 36A(6).
- (6) The relevant probation body has the meaning given in section 40(8).]

#### Textual Amendments

- F69** S. 41A inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 9** (as amended by S.I. 2008/912, Sch. 1 para. 24(2)(c)) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)

*Status: Point in time view as at 12/04/2019. This version of this part contains provisions that are prospective.*

*Changes to legislation: Domestic Violence, Crime and Victims Act 2004, Part 3 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Transfer directions

## 42 Victims' rights: preliminary

- (1) This section applies if—
- (a) a person (“the offender”) is convicted of a sexual [<sup>F70</sup>, violent or terrorism] offence,
  - (b) a relevant sentence is imposed on him in respect of the offence, and
  - (c) while the offender is serving the sentence, the Secretary of State gives a transfer direction [<sup>F71</sup> in respect of the offender (whether or not he also gives a restriction direction in respect of the offender)].
- (2) The local probation board for the area in which the hospital specified in the transfer direction is situated [<sup>F72</sup> or the provider of probation services operating in the local justice area in which the hospital specified in the transfer direction is situated] must take all reasonable steps to ascertain whether a person who appears to the board [<sup>F73</sup> or the provider] to be the victim of the offence or to act for the victim of the offence wishes—
- (a) to make representations about the matters specified in subsection (3);
  - (b) to receive the information specified in subsection (4).
- [<sup>F74</sup>(2A) The provider of probation services mentioned in subsection (2) is the provider of probation services identified as such by arrangements under section 3 of the Offender Management Act 2007.]
- (3) The matters are—
- (a) whether the offender should be subject to any conditions in the event of his discharge from hospital [<sup>F75</sup> at a time when a restriction direction is in force in respect of him];
  - (b) if so, what conditions [<sup>F76</sup>;
  - (c) what conditions he should be subject to in the event of his discharge from hospital under a community treatment order].
- (4) The information is information about any conditions to which the offender is to be subject in the event of his discharge from hospital.

#### Textual Amendments

- F70** Words in s. 42(1)(a) substituted (12.4.2019) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(3), **Sch. 4 para. 10(d)** (with s. 25(3)(4))
- F71** Words in s. 42(1)(c) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 10(2)** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)
- F72** Words in s. 42(2) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(10)(a)(i)**
- F73** Words in s. 42(2) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(10)(a)(ii)**
- F74** S. 42(2A) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(10)(b)**
- F75** Words in s. 42(3)(a) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 10(3)(a)** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)
- F76** S. 42(3)(c) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 10(3)(b)** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)

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#### [<sup>F77</sup>42A Supplemental provision for case where no restriction direction given

- (1) This section applies if, in a case where section 42 applies, the transfer direction in respect of the patient was given without a restriction direction.
- (2) Subsection (3) applies if a person who appears to the local probation board or provider of probation services mentioned in section 42(2) to be the victim of the offence or to act for the victim of the offence, when his wishes are ascertained under section 42(2), expresses a wish—
  - (a) to make representations about a matter specified in section 42(3), or
  - (b) to receive the information specified in section 42(4).
- (3) The local probation board or provider of probation services must—
  - (a) notify the managers of the hospital in which the patient is detained of that person's wish and of that person's name and address, and
  - (b) notify that person of the name and address of the hospital.
- (4) Subsection (5) applies if a person who appears to the local probation board or provider of probation services mentioned in section 42(2) to be the victim of the offence or to act for the victim of the offence, subsequently to his wishes being ascertained under section 42(2), expressed a wish to do something specified in subsection (2)(a) or (b).
- (5) The local probation board or provider of probation services mentioned in section 42(2) must take all reasonable steps—
  - (a) to ascertain whether the transfer direction given in respect of the patient continues in force and whether a community treatment order is in force in respect of him, and
  - (b) if the board or the provider ascertains that the transfer direction does continue in force—
    - (i) to notify the managers of the relevant hospital of that person's wish, and
    - (ii) to notify that person of the name and address of the hospital.
- (6) The relevant hospital has the meaning given in section 36A(6).]

#### Textual Amendments

**F77** S. 42A inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), Sch. 6 para. 11 (as amended by S.I. 2008/912, Sch. 1 para. 24(2)(d)) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), 2(o) (with art. 3, Sch.)

#### 43 [<sup>F78</sup>Representations where restriction direction made]

- (1) This section applies [<sup>F79</sup>if, in a case where section 42 applies, the transfer direction in respect of the patient was given with a restriction direction].
- (2) If—
  - (a) a person makes representations about a matter specified in section 42(3) to the local probation board [<sup>F80</sup>or provider of probation services] mentioned in section 42(2) or the [<sup>F81</sup>relevant probation body], and
  - (b) it appears to the [<sup>F81</sup>relevant probation body] that the person is the victim of the offence or acts for the victim of the offence,

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the [F81relevant probation body] must forward the representations to the persons responsible for determining the matter.

- (3) The duty in subsection (2) applies only while the restriction direction given in respect of the offender is in force.
- (4) The Secretary of State must inform the [F82relevant probation body] if he is considering—
  - (a) whether to give a direction in respect of the offender under section 42(1) of the Mental Health Act 1983 (c. 20) (directions lifting restrictions),
  - (b) whether to discharge the offender under section 42(2) of that Act, either absolutely or subject to conditions, or
  - (c) if the offender has been discharged subject to conditions, whether to vary the conditions.
- (5) [F83The First-tier Tribunal or the Mental Health Review Tribunal for Wales] must inform the [F84relevant probation body] if—
  - (a) an application is made to the tribunal by the offender under section 69, 70 or 75 of the Mental Health Act 1983 (applications concerning restricted patients), or
  - (b) the Secretary of State refers the offender’s case to the tribunal under section 71 of that Act (references concerning restricted patients).
- (6) Subsection (7) applies if—
  - (a) the [F85relevant probation body] receives information under subsection (4) or (5), and
  - (b) a person who appears to the [F85relevant probation body] to be the victim of the offence or to act for the victim of the offence—
    - (i) when his wishes were ascertained under section 42(2), expressed a wish to make representations about a matter specified in section 42(3), or
    - (ii) has made representations about such a matter to the [F85relevant probation body] or the local probation board [F86or provider of probation services] mentioned in section 42(2).
- (7) The [F87relevant probation body] must provide the information to the person.
- [F88(8) In this section, “the relevant probation body” is—
  - (a) in a case where the offender is to be discharged subject to a condition that he reside in a particular area, which is or is part of the area of a local probation board, that local probation board;
  - (b) in a case where the offender is to be discharged subject to a condition that he reside in a particular area other than one mentioned in paragraph (a), the provider of probation services operating in that area that is identified as the relevant probation body by arrangements under section 3 of the Offender Management Act 2007;
  - (c) in any other case—
    - (i) if the hospital in which the offender is detained is situated in the area of a local probation board, that area; and
    - (ii) if that hospital is not so situated, the provider of probation services operating in the local justice area in which the hospital in which the offender is detained is situated, that is identified as the relevant



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probation body by arrangements under section 3 of the Offender Management Act 2007.]

**Textual Amendments**

- F78** S. 43 title substituted (3.11.2008) by virtue of Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 12** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)
- F79** Words in s. 43(1) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 12** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)
- F80** Words in s. 43(2)(a) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(11)(a)(i)**
- F81** Words in s. 43(2) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(11)(a)(ii)**
- F82** Words in s. 43(4) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(11)(b)**
- F83** Words in s. 43(5) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), arts. 1(1), 9(1), **Sch. 3 para. 211**
- F84** Words in s. 43(5) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(11)(c)**
- F85** Words in s. 43(6) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(11)(d)(i)**
- F86** Words in s. 43(6)(b)(ii) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(11)(d)(ii)**
- F87** Words in s. 43(7) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(11)(e)**
- F88** S. 43(8) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(11)(f)**

[<sup>F89</sup>**43A Representations where restriction direction not given**

- (1) This section applies if, in a case where section 42 applies, the transfer direction in respect of the patient was given without a restriction direction.
- (2) Subsection (3) applies if—
  - (a) a person makes representations about a matter specified in section 42(3) to the managers of the relevant hospital, and
  - (b) it appears to the managers that the person is the victim of the offence or acts for the victim of the offence.
- (3) The managers must forward the representations to the persons responsible for determining the matter.
- (4) The responsible clinician must inform the managers of the relevant hospital if he is considering making—
  - (a) an order for discharge in respect of the patient under section 23(2) of the Mental Health Act 1983,
  - (b) a community treatment order in respect of him, or
  - (c) an order under section 17B(4) of the Mental Health Act 1983 to vary the conditions specified in a community treatment order in force in respect of the patient.

<sup>F90</sup>(5) .....



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- (6) [<sup>F91</sup>The First-tier Tribunal or the Mental Health Review Tribunal for Wales] must inform the managers of the relevant hospital if—
- (a) an application is made to the tribunal under section 66 or 69 of the Mental Health Act 1983, or
  - (b) the patient's case is referred to the tribunal under section 67 of that Act.
- (7) Subsection (8) applies if—
- (a) the managers of the relevant hospital receive information under subsection (4)<sup>F92</sup> ... or (6), and
  - (b) a person who appears to the managers to be the victim of the offence or to act for the victim of the offence—
    - (i) when his wishes were ascertained under section 42(2), expressed a wish to make representations about a matter specified in section 42(3), or
    - (ii) has made representations about such a matter to the managers of the hospital in which the patient was, at the time in question, detained.
- (8) The managers of the relevant hospital must provide the information to the person.
- (9) The relevant hospital has the meaning given in section 36A(6).]

#### Textual Amendments

- F89** S. 43A inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 13](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)
- F90** S. 43A(5) omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 39\(4\)\(e\)\(i\)](#), 306(4); S.I. 2012/1319, art. 2(3)
- F91** Words in s. 43A(6) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), arts. 1(1), 9(1), [Sch. 3 para. 212](#)
- F92** Words in s. 43A(7) omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 39\(4\)\(e\)\(iii\)](#), 306(4); S.I. 2012/1319, art. 2(3)

#### 44 [<sup>F93</sup>Information where restriction direction made]

- (1) This section applies [<sup>F94</sup>if, in a case where section 42 applies, the transfer direction in respect of the patient was given with a restriction direction].
- (2) Subsection (3) applies if a person who appears to the [<sup>F95</sup>relevant probation body] to be the victim of the offence or to act for the victim of the offence—
- (a) when his wishes were ascertained under section 42(2), expressed a wish to receive the information specified in section 42(4), or
  - (b) has subsequently informed the [<sup>F95</sup>relevant probation body] that he wishes to receive that information.
- (3) The [<sup>F96</sup>relevant probation body] must take all reasonable steps—
- (a) to inform that person whether or not the offender is to be subject to any conditions in the event of his discharge;
  - (b) if he is, to provide that person with details of any conditions which relate to contact with the victim or his family;
  - (c) if the restriction direction in respect of the offender is to cease to have effect, to notify that person of the date on which it is to cease to have effect;

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- (d) to provide that person with such other information as the board [F97 or the body] considers appropriate in all the circumstances of the case.
- (4) The Secretary of State must inform the [F98 relevant probation body]—
- (a) whether the offender is to be discharged;
  - (b) if he is, whether he is to be discharged absolutely or subject to conditions;
  - (c) if he is to be discharged subject to conditions, what the conditions are to be;
  - (d) if he has been discharged subject to conditions—
    - (i) of any variation of the conditions by the Secretary of State;
    - (ii) of any recall to hospital under section 42(3) of the Mental Health Act 1983 (c. 20);
  - (e) if the restriction direction is to cease to have effect by virtue of action to be taken by the Secretary of State, of the date on which the restriction direction is to cease to have effect.
- (5) Subsections (6) and (7) apply (instead of subsection (4)) if—
- (a) an application is made to [F99 the First-tier Tribunal or the Mental Health Review Tribunal for Wales] by the offender under section 69, 70 or 75 of the Mental Health Act 1983 (applications concerning restricted patients), or
  - (b) the Secretary of State refers the offender’s case to [F99 the First-tier Tribunal or the Mental Health Review Tribunal for Wales] under section 71 of that Act (references concerning restricted patients).
- (6) The tribunal must inform the [F100 relevant probation body]—
- (a) of the matters specified in subsection (4)(a) to (c);
  - (b) if the offender has been discharged subject to conditions, of any variation of the conditions by the tribunal;
  - (c) if the restriction direction is to cease to have effect by virtue of action to be taken by the tribunal, of the date on which the restriction direction is to cease to have effect.
- (7) The Secretary of State must inform the [F101 relevant probation body] of the matters specified in subsection (4)(d) and (e).
- (8) The duties in subsections (3) to (7) apply only while the restriction direction is in force.
- (9) The [F102 relevant probation body] has the meaning given in section 43(8).

#### Textual Amendments

- F93** S. 44 title substituted (3.11.2008) by virtue of [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 14](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)
- F94** Words in s. 44(1) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 14](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)
- F95** Words in s. 44(2) substituted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\)](#), arts. 1, 3, [Sch. 1 para. 20\(12\)\(a\)](#)
- F96** Words in s. 44(3) substituted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\)](#), arts. 1, 3, [Sch. 1 para. 20\(12\)\(b\)\(i\)](#)
- F97** Words in s. 44(3)(d) inserted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\)](#), arts. 1, 3, [Sch. 1 para. 20\(12\)\(b\)\(ii\)](#)
- F98** Words in s. 44(4) substituted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\)](#), arts. 1, 3, [Sch. 1 para. 20\(12\)\(c\)](#)

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- F99** Words in s. 44(5)(a)(b) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), arts. 1(1), 9(1), **Sch. 3 para. 213**
- F100** Words in s. 44(6) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(12)(d)**
- F101** Words in s. 44(7) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(12)(e)**
- F102** Words in s. 44(9) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(12)(f)**

### [<sup>F103</sup>44A Information where restriction direction not given

- (1) This section applies if, in a case where section 42 applies, the transfer direction in respect of the patient was given without a restriction direction.
- (2) The responsible clinician must inform the managers of the relevant hospital—
  - (a) whether he is to make an order for discharge in respect of the patient under section 23(2) of the Mental Health Act 1983;
  - (b) whether he is to make a community treatment order in respect of the patient;
  - (c) if a community treatment order is to be made in respect of the patient, what conditions are to be specified in the order;
  - (d) if a community treatment order is in force in respect of the patient, of any variation to be made under section 17B(4) of the Mental Health Act 1983 of the conditions specified in the order;
  - (e) if a community treatment order in respect of the patient is to cease to be in force, of the date on which it is to cease to be in force;
  - (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, it does not appear to the responsible clinician that the conditions set out in subsection (4) of that section are satisfied, of the date on which the authority for the patient's detention is to expire.

[<sup>F104</sup>(3) .....

- (4) Subsection (5) applies if—
  - (a) an application is made to [<sup>F105</sup>the First-tier Tribunal or the Mental Health Review Tribunal for Wales] under section 66 or 69 of the Mental Health Act 1983,
  - (b) the patient's case is referred to [<sup>F105</sup>the First-tier Tribunal or the Mental Health Review Tribunal for Wales] under section 67 of that Act, or
  - (c) the managers of the relevant hospital refer the patient's case to [<sup>F105</sup>the First-tier Tribunal or the Mental Health Review Tribunal for Wales] under section 68 of that Act.
- (5) The tribunal must inform the managers of the relevant hospital if it directs that the patient be discharged.
- (6) Subsection (7) applies if a person who appears to the managers of the relevant hospital to be the victim of the offence or to act for the victim of the offence—
  - (a) when his wishes were ascertained under section 42(2), expressed a wish to receive the information specified in section 42(4), or
  - (b) has subsequently informed the managers of the relevant hospital that he wishes to receive that information.

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- (7) The managers of the relevant hospital order must take all reasonable steps—
- (a) to inform that person whether the patient is to be discharged under section 23 or 72 of the Mental Health Act 1983;
  - (b) to inform that person whether a community treatment order is to be made in respect of the patient;
  - (c) if a community treatment order is to be made in respect of the patient and is to specify conditions which relate to contact with the victim or his family, to provide that person with details of those conditions;
  - (d) if a community treatment order is in force in respect of the patient and the conditions specified in the order are to be varied under section 17B(4) of the Mental Health Act 1983, to provide that person with details of any variation which relates to contact with the victim or his family;
  - (e) if a community treatment order in respect of the patient is to cease to be in force, to inform that person of the date on which it is to cease to be in force;
  - (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, the authority for the patient's detention is not to be renewed, to inform that person of the date on which the authority is to expire;
  - (g) to provide that person with such other information as the managers of the relevant hospital consider appropriate in all the circumstances of the case.
- (8) The relevant hospital has the meaning given by section 36A(6).]

#### Textual Amendments

**F103** Ss. 44A, 44B inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 15](#) (as amended by [S.I. 2008/912](#), [Sch. 1 para. 24\(2\)\(e\)](#)) (with s. 50(8)-(13)); [S.I. 2008/1900](#), arts. 1(1), [2\(o\)](#) (with art. 3, [Sch.](#))

**F104** [S. 44A\(3\)](#) omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 39\(4\)\(e\)\(i\)](#), [306\(4\)](#); [S.I. 2012/1319](#), art. 2(3)

**F105** Words in [s. 44A\(4\)\(a\)-\(c\)](#) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), arts. 1(1), 9(1), [Sch. 3 para. 214](#)

#### [<sup>F106</sup>44B Removal of restriction

- (1) This section applies if, in a case where section 42 applies—
- (a) the transfer direction in respect of the patient was given with a restriction direction, and
  - (b) the restriction direction ceases to be in force while the transfer direction continues in force.
- (2) Subsection (3) applies if a person who appears to the relevant probation body to be the victim of the offence or to act for the victim of the offence—
- (a) when his wishes were ascertained under section 42(2), expressed a wish to make representations about a matter specified in section 42(3) or to receive the information specified in section 42(4), or
  - (b) has subsequently informed the relevant probation body that he wishes to make representations about such a matter or to receive that information.
- (3) The relevant probation body must take all reasonable steps—

*Status: Point in time view as at 12/04/2019. This version of this part contains provisions that are prospective.*

**Changes to legislation:** Domestic Violence, Crime and Victims Act 2004, Part 3 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) to notify the managers of the relevant hospital of an address at which that person may be contacted;
  - (b) to notify that person of the name and address of the hospital.
- (4) While the transfer direction continues in force, the patient is to be regarded as a patient in respect of whom a transfer direction was given without a restriction direction; and sections 43A and 44A are to apply in relation to him accordingly.
- (5) The relevant hospital has the meaning given in section 36A(6).
- (6) The relevant probation body has the meaning given in section 43(8).]

#### Textual Amendments

**F106** Ss. 44A, 44B inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 15](#) (as amended by [S.I. 2008/912, Sch. 1 para. 24\(2\)\(e\)](#)) (with s. 50(8)-(13)); [S.I. 2008/1900](#), arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)

#### Interpretation

#### 45 [F107] Interpretation: sections 35 to 44B]

- (1) In sections 35 to [F108]44B]—

[F109]“community treatment order” has the meaning given in section 17A of the Mental Health Act 1983;]

“court” does not include [F110]the Court Martial or the Court Martial Appeal Court];

“hospital direction” has the meaning given in section 45A(3)(a) of the Mental Health Act 1983 (c. 20);

“hospital order” has the meaning given in section 37(4) of that Act;

“licence condition” means a condition in a licence;

“limitation direction” has the meaning given in section 45A(3)(b) of the Mental Health Act 1983;

“local probation board” means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43);

[F111]“the managers” has the meaning given in section 145 of the Mental Health Act 1983;

“relevant sentence” means any of these—

- (a) a sentence of imprisonment for a term of 12 months or more;
- (b) a sentence of detention during Her Majesty’s pleasure;
- (c) a sentence of detention for a period of 12 months or more under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (offenders under 18 convicted of certain serious offences);
- (d) a detention and training order for a term of 12 months or more;]

[F112]“responsible clinician” means the responsible clinician for the purposes of Part 3 of the Mental Health Act 1983;]

[F113]“responsible hospital” has the meaning given in section 17A of the Mental Health Act 1983;]

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“restriction direction” has the meaning given in section 49(2) of the Mental Health Act 1983;

“restriction order” has the meaning given in section 41(1) of that Act;

“supervision requirements” means requirements specified in a notice under section 103(6) of the Powers of Criminal Courts (Sentencing) Act 2000;

“transfer direction” has the meaning given in section 47(1) of the Mental Health Act 1983.

- (2) For the purposes of sections 35 to [F11444B], an offence is a sexual [F115, violent or terrorism] offence if it is any of these—
- (a) murder or an offence specified in Schedule 15 to the Criminal Justice Act 2003 (c. 44);
  - (b) an offence in respect of which the patient or offender is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c. 42));
  - (c) an offence against a child within the meaning of Part 2 of the Criminal Justice and Court Services Act 2000.
- [F116(3) A reference in sections 35 to 44B to a place in which a person is detained includes a reference to a place in which he is liable to be detained under the Mental Health Act 1983.
- (4) For the purposes of section 32(3) of that Act (regulations as to delegation of managers' functions, etc.) as applied by Parts 1 and 2 of Schedule 1 to that Act, a function conferred on the managers of a hospital under sections 35 to 44B of this Act is to be treated as a function of theirs under Part 3 of that Act.]

#### Textual Amendments

- F107** S. 45 title substituted (3.11.2008) by virtue of [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 16\(1\)](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)
- F108** Words in s. 45(1) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 16\(2\)\(a\)](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)
- F109** S. 45(1): definition of "community treatment order" inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 16\(2\)\(b\)](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)
- F110** Words in s. 45(1) substituted (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378(1), 383(2), [Sch. 16 para. 239](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, {art. 4} (and see transitional provisions in S.I. 2009/1059)
- F111** S. 45(1): definition of "the managers" inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 16\(2\)\(b\)](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)
- F112** S. 45(1): definition of "responsible clinician" inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 16\(2\)\(b\)](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)
- F113** S. 45(1): definition of "responsible hospital" inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 16\(2\)\(b\)](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)
- F114** Words in s. 45(2) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 16\(3\)](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)
- F115** Words in s. 45(2) substituted (12.4.2019) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\)](#), s. 27(3), [Sch. 4 para. 10\(e\)](#) (with s. 25(3)(4))
- F116** S. 45(3)(4) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 16\(4\)](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)



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## Northern Ireland

### 46 Victims of mentally disordered persons

(1) The Justice (Northern Ireland) Act 2002 (c. 26) is amended as follows.

(2) After section 69 (views on temporary release) insert—

#### **“69A Information about discharge and leave of absence of mentally disordered persons**

- (1) The Secretary of State must make a scheme requiring the Secretary of State to make available to persons falling within subsection (2) information about—
  - (a) the discharge from hospital of, or
  - (b) the grant of leave of absence from hospital to,persons in respect of whom relevant determinations have been made.
- (2) The persons referred to in subsection (1) are victims of the offences in respect of which the determinations were made who wish to receive the information.
- (3) A relevant determination is made in respect of a person if—
  - (a) a hospital order with a restriction order is made in respect of him by a court dealing with him for an offence, or
  - (b) a transfer direction and a restriction direction are given in respect of him while he is serving a sentence of imprisonment in respect of an offence.
- (4) The Secretary of State may from time to time make a new scheme or alterations to a scheme.
- (5) The information to be made available under a scheme must include information as to any relevant conditions to which a person in respect of whom a relevant determination has been made is to be subject in the event of—
  - (a) his discharge from hospital, or
  - (b) the grant of leave of absence from hospital to him.
- (6) A condition is relevant for the purposes of subsection (5) if it appears to the Secretary of State that it might affect a victim of an offence in respect of which the determination was made.
- (7) A scheme may require the Secretary of State to take all reasonable steps to ascertain whether a person who appears to him to be the victim of an offence in respect of which a relevant determination has been made wishes to make representations about the matters specified in subsection (8).
- (8) The matters are—
  - (a) whether the person in respect of whom the determination has been made should be subject to any conditions in the event of his discharge from hospital or the grant of leave of absence from hospital to him;
  - (b) if so, what conditions.
- (9) A scheme that includes provision such as is mentioned in subsection (7) must specify how the representations are to be made.



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- (10) A scheme may require other information in relation to the discharge of, or the grant of leave of absence to, persons in respect of whom relevant determinations are made to be made available under the scheme.
- (11) The other information may include, in cases of a description specified by the scheme or in which the Secretary of State considers it appropriate, the date on which it is anticipated that a person in respect of whom a relevant determination has been made will be discharged or granted leave of absence from hospital.
- (12) Subsections (5) to (8) of section 68 apply in relation to a scheme made under this section as they apply in relation to a scheme made under that section.
- (13) A scheme may make different provision in relation to different descriptions of persons in respect of whom a relevant determination is made.

### **69B Views on leave of absence**

- (1) If a person who is the victim of an offence in respect of which a relevant determination has been made makes to the Secretary of State representations falling within subsection (2) the Secretary of State has the obligations specified in subsection (3).
- (2) Representations fall within this subsection if they are to the effect that the grant of leave of absence to the person in respect of whom the determination has been made would threaten the safety, or otherwise adversely affect the well-being, of—
  - (a) the actual victim of the offence in respect of which the determination was made, or
  - (b) a person who is regarded for the purposes of a scheme under section 69A as a victim of that offence by virtue of section 68(5) (as applied by section 69A(12)).
- (3) The Secretary of State must—
  - (a) have regard to the representations in deciding whether he should give his consent to leave of absence being granted, and
  - (b) inform the victim of any such decision.
- (4) Section 69A(3) (relevant determination) applies for the purposes of this section.”
- (3) In section 70 (supplementary), after subsection (3) insert—
  - “(4) In sections 68 and 69 references to a person serving a sentence of imprisonment in Northern Ireland include a person detained in hospital pursuant to a transfer direction and a restriction direction.
  - (5) In subsection (4) and section 69A(3)—
    - “restriction direction” has the meaning given in Article 55(2) of the Mental Health (Northern Ireland) Order 1986;
    - “transfer direction” has the meaning given in Article 53(2) of that Order.
  - (6) In section 69A(3)—

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“hospital order” has the meaning given in Article 44(1) of the Mental Health (Northern Ireland) Order 1986;

“restriction order” has the meaning given in Article 47(1) of that Order;

“sentence of imprisonment” has the meaning given in Article 53(5) of that Order.

(7) In sections 69A and 69B “leave of absence” means leave of absence under Article 15 of the Mental Health (Northern Ireland) Order 1986.”

(4) In section 90(5) (statutory rules), in paragraph (b) after “section 68” insert “ or 69A ”.

### CHAPTER 3

#### OTHER MATTERS RELATING TO VICTIMS ETC

##### *Parliamentary Commissioner*

#### **47 Investigations by Parliamentary Commissioner**

Schedule 7 (which amends the Parliamentary Commissioner Act 1967 (c. 13)) has effect.

##### *Commissioner for Victims and Witnesses*

#### **48 Commissioner for Victims and Witnesses**

(1) The Secretary of State [<sup>F117</sup>for Justice] must appoint a Commissioner for Victims and Witnesses (referred to in this Part as the Commissioner).

(2) Before appointing the Commissioner the Secretary of State [<sup>F117</sup>for Justice] must consult the Attorney General and the [<sup>F118</sup>Secretary of State for the Home Department] as to the person to be appointed.

(3) <sup>F119</sup> .....

(4) <sup>F119</sup> .....

(5) <sup>F119</sup> .....

[<sup>F120</sup>(6) The Secretary of State may pay to, or in respect of, the Commissioner amounts—  
(a) by way of remuneration, pensions, allowances or gratuities, or  
(b) by way of provision for any such benefits.

(7) The Secretary of State may pay sums in respect of the expenses of the Commissioner.]

#### **Textual Amendments**

**F117** Words in s. 48 inserted (22.8.2007) by [The Secretary of State for Justice Order 2007 \(S.I. 2007/2128\)](#), arts. 1(2), 8, **Sch. para. 10(2)**

**F118** Words in s. 48 substituted (22.8.2007) by [The Secretary of State for Justice Order 2007 \(S.I. 2007/2128\)](#), arts. 1(2), 8, **Sch. para. 10(3)**

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**F119** S. 48(3)-(5) repealed (immediately before 1.2.2010) by Coroners and Justice Act 2009 (c. 25), ss. 142(2)(a), 178, 182(5), Sch. 23 Pt. 5 (with s. 180); S.I. 2010/145, art. 2(1)

**F120** S. 48(6)(7) substituted (immediately before 1.2.2010) for s. 48(6) by Coroners and Justice Act 2009 (c. 25), ss. 142(2)(b), 182(5) (with s. 180); S.I. 2010/145, art. 2(1)(a)

#### Modifications etc. (not altering text)

**C3** S. 48: functions transferred (22.8.2007) by The Secretary of State for Justice Order 2007 (S.I. 2007/2128), arts. 1(2), 4(2)(a), 5(2)(a) (with art. 7)

## 49 General functions of Commissioner

- (1) The Commissioner must—
  - (a) promote the interests of victims and witnesses;
  - (b) take such steps as he considers appropriate with a view to encouraging good practice in the treatment of victims and witnesses;
  - (c) keep under review the operation of the code of practice issued under section 32.
- (2) The Commissioner may, for any purpose connected with the performance of his duties under subsection (1)—
  - (a) make proposals to the Secretary of State [<sup>F121</sup>for Justice] for amending the code (at the request of the Secretary of State [<sup>F121</sup>for Justice] or on his own initiative);
  - (b) make a report to the Secretary of State [<sup>F121</sup>for Justice];
  - (c) make recommendations to an authority within his remit;
  - (d) <sup>F122</sup> .....
  - (e) consult any person he thinks appropriate.
- (3) If the Commissioner makes a report to the Secretary of State [<sup>F121</sup>for Justice] under subsection (2)(b)—
  - (a) the Commissioner must send a copy of the report to the Attorney General and the [<sup>F123</sup>Secretary of State for the Home Department];
  - (b) <sup>F124</sup> .....
- [<sup>F125</sup>(4) The Commissioner must prepare in respect of each calendar year a report on the carrying out of the functions of the Commissioner during the year.
- (5) The Commissioner must send a copy of each report prepared under subsection (4) to—
  - (a) the Secretary of State for Justice,
  - (b) the Attorney General, and
  - (c) the Secretary of State for the Home Department.
- (6) Reports under subsection (2)(b) or (4) must be published by the Commissioner.
- (7) If section 48 comes into force after the beginning of a calendar year, the first report under subsection (4) may relate to a period beginning with the day on which that section comes into force and ending with the end of the next calendar year.]

#### Textual Amendments

**F121** Words in s. 49 inserted (22.8.2007) by The Secretary of State for Justice Order 2007 (S.I. 2007/2128), arts. 1(2), 8, Sch. para. 10(2)

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- F122** S. 49(2)(d) repealed (immediately before 1.2.2010) by Coroners and Justice Act 2009 (c. 25), ss. 142(3)(a), 178, 182(5), Sch. 23 Pt. 5 (with s. 180); S.I. 2010/145, art. 2(1)
- F123** Words in s. 49 substituted (22.8.2007) by The Secretary of State for Justice Order 2007 (S.I. 2007/2128), arts. 1(2), 8, Sch. para. 10(3)
- F124** S. 49(3)(b) repealed (immediately before 1.2.2010) by Coroners and Justice Act 2009 (c. 25), ss. 142(3)(b), 178, 182(5), Sch. 23 Pt. 5 (with s. 180); S.I. 2010/145, art. 2(1)
- F125** S. 49(4)-(7) added (immediately before 1.2.2010) by Coroners and Justice Act 2009 (c. 25), ss. 142(3)(c), 182(5) (with s. 180); S.I. 2010/145, art. 2(1)(a)

**Modifications etc. (not altering text)**

- C4** S. 49: functions transferred (22.8.2007) by The Secretary of State for Justice Order 2007 (S.I. 2007/2128), arts. 1(2), 4(2)(a), 5(2)(a) (with art. 7)

**50 Advice**

- (1) If he is required to do so by a Minister of the Crown, the Commissioner must give advice to the Minister of the Crown in connection with any matter which—
- (a) is specified by the Minister, and
  - (b) relates to victims or witnesses.
- (2) <sup>F126</sup> .....
- (3) In this section “Minister of the Crown” includes the Treasury.

**Textual Amendments**

- F126** S. 50(2) repealed (immediately before 1.2.2010) by Coroners and Justice Act 2009 (c. 25), ss. 142(4), 178, 182(5), Sch. 23 Pt. 5 (with s. 180); S.I. 2010/145, art. 2(1)

**51 Restrictions on exercise of functions**

The Commissioner must not exercise any of his functions in relation to—

- (a) a particular victim or witness;
- (b) the bringing or conduct of particular proceedings;
- (c) anything done or omitted to be done by a person acting in a judicial capacity or on the instructions of or on behalf of such a person.

**52 “Victims” and “witnesses”**

- (1) This section applies for the purposes of sections 48 to 51.
- (2) “Victim” means—
- (a) a victim of an offence, or
  - (b) a victim of anti-social behaviour.
- (3) It is immaterial for the purposes of subsection (2)(a) that—
- (a) no complaint has been made about the offence;
  - (b) no person has been charged with or convicted of the offence.
- (4) “Witness” means a person (other than a defendant)—

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- (a) who has witnessed conduct in relation to which he may be or has been called to give evidence in relevant proceedings;
  - (b) who is able to provide or has provided anything which might be used or has been used as evidence in relevant proceedings; or
  - (c) who is able to provide or has provided anything mentioned in subsection (5) (whether or not admissible in evidence in relevant proceedings).
- (5) The things referred to in subsection (4)(c) are—
- (a) anything which might tend to confirm, has tended to confirm or might have tended to confirm evidence which may be, has been or could have been admitted in relevant proceedings;
  - (b) anything which might be, has been or might have been referred to in evidence given in relevant proceedings by another person;
  - (c) anything which might be, has been or might have been used as the basis for any cross examination in the course of relevant proceedings.
- (6) For the purposes of subsection (4)—
- (a) a person is a defendant in relation to any criminal proceedings if he might be, has been or might have been charged with or convicted of an offence in the proceedings;
  - (b) a person is a defendant in relation to any other relevant proceedings if he might be, has been or might have been the subject of an order made in those proceedings.
- (7) In subsections (4) to (6) “relevant proceedings” means—
- (a) criminal proceedings;
  - (b) proceedings of any other kind in respect of anti-social behaviour.
- (8) For the purposes of this section—
- (a) “anti-social behaviour” means behaviour by a person which causes or is likely to cause harassment, alarm or distress to one or more persons not of the same household as the person;
  - (b) a person is a victim of anti-social behaviour if the behaviour has caused him harassment, alarm or distress and he is not of the same household as the person who engages in the behaviour.

### **53 Authorities within Commissioner’s remit**

- (1) For the purposes of this Part the authorities within the Commissioner’s remit are those specified in Schedule 9.
- (2) An authority specified in Schedule 9 that has functions in relation to an area outside England and Wales is within the Commissioner’s remit only to the extent that it discharges its functions in relation to England and Wales.
- (3) Subsection (2) does not apply in relation to the Foreign and Commonwealth Office.
- (4) The Secretary of State [<sup>F127</sup>for Justice] may by order amend Schedule 9 by—
  - (a) adding an authority appearing to him to exercise functions of a public nature;
  - (b) omitting an authority;
  - (c) changing the description of an authority.

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- (5) In preparing a draft of an order under subsection (4) the Secretary of State [<sup>F127</sup>for Justice] must consult the Attorney General and the [<sup>F128</sup>Secretary of State for the Home Department].

#### Textual Amendments

- F127** Words in s. 53 inserted (22.8.2007) by The Secretary of State for Justice Order 2007 (S.I. 2007/2128), arts. 1(2), 8, **Sch. para. 10(2)**
- F128** Words in s. 53 substituted (22.8.2007) by The Secretary of State for Justice Order 2007 (S.I. 2007/2128), arts. 1(2), 8, **Sch. para. 10(3)**

#### Modifications etc. (not altering text)

- C5** S. 53: functions transferred (22.8.2007) by The Secretary of State for Justice Order 2007 (S.I. 2007/2128), **arts. 1(2), 4(2)(a), 5(2)(a)** (with art. 7)

### *Disclosure of information*

#### **54 Disclosure of information**

- (1) A person may disclose information to a relevant authority for a purpose specified in subsection (2).
- (2) The purposes are purposes connected with any of these—
- compliance with the code issued under section 32;
  - compliance with sections 35 to 44;
  - the carrying out of the functions of the Commissioner.
- (3) These are relevant authorities—
- a person required to do anything under the code issued under section 32;
  - a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43);
  - <sup>F129</sup>(ba) a provider of probation services;
  - the Commissioner;
  - an authority within the Commissioner's remit.
- (4) The Secretary of State [<sup>F130</sup>for Justice] may by order—
- amend subsection (2) by adding any purpose appearing to him to be connected with the assistance of victims of offences or anti-social behaviour, witnesses of offences or anti-social behaviour or other persons affected by offences or anti-social behaviour;
  - amend subsection (3) by adding any authority appearing to him to exercise functions of a public nature.
- (5) The reference in subsection (4)(a) to persons affected by offences does not include persons accused or convicted of offences.
- (6) The Secretary of State [<sup>F130</sup>for Justice] may exercise the power in subsection (4) only after consulting the Attorney General and the [<sup>F131</sup>Secretary of State for the Home Department].

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- (7) Nothing in this section authorises the making of a disclosure which contravenes [<sup>F132</sup>the data protection legislation].
- (8) This section does not affect a power to disclose which exists apart from this section.
- [<sup>F133</sup>(9) In this section, “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).]

#### Textual Amendments

- F129** S. 54(3)(ba) inserted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\)](#), arts. 1, 3, **Sch. 1 para. 20(13)**
- F130** Words in s. 54 inserted (22.8.2007) by [The Secretary of State for Justice Order 2007 \(S.I. 2007/2128\)](#), arts. 1(2), 8, **Sch. para. 10(2)**
- F131** Words in s. 54 substituted (22.8.2007) by [The Secretary of State for Justice Order 2007 \(S.I. 2007/2128\)](#), arts. 1(2), 8, **Sch. para. 10(3)**
- F132** Words in s. 54(7) substituted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), **Sch. 19 para. 103(2)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)
- F133** S. 54(9) inserted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), **Sch. 19 para. 103(3)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

#### Modifications etc. (not altering text)

- C6** S. 54: functions transferred (22.8.2007) by [The Secretary of State for Justice Order 2007 \(S.I. 2007/2128\)](#), **arts. 1(2), 4(2)(a), 5(2)(a)** (with art. 7)

#### Commencement Information

- I1** S. 54 wholly in force at 1.2.2010; s. 54 not in force at Royal Assent see s. 60; s. 54(1)(2)(a)(b)(3)(a)(b)(4)-(8) in force at 18.10.2005 by [S.I. 2005/2848](#), **art. 2(e)**; s. 54 in force so far as not already in force at 1.2.2010 by [S.I. 2010/129](#), **art. 2(e)**

F134 ...

#### Textual Amendments

- F134** S. 55 and cross-heading repealed (5.11.2013) by [The Public Bodies \(Abolition of Victims' Advisory Panel\) Order 2013 \(S.I. 2013/2853\)](#), arts. 1(2), **2(2)(b)**

### <sup>F134</sup>55 Victims' Advisory Panel

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#### Grants

### 56 Grants for assisting victims, witnesses etc

- (1) The Secretary of State may pay such grants to such persons as he considers appropriate in connection with measures which appear to him to be intended to assist victims, witnesses or other persons affected by offences.



*Status: Point in time view as at 12/04/2019. This version of this part contains provisions that are prospective.*

*Changes to legislation: Domestic Violence, Crime and Victims Act 2004, Part 3 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The Secretary of State may make a grant under this section subject to such conditions as he considers appropriate.

[<sup>F135</sup>(3) In the application of this section to Northern Ireland, any reference in subsection (1) or (2) to the Secretary of State shall be construed as a reference to the Department of Justice in Northern Ireland.]

#### Textual Amendments

**F135** S. 56(3) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 12, [Sch. 14 para. 87](#) (with arts. 28-31); [S.I. 2010/977](#), art. 1(2)

PROSPECTIVE

### *Criminal injuries compensation*

#### **57 Recovery of criminal injuries compensation from offenders**

- (1) The Criminal Injuries Compensation Act 1995 (c. 53) is amended as follows.
- (2) After section 7 insert—

##### **“7A Recovery of compensation from offenders: general**

- (1) The Secretary of State may, by regulations made by statutory instrument, make provision for the recovery from an appropriate person of an amount equal to all or part of the compensation paid in respect of a criminal injury.
- (2) An appropriate person is a person who has been convicted of an offence in respect of the criminal injury.
- (3) The amount recoverable from a person under the regulations must be determined by reference only to the extent to which the criminal injury is directly attributable to an offence of which he has been convicted.
- (4) The regulations may confer functions in respect of recovery on—
  - (a) claims officers;
  - (b) if a Scheme manager has been appointed, persons appointed by the Scheme manager under section 3(4)(a).
- (5) The regulations may not authorise the recovery of an amount in respect of compensation from a person to the extent that the compensation has been repaid in accordance with the Scheme.

##### **7B Recovery notices**

- (1) If, under regulations made under section 7A(1), an amount has been determined as recoverable from a person, he must be given a notice (a “recovery notice”) in accordance with the regulations which—
  - (a) requires him to pay that amount, and

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(b) contains the information mentioned in subsection (2).

(2) The information is—

- (a) the reasons for the determination that an amount is recoverable from the person;
- (b) the basis on which the amount has been determined;
- (c) the way in which and the date before which the amount is required to be paid;
- (d) the means by which the amount may be recovered if it is not paid in accordance with the notice;
- (e) the grounds on which and the procedure by means of which he may seek a review if he objects to—
  - (i) the determination that an amount is recoverable from him;
  - (ii) the amount determined as recoverable from him.

(3) The Secretary of State may by order made by statutory instrument amend subsection (2) by—

- (a) adding information;
- (b) omitting information;
- (c) changing the description of information.

#### **7C Review of recovery determinations**

(1) Regulations under section 7A(1) shall include provision for the review, in such circumstances as may be prescribed by the regulations, of—

- (a) a determination that an amount is recoverable from a person;
- (b) the amount determined as recoverable from a person.

(2) A person from whom an amount has been determined as recoverable under the regulations may seek such a review only on the grounds—

- (a) that he has not been convicted of an offence to which the injury is directly attributable;
- (b) that the compensation paid was not determined in accordance with the Scheme;
- (c) that the amount determined as recoverable from him was not determined in accordance with the regulations.

(3) Any such review must be conducted by a person other than the person who made the determination under review.

(4) The person conducting any such review may—

- (a) set aside the determination that the amount is recoverable;
- (b) reduce the amount determined as recoverable;
- (c) increase the amount determined as recoverable;
- (d) determine to take no action under paragraphs (a) to (c).

(5) But the person conducting any such review may increase the amount determined as recoverable if (but only if) it appears to that person that the interests of justice require the amount to be increased.

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## 7D Recovery proceedings

- (1) An amount determined as recoverable from a person under regulations under section 7A(1) is recoverable from him as a debt due to the Crown if (but only if)—
  - (a) he has been given a recovery notice in accordance with the regulations which complies with the requirements of section 7B, and
  - (b) he has failed to pay the amount in accordance with the notice.
- (2) In any proceedings for the recovery of the amount from a person, it is a defence for the person to show—
  - (a) that he has not been convicted of an offence to which the injury is directly attributable;
  - (b) that the compensation paid was not determined in accordance with the Scheme; or
  - (c) that the amount determined as recoverable from him was not determined in accordance with regulations under section 7A.
- (3) In any such proceedings, except for the purposes of subsection (2)(b), no question may be raised or finding made as to the amount that was, or ought to have been, the subject of an award.
- (4) For the purposes of section 9 of the Limitation Act 1980 (time limit for actions for sums recoverable by statute to run from date on which cause of action accrued) the cause of action to recover that amount shall be taken to have accrued—
  - (a) on the date on which the compensation was paid; or
  - (b) if later, on the date on which a person from whom an amount is sought to be recovered was convicted of an offence to which the injury is directly attributable.
- (5) If that person is convicted of more than one such offence and the convictions are made on different dates, the reference in subsection (4)(b) to the date on which he was convicted of such an offence shall be taken to be a reference to the earlier or earliest (as the case may be) of the dates on which he was convicted of such an offence.”
- (3) In section 9(7) (financial provisions: sums payable into Consolidated Fund), after “section 3(1)(c)” insert “, or by virtue of regulations made under section 7A(1), ”.
- (4) In section 11, after subsection (8) insert—
 

“(8A) No regulations under section 7A(1) or order under section 7B(3) shall be made unless a draft of the regulations or order has been laid before Parliament and approved by a resolution of each House.”

### Modifications etc. (not altering text)

- C7 S. 57(2) amended (S.) (and s. 57 thereby extended to S.) (8.12.2005) by the [Management of Offenders etc. \(Scotland\) Act 2005](#) (asp 14), **ss. 20(1)(2), 24(1)**

**Status:**

Point in time view as at 12/04/2019. This version of this part contains provisions that are prospective.

**Changes to legislation:**

Domestic Violence, Crime and Victims Act 2004, Part 3 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.