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## 2015 CHAPTER 9

### **PART 4**

#### VICTIMS AND WITNESSES

##### *The Victim Charter and the Witness Charter*

#### **The Victim Charter**

- 28.—**(1) The Department must issue a Victim Charter.
- (2) The Charter must set out—
- (a) the services which are to be provided to victims by specified criminal justice agencies and the standards which are to be expected in relation to those services;
  - (b) the standards which are to be expected in relation to the treatment of victims by such agencies.
- (3) In particular the Charter must include provision for a victim—
- (a) to be treated with courtesy, dignity and respect;
  - (b) to be informed about the services available to victims;
  - (c) to be informed about—
    - (i) the progress of relevant proceedings, and the reasons for any delay in those proceedings, at such intervals or at such times as are specified;
    - (ii) the final outcome of relevant proceedings, within such time as is specified;

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- (d) where in the course of relevant proceedings a decision is taken not to prosecute a person in respect of the criminal conduct concerned, to be given the reasons for that decision within such time as is specified;
  - (e) to be informed about any special measures which may be available to the victim under Article 4 or 5 of the Criminal Evidence (Northern Ireland) Order 1999 if called as a witness in criminal proceedings arising out of the criminal conduct concerned;
  - (f) to be informed about the opportunity to make a victim statement under section 33;
  - (g) to have considered by an independent body any complaint against a criminal justice agency in relation to any provision of the Charter which has not been resolved by that agency.
- (4) The Charter may restrict the application of any of its provisions and, in particular, may restrict the application of any of its provisions to—
- (a) specified descriptions of victims;
  - (b) victims of specified offences or descriptions of conduct;
  - (c) specified criminal justice agencies;
  - (d) cases where the criminal conduct concerned has been reported to the police.
- (5) The Charter may provide for exceptions to its provisions, including in particular exceptions for the purpose of—
- (a) ensuring compliance with any statutory provision or order of a court;
  - (b) avoiding jeopardising any criminal investigation or criminal proceedings;
  - (c) avoiding endangering any individual.
- (6) The Charter may include provision requiring or permitting the services which are to be provided to a victim to be provided to one or more other persons as well as the victim.
- (7) The Charter 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 Public Prosecution Service for Northern Ireland which involves the exercise of a discretion.
- (8) In this section “criminal justice agency” means a body or person which has any functions relating to—
- (a) victims; or
  - (b) any other aspect of the criminal justice system.
- (9) A criminal justice agency must, in carrying out any functions mentioned in subsection (8), have regard to the Charter.

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(10) In this section—

“criminal conduct concerned”, in relation to a victim, is to be construed in accordance with section 29(1);

“relevant proceedings”, in relation to a victim, means the investigation into the criminal conduct concerned, the taking of a decision whether to prosecute any person in respect of that criminal conduct and any criminal proceedings taken against any person in respect of that criminal conduct;

“specified” means specified in the Victim Charter.

#### Commencement Information

**II** S. 28 in operation at 1.9.2015 by S.R. 2015/320, art. 2(a)

### Meaning of victim

**29.—(1)** Subject to subsections (3) to (6), in section 28 “victim” means an individual who is a victim of criminal conduct; and, in relation to a victim, references to “the criminal conduct concerned” are to be construed accordingly.

(2) In determining whether an individual is a victim of criminal conduct, it is immaterial that no person has been charged with or convicted of an offence in respect of the conduct.

(3) If (whether as a result of the criminal conduct concerned or not)—

(a) the physical or mental state of a victim is such that it is unreasonable to expect the victim to act on his or her own behalf, or

(b) a victim has died,

references in section 28 to the victim are to be read as references to a member of the family of the victim.

(4) If a victim is under the age of 18, references in section 28 to the victim are to be read as including references to a parent of the victim.

(5) Subsection (3)(a) and subsection (4) do not apply in any case where a criminal justice agency determines that it would not be in the best interests of the victim for that provision to apply.

(6) The Victim Charter may make provision—

(a) as to the persons who are to be treated as members of the family of the victim for the purposes of subsection (3) and the identification of the person who is to act for the purposes of that subsection;

(b) for criminal justice agencies, in circumstances specified in the Charter, to treat any other person as if that person were the victim (either instead of or in addition to the actual victim or a person who would fall to be treated as the victim under subsection (3) or (4)).

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(7) Nothing in this section enables or requires an individual to be treated as a victim if that individual is under investigation for, or has been charged with, an offence arising from the criminal conduct concerned.

(8) In this section—

“criminal conduct” means conduct constituting an offence;

“criminal justice agency” has the meaning given by section 28(8);

“parent”, in relation to a child, includes a person who has parental responsibility for the child (within the meaning of the Children (Northern Ireland) Order 1995).

#### Commencement Information

**I2** S. 29 in operation at 1.9.2015 by S.R. 2015/320, art. 2(b)

VALID FROM 30/12/2016

#### The Witness Charter

**30.—**(1) The Department must issue a Witness Charter.

(2) The Charter must set out—

- (a) the services which are to be provided to witnesses in criminal investigations and criminal proceedings by specified criminal justice agencies and the standards which are to be expected in relation to those services;
- (b) the standards which are to be expected in relation to the treatment of witnesses by such agencies.

(3) The Charter may restrict the application of any of its provisions and, in particular, may restrict the application of any of its provisions to—

- (a) specified descriptions of witnesses;
- (b) witnesses in criminal investigations of, or criminal proceedings for, specified offences or descriptions of conduct;
- (c) specified criminal justice agencies.

(4) The Charter may provide for exceptions to its provisions, including in particular exceptions for the purpose of—

- (a) ensuring compliance with any statutory provision or order of a court;
- (b) avoiding jeopardising any criminal investigation or criminal proceedings;
- (c) avoiding endangering any individual.

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- (5) The Charter may include provision requiring or permitting the services which are to be provided to a witness to be provided to one or more other persons instead of or in addition to the witness.
- (6) The Charter 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 Public Prosecution Service for Northern Ireland which involves the exercise of a discretion.
- (7) In this section “criminal justice agency” means a body or person which has any functions relating to—
- (a) witnesses in criminal investigations or criminal proceedings; or
  - (b) any other aspect of the criminal justice system.
- (8) A criminal justice agency must, in carrying out any functions mentioned in subsection (7), have regard to the Charter.
- (9) In this section—
- “defendant”, in relation to any criminal proceedings, means a person who has been charged with, or convicted of, a criminal offence in the proceedings;
- “specified” means specified in the Witness Charter;
- “witness” means a person (other than the defendant) who—
- (a) has witnessed criminal or other conduct in relation to which that person may be or has been called to give evidence in criminal proceedings;
  - (b) is able to provide or has provided information or any other thing which might assist a criminal investigation or which might be or has been used in evidence in criminal proceedings; or
  - (c) for any other reason is called or might be called to give evidence in criminal proceedings.

### **Procedure for issuing Charters**

**31.—**(1) This section applies in relation to a Charter required to be issued under section 28 or 30.

(2) After preparing the Charter, the Department must lay the Charter before the Assembly.

(3) The Charter comes into operation on such date as the Department may by order appoint.

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(4) The Department may revise a Charter which is in operation; and subsections (2) and (3) apply to a revised Charter as they apply to the Charter as first prepared.

**Commencement Information**

**I3** S. 31 in operation at 1.9.2015 by S.R. 2015/320, art. 2(c)

**Effect of non compliance**

**32.—**(1) If a criminal justice agency fails to comply with the Charter issued under section 28 or 30, the failure does not of itself make the agency liable to criminal or civil proceedings.

(2) But the Charter is admissible in evidence in criminal or civil proceedings and a court may take into account a failure to comply with the Charter in determining a question in the proceedings.

**Commencement Information**

**I4** S. 32 in operation at 1.9.2015 by S.R. 2015/320, art. 2(d)

*Victim statements*

**Persons to be afforded opportunity to make victim statement**

**33.—**(1) A natural person against whom an offence has been committed or is alleged to have been committed (“the victim”) is to be afforded an opportunity to make a statement under this section.

(2) If (whether as a result of the offence or not)—

- (a) the physical or mental state of the victim is such that it is unreasonable to expect the victim to act on his or her own behalf, or
- (b) the victim has died,

a member of the family of the victim is to be afforded an opportunity to make a statement under this section.

(3) If the victim is under the age of 18, a parent of the victim is to be afforded an opportunity to make a statement under this section in addition to the victim.

(4) Where subsection (2)(a) or (3) applies such other person as may be determined under or in accordance with regulations may, in prescribed circumstances, be afforded the opportunity to make a statement under this section (in addition to or instead of any person entitled to be afforded that opportunity under that subsection).

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(5) Where subsection (2)(b) applies such other person as may be determined under or in accordance with regulations may, in prescribed circumstances, be afforded the opportunity to make a statement under this section (in addition to or instead of any person entitled to be afforded that opportunity under that subsection).

(6) The opportunity to make a statement under this section is to be afforded—

- (a) by the prescribed body or person; and
- (b) at such time and in such manner as may be prescribed.

(7) Nothing in this section or regulations under this section requires an opportunity to be afforded where in all the circumstances of the case it is impracticable for the prescribed body or person to do so.

(8) A statement under this section—

- (a) is to be made in writing;
- (b) is referred to in this Part as a victim statement;
- (c) if made by a person under subsection (1), (2)(b) or (5), is a statement as to the way in which, and degree to which, the offence or alleged offence has affected and continues to affect, the person making the statement and members of the victim's family;
- (d) if made by a person under subsection (2)(a), (3) or (4), is a statement as to the way in which, and degree to which, the offence or alleged offence has affected and continues to affect, the victim. and members of the victim's family.

(9) Regulations may provide that, except in prescribed cases or circumstances, paragraphs (c) and (d) of subsection (8) are to have effect with the omission of the words “and members of the victim's family”.

(10) The provisions of the Victim Charter referred to in section 29(6)(a) apply for the purposes of subsections (2) and (8)(c) and (d) as they apply for the purposes of subsection (3) of section 29.

(11) In this section—

“parent”, in relation to a child, includes a person who has parental responsibility for the child (within the meaning of the Children (Northern Ireland) Order 1995);

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Department.

#### Commencement Information

**I5** S. 33 in operation at 1.9.2015 by S.R. 2015/320, art. 2(e)

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### Supplementary statement

**34.—**(1) The Department may by regulations make provision for a person who has made a victim statement in relation to an offence to be afforded on request an opportunity to make a statement supplementary to, or in amplification of, the victim statement.

(2) The regulations may in particular make provision as to the time at which, manner in which and person or body by which that opportunity is to be afforded; but the regulations may not require an opportunity to be afforded where in all the circumstances of the case it is impracticable to do so.

(3) References in section 35 to a victim statement include references to any statement made under this section in relation to that statement.

#### Commencement Information

**I6** S. 34 in operation at 1.9.2015 by S.R. 2015/320, art. 2(f)

### Use of victim statement

**35.—**(1) The Department may by regulations make provision in relation to the provision of a copy of any victim statement made in respect of an offence to the defence and the court.

(2) Where a person is convicted of an offence by or before a court, the court must in determining the sentence in respect of the offence have regard to so much of any victim statement provided to it in accordance with regulations under subsection (1) as it considers to be relevant to that offence.

#### Commencement Information

**I7** S. 35 in operation at 1.9.2015 by S.R. 2015/320, art. 2(g)

### *Information sharing*

### Disclosure for purposes of victim and witness support services and victim information schemes

**36** Schedule 3 (which makes provision for the disclosure of information for the purposes of victim and witness support services and victim information schemes) has effect.



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