

EXPLANATORY MEMORANDUM TO
THE DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004 (VICTIMS' CODE OF PRACTICE) ORDER 2013

2013 No. 2907

1. This explanatory memorandum has been prepared by Ministry of Justice (MoJ) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this Order is to bring a revised Code of Practice for Victims of Crime under the Domestic Violence, Crime and Victims Act 2004 (“the Act”) into operation on 10 December 2013. The Code of Practice sets out the services to be provided to victims of crime by relevant criminal justice agencies.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Under section 32 of the Act, the Secretary of State 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 victims of criminal conduct or any aspect of the criminal justice system. Under section 33(8) of the Act the Secretary of State for Justice may revise the code from time to time, but may only do so if he is satisfied that the proposed revisions would not result in a significant reduction in the quality or extent of the services to be provided under the code, or a significant restriction in the description of persons to whom services are to be provided under the code. The previous code of practice was laid before Parliament on 19 October 2005 under section 33(6) of the Act and brought into force on 3 April 2006 under S.I. 2006/629. This is the first revision of the Code.

4.2 A draft of the revised code was published on 29 March 2013. The Secretary of State, in considering the representations on the draft consulted with the Attorney General and the Home Secretary and modified the draft in light of them. The final version of the revised code was laid before Parliament on 29 October 2013 under section 33(6) of the Act.

4.3 The Order comes into force on 10 December 2013, bringing the code into operation on the same day.

4.4 The revised code forms part of the implementation in England and Wales of:

a) Directive 2012/29/EU of the European Parliament and of the Council of 23 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decisions 2011/220/JHA;

b) Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

c) Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

4.5 Transposition notes and scrutiny histories for Directive 2012/29/EU and Directive 2011/93/EU are set out respectively at Annex A and B. Directive 2011/36/EU was implemented on 6 April 2013, as the revised Code replaces the previous code in setting out the services to be provided to all victims, including victims of trafficking in human beings, a transposition note is not produced for this Directive.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 This instrument gives effect to proposals published in the ‘Improving the Code of Practice for Victims of Crime’ consultation¹. The Government response to the consultation was published on 29 October 2013.

7.2 The Code of Practice for Victims of Crime places obligations on all of the criminal justice agencies to deliver certain services to victims of crime within set timescales. The 2006 version of the code is now out-of-date and inappropriate and inaccessible for its most important audience: victims of crime. It was described by respondents to the 2012 “Getting it Right for Victims and Witnesses” consultation² as being prescriptive, leaving the police and other criminal justice agencies no flexibility in the way they deal with a variety of victims.

7.3 The ‘Improving the Code of Practice for Victims of Crime’ consultation set out the policy intention to give victims of crime clearer entitlements from criminal justice

¹ <https://consult.justice.gov.uk/digital-communications/code-victims-crime>

² <https://consult.justice.gov.uk/digital-communications/victims-witnesses>

agencies and to better tailor services according to individual need, so victims get the right support at the right time.

7.4 Written in plain English and in a more accessible format, the new code is structured around the victim's journey through the criminal justice system. The code sets out the information and support available to victims from criminal justice agencies at every stage of the process from reporting a crime to post-trial support. The new code provides an enhanced service for victims of the most serious crime, persistently targeted and vulnerable or intimidated victims and a duty on the police to conduct a needs assessment to ascertain which victims fall into these three priority categories.

7.5 The new code strengthens the voice of the victim by putting the Victim Personal Statement (VPS) under a statutory code for the first time. Data from the Crime Survey for England and Wales indicates that victims recalled being offered the opportunity to make a VPS in only 9%³ of incidents reported to the police, and of these, in around 60%,⁴ they recalled making a VPS. The VPS enables the victim to explain to the court how a crime has affected them, giving them a voice in criminal proceedings. This is considered by the court when sentencing the offender. Under the new code victims can say whether they would like to read their statement aloud in court or to have it read aloud on their behalf if the defendant is found guilty, subject to judicial discretion. Alternatively the victim may choose not to make a VPS or for the judge to consider the written statement without having it read aloud.

7.6 The code now includes a separate chapter for businesses and an opportunity for businesses of all sizes (including enterprises such as charities) to make an Impact Statement so that their voice is fully heard. Prior to the publication of the new Victims' Code only small business were able to make an Impact Statement. The Impact Statement for Business will be available to be downloaded, completed by the business representative and submitted by post or email to the police.

7.7 For the first time, information on Restorative Justice for victims of adult offenders, as well as for victims of youth offenders, has been included in the revised Victims' Code. The new Victims' Code includes an entitlement for victims to be informed by the police about available Restorative Justice services, which involves those harmed by crime (the victim or the family of a victim) communicating with the person responsible for the crime (the offender) to enable everyone affected by the incident to play a part in repairing the harm and finding a positive way forward.

7.8 Other key policy changes in the revised code include an improved complaints process so that victims are better able to hold criminal justice agencies to account if things go wrong. Victims are now entitled to receive an acknowledgement or substantive response to a complaint within 10 working days. The new code also includes a dedicated

³ <https://www.gov.uk/government/publications/support-for-victims-findings-from-the-crime-survey-for-england-and-wales>, Table S39

⁴ <https://www.gov.uk/government/publications/support-for-victims-findings-from-the-crime-survey-for-england-and-wales>, Table S40.

section for victims under the age of 18 (raising this from those under 17 from the previous Victims' Code) and their parents and guardians. This section is written in a more straightforward and accessible way setting out specific entitlements for young victims, who are automatically considered as vulnerable or intimidated and therefore eligible for an enhanced service under the code.

7.9 The revised code transposes a significant proportion of the EU "Victims' Directive"⁵ which lays down the minimum standards of support member states must provide to victims of crime within their jurisdiction. The Directive complements the Government's reforms to the Victims' Code and existing practice in the UK. The Directive comes into force on 16 November 2015.

8. Consultation outcome

8.1 The proposals for the new code, together with a full explanation of the policy and the supporting impact assessment and equality statement, were published in the MoJ's 'Improving the Code of Practice for Victims of Crime' consultation and were subject to formal consultation between 29 March and 10 May 2013. This followed a 12-week consultation on "Getting it Right for Victims and Witnesses" in 2012. The Department has also engaged extensively with criminal justice agencies and victims' organisations that provided feedback on early proposals for a revised code.

8.2 The consultation sought views on a revised code, restructured and rewritten with victims of crime as the target audience. The 197 written responses to the consultation helped to inform the drafting of the new Victims' Code published on 29 October. Two public consultation events were held: one in London and one in Leeds with approximately 100 attendees attending in total. In addition, an online survey and webchat with children and young people was conducted and hosted by the NCPCC's N-Spire site to obtain direct feedback from children and young people on the new code.

8.3 77% of respondents to question 1 of the consultation⁶ were in favour of restructuring the Victims' Code to focus on the victim's journey throughout the criminal justice process, though there were some concerns about the length of the document. The final version of the Victims' Code is written in more straightforward language and includes an amended flow-chart to give victims a visual guide of their journey through the criminal justice system. Short leaflet guides and other tools will be developed to accompany the code and communicate it more widely. 65% of respondents to question 2 of the consultation⁷ agreed with the categories of victim entitled to enhanced service (victims of the most serious crime, persistently targeted and vulnerable or intimidated victims). The definitions in the final version of the code have been tightened to make it clearer to victims and criminal justice agencies which category victims will fall into, whilst retaining flexibility to enable criminal justice agencies to tailor services according to individual need.

⁵ 2012/29/EU.

⁶ Do you think that the approach taken to restructure the Code is the right one?

⁷ Do you think that the categories of persons entitled to receive enhanced services under the Code are appropriate?

8.4 96% of respondents to question 5 of the consultation⁸ agreed with including an entitlement for victims to make a VPS under the revised Victims' Code. Following analysis of the consultation responses and further consideration of the policy, the Code now includes an entitlement for victims to inform the court whether they would like to read their VPS aloud or have it read aloud on their behalf if the defendant is found guilty, subject to judicial discretion. This strengthens the victim's voice in the criminal justice system by empowering them to directly address the court.

8.5 93% of respondents to question 8 of the consultation⁹ agreed that all businesses should be entitled to make an Impact Statement explaining how the crime has affected that business. Following the consultation, eligibility to make an Impact Statement has been extended to charities and third sector organisations.

8.6 85% of respondents agreed with the proposal to include information about Restorative Justice for victims of adult offenders. To ensure victims are given a high quality service, the new code outlines a duty on criminal justice agencies to meet existing quality standards and put in place robust safeguards to ensure repeat victimisation does not occur.

8.7 89% of respondents to question 17 of the consultation agreed with the proposal to have a dedicated section of the code for young victims of crime. There were some concerns that the language was inaccessible in places, so this section was re-written to make it more straightforward and by moving explanations of key terms from the glossary to the main body of the text. Furthermore, in order to fully reflect existing statutory entitlements enabling child victims to give their best evidence, the code now includes a duty for the police to have regard to section 21 of the Youth Justice and Criminal Evidence Act 1999 which states that the "primary" rule for child witnesses is that the Court must provide for any video recording of an interview to be admitted as the witness's evidence-in-chief and for any other evidence given by video in those proceedings to be given by live link, subject to limitations as set out (for example if the child witness opts out).

8.8 The Government has published a summary of the responses in its response to the 'Improving the Code of Practice for Victims of Crime' consultation which can be found at: <https://consult.justice.gov.uk/digital-communications/code-victims-crime>.

9. Guidance

9.1 The Ministry of Justice has been assisting criminal justice agencies to update their operational guidance to take account of the changes to implement the code.

⁸ Do you agree that the Victim Personal Statement should be included within a revised Victims' Code?

⁹ Do you agree that all businesses should be entitled to make an impact statement to explain how a crime has affected them?

10. Impact

10.1 A full impact assessment relating to the content of this order accompanied the “Improving the Code of Practice for Victims of Crime” consultation and has not been prepared specifically for this instrument. The impact assessment was updated and published on 29 October 2013 alongside the Government response. The policy has not changed since the publication of the Victims’ Code and the MoJ is not aware of any further data which may affect the impact of the instrument. Therefore the original impact assessment has not been amended. It is not anticipated that there will be any impact on business, charities or voluntary sector organisations. Businesses that are victims of crime (including charities or third section organisations) may make an Impact Statement explaining how the crime has affected them, but submission of such a statement is voluntary and businesses are not obliged to do this.

10.2 The impact on the public sector is that there could be a potential additional cost of around £1m to £6m¹⁰ per year in police officer time if uptake of the VPS increases resulting from the changes in the code. These costs may not represent an additional financial resource cost as it may be possible to reallocate staff time from other activities to these services. Offering the VPS to victims is an existing national standard for the police. There are also potential administrative and transitional costs to criminal justice agencies associated with conducting the needs assessment with victims, including amending case tracking systems.

10.3 We expect the costs to be outweighed by the benefits to victims of crime. They will have a clearer set of codified entitlements. Victims of the most serious crime, vulnerable or intimidated victims, and the most persistently targeted will benefit from a greater awareness of enhanced entitlements they can receive under the revised Victims’ Code. Additionally, some victims who may not be vulnerable or intimidated under the previous Victims’ Code may now be entitled to enhanced services having been assessed as a victim of the most serious crime or as a persistently targeted victim. A copy of the signed impact assessment from 28 October 2013 can be found at: <https://consult.justice.gov.uk/digital-communications/code-victims-crime>.

10.4 The “Improving the Code of Practice for Victims of Crime” consultation analysed the potential impact of the measures in this order on people subject to many of the protected characteristics specified in the Equality Act 2010. The Equality Statement was also updated and published on 29 October 2013 with the Government response. A copy of the revised Equality Statement can be found at: <https://consult.justice.gov.uk/digital-communications/code-victims-crime>.

11. Regulating small business

11.1 This legislation does not regulate small businesses.

¹⁰ Figures between 1 and 10 million are rounded to the nearest million, figures greater than 10 million are rounded to the nearest 10 million, and figures between 100,000 and 1 million are rounded to the nearest 100,000.

11.2 Businesses of any size are entitled under the new Victims' Code to complete an Impact Statement if they are a victim of crime, which explains the impact of the crime upon them for consideration by a court if the defendant is found guilty. However, completion of this statement is voluntary, so it does not impose a regulatory burden on businesses. The British Retail Consortium and Association of Convenience Stores have been consulted in the development of this policy.

12. Monitoring & review

12.1 The Government is committed to reviewing the operation and implementation of the Victims' Code. There will be a policy review 2 years after implementation of the code. Part of the statutory function of the Victims Commissioner is to keep the Victims' Code under review. As part of the outcomes of the Transforming the CJS Strategy and Action Plan published in June 2013, effective mechanisms for sharing user satisfaction data, including victims and witnesses, will be explored to ensure that the way in which services are provided is improved. The Government is exploring the role that the Criminal Justice Board, chaired by the Minister for Policing, Criminal Justice and Victims, can play in monitoring victim satisfaction, alongside the role that PCCs play at a local level to improve local accountability for victims. Additional questions in the Crime Survey for England and Wales will help to measure the policy aim of improving the offer rate of the Victim Personal Statement by the police to victims of crime.

13. Contact

Tim Charlton and Hannah Meyer at the MoJ can answer any questions regarding this instrument.

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