

Transposition Note for the Domestic Violence, Crime and Victims Act 2004 (Victims' Code of Practice) Order 2013

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 must be implemented by 16 November 2015. While the Code of Practice for Victims of Crime achieves current domestic policy it overlaps with and is also intended to meet relevant obligations under the Directive. A full assessment of the requirements of the Directive is ongoing given that the obligation to implement is not until November 2015. However, it is likely that the Code of Practice will be relied upon for implementation purposes, and therefore a transposition note is included for indicative purposes.

Article	Detail	Implementation	Responsibility
1 Objectives and 2 Definitions	<p>Article 1 sets out the purpose of the Directive and the manner in which victims, especially child victims, are to be treated.</p> <p>Article 2 sets out the definition of a victim and of family members in cases where a person's death was directly caused by criminal conduct.</p>	<p>The code sets out the services that are to be provided to victims of criminal conduct in England and Wales and complements the aims of the directive. Paragraph 1 of the Introduction sets out this purpose, and the manner in which victims are to be treated.</p> <p>Chapter 3 of the code provides a children's section (for those under 18 years of age). Service providers must undertake a needs assessment of all victims (see 1.1, Chapter 2, Part A, and 1.6, Chapter 3, Part A). Paragraph 1.3 of Chapter 3 Part B provides that the best interests of the child is a</p>	All service providers (listed at paragraph 7 of the Introduction).

		<p>primary consideration</p> <p>The Introduction sets out who is a victim for the purposes of the code and eligible for support. Family members are referred to as ‘Close relatives’ in the code which is defined in the glossary.</p>	
<p>3 Right to understand and to be understood.</p>	<p>Article 3 sets out that from the first contact with a competent authority in the context of criminal proceedings, appropriate measures must be taken to ensure that a victim can understand and be understood.</p>	<p>Paragraph 12 of the Introduction provides that service providers must communicate with victims in simple and accessible language that the victim can understand. Paragraph 23 of the Introduction sets out the circumstances in which translation is to be provided.</p>	<p>As above.</p>
<p>4 Right to receive information from a first contact with competent authority.</p>	<p>Article 4 sets out the information that is to be available to a victim in order to access in order to realise their rights under the Directive. The extent or detail of information provided may vary depending on the specific needs and personal circumstances of the victim, and the nature of the crime.</p>	<p>The code aims to provide comprehensive requirements to provide relevant information to victims at each stage of criminal proceedings, and there is an obligation on service providers to provide information about the code on their websites (Paragraph 8 of the Introduction)</p> <p>Paragraph 1.1 of Chapter 2, Part A provides that the police must provide a victim with an “information for victims of crime” leaflet. This will set out what the victim can expect from</p>	<p>Police</p>

		the criminal justice system and contains much of the information listed in Article 4(1). All victims will receive a needs assessment (see paragraph 1.4 of Chapter 1, and 1.1 of Chapter 2, Part A).	
6 Right to receive information about their case	<p>Article 6 sets out specific information that is to be offered to victims in relation to the progression of their case. Article 6(1) to (4) relates to information about the police investigation, decisions to prosecute, the progress of criminal proceedings, and final judgment at trial.</p> <p>Article 6(5) and (6) refers to information regarding the release or escape of prisoners, at least where they may pose a danger to the victim.</p>	<p>The code provides specific obligations to provide information as follows:</p> <ul style="list-style-type: none"> - Paragraph 1.1 of Chapter 2, Part A, provides for the Police to provide information (including reasons) where a decision has been taken not to investigate or to conclude the arrest without charge. - Section 2 of Chapter 2, Part A provides for the victim to be informed of: <ul style="list-style-type: none"> • a decision to prosecute a victim; • a decision, with reasons, not to prosecute a victim. • the date, time and location of trial. - Paragraph 3.6 and 4.2 of Chapter 2, Part A provide for a victim to be informed of the final judgment and, where relevant, for any sentence to be explained. 	Providers of Probation Services, Police, Crown Prosecution Service (CPS), Witness Care Unit (WCU).

		<p>Section 6(iii) of Chapter 2, Part A refers to entitlements under the ‘Victim Contact Scheme’ which was created under the statutory requirements set out at section 35 to 45 of the Domestic Violence Crime and Victims Act 2004. In summary, a victim of specified sexual or violent offence where the offender was sentenced to 12 months or more in custody is entitled to make representations and receive information regarding the release of the offender.</p>	
<p>7 Right to interpretation and translation</p>	<p>Article 7 sets out the circumstances in which victims, in accordance with their role in the criminal justice system, who do not speak or understand the language used in the criminal proceedings are entitled to request interpretation or translation.</p>	<p>Paragraphs 12 and 23 of the Introduction to the code set out the circumstances in which interpretation will be available: when being interviewed by the police, when receiving information about the date, time or location of all court hearings, when giving evidence in criminal proceedings and when receiving information about the outcome of criminal proceedings.</p> <p>Paragraph 1.4 of Chapter 1 states that the personal characteristics of the victim will</p>	<p>Police, CPS, WCU, Her Majesty’s Courts and Tribunal Service.</p>

		<p>be taken into account when conducting a needs assessment.</p> <p>Section 9 of Chapter 2, Part A, outlines that victims are able to lodge a complaint if they do not receive the information or services under the Victims' code.</p>	
8. Right to access victim support services	Article 8 provides that victims are to have access, in accordance with their needs, to victim support services, and that Member States must facilitate a referral system to those support services. Such services should be free of charge, and confidential.	Paragraph 1.1 of Chapter 2, Part A provides for both a needs assessment and an automatic referral of all victims to victim services. Paragraph 1.9 of Chapter 2, Part A provides for the referral to specialist services for victims entitled to enhanced services where they are available and appropriate.	Police.
10 Right to be heard	Article 10 provides that a victim shall, in accordance with national law, be able to be heard during criminal proceedings and give evidence.	Section 1(ii) and (iii) of Chapter 2, Part A provides for a victim to be able to submit a Victim Personal Statement. Where a suspect has been found guilty, the victim can inform the court whether it would like to have the statement read aloud (either by the victim or on his or her behalf) or just considered in writing. The final decision is for the court.	Police, CPS.
11 Rights in the event of a	Article 11 provides that a	Paragraph 2.3 of Chapter 2, Part	CPS

decision not to prosecute.	victim, in accordance with their role in the criminal justice system, has the right to review a decision not to prosecute.	A provides that a victim may seek a review of a CPS decision not to prosecute, to discontinue or to offer no evidence in all proceedings.	
12 Right to safeguards in the context of restorative justice services	Article 12 sets out the safeguards that are to be provided if a victim agrees to engage in restorative justice activities.	Section 7 of Chapter 2, Part A explains restorative justice and sets out a victim's entitlements to be informed of restorative justice services and the safeguards that are to be in place.	Police, Youth Offending Teams.
14 Right to reimbursement of expenses	Article 14 provides for the possibility of victims to be reimbursed for their active participation in criminal proceedings in accordance with their role in the criminal justice system.	Paragraph 3.6 of Chapter 2, Part A refers to the right of a victim to reimbursement of expenses where they have given evidence at court in accordance with the Crown Prosecution Service (Witnesses' etc Allowances) Regulations 1988 (S.I. 1988/1862).	CPS
19 Right to avoid contact between victim and offender	Article 19 provides for necessary conditions which enable the avoidance of contact between a victim or their family members and the suspect in premises used for criminal proceedings	Paragraph 3.1 of Chapter 2, Part A, provides that a victim can, where possible, enter, and sit, separately from the suspect and his/her family or friends.	HMCTS court staff
20 Right to protection of victims during criminal investigations	Article 20 (a) to (c) makes provision relating to criminal investigations, in particular that: <ul style="list-style-type: none"> interviews should be held 	Paragraphs 1.5 and 1.6 of Chapter 2, Part B set out that the police must: <ul style="list-style-type: none"> conduct the interview without unjustified delay 	Police

	<p>without unjustified delay, be limited in number and only carried out where strictly necessary</p> <ul style="list-style-type: none"> • victims may be accompanied by their legal representative and any person of their choice (unless a reasoned decision to the contrary). 	<p>after the facts have been reported;</p> <ul style="list-style-type: none"> • limit the number of interviews where possible and only carry out interviews where strictly necessary for the purposes of the investigation; and • allow the victim to be accompanied by a person of their choice, unless a reasoned decision has been made to the contrary 	
<p>22 Individual assessment of victims to identify specific protection needs</p>	<p>Article 22 provides that a victim must be subject to an individual assessment which takes into account the nature and circumstances of the crime and the personal characteristics of the victim in order to determine whether, and the extent to which, the protection measures in Articles 23 and 24 should be provided. Child victims are presumed to have specific protection needs, and should also be subject to an assessment to determine which protection measures are appropriate.</p>	<p>Paragraph 1.4 and 1.5 of Chapter 1 sets out the requirements in relation to individual assessments for all victims. The assessment determines whether a victim is entitled to an enhanced service owing to the nature of the crime or their personal circumstances, and whether they may be eligible for special measures when giving evidence at court in accordance with the Youth Justice and Criminal Evidence Act 1999.</p> <p>Children also receive a needs</p>	<p>Police, WCU</p>

		assessment (paragraph 1.6 Chapter 3, Part A), and are automatically eligible for an enhanced service under the Code.	
23 Right to protection of victims with specific protection needs during criminal proceedings	<p>Article 23 provides that victims who have been found to have specific protection needs following an individual assessment under Article 22 should, subject to practical constraints, be able to obtain the protections set out in paragraphs 2 and 3 of Article 23.</p> <p>Paragraph 2 (a) to (c) provides the following protection measures should be available during investigations:</p> <p>(a) interviews with the victim being carried out in premises designed or adapted for that purpose;</p> <p>(b) interviews with the victim being carried out by or through professionals trained for that purpose;</p> <p>(c) all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice.</p>	<p>Paragraphs 1.5 and 1.6 of Chapter 2, Part B set out requirements of the Police when interviewing victims, in particular that they must:</p> <ul style="list-style-type: none"> • conduct the interview, where necessary, in premises designed or adapted for that purpose; • if possible and where appropriate, ensure that the same person conducts all the interviews with the victim; • ensure that a suitably trained professional conducts the interview; • consider the needs of the victim in order to minimise his or her stress, such as the timing and location of the interview, the gender of the interviewer and enabling the interviewee to be accompanied by a 	Police, CPS.

		<p>person of their choice.</p> <p>Paragraph 1.13 of Chapter 1 of the code explains what special measures are available at court and gives a victim an entitlement to ask the CPS to apply for the relevant measure.</p>	
<p>24 Right to protection of child victims during criminal proceedings</p>	<p>Article 24 (2) provides that where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall, for the purposes of the Directive, be presumed to be a child.</p>	<p>Paragraph 1.4 of Chapter 3, Part B applies this age presumption.</p> <p>The right for all interviews with a child victim or witness to be video recorded and be used in evidence is implemented by existing legislation under the Criminal Justice and Criminal Evidence Act 1999, but paragraph 1.8 of Chapter 3, Part A of the Code provides a clear entitlement for children to have their interviews recorded.</p>	<p>All Service Providers.</p>

Scrutiny History

Scrutiny History

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 (“the Directive”).

On 24 April 2012 the then Secretary of State for Justice (Kenneth Clarke QC) wrote to the scrutiny committee of both Houses to provide an update on the negotiations of the Directive. On 18 May the Commons committee requested a debate ahead of its agreement at the Justice and Home Affairs Council. Given the timetabling constraints, Lord McNally wrote to the Committee on 20 May, requesting that the Committee waive their Parliamentary Scrutiny Reserve to allow the Government to agree to the Roadmap and offered a debate on the Commission’s victim’s roadmap package as a whole. The Committee responded on 24 May, agreeing to this approach.

On 2 June 2012 an Explanatory Memorandum on the proposal for the Directive was submitted to the scrutiny committees of both Houses. The Lords Committee responded on 14 June clearing the proposal from scrutiny.

A debate was held in the Commons on 11 July and the question was put to and agreed to with regards to opting into the Directive.

On 5 September 2012 a Written Ministerial Statement was issued in the Lords and the Commons confirming the Government’s decision to opt-in to the Directive.

On 23 November 2012 the Secretary of State (Chris Grayling) wrote to the parliamentary scrutiny committees in both Houses notifying them that the Directive was published into the Official Journal on 14 November 2012.

Transposition Note for the Domestic Violence, Crime and Victims Act 2004 (Victims' Code of Practice) Order 2013

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.

Article	Detail	Implementation	Responsibility
18 General provisions on assistance, support, and protection measures for child victims	18(2) provides that a child victim is provided with assistance and support as soon as competent authorities have a reasonable grounds indication for believing they have been subject to any of the offences referred to in Articles 3 to 7. (All references to child victims in relation to the Directive refer to victims of offences contained in Articles 3 to 7)	Paragraph 1.10 of chapter 1 of the code provides that victims who are under 18 at the time of the offence are to receive an enhanced level of service. 1.6 of Chapter 3, Part A provides that child is to receive a needs assessment and be referred to victim support services within 2 days of reporting the allegation. Paragraph 1.12 provides that a child victim is entitled to therapy or counselling from a specialist organisation during the investigation or trial.	All Service Providers (listed at paragraph 7 of the Introduction)
	18(3) provides that where the age of person subject to any of the offences referred to in Article 3 to 7 is uncertain, and there are reasons to believe the person is a child, that person is presumed to be a child in order	Paragraph 1.4 of Chapter 3, Part B provides for this age presumption for the purposes of services provided under the code. Separately regulations under	All Service Providers.

	to receive immediate access to assistance, support and protection in accordance with Articles 19 and 20.	section 2(2) of the European Communities Act 1972 will be laid to provide for the age presumption to apply in relation to the determination of eligibility for special measures for giving evidence at court under the Youth Justice and Criminal Evidence Act 1999.	
19 Assistance and support to victims	19 (1) provides that assistance and support are to be provided to victims before during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive. In particular, that children who report abuse within their own family are protected.	The code sets out the services to be provided to victims at the various stages of the criminal justice process, including a specific chapter (chapter 3, part A) setting out the entitlements for child victims. Paragraph 1.6 of Chapter 3, Part A provides that child victims are automatically referred by the police to victim support services within 2 days of an allegation being reported. Paragraph 18 of the Introduction to the code provides that parents or guardians may receive services under the code unless they are under investigation or a decision is taken that it is not in the child's best interests.	All Service Providers.
	19(2) provides that assistance and support for a child victim is not to be conditional on the	Paragraph 20 of the Introduction to the code provides that services provided	All Service Providers

	child's willingness to cooperate with the criminal process	under the code are not conditional on co-operation.	
	19(3) requires that the specific actions to assist and support a child victim are undertaken following an individual assessment of the special circumstances of each particular child victim, taking into account child's view, needs and concerns.	Paragraph 1.6 of Chapter 3, Part A, provides for the police to carry out a needs assessment of the child. A further assessment is carried out if the child is required to provide evidence (1.12, Chapter 3, Part B). Paragraph 1.4 and 1.5 of Chapter 1 describe how an assessment is conducted, including that the views of the victim are to be taken into account.	Police, Witness Care Unit
	19(4) provides that child victims of the relevant offences are to be considered as particularly vulnerable victims pursuant to specific articles within Framework Decision 2001/220/JHA.	Paragraph 1.10(a) of Chapter 1 provides that child victims are considered to be vulnerable witnesses and eligible for an enhanced level of service under the code.	All service providers
	19 (5) provides that support, where appropriate and possible, should be provided to the family of the child victim when the family is in the territory of the Member State.	Paragraph 18 of the Introduction to the code provides that parents or guardians may receive services under the code unless they are under investigation or a decision is taken that it is not in the child's best interests.	All service providers.

<p>20 Protection of child victims in criminal investigations and proceedings</p>	<p>20(3) provides that during criminal investigations in relation to an offence under articles 3 to 7: (a) interviews with the child victim take place without unjustified delay after the facts have been reported; (b) interviews with the child victim take place, where necessary, in premises designed or adapted for the purpose; (c) interviews with the child victim are carried out, where necessary, by or through professionals trained for the purpose; (d) if possible and where appropriate, the same persons conduct all the interviews with the complainant; (e) the number of interviews with the child victim is as limited as possible and interviews are carried out only where strictly necessary for the purposes of the investigation; (f) the complainant may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned</p>	<p>See paragraph 1.10 of Chapter 3, Part B, which cross refers to the obligations on the police in paragraphs 1.5 and 1.6 of Chapter 2, Part B.</p>	<p>Police</p>
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	decision has been made to the contrary in respect of that person.		
	20(4) provides that all interviews with a child victim or witness may be video recorded and be used in evidence.	This is implemented by existing legislation under the Criminal Justice and Criminal Evidence Act 1999, but paragraph 1.8 of chapter 3, Part A of the code provides a clear entitlement for children to have their interviews recorded.	Police

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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 (“the Directive”)

On 13 April 2010 a factual EM on the Directive was submitted to the parliamentary scrutiny committees during purdah, with a full EM submitted on 25 May 2010 by the then Secretary of State for Justice (Kenneth Clarke QC). He subsequently wrote on 30 June 2010 informing Parliament of the Government’s decision to opt in to this Directive. A supplementary EM was subsequently submitted on 19 July 2010 in response to questions posed by the House of Lords EU Committee.

On 9 September 2010 the House of Commons, European Scrutiny Committee, report on the Directive was published. An EM on specific articles 1-13 (except art 10) was submitted on 14 October 2010. The European Scrutiny Committee published further reports on 27 October and on 24 November 2010.

On 15 December 2010 an unnumbered EM and Impact Assessment was submitted to Parliament. The European Scrutiny Committee published a report on 2 February 2011. The Committee cleared this proposal from scrutiny following a debate held on 26 April 2011. The House of Lords Sub-Committee E cleared this proposal from scrutiny on 22 June 2011.

On 3 November 2011 a Written Ministerial Statement about the October JHA Council meeting reported that the European Parliament adopted the text agreed by the Council on 27 October, following agreement between the Council, the European Parliament and the Commission.