

DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Victims Etc

Section 32: Codes of practice for victims

111. *Section 32* places a requirement on the Secretary of State in consultation (under *subsection 33*) with the Attorney General and the Lord Chancellor (the Cabinet Ministers who share responsibility for the criminal justice system) to issue a Code of Practice in respect of the services provided to victims of crime by persons who have functions relating to victims or the criminal justice system as a whole.
112. *Subsections (2)- (4)* allow the code, among other things, to:
- differentiate between different types of victims, so that particularly vulnerable victims, for example, might receive a faster service or a service tailored to their needs;
 - benefit persons other than the victim, such as the relatives of deceased victims or parents of juveniles;
 - allow for regional variations in the way that services are provided to victims so that the code can reflect local practices.
113. *Subsection (5)* provides that the code may not require anything to be done by a person acting in a judicial capacity or by a member of the Crown Prosecution Service when exercising a discretion.
114. *Subsection (6)* provides that a person can be a victim of criminal conduct for the purposes of this Section, irrespective of whether or not an offender is charged or convicted. This ensures that the provisions of the code can be broad enough to require the provision of services to victims at all stages of the criminal justice system and to victims of offences in respect of which no criminal proceedings are eventually brought or where criminal proceedings result in a not-guilty verdict.

Section 33: Procedure

115. *Section 33* explains the procedure for drafting and issuing the code of practice and subsequent revisions of it. When the final version of the code has been laid before Parliament, it is brought into operation by order. By virtue of *section 61(3)*, the order is to be subject to the negative resolution procedure. By virtue of *subsection (9)*, the code may not be revised so as to reduce the quality or extent of services provided.

Section 34: Effect of non-compliance

116. *Section 34* provides that failure to comply with the code does not, in itself, give rise to any liability to criminal or civil proceedings.

Section 35: Victims rights to make representation and receive information

117. *Section 35* replaces section 69 of the Criminal Justice and Court Services Act 2000. It provides that where the court convicts a person (the “offender”) for a sexual or violent offence and imposes a prison sentence of a minimum of 12 months or sentence of detention, the local probation board must take reasonable steps to establish whether the victim of the offence wishes to make representations about whether the offender should be subject to conditions on release (and if so, what conditions), or wishes to receive information about those conditions. If the victim dies express such a wish, the relevant local probation board becomes responsible for forwarding any representations the victim makes to the authority responsible for decisions on release. The board would also be responsible for informing the victim whether the offender will be subject to any conditions in the event of release; for providing details of any conditions about contact with the victim or his family, and for providing any other information it considers appropriate. The section defines the relevant local probation board as the board of which the supervising officer of the offender after release (if there is one) is an officer or the board for the area in which the offender is detained.

Sections 36 - 44

118. These sections make provision for local probation boards to provide similar information (obtained from the Secretary of State and Mental Health Review Tribunal) to victims of persons subject to the Mental Health Act 1983. They also make similar provision for such victims to make.

Hospital orders

Section 36: Victims’ rights: preliminary

119. *Section 36* applies where the court convicts a person (“the patient”) for a sexual or violent offence or makes a finding of insanity or unfitness to plead and then makes a hospital order with restrictions in respect of that patient. The local probation board must take reasonable steps to establish, as in *section 35*, if the victim of the offence wishes to make representations as to whether the patient should be subject to conditions in the event of the his discharge from hospital. The board must also establish whether the victim wishes to receive information about those conditions in the event of his discharge.

Section 37: Representations

120. *Section 37* follows on from *section 36* and requires the board to forward the victim’s representations to the authority making decisions on discharge. The Home Secretary is required to inform the board if he is considering lifting the restrictions, discharging the patient (and if so whether that is subject to conditions) or varying conditions of discharge. A Mental Health Review Tribunal is required to inform the board of applications or references of the patient’s case which may lead to discharge or variation of conditions. The board is then required to pass any information so received to a victim who has expressed a wish to make representations so that he may do so. The board must also pass that information to a victim who, regardless of whether he expressed a wish to or not has, in fact, made representations on the matters described in *section 36*.

Section 38: Information

121. *Section 38* also follows on from *section 36* and requires the board to inform a victim who has requested to receive information specified in that section whether the patient is

to be subject to conditions in the event of his discharge; and, if so, to inform him of any conditions relating to contact with the victim or his family. It also requires the board to inform him of the date (if any) on which the restrictions will cease and to give him any other information it considers appropriate.

122. So that the board is in a position to comply with these obligations, the Home Secretary is required to inform it if he is going to discharge the patient. He must also give the board information regarding any conditions of discharge, or recall to hospital or when restrictions will end if he uses his power to lift them. Similarly, if there is an application or reference to a Mental Health Review Tribunal, the tribunal is required to inform the board if the patient is to be discharged. It must also give the board information regarding any conditions of discharge and the date on which restrictions will end if the tribunal grants an absolute discharge.

Hospital direction

Section 39: Victims' rights: preliminary

123. *Section 39* applies instead of *section 35* by virtue of *section 35(2)* where the sentencing court makes a hospital direction and limitation direction in respect of an offender in addition to giving him a relevant prison sentence. The local probation board has the same responsibility to take reasonable steps to establish whether the victim of the offence wishes to make representations, broadly, about whether the offender should be subject to conditions or supervision requirements in the event of his discharge or release from hospital or prison (and if so what conditions or requirements). The board must also establish whether the victim wishes to receive information about the conditions or requirements to which the offender is to be subject in the event of his release or discharge.

Section 40: Representations

124. *Section 40* follows on from *section 39* and requires the board to forward the victim's representations to the relevant authority taking decisions on discharge, in the event that the offender is discharged under the powers in the Mental Health Act 1983. The Home Secretary is required to inform the board if he is considering lifting restrictions, discharging the offender under the 1983 Act powers or varying conditions of discharge. A Mental Health Review Tribunal is required to inform the board if it receives an application or reference in respect of the offender's discharge. The board must then pass any information so received to a victim who has expressed a wish to make representations so that he may do so. The board must also pass that information to a victim who, regardless of whether he expressed a wish to or not, has in fact made representations on the matters described in *section 40*.

Section 41: Information

125. *Section 41* also follows on from *section 39* and requires the board to inform a victim who has so requested to receive information specified in that section, whether the offender is to be subject to conditions in the event that he is discharged under the powers in the Mental Health Act 1983, and if so, to provide details of any such conditions relating to contact with the victim or his family. It also requires the board to notify him of the date on which any restrictions will cease to have effect. The board is also required to inform the victim if the offender is to be subject to any licence conditions or supervision requirements in the event of his release and to inform him of any such conditions or requirements which relate to contact with him or his family. In addition the board should provide the victim with any other information it considers appropriate.
126. So that the board is in a position to comply with these obligations, the Home Secretary must inform the board if he is considering discharging the offender under the 1983 Act powers. He must also give the board information regarding any conditions of discharge

or recall to hospital, and the date on which restrictions will cease to have effect if he is lifting them.

127. If an application or reference is made to a Mental Health Review Tribunal it must inform the board if it is going to discharge the offender under the 1983 Act powers; it must also give the board information regarding conditions of discharge and when restrictions will cease if the tribunal grants an absolute discharge.

Transfer directions

Section 42: Victims' rights: preliminary

128. *Section 42* applies if an offender (defined in the same terms as in *section 35*) is transferred by the Home Secretary to hospital and restrictions are imposed, under the powers in the Mental Health Act 1983. The board for the area where the hospital is situated is required to take reasonable steps to establish whether a victim of the offence wishes to make representations or receive information about any conditions which may apply in the event of discharge from hospital under the 1983 Act powers.

Section 43: Representations

129. *Section 43* follows on from *section 42* and requires the board to forward the victim's representations to the relevant authority taking decisions on discharge in the event that the offender is discharged under the powers in the Mental Health Act 1983. The Home Secretary is required to inform the board if he is considering lifting restrictions, discharging the offender (either absolutely or subject to conditions) or varying conditions of discharge. A Mental Health Review Tribunal is required to inform the board if it receives an application or reference in respect of the offender's discharge. The board must then pass any information so received to a victim who has expressed a wish to make representations so that he may do so. The board must also pass that information to a victim who, regardless of whether or not he expressed a wish to or not, has in fact made representations on the matters described in *section 42*.

Section 44: Information

130. *Section 44* also follows on from *section 42* and requires the board to inform the victim who has requested to receive information specified in that section whether the offender is to be subject to conditions in the event that he is discharged under the powers in the Mental Health Act 1983, and if so, to provide details of any conditions relating to contact with the victim and his family. It also requires the board to notify the victim of the date on which restrictions will cease, and to give any other information the board considers appropriate.
131. So that the board is in a position to comply with these obligations, the Home Secretary is required to inform it if he is considering discharging the offender under powers in the Mental Health Act 1983. He must also give information to the board regarding any conditions of discharge, any recall to hospital and the date on which restrictions will cease to have effect if he is lifting them.
132. Similarly, if an application or reference is made to a Mental Health Review Tribunal, the tribunal must inform the board if it is going to discharge the offender under the 1983 Act powers. It must also give information to the board regarding any conditions of discharge and when restrictions will cease if the tribunal grants an absolute discharge.

Section 45: Interpretation: sections 35 to 44

133. *Section 45* provides definitions of the expressions used in *sections 35 to 44*.
Northern Ireland

Section 46: Victims of mentally disordered persons

134. *Section 46* amends the Justice (Northern Ireland) Act 2002 to require the Secretary of State to create a similar scheme for victims of mentally disordered offenders in Northern Ireland.

Section 47: Investigations by the Parliamentary Commissioner

135. *Section 47 and Schedule 7* amend the Parliamentary Commissioner Act 1967. The amendments extend the jurisdiction of the Parliamentary Commissioner for Administration so that he can investigate and report on:
- complaints that a duty under the code of practice for victims issued under *section 32* has been breached;
 - complaints that any person has failed to comply with a duty to victims under *sections 35 to 44*.
136. Complaints will have to be made to the Parliamentary Commissioner through a Member of Parliament, in the same way as complaints of maladministration within the Parliamentary Commissioner's existing remit. The Parliamentary Commissioner will have the same powers to obtain evidence and examine witnesses as he has in relation to complaints of maladministration. The provisions as to secrecy of information will also apply in the same way as to complaints of maladministration.
137. *Paragraph 2(4) of Schedule 7* provides that the matters excluded from the Parliamentary Commissioner's remit are slightly different for complaints of breaches of the code or *sections 35 to 44* than they are for complaints of maladministration under the 1967 Act. Matters relating to criminal investigations and proceedings are excluded from the Parliamentary Commissioner's remit in respect of complaints of maladministration under the 1967 Act but such an exclusion would make the exercise of his functions in relation to breaches of the code and *sections 35 to 44* ineffective. Therefore, this exclusion does not apply in respect of complaints about such breaches.

Section 48: Commissioner for Victims and Witnesses

138. *Section 48* provides for a Commissioner for Victims and Witnesses to be appointed by the Secretary of State, in consultation with the Attorney General and the Lord Chancellor. The effect of providing that the Commissioner is a corporation sole (*subsection (3)*) is that the office of the Commissioner has legal personality and that the Commissioner (in his capacity as office holder) can hold property, bring legal proceedings and employ staff. *Sub-sections (4) and (5)* provide that the Commissioner is not to be a Crown servant, which would be inappropriate to his independent role.
139. *Subsection (6)* introduces *Schedule 8*, which makes detailed provision about the Commissioner. *Paragraph 1* provides for the Secretary of State to appoint a Deputy Commissioner who will carry on the Commissioner's functions if he is unable to do so. *Paragraphs 2, 5 and 6* concern the terms of appointment and remuneration of the Commissioner and Deputy Commissioner and *paragraph 10* provides that they will be disqualified from sitting in Parliament or the Northern Ireland Assembly (office holders are usually disqualified from membership of the Scottish Parliament and National Assembly for Wales by order made by the relevant authority). *Paragraphs 3 and 4* allow the Commissioner to appoint his own staff and to authorise them to carry out his functions. *Paragraphs 8 and 9* provide for the Commissioner to prepare an annual plan, which will be subject to the approval of the Secretary of State, and to prepare an annual report which he must send to the Secretary of State, who will be required to lay the report before Parliament and publish it.

Section 49: General functions of the Commissioner

140. *Section 49* outlines the functions of the Commissioner. Under *subsection (1)*, the Commissioner's primary functions are to promote the interests of victims and witnesses of crime and anti-social behaviour, take steps to encourage good practice in their treatment and keep the code issued under *section 32* under review. *Subsection (2)* provides for various ways in which he can carry out these functions, including making a report to the Secretary of State, commissioning research and making recommendations to an authority within his remit (as to which see *section 53*).
141. *Subsection (3)* requires that where the Commissioner makes a report to the Secretary of State under *subsection (2)*, the Secretary of State must send the report to the Attorney General and the Lord Chancellor, lay the report before Parliament and arrange for its publication.

Section 50: Advice

142. *Section 50* obliges the Commissioner to provide advice on issues relating to victims and witnesses of crime and anti-social behaviour when requested to do so by any Government Minister.
143. The authorities within the Commissioner's remit may ask the Commissioner to give specific advice in connection with the information they provide, through whatever medium, to victims and witnesses.

Section 51: Restrictions on exercise of functions

144. *Section 51* prevents the Commissioner from exercising his functions on behalf of individual victims or witnesses. He cannot, for example, ask the police or Crown Prosecution Service to bring or reconsider a particular charge against an individual offender, or ask for the courts to impose a particular sentence. On the other hand, the Commissioner will not be prevented from commenting on charging or sentencing policy, or any other wider policy issue relating to victims and witnesses.

Section 52: Victims and Witnesses

145. *Section 52* provides definitions of "victim" and "witness", for the purpose of *sections 48 to 51*. These definitions are wide enough to include: victims of offences in respect of which no offence was reported to the police or no suspect was charged or convicted (*subsection (3)*); witnesses who are not actually called to give evidence (*subsection (4)*); and the victims or witnesses of anti-social behaviour. The effect is that the Commissioner is not excluded from considering the position of those victims who, for whatever reason, choose not to report crime or anti-social behaviour, or those witnesses who do not come forward to make statements or give evidence.
146. Under *subsections (4) and (6)*, the definition of witness does not include witnesses who are or would be defendants in criminal proceedings or any anti-social behaviour proceedings.

Section 53: Authorities within the Commissioner's remit

147. *Section 53* introduces *Schedule 9* which lists the authorities which fall within the Commissioner's remit. The list includes authorities which might have a more general impact on victims and witnesses, not just authorities with an interest in the criminal justice system. *Subsection (2)* provides the Secretary of State with the power to amend this list by order, in consultation with the Attorney General and the Lord Chancellor. By virtue of *Section 61(4)*, this power is subject to the affirmative resolution procedure.

Section 54: Disclosure of information

148. *Section 54* enables information to be disclosed to those bound by the code issued under *section 32*, local probation boards, the Commissioner and authorities within his remit for the purposes of: compliance with the code; compliance with the duties under *sections 35 to 44*; and the carrying out of the Commissioner's functions.
149. Under *subsections (4) to (6)*, the Secretary of State may, in consultation with the Attorney General and the Lord Chancellor, amend the Section by order so as to permit disclosure of information to a wider range of people or for a wider range of purposes. However, the persons to whom information is disclosed must exercise functions of a public nature and the purpose must be connected with the assistance of victims, witnesses and others affected by offences and anti-social behaviour. By virtue of *Section 61(4)*, this power is subject to the affirmative resolution procedure.
150. *Subsection (7)*, makes clear that permission to disclose under this section does not override the provision of the Data Protection Act 1998. It is also implicit that the provisions of the Human Rights Act 1998 would need to be taken into account before any disclosure is made under this section.

Section 55: Victims' Advisory Panel

151. *Section 55* requires the Secretary of State to appoint a Victims' Advisory Panel which he can consult on matters relating to victims and witnesses of crime and of anti-social behaviour. The Panel will be required to publish an annual report if the Secretary of State has consulted it during a particular year. The Secretary of State must consult the Attorney General and the Lord Chancellor before appointing or removing a member of the Panel.
152. The Home Secretary announced his intention to set up a Victims' Advisory Panel in March 2002, as stated in paragraph 2.45 (page 48) of the July 2002 White Paper "*Justice For All*". A non-statutory advisory non-departmental public body known as the Victims' Advisory Panel was duly recruited and met for the first time on 3 March 2003.
153. The membership of the current Panel comprises ten voluntary lay members, who have direct experience of victimisation, three co-opted members representing wider victims' interests, representatives of voluntary organisations to which the Government provides core funding to provide direct services to victims and witnesses, and senior officials from criminal justice agencies. It is chaired by the Minister for Criminal Justice, and is also attended by a minister from the Department for Constitutional Affairs, and the Solicitor General.
154. By *subsection (7)* the non-statutory Victims' Advisory Panel is to be treated as having been established in accordance with this section.

Section 56: Grants for assisting victims, witnesses etc

155. *Section 56* will give the Secretary of State power to give grants to such persons or organisations as he considers appropriate in connection with measures intended to provide personal support to victims of crime, witnesses of crime, and others affected by crime. The section allows the Secretary of State to attach conditions to the giving of the grant.
156. The Home Office currently gives annual grants to several voluntary organisations which help victims and witnesses. This section will regularise the Home Office position in relation to current and future core funding programmes for victims and witnesses, and is consistent with Treasury best practice that there should be specific statutory authority for regular government grants to voluntary sector bodies.

Section 57: Recovery of criminal injuries compensation from offenders

157. *Section 57* amends the Criminal Injuries Compensation Act 1995. Subsection (2) inserts new sections 7A, 7B, 7C and 7D into that Act. Section 7A gives the Secretary of State power to make regulations enabling the Criminal Injuries Compensation Authority to recover from offenders the money it has paid in compensation to their victims under the Criminal Injuries Compensation Scheme. Section 7B provides for a person from whom an amount has been determined as recoverable under those regulations to be given a recovery notice. Section 7C sets out a procedure for a review of a determination that an amount is recoverable from a person and the amount determined as recoverable. Section 7D provides that an amount determined as recoverable from a person is recoverable as a debt due to the Crown. Section 7D also sets out defences that may be relied on by a person from whom an amount is sought to be recovered, and makes provision about limitation. Parallel legislation will be required by the Scottish Parliament to extend this power to Scotland.