



# Domestic Violence, Crime and Victims Act 2004

## 2004 CHAPTER 28

### PART 3

#### VICTIMS ETC

### CHAPTER 2

#### REPRESENTATIONS AND INFORMATION

##### *Hospital directions*

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

- (1) This section applies if—
- a person (“the offender”) is convicted of a sexual [<sup>F1</sup>, violent or terrorism] offence,
  - a relevant sentence is imposed on him in respect of the offence, and
  - 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>F2</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—
- to make representations about the matters specified in subsection (3);
  - to receive the information specified in subsection (4).

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[<sup>F3</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>F4</sup>while he is subject to a limitation direction], be subject to any conditions and, if so, what conditions;

[<sup>F5</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

- F1** 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))
- F2** 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)**
- F3** 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)**
- F4** 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.)
- F5** 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.)

## 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>F6</sup>or provider of probation services] mentioned in section 39(2) or the [<sup>F7</sup>relevant probation body], and

(b) it appears to the [<sup>F7</sup>relevant probation body] that the person is the victim of the offence or acts for the victim of the offence,

the [<sup>F7</sup>relevant probation body] must forward the representations to the persons responsible for determining the matter.

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- (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 [F8relevant 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) [F9The First-tier Tribunal or the Mental Health Review Tribunal for Wales] must inform the [F10relevant 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 [F11relevant probation body] receives information under subsection (4) or (5), and
  - (b) a person who appears to the [F11relevant 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 [F11relevant probation body] or the local probation board [F12or provider of probation services] mentioned in section 39(2).
- (7) The [F13relevant probation body] must provide the information to the person.
- [F14(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 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

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- (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

- F6** 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\(8\)\(a\)\(i\)](#)
- F7** 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\(8\)\(a\)\(ii\)](#)
- F8** 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\(8\)\(b\)](#)
- F9** 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](#)
- F10** 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\(8\)\(c\)](#)
- F11** 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\(8\)\(d\)\(i\)](#)
- F12** 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\(8\)\(d\)\(ii\)](#)
- F13** 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\(8\)\(e\)](#)
- F14** 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 [F15relevant 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 [F15relevant probation body] that he wishes to receive that information.
- (3) The [F16relevant 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 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.

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- (4) The Secretary of State must inform the [<sup>F17</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>F18</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>F18</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>F19</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>F20</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>F21</sup>relevant probation body] has the meaning given in section 40(8).

#### Textual Amendments

- F15** 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)**
- F16** 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)**
- F17** 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)**
- F18** 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**
- F19** 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)**
- F20** 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)**

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**F21** 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>F22</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**

**F22** [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.](#))

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 9 para. 26A inserted by [2015 c. 2 Sch. 3 para. 12](#)