

MENTAL HEALTH ACT 2007

EXPLANATORY NOTES

COMMENTARY

Part 2 – Amendments to Other Acts

Chapter 1 – Amendments to the Domestic Violence, Crime and Victims Act 2004

Section 48: Victims' rights and Schedule 6

187. *Section 48* introduces Schedule 6 which extends, with modifications, the rights of victims under the Domestic Violence, Crime and Victims Act 2004 (“the 2004 Act”) to victims of persons convicted of a sexual or violent offence, where (a) the person is made subject to a hospital order without restrictions; (b) the person is made subject to a hospital and limitation direction and the limitation direction subsequently ceases to have effect; and (c) the person is transferred from prison to hospital under a transfer direction without a restriction direction, or where the restriction direction is removed.
188. As under the existing provisions of the 2004 Act, the local probation board must take reasonable steps to establish (a) if the victim of the offence wishes to make representations as to whether the patient should be subject to conditions in the event of discharge from hospital; and (b) whether the victim wishes to receive information about those conditions in the event of his discharge.
189. As the local probation board has no remit in relation to non-restricted mentally disordered offenders detained in hospital, the board must, at the appropriate point, notify the hospital managers of the hospital in which that offender (“the patient”) is detained of the victim’s wish to receive information and make representations. The hospital managers then have responsibility for forwarding the victim’s representations to the relevant persons and bodies responsible for making decisions on discharge or community treatment orders and for passing any information received from those persons or bodies to the victim.
190. Hospital managers must inform the victim if the patient’s discharge is being considered or if the patient is to be discharged. Because unrestricted patients cannot be conditionally discharged, hospital managers must inform the victim who has requested to receive information whether the patient is to be subject to a community treatment order; and, if so, to inform him of any conditions relating to contact with the victim or his family; any variation of the conditions and the date on which the order will cease. Victims also have the right to make representations about the conditions to be attached to a community treatment order, which hospital managers must forward to the responsible clinician.
191. So that hospital managers are in a position to comply with these obligations, the responsible clinician and the MHRT are required to inform hospital managers if the patient is to be discharged. Responsible clinicians must also inform hospital managers whether they are to make a community treatment order and give the managers information regarding the imposition or variation of any conditions and when the order will end.