

## SCHEDULES

### SCHEDULE 6

Section 48

#### VICTIMS' RIGHTS

##### *Introduction*

- 1 Chapter 2 of Part 3 of the Domestic Violence, Crime and Victims Act 2004 (c. 28) (provision of information to victims of restricted patients under the 1983 Act, etc.) is amended as set out in this Schedule.

##### *Hospital orders (with or without restriction orders)*

- 2 (1) Section 36 (victims' rights: preliminary) is amended as follows.
- (2) In subsection (3), for “with a restriction order” substitute “, whether with or without a restriction order”.
- (3) In subsection (5)—
- (a) in paragraph (a), after “discharge from hospital” insert “while a restriction order is in force in respect of him”, and
  - (b) after paragraph (b) insert “;
  - (c) what conditions he should be subject to in the event of his discharge from hospital under a community treatment order”.
- 3 After section 36 insert—

##### **“36A Supplemental provision for case where no restriction order made**

- (1) This section applies if, in a case where section 36 applies, the hospital order in respect of the patient was made without a restriction order.
- (2) Subsection (3) applies if a person who appears to the local probation board mentioned in section 36(4) to be the victim of the offence or to act for the victim of the offence, when his wishes are ascertained under section 36(4), expresses a wish—
- (a) to make representations about a matter specified in section 36(5), or
  - (b) to receive the information specified in section 36(6).
- (3) The local probation board must—
- (a) notify the managers of the hospital in which the patient is detained of that person’s wish and of that person’s name and address, and
  - (b) notify that person of the name and address of the hospital.
- (4) Subsection (5) applies if a person who appears to the local probation board mentioned in section 36(4) to be the victim of the offence or to act for the victim of the offence, subsequently to his wishes being ascertained under

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section 36(4), expresses a wish to do something specified in subsection (2) (a) or (b).

- (5) The local probation board mentioned in section 36(4) must take all reasonable steps—
- (a) to ascertain whether the hospital order made in respect of the patient continues in force and whether a community treatment order is in force in respect of him, and
  - (b) if the board ascertains that the hospital order does continue in force—
    - (i) to notify the managers of the relevant hospital of that person's wish, and
    - (ii) to notify that person of the name and address of the hospital.
- (6) The relevant hospital is—
- (a) the hospital in which the patient is detained, or
  - (b) if a community treatment order is in force in respect of the patient, the responsible hospital.”

4 In section 37 (the title to which becomes “Representations where restriction order made”), in subsection (1), for “if section 36 applies” substitute “if, in a case where section 36 applies, the hospital order in respect of the patient was made with a restriction order”.

5 After section 37 insert—

**“37A Representations where restriction order not made**

- (1) This section applies if, in a case where section 36 applies, the hospital order in respect of the patient was made without a restriction order.
- (2) Subsection (3) applies if—
- (a) a person makes representations about a matter specified in section 36(5) to the managers of the relevant hospital, and
  - (b) it appears to the managers that the person is the victim of the offence or acts for the victim of the offence.
- (3) The managers must forward the representations to the persons responsible for determining the matter.
- (4) The responsible clinician must inform the managers of the relevant hospital if he is considering making—
- (a) an order for discharge in respect of the patient under section 23(2) of the Mental Health Act 1983,
  - (b) a community treatment order in respect of the patient, or
  - (c) an order under section 17B(4) of the Mental Health Act 1983 to vary the conditions specified in a community treatment order in force in respect of the patient.
- (5) Any person who has the power to make an order for discharge in respect of the patient under section 23(3) of the Mental Health Act 1983 must inform the managers of the relevant hospital if he is considering making that order.

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- (6) A Mental Health Review Tribunal must inform the managers of the relevant hospital if—
- (a) an application is made to the tribunal under section 66 or 69 of the Mental Health Act 1983, or
  - (b) the patient's case is referred to the tribunal under section 67 of that Act.
- (7) Subsection (8) applies if—
- (a) the managers of the relevant hospital receive information under subsection (4), (5) or (6), and
  - (b) a person who appears to the managers to be the victim of the offence or to act for the victim of the offence—
    - (i) when his wishes were ascertained under section 36(4), expressed a wish to make representations about a matter specified in section 36(5), or
    - (ii) has made representations about such a matter to the managers of the hospital in which the patient was, at the time in question, detained.
- (8) The managers of the relevant hospital must provide the information to the person.
- (9) The relevant hospital has the meaning given in section 36A(6).”
- 6 In section 38 (the title to which becomes “Information where restriction order made”), in subsection (1) for “if section 36 applies” substitute “if, in a case where section 36 applies, the hospital order in respect of the patient was made with a restriction order”.
- 7 After section 38 insert —

**“38A Information where restriction order not made**

- (1) This section applies if, in a case where section 36 applies, the hospital order in respect of the patient was made without a restriction order.
- (2) The responsible clinician must inform the managers of the relevant hospital—
  - (a) whether he is to make an order for discharge in respect of the patient under section 23(2) of the Mental Health Act 1983;
  - (b) whether he is to make a community treatment order in respect of the patient;
  - (c) if a community treatment order is to be made in respect of the patient, what conditions are to be specified in the order;
  - (d) if a community treatment order is in force in respect of the patient, of any variation to be made under section 17B(4) of the Mental Health Act 1983 of the conditions specified in the order;
  - (e) if a community treatment order in respect of the patient is to cease to be in force, of the date on which it is to cease to be in force;
  - (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, it does not appear to the responsible clinician that the conditions set out in subsection (4) of that section

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are satisfied, of the date on which the authority for the patient's detention is to expire.

- (3) Any person who has the power to make an order for discharge in respect of the patient under section 23(3) of the Mental Health Act 1983 must inform the managers of the relevant hospital if he is to make that order.
- (4) Subsection (5) applies if—
  - (a) an application is made to a Mental Health Review Tribunal under section 66 or 69 of the Mental Health Act 1983,
  - (b) the patient's case is referred to a Mental Health Review Tribunal under section 67 of that Act, or
  - (c) the managers of the relevant hospital refer the patient's case to a Mental Health Review Tribunal under section 68 of that Act.
- (5) The tribunal must inform the managers of the relevant hospital if it directs that the patient is to be discharged.
- (6) Subsection (7) applies if a person who appears to the managers of the relevant hospital to be the victim of the offence or to act for the victim of the offence—
  - (a) when his wishes were ascertained under section 36(4), expressed a wish to receive the information specified in section 36(6), or
  - (b) has subsequently informed the managers of the relevant hospital that he wishes to receive that information.
- (7) The managers of the relevant hospital order must take all reasonable steps—
  - (a) to inform that person whether the patient is to be discharged under section 23 or 72 of the Mental Health Act 1983;
  - (b) to inform that person whether a community treatment order is to be made in respect of the patient;
  - (c) if a community treatment order is to be made in respect of the patient and is to specify conditions which relate to contact with the victim or his family, to provide that person with details of those conditions;
  - (d) if a community treatment order is in force in respect of the patient and the conditions specified in the order are to be varied under section 17B(4) of the Mental Health Act 1983, to provide that person with details of any variation which relates to contact with the victim or his family;
  - (e) if a community treatment order in respect of the patient is to cease to be in force, to inform that person of the date on which it is to cease to be in force;
  - (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, the authority for the patient's detention is not to be renewed, to inform that person of the date on which the authority is to expire;
  - (g) to provide that person with such other information as the managers of the relevant hospital consider appropriate in all the circumstances of the case.
- (8) The relevant hospital has the meaning given by section 36A(6).

### **38B Removal of restriction**

- (1) This section applies if, in a case where section 36 applies—
  - (a) the hospital order in respect of the patient was made with a restriction order, and
  - (b) the restriction order ceases to have effect while the hospital order continues in force.
- (2) Subsection (3) applies if a person who appears to the relevant local probation board to be the victim of the offence or to act for the victim of the offence—
  - (a) when his wishes were ascertained under section 36(4), expressed a wish to make representations about a matter specified in section 36(5) or to receive the information specified in section 36(6), or
  - (b) has subsequently informed the relevant local probation board that he wishes to make representations about such a matter or to receive that information.
- (3) The relevant local probation board 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 name and address of the hospital.
- (4) While the hospital order continues in force, the patient 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 local probation board has the meaning given in section 37(8).”

#### *Hospital directions and limitation directions*

- 8 In section 39 (victims' rights: preliminary), in subsection (3)—
- (a) in paragraph (a), after “discharge from hospital” insert “while he is subject to a limitation direction”, and
  - (b) after that paragraph insert—
    - “(aa) what conditions he should be subject to in the event of his discharge from hospital under a community treatment order;”.
- 9 After section 41 insert—

### **“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.

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- (2) Subsection (3) applies if a person who appears to the relevant local probation board 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 local probation board that he wishes to make representations about such a matter or to receive that information.
- (3) The relevant local probation board 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 local probation board has the meaning given in section 40(8).”

*Transfer directions (with or without restriction directions)*

- 10 (1) Section 42 (victims' rights: preliminary) is amended as follows.
- (2) In subsection (1)(c), for “and a restriction direction in respect of him” substitute “in respect of the offender (whether or not he also gives a restriction direction in respect of the offender)”.
  - (3) In subsection (3)—
    - (a) in paragraph (a), after “discharge from hospital” insert “at a time when a restriction direction is in force in respect of him”, and
    - (b) after paragraph (b) insert “;
      - (c) what conditions he should be subject to in the event of his discharge from hospital under a community treatment order”.

11 After section 42 insert—

**“42A Supplemental provision for case where no restriction direction given**

- (1) This section applies if, in a case where section 42 applies, the transfer direction in respect of the patient was given without a restriction direction.
- (2) Subsection (3) applies if a person who appears to the local probation board mentioned in section 42(2) to be the victim of the offence or to act for the victim of the offence, when his wishes are ascertained under section 42(2), expresses a wish—
  - (a) to make representations about a matter specified in section 42(3), or
  - (b) to receive the information specified in section 42(4).
- (3) The local probation board must—

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- (a) notify the managers of the hospital in which the patient is detained of that person's wish and of that person's name and address, and
    - (b) notify that person of the name and address of the hospital.
  - (4) Subsection (5) applies if a person who appears to the local probation board mentioned in section 42(2) to be the victim of the offence or to act for the victim of the offence, subsequently to his wishes being ascertained under section 42(2), expressed a wish to do something specified in subsection (2) (a) or (b).
  - (5) The local probation board mentioned in section 42(2) must take all reasonable steps—
    - (a) to ascertain whether the transfer direction given in respect of the patient continues in force and whether a community treatment order is in force in respect of him, and
    - (b) if the board ascertains that the transfer direction does continue in force—
      - (i) to notify the managers of the relevant hospital of that person's wish, and
      - (ii) to notify that person of the name and address of the hospital.
  - (6) The relevant hospital has the meaning given in section 36A(6).”
- 12 In section 43 (the title to which becomes “Representations where restriction direction made”), in subsection (1), for “if section 42 applies” substitute “if, in a case where section 42 applies, the transfer direction in respect of the patient was given with a restriction direction”.
- 13 After section 43 insert—

**“43A Representations where restriction direction not given**

- (1) This section applies if, in a case where section 42 applies, the transfer direction in respect of the patient was given without a restriction direction.
- (2) Subsection (3) applies if—
  - (a) a person makes representations about a matter specified in section 42(3) to the managers of the relevant hospital, and
  - (b) it appears to the managers that the person is the victim of the offence or acts for the victim of the offence.
- (3) The managers must forward the representations to the persons responsible for determining the matter.
- (4) The responsible clinician must inform the managers of the relevant hospital if he is considering making—
  - (a) an order for discharge in respect of the patient under section 23(2) of the Mental Health Act 1983,
  - (b) a community treatment order in respect of him, or
  - (c) an order under section 17B(4) of the Mental Health Act 1983 to vary the conditions specified in a community treatment order in force in respect of the patient.

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- (5) Any person who has power to make an order for discharge in respect of the patient under section 23(3) of the Mental Health Act 1983 must inform the managers of the relevant hospital if he is considering making that order.
- (6) A Mental Health Review Tribunal must inform the managers of the relevant hospital if—
  - (a) an application is made to the tribunal under section 66 or 69 of the Mental Health Act 1983, or
  - (b) the patient's case is referred to the tribunal under section 67 of that Act.
- (7) Subsection (8) applies if—
  - (a) the managers of the relevant hospital receive information under subsection (4), (5) or (6), and
  - (b) a person who appears to the managers to be the victim of the offence or to act for the victim of the offence—
    - (i) when his wishes were ascertained under section 42(2), expressed a wish to make representations about a matter specified in section 42(3), or
    - (ii) has made representations about such a matter to the managers of the hospital in which the patient was, at the time in question, detained.
- (8) The managers of the relevant hospital must provide the information to the person.
- (9) The relevant hospital has the meaning given in section 36A(6)."

14 In section 44 (the title to which becomes "Information where restriction direction made"), in subsection (1), for "if section 42 applies" substitute "if, in a case where section 42 applies, the transfer direction in respect of the patient was given with a restriction direction".

15 After section 44 insert —

**"44A Information where restriction direction not given**

- (1) This section applies if, in a case where section 42 applies, the transfer direction in respect of the patient was given without a restriction direction.
- (2) The responsible clinician must inform the managers of the relevant hospital—
  - (a) whether he is to make an order for discharge in respect of the patient under section 23(2) of the Mental Health Act 1983;
  - (b) whether he is to make a community treatment order in respect of the patient;
  - (c) if a community treatment order is to be made in respect of the patient, what conditions are to be specified in the order;
  - (d) if a community treatment order is in force in respect of the patient, of any variation to be made under section 17B(4) of the Mental Health Act 1983 of the conditions specified in the order;
  - (e) if a community treatment order in respect of the patient is to cease to be in force, of the date on which it is to cease to be in force;

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- (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, it does not appear to the responsible clinician that the conditions set out in subsection (4) of that section are satisfied, of the date on which the authority for the patient's detention is to expire.
- (3) Any person who has power to make an order for discharge in respect of the patient under section 23(3) of the Mental Health Act 1983 must inform the managers of the relevant hospital if he is to make that order.
- (4) Subsection (5) applies if—
- (a) an application is made to a Mental Health Review Tribunal under section 66 or 69 of the Mental Health Act 1983,
  - (b) the patient's case is referred to a Mental Health Review Tribunal under section 67 of that Act, or
  - (c) the managers of the relevant hospital refer the patient's case to a Mental Health Review Tribunal under section 68 of that Act.
- (5) The tribunal must inform the managers of the relevant hospital if it directs that the patient be discharged.
- (6) Subsection (7) applies if a person who appears to the managers of the relevant hospital to be the victim of the offence or to act for the victim of the offence—
- (a) when his wishes were ascertained under section 42(2), expressed a wish to receive the information specified in section 42(4), or
  - (b) has subsequently informed the managers of the relevant hospital that he wishes to receive that information.
- (7) The managers of the relevant hospital order must take all reasonable steps—
- (a) to inform that person whether the patient is to be discharged under section 23 or 72 of the Mental Health Act 1983;
  - (b) to inform that person whether a community treatment order is to be made in respect of the patient;
  - (c) if a community treatment order is to be made in respect of the patient and is to specify conditions which relate to contact with the victim or his family, to provide that person with details of those conditions;
  - (d) if a community treatment order is in force in respect of the patient and the conditions specified in the order are to be varied under section 17B(4) of the Mental Health Act 1983, to provide that person with details of any variation which relates to contact with the victim or his family;
  - (e) if a community treatment order in respect of the patient is to cease to be in force, to inform that person of the date on which it is to cease to be in force;
  - (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, the authority for the patient's detention is not to be renewed, to inform that person of the date on which the authority is to expire;
  - (g) to provide that person with such other information as the managers of the relevant hospital consider appropriate in all the circumstances of the case.

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(8) The relevant hospital has the meaning given by section 36A(6).

#### **44B Removal of restriction**

- (1) This section applies if, in a case where section 42 applies—
- (a) the transfer direction in respect of the patient was given with a restriction direction, and
  - (b) the restriction direction ceases to be in force while the transfer direction continues in force.
- (2) Subsection (3) applies if a person who appears to the relevant local probation board to be the victim of the offence or to act for the victim of the offence—
- (a) when his wishes were ascertained under section 42(2), expressed a wish to make representations about a matter specified in section 42(3) or to receive the information specified in section 42(4), or
  - (b) has subsequently informed the relevant local probation board that he wishes to make representations about such a matter or to receive that information.
- (3) The relevant local probation board 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 name and address of the hospital.
- (4) While the transfer direction continues in force, the patient is to be regarded as a patient in respect of whom a transfer direction was given without a restriction direction; and sections 43A and 44A are to apply in relation to him accordingly.
- (5) The relevant hospital has the meaning given in section 36A(6).
- (6) The relevant local probation board has the meaning given in section 43(8)."

#### *Interpretation*

- 16 (1) Section 45 (the title to which becomes "Interpretation: sections 35 to 44B") is amended as follows.
- (2) In subsection (1)—
- (a) for "44" substitute "44B", and
  - (b) at the appropriate places insert—
    - ““community treatment order” has the meaning given in section 17A of the Mental Health Act 1983;”,
    - ““the managers” has the meaning given in section 145 of the Mental Health Act 1983;”,
    - ““responsible clinician” means the responsible clinician for the purposes of Part 3 of the Mental Health Act 1983;”, and
    - ““responsible hospital” has the meaning given in section 17A of the Mental Health Act 1983;”.

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- (3) In subsection (2), for “44” substitute “44B”.
- (4) After subsection (2) insert—
  - “(3) A reference in sections 35 to 44B to a place in which a person is detained includes a reference to a place in which he is liable to be detained under the Mental Health Act 1983.
  - (4) For the purposes of section 32(3) of that Act (regulations as to delegation of managers' functions, etc.) as applied by Parts 1 and 2 of Schedule 1 to that Act, a function conferred on the managers of a hospital under sections 35 to 44B of this Act is to be treated as a function of theirs under Part 3 of that Act.”