EXPLANATORY DOCUMENT TO

THE PUBLIC BODIES (ABOLITION OF THE VICTIMS' ADVISORY PANEL) ORDER 2013

2013 No. 2853

1. This explanatory document has been prepared by the Ministry of Justice (MoJ) and is laid before Parliament under section 11(1) of the Public Bodies Act 2011.

2. Purpose of the instrument

2.1 The purpose of this instrument is to abolish the Victims' Advisory Panel ("VAP"). The Order abolishes the VAP and makes a number of consequential amendments and repeals to legislation which refers to the VAP.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Government are proposing to use the powers in the Public Bodies Act 2011 ("The Act") to abolish the Victims' Advisory Panel.

4.2 The VAP is a statutory advisory Non-Departmental Public Body established in 2003, to allow victims of crime to have their say in reform of the criminal justice systems and the system and services it provides to victims of crime. The functions of the VAP are set out in s.55 Domestic Violence, Crime and Victims Act 2004 ("The 2004 Act"), as principally amended by s.142 of the Coroners and Justice Act 2009.

4.3 The 2004 Act requires the Secretary of State for Justice to appoint a Panel and to consult with them "at such times and in such a manner as he thinks appropriate on matters appearing to him to relate to victims or witnesses". Where the Secretary of State consults the VAP in any particular year he must arrange for the Panel to prepare a report, and for this to be published and laid before Parliament.

4.4 The Government announced planned reforms to public bodies on 14 October 2010, updating the proposals in March 2011, with a view to increasing transparency and accountability, cutting out duplication of activity and discontinuing activities which are no longer required. In conducting the review of public bodies, the MoJ first addressed the overarching question of whether a body needed to exist and its functions needed to be carried out at all. The Government proposed to abolish the VAP since its functions are no longer required and

duplicate activity elsewhere. It was considered that there is a clear overlap and duplication between the work of the panel and that of the Commissioner for Victims and Witnesses, also known as the Victims' Commissioner ("the Commissioner"), who has a statutory responsibility for promoting the interests of victims and witnesses, and providing advice on request to Ministers on specific issues relating to victims and victims services across the criminal justice system.

4.5 The VAP does not meet any of the three criteria set out by the Minister for the Cabinet Office in the public bodies review which determined whether a body or function should be delivered at arm's length from Ministers. These criteria test whether a body:

- Performs a technical function;
- Requires political impartiality; or
- Needs to act independently to establish facts.

4.6 The VAP is not a technical or fact gathering body that needs independence, nor does it require political impartiality to discharge its responsibilities.

4.7 The UK Government has consulted in accordance with the requirements in section 10 of the Act. The Office of the Advocate General, the Wales Office and the Northern Ireland Office have all confirmed that in relation to this Order there is no requirement for the consent of the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales. The amendments and repeals made by the Order have the same extent as the provision which is affected.

6. European Convention on Human Rights

6.1 The Lord Chancellor has made the following statement regarding Human Rights:

"In my view the provisions of the Public Bodies (Abolition of Victims' Advisory Panel) Order 2012 are compatible with the Convention rights."

7. Policy background

- What is being done and why

7.1 The terms of reference of the last Panel, as established under the 2004 Act, were to advise ministers of the views of victims of crime, with particular reference to their interaction with the criminal justice system and its agencies. In addition, the VAP were to offer views and advice on the prevention of crime from a victim's perspective and contribute informed opinion in order to assist in the development and safeguarding of the rights of victims. The Secretary of State was required to consult the Panel at such times and in such manner as he thought appropriate on matters appearing to him to relate to victims and/or witnesses of criminal offences or anti-social behavior. Where the Secretary of State did consult with the panel in a particular year, he was to arrange for the Panel to produce a report to be published and laid before Parliament.

7.2 Between 2006 and 2009 the VAP consisted of around ten volunteer members, all of whom had either experienced crime first hand (as a direct victim of crime, or a family member of a murder or manslaughter victim) or had provided support to victims. Since 2010, the Act has required that the Commissioner be appointed to, and chair, any panel. Although VAP members are unpaid, there is a small associated financial cost arising from recruitment and members' expenses.

7.3 When the tenure of the panel expired in July 2009, members were invited to stay on for another year until the appointment of a Commissioner. Four members continued until May 2010 when the Commissioner took up her post. No new appointments have been made ahead of the intention to abolish the panel. Following the resignation of the last Commissioner, Louise Casey, on 12 October 2011, the Government announced on 22 October 2012 that a new Commissioner was to be appointed. After an open competition, it was announced on 21 December 2012 that Baroness Newlove had been appointed to the role of Commissioner with 3 year tenure. She formally took up her post on 4 March 2013.

7.4 The Government is proposing to abolish the VAP as, with the existence of the Commissioner role, its functions are no longer required. The Commissioner has broader statutory functions than the VAP. These functions as set out in the 2004 Act require him or her to promote the interests of victims and witnesses and to take such steps as he or she considers appropriate with a view to encouraging good practice in the treatment of victims and witnesses. The Commissioner is also required to keep under review the operation of the Code of Practice for Victims ("the Victims' Code"). The Commissioner, in relation to their functions, can consult any person they consider appropriate and/or make a report to the Secretary of State for Justice on specific and relevant issues.

7.5 The Government considers that a statutory obligation to appoint and consult a relatively small advisory panel on victims' issues is no longer the right approach. The existence of the Commissioner provides a more effective and flexible approach to ensure a broad and diverse range of victims' views is independently represented to the Government.

7.6 It is anticipated that the new Commissioner, Baroness Newlove, following on from the work undertaken of her predecessor Louise Casey, will be a powerful national voice for victims, able to provide targeted consultation, engaging the right people at the right level, together with both advising and challenging the government on issues affecting victims as appropriate. One of the initial priorities for Baroness Newlove as Commissioner is to seek the views of victims and victims' families, in order to respond to the MoJ Victims' Code consultation, which was launched on 28 March 2013.[1] The Victims' Code consultation sets out the Government's plans to reform the Code to give victims clearer entitlements from criminal justice agencies and to better tailor service to individual need. Since taking up her post on 4 March 2013 the Commissioner is also undertaking work to review the Victim Contact Scheme[2] and has undertaken a number of visits and meetings with criminal justice agencies.

7.7 The Minister considers that the instrument serves the purpose in section 8(1) of the Act for the following reasons:

i. **Efficiency:** Abolishing the VAP is not expected to result in substantial administrative savings; however it will reduce duplication of resource and activity in respect of convening panels and their administration. Activities designed to engage the views of victims will be undertaken by the Commissioner, with assistance from MoJ as appropriate.

The Government wants to ensure policy is informed by a broad and diverse range of individuals and groups so that Government can respond accordingly to issues that matter most to victims. The Government believes that the appointment of a Commissioner provides an efficient and flexible approach to ensuring the views of victims are heard and acted upon and for more open engagement with wide range of victims and victims' organisations. This approach allows for a much greater breadth and depth of views to be obtained, on both specific issues and the criminal justice system as a whole, which the Commissioner will feed back to the Government and its agencies on a regular basis. This advice will inform and shape policy development and service delivery for the benefit of victims. The Commissioner has the ability to consult with former members of the Panel should she wish to do so, without the need for a formal statutory board to be in place.

ii. **Effectiveness:** The post of Commissioner is an effective way of ensuring the views of victims are sought and can influence the development of justice policy, as detailed in her annual report of 2010/11, the previous Commissioner met with over 900 victims and justice professionals during

1 The Victims' Code Consultation, was launched 28 March 2013 and closes 10 May 2013: https://consult.justice.gov.uk/digital-communications/code-victims-crime

2 The Victim Contact Scheme is a service for victims and their families involved in serious violent or sexual crime where an offender is sentenced to 12 months or more in prison. It enables victims to receive information about an offender's progress through the prison system, or where relevant about a Hospital Order.

her tenure from May 2010 to October 2011. She convened working groups of victims to help guide policy and travelled throughout the country to meet people and hear their views. During her tenure, the Commissioner received correspondence from over 300 people sharing their views and experiences. The vast majority of these emails and letters were from members of the public.[3] The new Commissioner will also work across England and Wales, meeting with and gaining the views of victims, victims' organisations and justice organisations in a similar manner.

The abolition of the VAP will in no way limit the opportunity for victims to articulate their opinions in relation to the criminal justice system and victims' position within it. The Commissioner provides a more effective and flexible approach, ensuring that victims' views are independently represented to Government. The previous Commissioner, Louise Casey, undertook a wide remit of consultation and provided advice and challenge to the Government concerning the treatment of victims and their families and the services they received.

It is the view of the Government that the role of the Commissioner has superseded that of the Victims' Advisory Panel, with the Commissioner taking on the key function of gaining the views of a wide and diverse range of victims and their families, with accountability to Ministers and the wider Government. In addition victims and victims' organisation also have the opportunity to engage directly with Government proposals regarding issues that matter to them, including through responding to relevant formal consultations and through attending workshops chaired by the Minister for Victims and court and departmental officials. For example in 2012 a number of workshops were held to discuss the "Getting It Right for Victims and Witnesses" consultation and most recently in 2013 to discuss the proposed reforms to the Victims' Code as part of the consultation exercise.

iii. **Economy:** Abolition will mean that Government will not need to recruit and run a new panel, which has in the past cost £50,000 a year. The Government believes that an additional spend of £50,000 to cover the cost of a Victims' Advisory Panel is unnecessary given the work the Panel previously undertook clearly falls into the remit of the Commissioner. There are no costs associated with abolition of the Panel.

iv. **Securing appropriate accountability to Ministers:**

The abolition of the VAP will not result in any lack of accountability to Ministers in relation to issues relating to victims and witnesses. The

[3] Annual Report 2010-2011 Commissioner for Victims and Witnesses - http://www.justice.gov.uk/downloads/news/press-releases/victims-com/cvw-annual-report-2010-11.pdf

Commissioner promotes the interests of victims and witnesses, as is her statutory duty, and is accountable to the Secretary of State for Justice.

The Commissioner is required to produce an annual report for the Secretary of State for Justice in terms of her role and the work she has undertaken, to be shared with the Attorney General and Home Secretary, which is published and laid before Parliament. The Commissioner is also accountable to Parliament, through giving evidence to Select and Bill Committees, as required. The previous Commissioner appeared before Parliament's Justice Committee to give evidence on victims' issues and before the Bill Committees scrutinising the Legal Aid, Sentencing and Punishment of Offenders Bill and the Police and Social Responsibility Bill. She also met with various Government Ministers and their shadows, together with MPs with a particular interest in victims' issues as matters of policy or constituency interests.[4] It is anticipated the Baroness Newlove, in her role as Commissioner, will also give evidence to relevant Parliamentary Select and Bill Committees, during her tenure.

The role of the Commissioner is independent from Government, with the role being wider than simply providing advice and evidence to Ministers to support departmental policy. Baroness Newlove has already made a clear statement that, whilst working with the Government to improve the criminal justice system, she will challenge the Government with equal determination where the current system or proposed reform fail to meet the needs of victims and their families.[5]

7.8 The Minister considers that the conditions in section 8(2) of the Act are satisfied. Abolition does not affect the exercise of any legal rights or freedoms either directly or indirectly. Victims of crime will be able to have their voice heard through the channels operated and promoted by the Commissioner and the Government.

7.9 An amendment was tabled at Lords Committee stage on 7th March 2011 by Lord Bach to remove the VAP from the Public Bodies Bill. This was a probing amendment raising concerns over how the Government was supporting victims. During the debate, the Minister of State for Justice, Lord McNally, stated that the decision to abolish to the VAP was not costs driven, but rather a matter of greater efficiency. With the appointment of the first Commissioner in 2010, the things the VAP aimed and were required to do have been overtaken by the Commissioner and her team. The amendment was subsequently withdrawn. No further amendments were tabled during the Bill's passage.[6]

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4 Ibid. page 9

5 https://www.gov.uk/government/news/helen-newlove-unveiled-as-the-victims-commissioner

6 House of Lords Hansard report -http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110307-0001.htm (Amendment 62 Column 1368)

The Order

7.10 This Order abolishes the Victims' Advisory Panel.

7.11 This Order makes amendments to the Domestic Violence, Crime and Victims Act 2004, the Secretary of State for Justice Order 2007, the Coroners and Justice Act 2009 and the Public Bodies Act 2011.

7.12 The Panel has no property, rights or liabilities. Therefore a transfer scheme under section 23 of the PBA 2011 is not required.

8. Consultation outcome

8.1 A public consultation covering the bodies the Ministry of Justice proposed to reform through the Public Bodies Bill, including the VAP, was launched on 12 July 2011 and closed on 11 October 2011.

8.2 19 responses were received in relation to the proposed abolition of the VAP. This included 13 from individuals, 3 from representatives of charitable organisations, 2 from representative bodies and 1 from an Arm's Length Body (ALB). In general the views expressed by respondents were equally weighted between support for the proposal/no particular view and objection. Half of those who responded felt that the functions of the VAP could be carried out by the Commissioner. Those who did not were, in general, primarily concerned about the place of victims in the criminal justice system generally.

8.3 During the consultation period, Louise Casey announced her decision to resign as Commissioner. One respondent to the consultation was a former member of the VAP, who felt that the VAP should not be abolished given that the post of Commissioner was vacant. The respondent also suggested that if the Commissioner role continued and "was not held by an individual who has suffered significant crime, the VAP will bring another voice worth listening to". As explained in this document, Baroness Newlove has been appointed as the Commissioner. Baroness Newlove has been a victim of serious crime and her appointment will ensure victims' and witnesses' voices are brought to the heart of Government, making sure their needs are championed and that the Government is delivering on its commitments. In addition the Commissioner can consult any person they consider appropriate, and therefore is able to communicate the views of a wide and diverse range of victims of crime, without the need for a formal statutory panel to be in place.

8.4 The Government's response to the consultation on proposals for reform of its bodies included in the Public Bodies Bill can be found, along with the Consultation document itself and the responses regarding the VAP proposal, on the Ministry of Justice website at:

- https://consult.justice.gov.uk/digital-communications/public_bodies_bill
- https://consult.justice.gov.uk/digital-communications/public_bodies_bill/results/victims-advisory-panel-consultation-responses.pdf

8.5 The Government's decision, after considering the responses to the consultation and taking the decision to appoint a new Commissioner, is that the VAP should be abolished on the basis that its functions are no longer required.

9. Guidance

9.1 The nature of this order makes it unnecessary to publish guidance in relation to it.

10. Impact

10.1 An Impact Assessment was not required because the abolition proposal does not impact on business, civil society or on regulatory matters; there is no impact on staff; and costs/benefits to the public sector will not exceed £5 million per annum. The financial impact of abolition, which is marginal, is set out under "Economy" in section 7 above.

10.2 An initial Equality Impact Assessment screening was provided alongside the consultation paper and updated at the time of publication of the Government response. No comments were received in relation to any equality impacts arising from the reforms. The Equality Impact Assessment can be found on the Ministry of Justice website at:

https://consult.justice.gov.uk/digital-communications/public_bodies_bill

11. Regulating small businesses

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 Cabinet Office and MoJ will carry out a post legislative scrutiny review after enactment of the Public Bodies Bill Act and MoJ will monitor the subsequent outcome.

13. Contact

13.1 Rachel Easom at the Ministry of Justice Tel: 0203 334 4224 or e-mail: Rachel.Easom@justice.gsi.gov.uk can answer any queries regarding the instrument.