

DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Victims Etc

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 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

*These notes refer to the Domestic Violence, Crime and Victims Act
2004 (c.28) which received Royal Assent on 15 November 2004*

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.