

**EXPLANATORY MEMORANDUM (SUPPLEMENTARY) TO
THE DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004 (VICTIMS' CODE
OF PRACTICE) ORDER 2015**

2015 No. 1817

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this Order is to bring the revised Code of Practice for Victims of Crime into operation on 16 November 2015. The code of practice is made under the Domestic Violence, Crime and Victims Act 2004 (“the Act”). It sets out the services to be provided to victims of crime by relevant service providers and is being updated to meet the relevant requirements of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime (OJ L 315, 14.11.2012, p. 57–73) (“the Victims’ Directive”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Under section 32 of the Act, the Secretary of State for Justice must issue a code of practice as to the services to be provided to victims of criminal conduct by persons appearing to him to have functions relating to victims of criminal conduct or any aspect of the criminal justice system. Under section 33(8) of the Act the Secretary of State for Justice may revise the code from time to time, but may only do so if he is satisfied that the proposed revisions would not result in a significant reduction in the quality or extent of the services to be provided under the code, or a significant restriction in the description of persons to whom services are to be provided under the code. The previous code of practice was laid before Parliament on 18 November 2013 under section 33(6) of the Act and brought into force on 10 December 2013 under S.I. 2013/2907. This is the second revision of the code.
- 4.2 A draft of the revised code was published for consultation on 16 July 2015. The Secretary of State considered the representations and after consulting the Attorney General and the Home Secretary modified the draft in light of them. The final version of the revised code was laid before Parliament on 22 October 2015 under section 33(6) of the Act.

- 4.3 The Order comes into force on 16 November 2015, bringing the code into operation on the same day.
- 4.4 The previous code formed part of the implementation of:
- a) Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA; and
 - b) Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.
- 4.5 The revised code, in addition to other existing legislative provision, and instruments relating to the Ministry of Defence (listed below) completes implementation in England and Wales of the Victims' Directive. The transposition note at Annex A sets out how the revised code transposes the relevant articles. The scrutiny history for Directive 2012/29/EU is set out at Annex B.
- 4.6 A further set of instruments to implement the Victims' Directive in relation to service offences are being laid by the Ministry of Defence. The instruments being laid by the Ministry of Defence are as follows:
- The Armed Forces (Service Courts Rules) (Amendment) Rules 2015
 - The Court Martial Appeal Court (Amendment) Rules 2015
 - The Criminal Justice (Armed Forces Code of Practice for Victims of Crime) Regulations 2015
 - The Summary Appeal Court (Youth Justice and Criminal Evidence Act 1999) Rules 2015
 - The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) (Amendment) (No. 2) Order 2015

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The Code of Practice for Victims of Crime ("Victims' Code") sets out the services victims of crime are entitled to and the obligations on relevant organisations to provide them.
- 7.2 This instrument gives effect to proposals published in the "Revising the Victims' Code" consultation, which ran from 16 July to 16 August 2015 – which consulted on technical changes to the Victims' Code required to ensure compliance with the Victims' Directive. The Government response to the consultation was published on 22 October 2015. Three main changes have been made to the Victims' Code.

- 7.3 The first main change broadens the definition of a victim under the Victims' Code, so that victims of all criminal offences are entitled to receive support and information, not just victims of the more serious criminal offences that are notifiable under the National Crime Recording Standards (NCRS).
- 7.4 The second main change is to ensure that victims are entitled to receive support and information services from other investigative and prosecutorial organisations which we consider to have relevant functions under the Victims' Directive, not just the police and Crown Prosecution Service. A new chapter 5 has been added to the Victims' Code which lists the new organisations added to the code and the duties placed on them.
- 7.5 The third main change is to ensure that a victim who reports a crime receives a written acknowledgement which states the basic elements of the criminal offence.
- 7.6 A number of smaller changes have also been made to the Victims' Code. The majority of these either codify (for transposition purposes) what is already happening in practice or require small adjustments to existing policy or practice.

8. Consultation outcome

- 8.1 The proposed changes to the Victims' Code, together with a full explanation of the policy changes and the supporting impact assessment and equality statement, were published in the Ministry of Justice's "Revising the Victims' Code" consultation and were subject to formal consultation between 16 July and 16 August 2015. The Ministry of Justice has worked closely with the affected organisations in drafting the revised Victims' Code.
- 8.2 The consultation sought views on technical changes required to ensure our compliance with the Victims' Directive. We received 1,875 written responses to the consultation. There were 122 distinct responses and 1,753 responses from individual members of Cyclist Touring Club (CTC), a national cycling charity, which were identical in substance.
- 8.3 When asked whether respondents agreed with amending the definition of a victim, 94% of those who responded (and 100% of the responses from CTC members) were in favour and the Government decided to proceed with the proposal. The Victims' Code now applies to victims of all criminal offences, not just victims of crimes classified under the NCRS.
- 8.4 When asked whether more organisations should be added as a competent authority, 60% of those who responded to the question (and 100% of the responses from CTC members) thought that more organisations should be added to the Victims' Code. Following consideration of the consultation responses the list of new organisations to which the Victims' Code applies in Chapter 5 has been increased to include the Gambling Commission, the Financial Conduct Authority, Home Office (Immigration Enforcement), the Environment Agency and Natural Resources Wales. The Victims' Code does not include charitable organisations, organisations who do not have functions in the context of criminal proceedings, or health sector organisations as the Victims' Directive does not place obligations on these type of organisations.
- 8.5 When asked whether we had imposed the right duties on additional service providers, 46% agreed, 15% disagreed and 39% did not answer. (CTC members did not answer this question.) As a result of comments received, the Victims' Code has been amended in a number of ways. Chapter 5 has been redrafted to make it a standalone Chapter

and the obligations within it have been clarified. Paragraph 12 of the Introduction has also been amended to provide that where service providers are required to share information that they do so effectively and in accordance with their obligations under the Data Protection Act 1998 and other relevant legislation. A further amendment is to clarify that measures to assist a witness give evidence (commonly referred to as special measures) can apply at the investigation stage (by recording interviews which can then form the evidence-in-chief to be played at trial) and at trial, and regardless of whether they are present in court (by giving evidence by video-link).

- 8.6 The Government has published a summary of the responses in its response to the “Revising the Victims’ Code” consultation which can be found at: <https://www.gov.uk/government/consultations/revising-the-victims-code>

9. Guidance

- 9.1 The Ministry of Justice has asked organisations covered by the Victims’ Code to update their operational guidance to take account of the changes. The Ministry of Justice will also support the organisations in updating their guidance.

10. Impact

- 10.1 A full impact assessment relating to the content of this order accompanied the “Revising the Victims’ Code” consultation and has not been prepared specifically for this instrument. The impact assessment was updated and published on 22 October 2015 alongside the Government response.
- 10.2 The Government believes the reforms will have no impact on businesses, charities or voluntary bodies.
- 10.3 By expanding the Victims’ Code to cover all victims of crime, the Government expects there will be modest extra resource costs for the police, and broadening the definition of victim means that more victims may wish to be referred to the services commissioned by Police and Crime Commissioners (PCCs). This could increase the cost to PCCs of providing those services. Relevant investigative and prosecutorial organisations (other than the police and CPS) will incur some resource costs from providing services to victims in line with the revised Victims’ Code. The Government expects that for most of the organisations being added to the code the increase in costs will be small. The Serious Fraud Office, National Crime Agency and Financial Conduct Authority may experience a greater increase in costs than the other organisations as their core business is investigating and prosecuting criminal offences.
- 10.4 The Government expects the costs to be outweighed by the benefits to victims of crime. Victims of non-NCRS offences will benefit by becoming eligible to receive services under the Victims’ Code. Victims of crimes which are dealt with by the new organisations in Chapter 5 will benefit by becoming eligible to receive services under the code. All victims will benefit from receiving a written acknowledgement when they report a crime, which will include the basic details of the offence.
- 10.5 When asked whether the Government had adequately assessed the impacts of our proposals, 75% of those who responded agreed. As a result of the consultation responses the Government updated its impact assessment to include an estimate for the additional hours of police time required to provide victims of crime with a written acknowledgement.

10.6 The “Revising the Victims’ Code” consultation considered the potential impact of the changes to the Victims’ Code on people with the protected characteristics specified in the Equality Act 2010. The Equality Statement was updated and published on 22 October 2015 with the Government response. A copy of the Equality Statement can be found at: <https://www.gov.uk/government/consultations/revising-the-victims-code>

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Government does not intend to publish a post-implementation review. The reasons are: we will conduct by the end of December 2015 a post-implementation review of the Victims’ Code (as revised in 2013); there is limited scope to amend these further changes to the revised code where they are necessary to comply with the Directive; and the Victims’ Commissioner has a statutory duty to monitor the operation of the code.

13. Contact

13.1 Mhairi Aylott (07580 701294, mhairi.aylott@justice.gsi.gov.uk) or Natalie Henson (07580 701671), natalie.henson1@justice.gsi.gov.uk) at the Ministry of Justice can answer any queries regarding the instrument.