

EXPLANATORY MEMORANDUM TO
THE DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004 (VICTIMS' CODE
OF PRACTICE) ORDER 2020

2020 No. 1314

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 Instrument is to bring the revised Code of Practice for Victims of Crime into operation on 1 April 2021. 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 take account of the responses to the Government consultation on Improving the Victims’ Code.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Under section 32 of the Domestic Violence, Crime and Victims Act 2004 (“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 23 October 2015 under section 33(6) of the Act and brought into force on 16 November 2015 under S.I. 2015/1817. This is the third revision of the code.

- 6.2 In accordance with section 33(4) of the Act, a draft of the revised Code was published as part of the Improving the Victims' Code public consultation on 5 March 2020, with the consultation closing on 28 May 2020. As per the requirements of section 33(5) of the Act, the Secretary of State for Justice considered the representations and, after consulting the Attorney General and the Home Secretary, modified the draft in light of them. The previous version of the revised Code was laid before Parliament on 22 October 2015 under section 33(6) of the Act.
- 6.3 The Order comes into force on 1 April 2021, bringing the revised Victims' Code into operation on the same day.
- 6.4 The previous Victims' 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.

7. Policy background

What is being done and why?

- 7.1 On 10 September 2018, the previous government published the first ever cross-government Victims Strategy, which identified that the Victims' Code needed to be amended to address its complexity, accessibility and language, as well as updating the rights in the Victims' Code so they were better reflective of victims' needs. Amongst its 89 commitments, the Victims' Strategy also committed to specific changes and additions to the Victims' Code. It also committed to consult on a revised version.
- 7.2 The previous Government held the first public consultation on the Victims' Code, Proposals for revising the Code of Practice for Victims of Crime, from 17 July 2019 to 11 September 2019, which sought to address the issues with the current Victims' Code, setting out the government's vision for a Victims' Code designed to build both victim confidence and trust in the system.
- 7.3 In light of the responses, a revised Victims' Code was drafted, which focused on a number of key areas: raising awareness and accessibility; providing clearer information on victims' rights to access practical and emotional support; strengthening communication and taking account of the victim's preferences; and increasing the voice of the victim through providing more flexibility in the Victim Personal Statement process. It also changed the structure so that the Victims' Code has a clearly defined set of 12 rights, that are easy for victims to understand. This was then publicly consulted on in the Improving the Victims' Code consultation (see paragraph 6.2).

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 The Improving the Victims' Code public consultation that closed on 28 May 2020 received a total of 315 responses from a range of organisations and individuals, including criminal justice practitioners, police forces, Police and Crime Commissioner Offices, voluntary organisations/charities, academics and members of the public. Of the 315 responses, 63 (20%) were identical in nature and called for changes to the information and rights to access Restorative Justice in the revised Code.

10.2 Not all of the respondents answered every question and some respondents opted to submit their response in the form of a general letter. However, out of 315 respondents, 187 (59%) agreed with our proposal to restructure the Code into 12 overarching rights; 25 (8%) disagreed; 17 (5%) commented but did not indicate support or disapproval and 85 (27%) did not answer the question. Therefore, of the 212 yes/no responses to question 1, 88% agreed with the proposal and 12% disagreed with it.

10.3 The key changes in the revised Victims' Code are:

- a) **Accessibility:** The revised Code is simplified to one chapter from the existing five chapters and victims are the primary audience. The complex structure of the existing Code is changed so that the revised version clearly sets out 12 overarching rights that victims are entitled to receive and also make it clear at what point in the justice process victims should receive them.

To help ensure that practitioners are clear on the rights, and at what stage these rights need to be provided, we will also be publishing a separate document containing detailed information and guidance for them – at the time of implementation (1 April 2021).

- b) **Improved engagement:** This option moves from a process where victims are simply informed when and how they will be contacted about their case to one where the frequency and method of communication is more victim led, whilst acknowledging that there may be times when a service provider is unable provide regular updates. Where this is the case the revised Code puts a duty on the service provider to explain why.
- c) **Victim Personal Statement (VPS):** The current Code requires that victims are offered the opportunity to make a VPS at the same point that the witness statement is taken. Under the revised Code, service providers have more flexibility on the timing of the offer, for example by offering the opportunity to make a VPS when a suspect is charged. However, victims must still be provided with the option of providing a VPS when they report a crime. Furthermore, victims are now be able to request a copy of their VPS.

- d) **Support for victims of mentally disordered offenders:** Victim Liaison Officers are already assigned to victims of restricted patients and this option would extend their role to include support for victims of unrestricted patients. This brings greater parity in rights for these victims, ensuring consistency in the level of information and the way it is provided.
- e) **Access to Support – Awareness of Support:** The revised Code includes clearer information about the ability to access support:
- without the need to report incidents to the police;
 - at any time during the investigation and prosecution;
 - if the case is stopped; or
 - at the end of the case.
- f) **Specialist Support:** Whilst retaining the existing eligibility categories for access to specialist support, this makes it clearer that service providers have the discretion to offer enhanced support to victims who fall outside the scope of the existing categories.

11. Guidance

- 11.1 The Ministry of Justice will be working with criminal justice agencies to prepare practitioner guidance on the Code for criminal justice practitioners, which will be available by 1 April 2021 when the Order stipulates the revised Code comes into force. The Ministry of Justice has also asked organisations covered by the Code to update their internal operational guidance to take account of the changes.

12. Impact

- 12.1 A full impact assessment relating to the content of this Order accompanied the Consultation on Improving the Victims’ Code and has not been prepared specifically for this instrument. The impact assessment was updated and has been published on 18 November 2020 alongside the Government response and is available here: <https://consult.justice.gov.uk/victim-policy/consultation-on-improving-the-victims-code/>.
- 12.2 The Consultation on Improving the Victims’ Code also considered the potential impact of the changes to the Victims’ Code on people with the protected characteristics specified in the Equality Act 2010. This was updated and published on 18 November 2015 with the Government response: <https://consult.justice.gov.uk/victim-policy/consultation-on-improving-the-victims-code/>.

13. Regulating small business

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

14. Monitoring & review

- 14.1 In 2019 with the approval of the Criminal Justice Board, MoJ issued the first iteration of a framework for local monitoring of compliance with the Code to be co-ordinated by Local Criminal Justice Partnerships (LCJPs). We will engage with LCJPs and Police and Crime Commissioners to consider how we can best assess the changes at a local level.

- 14.2 We will ask national agencies to consider reviewing the effect of the revised Code on their processes as part of existing reporting procedures (e.g. annual reports). The Victims' Commissioner also has a statutory duty under s49(2) of the Domestic Violence, Crime and Victims Act 2004 to keep under review the operation of the Code.
- 14.3 Information from these sources and others (e.g. HM Inspectorate reports) will inform an internal interim assessment after 3 years and a post-implementation review, which we will publish, will be conducted 5 years after the Code comes into force. These timescales have been agreed with MoJ analysts to allow for any proposed Victims' Law.

15. Contact

- 15.1 Guy Wilson at the Ministry of Justice Telephone: 07870819411 or email: guy.wilson@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Catherine Hinwood, Deputy Director for Victim and Witness Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Parliamentary Under Secretary of State Alex Chalk at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.