



Domestic Violence, Crime and Victims Act 2004

2004 CHAPTER 28

PART 3

VICTIMS ETC

CHAPTER 2

REPRESENTATIONS AND INFORMATION

Hospital orders

36 **Victims' rights: preliminary**

- (1) This section applies if the conditions in subsections (2) and (3) are met.
- (2) The first condition is that one of these applies in respect of a person (“the patient”) charged with a sexual [^{F1}, violent or terrorism] offence—
 - (a) the patient is convicted of the offence;
 - (b) a verdict is returned that the patient is not guilty of the offence by reason of insanity;
 - (c) a finding is made—
 - (i) under section 4 of the Criminal Procedure (Insanity) Act 1964 (c. 84) that the patient is under a disability, and
 - (ii) under section 4A of that Act that he did the act or made the omission charged against him as the offence.
- (3) The second condition is that a hospital order [^{F2}, whether with or without a restriction order,] is made in respect of the patient by a court dealing with him for the offence.

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- (4) The local probation board for the area in which the determination mentioned in subsection (2)(a), (b) or (c) is made [^{F3}or the provider of probation services operating in the local justice area in which the determination mentioned in subsection (2)(a), (b) or (c) is made] must take all reasonable steps to ascertain whether a person who appears to the board to be the victim of the offence or to act for the victim of the offence wishes—
- (a) to make representations about the matters specified in subsection (5);
 - (b) to receive the information specified in subsection (6).
- [^{F4}(4A) The provider of probation services mentioned in subsection (4) is the provider of probation services identified as such by arrangements under section 3 of the Offender Management Act 2007.]
- (5) The matters are—
- (a) whether the patient should be subject to any conditions in the event of his discharge from hospital [^{F5}while a restriction order is in force in respect of him];
 - (b) if so, what conditions [^{F6};
 - (c) what conditions he should be subject to in the event of his discharge from hospital under a community treatment order].
- (6) The information is information about any conditions to which the patient is to be subject in the event of his discharge from hospital.

Textual Amendments

- F1** Words in s. 36(2) substituted (12.4.2019) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(3), **Sch. 4 para. 10(b)** (with s. 25(3)(4))
- F2** Words in s. 36(3) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 2(2)** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)
- F3** Words in s. 36(4) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(4)(a)**
- F4** S. 36(4A) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(4)(b)**
- F5** Words in s. 36(5)(a) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 2(3)(a)** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)
- F6** S. 36(5)(c) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 2(3)(b)** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)

[^{F7}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 or provider of probation services 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 or the provider of probation services 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 or provider of probation services 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 section 36(4), expresses a wish to do something specified in subsection (2)(a) or (b).
- (5) The local probation board or provider of probation services 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 or provider 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.]

Textual Amendments

F7 S. 36A inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 3](#) (as amended by [S.I. 2008/912](#), [Sch. 1 para. 24\(2\)\(a\)](#)) (with s. 50(8)-(13)); [S.I. 2008/1900](#), arts. 1(1), [2\(o\)](#) (with [art. 3](#), [Sch.](#))

37 [F8]Representations where restriction order made]

- (1) This section applies [F9]if, in a case where section 36 applies, the hospital order in respect of the patient was made with a restriction order].
- (2) If—
- (a) a person makes representations about a matter specified in section 36(5) to the local probation board [F10]or provider of probation services] mentioned in section 36(4) or the [F11]relevant probation body], and
 - (b) it appears to the [F11]relevant probation body] that the person is the victim of the offence or acts for the victim of the offence,
- the [F11]relevant probation body] must forward the representations to the persons responsible for determining the matter.
- (3) The duty in subsection (2) applies only while the restriction order made in respect of the patient is in force.
- (4) The Secretary of State must inform the [F12]relevant probation body] if he is considering—
- (a) whether to give a direction in respect of the patient under section 42(1) of the [Mental Health Act 1983 \(c. 20\)](#) (directions lifting restrictions),

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- (b) whether to discharge the patient under section 42(2) of that Act, either absolutely or subject to conditions, or
 - (c) if the patient has been discharged subject to conditions, whether to vary the conditions.
- (5) ^{F13}The First-tier Tribunal or the Mental Health Review Tribunal for Wales] must inform the ^{F14}relevant probation body] if—
- (a) an application is made to the tribunal by the patient under section 69, 70 or 75 of the Mental Health Act 1983 (applications concerning restricted patients), or
 - (b) the Secretary of State refers the patient’s case to the tribunal under section 71 of that Act (references concerning restricted patients).
- (6) Subsection (7) applies if—
- (a) the ^{F15}relevant probation body] receives information under subsection (4) or (5), and
 - (b) a person who appears to the ^{F15}relevant probation body] 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 ^{F15}relevant probation body] or the local probation board ^{F16}or provider of probation services] mentioned in section 36(4).
- (7) The ^{F17}relevant probation body] must provide the information to the person.
- ^{F18}(8) In this section, “the relevant probation body” is—
- (a) in a case where the patient is to be discharged subject to a condition that he reside in a particular area, which is or is part of the area of a local probation board, that local probation board;
 - (b) in a case where the patient is to be discharged subject to a condition that he reside in a particular area other than one mentioned in paragraph (a), the provider of probation services operating in that area that is identified as the relevant probation body by arrangements under section 3 of the Offender Management Act 2007;
 - (c) in any other case—
 - (i) if the hospital in which the patient is detained is situated in the area of a local probation board, that area; and
 - (ii) if that hospital is not so situated, the provider of probation services operating in the local justice area in which the hospital in which the patient is detained is situated that is identified as the relevant probation body by arrangements under section 3 of the Offender Management Act 2007.]

Textual Amendments

- F8** S. 37 title substituted (3.11.2008) by virtue of [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 4](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), 2(o) (with art. 3, Sch.)
- F9** Words in s. 37(1) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 4](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), 2(o) (with art. 3, Sch.)
- F10** Words in s. 37(2)(a) inserted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\)](#), arts. 1, 3, [Sch. 1 para. 20\(5\)\(a\)\(i\)](#)

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- F11** Words in s. 37(2) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(5)(a)(ii)**
- F12** Words in s. 37(4) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(5)(b)**
- F13** Words in s. 37(5) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), arts. 1(1), 9(1), **Sch. 3 para. 205**
- F14** Words in s. 37(5) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(5)(c)**
- F15** Words in s. 37(6) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(5)(d)(i)**
- F16** Words in s. 37(6) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(5)(d)(ii)**
- F17** Words in s. 37(7) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(5)(e)**
- F18** S. 37(8) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(5)(f)**

[^{F19}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.

^{F20}(5)

- (6) [^{F21}The First-tier Tribunal or the Mental Health Review Tribunal for Wales] 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)^{F22}... 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—

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- (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).]

Textual Amendments

- F19** S. 37A inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 48, 56\(1\), Sch. 6 para. 5](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), 2(o) (with art. 3, Sch.)
- F20** S. 37A(5) omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\), ss. 39\(4\)\(e\)\(i\), 306\(4\); S.I. 2012/1319, art. 2\(3\)](#)
- F21** Words in s. 37A(6) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\), arts. 1\(1\), 9\(1\), Sch. 3 para. 206](#)
- F22** Words in s. 37A(7)(a) omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\), ss. 39\(4\)\(e\)\(ii\), 306\(4\); S.I. 2012/1319, art. 2\(3\)](#)

38 [F23]Information where restriction order made]

- (1) This section applies [F24:if, in a case where section 36 applies, the hospital order in respect of the patient was made with a restriction order].
- (2) Subsection (3) applies if a person who appears to the [F25:relevant probation body] 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 [F25:relevant probation body] that he wishes to receive that information.
- (3) The [F26:relevant probation body] must take all reasonable steps—
- (a) to inform that person whether or not the patient is to be subject to any conditions in the event of his discharge;
 - (b) if he is, to provide that person with details of any conditions which relate to contact with the victim or his family;
 - (c) if the restriction order in respect of the patient is to cease to have effect, to notify that person of the date on which it is to cease to have effect;
 - (d) to provide that person with such other information as [F27:the body] considers appropriate in all the circumstances of the case.
- (4) The Secretary of State must inform the [F28:relevant probation body]—
- (a) whether the patient is to be discharged;
 - (b) if he is, whether he is to be discharged absolutely or subject to conditions;
 - (c) if he is to be discharged subject to conditions, what the conditions are to be;
 - (d) if he has been discharged subject to conditions—
 - (i) of any variation of the conditions by the Secretary of State;
 - (ii) of any recall to hospital under section 42(3) of the Mental Health Act 1983 (c. 20);

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- (e) if the restriction order is to cease to have effect by virtue of action to be taken by the Secretary of State, of the date on which the restriction order is to cease to have effect.
- (5) Subsections (6) and (7) apply (instead of subsection (4)) if—
- (a) an application is made to [^{F29}the First-tier Tribunal or the Mental Health Review Tribunal for Wales] by the patient under section 69, 70 or 75 of the Mental Health Act 1983 (c. 20) (applications concerning restricted patients), or
- (b) the Secretary of State refers the patient’s case to [^{F29}the First-tier Tribunal or the Mental Health Review Tribunal for Wales] under section 71 of that Act (references concerning restricted patients).
- (6) The tribunal must inform the [^{F30}relevant probation body]—
- (a) of the matters specified in subsection (4)(a) to (c);
- (b) if the patient has been discharged subject to conditions, of any variation of the conditions by the tribunal;
- (c) if the restriction order is to cease to have effect by virtue of action to be taken by the tribunal, of the date on which the restriction order is to cease to have effect.
- (7) The Secretary of State must inform the [^{F31}relevant probation body] of the matters specified in subsection (4)(d) and (e).
- (8) The duties in subsections (3) to (7) apply only while the restriction order is in force.
- (9) The [^{F32}relevant probation body] has the meaning given in section 37(8).

Textual Amendments

- F23** S. 38 title substituted (3.11.2008) by virtue of Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 6** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)
- F24** Words in s. 38(1) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 6** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)
- F25** Words in s. 38(2) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(6)(a)**
- F26** Words in s. 38(3) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(6)(b)(i)**
- F27** Words in s. 38(3)(d) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(6)(b)(ii)**
- F28** Words in s. 38(4) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(6)(c)**
- F29** Words in s. 38(5)(a)(b) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), arts. 1(1), 9(1), **Sch. 3 para. 207**
- F30** Words in s. 38(6) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(6)(d)**
- F31** Words in s. 38(7) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(6)(e)**
- F32** Words in s. 38(9) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), arts. 1, 3, **Sch. 1 para. 20(6)(f)**

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[^{F33}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 are satisfied, of the date on which the authority for the patient's detention is to expire.

^{F34}(3)

- (4) Subsection (5) applies if—
 - (a) an application is made to [^{F35}the First-tier Tribunal or the Mental Health Review Tribunal for Wales] under section 66 or 69 of the Mental Health Act 1983,
 - (b) the patient's case is referred to [^{F35}the First-tier Tribunal or the Mental Health Review Tribunal for Wales] under section 67 of that Act, or
 - (c) the managers of the relevant hospital refer the patient's case to [^{F35}the First-tier Tribunal or the Mental Health Review Tribunal for Wales] 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

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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).]

Textual Amendments

- F33** Ss. 38A, 38B inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 7](#) (as amended by [S.I. 2008/912, Sch. 1 para. 24\(2\)\(b\)](#)) (with s. 50(8)-(13)); [S.I. 2008/1900](#), arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)
- F34** [S. 38A\(3\)](#) omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 39\(4\)\(e\)\(i\)](#), [306\(4\)](#); [S.I. 2012/1319](#), art. 2(3)
- F35** Words in s. 38A(4)(a)-(c) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), arts. 1(1), 9(1), [Sch. 3 para. 208](#)

[^{F36}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 probation body 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 probation body that he wishes to make representations about such a matter or to receive that information.
- (3) The relevant probation body 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 probation body has the meaning given in section 37(8).]

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Textual Amendments

F36 Ss. 38A, 38B inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 7](#) (as amended by [S.I. 2008/912](#), [Sch. 1 para. 24\(2\)\(b\)](#)) (with s. 50(8)-(13)); [S.I. 2008/1900](#), arts. 1(1), [2\(o\)](#) (with [art. 3](#), [Sch.](#))

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 9 para. 26A inserted by [2015 c. 2 Sch. 3 para. 12](#)