



Domestic Violence, Crime and Victims Act 2004

2004 CHAPTER 28

PART 3

VICTIMS ETC

CHAPTER 2

REPRESENTATIONS AND INFORMATION

Transfer directions

42 Victims' rights: preliminary

- (1) This section applies if—
- a person (“the offender”) is convicted of a sexual [^{F1}, violent or terrorism] offence,
 - a relevant sentence is imposed on him in respect of the offence, and
 - while the offender is serving the sentence, the Secretary of State gives a transfer direction [^{F2}in respect of the offender (whether or not he also gives a restriction direction in respect of the offender)].
- (2) The local probation board for the area in which the hospital specified in the transfer direction is situated [^{F3}or the provider of probation services operating in the local justice area in which the hospital specified in the transfer direction is situated] must take all reasonable steps to ascertain whether a person who appears to the board [^{F4}or the provider] to be the victim of the offence or to act for the victim of the offence wishes—
- to make representations about the matters specified in subsection (3);
 - to receive the information specified in subsection (4).

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[^{F5}(2A) The provider of probation services mentioned in subsection (2) is the provider of probation services identified as such by arrangements under section 3 of the Offender Management Act 2007.]

(3) The matters are—

- (a) whether the offender should be subject to any conditions in the event of his discharge from hospital [^{F6}at a time when a restriction direction is in force in respect of him];
- (b) if so, what conditions [^{F7};
- (c) what conditions he should be subject to in the event of his discharge from hospital under a community treatment order].

(4) The information is information about any conditions to which the offender is to be subject in the event of his discharge from hospital.

Textual Amendments

- F1** Words in s. 42(1)(a) substituted (12.4.2019) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\), s. 27\(3\), Sch. 4 para. 10\(d\)](#) (with s. 25(3)(4))
- F2** Words in s. 42(1)(c) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 48, 56\(1\), Sch. 6 para. 10\(2\)](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)
- F3** Words in s. 42(2) 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\(10\)\(a\)\(i\)](#)
- F4** Words in s. 42(2) 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\(10\)\(a\)\(ii\)](#)
- F5** S. 42(2A) 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\(10\)\(b\)](#)
- F6** Words in s. 42(3)(a) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 48, 56\(1\), Sch. 6 para. 10\(3\)\(a\)](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)
- F7** S. 42(3)(c) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 48, 56\(1\), Sch. 6 para. 10\(3\)\(b\)](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)

[^{F8}42A Supplemental provision for case where no restriction direction given

- (1) This section applies if, in a case where section 42 applies, the transfer direction in respect of the patient was given without a restriction direction.
- (2) Subsection (3) applies if a person who appears to the local probation board or provider of probation services mentioned in section 42(2) to be the victim of the offence or to act for the victim of the offence, when his wishes are ascertained under section 42(2), expresses a wish—
 - (a) to make representations about a matter specified in section 42(3), or
 - (b) to receive the information specified in section 42(4).
- (3) The local probation board or provider of probation services must—
 - (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 42(2) to be the victim of the offence or to

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act for the victim of the offence, subsequently to his wishes being ascertained under section 42(2), expressed 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 42(2) must take all reasonable steps—
- (a) to ascertain whether the transfer direction given 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 the provider ascertains that the transfer direction 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 has the meaning given in section 36A(6).]

Textual Amendments

- F8** S. 42A inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 11](#) (as amended by [S.I. 2008/912](#), [Sch. 1 para. 24\(2\)\(d\)](#)) (with s. 50(8)-(13)); [S.I. 2008/1900](#), arts. 1(1), [2\(o\)](#) (with [art. 3](#), [Sch.](#))

43 [F9]Representations where restriction direction made]

- (1) This section applies [F10:if, in a case where section 42 applies, the transfer direction in respect of the patient was given with a restriction direction].
- (2) If—
- (a) a person makes representations about a matter specified in section 42(3) to the local probation board [F11:or provider of probation services] mentioned in section 42(2) or the [F12:relevant probation body], and
 - (b) it appears to the [F12:relevant probation body] that the person is the victim of the offence or acts for the victim of the offence,
- the [F12: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 direction given in respect of the offender is in force.
- (4) The Secretary of State must inform the [F13:relevant probation body] if he is considering—
- (a) whether to give a direction in respect of the offender under section 42(1) of the Mental Health Act 1983 (c. 20) (directions lifting restrictions),
 - (b) whether to discharge the offender under section 42(2) of that Act, either absolutely or subject to conditions, or
 - (c) if the offender has been discharged subject to conditions, whether to vary the conditions.
- (5) [F14:The First-tier Tribunal or the Mental Health Review Tribunal for Wales] must inform the [F15:relevant probation body] if—
- (a) an application is made to the tribunal by the offender under section 69, 70 or 75 of the Mental Health Act 1983 (applications concerning restricted patients), or

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- (b) the Secretary of State refers the offender’s case to the tribunal under section 71 of that Act (references concerning restricted patients).
- (6) Subsection (7) applies if—
- (a) the [F16relevant probation body] receives information under subsection (4) or (5), and
- (b) a person who appears to the [F16relevant 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 42(2), expressed a wish to make representations about a matter specified in section 42(3), or
- (ii) has made representations about such a matter to the [F16relevant probation body] or the local probation board [F17or provider of probation services] mentioned in section 42(2).
- (7) The [F18relevant probation body] must provide the information to the person.
- [F19(8) In this section, “the relevant probation body” is—
- (a) in a case where the offender 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 offender 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 offender 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 offender 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

- F9** S. 43 title substituted (3.11.2008) by virtue of [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 12](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)
- F10** Words in s. 43(1) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 12](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)
- F11** Words in s. 43(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\(11\)\(a\)\(i\)](#)
- F12** Words in s. 43(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\(11\)\(a\)\(ii\)](#)
- F13** Words in s. 43(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\(11\)\(b\)](#)
- F14** Words in s. 43(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. 211](#)
- F15** Words in s. 43(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\(11\)\(c\)](#)

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- F16** Words in s. 43(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(11)(d)(i)**
- F17** Words in s. 43(6)(b)(ii) 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(11)(d)(ii)**
- F18** Words in s. 43(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(11)(e)**
- F19** S. 43(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(11)(f)**

[^{F20}43A Representations where restriction direction not given

- (1) This section applies if, in a case where section 42 applies, the transfer direction in respect of the patient was given without a restriction direction.
- (2) Subsection (3) applies if—
 - (a) a person makes representations about a matter specified in section 42(3) 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 him, 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.

^{F21}(5)

- (6) [^{F22}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)^{F23}... 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—
 - (i) when his wishes were ascertained under section 42(2), expressed a wish to make representations about a matter specified in section 42(3), 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.

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(9) The relevant hospital has the meaning given in section 36A(6).]

Textual Amendments

- F20** S. 43A inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 13](#) (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), [2\(o\)](#) (with art. 3, Sch.)
- F21** S. 43A(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)
- F22** Words in s. 43A(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. 212](#)
- F23** Words in s. 43A(7) omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), ss. [39\(4\)\(e\)\(iii\)](#), 306(4); S.I. 2012/1319, art. 2(3)

44 [F24 Information where restriction direction made]

- (1) This section applies [F25:if, in a case where section 42 applies, the transfer direction in respect of the patient was given with a restriction direction].
- (2) Subsection (3) applies if a person who appears to the [F26:relevant probation body] to be the victim of the offence or to act for the victim of the offence—
- when his wishes were ascertained under section 42(2), expressed a wish to receive the information specified in section 42(4), or
 - has subsequently informed the [F26:relevant probation body] that he wishes to receive that information.
- (3) The [F27:relevant probation body] must take all reasonable steps—
- to inform that person whether or not the offender is to be subject to any conditions in the event of his discharge;
 - if he is, to provide that person with details of any conditions which relate to contact with the victim or his family;
 - if the restriction direction in respect of the offender is to cease to have effect, to notify that person of the date on which it is to cease to have effect;
 - to provide that person with such other information as the board [F28:or the body] considers appropriate in all the circumstances of the case.
- (4) The Secretary of State must inform the [F29:relevant probation body]—
- whether the offender is to be discharged;
 - if he is, whether he is to be discharged absolutely or subject to conditions;
 - if he is to be discharged subject to conditions, what the conditions are to be;
 - if he has been discharged subject to conditions—
 - of any variation of the conditions by the Secretary of State;
 - of any recall to hospital under section 42(3) of the [Mental Health Act 1983 \(c. 20\)](#);
 - if the restriction direction 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 direction is to cease to have effect.
- (5) Subsections (6) and (7) apply (instead of subsection (4)) if—

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- (a) an application is made to [^{F30}the First-tier Tribunal or the Mental Health Review Tribunal for Wales] by the offender under section 69, 70 or 75 of the Mental Health Act 1983 (applications concerning restricted patients), or
 - (b) the Secretary of State refers the offender's case to [^{F30}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 [^{F31}relevant probation body]—
- (a) of the matters specified in subsection (4)(a) to (c);
 - (b) if the offender has been discharged subject to conditions, of any variation of the conditions by the tribunal;
 - (c) if the restriction direction is to cease to have effect by virtue of action to be taken by the tribunal, of the date on which the restriction direction is to cease to have effect.
- (7) The Secretary of State must inform the [^{F32}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 direction is in force.
- (9) The [^{F33}relevant probation body] has the meaning given in section 43(8).

Textual Amendments

- F24** S. 44 title substituted (3.11.2008) by virtue of Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 14** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)
- F25** Words in s. 44(1) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 48, 56(1), **Sch. 6 para. 14** (with s. 50(8)-(13)); S.I. 2008/1900, arts. 1(1), **2(o)** (with art. 3, Sch.)
- F26** Words in s. 44(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(12)(a)**
- F27** Words in s. 44(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(12)(b)(i)**
- F28** Words in s. 44(3)(d) 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(12)(b)(ii)**
- F29** Words in s. 44(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(12)(c)**
- F30** Words in s. 44(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. 213**
- F31** Words in s. 44(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(12)(d)**
- F32** Words in s. 44(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(12)(e)**
- F33** Words in s. 44(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(12)(f)**

[^{F34}44A Information where restriction direction not given

- (1) This section applies if, in a case where section 42 applies, the transfer direction in respect of the patient was given without a restriction direction.
- (2) The responsible clinician must inform the managers of the relevant hospital—

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- (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.

^{F35}(3)

(4) Subsection (5) applies if—

- (a) an application is made to [^{F36}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 [^{F36}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 [^{F36}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 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 42(2), expressed a wish to receive the information specified in section 42(4), 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 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;

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- (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

- F34** Ss. 44A, 44B inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 15](#) (as amended by [S.I. 2008/912](#), [Sch. 1 para. 24\(2\)\(e\)](#)) (with s. 50(8)-(13)); [S.I. 2008/1900](#), arts. 1(1), [2\(o\)](#) (with [art. 3](#), [Sch.](#))
- F35** [S. 44A\(3\)](#) 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\(3\)](#)
- F36** Words in s. 44A(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. 214](#)

[^{F37} 44B Removal of restriction

- (1) This section applies if, in a case where section 42 applies—
 - (a) the transfer direction in respect of the patient was given with a restriction direction, and
 - (b) the restriction direction ceases to be in force while the transfer direction 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 42(2), expressed a wish to make representations about a matter specified in section 42(3) or to receive the information specified in section 42(4), 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 transfer direction continues in force, the patient is to be regarded as a patient in respect of whom a transfer direction was given without a restriction direction; and sections 43A and 44A 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 43(8).]

Textual Amendments

- F37** Ss. 44A, 44B inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 15](#) (as amended by [S.I. 2008/912](#), [Sch. 1 para. 24\(2\)\(e\)](#)) (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](#)