



# Domestic Violence, Crime and Victims Act 2004

## 2004 CHAPTER 28

### PART 3

#### VICTIMS ETC

### CHAPTER 2

#### REPRESENTATIONS AND INFORMATION

##### *Imprisonment or detention*

#### **35 Victims' rights to make representations and receive information**

- (1) This section applies if—
  - (a) a court convicts a person (“the offender”) of a sexual or violent offence, and
  - (b) a relevant sentence is imposed on him in respect of the offence.
- (2) But section 39 applies (instead of this section) if a hospital direction and a limitation direction are given in relation to the offender.
- (3) The local probation board for the area in which the sentence is imposed 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 (4);
  - (b) to receive the information specified in subsection (5).
- (4) The matters are—
  - (a) whether the offender should be subject to any licence conditions or supervision requirements in the event of his release;
  - (b) if so, what licence conditions or supervision requirements.

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- (5) The information is information about any licence conditions or supervision requirements to which the offender is to be subject in the event of his release.
- (6) If a person whose wishes have been ascertained under subsection (3) makes representations to the local probation board mentioned in that subsection or the relevant local probation board about a matter specified in subsection (4), the relevant local probation board must forward those representations to the persons responsible for determining the matter.
- (7) If a local probation board has ascertained under subsection (3) that a person wishes to receive the information specified in subsection (5), the relevant local probation board must take all reasonable steps—
  - (a) to inform the person whether or not the offender is to be subject to any licence conditions or supervision requirements in the event of his release,
  - (b) if he is, to provide the person with details of any licence conditions or supervision requirements which relate to contact with the victim or his family, and
  - (c) to provide the person with such other information as the relevant local probation board considers appropriate in all the circumstances of the case.
- (8) The relevant local probation board is—
  - (a) in a case where the offender is to be supervised on release by an officer of a local probation board, that local probation board;
  - (b) in any other case, the local probation board for the area in which the prison or other place in which the offender is detained is situated.

### *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 or violent 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 with a restriction order is made in respect of the patient by a court dealing with him for the offence.
- (4) The local probation board for the 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).
- (5) The matters are—
  - (a) whether the patient should be subject to any conditions in the event of his discharge from hospital;
  - (b) if so, what conditions.
- (6) The information is information about any conditions to which the patient is to be subject in the event of his discharge from hospital.

### **37 Representations**

- (1) This section applies if section 36 applies.
- (2) If—
  - (a) a person makes representations about a matter specified in section 36(5) to the local probation board mentioned in section 36(4) or the relevant local probation board, and
  - (b) it appears to the relevant local probation board that the person is the victim of the offence or acts for the victim of the offence,the relevant local probation board 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 relevant local probation board 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),
  - (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) A Mental Health Review Tribunal must inform the relevant local probation board 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 relevant local probation board receives information under subsection (4) or (5), and
  - (b) a person who appears to the relevant local probation board 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 relevant local probation board or the local probation board mentioned in section 36(4).

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- (7) The relevant local probation board must provide the information to the person.
- (8) The relevant local probation board is—
  - (a) if the patient is to be discharged subject to a condition that he reside in a particular area, the local probation board for the area;
  - (b) in any other case, the local probation board for the area in which the hospital in which the patient is detained is situated.

### **38 Information**

- (1) This section applies if section 36 applies.
- (2) Subsection (3) applies if a person who appears to the relevant local probation board 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 relevant local probation board that he wishes to receive that information.
- (3) The relevant local probation board 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 the board considers appropriate in all the circumstances of the case.
- (4) The Secretary of State must inform the relevant local probation board—
  - (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);
  - (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 a Mental Health Review Tribunal 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 a Mental Health Review Tribunal under section 71 of that Act (references concerning restricted patients).
- (6) The tribunal must inform the relevant local probation board—
  - (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 relevant local probation board 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 relevant local probation board has the meaning given in section 37(8).

### *Hospital directions*

## **39 Victims' rights: preliminary**

- (1) This section applies if—
- (a) a person (“the offender”) is convicted of a sexual or violent offence,
  - (b) a relevant sentence is imposed on him in respect of the offence, and
  - (c) a hospital direction and a limitation direction are given in relation to him by a court dealing with him for the offence.
- (2) The local probation board for the area in which the hospital direction is given 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 (3);
  - (b) to receive the information specified in subsection (4).
- (3) The matters are—
- (a) whether the offender should, in the event of his discharge from hospital, be subject to any conditions and, if so, what conditions;
  - (b) whether the offender should, in the event of his release from hospital, be subject to any licence conditions or supervision requirements and, if so, what licence conditions or supervision requirements;
  - (c) if the offender is transferred to a prison or other institution in which he might have been detained if he had not been removed to hospital, whether he should, in the event of his release from prison or another such institution, be subject to any licence conditions or supervision requirements and, if so, what licence conditions or supervision requirements.
- (4) The information is—
- (a) information about any conditions to which the offender is to be subject in the event of his discharge;
  - (b) information about any licence conditions or supervision requirements to which the offender is to be subject in the event of his release.

## **40 Representations**

- (1) This section applies if section 39 applies.
- (2) If—

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- (a) a person makes representations about a matter specified in section 39(3) to the local probation board mentioned in section 39(2) or the relevant local probation board, and
  - (b) it appears to the relevant local probation board that the person is the victim of the offence or acts for the victim of the offence,
- the relevant local probation board must forward the representations to the persons responsible for determining the matter.
- (3) If the representations are about a matter specified in section 39(3)(a), the duty in subsection (2) applies only while the limitation direction given in relation to the offender is in force.
- (4) The Secretary of State must inform the relevant local probation board 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) A Mental Health Review Tribunal must inform the relevant local probation board 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
  - (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 relevant local probation board receives information under subsection (4) or (5), and
  - (b) a person who appears to the relevant local probation board to be the victim of the offence or to act for the victim of the offence—
    - (i) when his wishes were ascertained under section 39(2), expressed a wish to make representations about a matter specified in section 39(3)(a), or
    - (ii) has made representations about such a matter to the relevant local probation board or the local probation board mentioned in section 39(2).
- (7) The relevant local probation board must provide the information to the person.
- (8) The relevant local probation board is—
- (a) if the offender is to be discharged from hospital subject to a condition that he reside in a particular area, the local probation board for the area;
  - (b) if the offender is to be supervised on release by an officer of a local probation board, that local probation board;
  - (c) in any other case, the local probation board for the area in which the hospital, prison or other place in which the offender is detained is situated.

## 41 Information

- (1) This section applies if section 39 applies.

- (2) Subsection (3) applies if a person who appears to the relevant local probation board to be the victim of the offence or to act for the victim of the offence—
- (a) when his wishes were ascertained under section 39(2), expressed a wish to receive the information specified in section 39(4), or
  - (b) has subsequently informed the relevant local probation board that he wishes to receive that information.
- (3) The relevant local probation board must take all reasonable steps—
- (a) to inform that person whether or not the offender 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 limitation 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;
  - (d) to inform that person whether or not the offender is to be subject to any licence conditions or supervision requirements in the event of his release;
  - (e) if he is, to provide that person with details of any licence conditions or supervision requirements which relate to contact with the victim or his family;
  - (f) to provide that person with such other information as the board considers appropriate in all the circumstances of the case.
- (4) The Secretary of State must inform the relevant local probation board—
- (a) whether the offender 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);
  - (e) if the limitation 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 limitation direction is to cease to have effect.
- (5) Subsections (6) and (7) apply (instead of subsection (4)) if—
- (a) an application is made to a Mental Health Review Tribunal by the offender 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 offender's case to a Mental Health Review Tribunal under section 71 of that Act (references concerning restricted patients).
- (6) The tribunal must inform the relevant local probation board—
- (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 limitation direction is to cease to have effect by virtue of action to be taken by the tribunal, of the date on which the limitation direction is to cease to have effect.

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- (7) The Secretary of State must inform the relevant local probation board of the matters specified in subsection (4)(d) and (e).
- (8) The duties in subsections (3)(a) to (c) and (4) to (7) apply only while the limitation direction is in force.
- (9) The relevant local probation board has the meaning given in section 40(8).

### *Transfer directions*

## **42 Victims' rights: preliminary**

- (1) This section applies if—
  - (a) a person (“the offender”) is convicted of a sexual or violent offence,
  - (b) a relevant sentence is imposed on him in respect of the offence, and
  - (c) while the offender is serving the sentence, the Secretary of State gives a transfer direction and a restriction direction in respect of him.
- (2) The local probation board for the 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 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 (3);
  - (b) to receive the information specified in subsection (4).
- (3) The matters are—
  - (a) whether the offender should be subject to any conditions in the event of his discharge from hospital;
  - (b) if so, what conditions.
- (4) The information is information about any conditions to which the offender is to be subject in the event of his discharge from hospital.

## **43 Representations**

- (1) This section applies if section 42 applies.
- (2) If—
  - (a) a person makes representations about a matter specified in section 42(3) to the local probation board mentioned in section 42(2) or the relevant local probation board, and
  - (b) it appears to the relevant local probation board that the person is the victim of the offence or acts for the victim of the offence,
 the relevant local probation board 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 relevant local probation board 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) A Mental Health Review Tribunal must inform the relevant local probation board 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
  - (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 relevant local probation board receives information under subsection (4) or (5), and
  - (b) a person who appears to the relevant local probation board 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 relevant local probation board or the local probation board mentioned in section 42(2).
- (7) The relevant local probation board must provide the information to the person.
- (8) The relevant local probation board is—
- (a) if the offender is to be discharged subject to a condition that he reside in a particular area, the local probation board for the area;
  - (b) in any other case, the local probation board for the area in which the hospital in which the offender is detained is situated.

#### **44 Information**

- (1) This section applies if section 42 applies.
- (2) Subsection (3) applies if a person who appears to the relevant local probation board 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 relevant local probation board that he wishes to receive that information.
- (3) The relevant local probation board must take all reasonable steps—
- (a) to inform that person whether or not the offender 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 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;

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- (d) to provide that person with such other information as the board considers appropriate in all the circumstances of the case.
- (4) The Secretary of State must inform the relevant local probation board—
  - (a) whether the offender 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);
  - (e) 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—
  - (a) an application is made to a Mental Health Review Tribunal 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 a Mental Health Review Tribunal under section 71 of that Act (references concerning restricted patients).
- (6) The tribunal must inform the relevant local probation board—
  - (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 relevant local probation board 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 relevant local probation board has the meaning given in section 43(8).

### *Interpretation*

#### **45 Interpretation: sections 35 to 44**

- (1) In sections 35 to 44—
  - “court” does not include a court-martial or the Courts-Martial Appeal Court;
  - “hospital direction” has the meaning given in section 45A(3)(a) of the Mental Health Act 1983 (c. 20);
  - “hospital order” has the meaning given in section 37(4) of that Act;
  - “licence condition” means a condition in a licence;
  - “limitation direction” has the meaning given in section 45A(3)(b) of the Mental Health Act 1983;

“local probation board” means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43);

“relevant sentence” means any of these—

- (a) a sentence of imprisonment for a term of 12 months or more;
- (b) a sentence of detention during Her Majesty’s pleasure;
- (c) a sentence of detention for a period of 12 months or more under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (offenders under 18 convicted of certain serious offences);
- (d) a detention and training order for a term of 12 months or more;

“restriction direction” has the meaning given in section 49(2) of the Mental Health Act 1983;

“restriction order” has the meaning given in section 41(1) of that Act;

“supervision requirements” means requirements specified in a notice under section 103(6) of the Powers of Criminal Courts (Sentencing) Act 2000;

“transfer direction” has the meaning given in section 47(1) of the Mental Health Act 1983.

- (2) For the purposes of sections 35 to 44, an offence is a sexual or violent offence if it is any of these—
  - (a) murder or an offence specified in Schedule 15 to the Criminal Justice Act 2003 (c. 44);
  - (b) an offence in respect of which the patient or offender is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c. 42));
  - (c) an offence against a child within the meaning of Part 2 of the Criminal Justice and Court Services Act 2000.

### *Northern Ireland*

## **46 Victims of mentally disordered persons**

- (1) The Justice (Northern Ireland) Act 2002 (c. 26) is amended as follows.
- (2) After section 69 (views on temporary release) insert—

### **“69A Information about discharge and leave of absence of mentally disordered persons**

- (1) The Secretary of State must make a scheme requiring the Secretary of State to make available to persons falling within subsection (2) information about—
  - (a) the discharge from hospital of, or
  - (b) the grant of leave of absence from hospital to,
 persons in respect of whom relevant determinations have been made.
- (2) The persons referred to in subsection (1) are victims of the offences in respect of which the determinations were made who wish to receive the information.
- (3) A relevant determination is made in respect of a person if—
  - (a) a hospital order with a restriction order is made in respect of him by a court dealing with him for an offence, or

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- (b) a transfer direction and a restriction direction are given in respect of him while he is serving a sentence of imprisonment in respect of an offence.
- (4) The Secretary of State may from time to time make a new scheme or alterations to a scheme.
- (5) The information to be made available under a scheme must include information as to any relevant conditions to which a person in respect of whom a relevant determination has been made is to be subject in the event of—
  - (a) his discharge from hospital, or
  - (b) the grant of leave of absence from hospital to him.
- (6) A condition is relevant for the purposes of subsection (5) if it appears to the Secretary of State that it might affect a victim of an offence in respect of which the determination was made.
- (7) A scheme may require the Secretary of State to take all reasonable steps to ascertain whether a person who appears to him to be the victim of an offence in respect of which a relevant determination has been made wishes to make representations about the matters specified in subsection (8).
- (8) The matters are—
  - (a) whether the person in respect of whom the determination has been made should be subject to any conditions in the event of his discharge from hospital or the grant of leave of absence from hospital to him;
  - (b) if so, what conditions.
- (9) A scheme that includes provision such as is mentioned in subsection (7) must specify how the representations are to be made.
- (10) A scheme may require other information in relation to the discharge of, or the grant of leave of absence to, persons in respect of whom relevant determinations are made to be made available under the scheme.
- (11) The other information may include, in cases of a description specified by the scheme or in which the Secretary of State considers it appropriate, the date on which it is anticipated that a person in respect of whom a relevant determination has been made will be discharged or granted leave of absence from hospital.
- (12) Subsections (5) to (8) of section 68 apply in relation to a scheme made under this section as they apply in relation to a scheme made under that section.
- (13) A scheme may make different provision in relation to different descriptions of persons in respect of whom a relevant determination is made.

### **69B Views on leave of absence**

- (1) If a person who is the victim of an offence in respect of which a relevant determination has been made makes to the Secretary of State representations falling within subsection (2) the Secretary of State has the obligations specified in subsection (3).

- (2) Representations fall within this subsection if they are to the effect that the grant of leave of absence to the person in respect of whom the determination has been made would threaten the safety, or otherwise adversely affect the well-being, of—
- (a) the actual victim of the offence in respect of which the determination was made, or
  - (b) a person who is regarded for the purposes of a scheme under section 69A as a victim of that offence by virtue of section 68(5) (as applied by section 69A(12)).
- (3) The Secretary of State must—
- (a) have regard to the representations in deciding whether he should give his consent to leave of absence being granted, and
  - (b) inform the victim of any such decision.
- (4) Section 69A(3) (relevant determination) applies for the purposes of this section.”
- (3) In section 70 (supplementary), after subsection (3) insert—
- “(4) In sections 68 and 69 references to a person serving a sentence of imprisonment in Northern Ireland include a person detained in hospital pursuant to a transfer direction and a restriction direction.
- (5) In subsection (4) and section 69A(3)—
- “restriction direction” has the meaning given in Article 55(2) of the Mental Health (Northern Ireland) Order 1986;
- “transfer direction” has the meaning given in Article 53(2) of that Order.
- (6) In section 69A(3)—
- “hospital order” has the meaning given in Article 44(1) of the Mental Health (Northern Ireland) Order 1986;
- “restriction order” has the meaning given in Article 47(1) of that Order;
- “sentence of imprisonment” has the meaning given in Article 53(5) of that Order.
- (7) In sections 69A and 69B “leave of absence” means leave of absence under Article 15 of the Mental Health (Northern Ireland) Order 1986.”
- (4) In section 90(5) (statutory rules), in paragraph (b) after “section 68” insert “or 69A”.