



# Domestic Violence, Crime and Victims Act 2004

## 2004 CHAPTER 28

### PART 3

#### VICTIMS ETC

### CHAPTER 3

#### OTHER MATTERS RELATING TO VICTIMS ETC

#### *Parliamentary Commissioner*

#### **47 Investigations by Parliamentary Commissioner**

Schedule 7 (which amends the Parliamentary Commissioner Act 1967 (c. 13)) has effect.

#### *Commissioner for Victims and Witnesses*

#### **48 Commissioner for Victims and Witnesses**

- (1) The Secretary of State must appoint a Commissioner for Victims and Witnesses (referred to in this Part as the Commissioner).
- (2) Before appointing the Commissioner the Secretary of State must consult the Attorney General and the Lord Chancellor as to the person to be appointed.
- (3) The Commissioner is a corporation sole.
- (4) The Commissioner is not to be regarded—
  - (a) as the servant or agent of the Crown, or

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- (b) as enjoying any status, immunity or privilege of the Crown.
- (5) The Commissioner's property is not to be regarded as property of, or held on behalf of, the Crown.
- (6) Schedule 8 (which make further provision in connection with the Commissioner) has effect.

#### **49 General functions of Commissioner**

- (1) The Commissioner must—
  - (a) promote the interests of victims and witnesses;
  - (b) take such steps as he considers appropriate with a view to encouraging good practice in the treatment of victims and witnesses;
  - (c) keep under review the operation of the code of practice issued under section 32.
- (2) The Commissioner may, for any purpose connected with the performance of his duties under subsection (1)—
  - (a) make proposals to the Secretary of State for amending the code (at the request of the Secretary of State or on his own initiative);
  - (b) make a report to the Secretary of State;
  - (c) make recommendations to an authority within his remit;
  - (d) undertake or arrange for or support (financially or otherwise) the carrying out of research;
  - (e) consult any person he thinks appropriate.
- (3) If the Commissioner makes a report to the Secretary of State under subsection (2)(b)—
  - (a) the Commissioner must send a copy of the report to the Attorney General and the Lord Chancellor;
  - (b) the Secretary of State must lay a copy of the report before Parliament and arrange for the report to be published.

#### **50 Advice**

- (1) If he is required to do so by a Minister of the Crown, the Commissioner must give advice to the Minister of the Crown in connection with any matter which—
  - (a) is specified by the Minister, and
  - (b) relates to victims or witnesses.
- (2) If he is required to do so by or on behalf of an authority within his remit, the Commissioner must give advice to the authority in connection with the information provided or to be provided by or on behalf of the authority to victims or witnesses.
- (3) In this section “Minister of the Crown” includes the Treasury.

#### **51 Restrictions on exercise of functions**

The Commissioner must not exercise any of his functions in relation to—

- (a) a particular victim or witness;
- (b) the bringing or conduct of particular proceedings;

- (c) anything done or omitted to be done by a person acting in a judicial capacity or on the instructions of or on behalf of such a person.

## 52 “Victims” and “witnesses”

- (1) This section applies for the purposes of sections 48 to 51.
- (2) “Victim” means—
  - (a) a victim of an offence, or
  - (b) a victim of anti-social behaviour.
- (3) It is immaterial for the purposes of subsection (2)(a) that—
  - (a) no complaint has been made about the offence;
  - (b) no person has been charged with or convicted of the offence.
- (4) “Witness” means a person (other than a defendant)—
  - (a) who has witnessed conduct in relation to which he may be or has been called to give evidence in relevant proceedings;
  - (b) who is able to provide or has provided anything which might be used or has been used as evidence in relevant proceedings; or
  - (c) who is able to provide or has provided anything mentioned in subsection (5) (whether or not admissible in evidence in relevant proceedings).
- (5) The things referred to in subsection (4)(c) are—
  - (a) anything which might tend to confirm, has tended to confirm or might have tended to confirm evidence which may be, has been or could have been admitted in relevant proceedings;
  - (b) anything which might be, has been or might have been referred to in evidence given in relevant proceedings by another person;
  - (c) anything which might be, has been or might have been used as the basis for any cross examination in the course of relevant proceedings.
- (6) For the purposes of subsection (4)—
  - (a) a person is a defendant in relation to any criminal proceedings if he might be, has been or might have been charged with or convicted of an offence in the proceedings;
  - (b) a person is a defendant in relation to any other relevant proceedings if he might be, has been or might have been the subject of an order made in those proceedings.
- (7) In subsections (4) to (6) “relevant proceedings” means—
  - (a) criminal proceedings;
  - (b) proceedings of any other kind in respect of anti-social behaviour.
- (8) For the purposes of this section—
  - (a) “anti-social behaviour” means behaviour by a person which causes or is likely to cause harassment, alarm or distress to one or more persons not of the same household as the person;
  - (b) a person is a victim of anti-social behaviour if the behaviour has caused him harassment, alarm or distress and he is not of the same household as the person who engages in the behaviour.

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### **53 Authorities within Commissioner's remit**

- (1) For the purposes of this Part the authorities within the Commissioner's remit are those specified in Schedule 9.
- (2) An authority specified in Schedule 9 that has functions in relation to an area outside England and Wales is within the Commissioner's remit only to the extent that it discharges its functions in relation to England and Wales.
- (3) Subsection (2) does not apply in relation to the Foreign and Commonwealth Office.
- (4) The Secretary of State may by order amend Schedule 9 by—
  - (a) adding an authority appearing to him to exercise functions of a public nature;
  - (b) omitting an authority;
  - (c) changing the description of an authority.
- (5) In preparing a draft of an order under subsection (4) the Secretary of State must consult the Attorney General and the Lord Chancellor.

#### *Disclosure of information*

### **54 Disclosure of information**

- (1) A person may disclose information to a relevant authority for a purpose specified in subsection (2).
- (2) The purposes are purposes connected with any of these—
  - (a) compliance with the code issued under section 32;
  - (b) compliance with sections 35 to 44;
  - (c) the carrying out of the functions of the Commissioner.
- (3) These are relevant authorities—
  - (a) a person required to do anything under the code issued under section 32;
  - (b) a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43);
  - (c) the Commissioner;
  - (d) an authority within the Commissioner's remit.
- (4) The Secretary of State may by order—
  - (a) amend subsection (2) by adding any purpose appearing to him to be connected with the assistance of victims of offences or anti-social behaviour, witnesses of offences or anti-social behaviour or other persons affected by offences or anti-social behaviour;
  - (b) amend subsection (3) by adding any authority appearing to him to exercise functions of a public nature.
- (5) The reference in subsection (4)(a) to persons affected by offences does not include persons accused or convicted of offences.
- (6) The Secretary of State may exercise the power in subsection (4) only after consulting the Attorney General and the Lord Chancellor.
- (7) Nothing in this section authorises the making of a disclosure which contravenes the Data Protection Act 1998 (c. 29).

- (8) This section does not affect a power to disclose which exists apart from this section.

### *Victims' Advisory Panel*

## **55 Victims' Advisory Panel**

- (1) The Secretary of State must appoint persons to form a panel, to be known as the Victims' Advisory Panel.
- (2) The Secretary of State must consult the Attorney General and the Lord Chancellor before—
  - (a) appointing a person to the Panel, or
  - (b) removing a person from the Panel.
- (3) The Secretary of State must consult the Panel at such times and in such manner as he thinks appropriate on matters appearing to him to relate to victims of offences or anti-social behaviour or witnesses of offences or anti-social behaviour.
- (4) The Secretary of State may reimburse the members of the Panel for such of their travelling and other expenses as he thinks appropriate.
- (5) If the Secretary of State consults the Panel under subsection (3) in a particular year, he must arrange for the Panel to prepare a report for the year—
  - (a) summarising what the Panel has done in response to the consultation, and
  - (b) dealing with such other matters as the Panel consider appropriate.
- (6) If a report is prepared under subsection (5), the Secretary of State must—
  - (a) arrange for it to be published, and
  - (b) lay it before Parliament.
- (7) The non-statutory Victims' Advisory Panel is to be treated as having been established in accordance with this section.
- (8) If the Secretary of State consults the non-statutory Victims' Advisory Panel on a matter mentioned in subsection (3) before the date on which this section comes into force, the consultation is to be treated as taking place under subsection (3).
- (9) The non-statutory Victims' Advisory Panel is the unincorporated body of persons known as the Victims' Advisory Panel established by the Secretary of State before the date on which this section comes into force.
- (10) In this section “year” means a period of 12 months beginning on 1 April.

### *Grants*

## **56 Grants for assisting victims, witnesses etc**

- (1) The Secretary of State may pay such grants to such persons as he considers appropriate in connection with measures which appear to him to be intended to assist victims, witnesses or other persons affected by offences.
- (2) The Secretary of State may make a grant under this section subject to such conditions as he considers appropriate.

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### *Criminal injuries compensation*

#### **57 Recovery of criminal injuries compensation from offenders**

- (1) The Criminal Injuries Compensation Act 1995 (c. 53) is amended as follows.
- (2) After section 7 insert—

##### **“7A Recovery of compensation from offenders: general**

- (1) The Secretary of State may, by regulations made by statutory instrument, make provision for the recovery from an appropriate person of an amount equal to all or part of the compensation paid in respect of a criminal injury.
- (2) An appropriate person is a person who has been convicted of an offence in respect of the criminal injury.
- (3) The amount recoverable from a person under the regulations must be determined by reference only to the extent to which the criminal injury is directly attributable to an offence of which he has been convicted.
- (4) The regulations may confer functions in respect of recovery on—
  - (a) claims officers;
  - (b) if a Scheme manager has been appointed, persons appointed by the Scheme manager under section 3(4)(a).
- (5) The regulations may not authorise the recovery of an amount in respect of compensation from a person to the extent that the compensation has been repaid in accordance with the Scheme.

##### **7B Recovery notices**

- (1) If, under regulations made under section 7A(1), an amount has been determined as recoverable from a person, he must be given a notice (a “recovery notice”) in accordance with the regulations which—
  - (a) requires him to pay that amount, and
  - (b) contains the information mentioned in subsection (2).
- (2) The information is—
  - (a) the reasons for the determination that an amount is recoverable from the person;
  - (b) the basis on which the amount has been determined;
  - (c) the way in which and the date before which the amount is required to be paid;
  - (d) the means by which the amount may be recovered if it is not paid in accordance with the notice;
  - (e) the grounds on which and the procedure by means of which he may seek a review if he objects to—
    - (i) the determination that an amount is recoverable from him;
    - (ii) the amount determined as recoverable from him.
- (3) The Secretary of State may by order made by statutory instrument amend subsection (2) by—

- (a) adding information;
- (b) omitting information;
- (c) changing the description of information.

### **7C Review of recovery determinations**

- (1) Regulations under section 7A(1) shall include provision for the review, in such circumstances as may be prescribed by the regulations, of—
  - (a) a determination that an amount is recoverable from a person;
  - (b) the amount determined as recoverable from a person.
- (2) A person from whom an amount has been determined as recoverable under the regulations may seek such a review only on the grounds—
  - (a) that he has not been convicted of an offence to which the injury is directly attributable;
  - (b) that the compensation paid was not determined in accordance with the Scheme;
  - (c) that the amount determined as recoverable from him was not determined in accordance with the regulations.
- (3) Any such review must be conducted by a person other than the person who made the determination under review.
- (4) The person conducting any such review may—
  - (a) set aside the determination that the amount is recoverable;
  - (b) reduce the amount determined as recoverable;
  - (c) increase the amount determined as recoverable;
  - (d) determine to take no action under paragraphs (a) to (c).
- (5) But the person conducting any such review may increase the amount determined as recoverable if (but only if) it appears to that person that the interests of justice require the amount to be increased.

### **7D Recovery proceedings**

- (1) An amount determined as recoverable from a person under regulations under section 7A(1) is recoverable from him as a debt due to the Crown if (but only if)—
  - (a) he has been given a recovery notice in accordance with the regulations which complies with the requirements of section 7B, and
  - (b) he has failed to pay the amount in accordance with the notice.
- (2) In any proceedings for the recovery of the amount from a person, it is a defence for the person to show—
  - (a) that he has not been convicted of an offence to which the injury is directly attributable;
  - (b) that the compensation paid was not determined in accordance with the Scheme; or
  - (c) that the amount determined as recoverable from him was not determined in accordance with regulations under section 7A.

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- (3) In any such proceedings, except for the purposes of subsection (2)(b), no question may be raised or finding made as to the amount that was, or ought to have been, the subject of an award.
- (4) For the purposes of section 9 of the Limitation Act 1980 (time limit for actions for sums recoverable by statute to run from date on which cause of action accrued) the cause of action to recover that amount shall be taken to have accrued—
- (a) on the date on which the compensation was paid; or
  - (b) if later, on the date on which a person from whom an amount is sought to be recovered was convicted of an offence to which the injury is directly attributable.
- (5) If that person is convicted of more than one such offence and the convictions are made on different dates, the reference in subsection (4)(b) to the date on which he was convicted of such an offence shall be taken to be a reference to the earlier or earliest (as the case may be) of the dates on which he was convicted of such an offence.”
- (3) In section 9(7) (financial provisions: sums payable into Consolidated Fund), after “section 3(1)(c)” insert “, or by virtue of regulations made under section 7A(1),”.
- (4) In section 11, after subsection (8) insert—
- “(8A) No regulations under section 7A(1) or order under section 7B(3) shall be made unless a draft of the regulations or order has been laid before Parliament and approved by a resolution of each House.”