



Domestic Violence, Crime and Victims Act 2004

2004 CHAPTER 28

PART 3

VICTIMS ETC

CHAPTER 2

REPRESENTATIONS AND INFORMATION

Hospital orders

38 [F¹Information where restriction order made]

- (1) This section applies [F²if, 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 [F³relevant 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 [F³relevant probation body] that he wishes to receive that information.
- (3) The [F⁴relevant 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;

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- (d) to provide that person with such other information as [^{F5}the body] considers appropriate in all the circumstances of the case.
- (4) The Secretary of State must inform the [^{F6}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);
 - (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 [^{F7}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 [^{F7}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 [^{F8}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 [^{F9}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 [^{F10}relevant probation body] has the meaning given in section 37(8).

Textual Amendments

- F1** 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.)
- F2** 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.)
- F3** 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\(6\)\(a\)](#)
- F4** 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\(6\)\(b\)\(i\)](#)
- F5** 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\(6\)\(b\)\(ii\)](#)

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- F6** 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)**
- F7** 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**
- F8** 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)**
- F9** 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)**
- F10** 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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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](#)