



Domestic Violence, Crime and Victims Act 2004

2004 CHAPTER 28

PART 3

VICTIMS ETC

CHAPTER 2

REPRESENTATIONS AND INFORMATION

Hospital directions

40 Representations

- (1) This section applies if section 39 applies.
- (2) If—
 - (a) a person makes representations about a matter specified in section 39(3) to the local probation board [^{F1}or provider of probation services] mentioned in section 39(2) or the [^{F2}relevant probation body], and
 - (b) it appears to the [^{F2}relevant probation body] that the person is the victim of the offence or acts for the victim of the offence,the [^{F2}relevant probation body] 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 [^{F3}relevant probation body] if he is considering—

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- (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) [^{F4}The First-tier Tribunal or the Mental Health Review Tribunal for Wales] must inform the [^{F5}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
 - (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 [^{F6}relevant probation body] receives information under subsection (4) or (5), and
 - (b) a person who appears to the [^{F6}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 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 [^{F6}relevant probation body] or the local probation board [^{F7}or provider of probation services] mentioned in section 39(2).
- (7) The [^{F8}relevant probation body] must provide the information to the person.
- [^{F9}(8) For the purposes of this section, “the relevant probation body” is—
- (a) in a case where the offender is to be discharged from hospital 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 from hospital 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 a case where the offender is to be supervised on release by an officer of a local probation board or an officer of a provider of probation services, that local probation board or that provider of probation services (as the case may be);
 - (d) in any other case—
 - (i) if the hospital, prison or other place in which the offender is detained is situated in the area of a local probation board, that area; and
 - (ii) if that hospital, prison or other place is not so situated, the provider of probation services operating in the local justice area in which the hospital, prison or other place 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.]

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Textual Amendments

- F1** Words in s. 40(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(8)(a)(i)**
- F2** Words in s. 40(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(8)(a)(ii)**
- F3** Words in s. 40(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(8)(b)**
- F4** Words in s. 40(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. 209**
- F5** Words in s. 40(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(8)(c)**
- F6** Words in s. 40(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(8)(d)(i)**
- F7** Words in s. 40(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(8)(d)(ii)**
- F8** Words in s. 40(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(8)(e)**
- F9** S. 40(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(8)(f)**

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](#)