Mental Health Act 2007

Guidance on the extension of victims’ rights under the Domestic Violence, Crime and Victims Act 2004
This guidance describes new duties under the Domestic Violence, Crime and Victims Act 2004 on hospital managers, responsible clinicians, approved mental health professionals and NHS bodies in respect of the rights of victims of certainly mentally disordered offenders subject to the Mental Health Act 1983.

Hospital managers (etc) must comply with the new duties.

The new duties apply from 3 November 2008.

Contact details for further information are given in Section 6 of the guidance.
Mental Health Act 2007

Guidance on the extension of victims’ rights under the Domestic Violence, Crime and Victims Act 2004

Prepared by Department of Health Mental Health Act Implementation Team and Ministry of Justice Mental Health Unit and NOMS Public Protection Unit
Contents

Executive summary ........................................................................................................................................... 4

INTRODUCTION ........................................................................................................................................ 5

SECTION 1 - VICTIMS’ RIGHTS UNDER THE DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004 ........................................................................................................................................ 6

Summary .................................................................................................................................................. 6
Domestic Violence, Crime and Victims Act 2004 ....................................................................................... 6
Meaning of victim ......................................................................................................................................... 7
Mental Health Act patients to whom the provisions apply (“Chapter 2 patients”) ...................................... 7
“Restricted Chapter 2 patients” and “Unrestricted Chapter 2 patients” .................................................... 8
Victims’ rights in respect of Chapter 2 patients .......................................................................................... 8
Arrangements already in force in respect of restricted Chapter 2 patients ............................................ 9
New arrangements – unrestricted Chapter 2 patients ........................................................................... 9

SECTION 2 - OBLIGATIONS ON HOSPITAL MANAGERS ....................................................................... 11

Summary .................................................................................................................................................. 11
Meaning of hospital managers .................................................................................................................. 11
Delegation by hospital managers ........................................................................................................... 11
Requirement 1 – identifying relevant patients .......................................................................................... 12
Requirement 2 – maintaining records of victims who have asked to make representations or receive information ....................................................................................................................... 12
Requirement 3 – inviting and passing on representations from victims .................................................. 13
Requirement 4 – giving victims required information ............................................................................... 14
Requirement 5 – deciding whether to give victims additional information ............................................ 15
Requirement 6 – informing new hospital managers where patients are transferred or assigned .................... 15

SECTION 3 - RESPONSIBILITIES OF RESPONSIBLE CLINICIANS AND APPROVED MENTAL HEALTH PROFESSIONALS .................................................................................................................. 16

Summary .................................................................................................................................................. 16
Duties on responsible clinicians .................................................................................................................. 16
Duties on approved mental health professionals ....................................................................................... 17

SECTION 4 - DUTIES ON NHS BODIES WITH THE POWER TO DISCHARGE PATIENTS FOR WHOM INDEPENDENT HOSPITALS ARE RESPONSIBLE ........................................................................... 18

SECTION 5 - SHARING INFORMATION WITH VICTIMS – GENERAL .................................................... 19

SECTION 6 - FURTHER INFORMATION .................................................................................................. 20

APPENDIX – LIST OF SPECIFIED OFFENCES ....................................................................................... 21
Executive summary

i. Under the Domestic Violence, Crime and Victims Act 2004 victims of certain sexual and violent offenders have certain rights to receive information over the course of the offender’s sentence and to make representations about any conditions to which the offender should be subject on release.

ii. These rights have applied since 1 July 2005 to victims of offenders who are detained in hospital under Part 3 of the Mental Health Act 1983 (the 1983 Act) and who are subject to special restrictions (restricted patients), including those who have been conditionally discharged.

iii. From 3 November 2008, these rights will be extended to victims of offenders detained in hospital under Part 3 of the 1983 Act who are not subject to special restrictions (unrestricted patients), including those who are then discharged from hospital onto supervised community treatment (SCT).

iv. To enable victims to exercise those rights, there will be new statutory duties on:

- providers of probation services to identify eligible victims and, with their consent, to pass on their details to hospital managers;
- hospital managers to give information to victims and to pass on any representations they make;
- responsible clinicians to inform hospital managers if they are considering discharging relevant unrestricted patients and if they make certain decisions relating to those patients. They must also consider victims’ representations when deciding what conditions to include in the community treatment order of an unrestricted patient they discharge onto SCT;
- approved mental health professionals to consider victims’ representations when deciding whether to agree to the proposed conditions to be included in a community treatment order for a relevant unrestricted patient being discharged onto SCT; and
- NHS bodies, if they are considering using their powers under section 23(3) of the 1983 Act to discharge relevant NHS patients who are detained in independent hospitals, or who are SCT patients for whom an independent hospital is the responsible hospital.
INTRODUCTION

This guidance is intended to explain the new duties in respect of victims’ rights which fall on the managers of NHS and independent hospitals, other NHS bodies, responsible clinicians and approved mental health professionals under Chapter 2 of Part 3 of the Domestic Violence, Crime and Victims Act 2004 from 3 November 2008 as a result of changes made to that Act by section 48 and Schedule 6 of the Mental Health Act 2007.

While this guidance attempts to describe and explain those new duties, it is not a substitute for consulting the legislation itself or taking legal advice.
SECTION 1 - VICTIMS’ RIGHTS UNDER THE DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004

Summary

- Under Chapter 2 of Part 3 of the Domestic Violence, Crime and Victims Act 2004, the victims of offenders who have committed specified sexual or violent offences have certain rights if those offenders become patients subject to specific provisions of the 1983 Act (“Chapter 2 patients”)

- Victims have the right to ask to be informed if the patient is to be discharged and about any conditions attached to that discharge which relate to contact with them or their families

- Victims also have the right to ask to make representations about the conditions to which the patient should be subject if conditionally discharged or discharged onto supervised community treatment (SCT)

- These rights have been in force since 1 July 2005 in respect of restricted patients – and the arrangements are operated mainly by the Probation Services and the Mental Health Unit of the Ministry of Justice

- From 3 November 2008, these rights are extended to unrestricted patients – which will mean new duties on hospital managers, responsible clinicians, approved mental health professionals and on NHS bodies responsible for NHS patients in independent hospitals.

Domestic Violence, Crime and Victims Act 2004

1.1 Under Chapter 2 of Part 3 of the Domestic Violence, Crime and Victims Act 2004 (“the 2004 Act”) victims of specified offences of a sexual or violent nature are afforded rights to receive certain information, and to make representations, about the release of the offender from prison or from detention under the Mental Health Act 1983 (“the 1983 Act”). The relevant offences are specified in Schedule 15 of the Criminal Justice Act 2003.

---

1 See sections 35 to 45 of the Domestic Violence, Crime and Victims Act 2004 (c.28) as amended by Schedule 6 of the Mental Health Act 2007 (c.12)
1.2 A list of the relevant offences is to be found in Annex C to the National Probation Service’s Victim Liaison Guidance (Probation Circular PC11/2008). That list is reproduced in the Appendix to this guidance. Note, however, that the list may change from time to time.

Meaning of victim

1.3 For these purposes “victim” includes any person who appears to be, or to act for, the victim of the specified sexual or violent offence in question.

1.4 As a matter of practice this should be taken to include a victim’s family in a case where the offence has resulted in the victim’s death or incapacity, and in other cases where the victim’s age or personal circumstances make it appropriate to approach a family member in the first instance.

Mental Health Act patients to whom the provisions apply (“Chapter 2 patients”)

1.5 The 2004 Act provides specific rights for victims of offenders who are made subject to the 1983 Act. These apply to patients who have committed one of the specified sexual or violent offences and who are then detained in hospital under:

- a hospital order (section 37);
- a hospital and limitation direction (if the associated prison sentence is for 12 months of more) (section 45A); or
- a transfer direction (if the associated prison sentence is for 12 months or more) (section 47)

1.6 The provisions continue to apply to such patients if they are:

- conditionally discharged; or
- discharged onto supervised community treatment (SCT).

1.7 This includes patients who are given a hospital order after being found not guilty of a relevant offence by reason of insanity or unfit to stand trial under the Criminal Procedure (Insanity) Act 1964.

1.8 Patients are only Chapter 2 patients if they were made subject to a relevant order or direction after a certain date. This is explained in paragraphs 1.14 and 1.20 below.

1.9 Further information about the 1983 Act and the meaning of the various terms used above can be found in the Code of Practice to the 1983 Act and the Department of Health’s Reference Guide to that Act.
“Restricted Chapter 2 patients” and “Unrestricted Chapter 2 patients”

1.10 In this guidance:

- patients to whom the victims’ rights provisions apply are called “Chapter 2 patients”.

- “restricted Chapter 2 patients” are Chapter 2 patients in respect of whom a restricted hospital order, a limitation direction, or a restricted transfer direction order is in force, including patients who have been conditionally discharged.

- “unrestricted Chapter 2 patients” are Chapter 2 patients subject to unrestricted hospital orders, hospital directions whose associated limitation direction is no longer in force, and unrestricted transfer directions (including hospital orders and transfer directions which were originally restricted, but where the restriction order or direction has since ended or been lifted). It includes patients who have been discharged from such an order or direction onto SCT.

Victims’ rights in respect of Chapter 2 patients

1.11 Victims have two main rights in respect of Chapter 2 patients:

- they have the right make representations about conditions to which patients should be subject when discharged from hospital, and

- they have the right to receive information about any conditions to which the patient is subject when discharged from hospital.

1.12 The first right means that victims who ask to make representations must be informed when the patient’s discharge is being considered, so that they have an opportunity to make representations about any conditions to be attached to that discharge.

1.13 The second right means that victims who ask to receive information about discharge conditions must be informed:

- if patients are discharged from hospital subject to conditions (either through conditional discharge or SCT);

- of the details of any conditions which relate to contact with the victim or their family (and if those conditions are changed or removed);

- if the patient is discharged from hospital unconditionally, or ceases to be subject to conditional discharge or SCT;

- if a restricted patient is otherwise to cease to be subject to restrictions (eg because the patient’s restriction order is to be lifted, or a restriction direction is to come to an end); and

- of any other information the relevant authority thinks is appropriate.
Mental Health Act 2007 - extension of victims’ rights

Arrangements already in force in respect of restricted Chapter 2 patients

1.14 Victims’ rights provisions are already in force in relation to restricted Chapter 2 patients. They apply to cases where the patient:

- was both convicted (or found not guilty by reason of insanity, or to be under a disability but to have done the act or made the omission charged against them) and given a restricted hospital order, or hospital and limitation directions, for a specified offence on or after 1 July 2005; or
- was both convicted and sentenced to imprisonment (or the equivalent) for a specified offence on or after 1 July 2005, and subsequently transferred to hospital by a restricted transfer direction.

1.15 Local providers of probation services (via Victim Liaison Officers (VLO)) are responsible for all contact with the victim. The 2004 Act requires the Secretary of State for Justice and the Tribunal to notify the probation service of certain information, including any occasion when discharge from hospital is being considered.

1.16 Where the court makes a relevant order or direction, the VLO checks whether the victim wishes to make representations or receive information. Where they do, the VLO make contact with the patient’s responsible medical officer (RMO) – in future, the patient’s responsible clinician. Where a prisoner is transferred to hospital with a restriction direction, the Ministry of Justice notifies the relevant offender manager who in turn notifies the VLO; the VLO concerned then contacts the RMO/responsible clinician.

1.17 The 2004 Act does not place any statutory requirements on clinicians or hospital managers to disclose or forward information about restricted patients directly to victims. It is for the clinical team and the VLO to decide the level of contact between them; for example whether they should meet formally at regular intervals. It may be helpful for the clinical team to be informed of the views of any victim of the offence.

1.18 Guidance for clinicians on the existing arrangements in respect of restricted patients was issued by the Ministry of Justice in May 2007.

New arrangements – unrestricted Chapter 2 patients

1.19 From 3 November 2008 victims’ rights provisions will be extended to the victims of unrestricted Chapter 2 patients.

1.20 The new provisions apply to relevant patients who:

- were convicted of a specified offence (or found not guilty by reason of insanity, or to be under a disability but to have done the act or made the omission charged against

---

5 From 3 November 2008, the role of the Mental Health Review Tribunal in England is to be taken over by a new First Tier Tribunal established under the Tribunals, Courts and Enforcement Act 2007. References in this guidance to “the Tribunal” are to that Tribunal in England and (where relevant) to the Mental Health Review Tribunal for Wales.

Mental Health Act 2007 - extension of victims’ rights

...them) on or after 1 July 2005 and are then given an unrestricted hospital order on or after 3 November 2008;

• were convicted and given a prison sentence of at least 12 months for a specified offence on or after 1 July 2005 and who are then given an unrestricted transfer direction on or after 3 November 2008;

• were already restricted Chapter 2 patients (as per paragraph 1.14 above), and who cease to be subject to restrictions on or after 3 November 2008.

1.21 The arrangements are not retrospective – so they do not apply to patients given unrestricted hospital orders or unrestricted transfer directions before 3 November 2008. Nor do they apply to people given unrestricted transfer directions on or after 3 November if they were originally convicted before 1 July 2005.

1.22 Unlike the existing arrangements for restricted Chapter 2 patients, these new arrangements for unrestricted patients impose duties directly on:

• hospital managers (including managers of responsible hospitals for SCT patients);

• responsible clinicians

• approved mental health professionals (when considering whether to agree to discharge onto SCT); and

• NHS bodies responsible for NHS patients detained in independent hospitals or for whom an independent hospital is the responsible hospital.

1.23 These obligations are described in the following sections. “Hospital managers”, “responsible clinician” and “approved mental health professional” are all defined in the 1983 Act, as amended by the Mental Health Act 2007.
SECTION 2 - OBLIGATIONS ON HOSPITAL MANAGERS

Summary

In order to carry out their new duties in respect of unrestricted Chapter 2 patients, hospital managers need to have arrangements in place to meet the following six requirements:

- Requirement 1 – identifying relevant patients
- Requirement 2 – maintaining records of victims who have asked to make representations or receive information
- Requirement 3 – inviting and passing on representations from victims
- Requirement 4 – giving victims required information
- Requirement 5 – deciding whether to give victims additional information
- Requirement 6 – informing new hospital managers where patients are transferred or assigned

Meaning of hospital managers

2.1 “Hospital managers” means the same in the 2004 Act as it means in the 1983 Act. In other words, the organisation or individual in charge of the hospital in which a detained patient is liable to be detained, or which is the responsible hospital for an SCT patient.

2.2 For NHS hospitals, the managers will be the NHS foundation trust, NHS trust or primary care trust which runs the hospital. For independent hospitals, it will be the people or organisation in whose name the hospital is registered.

Delegation by hospital managers

2.3 Regulations allow hospital managers to authorise any other person to exercise their functions under the 2004 Act on their behalf. That could include (but is not limited to) their Mental Health Act administrators and their clinical and social work staff.

2.4 When this guidance refers to “hospital managers” it includes anyone authorised by those managers to act on their behalf. It is for hospital managers themselves to decide how, and in what way, to delegate their functions.

Footnote:
7 Regulation 20 of the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 (No. 1184).
Requirement 1 – identifying relevant patients

2.5 Hospital managers will need to know which of the detained and SCT patients for whom they are responsible are unrestricted Chapter 2 patients.

2.6 For patients given hospital orders by the courts, hospital managers will need to check whether any of the offences for which the patient has been sentenced are specified offences which make the patient a Chapter 2 patient. Details of the offences will be included in the court order which goes to the hospital. In cases of doubt, they should seek advice from local probation services. Probation services will routinely notify hospital managers of cases where a victim has expressed a wish to make representations or receive information.

2.7 When the Secretary of State makes an unrestricted transfer direction, the Ministry of Justice Mental Health Unit (MHU) will tell the hospital managers if the patient is a Chapter 2 patient.

2.8 The MHU will also tell the hospital managers if a restricted patient is a Chapter 2 patient when it lifts the restrictions on the patient, or the restrictions lapse, but the patient remains detained.

2.9 Hospital managers will need to ensure that responsible clinicians are aware if any of their patients are unrestricted Chapter 2 patients.

Requirement 2 – maintaining records of victims who have asked to make representations or receive information

2.10 The probation service’s VLO will take the initial steps following a relevant offender’s trial to establish:

- if the victim of the offence wishes to make representations about what conditions the patient should be subject to if discharged from hospital onto SCT, and

- whether the victim wishes to receive information about those conditions in the event of the patient’s discharge onto SCT.

2.11 When such an offender becomes liable to be detained in hospital as an unrestricted Chapter 2 patient, the VLO will notify the hospital managers of the hospital in which the patient is detained if the victim wishes to receive information and make representations and tell those managers the name and address of the victim. They will also notify the victim of the name and address of the hospital.

2.12 If a restricted Chapter 2 patient subsequently becomes an unrestricted patient, the VLO will (if the victim wishes) tell the managers of the hospital in which the patient is then detained if any victims have asked to receive information or make representations, and give the managers a contact address for the victim. The VLO will also tell the victims the name and address of the hospital.
2.13 Victims may also approach hospital managers directly to make representations or ask to receive information.

2.14 Hospital managers will need to keep a record of which victims have asked to make representations and/or receive information.

2.15 Legally, it is for the hospital managers themselves to decide whether the person requesting information, or asking to make representations, is in fact a victim for the purposes of the 2004 Act. In cases of doubt, probation services will be able to advise on how they identify eligible victims.

2.16 If hospital managers are approached directly by a victim after the patient has been transferred (or, in the case of an SCT patient, assigned) to another hospital under different managers, they should offer to pass on the victim’s request to the new managers. If the patient has been discharged, and is therefore no longer a Chapter 2 patient, the hospital managers should explain that to the victim.

Requirement 3 – inviting and passing on representations from victims

2.17 Responsible clinicians are required to tell the hospital managers if they are considering:

- discharging an unrestricted Chapter 2 patient from detention or SCT
- discharging an unrestricted Chapter 2 patient from detention onto SCT
- varying the conditions attached to an unrestricted Chapter 2 SCT patient’s community treatment order.

2.18 NHS bodies must tell the managers of an independent hospital if they are considering exercising their powers under section 23 of the 1983 Act to discharge an NHS Chapter 2 patient who is detained in that hospital, or who is an SCT patient from whom that hospital is the responsible hospital.

2.19 The hospital managers must also be informed by Tribunal if an application or reference has been made to the Tribunal by (or in respect of) a Chapter 2 patient.

2.20 In all of these cases, the hospital managers must pass that information on to any victims who have asked to make representations about conditions to be attached to the patient’s discharge (or who have since actually made any representations). They should ask the victims if they wish to make any representations (or new representations) to be passed on to the patient’s responsible clinician.

2.21 The Tribunal does not have the power to discharge patients onto SCT, but may recommend that the responsible clinician considers it. As a result, victims’ representations on the conditions to which a patient should be subject if discharged onto SCT are not directly relevant to the Tribunal’s decision, and do not have to be passed on to the Tribunal by the hospital managers. That should be explained to the victim, where relevant.
2.22 However, as a matter of policy, the Mental Health Review Tribunal has said that it is prepared to consider representations from victims of all offender patients when hearing their cases. It is likely that the new Tribunal will do the same. Victims who wish to make representations should be advised to contact the Tribunal directly.

2.23 Like the Tribunal, NHS bodies do not have the power to discharge patients onto SCT, but it is possible that (if they decide not to discharge) their involvement may prompt the responsible clinician to consider SCT. Again, hospital managers should explain that to the victim, where relevant.

2.24 If the victims make representations (or have already done so), the hospital managers must pass them on to responsible clinicians. If the responsible clinician is actively considering discharge to SCT, the representations must also be passed on to the AMHP who is considering whether to agree to the proposed community treatment order.

Requirement 4 – giving victims required information

2.25 If victims have told the probation service, or the managers of the patient’s current or previous hospital, that they wish to receive information about conditions attached to the patient’s discharge, the hospital managers must take all reasonable steps to inform them:

- if the patient is to be discharged from detention (whether by the managers themselves, the responsible clinician, the tribunal or (in the case of NHS patients in independent hospitals) by the relevant NHS body);

- if the patient’s detention is to expire because the responsible clinician has decided it should not be renewed and, if so, the date on which it will expire (responsible clinicians are required to tell the managers if this is to happen)

- if the patient is to be discharged onto SCT.

2.26 If the patient is to be discharged onto SCT, the hospital managers must also give victims

- details of any conditions to be included in the patient’s community treatment order which relate to contact with the victim or the victim’s family

2.27 Once a patient has been discharged onto SCT, hospital managers must also tell victims:

- the details of any subsequent variation of the conditions which relate to contact with the victim or the victim’s family; and

- the date on which the patient’s SCT is to end, whether because the patient is to be discharged from SCT, their SCT expires without being extended, their community treatment order is revoked, or for any other reason (responsible clinicians are required to tell the managers of the responsible hospital if the SCT is to end)

2.28 Hospital managers must also consider using their discretion to give victims additional information (eg about patients’ leave of absence, absconding, or transfer to another hospital) – see the next requirement.
Requirement 5 – deciding whether to give victims additional information

2.29 In addition, the 2004 Act requires hospital managers to give victims who have asked to receive information any further information which the managers think is appropriate in all the circumstances of the case.

2.30 This is to give the hospital managers’ discretion to give information intended to reassure victims. It is not intended to permit the disclosure of any information which would otherwise be treated as confidential patient information.

2.31 For example, if there is a possibility that victims may come into contact with patients who are on leave, it may be appropriate for hospital managers to exercise their discretion to disclose that a patient has been allowed leave (without giving specific details about the timing or purpose of the leave), so that the victim knows that the patient has not absconded.

2.32 Similarly, hospital managers might also decide to exercise their discretion, in some cases, to tell victims if patients have gone absent without leave to reassure victims that efforts are being made to find and return the patient.

2.33 Hospital managers must consider in every case whether any additional information should be given to victims, in the light of all the circumstances of the case.

2.34 If a Chapter 2 patient is transferred (or, in the case of an SCT patient, assigned) to a new hospital whose managers are different, it is likely to be appropriate to tell victims the name and address of the new hospital managers.

Requirement 6 – informing new hospital managers where patients are transferred or assigned

2.35 If an unrestricted Chapter 2 patient is transferred, or assigned, to a new hospital under a different set of hospital managers, the current managers will need to alert the new managers to:

- the fact that the patient is an unrestricted Chapter 2 patient
- the names and addresses of any victims who have asked to receive information or make representations; and
- any representations those victims have already made.

2.36 Managers will also need to consider informing victims of the transfer or assignment. As explained in paragraph 2.33 above, it is likely to be appropriate to tell victims the name and address of the new hospital managers.
SECTION 3 - RESPONSIBILITIES OF RESPONSIBLE CLINICIANS AND APPROVED MENTAL HEALTH PROFESSIONALS

Summary

• Responsible clinicians must inform the hospital managers if they are considering discharging a Chapter 2 patient, or if they take – or are considering taking – certain other steps.

• Before discharging an unrestricted Chapter 2 patient onto SCT – or changing the conditions included in the patient’s community treatment order – responsible clinicians must take into account any representations made by victims about the conditions to which the patient should be subject.

• Before agreeing to the conditions to be included in a community treatment order for an unrestricted Chapter 2 patient being discharged onto SCT, approved mental health professionals (AMHPs) must take into account any representations made by victims.

Duties on responsible clinicians

3.1 So hospital managers can meet their obligations to invite representations from victims, responsible clinicians must tell the hospital managers if they are considering:

• discharging an unrestricted Chapter 2 patient from detention or SCT

• discharging an unrestricted Chapter 2 patient onto SCT by making a community treatment order

• varying the conditions of an unrestricted Chapter 2 SCT patient’s community treatment order.

3.2 Responsible clinicians should, wherever practicable, notify the hospital managers sufficiently far in advance to ensure that victims have a chance to make representations. However, once they have decided that patients should be discharged (whether or not onto SCT), they should not delay that discharge just so that victims can make representations.
3.3 Responsible clinicians must consider any representations made by victims when deciding what conditions to include in a patient’s community treatment order. Victims might, for example, want responsible clinicians to consider imposing a condition that the patient stays away from the area in which the victim lives.

3.4 If victims make representations about conditions after a patient has already been discharged onto SCT, responsible clinicians should consider whether the conditions ought to be varied as a result.

3.5 The 2004 Act does not affect the rule in section 17B(2) of the 1983 Act that responsible clinicians may only include conditions in a patient’s community treatment order which they think are necessary or appropriate for ensuring the patient receives medical treatment, preventing risk of harm to the patient’s health or safety, or protecting other people.

3.6 As well as telling the managers if they are considering taking one of the steps described in paragraph 3.1 above, responsible clinicians must also tell the hospital managers:

- the date on which an unrestricted Chapter 2 patient’s detention is to expire, if they examine the patient with a view to making a report renewing the patient’s detention, but decide the criteria for renewal are not met;
- if they decide to discharge an unrestricted Chapter 2 patient from detention;
- if they decide to discharge an unrestricted Chapter 2 patient onto SCT, and if so, what conditions are to be included in the patient’s community treatment order;
- about any variations of the conditions of an unrestricted Chapter 2 patient’s community treatment order;
- if they decide to discharge an unrestricted Chapter 2 patient from SCT, the date on which that is to happen;
- if they decide to revoke an unrestricted Chapter 2 patient’s community treatment order, the date on which that happens; or
- the date on which an unrestricted Chapter 2 patient’s SCT is to end for another reason (eg that it is to expire without being extended).

3.7 This is to allow hospital managers to meet their obligations to provide information to victims. In practice, hospital managers are likely to need this information in the normal course of events, regardless of whether the patient is an unrestricted Chapter 2 patient.

Duties on approved mental health professionals

3.8 When asked formally to agree a responsible clinician’s decision to discharge an unrestricted Chapter 2 patient onto SCT, approved mental health professionals (AMHPs) must consider any representations from victims before agreeing to the proposed conditions to be included in the patient’s community treatment order.
SECTION 4 - DUTIES ON NHS BODIES WITH THE POWER TO DISCHARGE PATIENTS FOR WHOM INDEPENDENT HOSPITALS ARE RESPONSIBLE

4.1 NHS bodies must inform the managers of the relevant independent hospital if they are considering using their power under section 23(3) of the 1983 Act to discharge an unrestricted Chapter 2 NHS patient from detention in the independent hospital.

4.2 The same applies if they are considering using that power to discharge from SCT an unrestricted Chapter 2 NHS patient for whom an independent hospital is the responsible hospital.
SECTION 5 - SHARING INFORMATION WITH VICTIMS – GENERAL

5.1 In general, patients detained under Part 3 of the 1983 Act have the same rights to protection of confidentiality as any other patient.\(^8\)

5.2 Where a patient detained under Part 3 of the 1983 Act is both competent and willing to agree to the disclosure to victims of specified information about their care, this should be encouraged to enable victims and victims’ families to be informed about progress, if that is what the victims want.

5.3 This will serve in many cases to address the fears of the victims, improve confidence in the arrangements for diversion from punishment of mentally disordered offenders, and improve the prospects for the offender’s successful rehabilitation in the community.

5.4 Disclosure of such information also serves to reduce the danger of harmful confrontations between patients and victims when victims are unaware that patients have been discharged. Without prejudicing a patient’s rights to confidentiality care teams should be ready to discuss the benefits of enabling some information to be given by professionals to victims within the spirit of the Code of Practice for Victims of Crime.\(^9\)

5.5 Patients’ agreement to share information must be freely given and they will need to understand the implications of agreeing to information being given to the victim(s). Care must be taken not to exert any pressure on a patient, as this would bring into question the validity of the consent.

5.6 Chapter 2 patients’ consent is not required for the disclosure of information which is required by the provisions of the 2004 Act. Nonetheless, in those cases, it is still good practice to take steps to ensure that the patients concerned understand the relevant effects of the Act, including

- victims’ rights to make representations about conditions to be imposed on them when they are discharged; and

- what information may be given to victims about them and when that will happen.

\(^8\) For guidance on this, see chapter 18 of the revised Code of Practice to the Mental Health Act 1983.
\(^9\) www.homeoffice.gov.uk/documentsvictims-code-of-practice
SECTION 6 - FURTHER INFORMATION

6.1 For further information about the 2004 Act, please contact Felicity Hawksley 020 7217 0670 E-mail Felicity.Hawksley@ justice.gsi.gov.uk or Robert Lawman on 020 7217 0639 E-mail Robert.lawman@justice.gsi.gov.uk.

6.2 For further information about the Mental Health Act generally please contact the Department of Health's Customer Service Centre on 0207 210 4850 or e-mail MentalHealthAct2007@dh.gsi.gov.uk
APPENDIX – LIST OF SPECIFIED OFFENCES


CRIMINAL JUSTICE ACT 2003 – LIST OF SCHEDULE 15 OFFENCES

Attention is drawn to the fact that the offences are divided into two parts with Part 1 specifying relevant violent offences and Part 2 to sexual offences.

Criminal Justice Act 2003

SCHEDULE 15

• aiding, abetting, counselling, procuring or inciting the commission of an offence specified in this Schedule; or
• conspiring to commit an offence so specified; or
• attempting to commit an offence so specified.

Part I - SPECIFIED VIOLENT OFFENCES

An attempt to commit murder or a conspiracy to commit murder
Manslaughter
Kidnapping
False imprisonment

Offences Against the Person Act 1861

section 4 - soliciting murder
section 16 - threats to kill
section 18 - wounding with intent to cause grievous bodily harm
section 20 - malicious wounding
section 21 - attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence
section 22 - using chloroform etc. to commit or assist in the committing of any indictable offence
section 23 - maliciously administering poison etc. so as to endanger life or inflict grievous bodily harm
section 27 - abandoning children
section 28 - causing bodily injury by explosives
section 29 - using explosives etc with intent to do grievous bodily harm
Mental Health Act 2007 - extension of victims' rights

section 30 - placing explosives with intent to do bodily harm
section 31 - setting sprung guns etc. with intent to do grievous bodily harm
section 32 - endangering the safety of railway passengers
section 35 - injuring persons by furious driving
section 37 - assaulting an officer preserving a wreck
section 38 - assault with intent to resist arrest
section 47 - assault occasioning actual bodily harm

Explosive Substances Act 1883
section 2 - causing explosion likely to endanger life or property
section 3 - attempt to cause explosion, or making or keeping explosive with intent to endanger life or property

Infant Life (Preservation) Act 1929
section 1 - child destruction

Children and Young Persons Act 1933
section 1 - cruelty to children

Infanticide Act 1938
section 1 - infanticide

Firearms Act 1968
section 16 - possession of a firearm with intent to endanger life
section 16A - possession of a firearm with intent to cause fear of violence
section 17(1) - use of a firearm to resist arrest
section 17(2) - possession of a firearm at time of committing or being arrested for an offence specified in schedule 1 to that Act
section 18 - carrying a firearm with criminal intent

Theft Act 1968
section 8 - robbery or assault with intent to rob
section 9 - burglary with intent to: (a) inflict grievous bodily harm on a person; or (b) do unlawful damage to a building or anything in it
section 10 - aggravated burglary
section 12A - aggravated vehicle-taking involving an accident which caused the death of any person

Criminal Damage Act 1971
section 1 – arson
section 1(2) - destroying or damaging property other than an offence of arson

Taking of Hostages Act 1982
section 1 - hostage-taking

Aviation Security Act 1982
section 1 – hijacking
section 2 - destroying, damaging or endangering safety of aircraft
section 3 - other acts endangering or likely to endanger safety of aircraft
section 4 - offences in relation to certain dangerous articles
Mental Health Act 2007 - extension of victims’ rights

Mental Health Act 1983
section 127 - ill-treatment of patients

Prohibition of Female Circumcision Act 1985 (c. 38)
section 1 - prohibition of female circumcision

Public Order Act 1986
section 1 – riot
section 2 - violent disorder
section 3 – affray

Criminal Justice Act 1988
section 134 – torture

Road Traffic Act 1988
section 1 - causing death by dangerous driving
section 3A - causing death by careless driving when under influence of drink or drugs

Aviation and Maritime Security Act 1990
section 1 - endangering safety at aerodromes
section 9 – hijacking of ships
section 10 - seizing or exercising control of fixed platforms
section 11 - destroying fixed platforms or endangering their safety
section 12 - other acts endangering or likely to endanger safe navigation
section 13 - offences involving threats

Part II of the Channel Tunnel (Security) Order 1994 (S.I. 1994/570)
offences relating to Channel Tunnel trains and the tunnel system

Protection from Harassment Act 1997
section 4 - putting people in fear of violence

Crime and Disorder Act 1998
section 29 - racially or religiously aggravated assaults
section 31(1)(a) or (b) - racially or religiously aggravated offences [under section 4 or 4A of the Public Order Act 1986]

International Criminal Court Act 2001
section 51 or 52 - genocide, crimes against humanity, war crimes and related offences, other than one involving murder

Female Genital Mutilation Act 2003
section 1 - female genital mutilation
section 2 - assisting a girl to mutilate her own genitalia
section 3 - assisting a non-UK person to mutilate overseas a girl's genitalia

Domestic Violence, Crime and Victims Act 2004
section 5 – causing or allowing the death of a child or vulnerable adult.
Part II - SPECIFIED SEXUAL OFFENCES

Sexual Offences Act 1956
section 1 – rape
section 2 - procurement of woman by threats
section 3 - procurement of woman by false pretences
section 4 - administering drugs to obtain or facilitate intercourse
section 5 - intercourse with girl under 13
section 6 - intercourse with girl under 16
section 7 - intercourse with a defective
section 9 - procurement of a defective
section 10 - incest by a man
section 11 - incest by a woman
section 14 - indecent assault on a woman
section 15 - indecent assault on a man
section 16 - assault with intent to commit buggery
section 17 - abduction of woman by force or for the sake of her property
section 19 - abduction of unmarried girl under 18 from parent or guardian
section 20 - abduction of unmarried girl under 16 from parent or guardian
section 21 - abduction of defective from parent or guardian
section 22 - causing prostitution of women
section 23 - procuration of girl under 21
section 24 - detention of woman in brothel
section 25 - permitting girl under thirteen to use premises for intercourse
section 26 - permitting girl under sixteen to use premises for intercourse
section 27 - permitting defective to use premises for intercourse
section 28 - causing or encouraging the prostitution of, intercourse with or indecent assault on girl under 16
section 29 - causing or encouraging prostitution of defective
section 32 - soliciting by men
section 33 - keeping a brothel

Mental Health Act 1959
section 128 - sexual intercourse with patients

Indecency with Children Act 1960
section 1 - indecent conduct towards young child

Sexual Offences Act 1967
section 4 - procuring others to commit homosexual acts
section 5 - living on earnings of male prostitution

Theft Act 1968
section 9 - burglary with intent to commit rape

Criminal Law Act 1977
section 54 - inciting girl under 16 to have incestuous sexual intercourse
Protection of Children Act 1978
section 1 - indecent photographs of children

Customs and Excise Management Act 1979
section 170 - penalty for fraudulent evasion of duty etc [in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (indecent or obscene articles)]

Criminal Justice Act 1988
section 160 - possession of indecent photograph of a child

Sexual Offences Act 2003
section 1 – rape
section 2 - assault by penetration
section 3 - sexual assault
section 4 - causing a person to engage in sexual activity without consent
section 5 - rape of a child under 13
section 6 - assault of a child under 13 by penetration
section 7 - sexual assault of a child under 13
section 8 - causing or inciting a child under 13 to engage in sexual activity
section 9 - sexual activity with a child
section 10 - causing or inciting a child to engage in sexual activity
section 11 - engaging in sexual activity in the presence of a child
section 12 - causing a child to watch a sexual act
section 13 - child sex offences committed by children or young persons
section 14 - arranging or facilitating commission of a child sex offence
section 15 - meeting a child following sexual grooming etc.
section 16 - abuse of position of trust: sexual activity with a child
section 17 - abuse of position of trust: causing or inciting a child to engage in sexual activity
section 18 - abuse of position of trust: sexual activity in the presence of a child
section 19 - abuse of position of trust: causing a child to watch a sexual act
section 20 - sexual activity with a child family member
section 21 - inciting a child family member to engage in sexual activity
section 22 - sexual activity with a person with a mental disorder impeding choice
section 23 - causing or inciting a person with a mental disorder impeding choice to engage in sexual activity
section 24 - engaging in sexual activity in the presence of a person with a mental disorder impeding choice
section 25 - causing a person with a mental disorder impeding choice to watch a sexual act
section 26 - inducing, threat or deception to procure sexual activity with a person with a mental disorder
section 27 - causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception
section 28 - engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder
section 29 - causing a person with a mental disorder to watch a sexual act by inducement, threat or deception
section 30 - care workers: sexual activity with a person with a mental disorder
section 31 - care workers: causing or inciting sexual activity
section 32 - care workers: sexual activity in the presence of a person with a mental disorder
section 41 - care workers: causing a person with a mental disorder to watch a sexual act
section 47 - paying for sexual services of a child
section 48 - causing or inciting child prostitution or pornography
section 49 - controlling a child prostitute or a child involved in pornography
section 50 - arranging or facilitating child prostitution or pornography
section 52 - causing or inciting prostitution for gain
section 53 - controlling prostitution for gain
section 57 - trafficking into the UK for sexual exploitation
section 58 - trafficking within the UK for sexual exploitation
section 59 - trafficking out of the UK for sexual exploitation
section 61 - administering a substance with intent
section 62 - committing an offence with intent to commit a sexual offence
section 63 - trespass with intent to commit a sexual offence
section 64 - sex with an adult relative: penetration
section 65 - sex with an adult relative: consenting to penetration
section 66 – exposure
section 67 – voyeurism
section 69 - intercourse with an animal
section 70 - sexual penetration of a corpse

The majority of offences listed at Schedule 4 of the Criminal Justice and Courts Services Act 2000 are included in Schedule 15 of the Criminal Justice Act 2003, however several remain on statute and have been replaced below:

**Sexual Offences Act 1956**
Section 12 – committing buggery with a child under the age of 16
Section 13 – committing an act of gross indecency with a child
Section 30 – (man living on earnings of prostitution) in a case where the prostitute is a child
Section 31 – (woman exercising control over prostitute) in a case where the prostitute is a child

**Misuse of Drugs Act 1971**
Section 4(3) – (i) supplying or offering to supply a Class A drug to a child; (ii) being concerned in the supplying of a drug to a child; (iii) being concerned in the making to a child of an offer to supply such a drug.

**Child Abduction Act 1984**
Section 1 – abduction of child by parent

**Sexual Offences (Amendment) Act 2000**
Section 3 – abuse of trust
- aiding, abetting, counselling, procuring or inciting the commission of an offence against a child, or
- conspiring or attempting to commit such an offence.