

Victim Notification Scheme Offenders with a Mental Disorder

**Guidance for Victims
Eligibility and Registration**

September 2017



Scottish Government
Riaghaltas na h-Alba
gov.scot

Introduction

This booklet tells victims about how they can be involved in the Victim Notification Scheme (VNS) and the type of information they may receive and representations they may make about a particular offender.

It has been written to help you to decide whether you want to join the VNS. There is a lot of information in this booklet, and you may find that you want to read it in parts, rather than through from beginning to end.

If you want to speak to someone about this booklet or need help to decide whether to join the VNS, you can contact Victim Support Scotland, a national charity that helps victims of crime. You can find details of your local office in the telephone directory under "Victim Support", or you can contact them on 0345 603 9213 from Monday to Friday between 8 a.m. and 8 p.m. You can also find details of your local office on Victim Support Scotland's website at www.victimsupportsco.org.uk.

What is the Victim Notification Scheme?

The Victim Notification Scheme for mentally disordered offenders became operational in September 2017. It is a statutory scheme. It seeks to make sure that victims of a mentally disordered offender can, if they wish, be made aware of information about that offender and have the opportunity to make representations before certain decisions are taken about that offender. The scheme is intended to improve public safety, help prevent crime and disorder, and, by bringing the rights of victims of mentally disordered offenders into line with victims of other offenders, promote victims' rights.

Offenders with a Mental Disorder

These are offenders who have been found by the court (after hearing medical evidence), to have a mental disorder. The judge must be satisfied that medical treatment is available to treat the disorder and its effects or to try to prevent them worsening. The court can order the person to be detained in hospital for treatment, or receive treatment in the community for 6 months. This order is called a compulsion order and can be looked at and extended by the Mental Health Tribunal for Scotland (the Tribunal).

If the court considers the offender to pose a risk of serious harm to the public, it can also give the offender a restriction order. This order means they will be detained 'without limit of time'. The Tribunal reviews these orders, and the Scottish Ministers have to approve any request for a move between hospitals or leave from the hospital (suspension of detention).

This Victim Notification Scheme relates to offenders who are under a compulsion order **and** a restriction order.

Who is eligible for the Scheme?

If you have received this guidance, you may be eligible to take part in the scheme.

Eligible persons may take part in the scheme where:

- (a) an offence has been perpetrated against a person (the victim)
- (b) a person (the offender) has been made subject to a compulsion order and a restriction order in relation that offence
- (c) they have asked to be given information about the offender and is, or was at the time of asking, a person entitled to ask to be given the information (see persons eligible to take part in the scheme below), and
- (d) the offender is 16 years old or over.

The persons eligible to take part in the scheme are:

- victims aged 12 years and over against whom the offence was perpetrated;
- a parent or carer of a victim where the victim is a child under 12 years;
- the highest listed near relative of the victim if the victim is incapacitated;
- any or all of the four highest listed near relatives of a victim where the victim has died;
- if the victim died before reaching 16 years, any other person who cared for the victim immediately before the offence.

If a victim is unable to communicate, but this can be overcome by a human or mechanical aid (e.g. where the victim is unable to write but can tell someone else what (s)he wants to say) the right to join the VNS stays with the victim.

The eligible nearest relatives listed in order are:

- (a) spouse;
- (b) cohabitee¹;
- (c) son or daughter or any person that the victim had parental rights or responsibilities for;
- (d) father or mother or any person who had parental rights or responsibilities for the victim;
- (e) brother or sister;
- (f) grandparent;
- (g) grandchild;
- (h) uncle or aunt;
- (i) nephew or niece,

and the elder of any two persons described in any one of paragraphs (a) to (i) is to be taken to be the higher listed person, regardless of sex.

For example, in a case where a victim has died leaving a wife, two (living) parents and two brothers, the wife, both parents and the elder of the brothers would be invited to join the VNS. If one parent decided not to join, no others would be invited to take their place from further down the list.

¹ A person, whether or not of the same sex as the victim, who has lived with the victim, as if in a married relationship, for at least six months and was living with them immediately before the offence was committed.

What information can you receive?

There are two parts to the scheme and, if you choose to take part, you can choose to opt into either part 1 or part 2, or both parts.

Part 1

If you join part 1 of the scheme you can be told:

- a) **that the compulsion order to which the offender is subject has been revoked.**
- b) **that the restriction order to which the offender is subject has been revoked.**
Where an offender is under a compulsion order and restriction order, the assessment of the risk posed by the offender and the measures needed to manage any risks may be such that it is no longer felt to be right for the offender to be subject to a restriction order. The offender may continue to meet the criteria for a compulsion order. If a Tribunal decides that the offender no longer poses a risk of serious harm to the public, it may revoke the restriction order. In this situation, the compulsion order may be varied – see (e) below.

If a compulsion order and/or the restriction order is revoked, the victim will no longer be eligible for information under the VNS.

- c) **where the compulsion order or the restriction order has been revoked, that the decision to revoke it—**
 - (i) is under appeal, or**
 - (ii) cannot competently be appealed against and is therefore final.**If the decision to revoke a compulsion order or a restriction order is appealed against you will also be told about the decision of the Court of Session or the Supreme Court(whichever is relevant).
- d) **the date of the offender's death.**
We will make all attempts to tell you about an offender's death as soon as possible after the date of the death. However, you should be aware that there may be early press coverage of the death of an offender and, sometimes, despite our best efforts, it is not always possible for us to contact you before it is made public.
- e) **that the measures specified in the compulsion order have been varied.** A compulsion order is a hospital based order but it can be modified for example to provide for treatment in the community. These variations can require the offender to live at a given address or to allow visits from the clinical team, or to go to a given place for treatment.
- f) **that the offender has been transferred to a place out with Scotland.**
Sometimes an offender needs to be transferred to a place out with Scotland for mental health care and treatment. We will let you know the offender has been

transferred out of Scotland as soon as possible *after* the offender has been transferred.

g) **that the Mental Health Tribunal has made an order conditionally discharging the offender.**

If after a hearing, the Tribunal is satisfied that it is not necessary for the offender to be detained in hospital (to protect others from serious harm or for any other reason) then it may make an order for conditional discharge. The offender remains under a compulsion order and restriction order but does not have to stay in hospital. He or she will however be subject to conditions set by the Tribunal, which may include supervision and treatment requirements; exclusion zones; “no contact” conditions; conditions about abstinence from drugs/alcohol; and place of residence. An offender on conditional discharge can be recalled to hospital if necessary.

h) **the terms of any conditions that are relevant to the victim that the Tribunal impose on the offender on conditional discharge.**

Under the scheme, a condition is relevant to the victim if the condition restricts the offender contacting the victim or being in a place where the victim or their family is regularly at or in. To get information on such conditions, you must first have made a request to the Scottish Ministers to be informed about any such condition. Your request may be invalid if you ask for information about a place which is not one which you or any member of your family is regularly at or in, or a place which covers an unreasonably large area.

i) **that the Scottish Ministers have recalled the offender to hospital.**

The Scottish Ministers have powers to recall an offender to hospital from conditional discharge if necessary. If an incident (including, for example, a positive drug test) happens, the Scottish Ministers must be alerted at once and consideration given by the multi-disciplinary team as to whether recall is appropriate. The Scottish Ministers have the power to recall an offender when satisfied that it is necessary for the offender to be detained in hospital. This would include a situation where there is an increase in risk to the public.

Where the compulsion order authorises the offender’s detention in hospital, you can also be told:

a) **that the offender is unlawfully at large from hospital.**

Sometimes offenders escape or abscond from hospital. The police are alerted at once. If the offender is considered to present a threat to the victim, the police will take steps to make sure that the victim is notified as soon as possible. Usually, however, offenders who escape or abscond, return within the first 24 hours. You will be notified about the offender escaping or absconding if the offender remains at large for longer than 48 hours.

b) **that the offender has returned to hospital having been unlawfully at large.**

- c) **that a certificate has been granted, for the first time, under the Mental Health Act which suspends the offender's detention and does not impose a supervision requirement.**

An offender who is under a compulsion order and restriction order which authorises their detention in hospital for treatment cannot leave hospital *unless* they have permission. This is known as 'suspension of detention' or 'leave from hospital'. It is necessary to suspend detention to allow an offender to appear in court or to go to medical appointments, but it may also be suspended as part of the offender's treatment plan. Decisions on suspending detention as part of the offender's treatment are made by the offender's responsible medical officer (a psychiatrist) and are only taken after a risk assessment has been carried out. Normally the offender will initially be accompanied by hospital staff, but their treatment progresses, it may mean the offender is granted unescorted suspension of detention, which allows them leave from hospital for specific periods of time, without an escort or supervision. The first time this happens, you will be informed that a certificate has been granted suspending detention without a supervision requirement. You will, however, not be told about each period of suspension of detention without supervision after that.

- d) **that the certificate mentioned in paragraph (c) has been revoked.**

You will also be informed if a certificate that has been granted is later revoked (in these cases the offender's detention would not be suspended and they would be unable to leave hospital).

Part 2

You can also, if you wish, decide to join part 2 of the Victim Notification Scheme. If you decide to join part 2 of the VNS this means that you will be given the opportunity to make representations before a decision:

- a) **by the offender's responsible medical officer about granting for the first time a certificate which suspends the offender's detention and does not impose a supervision requirement.**
- b) **by the Tribunal when considering an application or reference in respect of an offender subject to a compulsion order and restriction order, to: make no order (maintaining the status quo); revoke the compulsion order; revoke the restriction order; vary the measures given in the compulsion order; or grant conditional discharge imposing certain conditions.**
- c) **by the Scottish Ministers imposing, altering or removing a condition which is (or would be) relevant to the victim.**

Under the Scheme, a condition is relevant to the victim if the condition restricts the offender contacting the victim or being in a place which the victim or their family is regularly at or in. You must first have made a request to the Scottish Ministers to be informed about any such condition. You will not be asked to make representations if it is not reasonably practicable to give you an opportunity to do so.

You may not get all of the above information or be able to make representations if:

- **decisions were taken about an offender before the scheme began (September 2017); or**
- **exceptional circumstances make it inappropriate to give you information; or**
- **an offender returns to Scotland after having been transferred outwith Scotland.**

What next?

If you choose to join the scheme, please fill in the form sent to you and send it to the **Victim Notification Scheme Administration Team** in the Scottish Government. The address is given on the form and is also on page 9 of this booklet. If you need help to decide whether to join the Victim Notification Scheme or to fill in the form you can contact Victim Support Scotland, a national charity that helps victims of crime. You can find their contact details on page 9 of this booklet.

Once the Team receives your application form they will write to you to tell you the information you may be eligible to receive and representations you may have a right to make under the scheme. You will receive a unique Victim Notification Scheme reference number by post which confirms your registration on the scheme.

You must quote the reference number given to you on all further correspondence for security reasons. If you do not quote this reference number, we may not be able to answer your question.

If you choose not to opt into the scheme, you will not receive any further letters or forms and you will not receive any information about the offender.

We understand that you may not feel that you wish to join the scheme immediately. You can change your mind at a later date by sending the completed application forms to the **Victim Notification Scheme Administration Team**. We would advise that you keep the application forms you have received in a safe place in case you later decide to register for information.

Please note that if we receive your application to join the scheme *after* the offender's compulsion order and restriction order is no longer in place, you may not be eligible to register. If you have joined the victim notification scheme and later decide you do not want to receive any more information about the offender, you can withdraw from it at any time. You will find a withdrawal form sent to you along with this booklet.

If you have joined the victim notification scheme and later change your contact details, please use the form included with this booklet to let us know. If we do not have the most up to date contact details for you, we cannot pass on the information you have registered to receive.

Please give as much information as possible about how you wish to be contacted. This will make it easier for the **Victim Notification Scheme Administration Team** to get in touch with you quickly. This information will be maintained in the strictest confidence by them.

Will the Offender know I have joined the Victim Notification Scheme?

The offender will not be told that you have joined the Victim Notification Scheme. However, if you choose to join part 2 of the Scheme and make written representations to the Tribunal, the offender is entitled to see these during Tribunal proceedings. You can also make representation in person at a Tribunal hearing. The offender will not be present at that hearing but they may be legally represented. If the offender has a solicitor, (s)he will also see your representations. Every effort to maintain your anonymity will be made, but you should not record any personal details, such as your address or your contact details, within the comments section of the form.

Registering

You will be given these forms if you may be eligible under the Scheme:

Form to join

If you wish to join the scheme, you must complete this form and return it to the Victim Notification Scheme Unit of the Scottish Government. The address is given on the form and is also on page 9 of this booklet.

Change of Address form

If you change your address and still want to receive information, please notify the Victim Notification Scheme Unit as soon as possible. You can find a change of address form along with this leaflet; however, you can also contact the Unit by letter, telephone or e-mail.

Withdrawal form

If you have joined the Victim Notification Scheme and later decide you do not want to receive any more information about the offender, you can withdraw from it at any time using the form provided or by contacting the Victim Notification Scheme Unit.

What support is available for me?

Information on support organisations is available at www.mygov.scot/crime-justice-and-the-law

If you need help to decide whether to join the Victim Notification Scheme or about anything in this booklet you can contact **Victim Support Scotland** on **0345 603 9213 from Monday to Friday between 8 a.m. and 8 p.m.** You can also find details of your local office on Victim Support Scotland's website at www.victimsupportsco.org.uk

More information about your rights as a victim of crime, and how to exercise these rights, can be found in the Victims' Code for Scotland. It is available from the Scottish Government website (<https://www.mygov.scot/victims-code-for-scotland/>).

Victim Support Scotland

15/23 Hardwell Close
Edinburgh EH8 9RX
Tel. 0131 668 4486
Email: info@victimsupportsco.org.uk
www.victimsupportsco.org.uk

The Scottish Government
(Victim Notification Scheme Administration Team)
The Hub
Mental Health and Protection of Rights Division
Room 3-ER
St Andrew's House
Regent Road
Edinburgh
EH1 3DG
Tel. 0131 244 3340
Email: vns@gov.scot

Parole Board for Scotland

Saughton House
Broomhouse Drive
Edinburgh EH11 3XD
Tel. 0131 244 8373
www.scottishparoleboard.gov.uk

Crown Office and Procurator Fiscal Service

You can make initial enquiries to the crown office and Procurator Fiscal Service regarding your eligibility for VNS using the contact details provided on previous correspondence you may have received from your local Victim Information and Advice Team.

If you no longer have these details, you can call the enquiry point on 0300 020 3000. Or emailing EnquiryPoint@copfs.gsi.gov.uk. you can also find your local office by visiting the Crown Office and Procurator Fiscal website at www.copfs.gov.uk.

Further Information

More information on how the Criminal Justice System works in Scotland can be found at:

www.mygov.scot/crime-justice-and-the-law

More information about sentencing can be found at:

<https://www.scottishsentencingcouncil.org.uk/>

More information about mental health disposals under the Criminal Procedures Act can be found at:

<http://www.mwscot.org.uk/the-law/criminal-procedures-act/>

More information about how the parole system works and the role of the Parole Board for Scotland can be found at:

www.scottishparoleboard.gov.uk



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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78851-181-0 (web only)

Published by The Scottish Government, September 2017

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS281686 (09/17)

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