

MENTAL HEALTH LEGISLATION: VICTIM NOTIFICATION SCHEMES

Introduction

1. This non-statutory guidance is for responsible medical officers (RMOs) exercising statutory functions under the Mental Health (Care and Treatment) (Scotland) Act 2003 (as amended) ('the mental health act'). It may be of interest to others including mental health officers, approved medical practitioners, the Mental Health Tribunal for Scotland and those with responsibilities under the Multi Agency Public Protection Arrangements (MAPPA).
2. The memorandum of procedure on restricted patients sets out the importance of respecting the fears of victims and others who may have been affected by the patients offending behaviour as well as considering victim safety as an integral part of risk management. Nothing in this guidance changes this.
3. This guidance deals with new rights for victims of offenders with a mental disorder. The Mental Health (Scotland) Act 2015 (the 2015 Act) provides rights to victims, who are entitled by the Act to ask to be given information, and to receive information where an offender with a mental disorder is subject to a hospital direction, a transfer for treatment direction, or a compulsion order with a restriction order (CORO). It also provides for the victims of mentally disordered offenders to be given a right to make representations in certain cases.

Victim Notification Scheme

4. Section 16 of the Criminal Justice (Scotland) Act 2003 (as amended) ("the criminal justice act") provides that victims of an offence for which an offender has been convicted and sentenced to detention for more than 18 months, life imprisonment or detention without limit of time can receive information mainly related to the circumstances in which a prisoner leaves prison. This may be information about: the first time a prisoner is entitled to be considered for temporary release, an escape, transfer to a prison outwith Scotland, release on licence or parole, death of the prisoner or the end of the custodial sentence.
5. Given that patients subject to a **hospital direction** or **transfer for treatment direction** are also offenders subject to a sentence of detention in prison, victims of such offenders have been able to register for information under the Victim Notification Scheme since 2005. However, the information victims have been able to receive has been limited to information related to the offender's sentence, the offender's death or their transfer out of Scotland. The 2015 Act extends the information available to such victims to include the fact that a patient is unlawfully at large from a hospital (and their return to hospital) as well as information on the first occasion of unescorted suspension of detention from hospital. Registered victims can also ask to make representations before a decision is taken on the first occasion of unescorted suspension of detention.

Compulsion Order and Restriction Order VNS (CORO VNS)

6. The 2015 Act introduces a new scheme for victims of offenders subject to a **compulsion order and restriction order (CORO)**. Similar to the Victim Notification Scheme operated by the Scottish Prison Service, victims who register for the CORO VNS can receive information mainly related to the circumstances in which a patient leaves hospital. This may be information about: the first time a patient is given unescorted suspension of detention, an escape or abscond, transfer to a hospital outwith Scotland, conditional discharge, death of the patient or absolute discharge. Registered victims can also ask to make representations before a decision is taken by:

- the RMO on the first occasion of unescorted suspension of detention
- the Tribunal under section 193 of the mental health act
- Scottish Ministers to amend a condition of discharge.

Victims

7. Both victim notification schemes have criteria setting out who is eligible to take part in them. Not all persons who have an interest in what happens to an offender may be eligible to register for the relevant scheme. The eligibility criteria is set out in Annex A.

8. A person who is not eligible for the schemes is not entitled to receive information or make representations that must be taken into account before certain decisions are taken. But, that does not prevent RMOs, MAPPA and others taking into account the views of such persons if they are known to you.

Administration of the schemes

9. The Scottish Prison Service will continue to administer the established Victim Notification Scheme and will liaise with the Victim Notification Scheme Administration Team in the Scottish Government to provide the additional information and obtain representations from victims following the changes by the 2015 Act.

10. The Victim Notification Scheme Administration Team will administer the new CORO VNS. This includes registering victims, obtaining representations and providing information under the scheme.

Restricted Patient Team

11. The Restricted Patient Team in the Scottish Government will continue to manage restricted patients, including providing advice, making recommendations to Scottish Ministers and making references to the Mental Health Tribunal for Scotland. RMOs should continue to liaise with the Restricted Patient Team as usual.

Responsible Medical Officers (RMO)

12. For all restricted patients the Victim Notification Scheme Administration Team in the Scottish Government will write to the relevant RMO to tell them of any VNS

registered victim(s). RMO's will be informed if there are one or more victim(s) registered and whether they have registered to receive information only or to receive information *and* make representations. Also listed will be the information the RMO must provide so that Scottish Ministers can provide the information to victims. RMOs will not be given details of the registered victim(s).

13. The information RMOs will be asked to provide is likely to be information that RMOs would already provide to the restricted patient team as part of the management of restricted patients. In most cases, therefore, RMOs will not be asked to do anything more than they already do, with the exception of the granting of certificates for the first occasion of unescorted suspension of detention.

1st occasion of unescorted suspension of detention

14. Both the Victim Notification Scheme and CORO Victim Notification Scheme require RMOs to take into account representations made by registered victims before deciding what conditions to include in a certificate granting unescorted suspension of detention for the first time. It also requires Scottish Ministers to tell registered victims when a certificate under section 224 of the mental health act, suspending detention for the first time without supervision, has been granted.

When a certificate is required

15. The order, or direction, authorising a patient's detention must specify the place where the patient is to be detained. Suspension of detention is needed in order to allow a patient, for a period of time, to leave the place of detention. The order, or direction, can either specify a hospital (for example "the State Hospital, Carstairs") or a unit within a hospital ("the Orchard Clinic, Royal Edinburgh Hospital" "Rowanbank Clinic, Stobhill Hospital" or Rohallion Clinic, Murray Royal Hospital). A hospital unit is defined as any part of a hospital which is treated as a separate unit.

16. Where the order, or direction, specifies a hospital *unit* as the place of detention and it is proposed that the patient should have access to the wider hospital grounds, this needs to be authorised by the granting of a certificate under section 224 of the mental health act. This is required regardless of whether the patient is escorted or unescorted and regardless of the level of security in the hospital unit. This is because the patient is being allowed to leave the boundaries of the place in which he or she is required to be detained.

17. Where the order or direction does not specify a hospital unit but instead specifies a hospital as the place of detention, access to the hospital grounds does not require to be authorised by the granting of a certificate under section 224 of the mental health act. This is the case even if the patient is detained in a hospital unit within the wider hospital. This is because the patient is not leaving the boundaries of the place in which he or she is required to be detained.

This guidance may be a change of practice, particularly for medium secure units where up to now a certificate may have been granted for any leave in the wider hospital grounds.

Before considering suspension of detention in wider hospital grounds RMOs in the medium secure units should check the order or direction under which the patient is detained and determine whether a certificate is required or not.

If a certificate is required RMOs should seek agreement from Scottish Ministers as usual. If a certificate is not required, grounds leave in the wider hospital is at the discretion of the RMO but you are asked to inform the restricted patient team.

If you have any concerns you should speak to the restricted patient team.

Victims

18. Both victim notification schemes come into play when a certificate suspending detention is required. So, where:

- **the order, or direction, specifies a hospital**, then unescorted leave within the hospital grounds does not require a certificate and would not trigger information to, or the right to make representation by, registered victims. This is the case even if the patient actually is in a unit within the hospital. With such orders, or directions, the first occasion of unescorted suspension of detention out with the hospital grounds would require a certificate to be granted for the first time suspending detention without supervision and would trigger action under the victim notification schemes.
- **the order, or direction, specifies a hospital *unit***, any unescorted leave out with any grounds associated with that unit (for example in the wider hospital grounds or outside the hospital grounds) would require a certificate and would trigger action under the victim notification schemes.

The first occasion

19. The first occasion of unescorted suspension of detention:

- is the first occasion since the patient was detained under the particular order, or direction, authorising their detention in hospital. This means if the patient is placed on a new order or direction, for example a transfer for treatment direction is revoked and the patient returns to prison but is later made subject to a further transfer for treatment direction then there could be a first occasion of unescorted suspension of detention under each transfer for treatment direction.
- includes the first occasion of unescorted suspension of detention after recall, in a case where the patient, while subject to an order, or direction, has been recalled to hospital under section 202 of the mental health act.

20. The first occasion of unescorted suspension of detention does not include it being granted after a certificate has already been granted and was revoked, even if it was revoked before the patient's detention was actually suspended.

Seeking representations

21. If the Victim Notification Scheme Administration Team have informed the RMO that there is one or more registered victim(s) who have registered to make representations, then **the RMO must inform the Victim Notification Scheme Administration Team, at the earliest opportunity, when they are considering granting a certificate for the first occasion of unescorted suspension of detention.** As above, this is when the intention is that the patient will access grounds out with the place of detention specified in the order or direction, without supervision for the first time.

22. The Victim Notification Scheme Administration Team will then seek representations from the registered victim(s). The registered victim(s) then have a period of 3 weeks to provide their representations which will then be forwarded to the RMO.

23. Representations have to set out how the decision to grant a certificate for unescorted suspension of detention for the first time would affect the victim, or their family. The RMO must take these representations into account when considering what conditions to include in a certificate. The representations may also be a consideration in deciding where a patient may go whilst on unescorted suspension of detention.

24. In accordance with the Memorandum of Procedure on Restricted Patients, decisions on suspension of detention should be taken using the Care Programme Approach. RMOs should also initiate a MAPPAs referral on the first occasion of unescorted leave whether that is in the hospital grounds or in the community. Unescorted leave in the hospital grounds may not trigger action under the victim notification schemes, the referral to MAPPAs in such circumstances would not therefore include registered victim(s) considerations. It would be advisable therefore for this MAPPAs referral to also include consideration of the first occasion of unescorted suspension of detention that requires a certificate under section 224 of the mental health act so that MAPPAs can take account of victim(s) representations and conditions to include in the certificate.

25. If a decision is taken, for any reason, not to grant a certificate suspending detention for the first time without supervision, RMOs must inform the Victim Notification Scheme Administration Team in the Scottish Government and they will notify victims who have been given an opportunity to make representations that a decision has been taken.

26. While the right to make representation is for the first occasion of unescorted suspension of detention only, it would be good practice to continue to consider any representations that have been made for future suspensions of detention.

Granting a certificate

27. A certificate, under section 224 of the mental health act, cannot be granted without the RMO taking account of any victim representations under the relevant victim notification scheme.

28. The 2015 Act made various changes to the rules around suspension of detention. In particular, RMOs should note that:

- a certificate under subsection 224 of the mental health act may specify (a) a single period not exceeding 90 days, or (b) a series of more than one individual period falling within a particular 3 month period
- the maximum cumulative total allowed to 200 days in a rolling 12 month period
- a day does not count towards the total period if the detention is suspended (by reason of certification) for a period of 8 hours or less in that day
- a single period (specified in certification) of more than 8 hours and less than 24 hours, whether in one day or spanning two days, is to count as a whole day towards the total period

Transitional provisions set out that any certificate granted before 30 June 2017 can be made under the former rules (even if the sus authorised is after 30 June). Any certificate granted on or after 30 June 2017 must meet the new timescales.

As set out in the Memorandum of Procedure on Restricted Patients, the maximum number of overnights permitted in any one week remains four. The maximum cumulative total of 200 days in a rolling 12 month period cannot be exceeded. Any concerns about what this means for an individual patient should be discussed with the restricted patient team.

Providing Information

29. Once the RMO has granted a certificate that includes suspending detention for the first time without supervision, RMOs must inform the Victim Notification Scheme Administration Team in the Scottish Government so that registered victims of both schemes can be informed of that fact. This is the case even if there are no victims registered to make representations, or victims have not made representations. All victims registered for information under both schemes are told about the granting of a certificate, although they are not given any details of the suspension of detention.

30. If the certificate suspending detention for the first time without supervision has been granted but is subsequently revoked, RMOs must inform the Victim Notification Scheme Administration Team in the Scottish Government so that registered victims of both schemes can also be informed of that fact.

MAPPA

31. A MAPPA meeting takes place on the first occasion of unescorted leave, whether or not a certificate is required under section 224 of the mental health act. If

this meeting is not asked to consider the first occasion of unescorted suspension of detention that requires a certificate, it will not take account of victim(s) considerations under the victim notification schemes. If that is the case then the MAPPA meeting should consider whether a further meeting should take place to consider suspension of detention that requires a certificate and which would then consider victim(s) representations under the victim notification schemes and conditions that may be appropriate in the certificate.

SCOTTISH MINISTERS

32. Scottish Ministers approval is required before a certificate can be granted. As part of their checks the Restricted Patient Team will ask the RMO to confirm that:

- the SUS plan would not exceed the legislative limits, and
- where there is one or more victim(s) registered to make representations, that the victim(s) representations have been taken into account.

COMMENCEMENT AND TRANSITIONAL ARRANGEMENTS

33. Where a certificate for the first occasion of unescorted suspension of detention has already been granted under section 224 of the Mental Health Act, prior to 30 September 2017, victims who register for either scheme cannot make representations but will be told that a certificate has been granted. This will be the case unless the certificate was revoked before 30 September 2017.

DATA PROTECTION AND SECURITY

34. Victim(s) representations are sensitive personal data and are shared with RMOs for the purpose of informing decisions about the granting of a certificate for the first time suspending detention without supervision. As data controllers, RMOs should ensure that they meet the requirements of the data protection legislation. These requirements include the data being kept securely, access being restricted, the information not being shared beyond the above purpose and how long the information should be retained.

Contact

Any queries about individual restricted patients can be addressed to the relevant restricted patient team at restrictedpatient@gov.scot or by contacting the relevant team on:

Patient surnames A-G – 0131 244 2459
Patient surnames H-Mc – 0131 244 2546
Patient surnames Me-Z – 0131 2441818

Any queries about the victim notification scheme can be addressed to the victim notification scheme administration team on 0131 244 3340 or vns@gov.scot .

Victim Notification Scheme Administration Team
October 2017

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ELIGIBILITY

Victim Notification Scheme (administered by the Scottish Prison Service)

Eligible persons may take part in the scheme where:

- they are any natural person against whom any offence has been perpetrated
- any person has been convicted of that offence and sentenced in respect of it—
 - (a) to imprisonment or detention for a period of 18 months or more;
 - (b) to life imprisonment or detention for life; or
 - (c) under section 205(2) (punishment for murder where convicted person under 18) or 208 (detention of children convicted on indictment) of the Criminal Procedure (Scotland) Act 1995, to detention without limit of time
- the person to be given the information wishes to receive it and has so intimated
- the convicted person has not been released before attaining the age of sixteen years

CORO Victim Notification Scheme (administered by the Scottish Government)

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.

Both Schemes

The persons eligible to take part in the schemes 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.