

Victim Notification Scheme Offenders with a Mental Disorder

(Compulsion Order and Restriction Order)

**Guidance for victims on making
written representations to
Scottish Ministers on variation of
conditions of discharge**

October 2017



Scottish Government
Riaghaltas na h-Alba
gov.scot

Introduction

This guidance booklet provides advice to victims registered under the victim notification scheme for offenders with a mental disorder who wish to make representations before certain decisions are taken. This booklet covers how to make written representations to Scottish Ministers when they exercise their power to vary conditions of discharge.

If you want to speak to someone about this booklet, 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 am and 8 pm. You can also find details of your local office on Victim Support Scotland’s website at www.victimsupportsco.org.uk.

Terms you may not be familiar with

Absolute discharge is when an offender is no longer subject to a compulsion order and restriction order.

Compulsion order is used when an offender commits an offence that is punishable by imprisonment but is found to have a mental disorder. The court can decide not to send the offender to prison but that they must stay in hospital for mental health treatment.

Conditional discharge allows a period of formal supervision of the offender in the community by closely monitoring their mental health. The offender will be subject to conditions.

Mental Health Tribunal for Scotland (often referred to as the Tribunal) is an independent judicial body set up to make and review decisions on the compulsory care and treatment and detention in hospital of people with a mental disorder in Scotland.

Restriction order can be added to a compulsion order. It is made by the court at the time of sentencing where the court considers that the person presents a risk of serious harm to the public.

Variation of conditions of discharge is when conditions the offender is subject to whilst living in the community are altered, removed or added to.

Why you will be asked to make representations

If 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. If that is the case then 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.

Scottish Ministers can vary the conditions imposed by the Tribunal. They can impose, alter or remove conditions. They may do this in response to changes in the offender’s mental health over time.

Some conditions are relevant to you. Conditions that are relevant to you are conditions about contacting you or being in places that you have asked to be informed about. The place that you have asked to be told about must be a place that you or your family are regularly at and must not cover an unreasonably large area.

You will be asked to make representations about these conditions before a decision is taken on varying them.

Why you would not be asked to make representations

You will not be asked to make representations before decisions are taken about varying conditions where:

- the conditions being varied are not relevant to you. Conditions that are not relevant to you include, for example, supervision and treatment requirements, no contact conditions involving people other than you, conditions about abstinence from drugs/alcohol and place of residence.
- the place that you have asked to be informed about is not a place that you or any member of your family is regularly at or in, or the place covers an unreasonably large area (taking into account the places where you and members of your family regularly go). If this applies you will have been informed that the place(s) you request to be informed about was invalid.
- if it is not reasonably practicable to give you the opportunity to make representations. This will not be the case in the majority of cases.

What your representations may cover

Your representations must be about how the Scottish Ministers' decision might affect you or members of your family.

Before Scottish Ministers make a decision you will be told about the condition that may be imposed, altered or removed. You may tell the Scottish Ministers anything, but think about what you have been told about the relevant condition.

You may want to tell Scottish Ministers about how seeing the offender or contact with them would affect you or your family. If you are concerned, you may wish to tell Scottish Ministers about places where you or members of your family live or visit regularly.

Scottish Ministers must take into account your representations when making a decision about any conditions relevant to you. They must take your concerns into account when imposing, amending or removing conditions prohibiting the offender from contacting you or being in certain places.

When to make your representations

You'll be contacted by the Victim Notification Scheme Administration Team, who will tell you:

- that a decision is to be taken on a relevant condition
- when you can make your representations

The letter will tell you about the condition that may be imposed, altered or removed. This should help you think about what you want to say to the Scottish Ministers in writing.

We will provide a form and tell you who to send your representations to in plenty of time before the Scottish Ministers make a decision. If you have previously made representations and have said you were happy for the Victim Notification Scheme Administration Team to hold on to those representations we will send a copy of them to you. You can then either update your representations or confirm that you wish the representation held for you to be taken into account by the Scottish Ministers.

You will be asked to return your representations by a specific date. If you miss that date, your representations may not be able to be taken into account by the Scottish Ministers.

What happens with your representations

Scottish Ministers must take into account your representations when making a decision about any conditions relevant to you. They must take your concerns into account when imposing, amending or removing conditions prohibiting the offender from contacting you or being in certain places.

After Scottish Ministers' decision

If a decision is taken to impose, amend or remove a condition that you were invited to make representations about then the Victim Notification Scheme Administration Team will write to you and tell you the terms of conditions relevant to you that have been imposed on the offender.

If a decision is taken not to impose, amend or remove a condition that you were invited to make representations about and you have asked to receive information after the decision has been taken then the Victim Notification Scheme Administration Team will write to you and tell you that the decision has been taken. This will always be the case unless Scottish Ministers consider that there are exceptional circumstances which make it inappropriate to do so. No further information can be provided under the scheme.

Change of Circumstances

You should inform the Victim Notification Scheme Administration Team of any change to your circumstances such as a change in address.

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 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

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Edinburgh EH8 9RX

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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

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Regent Road

Edinburgh

EH1 3DG

Tel. 0131 244 3340

Email: vns@gov.scot

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 the Mental Health Tribunal for Scotland can be found at:

https://www.mhtscotland.gov.uk/mhts/Home/Welcome_to_the_Mental_Health_Tribunal

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: 978-1-78851-246-6 (web only)

Published by The Scottish Government, October 2017

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS300786 (10/17)

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