EXPLANATORY MEMORANDUM TO

THE VICTIMS AND PRISONERS ACT 2024 (PERMITTED DISCLOSURES) REGULATIONS 2025

2025 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Minister Davies-Jones, Minister for Victims and Violence Against Women and Girls at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.

2.2 Isla Scott, Deputy Director for Victims and Witnesses Policy and Strategy at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Rachel Trow at the Ministry of Justice, telephone: 07935702355 or email: Rachel.Trow@justice.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes two changes to section 17 of the Victims and Prisoners Act 2024 ("the 2024 Act"):

(a) This instrument adds to the list of bodies at section 17(2) of the 2024 Act to which a victim of crime, or someone who reasonably believes they are a victim of crime, can disclose information about the criminal conduct without fear of legal action under a non-disclosure agreement:

(i) The Criminal Injuries Compensation Authority ("CICA"), for the purposes of making a claim for compensation; and

(ii) Courts and tribunals, for the purposes of issuing or pursuing proceedings regarding a decision of the CICA in relation to a claim for compensation.

(b) This instrument amends the definition of a "qualified lawyer" in section 17(6) of the 2024 Act to include registered foreign lawyers, so that a victim of crime, or someone who reasonably believes they are a victim of crime, can make disclosures to these lawyers for the purpose of seeking legal advice about the criminal conduct without fear of legal action under a non-disclosure agreement.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 Section 17 of the 2024 Act provides that provisions in agreements which purport to prevent the disclosure of information (sometimes referred to as non-disclosure agreements, or non-disclosure clauses) cannot be legally enforced to the extent that they seek to prevent a victim of crime, or someone who reasonably believes they are a victim of crime, making "permitted disclosures". "Permitted disclosures" are disclosures of information to certain specified persons or bodies, for certain specified purposes related to the criminal activity they have, or believe they have, been the victim of.

5.2 The overall aim of section 17 is to allow victims of crime, and those who reasonably believe they are victims of crime, to make disclosures about the criminal conduct they have been the victim of for the purposes of reporting the conduct, and to get advice and support to help them to cope and recover from the impact of the criminal conduct.

5.3 The current list of permitted disclosures is set out at section 17(2) of the 2024 Act as follows:

(a) Police or other bodies which investigate or prosecute crime, for the purpose of investigating or prosecuting the criminal conduct.

(b) Qualified lawyers, for the purpose of seeking legal advice about the criminal conduct.

(c) Regulated professionals, for the purpose of obtaining professional support in relation to the criminal conduct.

(d) Support services, for the purpose of obtaining support from the service in relation to the criminal conduct.

(e) Regulators, for the purpose of cooperation with the regulator in relation to the criminal conduct.

(f) A person authorised to receive information on behalf of any of the above, for the relevant purpose mentioned above.

(g) A close family member (child, parent or partner), for the purpose of obtaining support in relation to the criminal conduct.

5.4 Section 17(4) includes a power to add, remove or modify the list of permitted disclosures by regulations. The changes made by this instrument have, since the passing of the 2024 Act, been identified as necessary to comprehensively achieve the policy aim when section 17 is commenced. The changes are being made in exercise of the power at section 17(4), and are:

(a) In section 17(2), to make two additions to the list of bodies to which victims of crime, and those who reasonably believe they are victims of crime, can make permitted disclosures: the CICA and courts and tribunals (where proceedings relate to a decision made by CICA).

(b) In section 17(6), to amend the definition of "qualified lawyer" to include registered foreign lawyers so that victims can make disclosures to these lawyers for the purpose of seeking legal advice about the criminal conduct without fear of legal action under a non-disclosure agreement.

Disclosures to CICA

5.5 The CICA is an executive agency of the Ministry of Justice which pays compensation to people physically or mentally injured because of a violent crime in England, Scotland or Wales, or in an act of terror abroad. The CICA administers the taxpayer-funded compensation schemes issued under the Criminal Injuries Compensation Act 1995, and the Crime and Security Act 2010. The current versions of these schemes are the Criminal Injuries Compensation Scheme 2012 and the Victims of Overseas Terrorism Compensation Scheme 2012.

5.6 Victims apply to CICA for compensation under the Schemes. If a victim has received compensation for the same injury from another source, including through settlement of a civil legal claim, CICA can reduce or withhold its compensation payment. Applicants are sometimes unable or unwilling to share information with CICA about settlement agreements they have entered into because of non-disclosure provisions in such agreements. Without this information, it is difficult for CICA to assess an applicant's eligibility for compensation and there is a risk that compensation could be paid out incorrectly. Adding CICA to the list of permitted disclosures would ensure that victims of crime have greater confidence in making disclosures to CICA as part of their application, even if a non-disclosure agreement purports to prevent them from making such disclosures.

5.7 This instrument amends section 17(2) of the 2024 Act by adding at new paragraph (ea) disclosures to the CICA for the purpose of a claim for compensation in relation to the criminal conduct under the Criminal Injuries Compensation Scheme and the Victims of Overseas Terrorism Compensation Scheme. By making this addition to the list of permitted disclosures, a provision in an agreement will be void under section 17(1) of the 2024 Act to the extent that it seeks to prevent a victim of crime, or a person who reasonably believes they are a victim of crime, from making a disclosure to CICA for the purpose of a claim for compensation in relation to the criminal conduct under the schemes that CICA administers. This ensures that victims of crime are able to share information with CICA for that purpose without fear of legal action under a non-disclosure agreement.

5.8 This instrument also amends section 17(2) of the 2024 Act by adding, at new paragraph (eb), disclosures to a court or tribunal for the purpose of issuing or pursuing any proceedings (such as an appeal, judicial review or other litigation) in relation to a decision of CICA made in connection with a claim for compensation in relation to the criminal conduct under the schemes that CICA administers. This will mean that a provision in an agreement will be void under section 17(1) of the 2024 Act to the extent that it seeks to prevent a victim of crime, or a person who reasonably believes they are a victim of crime, from making a disclosure to a court or tribunal for the purpose of issuing or pursuing any proceedings in relation to a decision of CICA made in connection with any such claim. This ensures that victims of crime are able to continue to share information about the criminal conduct throughout the full legal process of applying to CICA for compensation under the schemes that CICA administers.

Amending the definition of "qualified lawyer".

5.9 Section 17(2)(b) provides that victims of crime, or those who reasonably believe they are victims of crime, can make disclosures to a "qualified lawyer" for the purpose of seeking legal advice about criminal conduct without fear of legal action under a non-disclosure agreement. A "qualified lawyer" is defined in section 17(6) of the Act as a person who is an authorised person in relation to a reserved legal activity for the purposes of the Legal Services Act 2007.

5.10 This definition of qualified lawyer does not include "registered foreign lawyers" ("RFLs"). RFLs are lawyers who qualified outside of England and Wales, have registered with, and are regulated by, the Solicitors Regulation Authority. RFLs can own or manage an authorised law firm and can provide certain reserved legal services in some situations whilst under supervision.

5.11 RFLs may be authorised to receive information on behalf of a qualified lawyer in certain circumstances, and where that is the case a disclosure to an RFL may therefore be permitted under existing section 17(2)(f) of the 2024 Act. However, the policy objective of the measure is to ensure that victims of crime can make disclosures to RFLs for the purpose of seeking legal advice about the criminal conduct, whether or not they are authorised to receive information on behalf of a "qualified lawyer". To achieve this policy objective, this instrument adds RFLs to the "qualified lawyer" definition at section 17(6).

5.12 The effect of this change is that a provision in an agreement will be void under section 17(1) of the 2024 Act to the extent that it seeks to prevent a victim of crime, or a person who reasonably believes they are a victim of crime, from making a disclosure of information to a RFL for the purpose of seeking legal advice about the criminal conduct. The change will ensure victims can approach all qualified, regulated lawyers working in England and Wales for legal advice on the criminal conduct.

What was the previous policy, how is this different?

5.13 Section 17 of the 2024 Act is not yet in force. There is no existing legislation which deals with the enforceability of provisions in agreements which purport to prevent a victim disclosing information about criminal conduct.

5.14 The policy underpinning section 17 (articulated at paragraph 5.2 of this Explanatory Memorandum) remains the same. This instrument seeks to make certain changes to better achieve that policy objective.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 17(4)(a) of the 2024 Act provides the Secretary of State with a power to amend section 17 to add, remove or modify a description of a permitted disclosure via regulations. This instrument is being made to make such changes, in reliance on this power.

6.2 The legal effect of this instrument is that a provision in an agreement will be void under section 17(1) of the 2024 Act to the extent that it seeks to prevent a victim of crime, or a person who reasonably believes they are a victim of crime, from making a disclosure of information to:

(a) The CICA, for the purpose of a claim for compensation in relation to the criminal conduct under the Criminal Injuries Compensation Scheme or the Victims of Overseas Terrorism Compensation Scheme;

(b) a court or tribunal, for the purpose of issuing or pursuing any proceedings in relation to a decision of CICA made in connection with any such claim; and

(c) a RFL, for the purpose of seeking legal advice about the criminal conduct.

Why was this approach taken to change the law?

6.3 This approach was chosen because it is the most expedient route to enact the desired change.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation was undertaken as the effect of these changes is not extensive and does not constitute a fundamental policy change, but improves the legislation in order to more fully achieve the policy objective.

8. Applicable Guidance

8.1 Guidance on section 17 of the Victims and Prisoners Act 2024, which this instrument amends, will be published prior to the commencement of this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, voluntary or public sector is foreseen.

Impact on businesses, charities and voluntary bodies

9.2 There is no significant impact on charities or voluntary bodies.

9.3 The legislation impacts businesses, including small or micro businesses, who use non-disclosure agreements who may need to familiarise themselves with the new legislation and update their non-disclosure templates to ensure they are compliant with the new legislation. Guidance on section 17 of the Victims and Prisoners Act 2024, which this instrument amends, will be published prior to the commencement of this instrument to help businesses prepare for the legislative change.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing the legislation?

10.1 There is no plan to monitor or review this legislation.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument will come into force on 1 October 2025.

11.2 Pursuant to S.I. 2025 No. 616, section 17 commences on 1 June 2025 for the purpose of making regulations only (to allow this instrument to be laid) and on 1 October 2025 for all other purposes.

12. European Convention on Human Rights

12.1 The Minister for Victims and Violence Against Women and Girls has made the following statement regarding Human Rights:

"In my view the provisions of The Victims and Prisoners Act 2024 (Permitted Disclosures) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").