

MENTAL HEALTH (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE & A SUMMARY OF THE ACT

Part One – the 2003 Act

Section 25: Ability to act if no named person

New section 257A

76. Section 25 of the Act introduces a new section 257A to the 2003 Act which makes provision about who will have the ability to act in relation to a patient, over the age of 16, who does not have a named person and who is incapable in relation to a decision about whether to make a decision to initiate an appeal or application. This ability to act does not apply to the extent that the patient has made a declaration under subsection (6) (b) that they would not wish their primary carer or nearest relative to act in relation to them if they became incapable. Such a declaration must be in writing and can be made in relation to specific persons or all persons.
77. The section allows listed persons to initiate applications or appeals, to the Mental Health Tribunal for Scotland, the Sheriff Principal and the Court of Session, under various sections of the 2003 Act. The listed persons are the patient's guardian, welfare attorney, primary carer or nearest relative. The sections of the 2003 Act under which these listed persons will now be able to initiate an application or appeal are 50(1), 99(1), 100(2), 120(2), 125(2), 126(2), 163(1), 164(2), 192(2), 201(1), 204(1), 214(2), 219(2), 220(2), 264(2), 268(2), 320(2), 321(1) and 322(2). Under section 257A(5), guardians and welfare attorneys are excluded from the application of certain of these provisions where there is an overlap with their existing functions.
78. The section also extends the effect of various sections of the 2003 Act so that certain of the listed persons (the patient's guardian or welfare attorney) will now be entitled to obtain certain information in respect of a decision about the patient's treatment. The information which they will be entitled to is any notice or information that is provided under sections 54(3), 60(1), 87(2)(c), 124(4) or (6), 127(7), 128(3), 129(3) or (4), 153(2) (c), 200(3), 218(4), (6) or (10)(b), 224(8), 225(3) or 226(3) of the 2003 Act. For these sections of the 2003 Act, which are included by virtue of subsection (4), notice is only given under the particular subsections listed. Exemptions are also included in new section 257A(6) so that the guardian or welfare attorney does not receive a copy of the record of a determination to extend a compulsory treatment order (CTO) under section 87(2)(c) or a compulsion order under section 153(2)(c) of the 2003 Act and only receives information about the reasons for a Responsible Medical Officer's (RMO) in relation to decisions about suspension of detention under sections 128(3) or 129(4) if the RMO is satisfied it is appropriate for them to do so.