



# Mental Health (Scotland) Act 2015

## 2015 asp 9

### PART 3

#### VICTIMS' RIGHTS

##### *Additional provisions*

#### 57 Information sharing

- (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.
- (2) After section 17D there is inserted—

##### **“17E Information sharing in respect of mentally-disordered offenders**

- (1) Where the Scottish Ministers are subject to a duty under section 16 or 16A to give a person (“V”) information about another person (“O”), they must give notice to—
  - (a) O's responsible medical officer, and
  - (b) if O is subject to a compulsion order, the Mental Health Tribunal.
- (2) A notice under subsection (1) is to request that the recipient of the notice provide the Scottish Ministers with information in such circumstances as may be specified in the notice.
- (3) The information that the Scottish Ministers may request in a notice under subsection (1) must be information about O which they will require in order to fulfil their duty to give information to V under section 16, 16A or 17D.
- (4) The recipient of a notice under subsection (1) must provide the Scottish Ministers with the information requested in the notice in the circumstances specified in it.
- (5) If the Scottish Ministers cease to be required to give anyone information about O under section 16 or 16A—
  - (a) they must intimate that fact to anyone to whom they sent a notice in relation to O in accordance with subsection (1), and

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- (b) on receiving that intimation, subsection (4) ceases to apply to the person who received the intimation.”.

#### Commencement Information

**II** S. 57 in force at 15.9.2017 by S.S.I. 2017/234, art. 2(1)(d)

## 58 Associated definitions

- (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.  
 (2) After section 18 there is inserted—

### “18A Interpretation of Part

- (1) In this Part—  
     “Mental Health Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003,  
     “Mental Health Tribunal” means the Mental Health Tribunal for Scotland,  
     “transfer for treatment direction” means a direction made under section 136 of the Mental Health Act.
- (2) A reference in this Part—  
 (a) to a certificate under the Mental Health Act which suspends a person's detention and does not impose a supervision requirement is to a certificate under subsection (2) of section 224 of that Act which does not include a condition under subsection (7)(a) of that section,  
 (b) to such a certificate being granted for the first time is to such a certificate being granted for the first time—  
     (i) since the person was detained under the particular order or direction which authorises the person's detention in a hospital (or would do, but for the certificate's being granted), or  
     (ii) in a case where the person, while subject to that order or direction, has been recalled to hospital under section 202 of the Mental Health Act, since the person was so recalled (or most recently so recalled if it has happened more than once).
- (3) For the purposes of sections 16A(3)(b) and 17B(5)(c), a condition is relevant to a person (“V”) if—  
 (a) the condition is a restriction on the person referred to in the section in question as O contacting an individual or being in a place, and  
 (b) V has made a valid request to the Scottish Ministers to be informed about any condition which restricts O from—  
     (i) contacting that individual, or (as the case may be)  
     (ii) being in that place or any wider area within which the place in question falls.
- (4) The Scottish Ministers may treat a request as invalid for the purposes of subsection (3) if or so far as—

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- (a) it is a request to be informed about any condition which restricts O from being in a place, and
- (b) the place referred to in the request—
  - (i) is not one which V or any member of V's family is regularly at or in, or
  - (ii) covers an unreasonably large area having regard to the places where V and members of V's family regularly go.”.

#### Commencement Information

**I2** S. 58 in force at 5.5.2017 for specified purposes by S.S.I. 2017/126, art. 2, sch.

**I3** S. 58 in force at 15.9.2017 in so far as not already in force by S.S.I. 2017/234, art. 2(1)(e)

VALID FROM 30/09/2017

#### 59 Power to make modifications

(1) The Criminal Justice (Scotland) Act 2003 is amended as follows.

(2) After section 18A there is inserted—

##### “18B Power to modify Part

- (1) The Scottish Ministers may by order amend—
  - (a) sections 16A and 16B, by substituting for any age for the time being specified in those sections a different age,
  - (b) section 16C, by adding descriptions of information,
  - (c) section 18A, by adding, amending or repealing definitions of terms used in the descriptions of information in section 16C.
- (2) The Scottish Ministers may by order amend—
  - (a) section 16A, so that information may be given under that section in some or all cases where a person has been made subject to a compulsion order and either—
    - (i) the person has not been made subject to a restriction order, or
    - (ii) the restriction order to which the person was made subject has been revoked,
  - (b) section 17B, to specify types of decision in respect of which representations under that section may be made by persons who have a right to be given information under section 16A as amended by virtue of paragraph (a).
- (3) In an order under subsection (2) which amends section 16A or 17B, the Scottish Ministers may make any amendment to the following enactments which they consider necessary or expedient in consequence of the amendment to section 16A or 17B—
  - (a) sections 16C, 17E and 18A,
  - (b) the Mental Health (Care and Treatment) (Scotland) Act 2003.”.

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(3) In section 88 (orders), after “16(4)” there is inserted “ , 18B ”.

VALID FROM 30/09/2017

## 60 Amendments to the 2003 Act

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) In section 193 (powers of Tribunal on reference or application under certain sections), after subsection (9) there is inserted—

“(9A) Where—

- (a) a person (“V”) is entitled to make victim's representations before the Tribunal makes a decision under this section, and
- (b) V has not been afforded the opportunity of making representations under subsection (8),

before making a decision about what (if any) conditions to impose on the patient's conditional discharge under subsection (7), the Tribunal must have regard to any victim's representations made by V.”.

(3) In section 200 (variation of conditions imposed on conditional discharge), after subsection (2) there is inserted—

“(2A) Before varying any conditions under subsection (2), the Scottish Ministers must have regard to any victim's representations.”.

(4) In section 224 (patients subject to certain other orders and directions: suspension of measure authorising detention), after subsection (6) there is inserted—

“(6A) Before deciding what conditions such as are mentioned in subsection (7) below to include in a certificate under subsection (2) above (if any), the responsible medical officer must have regard to any victim's representations.”.

(5) In section 329 (interpretation), at the appropriate alphabetical place in subsection (1) there is inserted—

““victim's representations” means representations made under section 17B of the Criminal Justice (Scotland) Act 2003 in relation to the matter being considered;”.

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