

MENTAL HEALTH (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE & A SUMMARY OF THE ACT

Part Two – Criminal Cases

Section 50: Information on extension of compulsion order

New section 153A

135. Section 151 of the 2003 Act sets out the steps that a responsible medical officer (RMO) must take when he or she has determined that a compulsion order (CO) is to be extended without change. In such cases, an RMO must prepare a record setting out the reasons for the determination and whether the mental health officer (MHO) agrees, disagrees or has not expressed a view, and, in the case of a disagreement, the reasons for that, the type of mental disorder suffered by the patient and whether that has changed from the disorder in the original CO. This record must be submitted to the Tribunal and a copy sent to the patient (unless the RMO considers there would be significant risk to the patient in doing so), the patient's named person, the MHO and the Commission. The Tribunal must be informed if the RMO is sending a copy or not to the patient and, if not, the reasons for that decision. When the MHO disagrees with the determination, or the type of mental disorder differs from that originally recorded in the CO, the RMO's decision to extend the CO must be reviewed by the Tribunal.
136. Section 50 of the Act inserts new section 153A which sets out new duties for the MHO when the Tribunal is required by section 165(2)(a) of the 2003 Act to review the determination. That situation occurs when (i) the determination states that there is a difference between the type of mental disorder that the patient has and that recorded in the CO; and (ii) where the MHO disagrees with the determination, or has failed to comply with the duties imposed by section 151 of the 2003 Act to inform the patient of the determination, their rights in relation to this and the right to independent advocacy, and as far as practicable interview the patient.
137. When section 165(2)(a) applies, the MHO, must prepare and submit a record to the Tribunal with the patient's name and address and that of the patient's named person and primary carer, if known, details of what the MHO has done in compliance with section 151 of the 2003 Act, and so far as relevant to the extension of the CO, the details of the personal circumstances of the patient, any advance statement of the patient (if known by the MHO), the views of the MHO on the extension of the CO and any other information the MHO considers relevant in relation to the extension of the CO. A copy of this record must also be sent to the patient and the patient's named person, RMO and the Commission. The patient need not receive a copy of the record if the MHO considers so doing would carry a significant risk of harm. The Tribunal must be told if the patient is not receiving the report, and the reasons for this decision.