

MENTAL HEALTH (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE & A SUMMARY OF THE ACT

Part Three – Victims’ Rights

Section 55: Right to information: compulsion order

150. **Section 55** makes further amendment to the Criminal Justice Act 2003 by inserting new sections 16A, 16B and 16C, which make provision regarding victims’ rights to receive certain information relating to offenders who are subject to a compulsion order and a restriction order (CORO).

New section 16A of the Criminal Justice Act 2003

151. New section 16A provides that where a person over 16 has been made subject to a CORO in proceedings in respect of an offence perpetrated against a natural person, the Scottish Ministers must give the information described in section 16C to the person entitled to receive that information (as determined by section 16B), provided that the person has requested to be given the information. Information about a condition imposed on conditional discharge may only be given where the condition is relevant to the person (as described in section 18A(3)). The information required to be given by section 16A may only be withheld if the Scottish Ministers consider that disclosing the information would be inappropriate due to exceptional circumstances in the case.

New section 16B

152. Section 16B lists those persons who are entitled to ask to be given information under section 16A, namely, the victim of the offence, or if the victim is dead, the spouse, cohabitee, child or parent of the victim, and if the victim died before reaching 16, any other person who cared for the victim before the relevant offence took place.
153. If the victim is under 12, he or she may not ask for information but someone who cares for the victim may ask instead. The section clarifies that a person who asks for information must not be incapable, and must not be a person accused of, or reasonably suspected of being the perpetrator, or been implicated in the perpetration of the offence.

New section 16C

154. Section 16C lists the information that is to be given under section 16A; that is, whether the compulsion order and/or the restriction order has been revoked, whether the decision to revoke the restriction order is under appeal or cannot be appealed against and is therefore final, the date of death of the offender, whether the compulsion order has been modified, any transfer of the offender to a place outwith Scotland, the conditional discharge of the offender, the terms of restrictions which have been placed on the things that the offender may do as a condition of their conditional discharge (i.e. exclusion zones or “no contact” conditions), or the recall of the offender to hospital following conditional discharge.

*These notes relate to the Mental Health (Scotland) Act
2015 (asp 9) which received Royal Assent on 4 August 2015*

155. If the offender is subject to a compulsion order and restriction order authorising detention in hospital, additional information may be disclosed including (a) whether the offender is unlawfully at large from hospital, (b) if they have been returned to hospital after having been unlawfully at large, (c) that suspension of detention has been granted for the first time and does not impose a supervision requirement and (d) where suspension of detention mention in (c) has been revoked. New definitions of what constitutes being granted suspension of detention for the first time are added by inserted section 18A (mentioned below).

156. Information is to be given in a case where the compulsion order and/or restriction order is revoked and that decision is appealed. The information includes whether (a) the Court of Session has decided to allow, or not allow the appeal against the decision to revoke the order in question i.e. Compulsion Order (in this case the Restriction Order will automatically fall) or the Restriction Order only; (b) that the Court of Session's decision has (i) been appealed against to the Supreme Court, or (ii) has not been appealed against to the Supreme Court. If the Court of Session does not allow the appeal the decision to revoke the order in question is final. (c) that the Supreme Court has allowed, or not allowed, the appeal against the Court of Session's decision; (d) if the Supreme Court's decision means the decision to revoke the order has not been set aside, the latter decision is final; and (e) if the Court of Session's decision or the Supreme Court's decision means the patient is once more subject to the order, the information provided will include this fact.