



Mental Health (Scotland) Act 2015

2015 asp 9

PART 3

VICTIMS' RIGHTS

Information and representations

56 Right to make representations

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

“17B Mentally-disordered offender: victim’s right to make representations

- (1) A person (“V”) who is to be given information about another person (“O”) under section 16 or 16A, must be afforded an opportunity to make representations—
 - (a) in a case where O is subject to a hospital direction or a transfer for treatment direction, before a decision of a type described in subsection (4) is taken in relation to O,
 - (b) in a case where O is subject to a compulsion order and a restriction order, before a decision of a type described in subsection (5) is taken in relation to O.
- (2) Representations under this section must be about how the decision in question might affect V or members of V’s family.
- (3) Subsection (1) does not apply unless V has intimated to the Scottish Ministers a wish to be afforded an opportunity to make representations about O under this section.
- (4) For the purpose of subsection (1)(a), the type of decision is a decision by O’s responsible medical officer about granting for the first time a certificate under the Mental Health Act which suspends O’s detention and does not impose a supervision requirement.

- (5) For the purpose of subsection (1)(b), the types of decision are a decision—
- (a) by O's responsible medical officer about granting for the first time a certificate under the Mental Health Act which suspends O's detention and does not impose a supervision requirement,
 - (b) by the Mental Health Tribunal under section 193 of the Mental Health Act (including a decision under that section as applied by section 201(3) or 204(3) of that Act),
 - (c) by the Scottish Ministers under section 200 of the Mental Health Act about imposing, altering or removing a condition which is (or would be) relevant to V as described in section 18A(3).
- (6) The Scottish Ministers need not afford V an opportunity to make representations before taking a decision of the type described in subsection (5) (c) if it is not reasonably practicable to afford V that opportunity.

17C Making representations under section 17B

- (1) Representations under section 17B—
- (a) may be made orally in relation to a decision of a type described in section 17B(5)(b),
 - (b) otherwise, must be made in writing.
- (2) The Scottish Ministers are to issue guidance as to how—
- (a) written representations under section 17B should be framed, and
 - (b) oral representations under that section should be made.

17D Right to information after section 17B decision

- (1) Subsection (2) applies where—
- (a) before a decision was taken, a person ("V") was afforded an opportunity to make representations under section 17B,
 - (b) the decision has since been taken,
 - (c) the Scottish Ministers are not required under section 16A to give any information to V as a result of the decision, and
 - (d) V has intimated to the Scottish Ministers a wish to receive information under this section.
- (2) The Scottish Ministers must, unless they consider that there are exceptional circumstances which make it inappropriate to do so, inform V that the decision has been taken.
- (3) Subsection (4) applies where—
- (a) in accordance with subsection (2), the Scottish Ministers have informed V that the Tribunal has decided to make an order revoking a compulsion order or restriction order, and
 - (b) by virtue of section 196 of the Mental Health Act, the Tribunal's order does not have effect because the Court of Session has made an order under section 323(1) of that Act.
- (4) The Scottish Ministers must—

- (a) inform V that the Court of Session has made an order under section 323(1) of the Mental Health Act, and
- (b) give V the information that they would have had to give V by virtue of section 16C(4) had the Court not made that order.”.