
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 172

The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2017

Ability to act if no named person

3.—(1) In rule 2 (interpretation)—

(a) in paragraph (a) of the definition of “party”, at the end insert “except a person who initiated them by virtue of a provision giving a listed initiator authority to act(1)”;

(b) after paragraph (1) insert—

“(1A) The “listed initiator requirement” is that the application or appeal is accompanied by—

(a) a written statement by an approved medical practitioner confirming that in the opinion of that practitioner the patient is incapable in relation to a decision as to whether to initiate an application or appeal; and

(b) a written statement from the person making the application or appeal stating—

(i) that the patient has attained the age of 16 years and has no named person;

(ii) which of the categories of person who may initiate the appeal or application by virtue of the provision giving a listed initiator authority to act the person falls within; and

(iii) that the patient has not made a written declaration which precludes the person from initiating the appeal or application by virtue of that provision.

(1B) A reference in these Rules to a provision giving a listed initiator authority to act is a reference to—

(a) section 257A of the Mental Health (Care and Treatment) (Scotland) Act 2003;

(b) regulation 8A of the Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008(2); and

(c) regulation 13A of the Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005(3).”.

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- (1) Section 257A (ability to act if no named person) was added to the Mental Health (Care and Treatment) (Scotland) Act 2003 ([asp 13](#)) by the Mental Health (Scotland) Act 2015 ([asp. 9](#)). It applies where a patient does not have a named person, is 16 years old or over and is incapable in relation to a decision about the initiation of an application or appeal in their own case.
- (2) [S.S.I. 2008/356](#) (“the 2008 Regulations”) was amended by [S.S.I. 2017/232](#) which inserted regulation 8A which allows certain people mentioned in the regulation the ability to initiate an appeal if the patient concerned does not have a named person. It also amended the 2008 Regulations so that they may also be cited as the Mental Health (Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008.
- (3) [S.S.I. 2005/467](#) was amended by [S.S.I. 2017/229](#) which inserted regulation 13A which allows certain people mentioned in the regulation the ability to initiate an appeal where the patient has no named person.