
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 197

The Mental Health (Scotland) Act 2015 (Commencement No. 4 and Transitional and Savings Provisions) Order 2017

NAMED PERSONS

Named persons in respect of patients subject to relevant orders: savings and cessation

13.—(1) Despite the commencement of section 22 of the Act and the repeal of section 251(1) of the 2003 Act, any person who, before the appointed day, is a named person in relation to another person who is subject to a relevant order (“the patient”) by virtue of that section continues to be a named person in relation to the patient until any one of the events mentioned in paragraph (2) occurs.

(2) The events are—

- (a) the making of a declaration under article 15 by the patient;
- (b) where the patient is subject to a short-term detention certificate, the revocation of that certificate;
- (c) where the patient is subject to a compulsory treatment order, the revocation of that order;
- (d) where the patient is subject to a compulsion order, the revocation of that order;
- (e) where the patient is subject to a hospital direction or transfer for treatment direction, the revocation of that hospital direction or transfer for treatment direction under section 210(2) (revocation following responsible medical officer report), 212(3) or (4) (duty of Scottish Ministers to keep directions under review) or 215(5) (powers of Tribunal on reference under section 201(3), 211(2) or 213(2) or on application under section 214(2));
- (f) where the patient is subject to an interim compulsory treatment order, the revocation of that order (including the revocation by virtue of section 75 (effect of subsequent compulsory treatment order on interim compulsory treatment order) of the 2003 Act).

(3) In this article “relevant order” means—

- (a) a short-term detention certificate;
- (b) a compulsory treatment order;
- (c) an interim compulsory treatment order;
- (d) a compulsion order;
- (e) a hospital direction;
- (f) a transfer for treatment direction.

(4) This article ceases to have effect on 30th June 2018.

Named persons acting under article 13(2): review of relevant order after 30th September 2017

14.—(1) This article applies where, after 30th September 2017, a person continues to act as a patient’s named person (“the named person”) by virtue of article 13(1) in respect of a patient who is subject to a compulsory treatment order, compulsion order, hospital direction or transfer for treatment direction.

(2) Article 13(2) is to be read as including the following events:—

- (a) where the patient is subject to a compulsory treatment order, a review of the order under section 77(2) (first mandatory review) or 78(2) (further mandatory reviews) of the 2003 Act;
- (b) where the patient is subject to a compulsion order, a review of that order under section 139(2) (first review of compulsion order) or 140(2) (further reviews of compulsion order) of the 2003 Act;
- (c) where the patient is subject to a hospital direction or a transfer for treatment direction, a review of that direction under section 206(2) of the 2003 Act (review of hospital direction and transfer for treatment direction).

Named persons: declaration in relation to a named person acting under article 13

15.—(1) This article applies where a person continues to act as a patient’s named person by virtue of article 13(1) after the appointed day.

(2) A person who has attained the age of 16 years (“the patient”) may make a declaration in accordance with paragraph (3) stating that a person specified in the declaration is not to be the patient’s named person.

(3) The declaration must be—

- (a) in writing;
- (b) signed by the patient; and
- (c) witnessed by a person mentioned in paragraph (4) (“the witness”) who certifies that, in the opinion of the witness, the patient—
 - (i) understands the effect of making the declaration; and
 - (ii) has not been subjected to any undue influence in making the declaration.

(4) The persons who may witness the declaration are—

- (a) persons providing independent advocacy services;
- (b) medical practitioners;
- (c) arts therapists, dieticians, occupational therapists, physiotherapists, practitioner psychologists and speech and language therapists registered with the Health and Care Professions Council;
- (d) persons employed in the provision of, or managing the provision of, a care service;
- (e) registered nurses;
- (f) social workers; and
- (g) solicitors.

(5) In this article—

“care service” has the meaning given by subsection (1)(a), (b), (d), (f), (g) and (j) of section 47 of the Public Services Reform (Scotland) Act 2010(2);

“Health and Care Professions Council” means the Council established by article 3 of the Health and Social Work Professions Order 2002(3);

“independent advocacy service” has the same meaning as in section 259(1) of the 2003 Act(4); and

“social worker” has the meaning given by section 77 of the Regulation of Care (Scotland) Act 2001(5).

Appointment of named persons: amendments made by section 23 of the Act

16. Despite the commencement of section 23 of the Act—

- (a) the amendment made by subsection (2) of that section to section 250 (nomination of named person) of the 2003 Act does not have effect in respect of a nomination made before the appointed day under section 250(1) of the 2003 Act;
- (b) the amendments made by subsection (3) of that section to section 257 (named person: Tribunal’s powers) of the 2003 Act do not apply where the application referred to in section 257(1) of the 2003 Act is made on or before the appointed day.

(3) [S.I. 2002/254](#). Article 3 was relevantly amended by section 214 of the Health and Social Care Act 2012 ([2012 c.7](#)). That section provided that the body then known as the Health Professions Council was to continue in existence and be renamed as the Health and Care Professions Council; subsection (2) substituted a new article 3(1) to refer to the Council by its new name.

(4) For the purposes of section 259(1), “advocacy services” has the meaning given by subsection (4) of section 259, and “independent” has the meaning given by subsection (5) of that section.

(5) [2001 asp 8](#). Section 77 was substituted by paragraph 9 of schedule 1 of the Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2011 ([S.S.I. 2011/211](#)). There are amendments to section 77 which are not relevant to this Order.