

MENTAL HEALTH (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE & A SUMMARY OF THE ACT

Part One – the 2003 Act

Section 2: Information where order extended

10. Section 87 of the 2003 Act sets out the steps that a responsible medical officer (RMO) must take when he or she has determined that a CTO 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. Also required to be recorded are, in the case of a disagreement the reasons for the disagreement, the type of mental disorder suffered by the patient and whether that has changed from the disorder in the original CTO.
11. 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 Mental Welfare Commission for Scotland (the Commission). The Tribunal must be told if the RMO is sending a copy or not to the patient and, if not, the reasons for that decision.

New section 87A

12. Section 2 of the Act inserts new section 87A which sets out new duties for the MHO when the Tribunal is required by section 101(2)(a) of the 2003 Act to review the determination. That is, when the determination states that there is a difference between the type of mental disorder that the patient has and that recorded in the original CTO, or the MHO disagrees with the determination, or has failed to express a view.
13. When section 101(2)(a) applies, section 87A requires the MHO to 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 85 of the 2003 Act (and if the MHO has not interviewed the patient, the reasons for that), and so far as relevant to the extension of the CTO, the details of the personal circumstances of the patient, any advance statement of the patient (if known by the MHO, and not withdrawn), the views of the MHO on the extension of the CTO and any other information the MHO considers relevant in relation to the extension of the CTO. A copy of this record must also be sent to the patient, the patient's named person, RMO and the Commission. The MHO need not send a copy of the record to the patient if the MHO considers so doing would carry a significant risk of harm to the patient or others. The Tribunal must be told if the patient is not receiving the report, and the reasons for this decision.