Mental Health (Scotland) Act 2015

2015 asp 9

PART 3

VICTIMS' RIGHTS

Information and representations

54 Right to information: offender imprisoned

(1) The Criminal Justice (Scotland) Act 2003 is amended as follows.

(2) In section 16 (victim's right to receive information concerning release etc. of offender), in subsection (3)—

(a) in paragraph (e)—

(i) for the words "or young" there is substituted " , young ",

(ii) after the word "institution" there is inserted " or hospital ",

(b) the word "and" immediately preceding paragraph (f) is repealed,

(c) in paragraph (f)—

(i) for the words "or young" there is substituted " , young ",

(ii) after the word "institution" there is inserted " or hospital ",

(d) after paragraph (f) there is inserted—

"(g) where the convicted person is liable to be detained in a hospital under a hospital direction or transfer for treatment direction—

(i) that a certificate has been granted, for the first time, under the Mental Health Act which suspends the person's detention and does not impose a supervision requirement,

(ii) that the certificate mentioned in sub-paragraph (i) has been revoked.".

(3) In section 16, in subsection (4)—

(a) the word "or" immediately preceding paragraph (b) is repealed, and

(b) at the end of paragraph (b) there is inserted "; or

(c) modify section 18A, by adding, amending or repealing definitions of terms used in the descriptions of information in subsection (3) of this section.”.

Commencement Information

I1 S. 54 in force at 5.5.2017 for specified purposes by S.S.I. 2017/126, art. 2, **sch.**

I2 S. 54 in force at 15.9.2017 for specified purposes by S.S.I. 2017/234, **art. 2(1)(a)** (with arts. 3, 4)

I3 S. 54 in force at 30.9.2017 in so far as not already in force by S.S.I. 2017/234, **art. 2(2)(a)**

55 Right to information: compulsion order

(1) The Criminal Justice (Scotland) Act 2003 is amended as follows.

(2) After section 16 there is inserted—

“16A Victim's right to receive information concerning offender subject to compulsion order

(1) Subsection (2) applies where—

(a) an offence has been perpetrated against a natural person,

(b) another person (“O”) has been made subject to a compulsion order and a restriction order in proceedings in respect of that offence,

(c) a person has asked to be given information about O under this section and that person is, or was at the time of asking, a person entitled to ask to be given the information (see section 16B), and

(d) O has attained the age of 16 years.

(2) The Scottish Ministers must give the information about O described in section 16C to the person mentioned in subsection (1)(c).

(3) But the Scottish Ministers—

(a) need not give a person information under this section if they consider there to be exceptional circumstances which make it inappropriate to do so,

(b) are not to give a person information about the terms of a condition in accordance with section 16C(2)(h) unless the condition is relevant to that person as described in section 18A(3).

(4) If the compulsion order or the restriction order mentioned in subsection (1)(b) is revoked, subsection (2) ceases to apply when the Scottish Ministers give the person mentioned in subsection (1)(c) the information that—

(a) the order has been revoked, and

(b) the decision to revoke it is final.

16B Person entitled to ask to be given information under section 16A

(1) The reference in section 16A(1)(c) to a person entitled to ask to be given information under that section is to—

(a) the natural person (“V”) against whom the offence mentioned in section 16A(1)(a) (“the relevant offence”) was perpetrated,

(b) if V is dead—

(i) any or all of the four qualifying persons highest listed in section 14(10), and

(ii) if V died before attaining the age of 16 years, any other person who cared for V immediately before the relevant offence was perpetrated, or

(c) if V has attained the age of 12 years and is incapable for the purposes of this section, the qualifying person highest listed in section 14(10).

(2) If a person (including V) who would be entitled to ask to be given information by virtue of subsection (1) has not attained the age of 12 years—

(a) the person is not entitled to ask to be given the information, and

(b) someone who cares for the person is entitled to ask to be given it instead.

(3) For the purposes of this section—

(a) the references to a qualifying person are to a person—

(i) whose relationship to V is listed in subsection (10) of section 14 (read with the other subsections of that section),

(ii) who is not incapable for the purposes of this section, and

(iii) who is not a person accused of, or reasonably suspected of being the perpetrator of, or having been implicated in the perpetration of, the relevant offence,

(b) when determining who is the qualifying person highest listed in section 14(10), if two or more persons have the same relationship to V they are to be listed according to age with the eldest being the highest listed of them,

(c) the expressions "cared for" and "cares for", are to be construed in accordance with the definition of "someone who cares for" in paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010,

(d) a person is to be considered incapable for the purposes of this section if the person would be considered incapable of making a victim statement by virtue of section 14(6)(b)(i) and (7).

16C Information to be given under section 16A

(1) This section sets out the information that is to be given under section 16A about the person referred to in that section as O.

(2) The following information is to be given in any case—

(a) that the compulsion order to which O is subject and which is mentioned in section 16A(1)(b) has been revoked,

(b) that the restriction order to which O is subject and which is mentioned in section 16A(1)(b) has been revoked,

(c) where the order mentioned in paragraph (a) or the order mentioned in paragraph (b) has been revoked, that the decision to revoke it—

(i) is being appealed against, or

(ii) cannot competently be appealed against and is therefore final,

(d) the date of O's death,

(e) that the compulsion order has been varied by way of a modification of the measures specified in it,

(f) that O has been transferred to a place outwith Scotland,

(g) that the Mental Health Tribunal has made an order under section 193(7) of the Mental Health Act conditionally discharging O,

(h) the terms of any conditions imposed on O on conditional discharge under section 193(7) or section 200(2) of the Mental Health Act (including under section 193(7) as applied by section 201(3) or 204(3) of that Act),

(i) that the Scottish Ministers have recalled O to hospital under section 202 of the Mental Health Act.

(3) The following information is to be given in a case where the compulsion order authorises O's detention in hospital—

(a) that O is unlawfully at large from hospital,

(b) that O has returned to hospital having been unlawfully at large,

(c) that a certificate has been granted, for the first time, under the Mental Health Act which suspends O's detention and does not impose a supervision requirement,

(d) that the certificate mentioned in paragraph (c) has been revoked.

(4) The following information is to be given in a case where the order mentioned in paragraph (a) or the order mentioned in paragraph (b) of subsection (2) has been revoked and that decision is appealed against—

(a) that the Court of Session has decided to allow, or not allow, the appeal against the decision to revoke the order in question,

(b) that the Court of Session's decision—

(i) has been appealed against to the Supreme Court, or

(ii) has not been appealed against to the Supreme Court before the expiry of the time allowed to appeal to the Supreme Court, and therefore if the Court of Session has not allowed the appeal the decision to revoke the order in question is final,

(c) that the Supreme Court has decided to allow, or not allow, the appeal against the Court of Session's decision,

(d) if the Supreme Court's decision means that the decision to revoke the order in question has not been set aside, that the latter decision is final,

(e) if the Court of Session's decision or the Supreme Court's decision means that O is once more subject to the order in question, that fact.”.

Commencement Information

I4 S. 55 in force at 15.9.2017 for specified purposes by S.S.I. 2017/234, **art. 2(1)(b)**(3) (with arts. 5-8)

I5 S. 55 in force at 30.9.2017 in so far as not already in force by S.S.I. 2017/234, **art. 2(2)(a)**

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.".

Commencement Information

I6 S. 56 in force at 15.9.2017 for specified purposes by S.S.I. 2017/234, **art. 2(1)(c)**

I7 S. 56 in force at 30.9.2017 in so far as not already in force by S.S.I. 2017/234, **art. 2(2)(a)**

Changes to legislation:
There are currently no known outstanding effects for the Mental Health (Scotland) Act 2015, Cross Heading: Information and representations.