

**Substance Addiction (Compulsory Assessment and Treatment) Act 2017:
SECTION 29(c): Application for review of compulsory status**

Note: All section references in this chapter are to the Substance Addiction (Compulsory Assessment and Treatment) Act 2017

PREAMBLE

- 1.1 Upon the filing of an application for a review under s29(c), the responsible clinician who makes the application must, as soon as practicable, serve the application and the documents specified in paragraph 12.2 on the patient and the District Inspector. The responsible clinician must also take reasonable steps to provide copies of the application and the documents to every other person entitled to appear and be heard on the application pursuant to s71 of the Act. The documents specified in paragraphs 12.2 and 12.3 below must also accompany the application filed in Court.
- 1.2 The documents to be served with the application are:
- (a) The patient's compulsory treatment certificate pursuant to s 23;
 - (b) A copy of the treatment plan prepared for the patient;
 - (c) A statement of the nature of the compulsory status;
 - (d) A statement of the right of the person receiving the documents to appear before the court and be heard on the application.
- 1.3 When the application for review is filed, the responsible clinician shall also provide to the Judge and any lawyer representing the patient, (prior to the interview):
- (a) Details of any other person the responsible clinician believes may assist in the assessment of the patient's condition: and
 - (b) Copies of the following documents:
 - i. Application for assessment pursuant to s 14;
 - ii. Certificate of medical practitioner pursuant to s 17(2);
 - iii. Memorandum by the authorised officer (where relevant) pursuant to s 18;
 - iv. Notice to attend an assessment examination pursuant to s 19(2)(c);
 - v. Notice to patient requiring admission to treatment centre pursuant to ss 25 and 30(3)(a).

INTERVIEW

- 1.4 When the application for review is received by the Court, a Judge must interview the patient as soon as practicable and no later than seven days after the application is filed (see Appendix A).
- 1.5 The interview, and where necessary, the hearing, shall take place by video link unless the Judge is satisfied that it is not practicable to do so. The Principal Family Court Judge shall be responsible for liaising with the Ministry of Justice official responsible for managing the Family Court resources to ensure that video link facilities are available in appropriate Court locations to which Family Court Judges may be rostered to consider applications of this type.

- 1.6 Once the date for the interview, and if necessary, the hearing, has been set, the responsible clinician shall advise the patient and where relevant and appropriate, other persons referred to in s71 of the Act of the date, time and place of the interview (see Appendix A).
- 1.7 At the Judge's interview, the responsible clinician is to be available for consultation and it will be their responsibility to arrange for the attendance of any other person the Judge thinks fit pursuant to s75(5).
- 1.8 Where appropriate and practicable, s 75(4) requires the Judge to do the following before and during the interview:
 - (a) Identify himself or herself to the patient; and
 - (b) Explain to the patient the purpose of the interview; and
 - (c) Discuss with the patient: the patient's situation, the proposed course of treatment and the patient's views on these matters.
- 1.9 As well as interviewing the patient, the Judge must then consult the responsible clinician and anyone else the Judge sees fit concerning the patient's condition. The presiding Judge will lead the inquiry and invite such questions or contributions that will, in the Judge's opinion, facilitate the inquiry.
- 1.10 Information received at the interview and any subsequent hearing, will not be on oath but all proceedings shall be recorded. The Judge's decision is to be recorded on a standardised form, (of a distinctive colour, readily noticeable on the file) and where appropriate, formal reasons are to be given in writing.
- 1.11 Pursuant to s 75(6), if the Judge is not satisfied that the criteria for compulsory treatment are met at the conclusion of the interview, the Judge must order the patient to be released from compulsory status and the application for review shall be dismissed.

HEARING

- 1.12 If the Judge is satisfied that the criteria for compulsory treatment have been met, the Judge can either:
 - (a) Proceed immediately to hear the application for review pursuant to s29(c) of the Act; or
 - (b) Adjourn the application to a hearing date that is not greater than 10 days after the application was filed; unless pursuant to s31(3) the Judge is satisfied that it is not practicable to determine the application within a period of 10 days. In these instances, the Judge may specify a period of up to 20 days after the date on which the application is filed provided the patient is older than 18 years of age and the Judge has interviewed the patient pursuant to s75. If the application is not finally determined before the expiry of the prescribed period, the application must be dismissed and the patient must be released from compulsory status pursuant to s 31(4) of the Act
- 1.13 The hearing shall be conducted in the same manner as the interview, (see paragraphs 12.8 to 12.11). Those entitled to appear and be heard at the hearing are referred to in s 71 (see Appendix A).
- 1.14 The patient must be present throughout the hearing of an application unless the Court excuses the patient from attending the hearing. The Court may excuse the patient at any stage if satisfied that:

- (a) Pursuant to s 76(2), the patient wholly lacks the capacity to understand the nature and purpose of the proceedings, or that attendance or continued attendance is likely to cause the patient serious mental, emotional or physical harm; or
 - (b) Pursuant to s76(3), the patient is causing a disturbance that makes it impracticable to continue with the hearing in his or her presence.
- 1.15 If the patient wishes to address the Court and is capable of so doing, the Judge may ask those persons referred to in s77(3) of the Act to withdraw from the hearing (see Appendix A).
- 1.16 Pursuant to s78(1), the Court may request a report in writing from any person it considers qualified to do soon any relevant aspect of the patient's condition. Before making such a request, the Judge must hear from any party or parties affected.
- 1.17 The Registrar must give a copy of the s 78 report to the lawyers for the parties or, if a party is not represented by a lawyer, to that party.
- 1.18 If a s 78 report is requested, the Court must consider the issue of reimbursement of the fees and expenses of the report writer pursuant to s 78(7).
- 1.19 If the Judge is satisfied that no person wishes to be heard in respect of the application, the application may be determined without a formal hearing.

COMMENCEMENT DATE

This practice note comes into operation on 27 November 2017



Laurence Ryan
Principal Family Court Judge

Dated 27 / 11 / 17

1 APPLICATIONS TO BE CONSIDERED WITHIN PRESCRIBED PERIOD (s31)

- 1.1 Applications under s 29(c) of the Substance Addiction (Compulsory Assessment and Treatment) Act 2017 must be considered within the prescribed period:
- 1.2 The prescribed period is:
- (a) Section 31 (2): 10 days after the date the application is filed in court; or
 - (b) Section 31(3): Where the patient is older than 18 years of age, the Judge may specify a period of up to 20 days after the date on which the application is filed if the Judge:
 - (i) Has interviewed the patient pursuant to s 75; and
 - (ii) Is satisfied that it is not practical to determine the application within 10 days

2 THOSE PERSONS ENTITLED TO APPEAR AND BE HEARD AT HEARINGS (s71)

- 2.1 The following persons may appear and be heard at every hearing of an application:
- (a) The parties,
 - (b) The patient's principal caregiver,
 - (c) The patient's welfare guardian,
 - (d) The patient's nominated person,
 - (e) If the patient is a child or young person, each parent or guardian of the child or young person,
 - (f) Any lawyer of the patient,
 - (g) The person who applied, under s 14, to have the patient assessed:
 - (i) Section 14: An applicant who is at least 18 years of age that has applied to the Area Director to have the person assessed under Part 2 of the Act,
 - (h) The medical practitioner who usually attended the patient immediately before the patient was required to undergo compulsory treatment,
 - (i) The Area Director,
 - (j) The responsible District Inspector,
 - (k) Any other person the Court considers should be entitled to appear and be heard because of that person's interest in the welfare of the patient.
- 2.2 The attendance of these persons is subject to s 77(3). While the patient is addressing the Court, the Court may require certain persons to withdraw from the hearing if it thinks it is desirable to do so:
- (a) a parent of the patient,
 - (b) a guardian of the patient,
 - (c) the patient's principal caregiver,
 - (d) the patient's welfare guardian,
 - (e) the patient's nominated person,
 - (f) the person who applied, under section 14, to have the patient assessed,
 - (g) a person with whom the patient was living before the patient became subject to compulsory status,
 - (h) the manager, or an employee or agent, of a treatment centre in which the patient is, or has been, detained.
 - (i) a lawyer representing a person referred to in any of paragraphs (a) to (h).

**Substance Addiction (Compulsory Assessment and Treatment) Act 2017:
SECTION 34(1) Application for urgent review of patient's status**

Note: All section references in this chapter are to the Substance Addiction (Compulsory Assessment and Treatment) Act 2017.

- 1.1 Upon the filing of an application for urgent review under s34(1), the applicant must serve the application on the responsible clinician and the District Inspector and take reasonable steps to provide a copy of it to every other person entitled to appear and be heard on the application pursuant to s 73. Section 73(2) places an obligation on the Area Director to serve the documents if the application for review is by the patient.
- 1.2 When the application is received by the Court, section 75 stipulates that a Judge must interview the patient as soon as practicable and no later than 7 days after the application is filed.
- 1.3 The interview shall take place by video link unless the Judge is satisfied that it is not practicable to do so. The Principal Family Court Judge shall be responsible for liaising with the Ministry of Justice official responsible for managing the Family Court resources to ensure that video link facilities are available in appropriate Court locations to which Family Court Judges may be rostered to consider applications of this type.
- 1.4 Once the date for the interview has been set, the responsible clinician shall advise the applicant and where relevant and appropriate, other persons as defined in s71(1) of the date, time and place of the interview.
- 1.5 When the application is filed, the responsible clinician shall provide to the Judge and any lawyer representing the patient (prior to the interview): details of any other person the responsible clinician believes may assist in the assessment of the patient's condition and copies of the following documents:
 - (a) Application for assessment pursuant to s 14;
 - (b) Certificate of medical practitioner pursuant to s 17(2);
 - (c) Notice to attend an assessment examination pursuant to s 18;
 - (d) Compulsory treatment certificate, (if any);
 - (e) Compulsory treatment order, (if any);
 - (f) Notice to patient requiring admission to treatment centre, (if any);
 - (g) The treatment plan prepared for the patient;
 - (h) Any other documents relevant to the detention and future treatment of the patient.
- 1.6 At the Judge's interview, the responsible clinician is to be available for consultation and it will be their responsibility to arrange for the attendance of any other person the Judge thinks fit, pursuant to s75(5).
- 1.7 The interview shall take the form of an inquiry. Section 75(4) requires the Judge to do the following things before and during the interview, as appropriate and practicable:
 - (a) Identify himself or herself to the patient;
 - (b) Explain to the patient the purpose of the interview;
 - (c) Discuss with the patient the patient's situation, the proposed course of treatment and the patient's views on these matters.

- (d) As well as interviewing the patient, the Judge must then consult with the responsible clinician and anyone else the Judge thinks fit, concerning the patient's condition. The presiding Judge will lead the inquiry and invite such questions or contributions as will, in the Judge's opinion, facilitate the inquiry.
- 1.8 Information received at the interview will not be on oath but all proceedings shall be recorded. The Judge's decision is to be recorded on a standardised form (of a distinctive colour, readily noticeable on the file) and where appropriate, formal reasons are to be given in writing.
- 1.9 In the event that an application for an urgent review has previously been made, a Judge may decline to hear the application if there is no evidence before the Court to indicate that the condition of the patient has changed, pursuant to s 34(3). It will be for the responsible clinician to provide evidence that the patient's condition has not changed.
- 1.10 After completing the interview, the Judge must proceed immediately to consider the application for an urgent review of the patient's compulsory status.
- 1.11 The Judge is to determine whether in relation to the patient; the criteria for compulsory treatment are met. If not satisfied, the Judge must order that the patient be released from compulsory status pursuant to s 34(4)(b) of the Act.

COMMENCEMENT DATE

This practice note comes into operation on *27 November 2017*



Laurence Ryan
Principal Family Court Judge

Dated *27/11/17*

**Substance Addiction (Compulsory Assessment and Treatment) Act 2017:
SECTION 46(1): Extension of Compulsory Treatment Order**

Note: All section references in this chapter are to the Substance Addiction (Compulsory Assessment and Treatment) Act 2017.

- 1.1 The responsible clinician may apply to the Court for an extension of a compulsory treatment order under s46(1) if the criteria for compulsory treatment continue to be met and there are reasonable grounds to believe that the patient suffers from a brain injury.
- 1.2 Pursuant to s 46(2), the application must be made within 14 days before the date of expiry of the patient's compulsory treatment order. If the application is not determined before the expiry of the order, that order is extended to whichever date is earlier:
 - (a) The close of day on which the application is determined or withdrawn; or
 - (b) The close of the 14th day after the date the compulsory treatment order would have expired.
- 1.3 The responsible clinician who files the application must, as soon as practicable, serve the application and documents specified under paragraph 12.4 on the patient and the District Inspector. The responsible clinician must also take reasonable steps to provide copies of these documents to every other person entitled to appear and be heard on the application pursuant to s71 of the Act.
- 1.4 The documents to be served with the application are:
 - (a) The patient's extended compulsory treatment certificate;
 - (b) A copy of the responsible clinicians report prepared pursuant to s 45(2) of the Act;
 - (c) A statement on the nature of an extended compulsory treatment order;
 - (d) A statement of the right of the person receiving the documents to appear before the court and be heard on the application.
- 1.5 The hearing shall take the form of an inquiry. Where appropriate and practicable, s 75(4) requires the Judge to do the following before and during the hearing:
 - (a) Identify himself or herself to the patient; and
 - (b) Explain to the patient the purpose of the hearing; and
 - (c) Discuss with the patient the patient's situation, the proposed course of treatment and the patient's views on these matters.
- 1.6 The hearing, shall take place by video link unless the Judge is satisfied that it is not practicable to do so. The Principal Family Court Judge shall be responsible for liaising with the Ministry of Justice official responsible for managing the Family Court resources to ensure that video link facilities are available in appropriate Court locations to which Family Court Judges may be rostered to consider applications of this type.
- 1.7 The patient must be present throughout the hearing of an application unless the court is excused under s 76. The Court may excuse the patient from attending the hearing at any stage if satisfied that:
 - (a) The patient wholly lacks the capacity to understand the nature and purpose of the proceedings, or that attendance or continued attendance is likely to cause the patient serious mental, emotional or physical harm; or

- (b) The patient is causing a disturbance that makes it impracticable to continue with the hearing in his or her presence.
- 1.8 If the patient wishes to address the Court and is capable of so doing, the Court has discretion to ask those persons referred to in s77(3) of the Act to withdraw from the hearing.
- 1.9 At the hearing, the Judge must consult the responsible clinician and anyone else the Judge thinks fit, concerning the patient's condition. The presiding Judge will lead the inquiry and invite such questions or contributions as will, in the Judge's opinion, facilitate the inquiry.
- 1.10 Information received at the hearing need not be on oath, but all proceedings shall be recorded. The Judge's decision is to be recorded on a standardised form (of a distinctive colour, readily noticeable on the file) and where appropriate, formal reasons are to be given in writing.

COMMENCEMENT DATE

This practice note comes into operation on *27 November 2017*



Laurence Ryan
Principal Family Court Judge

Dated *27/11/17*