

MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10 - Compulsion Orders and Restriction Orders

Chapter 2: review of orders

Proceedings before Tribunal

Section 193: powers of Tribunal on reference under section 185(1), 187(2) or 189(2) or application under section 191 or 192(2)

347. [Section 193](#) sets out the powers of the Tribunal on an application by the Scottish Ministers under section 191, an application by a patient or a patient's named person under section 192(2) or a reference by the Scottish Ministers under section 185(1), 187(2) or 189(2). Before making a decision, the Tribunal must hold a hearing and allow the persons listed in subsection (9) the opportunity to make representations and give evidence.
348. Under subsection (2), where the Tribunal is satisfied that the patient has a mental disorder and that the effect of the mental disorder makes it necessary, in order to protect others from serious harm, that the patient continues to be detained in hospital, whether for treatment or not, the Tribunal shall make no order. The compulsion order and restriction order continue to have effect.
349. Under subsection (3), where the Tribunal is not satisfied that the patient has a mental disorder it must revoke the compulsion order. Under subsection (4), where the Tribunal is satisfied that there is a mental disorder but it is not satisfied that the effect of that disorder makes it necessary, in order to protect others from serious harm, for the patient to continue to be detained in hospital and is not satisfied that the criteria in section 182(4)(b) and (c) are met, it shall revoke the compulsion order.
350. Under subsection (5), where the Tribunal is satisfied that the conditions in section 182(4) continue to be met and that it is necessary for the patient to be subject to the compulsion order but it is not satisfied that the patient needs to be detained in hospital in order to protect others from serious harm and that the restriction order is no longer necessary, the Tribunal shall revoke the restriction order.
351. Subsection (6) provides the circumstances when the Tribunal can vary the measures authorised by a compulsion order.
352. Under subsection (7), where the Tribunal is satisfied that the compulsion order and restriction order continue to be necessary, but is not satisfied that as a result of the patient's mental disorder, it is necessary to continue to detain the patient in hospital in order to protect any other person from serious harm, it can conditionally discharge the patient, imposing whatever conditions it sees fit.

*These notes relate to the Mental Health (Care and Treatment) (Scotland)
Act 2003 (asp 13) which received Royal Assent on 25 April 2003*

353. Subsection (10) repeats the effect of sections 64(C1) and 66(1C) of the 1984 Act. Section 102 of the National Health Service (Scotland) Act 1978 (as amended) states that state hospitals must be provided for persons detained under the 2003 Act or the 1995 Act who *require medical treatment* under conditions of special security. The Tribunal may decide under this section to make no order (and so continue the compulsion order and restriction order) because the patient must be kept in hospital, even if the practical effect is that the patient will be detained in a state hospital.