



# Mental Health (Care and Treatment) (Scotland) Act 2003

## 2003 asp 13

### PART 10

#### COMPULSION ORDERS AND RESTRICTION ORDERS

#### CHAPTER 2

#### REVIEW OF ORDERS

#### *Scottish Ministers' duty to keep orders under review*

#### **188 Duty of Scottish Ministers to keep compulsion order and restriction order under review**

- (1) This section applies where a patient is subject to a compulsion order and a restriction order.
- (2) Without prejudice to the duties imposed on the Scottish Ministers by sections 185(1), 187(2) and 189(2) of this Act, the Scottish Ministers shall from time to time consider—
  - (a) whether the conditions mentioned in section 182(4) of this Act continue to apply in respect of the patient;
  - (b) whether, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment;
  - (c) whether it continues to be necessary for the patient to be subject to the compulsion order; and
  - (d) whether it continues to be necessary for the patient to be subject to the restriction order.
- (3) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2) above, the Scottish Ministers are not satisfied that the patient has a mental disorder, they shall apply to the Tribunal under section 191 of this Act for an order under section 193 of this Act revoking the compulsion order.

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Scottish Ministers' duty to keep orders under review is up to date with all changes known to be in force on or before 22 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (4) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2) above, the Scottish Ministers—
- (a) are satisfied that the patient has a mental disorder; but
  - (b) are not satisfied—
    - (i) that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
    - [<sup>F1</sup>(ii) either—
      - (A) that the conditions mentioned in paragraphs (b) and (c) of section 182(4) of this Act continue to apply in respect of the patient; or
      - (B) that it continues to be necessary for the patient to be subject to the compulsion order,]

they shall, as soon as practicable after considering those matters, apply to the Tribunal under section 191 of this Act for an order under section 193 of this Act revoking the compulsion order.
- (5) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2) above, the Scottish Ministers—
- (a) are satisfied—
    - (i) that the conditions mentioned in section 182(4) of this Act continue to apply in respect of the patient; and
    - (ii) that it continues to be necessary for the patient to be subject to the compulsion order; but
  - (b) are not satisfied—
    - (i) that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
    - (ii) that it continues to be necessary for the patient to be subject to the restriction order,

they shall apply to the Tribunal under section 191 of this Act for an order under section 193 of this Act revoking the restriction order.
- (6) Where the Scottish Ministers—
- (a) apply, by virtue of subsection (5) above, for an order revoking the restriction order; and
  - (b) are satisfied that the compulsion order should be varied by modifying the measures specified in it,
- they shall apply to the Tribunal under section 191 of this Act for an order under section 193 of this Act varying the compulsion order in that way.
- (7) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2) above, the Scottish Ministers—
- (a) are satisfied—
    - (i) that the conditions mentioned in section 182(4) of this Act continue to apply in respect of the patient; and
    - (ii) that it continues to be necessary for the patient to be subject to the compulsion order and the restriction order; but

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- (b) are not satisfied that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment,
- they may apply to the Tribunal under section 191 of this Act for an order under section 193 of this Act conditionally discharging the patient.

#### Textual Amendments

- F1** S. 188(4)(b)(ii) substituted (22.3.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. [69\(3\)](#), [79\(2\)](#)

#### Commencement Information

- II** S. 188 in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

### 189 Reference to Tribunal by Scottish Ministers

- (1) This section applies where a patient is subject to a compulsion order and a restriction order.
- (2) If—
- (a) during the period of 2 years ending with the relevant day—
    - (i) no reference under section 185(1) or 187(2) of this Act has been [<sup>F2</sup>determined by] the Tribunal; and
    - (ii) no application under section 191 or 192(2) of this Act has been [<sup>F2</sup>determined by] the Tribunal; and
  - (b) during each period of 2 years ending with the anniversary, in every year thereafter, of the relevant day—
    - (i) no reference such as is mentioned in paragraph (a)(i) above or, subject to subsection (3) below, under this subsection has been [<sup>F2</sup>determined by] the Tribunal; and
    - (ii) no application such as is mentioned in paragraph (a)(ii) above has been [<sup>F2</sup>determined by] the Tribunal,

the Scottish Ministers shall make a reference to the Tribunal in respect of the compulsion order and restriction order to which the patient is subject.
- (3) The Scottish Ministers shall, in considering, under subsection (2)(b)(i) above, whether a reference has been [<sup>F3</sup>determined by] the Tribunal during any 2 year period, leave out of account any reference made under subsection (2) above [<sup>F4</sup>that has been determined by it] during the first year of that 2 year period.
- (4) Where a reference is made under subsection (2) above, the Scottish Ministers shall, as soon as practicable, give notice that a reference is to be or, as the case may be, has been made to the persons mentioned in paragraphs (a) to (g) of section 185(2) of this Act.
- (5) A reference under subsection (2) above shall state—
- (a) the name and address of the patient;
  - (b) the name and address of the patient's named person; and
  - (c) the reason for making the reference.

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- (6) In subsection (2) above, the “relevant day” means the day which falls 2 years after the day on which the compulsion order is made.

#### Textual Amendments

- F2** Words in s. 189(2) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 21(3)(a), 61(2)**; [S.S.I. 2017/197, art. 2, sch.](#) (with [art. 12\(b\)](#))
- F3** Words in s. 189(3) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 21(3)(b)(i), 61(2)**; [S.S.I. 2017/197, art. 2, sch.](#) (with [art. 12\(b\)](#))
- F4** Words in s. 189(3) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 21(3)(b)(ii), 61(2)**; [S.S.I. 2017/197, art. 2, sch.](#) (with [art. 12\(b\)](#))

#### Modifications etc. (not altering text)

- C1** S. 189(6) excluded (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Transitional and Savings Provisions\) Order 2005 \(S.S.I. 2005/452\)](#), **arts. 1, 20(3)**

#### Commencement Information

- I2** S. 189 in force at 5.10.2005 by [S.S.I. 2005/161, art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375](#), [art. 2](#) and as amended (22.9.2005) by [S.S.I. 2005/459](#), [art. 2](#))

### 190 Application by Scottish Ministers: notification

Where, by virtue of section 188 of this Act, an application is to be made under section 191 of this Act, the Scottish Ministers shall, as soon as practicable after the duty to make the application arises, give notice to the persons mentioned in paragraphs (a) to (g) of section 185(2) of this Act that the application is to be or, as the case may be, has been made.

#### Commencement Information

- I3** [S. 190](#) in force at 5.10.2005 by [S.S.I. 2005/161, art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375](#), [art. 2](#) and as amended (22.9.2005) by [S.S.I. 2005/459](#), [art. 2](#))

### 191 Application to Tribunal

An application under this section to the Tribunal by the Scottish Ministers for an order under section 193 of this Act—

- (a) shall state—
- (i) the name and address of the patient;
  - (ii) the name and address of the patient’s named person;
  - (iii) the order (or orders) sought;
  - (iv) the modification of the measures specified in the compulsion order that is proposed by the Scottish Ministers; and
  - (v) the reasons for seeking that modification; and
- (b) shall be accompanied by such documents as may be prescribed by regulations.

#### Commencement Information

- I4** S. 191 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161, art. 2, Sch. 1](#)

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- 15** [S. 191](#) in force at 5.10.2005 in so far as not already in force by [S.S.I. 2005/161, art. 3](#) (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 64(8A)(8B) inserted by [2015 asp 9 s. 1\(2\)](#)
- s. 65(7) inserted by [2015 asp 9 s. 1\(3\)](#)