



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

2003 asp 13

PART 11

HOSPITAL DIRECTIONS AND TRANSFER FOR TREATMENT DIRECTIONS

Reference to Tribunal by Scottish Ministers

209 Commission's power to require Scottish Ministers to make reference to Tribunal

- (1) This section applies where a patient is subject to—
 - (a) a hospital direction; or
 - (b) a transfer for treatment direction.
- (2) If it appears to the Commission that it is appropriate to do so, it may, by notice in writing to the Scottish Ministers, require them to make a reference to the Tribunal in respect of the direction to which the patient is subject.
- (3) Where, under subsection (2), the Commission gives notice to the Scottish Ministers, the Commission shall include in that notice its reasons for requiring the Scottish Ministers to make the reference.

Commencement Information

- II** S. 209 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)

210 Duty of Scottish Ministers on receiving report from responsible medical officer

- (1) This section applies where a patient's responsible medical officer submits to the Scottish Ministers—
 - (a) a report under section 207(2) of this Act that includes a recommendation; or
 - (b) a report under section 208(3) or (4) of this Act.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Reference to Tribunal by Scottish Ministers is up to date with all changes known to be in force on or before 25 May 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*

- (2) If, having considered the matters mentioned in paragraphs (a) to (c) of section 212(2) of this Act, the Scottish Ministers—
- (a) are not satisfied that the patient has a mental disorder; or
 - (b) are so satisfied but 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
 - [^{F1}(ii) either—
 - (A) that the conditions mentioned in paragraph (b) and (c) of section 206(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 direction,]
- the Scottish Ministers shall revoke the direction to which the patient is subject.
- (3) Where the Scottish Ministers do not, under subsection (2) above, revoke the direction to which the patient is subject, they shall make a reference to the Tribunal in respect of the direction.
- (4) Where a reference is made under subsection (3) above, the Scottish Ministers shall, as soon as practicable, give notice that a reference is to be made to—
- (a) the patient;
 - (b) the patient’s named person;
 - (c) any guardian of the patient;
 - (d) any welfare attorney of the patient;
 - (e) the patient’s responsible medical officer;
 - (f) the mental health officer; and
 - (g) the Commission.
- (5) A reference under subsection (3) 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 recommendation made by the responsible medical officer.
- (6) Nothing in section 102 (state hospitals) of the National Health Service (Scotland) Act 1978 (c. 29) prevents or restricts the detention of a patient in a state hospital as a result of a decision under this section by the Scottish Ministers not to revoke the direction to which the patient is subject.

Textual Amendments

- F1** S. 210(2)(b)(ii) substituted (22.3.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. 70(3), 79(2)

Commencement Information

- I2** S. 210 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)

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Reference to Tribunal by Scottish Ministers is up to date with all changes known to be in force on or before 25 May 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*

211 Notice under section 209(2): reference to Tribunal

- (1) This section applies where, under section 209(2) of this Act, the Commission gives notice to the Scottish Ministers.
- (2) The Scottish Ministers shall, as soon as practicable after receiving notice under section 209(2) of this Act, make a reference to the Tribunal in respect of the direction to which the patient is subject.
- (3) 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 made to the persons mentioned in paragraphs (a) to (g) of section 210(4) of this Act.
- (4) 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 given by the Commission in the notice under section 209(2) of this Act for requiring the Scottish Ministers to make the reference.

Commencement Information

- I3** [S. 211](#) 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](#))

Changes to legislation:

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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\(3\)](#)