



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

2003 asp 13

PART 11

HOSPITAL DIRECTIONS AND TRANSFER FOR TREATMENT DIRECTIONS

Scottish Ministers' duty to keep directions under review

212 Duty of Scottish Ministers to keep directions under review

- (1) This section applies where a patient is subject to—
 - (a) a hospital direction; or
 - (b) a transfer for treatment direction.
- (2) Without prejudice to the duties imposed on the Scottish Ministers by sections 210(2) and (3), 211(2) and 213(2) of this Act, the Scottish Ministers shall from time to time consider—
 - (a) whether the conditions mentioned in section 206(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; and
 - (c) whether it continues to be necessary for the patient to be subject to the direction.
- (3) If, having considered the matters mentioned in paragraphs (a) to (c) of subsection (2) above, the Scottish Ministers are not satisfied that the patient has a mental disorder, they shall revoke the direction.
- (4) If, having considered the matters mentioned in paragraphs (a) to (c) of subsection (2) above, the Scottish Ministers—
 - (a) are satisfied that the patient has a mental disorder; but
 - (b) are not satisfied—

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Scottish Ministers' duty to keep directions under review 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*

- (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,]
- they shall revoke the direction.
- (5) 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. 212(4)(b)(ii) substituted (22.3.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. 70(4), 79(2)

Commencement Information

- II** S. 212 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)

213 Reference to Tribunal by Scottish Ministers

- (1) This section applies where a patient is subject to—
- (a) a hospital direction; or
- (b) a transfer for treatment direction.
- (2) If—
- (a) during the period of 2 years ending with the relevant day—
- (i) no reference under section 210(3) or 211(2) of this Act has been [^{F2}determined by] the Tribunal; and
- (ii) no application under section 214(2) of this Act has been [^{F2}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 [^{F2}determined by] the Tribunal; and
- (ii) no application such as is mentioned in paragraph (a)(ii) above has been [^{F2}determined by] the Tribunal,
- the Scottish Ministers shall make a reference to the Tribunal in respect of the direction to which the patient is subject.
- (3) The Scottish Ministers shall, in considering, under subsection (2)(b)(i) above, whether a reference has been [^{F3}determined by] the Tribunal during any 2 year period, leave out

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of account any reference made under subsection (2) above [F4 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 made to the persons mentioned in paragraphs (a) to (g) of section 210(4) 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.
- (6) In subsection (2) above, the “relevant day” means the day which falls 2 years after the day on which the direction is made.

Textual Amendments

- F2** Words in s. 213(2) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 21(4)(a)**, 61(2); S.S.I. 2017/197, art. 2, sch. (with art. 12(c))
- F3** Words in s. 213(3) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 21(4)(b)(i)**, 61(2); S.S.I. 2017/197, art. 2, sch. (with art. 12(c))
- F4** Words in s. 213(3) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 21(4)(b)(ii)**, 61(2); S.S.I. 2017/197, art. 2, sch. (with art. 12(c))

Modifications etc. (not altering text)

- C1** S. 213(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, **29(3)**
- C2** S. 213(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, **25(1)**

Commencement Information

- I2** S. 213 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\(3\)](#)