



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

2003 asp 13

PART 11

HOSPITAL DIRECTIONS AND TRANSFER FOR TREATMENT DIRECTIONS

Preliminary

205 Mental health officer's duty to identify named person

- (1) This section applies where—
 - (a) a hospital direction; or
 - (b) a transfer for treatment direction,is made in respect of a patient.
- (2) The mental health officer shall, as soon as practicable after the direction is made, take such steps as are reasonably practicable to ascertain the name and address of the patient's named person.

Review of directions

206 Review of hospital direction and transfer for treatment direction

- (1) This section applies where a patient is subject to—
 - (a) a hospital direction; or
 - (b) a transfer for treatment direction.
- (2) The patient's responsible medical officer shall, during the period of 2 months ending with the relevant day, carry out a review in respect of the direction by complying with the requirements set out in subsection (3) below.
- (3) Those requirements are—
 - (a) to—
 - (i) carry out a medical examination of the patient; or

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- (ii) make arrangements for an approved medical practitioner to carry out such a medical examination;
 - (b) to consider—
 - (i) whether the conditions mentioned in subsection (4) below continue to apply in respect of the patient;
 - (ii) 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
 - (iii) whether it continues to be necessary for the patient to be subject to the direction; and
 - (c) to consult—
 - (i) the mental health officer; and
 - (ii) such other persons as the responsible medical officer considers appropriate.
- (4) Those conditions are—
- (a) that the patient has a mental disorder;
 - (b) that medical treatment which would be likely to—
 - (i) prevent the mental disorder worsening; or
 - (ii) alleviate any of the symptoms, or effects, of the disorder,
 is available for the patient; and
 - (c) that if the patient were not provided with such medical treatment there would be a significant risk—
 - (i) to the health, safety or welfare of the patient; or
 - (ii) to the safety of any other person.
- (5) In subsection (2) above, the “relevant day” means—
- (a) the day which falls 12 months after the day on which the direction is made; or
 - (b) where that relevant day has passed, the day falling on the same day in every year thereafter.

Consequences of review

207 Responsible medical officer’s report following review of direction

- (1) This section applies where a patient’s responsible medical officer carries out a review under section 206(2) of this Act.
- (2) The responsible medical officer shall, as soon as practicable after carrying out that review, submit a report in accordance with subsection (3) below to the Scottish Ministers.
- (3) That report shall record the responsible medical officer’s views as to—
 - (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.

- (4) If, after having regard to any views expressed by persons consulted under section 206(3)(c) of this Act, the responsible medical officer is not satisfied that the patient has a mental disorder, the responsible medical officer shall include in the report submitted to the Scottish Ministers under subsection (2) above a recommendation that the direction be revoked.
- (5) If, after having regard to any views expressed by persons consulted under section 206(3)(c) of this Act, the responsible medical officer—
 - (a) is satisfied that the patient has a mental disorder; but
 - (b) is 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 the conditions mentioned in paragraphs (b) and (c) of section 206(4) of this Act continue to apply in respect of the patient,the responsible medical officer shall include in the report submitted to the Scottish Ministers under subsection (2) above a recommendation that the direction be revoked.

Responsible medical officer’s duty to keep directions under review

208 Responsible medical officer’s duty 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 duty imposed on the patient’s responsible medical officer by section 206(2) of this Act, the responsible medical officer 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 responsible medical officer is not satisfied that the patient has a mental disorder, the responsible medical officer shall, as soon as practicable after considering those matters, submit to the Scottish Ministers a report complying with the requirements set out in section 207(3) of this Act and including a recommendation that the direction be revoked.
- (4) If, having considered the matters mentioned in paragraphs (a) to (c) of subsection (2) above, the responsible medical officer—
 - (a) is satisfied that the patient has a mental disorder; but
 - (b) is not satisfied—

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- (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 the conditions mentioned in paragraphs (b) and (c) of section 206(4) of this Act continue to apply in respect of the patient,
- the responsible medical officer shall, as soon as practicable after considering those matters, submit to the Scottish Ministers a report complying with the requirements set out in section 207(3) of this Act and including a recommendation that the direction be revoked.

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.

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.
- (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
 - (ii) that the conditions mentioned in paragraphs (b) and (c) of section 206(4) of this Act continue to apply in respect of the patient,

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.

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.

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;

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- (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—
 - (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 the conditions mentioned in paragraphs (b) and (c) of section 206(4) of this Act continue to apply in respect of the patient,
 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.

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 made to the Tribunal; and
 - (ii) no application under section 214(2) of this Act has been made to 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 made to the Tribunal; and
 - (ii) no application such as is mentioned in paragraph (a)(ii) above has been made to 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 made to the Tribunal during any 2 year period, leave out of

account any reference made under subsection (2) above 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.

Application by patient etc.

214 Application to Tribunal by patient and named person

- (1) This section applies where a patient is subject to—
 - (a) a hospital direction; or
 - (b) a transfer for treatment direction.
- (2) Each of the persons mentioned in subsection (3) below may, subject to subsections (4) to (6) below, make an application under this section to the Tribunal for the revocation of the direction to which the patient is subject.
- (3) Those persons are—
 - (a) the patient; and
 - (b) the patient’s named person.
- (4) Where a patient is subject to a hospital direction, an application under this section may not be made before the expiry of the period of 6 months beginning with the day on which the direction was made.
- (5) Where a patient is subject to a transfer for treatment direction, an application under this section—
 - (a) may be made during the period of 12 weeks beginning with the day on which the direction is made; but
 - (b) otherwise may not be made before the expiry of the period of 6 months beginning with the day on which the direction was made.
- (6) Neither of the persons mentioned in subsection (3) above may make more than one application under this section during—
 - (a) the period of 12 months beginning with the day on which the direction was made; or
 - (b) any subsequent period of 12 months that begins with or with an anniversary of the expiry of the period of 12 months mentioned in paragraph (a) above.
- (7) Where a patient’s named person makes an application under subsection (2) above, the named person shall give notice to the patient of the making of the application.

Proceedings before Tribunal

215 Powers of Tribunal on reference under section 210(3), 211(2) or 213(2) or on application under section 214(2)

- (1) This section applies where—
 - (a) a reference is made under section 210(3), 211(2) or 213(2) of this Act; or
 - (b) an application is made under section 214(2) of this Act.
- (2) If the Tribunal is satisfied—
 - (a) that the patient has a mental disorder; and
 - (b) 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,
 it shall make no direction to the Scottish Ministers under this section.
- (3) If the Tribunal is not satisfied that the patient has a mental disorder, it shall direct the Scottish Ministers to revoke the direction to which the patient is subject.
- (4) If the Tribunal—
 - (a) is satisfied that the patient has a mental disorder; but
 - (b) is 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 the conditions mentioned in paragraphs (b) and (c) of section 206(4) of this Act continue to apply in respect of the patient,
 the Tribunal shall direct the Scottish Ministers to revoke the direction to which the patient is subject.
- (5) The Scottish Ministers shall, if directed to do so by the Tribunal under subsection (3) or (4) above, revoke the direction to which the patient is subject.
- (6) Before making a decision under this section, the Tribunal shall—
 - (a) afford the persons mentioned in subsection (7) below the opportunity—
 - (i) of making representations (whether orally or in writing); and
 - (ii) of leading, or producing, evidence; and
 - (b) whether or not any such representations are made, hold a hearing.
- (7) Those persons are—
 - (a) the patient;
 - (b) the patient’s named person;
 - (c) the patient’s primary carer;
 - (d) any guardian of the patient;
 - (e) any welfare attorney of the patient;
 - (f) any curator *ad litem* appointed in respect of the patient by the Tribunal;
 - (g) the Scottish Ministers;
 - (h) the patient’s responsible medical officer;
 - (i) the mental health officer; and
 - (j) any other person appearing to the Tribunal to have an interest.

- (8) 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 Tribunal not to direct the Scottish Ministers to revoke the direction to which the patient is subject.

Effect of revocation of direction

216 Effect of revocation of direction

- (1) This section applies where, under section 210(2), 212(3) or (4) or 215(5) of this Act, the Scottish Ministers revoke—
- (a) a hospital direction; or
 - (b) a transfer for treatment direction.
- (2) Where the Scottish Ministers revoke a direction they shall direct that the patient be admitted to a prison, institution or other place in which the patient might have been detained had the patient not been detained in hospital by virtue of the direction.
- (3) The direction shall cease to have effect on the patient's admission to the prison, institution or place to which the patient is admitted by virtue of the direction under subsection (2) above.

Termination of direction on release of patient

217 Termination of hospital direction on release of patient

- (1) This section applies where a patient is subject to—
- (a) a hospital direction; or
 - (b) a transfer for treatment direction.
- (2) Where a patient is released under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9) or otherwise the direction to which the patient is subject shall cease to have effect.