



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

## 2003 asp 13

### PART 9

#### COMPULSION ORDERS

#### CHAPTER 2

#### REVIEW OF COMPULSION ORDERS

#### *Powers of Tribunal*

#### **166 Powers of Tribunal on review under section 165**

- (1) On the review of a determination under section 165 of this Act, the Tribunal may make an order under this section—
  - (a) revoking the determination;
  - (b) revoking both the determination and the compulsion order;
  - (c) confirming the determination; or
  - (d) confirming the determination and varying the compulsion order by modifying the measures specified in it.
- (2) Before making a decision under subsection (1) above, the Tribunal shall allow the persons mentioned in subsection (3) below the opportunity—
  - (a) of making representations (whether orally or in writing); and
  - (b) of leading, or producing, evidence.
- (3) Those persons are—
  - (a) the patient;
  - (b) the patient's named person;
  - (c) any guardian of the patient;
  - (d) any welfare attorney of the patient;
  - (e) the mental health officer;

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Powers of Tribunal 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*

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- (f) the patient's responsible medical officer;
- (g) the patient's primary carer;
- (h) any curator *ad litem* appointed in respect of the patient by the Tribunal; and
- (i) any other person appearing to the Tribunal to have an interest in the determination.

#### Commencement Information

- II** S. 166 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)

### 167 Powers of Tribunal on application under section 149, 158, 161, 163 or 164

- (1) Where an application is made under section 149 of this Act, the Tribunal may make an order—
  - (a) extending the compulsion order to which the application relates for the period mentioned in section 146(2) of this Act;
  - (b) refusing the application; or
  - (c) refusing the application and revoking the compulsion order.
- (2) Where an application is made under section 158 of this Act, the Tribunal may make an order—
  - (a) extending the compulsion order to which the application relates for the period mentioned in section 154(4) of this Act and varying the compulsion order by modifying the measures specified in it;
  - (b) extending the compulsion order for that period;
  - (c) refusing the application; or
  - (d) refusing the application and revoking the compulsion order.
- (3) Where an application is made under section 163 of this Act, the Tribunal may make an order—
  - (a) revoking the determination to which the application relates;
  - (b) revoking—
    - (i) the determination; and
    - (ii) the compulsion order to which the determination relates;
  - (c) confirming the determination; or
  - (d) confirming the determination and varying the compulsion order by modifying the measures specified in it.
- (4) Where an application is made under section 164(2)(a) of this Act, the Tribunal may make an order—
  - (a) revoking the compulsion order to which the application relates;
  - (b) varying the compulsion order by modifying the measures specified in it; or
  - (c) refusing the application.
- (5) Where an application is made under section 161 or 164(2)(b) of this Act, the Tribunal may make an order—
  - (a) varying the compulsion order to which the application relates by modifying the measures specified in it;

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- (b) refusing the application; or
  - (c) refusing the application and revoking that order.
- (6) Before making a decision under any of subsections (1) to (5) above, the Tribunal shall afford the persons mentioned in subsection (7) below the opportunity—
- (a) of making representations (whether orally or in writing); and
  - (b) of leading, or producing, evidence.
- (7) Those persons are—
- (a) the persons mentioned in section 166(3)[<sup>F1</sup>(a) to (h)] of this Act; and
  - (b) any other person appearing to the Tribunal to have an interest in the application.

#### Textual Amendments

- F1** Words in s. 167(7)(a) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(15)**

#### Commencement Information

- I2** S. 167 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)

### [<sup>F2</sup>167A Duties of Tribunal on application under section 164A

- (1) This section applies where an application is made under section 164A in respect of a patient.
- (2) If the Tribunal is satisfied that, without the provision of medical treatment of the kind mentioned in section 139(4)(b) to the patient, there would be a significant risk to the safety of other persons, it must refuse the application.
- (3) If the Tribunal is not satisfied as mentioned in subsection (2), it must determine that the disclosure period applicable to the compulsion order ends with immediate effect.
- (4) Before refusing an application under subsection (2) or making a determination under subsection (3), the Tribunal must afford the persons mentioned in subsection (5) the opportunity—
  - (a) of making representations (whether orally or in writing), and
  - (b) of leading, or producing, evidence.
- (5) Those persons are—
  - (a) the patient,
  - (b) the patient's named person,
  - (c) any guardian of the patient,
  - (d) any welfare attorney of the patient,
  - (e) the mental health officer,
  - (f) the patient's responsible medical officer,
  - (g) the patient's primary carer,
  - (h) any curator ad litem appointed in respect of the patient by the Tribunal, and
  - (i) any other person appearing to the Tribunal to have an interest in the application.

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(6) In this section and section 164A—

- (a) “disclosure period”, in relation to a compulsion order, is to be construed in accordance with the Rehabilitation of Offenders Act 1974,
- (b) references to the disclosure period applicable to a compulsion order are to be construed in accordance with section 5G(1) of that Act.]

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**Textual Amendments**

**F2** Ss. 167A, 167B inserted (30.11.2020) by [Management of Offenders \(Scotland\) Act 2019 \(asp 14\)](#), ss. **26(5)**, 63(2); S.S.I. 2020/245, reg. 2, sch. (with reg. 3)

**[<sup>F2</sup>167B Duty to notify outcome of applications under section 164A**

- (1) The Scottish Ministers may require the Tribunal to provide the information mentioned in subsection (3) in respect of a person.
- (2) Where a requirement is made under subsection (1), the Tribunal must, before the expiry of the period of 15 working days beginning with the day on which the requirement is made, provide the Scottish Ministers with the information.
- (3) The information is whether a refusal under subsection (2) of section 167A has been given, or a determination under subsection (3) of that section has been made, in relation to the person to whom the request relates.
- (4) In subsection (2), “working day” has the meaning given by section 47(8).]

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**Textual Amendments**

**F2** Ss. 167A, 167B inserted (30.11.2020) by [Management of Offenders \(Scotland\) Act 2019 \(asp 14\)](#), ss. **26(5)**, 63(2); S.S.I. 2020/245, reg. 2, sch. (with reg. 3)

**168 Interim extension etc. of order: application under section 149<sup>F3</sup> or 158]**

- (1) This section applies where an application is made under section 149<sup>F4</sup> or 158] of this Act.
- (2) Subject to section 170 of this Act, on the application of any person having an interest in the proceedings, or *ex proprio motu*, the Tribunal may, if it considers—
  - (a) that it will be unable to determine the application before the compulsion order to which the application relates ceases to authorise the measures specified in it; and
  - (b) that it is appropriate, pending its determining the application, to—
    - (i) extend the order; or
    - (ii) extend and vary the order by modifying the measures specified in it, make an interim order extending, or extending and varying, the compulsion order for such period not exceeding 28 days as may be specified in the order of the Tribunal.

**Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Powers of Tribunal 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

### Textual Amendments

- F3** Words in s. 168 inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(16)(a)**
- F4** Words in s. 168(1) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(16)(b)**

### Commencement Information

- I3** S. 168 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)

## 169 Interim variation of order following application, reference or review under Chapter

- (1) This section applies where—
- an application is made under section 149, 158, 161, 163 or 164 of this Act;
  - a reference is made under section 162 of this Act; or
  - the Tribunal is reviewing a determination under section 165 of this Act.
- (2) Subject to section 170 of this Act, on the application of any person having an interest in the proceedings, or *ex proprio motu*, the Tribunal may, if it considers that it is appropriate to do so pending its—
- determining the application or reference; or
  - making its decision on the review,
- make an interim order varying the compulsion order by modifying the measures specified in it for such period not exceeding 28 days as may be specified in the order of the Tribunal.

### Commencement Information

- I4** S. 169 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)

## 170 Limit on power of Tribunal to make interim order

The Tribunal may not make an interim order under section 168 or 169 of this Act if the effect of making the order would be that interim orders under either, or both, of those sections would be in force for a continuous period of more than 56 days.

### Commencement Information

- I5** S. 170 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)

## 171 Powers of Tribunal on reference under section 162

- (1) Where a reference is made under section 162 of this Act, the Tribunal may make an order—

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- (a) varying the compulsion order in respect of which the reference is made by modifying the measures specified in it; or
  - (b) revoking the compulsion order.
- (2) Before making an order under subsection (1) above, the Tribunal shall allow the persons mentioned in subsection (3) below the opportunity—
- (a) of making representations (whether orally or in writing); and
  - (b) of leading, or producing, evidence.
- (3) Those persons are—
- (a) the persons mentioned in section 166(3)[<sup>F5</sup>(a) to (h)] of this Act; and
  - (b) any other person appearing to the Tribunal to have an interest in the reference.

#### Textual Amendments

- F5** Words in s. 171(3)(a) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(17)**

#### Commencement Information

- I6** S. 171 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)

### 172 Tribunal's order varying compulsion order

<sup>F6</sup>... where the Tribunal makes an order under section 166, 167 or 171 of this Act varying a compulsion order, the Tribunal—

- (a) shall specify in its order the modifications made by its order to the measures specified in the compulsion order; and
- (b) may specify in its order measures other than those set out in the application to which its order relates.

#### Textual Amendments

- F6** Words in s. 172 repealed (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 2**

#### Commencement Information

- I7** S. 172 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)

### 173 Applications to Tribunal: ancillary powers

- (1) This section applies where—
- (a) an application is made to the Tribunal under section 149, 158, 161, 163 or 164 of this Act; or
  - (b) the Tribunal is, under section 165 of this Act, reviewing a determination.
- (2) Regulations may prescribe circumstances in which the Tribunal may require—
- (a) the patient's responsible medical officer; or
  - (b) the mental health officer,

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to prepare and submit to the Tribunal reports on such matters as may be prescribed.

**Commencement Information**

- 18** S. 173 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, **Sch. 1**
- 19** S. 173 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)

**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\(3\)](#)