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

2003 asp 13

PART 9

COMPULSION ORDERS

CHAPTER 2

REVIEW OF COMPULSION ORDERS

Mandatory reviews by responsible medical officer

139 First review of compulsion order

(1) This section applies where a relevant compulsion order is made in respect of a patient.

(2) The patient's responsible medical officer shall, during the appropriate period, carry out a review in respect of the compulsion order (such review being referred to in this Part of this Act as the "first review") by complying with the requirements in subsection (3) below.

(3) Those requirements are—

(a) to—

(i) carry out a medical examination of the patient; or

(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; and

(ii) whether it continues to be necessary for the patient to be subject to the compulsion order; and

(c) to consult—

(i) the mental health officer;

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

(ii) such persons as are mentioned in subsection (5) below as the responsible medical officer considers appropriate; and

(iii) 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) The persons referred to in subsection (3)(c)(ii) above are—

(a) persons who appear to the responsible medical officer to provide medical treatment of the kind that is recorded in the Part 9 care plan;

(b) if any community care services or relevant services are set out in that plan, persons who appear to the responsible medical officer to provide services of that kind;

(c) if any other treatment, care or service is set out in that plan, persons who appear to the responsible medical officer to provide treatment, care or a service of that kind.

(6) In subsection (2) above, "appropriate period" means the period of 2 months ending with the day on which the relevant compulsion order ceases to authorise the measures specified in it.

Modifications etc. (not altering text)

C1 S. 139(2) modified (3.11.2008) by Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008 (S.S.I. 2008/356), regs. 1(1), **33(2)**, (3)(c) (with reg. 2)

Commencement Information

I1 S. 139 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)

140 Further reviews of compulsion order

(1) This section applies where a relevant compulsion order is extended by virtue of an order under section 167 of this Act.

(2) The patient's responsible medical officer shall, during the period mentioned in subsection (3) below, carry out a review in respect of the compulsion order (such review being referred to in this Part of this Act as a "further review") by complying with the requirements in section 139(3) of this Act.

***Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

(3) The period referred to in subsection (2) above is the period of 2 months ending with the day on which the compulsion order, as extended by virtue of the order, ceases to authorise the measures specified in it.

Modifications etc. (not altering text)

C2 S. 140(2) modified (3.11.2008) by Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008 (S.S.I. 2008/356), regs. 1(1), **33(2)**, (3)(d) (with reg. 2)

Commencement Information

I2 S. 140 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)

Revocation of order by responsible medical officer or Commission

141 Responsible medical officer's duty to revoke compulsion order: mandatory reviews

(1) This section applies where a patient's responsible medical officer is carrying out—

(a) the first review of the relevant compulsion order to which the patient is subject; or

(b) a further review of that order.

(2) If, having regard to any views expressed by persons consulted under section 139(3)(c) of this Act for the purpose of the review being carried out, the responsible medical officer is not satisfied—

(a) that the conditions mentioned in section 139(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,

the responsible medical officer shall make a determination revoking the compulsion order.

(3) A determination under this section shall be made as soon as practicable after the duty to make it arises.

Commencement Information

I3 S. 141 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)

142 Revocation of compulsion order: responsible medical officer's duty to keep under review

(1) This section applies where a patient is subject to a relevant compulsion order.

(2) Without prejudice to the duties imposed on the patient's responsible medical officer by sections 139(2), 140(2), 141(2) and 159(2) of this Act, the responsible medical officer shall from time to time consider—

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

(a) whether the conditions mentioned in section 139(4) of this Act continue to apply in respect of the patient; and

(b) whether it continues to be necessary for the patient to be subject to a compulsion order.

(3) If, having considered the matters mentioned in paragraphs (a) and (b) of subsection (2) above, the responsible medical officer is not satisfied—

(a) that the conditions mentioned in section 139(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 a compulsion order,

the responsible medical officer shall make a determination revoking the compulsion order.

Commencement Information

I4 S. 142 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)

143 Commission's power to revoke compulsion order

(1) This section applies where a patient is subject to a relevant compulsion order.

(2) If the Commission is satisfied—

(a) that not all of the conditions mentioned in section 139(4) of this Act continue to apply in respect of the patient; or

(b) that it does not continue to be necessary for the patient to be subject to a compulsion order,

it may make a determination revoking the compulsion order.

Commencement Information

I5 S. 143 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)

144 Revocation of compulsion order: notification

(1) Where a patient's responsible medical officer makes a determination under section 141 or 142 of this Act, the responsible medical officer shall—

(a) give notice of the determination; and

(b) send a statement of the reasons for it,

to the Commission and to the persons mentioned in subsection (3) below.

(2) Where the Commission makes a determination under section 143 of this Act it shall—

(a) give notice of the determination; and

(b) send a statement of the reasons for it,

to the patient's responsible medical officer and to the persons mentioned in subsection (3) below.

***Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

(3) The persons referred to in subsections (1) and (2) above 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; and

(f) the Tribunal.

(4) Notice under subsection (1) or (2) above—

(a) to the persons mentioned in subsection (3)(a) to (d) above shall be given as soon as practicable after the determination is made and, in any event, before the expiry of the period of 7 days beginning with the day on which the determination is made; and

(b) to—

(i) the Commission;

(ii) the patient's responsible medical officer; and

(iii) the persons mentioned in subsection (3)(e) and (f) above,

shall be given before the expiry of the period of 7 days beginning with the day on which the determination is made.

Commencement Information

I6 S. 144 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)

Further steps to be taken where order not revoked

145 Mandatory reviews: further steps to be taken where compulsion order not revoked

(1) This section applies where a patient's responsible medical officer is carrying out—

(a) the first review of the relevant compulsion order to which the patient is subject; or

(b) a further review of that order.

(2) If, having regard to any views expressed by persons consulted under section 139(3)(c) of this Act for the purpose of the review being carried out, the patient's responsible medical officer is satisfied—

(a) that the conditions mentioned in section 139(4) of this Act continue to apply in respect of the patient; and

(b) that it continues to be necessary for the patient to be subject to a compulsion order,

the responsible medical officer shall comply with the requirements in subsection (3) below.

(3) Those requirements are—

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

(a) to consider whether it will continue to be necessary for the patient to be subject to a compulsion order after the day on which the order to which the patient is subject will cease (unless extended) to authorise the measures specified in it;

(b) to assess the needs of the patient for medical treatment;

(c) to consider—

(i) whether the compulsion order should be varied by modifying the measures specified in it;

(ii) if the order should be varied, what modification is appropriate; and

(d) to consider any views expressed on the matters mentioned in paragraphs (a) to (c) above by persons consulted under section 139(3)(c) of this Act.

Commencement Information

I7 S. 145 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)

Extension of order following first review

146 First review: responsible medical officer's duty where extension proposed

(1) This section applies where a patient's responsible medical officer is carrying out the first review of the relevant compulsion order to which the patient is subject.

(2) If, having regard to any views expressed by persons consulted under section 139(3)(c) of this Act, it appears to the responsible medical officer—

(a) that it will continue to be necessary for the patient to be subject to a compulsion order after the day on which the order will cease (unless extended) to authorise the measures specified in it; and

(b) that the compulsion order should not be varied by modifying the measures specified in it,

the responsible medical officer shall give notice to the mental health officer that the responsible medical officer is proposing to make an application under section 149 of this Act for an order under section 167 extending the compulsion order for the period of 6 months beginning with the day on which the compulsion order will cease (unless extended) to authorise the measures specified in it.

Commencement Information

I8 S. 146 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)

147 Proposed extension on first review: mental health officer's duties

(1) The mental health officer shall, as soon as practicable after receiving notice under section 146(2) of this Act, comply with the requirements in subsection (2) below.

(2) Those requirements are—

(a) subject to subsection (3) below, to interview the patient;

(b) to inform the patient—

***Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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 the patient's responsible medical officer is proposing to make an application under section 149 of this Act for an order under section 167 of this Act;

(ii) of the patient's rights in relation to such an application; and

(iii) of the availability of independent advocacy services under section 259 of this Act;

(c) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and

(d) to inform the patient's responsible medical officer—

(i) as to whether the mental health officer agrees, or disagrees, that the proposed application should be made;

(ii) if the mental health officer disagrees, of the reason why that is the case; and

(iii) of any other matters that the mental health officer considers relevant.

(3) If it is impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the mental health officer need not do so.

Commencement Information

I9 S. 147 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)

148 First review: responsible medical officer's duty to apply for extension of compulsion order

(1) This section applies where a patient's responsible medical officer is carrying out the first review of the relevant compulsion order to which the patient is subject.

(2) If, having regard to—

(a) any views expressed by persons consulted under section 139(3)(c) of this Act; and

(b) any views expressed by the mental health officer under section 147(2)(d) of this Act,

the responsible medical officer is satisfied as to the matters mentioned in section 146(2)(a) and (b) of this Act, the responsible medical officer shall comply with the requirement mentioned in subsection (3) below.

(3) The requirement referred to in subsection (2) above is to make an application to the Tribunal under section 149 of this Act for an order extending the compulsion order for the period of 6 months beginning with the day on which the order to which the patient is subject will cease (unless extended) to authorise the measures specified in it.

Commencement Information

I10 S. 148 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, Chapter 2 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*

149 Application to Tribunal for extension of order following first review

An application under this section to the Tribunal by a patient's responsible medical officer—

(a) shall state—

(i) the name and address of the patient;

(ii) the name and address of the patient's named person; and

(iii) whether the mental health officer agrees, or disagrees, that the application should be made, or has failed to comply with the duty imposed by section 147(2)(d)(i) of this Act; and

(b) shall be accompanied by such documents as may be prescribed by regulations.

Commencement Information

I11 S. 149 in force at 21.3.2005 for specified purposes by S.S.I. 2005/161, art. 2, **Sch. 1**

I12 S. 149 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)

Extension of order following further review

150 Further review: responsible medical officer's duty where extension proposed

(1) This section applies where a patient's responsible medical officer is carrying out a further review of the relevant compulsion order to which the patient is subject.

(2) If, having regard to any views expressed by persons consulted under section 139(3)(c) of this Act for the purpose of the review being carried out, it appears to the responsible medical officer—

(a) that it will continue to be necessary for the patient to be subject to a compulsion order after the day on which the order will cease (unless extended) to authorise the measures specified in it; and

(b) that the compulsion order should not be varied by modifying the measures specified in it,

the responsible medical officer shall give notice to the mental health officer that the responsible medical officer is proposing to make a determination under section 152 of this Act extending the order.

Commencement Information

I13 S. 150 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)

151 Proposed extension of order on further review: mental health officer's duties

(1) The mental health officer shall, as soon as practicable after receiving notice under section 150(2) of this Act, comply with the requirements in subsection (2) below.

(2) Those requirements are—

(a) subject to subsection (3) below, to interview the patient;

(b) to inform the patient—

***Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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 the patient's responsible medical officer is proposing to make a determination under section 152 of this Act extending the compulsion order to which the patient is subject for the period mentioned in section 152(3) of this Act that applies in the patient's case;

(ii) of the patient's rights in relation to such a determination; and

(iii) of the availability of independent advocacy services under section 259 of this Act;

(c) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and

(d) to inform the patient's responsible medical officer—

(i) as to whether the mental health officer agrees, or disagrees, that the determination that is proposed should be made;

(ii) if the mental health officer disagrees, of the reason why that is the case; and

(iii) of any other matters that the mental health officer considers relevant.

(3) If it is impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the mental health officer need not do so.

Commencement Information

I14 S. 151 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)

152 Further review: responsible medical officer's duty to extend compulsion order

(1) This section applies where a patient's responsible medical officer is carrying out a further review of the relevant compulsion order to which the patient is subject.

(2) If, having regard to—

(a) any views expressed by persons consulted under section 139(3)(c) of this Act for the purpose of the review being carried out; and

(b) any views expressed by the mental health officer under section 151(2)(d) of this Act for the purpose of that review,

the responsible medical officer is satisfied as to the matters mentioned in section 150(2)(a) and (b) of this Act, the responsible medical officer shall make a determination extending the compulsion order for the period mentioned in subsection (3) below.

(3) The period referred to in subsection (2) above is—

(a) where a determination is made in respect of the first further review, the period of 12 months beginning with the expiry of the period for which the order is extended by virtue of an order under section 167 of this Act;

(b) where a determination is made in respect of a subsequent further review, the period of 12 months beginning with the expiry of the period of 12 months for which the order is extended as a result of the immediately preceding further review.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

Commencement Information

I15 S. 152 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)

153 Determination extending compulsion order: notification

(1) Where a patient's responsible medical officer makes a determination under section 152 of this Act, the responsible medical officer shall, as soon as practicable after the determination is made and, in any event, before the day on which the compulsion order will cease (unless extended) to authorise the measures specified in it, comply with the requirements in subsection (2) below.

(2) Those requirements are—

(a) to prepare a record stating—

(i) the determination;

(ii) the reasons for it;

(iii) whether the mental health officer agrees, or disagrees, with the determination or has failed to comply with the duty imposed by section 151(2)(d)(i) of this Act;

(iv) if the mental health officer disagrees with the determination, the reasons for the disagreement;

(v) (by reference to the appropriate paragraph (or paragraphs) of the definition of "mental disorder" in section 328(1) of this Act) the type (or types) of mental disorder that the patient has; and if there is a difference between that type (or types) and the type (or types) of mental disorder recorded in the compulsion order in respect of which the determination is made, what that difference is; and

(vi) such other matters as may be prescribed by regulations;

(b) to submit the record to the Tribunal; and

(c) at the same time as the responsible medical officer submits the record to the Tribunal, to give notice of the determination and send a copy of the record—

(i) subject to subsection (3) below, to the patient;

(ii) to the patient's named person;

(iii) to the mental health officer; and

(iv) to the Commission.

(3) Where the responsible medical officer considers that there would be a risk of significant harm to the patient, or to others, if a copy of the record were sent to the patient, that officer need not send a copy to the patient.

(4) At the same time as the responsible medical officer submits the record to the Tribunal the responsible medical officer shall send to the Tribunal, and to the persons mentioned in subsection (2)(c)(ii) to (iv) above, a statement of the matters mentioned in subsection (5) below.

(5) Those matters are—

(a) whether the responsible medical officer is sending a copy of the record to the patient; and

***Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

(b) if the responsible medical officer is not sending a copy of the record to the patient, the reason for not doing so.

Commencement Information

I16 S. 153 in force at 21.3.2005 for specified purposes by S.S.I. 2005/161, art. 2, **Sch. 1**

I17 S. 153 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)

[F1 153A Further information on extension of compulsion order

(1) Subsections (2) and (3) below apply where—

(a) a mental health officer receives notice of a determination under section 152 of this Act from a patient's responsible medical officer, and

(b) the Tribunal is required by virtue of section 165(2)(a) of this Act to review the determination.

(2) The mental health officer must—

(a) prepare a record stating the information mentioned in subsection (4) below,

(b) submit the record to the Tribunal, and

(c) at the same time as submitting the record to the Tribunal, send to the persons mentioned in subsection (6) below—

(i) a copy of the record, and

(ii) a statement of the matters mentioned in subsection (5) below.

(3) At the same time as submitting the record to the Tribunal, the mental health officer must send a copy of the record to the patient except where the officer considers that doing so carries a risk of significant harm to the patient or others.

(4) The information to be stated in the record is—

(a) the name and address of the patient,

(b) if known by the mental health officer, the name and address of—

(i) the patient's named person, and

(ii) the patient's primary carer,

(c) the things done by the mental health officer in compliance with the requirements in subsection (2) of section 151 of this Act (and, if by virtue of subsection (3) of that section the first-listed one has not been complied with, the reason why compliance with it was impracticable),

(d) so far as relevant to the extension of the compulsion order—

(i) the details of the personal circumstances of the patient, and

(ii) if known by the mental health officer, the details of any advance statement made by the patient (and not withdrawn by the patient),

(e) the views of the mental health officer on the extension of the compulsion order, and

(f) any other information that the mental health officer considers relevant in relation to the extension of the compulsion order.

(5) The matters referred to in subsection (2)(c) above are—

(a) whether the mental health officer is sending a copy of the record to the patient, and

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

(b) if the mental health officer is not sending a copy of the record to the patient, the reason for not doing so.

(6) For the purposes of subsection (2)(c) above, the persons are—

(a) the patient's named person,

(b) the patient's responsible medical officer, and

(c) the Commission.**]**

Textual Amendments

F1 S. 153A inserted (30.6.2017) by Mental Health (Scotland) Act 2015 (asp 9), **ss. 50(2)**, 61(2); S.S.I. 2017/197, art. 2, sch. (with art. 4)

Extension and variation of order

154 Responsible medical officer's duty where extension and variation proposed

(1) This section applies where a patient's responsible medical officer is carrying out—

(a) the first review of the relevant compulsion order to which the patient is subject; or

(b) a further review of that order.

(2) If, having regard to any views expressed by persons consulted under section 139(3)(c) of this Act for the purpose of the review being carried out, it appears to the responsible medical officer—

(a) that it will continue to be necessary for the patient to be subject to a compulsion order after the day on which the order will cease (unless extended) to authorise the measures specified in it; but

(b) that the compulsion order should be varied by modifying the measures specified in it,

the responsible medical officer shall comply with the requirement in subsection (3) below.

(3) The requirement is to give notice to the mental health officer—

(a) that the responsible medical officer is proposing to make an application to the Tribunal under section 158 of this Act for an order under section 167 of this Act—

(i) extending the compulsion order for the period mentioned in subsection (4) below; and

(ii) varying the order by modifying the measures specified in it; and

(b) of the modification of the measures specified in that order that the responsible medical officer is proposing.

(4) The period referred to in subsection (3)(a)(i) above is—

(a) where the application is made in respect of the first review, the period of 6 months beginning with the day on which the compulsion order will cease (unless extended) to authorise the measures specified in it;

(b) where the application is made in respect of the first further review, the period of 12 months beginning with the expiry of the period mentioned in paragraph (a) above;

***Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

(c) where the application is made in respect of a subsequent further review, the period of 12 months beginning with the expiry of the period of 12 months for which the order is extended as a result of the immediately preceding further review.

Commencement Information

I18 S. 154 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)

155 Mental health officer's duties: extension and variation of compulsion order

(1) The mental health officer shall, as soon as practicable after receiving notice under section 154(3) of this Act, comply with the requirements in subsection (2) below.

(2) Those requirements are—

(a) subject to subsection (3) below, to interview the patient;

(b) to inform the patient of the matters mentioned in subsection (4) below;

(c) to inform the patient of the availability of independent advocacy services under section 259 of this Act;

(d) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and

(e) to inform the patient's responsible medical officer—

(i) of whether the mental health officer agrees, or disagrees, that the application that is proposed should be made;

(ii) if the mental health officer disagrees, of the reason why that is the case; and

(iii) of any other matters that the mental health officer considers relevant.

(3) If it is impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the mental health officer need not do so.

(4) The matters referred to in subsection (2)(b) above are—

(a) that the patient's responsible medical officer is proposing to make an application to the Tribunal under section 158 of this Act for an order—

(i) extending the compulsion order to which the patient is subject for the period mentioned in section 154(4) of this Act that applies in the patient's case; and

(ii) varying the compulsion order by modifying the measures specified in it;

(b) the modification of the measures specified in that order that the responsible medical officer is proposing; and

(c) the patient's rights in relation to such an application.

Commencement Information

I19 S. 155 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, Chapter 2 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*

156 Responsible medical officer's duty to apply for extension and variation of compulsion order

(1) If, having regard to—

(a) any views expressed by persons consulted under section 139(3)(c) of this Act for the purpose of the review being carried out; and

(b) any views expressed by the mental health officer under section 155(2)(e) of this Act for the purpose of that review,

the responsible medical officer is satisfied as to the matters mentioned in section 154(2)(a) and (b) of this Act, the responsible medical officer shall comply with the requirement in subsection (2) below.

(2) That requirement is to make an application to the Tribunal under section 158 of this Act for an order—

(a) extending the compulsion order for the period mentioned in section 154(4) of this Act that applies in the patient's case; and

(b) varying that order by modifying the measures specified in it.

Commencement Information

I20 S. 156 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)

157 Application for extension and variation of compulsion order: notification

Where, by virtue of section 156(1) of this Act, an application is to be made under section 158 of this Act, the patient's responsible medical officer shall, as soon as practicable after the duty to make the application arises (and, in any event, before making the application), give notice that the application 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 mental health officer; [F2]...

[F2](f) . . . . . .

Textual Amendments

F2 S. 157(f) and word repealed (30.6.2017) by Mental Health (Scotland) Act 2015 (asp 9), **ss. 51(2)**, 61(2); S.S.I. 2017/197, art. 2, sch.

Commencement Information

I21 S. 157 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)

158 Application to Tribunal for extension and variation of compulsion order

An application under this section to the Tribunal by a patient's responsible medical officer for an order extending and varying a compulsion order—

***Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

(a) shall state—

(i) the name and address of the patient;

(ii) the name and address of the patient's named person;

(iii) the modification of the measures authorised by the compulsion order that is proposed by the responsible medical officer;

(iv) the reasons for seeking that modification; [F3]...

(v) whether the mental health officer agrees, or disagrees, that the application should be made, or has failed to comply with the duty imposed by section 155(2)(e)(i) of this Act; and

(vi) **[**[F4]if the mental health officer disagrees, the reason for that disagreement**]**; and

(b) shall be accompanied by such documents as may be prescribed by regulations.

Textual Amendments

F3 Word in s. 158(a)(iv) omitted (2.12.2004) by virtue of Mental Health (Care and Treatment) (Scotland) Act 2003 Modification Order 2004 (S.S.I. 2004/533), arts. 1, **2(4)(a)**

F4 S. 158(a)(vi) and word inserted (2.12.2004) by Mental Health (Care and Treatment) (Scotland) Act 2003 Modification Order 2004 (S.S.I. 2004/533), arts. 1, **2(4)(b)**

Commencement Information

I22 S. 158 in force at 21.3.2005 for specified purposes by S.S.I. 2005/161, art. 2, **Sch. 1**

I23 S. 158 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)

Variation of order

159 Responsible medical officer's duties: variation of compulsion order

(1) This section applies where a patient is subject to a relevant compulsion order.

(2) Without prejudice to the duties imposed on the patient's responsible medical officer by sections 139(2), 140(2) and 145(2) of this Act, the responsible medical officer shall from time to time consider whether the compulsion order should be varied by modifying the measures specified in it.

(3) If it appears to the responsible medical officer that the compulsion order should be varied by modifying the measures specified in it, the responsible medical officer shall, as soon as practicable, comply with the requirements in subsection (4) below.

(4) Those requirements are—

(a) to assess the needs of the patient for medical treatment;

(b) to consider what modification, if any, of the measures specified in the compulsion order is appropriate; and

(c) to consult—

(i) the mental health officer; and

(ii) such other persons as the responsible medical officer considers appropriate.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

[F5(4A) If, having regard to any views expressed by persons consulted under subsection (4)(c) above, it continues to appear to the responsible medical officer that the compulsion order should be varied by modifying the measures specified in it, the responsible medical officer shall, as soon as practicable, notify the mental health officer–

(a) that the responsible medical officer is proposing to make an application to the Tribunal under section 161 of this Act for an order under section 167 of this Act varying the compulsion order; and

(b) the modification of the measures specified in that order that the responsible medical officer is proposing.

(4B) The mental health officer shall, as soon as practicable after being notified under subsection (4A) above, comply with the requirements in subsection (4C) below.

(4C) Those requirements are–

(a) subject to subsection (4D) below, to interview the patient;

(b) to inform the patient of the matters mentioned in subsection (4E) below;

(c) to inform the patient of the availability of independent advocacy services under section 259 of this Act;

(d) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and

(e) to inform the patient's responsible medical officer–

(i) of whether the mental health officer agrees, or disagrees, that the application that is proposed should be made;

(ii) if the mental health officer disagrees, of the reason why that is the case; and

(iii) of any other matters that the mental health officer considers relevant.

(4D) If it is impracticable for the mental health officer to comply with the requirement in subsection (4C)(a) above, the mental health officer need not do so.

(4E) The matters referred to in subsection (4C)(b) above are–

(a) that the patient's responsible medical officer is proposing to make an application to the Tribunal under section 161 of this Act for an order varying the compulsion order by modifying the measures specified in it;

(b) the modification of the measures specified in that order that the responsible medical officer is proposing; and

(c) the patient's rights in relation to such an application.**]**

(5) If, having regard to any views expressed by persons consulted under subsection (4)(c) above, the responsible medical officer is satisfied that the compulsion order should be varied by modifying the measures specified in it, the responsible medical officer shall make an application to the Tribunal under section 161 of this Act for an order under section 167 of this Act varying the compulsion order in that way.

Textual Amendments

F5 S. 159(4A)-(4E) inserted (2.12.2004) by Mental Health (Care and Treatment) (Scotland) Act 2003 Modification Order 2004 (S.S.I. 2004/533), arts. 1, **2(5)(a)**

***Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

Commencement Information

I24 S. 159 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)

160 Application for variation of compulsion order: notification

Where, by virtue of section 159(5) of this Act, an application is to be made under section 161 of this Act, the patient's responsible medical officer shall, as soon as practicable after the duty to make the application arises (and, in any event, before making the application), give notice that the application is to be made to the persons mentioned in section 157(a) to **[**F6(e)**]** of this Act.

Textual Amendments

F6 Word in s. 160 substituted (30.6.2017) by Mental Health (Scotland) Act 2015 (asp 9), **ss. 51(3)**, 61(2); S.S.I. 2017/197, art. 2, sch.

Commencement Information

I25 S. 160 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)

161 Application to Tribunal by responsible medical officer

An application under this section to the Tribunal by a patient's responsible medical officer for an order varying a compulsion order—

(a) shall state

(i) **[**F7the matters mentioned in section 158(a)**[**F8(i) to (iv)**]** of this Act;**]** and

[F9(ii) whether the mental health officer agrees, or disagrees that the application should be made, or has failed to comply with the duty imposed by section 159(4C)(e)(i) of this Act; and

(iii) if the mental health officer disagrees, the reason for that disagreement.**]**

(b) shall be accompanied by such documents as may be prescribed by regulations.

Textual Amendments

F7 Words in s. 161(a) renumbered as s. 161(a)(i) (2.12.2004) by Mental Health (Care and Treatment) (Scotland) Act 2003 Modification Order 2004 (S.S.I. 2004/533), arts. 1, **2(6)(b)**

F8 Words in s. 161(a) inserted (2.12.2004) by Mental Health (Care and Treatment) (Scotland) Act 2003 Modification Order 2004 (S.S.I. 2004/533), arts. 1, **2(6)(a)**

F9 S. 161(a)(ii)(iii) inserted (2.12.2004) by Mental Health (Care and Treatment) (Scotland) Act 2003 Modification Order 2004 (S.S.I. 2004/533), arts. 1, **2(6)(c)**

Commencement Information

I26 S. 161 in force at 21.3.2005 for specified purposes by S.S.I. 2005/161, art. 2, **Sch. 1**

I27 S. 161 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: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

Reference to Tribunal by Commission

162 Commission's power to make reference to Tribunal

(1) This section applies where a patient is subject to a relevant compulsion order.

(2) If it appears to the Commission that it is appropriate to do so, it may make a reference to the Tribunal in respect of the compulsion order to which the patient is subject.

(3) Where a reference is to be made under subsection (2) above, the Commission shall, as soon as practicable, give notice that a reference is to be made to—

(a) the patient's responsible medical officer; and

(b) the persons mentioned in section 157(a) to (e) 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 for making the reference.

Commencement Information

I28 S. 162 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)

Applications to Tribunal by patient etc.

163 Application to Tribunal by patient etc. for revocation of determination extending compulsion order

(1) Subject to subsection (2) below, where a patient's responsible medical officer makes a determination under section 152 of this Act—

(a) the patient; or

(b) the patient's named person,

may make an application under this section to the Tribunal for an order under section 167 of this Act revoking the determination.

(2) Subsection (1) above does not apply where the Tribunal is required, by virtue of section 165 of this Act, to review the determination.

Commencement Information

I29 S. 163 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)

164 Application to Tribunal by patient etc. for revocation or variation of compulsion order

(1) This section applies where a patient is subject to a relevant compulsion order.

***Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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) Either 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 an order under section 167 of this Act—

(a) revoking the compulsion order; or

(b) varying that order by modifying the measures specified in it.

(3) The persons referred to in subsection (2) above are—

(a) the patient; and

(b) the patient's named person.

(4) An application under this section may not be made—

(a) in respect of a compulsion order that has not been extended;

(b) during the period of 3 months beginning with the making of—

(i) an order in respect of the compulsion order made under section 166 of this Act; or

(ii) an order in respect of the compulsion order made, by virtue of section 149 or 158 of this Act, under section 167 of this Act.

(5) If—

(a) an application under this section for revocation of a compulsion order is refused; or

(b) an application is made under this section for variation of a compulsion order,

the person who made the application shall not be entitled to make more than one further application under this section in respect of the compulsion order during the period mentioned in subsection (7) below.

(6) If an application under section 163 of this Act for revocation of a determination under section 152 of this Act is refused, the person who made that application shall not be entitled to make more than one application under this section in respect of the compulsion order which is the subject of the determination during the period mentioned in subsection (7) below.

(7) The period referred to in subsections (5) and (6) above is—

(a) where the application is made during the period of 6 months beginning with the expiry of the initial period, that period of 6 months; or

(b) any subsequent period of 12 months that begins with, or with an anniversary of, the expiry of the period of 6 months mentioned in paragraph (a) above.

(8) In subsection (7)(a) above, "initial period" means the period of 6 months beginning with the day on which the compulsion order is made.

Modifications etc. (not altering text)

C3 S. 164 modified (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, **17(2)**

C4 S. 164 modified (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, **10(1)**

Commencement Information

I30 S. 164 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, Chapter 2 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*

[F10 164A Application to end disclosure period for compulsion order

(1) This section applies where a patient is subject to a relevant compulsion order.

(2) Either of the persons mentioned in subsection (3) may make an application under this section to the Tribunal for a determination under section 167A that the disclosure period applicable to the compulsion order is to come to an end.

(3) The persons referred to in subsection (2) are—

(a) the patient, and

(b) the patient's named person.

(4) An application under this section may not be made until the expiry of the period of 12 months beginning with the day on which the order is made (or is deemed under section 198(2) to be made).

(5) Where an application under this section relating to a compulsion order has already been refused by the Tribunal, a further such application relating to the order may not be made until the expiry of the period of 12 months beginning with the date of such refusal (or, where applicable, the date of the most recent such refusal).

(6) An application under this section must be accompanied by such documents as may be prescribed by regulations.**]**

Textual Amendments

F10 S. 164A inserted (30.11.2020) by Management of Offenders (Scotland) Act 2019 (asp 14), **ss. 26(4)**, 63(2); S.S.I. 2020/245, reg. 2, sch. (with reg. 3)

Review by Tribunal of determination extending order

165 Tribunal's duty to review determination under section 152

(1) This section applies where a patient's responsible medical officer makes a determination under section 152 of this Act.

(2) If—

(a) the record submitted to the Tribunal under section 153 of this Act states—

(i) that there is a difference between the type (or types) of mental disorder that the patient has and the type (or types) of mental disorder recorded in the compulsion order in respect of which the determination is made; or

(ii) that the mental health officer disagrees with the determination or has failed to comply with the duty imposed by section 151(2)(d)(i) of this Act; or

(b) no decision has been made by the Tribunal under this section or section 167 of this Act in respect of the compulsion order to which the determination relates during the period of 2 years ending with the day on which the order, had it not been extended by the determination, would have ceased to authorise the measures specified in it,

the Tribunal shall review the determination.

***Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

Modifications etc. (not altering text)

C5 S. 165(2)(b) modified (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, **17(5)**

C6 S. 165(2)(b) modified (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, **10(4)**

Commencement Information

I31 S. 165 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)

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;

(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

I32 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)

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

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;

(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)**[**F11(a) to (h)**]** of this Act; and

(b) any other person appearing to the Tribunal to have an interest in the application.

***Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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

F11 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

I33 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)

[F12 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.

(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.]

Textual Amendments

F12 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)

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

[F12 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).**]**

Textual Amendments

F12 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[F13 or 158]

(1) This section applies where an application is made under section 149**[**F14 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.

Textual Amendments

F13 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)**

F14 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

I34 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)

***Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

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

(1) This section applies where—

(a) an application is made under section 149, 158, 161, 163 or 164 of this Act;

(b) a reference is made under section 162 of this Act; or

(c) 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—

(a) determining the application or reference; or

(b) 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

I35 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

I36 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—

(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)**[**F15(a) to (h)**]** of this Act; and

(b) any other person appearing to the Tribunal to have an interest in the reference.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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

F15 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

I37 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

F16... 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

F16 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

I38 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,

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

Commencement Information

I39 S. 173 in force at 21.3.2005 for specified purposes by S.S.I. 2005/161, art. 2, **Sch. 1**

I40 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:** Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 2 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*

Effect of interim orders: calculation of time periods in Chapter

174 Effect of interim orders: calculation of time periods in Chapter

(1) Subject to subsection (2) below, in calculating, for the purpose of this Chapter of this Act, the day on which a relevant compulsion order—

(a) ceases;

(b) will cease; or

(c) would have ceased,

to authorise the measures specified in it, there shall be left out of account any period for which the order is extended (or extended and varied) by an interim order under section 168 of this Act.

(2) Subsection (1) above does not apply as respects calculating that day for the purpose of that section.

Commencement Information

I41 S. 174 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)

Meaning of "modify"

175 Meaning of "modify"

In this Chapter any reference to modifying measures specified in a relevant compulsion order includes a reference to—

(a) amending those measures;

(b) removing from the order any measure;

(c) adding to the order any measure.

Commencement Information

I42 S. 175 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, Chapter 2 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.
View outstanding changes

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)