



Adult Support and Protection (Scotland) Act 2007

2007 asp 10

PART 4

MENTAL HEALTH: MISCELLANEOUS AMENDMENTS AND REPEALS

68 Review of determination extending compulsory treatment order

Section 101 (duty of Mental Health Tribunal to review determination extending compulsory treatment order) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) is amended as follows—

- (a) for subsection (2)(b) substitute—
 - “(b) the conditions in subsection (3) are satisfied in relation to the compulsory treatment order to which the determination relates,”
- (b) after subsection (2) insert—
 - “(3) The conditions mentioned in subsection (2)(b) above are—
 - (a) that the order was made 2 or more years before the renewal day;
 - (b) that this section did not require the Tribunal to review the previous determination made under section 86 of this Act in relation to the order; and
 - (c) that, in the period of 2 years ending with the day before the renewal day, no application has been made to the Tribunal under section 92, 99, 95 or 100 in relation to the order.
 - (4) In subsection (3) above, the renewal day is the first day on which the order, had it not been extended by the determination, would not authorise the measures specified in it.”

69 Compulsion orders: revocation

- (1) In section 183(5)(b)(ii) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) substitute—

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“(ii) either—

- (A) that the conditions mentioned in paragraphs (b) and (c) of section 182(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.”

(2) In section 184(4)(b)(ii) of that Act substitute—

“(ii) either—

- (A) that the conditions mentioned in paragraphs (b) and (c) of section 182(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.”

(3) In section 188(4)(b)(ii) of that Act substitute—

“(ii) either—

- (A) that the conditions mentioned in paragraphs (b) and (c) of section 182(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.”

(4) In section 193(4)(b)(ii) of that Act substitute—

“(ii) either—

- (A) that the conditions mentioned in paragraphs (b) and (c) of section 182(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.”

70 Hospital directions and transfer for treatment directions: revocation

(1) For section 207(5)(b)(ii) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) substitute—

“(ii) either—

- (A) that the conditions mentioned in paragraph (b) and (c) of section 206(4) of this Act continue to apply in respect of the patient; or
- (B) that it continues to be necessary for the patient to be subject to the direction.”

(2) For section 208(4)(b)(ii) of that Act substitute—

“(ii) either—

- (A) that the conditions mentioned in paragraph (b) and (c) of section 206(4) of this Act continue to apply in respect of the patient; or
- (B) that it continues to be necessary for the patient to be subject to the direction.”

(3) For section 210(2)(b)(ii) of that Act substitute—

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- “(ii) either—
 - (A) that the conditions mentioned in paragraph (b) and (c) of section 206(4) of this Act continue to apply in respect of the patient; or
 - (B) that it continues to be necessary for the patient to be subject to the direction,”.
- (4) For section 212(4)(b)(ii) of that Act substitute—
 - “(ii) either—
 - (A) that the conditions mentioned in paragraph (b) and (c) of section 206(4) of this Act continue to apply in respect of the patient; or
 - (B) that it continues to be necessary for the patient to be subject to the direction,”.
- (5) For section 215(4)(b)(ii) of that Act substitute—
 - “(ii) either—
 - (A) that the conditions mentioned in paragraph (b) and (c) of section 206(4) of this Act continue to apply in respect of the patient; or
 - (B) that it continues to be necessary for the patient to be subject to the direction,”.

71 Compulsory treatment orders and compulsion orders: cross-border transfer of patients etc.

- (1) Section 289 (cross-border transfer of patients subject to requirements other than detention) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) is amended as follows—
 - (a) in subsection (1)—
 - (i) the words from “the”, where first occurring, to the end of the subsection become paragraph (a),
 - (ii) at end insert—
 - “(b) the reception in Scotland of a person subject to corresponding requirements in England, Wales, Northern Ireland, the Isle of Man or the Channel Islands and removed from there.”,
 - (b) in subsection (2), for “that provision is made” substitute “provision is made by regulations under paragraph (a) of subsection (1) above”,
 - (c) after subsection (2) insert—
 - “(2XA) Where provision is made by regulations under paragraph (a) of subsection (1) above, the regulations may make provision for exceptions to provisions included in them by virtue of subsection (2) (d).
 - (2YA) Where provision is made by regulations under paragraph (b) of subsection (1) above, the regulations shall provide for the reception of persons to take place only if—
 - (a) the managers of a hospital consent to the reception; and

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- (b) those managers undertake to appoint an approved medical practitioner to be the person’s responsible medical officer.
- (2ZA) Regulations under subsection (1) above may in particular—
- (a) make provision for things done under the law of a territory other than Scotland to be treated as things done under provisions of the law of Scotland,
 - (b) confer powers and immunities on persons engaged in—
 - (i) escorting persons being moved under the regulations;
 - (ii) pursuing persons who have absconded while being so moved;
 - (iii) restraining persons who have absconded, or attempt to abscond, while being so moved;
 - (c) make provision amending provisions of this Act (other than this section) or any other enactment, or providing for any such provision or enactment to have effect with modification.”,
- (d) in subsection (2A), for “Subsection (2) above is” substitute “Subsections (2) to (2ZA) above are”,
 - (e) after subsection (3) insert—
 - “(4) For the purposes of subsection (1)(b) above, a person is subject to “corresponding requirements” in a territory if under the law of that territory the person is subject to measures corresponding or similar to a requirement imposed in relation to a person under section 66(1) of this Act or section 57A(8) of the 1995 Act, not being detention in a hospital.”.
- (2) In section 309 (patients from other jurisdictions) of that Act—
- (a) in subsection (1), after “to”, where third occurring, insert “corresponding requirements or”,
 - (b) after subsection (2) insert—
 - “(2A) The reference in subsection (1) above to persons subject to corresponding requirements shall be construed in accordance with section 289(4) of this Act.”.
- (3) In section 316(1)(c) (offence of inducing or assisting patient to abscond), after “section” insert “289 or”.
- (4) In section 326(4)(c) (regulations subject to affirmative resolution) of that Act, after “286,” insert “289,”.

72 **Cross-border visits: leave of absence**

- (1) After section 309 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ([asp 13](#)), insert—

“309A Cross-border visits: leave of absence

- (1) Regulations may make provision for and in connection with the keeping in charge of a person who is subject to a corresponding suspension of detention in England, Wales, Northern Ireland, the Isle of Man or the Channel Islands.

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- (2) Those regulations may—
 - (a) make provision applying sections 301 to 303 of this Act to such persons;
 - (b) make such modifications of those sections in that application as the Scottish Ministers think fit.
 - (3) A person is subject to a “corresponding suspension of detention” in a territory if under the law of that territory—
 - (a) but for the leave of absence mentioned in paragraph (b), the person would be subject to measures corresponding or similar to detention in hospital authorised by virtue of this Act or the 1995 Act; and
 - (b) the person has been granted a leave of absence subject to a condition corresponding or similar to the condition set out in section 127(6)(a) of this Act.”.
- (2) In section 326(4)(c) (regulations subject to affirmative resolution) of that Act, after “309,” insert “309A,”.

73 Applications to the Mental Health Tribunal for Scotland

After paragraph 13 of schedule 2 to the Mental Health (Care and Treatment) (Scotland) Act 2003 ([asp 13](#)), insert—

“Withdrawn applications to be disregarded for certain purposes

13A For the purposes of sections 101(3)(c), 189(2)(a)(ii) and (b)(ii) and 213(2)(a)(ii) and (b)(ii) of this Act, an application to the Tribunal which is withdrawn by the applicant before it is determined is to be treated as not having been made.”.

74 Mental Health Act 1983: repeal of power to return patients absent from hospital etc.

Sections 88 and 128 of the Mental Health Act 1983 ([c. 20](#)) are repealed.

75 Assessment orders: amendment of Criminal Procedure (Scotland) Act 1995

The Criminal Procedure (Scotland) Act 1995 ([c. 46](#)) is amended as follows—

- (a) in section 144 (procedure at first diet)—
 - (i) in subsection (1), after “section 145” insert “or 145ZA”,
 - (ii) in subsection (9), after “section 145” insert “, 145ZA”,
- (b) after section 145 insert—

“145ZA Adjournment where assessment order made at first calling

Where the accused is present at the first calling of a case in a summary prosecution the court may, where it makes an assessment order in respect of the accused, adjourn the case under this section for a period not exceeding 28 days without calling on the accused to plead to any

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charge against him; and the court may so adjourn the case for a further period not exceeding 7 days.”.