

MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 11 – Hospital Directions and Transfer for Treatment Directions

367. **Part 11** provides for the regime which governs the effect of hospital directions made under section 59A of the 1995 Act and transfer for treatment directions made under section 136 of the 2003 Act. This regime is similar to the regime for compulsion orders combined with restriction orders set out in Part 10 of the 2003 Act.

Preliminary

Section 205: mental health officer's duty to identify named person

368. **Section 205** provides that, as soon as practicable after a hospital direction or a transfer for treatment direction is made, the mental health officer must take reasonable steps to find out the name and address of the patient's named person.

Review of directions

Section 206: review of hospital direction and transfer for treatment direction

369. **Section 206** provides for the responsible medical officer to carry out an annual review of a hospital direction or a transfer for treatment direction. The first review must be carried out during the two month period ending with the first anniversary of the making of the direction. Further reviews must be carried out annually thereafter, again during the last two months of each 12 month period. The review must conform to the requirements set out in subsection (3) and the responsible medical officer must consider the matters in subsection (4). As part of the review process, the responsible medical officer must consult, in addition to the mental health officer, such other persons as he considers appropriate.

Consequences of review

Section 207: responsible medical officer's report following review of direction

370. **Section 207** makes provision for the procedure following reviews under section 206. The responsible medical officer must submit a report to the Scottish Ministers recording that officer's views on the matters set out in subsection (3). If the responsible medical officer is not satisfied that the patient has a mental disorder, the officer must include in the report a recommendation that the direction be revoked. If the responsible medical officer, while satisfied that the patient has a mental disorder, is not satisfied that it is necessary to detain the patient in hospital to protect any other person from serious harm and is not satisfied that the conditions in section 206(4)(b) and (c) are met, the officer must again recommend revocation of the direction.

Responsible medical officer's duty to keep directions under review

Section 208: responsible medical officer's duty to keep directions under review

371. **Section 208** provides that the responsible medical officer is under a continuing duty to keep a hospital direction or a transfer for treatment direction to which the patient is subject under review. Where the responsible medical officer considers that the direction should be revoked, the officer must submit a report to the Scottish Ministers containing a recommendation to that effect. This section closely mirrors section 207.

Reference to Tribunal by Scottish Ministers

Section 209: Commission's power to require Scottish Ministers to make reference to Tribunal

372. **Section 209** gives power to the Commission to require the Scottish Ministers to refer the hospital direction or transfer for treatment direction to which a patient is subject to the Tribunal, if the Commission considers that such a reference is appropriate. The Commission must notify the Scottish Ministers of this requirement in writing and include its reasons for making the request.

Section 210: duty of Scottish Ministers on receiving report from responsible medical officer

373. **Section 210** provides that, where the Scottish Ministers receive a report from the responsible medical officer recommending that a hospital direction or a transfer for treatment direction be revoked, the Scottish Ministers must consider the matters in section 212(2)(a) to (c). The Scottish Ministers are under a duty to revoke where, having considered those matters, they are not satisfied that the patient has a mental disorder or they are satisfied that the patient is suffering from a mental disorder but are not satisfied that as a result of that disorder it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment, and they are not satisfied that the conditions listed in section 206(4) (b) and (c) continue to apply.
374. Subsection (3) provides that, where the Scottish Ministers decide not to revoke the direction, they must refer the case to the Tribunal. Notice of the reference must be given by the Scottish Ministers to the persons listed in subsection (4) and the reference must state the information set out in subsection (5). The notice must be given before the reference is made.
375. Subsection (6) makes equivalent provision for this section to that made by section 193(10) for that section.

Section 211: notice under section 209(2): reference to Tribunal

376. **Section 211** provides that, where the Commission has notified the Scottish Ministers under section 209(2) that they require the Scottish Ministers to refer a patient's case to the Tribunal, the Scottish Ministers have a duty to refer the patient's case to the Tribunal as soon as practicable. Notice that the reference is to be made must be given by the Scottish Ministers as soon as practicable to the persons listed in paragraphs (a) to (g) of subsection 210(4) and the reference must state the information set out in subsection (4).

Scottish Ministers' duty to keep directions under review

Section 212: duty of Scottish Ministers to keep directions under review

377. **Section 212** provides that the Scottish Ministers are under a duty to keep the hospital direction or transfer for treatment direction to which a patient is subject under review by considering the matters set out in subsection (2). The Scottish Ministers are under a

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duty to revoke if not satisfied that the patient has a mental disorder or where they are satisfied that that is the case but are not satisfied that, as a result of the disorder, it is necessary in order to protect any other person from serious harm, for the patient to be detained in hospital, whether for medical treatment or not, and they are not satisfied that the conditions in section 206(4)(b) and (c) continue to apply.

378. Subsection (5) makes equivalent provision for this section to that made by section 193(10) for that section.

Section 213: reference to Tribunal by Scottish Ministers

379. **Section 213** imposes a duty on the Scottish Ministers to refer a patient's case to the Tribunal 2 years after the making of the hospital direction or transfer for treatment direction if no reference or application has been made to the Tribunal during that period. In addition, at the end of every year thereafter, the Scottish Ministers have a duty to review the previous 2 years and refer the patient's case to the Tribunal if no reference or application has been made to it during that 2 year period. In order to ensure that the Tribunal reviews the direction to which the patient is subject at least once every 2 years, subsection (3) provides that, in assessing whether there has been an application or reference to the Tribunal in a 2 year period, any reference made under this section during the first year of that period is ignored.
380. Notice of the reference to the Tribunal must be given by the Scottish Ministers to the persons listed in paragraphs (a) to (g) of subsection 210(4) and the reference must state the information set out in section 213(5). This section operates in the same way as section 189.

Application by patient etc

Section 214: application to Tribunal by patient and named person

381. **Section 214** gives a patient subject to a hospital direction or a transfer for treatment direction and the patient's named person the right to apply to the Tribunal for revocation of the direction.
382. Where a patient is subject to a hospital direction, neither the patient nor the named person may apply to the Tribunal during the first 6 months following the day on which the direction was made. However, they may each apply to the Tribunal once during the subsequent 6 month period and then once every 12 months thereafter.
383. Where a patient is subject to a transfer for treatment direction, the patient and patient's named person may each apply to the Tribunal once within the 12 week period beginning with the day on which the direction is made. If an application is not made within that timescale then the patient or the named person may not apply until 6 months have elapsed after the making of the direction. The patient and the named person can then each apply to the Tribunal once during the subsequent 6 month period and then once every 12 months thereafter.
384. The patient's named person must give notice to the patient if the named person makes an application under this section.

Proceedings before Tribunal

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

385. **Section 215** sets out the powers of the Tribunal on an application by the patient or the patient's named person or on a reference by the Scottish Ministers
386. Under subsection (2), where the Tribunal is satisfied that the patient has a mental disorder and that the effect of it makes it necessary, in order to protect others from

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serious harm, for the patient to be detained in hospital, whether for treatment or not, the Tribunal shall make no direction to the Scottish Ministers, with the effect that the direction to which the patient is subject continues to apply.

387. Under subsection (3), where the Tribunal is not satisfied that the patient has a mental disorder, it must direct the Scottish Ministers to revoke the direction to which the patient is subject.
388. Under subsection (4), the Tribunal must again direct the Scottish Ministers to revoke the direction to which the patient is subject if the Tribunal is satisfied that the patient has a mental disorder, is not satisfied that it makes it necessary to detain the patient in hospital to protect others from serious harm and is not satisfied that the criteria in section 206(4)(b) and (c) are met.
389. Under subsection (5), where directed to do so by the Tribunal under subsection (3) or (4), the Scottish Ministers must revoke the direction to which the patient is subject.
390. Before making a decision, the Tribunal must hold a hearing and allow the persons listed in subsection (7) the opportunity to make representations and give evidence (subsection (6)).

Effect of revocation of direction

Section 216: effect of revocation of direction

391. **Section 216** provides that, where a hospital direction or transfer for treatment direction is revoked by the Scottish Ministers, the patient must be returned to a prison, institution or other place where the patient may have been detained had the patient not been detained in hospital. The direction ceases to have effect on admission.

Termination of direction on release of patient

Section 217: termination of hospital direction on release of patient

392. **Section 217** provides that a hospital direction or a transfer for treatment direction ceases to have effect when the underlying sentence of imprisonment to which the patient is subject comes to an end under the terms of Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. This applies also where the prisoner is released on licence by the Parole Board under that Act.