

These notes relate to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) which received Royal Assent on 25 April 2003

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Compulsory Treatment Orders

Chapter 1: application for, and making of, orders

Pre-application procedures

Sections 57 and 58: medical examinations and mental health reports

99. Applications for compulsory treatment orders may be made only by a mental health officer. A mental health officer is under a duty to make such an application on receiving two mental health reports. One of these reports must be compiled by an approved medical practitioner while the other may be provided by an approved medical practitioner or the patient's general practitioner. The information which each practitioner must provide in the mental health report prepared by him or her is set out in subsection (4) of section 57.

Sections 59 to 62: duties and powers of mental health officer on receiving reports

100. On receipt of the mental health reports (defined in section 57(4)) produced by virtue of section 57, the mental health officer is required to interview the patient and comply with the other requirements in section 61(2); to take steps to identify the patient's named person (section 59); to co-ordinate the preparation of a proposed care plan in respect of the patient (section 62); and to prepare a report and application to the Tribunal (sections 61 and 63).

101. **Section 57(7)** requires the application for a compulsory treatment order to be submitted to the Tribunal within 14 days of the later of the two medical examinations.

102. Before making an application, the mental health officer must give notice to the persons listed in section 60(1) of the fact that an application is to be made. Notice need not be given to the patient if a mental health report provided by an approved medical practitioner has indicated that notice should not be given. However, the mental health officer may override the advice of the approved medical practitioner where he or she considers it appropriate and may give such notice all the same. This provision does not, however, relieve the mental health officer of the duty to inform the patient of the proposed application and of the availability of advocacy services at the point at which the mental health officer is preparing the report required under section 61.

103. **Section 61(4)** sets out the information which must be included in the mental health officer's report. The mental health officer is required by section 57 to submit an application whether or not that officer considers the powers sought are appropriate; but he or she may nonetheless express views on the mental health reports (section 61(4)(f)).

Any difference in views between the mental health officer and the medical practitioners will be a matter for the Tribunal to consider. The report must also give details of any advance statement (see sections 275 and 276) which the patient has made and of which the mental health officer is aware.

104. [Section 62](#) requires that the proposed care plan be prepared by the mental health officer in consultation so far as practicable with the medical practitioners who produced the mental health reports and with other persons or agencies who will be providing services, treatment or care to the patient. The plan must contain the information set out in subsection (5).

Application for order

Sections 63, 64 and 67 to 69: consideration by the Tribunal

105. [Section 63](#) deals with the application for a compulsory treatment order. Subsection (2) sets out the matters that must be stated in the application and subsection (3) lists the documents that must accompany the application.
106. For patients who are already subject to a short-term detention certificate (or an extension certificate), section 68 provides that once an application under section 63 has been submitted to the Tribunal, the patient's detention in hospital under authority of the certificate is automatically extended for a further five working days. This is to enable the Tribunal to have sufficient time to come to a decision on the application. Section 69 requires the Tribunal either to make an interim compulsory treatment order or determine the application for the compulsory treatment order before the end of that extended period.
107. On receipt of an application for a compulsory treatment order, the Tribunal must make arrangements under section 64 to consider it. Subsections (2) and (3) require the Tribunal to afford various parties an opportunity to make representations. Tribunal rules made under schedule 2 to the Act will set out further procedural requirements.
108. [Section 64\(5\)](#) sets out the conditions which the Tribunal must be satisfied are met when deciding whether or not to make a compulsory treatment order. If so satisfied, the Tribunal must consider which of the measures from the list set out in section 66(1) are appropriate in the patient's case.

Outcome of application

Section 65: interim compulsory treatment order

109. Where an application for a compulsory treatment order has been made, the Tribunal has power to grant an interim compulsory treatment order. The Tribunal may do so at its own discretion or on the application of any party with an interest in the proceedings. An interim order may last for any period of up to 28 days. The Tribunal may grant more than one interim order in respect of a patient. In that case however, the total period authorised by the interim orders must not exceed 56 consecutive days.
110. [Section 65\(5\)](#) stipulates which persons must be afforded the opportunity to make representations to the Tribunal before an interim order can be granted.

Section 66: measures which may be authorised by a compulsory treatment order or an interim compulsory treatment order

111. A compulsory treatment order (or an interim compulsory treatment order) authorises the measures set out in it. The measures are drawn from the list in subsection (1) of section 66. The measures include detention of the patient in hospital and various measures which are delivered in the community. Whether or not the patient is in

hospital, the compulsory treatment order may specify that the patient is to be given medical treatment in accordance with Part 16.

Sections 67, 70, 71, 75 and 76: actions following the making of a compulsory treatment order

112. Where a compulsory treatment order or an interim compulsory treatment order is made, the order will provide the authority for the patient to be removed to the hospital or other place specified in the order (section 67) within 7 days. Other duties which must be carried out once either of these orders has been made include:
 - the appointment of a responsible medical officer by the hospital managers (if the patient does not already have a responsible medical officer) (section 230- see paragraphs 419 to 421 of these Notes)
 - the preparation of a social circumstances report by the mental health officer (except where this would serve little or no practical purpose) (section 231- see paragraph 422 of these Notes)
 - the preparation of a care plan by the patient's responsible medical officer. The responsible medical officer must ensure that this care plan is placed with the patient's medical records (section 76- see paragraph 119 of these Notes).
113. **Section 70** provides that where an interim compulsory treatment order or a compulsory treatment order is made while a patient is detained on short-term detention, the certificate which authorised the short-term detention is automatically revoked upon the making of the subsequent order. Similarly, section 75 provides that where a patient is made subject to a compulsory treatment order while already subject to an interim compulsory treatment order, that interim order shall be revoked on the making of the 'full' compulsory treatment order.
114. **Section 71** introduces schedule 3 and provides that Chapter 1 of Part 7 applies where a patient is subject to a hospital direction made under section 59A of the 1995 Act or a transfer for treatment direction made under section 136 of the 2003 Act subject to the modifications of that Chapter set out in schedule 3.