

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 7 – Compulsory Treatment Orders**

##### *Chapter 4: review of orders*

##### *Section 77: first mandatory review of compulsory treatment order*

120. Subsections (1) and (2) of section 77 require the responsible medical officer of a patient who is subject to a compulsory treatment order to carry out an initial review. A compulsory treatment order lasts for six months and the first review must be carried out in the two months before the order is due to expire. The responsible medical officer must comply with the requirements of subsection (3).

##### *Section 78: further mandatory reviews*

121. **Section 78** provides for further mandatory reviews of compulsory treatment orders following the first review. The section applies to compulsory treatment orders which have been extended by one of the three types of determination set out in subsection (1) (a) (broadly, a determination on first review extending the order for six months; a determination on the first further review (i.e. at the end of that six month extension) extending the order for twelve months; and a determination on a second or later further review (extending the order for a further period of twelve months)). It also applies to orders which have been extended by the Tribunal under section 103.
122. Subsection (2) imposes a duty on the patient's responsible medical officer to carry out a review. He or she must comply with the requirements in section 77(3). As with the first review, the further review must take place within two months of the date on which the extended order would otherwise expire.
123. There are three possible outcomes of a review of an order. Each is considered in turn.

##### **First possible outcome: revocation**

124. The review may result in the order being revoked by the responsible medical officer (section 79). If (having regard to the views of those consulted under section 77(3)(c)) the responsible medical officer is not satisfied as to either of the matters mentioned in subsection (2) of section 79, that officer must make a determination revoking the order.
125. The responsible medical officer and the Commission can revoke an order if satisfied as to the matters specified in sections 80 and 81 respectively. In section 80 cases, the order must be revoked; in section 81 cases, it may be revoked.
126. If an order is revoked, notification must be made to those persons specified in section 82(4).

**Second possible outcome: determination that order be extended for 6 months in same form**

***Section 83: further steps to be taken where order not revoked***

127. If the order is not revoked, the responsible medical officer must take the further steps set out in section 83.

***Sections 84 to 87: determination that order be extended in same form***

128. **Section 84(1)** and (2) provide that if, after having complied with section 83, the responsible medical officer considers that the order should continue to apply in exactly the same form, that officer must give notice to the mental health officer that it is proposed to make a determination under section 86.
129. Subsection (1) of section 85 then requires the mental health officer, as soon as practicable after receiving that notice, to take the steps set out in subsection (2) of that section.
130. If the tests in subsection (1) of section 86 are met, the responsible medical officer must make a determination extending the order for a period of:
- in the case of a first review, six months,
  - in the case of the first further review, a further 12 months,
  - in the case of a subsequent further review, a further 12 months from the expiry of the last 12 month period for which the order was extended.
131. **Section 87** applies where a determination is made under section 86. Subsection (1) requires the responsible medical officer to comply with subsection (2) of that section. By compliance with that provision, the patient's case is again brought to the attention of the Tribunal.
132. Under section 99 the determination made under section 86 may be challenged by the patient or the patient's named person.

***Sections 101 and 102: review of determination by Tribunal***

133. Subsection (2) of section 101 then requires the Tribunal to review the determination if any of the conditions in that subsection is satisfied. Section 102(1) sets out the range of powers available to the Tribunal on such a review.

**Third possible outcome: application to tribunal for extension and variation of order**

***Sections 83, 88 to 92, 103(1) and 105 to 110: application to Tribunal for extension and variation of order***

134. Having taken the further steps in section 83, the patient's responsible medical officer may decide both that it will be necessary for the order to be extended for a further period, as specified in section 88(4), and that it should be varied for that extended period (section 88(2)). In such a case, the responsible medical officer must give notice to the mental health officer under section 88(3).
135. This route to extension and variation, is separate from the responsibility placed on the responsible medical officer by way of sections 93 to 95 to seek a variation of the order *at any time*, should he or she consider that its terms require amendment (see paragraphs 144 and 145 of these Notes).
136. Once the mental health officer has received notice under section 88(3), he or she must take the steps set out in section 89.

137. Subsections (1) and (2) of section 90 provide that if, after having regard to the views of the mental health officer as expressed under section 89(2)(e) and to the views of the persons listed at section 77(3)(c), the responsible medical officer is still satisfied that extension and variation of the compulsory treatment order is necessary, he or she must make an application to the Tribunal under section 92. The information to be submitted as part of such an application is set out in section 92. As soon as practicable after the duty to make an application under section 92 arises, the responsible medical officer must give notice of the application to the persons listed in section 91.
138. Subsection (1) of section 103 sets out the powers that the Tribunal has on an application under section 92.
139. In addition to the powers in section 103(1), the Tribunal has power under sections 105 and 106 to make interim orders.
140. If the Tribunal is satisfied that the tests in paragraphs (a) and (b) of subsection (2) of section 105 are met, it may make an interim order extending (with or without variation) the compulsory treatment order for a period of up to 28 days. The Tribunal may make an interim order at its own discretion or on the application of any person with an interest in the proceedings.
141. [Section 106](#) enables the Tribunal to make an interim order varying the compulsory treatment order for a period of up to 28 days. The test which must be satisfied is set out in subsection (2).
142. [Section 107](#) imposes a limit on the powers in sections 105 and 106. An order under either of those sections cannot be made if, when taken together with any other interim order(s) made under those sections, it would lead to such interim orders being in force for a continuous period of more than 56 days.
143. [Section 108](#) requires the Tribunal, when it makes an order under section 105 or 106 (or any of the other provisions referred to), to specify in the order the modifications made to the measures and any recorded matter.

### **Variation of order: application by responsible medical officer**

#### ***Sections 93, 95, 96, 97, 104 and 106 to 108: recorded matters – reference to Tribunal by responsible medical officer***

144. [Section 93](#) also imposes a duty on the patient's responsible medical officer which is additional to the duties imposed by sections 77 and 78. The responsible medical officer must periodically consider whether a compulsory treatment order should be varied by modifying the measures or recorded matters specified. Subsection (4) details the steps which the officer must take and those who must be consulted. If the officer's views then remain that the order requires to be varied, he or she must apply to the Tribunal under section 95 for an appropriate order.
145. The section has been modified by the 2004 Order which adds to the required steps in the process which the mental health officer must take when notified that the responsible medical officer is proposing to apply to the Tribunal. These include interviewing the patient and giving the patient information about various matters, including the availability of advocacy services and how to access those, and the patient's rights in relation to an application to the Tribunal. There are corresponding amendments to section 95.
146. [Section 96](#) sets out the procedure to be followed by the responsible medical officer where he or she is satisfied that any recorded matter specified in the compulsory treatment order is not being provided. Where this happens, the responsible medical officer must make a reference to the Tribunal (subsection (3)) after having regard to the views of the mental health officer and any other persons he or she considers appropriate.

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

147. [Section 97](#) states which persons the responsible medical officer must notify once he is required to make a reference to the Tribunal under section 96(3).
148. [Section 104](#) sets out the powers of the Tribunal on a reference under section 96. In addition it may make an interim order under section 106, in which case sections 107 and 108 apply (see paragraphs 142 to 143 of these Notes).

### **Reference to Tribunal by Commission**

#### ***Sections 98, 104 and 106 to 108: reference to Tribunal by Commission***

149. [Section 98](#) confers on the Commission power to make a reference to the Tribunal with regard to a compulsory treatment order for any reason it considers appropriate. Where the Commission makes such a reference to the Tribunal, it must notify the persons listed in subsection (3) and include in that reference the details listed in subsection (4).
150. [Sections 104](#) and [106 to 108](#) are then applicable (see paragraph 148 above).

### **Applications by patients etc.**

#### ***Sections 99, 100, 103(2) to (4) and 106 to 108: applications by patients etc for revocation of determination extending order and for revocation or variation of order***

151. [Section 99](#) gives the patient or the patient's named person a right to apply to the Tribunal for an order under section 103 revoking the determination made by the responsible medical officer under section 86 to extend the compulsory treatment order.
152. [Section 100](#) confers on the patient or the patient's named person a right to make an application to the Tribunal for an order revoking the compulsory treatment order outright or varying it by modifying any of the measures or recorded matters specified in the order. Any such application may not be made within three months of the compulsory treatment order being made or within three months of any further order being made in respect of that compulsory treatment order under section 102 or 103. Subsection (6) provides that if an application under section 100 for revocation is refused or an application is made for variation, the individual who made that application is entitled to make no more than one further application in respect of that compulsory treatment order within the period mentioned in subsection (8). This means, for example, that one further application for revocation can be made either within the six month period following the day on which the order was made, or within the six month period following the first extension of the order, or within the 12 month period following the second extension of the order.
153. The powers of the Tribunal are set out in section 103. Subsection (2) deals with applications under section 99 and subsections (3) and (4) with applications under section 100.
154. [Sections 106 to 108](#) are then applicable (see paragraphs 141 to 143 above).

### **Ancillary powers of Tribunal**

#### ***Sections 109 to 111***

155. [Section 109](#) confers power on the Tribunal to require the patient's responsible medical officer or mental health officer to submit certain reports for the purpose of determining an application under section 92, 95, 99 or 100; a review under section 101; and a reference under section 96 or 98. The circumstances in which the Tribunal may require such reports will be set out in regulations made by the Scottish Ministers.

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**Interpretative provisions**

156. [Sections 110](#) and [111](#) apply for the purposes of the Chapter. Section 110 sets out rules for the calculation of periods of time; and section 111 explains what “modify” means.