



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

2003 asp 13

PART 7

COMPULSORY TREATMENT ORDERS

CHAPTER 1

APPLICATION FOR, AND MAKING OF, ORDERS

Pre-application procedures

57 Mental health officer's duty to apply for compulsory treatment order

- (1) Where subsections (2) to (5) below apply in relation to a patient, a mental health officer shall apply to the Tribunal under section 63 of this Act for a compulsory treatment order in respect of that patient.
- (2) This subsection applies where two medical practitioners carry out medical examinations of the patient in accordance with the requirements of section 58 of this Act.
- (3) This subsection applies where each of the medical practitioners who carries out a medical examination mentioned in subsection (2) above is satisfied—
 - (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;
 - (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;

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- (d) that because of the mental disorder the patient’s ability to make decisions about the provision of such medical treatment is significantly impaired; and
 - (e) that the making of a compulsory treatment order is necessary.
- (4) This subsection applies where each of the medical practitioners who carries out a medical examination mentioned in subsection (2) above submits to the mental health officer a report (any such report being referred to in this Act as a “mental health report”)—
- (a) stating that the medical practitioner submitting the report is satisfied that the conditions mentioned in paragraphs (a) to (e) of subsection (3) above are met in respect of the patient;
 - (b) stating, in relation to each of the conditions mentioned in paragraphs (b) to (e) of subsection (3) above, the medical practitioner’s reasons for believing the condition to be met in respect of the patient;
 - (c) specifying (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;
 - (d) setting out a description of—
 - (i) the symptoms that the patient has of the mental disorder; and
 - (ii) the ways in which the patient is affected by the mental disorder;
 - (e) specifying the measures that should, in the medical practitioner’s opinion, be authorised by the compulsory treatment order;
 - (f) specifying the date or dates on which the medical practitioner carried out the medical examination mentioned in subsection (2) above; and
 - (g) setting out any other information that the medical practitioner considers to be relevant.
- (5) This subsection applies where—
- (a) for the purposes of subsection (4)(c) above each of the mental health reports specifies at least one type of mental disorder that is also specified in the other report;
 - (b) for the purposes of subsection (4)(e) above each of the mental health reports specifies the same measures; and
 - (c) one of the mental health reports (being a report by an approved medical practitioner) states the views of that medical practitioner as to—
 - (i) subject to subsection (6) below, whether notice should be given to the patient under section 60(1)(a) of this Act; and
 - (ii) whether the patient is capable of arranging for a person to represent the patient in connection with the application under section 63 of this Act.
- (6) A medical practitioner may state the view that notice should not be given under section 60(1)(a) of this Act only if, in the opinion of that medical practitioner, the giving of notice would be likely to cause significant harm to the patient or any other person.
- (7) Where a mental health officer is required by subsection (1) above to make an application for a compulsory treatment order, the mental health officer shall make the application before the expiry of the period of 14 days beginning with—

- (a) in the case where each of the mental health reports specifies the same date (or dates) for the purposes of subsection (4)(f) above, that date (or the later, or latest, of those dates); or
- (b) in the case where each of those reports specifies for those purposes a different date (or different dates), the later (or latest) of those dates.

58 Medical examination: requirements

- (1) The requirements referred to in section 57(2) of this Act are set out in subsections (2) to (6) below.
- (2) Subject to subsection (4) below and to regulations under subsection (5) below—
 - (a) each medical examination of the patient shall be carried out by an approved medical practitioner; and
 - (b) subject to subsection (6) below, each such examination shall be carried out separately.
- (3) Where the medical examinations are carried out separately, the second shall be completed no more than five days after the first.
- (4) The patient's general medical practitioner may carry out one of the medical examinations of the patient although not an approved medical practitioner.
- (5) Except in circumstances specified in regulations, there must not be a conflict of interest in relation to the medical examination; and regulations shall specify the circumstances in which there is to be taken to be such a conflict of interest.
- (6) The medical examinations need not be carried out separately if—
 - (a) where the patient is capable of consenting to the examinations, the patient consents to the examinations being carried out at the same time; or
 - (b) where the patient is incapable of consenting to the examinations—
 - (i) the patient's named person;
 - (ii) any guardian of the patient; or
 - (iii) any welfare attorney of the patient,consents to the examinations being carried out at the same time.

59 Mental health officer's duty to identify named person

Where a mental health officer is required by 57(1) of this Act to make an application under section 63 of this Act in respect of a patient, the mental health officer shall, as soon as practicable after the duty to make the application arises, take such steps as are reasonably practicable to ascertain the name and address of the patient's named person.

60 Application for compulsory treatment order: notification

- (1) Where a mental health officer is required by section 57(1) of this Act to make an application under section 63 of this Act in respect of a patient, the mental health 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—
 - (a) subject to subsection (2) below, to the patient in respect of whom the application is to be made;

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- (b) to the patient's named person; and
 - (c) to the Commission.
- (2) If the view set out in one of the mental health reports by virtue of section 57(5)(c) of this Act is that notice should not be given under paragraph (a) of subsection (1) above, the mental health officer—
- (a) need not give such notice; but
 - (b) may, if the mental health officer considers it appropriate to do so, give such notice.

61 Mental health officer's duty to prepare report

- (1) This section applies where a mental health officer is required by section 57(1) of this Act to make an application under section 63 of this Act in respect of a patient.
- (2) The mental health officer shall, before the date on which, by virtue of section 57(7) of this Act, the application is to be made—
- (a) subject to subsection (3) below, interview the patient;
 - (b) if the patient has not been given notice under section 60(1)(a) of this Act, inform the patient that the application is to be made;
 - (c) inform the patient of—
 - (i) the patient's rights in relation to the application; and
 - (ii) the availability of independent advocacy services under section 259 of this Act;
 - (d) take appropriate steps to ensure that the patient has the opportunity of making use of those services; and
 - (e) prepare in relation to the patient a report in accordance with subsection (4) below.
- (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 report shall state—
- (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 steps that the mental health officer has taken in pursuance of the requirements imposed by subsection (2) above;
 - (d) if it was impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the reason for that being the case;
 - (e) in so far as relevant for the purposes of the application, details of the personal circumstances of the patient;
 - (f) the mental health officer's views on the mental health reports relating to the patient;
 - (g) if known by the mental health officer, details of any advance statement that the patient has made (and not withdrawn); and
 - (h) any other information that the mental health officer considers relevant to the determination by the Tribunal of the application.

62 Mental health officer’s duty to prepare proposed care plan

- (1) This section applies where a mental health officer is required by section 57(1) of this Act to make an application under section 63 of this Act in respect of a patient.
- (2) The mental health officer shall, before the date on which, by virtue of section 57(7) of this Act, the application is to be made, prepare a plan (a “proposed care plan”) relating to the patient.
- (3) Before preparing the proposed care plan, the mental health officer shall consult—
 - (a) the medical practitioners who provided the mental health reports relating to the patient;
 - (b) subject to subsection (7) below, the persons mentioned in subsection (4) below; and
 - (c) such other persons as the mental health officer considers appropriate.
- (4) The persons referred to in subsection (3)(b) above are persons who appear to the mental health officer to provide—
 - (a) medical treatment of the kind that it is proposed to specify, by virtue of paragraph (d) of subsection (5) below, in the proposed care plan;
 - (b) community care services, or relevant services, of the kind that it is proposed to specify, by virtue of paragraph (e) of that subsection, in that plan; or
 - (c) other treatment, care or services of the kind that it is proposed to specify, by virtue of paragraph (f) of that subsection, in that plan.
- (5) The proposed care plan shall specify—
 - (a) (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 which the patient has;
 - (b) the needs of the patient for medical treatment that have been assessed by the medical practitioners who submitted the mental health reports relating to the patient;
 - (c) in so far as relevant for the purposes of the application—
 - (i) where the patient is a child, the needs of the patient that have been assessed under section 23(3) of the Children (Scotland) Act 1995 (c. 36);
 - (ii) where the patient is not a child, the needs of the patient that have been assessed under section 12A(1)(a) of the Social Work (Scotland) Act 1968 (c. 49);
 - (d) the medical treatment which it is proposed to give to the patient in relation to each of the needs specified by virtue of paragraph (b) above (including the names of the persons who would give the treatment and the addresses at which the treatment would be given);
 - (e) any community care services or relevant services which it is proposed to provide to the patient in relation to each of the needs specified by virtue of paragraph (c) above (including the names of the persons who would provide such services and the addresses at which such services would be provided);
 - (f) in so far as relevant for the purposes of the application—
 - (i) any treatment or care (other than treatment or care specified, by virtue of paragraph (d) above, in the proposed care plan); or
 - (ii) any service (other than a service specified, by virtue of paragraph (e) above, in the proposed care plan),

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which it is proposed to provide to the patient (including the names of the persons who would provide such treatment, care or service and the addresses at which such treatment, care or service would be provided);

- (g) which of the measures mentioned in section 66(1) of this Act it is proposed that the compulsory treatment order should authorise;
- (h) where it is proposed that the compulsory treatment order should authorise the detention of the patient in hospital, the name and address of the hospital;
- (i) where it is proposed that the compulsory treatment order should authorise any of the measures mentioned in section 66(1)(c) to (h) of this Act, details of the measure (or measures);
- (j) where it is proposed that the compulsory treatment order should specify—
 - (i) any medical treatment specified, by virtue of paragraph (d) above, in the proposed care plan;
 - (ii) any community care services, or relevant services, specified, by virtue of paragraph (e) above, in the proposed care plan; or
 - (iii) any treatment, care or service specified, by virtue of paragraph (f) above, in the proposed care plan,
 that medical treatment, those services or that treatment, care, or service, as the case may be;
- (k) where it is proposed that the compulsory treatment order should authorise measures other than the detention of the patient in hospital, the name of the hospital the managers of which should have responsibility for appointing the patient’s responsible medical officer; and
- (l) the objectives of—
 - (i) the medical treatment which it is proposed, by virtue of paragraph (d) above, to give to the patient;
 - (ii) any community care services or relevant services which it is proposed, by virtue of paragraph (e) above, to provide to the patient;
 - (iii) any treatment, care or service which, by virtue of paragraph (f) above, it is proposed to provide to the patient; and
 - (iv) the measures (other than detention of the patient in hospital) that it is proposed that the compulsory treatment order should authorise.

(6) The proposed care plan shall be signed by the mental health officer.

(7) The mental health officer need not consult any person such as is mentioned in subsection (4) above in any case where it is impracticable to do so.

(8) In this section “child” has the same meaning as in section 23(3) of the Children (Scotland) Act 1995 (c. 36).

Application for order

63 Application for compulsory treatment order

(1) An application to the Tribunal for a compulsory treatment order may be made by, and only by, a mental health officer.

(2) An application—
 (a) shall specify—

- (i) the measures that are sought in relation to the patient in respect of whom the application is made;
 - (ii) any medical treatment, community care services, relevant services or other treatment, care or service specified in the proposed care plan by virtue of section 62(5)(j) of this Act; and
 - (iii) where it is proposed that the order should authorise measures other than the detention of the patient in hospital, the name of the hospital the managers of which should have responsibility for appointing the patient's responsible medical officer; and
- (b) shall be accompanied by the documents that are mentioned in subsection (3) below.
- (3) Those documents are—
- (a) the mental health reports;
 - (b) the report prepared under section 61 of this Act; and
 - (c) the proposed care plan,
- relating to the patient.

Making of order etc.

64 Powers of Tribunal on application under section 63: compulsory treatment order

- (1) This section applies where an application is made under section 63 of this Act.
- (2) Before determining the application, the Tribunal shall afford 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 medical practitioners who submitted the mental health reports which accompany the application;
 - (g) if the patient has a responsible medical officer, that officer;
 - (h) the patient's primary carer;
 - (i) any curator *ad litem* appointed in respect of the patient by the Tribunal; and
 - (j) any other person appearing to the Tribunal to have an interest in the application.
- (4) The Tribunal may—
- (a) if satisfied that all of the conditions mentioned in subsection (5) below are met, make an order—
 - (i) authorising, for the period of 6 months beginning with the day on which the order is made, such of the measures mentioned in section 66(1) of this Act as may be specified in the order;

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- (ii) specifying such medical treatment, community care services, relevant services, other treatment, care or service as the Tribunal considers appropriate (any such medical treatment, community care services, relevant services, other treatment, care or service so specified being referred to in this Act as a “recorded matter”);
 - (iii) recording (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
 - (iv) if the order does not authorise the detention of the patient in hospital, specifying the name of the hospital the managers of which are to have responsibility for appointing the patient’s responsible medical officer;
 - or
 - (b) refuse the application.
- (5) The conditions referred to in subsection (4)(a) above 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;
 - (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;
 - (d) that because of the mental disorder the patient’s ability to make decisions about the provision of such medical treatment is significantly impaired;
 - (e) that the making of a compulsory treatment order in respect of the patient is necessary; and
 - (f) where the Tribunal does not consider it necessary for the patient to be detained in hospital, such other conditions as may be specified in regulations.
- (6) Subject to subsection (7) below, an order under subsection (4)(a) above may, in addition to, or instead of, specifying some or all of the measures sought in the application to which the order relates, specify measures other than those set out in that application.
- (7) The Tribunal may specify in the order under subsection (4)(a) above measures other than those set out in the application only if, before making the order—
- (a) subject to subsection (8) below, the Tribunal gives notice to the persons mentioned in subsection (3) above—
 - (i) stating what it is proposing to do; and
 - (ii) setting out what those measures are;
 - (b) the Tribunal affords those persons the opportunity—
 - (i) of making representations (whether orally or in writing) in relation to the proposal; and
 - (ii) of leading, or producing, evidence.
- (8) Where the duty under subsection (7)(a) above arises during a hearing of the application, notice need not be given under that subsection to any person mentioned in subsection (3) above who is present at the hearing.

- (9) Before making regulations under subsection (5)(f) above, the Scottish Ministers shall consult such persons as they consider appropriate.

65 Powers of Tribunal on application under section 63: interim compulsory treatment order

- (1) This section applies where an application is made under section 63 of this Act.
- (2) Subject to subsections (3) and (4) below and to section 69 of this Act, on the application of any person having an interest in the proceedings, or *ex proprio motu*, the Tribunal may, if satisfied as to the matters mentioned in subsection (6) below, make an order (an “interim compulsory treatment order”)—
- (a) authorising for such period not exceeding 28 days as may be specified in the order such of the measures mentioned in section 66(1) of this Act as may be so specified; and
 - (b) if the order does not authorise the detention of the patient in hospital, specifying the name of the hospital the managers of which are to have responsibility for appointing the patient’s responsible medical officer.
- (3) The Tribunal may not make an interim compulsory treatment order if its effect, when taken with any other interim compulsory treatment order made in respect of the patient, would be to authorise measures in respect of the patient for a continuous period of more than 56 days.
- (4) Before making an interim compulsory treatment order, the Tribunal shall afford the persons mentioned in subsection (5) below the opportunity—
- (a) of making representations (whether orally or in writing); and
 - (b) of leading, or producing, evidence.
- (5) Those persons are—
- (a) the persons referred to in section 64(3)(a) to (e) and (g) to (i) of this Act;
 - (b) the medical practitioners who submitted the mental health reports which accompany the application under section 63 of this Act; and
 - (c) any other person appearing to the Tribunal to have an interest in that application.
- (6) The matters referred to in subsection (2) above are—
- (a) that the conditions mentioned in paragraphs (a) to (d) of section 64(5) of this Act are met in respect of the patient; and
 - (b) that it is necessary to make an interim compulsory treatment order.

66 Measures that may be authorised

- (1) Subject to subsection (2) below, the measures referred to in sections 64(4)(a)(i) and 65(2)(a) of this Act are—
- (a) the detention of the patient in the specified hospital;
 - (b) the giving to the patient, in accordance with Part 16 of this Act, of medical treatment;
 - (c) the imposition of a requirement on the patient to attend—
 - (i) on specified or directed dates; or
 - (ii) at specified or directed intervals,

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- specified or directed places with a view to receiving medical treatment;
- (d) the imposition of a requirement on the patient to attend—
- (i) on specified or directed dates; or
 - (ii) at specified or directed intervals,
- specified or directed places with a view to receiving community care services, relevant services or any treatment, care or service;
- (e) the imposition of a requirement on the patient to reside at a specified place;
- (f) the imposition of a requirement on the patient to allow—
- (i) the mental health officer;
 - (ii) the patient’s responsible medical officer; or
 - (iii) any person responsible for providing medical treatment, community care services, relevant services or any treatment, care or service to the patient who is authorised for the purposes of this paragraph by the patient’s responsible medical officer,
- to visit the patient in the place where the patient resides;
- (g) the imposition of a requirement on the patient to obtain the approval of the mental health officer to any proposed change of address; and
- (h) the imposition of a requirement on the patient to inform the mental health officer of any change of address before the change takes effect.
- (2) Regulations may make provision for measures prescribed by the regulations to be treated as included among the measures mentioned in subsection (1) above.
- (3) In this section—
- “directed” means in accordance with directions given by the patient’s responsible medical officer; and
- “specified” means specified in the compulsory treatment order or, as the case may be, the interim compulsory treatment order.

67 Order authorising detention: ancillary authorisation

- (1) Where a compulsory treatment order or an interim compulsory treatment order—
- (a) authorises the detention of a patient in a hospital specified in the order; or
 - (b) imposes a requirement on a patient to reside at a place specified in the order,
- this section authorises the removal, before the expiry of the period of 7 days beginning with the appropriate day, of the patient in respect of whom the order is made to that hospital or, as the case may be, place.
- (2) In subsection (1) above, “appropriate day” means the day on which—
- (a) a compulsory treatment order or, as the case may be, an interim compulsory treatment order authorising detention of a patient in hospital is made; or
 - (b) a compulsory treatment order is varied so as to authorise the detention of a patient in the hospital specified in the order.

Extension of short-term detention: special case

68 Extension of short-term detention pending determination of application

- (1) Where—

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- (a) the detention of a patient in hospital is authorised by—
 - (i) a short-term detention certificate; or
 - (ii) an extension certificate; and
 - (b) before the expiry of the period of detention so authorised, an application is made under section 63 of this Act,
- the measures mentioned in subsection (2) below are authorised.
- (2) Those measures are—
- (a) the detention in hospital of the patient for the period of 5 days beginning with the expiry of the period for which the certificate authorises the detention of the patient in hospital; and
 - (b) the giving to the patient, in accordance with Part 16 of this Act, of medical treatment.
- (3) In reckoning the period of days mentioned in subsection (2)(a) above, there shall be left out of account any day which is not a working day.
- (4) In this section “working day” has the meaning given by section 47(8) of this Act.

Time limit for Tribunal’s determination: special case

69 Time limit for determining application etc. where section 68 applies

Where section 68 of this Act applies, the Tribunal shall, before the expiry of the period of 5 days referred to in section 68(2)(a) of this Act—

- (a) determine whether an interim compulsory treatment order should be made; and
- (b) if it determines that an interim compulsory treatment order should not be made, determine the application.

Effect of making of orders on short-term detention

70 Effect of subsequent order on short-term detention certificate

If a compulsory treatment order, or an interim compulsory treatment order, is made in respect of a patient who is in hospital under authority of a short-term detention certificate, the certificate shall, on the making of the order, be revoked.

Application of Chapter where patient subject to hospital direction or transfer for treatment direction

71 Application of Chapter where patient subject to hospital direction or transfer for treatment direction

Where a patient is subject to—

- (a) a hospital direction; or
- (b) a transfer for treatment direction,

this Chapter shall have effect in accordance with schedule 3 to this Act.