

**2004 No. 533**

**MENTAL HEALTH**

**The Mental Health (Care and Treatment) (Scotland) Act 2003  
Modification Order 2004**

*Made - - - - 1st December 2004*

*Coming into force in accordance with article 1*

The Scottish Ministers, in exercise of the powers conferred by section 330 of the Mental Health (Care and Treatment) (Scotland) Act 2003(a), and of all other powers enabling them in that behalf, hereby make the following Order, a draft of which has, in accordance with section 326(4)(b) of that Act, been laid before and approved by resolution of the Scottish Parliament:

**Citation and commencement**

1. This Order may be cited as the Mental Health (Care and Treatment) (Scotland) Act 2003 Modification Order 2004 and shall come into force on the day after the day on which it is made.

**Modification of the Mental Health (Care and Treatment) (Scotland) Act 2003**

2.—(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 shall be amended as follows.

(2) In section 93 (responsible medical officer's duties: variation of order)—

(a) after subsection (4) insert—

“(4A) If, having regard to any views expressed by persons consulted under subsection (4)(c) above, it continues to appear to the responsible medical officer that the compulsory treatment order should be varied as mentioned in subsection (2) above, the responsible medical officer shall, as soon as practicable, notify the mental health officer—

- (a) that the responsible medical officer is proposing to make an application to the Tribunal under section 95 of this Act for an order under section 103 of this Act varying the compulsory treatment order; and
- (b) the modification of the measures, or any recorded matter, specified in that order that the responsible medical officer is proposing.

(4B) The mental health officer shall, as soon as practicable after being notified under subsection (4A) above, comply with the requirements in subsection (4C) below.

(4C) Those requirements are—

- (a) subject to subsection (4D) below, to interview the patient;
- (b) to inform the patient of the matters mentioned in subsection (4E) below;
- (c) to inform the patient of the availability of independent advocacy services under section 259 of this Act;

- (d) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and
  - (e) to inform the patient’s responsible medical officer–
    - (i) of whether the mental health officer agrees, or disagrees, that the application that is proposed should be made;
    - (ii) if the mental health officer disagrees, of the reason why that is the case; and
    - (iii) of any other matters that the mental health officer considers relevant.
- (4D) If it is impracticable for the mental health officer to comply with the requirement in subsection (4C)(a) above, the mental health officer need not do so.
- (4E) The matters referred to in subsection (4C)(b) above are–
- (a) that the patient’s responsible medical officer is proposing to make an application to the Tribunal under section 95 of this Act for an order varying the compulsory treatment order by modifying the measures or a recorded matter specified in it;
  - (b) the modification of the measures or any recorded matter specified in that order that the responsible medical officer is proposing; and
  - (c) the patient’s rights in relation to such an application.”; and
- (b) in subsection (5), after “(4)(c) above”, insert “and any views expressed by the mental health officer under subsection (4C)(e) above”.
- (3) In section 95(a) (application to tribunal by responsible medical officer)–
- (a) for “(vi)” substitute “(iv)”;
  - (b) the words from “the” to “Act;” become sub-paragraph (i); and
  - (c) after “Act;” insert–
    - “(ii) whether the mental health officer agrees, or disagrees that the application should be made, or has failed to comply with the duty imposed by section 93(4C)(e)(i) of this Act; and
    - (iii) if the mental health officer disagrees, the reason for that disagreement.”.
- (4) In section 158 (application to tribunal for extension and variation of compulsion order)–
- (a) after subsection (a)(iv) omit “and”; and
  - (b) in subsection (a)(v) after “Act”, insert–
    - “; and
    - (vi) if the mental health officer disagrees, the reason for that disagreement”.
- (5) In section 159 (responsible medical officer’s duties: variation of compulsion order)–
- (a) after subsection (4) insert–
    - “(4A) If, having regard to any views expressed by persons consulted under subsection (4)(c) above, it continues to appear to the responsible medical officer that the compulsion order should be varied by modifying the measures specified in it, the responsible medical officer shall, as soon as practicable, notify the mental health officer–
      - (a) that the responsible medical officer is proposing to make an application to the Tribunal under section 161 of this Act for an order under section 167 of this Act varying the compulsion order; and
      - (b) the modification of the measures specified in that order that the responsible medical officer is proposing.
- (4B) The mental health officer shall, as soon as practicable after being notified under subsection (4A) above, comply with the requirements in subsection (4C) below.
- (4C) Those requirements are–
- (a) subject to subsection (4D) below, to interview the patient;
  - (b) to inform the patient of the matters mentioned in subsection (4E) below;

- (c) to inform the patient of the availability of independent advocacy services under section 259 of this Act;
  - (d) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and
  - (e) to inform the patient’s responsible medical officer–
    - (i) of whether the mental health officer agrees, or disagrees, that the application that is proposed should be made;
    - (ii) if the mental health officer disagrees, of the reason why that is the case; and
    - (iii) of any other matters that the mental health officer considers relevant.
- (4D) If it is impracticable for the mental health officer to comply with the requirement in subsection (4C)(a) above, the mental health officer need not do so.
- (4E) The matters referred to in subsection (4C)(b) above are–
- (a) that the patient’s responsible medical officer is proposing to make an application to the Tribunal under section 161 of this Act for an order varying the compulsion order by modifying the measures specified in it;
  - (b) the modification of the measures specified in that order that the responsible medical officer is proposing; and
  - (c) the patient’s rights in relation to such an application.”.
- (6) In section 161(a) (application to tribunal by responsible medical officer)–
- (a) after “158(a)” insert “(i) to (iv)”;
  - (b) the words from “the” to “Act;” become sub-paragraph (1); and
  - (c) after “Act;” insert–
    - “(ii) whether the mental health officer agrees, or disagrees that the application should be made, or has failed to comply with the duty imposed by section 159(4C)(e)(i) of this Act; and
    - (iii) if the mental health officer disagrees, the reason for that disagreement.”.
- (7) Section 246 (certificates under section 238) becomes subsection (1) of that section and at the end insert–
- “(2) A person who gives a certificate under section 238 of this Act shall, before the expiry of the period of 7 days beginning with the day on which the certificate is given, send a copy of it to the Commission.”.
- (8) In section 274 (code of practice)–
- (a) in subsection (1), after “Act” insert “or Part VI (mental disorder) of the 1995 Act(a)”;
  - (b) in subsection (4), after “Act” insert “or Part VI (mental disorder) of the 1995 Act”; and
  - (c) in subsection (5)–
    - (i) after “Act” insert “or Part VI (mental disorder) of the 1995 Act”; and
    - (ii) after paragraph (a) insert–
      - “(aa) a prosecutor;”.
- (9) In section 289 (cross-border transfer: patients subject to requirement other than detention), after subsection (2) insert–
- “(2A) Subsection (2) above is without prejudice to the generality of the powers conferred by subsection (1) above.”

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(a) 1995 c.46.

(10) In section 290(2)(b)(i) (cross-border transfer: patients subject to detention requirement or otherwise in hospital)–

- (a) after “patient”, where secondly occurring, insert “, in the case of paragraph (a) of subsection (1) above,”; and
- (b) after “Act”, where secondly occurring, insert “or, in the case of paragraph (b) of subsection (1) above, treatment for mental disorder corresponding or similar to that which the patient is receiving in hospital”.

(11) In section 310(2)(a) (regulations as to absconding by other patients), after sub-paragraph (i) insert–

“(ia)specified prosecutors;”.

St Andrew’s House,  
Edinburgh  
1st December 2004

*RHONA BRANKIN*  
Authorised to sign by the Scottish Ministers

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes supplementary, incidental and consequential provision in the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the Act”) by modifying various provisions of the Act as described below.

Article 2(2) modifies section 93 of the Act which places duties on a patient’s mental health officer in circumstances where the responsible medical officer is considering making an application to the Mental Health Tribunal for Scotland (“the Tribunal”) to vary the patient’s compulsory treatment order. Those duties include interviewing the patient, providing the patient with further information about the detail of the application, and informing the patient about available independent advocacy services. It also places a further duty on the responsible medical officer to notify the mental health officer.

Article 2(3) modifies section 95(a) to reflect the duties placed on the mental health officer by section 93, as modified, in respect of the information that the responsible medical officer must provide in an application to the Tribunal.

Article 2(4) modifies section 158 by inserting a requirement for the responsible medical officer to include details in an application (to extend and vary a compulsion order) where the mental health officer disagrees with the application, and the reasons for that disagreement.

Article 2(5) modifies section 159 of the Act which has a similar effect to the modifications to section 93 (described above), but applies where the responsible medical officer is making an application to vary the patient’s compulsion order.

Article 2(6) modifies section 161(a) to reflect the duties placed on the mental health officer by section 159, as modified, in respect of the information that the responsible medical officer must provide in an application to the Tribunal.

Article 2(7) inserts a new subsection into section 246 of the Act which has the effect of requiring a person who gives a certificate under section 238 to send a copy to the Mental Welfare Commission within 7 days.

Article 2(8) modifies section 274 (code of practice) of the Act to allow the Scottish Ministers to give guidance to persons discharging functions under Part VI of the Criminal Procedure (Scotland) Act 1995 (c.46). The Scottish Ministers already have power to give guidance to those discharging functions under the Act.

Article 2(9) and (10) deal with the cross-border transfer of patients. Article 2(9) adds a new subsection (2A) to section 289 of the Act. Article 2(10) modifies section 290(2)(b)(i) to widen the regulation making power in section 290(1) so that regulations can require the Scottish Ministers to consider corresponding care and services for informal patients (in addition to patients receiving treatment under the Act or the Criminal Procedure (Scotland) Act 1995) before authorising removal of the patient from Scotland.

Article 2(11) modifies section 310 of the Act to allow regulations to require notification to the prosecutor (in addition to the courts, the Mental Welfare Commission and the Scottish Ministers) where a patient absconds or fails to comply with requirements imposed on them by certain orders or directions.





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