
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 452

**The Mental Health (Care and Treatment) (Scotland) Act
2003 (Transitional and Savings Provisions) Order 2005**

PART 2

PATIENTS DETAINED UNDER PART 5 OF THE 1984 ACT

Deemed compulsory treatment order

3.—(1) A 1984 Act patient shall be treated as if that patient was subject to a compulsory treatment order made under section 64(4)(a) of the 2003 Act and as if liable to be detained by virtue of the 2003 Act.

(2) The deemed compulsory treatment order—

- (a) authorises the measures mentioned in section 66(1)(a) and (b) of the 2003 Act for the remaining period of time for which there was authority for the detention of the patient under Part 5 of the 1984 Act;
- (b) is deemed to record as the type (or types) of mental disorder that the patient has the type (or types) of mental disorder common to the 2 medical recommendations mentioned in section 18(2) of the 1984 Act, or, where applicable, any forms of mental disorder mentioned in the reports mentioned in section 74(9) of the 1984 Act except that the form of mental disorder specified by the deemed compulsory treatment order is—
 - (i) learning disability where the form of mental disorder common to the recommendations or mentioned in the reports is mental handicap; and
 - (ii) personality disorder where the form of mental disorder common to the recommendations or mentioned in the reports is mental illness consisting of personality disorder; and
- (c) is deemed to specify the hospital in which the person is detained immediately before 5th October 2005 or, if the patient has not yet been admitted to hospital, is deemed to specify the hospital named in the application for admission under Part 5 of the 1984 Act.

Review, revocation and variation of deemed compulsory treatment order

4.—(1) A 1984 Act patient shall be treated, for the purposes of section 100 of the 2003 Act as if the deemed compulsory treatment order to which that patient is subject had been made on the day when the patient was admitted to hospital in pursuance of an application for admission under Part 5 the 1984 Act.

(2) Where authority for the detention of a 1984 patient has, prior to 5th October 2005, been renewed under section 30 of the 1984 Act, that patient shall be treated—

- (a) where the authority for the detention has been renewed once, as if a determination under section 86 of the 2003 Act had been made in respect of the first review.

- (b) where the authority for the detention has been renewed more than once, as if such a determination had been made in respect of a subsequent further review.
- (3) Where a 1984 Act patient has within a period of detention immediately preceding 5th October 2005 made an unsuccessful appeal to the sheriff to order discharge, that patient shall be treated as if an application under section 99 of the 2003 Act for revocation of a determination had been refused in respect of the deemed compulsory treatment order in that period.
- (4) When a determination is made for the first time in respect of any 1984 Act patient under section 86 of the 2003 Act to extend a deemed compulsory treatment order, the responsible medical officer shall send a copy of the patient's care plan and the mental health officer's report mentioned in paragraph (7) to the Tribunal.
- (5) At the same time as the patient's care plan and mental health officer's report are sent to the Tribunal, the responsible medical officer shall send a copy of them—
- (a) subject to paragraph (6), to the patient;
 - (b) to the patient's named person;
 - (c) to the mental health officer;
 - (d) to the Commission.
- (6) If the responsible medical officer considers that there would be a risk of significant harm to the patient, or to others, if a copy of either the care plan or mental health officer's report were sent to the patient, that officer need not send that copy to the patient.
- (7) When the determination mentioned in paragraph 4 is made, the patient's mental health officer shall prepare a report setting out—
- (a) the views of the mental health officer on the determination and the reasons for those views;
 - (b) if known to the mental health officer, the views of the patient and the patient's named person on the determination and the reasons for those views;
 - (c) in so far as the mental health officer considers relevant for the purposes of the review, details of the personal circumstances of the patient;
 - (d) if known to the mental health officer, details of any advance statement that the patient has made (and not withdrawn);
 - (e) any other information which the mental health officer considers may assist the Tribunal in considering the determination; and
 - (f) the social circumstances report, if available.

Transfer provisions

5.—(1) Where a 1984 Act patient has been transferred in accordance with the provisions of section 29 of the 1984 Act, and no intimation of the transfer has yet been made in accordance with section 29(2) of that Act immediately before 5th October 2005, such intimation shall be made within 7 days of the transfer.

(2) Where a 1984 Act patient is transferred to a state hospital on or after 8th September 2005 and no appeal is lodged under section 29(4) of the 1984 Act immediately before 5th October 2005, the patient shall be treated as if section 126 of the 2003 Act applied to that patient.

(3) Where a 1984 Act patient is transferred to a state hospital on or after 8th September 2005 and an appeal is lodged under section 29(4) of the 1984 Act but not determined immediately before 5th October 2005, section 29(4) of the 1984 Act shall continue to have effect in respect of that appeal.

Leave of absence

6.—(1) Notwithstanding section 127(2) of the 2003 Act, where for the period immediately before 5th October 2005 a 1984 Act patient has been granted leave of absence under section 27 of the 1984 Act, whether or not that leave has been extended, that patient shall be treated as if a certificate had been granted under section 127(1) of the 2003 Act for the period of absence granted under section 27 except that the total period of absence shall be no more than 12 months from the first day of absence or 9 months from 5th October 2005, whichever expires earlier.

(2) Any direction made or condition imposed under section 27(3) of the 1984 Act in connection with a 1984 Act patient shall be deemed to be a condition included in a certificate granted under section 127(1) of the 2003 Act.

(3) Where immediately before 5th October 2005 the Commission has not been notified of a grant of leave of absence or an extension of leave of absence under section 27(4) of the 1984 Act, the responsible medical officer shall, before the expiry of the period of 14 days beginning with the day of the granting of leave or extension, give notice of it to the Commission.

Absconding

7. Where immediately before 5th October 2005 a 1984 Act patient is a patient such as is referred to in section 28(1)(a), (b) or (c) of the 1984 Act—

- (a) that patient shall be treated as liable to be taken into custody, under section 301 of the 2003 Act and dealt with in accordance with section 303 of that Act; and
- (b) the period referred to in section 304(3) of the 2003 Act shall be calculated from the first day of the patient's absence, notwithstanding the date when the deemed compulsory treatment order takes effect.

Applications for admission under the 1984 Act

8.—(1) Where a local authority has been required by the nearest relative, guardian or welfare attorney under section 19(3) of the 1984 Act to direct a mental health officer to take a patient's case into consideration with a view to making an application for admission, but before 5th October 2005 no application has been made, the mental health officer shall be obliged to inform the nearest relative, guardian or welfare attorney, as the case may be, of the reasons in writing, if it has been decided not to make an application.

(2) Where before 5th October 2005 an application for admission has been submitted to the sheriff under section 21 of the 1984 Act and not yet been determined, sections 18(3), 21, 22(1), 23 and 113 of the 1984 Act shall have effect in respect of that application.

(3) Where the sheriff approves an application referred to in paragraph (2), the person who is the subject of the application shall on admission to hospital be subject to a deemed compulsory treatment order, but the deemed compulsory treatment order shall have no effect if—

- (a) the application or any medical recommendation given for the purposes of the application is found to be incorrect or defective and is not amended as provided for in section 23(1) of the 1984 Act; or
- (b) notice is given under section 23(2) of the 1984 Act and the conditions referred to in paragraphs (a) and (b) of that subsection are not satisfied.