

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9 - Compulsion Orders

Chapter 2: review of compulsion orders

Powers of Tribunal

Section 166: powers of Tribunal on review under section 165

313. *Section 166* sets out the powers of the Tribunal on a review under section 165 of a responsible medical officer's determination to extend a compulsion order. Before it makes a decision, the Tribunal must allow the patient, the patient's named person, the responsible medical officer and the other persons listed in subsection (3) the opportunity to make representations or to lead or produce evidence. The Tribunal may revoke or confirm the determination. Where it revokes the determination, it may also revoke the compulsion order. Where it confirms the determination, it may also vary the compulsion order.

Section 167: powers of Tribunal on application under section 149, 158, 161, 163 or 164

314. *Section 167* provides for the powers of the Tribunal on the following applications, namely:

- applications under section 149 by the responsible medical officer for the first extension of a compulsion order (see subsection (1));
- applications under section 158 by the responsible medical officer for the extension and variation of a compulsion order (see subsection (2));
- applications under section 163 by a patient or patient's named person for revocation of a determination by the responsible medical officer under section 152 (see subsection (3));
- applications under section 164(2)(a) by a patient or patient's named person for revocation or variation of a compulsion order (see subsection (4)); and
- applications under section 161 or 164(2)(b) by the responsible medical officer or the patient or patient's named person respectively for the variation of a compulsion order (see subsection (5)).

315. Before making any decision on an application, the Tribunal must give the persons listed in section 166(3) and any person appearing to the Tribunal to have an interest,

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the opportunity of making written or oral representations and of leading or producing evidence (subsection (6)).

Section 168: interim extension etc of order: application under section 149

316. **Section 168** gives power to the Tribunal to make an interim order to extend or extend and vary a compulsion order for a period of up to 28 days where it has received an application from the responsible medical officer under section 149 to extend the order. It is open to anyone with an interest in the proceedings to ask the Tribunal to make an interim order. In addition, the Tribunal has power to make the order on its own initiative. The Tribunal may make an interim order only where it considers that it will not be able to come to a decision on the application before the compulsion order would cease to have effect and that it is appropriate to make the order. The Tribunal's power is subject to the restriction set out in section 170.

Section 169: interim variation of order following application, reference or review under Chapter

317. **Section 169** provides the Tribunal with power to make an interim order to vary a compulsion order for a period of up to 28 days where it has received an application or reference mentioned in subsection (1)(a) or (b) or where it is reviewing a determination made under section 165. Any person with an interest in the proceedings can ask the Tribunal to make an interim order or the Tribunal can do so on its own initiative. The Tribunal can make an interim order only where it considers it appropriate to do so pending its decision on the application, reference or review. The Tribunal's power is subject to the restriction in section 170.

Section 170: limit on power of Tribunal to make interim order

318. **Section 170** provides that the maximum continuous period of time that interim orders can be in force under sections 168 and 169 cannot exceed 56 days.

Section 171: powers of Tribunal on reference under section 162

319. **Section 171** provides powers to the Tribunal on receiving a reference from the Commission under section 162, to vary or revoke the compulsion order. Before it makes any order, the Tribunal must give the persons listed in section 166(3) and any other person appearing to the Tribunal to have an interest the opportunity of making representations or leading or producing evidence.

Section 172: Tribunal's order varying compulsion order

320. **Section 172** sets out what the Tribunal must specify when it makes an order under section 166, 167 or 171 varying a compulsion order. It must specify the modifications that it has made to the measures specified in the compulsion order. In addition, the Tribunal may specify measures which were not sought in the application to which its order relates.

Section 173: applications to Tribunal: ancillary powers

321. **Section 173** gives power to the Scottish Ministers to make regulations to prescribe circumstances in which the Tribunal can require the responsible medical officer and the mental health officer to submit reports to the Tribunal; and to prescribe the matters which those reports must cover.

Section 174: effect of interim orders: calculation of time periods in Chapter

322. The section provides that, if the Tribunal has extended, or extended and varied, an order under section 168, the period of time for which that order was extended will not be

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taken into account in the calculation of the day on which the order ceases, will cease or would have ceased.