



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

2003 asp 13

PART 7

COMPULSORY TREATMENT ORDERS

CHAPTER 4

REVIEW OF ORDERS

Extension and variation of order: application by responsible medical officer

88 Responsible medical officer's duty where extension and variation of order appear appropriate

- (1) This section applies where a patient's responsible medical officer is carrying out—
 - (a) the first review of the compulsory treatment order to which the patient is subject; or
 - (b) a further review of that order.
- (2) If, having regard to any views expressed by persons consulted under section 77(3)(c) of this Act for the purpose of the review being carried out, it appears to the responsible medical officer—
 - (a) that it will continue to be necessary for the patient to be subject to a compulsory treatment order after the day on which the order will cease (unless extended) to authorise the measures specified in it; but
 - (b) that the order should be varied by modifying the measures, or any recorded matter, specified in it,the responsible medical officer shall comply with the requirement in subsection (3) below.
- (3) That requirement is to give notice to the mental health officer—

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Extension and variation of order: application by responsible medical officer is up to date with all changes known to be in force on or before 15 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (a) that the responsible medical officer is proposing to make an application to the Tribunal under section 92 of this Act for an order under section 103 of this Act—
 - (i) extending the compulsory treatment order for the period mentioned in subsection (4) below; and
 - (ii) varying that order by modifying the measures, or a recorded matter, specified in it; and
 - (b) of the modification of the measures, or any recorded matter, specified in that order that the responsible medical officer is proposing.
- (4) The period referred to in subsection (3) above is—
- (a) where the application is made in respect of the first review, the period of 6 months beginning with the day on which the compulsory treatment order will (unless extended) cease to authorise the measures specified in it;
 - (b) where the application is made in respect of the first further review, the period of 12 months beginning with the expiry of the period mentioned in paragraph (a) above;
 - (c) where the application is made in respect of a subsequent further review, the period of 12 months beginning with the expiry of the period of 12 months for which the order is extended as a result of the immediately preceding further review.

Commencement Information

- II** [S. 88](#) in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

89 Mental health officer's duties: extension and variation of order

- (1) The mental health officer shall, as soon as practicable after receiving notice under section 88(3) of this Act, comply with the requirements in subsection (2) below.
- (2) Those requirements are—
 - (a) subject to subsection (3) below, to interview the patient;
 - (b) to inform the patient of the matters mentioned in subsection (4) 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.
- (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 matters referred to in subsection (2)(b) above are—

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- (a) that the patient's responsible medical officer is proposing to make an application to the Tribunal under section 92 of this Act for an order—
 - (i) extending the compulsory treatment order to which the patient is subject for the period mentioned in section 88(4) of this Act; and
 - (ii) 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.

Commencement Information

- I2** [S. 89](#) in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

90 Responsible medical officer's duty to apply for extension and variation of order

- (1) If, having regard to—
 - (a) any views expressed by persons consulted under section 77(3)(c) of this Act for the purpose of the review being carried out; and
 - (b) any views expressed by the mental health officer under section 89(2)(e) of this Act for the purpose of that review,
 the responsible medical officer is satisfied as to the matters mentioned in section 88(2) (a) and (b) of this Act, the responsible medical officer shall comply with the requirement in subsection (2) below.
- (2) That requirement is to make an application to the Tribunal under section 92 of this Act for an order—
 - (a) extending the compulsory treatment order for the period mentioned in section 88(4) of this Act; and
 - (b) varying that order by modifying the measures, or a recorded matter, specified in it.
- (3) An application made under section 92 of this Act, by virtue of subsection (1) above, for an order mentioned in subsection (2) above shall be made as soon as practicable after the duty to make it arises.

Commencement Information

- I3** [S. 90](#) in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

91 Application for extension and variation of order: notification

Where, by virtue of section 90(1) of this Act, an application is to be made under section 92 of this Act, the patient's responsible medical 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 to—

- (a) the patient;

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- (b) the patient's named person;
- (c) any guardian of the patient;
- (d) any welfare attorney of the patient;
- (e) the mental health officer; and
- (f) the Commission.

Commencement Information

- I4** [S. 91](#) in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

92 Application to Tribunal

An application under this section to the Tribunal by a patient's responsible medical officer for an order extending and varying a compulsory treatment order—

- (a) shall state—
 - (i) the name and address of the patient;
 - (ii) the name and address of the patient's named person;
 - (iii) the modification of the measures, or any recorded matter, specified in the compulsory treatment order that is proposed by the responsible medical officer;
 - (iv) the reasons for seeking that modification;
 - (v) 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 89(2)(e)(i) of this Act; and
 - (vi) if the mental health officer disagrees, the reason for that disagreement; and
- (b) shall be accompanied by such documents as may be prescribed by regulations.

Commencement Information

- I5** [S. 92](#) in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), [art. 2](#), [Sch. 1](#)
- I6** [S. 92](#) in force at 5.10.2005 in so far as not already in force by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 64(8A)(8B) inserted by [2015 asp 9 s. 1\(2\)](#)
- s. 65(7) inserted by [2015 asp 9 s. 1\(3\)](#)