



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

## 2003 asp 13

### PART 9

#### COMPULSION ORDERS

#### CHAPTER 2

#### REVIEW OF COMPULSION ORDERS

#### *Variation of order*

#### **159 Responsible medical officer's duties: variation of compulsion order**

- (1) This section applies where a patient is subject to a relevant compulsion order.
- (2) Without prejudice to the duties imposed on the patient's responsible medical officer by sections 139(2), 140(2) and 145(2) of this Act, the responsible medical officer shall from time to time consider whether the compulsion order should be varied by modifying the measures specified in it.
- (3) If it appears 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, comply with the requirements in subsection (4) below.
- (4) Those requirements are—
  - (a) to assess the needs of the patient for medical treatment;
  - (b) to consider what modification, if any, of the measures specified in the compulsion order is appropriate; and
  - (c) to consult—
    - (i) the mental health officer; and
    - (ii) such other persons as the responsible medical officer considers appropriate.

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Variation of order is up to date with all changes known to be in force on or before 25 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*

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- [<sup>F1</sup>(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.]
- (5) If, having regard to any views expressed by persons consulted under subsection (4)(c) above, the responsible medical officer is satisfied that the compulsion order should be varied by modifying the measures specified in it, the responsible medical officer shall 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 in that way.

#### Textual Amendments

- F1** S. 159(4A)-(4E) inserted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(5)(a)**

**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Variation of order is up to date with all changes known to be in force on or before 25 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*

### Commencement Information

- I1** S. 159 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)

## 160 Application for variation of compulsion order: notification

Where, by virtue of section 159(5) of this Act, an application is to be made under section 161 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 the persons mentioned in section 157(a) to <sup>[F2(e)]</sup> of this Act.

### Textual Amendments

- F2** Word in s. 160 substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 51\(3\), 61\(2\); S.S.I. 2017/197, art. 2, sch.](#)

### Commencement Information

- I2** S. 160 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)

## 161 Application to Tribunal by responsible medical officer

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

- (a) shall state
- (i) <sup>[F3]</sup>the matters mentioned in section 158(a)<sup>[F4(i) to (iv)]</sup> of this Act;] and
  - <sup>[F5(ii)]</sup> 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.]
- (b) shall be accompanied by such documents as may be prescribed by regulations.

### Textual Amendments

- F3** Words in s. 161(a) renumbered as s. 161(a)(i) (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\), arts. 1, 2\(6\)\(b\)](#)
- F4** Words in s. 161(a) inserted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\), arts. 1, 2\(6\)\(a\)](#)
- F5** S. 161(a)(ii)(iii) inserted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\), arts. 1, 2\(6\)\(c\)](#)

### Commencement Information

- I3** S. 161 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161, art. 2, Sch. 1](#)
- I4** S. 161 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:**

Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Variation of order is up to date with all changes known to be in force on or before 25 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.

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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\(3\)](#)