

ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 4

Mental Health: Miscellaneous Amendments and Repeals

Section 68 – Review of determination extending compulsory treatment order

158. This section amends section 101(2)(b) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”). Section 101 applies where a patient is subject to a Compulsory Treatment Order (“CTO”) made under section 64(4)(a) of the 2003 Act and the patient’s responsible medical officer makes a determination under section 86 of the 2003 Act extending the CTO.
159. **Section 101(2)(a)** requires the Mental Health Tribunal for Scotland (“the Tribunal”) to review such a determination if the record submitted to the Tribunal with the determination states that there is a difference between the type(s) of mental disorder that the patient has and the type(s) of mental disorder recorded in the CTO in respect of which the determination is made, or that the patient’s mental health officer disagrees with the determination (or has failed to inform the patient of the matters set out in section 85(2) of the 2003 Act (including the patient’s rights in relation to the determination)).
160. The amendment to section 101(2)(b) of the 2003 Act (together with new subsections (3) and (4)) provides further ground for reviews of determinations under section 86. This ground comes into play 2 years from the original granting of the CTO if there is a determination under section 86 extending the CTO for a further year. The effect of this is that there is not to be a review by the Tribunal under the new section 101(2) (b) of determinations under section 86 in respect of the first two year period from the granting of the CTO (i.e. there is not to be a review of the first two determinations from the granting of the CTO under that section).
161. Thereafter there is to be a review of a determination by the Tribunal if, within the two year period ending just before the CTO would expire if not extended by that determination, no application has been made to the Tribunal under section 92, 95, 99 or 100 of the 2003 Act, nor has there been a review under section 101.
162. Section 102 of the 2003 Act sets out the range of powers and duties of the Tribunal on such a review.

Section 69 - Compulsion orders: revocation

163. This section gives the Responsible Medical Officer (RMO), the Scottish Ministers and the Mental Health Tribunal for Scotland the flexibility to recommend or make

decisions which lead to the revocation of the compulsion order for patients subject to a compulsion order with a restriction order (CORO) in the following circumstances:

- it is not necessary for the patient to be detained in hospital for the protection of any person from serious harm;
- the patient has a mental disorder which needs treatment;
- the patient does not require to be subject to the compulsion order for the purpose of receiving such treatment.

This amendment makes provision which allows patients subject to compulsion orders with restrictions to be absolutely discharged where it is no longer necessary for such patients to receive that treatment compulsorily.

Section 70 – Hospital directions and transfer for treatment directions: revocation

164. This section amends sections 207(5), 208(4), 210(2), 212(4) and 215(4) of the 2003 Act to add an additional test to the criteria for revocation of a patient's transfer for treatment direction or hospital direction. The additional test is that the patient's responsible medical officer, the Scottish Ministers or the Mental Health Tribunal for Scotland, as the case may be, is not satisfied that it continues to be necessary for the patient to be subject to the direction.
165. For as long as the patient has a mental disorder and requires to receive treatment by virtue of meeting the tests at section 206(4)(b) and (c) of the 2003 Act, the previous effect of the law was that the direction could not be revoked, meaning that the patient had to remain detained in hospital to receive treatment compulsorily there. The effect of these amendments is that where the patient has a mental disorder and still requires to receive treatment, the direction can still be revoked in circumstances where it is no longer considered necessary for the patient to receive that treatment compulsorily in hospital, thus allowing the patient to be returned to prison to be treated voluntarily there.

Section 71 – Compulsory treatment orders and compulsion orders: cross-border transfer of patients etc.

166. This section amends section 289 of the 2003 Act. Section 289 allows the Scottish Ministers to make regulations to make provision for, or in connection with, the removal from Scotland of a patient who is subject to a community-based compulsory treatment order or compulsion order. This amendment extends the scope of this regulation-making power through the insertion of new subsection (1)(b) of section 289, to allow for regulations to make provision for or in connection with the reception into Scotland from the rest of the UK, the Isle of Man or the Channel Islands, of patients subject to corresponding or similar community-based orders.
167. Subsection (1) amends section 289 to provide that regulations made under that provision may or shall make provision as to certain specified matters. Those matters include making exceptions as to notification requirements, allowing for powers and immunities to be conferred on those who are escorting patients who are being removed under the regulations or who are pursuing or restraining such patients in the event that they abscond, and requiring the reception of community-based patients into Scotland to take place only with the consent of hospital managers. In addition, subsection (1) amends section 289 so that regulations may also provide for amendments or modifications to be made to provisions in the 2003 Act or any other enactment.
168. Subsection (2) amends section 309 of the 2003 Act. These are consequential amendments to extend the scope of the provision allowing regulations to apply absconding provisions in the 2003 Act to patients from other jurisdictions, so that they may apply to non-detained patients as well as patients who are subject to detention.

169. Subsection (3) amends section 316(1)(c) of the 2003 Act. This is a consequential amendment to a provision in the 2003 Act regarding the scope of an offence of knowingly inducing or assisting a patient to abscond or harbouring a patient. The scope of that offence is extended so that it applies in relation to community-based patients who are being transferred under section 289 of the 2003 Act.
170. Subsection (4) amends section 326(4)(c) of the 2003 Act, to provide that regulations made under section 289 of the 2003 Act will be subject to affirmative resolution procedure in the Scottish Parliament.

Section 72 – Cross-border visits: leave of absence

171. **Section 72** inserts section 309A into the 2003 Act to provide a power for the Scottish Ministers to make regulations for and in connection with the keeping in charge of a person who is subject to escorted leave of absence authorised under legislation in force in another part of the UK, or in the Isle of Man or the Channel Islands. Such regulations may make such provision by applying sections 301 to 303 of the 2003 Act, with or without modification, to such patients. This provision enables regulations to make clear the powers of persons escorting patients under authority conferred under legislation in force in other territories, so that there is clear authority under the 2003 Act for those persons to continue to escort the patient whilst in Scotland. Section 72(2) amends section 326(4)(c) to provide that regulations made under section 309A of the 2003 Act will be subject to affirmative resolution procedure in the Scottish Parliament.

Section 73 – Applications to the Mental Health Tribunal for Scotland

172. This amends Part 3 of Schedule 2 to the Mental Health (Care and Treatment) (Scotland) Act 2003 by inserting paragraph 13A. Part 3 makes provision for the Tribunal's procedure. The effect of the amendment is that where a relevant application is made in the relevant period but withdrawn before being determined, the application is to be treated for the supervisory review sections of the Act (sections 101, 189 and 213) as not having been made.

Section 74 – Mental Health Act 1983: repeal of power to return patients absent from hospital etc.

173. This section repeals sections 88 and 128 of the Mental Health Act 1983, insofar as they extend to Scotland, in relation to the taking into custody in Scotland of persons who have absconded from England and Wales, and the offence of inducing or assisting a patient detained in England and Wales under the Mental Health Act 1983 to abscond. These powers are now provided for by way of sections 309 and 316 of the 2003 Act.

Section 75 – Assessment orders: amendment of the Criminal Procedure (Scotland) Act 1995

174. This section amends the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), as amended by the 2003 Act. This amendment makes provision in the 1995 Act (by the insertion of new section 145ZA) that where an accused person is present at the first calling of a case in a summary prosecution and a court is making the accused subject to an assessment order (to assess the extent of their mental disorder), the court may adjourn the case without calling on the accused to plead to any charge against him or her. Such an adjournment may be for a period not exceeding 28 days or, in the case of a further adjournment, a period not exceeding 7 days. Previously the effect of section 144 was that in these circumstances the accused had to be called upon to plead at the first calling when he or she may have been unfit to do so.
175. Section 145 of the 1995 Act provides for a similar power, where the accused is present at the first calling, for a court to adjourn the case without calling on the accused to plead in circumstances where the accused is being remanded in custody or on bail, or ordained to appear at a fixed diet.