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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 366**

**MENTAL HEALTH**

**The Mental Health (Compulsory treatment orders – documents and reports to be submitted to the Tribunal) (Scotland) Regulations 2005**

<i>Made</i>	- - - -	<i>27th June 2005</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>30th June 2005</i>
<i>Coming into force</i>	- -	<i>5th October 2005</i>

The Scottish Ministers, in exercise of the powers conferred by sections 92(b), 95(b)(1), 96(4)(b) and 109(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003(2) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Mental Health (Compulsory treatment orders – documents and reports to be submitted to the Tribunal) (Scotland) Regulations 2005 and shall come into force on 5th October 2005.

(2) In these Regulations, any reference to a numbered section is a reference to the section bearing that number in the Mental Health (Care and Treatment) (Scotland) Act 2003.

**Documents to accompany application to Tribunal under sections 92, 95 and 96**

2. The documents prescribed for the purpose of sections 92(b) (application to Tribunal for extension and variation of compulsory treatment order), 95(b) (application to Tribunal for variation of compulsory treatment order) and 96(4)(b) (reference to Tribunal because of non provision of a recorded matter) are–

- (a) a copy of the patient’s care plan as first prepared under section 76(1)(a)(preparation of a care plan); and
- (b) a copy of any such care plan amended by virtue of section 76(3) or (4)(a).

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(1) Section 95 was amended by article 2(3) of the Mental Health (Care and Treatment) (Scotland) Act 2003 Modification Order 2004 (S.S.I. 2004/533) (“the Order”).  
(2) 2003 asp 13.

**Application for extension and variation of a compulsory treatment order: report to be prepared and submitted to Tribunal under section 109**

3. Where the Tribunal is considering an application made under section 92 (application for an order extending and varying a compulsory treatment order), and is not satisfied that it has sufficient information to enable it to make a decision the Tribunal may require, under section 109(2) (power to require preparation and submission of reports), the mental health officer to prepare and submit to it a report—

- (a) on the steps that the mental health officer has taken to comply with the requirements imposed by section 89(2) (mental health officer's duties to patient etc);
- (b) giving the views of the mental health officer on the application and the reasons for those views;
- (c) giving, if known to the mental health officer, the views of the patient and the patient's named person on the application and the reasons for those views;
- (d) giving, in so far as the mental health officer considers relevant for the purposes of the application, details of the personal circumstances of the patient;
- (e) giving, if known to the mental health officer, details of any advance statement that the patient has made (and not withdrawn); and
- (f) giving any other information which the mental health officer considers may assist the Tribunal in considering the application.

**Application for variation of a compulsory treatment order: reports to be prepared and submitted to Tribunal under section 109**

4. Where the Tribunal is considering an application made under section 95 (application for an order varying a compulsory treatment order) and is not satisfied that it has sufficient information to enable it to make a decision, the Tribunal may require, under section 109(2), the mental health officer to prepare and submit to it a report—

- (a) on the steps that the mental health officer has taken to comply with the requirements imposed by section 93(4C))(3) (mental health officer's duties to patient etc);
- (b) giving the views of the mental health officer on the application and the reasons for those views;
- (c) giving, if known to the mental health officer, the views of the patient and the patient's named person on the application and the reasons for those views;
- (d) giving, in so far as the mental health officer considers relevant for the purposes of the application, details of the personal circumstances of the patient;
- (e) giving, if known to the mental health officer, details of any advance statement that the patient has made (and not withdrawn); and
- (f) giving any other information which the mental health officer considers may assist the Tribunal in considering the application.

**Applications by the patient etc. for revocation of determination extending compulsory treatment order and revocation or variation of compulsory treatment order: reports to be prepared and submitted to Tribunal under section 109**

5. Where the Tribunal is considering an application made under section 99(1) (application for revocation of determination extending compulsory treatment order) or section 100(2) (application

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(3) Section 93(4C) was inserted by article 2(2) of the Order.

for revocation or variation of compulsory treatment order), and is not satisfied that it has sufficient information to enable it to make a decision the Tribunal may require, under section 109(2)–

- (a) the mental health officer to prepare and submit to it a report–
  - (i) giving the views of the mental health officer on the application and the reasons for those views;
  - (ii) giving, if known to the mental health officer, details of any advance statement that the patient has made (and not withdrawn); and
  - (iii) giving any other information which the mental health officer considers may assist the Tribunal in considering the application; and
- (b) the patient’s responsible medical officer to prepare and submit to it a report–
  - (i) giving the views of the responsible medical officer on the application and the reasons for those views; and
  - (ii) giving any other information which the responsible medical officer considers may assist the Tribunal in considering the application.

**Review of determination extending compulsory treatment order: reports to be submitted to Tribunal under section 109**

6.—(1) Where the Tribunal is, under section 101, reviewing a determination made by the patient’s responsible medical officer under section 86 (determination extending compulsory treatment order) and is not satisfied that it has sufficient information to enable it to make a decision the Tribunal may require, under section 109(2)–

- (a) the mental health officer to prepare and submit to it a report–
  - (i) on the steps that the mental health officer has taken in pursuance of the requirements imposed by section 85(2) (mental health officer’s duties to patient etc.);
  - (ii) giving the views of the mental health officer on the determination and the reasons for those views;
  - (iii) giving, 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;
  - (iv) giving, in so far as the mental health officer considers relevant for the purposes of the review, details of the personal circumstances of the patient;
  - (v) giving, if known to the mental health officer, details of any advance statement that the patient has made (and not withdrawn); and
  - (vi) giving any other information which the mental health officer considers may assist the Tribunal in considering the determination; and
- (b) the patient’s responsible medical officer to prepare and submit to it a report on the extent to which the objectives of any medical treatment, community care services, other relevant services, or any other treatment, care or service included in the patient’s care plan are being met.

(2) In this regulation “care plan” means the patient’s current care plan prepared under section 76(1), whether or not amended by virtue of subsections (3) or (4)(a) of that section.

**Reference concerning non-provision of a recorded matter: report to be prepared and submitted to Tribunal under section 109**

7. Where the Tribunal is considering a reference under section 96 (reference regarding the non provision of a recorded matter) and is not satisfied that it has sufficient information to enable it to

make a decision, the Tribunal may require, under section 109(2), the mental health officer to prepare and submit to it a report—

- (a) giving the views of the mental health officer on the non-provision of the recorded matter; and
- (b) giving any other information which the mental health officer considers may assist the Tribunal in considering the application.

**Reference by Mental Welfare Commission for Scotland: reports to be prepared and submitted to Tribunal under section 109**

8. Where the Tribunal is considering a reference made under section 98(2) (reference by Mental Welfare Commission for Scotland) and is not satisfied that it has sufficient information to enable it to make a decision, the Tribunal may require, under section 109(2)—

- (a) the mental health officer to prepare and submit to it a report—
  - (i) giving the views of the mental health officer on the reference and the reasons for those views;
  - (ii) commenting on the relevancy to the Tribunal’s consideration of any advance statement that the patient has made (and not withdrawn), if available to the mental health officer; and
  - (iii) giving any other information which the mental health officer considers may assist the Tribunal in determining the reference; and
- (b) the patient’s responsible medical officer to prepare and submit to it a report—
  - (i) giving the views of the responsible medical officer on the reference and the reasons for those views; and
  - (ii) giving any other information which the responsible medical officer considers may assist the Tribunal in considering the reference.

St Andrew’s House, Edinburgh  
27th June 2005

*RHONA BRANKIN*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Mental Health (Care and Treatment) (Scotland) Act 2003 (“the Act”) establishes the Mental Health Tribunal for Scotland (“the Tribunal”). These Regulations provide that particular documents must accompany certain types of application to the Tribunal and for reports that the Tribunal may itself require to be prepared and submitted to it in connection with certain applications or references or a particular determination.

Regulation 2 prescribes the documents which are to accompany an application to the Tribunal by a patient’s responsible medical officer under sections 92 or 95 of the Act or a reference under section 96.

Regulations 3 and 4 prescribe the reports which the Tribunal may require the mental health officer to prepare and submit when it is considering applications by the patient’s responsible medical officer under sections 92 and 95 and of the Act.

Regulation 5 prescribes the reports which the Tribunal may require the patient’s responsible medical officer and the mental health officer to prepare and submit when it is considering an application by the patient, or the patient’s named person under sections 99 or 100 of the Act.

Regulation 6 prescribes the reports which the Tribunal may require the mental health officer and the patient’s responsible medical officer to prepare and submit when it is reviewing a determination by the patient’s responsible medical officer under section 101 of the Act.

Regulation 7 prescribes the report which the Tribunal may require the mental health officer to prepare and submit when it is considering a reference by the patient’s responsible medical officer under section 96 of the Act.

Regulation 8 prescribes the reports which the Tribunal may require the patient’s responsible medical officer and the mental health officer to prepare and submit when it is considering a reference by the Mental Welfare Commission for Scotland under section 98 of the Act.