

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9 - Compulsion Orders

Chapter 2: review of compulsion orders

Variation of order

Section 159: responsible medical officer's duties: variation of compulsion order

300. **Section 159** imposes a duty on the responsible medical officer to consider on an ongoing basis whether the measures specified in a compulsion order require to be varied. Subsection (3) provides that, if it appears to the responsible medical officer that the measures authorised by the order should be varied, the officer must carry out the steps listed in subsection (4), which include assessing the patient's needs and consulting the patient's mental health officer. Where, after doing so, the responsible medical officer is still satisfied that the order should be varied, subsection (5) imposes a duty on the officer to apply to the Tribunal for variation of the order.
301. The 2004 Order amends this section to provide for steps which the mental health officer is to take on being notified by the responsible medical officer that an application to the Tribunal is proposed. These steps include interviewing the patient and providing information to the patient about various matters, including available advocacy services and how to access those, as well as on the patient's rights in relation to such an application to the Tribunal.
302. Corresponding changes are made to section 161 (see paragraph 304 below).

Section 160: application for variation of compulsion order: notification

303. **Section 160** places a duty on the responsible medical officer to notify the persons listed in section 157 before making an application to the Tribunal for the variation of a compulsion order.

Section 161: application to Tribunal by responsible medical officer

304. **Section 161** sets out the information that must be included in an application to the Tribunal by the responsible medical officer for an order varying a compulsion order. It also gives power to the Scottish Ministers to make provision by regulations for other documentation to be sent with the application.
305. The 2004 Order amends into the section a requirement that the Tribunal be advised when the mental health officer disagrees that the application is required, of the reasons for that view.