

These notes relate to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) which received Royal Assent on 25 April 2003

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Compulsory Treatment Orders

Chapter 4: review of orders

Third possible outcome: application to tribunal for extension and variation of order

Sections 83, 88 to 92, 103(1) and 105 to 110: application to Tribunal for extension and variation of order

134. Having taken the further steps in section 83, the patient's responsible medical officer may decide both that it will be necessary for the order to be extended for a further period, as specified in section 88(4), and that it should be varied for that extended period (section 88(2)). In such a case, the responsible medical officer must give notice to the mental health officer under section 88(3).
135. This route to extension and variation, is separate from the responsibility placed on the responsible medical officer by way of sections 93 to 95 to seek a variation of the order *at any time*, should he or she consider that its terms require amendment (see paragraphs 144 and 145 of these Notes).
136. Once the mental health officer has received notice under section 88(3), he or she must take the steps set out in section 89.
137. Subsections (1) and (2) of section 90 provide that if, after having regard to the views of the mental health officer as expressed under section 89(2)(e) and to the views of the persons listed at section 77(3)(c), the responsible medical officer is still satisfied that extension and variation of the compulsory treatment order is necessary, he or she must make an application to the Tribunal under section 92. The information to be submitted as part of such an application is set out in section 92. As soon as practicable after the duty to make an application under section 92 arises, the responsible medical officer must give notice of the application to the persons listed in section 91.
138. Subsection (1) of section 103 sets out the powers that the Tribunal has on an application under section 92.
139. In addition to the powers in section 103(1), the Tribunal has power under sections 105 and 106 to make interim orders.
140. If the Tribunal is satisfied that the tests in paragraphs (a) and (b) of subsection (2) of section 105 are met, it may make an interim order extending (with or without variation) the compulsory treatment order for a period of up to 28 days. The Tribunal may make

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an interim order at its own discretion or on the application of any person with an interest in the proceedings.

141. **Section 106** enables the Tribunal to make an interim order varying the compulsory treatment order for a period of up to 28 days. The test which must be satisfied is set out in subsection (2).
142. **Section 107** imposes a limit on the powers in sections 105 and 106. An order under either of those sections cannot be made if, when taken together with any other interim order(s) made under those sections, it would lead to such interim orders being in force for a continuous period of more than 56 days.
143. **Section 108** requires the Tribunal, when it makes an order under section 105 or 106 (or any of the other provisions referred to), to specify in the order the modifications made to the measures and any recorded matter.