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

2003 asp 13

PART 10

COMPULSION ORDERS AND RESTRICTION ORDERS

CHAPTER 2

REVIEW OF ORDERS

Proceedings before Tribunal

193 Powers of Tribunal on reference under section 185(1), 187(2) or 189(2) or application under section 191 or 192(2)

(1) This section applies where—
    (a) an application is made under section 191 or 192(2) of this Act; or
    (b) a reference is made under section 185(1), 187(2) or 189(2) of this Act.

(2) If the Tribunal is satisfied—
    (a) that the patient has a mental disorder; and
    (b) that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment,
it shall make no order under this section.

(3) If the Tribunal is not satisfied that the patient has a mental disorder, the Tribunal shall make an order revoking the compulsion order.

(4) If the Tribunal—
    (a) is satisfied that the patient has a mental disorder; but
    (b) is not satisfied—

2
Mental Health (Care and Treatment) (Scotland) Act 2003 asp 13
Part 10 – Compulsion orders and restriction orders
Chapter 2 – Review of orders
Document Generated: 2023-05-25

    (i) that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and

[**F1**(ii) either—

    (A) that the conditions mentioned in paragraphs (b) and (c) of section 182(4) of this Act continue to apply in respect of the patient; or

    (B) that it continues to be necessary for the patient to be subject to the compulsion order,**]**

it shall make an order revoking the compulsion order.

(5) If the Tribunal—

    (a) is satisfied—

        (i) that the conditions mentioned in section 182(4) of this Act continue to apply in respect of the patient; and

        (ii) that it continues to be necessary for the patient to be subject to the compulsion order; but

    (b) is not satisfied—

        (i) that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and

        (ii) that it continues to be necessary for the patient to be subject to the restriction order,

it shall make an order revoking the restriction order.

(6) If the Tribunal—

    (a) makes an order, under subsection (5) above, revoking the restriction order; and

    (b) is satisfied that the compulsion order should be varied by modifying the measures specified in it,

it shall make an order varying the compulsion order in that way.

(7) If the Tribunal—

    (a) is satisfied—

        (i) that the conditions mentioned in section 182(4) of this Act continue to apply in respect of the patient; and

        (ii) that it continues to be necessary for the patient to be subject to the compulsion order and the restriction order; but

    (b) is not satisfied—

        (i) that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and

        (ii) that it is necessary for the patient to be detained in hospital,

the Tribunal may make an order that the patient be conditionally discharged and impose such conditions on that discharge as it thinks fit.

(8) Before making a decision under this section the Tribunal shall—

    (a) afford the persons mentioned in subsection (9) below the opportunity—

        (i) of making representations (whether orally or in writing); and

        (ii) of leading, or producing, evidence; and

Mental Health (Care and Treatment) (Scotland) Act 2003 asp 13
Part 10 – Compulsion orders and restriction orders
Chapter 2 – Review of orders
Document Generated: 2023-05-25

3

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Proceedings
before Tribunal 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

    (b)   whether or not any such representations are made, hold a hearing.

(9) Those persons are—

    (a)   the patient;

    (b)   the patient's named person;

    (c)   the patient's primary carer;

    (d)   any guardian of the patient;

    (e)   any welfare attorney of the patient;

    (f)   any curator *ad litem* appointed by the Tribunal in respect of the patient;

    (g)   the Scottish Ministers;

    (h)   the patient's responsible medical officer;

    (i)   the mental health officer; and

    (j)   any other person appearing to the Tribunal to have an interest.

[**F2**(9A) Where—

    (a)   a person ("V") is entitled to make victim's representations before the Tribunal makes a decision under this section, and

    (b)   V has not been afforded the opportunity of making representations under subsection (8),

before making a decision about what (if any) conditions to impose on the patient's conditional discharge under subsection (7), the Tribunal must have regard to any victim's representations made by V.]

(10) Nothing in section 102 (state hospitals) of the National Health Service (Scotland) Act 1978 (c. 29) prevents or restricts the detention of a patient in a state hospital as a result of a decision of the Tribunal not to make any order under this section.

Textual Amendments

F1   S. 193(4)(b)(ii) substituted (22.3.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 69(4)**, 79(2)

F2   S. 193(9A) inserted (30.9.2017) by Mental Health (Scotland) Act 2015 (asp 9), **ss. 60(2)**, 61(2); S.S.I. 2017/234, art. 2(2)(c)

Commencement Information

I1   S. 193 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)

---

194   **Tribunal's powers etc. when varying compulsion order**

Where the Tribunal makes an order under section 193(6) of this Act varying a compulsion order, the Tribunal shall specify in its order the modifications made by its order to the measures specified in the compulsion order.

Commencement Information

I2   S. 194 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)

4   *Mental Health (Care and Treatment) (Scotland) Act 2003 asp 13*
Part 10 – Compulsion orders and restriction orders
Chapter 2 – Review of orders
Document Generated: 2023-05-25

195   Deferral of conditional discharge

> Where the Tribunal makes an order under section 193(7) of this Act conditionally discharging a patient, it may defer that discharge until such arrangements as appear to the Tribunal to be necessary for that purpose have been made.

Commencement Information

I3   S. 195 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)

Changes to legislation:
Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Proceedings before Tribunal 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.
View outstanding changes

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)