

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)



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

2003 asp 13

PART 7

COMPULSORY TREATMENT ORDERS

CHAPTER 4

REVIEW OF ORDERS

VALID FROM 05/10/2005

Mandatory reviews by responsible medical officer

77 First mandatory review

- (1) This section applies where a compulsory treatment order is made in respect of a patient.
- (2) The patient's responsible medical officer shall, during the appropriate period, carry out a review in respect of the order (such review being referred to in this Part of this Act as the "first review") by complying with the requirements in subsection (3) below.
- (3) Those requirements are—
 - (a) to—
 - (i) carry out a medical examination of the patient; or
 - (ii) make arrangements for an approved medical practitioner to carry out such a medical examination;
 - (b) to consider—

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)*

- (i) whether the conditions mentioned in paragraphs (a) to (d) of section 64(5) of this Act continue to apply in respect of the patient; and
- (ii) whether it continues to be necessary for the patient to be subject to a compulsory treatment order; and
- (c) to consult—
 - (i) the mental health officer;
 - (ii) such persons as are mentioned in subsection (4) below as the responsible medical officer considers appropriate; and
 - (iii) such other persons as the responsible medical officer considers appropriate.
- (4) The persons referred to in subsection (3)(c)(ii) above are—
 - (a) persons who appear to the responsible medical officer to provide medical treatment of the kind that is set out in the patient’s care plan;
 - (b) if any community care services or relevant services are set out in that plan, persons who appear to the responsible medical officer to provide services of that kind;
 - (c) if any other treatment, care or service is set out in that plan, persons who appear to the responsible medical officer to provide treatment, care or a service of that kind.
- (5) In subsection (2) above, “appropriate period” means the period of 2 months ending with the day on which the compulsory treatment order ceases to authorise the measures specified in it.

78 Further mandatory reviews

- (1) This section applies where a compulsory treatment order is extended—
 - (a) by a determination under section 86 of this Act; or
 - (b) by virtue of an order under section 103 of this Act.
- (2) The patient’s responsible medical officer shall, during the period mentioned in subsection (3) below, carry out a review in respect of the compulsory treatment order (such review being referred to in this Part of this Act as a “further review”) by complying with the requirements set out in section 77(3) of this Act.
- (3) The period referred to in subsection (2) above is the period of 2 months ending with the day on which the compulsory treatment order as extended by the determination, or by virtue of the order under section 103 of this Act, ceases to authorise the measures specified in it.

VALID FROM 05/10/2005

Revocation of order by responsible medical officer or Commission

79 Responsible medical officer’s duty to revoke order: mandatory reviews

- (1) This section applies where a patient’s responsible medical officer is carrying out—

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)*

- (a) the first review of the compulsory treatment order to which the patient is subject; or
 - (b) a further review of that order.
- (2) If, having regard to any views expressed by persons consulted under section 77(3)(c) of this Act for the purpose of the review being carried out, the responsible medical officer is not satisfied—
 - (a) that the conditions mentioned in paragraphs (a) to (d) of section 64(5) 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 a compulsory treatment order,the responsible medical officer shall make a determination revoking the compulsory treatment order.
- (3) A determination under this section shall be made as soon as practicable after the duty to make it arises.

80 Revocation of order: responsible medical officer's duty to keep under review

- (1) This section applies where a patient is subject to a compulsory treatment order.
- (2) Without prejudice to the duties imposed on the patient's responsible medical officer by sections 77(2), 78(2), 79(2) and 93(2) of this Act, the responsible medical officer shall from time to time consider—
 - (a) whether the conditions mentioned in paragraphs (a) to (d) of section 64(5) of this Act continue to apply in respect of the patient; and
 - (b) whether it continues to be necessary for the patient to be subject to a compulsory treatment order.
- (3) If, having considered the matters mentioned in paragraphs (a) and (b) of subsection (2) above, the responsible medical officer is not satisfied—
 - (a) that the conditions mentioned in paragraphs (a) to (d) of section 64(5) 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 a compulsory treatment order,the responsible medical officer shall make a determination revoking the compulsory treatment order.
- (4) A determination under this section shall be made as soon as practicable after the duty to make it arises.

81 Commission's power to revoke order

- (1) This section applies where a patient is subject to a compulsory treatment order.
- (2) If the Commission is satisfied—
 - (a) that not all of the conditions mentioned in paragraphs (a) to (d) of section 64(5) of this Act continue to apply in respect of the patient; or
 - (b) that it does not continue to be necessary for the patient to be subject to a compulsory treatment order,it may make a determination revoking the compulsory treatment order.

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)*

82 Revocation of order: notification

- (1) Where a patient's responsible medical officer makes a determination under section 79 or 80 of this Act, that officer shall—
 - (a) give notice of the determination; and
 - (b) send a statement of the reasons for it,
 to the Commission and to the persons mentioned in subsection (3) below.
- (2) Where the Commission makes a determination under section 81 of this Act, it shall—
 - (a) give notice of the determination; and
 - (b) send a statement of the reasons for it,
 to the patient's responsible medical officer and to the persons mentioned in subsection (3) below.
- (3) The persons referred to in subsections (1) and (2) above are—
 - (a) the patient;
 - (b) the patient's named person;
 - (c) any guardian of the patient;
 - (d) any welfare attorney of the patient;
 - (e) the mental health officer; and
 - (f) the Tribunal.
- (4) Notice under subsection (1) or (2) above—
 - (a) to the persons mentioned in paragraphs (a) to (d) of subsection (3) above shall be given as soon as practicable after the determination is made and, in any event, before the expiry of the period of 7 days beginning with the day on which the determination is made; and
 - (b) to—
 - (i) the Commission;
 - (ii) the patient's responsible medical officer; and
 - (iii) the persons mentioned in paragraphs (e) and (f) of that subsection,
 shall be given before the expiry of the period of 7 days beginning with the day on which the determination is made.

VALID FROM 05/10/2005

Further steps to be taken where order not revoked

83 Mandatory reviews: further steps to be taken where order not revoked

- (1) This section applies where a patient's responsible medical officer is carrying out—
 - (a) the first review of the compulsory treatment order to which the patient is subject; or
 - (b) a further review of that order.
- (2) If, having regard to any views expressed by persons consulted under section 77(3)(c) of this Act for the purpose of the review being carried out, the patient's responsible medical officer is satisfied—

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)*

- (a) that the conditions mentioned in paragraphs (a) to (d) of section 64(5) of this Act continue to apply in respect of the patient; and
- (b) that it continues to be necessary for the patient to be subject to a compulsory treatment order,

the responsible medical officer shall comply with the requirements in subsection (3) below.

(3) Those requirements are—

- (a) to consider whether it will continue to be necessary for the patient to be subject to a compulsory treatment order after the day on which the order to which the patient is subject will cease (unless extended) to authorise the measures specified in it;
- (b) to assess the needs of the patient for medical treatment;
- (c) to consider—
 - (i) whether the compulsory treatment order should be varied by modifying the measures, or any recorded matter, specified in it; and
 - (ii) if the order should be varied, what modification is appropriate;
- (d) to consider any views expressed on the matters mentioned in paragraphs (a) to (c) above by persons consulted under section 77(3)(c) of this Act.

Extension of order by responsible medical officer

VALID FROM 05/10/2005

84 Responsible medical officer's duty where extension of order appears appropriate

- (1) This section applies where a patient's responsible medical officer is carrying out—
 - (a) the first review of the compulsory treatment order to which the patient is subject; or
 - (b) a further review of that order.
- (2) If, having regard to any views expressed by persons consulted under section 77(3)(c) of this Act for the purpose of the review being carried out, it appears to the responsible medical officer—
 - (a) that it will continue to be necessary for the patient to be subject to a compulsory treatment order after the day on which the order will cease (unless extended) to authorise the measures specified in it; and
 - (b) that the order should not be varied by modifying the measures, or any recorded matter, specified in it,

the responsible medical officer shall give notice to the mental health officer that the responsible medical officer is proposing to make a determination under section 86 of this Act extending the order.

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)

VALID FROM 05/10/2005

85 Mental health officer's duties: extension of order

- (1) The mental health officer shall, as soon as practicable after receiving notice under section 84(2) of this Act, comply with the requirements in subsection (2) below.
- (2) Those requirements are—
 - (a) subject to subsection (3) below, to interview the patient;
 - (b) to inform the patient—
 - (i) that the patient's responsible medical officer is proposing to make a determination under section 86 of this Act extending the compulsory treatment order to which the patient is subject for the period mentioned in section 86(2) of this Act;
 - (ii) of the patient's rights in relation to such a determination; and
 - (iii) of the availability of independent advocacy services under section 259 of this Act;
 - (c) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and
 - (d) to inform the patient's responsible medical officer—
 - (i) of whether the mental health officer agrees, or disagrees, that the determination that is proposed should be made;
 - (ii) if the mental health officer disagrees, of the reason why that is the case; and
 - (iii) of any other matters that the mental health officer considers relevant.
- (3) If it is impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the mental health officer need not do so.

VALID FROM 05/10/2005

86 Responsible medical officer's duty to extend order

- (1) If, having regard to—
 - (a) any views expressed by persons consulted under section 77(3)(c) of this Act for the purpose of the review being carried out; and
 - (b) any views expressed by the mental health officer under section 85(2)(d) of this Act for the purpose of that review,
 the responsible medical officer is satisfied as to the matters mentioned in section 84(2)(a) and (b) of this Act, the responsible medical officer shall make a determination extending the compulsory treatment order for the period mentioned in subsection (2) below.
- (2) The period referred to in subsection (1) above is—
 - (a) where a determination is made in respect of the first review, the period of 6 months beginning with the day on which the compulsory treatment order will cease (unless extended) to authorise the measures specified in it;

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)*

- (b) where a determination is made in respect of the first further review, the period of 12 months beginning with the expiry of the period mentioned in paragraph (a) above;
- (c) where a determination is made in respect of a subsequent further review, the period of 12 months beginning with the expiry of the period of 12 months for which the order is extended as a result of the immediately preceding further review.

87 Determination extending order: notification etc.

- (1) Where a patient's responsible medical officer makes a determination under section 86 of this Act, that officer shall, as soon as practicable after the determination is made and, in any event, before the day on which the compulsory treatment order will cease, if it is not extended by the determination, to authorise the measures specified in it, comply with the requirements in subsection (2) below.
- (2) Those requirements are—
 - (a) to prepare a record stating—
 - (i) the determination;
 - (ii) the reasons for it;
 - (iii) whether the mental health officer agrees, or disagrees, with the determination or has failed to comply with the duty imposed by section 85(2)(d)(i) of this Act;
 - (iv) if the mental health officer disagrees with the determination, the reasons for the disagreement;
 - (v) (by reference to the appropriate paragraph (or paragraphs) of the definition of “mental disorder” in section 328(1) of this Act) the type (or types) of mental disorder that the patient has; and if there is a difference between that type (or types) and the type (or types) of mental disorder recorded in the compulsory treatment order in respect of which the determination is made, what that difference is; and
 - (vi) such other matters as may be prescribed by regulations;
 - (b) to submit the record to the Tribunal; and
 - (c) at the same time as the responsible medical officer submits the record to the Tribunal, to give notice of the determination and send a copy of the record—
 - (i) subject to subsection (3) below, to the patient;
 - (ii) to the patient's named person;
 - (iii) to the mental health officer; and
 - (iv) to the Commission.
- (3) If the responsible medical officer considers that there would be a risk of significant harm to the patient, or to others, if a copy of the record were sent to the patient, that officer need not send a copy to the patient.
- (4) At the same time as the responsible medical officer submits the record to the Tribunal, that officer shall send to the Tribunal, and to the persons mentioned in subsection (2) (c)(ii) to (iv) above, a statement of the matters mentioned in subsection (5) below.
- (5) Those matters are—
 - (a) whether the responsible medical officer is sending a copy of the record to the patient; and

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)

- (b) if the responsible medical officer is not sending a copy of the record to the patient, the reason for not doing so.

Commencement Information

II S. 87 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), [art. 2](#), [Sch. 1](#)

Extension and variation of order: application by responsible medical officer

VALID FROM 05/10/2005

88 Responsible medical officer's duty where extension and variation of order appear appropriate

- (1) This section applies where a patient's responsible medical officer is carrying out—
- (a) the first review of the compulsory treatment order to which the patient is subject; or
 - (b) a further review of that order.
- (2) If, having regard to any views expressed by persons consulted under section 77(3)(c) of this Act for the purpose of the review being carried out, it appears to the responsible medical officer—
- (a) that it will continue to be necessary for the patient to be subject to a compulsory treatment order after the day on which the order will cease (unless extended) to authorise the measures specified in it; but
 - (b) that the order should be varied by modifying the measures, or any recorded matter, specified in it,
- the responsible medical officer shall comply with the requirement in subsection (3) below.
- (3) That requirement is to give notice to the mental health officer—
- (a) that the responsible medical officer is proposing to make an application to the Tribunal under section 92 of this Act for an order under section 103 of this Act—
 - (i) extending the compulsory treatment order for the period mentioned in subsection (4) below; and
 - (ii) varying that order by modifying the measures, or a recorded matter, specified in it; and
 - (b) of the modification of the measures, or any recorded matter, specified in that order that the responsible medical officer is proposing.
- (4) The period referred to in subsection (3) above is—
- (a) where the application is made in respect of the first review, the period of 6 months beginning with the day on which the compulsory treatment order will (unless extended) cease to authorise the measures specified in it;
 - (b) where the application is made in respect of the first further review, the period of 12 months beginning with the expiry of the period mentioned in paragraph (a) above;

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)

- (c) where the application is made in respect of a subsequent further review, the period of 12 months beginning with the expiry of the period of 12 months for which the order is extended as a result of the immediately preceding further review.

VALID FROM 05/10/2005

89 Mental health officer's duties: extension and variation of order

- (1) The mental health officer shall, as soon as practicable after receiving notice under section 88(3) of this Act, comply with the requirements in subsection (2) below.
- (2) Those requirements are—
- (a) subject to subsection (3) below, to interview the patient;
 - (b) to inform the patient of the matters mentioned in subsection (4) below;
 - (c) to inform the patient of the availability of independent advocacy services under section 259 of this Act;
 - (d) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and
 - (e) to inform the patient's responsible medical officer—
 - (i) of whether the mental health officer agrees, or disagrees, that the application that is proposed should be made;
 - (ii) if the mental health officer disagrees, of the reason why that is the case; and
 - (iii) of any other matters that the mental health officer considers relevant.
- (3) If it is impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the mental health officer need not do so.
- (4) The matters referred to in subsection (2)(b) above are—
- (a) that the patient's responsible medical officer is proposing to make an application to the Tribunal under section 92 of this Act for an order—
 - (i) extending the compulsory treatment order to which the patient is subject for the period mentioned in section 88(4) of this Act; and
 - (ii) varying the compulsory treatment order by modifying the measures or a recorded matter specified in it;
 - (b) the modification of the measures or any recorded matter specified in that order that the responsible medical officer is proposing; and
 - (c) the patient's rights in relation to such an application.

VALID FROM 05/10/2005

90 Responsible medical officer's duty to apply for extension and variation of order

- (1) If, having regard to—
- (a) any views expressed by persons consulted under section 77(3)(c) of this Act for the purpose of the review being carried out; and

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)*

- (b) any views expressed by the mental health officer under section 89(2)(e) of this Act for the purpose of that review,
- the responsible medical officer is satisfied as to the matters mentioned in section 88(2)(a) and (b) of this Act, the responsible medical officer shall comply with the requirement in subsection (2) below.
- (2) That requirement is to make an application to the Tribunal under section 92 of this Act for an order—
- (a) extending the compulsory treatment order for the period mentioned in section 88(4) of this Act; and
- (b) varying that order by modifying the measures, or a recorded matter, specified in it.
- (3) An application made under section 92 of this Act, by virtue of subsection (1) above, for an order mentioned in subsection (2) above shall be made as soon as practicable after the duty to make it arises.

VALID FROM 05/10/2005

91 Application for extension and variation of order: notification

Where, by virtue of section 90(1) of this Act, an application is to be made under section 92 of this Act, the patient's responsible medical officer shall, as soon as practicable after the duty to make the application arises (and, in any event, before making the application), give notice that the application is to be made to—

- (a) the patient;
- (b) the patient's named person;
- (c) any guardian of the patient;
- (d) any welfare attorney of the patient;
- (e) the mental health officer; and
- (f) the Commission.

92 Application to Tribunal

An application under this section to the Tribunal by a patient's responsible medical officer for an order extending and varying a compulsory treatment order—

- (a) shall state—
- (i) the name and address of the patient;
- (ii) the name and address of the patient's named person;
- (iii) the modification of the measures, or any recorded matter, specified in the compulsory treatment order that is proposed by the responsible medical officer;
- (iv) the reasons for seeking that modification;
- (v) whether the mental health officer agrees, or disagrees, that the application should be made, or has failed to comply with the duty imposed by section 89(2)(e)(i) of this Act; and
- (vi) if the mental health officer disagrees, the reason for that disagreement; and

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)

(b) shall be accompanied by such documents as may be prescribed by regulations.

Commencement Information

I2 S. 92 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), [art. 2](#), [Sch. 1](#)

Variation of order: application by responsible medical officer

VALID FROM 05/10/2005

93 Responsible medical officer's duties: variation of order

- (1) This section applies where a patient is subject to a compulsory treatment order.
- (2) Without prejudice to the duties imposed on the patient's responsible medical officer by sections 77(2), 78(2) and 83(2) of this Act, the responsible medical officer shall from time to time consider whether the compulsory treatment order should be varied by modifying the measures, or any recorded matter, specified in it.
- (3) If it appears to the responsible medical officer that the compulsory treatment order should be varied as mentioned in subsection (2) above, the responsible medical officer shall, as soon as practicable, comply with the requirements in subsection (4) below.
- (4) Those requirements are—
 - (a) to assess the needs of the patient for medical treatment;
 - (b) to consider what modification, if any, of the measures, or any recorded matter, specified in the compulsory treatment order is appropriate;
 - (c) to consult—
 - (i) the mental health officer; and
 - (ii) such persons as the responsible medical officer considers appropriate.

[^{F1}(4A) If, having regard to any views expressed by persons consulted under subsection (4) (c) above, it continues to appear to the responsible medical officer that the compulsory treatment order should be varied as mentioned in subsection (2) above, the responsible medical officer shall, as soon as practicable, notify the mental health officer—

- (a) that the responsible medical officer is proposing to make an application to the Tribunal under section 95 of this Act for an order under section 103 of this Act varying the compulsory treatment order; and
- (b) the modification of the measures, or any recorded matter, specified in that order that the responsible medical officer is proposing.

(4B) The mental health officer shall, as soon as practicable after being notified under subsection (4A) above, comply with the requirements in subsection (4C) below.

(4C) Those requirements are—

- (a) subject to subsection (4D) below, to interview the patient;
- (b) to inform the patient of the matters mentioned in subsection (4E) below;

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)*

- (c) to inform the patient of the availability of independent advocacy services under section 259 of this Act;
 - (d) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and
 - (e) to inform the patient's responsible medical officer—
 - (i) of whether the mental health officer agrees, or disagrees, that the application that is proposed should be made;
 - (ii) if the mental health officer disagrees, of the reason why that is the case; and
 - (iii) of any other matters that the mental health officer considers relevant.
- (4D) If it is impracticable for the mental health officer to comply with the requirement in subsection (4C)(a) above, the mental health officer need not do so.
- (4E) The matters referred to in subsection (4C)(b) above are—
- (a) that the patient's responsible medical officer is proposing to make an application to the Tribunal under section 95 of this Act for an order varying the compulsory treatment order by modifying the measures or a recorded matter specified in it;
 - (b) the modification of the measures or any recorded matter specified in that order that the responsible medical officer is proposing; and
 - (c) the patient's rights in relation to such an application.]
- (5) If, having regard to any views expressed by persons consulted under subsection (4)(c) above^{F2} and any views expressed by the mental health officer under subsection (4C)(e) above], the responsible medical officer is satisfied that the compulsory treatment order should be varied as mentioned in subsection (2) above, the responsible medical officer shall make an application to the Tribunal under section 95 of this Act for an order under section 103 of this Act varying the compulsory treatment order in that way.
- (6) An application made under section 95 of this Act, by virtue of subsection (5) above, for an order mentioned in that subsection shall be made as soon as practicable after the duty to make it arises.

Textual Amendments

- F1** S. 93(4A)-(4E) inserted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(2)(a)**
- F2** Words in s. 93(5) inserted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(2)(b)**

VALID FROM 05/10/2005

94 Application by responsible medical officer for variation of order: notification

Where, by virtue of section 93(5) of this Act, an application is to be made under section 95 of this Act, the patient's responsible medical officer shall, as soon as practicable after the duty to make the application arises (and, in any event, before

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)

making the application), give notice that the application is to be made to the persons mentioned in section 91(a) to (f) of this Act.

95 Application to Tribunal by responsible medical officer

An application under this section to the Tribunal by a patient's responsible medical officer for an order varying a compulsory treatment order—

- (a) shall state
 - [^{F3}(i) the matters mentioned in section 92(a)(i) to [^{F4}(iv)] of this Act;]
 - [^{F5}(ii) whether the mental health officer agrees, or disagrees that the application should be made, or has failed to comply with the duty imposed by section 93(4C)(e)(i) of this Act; and
 - (iii) if the mental health officer disagrees, the reason for that disagreement.]and
- (b) shall be accompanied by such documents as may be prescribed by regulations.

Textual Amendments

- F3** Words in s. 95(a) renumbered as s. 95(a)(i) (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(3)(b)**
- F4** Word in s. 95(a) substituted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(3)(a)**
- F5** S. 95(a)(ii)(iii) inserted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(3)(c)**

Commencement Information

- I3** S. 95 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, **Sch. 1**

Recorded matters: reference to Tribunal by responsible medical officer

96 Recorded matters: reference to Tribunal by responsible medical officer

- (1) This section applies where a patient is subject to a compulsory treatment order which specifies one or more recorded matters.
- (2) Without prejudice to the duties imposed on the patient's responsible medical officer by sections 77(2), 78(2) and 83(2) of this Act and subject to subsection (6) below, if it appears to the responsible medical officer that any recorded matter specified in the compulsory treatment order is not being provided, the responsible medical officer shall, as soon as practicable, consult—
 - (a) the mental health officer; and
 - (b) such other persons as the responsible medical officer considers appropriate.
- (3) If, having regard to any views expressed by persons consulted under subsection (2) above, the responsible medical officer is satisfied that a recorded matter specified in the compulsory treatment order is not being provided, the responsible medical officer shall make a reference to the Tribunal.
- (4) A reference under subsection (3) above—
 - (a) shall state—

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)*

- (i) the name and address of the patient;
 - (ii) the name and address of the patient’s named person; and
 - (iii) the reason for making the reference; and
- (b) shall be accompanied by such documents as may be prescribed by regulations.
- (5) A reference under subsection (3) above shall be made as soon as practicable after the duty to make it arises.
- (6) Subsections (2) to (5) above do not apply where—
- (a) the responsible medical officer is required, by virtue of section 79 or 80 of this Act, to revoke the compulsory treatment order; or
 - (b) the responsible medical officer is making an application under section 92 or 95 of this Act in respect of the compulsory treatment order.

Commencement Information

I4 S. 96 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, [Sch. 1](#)

VALID FROM 05/10/2005

97 Reference to Tribunal under section 96(3): notification

Where a patient’s responsible medical officer is required by section 96(3) of this Act to make a reference to the Tribunal, the responsible medical officer shall, as soon as practicable after the duty to make the reference arises, give notice that the reference is to be made to the persons mentioned in section 91(a) to (f) of this Act.

VALID FROM 05/10/2005

Reference to Tribunal by Commission

98 Reference to Tribunal by Commission

- (1) This section applies where a patient is subject to a compulsory treatment order.
- (2) If it appears to the Commission that it is appropriate to do so, it may make a reference to the Tribunal in respect of the compulsory treatment order to which the patient is subject.
- (3) Where a reference is to be made under subsection (2) above, the Commission shall, as soon as practicable, give notice that a reference is to be made to—
 - (a) the patient’s responsible medical officer; and
 - (b) the persons mentioned in section 91(a) to (e) of this Act.
- (4) A reference under subsection (2) above shall state—
 - (a) the name and address of the patient;
 - (b) the name and address of the patient’s named person; and
 - (c) the reason for making the reference.

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)

VALID FROM 05/10/2005

Applications by patient etc.

99 Application by patient etc. for revocation of determination extending order

- (1) Where a patient's responsible medical officer makes a determination under section 86 of this Act, subject to subsection (3) below, either of the persons mentioned in subsection (2) below may make an application under this section to the Tribunal for an order under section 103 of this Act revoking the determination.
- (2) Those persons are—
 - (a) the patient;
 - (b) the patient's named person.
- (3) Subsection (1) above does not apply where the Tribunal is required, by virtue of section 101 of this Act, to review the determination.

100 Application by patient etc. for revocation or variation of order

- (1) This section applies where a patient is subject to a compulsory treatment order.
- (2) Either of the persons mentioned in subsection (3) below may, subject to subsections (4) and (6) below, make an application under this section to the Tribunal for an order under section 103 of this Act—
 - (a) revoking the compulsory treatment order; or
 - (b) varying that order by modifying—
 - (i) the measures; or
 - (ii) any recorded matter, specified in it.
- (3) Those persons are—
 - (a) the patient;
 - (b) the patient's named person.
- (4) An application under this section may not be made during the period of 3 months beginning with the making of any of the orders mentioned in subsection (5) below.
- (5) Those orders are—
 - (a) the compulsory treatment order;
 - (b) an order in respect of the compulsory treatment order made under section 102 of this Act;
 - (c) an order in respect of the compulsory treatment order made, by virtue of section 92 of this Act, under section 103 of this Act.
- (6) If—
 - (a) an application under this section for revocation of a compulsory treatment order is refused; or
 - (b) an application is made under this section for variation of a compulsory treatment order,

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)*

the person who made the application shall not be entitled to make more than one further application under this section in respect of the compulsory treatment order during the period mentioned in subsection (8) below.

- (7) If an application under section 99 of this Act for revocation of a determination under section 86 of this Act is refused, the person who made the application shall not be entitled to make more than one application under this section in respect of the compulsory treatment order which is the subject of the determination during the period mentioned in subsection (8) below.
- (8) The period referred to in subsections (6) and (7) above is—
- (a) where the application mentioned in subsection (6)(a) or (b) or (7) above is made before the expiry of the period of 6 months beginning with the day on which the compulsory treatment order was made, that period of 6 months; or
 - (b) where that application is made before the expiry of—
 - (i) the period of 6 months beginning with the expiry of the period mentioned in paragraph (a) above, that period of 6 months; or
 - (ii) any subsequent period of 12 months that begins with, or with an anniversary of, the expiry of the period of 6 months mentioned in sub-paragraph (i) above, that subsequent period of 12 months.

VALID FROM 05/10/2005

Review by Tribunal of determination extending order

101 Tribunal's duty to review determination under section 86

- (1) This section applies where a patient's responsible medical officer makes a determination under section 86 of this Act.
- (2) If—
- (a) the record submitted to the Tribunal under section 87(2)(b) of this Act states—
 - (i) that there is a difference between the type (or types) of mental disorder that the patient has and the type (or types) of mental disorder recorded in the compulsory treatment order in respect of which the determination is made; or
 - (ii) that the mental health officer disagrees with the determination or has failed to comply with the duty imposed by section 85(2)(d)(i) of this Act; or
 - (b) no decision has been made by the Tribunal under this section or section 103 of this Act in respect of the compulsory treatment order to which the determination relates during the period of 2 years ending with the day on which the order, had it not been extended by the determination, would have ceased to authorise the measures specified in it,
- the Tribunal shall review the determination.

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)

Powers of Tribunal

VALID FROM 05/10/2005

102 Powers of Tribunal on review under section 101

- (1) On the review of a determination under section 101 of this Act, the Tribunal may make an order under this section—
 - (a) revoking the determination;
 - (b) revoking both the determination and the compulsory treatment order;
 - (c) confirming the determination; or
 - (d) confirming the determination and varying the compulsory treatment order by modifying—
 - (i) the measures; or
 - (ii) any recorded matter, specified in it.
- (2) Before making a decision under subsection (1) above, the Tribunal shall allow the persons mentioned in subsection (3) below the opportunity—
 - (a) of making representations (whether orally or in writing); and
 - (b) of leading, or producing, evidence.
- (3) Those persons are—
 - (a) the patient;
 - (b) the patient's named person;
 - (c) any guardian of the patient;
 - (d) any welfare attorney of the patient;
 - (e) the mental health officer;
 - (f) the patient's responsible medical officer;
 - (g) the patient's primary carer;
 - (h) any curator *ad litem* appointed in respect of the patient by the Tribunal; and
 - (i) any other person appearing to the Tribunal to have an interest in the determination.

VALID FROM 05/10/2005

103 Powers of Tribunal on application under section 92, 95, 99 or 100

- (1) Where an application is made under section 92 of this Act, the Tribunal may make an order—
 - (a) extending the compulsory treatment order to which the application relates for the period mentioned in section 88(4) of this Act and varying the compulsory treatment order by modifying—
 - (i) the measures; or
 - (ii) any recorded matter, specified in it;

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)*

- (b) extending the compulsory treatment order for that period;
 - (c) refusing the application; or
 - (d) refusing the application and revoking the compulsory treatment order.
- (2) Where an application is made under section 99 of this Act, the Tribunal may make an order—
- (a) revoking the determination to which the application relates;
 - (b) revoking—
 - (i) the determination; and
 - (ii) the compulsory treatment order to which the determination relates;
 - (c) confirming the determination; or
 - (d) confirming the determination and varying the compulsory treatment order by modifying—
 - (i) the measures; or
 - (ii) any recorded matter, specified in it.
- (3) Where an application is made under section 100(2)(a) of this Act, the Tribunal may make an order—
- (a) revoking the compulsory treatment order to which the application relates;
 - (b) varying the compulsory treatment order by modifying—
 - (i) the measures; or
 - (ii) any recorded matter, specified in it; or
 - (c) refusing the application.
- (4) Where an application is made under section 95 or 100(2)(b) of this Act, the Tribunal may make an order—
- (a) varying the compulsory treatment order to which the application relates by modifying—
 - (i) the measures; or
 - (ii) any recorded matter, specified in it;
 - (b) refusing the application; or
 - (c) refusing the application and revoking that order.
- (5) Before making a decision under any of subsections (1) to (4) above, the Tribunal shall afford the persons mentioned in subsection (6) below the opportunity—
- (a) of making representations (whether orally or in writing); and
 - (b) of leading, or producing, evidence.
- (6) Those persons are—
- (a) the persons mentioned in section 102(3)(a) to (h) of this Act; and
 - (b) any other person appearing to the Tribunal to have an interest in the application.

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)

VALID FROM 05/10/2005

104 Powers of Tribunal on reference under section 96 or 98

- (1) Where a reference is made under section 96 or 98 of this Act, the Tribunal may make an order—
 - (a) varying the compulsory treatment order in respect of which the reference is made by modifying—
 - (i) the measures; or
 - (ii) any recorded matter, specified in it; or
 - (b) revoking the compulsory treatment order.
- (2) Before making an order under subsection (1) above, the Tribunal shall allow the persons mentioned in subsection (3) below the opportunity—
 - (a) of making representations (whether orally or in writing); and
 - (b) of leading, or producing, evidence.
- (3) Those persons are—
 - (a) the persons mentioned in section 102(3)(a) to (h) of this Act; and
 - (b) any other person appearing to the Tribunal to have an interest in the reference.

VALID FROM 05/10/2005

105 Interim extension etc. of order: application under section 92

- (1) This section applies where an application is made under section 92 of this Act.
- (2) Subject to section 107 of this Act, on the application of any person having an interest in the proceedings, or *ex proprio motu*, the Tribunal may, if it considers—
 - (a) that it will be unable to determine the application before the compulsory treatment order to which the application relates ceases to authorise the measures specified in it; and
 - (b) that it is appropriate, pending its determining the application, to—
 - (i) extend the order; or
 - (ii) extend and vary the order by modifying the measures, or any recorded matter, specified in it,make an interim order extending, or extending and varying, the compulsory treatment order for such period not exceeding 28 days as may be specified in the order of the Tribunal.

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)

VALID FROM 05/10/2005

106 Interim variation of order: application, reference or review under Chapter

- (1) This section applies where—
- (a) an application is made under section 92, 95, 99 or 100 of this Act;
 - (b) a reference is made under section 96 or 98 of this Act; or
 - (c) the Tribunal is reviewing a determination under section 101 of this Act.
- (2) Subject to section 107 of this Act, on the application of any person having an interest in the proceedings, or *ex proprio motu*, the Tribunal may, if it considers that it is appropriate to do so pending its—
- (a) determining the application or reference; or
 - (b) making its decision on the review;

make an interim order varying the compulsory treatment order by modifying the measures, or any recorded matter, specified in it, for such period not exceeding 28 days as may be specified in the order of the Tribunal.

VALID FROM 05/10/2005

107 Limit on Tribunal's power to make interim orders

The Tribunal may not make an interim order under section 105 or 106 of this Act if the effect of making the order would be that interim orders under either, or both, of those sections would be in force for a continuous period of more than 56 days.

VALID FROM 05/10/2005

108 Tribunal's order varying compulsory treatment order

Where the Tribunal makes—

- (a) an order under section 102, 103, 104 or 106 of this Act varying a compulsory treatment order; or
- (b) an order under section 103 or 105 of this Act extending and varying such an order,

the Tribunal shall specify in its order the modifications made by its order to the measures, and any recorded matter, specified in the compulsory treatment order.

109 Ancillary powers of Tribunal

- (1) This section applies where—
- (a) an application is made to the Tribunal under section 92, 95, 99 or 100 of this Act;
 - (b) the Tribunal is, under section 101 of this Act, reviewing a determination; or
 - (c) a reference is made to the Tribunal under section 96 or 98 of this Act.

Status: Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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)

- (2) Regulations may prescribe circumstances in which the Tribunal may require—
- (a) the patient’s responsible medical officer; or
 - (b) the mental health officer,
- to prepare and submit to the Tribunal reports on such matters as may be prescribed.

Commencement Information

I5 S. 109 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, [Sch. 1](#)

VALID FROM 05/10/2005

Effect of interim orders on calculation of time periods in Chapter

110 Effect of interim orders on calculation of time periods in Chapter

- (1) Subject to subsection (2) below, in calculating, for the purpose of this Chapter, the day on which a compulsory treatment order—
- (a) ceases;
 - (b) will cease; or
 - (c) would have ceased,
- to authorise the measures specified in it, there shall be left out of account any period for which the order is extended (or extended and varied) by an interim order under section 105 of this Act.
- (2) Subsection (1) above does not apply as respects calculating that day for the purpose of that section.

VALID FROM 05/10/2005

Meaning of “modify”

111 Meaning of “modify”

In this Chapter, any reference to modifying measures, or recorded matters, specified in a compulsory treatment order includes a reference to—

- (a) amending those measures or recorded matters;
- (b) removing from the order any measure or recorded matter;
- (c) adding to the order any measure or recorded matter;
- (d) specifying a recorded matter in an order which does not specify a recorded matter.

Status:

Point in time view as at 21/03/2005. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation:

Mental Health (Care and Treatment) (Scotland) Act 2003, Chapter 4 is up to date with all changes known to be in force on or before 11 April 2024. 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.