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

2003 asp 13

PART 7

COMPULSORY TREATMENT ORDERS

CHAPTER 4

REVIEW OF ORDERS

Powers of Tribunal

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;

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(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.

Commencement Information

I1 S. 102 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)

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;
(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,

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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.

Commencement Information

I2 S. 103 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)

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.

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Commencement Information

I3 S. 104 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)

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.

Commencement Information

I4 S. 105 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)

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.

Commencement Information

I5 S. 106 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)

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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.

Commencement Information

I6 S. 107 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)

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.

Commencement Information

I7 S. 108 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)

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.

(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

I8 S. 109 in force at 21.3.2005 for specified purposes by S.S.I. 2005/161, art. 2, **Sch. 1**

I9 S. 109 in force at 5.10.2005 in so far as not already in force 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)

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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)