



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

2003 asp 13

PART 10

COMPULSION ORDERS AND RESTRICTION ORDERS

CHAPTER 2

REVIEW OF ORDERS

Scottish Ministers' duty to keep orders under review

188 Duty of Scottish Ministers to keep compulsion order and restriction order under review

- (1) This section applies where a patient is subject to a compulsion order and a restriction order.
- (2) Without prejudice to the duties imposed on the Scottish Ministers by sections 185(1), 187(2) and 189(2) of this Act, the Scottish Ministers shall from time to time consider—
 - (a) whether the conditions mentioned in section 182(4) of this Act continue to apply in respect of the patient;
 - (b) whether, 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;
 - (c) whether it continues to be necessary for the patient to be subject to the compulsion order; and
 - (d) whether it continues to be necessary for the patient to be subject to the restriction order.
- (3) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2) above, the Scottish Ministers are not satisfied that the patient has a mental disorder, they shall apply to the Tribunal under section 191 of this Act for an order under section 193 of this Act revoking the compulsion order.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Section 188 is up to date with all changes known to be in force on or before 26 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*

- (4) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2) above, the Scottish Ministers—
- (a) are satisfied that the patient has a mental disorder; but
 - (b) are 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
 - [^{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,]
- they shall, as soon as practicable after considering those matters, apply to the Tribunal under section 191 of this Act for an order under section 193 of this Act revoking the compulsion order.
- (5) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2) above, the Scottish Ministers—
- (a) are 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) are 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,
- they shall apply to the Tribunal under section 191 of this Act for an order under section 193 of this Act revoking the restriction order.
- (6) Where the Scottish Ministers—
- (a) apply, by virtue of subsection (5) above, for an order revoking the restriction order; and
 - (b) are satisfied that the compulsion order should be varied by modifying the measures specified in it,
- they shall apply to the Tribunal under section 191 of this Act for an order under section 193 of this Act varying the compulsion order in that way.
- (7) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2) above, the Scottish Ministers—
- (a) are 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

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- (b) are not satisfied 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,
- they may apply to the Tribunal under section 191 of this Act for an order under section 193 of this Act conditionally discharging the patient.

Textual Amendments

- F1** S. 188(4)(b)(ii) substituted (22.3.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 69\(3\)](#), [79\(2\)](#)
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Commencement Information

- I1** S. 188 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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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\(3\)](#)