



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

2003 asp 13

PART 11

HOSPITAL DIRECTIONS AND TRANSFER FOR TREATMENT DIRECTIONS

Reference to Tribunal by Scottish Ministers

210 Duty of Scottish Ministers on receiving report from responsible medical officer

- (1) This section applies where a patient's responsible medical officer submits to the Scottish Ministers—
- (a) a report under section 207(2) of this Act that includes a recommendation; or
 - (b) a report under section 208(3) or (4) of this Act.
- (2) If, having considered the matters mentioned in paragraphs (a) to (c) of section 212(2) of this Act, the Scottish Ministers—
- (a) are not satisfied that the patient has a mental disorder; or
 - (b) are so satisfied but 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 paragraph (b) and (c) of section 206(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 direction,]
- the Scottish Ministers shall revoke the direction to which the patient is subject.
- (3) Where the Scottish Ministers do not, under subsection (2) above, revoke the direction to which the patient is subject, they shall make a reference to the Tribunal in respect of the direction.

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Section 210 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) Where a reference is made under subsection (3) above, the Scottish Ministers shall, as soon as practicable, give notice that a reference 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 patient’s responsible medical officer;
 - (f) the mental health officer; and
 - (g) the Commission.
- (5) A reference under subsection (3) 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 recommendation made by the responsible medical officer.
- (6) 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 under this section by the Scottish Ministers not to revoke the direction to which the patient is subject.

Textual Amendments

- F1** S. 210(2)(b)(ii) substituted (22.3.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 70\(3\)](#), [79\(2\)](#)

Commencement Information

- I1** S. 210 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, Section 210 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.

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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\(3\)](#)