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

2003 asp 13

PART 7

COMPULSORY TREATMENT ORDERS

CHAPTER 1

APPLICATION FOR, AND MAKING OF, ORDERS

Making of order etc.

64   Powers of Tribunal on application under section 63: compulsory treatment order

(1) This section applies where an application is made under section 63 of this Act.

(2) Before determining the application, the Tribunal shall afford 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 medical practitioners who submitted the mental health reports which accompany the application;

    (g)   if the patient has a responsible medical officer, that officer;

    (h)   the patient's primary carer;

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

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

(4) The Tribunal may—

    (a)   if satisfied that all of the conditions mentioned in subsection (5) below are met, make an order—

        (i)   authorising, for the period of 6 months beginning with the day on which the order is made, such of the measures mentioned in section 66(1) of this Act as may be specified in the order;

        (ii)   specifying such medical treatment, community care services, relevant services, other treatment, care or service as the Tribunal considers appropriate (any such medical treatment, community care services, relevant services, other treatment, care or service so specified being referred to in this Act as a "recorded matter");

        (iii)   recording (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

        (iv)   if the order does not authorise the detention of the patient in hospital, specifying the name of the hospital the managers of which are to have responsibility for appointing the patient's responsible medical officer; or

    (b)   refuse the application.

(5) The conditions referred to in subsection (4)(a) above are—

    (a)   that the patient has a mental disorder;

    (b)   that medical treatment which would be likely to—

        (i)   prevent the mental disorder worsening; or

        (ii)   alleviate any of the symptoms, or effects, of the disorder,

    is available for the patient;

    (c)   that if the patient were not provided with such medical treatment there would be a significant risk—

        (i)   to the health, safety or welfare of the patient; or

        (ii)   to the safety of any other person;

    (d)   that because of the mental disorder the patient's ability to make decisions about the provision of such medical treatment is significantly impaired;

    (e)   that the making of a compulsory treatment order in respect of the patient is necessary; and

    (f)   where the Tribunal does not consider it necessary for the patient to be detained in hospital, such other conditions as may be specified in regulations.

(6) Subject to subsection (7) below, an order under subsection (4)(a) above may, in addition to, or instead of, specifying some or all of the measures sought in the application to which the order relates, specify measures other than those set out in that application.

(7) The Tribunal may specify in the order under subsection (4)(a) above measures other than those set out in the application only if, before making the order—

    (a)   subject to subsection (8) below, the Tribunal gives notice to the persons mentioned in subsection (3) above—

        (i)   stating what it is proposing to do; and

        (ii)   setting out what those measures are;

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(b)   the Tribunal affords those persons the opportunity—

(i) of making representations (whether orally or in writing) in relation to the proposal; and

(ii) of leading, or producing, evidence.

(8) Where the duty under subsection (7)(a) above arises during a hearing of the application, notice need not be given under that subsection to any person mentioned in subsection (3) above who is present at the hearing.

(9) Before making regulations under subsection (5)(f) above, the Scottish Ministers shall consult such persons as they consider appropriate.

Commencement Information

I1   S. 64 in force at 21.3.2005 for specified purposes by S.S.I. 2005/161, art. 2, **Sch. 1**

I2   S. 64 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)

Changes to legislation:
Mental Health (Care and Treatment) (Scotland) Act 2003, Section 64 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)