

MENTAL HEALTH (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE & A SUMMARY OF THE ACT

Part One – the 2003 Act

Section 21: periodical referral of cases

Amendment of **section 101, 189 and 213**

67. Section 101 of the 2003 Act ensures that the Tribunal reviews a compulsory treatment order (CTO) at least once every 2 years. It does this by requiring a review to be carried out where, during the relevant 2-year period, the Tribunal has not been required to review the CTO by virtue of subsection (2)(a) and none of the following references or applications have been made to the Tribunal; namely, a reference under section 92 or 95 by a responsible medical officer or an application under section 99 or 100 by the patient or patient's named person.
68. Section 189 of the 2003 Act requires the Scottish Ministers to refer the case of a patient who is subject to a compulsion and restriction order (CORO) to the Tribunal for review every 2 years. The requirement applies where during the relevant 2-year period none of the following references or applications have been made to the Tribunal; namely, a reference under section 185 or 187 or an application under section 191 or 192.
69. Section 21 of the Act amends sections 101 and 189 to provide that an order has to be reviewed under section 101 if a reference or application under sections 92, 95, 99 or 100 has not been determined by the Tribunal, rather than the requirement being based upon when a reference or application has been made. Similarly, it provides that an order has to be referred under section 189 if a reference or application under section 185, 187, 191 or 192 has not been determined by the Tribunal. This is different from the current position which is based upon whether a reference or application has been made, whether or not it has been determined. Requiring that a case has to be reviewed if a reference or application has not been determined by the Tribunal rather than the requirement being based upon when a reference or application has been made will avoid situations where a review is not triggered because an application has been made to the Tribunal and then withdrawn by the patient. Paragraph 13A of schedule 2 of the 2003 Act is repealed in consequence of these changes.