

MENTAL HEALTH (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE & A SUMMARY OF THE ACT

Part Two – Criminal Cases

Section 52: Effect of revocation of restriction order

Amendment of [section 198](#)

139. Part 10 of the 2003 Act contains provisions in relation to compulsion orders and restriction orders. There are various provisions which allow for applications or references to be made by patients subject to such orders and their named persons to the Mental Health Tribunal in respect of these orders. In addition, the Scottish Ministers are also required to refer cases to the Tribunal in certain circumstances. Where, following such an application or reference, the Tribunal considers that it is necessary for a compulsion order and restriction order (CORO) patient to remain subject to a compulsion order but considers that the restriction order is no longer necessary, it may make an order under section 193 of the 2003 Act revoking the restriction order.
140. Section 196 of the 2003 Act provides that any order made under section 193 does not take effect until the occurrence of certain events, which can be summarised as: (1) the expiry of the period for appealing against the Tribunal’s order, without any appeal having been lodged; or (2) where an appeal has been lodged, a decision by Scottish Ministers not to seek an order under section 323 suspending the effect of the Tribunal’s order, or the court’s decision not to grant such an order, or (3) where a section 323 order has been made, the recall or expiry of such an order.
141. Section 198 of the 2003 Act provides that from the day on which the Tribunal makes the revocation order under section 193, the patient is to be treated as being subject to a compulsion order to which Part 9 of the 2003 Act applies which had been made on the day on which the Tribunal revoked the restriction order. And accordingly, from the day on which the revocation order is made, the patient is subject to the review requirements of Part 9 of the 2003 Act (relating to compulsion orders).
142. [Section 52](#) substitutes the words “order revoking the restriction order has effect in accordance with section 196 of this Act” for the words “Tribunal revoked the restriction order” in section 198(2) of the 2003 Act. This has the effect that a patient whose restriction order is revoked should not be treated as being subject to a compulsion order (and its attendant review requirements) until such time as the revocation takes effect.
143. This avoids the possibility that the Registered Medical Officer could be required to carry out a review of the compulsion order despite the patient continuing to be subject to a CORO.