



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

## 2003 asp 13

### PART 7 **S**

#### COMPULSORY TREATMENT ORDERS

### CHAPTER 1 **S**

#### APPLICATION FOR, AND MAKING OF, ORDERS

##### *Pre-application procedures*

#### 57 **Mental health officer's duty to apply for compulsory treatment order** **S**

- (1) Where subsections (2) to (5) below apply in relation to a patient, a mental health officer shall apply to the Tribunal under section 63 of this Act for a compulsory treatment order in respect of that patient.
- (2) This subsection applies where two medical practitioners carry out medical examinations of the patient in accordance with the requirements of section 58 of this Act.
- (3) This subsection applies where each of the medical practitioners who carries out a medical examination mentioned in subsection (2) above is satisfied—
  - (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;

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- (d) that because of the mental disorder the patient’s ability to make decisions about the provision of such medical treatment is significantly impaired; and
  - (e) that the making of a compulsory treatment order is necessary.
- (4) This subsection applies where each of the medical practitioners who carries out a medical examination mentioned in subsection (2) above submits to the mental health officer a report (any such report being referred to in this Act as a “mental health report”)—
- (a) stating that the medical practitioner submitting the report is satisfied that the conditions mentioned in paragraphs (a) to (e) of subsection (3) above are met in respect of the patient;
  - (b) stating, in relation to each of the conditions mentioned in paragraphs (b) to (e) of subsection (3) above, the medical practitioner’s reasons for believing the condition to be met in respect of the patient;
  - (c) specifying (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;
  - (d) setting out a description of—
    - (i) the symptoms that the patient has of the mental disorder; and
    - (ii) the ways in which the patient is affected by the mental disorder;
  - (e) specifying the measures that should, in the medical practitioner’s opinion, be authorised by the compulsory treatment order;
  - (f) specifying the date or dates on which the medical practitioner carried out the medical examination mentioned in subsection (2) above; and
  - (g) setting out any other information that the medical practitioner considers to be relevant.
- (5) This subsection applies where—
- (a) for the purposes of subsection (4)(c) above each of the mental health reports specifies at least one type of mental disorder that is also specified in the other report;
  - (b) for the purposes of subsection (4)(e) above each of the mental health reports specifies the same measures; and
  - (c) one of the mental health reports (being a report by an approved medical practitioner) states the views of that medical practitioner as to—
    - (i) subject to subsection (6) below, whether notice should be given to the patient under section 60(1)(a) of this Act; and
    - (ii) whether the patient is capable of arranging for a person to represent the patient in connection with the application under section 63 of this Act.
- (6) A medical practitioner may state the view that notice should not be given under section 60(1)(a) of this Act only if, in the opinion of that medical practitioner, the giving of notice would be likely to cause significant harm to the patient or any other person.
- (7) Where a mental health officer is required by subsection (1) above to make an application for a compulsory treatment order, the mental health officer shall make the application before the expiry of the period of 14 days beginning with—

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- (a) in the case where each of the mental health reports specifies the same date (or dates) for the purposes of subsection (4)(f) above, that date (or the later, or latest, of those dates); or
- (b) in the case where each of those reports specifies for those purposes a different date (or different dates), the later (or latest) of those dates.

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**Commencement Information**

- I1** S. 57 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)

**58 Medical examination: requirements** **S**

- (1) The requirements referred to in section 57(2) of this Act are set out in subsections (2) to (6) below.
- (2) Subject to subsection (4) below and to regulations under subsection (5) below—
  - (a) each medical examination of the patient shall be carried out by an approved medical practitioner; and
  - (b) subject to subsection (6) below, each such examination shall be carried out separately.
- (3) Where the medical examinations are carried out separately, the second shall be completed no more than five days after the first.
- (4) The patient's general medical practitioner may carry out one of the medical examinations of the patient although not an approved medical practitioner.
- <sup>F1</sup>(5) .....
- (6) The medical examinations need not be carried out separately if—
  - (a) where the patient is capable of consenting to the examinations, the patient consents to the examinations being carried out at the same time; or
  - (b) where the patient is incapable of consenting to the examinations—
    - (i) the patient's named person;
    - (ii) any guardian of the patient; or
    - (iii) any welfare attorney of the patient,consents to the examinations being carried out at the same time.

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**Textual Amendments**

- F1** S. 58(5) repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015](#) (asp 9), **ss. 29(3)(d)**, 61(2); [S.S.I. 2017/197](#), art. 2, sch.

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**Commencement Information**

- I2** S. 58 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, **Sch. 1**
- I3** S. 58 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, Part 7 is up to date with all changes known to be in force on or before 06 October 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*

## 59 Mental health officer’s duty to identify named person **S**

Where a mental health officer is required by 57(1) of this Act to make an application under section 63 of this Act in respect of a patient, the mental health officer shall, as soon as practicable after the duty to make the application arises, take such steps as are reasonably practicable to ascertain the name and address of the patient’s named person.

### Commencement Information

**I4** S. 59 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)

## 60 Application for compulsory treatment order: notification **S**

- (1) Where a mental health officer is required by section 57(1) of this Act to make an application under section 63 of this Act in respect of a patient, the mental health officer shall, as soon as practicable after the duty to make the application arises (and, in any event, before making the application) give notice that the application is to be made—
  - (a) subject to subsection (2) below, to the patient in respect of whom the application is to be made;
  - (b) to the patient’s named person; and
  - (c) to the Commission.
- (2) If the view set out in one of the mental health reports by virtue of section 57(5)(c) of this Act is that notice should not be given under paragraph (a) of subsection (1) above, the mental health officer—
  - (a) need not give such notice; but
  - (b) may, if the mental health officer considers it appropriate to do so, give such notice.

### Commencement Information

**I5** S. 60 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)

## 61 Mental health officer’s duty to prepare report **S**

- (1) This section applies where a mental health officer is required by section 57(1) of this Act to make an application under section 63 of this Act in respect of a patient.
- (2) The mental health officer shall, before the date on which, by virtue of section 57(7) of this Act, the application is to be made—
  - (a) subject to subsection (3) below, interview the patient;
  - (b) if the patient has not been given notice under section 60(1)(a) of this Act, inform the patient that the application is to be made;
  - (c) inform the patient of—
    - (i) the patient’s rights in relation to the application; and
    - (ii) the availability of independent advocacy services under section 259 of this Act;

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- (d) take appropriate steps to ensure that the patient has the opportunity of making use of those services; and
  - (e) prepare in relation to the patient a report in accordance with subsection (4) below.
- (3) If it is impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the mental health officer need not do so.
- (4) The report shall state—
- (a) the name and address of the patient;
  - (b) if known by the mental health officer, the name and address of—
    - (i) the patient’s named person; and
    - (ii) the patient’s primary carer;
  - (c) the steps that the mental health officer has taken in pursuance of the requirements imposed by subsection (2) above;
  - (d) if it was impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the reason for that being the case;
  - (e) in so far as relevant for the purposes of the application, details of the personal circumstances of the patient;
  - (f) the mental health officer’s views on the mental health reports relating to the patient;
  - (g) if known by the mental health officer, details of any advance statement that the patient has made (and not withdrawn); and
  - (h) any other information that the mental health officer considers relevant to the determination by the Tribunal of the application.

#### Commencement Information

**I6** S. 61 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)

## 62 Mental health officer’s duty to prepare proposed care plan **S**

- (1) This section applies where a mental health officer is required by section 57(1) of this Act to make an application under section 63 of this Act in respect of a patient.
- (2) The mental health officer shall, before the date on which, by virtue of section 57(7) of this Act, the application is to be made, prepare a plan (a “proposed care plan”) relating to the patient.
- (3) Before preparing the proposed care plan, the mental health officer shall consult—
  - (a) the medical practitioners who provided the mental health reports relating to the patient;
  - (b) subject to subsection (7) below, the persons mentioned in subsection (4) below; and
  - (c) such other persons as the mental health officer considers appropriate.
- (4) The persons referred to in subsection (3)(b) above are persons who appear to the mental health officer to provide—
  - (a) medical treatment of the kind that it is proposed to specify, by virtue of paragraph (d) of subsection (5) below, in the proposed care plan;

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- (b) community care services, or relevant services, of the kind that it is proposed to specify, by virtue of paragraph (e) of that subsection, in that plan; or
  - (c) other treatment, care or services of the kind that it is proposed to specify, by virtue of paragraph (f) of that subsection, in that plan.
- (5) The proposed care plan shall specify—
- (a) (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 which the patient has;
  - (b) the needs of the patient for medical treatment that have been assessed by the medical practitioners who submitted the mental health reports relating to the patient;
  - (c) in so far as relevant for the purposes of the application—
    - (i) where the patient is a child, the needs of the patient that have been assessed under section 23(3) of the Children (Scotland) Act 1995 (c. 36);
    - (ii) where the patient is not a child, the needs of the patient that have been assessed under section 12A(1)(a) of the Social Work (Scotland) Act 1968 (c. 49);
  - (d) the medical treatment which it is proposed to give to the patient in relation to each of the needs specified by virtue of paragraph (b) above (including the names of the persons who would give the treatment and the addresses at which the treatment would be given);
  - (e) any community care services or relevant services which it is proposed to provide to the patient in relation to each of the needs specified by virtue of paragraph (c) above (including the names of the persons who would provide such services and the addresses at which such services would be provided);
  - (f) in so far as relevant for the purposes of the application—
    - (i) any treatment or care (other than treatment or care specified, by virtue of paragraph (d) above, in the proposed care plan); or
    - (ii) any service (other than a service specified, by virtue of paragraph (e) above, in the proposed care plan),
 which it is proposed to provide to the patient (including the names of the persons who would provide such treatment, care or service and the addresses at which such treatment, care or service would be provided);
  - (g) which of the measures mentioned in section 66(1) of this Act it is proposed that the compulsory treatment order should authorise;
  - (h) where it is proposed that the compulsory treatment order should authorise the detention of the patient in hospital, the name and address of the hospital;
  - (i) where it is proposed that the compulsory treatment order should authorise any of the measures mentioned in section 66(1)(c) to (h) of this Act, details of the measure (or measures);
  - (j) where it is proposed that the compulsory treatment order should specify—
    - (i) any medical treatment specified, by virtue of paragraph (d) above, in the proposed care plan;
    - (ii) any community care services, or relevant services, specified, by virtue of paragraph (e) above, in the proposed care plan; or
    - (iii) any treatment, care or service specified, by virtue of paragraph (f) above, in the proposed care plan,

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- that medical treatment, those services or that treatment, care, or service, as the case may be;
- (k) where it is proposed that the compulsory treatment order should authorise measures other than the detention of the patient in hospital, the name of the hospital the managers of which should have responsibility for appointing the patient’s responsible medical officer; and
- (l) the objectives of—
- (i) the medical treatment which it is proposed, by virtue of paragraph (d) above, to give to the patient;
  - (ii) any community care services or relevant services which it is proposed, by virtue of paragraph (e) above, to provide to the patient;
  - (iii) any treatment, care or service which, by virtue of paragraph (f) above, it is proposed to provide to the patient; and
  - (iv) the measures (other than detention of the patient in hospital) that it is proposed that the compulsory treatment order should authorise.
- (6) The proposed care plan shall be signed by the mental health officer.
- (7) The mental health officer need not consult any person such as is mentioned in subsection (4) above in any case where it is impracticable to do so.
- (8) In this section “child” has the same meaning as in section 23(3) of the Children (Scotland) Act 1995 (c. 36).

#### Commencement Information

- I7** S. 62 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)

### *Application for order*

## **63 Application for compulsory treatment order** **S**

- (1) An application to the Tribunal for a compulsory treatment order may be made by, and only by, a mental health officer.
- (2) An application—
- (a) shall specify—
    - (i) the measures that are sought in relation to the patient in respect of whom the application is made;
    - (ii) any medical treatment, community care services, relevant services or other treatment, care or service specified in the proposed care plan by virtue of section 62(5)(j) of this Act; and
    - (iii) where it is proposed that the order should authorise measures other than the detention of the patient in hospital, the name of the hospital the managers of which should have responsibility for appointing the patient’s responsible medical officer; and
  - (b) shall be accompanied by the documents that are mentioned in subsection (3) below.
- (3) Those documents are—

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- (a) the mental health reports;
  - (b) the report prepared under section 61 of this Act; and
  - (c) the proposed care plan,
- relating to the patient.

#### Commencement Information

- I8** S. 63 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)

*Making of order etc.*

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

- (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
  - (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”);



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- (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;
  - (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.

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#### Commencement Information

- I9** S. 64 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161, art. 2, Sch. 1](#)
- I10** 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](#))

### 65 Powers of Tribunal on application under section 63: interim compulsory treatment order **S**

- (1) This section applies where an application is made under section 63 of this Act.
- (2) Subject to subsections (3) and (4) below and to section 69 of this Act, on the application of any person having an interest in the proceedings, or *ex proprio motu*, the Tribunal may, if satisfied as to the matters mentioned in subsection (6) below, make an order (an “interim compulsory treatment order”)—
  - (a) authorising for such period not exceeding 28 days as may be specified in the order such of the measures mentioned in section 66(1) of this Act as may be so specified; and
  - (b) 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.
- (3) The Tribunal may not make an interim compulsory treatment order if its effect, when taken with any other interim compulsory treatment order made in respect of the patient, would be to authorise measures in respect of the patient for a continuous period of more than 56 days.
- (4) Before making an interim compulsory treatment order, the Tribunal shall afford the persons mentioned in subsection (5) below the opportunity—
  - (a) of making representations (whether orally or in writing); and
  - (b) of leading, or producing, evidence.
- (5) Those persons are—
  - (a) the persons referred to in section 64(3)(a) to (e) and (g) to (i) of this Act;
  - (b) the medical practitioners who submitted the mental health reports which accompany the application under section 63 of this Act; and
  - (c) any other person appearing to the Tribunal to have an interest in that application.
- (6) The matters referred to in subsection (2) above are—
  - (a) that the conditions mentioned in paragraphs (a) to (d) of section 64(5) of this Act are met in respect of the patient; and
  - (b) that it is necessary to make an interim compulsory treatment order.

#### Commencement Information

- I11** S. 65 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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## 66 Measures that may be authorised **S**

- (1) Subject to subsection (2) below, the measures referred to in sections 64(4)(a)(i) and 65(2)(a) of this Act are—
- (a) the detention of the patient in the specified hospital;
  - (b) the giving to the patient, in accordance with Part 16 of this Act, of medical treatment;
  - (c) the imposition of a requirement on the patient to attend—
    - (i) on specified or directed dates; or
    - (ii) at specified or directed intervals,specified or directed places with a view to receiving medical treatment;
  - (d) the imposition of a requirement on the patient to attend—
    - (i) on specified or directed dates; or
    - (ii) at specified or directed intervals,specified or directed places with a view to receiving community care services, relevant services or any treatment, care or service;
  - (e) the imposition of a requirement on the patient to reside at a specified place;
  - (f) the imposition of a requirement on the patient to allow—
    - (i) the mental health officer;
    - (ii) the patient’s responsible medical officer; or
    - (iii) any person responsible for providing medical treatment, community care services, relevant services or any treatment, care or service to the patient who is authorised for the purposes of this paragraph by the patient’s responsible medical officer,to visit the patient in the place where the patient resides;
  - (g) the imposition of a requirement on the patient to obtain the approval of the mental health officer to any proposed change of address; and
  - (h) the imposition of a requirement on the patient to inform the mental health officer of any change of address before the change takes effect.
- (2) Regulations may make provision for measures prescribed by the regulations to be treated as included among the measures mentioned in subsection (1) above.
- (3) In this section—
- “directed” means in accordance with directions given by the patient’s responsible medical officer; and
  - “specified” means specified in the compulsory treatment order or, as the case may be, the interim compulsory treatment order.

### Commencement Information

**I12** S. 66 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), [art. 2](#), [Sch. 1](#)

**I13** [S. 66](#) 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](#))

## 67 Order authorising detention: ancillary authorisation **S**

- (1) Where a compulsory treatment order or an interim compulsory treatment order—
- (a) authorises the detention of a patient in a hospital specified in the order; or

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(b) imposes a requirement on a patient to reside at a place specified in the order, this section authorises the removal, before the expiry of the period of 7 days beginning with the appropriate day, of the patient in respect of whom the order is made to that hospital or, as the case may be, place.

(2) In subsection (1) above, “appropriate day” means the day on which—

- (a) a compulsory treatment order or, as the case may be, an interim compulsory treatment order authorising detention of a patient in hospital is made; or
- (b) a compulsory treatment order is varied so as to authorise the detention of a patient in the hospital specified in the order.

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**Commencement Information**

**I14** S. 67 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)

*Extension of short-term detention: special case*

**68**      **Extension of short-term detention pending determination of application** **S**

(1) Where—

- (a) the detention of a patient in hospital is authorised by—
  - (i) a short-term detention certificate; or
  - (ii) an extension certificate; and

(b) before the expiry of the period of detention so authorised, an application is made under section 63 of this Act,

the measures mentioned in subsection (2) below are authorised.

(2) Those measures are—

- (a) the detention in hospital of the patient for the period of 5 days beginning with the expiry of the period for which the certificate authorises the detention of the patient in hospital; and
- (b) the giving to the patient, in accordance with Part 16 of this Act, of medical treatment.

(3) In reckoning the period of days mentioned in subsection (2)(a) above, there shall be left out of account any day which is not a working day.

(4) In this section “working day” has the meaning given by section 47(8) of this Act.

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**Commencement Information**

**I15** S. 68 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 to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 7 is up to date with all changes known to be in force on or before 06 October 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*

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*Time limit for Tribunal's determination: special case*

**69 Time limit for determining application etc. where section 68 applies** **S**

Where section 68 of this Act applies, the Tribunal shall, before the expiry of the period of 5 days referred to in section 68(2)(a) of this Act—

- (a) determine whether an interim compulsory treatment order should be made; and
- (b) if it determines that an interim compulsory treatment order should not be made, determine the application.

**Commencement Information**

**I16** S. 69 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)

*Effect of making of orders on short-term detention*

**70 Effect of subsequent order on short-term detention certificate** **S**

If a compulsory treatment order, or an interim compulsory treatment order, is made in respect of a patient who is in hospital under authority of a short-term detention certificate, the certificate shall, on the making of the order, be revoked.

**Commencement Information**

**I17** S. 70 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)

*Application of Chapter where patient subject to hospital direction or transfer for treatment direction*

**71 Application of Chapter where patient subject to hospital direction or transfer for treatment direction** **S**

Where a patient is subject to—

- (a) a hospital direction; or
- (b) a transfer for treatment direction,

this Chapter shall have effect in accordance with schedule 3 to this Act.

**Commencement Information**

**I18** S. 71 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)

**[<sup>F2</sup>71A Compulsory treatment in hospital unit** **S**

- (1) In sections 62 to 68 of this Act, a reference to a hospital may be read as a reference to a hospital unit.

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- (2) For the purposes of subsection (1) above, “hospital unit” means any part of a hospital which is treated as a separate unit.]

#### Textual Amendments

- F2** S. 71A inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 11(4)**, 61(2); S.S.I. 2017/197, art. 2, sch.

## CHAPTER 2 S

### INTERIM COMPULSORY TREATMENT ORDERS: REVIEW AND REVOCATION

#### 72 **Interim compulsory treatment order: responsible medical officer’s duty to keep under review** S

- (1) Where a patient is subject to an interim compulsory treatment order, the patient’s responsible medical officer shall from time to time consider—
- (a) whether the conditions mentioned in paragraphs (a) to (d) of section 64(5) of this Act continue to apply in respect of the patient; and
  - (b) whether it continues to be necessary for the patient to be subject to an interim compulsory treatment order.
- (2) If, having considered the matters mentioned in paragraphs (a) and (b) of subsection (1) above, the responsible medical officer is not satisfied—
- (a) that the conditions mentioned in paragraphs (a) to (d) of section 64(5) 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 an interim compulsory treatment order,
- the responsible medical officer shall make a determination revoking the interim compulsory treatment order.
- (3) A determination under this section shall be made as soon as practicable after the duty to make it arises.

#### Commencement Information

- I19** S. 72 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)

#### 73 **Commission’s power to revoke interim compulsory treatment order** S

- (1) This section applies where a patient is subject to an interim compulsory treatment order.
- (2) If the Commission is satisfied—
- (a) that not all of the conditions mentioned in paragraphs (a) to (d) of section 64(5) of this Act continue to apply in respect of the patient; or
  - (b) that it does not continue to be necessary for the patient to be subject to an interim compulsory treatment order,

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the Commission may revoke the interim compulsory treatment order.

#### Commencement Information

**I20** S. 73 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)

### 74 Revocation under section 72 or 73: notification **S**

- (1) Where a patient's responsible medical officer makes a determination under section 72 of this Act, the responsible medical officer shall, as soon as practicable after doing so—
  - (a) give notice of the determination; and
  - (b) send a statement of the reasons for it,to the Commission and to the persons mentioned in subsection (3) below.
- (2) Where the Commission makes a determination under section 73 of this Act, it shall, as soon as practicable after doing so—
  - (a) give notice of the determination; and
  - (b) send a statement of the reasons for it,to the patient's responsible medical officer and to the persons mentioned in subsection (3) below.
- (3) The persons referred to in subsections (1) and (2) above 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; and
  - (f) the Tribunal.

#### Commencement Information

**I21** S. 74 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)

### 75 Effect of subsequent compulsory treatment order on interim compulsory treatment order **S**

If a compulsory treatment order is made in respect of a patient who is subject to an interim compulsory treatment order, the interim compulsory treatment order shall, on the making of the compulsory treatment order, be revoked.

#### Commencement Information

**I22** S. 75 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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## CHAPTER 3 **S**

### COMPULSORY TREATMENT ORDERS: CARE PLAN

#### 76 Care plan: preparation, placing in medical records etc. **S**

[<sup>F3</sup>(A1) This section applies where a compulsory treatment order is made in respect of a patient.]

- (1) As soon as practicable after a patient’s responsible medical officer is appointed under section 230 of this Act, the responsible medical officer shall—
  - (a) prepare a plan (any such plan being referred to in this Act as a “care plan”) relating to the patient; and
  - (b) ensure that the patient’s care plan is included in the patient’s medical records.
- (2) The care plan shall set out—
  - (a) the medical treatment—
    - (i) which it is proposed to give; and
    - (ii) which is being given,
 to the patient while the patient is subject to the compulsory treatment order; and
  - (b) such other information relating to the care of the patient as may be prescribed by regulations.
- (3) Subject to subsection (4)(b) below, a patient’s responsible medical officer may from time to time amend the patient’s care plan.
- (4) Regulations may prescribe—
  - (a) circumstances in which a patient’s responsible medical officer is required to amend the patient’s care plan;
  - (b) information in a care plan which may not be amended.
- (5) Where a patient’s responsible medical officer amends the patient’s care plan—
  - (a) the responsible medical officer shall ensure that, as soon as practicable after it is amended, the amended care plan is included in the patient’s medical records; and
  - (b) subsections (2) to (4) above and this subsection shall apply as if references to the care plan were references to the amended care plan.

#### Textual Amendments

- F3** S. 76(A1) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(11)**

#### Modifications etc. (not altering text)

- C1** S. 76 modified (5.10.2005) by [Mental Health \(Cross-border transfer; patients subject to detention requirement or otherwise in hospital\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/467\)](#), regs. 1(1), **42(2)** (with reg. 2)
- C2** S. 76 modified (3.11.2008) by [Mental Health \(England and Wales Cross-border transfer: patients subject to requirements other than detention\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/356\)](#), regs. 1(1), **29(1), (2)** (with reg. 2)



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#### Commencement Information

- I23** S. 76 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161, art. 2, Sch. 1](#)
- I24** S. 76 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](#))

## CHAPTER 4 **S**

### REVIEW OF ORDERS

#### *Mandatory reviews by responsible medical officer*

#### 77 **First mandatory review** **S**

- (1) This section applies where a compulsory treatment order is made in respect of a patient.
- (2) The patient's responsible medical officer shall, during the appropriate period, carry out a review in respect of the order (such review being referred to in this Part of this Act as the "first review") by complying with the requirements in subsection (3) below.
- (3) Those requirements are—
  - (a) to—
    - (i) carry out a medical examination of the patient; or
    - (ii) make arrangements for an approved medical practitioner to carry out such a medical examination;
  - (b) to consider—
    - (i) whether the conditions mentioned in paragraphs (a) to (d) of section 64(5) of this Act continue to apply in respect of the patient; and
    - (ii) whether it continues to be necessary for the patient to be subject to a compulsory treatment order; and
  - (c) to consult—
    - (i) the mental health officer;
    - (ii) such persons as are mentioned in subsection (4) below as the responsible medical officer considers appropriate; and
    - (iii) such other persons as the responsible medical officer considers appropriate.
- (4) The persons referred to in subsection (3)(c)(ii) above are—
  - (a) persons who appear to the responsible medical officer to provide medical treatment of the kind that is set out in the patient's care plan;
  - (b) if any community care services or relevant services are set out in that plan, persons who appear to the responsible medical officer to provide services of that kind;
  - (c) if any other treatment, care or service is set out in that plan, persons who appear to the responsible medical officer to provide treatment, care or a service of that kind.

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- (5) In subsection (2) above, “appropriate period” means the period of 2 months ending with the day on which the compulsory treatment order ceases to authorise the measures specified in it.

**Modifications etc. (not altering text)**

- C3** S. 77(2) modified (3.11.2008) by [Mental Health \(England and Wales Cross-border transfer: patients subject to requirements other than detention\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/356\)](#), regs. 1(1), **33(2)**, (3)(a) (with [reg. 2](#))

**Commencement Information**

- I25** S. 77 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)

**78 Further mandatory reviews** **S**

- (1) This section applies where a compulsory treatment order is extended—
- (a) by a determination under section 86 of this Act; or
  - (b) by virtue of an order under section 103 of this Act.
- (2) The patient’s responsible medical officer shall, during the period mentioned in subsection (3) below, carry out a review in respect of the compulsory treatment order (such review being referred to in this Part of this Act as a “further review”) by complying with the requirements set out in section 77(3) of this Act.
- (3) The period referred to in subsection (2) above is the period of 2 months ending with the day on which the compulsory treatment order as extended by the determination, or by virtue of the order under section 103 of this Act, ceases to authorise the measures specified in it.

**Modifications etc. (not altering text)**

- C4** S. 78(2) modified (3.11.2008) by [Mental Health \(England and Wales Cross-border transfer: patients subject to requirements other than detention\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/356\)](#), regs. 1(1), **33(2)**, (3)(b) (with [reg. 2](#))

**Commencement Information**

- I26** S. 78 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)

*Revocation of order by responsible medical officer or Commission*

**79 Responsible medical officer’s duty to revoke order: mandatory reviews** **S**

- (1) This section applies where a patient’s responsible medical officer is carrying out—
- (a) the first review of the compulsory treatment order to which the patient is subject; or
  - (b) a further review of that order.

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 7 is up to date with all changes known to be in force on or before 06 October 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*

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- (2) If, having regard to any views expressed by persons consulted under section 77(3)(c) of this Act for the purpose of the review being carried out, the responsible medical officer is not satisfied—
- (a) that the conditions mentioned in paragraphs (a) to (d) of section 64(5) 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 a compulsory treatment order,
- the responsible medical officer shall make a determination revoking the compulsory treatment order.
- (3) A determination under this section shall be made as soon as practicable after the duty to make it arises.

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**Commencement Information**

**I27** S. 79 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)

**80**      **Revocation of order: responsible medical officer's duty to keep under review** **S**

- (1) This section applies where a patient is subject to a compulsory treatment order.
- (2) Without prejudice to the duties imposed on the patient's responsible medical officer by sections 77(2), 78(2), 79(2) and 93(2) of this Act, the responsible medical officer shall from time to time consider—
- (a) whether the conditions mentioned in paragraphs (a) to (d) of section 64(5) of this Act continue to apply in respect of the patient; and
  - (b) whether it continues to be necessary for the patient to be subject to a compulsory treatment order.
- (3) If, having considered the matters mentioned in paragraphs (a) and (b) of subsection (2) above, the responsible medical officer is not satisfied—
- (a) that the conditions mentioned in paragraphs (a) to (d) of section 64(5) 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 a compulsory treatment order,
- the responsible medical officer shall make a determination revoking the compulsory treatment order.
- (4) A determination under this section shall be made as soon as practicable after the duty to make it arises.

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**Commencement Information**

**I28** S. 80 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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## 81 Commission's power to revoke order **S**

- (1) This section applies where a patient is subject to a compulsory treatment order.
- (2) If the Commission is satisfied—
  - (a) that not all of the conditions mentioned in paragraphs (a) to (d) of section 64(5) of this Act continue to apply in respect of the patient; or
  - (b) that it does not continue to be necessary for the patient to be subject to a compulsory treatment order,
 it may make a determination revoking the compulsory treatment order.

### Commencement Information

**I29** S. 81 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)

## 82 Revocation of order: notification **S**

- (1) Where a patient's responsible medical officer makes a determination under section 79 or 80 of this Act, that officer shall—
  - (a) give notice of the determination; and
  - (b) send a statement of the reasons for it,
 to the Commission and to the persons mentioned in subsection (3) below.
- (2) Where the Commission makes a determination under section 81 of this Act, it shall—
  - (a) give notice of the determination; and
  - (b) send a statement of the reasons for it,
 to the patient's responsible medical officer and to the persons mentioned in subsection (3) below.
- (3) The persons referred to in subsections (1) and (2) above 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; and
  - (f) the Tribunal.
- (4) Notice under subsection (1) or (2) above—
  - (a) to the persons mentioned in paragraphs (a) to (d) of subsection (3) above shall be given as soon as practicable after the determination is made and, in any event, before the expiry of the period of 7 days beginning with the day on which the determination is made; and
  - (b) to—
    - (i) the Commission;
    - (ii) the patient's responsible medical officer; and
    - (iii) the persons mentioned in paragraphs (e) and (f) of that subsection,
 shall be given before the expiry of the period of 7 days beginning with the day on which the determination is made.

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 7 is up to date with all changes known to be in force on or before 06 October 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*

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#### Commencement Information

**I30** S. 82 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)

*Further steps to be taken where order not revoked*

### 83 **Mandatory reviews: further steps to be taken where order not revoked** **S**

- (1) This section applies where a patient's responsible medical officer is carrying out—
  - (a) the first review of the compulsory treatment order to which the patient is subject; or
  - (b) a further review of that order.
- (2) If, having regard to any views expressed by persons consulted under section 77(3)(c) of this Act for the purpose of the review being carried out, the patient's responsible medical officer is satisfied—
  - (a) that the conditions mentioned in paragraphs (a) to (d) of section 64(5) of this Act continue to apply in respect of the patient; and
  - (b) that it continues to be necessary for the patient to be subject to a compulsory treatment order,the responsible medical officer shall comply with the requirements in subsection (3) below.
- (3) Those requirements are—
  - (a) to consider whether it will continue to be necessary for the patient to be subject to a compulsory treatment order after the day on which the order to which the patient is subject will cease (unless extended) to authorise the measures specified in it;
  - (b) to assess the needs of the patient for medical treatment;
  - (c) to consider—
    - (i) whether the compulsory treatment order should be varied by modifying the measures, or any recorded matter, specified in it; and
    - (ii) if the order should be varied, what modification is appropriate;
  - (d) to consider any views expressed on the matters mentioned in paragraphs (a) to (c) above by persons consulted under section 77(3)(c) of this Act.

#### Commencement Information

**I31** S. 83 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)

*Extension of order by responsible medical officer*

### 84 **Responsible medical officer's duty where extension of order appears appropriate** **S**

- (1) This section applies where a patient's responsible medical officer is carrying out—

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- (a) the first review of the compulsory treatment order to which the patient is subject; or
  - (b) a further review of that order.
- (2) If, having regard to any views expressed by persons consulted under section 77(3)(c) of this Act for the purpose of the review being carried out, it appears to the responsible medical officer—
- (a) that it will continue to be necessary for the patient to be subject to a compulsory treatment order after the day on which the order will cease (unless extended) to authorise the measures specified in it; and
  - (b) that the order should not be varied by modifying the measures, or any recorded matter, specified in it,
- the responsible medical officer shall give notice to the mental health officer that the responsible medical officer is proposing to make a determination under section 86 of this Act extending the order.

#### Commencement Information

**I32** S. 84 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)

## 85 Mental health officer's duties: extension of order **S**

- (1) The mental health officer shall, as soon as practicable after receiving notice under section 84(2) of this Act, comply with the requirements in subsection (2) below.
- (2) Those requirements are—
- (a) subject to subsection (3) below, to interview the patient;
  - (b) to inform the patient—
    - (i) that the patient's responsible medical officer is proposing to make a determination under section 86 of this Act extending the compulsory treatment order to which the patient is subject for the period mentioned in section 86(2) of this Act;
    - (ii) of the patient's rights in relation to such a determination; and
    - (iii) of the availability of independent advocacy services under section 259 of this Act;
  - (c) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and
  - (d) to inform the patient's responsible medical officer—
    - (i) of whether the mental health officer agrees, or disagrees, that the determination that is proposed should be made;
    - (ii) if the mental health officer disagrees, of the reason why that is the case; and
    - (iii) of any other matters that the mental health officer considers relevant.
- (3) If it is impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the mental health officer need not do so.

**Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Part 7 is up to date with all changes known to be in force on or before 06 October 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

#### Commencement Information

**I33** S. 85 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)

### 86 Responsible medical officer's duty to extend order **S**

- (1) If, having regard to—
- (a) any views expressed by persons consulted under section 77(3)(c) of this Act for the purpose of the review being carried out; and
  - (b) any views expressed by the mental health officer under section 85(2)(d) of this Act for the purpose of that review,
- the responsible medical officer is satisfied as to the matters mentioned in section 84(2) (a) and (b) of this Act, the responsible medical officer shall make a determination extending the compulsory treatment order for the period mentioned in subsection (2) below.
- (2) The period referred to in subsection (1) above is—
- (a) where a determination is made in respect of the first review, the period of 6 months beginning with the day on which the compulsory treatment order will cease (unless extended) to authorise the measures specified in it;
  - (b) where a determination is made in respect of the first further review, the period of 12 months beginning with the expiry of the period mentioned in paragraph (a) above;
  - (c) where a determination is made in respect of a subsequent further review, the period of 12 months beginning with the expiry of the period of 12 months for which the order is extended as a result of the immediately preceding further review.

#### Commencement Information

**I34** S. 86 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)

### 87 Determination extending order: notification etc. **S**

- (1) Where a patient's responsible medical officer makes a determination under section 86 of this Act, that officer shall, as soon as practicable after the determination is made and, in any event, before the day on which the compulsory treatment order will cease, if it is not extended by the determination, to authorise the measures specified in it, comply with the requirements in subsection (2) below.
- (2) Those requirements are—
- (a) to prepare a record stating—
    - (i) the determination;
    - (ii) the reasons for it;
    - (iii) whether the mental health officer agrees, or disagrees, with the determination or has failed to comply with the duty imposed by section 85(2)(d)(i) of this Act;

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 7 is up to date with all changes known to be in force on or before 06 October 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*

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- (iv) if the mental health officer disagrees with the determination, the reasons for the disagreement;
  - (v) (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 if there is a difference between that type (or types) and the type (or types) of mental disorder recorded in the compulsory treatment order in respect of which the determination is made, what that difference is; and
  - (vi) such other matters as may be prescribed by regulations;
- (b) to submit the record to the Tribunal; and
  - (c) at the same time as the responsible medical officer submits the record to the Tribunal, to give notice of the determination and send a copy of the record—
    - (i) subject to subsection (3) below, to the patient;
    - (ii) to the patient’s named person;
    - (iii) to the mental health officer; and
    - (iv) to the Commission.
- (3) If the responsible medical officer considers that there would be a risk of significant harm to the patient, or to others, if a copy of the record were sent to the patient, that officer need not send a copy to the patient.
- (4) At the same time as the responsible medical officer submits the record to the Tribunal, that officer shall send to the Tribunal, and to the persons mentioned in subsection (2) (c)(i) to (iv) above, a statement of the matters mentioned in subsection (5) below.
- (5) Those matters are—
- (a) whether the responsible medical officer is sending a copy of the record to the patient; and
  - (b) if the responsible medical officer is not sending a copy of the record to the patient, the reason for not doing so.

#### Commencement Information

**I35** S. 87 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, [Sch. 1](#)

**I36** S. 87 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)

#### [<sup>F4</sup>87A Further information where order extended **S**

- (1) Subsections (2) and (3) below apply where—
- (a) a mental health officer receives notice of a determination under section 86 of this Act from a patient’s responsible medical officer, and
  - (b) the Tribunal is required by virtue of section 101(2)(a) of this Act to review the determination.
- (2) The mental health officer must—
- (a) prepare a record stating the information mentioned in subsection (4) below,
  - (b) submit the record to the Tribunal, and
  - (c) at the same time as submitting the record to the Tribunal, send to the persons mentioned in subsection (6) below—



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- (i) a copy of the record, and
  - (ii) a statement of the matters mentioned in subsection (5) below.
- (3) At the same time as submitting the record to the Tribunal, the mental health officer must send a copy of the record to the patient except where the officer considers that doing so carries a risk of significant harm to the patient or others.
- (4) The information to be stated in the record is—
- (a) the name and address of the patient,
  - (b) if known by the mental health officer, the name and address of—
    - (i) the patient's named person, and
    - (ii) the patient's primary carer,
  - (c) the things done by the mental health officer in compliance with the requirements in subsection (2) of section 85 of this Act (and, if by virtue of subsection (3) of that section the first-listed one has not been complied with, the reason why compliance with it was impracticable),
  - (d) so far as relevant to the extension of the compulsory treatment order—
    - (i) the details of the personal circumstances of the patient, and
    - (ii) if known by the mental health officer, the details of any advance statement made by the patient (and not withdrawn by the patient),
  - (e) the views of the mental health officer on the extension of the compulsory treatment order, and
  - (f) any other information that the mental health officer considers relevant in relation to the extension of the compulsory treatment order.
- (5) The matters referred to in subsection (2)(c) above are—
- (a) whether the mental health officer is sending a copy of the record to the patient, and
  - (b) if the mental health officer is not sending a copy of the record to the patient, the reason for not doing so.
- (6) For the purposes of subsection (2)(c) above, the persons are—
- (a) the patient's named person,
  - (b) the patient's responsible medical officer, and
  - (c) the Commission.]

#### Textual Amendments

**F4** S. 87A inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 2(2)**, 61(2); [S.S.I. 2017/197](#), **art. 2**, **sch.** (with **art. 3**)

*Extension and variation of order: application by responsible medical officer*

## 88 Responsible medical officer's duty where extension and variation of order appear appropriate **S**

- (1) This section applies where a patient's responsible medical officer is carrying out—
- (a) the first review of the compulsory treatment order to which the patient is subject; or

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- (b) a further review of that order.
- (2) If, having regard to any views expressed by persons consulted under section 77(3)(c) of this Act for the purpose of the review being carried out, it appears to the responsible medical officer—
- (a) that it will continue to be necessary for the patient to be subject to a compulsory treatment order after the day on which the order will cease (unless extended) to authorise the measures specified in it; but
  - (b) that the order should be varied by modifying the measures, or any recorded matter, specified in it,
- the responsible medical officer shall comply with the requirement in subsection (3) below.
- (3) That requirement is to give notice to the mental health officer—
- (a) that the responsible medical officer is proposing to make an application to the Tribunal under section 92 of this Act for an order under section 103 of this Act—
    - (i) extending the compulsory treatment order for the period mentioned in subsection (4) below; and
    - (ii) varying that order by modifying the measures, or a recorded matter, specified in it; and
  - (b) of the modification of the measures, or any recorded matter, specified in that order that the responsible medical officer is proposing.
- (4) The period referred to in subsection (3) above is—
- (a) where the application is made in respect of the first review, the period of 6 months beginning with the day on which the compulsory treatment order will (unless extended) cease to authorise the measures specified in it;
  - (b) where the application is made in respect of the first further review, the period of 12 months beginning with the expiry of the period mentioned in paragraph (a) above;
  - (c) where the application is made in respect of a subsequent further review, the period of 12 months beginning with the expiry of the period of 12 months for which the order is extended as a result of the immediately preceding further review.

#### Commencement Information

**I37** S. 88 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)

## 89 Mental health officer's duties: extension and variation of order **S**

- (1) The mental health officer shall, as soon as practicable after receiving notice under section 88(3) of this Act, comply with the requirements in subsection (2) below.
- (2) Those requirements are—
- (a) subject to subsection (3) below, to interview the patient;
  - (b) to inform the patient of the matters mentioned in subsection (4) below;
  - (c) to inform the patient of the availability of independent advocacy services under section 259 of this Act;

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 7 is up to date with all changes known to be in force on or before 06 October 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*

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- (d) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and
  - (e) to inform the patient's responsible medical officer—
    - (i) of whether the mental health officer agrees, or disagrees, that the application that is proposed should be made;
    - (ii) if the mental health officer disagrees, of the reason why that is the case; and
    - (iii) of any other matters that the mental health officer considers relevant.
- (3) If it is impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the mental health officer need not do so.
- (4) The matters referred to in subsection (2)(b) above are—
- (a) that the patient's responsible medical officer is proposing to make an application to the Tribunal under section 92 of this Act for an order—
    - (i) extending the compulsory treatment order to which the patient is subject for the period mentioned in section 88(4) of this Act; and
    - (ii) varying the compulsory treatment order by modifying the measures or a recorded matter specified in it;
  - (b) the modification of the measures or any recorded matter specified in that order that the responsible medical officer is proposing; and
  - (c) the patient's rights in relation to such an application.

#### Commencement Information

**I38** S. 89 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)

## 90 Responsible medical officer's duty to apply for extension and variation of order **S**

- (1) If, having regard to—
- (a) any views expressed by persons consulted under section 77(3)(c) of this Act for the purpose of the review being carried out; and
  - (b) any views expressed by the mental health officer under section 89(2)(e) of this Act for the purpose of that review,
- the responsible medical officer is satisfied as to the matters mentioned in section 88(2)(a) and (b) of this Act, the responsible medical officer shall comply with the requirement in subsection (2) below.
- (2) That requirement is to make an application to the Tribunal under section 92 of this Act for an order—
- (a) extending the compulsory treatment order for the period mentioned in section 88(4) of this Act; and
  - (b) varying that order by modifying the measures, or a recorded matter, specified in it.
- (3) An application made under section 92 of this Act, by virtue of subsection (1) above, for an order mentioned in subsection (2) above shall be made as soon as practicable after the duty to make it arises.

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*Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Part 7 is up to date with all changes known to be in force on or before 06 October 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*

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#### Commencement Information

**I39** S. 90 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)

## 91 Application for extension and variation of order: notification **S**

Where, by virtue of section 90(1) of this Act, an application is to be made under section 92 of this Act, the patient's responsible medical officer shall, as soon as practicable after the duty to make the application arises (and, in any event, before making the application), give notice that the application 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 mental health officer; and
- (f) the Commission.

#### Commencement Information

**I40** S. 91 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)

## 92 Application to Tribunal **S**

An application under this section to the Tribunal by a patient's responsible medical officer for an order extending and varying a compulsory treatment order—

- (a) shall state—
  - (i) the name and address of the patient;
  - (ii) the name and address of the patient's named person;
  - (iii) the modification of the measures, or any recorded matter, specified in the compulsory treatment order that is proposed by the responsible medical officer;
  - (iv) the reasons for seeking that modification;
  - (v) whether the mental health officer agrees, or disagrees, that the application should be made, or has failed to comply with the duty imposed by section 89(2)(e)(i) of this Act; and
  - (vi) if the mental health officer disagrees, the reason for that disagreement; and
- (b) shall be accompanied by such documents as may be prescribed by regulations.

#### Commencement Information

**I41** S. 92 in force at 21.3.2005 for specified purposes by S.S.I. 2005/161, art. 2, Sch. 1

**I42** S. 92 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)

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*Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Part 7 is up to date with all changes known to be in force on or before 06 October 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*

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*Variation of order: application by responsible medical officer*

**93 Responsible medical officer's duties: variation of order** **S**

- (1) This section applies where a patient is subject to a compulsory treatment order.
- (2) Without prejudice to the duties imposed on the patient's responsible medical officer by sections 77(2), 78(2) and 83(2) of this Act, the responsible medical officer shall from time to time consider whether the compulsory treatment order should be varied by modifying the measures, or any recorded matter, specified in it.
- (3) If it appears to the responsible medical officer that the compulsory treatment order should be varied as mentioned in subsection (2) above, the responsible medical officer shall, as soon as practicable, comply with the requirements in subsection (4) below.
- (4) Those requirements are—
  - (a) to assess the needs of the patient for medical treatment;
  - (b) to consider what modification, if any, of the measures, or any recorded matter, specified in the compulsory treatment order is appropriate;
  - (c) to consult—
    - (i) the mental health officer; and
    - (ii) such persons as the responsible medical officer considers appropriate.

[<sup>F5</sup>4A) If, having regard to any views expressed by persons consulted under subsection (4)(c) above, it continues to appear to the responsible medical officer that the compulsory treatment order should be varied as mentioned in subsection (2) above, the responsible medical officer shall, as soon as practicable, notify the mental health officer—

- (a) that the responsible medical officer is proposing to make an application to the Tribunal under section 95 of this Act for an order under section 103 of this Act varying the compulsory treatment order; and
  - (b) the modification of the measures, or any recorded matter, specified in that order that the responsible medical officer is proposing.
- (4B) The mental health officer shall, as soon as practicable after being notified under subsection (4A) above, comply with the requirements in subsection (4C) below.
- (4C) Those requirements are—
- (a) subject to subsection (4D) below, to interview the patient;
  - (b) to inform the patient of the matters mentioned in subsection (4E) below;
  - (c) to inform the patient of the availability of independent advocacy services under section 259 of this Act;
  - (d) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and
  - (e) to inform the patient's responsible medical officer—
    - (i) of whether the mental health officer agrees, or disagrees, that the application that is proposed should be made;
    - (ii) if the mental health officer disagrees, of the reason why that is the case; and
    - (iii) of any other matters that the mental health officer considers relevant.
- (4D) If it is impracticable for the mental health officer to comply with the requirement in subsection (4C)(a) above, the mental health officer need not do so.

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- (4E) The matters referred to in subsection (4C)(b) above are–
- (a) that the patient’s responsible medical officer is proposing to make an application to the Tribunal under section 95 of this Act for an order varying the compulsory treatment order by modifying the measures or a recorded matter specified in it;
  - (b) the modification of the measures or any recorded matter specified in that order that the responsible medical officer is proposing; and
  - (c) the patient’s rights in relation to such an application.]
- (5) If, having regard to any views expressed by persons consulted under subsection (4)(c) above<sup>F6</sup> and any views expressed by the mental health officer under subsection (4C) (e) above], the responsible medical officer is satisfied that the compulsory treatment order should be varied as mentioned in subsection (2) above, the responsible medical officer shall make an application to the Tribunal under section 95 of this Act for an order under section 103 of this Act varying the compulsory treatment order in that way.
- (6) An application made under section 95 of this Act, by virtue of subsection (5) above, for an order mentioned in that subsection shall be made as soon as practicable after the duty to make it arises.

#### Textual Amendments

- F5** S. 93(4A)-(4E) inserted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(2)(a)**
- F6** Words in s. 93(5) inserted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(2)(b)**

#### Commencement Information

- I43** S. 93 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)

## 94 Application by responsible medical officer for variation of order: notification **S**

Where, by virtue of section 93(5) of this Act, an application is to be made under section 95 of this Act, the patient’s responsible medical officer shall, as soon as practicable after the duty to make the application arises (and, in any event, before making the application), give notice that the application is to be made to the persons mentioned in section 91(a) to (f) of this Act.

#### Commencement Information

- I44** S. 94 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)

## 95 Application to Tribunal by responsible medical officer **S**

An application under this section to the Tribunal by a patient’s responsible medical officer for an order varying a compulsory treatment order—

- (a) shall state

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- (i) [F7the matters mentioned in section 92(a)(i) to [F8(iv)] of this Act;]  
[F9(ii) whether the mental health officer agrees, or disagrees that the application should be made, or has failed to comply with the duty imposed by section 93(4C)(e)(i) of this Act; and  
(iii) if the mental health officer disagrees, the reason for that disagreement.]and  
(b) shall be accompanied by such documents as may be prescribed by regulations.

#### Textual Amendments

- F7** Words in s. 95(a) renumbered as s. 95(a)(i) (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(3)(b)**  
**F8** Word in s. 95(a) substituted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(3)(a)**  
**F9** S. 95(a)(ii)(iii) inserted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(3)(c)**

#### Commencement Information

- I45** S. 95 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, **Sch. 1**  
**I46** S. 95 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)

*Recorded matters: reference to Tribunal by responsible medical officer*

## 96 Recorded matters: reference to Tribunal by responsible medical officer **S**

- (1) This section applies where a patient is subject to a compulsory treatment order which specifies one or more recorded matters.
- (2) Without prejudice to the duties imposed on the patient's responsible medical officer by sections 77(2), 78(2) and 83(2) of this Act and subject to subsection (6) below, if it appears to the responsible medical officer that any recorded matter specified in the compulsory treatment order is not being provided, the responsible medical officer shall, as soon as practicable, consult—
- (a) the mental health officer; and
- (b) such other persons as the responsible medical officer considers appropriate.
- (3) If, having regard to any views expressed by persons consulted under subsection (2) above, the responsible medical officer is satisfied that a recorded matter specified in the compulsory treatment order is not being provided, the responsible medical officer shall make a reference to the Tribunal.
- (4) A reference under subsection (3) above—
- (a) shall state—
- (i) the name and address of the patient;
- (ii) the name and address of the patient's named person; and
- (iii) the reason for making the reference; and
- (b) shall be accompanied by such documents as may be prescribed by regulations.
- (5) A reference under subsection (3) above shall be made as soon as practicable after the duty to make it arises.

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*Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Part 7 is up to date with all changes known to be in force on or before 06 October 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*

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- (6) Subsections (2) to (5) above do not apply where—
- (a) the responsible medical officer is required, by virtue of section 79 or 80 of this Act, to revoke the compulsory treatment order; or
  - (b) the responsible medical officer is making an application under section 92 or 95 of this Act in respect of the compulsory treatment order.

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**Commencement Information**

- I47** S. 96 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161, art. 2, Sch. 1](#)
- I48** S. 96 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)

**97 Reference to Tribunal under section 96(3): notification** **S**

Where a patient’s responsible medical officer is required by section 96(3) of this Act to make a reference to the Tribunal, the responsible medical officer shall, as soon as practicable after the duty to make the reference arises, give notice that the reference is to be made to the persons mentioned in section 91(a) to (f) of this Act.

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**Commencement Information**

- I49** S. 97 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)

*Reference to Tribunal by Commission*

**98 Reference to Tribunal by Commission** **S**

- (1) This section applies where a patient is subject to a compulsory treatment order.
- (2) If it appears to the Commission that it is appropriate to do so, it may make a reference to the Tribunal in respect of the compulsory treatment order to which the patient is subject.
- (3) Where a reference is to be made under subsection (2) above, the Commission shall, as soon as practicable, give notice that a reference is to be made to—
  - (a) the patient’s responsible medical officer; and
  - (b) the persons mentioned in section 91(a) to (e) of this Act.
- (4) A reference under subsection (2) 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 reason for making the reference.

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**Commencement Information**

- I50** S. 98 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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*Applications by patient etc.*

**99 Application by patient etc. for revocation of determination extending order** **S**

- (1) Where a patient's responsible medical officer makes a determination under section 86 of this Act, subject to subsection (3) below, either of the persons mentioned in subsection (2) below may make an application under this section to the Tribunal for an order under section 103 of this Act revoking the determination.
- (2) Those persons are—
  - (a) the patient;
  - (b) the patient's named person.
- (3) Subsection (1) above does not apply where the Tribunal is required, by virtue of section 101 of this Act, to review the determination.

**Commencement Information**

**I51** S. 99 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)

**100 Application by patient etc. for revocation or variation of order** **S**

- (1) This section applies where a patient is subject to a compulsory treatment order.
- (2) Either of the persons mentioned in subsection (3) below may, subject to subsections (4) and (6) below, make an application under this section to the Tribunal for an order under section 103 of this Act—
  - (a) revoking the compulsory treatment order; or
  - (b) varying that order by modifying—
    - (i) the measures; or
    - (ii) any recorded matter, specified in it.
- (3) Those persons are—
  - (a) the patient;
  - (b) the patient's named person.
- (4) An application under this section may not be made during the period of 3 months beginning with the making of any of the orders mentioned in subsection (5) below.
- (5) Those orders are—
  - (a) the compulsory treatment order;
  - (b) an order in respect of the compulsory treatment order made under section 102 of this Act;
  - (c) an order in respect of the compulsory treatment order made, by virtue of section 92 of this Act, under section 103 of this Act.
- (6) If—
  - (a) an application under this section for revocation of a compulsory treatment order is refused; or

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- (b) an application is made under this section for variation of a compulsory treatment order,
- the person who made the application shall not be entitled to make more than one further application under this section in respect of the compulsory treatment order during the period mentioned in subsection (8) below.
- (7) If an application under section 99 of this Act for revocation of a determination under section 86 of this Act is refused, the person who made the application shall not be entitled to make more than one application under this section in respect of the compulsory treatment order which is the subject of the determination during the period mentioned in subsection (8) below.
- (8) The period referred to in subsections (6) and (7) above is—
- (a) where the application mentioned in subsection (6)(a) or (b) or (7) above is made before the expiry of the period of 6 months beginning with the day on which the compulsory treatment order was made, that period of 6 months; or
  - (b) where that application is made before the expiry of—
    - (i) the period of 6 months beginning with the expiry of the period mentioned in paragraph (a) above, that period of 6 months; or
    - (ii) any subsequent period of 12 months that begins with, or with an anniversary of, the expiry of the period of 6 months mentioned in subparagraph (i) above, that subsequent period of 12 months.

#### Modifications etc. (not altering text)

- C5** S. 100 modified (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Transitional and Savings Provisions\) Order 2005 \(S.S.I. 2005/452\)](#), arts. 1, **4(1)**
- C6** S. 100 modified (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Transitional and Savings Provisions\) Order 2005 \(S.S.I. 2005/452\)](#), arts. 1, **15(2)**
- C7** S. 100 applied by S.S.I. 2005/467, reg. 33(2) (as inserted (30.6.2017) by [The Mental Health \(Cross-border transfer patients subject to detention requirement or otherwise in hospital\) \(Scotland\) Amendment Regulations 2017 \(S.S.I. 2017/229\)](#), regs. 2, **24(3)**)
- C8** S. 100 applied by S.S.I. 2008/356, reg. 20(2) (as inserted (30.6.2017) by [The Mental Health \(Cross-border transfer patients subject to requirements other than detention\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/232\)](#), regs. 2, **13(3)**)

#### Commencement Information

- I52** S. 100 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)

### *Review by Tribunal of determination extending order*

## **101 Tribunal's duty to review determination under section 86** **S**

- (1) This section applies where a patient's responsible medical officer makes a determination under section 86 of this Act.
- (2) If—
- (a) the record submitted to the Tribunal under section 87(2)(b) of this Act states—
    - (i) that there is a difference between the type (or types) of mental disorder that the patient has and the type (or types) of mental disorder

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recorded in the compulsory treatment order in respect of which the determination is made; or

(ii) that the mental health officer disagrees with the determination or has failed to comply with the duty imposed by section 85(2)(d)(i) of this Act; or

[<sup>F10</sup>(b) the conditions in subsection (3) are satisfied in relation to the compulsory treatment order to which the determination relates,]

the Tribunal shall review the determination.

[<sup>F11</sup>(3) The conditions mentioned in subsection (2)(b) above are—

- (a) that the order was made 2 or more years before the renewal day;
- (b) that this section did not require the Tribunal to review the previous determination made under section 86 of this Act in relation to the order; and
- (c) that, in the period of 2 years ending with the day before the renewal day, no application has been [<sup>F12</sup>determined by] the Tribunal under section 92, 99, 95 or 100 in relation to the order.

(4) In subsection (3) above, the renewal day is the first day on which the order, had it not been extended by the determination, would not authorise the measures specified in it.]

#### Textual Amendments

**F10** S. 101(2)(b) substituted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 68\(a\)](#), [79\(3\)](#); [S.S.I. 2007/334](#), [art. 2\(b\)](#), [sch. 2](#)

**F11** S. 101(3)(4) inserted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 68\(b\)](#), [79\(3\)](#); [S.S.I. 2007/334](#), [art. 2\(b\)](#), [sch. 2](#)

**F12** Words in s. 101(3)(c) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 21\(2\)](#), [61\(2\)](#); [S.S.I. 2017/197](#), [art. 2](#), [sch. \(with art. 12\(a\)\)](#)

#### Commencement Information

**I53** S. 101(1) 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](#))

**I54** S. 101(2)(a) 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](#))

### *Powers of Tribunal*

## 102 Powers of Tribunal on review under section 101 **S**

(1) On the review of a determination under section 101 of this Act, the Tribunal may make an order under this section—

- (a) revoking the determination;
- (b) revoking both the determination and the compulsory treatment order;
- (c) confirming the determination; or
- (d) confirming the determination and varying the compulsory treatment order by modifying—
  - (i) the measures; or
  - (ii) any recorded matter, specified in it.

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- (2) Before making a decision under subsection (1) above, the Tribunal shall allow 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 patient’s responsible medical officer;
  - (g) the patient’s primary carer;
  - (h) any curator *ad litem* appointed in respect of the patient by the Tribunal; and
  - (i) any other person appearing to the Tribunal to have an interest in the determination.

#### Commencement Information

**I55** S. 102 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)

### 103 Powers of Tribunal on application under section 92, 95, 99 or 100 **S**

- (1) Where an application is made under section 92 of this Act, the Tribunal may make an order—
- (a) extending the compulsory treatment order to which the application relates for the period mentioned in section 88(4) of this Act and varying the compulsory treatment order by modifying—
    - (i) the measures; or
    - (ii) any recorded matter, specified in it;
  - (b) extending the compulsory treatment order for that period;
  - (c) refusing the application; or
  - (d) refusing the application and revoking the compulsory treatment order.
- (2) Where an application is made under section 99 of this Act, the Tribunal may make an order—
- (a) revoking the determination to which the application relates;
  - (b) revoking—
    - (i) the determination; and
    - (ii) the compulsory treatment order to which the determination relates;
  - (c) confirming the determination; or
  - (d) confirming the determination and varying the compulsory treatment order by modifying—
    - (i) the measures; or
    - (ii) any recorded matter,

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specified in it.

- (3) Where an application is made under section 100(2)(a) of this Act, the Tribunal may make an order—
  - (a) revoking the compulsory treatment order to which the application relates;
  - (b) varying the compulsory treatment order by modifying—
    - (i) the measures; or
    - (ii) any recorded matter,specified in it; or
  - (c) refusing the application.
- (4) Where an application is made under section 95 or 100(2)(b) of this Act, the Tribunal may make an order—
  - (a) varying the compulsory treatment order to which the application relates by modifying—
    - (i) the measures; or
    - (ii) any recorded matter,specified in it;
  - (b) refusing the application; or
  - (c) refusing the application and revoking that order.
- (5) Before making a decision under any of subsections (1) to (4) above, the Tribunal shall afford the persons mentioned in subsection (6) below the opportunity—
  - (a) of making representations (whether orally or in writing); and
  - (b) of leading, or producing, evidence.
- (6) Those persons are—
  - (a) the persons mentioned in section 102(3)(a) to (h) of this Act; and
  - (b) any other person appearing to the Tribunal to have an interest in the application.

#### Commencement Information

**I56** S. 103 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)

## 104 Powers of Tribunal on reference under section 96 or 98 **S**

- (1) Where a reference is made under section 96 or 98 of this Act, the Tribunal may make an order—
  - (a) varying the compulsory treatment order in respect of which the reference is made by modifying—
    - (i) the measures; or
    - (ii) any recorded matter,specified in it; or
  - (b) revoking the compulsory treatment order.
- (2) Before making an order under subsection (1) above, the Tribunal shall allow the persons mentioned in subsection (3) below the opportunity—

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- (a) of making representations (whether orally or in writing); and
  - (b) of leading, or producing, evidence.
- (3) Those persons are—
- (a) the persons mentioned in section 102(3)(a) to (h) of this Act; and
  - (b) any other person appearing to the Tribunal to have an interest in the reference.

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**Commencement Information**

**I57** S. 104 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)

**105 Interim extension etc. of order: application under section 92** **S**

- (1) This section applies where an application is made under section 92 of this Act.
- (2) Subject to section 107 of this Act, on the application of any person having an interest in the proceedings, or *ex proprio motu*, the Tribunal may, if it considers—
- (a) that it will be unable to determine the application before the compulsory treatment order to which the application relates ceases to authorise the measures specified in it; and
  - (b) that it is appropriate, pending its determining the application, to—
    - (i) extend the order; or
    - (ii) extend and vary the order by modifying the measures, or any recorded matter, specified in it,
- make an interim order extending, or extending and varying, the compulsory treatment order for such period not exceeding 28 days as may be specified in the order of the Tribunal.

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**Commencement Information**

**I58** S. 105 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)

**106 Interim variation of order: application, reference or review under Chapter** **S**

- (1) This section applies where—
- (a) an application is made under section 92, 95, 99 or 100 of this Act;
  - (b) a reference is made under section 96 or 98 of this Act; or
  - (c) the Tribunal is reviewing a determination under section 101 of this Act.
- (2) Subject to section 107 of this Act, on the application of any person having an interest in the proceedings, or *ex proprio motu*, the Tribunal may, if it considers that it is appropriate to do so pending its—
- (a) determining the application or reference; or
  - (b) making its decision on the review;
- make an interim order varying the compulsory treatment order by modifying the measures, or any recorded matter, specified in it, for such period not exceeding 28 days as may be specified in the order of the Tribunal.

**Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Part 7 is up to date with all changes known to be in force on or before 06 October 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

#### Commencement Information

**I59** S. 106 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)

### 107 Limit on Tribunal’s power to make interim orders **S**

The Tribunal may not make an interim order under section 105 or 106 of this Act if the effect of making the order would be that interim orders under either, or both, of those sections would be in force for a continuous period of more than 56 days.

#### Commencement Information

**I60** S. 107 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)

### 108 Tribunal’s order varying compulsory treatment order **S**

Where the Tribunal makes—

- (a) an order under section 102, 103, 104 or 106 of this Act varying a compulsory treatment order; or
- (b) an order under section 103 or 105 of this Act extending and varying such an order,

the Tribunal shall specify in its order the modifications made by its order to the measures, and any recorded matter, specified in the compulsory treatment order.

#### Commencement Information

**I61** S. 108 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)

### 109 Ancillary powers of Tribunal **S**

(1) This section applies where—

- (a) an application is made to the Tribunal under section 92, 95, 99 or 100 of this Act;
- (b) the Tribunal is, under section 101 of this Act, reviewing a determination; or
- (c) a reference is made to the Tribunal under section 96 or 98 of this Act.

(2) Regulations may prescribe circumstances in which the Tribunal may require—

- (a) the patient’s responsible medical officer; or
- (b) the mental health officer,

to prepare and submit to the Tribunal reports on such matters as may be prescribed.

#### Commencement Information

**I62** S. 109 in force at 21.3.2005 for specified purposes by S.S.I. 2005/161, art. 2, Sch. 1

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**I63** S. 109 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)

*Effect of interim orders on calculation of time periods in Chapter*

**110 Effect of interim orders on calculation of time periods in Chapter S**

- (1) Subject to subsection (2) below, in calculating, for the purpose of this Chapter, the day on which a compulsory treatment order—
- (a) ceases;
  - (b) will cease; or
  - (c) would have ceased,

to authorise the measures specified in it, there shall be left out of account any period for which the order is extended (or extended and varied) by an interim order under section 105 of this Act.

- (2) Subsection (1) above does not apply as respects calculating that day for the purpose of that section.

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**Commencement Information**

**I64** S. 110 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)

*Meaning of “modify”*

**111 Meaning of “modify” S**

In this Chapter, any reference to modifying measures, or recorded matters, specified in a compulsory treatment order includes a reference to—

- (a) amending those measures or recorded matters;
- (b) removing from the order any measure or recorded matter;
- (c) adding to the order any measure or recorded matter;
- (d) specifying a recorded matter in an order which does not specify a recorded matter.

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**Commencement Information**

**I65** S. 111 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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## CHAPTER 5 **S**

### BREACH OF ORDERS

#### *Failure to attend for medical treatment*

#### **112 Failure to attend for medical treatment **S****

- (1) Subject to subsection (2) below, where—
  - (a) a patient is subject to—
    - (i) a compulsory treatment order; or
    - (ii) an interim compulsory treatment order,that imposes on the patient a requirement mentioned in section 66(1)(c) of this Act (“the attendance requirement”); and
  - (b) the patient fails to comply with the attendance requirement,the patient’s responsible medical officer may exercise the power conferred by subsection (3) below.
- (2) The responsible medical officer may exercise the power conferred by subsection (3) below only if—
  - (a) the responsible medical officer has consulted a mental health officer; and
  - (b) the mental health officer consents to the power being exercised.
- (3) The responsible medical officer may take, or may cause a person authorised for the purpose by the responsible medical officer to take, the patient into custody and convey the patient—
  - (a) to the place the patient is required to attend by the attendance requirement; or
  - (b) to any hospital.
- (4) Subject to subsection (5) below, where by virtue of subsection (3) above the patient is conveyed to the place the patient is required to attend or a hospital—
  - (a) if the order to which the patient is subject authorises the measure mentioned in section 66(1)(b) of this Act, the patient may be detained there for so long as is necessary for the purpose of giving to the patient any medical treatment that could have been given to the patient had the patient complied with the attendance requirement;
  - (b) if the order to which the patient is subject does not authorise that measure, the patient may be detained there for so long as is necessary to determine whether the patient is capable of consenting to medical treatment and, if so, whether the patient consents to receive any medical treatment.
- (5) The patient may not be detained by virtue of subsection (4) above for more than a period of 6 hours beginning with the arrival of the patient in the place or hospital.

#### **Commencement Information**

**I66** S. 112 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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### *Non-compliance generally with order*

## 113 Non-compliance generally with order **S**

- (1) Where—
- (a) a patient is subject to—
    - (i) a compulsory treatment order; or
    - (ii) an interim compulsory treatment order, that does not authorise the detention of the patient in hospital;
  - (b) the patient fails to comply with any measure authorised by the order; and
  - (c) subsection (2) or (3) below applies,
- the power conferred by subsection (4) below may be exercised.
- (2) This subsection applies if the patient’s responsible medical officer considers that—
- (a) reasonable steps have been taken to contact the patient following the patient’s failure to comply with the measure;
  - (b) if contact has been made with the patient, the patient has been afforded a reasonable opportunity to comply with the measure; and
  - (c) if the patient were to continue to fail to comply with the measure, it is reasonably likely that there would be a significant deterioration in the patient’s mental health.
- (3) This subsection applies if the patient’s responsible medical officer considers that—
- (a) if the patient were to continue to fail to comply with the measure, it is reasonably likely that there would be a significant deterioration in the patient’s mental health; and
  - (b) it is necessary as a matter of urgency that the power conferred by subsection (4) below be exercised.
- (4) The patient’s responsible medical officer may take, or may cause a person authorised for the purpose by the responsible medical officer to take, the patient into custody and convey the patient to a hospital.
- (5) Where the power conferred by subsection (4) above is exercised in relation to a patient, the patient may be detained in hospital for the period of 72 hours beginning with the arrival by virtue of that subsection of the patient in hospital.
- (6) As soon as reasonably practicable after the patient has been conveyed to a hospital, the responsible medical officer shall—
- (a) carry out a medical examination of the patient; or
  - (b) make arrangements for an approved medical practitioner to carry out such an examination.

#### **Commencement Information**

**I67** S. 113 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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## 114 **Compulsory treatment order: detention pending review or application for variation** **S**

- (1) Subsection (2) below applies where—
- (a) a patient who is subject to an order such as is mentioned in subsection (1)(a)(i) of section 113 of this Act is detained in hospital by virtue of subsection (5) of that section;
  - (b) the patient has been examined under subsection (6) of that section;
  - (c) the patient’s responsible medical officer—
    - (i) is considering under subsection (2) of section 93 of this Act whether that order should be varied by modifying the measures specified in it; or
    - (ii) by virtue of subsection (5) of that section, is required to make an application to the Tribunal; and
  - (d) the patient’s responsible medical officer considers that if the patient does not continue to be detained in hospital it is reasonably likely that there will be a significant deterioration in the patient’s mental health.
- (2) Subject to subsections (3) and (4) below, the responsible medical officer may grant a certificate authorising the continued detention in hospital of the patient for the period of 28 days beginning with the granting of the certificate.
- (3) The power in subsection (2) above may be exercised only if—
- (a) the responsible medical officer has consulted the mental health officer; and
  - (b) the mental health officer consents to the power being exercised.
- (4) Before granting a certificate under subsection (2) above the responsible medical officer shall, if it is practicable to do so, consult the patient’s named person.
- (5) A certificate under subsection (2) above—
- (a) shall state the responsible medical officer’s reasons for believing that paragraph (d) of subsection (1) applies in the patient’s case; and
  - (b) shall be signed by the responsible medical officer.

### Commencement Information

**I68** S. 114 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)

## 115 **Interim compulsory treatment order: detention pending further procedure** **S**

- (1) Subsection (2) below applies where—
- (a) a patient who is subject to an order such as is mentioned in subsection (1)(a)(ii) of section 113 of this Act is detained in hospital by virtue of subsection (5) of that section;
  - (b) the patient has been examined under subsection (6) of that section;
  - (c) the patient’s responsible medical officer considers that if the patient does not continue to be detained in hospital it is reasonably likely that there will be a significant deterioration in the patient’s mental health; and

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- (d) on the expiry of the period of detention authorised by subsection (5) of that section the period for which the order authorises the measures specified in it will not have expired.
- (2) Subject to subsections (3) and (4) below, the responsible medical officer may grant a certificate authorising the continued detention in hospital of the patient for the period beginning with the granting of the certificate and ending with the expiry of the period for which the order authorises the measures specified in it.
- (3) The power in subsection (2) above may be exercised only if—
- (a) the patient’s responsible medical officer has consulted a mental health officer; and
  - (b) the mental health officer consents to the power being exercised.
- (4) Before granting a certificate the responsible medical officer shall, if it is practicable to do so, consult the patient’s named person.
- (5) A certificate under subsection (2) above—
- (a) shall state the responsible medical officer’s reasons for believing that subsection (1)(c) above applies in the patient’s case; and
  - (b) shall be signed by the responsible medical officer.

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**Commencement Information**

**I69** S. 115 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)

**116 Certificate under section 114(2) or 115(2): notification S**

- (1) This section applies where a certificate is granted under section 114(2) or 115(2) of this Act in respect of a patient.
- (2) The managers of the hospital in which the patient is detained shall, as soon as practicable after the granting of the certificate, give notice of its granting to—
- (a) the patient;
  - (b) the patient’s named person;
  - (c) any guardian of the patient; and
  - (d) any welfare attorney of the patient.
- (3) The managers of the hospital in which the patient is detained shall, before the expiry of the period of 7 days beginning with the granting of the certificate, give notice of its granting, and send a copy of it, to—
- (a) the Tribunal; and
  - (b) the Commission.

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**Commencement Information**

**I70** S. 116 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 to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Part 7 is up to date with all changes known to be in force on or before 06 October 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*

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### Revocation of certificates

#### 117 Certificate under section 114(2): responsible medical officer's duty to revoke **S**

(1) Where—

- (a) a patient's responsible medical officer grants, by virtue of subsection (1)(c)(i) of section 114 of this Act, a certificate under subsection (2) of that section; and
- (b) the responsible medical officer determines that the order should not be varied as mentioned in section 93(2) of this Act,

the responsible medical officer shall revoke the certificate.

(2) Where—

- (a) a patient's responsible medical officer grants, by virtue of subsection (1)(c)(ii) of section 114 of this Act, a certificate under subsection (2) of that section; and
- (b) the responsible medical officer is not satisfied that if the patient does not continue to be detained in hospital it is reasonably likely that there will be a significant deterioration in the patient's mental health,

the responsible medical officer shall revoke the certificate.

#### Commencement Information

**I71** [S. 117](#) 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](#))

#### 118 Certificate under section 115(2): responsible medical officer's duty to revoke **S**

Where—

- (a) a patient's responsible medical officer grants a certificate under section 115(2) of this Act; and
- (b) the responsible medical officer is not satisfied that if the patient does not continue to be detained in hospital it is reasonably likely that there will be a significant deterioration in the patient's mental health,

the responsible medical officer shall revoke the certificate.

#### Commencement Information

**I72** [S. 118](#) 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](#))

#### 119 Revocation of certificate granted under section 114(2) or 115(2): notification **S**

Where a patient's responsible medical officer revokes, under section 117 or 118 of this Act, a certificate, the responsible medical officer shall—

- (a) as soon as practicable after the revocation, give notice of the revocation to the persons mentioned in subsection (2) of section 116 of this Act; and

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- (b) before the expiry of the period of 7 days beginning with the revocation, give notice of the revocation to the persons mentioned in subsection (3) of that section.

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**Commencement Information**

**I73** S. 119 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)

**120 Certificates under sections 114(2) and 115(2): patient's right to apply to Tribunal** **S**

- (1) This section applies where a certificate is granted under section 114(2) or 115(2) of this Act in respect of a patient.
- (2) On the application of the patient or the patient's named person, the Tribunal shall, if not satisfied that if the patient does not continue to be detained in hospital it is reasonably likely that there will be a significant deterioration in the patient's mental health, revoke the certificate.

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**Commencement Information**

**I74** S. 120 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)

*Effect of section 113(5) on order*

**121 Effect of section 113(5) on order** **S**

- (1) Subject to subsection (2) below, where a patient is detained in hospital under section 113(5) of this Act, the compulsory treatment order or, as the case may be, interim compulsory treatment order to which the patient is subject shall cease, during the period mentioned in that section, to authorise the measures specified in it.
- (2) If the measure mentioned in section 66(1)(b) of this Act is specified in the order, the order shall continue to authorise that measure during the period referred to in subsection (1) above.

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**Commencement Information**

**I75** S. 121 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)

*Effect of certificate under section 114(2) on order*

**122 Effect of certificate under section 114(2) on order** **S**

- (1) Subject to subsection (2) below, where a certificate is granted under section 114(2) of this Act in respect of a patient, the compulsory treatment order to which the patient

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 7 is up to date with all changes known to be in force on or before 06 October 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*

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is subject shall cease, during the period mentioned in that section, to authorise the measures specified in it.

- (2) If the measure mentioned in section 66(1)(b) of this Act is specified in the order, the order shall continue to authorise that measure during the period referred to in subsection (1) above.

#### Commencement Information

**I76** S. 122 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)

#### *Effect of certificate under section 115(2) on order*

### **123 Effect of certificate under section 115(2) on order** **S**

- (1) Subject to subsection (2) below, where a certificate is granted under section 115(2) of this Act in respect of a patient, the interim compulsory treatment order to which the patient is subject shall cease, during the period mentioned in that section, to authorise the measures specified in it.
- (2) If the measure mentioned in section 66(1)(b) of this Act is specified in the order, the order shall continue to authorise that measure during the period referred to in subsection (1) above.

#### Commencement Information

**I77** S. 123 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)

## **CHAPTER 6** **S**

### TRANSFERS

### **124 Transfer to other hospital** **S**

- (1) This section applies where the detention of a patient in hospital is authorised [<sup>F13</sup>by—
- (a) a compulsory treatment order, or
  - (b) an interim compulsory treatment order.]
- (2) The managers of the hospital in which the patient is detained may, where the condition mentioned in subsection (3) below is satisfied, transfer the patient to another hospital.
- (3) The condition is that the managers of the hospital to which it is proposed to transfer the patient consent to the transfer.
- (4) Where the managers of a hospital propose to transfer the patient under subsection (2) above, they shall, subject to subsections (5) and (7) below, give the persons mentioned in subsection (8) below at least 7 days' notice of the transfer.

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- (5) The managers of a hospital need not give notice under subsection (4) above where it is necessary that the patient be transferred urgently.
- (6) Where, by virtue of subsection (5) above, notice is not given under subsection (4) above, the managers of the hospital shall, subject to subsection (7) below, give the persons mentioned in subsection (8) below notice—
- (a) where the proposed transfer has not taken place, of the proposed transfer; or
  - (b) where the transfer has taken place, of the transfer,
- as soon as practicable before, on or, as the case may be, after the transfer.
- (7) The managers of the hospital need not give notice to the patient under subsection (4) or, as the case may be, (6) above where the patient consents to the transfer.
- (8) The persons referred to in subsections (4) and (6) above are—
- (a) the patient;
  - (b) the patient's named person; and
  - (c) the patient's primary carer.
- (9) Where—
- (a) notice is given under subsection (4) or (6)(a) above of a proposed transfer under subsection (2) above; and
  - (b) the proposed transfer does not take place before the end of the period of 3 months beginning with the day on which notice is given,
- the managers of the hospital may transfer the patient as proposed only if subsection (10) below applies.
- (10) This subsection applies where—
- (a) the condition mentioned in subsection (3) above continues to be satisfied; and
  - (b) the persons mentioned in subsection (8) above are given at least 7 days' notice of the proposed transfer.
- (11) Subsections (5) to (7) above shall apply to the giving of notice under subsection (10) (b) above as they apply to the giving of notice under subsection (4) above.
- (12) Where the patient is transferred under subsection (2) above, the managers of the hospital from which the patient is transferred shall, before the expiry of the period of 7 days beginning with the transfer, give notice to the Commission of the matters mentioned in subsection (13) below.
- (13) Those matters are—
- (a) the date on which the patient was transferred;
  - (b) the hospital to which the patient was transferred;
  - (c) that—
    - (i) notice was given under subsection (4) above; or
    - (ii) if no such notice was given, the reasons why it was necessary that the patient be transferred urgently; and
  - (d) whether notice was given under subsection (6) or (10)(b) above.
- (14) Where the patient is transferred under subsection (2) above, the [F14 order in question] shall, for the purposes of this Act (other than sections 125 and 126), be taken to specify the hospital to which the patient is transferred.



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#### Textual Amendments

**F13** Words in s. 124(1) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 3\(2\)\(a\), 61\(2\); S.S.I. 2017/197, art. 2, sch.](#)

**F14** Words in s. 124(14) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 3\(2\)\(b\), 61\(2\); S.S.I. 2017/197, art. 2, sch.](#)

#### Commencement Information

**I78** S. 124 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](#))

### [<sup>F15</sup>124A Transfer to other hospital unit **S**

- (1) Subsection (2) below applies where—
  - (a) the detention of a patient in hospital is authorised by—
    - (i) a compulsory treatment order, or
    - (ii) an interim compulsory treatment order, and
  - (b) that order specifies the hospital unit in which the patient is to be detained.
- (2) The managers of the hospital in which the patient is detained may transfer the patient to another hospital unit within the same hospital.
- (3) In relation to a transfer or proposed transfer under subsection (2) above, section 124(4) to (14) of this Act applies subject to the following modifications—
  - (a) a reference to section 124(2) is to be read as a reference to subsection (2) above,
  - (b) subsection (10)(a) is to be ignored,
  - (c) in subsection (12), a reference to the hospital from which the patient is transferred is to be read as a reference to the hospital in which the patient is detained,
  - (d) in subsections (13)(b) and (14), a reference to the hospital to which the patient is transferred is to be read as a reference to the hospital unit to which the patient is transferred.
- (4) For the purposes of this section, “hospital unit” means any part of a hospital which is treated as a separate unit.]

#### Textual Amendments

**F15** [S. 124A](#) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 13\(2\), 61\(2\); S.S.I. 2017/197, art. 2, sch.](#)

### 125 Transfer to hospital other than state hospital: appeal to Tribunal **S**

- (1) This section applies where a patient—
  - (a) receives notice under subsection (4), (6)(a) or (10)(b) of section 124 of this Act that it is proposed to transfer the patient; or
  - (b) is transferred under subsection (2) of that section,to any hospital other than a state hospital.

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- (2) The patient, or the patient’s named person, may, during the period mentioned in subsection (3) below, appeal to the Tribunal against the proposed transfer or, as the case may be, the transfer.
- (3) That period is—
- (a) in the case of the patient—
    - (i) where notice is given to the patient before the proposed transfer, the period beginning with the day on which notice is given and ending 28 days after the transfer;
    - (ii) where notice is given to the patient on or after the transfer, the period beginning with the day on which the patient is transferred and ending 28 days after the day on which notice is given; or
    - (iii) where notice is not given to the patient, the period of 28 days beginning with the day on which the patient is transferred;
  - (b) in the case of the patient’s named person—
    - (i) where notice is given to the patient’s named person before the proposed transfer, the period beginning with the day on which notice is given and ending 28 days after the transfer; or
    - (ii) where notice is given to the patient’s named person on or after the transfer, the period of 28 days beginning with the day on which notice is given.
- (4) If, when an appeal under subsection (2) above against a proposed transfer is made to the Tribunal, the proposed transfer has not taken place—
- (a) the managers of the hospital shall not transfer the patient as proposed; but
  - (b) the Tribunal may, if satisfied that, pending the determination of the appeal, the patient should be transferred as proposed, make an order that the patient be so transferred.
- (5) On an appeal under subsection (2) above, the Tribunal may make an order that the proposed transfer not take place or, as the case may be, that the patient be returned to the hospital from which the patient was transferred.

#### Commencement Information

**I79** S. 125 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)

## 126 Transfer to state hospital: appeal to Tribunal **S**

- (1) This section applies where a patient—
- (a) receives notice under subsection (4), (6)(a) or (10)(b) of section 124 of this Act that it is proposed to transfer the patient; or
  - (b) is transferred under subsection (2) of that section, to a state hospital.
- (2) The patient, or the patient’s named person, may, during the period mentioned in subsection (3) below, appeal to the Tribunal against the proposed transfer or, as the case may be, the transfer.
- (3) That period is—

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 7 is up to date with all changes known to be in force on or before 06 October 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*

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- (a) in the case of the patient—
    - (i) where notice is given to the patient before the proposed transfer, the period beginning with the day on which notice is given and ending 12 weeks after the transfer;
    - (ii) where notice is given to the patient on or after the transfer, the period beginning with the day on which the patient is transferred and ending 12 weeks after the day on which notice is given; or
    - (iii) where notice is not given to the patient, the period of 12 weeks beginning with the day on which the patient is transferred;
  - (b) in the case of the patient’s named person—
    - (i) where notice is given to the patient’s named person before the proposed transfer, the period beginning with the day on which notice is given and ending 12 weeks after the transfer; or
    - (ii) where notice is given to the patient’s named person on or after the transfer, the period of 12 weeks beginning with the day on which notice is given.
- (4) If, when an appeal under subsection (2) above against a proposed transfer is made to the Tribunal, the proposed transfer has not taken place—
- (a) the managers of the hospital shall not transfer the patient as proposed; but
  - (b) the Tribunal may, if satisfied that, pending determination of the appeal, the patient should be transferred as proposed, make an order that the patient be so transferred.
- (5) On an appeal under subsection (2) above, the Tribunal may, if not satisfied as to the matter mentioned in subsection (6) below, make an order that the proposed transfer not take place or, as the case may be, that the patient be returned to the hospital from which the patient was transferred.
- (6) That matter is—
- (a) that the patient requires to be detained in hospital under conditions of special security; and
  - (b) that those conditions of special security can be provided only in a state hospital.

#### Commencement Information

**180** S. 126 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)

## CHAPTER 7 **S**

### SUSPENSION

#### 127 Suspension of measure authorising detention **S**

- (1) Where—
- (a) a patient is subject to a compulsory treatment order that authorises the measure mentioned in section 66(1)(a) of this Act; and

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- (b) subject to subsection (2) below, the patient’s responsible medical officer grants a certificate specifying a period <sup>F16</sup>... during which the order shall not authorise that measure,

the order does not authorise that measure during that period.

[<sup>F17</sup>(1A) A certificate under subsection (1) above may specify—

- (a) a single period not exceeding 200 days, or  
 (b) a series of more than one individual period falling within a particular 6 month period.]

[<sup>F18</sup>(2) The total period that an order does not, by reason of certification under subsection (1) above, authorise the measure mentioned in section 66(1)(a) of this Act must not exceed 200 days within any period of 12 months (whenever counted from).]

[<sup>F19</sup>(2A) For the purpose of subsection (2) above—

- (a) a day does not count towards the total period if the measure is (by reason of such certification) not authorised for a period of 8 hours or less in that day,  
 (b) a single period (specified in such certification) of more than 8 hours and less than 24 hours, whether in one day or spanning two days, is to count as a whole day towards the total period.]

(3) Where—

- (a) a patient is subject to<sup>F20</sup>—  
 (i) an interim compulsory treatment order that authorises the measure mentioned in section 66(1)(a) of this Act<sup>F21</sup>; or  
 (ii) an interim order made under section 105 or 106 of this Act, extending, extending and varying or varying, as the case may be, a compulsory treatment order that authorises that measure;]; and  
 (b) the patient’s responsible medical officer grants a certificate specifying a period during which the order shall not authorise that measure,

the order does not authorise that measure during that period.

[<sup>F22</sup>(3A) A certificate under subsection (3) above may specify—

- (a) a single period, or  
 (b) a series of more than one individual period.]

<sup>F23</sup>(4) .....

[<sup>F24</sup>(4A) The purpose for which a certificate under subsection (1) or (3) above is granted must be recorded in the certificate.]

(5) If the responsible medical officer considers that it is necessary—

- (a) in the interests of the patient; or  
 (b) for the protection of any other person,

a certificate under subsection (1) or (3) above may include conditions such as are mentioned in subsection (6) below; and any such conditions shall have effect.

(6) Those conditions are—

- (a) that, during the period specified in the certificate, the patient be kept in the charge of a person authorised in writing for the purpose by the patient’s responsible medical officer; and  
 (b) such other conditions as may be specified by the patient’s responsible medical officer.

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- (7) Where a patient's responsible medical officer proposes to grant a certificate under subsection (1) above specifying—
- (a) a period of more than 28 days; or
  - (b) a period which, when taken together with the period specified in any other certificate granted under that subsection, would exceed 28 days,
- the responsible medical officer shall, before granting such a certificate, give notice of the proposal to the persons mentioned in subsection (8) below.
- (8) Those persons are—
- (a) the patient;
  - (b) the patient's named person;
  - (c) the patient's general medical practitioner; and
  - (d) the mental health officer.
- (9) Where a certificate is granted under subsection (1) above specifying a period of more than 28 days, the patient's responsible medical officer shall, before the expiry of the period of 14 days beginning with the day on which the certificate is granted, give notice of it to the Commission.

#### Textual Amendments

- F16** Words in s. 127(1) repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 9(2)(a)**, 61(2); [S.S.I. 2017/197](#), **art. 2**, **sch.**
- F17** S. 127(1A) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 9(2)(b)**, 61(2); [S.S.I. 2017/197](#), **art. 2**, **sch.**
- F18** S. 127(2) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 10(2)(a)**, 61(2); [S.S.I. 2017/197](#), **art. 2**, **sch.** (with **art. 9(a)**)
- F19** S. 127(2A) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 10(2)(b)**, 61(2); [S.S.I. 2017/197](#), **art. 2**, **sch.** (with **art. 9(a)**)
- F20** In s. 127(3)(a) "- (i)" inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), **art. 1**, **sch. 1 para. 32(12)(a)**
- F21** S. 127(3)(a)(ii) and word inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), **art. 1**, **sch. 1 para. 32(12)(b)**
- F22** S. 127(3A) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 9(2)(c)**, 61(2); [S.S.I. 2017/197](#), **art. 2**, **sch.**
- F23** S. 127(4) repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 9(2)(d)**, 61(2); [S.S.I. 2017/197](#), **art. 2**, **sch.**
- F24** S. 127(4A) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 9(2)(e)**, 61(2); [S.S.I. 2017/197](#), **art. 2**, **sch.**

#### Modifications etc. (not altering text)

- C9** S. 127(2) excluded (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Transitional and Savings Provisions\) Order 2005 \(S.S.I. 2005/452\)](#), **arts. 1**, **6(1)**, 12(1)

#### Commencement Information

- I81** S. 127 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 to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Part 7 is up to date with all changes known to be in force on or before 06 October 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*

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## 128 Suspension of other measures **S**

(1) Where—

- (a) a patient is subject to a compulsory treatment order that authorises any of the measures mentioned in section 66(1)(b) to (h) of this Act; and
- (b) subject to subsection (2) below, the patient’s responsible medical officer grants a certificate specifying a period not exceeding [<sup>F25</sup>90 days] during which the order shall not authorise such of those measures as are specified in the certificate,

the order does not authorise the measures specified in the certificate during that period.

(2) If the sum of—

- (a) the period that the responsible medical officer proposes to specify in a certificate under subsection (1) above; and
- (b) the period specified in any other certificate granted under that subsection in respect of the same patient,

would exceed [<sup>F25</sup>90 days], the responsible medical officer may not grant a certificate under that subsection.

[<sup>F26</sup>(2A) A day is to count as a whole day towards the 90 days mentioned in subsection (2) above if any part of that day falls within the period mentioned in paragraph (a) or (b) of that subsection.]

(3) Where a patient’s responsible medical officer proposes to grant a certificate under subsection (1) above, the responsible medical officer shall, before granting such a certificate, give notice to the persons mentioned in subsection (4) below of—

- (a) the measures and the period that the responsible medical officer proposes to specify in the certificate; and
- (b) the responsible medical officer’s reasons for proposing to specify those measures.

(4) Those persons are—

- (a) the patient;
- (b) the patient’s named person; and
- (c) the mental health officer.

(5) Where a certificate is granted under subsection (1) above, the patient’s responsible medical officer shall, before the expiry of the period of 14 days beginning with the day on which the certificate is granted, give notice to the Commission of—

- (a) the granting of the certificate;
- (b) the measures and the period specified in the certificate; and
- (c) the responsible medical officer’s reasons for specifying those measures.

### Textual Amendments

**F25** Words in s. 128(1)(2) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 10(3)(a)**, 61(2); [S.S.I. 2017/197](#), art. 2, sch. (with art. 9(b))

**F26** S. 128(2A) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 10(3)(b)**, 61(2); [S.S.I. 2017/197](#), art. 2, sch. (with art. 9(b))

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 7 is up to date with all changes known to be in force on or before 06 October 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*

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#### Commencement Information

**182** S. 128 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)

### 129 Certificates under sections 127 and 128: revocation **S**

- (1) Subsection (2) below applies where a certificate is granted under section 127(1) or (3) or 128(1) of this Act.
- (2) If the patient's responsible medical officer is satisfied that it is necessary—
  - (a) in the interests of the patient; or
  - (b) for the protection of any other person,that the certificate be revoked, the responsible medical officer may revoke the certificate.
- (3) Where the responsible medical officer revokes under subsection (2) above a certificate granted under subsection (1) or (3) of section 127 of this Act, the responsible medical officer shall, as soon as practicable after the revocation, give notice of it to—
  - (a) the patient;
  - (b) the patient's named person;
  - (c) the mental health officer;
  - (d) where a person is authorised for the purposes of subsection (6)(a) of that section, that person; and
  - (e) the patient's general medical practitioner.
- (4) Where the responsible medical officer revokes under subsection (2) above a certificate granted under section 128(1) of this Act, the responsible medical officer shall, as soon as practicable after the revocation, give notice to the persons mentioned in paragraphs (a) to (c) of subsection (3) above of—
  - (a) the revocation; and
  - (b) the responsible medical officer's reasons for revoking the certificate.
- (5) Where the responsible medical officer revokes under subsection (2) above a certificate granted under section 127(1) or (3) or 128(1) of this Act, the responsible medical officer shall, before the expiry of the period of 14 days beginning with the day on which the certificate is revoked, give notice of the revocation to the Commission.

#### Commencement Information

**183** [S. 129](#) 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, Part 7 is up to date with all changes known to be in force on or before 06 October 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\(3\)](#)