



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

2003 asp 13

PART 10

COMPULSION ORDERS AND RESTRICTION ORDERS

CHAPTER 2

REVIEW OF ORDERS

Scottish Ministers' duty to keep orders under review

189 Reference to Tribunal by Scottish Ministers

- (1) This section applies where a patient is subject to a compulsion order and a restriction order.
- (2) If—
- (a) during the period of 2 years ending with the relevant day—
 - (i) no reference under section 185(1) or 187(2) of this Act has been [^{F1}determined by] the Tribunal; and
 - (ii) no application under section 191 or 192(2) of this Act has been [^{F1}determined by] the Tribunal; and
 - (b) during each period of 2 years ending with the anniversary, in every year thereafter, of the relevant day—
 - (i) no reference such as is mentioned in paragraph (a)(i) above or, subject to subsection (3) below, under this subsection has been [^{F1}determined by] the Tribunal; and
 - (ii) no application such as is mentioned in paragraph (a)(ii) above has been [^{F1}determined by] the Tribunal,

the Scottish Ministers shall make a reference to the Tribunal in respect of the compulsion order and restriction order to which the patient is subject.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Section 189 is up to date with all changes known to be in force on or before 24 July 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*

- (3) The Scottish Ministers shall, in considering, under subsection (2)(b)(i) above, whether a reference has been [^{F2}determined by] the Tribunal during any 2 year period, leave out of account any reference made under subsection (2) above [^{F3}that has been determined by it] during the first year of that 2 year period.
- (4) Where a reference is made under subsection (2) above, the Scottish Ministers shall, as soon as practicable, give notice that a reference is to be or, as the case may be, has been made to the persons mentioned in paragraphs (a) to (g) of section 185(2) of this Act.
- (5) 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.
- (6) In subsection (2) above, the “relevant day” means the day which falls 2 years after the day on which the compulsion order is made.

Textual Amendments

- F1** Words in s. 189(2) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 21(3)(a)**, 61(2); [S.S.I. 2017/197](#), **art. 2**, **sch.** (with **art. 12(b)**)
- F2** Words in s. 189(3) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 21(3)(b)(i)**, 61(2); [S.S.I. 2017/197](#), **art. 2**, **sch.** (with **art. 12(b)**)
- F3** Words in s. 189(3) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 21(3)(b)(ii)**, 61(2); [S.S.I. 2017/197](#), **art. 2**, **sch.** (with **art. 12(b)**)

Modifications etc. (not altering text)

- C1** S. 189(6) 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, 20(3)**

Commencement Information

- I1** S. 189 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), **art. 2** and as amended (22.9.2005) by [S.S.I. 2005/459](#), **art. 2**)

Changes to legislation:

Mental Health (Care and Treatment) (Scotland) Act 2003, Section 189 is up to date with all changes known to be in force on or before 24 July 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 :

- s. 189 suspended by [2020 c. 7 Sch. 9 para. 9](#)

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\(3\)](#)