
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 533

**The Mental Health (Care and Treatment)
(Scotland) Act 2003 Modification Order 2004**

Modification of the Mental Health (Care and Treatment) (Scotland) Act 2003

2.—(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 shall be amended as follows.

(2) In section 93 (responsible medical officer's duties: variation of order)—

(a) after subsection (4) insert—

“(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.

(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.”; and
- (b) in subsection (5), after “(4)(c) above”, insert “and any views expressed by the mental health officer under subsection (4C)(e) above”.
- (3) In section 95(a) (application to tribunal by responsible medical officer)–
 - (a) for “(vi)” substitute “(iv)”;
 - (b) the words from “the” to “Act;” become sub paragraph (i); and
 - (c) after “Act;” insert–
 - “(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.”.
- (4) In section 158 (application to tribunal for extension and variation of compulsion order)–
 - (a) after subsection (a)(iv) omit “and”; and
 - (b) in subsection (a)(v) after “Act”, insert–
 - “; and
 - (vi) if the mental health officer disagrees, the reason for that disagreement”.
- (5) In section 159 (responsible medical officer’s duties: variation of compulsion order)–
 - (a) after subsection (4) insert–
 - “(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 compulsion order should be varied by modifying the measures specified in it, 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 161 of this Act for an order under section 167 of this Act varying the compulsion order; and
 - (b) the modification of the measures 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.
- (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 161 of this Act for an order varying the compulsion order by modifying the measures specified in it;
 - (b) the modification of the measures specified in that order that the responsible medical officer is proposing; and
 - (c) the patient’s rights in relation to such an application.”.
- (6) In section 161(a) (application to tribunal by responsible medical officer)—
- (a) after “158(a)” insert “(i) to (iv)”;
 - (b) the words from “the” to “Act;” become sub paragraph (1); and
 - (c) after “Act;” insert—
 - “(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 159(4C)(e) (i) of this Act; and
 - (iii) if the mental health officer disagrees, the reason for that disagreement.”.
- (7) Section 246 (certificates under section 238) becomes subsection (1) of that section and at the end insert—
- “(2) A person who gives a certificate under section 238 of this Act shall, before the expiry of the period of 7 days beginning with the day on which the certificate is given, send a copy of it to the Commission.”.
- (8) In section 274 (code of practice)—
- (a) in subsection (1), after “Act” insert “or Part VI (mental disorder) of the 1995 Act(1)”;
 - (b) in subsection (4), after “Act” insert “or Part VI (mental disorder) of the 1995 Act”; and
 - (c) in subsection (5)—
 - (i) after “Act” insert “or Part VI (mental disorder) of the 1995 Act”; and
 - (ii) after paragraph (a) insert—
 - “(aa) a prosecutor;”.
- (9) In section 289 (cross-border transfer: patients subject to requirement other than detention), after subsection (2) insert—
- “(2A) Subsection (2) above is without prejudice to the generality of the powers conferred by subsection (1) above.”
- (10) In section 290(2)(b)(i) (cross-border transfer: patients subject to detention requirement or otherwise in hospital)—
- (a) after “patient”, where secondly occurring, insert “, in the case of paragraph (a) of subsection (1) above;”; and
 - (b) after “Act”, where secondly occurring, insert “or, in the case of paragraph (b) of subsection (1) above, treatment for mental disorder corresponding or similar to that which the patient is receiving in hospital”.
- (10) In section 310(2)(a) (regulations as to absconding by other patients), after sub paragraph (i) insert—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“(ia) specified prosecutors;”.