
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 452

**The Mental Health (Care and Treatment) (Scotland) Act
2003 (Transitional and Savings Provisions) Order 2005**

PART 3

PATIENTS DETAINED UNDER A HOSPITAL ORDER

Review, revocation and variation of deemed compulsion order

10.—(1) A 1995 Act patient shall be treated, for the purposes of section 164 of the 2003 Act as if the deemed compulsion order to which that patient is subject had been made on the same day as the hospital order under which the patient was detained.

(2) Where authority for the detention of a 1995 patient has, prior to 5th October 2005, been renewed under section 30 of the 1984 Act, that patient shall be treated—

- (a) where the authority for the detention has been renewed once, as if an order had been made under section 167(1)(a) of the 2003 Act;
- (b) where the authority for the detention has been renewed more than once, as if a determination had been made under section 152(2) of the 2003 Act.

(3) Where a 1995 Act patient has within a period of detention immediately preceding 5th October 2005 made an unsuccessful appeal to the sheriff to order discharge, that patient shall be treated as if an application under section 163 of the 2003 Act for revocation of a determination extending the deemed compulsion order had been refused within that period.

(4) When a determination has been made for the first time on or after 5th October 2005 under section 152 of the 2003 Act to extend a compulsion order, section 165(2)(b) of the 2003 Act shall in respect of 1995 Act patients be modified so that for the words from “ending” to “it” there shall be substituted “starting with the first day of the period for which detention was last renewed under the 1984 Act”.

(5) When on or after 5th October 2005 an application is first made under section 149 of the 2003 Act for an order extending the compulsion order, or a determination is made for the first time under section 152 of the 2003 Act, the responsible medical officer shall send to the Tribunal a copy of the patient’s Part 9 care plan and the mental health officer’s report mentioned in paragraph (8).

(6) At the same time as a copy of the patient’s Part 9 care plan and mental health officer’s report are sent to the Tribunal, the responsible medical officer shall send a copy of them—

- (a) subject to paragraph (7), to the patient;
- (b) to the patient’s named person;
- (c) to the mental health officer;
- (d) to the Commission.

(7) 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 either the Part 9 care plan or mental health officer’s report were sent to the patient, that officer need not send that copy to the patient.

(8) When a determination or an application mentioned in paragraph 5 is to be made, the patient's mental health officer shall prepare a report setting out—

- (a) the views of the mental health officer on the determination or application and the reasons for those views;
- (b) if known to the mental health officer, the views of the patient and the patient's named person on the determination or application and the reasons for those views;
- (c) in so far as the mental health officer considers relevant for the purposes of the review, details of the personal circumstances of the patient;
- (d) if known to the mental health officer, details of any advance statement that the patient has made (and not withdrawn);
- (e) any other information which the mental health officer considers may assist the Tribunal in considering the determination or application; and
- (f) the social circumstances report, if available.