
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 452

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

PART 4

PATIENTS SUBJECT TO COMMUNITY CARE ORDERS

Deemed community compulsory treatment order

14.—(1) An existing community patient who prior to the community care order being made was liable to be detained in pursuance of an application for admission under the 1984 Act shall be treated as if that patient was subject to a compulsory treatment order made under section 64(4) (a) of the 2003 Act.

(2) The deemed community compulsory treatment order—

- (a) authorises the imposition on the patient of the conditions specified under section 35A(4) (a) of the 1984 Act in the community care order to which the patient was subject for the remaining period of time for which the community care order to which the patient was subject would have had effect;
- (b) is deemed to record as the type or types of mental disorder that the patient has the type or types of mental disorder common to the 2 medical recommendations mentioned in section 35B(7)(a) of the 1984 Act except that the form of mental disorder specified by the deemed community compulsory treatment order is—
 - (i) learning disability where the form of mental disorder common to the recommendations is mental handicap; and
 - (ii) personality disorder where the form of mental disorder common to the recommendations is mental illness consisting of personality disorder; and
- (c) is deemed to specify as the hospital the managers of which are to have responsibility for appointing the patient's responsible medical officer, the hospital of which the patient's special medical officer, as defined in section 35A of the 1984 Act, is a member of staff.

Review, revocation and variation of deemed community compulsory treatment order

15.—(1) This Article applies to existing community patients who prior to the community care order being made were liable to be detained under Part 5 of the 1984 Act.

(2) An existing community patient shall be treated for the purposes of section 100 of the 2003 Act as if the deemed community compulsory treatment order to which that patient is subject had been made on the day when the community care order came into effect.

(3) Where a community care order has prior to 5th October 2005 been renewed under section 35C of the 1984 Act, the patient who is the subject of that order shall be treated—

- (a) where the community care order has been renewed once, as if a determination under section 86 of the 2003 Act had been made in respect of the first review;

(b) where the community care order has been renewed more than once, as if such a determination had been made in respect of a subsequent further review.

(4) Where an existing community patient has within the period of renewal for which a community care order is in force immediately preceding 5th October 2005 made an unsuccessful appeal to the sheriff under section 35F of the 1984 Act for revocation of the order, that patient shall be treated as if an application under section 99 of the 2003 Act for revocation of a determination had been refused in respect of the deemed community compulsory treatment order in that period.

(5) When a determination is made for the first time in respect of an existing community patient under section 86 of the 2003 Act to extend a deemed community compulsory treatment order, the responsible medical officer shall send a copy of the patient's care plan and the mental health officer's report mentioned in paragraph (8) to the Tribunal.

(6) At the same time as the patient's 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 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 the determination mentioned in paragraph (5) is made, the patient's mental health officer shall prepare a report setting out—

- (a) the views of the mental health officer on the determination 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 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; and
- (f) the social circumstances report, if available.

Deemed community compulsion order

16.—(1) An existing community patient who prior to the community care order being made was detained in pursuance of an order or direction by virtue of which that patient was liable to be detained under Part 6 of the 1984 Act shall be treated as if that patient was subject to a compulsion order made under section 57A(2) of the 1995 Act.

(2) The deemed community compulsion order—

- (a) authorises the imposition on the patient of the conditions specified under section 35A(4) (a) of the 1984 Act in the community care order to which the patient was subject for the remaining period of time for which the community care order to which the patient was subject would have had effect;
- (b) is deemed to record as the type or types of mental disorder that the patient has the type or types of mental disorder common to the 2 medical recommendations mentioned in

section 35B(7)(a) of the 1984 Act except that the form of mental disorder specified by the deemed community compulsion order is—

- (i) learning disability where the form of mental disorder common to the recommendations is mental handicap; and
 - (ii) personality disorder where the form of mental disorder common to the recommendations is mental illness consisting of personality disorder; and
- (c) is deemed to specify as the hospital the managers of which are to have responsibility for appointing the patient's responsible medical officer, the hospital of which the patient's special medical officer, as defined in section 35A of the 1984 Act, is a member of staff.

Review, revocation and variation of deemed community compulsion order

17.—(1) This Article applies to existing community patients who prior to the community care order being made were liable to be detained under Part 6 of the 1984 Act.

(2) An existing community patient shall be treated for the purposes of section 164 of the 2003 Act as if the deemed community compulsion order to which that patient is subject had been made on the day when the community care order came into effect.

(3) Where a community care order has prior to 5th October 2005 been renewed under section 35C of the 1984 Act, the patient who is the subject of that order shall be treated—

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

(4) Where a community care order patient has within the period of renewal for which a community care order is in force immediately preceding 5th October 2005 made an unsuccessful appeal to the sheriff under section 35F of the 1984 Act for revocation of the order, that patient shall be treated as if an application under section 163 of the 2003 Act for revocation of a determination had been refused in respect of the deemed community compulsion order in that period.

(5) 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 deemed community 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”.

(6) 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 (9).

(7) At the same time as a copy of the patient's 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 (8), to the patient;
- (b) to the patient's named person;
- (c) to the mental health officer;
- (d) to the Commission.

(8) 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.

(9) When a determination or an application mentioned in paragraph 6 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.

Applications for a community care order under the 1984 Act

18.—(1) Where on 5th October 2005 an application under section 35A of the 1984 Act has been made but not yet determined, sections 21(1), (2)(a) and (b), (3), (4) and (5), 35A(2), (3), (4), (5), (6), and (7) and 113 of the 1984 Act and the Mental Health (Patients in the Community) (Transfer from England and Wales to Scotland) Regulations 1996⁽¹⁾ shall have effect until a community care order in respect of that application has been made or that application has been refused.

(2) Where the sheriff makes a community care order on or after 5th October 2005—

- (a) if the person who is the subject of the application was immediately prior to the community care order being made a 1984 Act patient or subject to after-care supervision after having been detained under section 3 of the Mental Health Act 1983⁽²⁾, that person shall immediately be subject to a deemed community compulsory treatment order.
- (b) if the person who is the subject of the application was immediately prior to the community care order being made detained in pursuance of an order or direction by virtue of which that patient was liable to be detained under Part 6 of the 1984 Act or subject to after care under supervision after having been detained under sections 37, 45A, 47 or 48 of the Mental Health Act 1983 that person shall immediately be subject to a deemed community compulsion order.

(3) If by 5th October 2005 a note of a proposed variation of the conditions specified in a community care order has been sent to the sheriff clerk as mentioned in section 35D of the 1984 Act, section 35D(4), (5) and (6) shall continue to have effect until the sheriff has approved or declined to approve the proposed variation.

(4) Where such a variation of conditions is approved, the conditions as varied shall be deemed to be authorised by the deemed community compulsory treatment order or deemed community compulsion order.

Patients admitted to hospital

19.—(1) Sections 35G and 35H of the 1984 Act shall continue to have effect in respect of a patient who is detained under section 35G until authority for the detention has expired.

(1) S.I.1996/742.

(2) 1983 c. 20.

(2) References in sections 35G and 35H to a community care order shall be treated as references to the deemed community compulsory treatment order or the deemed community compulsion order as the case may be.