

MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10 - Compulsion Orders and Restriction Orders

Chapter 2: review of orders

Scottish Ministers' duty to keep orders under review

Section 188: duty of Scottish Ministers to keep compulsion order and restriction order under review

337. **Section 188** provides that the Scottish Ministers are under a duty to keep the compulsion order and restriction order to which the patient is subject under review by considering the matters set out in subsection (2). Subsections (3) to (7) set out the series of tests that the Scottish Ministers must apply when reviewing a compulsion order and restriction order.
338. Depending on their views, the Scottish Ministers may be required to apply to the Tribunal to have the compulsion order revoked, to have the restriction order revoked, to have the compulsion order varied or to have the patient conditionally discharged.

Section 189: reference to Tribunal by Scottish Ministers

339. **Section 189** imposes a duty on the Scottish Ministers to refer a patient's case to the Tribunal two years after the making of the compulsion order and restriction order if no reference or application has been made to the Tribunal during that period.
340. In addition, at the end of each year thereafter, the Scottish Ministers have a duty to review the previous 2 years and refer the patient's case to the Tribunal if no reference or application has been made to it during that 2 year period.
341. In order to ensure that the Tribunal reviews the compulsion order and restriction order at least once every 2 years, subsection (3) provides that, in assessing whether there has been an application or reference to the Tribunal in a 2 year period, any reference under this section during the first year of that period is ignored.
342. Notice of the reference to the Tribunal must be given by the Scottish Ministers to the persons listed in paragraphs (a) to (g) of section 185(2) and the reference must state the information set out in section 189(5).

Section 190: application by Scottish Ministers: notification

343. **Section 190** provides that where the Scottish Ministers make an application to the Tribunal as a result of section 188, they must notify the persons listed in paragraphs (a)

*These notes relate to the Mental Health (Care and Treatment) (Scotland)
Act 2003 (asp 13) which received Royal Assent on 25 April 2003*

to (g) in section 185(2). They should, if possible, notify those persons before making the application.

Section 191: application to Tribunal

344. **Section 191** sets out the information which must be provided by the Scottish Ministers when applying to the Tribunal for an order under section 193. Section 191(b) gives the Scottish Ministers power to prescribe by regulations the documents which must accompany the application.