



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

## 2003 asp 13

### PART 10 **S**

#### COMPULSION ORDERS AND RESTRICTION ORDERS

### CHAPTER 2 **S**

#### REVIEW OF ORDERS

##### *Annual review of orders*

### 182 **Review of compulsion order and restriction order **S****

- (1) This section applies where a patient is subject to a compulsion order and a restriction order.
- (2) The patient's responsible medical officer shall, during the period of 2 months ending with the relevant day, carry out a review in respect of both the compulsion order and restriction order by complying with the requirements set out in subsection (3) below.
- (3) Those requirements are—
  - (a) to—
    - (i) carry out a medical examination of the patient; or
    - (ii) make arrangements for an approved medical practitioner to carry out such a medical examination;
  - (b) to consider—
    - (i) whether the conditions mentioned in subsection (4) below continue to apply in respect of the patient;
    - (ii) whether, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment;

*Status: Point in time view as at 29/10/2008.*

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- (iii) whether it continues to be necessary for the patient to be subject to the compulsion order; and
  - (iv) whether it continues to be necessary for the patient to be subject to the restriction order; and
  - (c) to consult the mental health officer.
- (4) Those conditions are—
- (a) that the patient has a mental disorder;
  - (b) that medical treatment which would be likely to—
    - (i) prevent the mental disorder worsening; or
    - (ii) alleviate any of the symptoms, or effects, of the disorder, is available for the patient; and
  - (c) that if the patient were not provided with such medical treatment there would be a significant risk—
    - (i) to the health, safety or welfare of the patient; or
    - (ii) to the safety of any other person.
- (5) In subsection (2) above, the “relevant day” means—
- (a) the day which falls 12 months after the day on which the compulsion order is made; or
  - (b) where that relevant day has passed, the day falling on the same day in every year thereafter.

#### Modifications etc. (not altering text)

- C1** S. 182(5) modified (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(2)**

#### Commencement Information

- II** S. 182 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)

### *Consequences of annual review*

## **183 Responsible medical officer’s report and recommendation following review of compulsion order and restriction order** **S**

- (1) This section applies where a patient’s responsible medical officer carries out a review under section 182(2) of this Act.
- (2) The responsible medical officer shall, as soon as practicable after carrying out that review, submit a report in accordance with subsection (3) below to the Scottish Ministers.
- (3) That report shall record the responsible medical officer’s views as to—
  - (a) whether the conditions mentioned in section 182(4) of this Act continue to apply in respect of the patient;
  - (b) whether, as a result of the patient’s mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment;

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- (c) whether it continues to be necessary for the patient to be subject to the compulsion order; and
  - (d) whether it continues to be necessary for the patient to be subject to the restriction order.
- (4) If, after having regard to any views expressed by the mental health officer, the responsible medical officer is not satisfied that the patient has a mental disorder, the responsible medical officer shall include in the report submitted to the Scottish Ministers under subsection (2) above a recommendation that the compulsion order be revoked.
- (5) If, after having regard to any views expressed by the mental health officer, the responsible medical officer—
- (a) is satisfied that the patient has a mental disorder; but
  - (b) is not satisfied—
    - (i) that, as a result of the patient’s mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
    - [<sup>F1</sup>(ii) either—
      - (A) that the conditions mentioned in paragraphs (b) and (c) of section 182(4) of this Act continue to apply in respect of the patient; or
      - (B) that it continues to be necessary for the patient to be subject to the compulsion order.]
- the responsible medical officer shall include in the report submitted under subsection (2) above a recommendation that the compulsion order be revoked.
- (6) If, after having regard to any views expressed by the mental health officer, the responsible medical officer—
- (a) is satisfied—
    - (i) that the conditions mentioned in section 182(4) of this Act continue to apply in respect of the patient; and
    - (ii) that it continues to be necessary for the patient to be subject to the compulsion order; but
  - (b) is not satisfied—
    - (i) that, as a result of the patient’s mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
    - (ii) that it continues to be necessary for the patient to be subject to the restriction order,
- the responsible medical officer shall include in the report submitted to the Scottish Ministers under subsection (2) above a recommendation that the restriction order be revoked.
- (7) If, after having regard to any views expressed by the mental health officer, the responsible medical officer—
- (a) is satisfied—
    - (i) that the conditions mentioned in section 182(4) of this Act continue to apply in respect of the patient; and
    - (ii) that it continues to be necessary for the patient to be subject to the compulsion order and the restriction order; but

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- (b) is not satisfied that, as a result of the patient’s mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment,

the responsible medical officer may include in the report submitted to the Scottish Ministers under subsection (2) above a recommendation that the patient be conditionally discharged.

- (8) Where the responsible medical officer—

- (a) submits a report under subsection (2) above that includes a recommendation under subsection (6) above; and  
 (b) is satisfied that the compulsion order should be varied by modifying the measures specified in it,

the responsible medical officer shall include in the report a recommendation that the compulsion order be varied in that way.

#### Textual Amendments

- F1** S. 183(5)(b)(ii) substituted (22.3.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. **69(1)**, **79(2)**

#### Modifications etc. (not altering text)

- C2** S. 183 modified (5.10.2005) by [Mental Health \(Cross-border transfer; patients subject to detention requirement or otherwise in hospital\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/467\)](#), regs. **1(1)**, **39** (with [reg. 2](#))

#### Commencement Information

- I2** S. 183 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)

### *Responsible medical officer’s duty to keep orders under review*

## **184 Responsible medical officer’s duty to keep compulsion order and restriction order under review** **S**

- (1) This section applies where a patient is subject to a compulsion order and a restriction order.
- (2) Without prejudice to the duty imposed on the patient’s responsible medical officer by section 182(2) of this Act, the responsible medical officer shall from time to time consider—
- whether the conditions mentioned in section 182(4) of this Act continue to apply in respect of the patient;
  - whether, as a result of the patient’s mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment;
  - whether it continues to be necessary for the patient to be subject to the compulsion order; and
  - whether it continues to be necessary for the patient to be subject to the restriction order.

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- (3) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2) above, the responsible medical officer is not satisfied that the patient has a mental disorder, the responsible medical officer shall, as soon as practicable after considering those matters, submit to the Scottish Ministers a report complying with the requirements set out in section 183(3) of this Act and including a recommendation that the compulsion order be revoked.
- (4) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2) above, the responsible medical officer—
- (a) is satisfied that the patient has a mental disorder; but
  - (b) is not satisfied—
    - (i) that, as a result of the patient’s mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
    - [<sup>F2</sup>(ii) either—
      - (A) that the conditions mentioned in paragraphs (b) and (c) of section 182(4) of this Act continue to apply in respect of the patient; or
      - (B) that it continues to be necessary for the patient to be subject to the compulsion order,]
- the responsible medical officer shall, as soon as practicable after considering those matters, submit to the Scottish Ministers a report complying with the requirements set out in section 183(3) of this Act and including a recommendation that the compulsion order be revoked.
- (5) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2) above, the responsible medical officer—
- (a) is satisfied—
    - (i) that the conditions mentioned in section 182(4) of this Act continue to apply in respect of the patient; and
    - (ii) that it continues to be necessary for the patient to be subject to the compulsion order; but
  - (b) is not satisfied that—
    - (i) that, as a result of the patient’s mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
    - (ii) that it continues to be necessary for the patient to be subject to the restriction order,
- the responsible medical officer shall, as soon as practicable after considering those matters, submit to the Scottish Ministers a report complying with the requirements set out in section 183(3) of this Act and including a recommendation that the restriction order be revoked.
- (6) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2) above, the responsible medical officer—
- (a) is satisfied—
    - (i) that the conditions mentioned in section 182(4) of this Act continue to apply in respect of the patient; and
    - (ii) that it continues to be necessary for the patient to be subject to the compulsion order and the restriction order; but

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(b) is not satisfied that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment,

the responsible medical officer may submit to the Scottish Ministers a report complying with the requirements set out in section 183(3) of this Act and including a recommendation that the patient be conditionally discharged.

(7) Where the responsible medical officer—

(a) submits a report under subsection (5) above; and

(b) is satisfied that the compulsion order should be varied by modifying the measures specified in it,

the responsible medical officer shall include in the report a recommendation that the compulsion order be varied in that way.

#### Textual Amendments

**F2** S. 184(4)(b)(ii) substituted (22.3.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. **69(2)**, **79(2)**

#### Commencement Information

**I3** S. 184 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)

### *Reference to Tribunal by Scottish Ministers*

## **185 Duty of Scottish Ministers on receiving report from responsible medical officer** S

(1) Where a patient's responsible medical officer submits to the Scottish Ministers—

(a) a report under section 183(2) of this Act that includes a recommendation; or

(b) a report under section 184 of this Act,

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.

(2) Where a reference is made under subsection (1) above, the Scottish Ministers shall, as soon as practicable, give notice that a reference is to be made to—

(a) the patient;

(b) the patient's named person;

(c) any guardian of the patient;

(d) any welfare attorney of the patient;

(e) the patient's responsible medical officer;

(f) the mental health officer; and

(g) the Commission.

(3) A reference under subsection (1) 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 recommendation included in the report submitted by the responsible medical officer.

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#### Commencement Information

- I4** S. 185 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)

### 186 Commission's power to require Scottish Ministers to make reference to Tribunal **S**

- (1) This section applies where a patient is subject to a compulsion order and a restriction order.
- (2) If it appears to the Commission that it is appropriate to do so, it may, by notice in writing to the Scottish Ministers, require them to make a reference to the Tribunal in respect of the compulsion order and the restriction order to which the patient is subject.
- (3) Where, under subsection (2), the Commission gives notice to the Scottish Ministers, the Commission shall include in that notice its reasons for requiring the Scottish Ministers to make the reference.

#### Commencement Information

- I5** S. 186 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)

### 187 Notice under section 186(2): reference to Tribunal **S**

- (1) This section applies where, under section 186(2) of this Act, the Commission gives notice to the Scottish Ministers.
- (2) The Scottish Ministers shall, as soon as practicable after receiving notice under section 186(2) of this Act, make a reference to the Tribunal in respect of the compulsion order and restriction order to which the patient is subject.
- (3) Where a reference is made under subsection (2) above, the Scottish Ministers shall, as soon as practicable, give notice that the 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.
- (4) 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 given by the Commission in the notice under section 186(2) of this Act for requiring the Scottish Ministers to make the reference.

#### Commencement Information

- I6** S. 187 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)

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*Scottish Ministers' duty to keep orders under review*

**188 Duty of Scottish Ministers to keep compulsion order and restriction order under review** **S**

- (1) This section applies where a patient is subject to a compulsion order and a restriction order.
- (2) Without prejudice to the duties imposed on the Scottish Ministers by sections 185(1), 187(2) and 189(2) of this Act, the Scottish Ministers shall from time to time consider—
  - (a) whether the conditions mentioned in section 182(4) of this Act continue to apply in respect of the patient;
  - (b) whether, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment;
  - (c) whether it continues to be necessary for the patient to be subject to the compulsion order; and
  - (d) whether it continues to be necessary for the patient to be subject to the restriction order.
- (3) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2) above, the Scottish Ministers are not satisfied that the patient has a mental disorder, they shall apply to the Tribunal under section 191 of this Act for an order under section 193 of this Act revoking the compulsion order.
- (4) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2) above, the Scottish Ministers—
  - (a) are satisfied that the patient has a mental disorder; but
  - (b) are not satisfied—
    - (i) that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
    - [<sup>F3</sup>(ii) either—
      - (A) that the conditions mentioned in paragraphs (b) and (c) of section 182(4) of this Act continue to apply in respect of the patient; or
      - (B) that it continues to be necessary for the patient to be subject to the compulsion order,]

they shall, as soon as practicable after considering those matters, apply to the Tribunal under section 191 of this Act for an order under section 193 of this Act revoking the compulsion order.
- (5) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2) above, the Scottish Ministers—
  - (a) are satisfied—
    - (i) that the conditions mentioned in section 182(4) of this Act continue to apply in respect of the patient; and
    - (ii) that it continues to be necessary for the patient to be subject to the compulsion order; but
  - (b) are not satisfied—



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- (i) that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
- (ii) that it continues to be necessary for the patient to be subject to the restriction order,

they shall apply to the Tribunal under section 191 of this Act for an order under section 193 of this Act revoking the restriction order.

(6) Where the Scottish Ministers—

- (a) apply, by virtue of subsection (5) above, for an order revoking the restriction order; and
- (b) are satisfied that the compulsion order should be varied by modifying the measures specified in it,

they shall apply to the Tribunal under section 191 of this Act for an order under section 193 of this Act varying the compulsion order in that way.

(7) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2) above, the Scottish Ministers—

- (a) are satisfied—
  - (i) that the conditions mentioned in section 182(4) of this Act continue to apply in respect of the patient; and
  - (ii) that it continues to be necessary for the patient to be subject to the compulsion order and the restriction order; but
- (b) are not satisfied that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment,

they may apply to the Tribunal under section 191 of this Act for an order under section 193 of this Act conditionally discharging the patient.

**Textual Amendments**

**F3** S. 188(4)(b)(ii) substituted (22.3.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. [69\(3\)](#), [79\(2\)](#)

**Commencement Information**

**I7** S. 188 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)

**189 Reference to Tribunal by Scottish Ministers** **S**

(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 made to the Tribunal; and
  - (ii) no application under section 191 or 192(2) of this Act has been made to the Tribunal; and

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- (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 made to the Tribunal; and
  - (ii) no application such as is mentioned in paragraph (a)(ii) above has been made to 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.
- (3) The Scottish Ministers shall, in considering, under subsection (2)(b)(i) above, whether a reference has been made to the Tribunal during any 2 year period, leave out of account any reference made under subsection (2) above 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.

**Modifications etc. (not altering text)**

**C3** 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**

**I8** 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)

**190 Application by Scottish Ministers: notification S**

Where, by virtue of section 188 of this Act, an application is to be made under section 191 of this Act, the Scottish Ministers shall, as soon as practicable after the duty to make the application arises, give notice to the persons mentioned in paragraphs (a) to (g) of section 185(2) of this Act that the application is to be or, as the case may be, has been made.

**Commencement Information**

**I9** S. 190 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)

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## 191 Application to Tribunal **S**

An application under this section to the Tribunal by the Scottish Ministers for an order under section 193 of this Act—

- (a) shall state—
  - (i) the name and address of the patient;
  - (ii) the name and address of the patient’s named person;
  - (iii) the order (or orders) sought;
  - (iv) the modification of the measures specified in the compulsion order that is proposed by the Scottish Ministers; and
  - (v) the reasons for seeking that modification; and
- (b) shall be accompanied by such documents as may be prescribed by regulations.

### Commencement Information

**II0** S. 191 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161, art. 2, Sch. 1](#)

**II1** [S. 191](#) in force at 5.10.2005 in so far as not already in force 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](#))

*Application by patient etc.*

## 192 Application to Tribunal by patient and named person **S**

- (1) This section applies where a patient is subject to a compulsion order and a restriction order.
- (2) Each of the persons mentioned in subsection (3) below may, subject to subsections (4) and (5) below, make an application under this section to the Tribunal for an order under section 193 of this Act—
  - (a) conditionally discharging the patient;
  - (b) revoking the restriction order to which the patient is subject;
  - (c) revoking the restriction order and varying the compulsion order by modifying the measures specified in it; or
  - (d) revoking the compulsion order to which the patient is subject.
- (3) Those persons are—
  - (a) the patient; and
  - (b) the patient’s named person.
- (4) An application under this section may not be made—
  - (a) during the period of 6 months beginning with the making of the compulsion order;
  - (b) during the period of 3 months beginning with—
    - (i) the making of an order in respect of the compulsion order made under section 193 of this Act; or
    - (ii) the making, under section 193 of this Act, by the Tribunal of a decision to make no order under that section.
- (5) Neither of the persons mentioned in subsection (3) above may make more than one application under this section during—

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- (a) the period of 12 months beginning with the day on which the compulsion order was made; or
  - (b) any subsequent period of 12 months that begins with or with an anniversary of the expiry of the period of 12 months mentioned in paragraph (a) above.
- (6) Where a patient's named person makes an application under subsection (2) above, the named person shall give notice to the patient of the making of the application.

#### Modifications etc. (not altering text)

**C4** S. 192(4) modified (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(2)**

#### Commencement Information

**I12** S. 192 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)

### *Proceedings before Tribunal*

## **193 Powers of Tribunal on reference under section 185(1), 187(2) or 189(2) or application under section 191 or 192(2) S**

- (1) This section applies where—
- (a) an application is made under section 191 or 192(2) of this Act; or
  - (b) a reference is made under section 185(1), 187(2) or 189(2) of this Act.
- (2) If the Tribunal is satisfied—
- (a) that the patient has a mental disorder; and
  - (b) that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment,
- it shall make no order under this section.
- (3) If the Tribunal is not satisfied that the patient has a mental disorder, the Tribunal shall make an order revoking the compulsion order.
- (4) If the Tribunal—
- (a) is satisfied that the patient has a mental disorder; but
  - (b) is not satisfied—
    - (i) that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
    - <sup>F4</sup>(ii) either—
      - (A) that the conditions mentioned in paragraphs (b) and (c) of section 182(4) of this Act continue to apply in respect of the patient; or
      - (B) that it continues to be necessary for the patient to be subject to the compulsion order,]
- it shall make an order revoking the compulsion order.

*Status: Point in time view as at 29/10/2008.*

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- (5) If the Tribunal—
- (a) is satisfied—
    - (i) that the conditions mentioned in section 182(4) of this Act continue to apply in respect of the patient; and
    - (ii) that it continues to be necessary for the patient to be subject to the compulsion order; but
  - (b) is not satisfied—
    - (i) that, as a result of the patient’s mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
    - (ii) that it continues to be necessary for the patient to be subject to the restriction order,it shall make an order revoking the restriction order.
- (6) If the Tribunal—
- (a) makes an order, under subsection (5) above, revoking the restriction order; and
  - (b) is satisfied that the compulsion order should be varied by modifying the measures specified in it,
- it shall make an order varying the compulsion order in that way.
- (7) If the Tribunal—
- (a) is satisfied—
    - (i) that the conditions mentioned in section 182(4) of this Act continue to apply in respect of the patient; and
    - (ii) that it continues to be necessary for the patient to be subject to the compulsion order and the restriction order; but
  - (b) is not satisfied—
    - (i) that, as a result of the patient’s mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
    - (ii) that it is necessary for the patient to be detained in hospital,the Tribunal may make an order that the patient be conditionally discharged and impose such conditions on that discharge as it thinks fit.
- (8) Before making a decision under this section the Tribunal shall—
- (a) afford the persons mentioned in subsection (9) below the opportunity—
    - (i) of making representations (whether orally or in writing); and
    - (ii) of leading, or producing, evidence; and
  - (b) whether or not any such representations are made, hold a hearing.
- (9) Those persons are—
- (a) the patient;
  - (b) the patient’s named person;
  - (c) the patient’s primary carer;
  - (d) any guardian of the patient;
  - (e) any welfare attorney of the patient;
  - (f) any curator *ad litem* appointed by the Tribunal in respect of the patient;
  - (g) the Scottish Ministers;

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- (h) the patient's responsible medical officer;
- (i) the mental health officer; and
- (j) any other person appearing to the Tribunal to have an interest.

(10) Nothing in section 102 (state hospitals) of the National Health Service (Scotland) Act 1978 (c. 29) prevents or restricts the detention of a patient in a state hospital as a result of a decision of the Tribunal not to make any order under this section.

#### Textual Amendments

**F4** S. 193(4)(b)(ii) substituted (22.3.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. [69\(4\)](#), [79\(2\)](#)

#### Commencement Information

**I13** S. 193 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)

### 194 Tribunal's powers etc. when varying compulsion order **S**

Where the Tribunal makes an order under section 193(6) of this Act varying a compulsion order, the Tribunal shall specify in its order the modifications made by its order to the measures specified in the compulsion order.

#### Commencement Information

**I14** [S. 194](#) 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)

### 195 Deferral of conditional discharge **S**

Where the Tribunal makes an order under section 193(7) of this Act conditionally discharging a patient, it may defer that discharge until such arrangements as appear to the Tribunal to be necessary for that purpose have been made.

#### Commencement Information

**I15** [S. 195](#) 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)

#### *Effect of modification or revocation of orders*

### 196 General effect of orders under section 193 **S**

- (1) Where the Tribunal makes an order under section 193 of this Act—
- (a) revoking a compulsion order;
  - (b) revoking a restriction order;
  - (c) conditionally discharging a patient; or
  - (d) varying a compulsion order by modifying the measures specified in it,

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the order shall not have effect until the occurrence of the first to occur of the events mentioned in subsection (2) below.

- (2) Those events are—
- (a) the expiry of the appeal period, no appeal having been lodged within that period; and
  - (b) where an appeal has been lodged within the appeal period—
    - (i) the receipt by both the Court of Session and the managers of the hospital specified in the compulsion order of notice from the Scottish Ministers that they do not intend to move the Court of Session to make an order under section 323 of this Act;
    - (ii) the refusal by the Court of Session to make such an order; and
    - (iii) the recall of any such order or the expiry of its effect.
- (3) In subsection (2) above—
- “appeal” means an appeal under section 322 of this Act; and
  - “appeal period” means, in relation to an appeal, the period, prescribed by regulations made under section 324(7) of this Act, within which the appeal has to be lodged in order to be competent.

#### Commencement Information

**I16** S. 196 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)

### 197 Effect of revocation of compulsion order **S**

Where the Tribunal makes an order under section 193(3) or (4) of this Act revoking a compulsion order, the restriction order to which the patient is subject shall cease to have effect.

#### Commencement Information

**I17** S. 197 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)

### 198 Effect of revocation of restriction order **S**

- (1) This section applies where the Tribunal—
- (a) makes an order under subsection (5) of section 193 of this Act revoking the restriction order to which the patient is subject; but
  - (b) does not make an order under subsection (3) or (4) of that section revoking the compulsion order to which the patient is subject.
- (2) Part 9 of this Act shall apply to the patient as if the compulsion order to which the patient is subject were a relevant compulsion order made on the day on which the Tribunal revoked the restriction order.
- (3) In this section, “relevant compulsion order” has the meaning given by section 137(1) of this Act.

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#### Commencement Information

**I18** S. 198 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)

#### Meaning of “modify”

#### 199 Meaning of “modify” **S**

In this Chapter, any reference to modifying the measures specified in a compulsion order includes a reference to—

- (a) amending those measures;
- (b) removing from the order any measure; or
- (c) adding to the order any measure.

#### Commencement Information

**I19** S. 199 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)



**Status:**

Point in time view as at 29/10/2008.

**Changes to legislation:**

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