



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

## 2003 asp 13

### PART 7

#### COMPULSORY TREATMENT ORDERS

#### CHAPTER 1

#### APPLICATION FOR, AND MAKING OF, ORDERS

#### *Pre-application procedures*

#### **57 Mental health officer's duty to apply for compulsory treatment order**

- (1) Where subsections (2) to (5) below apply in relation to a patient, a mental health officer shall apply to the Tribunal under section 63 of this Act for a compulsory treatment order in respect of that patient.
- (2) This subsection applies where two medical practitioners carry out medical examinations of the patient in accordance with the requirements of section 58 of this Act.
- (3) This subsection applies where each of the medical practitioners who carries out a medical examination mentioned in subsection (2) above is satisfied—
  - (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;
  - (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;

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- (d) that because of the mental disorder the patient’s ability to make decisions about the provision of such medical treatment is significantly impaired; and
  - (e) that the making of a compulsory treatment order is necessary.
- (4) This subsection applies where each of the medical practitioners who carries out a medical examination mentioned in subsection (2) above submits to the mental health officer a report (any such report being referred to in this Act as a “mental health report”)—
- (a) stating that the medical practitioner submitting the report is satisfied that the conditions mentioned in paragraphs (a) to (e) of subsection (3) above are met in respect of the patient;
  - (b) stating, in relation to each of the conditions mentioned in paragraphs (b) to (e) of subsection (3) above, the medical practitioner’s reasons for believing the condition to be met in respect of the patient;
  - (c) specifying (by reference to the appropriate paragraph (or paragraphs) of the definition of “mental disorder” in section 328(1) of this Act) the type (or types) of mental disorder that the patient has;
  - (d) setting out a description of—
    - (i) the symptoms that the patient has of the mental disorder; and
    - (ii) the ways in which the patient is affected by the mental disorder;
  - (e) specifying the measures that should, in the medical practitioner’s opinion, be authorised by the compulsory treatment order;
  - (f) specifying the date or dates on which the medical practitioner carried out the medical examination mentioned in subsection (2) above; and
  - (g) setting out any other information that the medical practitioner considers to be relevant.
- (5) This subsection applies where—
- (a) for the purposes of subsection (4)(c) above each of the mental health reports specifies at least one type of mental disorder that is also specified in the other report;
  - (b) for the purposes of subsection (4)(e) above each of the mental health reports specifies the same measures; and
  - (c) one of the mental health reports (being a report by an approved medical practitioner) states the views of that medical practitioner as to—
    - (i) subject to subsection (6) below, whether notice should be given to the patient under section 60(1)(a) of this Act; and
    - (ii) whether the patient is capable of arranging for a person to represent the patient in connection with the application under section 63 of this Act.
- (6) A medical practitioner may state the view that notice should not be given under section 60(1)(a) of this Act only if, in the opinion of that medical practitioner, the giving of notice would be likely to cause significant harm to the patient or any other person.
- (7) Where a mental health officer is required by subsection (1) above to make an application for a compulsory treatment order, the mental health officer shall make the application before the expiry of the period of 14 days beginning with—

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- (a) in the case where each of the mental health reports specifies the same date (or dates) for the purposes of subsection (4)(f) above, that date (or the later, or latest, of those dates); or
- (b) in the case where each of those reports specifies for those purposes a different date (or different dates), the later (or latest) of those dates.

#### Commencement Information

- II** S. 57 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)

### 58 Medical examination: requirements

- (1) The requirements referred to in section 57(2) of this Act are set out in subsections (2) to (6) below.
- (2) Subject to subsection (4) below and to regulations under subsection (5) below—
  - (a) each medical examination of the patient shall be carried out by an approved medical practitioner; and
  - (b) subject to subsection (6) below, each such examination shall be carried out separately.
- (3) Where the medical examinations are carried out separately, the second shall be completed no more than five days after the first.
- (4) The patient's general medical practitioner may carry out one of the medical examinations of the patient although not an approved medical practitioner.
- (5) Except in circumstances specified in regulations, there must not be a conflict of interest in relation to the medical examination; and regulations shall specify the circumstances in which there is to be taken to be such a conflict of interest.
- (6) The medical examinations need not be carried out separately if—
  - (a) where the patient is capable of consenting to the examinations, the patient consents to the examinations being carried out at the same time; or
  - (b) where the patient is incapable of consenting to the examinations—
    - (i) the patient's named person;
    - (ii) any guardian of the patient; or
    - (iii) any welfare attorney of the patient,consents to the examinations being carried out at the same time.

#### Commencement Information

- I2** S. 58 in force at 21.3.2005 for specified purposes by S.S.I. 2005/161, art. 2, Sch. 1
- I3** S. 58 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)

### 59 Mental health officer's duty to identify named person

Where a mental health officer is required by 57(1) of this Act to make an application under section 63 of this Act in respect of a patient, the mental health officer shall, as

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soon as practicable after the duty to make the application arises, take such steps as are reasonably practicable to ascertain the name and address of the patient's named person.

#### Commencement Information

**I4** S. 59 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)

### 60 Application for compulsory treatment order: notification

- (1) Where a mental health officer is required by section 57(1) of this Act to make an application under section 63 of this Act in respect of a patient, the mental health officer shall, as soon as practicable after the duty to make the application arises (and, in any event, before making the application) give notice that the application is to be made—
  - (a) subject to subsection (2) below, to the patient in respect of whom the application is to be made;
  - (b) to the patient's named person; and
  - (c) to the Commission.
- (2) If the view set out in one of the mental health reports by virtue of section 57(5)(c) of this Act is that notice should not be given under paragraph (a) of subsection (1) above, the mental health officer—
  - (a) need not give such notice; but
  - (b) may, if the mental health officer considers it appropriate to do so, give such notice.

#### Commencement Information

**I5** S. 60 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)

### 61 Mental health officer's duty to prepare report

- (1) This section applies where a mental health officer is required by section 57(1) of this Act to make an application under section 63 of this Act in respect of a patient.
- (2) The mental health officer shall, before the date on which, by virtue of section 57(7) of this Act, the application is to be made—
  - (a) subject to subsection (3) below, interview the patient;
  - (b) if the patient has not been given notice under section 60(1)(a) of this Act, inform the patient that the application is to be made;
  - (c) inform the patient of—
    - (i) the patient's rights in relation to the application; and
    - (ii) the availability of independent advocacy services under section 259 of this Act;
  - (d) take appropriate steps to ensure that the patient has the opportunity of making use of those services; and

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- (e) prepare in relation to the patient a report in accordance with subsection (4) below.
- (3) If it is impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the mental health officer need not do so.
- (4) The report shall state—
- (a) the name and address of the patient;
  - (b) if known by the mental health officer, the name and address of—
    - (i) the patient’s named person; and
    - (ii) the patient’s primary carer;
  - (c) the steps that the mental health officer has taken in pursuance of the requirements imposed by subsection (2) above;
  - (d) if it was impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the reason for that being the case;
  - (e) in so far as relevant for the purposes of the application, details of the personal circumstances of the patient;
  - (f) the mental health officer’s views on the mental health reports relating to the patient;
  - (g) if known by the mental health officer, details of any advance statement that the patient has made (and not withdrawn); and
  - (h) any other information that the mental health officer considers relevant to the determination by the Tribunal of the application.

#### **Commencement Information**

**16** S. 61 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)

## **62 Mental health officer’s duty to prepare proposed care plan**

- (1) This section applies where a mental health officer is required by section 57(1) of this Act to make an application under section 63 of this Act in respect of a patient.
- (2) The mental health officer shall, before the date on which, by virtue of section 57(7) of this Act, the application is to be made, prepare a plan (a “proposed care plan”) relating to the patient.
- (3) Before preparing the proposed care plan, the mental health officer shall consult—
- (a) the medical practitioners who provided the mental health reports relating to the patient;
  - (b) subject to subsection (7) below, the persons mentioned in subsection (4) below; and
  - (c) such other persons as the mental health officer considers appropriate.
- (4) The persons referred to in subsection (3)(b) above are persons who appear to the mental health officer to provide—
- (a) medical treatment of the kind that it is proposed to specify, by virtue of paragraph (d) of subsection (5) below, in the proposed care plan;
  - (b) community care services, or relevant services, of the kind that it is proposed to specify, by virtue of paragraph (e) of that subsection, in that plan; or

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- (c) other treatment, care or services of the kind that it is proposed to specify, by virtue of paragraph (f) of that subsection, in that plan.
- (5) The proposed care plan shall specify—
- (a) (by reference to the appropriate paragraph (or paragraphs) of the definition of “mental disorder” in section 328(1) of this Act), the type (or types) of mental disorder which the patient has;
  - (b) the needs of the patient for medical treatment that have been assessed by the medical practitioners who submitted the mental health reports relating to the patient;
  - (c) in so far as relevant for the purposes of the application—
    - (i) where the patient is a child, the needs of the patient that have been assessed under section 23(3) of the Children (Scotland) Act 1995 (c. 36);
    - (ii) where the patient is not a child, the needs of the patient that have been assessed under section 12A(1)(a) of the Social Work (Scotland) Act 1968 (c. 49);
  - (d) the medical treatment which it is proposed to give to the patient in relation to each of the needs specified by virtue of paragraph (b) above (including the names of the persons who would give the treatment and the addresses at which the treatment would be given);
  - (e) any community care services or relevant services which it is proposed to provide to the patient in relation to each of the needs specified by virtue of paragraph (c) above (including the names of the persons who would provide such services and the addresses at which such services would be provided);
  - (f) in so far as relevant for the purposes of the application—
    - (i) any treatment or care (other than treatment or care specified, by virtue of paragraph (d) above, in the proposed care plan); or
    - (ii) any service (other than a service specified, by virtue of paragraph (e) above, in the proposed care plan),
 which it is proposed to provide to the patient (including the names of the persons who would provide such treatment, care or service and the addresses at which such treatment, care or service would be provided);
  - (g) which of the measures mentioned in section 66(1) of this Act it is proposed that the compulsory treatment order should authorise;
  - (h) where it is proposed that the compulsory treatment order should authorise the detention of the patient in hospital, the name and address of the hospital;
  - (i) where it is proposed that the compulsory treatment order should authorise any of the measures mentioned in section 66(1)(c) to (h) of this Act, details of the measure (or measures);
  - (j) where it is proposed that the compulsory treatment order should specify—
    - (i) any medical treatment specified, by virtue of paragraph (d) above, in the proposed care plan;
    - (ii) any community care services, or relevant services, specified, by virtue of paragraph (e) above, in the proposed care plan; or
    - (iii) any treatment, care or service specified, by virtue of paragraph (f) above, in the proposed care plan,
 that medical treatment, those services or that treatment, care, or service, as the case may be;

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- (k) where it is proposed that the compulsory treatment order should authorise measures other than the detention of the patient in hospital, the name of the hospital the managers of which should have responsibility for appointing the patient's responsible medical officer; and
- (l) the objectives of—
  - (i) the medical treatment which it is proposed, by virtue of paragraph (d) above, to give to the patient;
  - (ii) any community care services or relevant services which it is proposed, by virtue of paragraph (e) above, to provide to the patient;
  - (iii) any treatment, care or service which, by virtue of paragraph (f) above, it is proposed to provide to the patient; and
  - (iv) the measures (other than detention of the patient in hospital) that it is proposed that the compulsory treatment order should authorise.
- (6) The proposed care plan shall be signed by the mental health officer.
- (7) The mental health officer need not consult any person such as is mentioned in subsection (4) above in any case where it is impracticable to do so.
- (8) In this section “child” has the same meaning as in section 23(3) of the Children (Scotland) Act 1995 (c. 36).

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#### **Commencement Information**

- I7** S. 62 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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