

ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 4

Mental Health: Miscellaneous Amendments and Repeals

Section 68 – Review of determination extending compulsory treatment order

158. This section amends section 101(2)(b) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”). Section 101 applies where a patient is subject to a Compulsory Treatment Order (“CTO”) made under section 64(4)(a) of the 2003 Act and the patient’s responsible medical officer makes a determination under section 86 of the 2003 Act extending the CTO.
159. **Section 101(2)(a)** requires the Mental Health Tribunal for Scotland (“the Tribunal”) to review such a determination if the record submitted to the Tribunal with the determination states that there is a difference between the type(s) of mental disorder that the patient has and the type(s) of mental disorder recorded in the CTO in respect of which the determination is made, or that the patient’s mental health officer disagrees with the determination (or has failed to inform the patient of the matters set out in section 85(2) of the 2003 Act (including the patient’s rights in relation to the determination)).
160. The amendment to section 101(2)(b) of the 2003 Act (together with new subsections (3) and (4)) provides further ground for reviews of determinations under section 86. This ground comes into play 2 years from the original granting of the CTO if there is a determination under section 86 extending the CTO for a further year. The effect of this is that there is not to be a review by the Tribunal under the new section 101(2) (b) of determinations under section 86 in respect of the first two year period from the granting of the CTO (i.e. there is not to be a review of the first two determinations from the granting of the CTO under that section).
161. Thereafter there is to be a review of a determination by the Tribunal if, within the two year period ending just before the CTO would expire if not extended by that determination, no application has been made to the Tribunal under section 92, 95, 99 or 100 of the 2003 Act, nor has there been a review under section 101.
162. Section 102 of the 2003 Act sets out the range of powers and duties of the Tribunal on such a review.