



Management of Offenders (Scotland) Act 2019 2019 asp 14

PART 2

DISCLOSURE OF CONVICTIONS

Rules relating to disclosure

26 Disclosure period: compulsion orders

- (1) The 1974 Act is amended as follows.
- (2) After section 5F (inserted by section 25) there is inserted—

“5G Disclosure period: compulsion orders

- (1) The disclosure period applicable to a compulsion order—
 - (a) if arising by virtue of subsection (1)(b) of section 57 of the Criminal Procedure (Scotland) Act 1995, under subsection (2)(a) of that section, or
 - (b) under section 57A of that Act,is a period beginning with the date of the conviction in respect of which the order was made and ending on the date the order ceases or ceased to have effect.
- (2) Subsection (1) is subject to sections 164A and 167A of the Mental Health (Care and Treatment) (Scotland) Act 2003.
- (3) Where the Mental Health Tribunal for Scotland makes a determination under section 167A(3) of that Act in relation to a person—
 - (a) the person is, with effect from the date on which the disclosure period applicable to the compulsion order ends by virtue of that section, to be treated for the purposes of this Act as a protected person, and
 - (b) the person’s conviction in respect of which the compulsion order was made is for those purposes to be treated as spent.

Status: This is the original version (as it was originally enacted).

(4) Subsection (3) is subject to section 6(2).”.

(3) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(4) After section 164 there is inserted—

“164A Application to end disclosure period for compulsion order

(1) This section applies where a patient is subject to a relevant compulsion order.

(2) Either of the persons mentioned in subsection (3) may make an application under this section to the Tribunal for a determination under section 167A that the disclosure period applicable to the compulsion order is to come to an end.

(3) The persons referred to in subsection (2) are—

- (a) the patient, and
- (b) the patient’s named person.

(4) An application under this section may not be made until the expiry of the period of 12 months beginning with the day on which the order is made (or is deemed under section 198(2) to be made).

(5) Where an application under this section relating to a compulsion order has already been refused by the Tribunal, a further such application relating to the order may not be made until the expiry of the period of 12 months beginning with the date of such refusal (or, where applicable, the date of the most recent such refusal).

(6) An application under this section must be accompanied by such documents as may be prescribed by regulations.”.

(5) After section 167 there is inserted—

“167A Duties of Tribunal on application under section 164A

(1) This section applies where an application is made under section 164A in respect of a patient.

(2) If the Tribunal is satisfied that, without the provision of medical treatment of the kind mentioned in section 139(4)(b) to the patient, there would be a significant risk to the safety of other persons, it must refuse the application.

(3) If the Tribunal is not satisfied as mentioned in subsection (2), it must determine that the disclosure period applicable to the compulsion order ends with immediate effect.

(4) Before refusing an application under subsection (2) or making a determination under subsection (3), the Tribunal must afford the persons mentioned in subsection (5) the opportunity—

- (a) of making representations (whether orally or in writing), and
- (b) of leading, or producing, evidence.

(5) Those persons are—

- (a) the patient,
- (b) the patient’s named person,

Status: This is the original version (as it was originally enacted).

- (c) any guardian of the patient,
- (d) any welfare attorney of the patient,
- (e) the mental health officer,
- (f) the patient’s responsible medical officer,
- (g) the patient’s primary carer,
- (h) any curator ad litem appointed in respect of the patient by the Tribunal, and
- (i) any other person appearing to the Tribunal to have an interest in the application.

(6) In this section and section 164A—

- (a) “disclosure period”, in relation to a compulsion order, is to be construed in accordance with the Rehabilitation of Offenders Act 1974,
- (b) references to the disclosure period applicable to a compulsion order are to be construed in accordance with section 5G(1) of that Act.

167B Duty to notify outcome of applications under section 164A

- (1) The Scottish Ministers may require the Tribunal to provide the information mentioned in subsection (3) in respect of a person.
 - (2) Where a requirement is made under subsection (1), the Tribunal must, before the expiry of the period of 15 working days beginning with the day on which the requirement is made, provide the Scottish Ministers with the information.
 - (3) The information is whether a refusal under subsection (2) of section 167A has been given, or a determination under subsection (3) of that section has been made, in relation to the person to whom the request relates.
 - (4) In subsection (2), “working day” has the meaning given by section 47(8).”.
- (6) In section 257A (ability to act if no named person), in subsection (3), after “164(2)” there is inserted “164A,”.