



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

## 2003 asp 13

### PART 7 **S**

#### COMPULSORY TREATMENT ORDERS

### CHAPTER 4 **S**

#### REVIEW OF ORDERS

##### *Extension of order by responsible medical officer*

#### 84 **Responsible medical officer's duty where extension of order appears appropriate **S****

- (1) This section applies where a patient's responsible medical officer is carrying out—
  - (a) the first review of the compulsory treatment order to which the patient is subject; or
  - (b) a further review of that order.
- (2) If, having regard to any views expressed by persons consulted under section 77(3)(c) of this Act for the purpose of the review being carried out, it appears to the responsible medical officer—
  - (a) that it will continue to be necessary for the patient to be subject to a compulsory treatment order after the day on which the order will cease (unless extended) to authorise the measures specified in it; and
  - (b) that the order should not be varied by modifying the measures, or any recorded matter, specified in it,

the responsible medical officer shall give notice to the mental health officer that the responsible medical officer is proposing to make a determination under section 86 of this Act extending the order.

**Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Extension of order by responsible medical officer is up to date with all changes known to be in force on or before 04 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

#### Commencement Information

- I1** S. 84 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)

### 85 Mental health officer's duties: extension of order **S**

- (1) The mental health officer shall, as soon as practicable after receiving notice under section 84(2) of this Act, comply with the requirements in subsection (2) below.
- (2) Those requirements are—
- (a) subject to subsection (3) below, to interview the patient;
  - (b) to inform the patient—
    - (i) that the patient's responsible medical officer is proposing to make a determination under section 86 of this Act extending the compulsory treatment order to which the patient is subject for the period mentioned in section 86(2) of this Act;
    - (ii) of the patient's rights in relation to such a determination; and
    - (iii) of the availability of independent advocacy services under section 259 of this Act;
  - (c) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and
  - (d) to inform the patient's responsible medical officer—
    - (i) of whether the mental health officer agrees, or disagrees, that the determination that is proposed should be made;
    - (ii) if the mental health officer disagrees, of the reason why that is the case; and
    - (iii) of any other matters that the mental health officer considers relevant.
- (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.

#### Commencement Information

- I2** S. 85 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)

### 86 Responsible medical officer's duty to extend order **S**

- (1) If, having regard to—
- (a) any views expressed by persons consulted under section 77(3)(c) of this Act for the purpose of the review being carried out; and
  - (b) any views expressed by the mental health officer under section 85(2)(d) of this Act for the purpose of that review,
- the responsible medical officer is satisfied as to the matters mentioned in section 84(2) (a) and (b) of this Act, the responsible medical officer shall make a determination extending the compulsory treatment order for the period mentioned in subsection (2) below.

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- (2) The period referred to in subsection (1) above is—
- (a) where a determination is made in respect of the first review, the period of 6 months beginning with the day on which the compulsory treatment order will cease (unless extended) to authorise the measures specified in it;
  - (b) where a determination is made in respect of the first further review, the period of 12 months beginning with the expiry of the period mentioned in paragraph (a) above;
  - (c) where a determination is made in respect of a subsequent further review, the period of 12 months beginning with the expiry of the period of 12 months for which the order is extended as a result of the immediately preceding further review.

#### Commencement Information

- I3** S. 86 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)

## 87 Determination extending order: notification etc. **S**

- (1) Where a patient’s responsible medical officer makes a determination under section 86 of this Act, that officer shall, as soon as practicable after the determination is made and, in any event, before the day on which the compulsory treatment order will cease, if it is not extended by the determination, to authorise the measures specified in it, comply with the requirements in subsection (2) below.
- (2) Those requirements are—
- (a) to prepare a record stating—
    - (i) the determination;
    - (ii) the reasons for it;
    - (iii) whether the mental health officer agrees, or disagrees, with the determination or has failed to comply with the duty imposed by section 85(2)(d)(i) of this Act;
    - (iv) if the mental health officer disagrees with the determination, the reasons for the disagreement;
    - (v) (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; and if there is a difference between that type (or types) and the type (or types) of mental disorder recorded in the compulsory treatment order in respect of which the determination is made, what that difference is; and
    - (vi) such other matters as may be prescribed by regulations;
  - (b) to submit the record to the Tribunal; and
  - (c) at the same time as the responsible medical officer submits the record to the Tribunal, to give notice of the determination and send a copy of the record—
    - (i) subject to subsection (3) below, to the patient;
    - (ii) to the patient’s named person;
    - (iii) to the mental health officer; and
    - (iv) to the Commission.

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- (3) If the responsible medical officer considers that there would be a risk of significant harm to the patient, or to others, if a copy of the record were sent to the patient, that officer need not send a copy to the patient.
- (4) At the same time as the responsible medical officer submits the record to the Tribunal, that officer shall send to the Tribunal, and to the persons mentioned in subsection (2)(c)(ii) to (iv) above, a statement of the matters mentioned in subsection (5) below.
- (5) Those matters are—
  - (a) whether the responsible medical officer is sending a copy of the record to the patient; and
  - (b) if the responsible medical officer is not sending a copy of the record to the patient, the reason for not doing so.

#### Commencement Information

- I4** S. 87 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161, art. 2, Sch. 1](#)
- I5** S. 87 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)

#### [<sup>F1</sup>87A Further information where order extended **S**

- (1) Subsections (2) and (3) below apply where—
  - (a) a mental health officer receives notice of a determination under section 86 of this Act from a patient's responsible medical officer, and
  - (b) the Tribunal is required by virtue of section 101(2)(a) of this Act to review the determination.
- (2) The mental health officer must—
  - (a) prepare a record stating the information mentioned in subsection (4) below,
  - (b) submit the record to the Tribunal, and
  - (c) at the same time as submitting the record to the Tribunal, send to the persons mentioned in subsection (6) below—
    - (i) a copy of the record, and
    - (ii) a statement of the matters mentioned in subsection (5) below.
- (3) At the same time as submitting the record to the Tribunal, the mental health officer must send a copy of the record to the patient except where the officer considers that doing so carries a risk of significant harm to the patient or others.
- (4) The information to be stated in the record is—
  - (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 things done by the mental health officer in compliance with the requirements in subsection (2) of section 85 of this Act (and, if by virtue of subsection (3) of that section the first-listed one has not been complied with, the reason why compliance with it was impracticable),
  - (d) so far as relevant to the extension of the compulsory treatment order—

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- (i) the details of the personal circumstances of the patient, and
  - (ii) if known by the mental health officer, the details of any advance statement made by the patient (and not withdrawn by the patient),
  - (e) the views of the mental health officer on the extension of the compulsory treatment order, and
  - (f) any other information that the mental health officer considers relevant in relation to the extension of the compulsory treatment order.
- (5) The matters referred to in subsection (2)(c) above are—
- (a) whether the mental health officer is sending a copy of the record to the patient, and
  - (b) if the mental health officer is not sending a copy of the record to the patient, the reason for not doing so.
- (6) For the purposes of subsection (2)(c) above, the persons are—
- (a) the patient's named person,
  - (b) the patient's responsible medical officer, and
  - (c) the Commission.]

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#### Textual Amendments

- F1** S. 87A inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. **2(2)**, 61(2); S.S.I. 2017/197, art. 2, sch. (with art. 3)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 64(8A)(8B) inserted by [2015 asp 9 s. 1\(2\)](#)
- s. 65(7) inserted by [2015 asp 9 s. 1\(3\)](#)