
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes supplementary, incidental and consequential provision in the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the Act”) by modifying various provisions of the Act as described below.

Article 2(2) modifies section 93 of the Act which places duties on a patient’s mental health officer in circumstances where the responsible medical officer is considering making an application to the Mental Health Tribunal for Scotland (“the Tribunal”) to vary the patient’s compulsory treatment order. Those duties include interviewing the patient, providing the patient with further information about the detail of the application, and informing the patient about available independent advocacy services. It also places a further duty on the responsible medical officer to notify the mental health officer.

Article 2(3) modifies section 95(a) to reflect the duties placed on the mental health officer by section 93, as modified, in respect of the information that the responsible medical officer must provide in an application to the Tribunal.

Article 2(4) modifies section 158 by inserting a requirement for the responsible medical officer to include details in an application (to extend and vary a compulsion order) where the mental health officer disagrees with the application, and the reasons for that disagreement.

Article 2(5) modifies section 159 of the Act which has a similar effect to the modifications to section 93 (described above), but applies where the responsible medical officer is making an application to vary the patient’s compulsion order.

Article 2(6) modifies section 161(a) to reflect the duties placed on the mental health officer by section 159, as modified, in respect of the information that the responsible medical officer must provide in an application to the Tribunal.

Article 2(7) inserts a new subsection into section 246 of the Act which has the effect of requiring a person who gives a certificate under section 238 to send a copy to the Mental Welfare Commission within 7 days.

Article 2(8) modifies section 274 (code of practice) of the Act to allow the Scottish Ministers to give guidance to persons discharging functions under Part VI of the Criminal Procedure (Scotland) Act 1995 (c. 46). The Scottish Ministers already have power to give guidance to those discharging functions under the Act.

Article 2(9) and (10) deal with the cross border transfer of patients. Article 2(9) adds a new subsection (2A) to section 289 of the Act. Article 2(10) modifies section 290(2)(b)(i) to widen the regulation making power in section 290(1) so that regulations can require the Scottish Ministers to consider corresponding care and services for informal patients (in addition to patients receiving treatment under the Act or the Criminal Procedure (Scotland) Act 1995) before authorising removal of the patient from Scotland.

Article 2(11) modifies section 310 of the Act to allow regulations to require notification to the prosecutor (in addition to the courts, the Mental Welfare Commission and the Scottish Ministers) where a patient absconds or fails to comply with requirements imposed on them by certain orders or directions.