

2005 No. 365

MENTAL HEALTH

The Mental Health (Compulsion orders - documents and reports to be submitted to the Tribunal) (Scotland) Regulations 2005

Made - - - - - *27th June 2005*

Laid before the Scottish Parliament *30th June 2005*

Coming into force - - - *5th October 2005*

The Scottish Ministers, in exercise of the powers conferred by sections 149(b), 158(b)(a), 161(b)(b) and 173(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003(c) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Mental Health (Compulsion orders – documents and reports to be submitted to the Tribunal) (Scotland) Regulations 2005 and shall come into force on 5th October 2005.

(2) In these regulations—

- (i) “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(d); and
- (ii) unless the context otherwise requires, any reference to a numbered section is a reference to the section bearing that number in the Mental Health (Care and Treatment) (Scotland) Act 2003.

Documents to accompany application to Tribunal under section 149

2. The documents prescribed for the purpose of section 149(b) (documents to accompany application to Tribunal by responsible medical officer for extension of compulsion order) are—

- (a) a copy of the patient’s—
 - (i) Part 9 care plan as first prepared under section 137(2)(a) (preparation of Part 9 care plan); and
 - (ii) amended Part 9 care plan;
- (b) a copy of any written evidence given by a medical practitioner under section 57A(2)(a) of the 1995 Act (evidence of medical practitioners prior to making of compulsion order by court)(e); and

(a) Section 158 was amended by article 2(4) of the Mental Health (Care and Treatment) (Scotland) Act 2003 Modification Order 2004 (S.S.I. 2004/533) (“the Order”).
(b) Section 161 was amended by article 2(6) of the Order.
(c) 2003 asp 13.
(d) 1995 c.46.
(e) Section 57A was inserted by section 133 of the Mental Health (Care and Treatment) (Scotland) Act 2003 asp 13 (“the Act”).

- (c) a copy of any report by the mental health officer prepared in accordance with section 57C(2)(b) of the 1995 Act (report by mental health officer prior to making of compulsion order by court)(a).

Documents to accompany application to Tribunal under section 158

3. The documents prescribed for the purpose of section 158(b) (documents to accompany application to Tribunal by responsible medical officer for order extending and varying a compulsion order) are–

- (a) where the application is made following a first review of the compulsion order, the documents prescribed in regulation 2.
- (b) where the application is made other than following a first review of the compulsion order, a copy of the patient’s amended Part 9 care plan.

Documents to accompany application to Tribunal under section 161

4. The documents prescribed for the purpose of section 161(b) (documents to accompany application to Tribunal by responsible medical officer for order varying a compulsion order) are–

- (a) where the application is made during the period of six months beginning with the day on which the compulsion order is made–
 - (i) a copy of the patient’s–
 - (aa) Part 9 care plan as first prepared under section 137(2)(a) (preparation of Part 9 care plan); and
 - (bb) amended Part 9 care plan;
 - (ii) a copy of any written evidence given by a medical practitioner under section 57A(2)(a) of the 1995 Act (evidence of medical practitioners prior to making of compulsion order by court); and
 - (iii) a copy of any report by the mental health officer prepared in accordance with section 57C(2)(b) of the 1995 Act (report by mental health officer prior to making of compulsion order by court); or
- (b) where the application is made in any period for which a compulsion order has been extended, a copy of the patient’s amended Part 9 care plan.

Application for extension of compulsion order following first review: reports to be prepared and submitted to Tribunal under section 173

5. Where the Tribunal is considering an application made under section 149 and is not satisfied that it has sufficient information to enable it to make a decision, the Tribunal may require, under section 173(2) (power to require preparation and submission of reports)–

- (a) the mental health officer to prepare and submit to it a report–
 - (i) on the steps that the mental health officer has taken to comply with the requirements imposed by section 147(2) (mental health officer’s duties to patient etc);
 - (ii) giving the views of the mental health officer on the application and the reasons for those views;
 - (iii) giving, if known to the mental health officer, the views of the patient and the patient’s named person on the application and the reasons for those views;
 - (iv) giving, in so far as the mental health officer considers relevant for the purposes of the review, details of the personal circumstances of the patient;
 - (v) giving, if known to the mental health officer, details of any advance statement that the patient has made (and not withdrawn); and

(a) Section 57C was inserted by section 133 of the Act.

- (vi) giving any other information which the mental health officer considers may assist the Tribunal in considering the application; and
- (b) the patient's responsible medical officer to prepare and submit to it a report–
 - (i) stating the basis on which the responsible medical officer is satisfied that the conditions mentioned in section 139(4) (conditions applying to patient) continue to apply and the reasons for that view;
 - (ii) specifying, by reference to the appropriate sub-paragraph of section 328(1) (meaning of “mental disorder”), the type (or types) of mental disorder that the patient has;
 - (iii) stating why the responsible medical officer considers that it continues to be necessary for the patient to be subject to the compulsion order;
 - (iv) on the extent to which the objectives of any medical treatment, community care services, other relevant services, or any other treatment, care or service included in the patient's Part 9 care plan are being met; and
 - (v) giving any other information which the responsible medical officer considers may assist the Tribunal in considering the application.

Application for extension and variation of compulsion order: report to be prepared and submitted to Tribunal under section 173

6. Where the Tribunal is considering an application made under section 158 and is not satisfied that it has sufficient information to enable it to make a decision, the Tribunal may require, under section 173(2), the mental health officer to prepare and submit to it a report–

- (i) on the steps that the mental health officer has taken to comply with the requirements imposed by section 155(2) (mental health officer's duties to patient etc);
- (ii) giving the views of the mental health officer on the application and the reasons for those views;
- (iii) giving, if known to the mental health officer, the views of the patient and the patient's named person on the application and the reasons for those views;
- (iv) giving, in so far as the mental health officer considers relevant for the purposes of the review, details of the personal circumstances of the patient;
- (v) giving, if known to the mental health officer, details of any advance statement that the patient has made (and not withdrawn); and
- (vi) giving any other information which the mental health officer considers may assist the Tribunal in considering the application.

Application for variation of compulsion order: report to be submitted to Tribunal under section 173

7. Where the Tribunal is considering an application made under section 161 (application for order varying a compulsion order) and is not satisfied that it has sufficient information to enable it to make a decision, the Tribunal may require, under section 173(2), the mental health officer to prepare and submit to it a report–

- (a) on the steps that the mental health officer has taken to comply with the requirements imposed by section 159(4C)(a) (mental health officer's duties to patient etc);
- (b) giving the views of the mental health officer on the application and the reasons for those views;
- (c) giving, if known to the mental health officer, the views of the patient and the patient's named person on the application;
- (d) giving, in so far as the mental health officer considers relevant for the purposes of the application, details of the personal circumstances of the patient;

(a) Section 159(4C) was inserted by article 2(5) of the Order.

- (e) giving, if known to the mental health officer, details of any advance statement that the patient has made (and not withdrawn); and
- (f) giving any other information which the mental health officer considers may assist the Tribunal in considering the application.

Application for revocation of determination extending compulsion order or revocation or variation of compulsion order: reports to be submitted to Tribunal under section 173

8. Where the Tribunal is considering an application made under sections 163(1) (revocation of determination extending compulsion order) or 164(2) (revocation or variation of compulsion order) and is not satisfied that it has sufficient information to enable it to make a decision, the Tribunal may require, under section 173(2)–

- (a) the mental health officer to prepare and submit to it a report–
 - (i) giving the views of the mental health officer on the application and the reasons for those views;
 - (ii) giving, if known to the mental health officer, details of any advance statement that the patient has made (and not withdrawn); and
 - (iii) giving any other information which the mental health officer considers may assist the Tribunal in considering the application; and
- (b) the patient’s responsible medical officer to prepare and submit to it a report–
 - (i) giving the views of the responsible medical officer on the application and the reasons for those views; and
 - (ii) giving any other information which the responsible medical officer considers may assist the Tribunal in considering the application.

Review of determination extending compulsion order: reports to be submitted to Tribunal under section 173

9. Where the Tribunal is reviewing, under section 165(2) (grounds for review of determination), a determination made under section 152(2) extending a compulsion order and is not satisfied that it has sufficient information to enable it to make a decision, the Tribunal may require, under section 173(2)–

- (a) the mental health officer to prepare and submit to it a report–
 - (i) on the steps that the mental health officer has taken to comply with the requirements imposed by section 151(2) (mental health officer’s duties to patient etc);
 - (ii) giving the mental health officer’s views or further views on the determination and the reasons for those views;
 - (iii) giving, if known to the mental health officer, the views of the patient and the patient’s named person on the determination and the reasons for those views;
 - (iv) giving, in so far as the mental health officer considers relevant for the purposes of the review, details of the personal circumstances of the patient;
 - (v) giving, if known to the mental health officer, details of any advance statement that the patient has made (and not withdrawn); and
 - (vi) giving any other information which the mental health officer considers may assist the Tribunal in considering the determination; and

- (b) the patient's responsible medical officer to prepare and submit to it a report on the extent to which the objectives of any medical treatment, community care services, other relevant services, or any other treatment, care or service included in the patient's Part 9 care plan are being met.

St Andrew's House,
Edinburgh
27th June 2005

RHONA BRANKIN
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Mental Health (Care and Treatment) (Scotland) Act 2003 (“the Act”) establishes the Mental Health Tribunal for Scotland “the Tribunal”. These Regulations provide that particular documents must accompany certain types of application to the Tribunal and for reports that the Tribunal may itself require to be prepared and submitted to it in connection with certain applications or a particular determination.

Regulations 2, 3 and 4 prescribe the documents which are to accompany applications to the Tribunal by a patient’s responsible medical officer under sections 149, 158 and 161 of the Act.

Regulation 5 prescribes the reports which the Tribunal may require the mental health officer and the patient’s responsible medical officer to prepare and submit when it is considering an application by the responsible medical officer under section 149 of the Act.

Regulation 6 and 7 prescribe the reports which the Tribunal may require the mental health officer to prepare and submit when it is considering an application by the patient’s responsible medical officer under section 158 or 161 of the Act.

Regulation 8 prescribes the reports which the Tribunal may require the mental health officer and the patient’s responsible medical officer to prepare and submit when it is considering an application by the responsible medical officer under section 163 or 164 of the Act.

Regulation 9 prescribes the reports which the Tribunal may require the mental health officer and the patient’s responsible medical officer to prepare and submit when it is reviewing under section 165 a determination made under section 152 of the Act.

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