Draft Order laid before the Scottish Parliament under section 13(2) of the Convention Rights (Compliance) (Scotland) Act 2001, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2026 No.

MENTAL HEALTH

The Mental Health (Care and Treatment) (Scotland) Act 2003 Remedial Order 2026

Made - - - -	*2026*
Coming into force - -	*13th November 2026*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 12(1) and (3) of the Convention Rights (Compliance) (Scotland) Act 2001(**a**)("the 2001 Act") and all other powers enabling them to do so.

The Scottish Ministers consider the provision made by this remedial Order to be necessary or expedient in consequence of the provisions in the Mental Health (Care and Treatment) (Scotland) Act 2003(**b**) in relation to the inability to specify recorded matters in compulsion orders, compulsion and restriction orders, hospital directions and transfer for treatment directions which is or may be incompatible with Convention rights(**c**).

In accordance with section 12(2) of the 2001 Act the Scottish Ministers are of the opinion that there are compelling reasons for making a remedial order as distinct from taking any other action.

In accordance with section 13(3) of the 2001 Act the Scottish Ministers laid before the Scottish Parliament a copy of the proposed draft Order, together with a statement of their reasons for proposing to make the Order, gave such public notice of the proposed draft Order as they considered appropriate, invited observations on it and had regard to observations submitted.

In accordance with section 13(4) of the 2001 Act the Scottish Ministers laid before the Scottish Parliament a statement summarising all the observations to which they had regard under section 13(3)(c) and specifying the changes which they made in the draft Order and the reasons for them.

In accordance with section 13(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

(**a**) 2001 asp 7.
(**b**) 2003 asp 13.
(**c**) The term "Convention rights" has the meaning given by section 1 of the Human Rights Act 1998 (c. 42).

PART 1

Introductory

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Mental Health (Care and Treatment) (Scotland) Act 2003 Remedial Order 2026.

(2) This Order comes into force on 13 November 2026.

(3) In this Order, "the 2003 Act" means the Mental Health (Care and Treatment) (Scotland) Act 2003.

PART 2

Compulsion orders

Compulsion orders

2.—(1) Part 9 of the 2003 Act is amended as follows.

(2) In section 145 (mandatory reviews: further steps to be taken where compulsion order not revoked), in subsection (3)(c), after sub-paragraph (i), insert—

"(ia) where a further review of a compulsion order is being carried out, whether the compulsion order should be varied by modifying any recorded matter specified in it;".

(3) In section 150 (further review: responsible medical officer's duty where extension proposed), in subsection (2), in paragraph (b), after "measures" insert ", or any recorded matter,".

(4) In section 154 (responsible medical officer's duty where extension and variation proposed)—

(a) in subsection (2), for paragraph (b) substitute—

"(b) that—

(i) the compulsion order should be varied by modifying the measures specified in it; or

(ii) in the case of carrying out a further review, the compulsion order should be varied by modifying any recorded matter specified in it,",

(b) in subsection (3)—

(i) in paragraph (a), for sub-paragraph (ii) substitute—

"(ii) varying the order—

(aa) by modifying the measures specified in it; or

(bb) in the case of carrying out a further review, by modifying any recorded matter specified in it; and",

(ii) in paragraph (b), after "measures" insert ", or any recorded matter,".

(5) In section 155 (mental health officer's duties: extension and variation of compulsion order), in subsection (4)—

(a) in paragraph (a)(ii), after "measures" insert ", or any recorded matter, ",

(b) in paragraph (b), after "measures" insert ", or any recorded matter, ".

(6) In section 156 (responsible medical officer's duty to apply for extension and variation of compulsion order), in subsection (2)(b), after "measures" insert ", or any recorded matter,".

(7) In section 158 (application to Tribunal for extension and variation of compulsion order), in paragraph (a)(iii), after "order" insert ", or any recorded matter,".

(8) In section 159 (responsible medical officer's duties: variation of compulsion order)—

(a) in subsection (1), after "order" insert "including a compulsion order which is extended by virtue of an order under section 167",

(b) in subsection (2), after "measures" insert ", or any recorded matter,",

(c) in subsection (3), for "by modifying the measures specified in it" substitute "as mentioned in subsection (2)",

(d) in subsection (4)(b), after "measures" insert ", or any recorded matter,",

(e) in subsection (4A(**a**))—

(i) in the opening words, for "by modifying the measures specified in it" substitute "as mentioned in subsection (2)",

(ii) in paragraph (b), after "measures" insert ", or any recorded matter,",

(f) in subsection (4E)—

(i) in paragraph (a), after "measures" insert ", or any recorded matter,",

(ii) in paragraph (b), after "measures" insert ", or any recorded matter,",

(g) in subsection (5), for "by modifying the measures specified in it" substitute "as mentioned in subsection (2)".

(9) After section 161 (application to Tribunal by responsible medical officer), insert—

"Recorded matters: reference to Tribunal by responsible medical officer

161A Recorded matters: reference to Tribunal by responsible medical officer

(1) This section applies where a patient is subject to a relevant compulsion order which specifies one or more recorded matters.

(2) Without prejudice to the duties imposed on the patient's responsible medical officer by sections 139(2), 140(2) and 145(2) (and subject to subsection (6)), if it appears to the responsible medical officer that any recorded matter specified in the compulsion order is not being provided, the responsible medical officer must, as soon as practicable, consult—

(a) the mental health officer; and

(b) such other persons as the responsible medical officer considers appropriate.

(3) If, having regard to any views expressed by persons consulted under subsection (2), the responsible medical officer is satisfied that a recorded matter specified in the compulsion order is not being provided, the responsible medical officer must make a reference to the Tribunal.

(4) A reference under subsection (3) must—

(a) state—

(i) the name and address of the patient;

(ii) the name and address of the patient's named person; and

(**a**) Subsections (4A) to (4E) were inserted by article 2(5) of S.S.I. 2004/533.

(iii) the reason for making the reference; and

(b) be accompanied by such documents as may be prescribed by regulations.

(5) A reference under subsection (3) must be made as soon as practicable after the duty to make it arises.

(6) Subsections (2) to (5) do not apply where—

(a) the responsible medical officer is required, by virtue of section 141 or 142, to revoke the compulsion order; or

(b) the responsible medical officer is making an application under section 158 or 161 in respect of the compulsion order.

161B Reference to Tribunal under section 161A(3): notification

Where a patient's responsible medical officer is required by section 161A(3) to make a reference to the Tribunal, the responsible medical officer must, as soon as practicable after the duty to make the reference arises, give notice that the reference is to be made to—

(a) the patient;

(b) the patient's named person;

(c) any guardian of the patient;

(d) any welfare attorney of the patient;

(e) the mental health officer; and

(f) the Commission.".

(10) In section 164 (application to Tribunal by patient etc. for revocation or variation of compulsion order), in subsection (2)(b)—

(a) the words from "the measures" to the end become sub-paragraph (i),

(b) at the end of that sub-paragraph, insert "; or

(ii) any recorded matter specified in it.".

(11) In section 166 (powers of Tribunal on review under section 165), in subsection (1)(d)—

(a) the words from "the measures" to the end become sub-paragraph (i),

(b) at the end of that sub-paragraph, insert "; or

(ii) any recorded matter specified in it.".

(12) In section 167 (powers of Tribunal on application under section 149, 158, 161, 163 or 164)—

(a) in subsection (1), after paragraph (a), insert—

"(aa) extending the compulsion order for that period and specifying a recorded matter in it;",

(b) in subsection (2), in paragraph (a)—

(i) the words from "the measures" to the end become sub-paragraph (i) of that paragraph,

(ii) at the end of that sub-paragraph, insert "; or

(ii) any recorded matter specified in it;",

(c) in subsection (3), in paragraph (d)—

(i) the words from "the measures" to the end become sub-paragraph (i),

(ii) at the end of that sub-paragraph, insert "; or

(ii) any recorded matter specified in it.",

(d) in subsection (4), in paragraph (b)—

(i) the words from "the measures" to the end become sub-paragraph (i),

(ii) at the end of that sub-paragraph, insert "; or

(ii) any recorded matter specified in it;",

(e) in subsection (5), in paragraph (a)—

(i) the words from "the measures" to the end become sub-paragraph (i),

(ii) at the end of that sub-paragraph, insert "; or

(ii) any recorded matter specified in it;".

(13) In section 168 (interim extension etc. of order: application under section 149 or 158)(**a**), in subsection (2)(b)(ii), after "measures" insert ", or any recorded matter,".

(14) In section 169 (interim variation of order following application, reference or review under Chapter)—

(a) in subsection (1), in paragraph (b), after "section" insert "161A or",

(b) in subsection (2), in the closing words, after "measures" insert ", or any recorded matter,".

(15) In section 171 (powers of Tribunal on reference under section 162)—

(a) in subsection (1)—

(i) in the opening words, after "section" insert "161A or",

(b) in paragraph (a)—

(i) the words from "the measures" to the end become sub-paragraph (i),

(ii) at the end of that sub-paragraph, insert "or

(ii) any recorded matter specified in it;",

(c) the title of the section becomes "Powers of Tribunal on reference under section 161A or 162".

(16) In section 172 (Tribunal's order varying compulsion order)—

(a) in paragraph (a), after "measures" insert ", or any recorded matter,",

(b) in paragraph (b), after "measures" insert ", or recorded matters,".

(17) In section 175 (meaning of "modify")—

(a) in the opening words, after "measures" insert ", or recorded matters,",

(b) in paragraph (a), after "measures" insert "or recorded matters",

(c) in paragraph (b), after "measure" insert "or recorded matter",

(d) in paragraph (c), after "measure" insert "or recorded matter",

(e) after paragraph (c), insert—

"(d) specifying a recorded matter in an order which does not specify a recorded matter.".

(**a**) Section 168 was amended by paragraph 32(16) of Schedule 1 of S.S.I. 2005/465.

Compulsion orders: documents and reports to be submitted to Tribunal

3.—(1) The Mental Health (Compulsion orders – documents and reports to be submitted to the Tribunal) (Scotland) Regulations 2005(**a**) are amended as follows.

(2) After regulation 4 (Documents to accompany application to Tribunal under section 161), insert—

> **"Reference concerning non-provision of a recorded matter: report to be prepared and submitted to Tribunal**
>
> **4A.** Where the Tribunal is considering a reference under section 161A (reference regarding the non-provision of a recorded matter) and is not satisfied that it has sufficient information to enable it to make a decision, the Tribunal may require the mental health officer to prepare and submit to it a report—
>
> (a) giving the views of the mental health officer on the alleged non-provision of the recorded matter; and
>
> (b) giving any other information which the mental health officer considers may assist the Tribunal in considering the application.".

PART 3

Compulsion orders and restriction orders

Compulsion orders and restriction orders

4.—(1) Part 10 of the 2003 Act is amended as follows.

(2) In section 182 (review of compulsion order and restriction order), in subsection (3)—

(a) the "and" at the end of paragraph (b) is repealed,

(b) after paragraph (b), insert—

> "(ba) if the responsible medical officer is satisfied that the conditions mentioned in subsection (4) continue to apply in respect of the patient and that it continues to be necessary for the patient to be subject to the compulsion order, to comply with section 184A, and".

(3) In section 184 (responsible medical officer's duty to keep compulsion order and restriction order under review), after subsection (7), insert—

> "(8) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2), the responsible medical officer is satisfied—
>
> (a) that the conditions mentioned in section 182(4) continue to apply in respect of the patient; and
>
> (b) that it continues to be necessary for the patient to be subject to the compulsion order,
>
> the responsible medical officer must comply with section 184A.".

(4) After section 184, insert—

(**a**) S.S.I. 2005/365.

"Responsible medical officer's duty to consider modification of recorded matters

184A Responsible medical officer's duties: variation of compulsion order

(1) If the responsible medical officer is satisfied as described in section 182(3)(ba) or 184(8), the responsible medical officer must consider whether the compulsion order should be varied by modifying any recorded matter specified in it.

(2) If it appears to the responsible medical officer that the compulsion order should be varied as mentioned in subsection (1), the responsible medical officer must, as soon as practicable, comply with the requirements in subsection (3).

(3) Those requirements are—

(a) to assess the needs of the patient for medical treatment;

(b) to consider what modification, if any, of any recorded matter specified in the compulsion order is appropriate;

(c) to consult—

(i) the mental health officer; and

(ii) such persons as the responsible medical officer considers appropriate.

(4) If, having regard to any views expressed by persons consulted under subsection (3)(c), it continues to appear to the responsible medical officer that the compulsion order should be varied as mentioned in subsection (1), the responsible medical officer must, as soon as practicable, notify the mental health officer—

(a) that the responsible medical officer is proposing to recommend to the Scottish Ministers that the compulsion order should be varied as mentioned in subsection (1); and

(b) of the modification of the recorded matter that the responsible medical officer considers appropriate.

(5) The mental health officer must, as soon as practicable after being notified under subsection (4), comply with the requirements in subsection (6).

(6) Those requirements are—

(a) subject to subsection (7), to interview the patient;

(b) to inform the patient of the matters mentioned in subsection (8);

(c) to inform the patient of the availability of independent advocacy services under section 259;

(d) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and

(e) to inform the patient's responsible medical officer—

(i) of whether the mental health officer agrees, or disagrees, that the recommendation 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.

(7) If it is impracticable for the mental health officer to comply with the requirement in subsection (6)(a), the mental health officer need not do so.

(8) The matters referred to in subsection (6)(b) are—

(a) that the patient's responsible medical officer is proposing to recommend to the Scottish Ministers that the compulsion order should be varied as mentioned in subsection (1);

(b) the modification of the recorded matter that the responsible medical officer considers appropriate;

(c) the Scottish Ministers' duty under section 185(1) to make a reference to the Tribunal; and

(d) the patient's rights in relation to such a reference.

(9) If, having regard to any views expressed by persons consulted under subsection (3)(c) and any views expressed by the mental health officer under subsection (6)(e), the responsible medical officer is satisfied that the compulsion order should be varied as mentioned in subsection (1), the responsible medical officer must—

(a) in an annual review under section 182(2), include in the report under section 183(2) a recommendation that the compulsion order should be varied as mentioned in subsection (1);

(b) in a review under section 184(2)—

(i) if the responsible medical officer is submitting a report under section 184(5) or (6), include in that report a recommendation that the compulsion order should be varied as mentioned in subsection (1); or

(ii) if the responsible medical officer is not submitting such a report, submit to the Scottish Ministers a report complying with the requirements set out in section 183(3) and including a recommendation that the compulsion order should be varied as mentioned in subsection (1).

(10) A report submitted to the Scottish Ministers that, by virtue of subsection (9), includes a recommendation that the compulsion order should be varied as mentioned in subsection (1) must be made as soon as practicable after the duty to make it arises.

Recorded matters: report to Scottish Ministers by responsible medical officer

184B Recorded matters: report to Scottish Ministers by responsible medical officer

(1) This section applies where—

(a) a patient is subject to a compulsion order and a restriction order; and

(b) the compulsion order specifies one or more recorded matters.

(2) Without prejudice to the duties imposed on the patient's responsible medical officer by sections 182(2) and 184(2) (and subject to subsection (6)), if it appears to the responsible medical officer that any recorded matter specified in the compulsion order is not being provided, the responsible medical officer must, as soon as practicable, consult—

(a) the mental health officer; and

(b) such other persons as the responsible medical officer considers appropriate.

(3) If, having regard to any views expressed by persons consulted under subsection (2), the responsible medical officer is satisfied that a recorded matter specified in the compulsion order is not being provided, the responsible medical officer must submit a report to the Scottish Ministers.

(4) A report under subsection (3) must state—

(a) the name and address of the patient;

(b) the name and address of the patient's named person; and

(c) the reason for making the report.

(5) A report under subsection (3) must be submitted as soon as practicable after the duty to submit it arises.

(6) Subsections (2) to (5) do not apply where the responsible medical officer is recommending under section 183(4) or (5) or section 184(3) or (4) that the compulsion order be revoked.".

(5) In section 185 (duty of Scottish Ministers on receiving report from responsible medical officer)—

(a) in subsection (1)—

(i) the "or" at the end of paragraph (a) is repealed,

(ii) at the end of paragraph (b) insert—"; or

(c) a report under section 184A(9)(b)(ii),".

(b) in subsection (2) for "a reference" to "as practicable" substitute "the Scottish Ministers are required to make a reference under subsection (1), they must, as soon as practicable after the duty to make the reference arises".

(6) After section 185, insert—

"185A Duties of Scottish Ministers on receiving report from responsible medical officer under section 184B(3)

(1) Where a patient's responsible medical officer submits to the Scottish Ministers a report under section 184B(3), the Scottish Ministers must make a reference to the Tribunal in respect of the compulsion order and restriction order to which the patient is subject.

(2) Where the Scottish Ministers are required to make a reference under subsection (1), they must, as soon as practicable after the duty to make the reference arises, give notice that the reference is to be made to—

(a) the patient;

(b) the patient's named person;

(c) any guardian of the patient;

(d) any welfare attorney of the patient;

(e) the patient's responsible medical officer;

(f) the mental health officer; and

(g) the Commission.

(3) A reference under subsection (1) must—

(a) state—

(i) the name and address of the patient;

(ii) the name and address of the patient's named person; and

(iii) the reason that the responsible medical officer stated for submitting the report;

(b) be accompanied by such documents as may be prescribed by regulations, and

(c) be made as soon as practicable after the duty to make it arises.".

(7) In section 188 (duty of Scottish Ministers to keep compulsion order and restriction order under review), after subsection (7), insert—

"(8) If, having considered the matters mentioned in paragraphs (a) to (d) of subsection (2), the Scottish Ministers are satisfied—

(a) that the conditions mentioned in section 182(4) continue to apply in respect of the patient; and

(b) that it continues to be necessary for the patient to be subject to the compulsion order,

the Scottish Ministers must comply with section 188A.".

(8) After section 188, insert—

"188A The Scottish Ministers' duties: variation of compulsion order

(1) If the Scottish Ministers are satisfied as described in section 188(8), they must consider whether the compulsion order should be varied by modifying any recorded matter specified in it.

(2) If it appears to the Scottish Ministers that the compulsion order should be varied as mentioned in subsection (1), they must, as soon as practicable, comply with the requirements in subsection (3).

(3) Those requirements are—

(a) to assess the needs of the patient for medical treatment;

(b) to consider what modification, if any, of any recorded matter specified in the compulsion order is appropriate;

(c) to consult—

(i) the mental health officer;

(ii) the patient's responsible medical officer; and

(iii) such persons as the Scottish Ministers consider appropriate.

(4) If, having regard to any views expressed by persons consulted under subsection (3)(c), it continues to appear to the Scottish Ministers that the compulsion order should be varied as mentioned in subsection (1), they must, as soon as practicable, notify the patient's responsible medical officer and the mental health officer—

(a) that they are proposing to make an application to the Tribunal under section 191 for an order under section 193 varying the compulsion order as mentioned in subsection (1); and

(b) of the modification of any recorded matter that they consider appropriate.

(5) The mental health officer must, as soon as practicable after being notified under subsection (4), comply with the requirements in subsection (6).

(6) Those requirements are—

(a) subject to subsection (7), to interview the patient;

(b) to inform the patient of the matters mentioned in subsection (8);

(c) to inform the patient of the availability of independent advocacy services under section 259;

(d) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and

(e) to inform the patient's responsible medical officer and the Scottish Ministers—

(i) of whether the mental health officer agrees, or disagrees, that the application 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.

(7) If it is impracticable for the mental health officer to comply with the requirement in subsection (6)(a), the mental health officer need not do so.

(8) The matters referred to in subsection (6)(b) are—

(a) that the Scottish Ministers are proposing to make an application to the Tribunal under section 191 for an order under section 193 varying the compulsion order as mentioned in subsection (1);

(b) the modification of any recorded matter that the Scottish Ministers consider appropriate; and

(c) the patient's rights in relation to an application described in paragraph (a).

(9) If, having regard to any views expressed by persons consulted under subsection (3)(c) and any views expressed by the mental health officer under subsection (6)(e), the Scottish Ministers are satisfied that the compulsion order should be varied as mentioned in subsection (1), the Scottish Ministers must make an application to the Tribunal under section 191 for an order under section 193 varying the compulsion order as mentioned in subsection (1).

(10) An application made under section 191, by virtue of subsection (9) above, for an order mentioned in that subsection shall be made as soon as practicable after the duty to make it arises.

188B Recorded matters: Scottish Ministers' duties

(1) This section applies where—

(a) a patient is subject to a compulsion order and a restriction order; and

(b) the compulsion order specifies one or more recorded matters.

(2) Without prejudice to the duties imposed on the Scottish Ministers by sections 185(1), 185A(1), 187(2), 188(2) and 189(2) (and subject to subsection (6)), if it

appears to the Scottish Ministers that any recorded matter specified in the compulsion order is not being provided, the Scottish Ministers must, as soon as practicable, consult—

(a) the mental health officer;

(b) the patient's responsible medical officer; and

(c) such other persons as the Scottish Ministers consider appropriate.

(3) If, having regard to any views expressed by persons consulted under subsection (2), the Scottish Ministers are satisfied that a recorded matter specified in the compulsion order is not being provided, the Scottish Ministers must make a reference to the Tribunal.

(4) A reference under subsection (3) must—

(a) state—

(i) the name and address of the patient;

(ii) the name and address of the patient's named person;

(iii) the reason for making the reference; and

(b) be accompanied by such documents as may be prescribed by regulations.

(5) A reference under subsection (3) must be submitted as soon as practicable after the duty to submit it arises.

(6) Subsections (2) to (5) do not apply—

(a) where the Scottish Ministers have made a reference under section 185A(1); or

(b) where the Scottish Ministers are making an application to the Tribunal under section 191 for an order under section 193 revoking the compulsion order.

188C Reference to Tribunal under section 188B(3): notification

Where the Scottish Ministers are required by section 188B(3) to make a reference to the Tribunal, the Scottish Ministers must, as soon as practicable after the duty to make the reference arises, give notice that the reference is to be made to—

(a) the patient;

(b) the patient's named person;

(c) any guardian of the patient;

(d) any welfare attorney of the patient;

(e) the patient's responsible medical officer;

(f) the mental health officer; and

(g) the Commission.

188D Reference concerning non-provision of recorded matters: mental health officer report for Tribunal

Where the Tribunal is considering a reference under section 188B(3) and is not satisfied that it has sufficient information to enable it to make a decision, the

Tribunal may require the mental health officer to prepare and submit to it a report—

(a) giving the views of the mental health officer on the alleged non-provision of the recorded matter; and

(b) giving any other information which the mental health officer considers may assist the Tribunal in considering the application.".

(9) In section 190 (application by Scottish Ministers: notification)—

(a) the words "section 188" to the end become subsection (1),

(b) after subsection (1) insert—

"(2) section 188A(9) of this Act, an application is to be made under section 191 of this Act, the Scottish Ministers shall, as soon as practicable after the duty to make the application arises, give notice to the persons mentioned in paragraphs (a) to (g) of section 188C of this Act that the application is to be, or as the case may be, has been made.".

(10) In section 191 (application to Tribunal), in paragraph (a)(iv), after "measures" insert ", or any recorded matter,".

(11) In section 192 (application to Tribunal by patient and named person), in subsection (2)(c)—

(a) the words from "the measures" to the end become sub-paragraph (i),

(b) at the end of that sub-paragraph, insert "; or

(ii) any recorded matter specified in it;

(ca) varying the compulsion order by modifying any recorded matter specified in it;".

(12) In section 193 (powers of Tribunal on reference under section 185(1), 187(2) or 189(2) or application under section 191 or 192(2))—

(a) in subsection (1), in paragraph (b)—

(i) after "185(1)," insert "185A(1),",

(ii) after "187(2)" insert ", 188B(3)",

(b) in subsection (2), in the closing words, after "shall" insert ", subject to subsection (7A),",

(c) in subsection (6), in paragraph (b), after "measures" insert ", or any recorded matter,",

(d) after subsection (7), insert—

"(7A) If the Tribunal is satisfied—

(a) that it continues to be necessary for the patient to be subject to the compulsion order and the restriction order; and

(b) that the compulsion order should be varied by modifying any recorded matter specified in it,

it must make an order varying the compulsion order in that way.",

(e) the section title becomes "Powers of Tribunal on reference under section 185(1), 185A(1), 187(2), 188B(3) or 189(2) or application under section 191 or 192(2)".

(13) In section 194 (Tribunal's powers etc. when varying compulsion order)—

(a) after "section 193(6)" insert "or (7A)",

(b) after "measures" insert "or, as the case may be, recorded matters".

(14) In section 199 (meaning of "modify")—

(a) in the opening words, after "measures" insert ", or recorded matters,",

(b) in paragraph (a), after "measures" insert "or recorded matters",

(c) in paragraph (b)—

(i) after "measure" insert "or recorded matter",

(ii) "or" at the end of the paragraph is repealed,

(d) in paragraph (c), after "measure" insert "or recorded matter or;",

(e) after paragraph (c), insert—

"(d) specifying a recorded matter in an order which does not specify a recorded matter.".

PART 4

Hospital directions and transfer for treatment directions

Hospital directions and transfer for treatment directions

5.—(1) Part 11 of the 2003 Act is amended as follows.

(2) In section 206 (review of hospital direction and transfer for treatment direction), in subsection (3)—

(a) the "and" at the end of paragraph (b) is repealed,

(b) after paragraph (b), insert—

"(ba)if the responsible medical officer is satisfied that the conditions mentioned in subsection (4) continue to apply in respect of the patient and that it continues to be necessary for the patient to be subject to the direction, to comply with section 208A; and".

(3) In section 208 (responsible medical officer's duty to keep directions under review), after subsection (2), insert—

"(2A) If, having considered the matters mentioned in paragraphs (a) to (c) of subsection (2), the responsible medical officer is satisfied—

(a) that the conditions mentioned in section 206(4) continue to apply in respect of the patient; and

(b) that it continues to be necessary for the patient to be subject to the direction,

the responsible medical officer must comply with section 208A.".

(4) After section 208, insert—

"Responsible medical officer's duty to consider modification of recorded matters

208A Responsible medical officer's duties: variation of direction

(1) If the responsible medical officer is satisfied as described in section 206(3)(ba) or 208(2A), the responsible medical officer must consider whether the direction should be varied by modifying any recorded matter specified in it.

(2) If it appears to the responsible medical officer that the direction should be varied as mentioned in subsection (1), the responsible medical officer must, as soon as practicable, comply with the requirements in subsection (3).

(3) Those requirements are—

(a) to assess the needs of the patient for medical treatment;

(b) to consider what modification, if any, of any recorded matter specified in the direction is appropriate;

(c) to consult—

(i) the mental health officer; and

(ii) such persons as the responsible medical officer considers appropriate.

(4) If, having regard to any views expressed by persons consulted under subsection (3)(c), it continues to appear to the responsible medical officer that the direction should be varied as mentioned in subsection (1), the responsible medical officer must, as soon as practicable, notify the mental health officer—

(a) that the responsible medical officer is proposing to recommend to the Scottish Ministers that the direction should be varied as mentioned in subsection (1); and

(b) of the modification of any recorded matter that the responsible medical officer considers appropriate.

(5) The mental health officer must, as soon as practicable after being notified under subsection (4), comply with the requirements in subsection (6).

(6) Those requirements are—

(a) subject to subsection (7), to interview the patient;

(b) to inform the patient of the matters mentioned in subsection (8);

(c) to inform the patient of the availability of independent advocacy services under section 259;

(d) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and

(e) to inform the patient's responsible medical officer—

(i) of whether the mental health officer agrees, or disagrees, that the recommendation 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.

(7) If it is impracticable for the mental health officer to comply with the requirement in subsection (6)(a), the mental health officer need not do so.

(8) The matters referred to in subsection (6)(b) are—

(a) that the patient's responsible medical officer is proposing to recommend to the Scottish Ministers that the direction should be varied as mentioned in subsection (1);

(b) the modification of any recorded matter that the responsible medical officer considers appropriate;

(c) the Scottish Ministers' duty under section 210(3) to make a reference to the Tribunal; and

(d) the patient's rights in relation to such a reference.

(9) If, having regard to any views expressed by persons consulted under subsection (3)(c) and any views expressed by the mental health officer under subsection (6)(e), the responsible medical officer is satisfied that the direction should be varied as mentioned in subsection (1), the responsible medical officer must—

(a) in an annual review under section 206(2), include in the report under section 207(2) a recommendation that the direction should be varied as mentioned in subsection (1); or

(b) in a review under section 208(2), submit to the Scottish Ministers a report—

(i) complying with the requirements set out in subsection (10); and

(ii) including a recommendation that the direction should be varied as mentioned in subsection (1).

(10) The report mentioned in subsection (9)(b) must record the responsible medical officer's views as to—

(a) whether the conditions mentioned in section 206(4) of this Act continue to apply in respect of the patient;

(b) whether, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and

(c) whether it continues to be necessary for the patient to be subject to the direction.

(11) A report submitted to the Scottish Ministers that, by virtue of subsection (9), includes a recommendation that the direction should be varied as mentioned in subsection (1) must be made as soon as practicable after the duty to make it arises.

Recorded matters: report to Scottish Ministers by responsible medical officer

208B Recorded matters: report to Scottish Ministers by responsible medical officer

(1) This section applies where—

(a) a patient is subject to—

(i) a hospital direction; or

(ii) a transfer for treatment direction; and

(b) the direction specifies one or more recorded matters.

(2) Without prejudice to the duties imposed on the patient's responsible medical officer by sections 206(2) and 208(2) (and subject to subsection (6)), if it appears to the responsible medical officer that any recorded matter specified in the direction is not being provided, the responsible medical officer must, as soon as practicable, consult—

(a) the mental health officer; and

(b) such other persons as the responsible medical officer considers appropriate.

(3) If, having regard to any views expressed by persons consulted under subsection (2), the responsible medical officer is satisfied that a recorded matter specified

in the direction is not being provided, the responsible medical officer must submit a report to the Scottish Ministers.

(4) A report under subsection (3) must state—

(a) the name and address of the patient;

(b) the name and address of the patient's named person; and

(c) the reason for making the report.

(5) A report under subsection (3) must be submitted as soon as practicable after the duty to submit it arises.

(6) Subsections (2) to (5) do not apply where the responsible medical officer is recommending under section 207(4) or (5) or 208(3) or (4) that the direction be revoked.".

(5) In section 210 (duty of Scottish Ministers on receiving report from responsible medical officer), in subsection (1)—

(a) the "or" at the end of paragraph (a) is repealed,

(b) at the end of paragraph (b), insert "; or

(c) a report under section 208A(9)(b).",

(c) in subsection (4) for "a reference" to "as practicable" substitute "the Scottish Ministers are required to make a reference under subsection (3), they must, as soon as practicable after the duty to make the reference arises",

(d) the title of the section becomes "Duty of Scottish Ministers on receiving report from responsible medical officer under section 207(2), 208(3) or (4) or 208A(9)(b)".

(6) After section 210, insert—

"210A Duties of Scottish Ministers on receiving report from responsible medical officer under section 208B(3)

(1) Where a patient's responsible medical officer submits to the Scottish Ministers a report under section 208B(3), the Scottish Ministers must make a reference to the Tribunal in respect of the direction to which the patient is subject.

(2) Where the Scottish Ministers are required to make a reference under subsection (1), they must, as soon as practicable after the duty to make the reference arises, give notice that the reference is to be made to—

(a) the patient;

(b) the patient's named person;

(c) any guardian of the patient;

(d) any welfare attorney of the patient;

(e) the patient's responsible medical officer;

(f) the mental health officer; and

(g) the Commission.

(3) A reference under subsection (1) must—

(a) state—

(i) the name and address of the patient;

(ii) the name and address of the patient's named person; and

(iii) the reason that the responsible medical officer stated for submitting the report;

(b) be accompanied by such documents as may be prescribed by regulations; and

(c) be made as soon as practicable after the duty to make it arises.".

(7) In section 212 (duty of Scottish Ministers to keep directions under review), after subsection (2), insert—

"(2A) If, having considered the matters mentioned in paragraphs (a) to (c) of subsection (2), the Scottish Ministers are satisfied—

(a) that the conditions mentioned in section 206(4) continue to apply in respect of the patient; and

(b) that it continues to be necessary for the patient to be subject to the direction,

the Scottish Ministers must comply with section 212A.".

(8) After section 212, insert—

"212A The Scottish Ministers' duties: variation of direction

(1) If the Scottish Ministers are satisfied as described in section 212(2A), they must consider whether the direction should be varied by modifying any recorded matter specified in it.

(2) If it appears to the Scottish Ministers that the direction should be varied as mentioned in subsection (1), they must, as soon as practicable, comply with the requirements in subsection (3).

(3) Those requirements are—

(a) to assess the needs of the patient for medical treatment;

(b) to consider what modification, if any, of any recorded matter specified in the direction is appropriate;

(c) to consult—

(i) the mental health officer;

(ii) the patient's responsible medical officer; and

(iii) such persons as the Scottish Ministers consider appropriate.

(4) If, having regard to any views expressed by persons consulted under subsection (3)(c), it continues to appear to the Scottish Ministers that the direction should be varied as mentioned in subsection (1), they must, as soon as practicable, notify the patient's responsible medical officer and the mental health officer—

(a) that they are proposing to make an application to the Tribunal under section 213B for an order under section 215 varying the direction as mentioned in subsection (1); and

(b) of the modification of any recorded matter that they consider appropriate.

(5) The mental health officer must, as soon as practicable after being notified under subsection (4), comply with the requirements in subsection (6).

(6) Those requirements are—

(a) subject to subsection (7), to interview the patient;

(b) to inform the patient of the matters mentioned in subsection (8);

(c) to inform the patient of the availability of independent advocacy services under section 259;

(d) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and

(e) to inform the patient's responsible medical officer and the Scottish Ministers—

(i) of whether the mental health officer agrees, or disagrees, that the recommendation 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.

(7) If it is impracticable for the mental health officer to comply with the requirement in subsection (6)(a), the mental health officer need not do so.

(8) The matters referred to in subsection (6)(b) are—

(a) that the Scottish Ministers are proposing to make an application to the Tribunal under section 213B for an order under section 215 varying the direction as mentioned in subsection (1);

(b) the modification of any recorded matter that the Scottish Ministers consider appropriate; and

(c) the patient's rights in relation to an application described in paragraph (a).

(9) If, having regard to any views expressed by persons consulted under subsection (3)(c) and any views expressed by the mental health officer under subsection (6)(e), the Scottish Ministers are satisfied that the direction should be varied as mentioned in subsection (1), the Scottish Ministers must make an application to the Tribunal under section 213B for an order under section 215 varying the direction as mentioned in subsection (1).

(10) An application made under section 213B, by virtue of subsection (9) above, for an order mentioned in that subsection shall be made as soon as practicable after the duty to make it arises.

212B Recorded matters: Scottish Ministers' duties

(1) This section applies where—

(a) a patient is subject to—

(i) a hospital direction; or

(ii) a transfer for treatment direction; and

(b) the direction specifies one or more recorded matters.

(2) Without prejudice to the duties imposed on the Scottish Ministers by sections 210(3), 211(2), 212(2) and 213(2) (and subject to subsection (6)), if it appears

to the Scottish Ministers that any recorded matter specified in the direction is not being provided, the Scottish Ministers must, as soon as practicable, consult—

(a) the mental health officer;

(b) the patient's responsible medical officer; and

(c) such other persons as the Scottish Ministers consider appropriate.

(3) If, having regard to any views expressed by persons consulted under subsection (2), the Scottish Ministers are satisfied that a recorded matter specified in the direction is not being provided, the Scottish Ministers must make a reference to the Tribunal.

(4) A reference under subsection (3) must—

(a) state—

(i) the name and address of the patient;

(ii) the name and address of the patient's named person;

(iii) the reason for making the reference; and

(b) be accompanied by such documents as may be prescribed by regulations.

(5) A reference under subsection (3) must be submitted as soon as practicable after the duty to submit it arises.

(6) Subsections (2) to (5) do not apply—

(a) where the Scottish Ministers are required to revoke the direction under section 210 or 212; or

(b) where the Scottish Ministers have made a reference under section 210A(1).

212C Reference to Tribunal under section 212B(3): notification

Where the Scottish Ministers are required by section 212B(3) to make a reference to the Tribunal, the Scottish Ministers must, as soon as practicable after the duty to make the reference arises, give notice that the reference is to be made to—

(a) the patient;

(b) the patient's named person;

(c) any guardian of the patient;

(d) any welfare attorney of the patient;

(e) the patient's responsible medical officer;

(f) the mental health officer; and

(g) the Commission.

212D Reference concerning non-provision of recorded matters: mental health officer report for Tribunal

Where the Tribunal is considering a reference under section 212B (reference regarding the non-provision of a recorded matter) and is not satisfied that it has

sufficient information to enable it to make a decision, the Tribunal may require the mental health officer to prepare and submit to it a report—

(a) giving the views of the mental health officer on the non-provision of the recorded matter; and

(b) giving any other information which the mental health officer considers may assist the Tribunal in considering the application.

213A Application by Scottish Ministers: notification

Where, by virtue of section 212A, an application is to be made under section 213B, the Scottish Ministers must, as soon as practicable after the duty to make the application arises, give notice to the persons mentioned in paragraphs (a) to (g) of section 212C that the application is to be, or as the case may be, has been made.

213B Application to Tribunal

An application under this section to the Tribunal by the Scottish Ministers for an order under section 215—

(a) must state—

(i) the name and address of the patient;

(ii) the name and address of the patient's named person;

(iii) the order (or orders sought);

(iv) the modification of the recorded matters specified in the direction that is proposed by the Scottish Ministers;

(v) the reasons for seeking that modification; and

(b) must be accompanied by such documents as may be prescribed by regulations.".

(9) In section 214 (application to Tribunal by patient and named person)—

(a) in subsection (2)—

(i) for the words from ", subject to subsections" to the end of the subsection substitute "—

(a) subject to subsections (4) to (6), make an application to the Tribunal for the revocation of the direction to which the patient is subject; or

(b) subject to subsections (6A) and (6B), make an application to the Tribunal for an order varying the direction by modifying any recorded matter specified in it.",

(b) in subsection (4), for "this section" substitute "subsection (2)(a)",

(c) in subsection (5), in the opening words, for "this section" substitute "subsection (2)(a)",

(d) in subsection (6), in the opening words, for "this section" substitute "subsection (2)(a)",

(e) after subsection (6), insert—

"(6A) An application under subsection (2)(b) may not be made before the expiry of the period of three months beginning with the day on which the direction was made.

(6B) The persons mentioned in subsection (3) may not make more than one application under subsection (2)(b) during—

(a) the period of 12 months beginning with the day on which the direction was made; or

(b) any subsequent period of 12 months that begins with, or with an anniversary of, the expiry of the period of 12 months mentioned in paragraph (a).".

(10) In section 215 (powers of Tribunal on reference under section 210(3), 211(2) or 213(2) or on application under section 214(2))—

(a) in subsection (1)—

(i) in paragraph (a)—

(aa) after "210(3)," insert "210A(1),"

(bb) after "211(2)" insert ", 212B(3)", and

(ii) in paragraph (b) after "section" insert "213B or section", and

(b) after subsection (2), insert—

"(2A) If the Tribunal is satisfied—

(a) that it continues to be necessary for the patient to be subject to the direction; and

(b) that the direction should be varied by modifying any recorded matter specified in it,

it must make an order varying the direction in that way.".

(11) After section 217, insert—

"217A Meaning of "modify"

In this Chapter any reference to modifying recorded matters specified in a relevant direction includes a reference to—

(a) amending those recorded matters;

(b) removing from the direction any recorded matter;

(c) adding to the direction any recorded matter;

(d) specifying a recorded matter in a direction which does not specify a recorded matter.".

PART 5

Meaning of "recorded matter"

Meaning of "recorded matter"

6.—(1) The 2003 Act is amended as follows.

(2) In section 64 (powers of Tribunal on application under section 63: compulsory treatment order), for subsection (4)(a)(ii) substitute—

"(ii) specifying a recorded matter;".

(3) In section 329 (interpretation), for the definition of "recorded matter", substitute—

""recorded matter" means such medical treatment, community care services, relevant services, other treatment, care or service as the Tribunal considers appropriate;".

Name
Authorised to sign by the Scottish Ministers

St Andrews House
Edinburgh

EXPLANATORY NOTE

(This note is not part of the Order)

This Order principally amends the Mental Health Care and Treatment (Scotland) Act 2003 ("the 2003 Act") to remove an incompatibility with the European Convention on Human Rights (ECHR). The ability of the Mental Health Tribunal for Scotland ("the Tribunal") to specify and subsequently modify, "recorded matters" in a "civil" order such as a community treatment order but not in a "forensic" order such as a compulsion order was found to violate article 14 (protection from discrimination) of the ECHR in the case of X v Mental Health Tribunal for Scotland [2022] CSOH 78.

In order to address the incompatibility this Order amends Parts 9 (compulsion orders), 10 (compulsion orders and restriction orders) and 11 (hospital directions and transfer for treatment directions) of the 2003 Act. The Order enables recorded matters to be varied (added, amended or removed) during reviews of compulsion orders, compulsion orders with restriction orders, hospital directions and transfer for treatment directions.

The Order creates duties on responsible medical officers and on the Scottish Ministers to take steps, consult key persons and, where appropriate, make applications or references to the Tribunal when modification of recorded matters may be required or where recorded matters are not being provided, and confers corresponding powers on the Tribunal to vary recorded matters when determining relevant applications, reviews or references.

Amendments to Part 9 of the 2003 Act (compulsion orders)

Article 2 of this Order amends sections 145, 150, 154, 155, 156, 158, 159, 164, 166, 167, 168, 169, 171, 172, 175 and inserts sections 161A and 161B.

Section 145 (mandatory reviews: further steps to be taken where compulsion order not revoked) is amended to add a requirement for the responsible medical officer to consider whether recorded matters in a compulsion order should be modified during a further review of the order.

Section 154 (responsible medical officer's duty where extension and variation proposed) is amended to introduce a requirement that the responsible medical officer, when conducting a further review of the compulsion order, proposes changing the order by modifying recorded matters. Subsection (3) provides that the Mental Health Officer must be notified of a proposed application to the Tribunal and of the proposed changes to recorded matters.

Section 155 (mental health officer's duties: extension and variation of compulsion order) sets out the duties of the mental health officer following notification under section 154(3) and section 156 (responsible medical officer's duty to apply for extension or variation of compulsion order) places a duty on the responsible medical officer to apply to the Tribunal where they are satisfied the compulsion order should remain in place and that the order be varied. Both sections are amended to add in references to recorded matters, reflecting the fact that the order can be varied by modifying a recorded matter in addition to a measure. Likewise, section 158 (application to tribunal for extension and variation of compulsion order) is amended to ensure that such variation can include modification of a recorded matter, in addition to a measure.

Section 159 (responsible medical officer's duties: variation of compulsion order) requires the responsible medical officer to consider on an ongoing basis whether the measures specified in a

compulsion order need to be varied. Amendments are therefore made so that references to considering measures will include consideration of recorded matters.

New section 161A (recorded matters: reference to Tribunal by responsible medical officer) requires the responsible medical officer to make a reference to the Tribunal if any recorded matter is not being delivered to the patient. The responsible medical officer must seek the views of the mental health officer and such other individuals the responsible medical officer considers appropriate. The responsible medical officer must make a reference to the Tribunal unless they are making an application to revoke the compulsion order, or they have made an application to extend or vary the order.

New section 161B (reference to Tribunal under section 161A(3): notification) imposes notification requirements on the responsible medical officer where they have made a reference under section 161A. Persons to be notified are: the patient, their named person, any guardian and/or welfare attorney, the mental health officer and the Mental Welfare Commission.

Section 164 (applications to Tribunal by patient etc. for revocation or variation of compulsion order) allows patients and their named persons to apply to the Tribunal to vary a compulsion order by modifying measures. Section 166 (powers of the Tribunal on review under section 165) concerns the Tribunal's powers in relation to a responsible medical officer's determination to extend a compulsion order, including the modification of any measures. Both sections are amended to add in modification of recorded matters in addition to measures.

Section 167 (powers of the Tribunal on application under section 149, 158, 161, 163 or 164) is amended to give the Tribunal power when extending or varying the order to specify a recorded matter and modify recorded matters. Section 168 (interim extension etc. of order: application under section 149 or 158) allows the Tribunal to make interim orders that extend and vary compulsion orders by modifying measures for up to 28 days. Amendments are made to ensure the Tribunal can make interim orders varying a compulsion order by modifying recorded matters.

Section 169 (interim variation of order following application, reference or review under Chapter) allows the Tribunal to make interim variations to compulsion orders by modifying measures while an application, reference or review is pending. An interim order varying the compulsion order by modifying measures can be made for a period not exceeding 28 days. Amendments ensure that interim orders can include modification of recorded matters in addition to measures. The section is also amended to ensure that it applies to a reference under section 161A regarding non-provision of a recorded matter.

Section 171 (powers of the Tribunal under section 161A or 162) is amended to allow the Tribunal to vary or revoke a compulsion order upon a section 161A reference by the responsible medical officer which in addition to modifying measures includes modifying recorded matters.

Section 172 (tribunal's order varying compulsion order) is amended to ensure that the Tribunal, after making a determination to vary a compulsion order, can specify any modifications to recorded matters as well as to include other recorded matters not in the original application.

Section 175 (meaning of modify) contains the definition of 'modify'. This is amended to include adding, removing, or amending recorded matters in a compulsion order. A further insertion also clarifies that the meaning of modify includes specifying a recorded matter in an order which does not specify a recorded matter.

Article 3 of this Order amends the Mental Health (Compulsion orders - documents and reports to be submitted to the Tribunal) (Scotland) Regulations 2005 ("the 2005 Regulations"). The 2005 Regulations provide that particular documents must accompany certain types of application to the Tribunal and set out reports that the Tribunal may require to be prepared and submitted to it in connection with certain applications or a particular determination. Article 3 inserts new regulation 4A (reference concerning non-provision of a recoded matter: report to be prepared and submitted to Tribunal). The effect is that the Tribunal can request a report and relevant information from the mental health officer on their views about the non-provision of a recorded matter which would assist the Tribunal in considering the application.

Amendments to Part 10 of the 2003 Act (compulsion orders and restriction orders)

Article 4 of this Order amends Part 10 of the 2003 Act to make parallel provision for cases where a compulsion order is accompanied by a restriction order.

Sections 182 (review of compulsion order and restriction order) and 184 (responsible medical officer's duty to keep compulsion order and restriction order under review) are amended so that where certain conditions are met there is a duty placed upon the responsible medical officer to comply with section 184A. New section 184A (responsible medical officer's duties: variation of compulsion order) is inserted to require the responsible medical officer, where the statutory criteria for continuing the order are met, to consider modification of any recorded matter, to assess the patient's treatment needs, consult the mental health officer and others, and (if appropriate) to recommend variation of recorded matters in reports prepared for annual or other reviews.

New section 184B (recorded matters: report to Scottish Ministers by responsible medical officer) requires the responsible medical officer, where satisfied that a recorded matter is not being provided, to submit a report to the Scottish Ministers. New section 185A (duties of Scottish Ministers on receiving report from responsible medical officer under section 184B(3)) requires the Scottish Ministers to refer the case to the Tribunal upon receipt of such a report and to notify specified persons.

Section 188 (duty of Scottish Ministers to keep compulsion order and restriction order under review) is amended so that where certain conditions are met there is a duty placed upon the Scottish Ministers to comply with section 188A. Section 188A (the Scottish Ministers' duties: variation of compulsion order) is inserted to require the Scottish Ministers, where the statutory criteria for continuing the order are met, to consider modification of recorded matters, undertake assessment and consultation, notify the responsible medical officer and mental health officer if they propose to apply to the Tribunal to vary recorded matters, and (if satisfied) to apply to the Tribunal. New sections 188B (recorded matters: Scottish Ministers' duties), 188C (reference to Tribunal under section 188B(3): notification) and 188D (reference concerning non-provision of recorded matters: mental health officer report for Tribunal) create duties on the Scottish Ministers to consult and notify specified persons and to make a reference to the Tribunal where they are satisfied that a recorded matter is not being provided, and allow the Tribunal to require a mental health officer report when considering such references.

Section 190 (application by Scottish Ministers: notification) is amended to provide for notification duties in relation to applications made by the Scottish Ministers by virtue of new section 188A.

Sections 191 (application to Tribunal) and 192 (application to Tribunal by patient and named person) are amended so that patients and named persons may apply to vary recorded matters in a compulsion order with a restriction order, subject to frequency limits for such variation applications.

Section 193 (Powers of Tribunal on reference under section 185(1), 187(2) or 189(2) or application under section 191 or 192(2)) is amended to include references arising from the new duties. Subsection (7A) is inserted to require the Tribunal, where satisfied that the compulsion order and the restriction order should continue and that a recorded matter should be modified, to make an order varying the compulsion order accordingly.

Section 194 (Tribunal's powers etc. when varying compulsion order) is amended consequentially to ensure that the Tribunal's powers apply to an order varied under section 193(7A) concerning the modification of a recorded matter.

Section 199 (meaning of modify) expands the meaning of "modify" to include recorded matters. A further insertion also clarifies that the meaning of modify includes specifying a recorded matter in an order which does not specify a recorded matter.

Amendments to Part 11 of the 2003 Act (hospital directions and transfer for treatment directions)

Article 5 of this Order makes equivalent provision in Part 11 of the 2003 Act for hospital directions and transfer for treatment directions.

Sections 206 (review of hospital direction and transfer for treatment direction) and 208 (responsible medical officer's duty to keep directions under review) are amended so that where certain conditions are met there is a duty placed upon the responsible medical officer to comply with section 208A. New section 208A (responsible medical officer's duties: variation of direction) is inserted to require the responsible medical officer, where the statutory criteria for continuation are met, to consider modification of recorded matters, assess, consult, notify the mental health officer of proposed recommendations and include recommendations in reports to the Scottish Ministers.

New section 208B (recorded matters: report to Scottish Ministers by responsible medical officer) requires the responsible medical officer, where satisfied that a recorded matter is not being provided, to submit a report to the Scottish Ministers (subsection (3)). New Section 210A (duties of Scottish Ministers on receiving report from responsible medical officer under section 208B(3)) then requires the Scottish Ministers to refer the case to the Tribunal and to notify specified persons.

Section 212 (duty of Scottish Ministers to keep directions under review) is amended so that where certain conditions are met there is a duty placed upon the Scottish Ministers to comply with section 212A. New section 212A (the Scottish Ministers' duties: variation of direction) is inserted to require the Scottish Ministers, where the statutory criteria for continuation are met, to consider modification of recorded matters, consult, notify and, if satisfied, apply to the Tribunal under new section 213B (application to Tribunal) for an order under section 215 to vary the direction by modifying any recorded matter specified in it.

New sections 212B (recorded matters: Scottish Ministers' duties), 212C (reference to Tribunal under section 212B(3): notification) and 212D (reference concerning non-provision of recorded matters: mental health officer report for Tribunal) create consultation and reference duties for the Scottish Ministers where they are satisfied that a recorded matter is not being provided, and allow the Tribunal to require a mental health officer report.

New section 213A (application by Scottish Ministers: notification) provides for notifications where the Scottish Ministers by virtue of section 212A, makes an application under section 213B, and new section 213B (application to Tribunal) sets out the content of such an application.

Section 214 (application to Tribunal by patient and named person) is amended to allow patients and named persons to apply to vary a direction by modifying any recorded matter specified in it, subject to initial and annual frequency limits.

Section 215 (powers of Tribunal on reference under section 210(3), 211(2) or 213(2) or on application under section 214(2)) is amended to add the new routes of reference and application and to require the Tribunal, where satisfied that a direction should continue and that a recorded matter should be modified, to make an order varying the direction accordingly.

New section 217A (meaning of modify) clarifies the meaning of "modify" in this Chapter to include adding, amending, removing or newly specifying recorded matters.

Meaning of "recorded matter"

Article 6(2) of this Order amends section 64 of the 2003 Act (powers of Tribunal on application under section 63: compulsory treatment order) to make clear that, when making a compulsory treatment order, the Tribunal may specify a recorded matter.

Article 6(3) of this Order substitutes a new definition of "recorded matter" in section 329 of the 2003 Act (interpretation) so that it includes such medical treatment, community care services, relevant services, and any other treatment, care or service as the Tribunal considers appropriate.

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Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Saul Nassé, the King's Printer for Scotland.

ISBN 978-0-11-106684-3

£8.90

http://www.legislation.gov.uk/id/sdsi/2026/9780111066843

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