SCOTTISH STATUTORY INSTRUMENTS

2004 No. 533

MENTAL HEALTH

The Mental Health (Care and Treatment) (Scotland) Act 2003 Modification Order 2004

Made - - - - 1st December 2004

Coming into force in accordance with article 1

The Scottish Ministers, in exercise of the powers conferred by section 330 of the Mental Health (Care and Treatment) (Scotland) Act 2003(**1**), and of all other powers enabling them in that behalf, hereby make the following Order, a draft of which has, in accordance with section 326(4)(b) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation and commencement

1. This Order may be cited as the Mental Health (Care and Treatment) (Scotland) Act 2003 Modification Order 2004 and shall come into force on the day after the day on which it is made.

Modification of the Mental Health (Care and Treatment) (Scotland) Act 2003

2.—(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 shall be amended as follows.

(2) In section 93 (responsible medical officer's duties: variation of order)–

(a) after subsection (4) insert–

"(4A) If, having regard to any views expressed by persons consulted under subsection (4)(c) above, it continues to appear to the responsible medical officer that the compulsory treatment order should be varied as mentioned in subsection (2) above, the responsible medical officer shall, as soon as practicable, notify the mental health officer–

(a) that the responsible medical officer is proposing to make an application to the Tribunal under section 95 of this Act for an order under section 103 of this Act varying the compulsory treatment order; and

(b) the modification of the measures, or any recorded matter, specified in that order that the responsible medical officer is proposing.

(**1**) 2003 asp 13.

(4B) The mental health officer shall, as soon as practicable after being notified under subsection (4A) above, comply with the requirements in subsection (4C) below.

(4C) Those requirements are–

(a) subject to subsection (4D) below, to interview the patient;

(b) to inform the patient of the matters mentioned in subsection (4E) below;

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

(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 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.

(4D) If it is impracticable for the mental health officer to comply with the requirement in subsection (4C)(a) above, the mental health officer need not do so.

(4E) The matters referred to in subsection (4C)(b) above are–

(a) that the patient's responsible medical officer is proposing to make an application to the Tribunal under section 95 of this Act for an order varying the compulsory treatment order by modifying the measures or a recorded matter specified in it;

(b) the modification of the measures or any recorded matter specified in that order that the responsible medical officer is proposing; and

(c) the patient's rights in relation to such an application."; and

(b) in subsection (5), after "(4)(c) above", insert "and any views expressed by the mental health officer under subsection (4C)(e) above".

(3) In section 95(a) (application to tribunal by responsible medical officer)–

(a) for "(vi)" substitute "(iv)";

(b) the words from "the" to "Act;" become sub paragraph (i); and

(c) after "Act;" insert–

"(ii) whether the mental health officer agrees, or disagrees that the application should be made, or has failed to comply with the duty imposed by section 93(4C)(e)(i) of this Act; and

(iii) if the mental health officer disagrees, the reason for that disagreement.".

(4) In section 158 (application to tribunal for extension and variation of compulsion order)–

(a) after subsection (a)(iv) omit "and"; and

(b) in subsection (a)(v) after "Act", insert–

"; and

(vi) if the mental health officer disagrees, the reason for that disagreement".

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

(a) after subsection (4) insert–