



SCOTTISH EXECUTIVE

Health Directorates
Healthcare Policy and Planning Directorate

Dear Colleague

**THE MENTAL HEALTH (CARE AND TREATMENT)
(SCOTLAND) ACT 2003: AMENDMENTS MADE BY
THE ADULT SUPPORT AND PROTECTION
(SCOTLAND) ACT 2007**

**Mandatory two year review by the Mental Health Tribunal
for Scotland.**

Amendments were made to s101 of the 2003 Act by the Adult Support and Protection Act (Scotland) 2007 (the 2007 Act) to provide that the mandatory review by the Mental Health Tribunal for Scotland will only apply to patients who have been subject to a CTO for 2 years and have not during that time had a review by the Tribunal.

These amendments will be commenced on 5 October 2007.

Annex A explains the effect of the amendments and sets out the procedure to be followed by Responsible Medical Officers when making a section 86 determination for a patient which would extend the overall length of a CTO to greater than 2 years.

Provisions in relation to 2 year reviews for Compulsion Orders and Compulsion Orders with Restrictions (COROs) are not changed by this amendment. Further information relating to the two year review of Compulsion Orders is contained in Annex A.

Annex B sets out the other amendments to the 2003 Act in the 2007 Act and their proposed commencement dates.

You are asked to bring this letter and its Annexes to the attention of relevant staff in your organisation.

Yours sincerely

Geoff Huggins

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31st July 2007

Addresses

For action

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ANNEX A

Mandatory two year review by the Mental Health Tribunal for Scotland: Amendments made in the Adult Support and Protection (Scotland) Act 2007 (the 2007 Act)

Background

1. Section 101 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (the 2003 Act) provides that, in certain circumstances, the Mental Health Tribunal for Scotland has a duty to review a Compulsory Treatment Order (CTO) where a patient's Responsible Medical Officer (RMO) makes a determination under section 86 of the 2003 Act extending the CTO.
2. The policy intention of Section 101(2) (b) of the 2003 Act was to ensure that no more than 2 years would elapse without a review by the Tribunal being triggered for patients on CTOs. The original drafting of the provisions did not meet this intention as the provision took no account of the Tribunal's role in making the CTO in the first place when calculating when reviews by the Tribunal would be triggered. The effect of this would have been that the automatic review by the Tribunal would be triggered 6 months after the CTO was granted by the Tribunal instead of after 2 years. This section was therefore not commenced with the other provisions of the 2003 Act in October 2005.
3. Section 68 of the Adult Support and Protection (Scotland) Act 2007 (the 2007 Act) amends section 101(2)(b) of the 2003 Act to provide that the Tribunal is under a duty to review any determination to extend a CTO where (a) the CTO itself was made 2 years or more before the beginning of the extension being authorised by the determination, (b) no review under section 101 has been triggered or is likely to be triggered in the 2 years prior to the extension of the CTO being authorised by the determination and (c) no application for review under sections 92, 99, 95 or 100 has been made to the Tribunal in those 2 years.
4. It is proposed to commence the amended section of the 2003 Act on 5 October 2007.

Notification to Tribunal

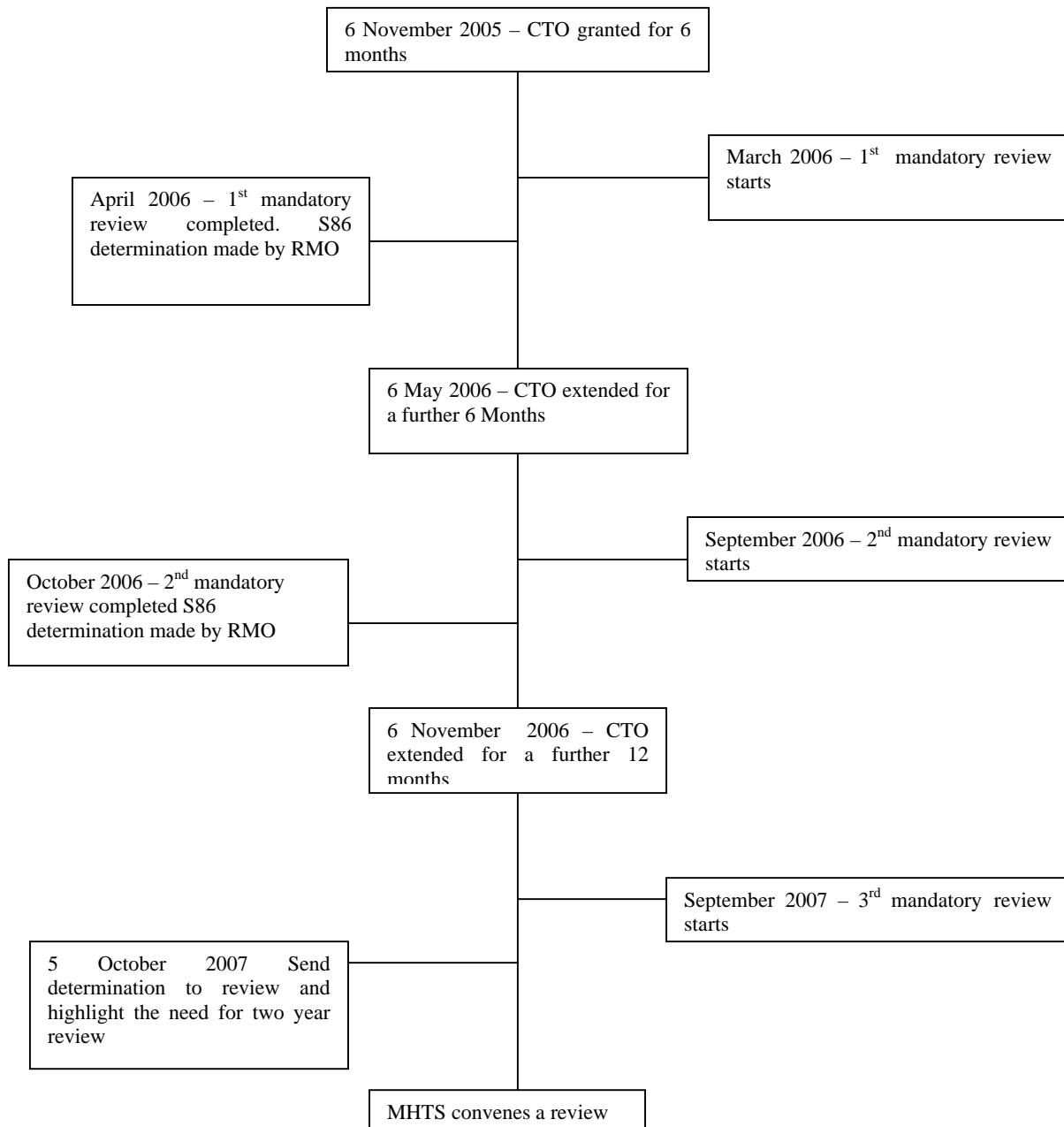
5. RMOs should bear in mind that on receipt of a section 86 determination, the Tribunal may not have all the necessary information to enable it to determine whether the conditions in s101(2)(b) are satisfied and a mandatory review should be carried out. When considering renewal of a CTO with a review date on or after 5 October 2007, when making a section 86 determination for a patient which would extend the overall length of the order to greater than 2 years, RMOs should check whether any relevant hearing has been held by the Tribunal in the preceding two years. If no relevant hearing has been held, this fact should be highlighted to the Tribunal. If the CTO has already been running for more than 2 years the RMO is advised to check at each annual renewal whether a "2 year review" by the Tribunal is required.

Operational Process and timeline for mandatory review by the Mental Health Tribunal for Scotland.

6. The following examples are offered to provide guidance to practitioners and develop a timeline for applications for the two year mandatory review hearing by the Tribunal.

A) CTOs first applied under Mental Health (Care and Treatment) (Scotland) Act 2003.

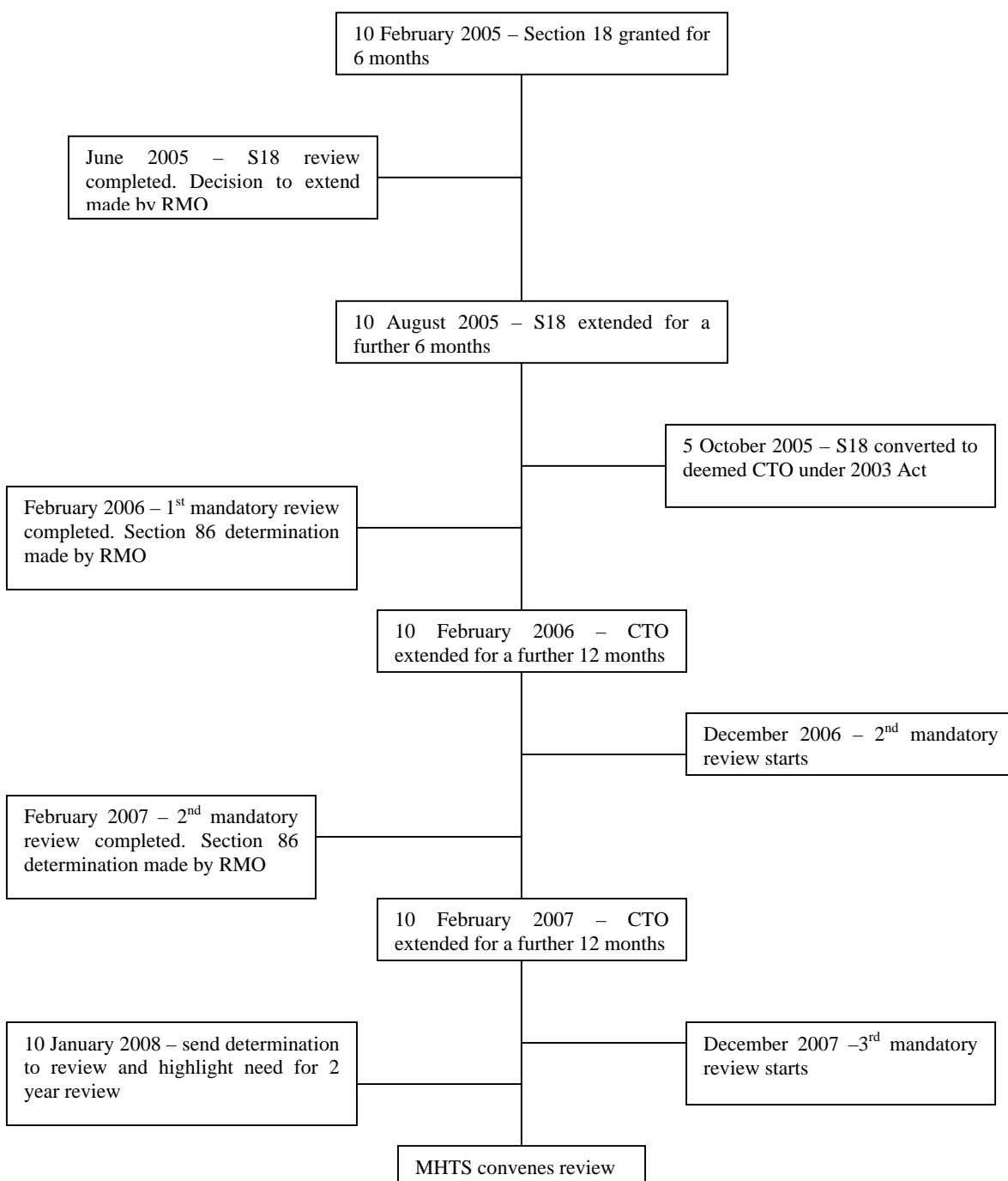
For orders made after the commencement of the 2003 Act; namely those first granted at a Tribunal hearing after 5 October 2005, a hearing will be required if after two years have elapsed the order will still be in force. In this example, at each previous mandatory review, the RMO had determined to extend the order without varying its terms, with the agreement of the designated MHO, and there has been no request for review by the patient or their Named Person, or the Mental Welfare Commission:



B) Deemed CTO - order first made under the Section 18 of the Mental Health (Scotland) Act 1984

For orders made before the commencement of the 2003 Act; namely those first granted at a hearing before a sheriff, before October 2005 which became a ‘deemed’ hospital-based CTO on commencement of the 2003 Act, a hearing will be required if two years have elapsed at the date of next extension and the order is still in force and no hearing has been heard or is scheduled under s 92, 95, 99, 100 by the Tribunal.

In this example, at each previous mandatory review, the RMO had determined to extend the ‘deemed’ order without varying its terms, with the agreement of the designated MHO, without any request for review by the patient or their Named Person or by the Mental Welfare Commission. See example B:



Provisions for review of Compulsion Orders and Compulsion Orders with Restriction Orders

7. Provisions relating to two year reviews of compulsion orders (COs) and compulsion orders with restriction orders (COROs), (sections 152 and 189 of the 2003 Act) are unaffected by the amendments in the 2007 Act. It has been reported that although the provisions relating to the two year review of COs have been in force since the implementation of the 2003 Act in October 2005, the Mental Health Tribunal has not received as many notifications for COs to be reviewed as they would have expected. Responsible Medical Officers are reminded that, when making a decision to extend a CO, under section 152, they should consider whether the patient would be eligible for a two year review and, if so, notify the Tribunal accordingly.

ANNEX B

FURTHER AMENDMENTS IN THE 2007 ACT TO THE 2003 ACT AND THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

Section 69 - Compulsion orders: revocation

1. This section gives the Responsible Medical Officer (RMO), the Scottish Ministers and the Mental Health Tribunal for Scotland the flexibility to recommend or make decisions which lead to the revocation of the compulsion order for patients subject to a compulsion order with a restriction order (CORO) in the following circumstances:

- it is not necessary for the patient to be detained in hospital for the protection of any person from serious harm;
- the patient has a mental disorder which needs treatment;
- the patient does not require to be subject to the compulsion order for the purpose of receiving such treatment.

2. This amendment made provision which allows patients subject to COROs to be absolutely discharged where it is no longer necessary for such patients to receive that treatment compulsorily. This section is now in force as it was commenced on 22 March 2007.

Section 70 – Hospital directions and transfer for treatment directions: revocation

3. This section amended sections 207(5), 208(4), 210(2), 212(4) and 215(4) of the 2003 Act to add an additional test to the criteria for revocation of a patient's transfer for treatment direction or hospital direction. The additional test is that the patient's responsible medical officer, the Scottish Ministers or the Mental Health Tribunal for Scotland, as the case may be, is not satisfied that it continues to be necessary for the patient to be subject to the direction.

4. The effect of these amendments is that where the patient has a mental disorder and still requires to receive treatment, the direction can still be revoked in circumstances where it is no longer considered necessary for the patient to receive that treatment compulsorily in hospital, thus allowing the patient to be returned to prison to be treated voluntarily there. This section is already in force as it was commenced on 22 March 2007.

Section 71 – Compulsory treatment orders and compulsion orders: cross-border transfer of patients etc.

5. This section will amend section 289 of the 2003 Act. Section 289 at present allows the Scottish Ministers to make regulations to make provision for, or in connection with, the removal from Scotland of a patient who is subject to a community-based compulsory treatment order or compulsion order. This amendment will extend the scope of this regulation-making power through the insertion of new subsection (1) (b) of section 289, to allow for regulations to make provision for or in connection with the reception into Scotland

from the rest of the UK, the Isle of Man or the Channel Islands, of patients subject to corresponding or similar community-based orders.

6. Subsection (1) will amend section 289 to provide that regulations made under that provision may or shall make provision as to certain specified matters. Those matters include making exceptions as to notification requirements, allowing for powers and immunities to be conferred on those who are escorting patients who are being removed under the regulations or who are pursuing or restraining such patients in the event that they abscond, and requiring the reception of community-based patients into Scotland to take place only with the consent of hospital managers. In addition, subsection (1) amends section 289 so that regulations may also provide for amendments or modifications to be made to provisions in the 2003 Act or any other enactment.

7. Subsection (2) will amend section 309 of the 2003 Act. These are consequential amendments to extend the scope of the provision allowing regulations to apply absconding provisions in the 2003 Act to patients from other jurisdictions, so that they may apply to non-detained patients as well as patients who are subject to detention.

8. Subsection (3) will amend section 316(1) (c) of the 2003 Act. This is a consequential amendment to a provision in the 2003 Act regarding the scope of an offence of knowingly inducing or assisting a patient to abscond or harbouring a patient. The scope of that offence is extended so that it applies in relation to community-based patients who are being transferred under section 289 of the 2003 Act.

9. Subsection (4) will amend section 326(4)(c) of the 2003 Act, to provide that regulations made under section 289 of the 2003 Act will be subject to affirmative resolution procedure in the Scottish Parliament. These amendments will be timed to coincide with the implementation of amendments to the Mental Health Act 1983 which are currently being considered by the UK Parliament.

Section 72 – Cross-border visits: leave of absence

10. Section 72 will insert a new section 309A into the 2003 Act to provide a power for the Scottish Ministers to make regulations for and in connection with the keeping in charge of a person who is subject to escorted leave of absence authorised under legislation in force in another part of the UK, or in the Isle of Man or the Channel Islands. Such regulations may make such provision by applying sections 301 to 303 of the 2003 Act, with or without modification, to such patients. This new provision will enable regulations to make clear the powers of persons escorting patients under authority conferred under legislation in force in other territories, so that there is clear authority under the 2003 Act for those persons to continue to escort the patient whilst in Scotland. Section 72(2) amends section 326(4)(c) to provide that regulations made under new section 309A of the 2003 Act will be subject to affirmative resolution procedure in the Scottish Parliament. This section will be commenced on 30 June 2007. Further advice will be provided on the regulations made under s309A which are expected to come into force in October 2007.

Section 73 – Applications to the Mental Health Tribunal for Scotland

11. This section will amend Part 3 of Schedule 2 to the 2003 Act by inserting paragraph 13A. The effect of the amendment is that where a relevant application is made in the relevant period but withdrawn before being determined, the application is to be treated for the supervisory review sections of the Act (sections 101, 189 and 213) as not having been made. This amendment will come into force on 30 June 2007.

Section 74 – Mental Health Act 1983: repeal of power to return patients absent from hospital etc.

12. This section will repeal sections 88 and 128 of the Mental Health Act 1983, insofar as they extend to Scotland, in relation to the taking into custody in Scotland of persons who have absconded from England and Wales, and the offence of inducing or assisting a patient detained in England and Wales under the Mental Health Act 1983 to abscond. These powers are now provided for by way of sections 309 and 316 of the 2003 Act. The commencement of this amendment will be timed to coincide with the implementation of amendments to the Mental Health Act 1983 which are currently being considered by the UK Parliament.

Section 75 – Assessment orders: amendment of the Criminal Procedure (Scotland) Act 1995

13. This section will amend the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), as amended by the 2003 Act. At present, the effect of section 144 of the 1995 Act is that in certain circumstances an accused may be called upon to plead at the first calling, when they may be unfit to do so. This amendment makes provision in the 1995 Act (by the insertion of new section 145ZA) that where an accused person is present at the first calling of a case in a summary prosecution and a court is making the accused subject to an assessment order (to assess the extent of their mental disorder), the court may adjourn the case without calling on the accused to plead to any charge against him or her. Such an adjournment may be for a period not exceeding 28 days or, in the case of a further adjournment, a period not exceeding 7 days.

14. Section 145 of the 1995 Act already provides for a similar power, where the accused is present at the first calling, for a court to adjourn the case without calling on the accused to plead in circumstances where the accused is being remanded in custody or on bail, or ordained to appear at a fixed diet. This section will be commenced on 30 June 2007.

Schedule 1 – Minor and Consequential amendments

15. Paragraph 2 provides minor consequential amendments to the Disabled Persons (Services, Consultation and Representation) Act 1986 to amend references in that Act from the Mental Health (Scotland) Act 1984 to the Mental Health (Care and Treatment)(Scotland) Act 2003. We propose to commence this section on 30 June 2007.

16. Paragraph 6 will amend the 2003 Act to reduce the minimum number of medical commissioners which the Commission is required to appoint to one. This change reflects the Commission's reduced role in relation to the discharge of patients under the Act. We propose to commence this amendment on 30 June 2007.