



SCOTTISH EXECUTIVE

Health Department
Directorate of Healthcare Policy and Strategy

Dear Colleague

THE MENTAL HEALTH (CARE AND TREATMENT)(SCOTLAND) ACT 2003: AMENDMENTS TO PARTS 10 AND 11 RE THE NECESSITY TEST

This letter confirms that the amendment made to Parts 10 and 11 of the Mental Health (Care and Treatment) (Scotland) Act 2003, in the Adult Support and Protection Act 2007, came into force on 22 March. A copy of the text of the amendments was attached to my letter of 23 February.

The 2007 Act may be accessed at <http://www.scottish.parliament.uk/business/bills/62-adultSupport/index.htm> Annex A attached explains the amendments in detail. The other amendments made by the 2007 Act have not been commenced yet. A further HDL will issue soon explaining these in detail.

You are asked to bring this letter to the attention of relevant staff, in particular those working with restricted patients.

Yours sincerely

GEOFF HUGGINS

30 May 2007

Addresses

For action

Chief Executives, NHS Boards
Chief Executive, State Hospital
Directors of Social Work/Chief Social Work Officers
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For information

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Chief Executive, Mental Health Tribunal for Scotland
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**THE MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003:
AMENDMENTS TO PARTS 10 AND 11 IN THE ADULT SUPPORT AND PROTECTION
ACT 2007**

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.

This amendment makes provision which allows patients subject to compulsion orders with restrictions to be absolutely discharged where it is no longer necessary for such patients to receive that treatment compulsorily.

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

2. This section amends sections 207(5), 208(4), 210(2), 212(4) and 215(4) of the 2003 Act so as 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.

3. 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.