

GUIDANCE TO TRIBUNAL MEMBERS NO. 3/2024

Schedule 3 to the Mental Health (Care and Treatment) (Scotland) Act 2003

1. Schedule 3 to the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) creates a process for making a CTO for a patient, P, subject to a hospital direction (HD) or transfer for treatment direction (TTD). The process is quite technical, and this guidance attempts to summarise its main features.

2. If P has been transferred from prison to hospital during their sentence under an HD or TTD, it may be thought that they will need continuing care and treatment after their sentence ends. The length of the sentence they were originally given is still relevant. Section 217 of the 2003 Act provides that, where a patient is released under Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) or otherwise, the direction to which the patient is subject shall cease to have effect. So the direction cannot authorise their detention beyond the date when they are due to be released. Page 2 of the CTO application (CTO1 form) will tell you the type of direction to which P is subject, and the earliest date for licence (release), the EDL, or sentence end date (SED).

3. Next, there is the issue of when a CTO can be made for P. The CTO will only come into force if the direction concerned ceases to have effect within 28 days of the CTO being made, with the day of the hearing being day 1 (see paragraph 2(1)(a) of Schedule 3 to the 2003 Act). In other words, it is only during a ‘window period’ towards the end of the sentence that the CTO can be made. PLEASE NOTE THAT THE HEARING WILL NEED TO TAKE PLACE AT THE LATEST ON THE DAY BEFORE THE EDL. THIS IS SO THAT THE MEASURES WILL TAKE EFFECT FROM MIDNIGHT AT THE POINT WHEN THE PATIENT WOULD OTHERWISE BE DUE FOR RELEASE. If the EDL is 28 March, that means that P is released (notionally) with effect from midnight at the end of 27 March, and the date on which the direction ceases to have effect is 28 March. The first day on which a CTO can be made is therefore 1 March, and the last day is 27 March. That also means that 27 March is the last date for any continuation of a hearing held earlier in the month.

4. If a CTO is granted, the FFR should make clear when the CTO actually takes effect (the EDL or SED).

5. The CTO application is subject to all the usual requirements regarding evidence and criteria, though the necessity criterion is that a CTO “immediately after the ... direction ... ceases to have effect” is necessary (see paragraph 2(2) of Schedule 3). The CTO will authorise the measures specified in it for 6 months beginning with the EDL or SED.

6. Members should also note that where the patient is subject to a HD or a TTD and an application is made for a CTO, it is **not competent** for the Tribunal to grant an interim CTO (see paragraph 3 of Schedule 3).