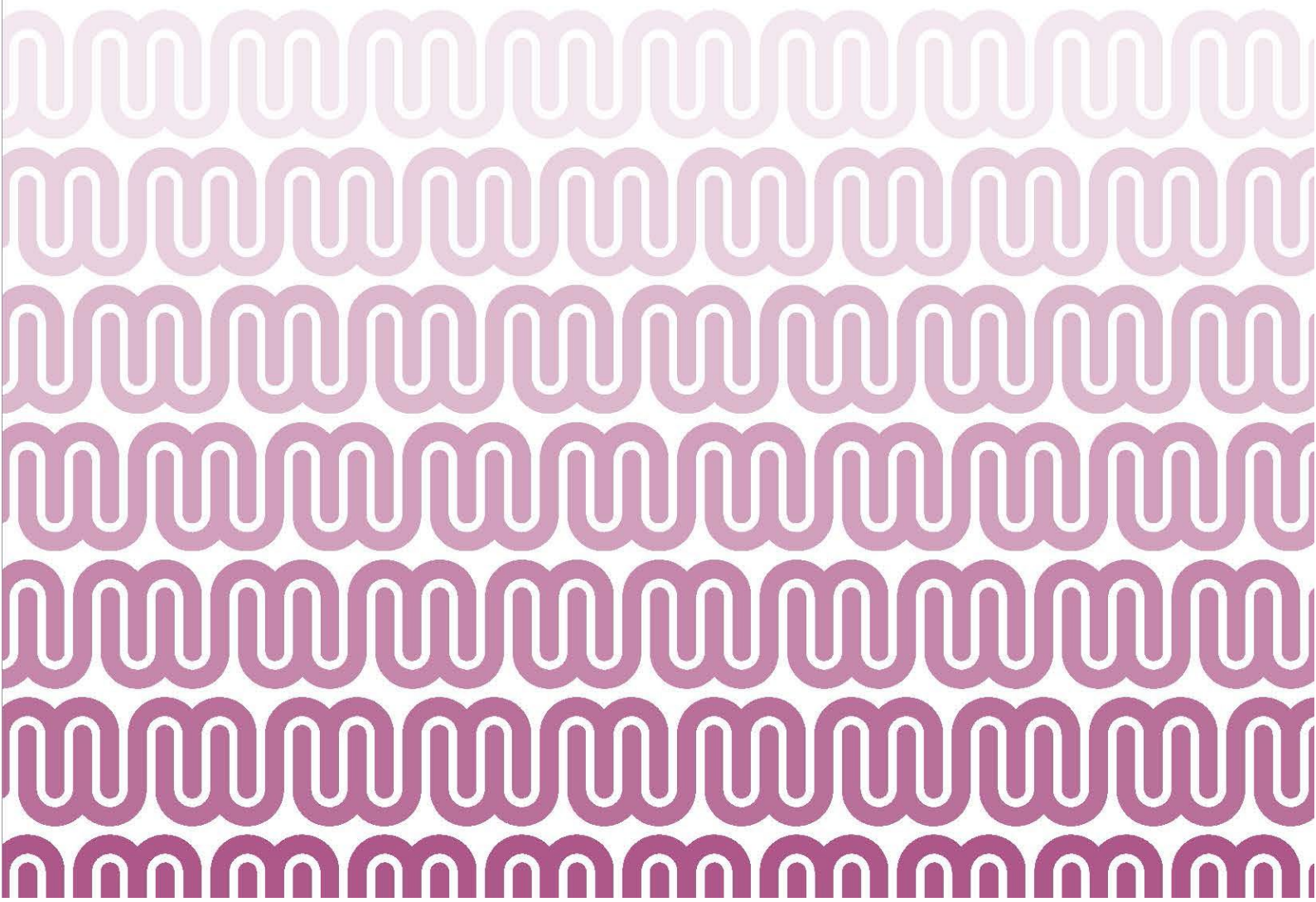


# **Patients' rights to apply to the Tribunal following variation or extension of a Compulsory Treatment Order (CTO)**

Advice note

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January 2026



# Our mission and purpose

## Our Mission

To be a leading and independent voice in promoting a society where people with mental illness, learning disabilities, dementia and related conditions are treated fairly, have their rights respected, and have appropriate support to live the life of their choice.

## Our Purpose

We protect and promote the human rights of people with mental illness, learning disabilities, dementia and related conditions.

## Our Priorities

To achieve our mission and purpose over the next three years we have identified four strategic priorities.

- To challenge and to promote change
- Focus on the most vulnerable
- Increase our impact (in the work that we do)
- Improve our efficiency and effectiveness

## Our Activity

- Influencing and empowering
- Visiting individuals
- Monitoring the law
- Investigations and casework
- Information and advice

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Relevant legislation: Mental Health (Care and Treatment) (Scotland) Act 2003

Intended audience: Mental Health Officers, Responsible Medical Officers, Health Board Mental Health Act Administrators, Tribunal Liaison Staff, Advocacy Providers

## Purpose of this guidance

This guidance sets out the legal position under the Mental Health (Care and Treatment) (Scotland) Act 2003 regarding patients' rights to apply to the Mental Health Tribunal for Scotland following a variation or extension of a Compulsory Treatment Order (CTO).

It was produced in response to concerns raised with the Commission in 2025 that some patients may have been wrongly informed that they could not apply to the Tribunal for three months after their CTO was renewed by the responsible medical officer. In some health board areas, standard patients' letters and information leaflets appeared to apply the 'three-month rule', during which time no appeal to the Tribunal can be made, too broadly or incorrectly – in particular following extensions under section 86 by the responsible medical officer (RMO), or variations by the Tribunal following an application under section 95 by the RMO.

This guidance clarifies:

- What the 'three-month rule' is and why it exists;
- The specific circumstances in which it applies;
- The situations in which patients have a right to apply immediately to the Tribunal, without any waiting period;
- How services should ensure that patients are provided with accurate and lawful information about their rights.

## What is the three-month rule?

### Purpose of the rule

The three-month rule is a statutory restriction that limits when a patient or named person can make an application to the Mental Health Tribunal under section 100 of the 2003 Act to vary or revoke a CTO. It is intended to:

- Prevent repetitive or overly frequent applications where there has been no significant change in circumstances; and
- Ensure that the Tribunal's time is used efficiently while still protecting the patient's right to have their case reviewed regularly.

### How the rule works

Under section 100(4), a patient cannot apply to the Tribunal under section 100 during the three-month period following certain types of Tribunal decisions.

This restriction applies only to applications made under section 100 – the general route available to patients who wish to challenge a CTO. It does not apply to other appeal rights.

### When does the three-month rule apply?

The three-month restriction applies only in the following circumstances:

Triggering event	Legal basis
The original CTO was made by the Tribunal	Section 100(5)(a)
The Tribunal made an order following a review under section 101 (for example, because of a change in diagnosis or MHO disagreement)	Section 100(5)(b) and 102
The Tribunal made an order under section 103 following an application under section 92 to extend and vary the CTO	Section 100(5)(c)

## **When does the three-month rule not apply?**

The three-month rule does not apply in the following circumstances:

- When the CTO is varied by the Tribunal following an application by the RMO under section 95: Patients and named persons may apply immediately to the Tribunal under section 100 to revoke or further vary the order.
- When the CTO is extended by the RMO under section 86: Patients and named persons may apply immediately under section 99 to revoke the extension, unless a Tribunal review is already underway under section 101, in which case a separate application is not required or permitted.
- When the patient is using another legal route, such as section 320 (appeal to Sheriff Principal): The three-month restriction does not apply to these distinct appeal or application rights.

## **Variation of a CTO without extension of the order (section 95)**

When the RMO believes the order should be varied before it is due to expire, the RMO applies to the Tribunal under section 95 for an order to vary the order. The Tribunal decides whether to make the variation under section 103. The patient may submit representations and lead evidence in the Tribunal process under section 103(5) and (6).

Separately, under section 100, the patient or named person may apply to the Tribunal for an order to revoke or further vary the CTO at any time. As variation without extension is not listed among the events triggering the three-month bar in section 100(4), the patient may apply immediately under section 100(2).

## Extension of a CTO by the RMO (section 86)

When a CTO is extended by the RMO under section 86, the patient or named person may apply to the Tribunal under section 99 for an order revoking the determination. This right is immediate and is not subject to a three-month restriction.

However, section 99(3) provides that an application under section 99 is not competent where the Tribunal is already required to review the determination under section 101. Section 101 applies where:

- the MHO disagrees with the extension, or fails to provide an opinion (section 101(2)(a)(ii));
- the type of mental disorder has changed (section 101(2)(a)(i)); or
- there has been no Tribunal decision in relation to the order for two years (section 101(2)(b) and (3)).

In these cases, the Tribunal conducts a statutory review under section 101, and the patient is a party to that review. A separate application under section 99 is not required or permitted.

### Summary Table

Event	Triggering Section	Patient Right to Apply	Applicable Section	Three-Month Restriction
RMO application to vary CTO	s95	Yes	s100	No
CTO extended by RMO	s86	Yes	s99	No (unless s101 applies)
CTO made by Tribunal	s64(4)	Yes (but not within 3 months)	s100	Yes – statutory bar applies (s100(4))
Tribunal review confirming extension by RMO	s102	Yes (but not within 3 months)	s100	Yes – statutory bar applies (s100(4))
Tribunal makes order following RMO application to extend and vary CTO	s92	Yes (but not within 3 months)	s100	Yes – statutory bar applies (s100(4))



## Recommendations for Services

1. Ensure all patient letters and leaflets accurately describe the right to apply to the Tribunal under sections 99 and 100.
2. Avoid generic statements that patients "cannot appeal for three months" unless specifically referring to section 100 in circumstances where the statutory bar applies.
3. If a statutory Tribunal review is underway under section 101, patients should be advised that they are entitled to participate in that review and that no separate application under section 99 is required.
4. The Commission is available to review proposed patient information materials on request.

## Further Information

For further advice on this matter, please contact the Commission at:

Mental Welfare Commission for Scotland

Thistle House,

91 Haymarket Terrace,

Edinburgh

EH12 5HE

Telephone: 0131 313 8777

Email: [enquiries@mwscot.org.uk](mailto:enquiries@mwscot.org.uk)

This Advice Note reflects the law as at publication date and will be reviewed periodically.



If you have any comments or feedback on this publication, please contact us:

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