

MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 19 – Entry, Removal and Detention Powers

Sections 293 to 296: removal order

Application for a removal order

581. [Section 293\(1\)](#) confers on a sheriff the power to grant a removal order, on the application of a mental health officer for the area in which the premises to which the order relates are situated. A removal order may be granted where the sheriff is satisfied that a person over the age of 16 has a mental disorder, is vulnerable in one of a number of ways laid out in subsection (2) and is likely to suffer significant harm if not removed to a place of safety.
582. A removal order authorises the removal, within 72 hours, of the person who is the subject of the order to a specified place of safety and his or her detention in that place for a specified period of up to 7 days. Such an order also grants authority to enter premises and to open lock-fast places.
583. Subsections (4) to (7) deal with procedural aspects of removal orders.
584. Where it is impracticable for an application for a removal order to be made to a sheriff and any delay in obtaining an order is likely to be prejudicial to the person concerned, section 294 allows the application to be made to a justice of the peace for the commission area in which the premises are situated. The grounds for, and terms of, the order, would be the same as for an order under section 293.

Recall or variation of a removal order

585. [Section 295](#) provides that where a person is subject to a removal order, that person, or any person claiming an interest in his or her welfare, may apply for a further order recalling or varying the removal order. The removal order may be varied by specifying a different place of safety, thereby authorising the removal of the person to that place of safety and his or her detention there for the remainder of the period originally specified. Subsection (2) makes clear that where a person is to be moved to a different place of safety, this must happen within 72 hours of the variation order being granted. The 7-day detention period continues to run from when the removal order was made.
586. Subsections (3) to (5) deal with procedural aspects of applications for recall or variation.
587. Where the sheriff grants a variation order, the sheriff may, in accordance with subsection (6), make an order that the person concerned be returned to the premises from which the person was originally removed, or be taken to some other place chosen by that person.

*These notes relate to the Mental Health (Care and Treatment) (Scotland)
Act 2003 (asp 13) which received Royal Assent on 25 April 2003*

Appeals against a removal order or an order recalling or varying a removal order

588. [Section 296](#) provides that no appeal is possible against a decision of a sheriff or a justice of the peace to make or refuse to make a removal order, nor against a decision to make or refuse to make an order to recall or vary a removal order.