



# Mental Health (Care and Treatment) (Scotland) Act 2003

2003 asp 13

## PART 20

### ABSCONDING

#### *Absconding*

#### **301 Absconding etc. by patients subject to compulsory treatment order**

- (1) A patient who is subject to a compulsory treatment order authorising detention in hospital and who—
- (a) absconds from—
    - (i) any place where the patient is kept pending removal to hospital under the order; or
    - (ii) the hospital in which, under the order, the patient is being detained; or
  - (b) while being removed to hospital under the order or transferred under section 124 of this Act, absconds,
- is liable to be taken into custody and dealt with in accordance with section 303 of this Act.
- (2) A patient who is subject to such an order and in respect of whom—
- (a) a certificate under section 127(1) of this Act has effect; and
  - (b) a condition under subsection (6) of that section requires—
    - (i) that the patient be kept in the charge of an authorised person or reside continuously or for or at specified times at a specified place; or
    - (ii) that the patient, on being recalled or on the expiry of a specified period or on or after the occurrence of a specified event, return to the hospital in which the patient was detained under the order or go to such other place as may be specified,
- and who absconds from the charge of that authorised person or otherwise fails to comply with the condition is liable to be taken into custody and dealt with in accordance with section 303 of this Act.

- (3) A patient who is subject to a compulsory treatment order imposing a requirement that the patient reside at a specified place and who fails to comply with that requirement is liable to be taken into custody and dealt with in accordance with section 303 of this Act.
- (4) A patient who is subject to a compulsory treatment order imposing a requirement that the patient obtain the approval of the mental health officer to any proposed change of address and who changes address without having obtained that approval is liable to be taken into custody and dealt with in accordance with section 303 of this Act.
- (5) A patient who has been taken into custody under this section and who absconds from that custody remains liable to be taken into custody and dealt with in accordance with section 303 of this Act.

### **302 Absconding etc. by other patients**

- (1) Subsection (2) below applies to a patient—
  - (a) who is subject to—
    - (i) an interim compulsory treatment order authorising detention;
    - (ii) a short-term detention certificate; or
    - (iii) a certificate under section 114(2) or 115(2) of this Act authorising continued detention;
  - (b) who is being detained in pursuance of an extension certificate or under the power conferred by section 68 of this Act;
  - (c) to whom an emergency detention certificate applies; or
  - (d) who is being detained in hospital under the power conferred by section 113(5) or 299 of this Act.
- (2) A patient to whom this subsection applies and who absconds from—
  - (a) any place where the patient is kept pending removal to hospital under the order or certificate; or
  - (b) the hospital in which, under the order, certificate or, as the case may be, power, the patient is detained,
 is liable to be taken into custody and dealt with in accordance with section 303 of this Act.
- (3) A patient who is subject to an interim compulsory treatment order imposing a requirement that the patient reside continuously or for or at specified times at a specified place and who fails to comply with that requirement is liable to be taken into custody and dealt with in accordance with section 303 of this Act.
- (4) A patient who is subject to an interim compulsory treatment order authorising detention and in respect of whom—
  - (a) a certificate under section 127(3) of this Act has effect; and
  - (b) a condition under subsection (6) of that section requires—
    - (i) that the patient be kept in the charge of an authorised person or reside continuously or for or at specified times at a specified place; or
    - (ii) that the patient, on being recalled or on the expiry of a specified period or on or after the occurrence of a specified event, return to the hospital in which the patient was detained under the order or go to such other place as may be specified,

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*Status: This is the original version (as it was originally enacted).*

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and who absconds from the charge of that authorised person or otherwise fails to comply with any such condition is liable to be taken into custody and dealt with in accordance with section 303 of this Act.

- (5) A patient who is subject to a short-term detention certificate in respect of whom—
- (a) a certificate under section 53(1) of this Act has effect; and
  - (b) a condition under subsection (4) of that section requires—
    - (i) that the patient be kept in the charge of an authorised person or reside continuously or for or at specified times at a specified place; or
    - (ii) that the patient, on being recalled or on the expiry of a specified period or on or after the occurrence of a specified event, return to the hospital in which the patient was detained under the certificate or go to such other place as may be specified,

and who absconds from the charge of that authorised person or otherwise fails to comply with any such condition is liable to be taken into custody and dealt with in accordance with section 303 of this Act.

- (6) A patient who is subject to an emergency detention certificate in respect of whom—
- (a) a certificate under section 41(1) of this Act has effect; and
  - (b) a condition under subsection (4) of that section requires—
    - (i) that the patient be kept in the charge of an authorised person or reside continuously or for or at specified times at a specified place; or
    - (ii) that the patient, on being recalled or on the expiry of a specified period or on or after the occurrence of a specified event, return to the hospital in which the patient was detained under the certificate or go to such other place as may be specified,

and who absconds from the charge of that authorised person or otherwise fails to comply with any such condition is liable to be taken into custody and dealt with in accordance with section 303 of this Act.

### **303 Taking into custody and return of absconding patients**

- (1) A person specified in subsection (3)(a) below may, during the period specified in subsection (4) below—
- (a) take into custody any patient who, under sections 301 or 302 of this Act, is liable to be taken into custody;
  - (b) return the patient to the hospital in which the patient was detained or, as the case may be, take the patient to the hospital in which the patient was to be detained or, if that is not appropriate or practicable, take the patient to any other place considered appropriate by the patient's responsible medical officer;
  - (c) return or take the patient to such other place as the patient absconded from or at which the patient failed to reside or, if that is not appropriate or practicable, take the patient to any other place considered appropriate by the patient's responsible medical officer.
- (2) The person specified in subsection (3)(b) below may, during the period specified in subsection (4) below—
- (a) take into custody any patient in respect of whom a certificate under section 41(1), 53(1) or 127(1) of this Act has effect and a condition under section 41(4), 53(4) or, as the case may be, 127(6) of this Act requires that the

patient be kept in charge of that person and who, under section 301 or 302 of this Act is liable to be taken into custody; and

- (b) resume the charge of the patient or, if that is not appropriate or practicable, take the patient to any place considered appropriate by the patient's responsible medical officer.

(3) The—

- (a) persons referred to in subsection (1) above are—
  - (i) a mental health officer;
  - (ii) a constable;
  - (iii) a member of staff of any hospital and, where the patient liable to be taken into custody is subject to a compulsory treatment order a condition of which requires the patient to reside in an establishment the address of which is specified in the order, a member of staff of that establishment; and
  - (iv) any other person authorised for the purposes of that subsection by the patient's responsible medical officer;
- (b) person referred to in subsection (2) above is the person who is authorised under section 41(4), 53(4) or, as the case may be, 127(6) of this Act to have charge of the patient.

(4) The period referred to in subsection (1) above is—

- (a) in the case of a patient who is subject to a compulsory treatment order, the period of 3 months beginning with the day—
  - (i) when the patient absconded; or
  - (ii) when the patient's conduct or failure first gave rise to liability to be taken into custody;
- (b) in any other case, the period ending with the expiry of the order, certificate, report or, as the case may be, provision under or in pursuance of which the patient was to be detained.

(5) The expiry, during the period referred to in subsection (1) above, of the authorised period in relation to the compulsory treatment order to which a patient is subject does not affect the powers conferred by this section.

(6) The powers conferred by subsections (1) and (2) above include power to use reasonable force in their exercise.

(7) A patient who is, under section 301 or 302 of this Act, liable to be taken into custody ceases to be so liable—

- (a) on returning to the hospital or other place from which the patient absconded or arriving at the hospital in which the patient was to be detained;
- (b) on being returned or taken either there or to such other place as is considered appropriate by the patient's responsible medical officer under subsection (1) (b) or (c) or (2)(b) above; or
- (c) on being taken into custody under section 113 of this Act.

### *Effect of unauthorised absence*

#### **304 Effect of unauthorised absence**

- (1) References in this section and sections 305 to 308 of this Act to a patient's unauthorised absence are references to a patient's being liable, under section 301 of this Act, to be taken into custody and dealt with under section 303 of this Act.
- (2) Subject to sections 305 to 308 of this Act, a patient's unauthorised absence does not affect the continuity or measurement of any period of time fixed by, under or relative to any provision of this Act or requirement imposed by virtue of it, of which that absence is a breach.
- (3) Where, in the case of a patient who is subject to a compulsory treatment order, the patient's unauthorised absence has continued for a period of 3 months, the order shall then cease to have effect.

#### **305 Effect of long unauthorised absence ending more than 14 days before expiry of compulsory treatment order**

- (1) Where the unauthorised absence of a patient who is subject to a compulsory treatment order—
  - (a) lasted longer than 28 consecutive days; and
  - (b) ceased before the beginning of the period of 14 days ending with the day when the compulsory treatment would, apart from this subsection, cease to authorise the measures specified in it,the order shall cease to have effect at the expiry of the period of 14 days beginning with the day when the patient's unauthorised absence ceased.
- (2) The patient's responsible medical officer shall, during the period of 14 days secondly referred to in subsection (1) above, carry out a review in respect of the compulsory treatment order to which the patient is subject by complying with the requirements set out in section 77(3) of this Act.
- (3) Where any part of the period of 14 days referred to in subsection (2) above occurs within the period of 2 months mentioned in subsection (5) of section 77 or subsection (3) of section 78 of this Act, the review which would (apart from this subsection) have been carried out during that period of 2 months under that section shall not be carried out.
- (4) The other review provisions (that is to say, section 83(2) and (3) and the subsequent provisions of Chapter 4 of Part 7 of this Act) shall, in accordance with subsections (5) and (6) below, apply in respect and in consequence of a review under this section as they apply in respect and in consequence of the reviews for which that Chapter provides.
- (5) Where the compulsory treatment order to which the patient is subject has not been extended as mentioned in section 78(1) of this Act, those of the other review provisions which relate to a first review apply.
- (6) Where that order has been so extended, those of the other review provisions which relate to a further review apply.

**306 Effect of unauthorised absence ending simultaneously with or within 14 days before expiry of compulsory treatment order**

- (1) Where the unauthorised absence of a patient who is subject to a compulsory treatment order—
  - (a) ceases on the day that the order to which the patient is subject would, apart from this subsection, cease to authorise the measures specified in it; or
  - (b) ceased within a period of 14 days ending with that day,
 the order shall be treated as having continued in effect and, subject to subsection (4) below, as continuing in effect until the end of the period of 14 days beginning with the day on which the patient's unauthorised absence ceased.
- (2) The patient's responsible medical officer shall, during the period of 14 days secondly referred to in subsection (1) above, carry out a review in respect of the compulsory treatment order to which the patient is subject by complying with the requirements set out in section 77(3) of this Act.
- (3) Where any part of the period of 14 days referred to in subsection (2) above occurs within the period of 2 months mentioned in subsection (5) of section 77 or subsection (3) of section 78 of this Act, the review which would (apart from this subsection) have been carried out during that period of 2 months under that section shall not be carried out.
- (4) Subsections (4) to (6) of section 305 of this Act apply for the purposes of a review under subsection (2) above as they apply for the purposes of a review under subsection (2) of that section.
- (5) Where—
  - (a) the compulsory treatment order to which a patient is subject is, under this section, treated as continuing in effect; and
  - (b) the patient's unauthorised absence—
    - (i) began at a time when a review of the order was being carried out under section 77 or 78 of this Act; and
    - (ii) lasted for 28 consecutive days or any shorter period,
 then anything done by the patient's responsible medical officer for the purposes of that review which (apart from this subsection) would fall to be done for the purposes of a review under this section need not, for those latter purposes, be done.

**307 Effect of unauthorised absence ending after expiry of compulsory treatment order**

- (1) Where the unauthorised absence of a patient who is subject to a compulsory treatment order ceases—
  - (a) within a period of 3 months beginning with the day on which it began; and
  - (b) after the day when the compulsory treatment order to which the patient was subject would, but for this subsection, have ceased to authorise the measures specified in it,
 the order shall be treated as having continued in effect and, subject to subsection (3) below, as continuing in effect until the end of the period of 14 days beginning with the day on which the patient's unauthorised absence ceased.

- (2) The patient's responsible medical officer shall, during the period of 14 days referred to in subsection (1) above, carry out a review of the compulsory treatment order to which the patient is subject by complying with the requirements set out in section 77(3) of this Act.
- (3) Subsections (4) to (6) of section 305 of this Act apply for the purposes of a review under subsection (2) above as they apply for the purposes of a review under subsection (2) of that section.
- (4) Where—
- (a) the compulsory treatment order to which a patient is subject is, under this section, treated as continuing in effect; and
  - (b) the patient's unauthorised absence—
    - (i) began at a time when a review of the order was being carried out under section 77 or 78 of this Act; and
    - (ii) lasted for 28 consecutive days or any shorter period,then anything done by the patient's responsible medical officer for the purposes of that review which (apart from this subsection) would fall to be done for the purposes of a review under this section need not, for those latter purposes, be done.

**308      Effect of unauthorised absence of patient subject to short-term detention certificate or certificate under section 114(2) or 115(2)**

Where the unauthorised absence of a patient who is subject to a short-term detention certificate or a certificate under section 114(2) or 115(2) of this Act authorising continued detention ceases within the period of 13 days ending with the day on which the certificate would, but for this section, have ceased to authorise the measures specified in it, the certificate shall continue to authorise those measures until the end of the period of 14 days beginning with the day when the patient's unauthorised absence ceased.

*Patients from other jurisdictions*

**309      Patients from other jurisdictions**

- (1) Regulations may make provision applying sections 301 to 303 of this Act to persons in Scotland who are subject to corresponding measures in England, Wales, Northern Ireland, the Isle of Man or the Channel Islands.
- (2) Those regulations may make such modifications of those sections in that application as the Scottish Ministers think fit.
- (3) The reference in subsection (1) above to persons subject to corresponding measures shall be construed in accordance with section 290(8) of this Act.

*Absconding by certain other patients*

**310      Regulations as to absconding by other patients**

- (1) Regulations may provide as to—

- (a) the circumstances in which patients—
    - (i) who are subject to any of the orders or directions mentioned in subsection (3) below; and
    - (ii) who abscond or fail to comply with requirements imposed on them by virtue of the orders or directions to which they are subject or otherwise by virtue of this Act or the 1995 Act,
 are to be liable to be taken into custody by specified persons;
  - (b) the steps which may be taken by those persons upon their taking those patients into custody; and
  - (c) the effect (whether upon the orders or directions to which those patients are subject or otherwise) of such absconding or failure.
- (2) Regulations under subsection (1) above may include provision—
- (a) requiring patients' responsible medical officers to notify—
    - (i) specified courts;
    - (ii) the Commission;
    - (iii) the Scottish Ministers,
 of such absconding or failure;
  - (b) authorising the use of reasonable force in the exercise of the powers conferred by virtue of subsection (1) above to take patients into custody and to take the steps referred to in that subsection;
  - (c) for—
    - (i) the review of those orders and directions; and
    - (ii) the authorisation of measures additional to or different from those authorised by them,
 in consequence of such absconding or failure;
  - (d) corresponding to section 309 of this Act and any regulations which may be made under that section.
- (3) The orders referred to in subsection (1) above are—
- (a) assessment orders;
  - (b) treatment orders;
  - (c) temporary compulsion orders made under section 54(1)(c) of the 1995 Act;
  - (d) interim compulsion orders; and
  - (e) compulsion orders,
- and the directions there referred to are hospital directions and transfer for treatment directions.
- (4) In this section, “specified” means specified in the regulations.