



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

## 2003 asp 13

### PART 21

#### OFFENCES

#### <sup>F1</sup>311 Non-consensual sexual acts

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##### Textual Amendments

- F1** Ss. 311-313 repealed (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#), s. 62(2), [sch. 6](#); [S.S.I. 2010/357](#), art. 2(a)

#### <sup>F1</sup>312 Offences under section 311: extended sentences

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##### Textual Amendments

- F1** Ss. 311-313 repealed (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#), s. 62(2), [sch. 6](#); [S.S.I. 2010/357](#), art. 2(a)

#### <sup>F1</sup>313 Persons providing care services: sexual offences

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##### Textual Amendments

- F1** Ss. 311-313 repealed (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#), s. 62(2), [sch. 6](#); [S.S.I. 2010/357](#), art. 2(a)

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## **F<sup>2</sup>314 Notification requirements for offenders under sections 311 and 313**

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### **Textual Amendments**

**F2** S. 314 repealed (27.9.2005 (before coming into force)) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, [sch. 2](#)

## **315 Ill-treatment and wilful neglect of mentally disordered person**

- (1) This section applies to a person (a “relevant person”) who—
- (a) is an individual employed in, or contracted to provide services in or to, a hospital;
  - (b) not being the Scottish Ministers, is a manager of a hospital;
  - (c) provides care services; or
  - (d) is an individual who, otherwise than—
    - (i) by virtue of a contract of employment or other contract with any person; or
    - (ii) as a volunteer for a voluntary organisation, provides care or treatment.
- (2) A relevant person who—
- (a) whether under this Act or otherwise—
    - (i) is providing care or treatment; or
    - (ii) purports to provide care or treatment, to a patient; and
  - (b) ill-treats, or wilfully neglects, that patient, shall be guilty of an offence.
- (3) A person guilty of an offence under subsection (2) above shall be liable—
- (a) on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment to imprisonment for a term not exceeding [F<sup>3</sup>5] years or to a fine or to both.
- [F<sup>4</sup>(4) In subsection 1(c), “provides care services” means anything done—
- (a) by a care service,
  - (b) by an employee of a care service, or
  - (c) in the course of a service provided or supplied by a care service,
- whether by virtue of a contract of employment or any other contract or in circumstances as may be prescribed by regulations.]
- [F<sup>5</sup>(5) For the purposes of subsection (4), “care service” means a service mentioned in section 47(1)(a), (b), (d), (f), (g), (j) or (m) of the Public Services Reform (Scotland) Act 2010.]

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#### Textual Amendments

- F3** Word in s. 315(3)(b) substituted (1.10.2017) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 32(a)**, 36(2); S.S.I. 2017/294, reg. 2, sch.
- F4** S. 315(4) substituted (1.10.2017) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 32(b)**, 36(2); S.S.I. 2017/294, reg. 2, sch.
- F5** S. 315(5) inserted (1.10.2017) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 32(c)**, 36(2); S.S.I. 2017/294, reg. 2, sch.

#### Commencement Information

- I1** S. 315 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

### 316 Inducing and assisting absconding etc.

- (1) A person who knowingly—
- induces or assists a patient to do or fail to do anything which results in the patient's being liable under section 301 or 302 of this Act to be taken into custody and dealt with under section 303 of this Act; or
  - harbours a patient who has, with that result, done or failed to do anything [<sup>F6</sup>; or
  - “induces or assists a patient to abscond or to attempt to abscond or harbours a patient who absconds while that patient is being removed or transferred under regulations made under section [<sup>F7</sup>289 or ] 290 of this Act.]
- shall be guilty of an offence.
- (2) Where a person is charged with an offence under subsection (1)(b) above, it shall be a defence for such person to prove that the doing of that with which the person is charged—
- did not obstruct the discharge by any person of a function conferred or imposed on that person by virtue of this Act; and
  - was intended to protect the interests of the patient.
- (3) A person guilty of an offence under this section shall be liable—
- on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;
  - on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or both.
- (4) The reference in subsection (1) above to sections 301 to 303 of this Act includes a reference to those sections as applied or as applied and modified under section 309 of this Act and to any regulations made under section 310 of this Act which make provision corresponding to sections 301 to 303 of this Act.

#### Textual Amendments

- F6** S. 316(1)(c) and word inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(22)**
- F7** Words in s. 316(1)(c) inserted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 71(3)**, 79(3); S.S.I. 2007/334, art. 2(a), sch. 1

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#### Commencement Information

- I2** S. 316 in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

### 317 Obstruction

- (1) A person who—
- (a) refuses to allow a person authorised by virtue of this Act access to any premises;
  - (b) refuses to allow access to a mentally disordered person by a person authorised by virtue of this Act to have such access;
  - (c) refuses to allow the interview or examination of a mentally disordered person by a person authorised by virtue of this Act to interview or examine such person;
  - (d) persists in being present when requested to withdraw by a person authorised by virtue of this Act to interview or examine, in private, a mentally disordered person;
  - (e) refuses to produce any document or record to a person authorised by virtue of this Act to require the production of such document or record; or
  - (f) otherwise obstructs a person in the exercise of any functions conferred on such person by virtue of this Act,
- shall be guilty of an offence.
- (2) A mentally disordered person shall not be guilty of an offence under subsection (1) above if the person mentioned in that subsection—
- (a) who is authorised by virtue of this Act, is so authorised; or
  - (b) who is exercising functions conferred on that person by virtue of this Act, is exercising those functions,
- in relation to that mentally disordered person.
- (3) In any proceedings against a person for an offence under subsection (1) above it shall be a defence for the accused to show that the accused had a reasonable excuse for doing that with which the accused is charged.
- (4) A person guilty of an offence under subsection (1) above shall be liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 3 on the standard scale or to both.

#### Commencement Information

- I3** [S. 317](#) in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

### 318 False statements

- (1) A person who—
- (a) knowingly makes, in a relevant document, an entry or statement which is false in a material particular; or

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- (b) with intent to deceive, makes use of any such entry or statement knowing it to be false,  
shall be guilty of an offence.
- (2) For the purposes of subsection (1) above, a “relevant document”—
  - (a) is—
    - (i) an application under this Act;
    - (ii) a document accompanying any such application; or
    - (iii) any other document required or authorised to be granted, prepared, sent or given for any of the purposes of this Act; but
  - (b) does not include—
    - (i) a nomination of a named person in accordance with section 250(2) of this Act;
    - <sup>F8</sup>(ii) .....
    - (iii) an advance statement.
- (3) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

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**Textual Amendments**

**F8** S. 318(2)(b)(ii) repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 22(3)**, 61(2); [S.S.I. 2017/197](#), art. 2, sch. (with arts. 13-15)

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**Commencement Information**

**I4** S. 318 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

**<sup>F9</sup>319 Time limit for summary proceedings for offences under sections 311 and 313**

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**Textual Amendments**

**F9** S. 319 repealed (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#), s. 62(2), **sch. 6**; [S.S.I. 2010/357](#), art. 2(a)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 64(8A)(8B) inserted by [2015 asp 9 s. 1\(2\)](#)
- s. 65(7) inserted by [2015 asp 9 s. 1\(3\)](#)