



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

2003 asp 13

## PART 7

### COMPULSORY TREATMENT ORDERS

#### CHAPTER 5

##### BREACH OF ORDERS

###### *Failure to attend for medical treatment*

#### **112 Failure to attend for medical treatment**

- (1) Subject to subsection (2) below, where—
  - (a) a patient is subject to—
    - (i) a compulsory treatment order; or
    - (ii) an interim compulsory treatment order,that imposes on the patient a requirement mentioned in section 66(1)(c) of this Act (“the attendance requirement”); and
  - (b) the patient fails to comply with the attendance requirement,the patient’s responsible medical officer may exercise the power conferred by subsection (3) below.
- (2) The responsible medical officer may exercise the power conferred by subsection (3) below only if—
  - (a) the responsible medical officer has consulted a mental health officer; and
  - (b) the mental health officer consents to the power being exercised.
- (3) The responsible medical officer may take, or may cause a person authorised for the purpose by the responsible medical officer to take, the patient into custody and convey the patient—
  - (a) to the place the patient is required to attend by the attendance requirement; or

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- (b) to any hospital.
- (4) Subject to subsection (5) below, where by virtue of subsection (3) above the patient is conveyed to the place the patient is required to attend or a hospital—
  - (a) if the order to which the patient is subject authorises the measure mentioned in section 66(1)(b) of this Act, the patient may be detained there for so long as is necessary for the purpose of giving to the patient any medical treatment that could have been given to the patient had the patient complied with the attendance requirement;
  - (b) if the order to which the patient is subject does not authorise that measure, the patient may be detained there for so long as is necessary to determine whether the patient is capable of consenting to medical treatment and, if so, whether the patient consents to receive any medical treatment.
- (5) The patient may not be detained by virtue of subsection (4) above for more than a period of 6 hours beginning with the arrival of the patient in the place or hospital.

*Non-compliance generally with order*

### **113 Non-compliance generally with order**

- (1) Where—
  - (a) a patient is subject to—
    - (i) a compulsory treatment order; or
    - (ii) an interim compulsory treatment order,
 that does not authorise the detention of the patient in hospital;
  - (b) the patient fails to comply with any measure authorised by the order; and
  - (c) subsection (2) or (3) below applies,
 the power conferred by subsection (4) below may be exercised.
- (2) This subsection applies if the patient's responsible medical officer considers that—
  - (a) reasonable steps have been taken to contact the patient following the patient's failure to comply with the measure;
  - (b) if contact has been made with the patient, the patient has been afforded a reasonable opportunity to comply with the measure; and
  - (c) if the patient were to continue to fail to comply with the measure, it is reasonably likely that there would be a significant deterioration in the patient's mental health.
- (3) This subsection applies if the patient's responsible medical officer considers that—
  - (a) if the patient were to continue to fail to comply with the measure, it is reasonably likely that there would be a significant deterioration in the patient's mental health; and
  - (b) it is necessary as a matter of urgency that the power conferred by subsection (4) below be exercised.
- (4) The patient's responsible medical officer may take, or may cause a person authorised for the purpose by the responsible medical officer to take, the patient into custody and convey the patient to a hospital.

- (5) Where the power conferred by subsection (4) above is exercised in relation to a patient, the patient may be detained in hospital for the period of 72 hours beginning with the arrival by virtue of that subsection of the patient in hospital.
- (6) As soon as reasonably practicable after the patient has been conveyed to a hospital, the responsible medical officer shall—
  - (a) carry out a medical examination of the patient; or
  - (b) make arrangements for an approved medical practitioner to carry out such an examination.

#### **114      Compulsory treatment order: detention pending review or application for variation**

- (1) Subsection (2) below applies where—
  - (a) a patient who is subject to an order such as is mentioned in subsection (1)(a)(i) of section 113 of this Act is detained in hospital by virtue of subsection (5) of that section;
  - (b) the patient has been examined under subsection (6) of that section;
  - (c) the patient's responsible medical officer—
    - (i) is considering under subsection (2) of section 93 of this Act whether that order should be varied by modifying the measures specified in it; or
    - (ii) by virtue of subsection (5) of that section, is required to make an application to the Tribunal; and
  - (d) the patient's responsible medical officer considers that if the patient does not continue to be detained in hospital it is reasonably likely that there will be a significant deterioration in the patient's mental health.
- (2) Subject to subsections (3) and (4) below, the responsible medical officer may grant a certificate authorising the continued detention in hospital of the patient for the period of 28 days beginning with the granting of the certificate.
- (3) The power in subsection (2) above may be exercised only if—
  - (a) the responsible medical officer has consulted the mental health officer; and
  - (b) the mental health officer consents to the power being exercised.
- (4) Before granting a certificate under subsection (2) above the responsible medical officer shall, if it is practicable to do so, consult the patient's named person.
- (5) A certificate under subsection (2) above—
  - (a) shall state the responsible medical officer's reasons for believing that paragraph (d) of subsection (1) applies in the patient's case; and
  - (b) shall be signed by the responsible medical officer.

#### **115      Interim compulsory treatment order: detention pending further procedure**

- (1) Subsection (2) below applies where—
  - (a) a patient who is subject to an order such as is mentioned in subsection (1)(a)(ii) of section 113 of this Act is detained in hospital by virtue of subsection (5) of that section;
  - (b) the patient has been examined under subsection (6) of that section;

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- (c) the patient's responsible medical officer considers that if the patient does not continue to be detained in hospital it is reasonably likely that there will be a significant deterioration in the patient's mental health; and
  - (d) on the expiry of the period of detention authorised by subsection (5) of that section the period for which the order authorises the measures specified in it will not have expired.
- (2) Subject to subsections (3) and (4) below, the responsible medical officer may grant a certificate authorising the continued detention in hospital of the patient for the period beginning with the granting of the certificate and ending with the expiry of the period for which the order authorises the measures specified in it.
- (3) The power in subsection (2) above may be exercised only if—
- (a) the patient's responsible medical officer has consulted a mental health officer; and
  - (b) the mental health officer consents to the power being exercised.
- (4) Before granting a certificate the responsible medical officer shall, if it is practicable to do so, consult the patient's named person.
- (5) A certificate under subsection (2) above—
- (a) shall state the responsible medical officer's reasons for believing that subsection (1)(c) above applies in the patient's case; and
  - (b) shall be signed by the responsible medical officer.

#### **116 Certificate under section 114(2) or 115(2): notification**

- (1) This section applies where a certificate is granted under section 114(2) or 115(2) of this Act in respect of a patient.
- (2) The managers of the hospital in which the patient is detained shall, as soon as practicable after the granting of the certificate, give notice of its granting to—
- (a) the patient;
  - (b) the patient's named person;
  - (c) any guardian of the patient; and
  - (d) any welfare attorney of the patient.
- (3) The managers of the hospital in which the patient is detained shall, before the expiry of the period of 7 days beginning with the granting of the certificate, give notice of its granting, and send a copy of it, to—
- (a) the Tribunal; and
  - (b) the Commission.

#### *Revocation of certificates*

#### **117 Certificate under section 114(2): responsible medical officer's duty to revoke**

- (1) Where—
- (a) a patient's responsible medical officer grants, by virtue of subsection (1)(c)(i) of section 114 of this Act, a certificate under subsection (2) of that section; and
  - (b) the responsible medical officer determines that the order should not be varied as mentioned in section 93(2) of this Act,

the responsible medical officer shall revoke the certificate.

(2) Where—

- (a) a patient's responsible medical officer grants, by virtue of subsection (1)(c)(ii) of section 114 of this Act, a certificate under subsection (2) of that section; and
- (b) the responsible medical officer is not satisfied that if the patient does not continue to be detained in hospital it is reasonably likely that there will be a significant deterioration in the patient's mental health,

the responsible medical officer shall revoke the certificate.

**118 Certificate under section 115(2): responsible medical officer's duty to revoke**

Where—

- (a) a patient's responsible medical officer grants a certificate under section 115(2) of this Act; and
- (b) the responsible medical officer is not satisfied that if the patient does not continue to be detained in hospital it is reasonably likely that there will be a significant deterioration in the patient's mental health,

the responsible medical officer shall revoke the certificate.

**119 Revocation of certificate granted under section 114(2) or 115(2): notification**

Where a patient's responsible medical officer revokes, under section 117 or 118 of this Act, a certificate, the responsible medical officer shall—

- (a) as soon as practicable after the revocation, give notice of the revocation to the persons mentioned in subsection (2) of section 116 of this Act; and
- (b) before the expiry of the period of 7 days beginning with the revocation, give notice of the revocation to the persons mentioned in subsection (3) of that section.

**120 Certificates under sections 114(2) and 115(2): patient's right to apply to Tribunal**

- (1) This section applies where a certificate is granted under section 114(2) or 115(2) of this Act in respect of a patient.
- (2) On the application of the patient or the patient's named person, the Tribunal shall, if not satisfied that if the patient does not continue to be detained in hospital it is reasonably likely that there will be a significant deterioration in the patient's mental health, revoke the certificate.

*Effect of section 113(5) on order*

**121 Effect of section 113(5) on order**

- (1) Subject to subsection (2) below, where a patient is detained in hospital under section 113(5) of this Act, the compulsory treatment order or, as the case may be, interim compulsory treatment order to which the patient is subject shall cease, during the period mentioned in that section, to authorise the measures specified in it.

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- (2) If the measure mentioned in section 66(1)(b) of this Act is specified in the order, the order shall continue to authorise that measure during the period referred to in subsection (1) above.

*Effect of certificate under section 114(2) on order*

**122 Effect of certificate under section 114(2) on order**

- (1) Subject to subsection (2) below, where a certificate is granted under section 114(2) of this Act in respect of a patient, the compulsory treatment order to which the patient is subject shall cease, during the period mentioned in that section, to authorise the measures specified in it.
- (2) If the measure mentioned in section 66(1)(b) of this Act is specified in the order, the order shall continue to authorise that measure during the period referred to in subsection (1) above.

*Effect of certificate under section 115(2) on order*

**123 Effect of certificate under section 115(2) on order**

- (1) Subject to subsection (2) below, where a certificate is granted under section 115(2) of this Act in respect of a patient, the interim compulsory treatment order to which the patient is subject shall cease, during the period mentioned in that section, to authorise the measures specified in it.
- (2) If the measure mentioned in section 66(1)(b) of this Act is specified in the order, the order shall continue to authorise that measure during the period referred to in subsection (1) above.