



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

2003 asp 13

PART 19

ENTRY, REMOVAL AND DETENTION POWERS

Entry to premises

292 Warrant to enter premises for purposes of taking patient

- (1) If a sheriff or a justice of the peace is satisfied by an authorised person's evidence on oath as to the matters mentioned in subsection (2) below, the sheriff or, as the case may be, justice of the peace may grant a warrant under this subsection.
- (2) Those matters are—
 - (a) that for the purposes for which the authorised person is authorised it is necessary to enter premises; and
 - (b) that the authorised person—
 - (i) is unable to obtain entry to those premises; or
 - (ii) reasonably apprehends that the authorised person will be unable to obtain entry to those premises.
- (3) A warrant under subsection (1) above is a warrant—
 - (a) authorising—
 - (i) the authorised person;
 - (ii) any mental health officer appointed by the local authority for the area in which the premises are situated; and
 - (iii) any constable of the police force maintained for the area in which the premises are situated,to enter the premises specified in the warrant; and
 - (b) authorising any constable of the police force for the area in which the premises are situated, for the purpose of exercising the power mentioned in paragraph (a) above, to open lockfast places on premises so specified.

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- (4) In the execution of a warrant granted under subsection (1) above, the persons authorised for the purpose of subsection (3)(a) above may be accompanied by—
- (a) a medical practitioner;
 - (b) any other authorised person.
- (5) In this section, references to an authorised person are to a person who, in relation to a patient, is authorised by virtue of this Act—
- (a) to take the patient to any place; or
 - (b) to take (or retake) into custody the patient where the patient is liable to be taken (or retaken).

Removal to place of safety

293 Removal order

- (1) If, on the application of a relevant mental health officer, a sheriff is satisfied that—
- (a) a person who is aged 16 years or over has a mental disorder;
 - (b) any of the circumstances mentioned in subsection (2) below apply in respect of that person; and
 - (c) that person is likely to suffer significant harm if not removed to a place of safety,
- the sheriff may make an order under this section (any such order being referred to in this Act as a “removal order”) in respect of that person.
- (2) The circumstances referred to in subsection (1)(b) above are—
- (a) that the person is subject, or exposed, to—
 - (i) ill-treatment;
 - (ii) neglect; or
 - (iii) some other deficiency in care or treatment;
 - (b) that, because of the mental disorder, the person’s property—
 - (i) is suffering loss or damage; or
 - (ii) is at risk of suffering loss or damage; and
 - (c) that the person is—
 - (i) living alone or without care; and
 - (ii) unable to look after himself or his property or financial affairs.
- (3) A removal order is an order—
- (a) authorising—
 - (i) the mental health officer specified in the order;
 - (ii) any other persons so specified; and
 - (iii) any constable of the police force maintained for the area in which the premises are situated,
 before the expiry of the period of 72 hours beginning with the granting of the order, to enter any premises so specified;
 - (b) authorising any such constable, before the expiry of that period, for the purpose of exercising the power mentioned in paragraph (a) above, to open lockfast places on premises so specified; and
 - (c) authorising—

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- (i) before the expiry of that period, the removal of the person who is the subject of the removal order to a place of safety specified in the order; and
 - (ii) the detention of that person in that place for such period, not exceeding 7 days, as may be specified in the order.
- (4) An application for a removal order shall be made to the sheriff of the sheriffdom in which the premises to which the application relates are situated.
- (5) Before determining an application for a removal order, the sheriff shall, subject to subsection (7) below, afford the persons mentioned in subsection (6) below the opportunity—
 - (a) of making representations (whether orally or in writing); and
 - (b) of leading, or producing, evidence.
- (6) Those persons are—
 - (a) the person who is the subject of the application; and
 - (b) such other persons as may be prescribed by regulations.
- (7) If the sheriff considers that such delay as would result from compliance with the requirements of subsection (5) above would be likely to be prejudicial to the person who is the subject of the application, the sheriff may dispense with the requirements of that subsection.
- (8) In this section “relevant mental health officer” means a mental health officer appointed by the local authority for the area in which the premises to which the application relates are situated.

294 Removal order: urgent application to justice of the peace

Where—

- (a) the making of an application to the sheriff for a removal order is impracticable; and
- (b) the circumstances are such that any delay in obtaining a removal order is likely to be prejudicial to the person who would be the subject of the application,

the application may be made instead to a justice of the peace for the commission area in which the premises to which the application relates are situated; and subsections (1) to (3) of section 293 of this Act shall apply in relation to an application made by virtue of this section as those subsections apply as respects an application to the sheriff.

295 Recall or variation of removal order

- (1) A person who is the subject of a removal order, or any person claiming an interest in the welfare of that person, may apply to the sheriff for an order under this section—
 - (a) recalling the removal order; or
 - (b) varying that order by—
 - (i) specifying a different place of safety;
 - (ii) authorising, before the expiry of the period mentioned in subsection (2) below, the removal of the person who is the subject of the removal order to that place of safety; and
 - (iii) authorising the detention of the person who is the subject of the removal order in that place of safety for the remainder of such period

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as may have been specified, by virtue of section 293(3)(c)(ii) of this Act, in the removal order.

- (2) The period referred to in subsection (1)(b)(ii) above is the period of 72 hours beginning with the granting of the order varying the removal order.
- (3) An application under section (1) above shall be made to the sheriff of the sheriffdom in which the premises to which the application for a removal order related are situated.
- (4) Before determining an application under subsection (1) above, the sheriff shall afford the persons mentioned in subsection (5) below the opportunity—
 - (a) of making representations (whether orally or in writing); and
 - (b) of leading, or producing, evidence.
- (5) Those persons are—
 - (a) the person who is the subject of the removal order to which the application relates; and
 - (b) such persons as may be prescribed by regulations.
- (6) Where a sheriff makes an order under this section recalling a removal order, the sheriff may, in addition, make such order as the sheriff thinks fit for the person who was the subject of the removal order—
 - (a) to be returned to the premises from which that person was, by virtue of the removal order, removed; or
 - (b) to be taken to some appropriate place chosen by that person.

296 No appeal against decision under section 293 or 295

No appeal shall be competent against—

- (a) a decision of a sheriff under—
 - (i) section 293(1) of this Act making, or refusing to make, a removal order; or
 - (ii) section 295 of this Act making, or refusing to make, an order recalling or varying a removal order; or
- (b) a decision of a justice of the peace under section 293(1) of this Act making, or refusing to make, a removal order.

297 Removal from public place

- (1) Where—
 - (a) a constable reasonably suspects—
 - (i) that a person (referred to in this section and in section 298 of this Act as a “relevant person”) who is in a public place has a mental disorder; and
 - (ii) that the relevant person is in immediate need of care or treatment; and
 - (b) the constable considers that it would be in the interests of the relevant person, or necessary for the protection of any other person, to remove the relevant person to a place of safety,

the constable may remove the relevant person to a place of safety.
- (2) A relevant person removed to a place of safety under subsection (1) above may, for the purposes of enabling—

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- (a) arrangements to be made for a medical practitioner to carry out a medical examination of the relevant person; and
 - (b) the making of such arrangements as the medical practitioner considers necessary for the relevant person’s care or treatment,
- be detained there for a period ending not later than 24 hours after the time at which the relevant person is removed from the public place by the constable.
- (3) If a relevant person absconds—
 - (a) while being removed to a place of safety under subsection (1) above; or
 - (b) from the place of safety,a constable may, at any time during the period mentioned in subsection (2) above, take the person into custody and remove the person to a place of safety.
 - (4) In this section, “public place” means a place to which the public, or any section of the public, has, or is permitted to have, access (whether on payment or otherwise); and includes the common parts of a building containing two or more separate dwellings.
 - (5) If no place of safety is immediately available, a constable may, under subsection (1) or (3) above, remove a relevant person to a police station; and in any such case, any reference in this section and in section 298 of this Act to a place of safety shall be construed as being a reference to a police station.

298 Removal under section 297: further provision

- (1) This section applies where a constable removes a relevant person to a place of safety under section 297 of this Act.
- (2) The constable shall—
 - (a) as soon as reasonably practicable after removing a relevant person to a place of safety, ensure—
 - (i) that the local authority in whose area the place of safety is situated are informed of the matters mentioned in subsection (3) below; and
 - (ii) subject to subsection (4) below, that the nearest relative of the relevant person is informed of those matters; and
 - (b) before the expiry of the period of 14 days beginning with the day on which the person is removed to the place of safety, ensure that the Commission is given notice of those matters.
- (3) The matters are—
 - (a) the name and address of the relevant person;
 - (b) the date and time at which the relevant person was removed from the public place;
 - (c) the circumstances giving rise to the removal of the relevant person to the place of safety;
 - (d) the address of the place of safety;
 - (e) if the relevant person is removed to a police station, the reason why the relevant person was removed there; and
 - (f) any other matter prescribed by regulations.
- (4) Where—
 - (a) it is impracticable to ensure that the relevant person’s nearest relative is informed of the matters mentioned in subsection (3) above; or

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- (b) the nearest relative is so informed but the nearest relative does not reside with the relevant person,
the constable shall, as soon as reasonably practicable after removing the relevant person to the place of safety, ensure that, where reasonably practicable, a person falling within subsection (5) below is informed of those matters.
- (5) A person falls within this subsection if—
- (a) the person—
 - (i) resides with the relevant person; or
 - (ii) provides a care service to the relevant person; or
 - (b) the person 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 for the relevant person.
- (6) In this section—
“care service” has the meaning given by section 2(1) of the Regulation of Care (Scotland) Act 2001 (asp 8);
“nearest relative” has the meaning given by section 254 of this Act; and
“public place” has the meaning given by section 297 of this Act.

Detention pending medical examination

299 Nurse’s power to detain pending medical examination

- (1) This section applies where—
- (a) by virtue of an order under section 228(1) of the 1995 Act which includes—
 - (i) by virtue of subsections (1) and (2)(a) of section 230 of that Act, a requirement that the patient submit to treatment as a resident patient in a hospital; or
 - (ii) by virtue of subsections (1) and (2)(b) of that section, a requirement that the patient submit to treatment as a non-resident patient at an institution or place specified in the order,
a patient is in hospital and being given medical treatment; or
 - (b) otherwise than by virtue of—
 - (i) an order such as is mentioned in paragraph (a) above;
 - (ii) any other provision of the 1995 Act; or
 - (iii) this Act,
a patient is in hospital and being given medical treatment.
- (2) Where—
- (a) a nurse of such class as may be prescribed by regulations considers that it is likely that the conditions mentioned in subsection (3) below are met in respect of the patient; and
 - (b) it is not practicable to secure the immediate medical examination of the patient by a medical practitioner,

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the patient may, subject to subsection (4) below, be detained in hospital for a period of 2 hours (the “holding period”) for the purpose of enabling arrangements to be made for a medical examination of the patient to be carried out.

- (3) The conditions referred to in subsection (2)(a) above are—
- (a) that the patient has a mental disorder;
 - (b) that it is necessary for the protection of—
 - (i) the health, safety or welfare of the patient; or
 - (ii) the safety of any other person,that the patient be immediately restrained from leaving the hospital; and
 - (c) that it is necessary to carry out a medical examination of the patient for the purpose of determining whether the granting of—
 - (i) an emergency detention certificate; or
 - (ii) a short-term detention certificate,is warranted.
- (4) If the medical practitioner who first arrives to carry out a medical examination of the patient within the holding period arrives after the expiry of the first hour of the holding period, the period for which the patient may be held shall be the period beginning with the commencement of the patient’s detention under subsection (2) above and ending one hour after the arrival of the medical practitioner.
- (5) Where the patient is detained under subsection (2) above the nurse shall, as soon as practicable after the holding period begins, take all reasonable steps to inform a mental health officer of the detention.
- (6) Where the patient is detained under subsection (2) above, the nurse shall, as soon as practicable after the holding period begins, record in writing—
- (a) the fact that the patient has been detained;
 - (b) the time at which the holding period began; and
 - (c) the nurse’s reasons for believing that it is likely that the conditions mentioned in paragraphs (a) to (c) of subsection (3) are met in respect of the patient.
- (7) A record made under subsection (6) above shall, as soon as practicable after it is made, be delivered to the managers of the hospital in which the patient is detained by—
- (a) the nurse; or
 - (b) a person authorised for the purpose by the nurse.
- (8) Where the managers of a hospital receive a record by virtue of subsection (7) above, they shall, before the expiry of the period of 14 days beginning with the day on which they receive it, send a copy of it to the Commission.
- (9) Any subordinate legislation made under section 25 of the Mental Health (Scotland) Act 1984 (c. 36) (detention of patients already in hospital) shall, if in force immediately before the day on which this section comes into force, have effect on and after that day as if made under this section.

Meaning of “place of safety”

300 Meaning of “place of safety”

In this Part of this Act, “place of safety” means—

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- (a) a hospital;
- (b) premises which are used for the purpose of providing a care home service (as defined in section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8));
or
- (c) any other suitable place (other than a police station) the occupier of which is willing temporarily to receive mentally disordered persons.