

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

---

## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 19 – Entry, Removal and Detention Powers**

577. **Part 19** provides powers to allow authorised persons to enter premises in order to take a patient to a place of safety, to another specified place, or into custody, and for those authorised persons to remove a patient to a place of safety. It also confers on certain classes of nurse, the power to detain certain categories of patient for up to 2 hours for the purpose of having a medical practitioner undertake an examination of the patient.

#### ***Section 292: entry to premises***

578. **Section 292** deals with obtaining access to premises where an authorised person already has power under the 2003 Act to take a patient to any place or into custody.

579. Subsection (1) gives a sheriff or justice of the peace the power to grant a warrant which would authorise a person, who already has authority to take a patient to a place or into custody, to enter premises specified in the warrant. Such a warrant may only be granted, firstly, where it is necessary to enable the authorised person to fulfil the purpose for which he or she had previously been authorised; and secondly, where the sheriff or justice of the peace is satisfied the authorised person cannot obtain, or cannot reasonably expect to obtain, entry to those premises (see subsection (2)). A warrant issued under this section also authorises a mental health officer for the area in which the premises are situated and a police constable to enter the premises. It further authorises a local constable to open lock-fast places on the premises where this is necessary to gain entry (see subsection (3)).

580. Subsection (4) provides that, in executing a warrant under subsection (1), a person may be accompanied by a medical practitioner and any other person who is authorised to take the patient to a place or into custody.

#### ***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.

### **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.

### ***Sections 297 and 298: removal to a place of safety from a public place***

589. Subsection (1) gives a police constable the power to remove from a public place a person who appears to be mentally disordered and who appears to be in immediate need of care or treatment, to a place of safety.
590. Detention for up to 24 hours is allowed for the purpose of enabling the person to be medically examined and the making of necessary arrangements for the person's care and treatment (subsection (2)).
591. Subsection (3) allows a constable to detain a person who tries to abscond during that period, to take the person into custody and remove him or her to a place of safety.
592. Subsection (4) explains what is meant by a "public place". It includes, for example, the common stair of a tenement building.
593. Where no place of safety is immediately available the person may be removed to a police station (subsection (5)).
594. [Section 298](#) imposes certain duties where a constable has exercised the power in section 297.
595. The constable must ensure as soon as reasonably practicable that the local authority in whose area the place of safety is situated and the nearest relative of the patient are informed of the matters listed in subsection (3).

596. The constable must also ensure that the Commission is given notice of the same matters within 14 days of the day on which the person was removed to a place of safety.
597. Subsections (4) and (5) provide that where it is impracticable to inform the nearest relative or where the nearest relative, although informed, does not reside with the person who has been removed, the constable must ensure that a person who resides with the person, provides a care service to the person or provides care to the person on a certain basis, is informed of the matters listed in subsection (3).

***Section 299: nurse's power to detain pending medical examination***

598. This section empowers certain nurses to detain certain categories of patients who are already in hospital receiving treatment for mental disorder. The first category is a patient who is detained in hospital and being given medical treatment by virtue of an order made under section 228(1) of the 1995 Act. The second category is patients whose presence in hospital does not arise from any provision of the 2003 Act or the 1995 Act. The nurse may hold the patient for a period of up to two hours or until a medical practitioner arrives, whichever is the sooner, and, where the doctor arrives after the first hour, for a further period of one hour from his or her arrival.
599. A nurse may exercise such a power where it appears that:
- a medical examination is necessary to ascertain whether an emergency detention certificate or a short-term detention certificate may be appropriate;
  - the patient has a mental disorder ;
  - it is necessary for the protection of the health, safety or welfare of the patient or the safety of any other person to prevent the patient from leaving;
  - it is not practicable to secure an immediate medical examination of the patient.
600. The power is only available to a nurse who falls within a class prescribed in regulations.
601. As soon as is practicable after the detention period begins, the nurse exercising the power must take all reasonable steps to inform a mental health officer of the detention. Subsections (6) to (8) provide that the nurse must also make a written record of matters relating to the detention and deliver that record to the hospital managers who must forward a copy to the Commission.
602. Subsection (9) preserves any subordinate legislation made under section 25 of the 1984 Act in force immediately before the day on which section 299 comes into force.
603. **Section 300** provides a definition of “place of safety”.