



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

## 2003 asp 13

### PART 20

#### ABSCONDING

##### *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.

#### **Commencement Information**

- II** [S. 304](#) 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)

#### **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

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- (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.

#### Commencement Information

- I2** [S. 305](#) 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](#))

### **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.

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- (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.

#### Commencement Information

- I3** [S. 306](#) 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)

### 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—

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- (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.

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**Commencement Information**

- I4** [S. 307](#) 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)

**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.

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**Commencement Information**

- I5** [S. 308](#) 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)

**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\(3\)](#)