



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

## 2003 asp 13

### PART 7

#### COMPULSORY TREATMENT ORDERS

#### CHAPTER 5

#### BREACH OF ORDERS

#### *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—

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Non-compliance generally with order is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (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.

#### Commencement Information

- II** S. 113 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)

## 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.

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- (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.

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**Commencement Information**

**I2** S. 114 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)

## 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;
  - (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.

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**Commencement Information**

**I3** S. 115 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)

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## 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.

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### Commencement Information

- I4** S. 116 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\(3\)](#)