

Executive Note

The Mental Health (Absconding by mentally disordered offenders) (Scotland) Regulations 2005 S.S.I. 2005/463

The above regulations were made in exercise of the powers conferred by section 310(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the Act”). The instrument is subject to affirmative resolution procedure.

Policy Objectives

The purpose of these regulations is to make provision for the taking into custody of a patient who has been involved in criminal justice proceedings and who absconds in breach of the order or direction, specified in the regulations, to which they are subject.

Regulation 2

The purpose of this regulation is to set out the circumstances in which a patient may be taken into custody after having absconded in breach of the order or direction to which they are subject. These include absconding by the patient after being detained in hospital or while they are being transported to or from hospital. Similarly where a patient absconds while being transferred from one hospital to another, including where they are being transferred out of Scotland, the regulation provides for their being taken into custody. Where a patient has been given leave from the hospital the regulation provides for their being taken into custody should they abscond or breach the conditions imposed on them, such as a requirement to reside at a specific address, while on leave and also where they fail to return to the hospital upon expiry of, or following their recall from, that period of leave. Where the order imposing compulsory measures allows a patient to reside in the community, the regulation provides for the patient to be taken into custody if they breach a condition of the order requiring them to reside at a particular address. The regulation also provides for the taking into custody of a restricted patient who absconds following the Scottish Ministers recalling them to hospital from a period of conditional discharge.

The table in subsection (1) specifies which of the circumstances in subsection (2) apply to each particular order or direction.

Regulation 3

The purpose of this regulation is to set out who has the authority to take a patient into custody in the circumstances outlined above. This function may be carried out by a mental health officer, a constable, hospital staff, staff of any other establishment where a patient is required to reside or a person who has been authorised by the patient’s responsible medical officer (“RMO”).

Regulation 4

The purpose of this regulation is to set out the steps that can be taken by a person listed in regulation 3 on taking the patient into custody, and the places to which they make take the patient after so doing. In general terms, and it differs depending on the circumstances, these include hospital, prison or a place that the patient’s RMO considers appropriate.

The table in subsection (1) specifies which of the steps can be taken, and the places to which the patient may be removed, as described in subsection (2), as they apply to each particular order or direction.

Regulation 5

This regulation provides that a person taking the patient into custody may use reasonable force, which is in line with those corresponding provisions in the Act which cover the taking into custody of patients detained under civil proceedings.

Regulations 6, 7 and 8

The purpose of these regulations is to ensure that the relevant parties are notified by the patient's RMO when a patient absconds or is taken back into custody after absconding. Where the patient is subject to a pre-sentence order (and so the case has not been disposed of by the court) these parties include the court, the prosecutor, the Scottish Ministers and the Mental Welfare Commission. Where the patient's case has been disposed of by the court, the Scottish Ministers and the Mental Welfare Commission must be notified.

Regulation 9

The purpose of this regulation in general terms is to set out what effect a patient's absconding has on the order or direction to which they are subject. In relation to a compulsion order (without a restriction order) these provisions mirror those set out in the Act for the corresponding order on the civil side, the compulsory treatment order. Where the patient is a prisoner who is serving a sentence of imprisonment but is currently detained in hospital under a direction, the term of their sentence is suspended during their period of unauthorised absence. Similarly, where the patient is in the process of progressing through the criminal justice system and the order to which they are subject is of a fixed duration, the term of the order is suspended until they are taken back into custody.

Regulations 10, 11 and 12

These regulations together provide that a patient's RMO must in certain circumstances carry out a review of the order on the return of the patient to hospital. Where the patient is still within the criminal justice system regulation 12 allows the order to be reviewed by the court (on the RMO's request) following the patient being taken back into custody. For example, the RMO might consider that the patient requires to be detained in a hospital which has a higher level of security than the one from which they absconded.

Regulation 13

The purpose of this regulation is to afford the RMO, following a patient having absconded or having been taken back into custody after having absconded during a period of authorised leave from the hospital, the discretion to revoke the certificate which authorised that leave.

Consultation

An extensive consultation exercise was carried out in relation to these regulations which included both health and criminal justice stakeholders.

Financial Effects

The order has no financial effects on the Scottish Executive or any other organisation.