



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

2003 asp 13

PART 19

ENTRY, REMOVAL AND DETENTION POWERS

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 [^{F1}section 227A(1)] of the 1995 Act which includes—
 - (i) by virtue of [^{F2}subsections (1) and (3)(a) of section 227R] of that Act, a requirement that the patient submit to treatment as a resident patient in a hospital; or
 - (ii) by virtue of [^{F3}subsections (1) and (3)(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; ^{F4}...

^{F4}(b)

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Detention pending medical examination is up to date with all changes known to be in force on or before 18 July 2023. 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

the patient may ^{F5}be detained in the hospital for a period not exceeding 3 hours (“holding period”) for the purpose of enabling the carrying out of a medical examination of the patient by a medical practitioner].

- (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 ^{F6}for a medical examination of the patient to be carried out by a medical practitioner] for the purpose of determining whether the granting of—
 - (i) an emergency detention certificate; or
 - (ii) a short-term detention certificate,
 is warranted.

^{F7}(4)

- (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.

Textual Amendments

- F1** Words in s. 299(1)(a) substituted (30.6.2017) by [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2017 \(S.S.I. 2017/228\)](#), arts. 1, **2(2)(a)** (with art. 3)
- F2** Words in s. 299(1)(a)(i) substituted (30.6.2017) by [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2017 \(S.S.I. 2017/228\)](#), arts. 1, **2(2)(b)** (with art. 3)
- F3** Words in s. 299(1)(a)(ii) substituted (30.6.2017) by [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2017 \(S.S.I. 2017/228\)](#), arts. 1, **2(2)(c)** (with art. 3)

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Detention pending medical examination is up to date with all changes known to be in force on or before 18 July 2023. 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*

- F4** S. 299(2)(b) and word repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 20(2)(a)(i)**, 61(2); [S.S.I. 2017/197](#), art. 2, sch. (with art. 11)
- F5** Words in s. 299(2) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 20(2)(a)(ii)**, 61(2); [S.S.I. 2017/197](#), art. 2, sch. (with art. 11)
- F6** Words in s. 299(3)(c) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 20(2)(b)**, 61(2); [S.S.I. 2017/197](#), art. 2, sch. (with art. 11)
- F7** S. 299(4) repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 20(2)(c)**, 61(2); [S.S.I. 2017/197](#), art. 2, sch. (with art. 11)

Commencement Information

- I1** S. 299 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, **Sch. 1**
- I2** S. 299 in force at 5.10.2005 in so far as not already in force 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\(3\)](#)