

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 20 – Absconding

604. **Part 20** makes provision for taking into custody and returning patients who are absent without due authorisation from the place where they are detained or required to reside.

Section 301: absconding etc. by patients subject to compulsory treatment order

605. **Section 301** provides that patients who are subject to a compulsory treatment order which authorises detention in hospital or which imposes a requirement that the patient resides at a specified address or has to notify a change of address, and who absconds or fails to comply with any condition or requirement in the order, is liable to be taken into custody and made subject to the provisions of section 303.

Section 302: absconding etc. by other patients

606. **Section 302** applies the provisions of section 303 to patients who are subject to other orders or detention certificates, such as an emergency detention certificate, a short-term detention certificate or an interim compulsory treatment order, where they have absconded or otherwise failed to comply with a requirement or condition of the order or certificate.

Section 303: taking into custody and return of absconding patients

607. **Section 303** sets out the powers of authorised persons to make arrangements for the return of certain patients who have absconded or failed to comply with a requirement or condition imposed on them. A patient who absconds while subject to a compulsory treatment order may be taken into custody and returned any time up to 3 months after the date on which he or she goes absent, or fails to comply. Even if the compulsory treatment order has expired in the patient's absence, this provision is still applicable. In relation to any order or certificate other than a compulsory treatment order, the period during which the patient may be taken into custody and returned ends with the expiry of the order or certificate under which the patient is detained.
608. Subsection (3) of section 303 stipulates the parties who are authorised to take into custody and/or return patients who have absconded. Subsection (6) makes clear that any of the parties listed at subsection (3) may use reasonable force when taking into custody or returning such a patient.

Sections 304 to 308: effect of period of unauthorised absence on expiry of compulsory treatment order

609. **Section 304** makes clear that the unauthorised absence does not affect the expiry date of any order or calculation of any period specified under the 2003 Act. Subsection (3)

provides that a compulsory treatment order expires where the patient's unauthorised absence has continued for a period of 3 months.

610. **Section 305** sets out the procedures to be followed where a patient is returned from a period of unauthorised absence more than 14 days before the expiry of the compulsory treatment order. Subsection (1) states that if a patient is absent for longer than 28 consecutive days and is returned at any point before the final 14 days of the compulsory treatment order, the order will cease to have effect at the end of a 14 day period which begins on the day that the patient was returned. Subsection (2) places a duty on the patient's responsible medical officer to carry out a review of the compulsory treatment order in line with the provisions of section 77(3) during this 14 day period after the patient has been returned.
611. Subsections (3) to (6) make provision as to how this review sits with the reviews provided for in Chapter 4 of Part 7 of the 2003 Act.
612. **Sections 306** and **307** deal respectively with patients who are subject to compulsory treatment orders and whose absence ceases when the order has less than 14 days to run and patients subject to compulsory treatment orders whose period of unauthorised absence is for less than 3 months but ends after the expiry of the order. In these cases, the compulsory treatment order shall be deemed to continue for a period of 14 days from the return of the patient in order to enable the responsible medical officer to carry out a review. Again, subsections (2) to (5) of each section explain how this review operates in relation to the reviews normally carried out under Chapter 4 of Part 7 of the 2003 Act.
613. **Section 308** states that where a patient subject to a short-term detention certificate or to a certificate issued under section 114(2) or 115(2) is returned in the last 13 days before the expiry of that certificate, the measures specified in the certificate will apply for a further 14 days. (This is to allow time for further assessment of the patient and, where appropriate, an application for a compulsory treatment order).

Sections 309: patients from other jurisdictions

614. Subsection (1) enables the Scottish Ministers to make regulations, with any modifications deemed appropriate, applying sections 301 to 303 in relation to patients from the other jurisdictions mentioned in the subsection.

Section 310: regulations as to absconding by other patients

615. Subsection (1) enables the Scottish Ministers to make regulations as to the circumstances in which a patient who absconds while subject to one of the orders listed in subsection (3) can be taken into custody.
616. The 2004 Order makes a minor amendment to allow any regulations made to require notification to be made, amongst others, to specified prosecutors.