



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

2003 asp 13

## PART 20

### ABSCONDING

#### *Absconding*

#### **301 Absconding etc. by patients subject to compulsory treatment order**

- (1) A patient who is subject to a compulsory treatment order authorising detention in hospital and who—
- (a) absconds from—
    - (i) any place where the patient is kept pending removal to hospital under the order; or
    - (ii) the hospital in which, under the order, the patient is being detained; or
  - (b) while being removed to hospital under the order or transferred under section 124 of this Act, absconds,
- is liable to be taken into custody and dealt with in accordance with section 303 of this Act.
- (2) A patient who is subject to such an order and in respect of whom—
- (a) a certificate under section 127(1) of this Act has effect; and
  - (b) a condition under subsection (6) of that section requires—
    - (i) that the patient be kept in the charge of an authorised person or reside continuously or for or at specified times at a specified place; or
    - (ii) that the patient, on being recalled or on the expiry of a specified period or on or after the occurrence of a specified event, return to the hospital in which the patient was detained under the order or go to such other place as may be specified,
- and who absconds from the charge of that authorised person or otherwise fails to comply with the condition is liable to be taken into custody and dealt with in accordance with section 303 of this Act.

**Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading:

*Absconding is up to date with all changes known to be in force on or before 28 December 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*

- (3) A patient who is subject to a compulsory treatment order imposing a requirement that the patient reside at a specified place and who fails to comply with that requirement is liable to be taken into custody and dealt with in accordance with section 303 of this Act.
- (4) A patient who is subject to a compulsory treatment order imposing a requirement that the patient obtain the approval of the mental health officer to any proposed change of address and who changes address without having obtained that approval is liable to be taken into custody and dealt with in accordance with section 303 of this Act.
- (5) A patient who has been taken into custody under this section and who absconds from that custody remains liable to be taken into custody and dealt with in accordance with section 303 of this Act.

#### Modifications etc. (not altering text)

- C1** Ss. 301-303 applied (with modifications) (5.10.2005) by [Mental Health \(Cross-border transfer; patients subject to detention requirement or otherwise in hospital\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/467\)](#), regs. 1(1), **22** (with reg. 2)
- C2** S. 301 applied (with modifications) (2.10.2008) by [Mental Health \(Absconding Patients from Other Jurisdictions\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/333\)](#), regs. 1(1), **2**, **3**
- C3** S. 301 applied (with modifications) (3.11.2008) by [Mental Health \(England and Wales Cross-border transfer: patients subject to requirements other than detention\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/356\)](#), regs. 1(1), **12(4)**, (5) (with reg. 2)

#### Commencement Information

- I1** [S. 301](#) 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)

### 302 Absconding etc. by other patients

- (1) Subsection (2) below applies to a patient—
  - (a) who is subject to—
    - (i) an interim compulsory treatment order authorising detention;
    - (ii) a short-term detention certificate; or
    - (iii) a certificate under section 114(2) or 115(2) of this Act authorising continued detention;
  - (b) who is being detained in pursuance of an extension certificate or under the power conferred by section 68 of this Act;
  - (c) to whom an emergency detention certificate applies; or
  - (d) who is being detained in hospital under the power conferred by section 113(5) or 299 of this Act.
- (2) A patient to whom this subsection applies and who absconds from—
  - (a) any place where the patient is kept pending removal to hospital under the order or certificate; or
  - (b) the hospital in which, under the order, certificate or, as the case may be, power, the patient is detained,
 is liable to be taken into custody and dealt with in accordance with section 303 of this Act.

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- (3) A patient who is subject to an interim compulsory treatment order imposing a requirement that the patient reside continuously or for or at specified times at a specified place and who fails to comply with that requirement is liable to be taken into custody and dealt with in accordance with section 303 of this Act.
- (4) A patient who is subject to an interim compulsory treatment order authorising detention and in respect of whom—
- (a) a certificate under section 127(3) of this Act has effect; and
  - (b) a condition under subsection (6) of that section requires—
    - (i) that the patient be kept in the charge of an authorised person or reside continuously or for or at specified times at a specified place; or
    - (ii) that the patient, on being recalled or on the expiry of a specified period or on or after the occurrence of a specified event, return to the hospital in which the patient was detained under the order or go to such other place as may be specified,
- and who absconds from the charge of that authorised person or otherwise fails to comply with any such condition is liable to be taken into custody and dealt with in accordance with section 303 of this Act.
- (5) A patient who is subject to a short-term detention certificate in respect of whom—
- (a) a certificate under section 53(1) of this Act has effect; and
  - (b) a condition under subsection (4) of that section requires—
    - (i) that the patient be kept in the charge of an authorised person or reside continuously or for or at specified times at a specified place; or
    - (ii) that the patient, on being recalled or on the expiry of a specified period or on or after the occurrence of a specified event, return to the hospital in which the patient was detained under the certificate or go to such other place as may be specified,
- and who absconds from the charge of that authorised person or otherwise fails to comply with any such condition is liable to be taken into custody and dealt with in accordance with section 303 of this Act.
- (6) A patient who is subject to an emergency detention certificate in respect of whom—
- (a) a certificate under section 41(1) of this Act has effect; and
  - (b) a condition under subsection (4) of that section requires—
    - (i) that the patient be kept in the charge of an authorised person or reside continuously or for or at specified times at a specified place; or
    - (ii) that the patient, on being recalled or on the expiry of a specified period or on or after the occurrence of a specified event, return to the hospital in which the patient was detained under the certificate or go to such other place as may be specified,
- and who absconds from the charge of that authorised person or otherwise fails to comply with any such condition is liable to be taken into custody and dealt with in accordance with section 303 of this Act.

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**Modifications etc. (not altering text)**

- C1** Ss. 301-303 applied (with modifications) (5.10.2005) by [Mental Health \(Cross-border transfer; patients subject to detention requirement or otherwise in hospital\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/467\)](#), regs. 1(1), 22 (with reg. 2)

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- C4** S. 302 applied (with modifications) (7.5.2008) by [Mental Health \(Cross-border Visits\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/181\)](#), regs. 1(1), **2(1)(b)**
- C5** S. 302 applied (with modifications) (2.10.2008) by [Mental Health \(Absconding Patients from Other Jurisdictions\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/333\)](#), regs. 1(1), **4, 5**

#### Commencement Information

- I2** S. 302 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)

### 303 Taking into custody and return of absconding patients

- (1) A person specified in subsection (3)(a) below may, during the period specified in subsection (4) below—
- (a) take into custody any patient who, under sections 301 or 302 of this Act, is liable to be taken into custody;
  - (b) return the patient to the hospital in which the patient was detained or, as the case may be, take the patient to the hospital in which the patient was to be detained or, if that is not appropriate or practicable, take the patient to any other place considered appropriate by the patient's responsible medical officer;
  - (c) return or take the patient to such other place as the patient absconded from or at which the patient failed to reside or, if that is not appropriate or practicable, take the patient to any other place considered appropriate by the patient's responsible medical officer.
- (2) The person specified in subsection (3)(b) below may, during the period specified in subsection (4) below—
- (a) take into custody any patient in respect of whom a certificate under section 41(1), 53(1) or 127(1) of this Act has effect and a condition under section 41(4), 53(4) or, as the case may be, 127(6) of this Act requires that the patient be kept in charge of that person and who, under section 301 or 302 of this Act is liable to be taken into custody; and
  - (b) resume the charge of the patient or, if that is not appropriate or practicable, take the patient to any place considered appropriate by the patient's responsible medical officer.
- (3) The—
- (a) persons referred to in subsection (1) above are—
    - (i) a mental health officer;
    - (ii) a constable;
    - (iii) a member of staff of any hospital and, where the patient liable to be taken into custody is subject to a compulsory treatment order [<sup>F1</sup>or an interim compulsory treatment order] a condition of which requires the patient to reside in an establishment the address of which is specified in the order, a member of staff of that establishment; and
    - (iv) any other person authorised for the purposes of that subsection by the patient's responsible medical officer;
  - (b) person referred to in subsection (2) above is the person who is authorised under section 41(4), 53(4) or, as the case may be, 127(6) of this Act to have charge of the patient.

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- (4) The period referred to in subsection (1) above is—
- (a) in the case of a patient who is subject to a compulsory treatment order, the period of 3 months beginning with the day—
    - (i) when the patient absconded; or
    - (ii) when the patient's conduct or failure first gave rise to liability to be taken into custody;
  - (b) in any other case, the period ending with the expiry of the order, certificate, report or, as the case may be, provision under or in pursuance of which the patient was to be detained.
- (5) The expiry, during the period referred to in subsection (1) above, of the authorised period in relation to the compulsory treatment order to which a patient is subject does not affect the powers conferred by this section.
- (6) The powers conferred by subsections (1) and (2) above include power to use reasonable force in their exercise.
- (7) A patient who is, under section 301 or 302 of this Act, liable to be taken into custody ceases to be so liable—
- (a) on returning to the hospital or other place from which the patient absconded or arriving at the hospital in which the patient was to be detained;
  - (b) on being returned or taken either there or to such other place as is considered appropriate by the patient's responsible medical officer under subsection (1) (b) or (c) or (2)(b) above; or
  - (c) on being taken into custody under section 113 of this Act.

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#### Textual Amendments

- F1** Words in [s. 303\(3\)\(a\)\(iii\)](#) inserted (5.5.2017 for specified purposes, 30.6.2017 in so far as not already in force) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 33(2)**, 61(2); [S.S.I. 2017/126](#), [art. 2](#), [sch.](#); [S.S.I. 2017/197](#), [art. 2](#), [sch.](#)

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#### Modifications etc. (not altering text)

- C1** Ss. 301-303 applied (with modifications) (5.10.2005) by [Mental Health \(Cross-border transfer; patients subject to detention requirement or otherwise in hospital\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/467\)](#), [regs. 1\(1\)](#), **22** (with [reg. 2](#))
- C6** S. 303 applied (with modifications) (7.5.2008) by [Mental Health \(Cross-border Visits\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/181\)](#), [regs. 1\(1\)](#), **2(1)(b)**
- C7** S. 303 applied (with modifications) (2.10.2008) by [Mental Health \(Absconding Patients from Other Jurisdictions\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/333\)](#), [regs. 1\(1\)](#), **6**, **7**
- C8** S. 303 applied (with modifications) (3.11.2008) by [Mental Health \(England and Wales Cross-border transfer: patients subject to requirements other than detention\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/356\)](#), [regs. 1\(1\)](#), **12(4)**, **(5)** (with [reg. 2](#))

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#### Commencement Information

- I3** S. 303 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\(3\)](#)