SCOTTISH STATUTORY INSTRUMENTS

2005 No. 463

MENTAL HEALTH

The Mental Health (Absconding by mentally disordered offenders) (Scotland) Regulations 2005

Made - - - -	*26th September 2005*
Coming into force	*5th October 2005*

The Scottish Ministers, in exercise of the powers conferred by section 310 of the Mental Health (Care and Treatment) (Scotland) Act 2003(**a**) and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with section 326(4) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Mental Health (Absconding by mentally disordered offenders) (Scotland) Regulations 2005 and shall come into force on 5th October 2005.

(2) In these Regulations–

"the 1995 Act" means the Criminal Procedure (Scotland) Act 1995(**b**);

"the 2003 Act" means the Mental Health (Care and Treatment) (Scotland) Act 2003; and

"prosecutor" means the prosecutor who has brought the proceedings against the patient in respect of the offence with which the patient has been charged.

Circumstances in which a patient is liable to be taken into custody by specified persons

2.—(1) A patient–

(a) who is subject to any of the orders or directions mentioned in column A in the following Table; and

(b) who absconds or fails to comply with requirements imposed on the patient by virtue of the orders or directions to which the patient is subject or otherwise by virtue of the 2003 Act or the 1995 Act,

shall be liable to be taken into custody by the persons specified in regulation 3 in any of the circumstances mentioned in the sub-paragraphs of paragraph (2) which are referred to in column B of that Table opposite the entry in column A.

(**a**) 2003 asp 13.
(**b**) 1995 c.46.

TABLE

A *ORDER/DIRECTION*	*B* *Sub-paragraphs of paragraph (2) of this regulation*
assessment order	(a) to (f) and (i)
treatment order	(a) to (f) and (i)
temporary compulsion order made under section 54(1)(c) of the 1995 Act	(a) to (c) and (i)
interim compulsion order	(a) to (f) and (i)
compulsion order that authorises the detention of the patient in hospital in terms of section 57A(8)(a) of the 1995 Act	(a) to (f), (i), (l) and (m)
compulsion order that does not authorise the detention of the patient in hospital in terms of section 57A(8)(a) of the 1995 Act	(g), (h) and (i)
compulsion order where the patient is also subject to a restriction order	(a) to (f), (i), (j), (l) and (m)
hospital direction	(a) to (f), (i), (k), (l) and (m)
transfer for treatment direction	(a) to (f), (i), (k), (l) and (m)

(2) The circumstances are when the patient–

(a) absconds from any place where the patient is being kept pending removal to hospital under the order or direction;

(b) absconds while being removed to hospital under the order or direction;

(c) absconds from the hospital in which, under the order or direction, the patient is being detained;

(d) absconds from the charge of a person authorised in writing in terms of sections 127(6)(a)(**a**), 221(6)(a) or 224(7)(a) (patient to be kept in the charge of an authorised person) of the 2003 Act;

(e) breaches a condition specified in a certificate granted under sections 127(1), 221(2) or 224(2) (certificates suspending authority to detain under certain orders and directions) of the 2003 Act that the patient reside continuously or for or at specified times at a specified place;

(f) absconds following the expiry of a specified period or after the occurrence of a specified event or on revocation of a certificate granted under sections 127(1), 128(1), 221(2) or 224(2) of the 2003 Act;

(g) breaches a requirement to reside at a specified place in terms of section 57A(8)(e) (imposition of residence requirement in compulsion order) of the 1995 Act;

(h) changes address without having obtained approval of the patient's mental health officer in breach of a requirement to obtain the approval of the mental health officer;

(i) absconds from custody;

(j) absconds following recall to hospital by warrant issued under section 202 (recall of patients from conditional discharge) of the 2003 Act;

(k) absconds while being removed to a prison, institution or other place (not being a hospital) on the direction of the Scottish Ministers under section 216(2) (effect of revocation by Scottish Ministers of a hospital direction or transfer for treatment direction) of the 2003 Act;

(**a**) Section 127 of the Mental Health (Care and Treatment) (Scotland) Act 2003 is applied in relation to a patient subject to a relevant compulsion order by section 179 of that Act.

(l) absconds while being transferred from one hospital to another under–

(i) section 124 (2) as applied by section 178 of the 2003 Act (transfer where patient is subject to a relevant compulsion order); or

(ii) section 218(2) of that Act (transfer where patient is subject to a compulsion order and a restriction order, a hospital direction or a transfer for treatment direction); or

(m) absconds while being removed from Scotland by virtue of regulations made under section 290 of the 2003 Act.

Taking into custody by specified persons

3. The persons specified for the purposes of regulation 2 who may take a patient into custody are–

(a) a mental health officer;

(b) a constable;

(c) a member of staff of any hospital and, where the patient liable to be taken into custody is subject to a compulsion 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;

(d) a person authorised in writing under sections 127(1), 221(6)(a) or 224(7)(a) (patient to be kept in charge of authorised person) of the 2003 Act, but only in respect of the patient to be kept in that person's charge;

(e) a person authorised to escort a patient who is being removed by virtue of regulations made under section 290 of the 2003 Act.

Steps which may be taken by specified persons on taking patients into custody

4.—(1) Where a patient, who is subject to any of the orders or directions mentioned in Column A of the following Table, is taken into custody in terms of regulation 2 by a person specified in regulation 3, the steps which may be taken by that person in respect of that patient shall be the steps mentioned in the sub-paragraphs of paragraph (2) which are referred to in Column B of that Table opposite the entry in Column A.

TABLE

A *ORDER/DIRECTION*	*B* *Sub-paragraph of paragraph (2) of this regulation*
Assessment order	(a)(i) and (ii) and (b)(i) and (ii)
treatment order	(a)(i) and (ii) and (b)(i) and (ii)
temporary compulsion order	(a)(i) and (ii)
interim compulsion order	(a)(i) and (ii) and (b)(i) and (ii)
compulsion order that authorises the detention of the patient in hospital in terms of section 57A(8)(a) of the 1995 Act	(a)(i) and (ii) and (b)(i) and (ii) and (e)
compulsion order that does not authorise the detention of the patient in hospital in terms of section 57A(8)(a) of the 1995 Act	(c)
compulsion order where the patient is also subject to a restriction order	(a)(i) and (ii) and (b)(i) and (ii) and (e)

A *ORDER/DIRECTION*	*B* *Sub-paragraph of paragraph (2) of this regulation*
hospital direction	(a)(i) and (ii), (b)(i) and (ii), (d) and (e)
transfer for treatment direction	(a)(i) and (ii), (b)(i) and (ii), (d) and (e)

(2) The steps which may be taken by a person specified in regulation 3, upon their taking a patient into custody are–

(a) if the patient was detained, or to be detained, in a hospital specified in the order or direction–

(i) take the patient to that hospital;

or, if that is not appropriate or practicable,

(ii) take the patient to any other place considered appropriate by the patient's responsible medical officer;

(b) where appropriate, return the patient to the charge of the person referred to in regulation 2(2)(d) and that person may either–

(i) resume charge of the patient;

or, if that is not appropriate or practicable,

(ii) 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;

(d) if the patient absconded in the circumstances referred to in regulation 2(2)(k)–

(i) take the patient to the prison, institution or other place to which the patient was being removed at the time when the absconding took place;

or, if that is not appropriate or practicable,

(ii) take the patient to any other place considered appropriate by the patient's responsible medical officer; or

(e) if the patient absconded in the circumstances referred to in regulation 2(2)(m)–

(i) take the patient to the place to which the patient was being removed at the time when the absconding took place;

or, if that is not appropriate or practicable,

(ii) take the patient to any other place considered appropriate by the patient's responsible medical officer.

Reasonable force

5. A person specified in regulation 3 may use reasonable force in exercising the powers conferred by regulation 2 to take a patient into custody and by regulation 4 to take the steps referred to in that regulation.

Notification requirements

6.—(1) Where the responsible medical officer of a patient who is subject to any of the following orders–

(a) an assessment order;

(b) a treatment order;

(c) a temporary compulsion order under section 54(1)(c) of the 1995 Act; or

(d) an interim compulsion order,

becomes aware that the patient has absconded or has been taken into custody after having absconded, the responsible medical officer shall notify the parties referred to in paragraph (2).

(2) Subject to paragraph (3), the parties referred to in paragraph (1) are–

(a) the court which imposed the order;

(b) the Commission; and

(c) the Scottish Ministers.

(3) Where the responsible medical officer of a patient who is subject to any of the following orders–

(a) an assessment order imposed prior to conviction;

(b) a treatment order imposed prior to conviction; or

(c) a temporary compulsion order under section 54(1)(c) of the 1995 Act,

becomes aware that the patient has absconded or been taken into custody after having absconded, the responsible medical officer shall, in addition to the parties referred to in paragraph (2), notify the prosecutor.

Notification of Commission: compulsion order

7. Where the responsible medical officer of a patient who is subject to a compulsion order (without a restriction order) becomes aware that the patient has absconded or has failed to comply with requirements imposed on them by virtue of the order to which the patient is subject, or has been taken into custody after having absconded or failed, the responsible medical officer shall notify the Commission.

Notification of Commission and Scottish Ministers

8. Where the responsible medical officer of a patient who is subject to–

(a) a compulsion order where the patient is also subject to a restriction order;

(b) a hospital direction; or

(c) a transfer for treatment direction

becomes aware that the patient has absconded or has failed to comply with requirements imposed on them by virtue of the order to which the patient is subject, or has been taken into custody after having absconded or failed, the responsible medical officer shall notify the Commission and the Scottish Ministers.

Effect of unauthorised absence on orders and directions

9.—(1) In this regulation, references to a patient's unauthorised absence are references to the patient's being liable to be taken into custody in terms of regulation 2 for such absconding or failure.

(2) This regulation makes provision as to the effect of such unauthorised absence.

(3) Where, in the case of a patient who is subject to a compulsion order without a restriction order, the patient's unauthorised absence–

(a) continued for more than 28 consecutive days and less than 3 months, but ceased more than 14 days before the day on which the order to which the patient is subject would, apart from this paragraph, cease to authorise the measures specified in it;

(b) ceased either on the day on which the order to which the patient is subject would, apart from this paragraph, cease to authorise the measures specified in it, or within 14 days of that date; or

(c) continued for a period of less than 3 months or less but ceased after the day on which the order to which the patient is subject ceased to authorise the measures specified in it,

the order shall continue in effect until the end of the period of 14 days beginning with the day on which the patient's unauthorised absence ceased; or

(d) continued for a period of 3 months, the order shall then cease to have effect.

(4) Where the patient is subject to an assessment order or an interim compulsion order, the patient's unauthorised absence does not affect the continuity of such order, the duration of which shall not take account of any day falling within the period of the patient's unauthorised absence.

(5) Where the patient is subject to a hospital direction or a transfer for treatment direction, the patient's unauthorised absence does not affect the continuity of the sentence of imprisonment to which the patient is subject, which sentence shall be treated as if suspended during the patient's unauthorised absence and shall continue in effect on the day on which the patient's unauthorised absence ceased.

Review of compulsion order (without a restriction order)

10.—(1) Subject to paragraphs (2) to (4), in the case of a patient who is subject to a compulsion order without a restriction order whose unauthorised absence falls within the description in regulation 6(3)(a), the responsible medical officer shall, during the period of 14 days in which the order continues in effect, carry out a review of the patient's compulsion order complying with the requirements of section 139(3) of the 2003 Act.

(2) Where any part of the period of 14 days referred to in paragraph (1) occurs within the period of 2 months mentioned in subsection (6) of section 139 or subsection (3) of section 140 of the 2003 Act, the review which would (apart from this paragraph) have been carried out during that period of 2 months under that section shall not be carried out.

(3) Where the compulsion order to which the patient is subject has not been extended as mentioned in section 140(1)of the 2003 Act, those of the other review provisions which relate to a further review apply.

(4) Where that order has been so extended, those of the other review provisions which relate to a further review apply.

(5) Subject to paragraph (6), in the case of a patient who is subject to a compulsion order without a restriction order whose unauthorised absence falls within the description in regulation 6(3)(b) or (c), the responsible medical officer shall, during the period of 14 days in which the order continues in effect, carry out a review of the patient's compulsion order complying with the requirements of section 139(3) of the 2003 Act.

(6) Where any part of the period of 14 days referred to in paragraph (5) occurs within the period of 2 months mentioned in subsection (6) of section 139 or subsection (3) of section 140 of the 2003 Act, the review which would (apart from this paragraph) have been carried out during that period of 2 months under that section shall not be carried out.

(7) Where–

(a) the compulsion order to which a patient is subject is, under this regulation, treated as continuing in effect; and

(b) the patient's unauthorised absence–

(i) began at a time when a review of the order was being carried out under sections 139 or 140 of the 2003 Act; and;

(ii) or, if that is not appropriate or practicable,

then anything done by the patient's responsible medical officer for the purposes of that review which (apart from this paragraph) would fall to be done for the purpose of a review under this regulation need not, for those latter purposes, be done.

Review of compulsion order with a restriction order, a hospital direction or a transfer for treatment direction

11.—(1) Subject to paragraphs (2) and (3), in the case of a patient who is subject to a compulsion order with a restriction order, the patient's responsible medical officer shall, within 14 days of the day on which the patient's unauthorised absence ceased, carry out a review in respect of both the compulsion order and restriction order complying with the requirements of section 182(3) of the 2003 Act.

(2) Where any part of the period of 14 days referred to in paragraph (1) occurs within the period of 2 months mentioned in subsection (2) of section 182 of the 2003 Act, the review which would (apart from this paragraph) have been carried out during that period of 2 months under that section shall not be carried out.

(3) Where the patient's unauthorised absence–

(a) began at a time when a review of the orders was being carried out under section 182 of the 2003 Act; and

(b) lasted for 28 consecutive days or any shorter period,

then anything done by the patient's responsible medical officer for the purposes of that review which (apart from this paragraph) would fall to be done for the purpose of a review under this regulation need not, for those latter purposes, be done.

(4) Subject to paragraphs (5) to (7), in the case of a patient who is subject to a hospital direction or a transfer for treatment direction, the patient's responsible medical officer shall, within 14 days of the day on which the patient's unauthorised absence ceased, carry out a review in respect of the direction complying with the requirements of section 206(3) of the 2003 Act.

(5) Paragraph (4) shall not apply where the patient's unauthorised absence ceased within the period of 2 months from the date when the direction to which the patient is subject ceased to have effect in terms of section 217(2).

(6) Where any part of the period of 14 days referred to in paragraph (4) occurs within the period of 2 months mentioned in subsection (2) of section 206 of the 2003 Act, the review which would (apart from this paragraph) have been carried out during that period of 2 months under that section shall not be carried out.

(7) Where the patient's unauthorised absence–

(a) began at a time when a review of the direction was being carried out under section 206 of the 2003 Act; and

(b) lasted for 28 consecutive days or any shorter period,

then anything done by the patient's responsible medical officer for the purposes of that review which (apart from this paragraph) would fall to be done for the purpose of a review under this regulation need not, for those latter purposes, be done.

Review of certain orders

12.—(1) Where a patient who is subject to any of the orders referred to in regulation 6(1)(a) to (d), has absconded or has been taken into custody, the patient's responsible medical officer shall, as soon as reasonably practicable after becoming aware that the patient has absconded or been taken into custody, review the order.

(2) Where the responsible medical officer is satisfied on review, that as a consequence of the patient's unauthorised absence, the order requires to be varied, apply to the court which made that order for an order varying the measures specified in the order.

(3) Where an application is made under paragraph (1), the court may–

(a) confirm the order; or

(b) vary the order by specifying measures additional to or different from those specified in the order.

Revocation of certificate by responsible medical officer

13. Where a patient in respect of whom a certificate was granted under sections 127(1), 128(1), 221(2) or 224(2) of the 2003 Act(**a**), has absconded or has been taken into custody after having absconded, the responsible medical officer may revoke the certificate.

LEWIS MACDONALD
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
26th September 2005

(**a**) 2003 asp 13.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Mental Health (Care and Treatment) (Scotland) Act 2003 ("the Act") makes provision for taking into custody a patient who is subject to a relevant order or direction made under the criminal justice system and who breaches a relevant condition of that order or direction.

Regulation 2 prescribes the circumstances relating to individual orders or directions in which a patient is liable to be taken into custody.

Regulation 3 prescribes the persons who may take such patients into custody.

Regulation 4 prescribes the steps that may be taken with regard to a patient who has been taken into custody with reference to the particular order or direction to which the patient is subject.

Regulation 5 prescribes the circumstances in which a responsible medical officer must notify certain persons of a patient's unauthorised absence.

Regulation 6 prescribes the effect of unauthorised absence on the orders or directions to which the patient is subject.

Regulation 7 provides that the responsible medical officer of a patient subject to a compulsion order (without a restriction order) should notify the Mental Welfare Commission of that patient's unauthorised absence.

Regulation 8 provides that the responsible medical officer of a patient subject to a compulsion order and also subject to a restriction order, a hospital direction or a transfer for treatment direction should notify the Mental Welfare Commission and the Scottish Ministers of that patient's unauthorised absence.

Regulation 9 prescribes the effect of unauthorised absence on the orders or directions to which the patient is subject.

Regulation 10 provides for a review by the responsible medical officer where a patient who absconded was subject to a compulsion order, without a restriction order, and how this review fits with statutory reviews otherwise required under sections 139 and 140 of the 2003 Act.

Regulation 11 provides for a review by the responsible medical officer where a patient who absconded was subject to a compulsion order and a restriction order, a hospital direction or a transfer for treatment direction and how this review sits with statutory reviews otherwise required under section 182 or 206 of the 2003 Act.

Regulation 12 provides for a review of certain other orders and when a patient's responsible medical officer may apply to the court for the order to which the patient is subject to be confirmed, or varied.

Regulation 13 provides that a patient's responsible medical officer may revoke a certificate of suspension where a patient has absconded.

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