

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Compulsory Treatment Orders

Chapter 5: breach of orders

Sections 112 to 123: non-compliance with compulsory treatment order or interim compulsory treatment order

Detention provisions

157. **Sections 112** and **113** relate to a patient who is subject to a compulsory treatment order or an interim compulsory treatment order which does not authorise that patient's detention in hospital; and make provision for breach of the order.
158. **Section 112** applies specifically to the patient's breach of a requirement in the order to attend a specified place with a view to receiving medical treatment (the "attendance requirement"). Where a patient has breached the attendance requirement, the responsible medical officer may, with the consent of a mental health officer, make arrangements for that patient to be admitted to hospital or to be taken to the place the patient is required to attend by the attendance requirement. The patient may be detained for no more than 6 hours from the point at which he or she arrives at the hospital or other place (section 112(4) and (5)).
159. **Section 113** applies to patients who fail to comply with any of the measures specified in a community-based compulsory treatment order or community-based interim compulsory treatment order. The patient may be taken into custody and conveyed to a hospital either by the responsible medical officer or by a person authorised for that purpose by the responsible medical officer. The patient may then be detained for a period of up to 72 hours. Before the responsible medical officer can exercise this power, however, he or she must be satisfied that subsection (2) or (3) applies in the patient's case.
160. **Section 113(6)** provides that as soon as reasonably practicable after the patient has been conveyed to hospital under section 113(5), a medical examination of the patient must be carried out by either the patient's responsible medical officer or an approved medical practitioner.
161. **Section 114** makes provision for the situation where a patient subject to a compulsory treatment order is detained in hospital under section 113(5) after a breach of the terms of the order. The patient's responsible medical officer may grant a certificate under subsection (2) authorising the patient's continued detention in hospital for a further period of up to 28 days. Before granting such a certificate, however, the responsible medical officer must comply with the conditions listed at subsections (1), (3) and (4).

Subsection (5) requires the responsible medical officer to list the reasons for believing that if the patient does not continue to be detained in hospital that it is reasonably likely that there will be a significant deterioration in the patient's mental health. It is also a requirement that the certificate be signed by the responsible medical officer.

162. **Section 115** makes provision for the situation where a patient subject to an interim compulsory treatment order is detained in hospital under section 113(5) after a breach of the terms of the order. Subsection (2) confers power on the responsible medical officer to grant a certificate authorising the patient's continued detention in hospital until the point at which the interim compulsory treatment order would have expired. A certificate may be granted only if the conditions in subsections (1), (3) and (4) are met.

Notification duties

163. **Section 116** lists the persons who must be notified by the managers of the hospital in which the patient is detained where a certificate is granted under either section 114(2) or section 115(2).

Revocation of detention certificates issued under sections 114(2) and 115(2)

164. **Sections 117** and **118** place a duty on the responsible medical officer who granted a certificate under section 114(2) or section 115(2) to revoke that certificate under certain circumstances.
165. **Section 117(1)** provides that where a certificate under section 114(2) was granted on the basis mentioned in section 114(1)(c)(i) and the responsible medical officer determines that the order should not be varied, that officer must revoke the certificate. Subsection (2) provides that where a certificate under section 114(2) was granted on the basis mentioned in section 114(1)(c)(ii) and the test in section 117(2)(b) is satisfied, the responsible medical officer must revoke the certificate.
166. **Section 118** provides that a certificate under section 115(2) must be revoked where the test in paragraph (b) is met.
167. **Section 119** sets out the persons the responsible medical officer must notify of any such revocation.
168. **Section 120** confers on the patient or the patient's named person the right to apply to the Tribunal for the revocation of a certificate issued under sections 114(2) or 115(2). Subsection (2) sets out the grounds on which the Tribunal will revoke the certificate.

Interaction of Chapter and orders

169. **Section 121(1)** provides that where a patient has breached the terms of a compulsory treatment order or an interim compulsory treatment order and is then detained in hospital under section 113(5), the measures originally authorised by the order are not authorised while the patient is detained under that section. The one exception to this rule relates to the giving of any medical treatment authorised by section 66(1)(b). Where such authorisation for medical treatment has been granted, that authorisation continues to apply during the period of hospital detention authorised by section 113(5).
170. **Sections 122** and **123** similarly provide that where a certificate has been granted under section 114(2) or 115(2), the measures authorised in the compulsory treatment order or interim compulsory treatment order do not apply while the certificate is in force. As with section 121, the one exception to this provision relates to the giving of any medical treatment authorised by section 66(1)(b) which may continue to be given while these certificates are in force.