



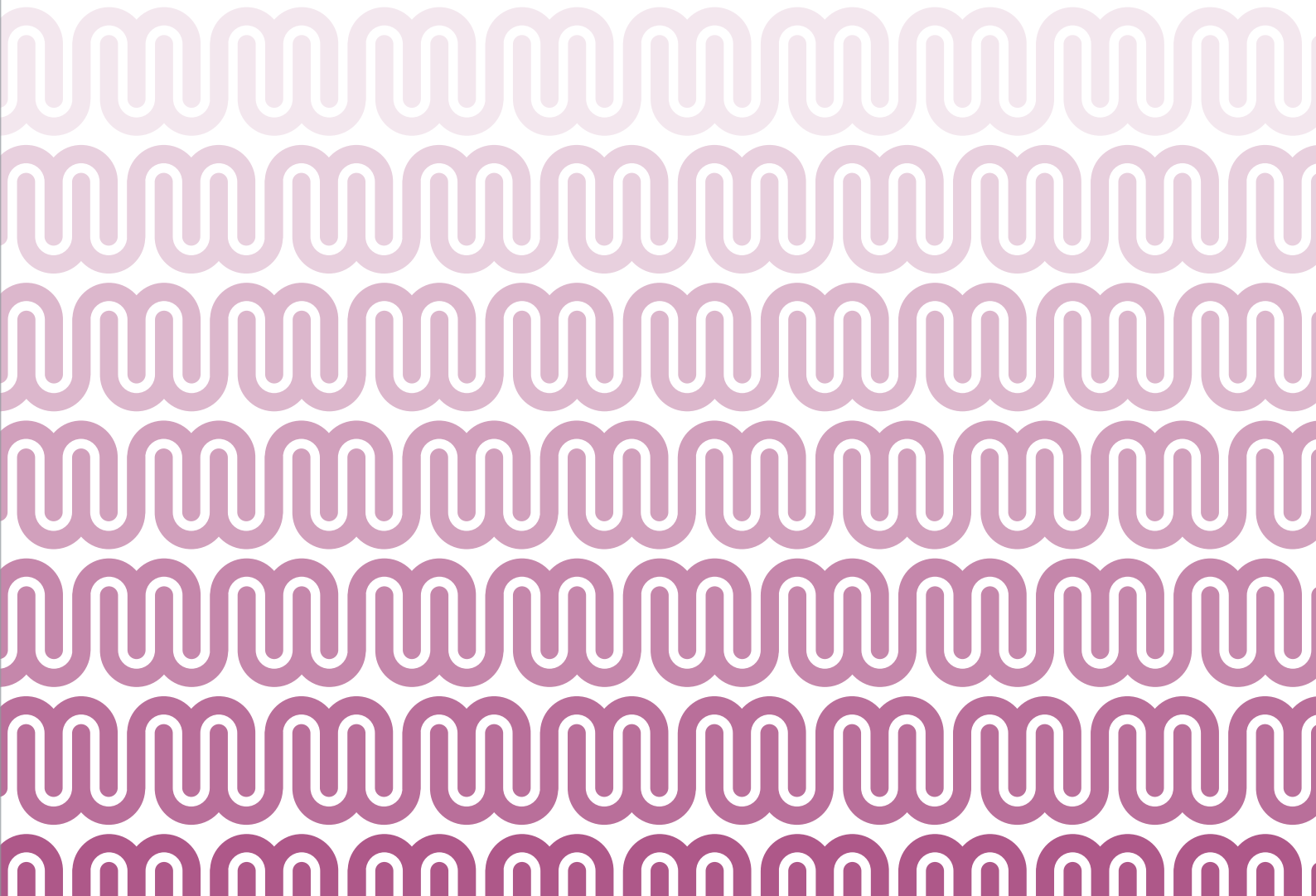
**mental welfare**  
commission for scotland

# **Non-compliance with community compulsory treatment orders**

Advice notes

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August 2020



# Our mission and purpose

## Our Mission

To be a leading and independent voice in promoting a society where people with mental illness, learning disabilities, dementia and related conditions are treated fairly, have their rights respected, and have appropriate support to live the life of their choice.

## Our Purpose

We protect and promote the human rights of people with mental illness, learning disabilities, dementia and related conditions.

## Our Priorities

To achieve our mission and purpose over the next three years we have identified four strategic priorities.

- To challenge and to promote change
- Focus on the most vulnerable
- Increase our impact (in the work that we do)
- Improve our efficiency and effectiveness

## Our Activity

- Influencing and empowering
- Visiting individuals
- Monitoring the law
- Investigations and casework
- Information and advice

**This information was first/last published in 2014. It was reviewed in July 2020 and remains current. It now incorporates information on the timing of s114 certificates from a separate short advice note. Minor changes include updated links and small changes to improve readability.**

## **Introduction**

A compulsory treatment order (CTO) allows for a person to be treated for their mental illness, learning disability or related disorder. A CTO will set out a number of conditions that the person will need to comply with. These conditions may include that the person is liable to be detained in hospital.

When the CTO does not authorise detention in hospital, this is commonly known as a community compulsory treatment order (CCTO).

Before the Mental Health (Care and Treatment) (Scotland) Act 2003 (the Act), there were no provisions for compulsory treatment in the community, except under “leave of absence” from hospital, which was allowed by the Mental Health (Scotland) Act (1984).

The proportion of community orders relative to hospital orders has risen over a ten year period, from 37.6% in January 2010 to 45.8% in January 2019. The proportion reached a high of 48.3% at January 2018. This shows the extent to which the balance of care has shifted to the community for people subject to compulsion.

We are regularly asked about what can be done when someone subject to a CCTO is not complying with the requirements of the order, or has become unwell.

This guide details the provisions of the Act. The principle of ensuring the minimum restriction on the freedom of the patient that is necessary must be taken into account by those who are carrying out functions under the Act. Detaining someone in hospital against their wishes is a severe restriction and should only ever happen when less restrictive interventions have proved to be ineffective.

## Compulsory community treatment

Non-compliance with community treatment is covered under chapter 5 of the Act from Section 112 through to 123.

The code of practice, volume two at chapter six, covers non-compliance with a community based compulsory treatment order or interim compulsory treatment order.

### Section 112 - failure to attend for medical treatment

Section 112 refers to patients subject to a CTO or interim CTO where there is an attendance requirement under section 66(1) (c) or those subject to a compulsion order (CO) where there is an attendance requirement under 57A (8) (c) of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act).

Section 112 of the Act allows the patient's responsible medical officer (RMO) to compel the patient to attend a specified place at a specified time with a view to the patient being given medical treatment for their mental disorder. This section is intended to be used where a patient who is required to accept medical treatment under their CCTO has refused to comply with requests to take their medication.

If the patient has not complied with the attendance requirement, then the RMO can have the patient taken into custody and conveyed to the specified place where they were to receive their medical treatment or to **any** hospital.

The RMO needs to consult with and obtain the consent of a mental health officer (MHO) before exercising this power and, where practicable, it should be the MHO with responsibility for that patient's case. Medical treatment must **never** be forcibly administered to the patient in their own home.

The care team should also consider how they will transport the patient to the specified place and who will accompany them. If it is likely that physical restraint will be required then the care team must carefully consider the care plan for this. Local psychiatric emergency plans should be in place to cover the transfer.

Although Section 112 gives staff the power to convey the patient to hospital, it does not provide the authority to force entry to a property. If forcible entry and assistance from the police is necessary, then an application will need to be made for a section 292 removal warrant.

The patient can be detained at the specified place or hospital for no more than 6 hours from the point of arrival. Form [CTO7](#) needs to be completed by the RMO. This is not a statutory form but its use is strongly recommended. The form is completed after the patient has attended for medical treatment. It is not completed prior to the treatment, but staff need to be clear under what authority they are acting and that it has been authorised by the RMO.

Once the form is signed there is no timescale under the Act for when the authority expires if it has not been used. It is important to ensure that the criteria for section 112 continue to be met and if circumstances change and the authority is no longer required then the form should be made void.

A copy of the completed form should be sent to the Commission.

## Recall to hospital under section 113

Section 113 refers to patients subject to a CTO, interim CTO or CO that does not authorise detention in hospital where the patient fails to comply with one or more measures authorised by that order.

Section 113 of the Act allows the patient to be taken into custody and conveyed to a hospital if they fail to comply with any authorised measure in the order **and** their health is likely to deteriorate as a result.

Section 113 lasts for up to 72 hours beginning with the patient's arrival in hospital but the RMO can revoke it earlier if indicated.

Section 113 cannot be used for a patient on a CCTO who has already been admitted informally to hospital but then changed their mind about agreeing to admission. An emergency or short term detention certificate would be the appropriate route.

Admission under section 113 does not require the consent of an MHO.

Prior to the patient being returned to hospital under section 113, the RMO must have taken reasonable steps to contact the patient following their failure to comply and to afford the patient a reasonable opportunity to comply with the measures.

It must also be apparent that there would be a significant deterioration in the patient's mental health if they were to continue to fail to comply with the measures and it is a matter of urgency to exercise the power. A patient may not be complying with a compulsory measure (e.g. to attend a particular appointment) but non-compliance in itself should not result in return to hospital. Refer to code of practice volume 2 chapter 6 for further information.

Recall under section 113 requires the RMO to consider the grounds for detaining the patient in hospital because of non-compliance with the measures in the order. Form [CTO8](#) is a notification that this has happened. It is completed by the RMO after the patient has been admitted, not before. If the RMO is not available to do this then they can make arrangements for another AMP to do this. This is not a statutory form but its use is strongly recommended. There is no form that actually authorises the admission. Staff will need to be clear under what authority they are acting and that it has been authorised by the RMO.

A scenario that the Act did not envisage is if there is a separate RMO for community and in-patient treatment. An individual could be recalled by the community RMO under section 113 because of non-compliance with the measures in a community [CTO](#) and then a different approved medical practitioner could become the in-patient RMO.

Section 113 gives staff the power to return the patient to hospital but does not provide the authority to force entry to a property. If forcible entry and assistance from the police is necessary then an application will need to be made for a section 292 removal warrant. The care team should also consider how they will transport the patient to the hospital and who will accompany them. Local psychiatric emergency plans should be in place to cover this.

The section 113 comes to an end if the person is detained under section 114 during that period of time or it is revoked by the RMO.

There is no form for revocation of section 113 but we advise the reasons for this should be carefully documented in the patient's case file.

There is no right of appeal to the Mental Health Tribunal for Scotland (the Tribunal) during this 72 hour period.

During the 72 hour period of the section 113 the compulsory measures specified in the CTO, interim CTO or CO are suspended except the giving of medical treatment under part 16.

## **Non-compliance or illness?**

We are often asked about whether a non-compliance order (section 113) should be used, or a short term detention certificate or emergency detention certificate instead.

It is not appropriate to use a non-compliance order to admit a person who complies with the CTO but becomes ill and may need compulsory admission. In these circumstances, the person should be assessed for detention under a short term detention certificate or an emergency detention certificate if indicated.

Where there is doubt as to whether the person may or may not be complying, it is better to assess for a short term detention certificate or an emergency detention certificate.

## Further detention in hospital under section 114/ 115

A person cannot be detained in hospital under a section 114 / 115 unless first admitted under a section 113. There is no direct entry to section 114.

Section 114 relates to a patient subject to a CTO / CO and section 115 relates to a patient subject to an interim order.

The RMO must consult and get the consent of the MHO before granting either and also consult with the named person where practicable.

The section 114 takes effect from the day it is granted and authorises detention for up to 28 days. The section 115 takes effect from the day it is granted and authorises detention up to the expiry of the interim order.

For section 114 / 115, form [CTO9](#) is completed by the RMO and should be completed within the 72 hour period authorised by section 113 certificate (CTO 8).

The period of detention should be used to consider whether an application to vary the order to include hospital detention will be necessary. Should the RMO want to revoke the certificate then form [REV 3](#) should be completed.

It should however be borne in mind that, unlike a short-term detention certificate, the period of 28 days starts from the granting of the S114 certificate, not the beginning of the day it is granted.

So:

- An STDC granted at 3pm on 1 April expires at midnight at the end of 28 April,

But:

- A S114 certificate granted at the same time would expire at 3pm on 29 April.

Where it looks likely that the patient will require detention beyond 28 days, we advise making an early application to the Tribunal to vary or extend and vary the order on a full or interim basis.

The application to vary should be made to the Tribunal as soon as possible to ensure the hearing takes place before the end of the 28 day period.

For section 114 there is no provision for the order to be extended to allow the Tribunal to hold a hearing. Section 114 is not extended by the application to vary.

It is possible under section 106 of the Act for the Tribunal to grant an interim variation of a CCTO without holding an evidential hearing. We strongly advise that the Tribunal is contacted as early as possible during the section 114 if it appears that detention in hospital beyond the period of the section 114 may be needed.

During the 28 day period of the section 114, the compulsory measures specified in the CTO, interim CTO or CO are suspended except the giving of medical treatment under part 16.

Both the patient and the named person have the right to apply to the Tribunal to have the certificate revoked.

Hospital managers must notify the patient, their named person, welfare guardian or welfare attorney of the granting of the certificate as soon as is practicable.

The Commission and the Tribunal must be notified within 7 days of the granting of the certificate.



Mental Welfare Commission for Scotland  
Thistle House,  
91 Haymarket Terrace,  
Edinburgh,  
EH12 5HE  
Tel: 0131 313 8777  
Fax: 0131 313 8778  
Freephone: 0800 389 6809  
[enquiries@mwscot.org.uk](mailto:enquiries@mwscot.org.uk)  
[www.mwscot.org.uk](http://www.mwscot.org.uk)  
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