

## Removal order (A “section 293 order”)

- 1 An MHO may apply to a sheriff under section 293 of the Act for a “removal order” which would allow a mentally disordered person over the age of 16 to be removed to a place of safety. The circumstances in which an MHO would make an application for a removal order with respect to such a person are where the MHO believes that the person is likely to suffer significant harm if not removed to a place of safety and if any of the following circumstances apply:
  - the person is subject to or exposed to ill-treatment, neglect or some other deficiency in care or treatment;
  - because of the mental disorder the person’s property is suffering loss or damage or is at risk of suffering loss or damage; or
  - the person is living alone or without care and is unable to look after him/herself or his/her property or financial affairs.

### Making an application for a removal order

- 2 The application must be made by an MHO who has been appointed by the local authority for the area in which the premises are situated.
- 3 The application must be made to a sheriff of the sheriffdom in which the premises are situated. Section 294 of the Act provides, however, that an application for a removal order can be made to a justice of the peace if it is impracticable to make the application to the sheriff and if any delay in obtaining the removal order would be prejudicial to the person who is the subject of the application. It is therefore best practice to make an application to the sheriff wherever possible.
- 4 The MHO must provide evidence on oath to the sheriff or justice of the peace. The following statutory forms must be used for an application to the sheriff or a justice of the peace. (*The statutory forms are available on the Scottish Government website*)
  - application to the sheriff: Form MHO5
  - application to a justice of the peace: Form MHO6.
- 5 During the course of their inquiries, the MHO must ascertain, where practicable, the following persons prescribed under The Mental Health (Removal Order) (Scotland) Regulations 2005:
  - any nearest relative of the person;
  - any guardian of the person; • any welfare attorney of the person;
  - any primary carer of the person.
- 6 Where the MHO considers that it would be prejudicial to the person’s welfare for a hearing to be held by the sheriff, then the MHO may introduce a crave to the sheriff to dispense with intimation to the person who is the subject of the application and the

prescribed persons listed at paragraph 35. The MHO should provide the sheriff with their reasons in coming to this conclusion to assist the sheriff in reaching his/her decision. *(This may be done by way of the statutory application MHO5.)*

- 7 Where the MHO considers that it would not be detrimental to the person's welfare, it would be best practice for the MHO to inform the person who is the subject of the application about the application for the removal order.
- 8 Where practicable, it would also be best practice for the MHO to advise any other persons who may have an interest in the person's welfare of the application. This would enable any parties to then enter the proceedings by way of a Minute.

#### Determining an application for a removal order

- 9 Where the application is being determined by a sheriff, he/she must give the person who is the subject of the application and the prescribed persons the opportunity to make written or oral representation and to lead or produce evidence with respect to the application. Where the sheriff decides to hold a hearing, then the sheriff will arrange for intimation of the date, place and time of the hearing to the person who is the subject of the application and the prescribed persons. However, a sheriff can dispense with this requirement if he/she believes that a delay caused by complying with this requirement would be prejudicial to the person who is the subject of the application.
- 10 Where the application is made to a justice of the peace, the Act does not allow the patient or prescribed persons the opportunity to make representation or to lead or produce evidence. Where this is practicable, an application for a removal order must be made to a sheriff rather than to a justice of the peace.
- 11 The application can be granted if the sheriff or the justice of the peace is satisfied that:
  - the person is aged 16 or over;
  - the person has a mental disorder;
  - the person is likely to suffer significant harm if not removed to a place of safety; and
  - any of the circumstances outlined in sections 293(2) of the Act as set out at paragraph 30 above applies.

#### What does a removal order authorise?

- 12 In terms of section 293(3) of the Act, a removal order confers several powers:
  - it authorises the MHO specified in the order, any other persons specified in the order, and any constable of the police force for the area in which the premises are situated to enter any premises specified in the order within the period of 72 hours beginning with the granting of the order;

- it authorises any constable of the police force maintained for the area in which the premises are situated to open lock-fast places on the premises before the expiry of the 72 hour period;
  - it authorises the removal of the person to a place of safety which was specified in the order within that 72 hour period; and
  - it authorises the detention of the person in that place of safety for a period which is specified in the order. This period may not exceed 7 days.
- 13 It should be noted that although the removal order authorises entry to premises and the removal of the person within a 72 hour period, the order should be executed as quickly as is safe and practicable in order to limit any potential for further harm to the person, or further loss or damage to their property. Similarly, although the person may be detained at a place of safety for a period of up to 7 days, the person should be moved as swiftly as possible from the place of safety to a more suitable care and treatment environment.
- 14 As soon as is practicable after the decision is made, the MHO must notify the Mental Welfare Commission as to whether the application was granted or refused. It would be best practice also to give an account to the Commission of the circumstances which led the MHO to conclude that an application for a removal order was appropriate.
- 15 Where a removal order is granted, it would be best practice for the MHO to inform the prescribed persons (see paragraph 35 above) of the outcome where a hearing was not held or the prescribed person(s) could not attend. The MHO may also wish to consider informing the person who is the subject of the removal order. It would also be best practice for the MHO to inform any other person who the MHO considers may have a legitimate interest in the person's welfare, setting out the procedure they should follow should they wish to exercise their right to apply to the sheriff under section 295 for an order to recall or vary the removal order.

## Recalling or varying a removal order (section 295)

- 16 An application can be made to a sheriff under section 295 of the Act which would 'recall' (i.e. cancel) the removal order. Similarly, an application can also be made to vary the removal order by specifying a different place of safety in the order.
- 17 The application must be made on Form MHO7. (*The statutory form is available on the Scottish Government website.*)
- 18 Such an application can be made by the person who is the subject of the removal order or by any person claiming an interest in the welfare of that person. The application must be made to a sheriff of the sheriffdom in which the premises to which the application for the removal order related are situated. Note that application cannot be made to a justice of the peace, unlike the initial application for the removal order.
- 19 Before the sheriff determines an application for such an order, he/she must afford the person who is the subject of the application and any person prescribed by regulations the opportunity to make written or oral representations and to lead or produce evidence. As the person who made the initial application, the MHO will be cited as the defender and will therefore receive intimation of such application.
- 20 The persons prescribed to make written representations by the Mental Health (Recall or Variation of Removal Order) (Scotland) Regulations 2006 are:
  - the mental health officer who applied for the removal order to which the application for an order recalling or varying that order relates;
  - the nearest relative of the person;
  - any guardian of the person;
  - any welfare attorney of the person; and
  - any primary carer of the person.
- 21 Where the sheriff grants an order varying the removal order, this variation may authorise:
  - the removal of the person to a new place of safety within 72 hours of the order varying the initial removal order being granted; and
  - the person's detention there for the remainder of the period specified in the original order.

- 22 Where the sheriff grants an order recalling the removal order, then the order may authorise the return of the person concerned to the premises from which they were originally removed, or to some other appropriate place chosen by that person.
- 23 No appeal is possible against a decision of a sheriff to make or refuse to make an order which would recall or vary a removal order.
- 24 As soon as is practicable after the order is made the MHO must notify the Commission of the sheriff's decision. It would be best practice to inform the Commission of the reasons for this. Where the order has been recalled, the MHO must notify the Commission of any additional order made by the sheriff.