



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

## 2003 asp 13

### PART 6

#### SHORT-TERM DETENTION

##### *Short-term detention certificate*

#### 44 Short-term detention in hospital

(1) Where—

- (a) an approved medical practitioner carries out a medical examination of a patient;
- (b) the patient does not fall within subsection (2) below; and
- (c) subsection (3) below applies,

the approved medical practitioner may, before the expiry of the period of 3 days beginning with the completion of the medical examination, grant a short-term detention certificate authorising, if the condition mentioned in subsection (6) below is satisfied, the measures mentioned in subsection (5) below.

(2) The patient falls within this subsection if, immediately before the medical examination mentioned in subsection (1)(a) above is carried out, the patient is [<sup>F1</sup>subject to]—

- (a) a short-term detention certificate;
- (b) an extension certificate;
- (c) section 68 of this Act; or
- (d) a certificate granted under section 114(2) or 115(2) of this Act.

(3) This subsection applies where—

- (a) there is no conflict of interest in relation to the medical examination;
- (b) the approved medical practitioner considers that it is likely that the conditions mentioned in subsection (4) below are met in respect of the patient;
- (c) the approved medical practitioner consults a mental health officer; and

*Status: Point in time view as at 01/02/2011.*

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- (d) the mental health officer consents to the grant of a short-term detention certificate.
- (4) The conditions referred to subsection (3)(b) above are—
- (a) that the patient has a mental disorder;
  - (b) that, because of the mental disorder, the patient’s ability to make decisions about the provision of medical treatment is significantly impaired;
  - (c) that it is necessary to detain the patient in hospital for the purpose of—
    - (i) determining what medical treatment should be given to the patient; or
    - (ii) giving medical treatment to the patient;
  - (d) that if the patient were not detained in hospital there would be a significant risk—
    - (i) to the health, safety or welfare of the patient; or
    - (ii) to the safety of any other person; and
  - (e) that the granting of a short-term detention certificate is necessary.
- (5) The measures referred to in subsection (1) above are—
- (a) the removal, before the expiry of the period of 3 days beginning with the granting of the short-term detention certificate, of the patient to a hospital or to a different hospital;
  - (b) the detention of the patient in hospital for the period of 28 days beginning with—
    - (i) if, immediately before the certificate is granted, the patient is not in hospital, the beginning of the day on which admission under authority of the certificate of the patient to hospital first takes place;
    - (ii) if, immediately before the certificate is granted, the patient is in hospital, the beginning of the day on which the certificate is granted;
  - (c) the giving to the patient, in accordance with Part 16 of this Act, of medical treatment.
- (6) The condition referred to in subsection (1) above is that the measure mentioned in subsection (5)(b)(i) above is authorised by the certificate only if, before the patient is admitted to hospital under authority of the certificate, the certificate is given to the managers of that hospital.
- (7) If an approved medical practitioner grants a short-term detention certificate in respect of a patient who, immediately before the certificate is granted, is in hospital, the approved medical practitioner shall, as soon as practicable after granting the certificate, give the certificate to the managers of that hospital.
- (8) Regulations may specify—
- (a) the circumstances in which there is to be taken to be; and
  - (b) the circumstances in which there is not to be taken to be, a conflict of interest in relation to the medical examination.
- (9) The short-term detention certificate—
- (a) shall state the approved medical practitioner’s reasons for believing the conditions mentioned in subsection (4) above to be met in respect of the patient; and
  - (b) shall be signed by the approved medical practitioner.

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- (10) Before granting the short-term detention certificate, the approved medical practitioner shall, subject to subsection (11) below, consult the patient's named person about the proposed grant of the certificate; and the approved medical practitioner shall have regard to any views expressed by the named person.
- (11) The approved medical practitioner need not consult a named person as mentioned in subsection (10) above in any case where it is impracticable to do so.

#### Textual Amendments

- F1** Words in s. 44(2) substituted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(4)**

#### Commencement Information

- I1** S. 44 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, **Sch. 1**
- I2** [S. 44](#) in force at 5.10.2005 in so far as not already in force 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)

## 45 Mental health officer's duty to interview patient etc.

- (1) Subject to subsection (2) below, before deciding whether to consent for the purposes of section 44(3)(d) of this Act, a mental health officer shall—
- interview the patient;
  - ascertain the name and address of the patient's named person;
  - inform the patient of the availability of independent advocacy services under section 259 of this Act; and
  - take appropriate steps to ensure that the patient has the opportunity of making use of those services.
- (2) If it is impracticable for the mental health officer to—
- interview the patient; or
  - ascertain the name and address of the patient's named person,
- the mental health officer shall comply with the requirements in subsection (3) below.
- (3) Those requirements are—
- recording the steps taken by the mental health officer with a view to complying with the duty concerned; and
  - before the expiry of the period of 7 days beginning with the day on which the mental health officer is consulted by an approved medical practitioner under section 44(3)(c) of this Act, giving a copy of the record to the approved medical practitioner.

#### Commencement Information

- I3** [S. 45](#) 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)

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### *Duties on hospital managers*

#### **46 Hospital managers' duties: notification**

- (1) This section applies where a patient is [<sup>F2</sup>subject to] a short-term detention certificate.
- (2) The managers of the hospital shall as soon as practicable after the production to them of the short-term detention certificate, give notice of its granting to—
  - (a) the patient;
  - (b) the patient's named person;
  - (c) any guardian of the patient; and
  - (d) any welfare attorney of the patient.
- (3) The managers of the hospital shall, before the expiry of the period of 7 days beginning with the day on which the certificate is granted, give notice of its granting, and send a copy of it, to—
  - (a) the Tribunal; and
  - (b) the Commission.

#### **Textual Amendments**

- F2** Words in s. 46(1) substituted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, [sch. 1 para. 32\(5\)](#)

#### **Commencement Information**

- I4** [S. 46](#) 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)

### *Extension certificate*

#### **47 Extension of detention pending application for compulsory treatment order**

- (1) Where—
  - (a) a patient is [<sup>F3</sup>subject to] a short-term detention certificate;
  - (b) an approved medical practitioner carries out a medical examination of the patient; and
  - (c) subsections (2) and (3) below apply,

the approved medical practitioner may, before the expiry of the period of 24 hours beginning with the completion of that medical examination, grant a certificate (any such certificate being referred to in this Act as an “extension certificate”) authorising the measures mentioned in subsection (4) below.
- (2) This subsection applies where—
  - (a) there is no conflict of interest in relation to the medical examination; and
  - (b) the approved medical practitioner considers—
    - (i) that the conditions mentioned in paragraphs (a) to (d) of section 44(4) of this Act are met in respect of the patient; and
    - (ii) that because of a change in the mental health of the patient, an application should be made under section 63 of this Act for a compulsory treatment order.

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- (3) This subsection applies where—
- (a) no application has been made under section 63 of this Act;
  - (b) it would not be reasonably practicable to make an application under that section before the expiry of the period of detention authorised by the short-term detention certificate; and
  - (c) subject to subsection (6) below—
    - (i) the approved medical practitioner consults a mental health officer about the proposed grant of an extension certificate; and
    - (ii) the mental health officer consents to the granting of the extension certificate.
- (4) The measures referred to in subsection (1) above are—
- (a) the detention in hospital of the patient for the period of 3 days beginning with the expiry of the period for which the short-term detention certificate authorises the detention of the patient in hospital; and
  - (b) the giving to the patient, in accordance with Part 16 of this Act, of medical treatment.
- (5) Regulations may specify—
- (a) the circumstances in which there is to be taken to be; and
  - (b) the circumstances in which there is not to be taken to be, a conflict of interest in relation to the medical examination.
- (6) An approved medical practitioner need not consult or seek consent under subsection (3)(c) above in any case where it is impracticable to do so.
- (7) In reckoning the period of days mentioned in subsection (4)(a) above, there shall be left out of account any day which is not a working day.
- (8) In this section “working day” means a day which is not—
- (a) Saturday;
  - (b) Sunday; or
  - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in Scotland.

#### Textual Amendments

- F3** Words in s. 47(1)(a) substituted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, [sch. 1 para. 32\(6\)](#)

#### Commencement Information

- I5** S. 47 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, [Sch. 1](#)
- I6** [S. 47](#) in force at 5.10.2005 in so far as not already in force 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)

## 48 Extension certificate: notification

- (1) An approved medical practitioner who grants an extension certificate shall, before the expiry of the period of 24 hours beginning with the granting of the certificate, give

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the certificate to the managers of the hospital in which the patient is detained and give notice to the persons mentioned in subsection (2) below—

- (a) of the granting of the extension certificate;
- (b) of the approved medical practitioner's reasons for believing the conditions mentioned in paragraphs (a) to (d) of section 44(4) of this Act to be met in respect of the patient;
- (c) as to whether consent of a mental health officer was obtained to the granting of the certificate; and
- (d) if the certificate was granted without consent to its granting having been obtained from a mental health officer, the reason why it was impracticable to consult a mental health officer.

(2) Those persons are—

- (a) the patient;
- (b) the patient's named person;
- (c) the Tribunal;
- (d) the Commission;
- (e) any guardian of the patient;
- (f) any welfare attorney of the patient; and
- (g) the mental health officer.

#### Commencement Information

- I7** S. 48 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)

### *Revocation of certificates*

#### **49 Responsible medical officer's duty to review continuing need for detention**

(1) Where a patient is [<sup>F4</sup>subject to] a short-term detention certificate or an extension certificate, the patient's responsible medical officer shall, from time to time, consider—

- (a) whether the conditions mentioned in paragraphs (a), (b) and (d) of section 44(4) of this Act continue to be met in respect of the patient; and
- (b) whether it continues to be necessary for the detention in hospital of the patient to be authorised by the certificate.

(2) If, having complied with subsection (1) above, the responsible medical officer is not satisfied—

- (a) that the conditions referred to in paragraph (a) of that subsection continue to be met in respect of the patient; or
- (b) that it continues to be necessary for the detention in hospital of the patient to be authorised by the certificate,

the responsible medical officer shall revoke the certificate.

(3) The responsible medical officer shall, as soon as practicable after revoking a certificate under subsection (2) above, give notice of its revocation to—

- (a) the patient;

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- (b) the patient's named person;
  - (c) any guardian of the patient;
  - (d) any welfare attorney of the patient; and
  - (e) the mental health officer who was consulted under section 44(3)(c) of this Act.
- (4) The responsible medical officer shall, before the expiry of the period of 7 days beginning with the day on which the certificate is revoked, give notice of its revocation to—
- (a) the Tribunal; and
  - (b) the Commission.

#### Textual Amendments

- F4** Words in s. 49(1) substituted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, [sch. 1 para. 32\(7\)](#)

#### Commencement Information

- I8** [S. 49](#) 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)

## 50 Patient's right to apply for revocation of short-term detention certificate or extension certificate etc.

- (1) Where a patient is [<sup>F5</sup>subject to] a short-term detention certificate or an extension certificate—
- (a) the patient; or
  - (b) the patient's named person,
- may apply to the Tribunal for revocation of the certificate.
- (2) Before determining an application under subsection (1) above, the Tribunal shall afford the persons mentioned in subsection (3) below the opportunity—
- (a) of making representations (whether orally or in writing); and
  - (b) of leading, or producing, evidence.
- (3) Those persons are—
- (a) the patient;
  - (b) the patient's named person;
  - (c) any guardian of the patient;
  - (d) any welfare attorney of the patient;
  - (e) the approved medical practitioner who granted the short-term detention certificate;
  - (f) the mental health officer who was consulted under section 44(3)(c) of this Act;
  - (g) if the patient has a responsible medical officer, that responsible medical officer;
  - (h) any curator *ad litem* appointed in respect of the patient by the Tribunal; and
  - (i) any other person appearing to the Tribunal to have an interest in the application.
- (4) On an application under subsection (1) above, the Tribunal shall, if not satisfied—

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- (a) that the conditions mentioned in paragraphs (a), (b) and (d) of section 44(4) of this Act continue to be met in respect of the patient; or
  - (b) that it continues to be necessary for the detention in hospital of the patient to be authorised by the certificate,
- revoke the certificate.

- (5) Where, before a short-term detention certificate is revoked under subsection (4) above an extension certificate has been granted in respect of the patient, the revocation of the short-term detention certificate shall have the effect of revoking the extension certificate, notwithstanding that there has been no application under subsection (1) above in relation to the extension certificate.

#### Textual Amendments

- F5** Words in s. 50(1) substituted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(8)**

#### Commencement Information

- I9** [S. 50](#) 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)

## 51 Commission’s power to revoke short-term detention certificate or extension certificate

Where—

- (a) [<sup>F6</sup>a patient is subject to] a short-term detention certificate or an extension certificate; and
  - (b) the Commission is satisfied—
    - (i) that not all of the conditions mentioned in paragraphs (a), (b) and (d) of section 44(4) of this Act continue to be met in respect of the patient; or
    - (ii) that it does not continue to be necessary for the detention in hospital of the patient to be authorised by the certificate,
- the Commission may revoke the certificate.

#### Textual Amendments

- F6** Words in s. 51(a) substituted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(9)**

#### Commencement Information

- I10** [S. 51](#) 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)

## 52 Revocation of short-term detention certificate or extension certificate: notification

Where the Commission revokes a certificate under section 51 of this Act, it shall, as soon as practicable after doing so, give notice of the revocation to—

- (a) the patient;



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- (b) the patient's named person;
- (c) any guardian of the patient;
- (d) any welfare attorney of the patient;
- (e) the managers of the hospital in which the patient is detained;
- (f) the mental health officer who was consulted under section 44(3)(c) of this Act;  
and
- (g) the Tribunal.

#### Commencement Information

**III** S. 52 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)

### *Suspension of detention*

#### **53 Suspension of measure authorising detention**

- (1) Where—
- (a) a patient is subject to a short-term detention certificate; and
  - (b) the patient's responsible medical officer grants a certificate specifying a period during which the short-term detention certificate shall not authorise the measures mentioned in section 44(5)(b) of this Act,
- the short-term detention certificate does not authorise that measure during that period.
- (2) A period specified in a certificate granted under subsection (1) above may be expressed as—
- (a) the duration of—
    - (i) an event; or
    - (ii) a series of events; or
  - (b) the duration of—
    - (i) an event; or
    - (ii) a series of events,and any associated travel.
- (3) If the responsible medical officer considers that it is necessary—
- (a) in the interests of the patient; or
  - (b) for the protection of any other person,
- a certificate granted under subsection (1) above may include conditions such as are mentioned in subsection (4) below; and any such conditions shall have effect.
- (4) Those conditions are—
- (a) that, during the period specified in the certificate, the patient be kept in the charge of a person authorised in writing for the purpose by the responsible medical officer;
  - (b) such other conditions as may be specified by the responsible medical officer.

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#### Commencement Information

**I12** S. 53 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)

#### 54 Certificate under section 53: revocation

- (1) Subsection (2) below applies where a certificate is granted under section 53(1) of this Act in respect of a patient.
- (2) If the patient's responsible medical officer is satisfied that it is necessary—
  - (a) in the interests of the patient; or
  - (b) for the protection of any other person,
 that the certificate be revoked, the responsible medical officer may revoke the certificate.
- (3) Where a responsible medical officer revokes a certificate under subsection (2) above, the responsible medical officer shall, as soon as practicable after doing so, give notice of the revocation to—
  - (a) the patient;
  - (b) the patient's named person;
  - (c) the mental health officer;
  - (d) if the certificate includes a condition such as is mentioned in section 53(4)(a) of this Act, any person authorised in accordance with that condition; and
  - (e) the Commission.

#### Commencement Information

**I13** S. 54 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)

*Effect of short-term detention certificate on emergency detention certificate*

#### 55 Effect of subsequent short-term detention certificate on emergency detention certificate

If a short-term detention certificate is granted in respect of a patient who is <sup>F7</sup>subject to] an emergency detention certificate, the emergency detention certificate shall, on the granting of the short-term detention certificate, be revoked.

#### Textual Amendments

**F7** Words in s. 55 substituted (27.9.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 1, sch. 1 para. 32(10)

#### Commencement Information

**I14** S. 55 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)

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*Effect of short-term detention certificate on compulsory treatment order*

**56 Effect of subsequent short-term detention certificate on compulsory treatment order**

- (1) Subsection (2) below applies where—
- (a) a patient is subject to a compulsory treatment order; and
  - (b) a short-term detention certificate is granted in respect of the patient.
- (2) The compulsory treatment order shall cease to authorise the measures specified in it for the period during which the patient is subject to the short-term detention certificate.

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**Commencement Information**

**I15** S. 56 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)

**Status:**

Point in time view as at 01/02/2011.

**Changes to legislation:**

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