

MENTAL HEALTH (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE & A SUMMARY OF THE ACT

Part One – the 2003 Act

Section 4: Emergency detention in hospital

Amendment of **sections 36, 38, 40 and 42**

16. **Part 5** (sections 36 to 43) of the 2003 Act makes provision for removal to and emergency detention in hospital by means of an emergency detention certificate (EDC). Section 36 sets out the procedure for the granting of an EDC authorising the detention of a patient in hospital for a period of 72 hours. An EDC cannot be granted in respect of a patient if the patient is subject to detention by virtue of the provisions listed in section 36(2).
17. Section 4(2) of the Act adds short term detention under section 113(5) of the 2003 Act (non-compliance with a CTO or interim CTO) to that list.
18. Section 38 of the 2003 Act at present provides that in the case of an emergency detention, a hospital manager must inform the following persons that the certificate has been granted: the patient's nearest relative; if the patient's nearest relative doesn't reside with the patient any person who does reside with the patient; the patient's named person (if known); and the Commission. The hospital manager must also notify those persons of the matters notified to them under section 37, i.e. the reason for granting the certificate, whether the MHO consented to it, if not then why an MHO was not consulted, the alternatives to emergency detention that were considered by the medical practitioner and the reason that any such alternative was decided to be inappropriate.
19. Section 4(3) of the Act amends section 38 to add any guardian or welfare attorney of the patient (if known) to the list of people to be notified. It also amends the Act so that hospital managers will still be required to inform those persons that an emergency detention certificate has been granted, but will have discretion as to whether they are notified of the matters in section 37. Those matters will still require to be notified to the Commission. Section 4(4) and 4(5) of the Act make consequential amendments in respect of the revocation of EDCs in sections 40 and 42 of the 2003 Act.