

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 – Short-Term Detention

81. **Part 6** makes provision for a patient’s detention in hospital for a period of 28 days for the purposes of assessment or treatment of his mental condition. Unlike the procedure under the 1984 Act, it is not necessary for the patient first to have been admitted to hospital on an emergency basis.

Sections 44 to 56: short-term detention in hospital

Procedure for initiating short-term detention

82. **Section 44** sets out the procedure for granting a short-term detention certificate. The detention is initiated by an approved medical practitioner who has examined the patient, determined that the criteria for short-term detention are met and obtained the consent of a mental health officer. The approved medical practitioner should also, unless it is impracticable, have regard to any views expressed by the patient’s named person (see Chapter 1 of Part 17) concerning the proposed detention. Any approved medical practitioner may issue a short-term detention certificate provided that there is no conflict of interest in relation to the medical examination.
83. **Section 44(2)** also provides that a patient may not be re-detained on a short-term detention certificate immediately upon the expiry of an earlier period of detention authorised by:
- a short-term detention certificate;
 - an extension certificate;
 - section 68;
 - a certificate granted under section 114(2) or 115(2).

Criteria for short-term detention

84. **Section 44(4)** sets out the criteria for short-term detention. These criteria are similar to the criteria for compulsory treatment orders (see Part 7). However, because short-term detention may be required when the nature and effect of the patient’s mental disorder is not clear, it is unnecessary to demonstrate that medical treatment is available which would benefit the patient. Instead, the approved medical practitioner must be satisfied that it is necessary to detain the patient for the purpose of either determining what treatment should be given or administering medical treatment.

Effect of granting of short-term detention certificate

85. By virtue of section 44(5), a certificate granted by an approved medical practitioner authorises three measures:
- removal to hospital within three days of the certificate being granted.
 - detention in hospital for 28 days. The 28 day detention period starts at the beginning of the day on which the patient was admitted to hospital for a patient who is not already in hospital. For a patient who is already in hospital, the 28 day detention period starts at the beginning of the day on which the certificate was granted.
 - the giving of medical treatment, in accordance with Part 16.
86. Subsection (1) of section 45 provides that, on being asked to consent to short-term detention, the mental health officer must, if practicable, interview the patient and ascertain the name and address of the patient's named person. The mental health officer must also inform the patient of the availability of advocacy services under section 259 of the Act. Subsections (2) and (3) provide that if it is impracticable for the mental health officer to interview the patient and ascertain the name and address of the named person, the mental health officer must give to the approved medical practitioner a copy of a record which states the steps they have taken in attempting to comply with these duties.

Hospital managers' duties

87. [Section 46](#) requires the relevant hospital managers to give notice of the granting of a short-term detention certificate to the persons listed in subsection (2). Where a patient subject to a short-term detention certificate does not already have a responsible medical officer, the managers of the hospital in which the patient is detained must also appoint an approved medical practitioner to act as the patient's responsible medical officer. This duty is imposed by section 230 (see paragraphs 419 to 421 of these Notes).

Extension of short-term detention

88. Subsection (1) of section 47 enables short-term detention to be extended for a further three days if the conditions in that subsection are complied with and an extension certificate is granted by an approved medical practitioner. For example, this procedure can be followed towards the end of the 28 day detention period if the patient's mental health suddenly deteriorates. The three day extension would give the responsible medical officer and the mental health officer additional time within which to prepare an application for a compulsory treatment order. Before an extension certificate can be issued, the conditions set out in subsections (2) and (3) must apply.
89. Subsection (1) of section 48 requires the approved medical practitioner who grants an extension certificate to notify the persons listed in subsection (2) of the extension of the detention period and of the related matters set out in paragraphs (b) to (d) of subsection (1).

Revocation of detention

90. [Section 49](#) imposes on the responsible medical officer a duty to keep under review the need for the patient to be detained either under a short-term detention certificate or an extension certificate; and requires the certificate to be revoked if the detention criteria are no longer met or if it is no longer necessary for the patient to be detained in hospital on the authority of the certificate. Where a certificate is revoked, notification under subsections (3) and (4) must be made.

Revocation on application of patient

91. [Section 50](#) confers on the patient or the patient's named person a right to apply to the Tribunal for revocation of the certificate. A short-term detention certificate is

These notes relate to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) which received Royal Assent on 25 April 2003

also automatically revoked if a compulsory treatment order or an interim compulsory treatment order is made in respect of the patient (see section 70).

Commission's power to revoke detention certificates

92. [Section 51](#) confers a power on the Commission to revoke a short-term detention certificate or an extension certificate where it is satisfied that one of the tests in paragraph (b) is met. Section 52 provides that where the Commission exercises this power, it must give notice of the revocation to the parties listed in that section.

Temporary suspension of detention

93. [Section 53](#) allows a patient's responsible medical officer to suspend temporarily the detention requirement under a short-term detention certificate for a specified period of time. This is effected by the grant of a certificate by the patient's responsible medical officer. In the circumstances set out in subsection (3), the suspension may be made subject to conditions.

Revocation of temporary suspension

94. Subsection (2) of section 54 enables the responsible medical officer to revoke the temporary suspension certificate on either of the grounds set out in that subsection. The officer must give notice of revocation to the parties listed in subsection (3).

Relationship between certificate and other measures under Act authorising detention

95. [Section 55](#) provides that the granting of a subsequent short-term detention certificate supersedes an emergency detention certificate.
96. [Section 56](#) similarly provides that where a patient is subject to a compulsory treatment order and a short-term detention certificate is subsequently granted in respect of that patient, the compulsory treatment order will not authorise the measures specified in it during the period that the patient is subject to the short-term detention certificate.