



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

## 2003 asp 13

### PART 6

#### SHORT-TERM DETENTION

##### *Revocation of certificates*

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

- (1) Where a patient is [<sup>F1</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;
  - (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.

**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Revocation of certificates is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (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

**F1** 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

**II** [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>F2</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—
- (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.

**Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Revocation of certificates is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (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

- F2** 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

- I2** [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>F3</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

- F3** 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

- I3** [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;
- (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;

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Revocation of certificates is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (f) the mental health officer who was consulted under section 44(3)(c) of this Act;  
and
- (g) the Tribunal.

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**Commencement Information**

**I4** 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)

**Changes to legislation:**

Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Revocation of certificates is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 64(8A)(8B) inserted by [2015 asp 9 s. 1\(2\)](#)
- s. 65(7) inserted by [2015 asp 9 s. 1\(3\)](#)