



# 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 detained in hospital under authority of 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.

- (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.

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

- (1) Where a patient is in hospital under authority of 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.
- (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.

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

Where—

- (a) the detention of a patient in hospital is authorised by 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.

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