



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

## 2003 asp 13

### PART 5

#### EMERGENCY DETENTION

##### *Emergency detention certificate*

#### **36 Emergency detention in hospital**

(1) Where—

- (a) a 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 medical practitioner may, before the expiry of the appropriate period, grant an emergency detention certificate authorising, if the condition mentioned in subsection (7) below is satisfied, the measures mentioned in subsection (8) 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) an emergency detention certificate;
- (b) a short-term detention certificate;
- (c) an extension certificate;
- (d) section 68 of this Act; or

[<sup>F2</sup>(da) section 113(5) of this Act;]

- (e) a certificate granted under section 114(2) or 115(2) of this Act.

(3) Subject to subsection (6) below, this subsection applies where—

<sup>F3</sup>(a) .....

- (b) the medical practitioner considers that it is likely that the conditions mentioned in subsection (4) below are met in respect of the patient;
- (c) the medical practitioner is satisfied that the conditions mentioned in subsection (5) below are met in respect of the patient; and

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- (d) the medical practitioner has consulted a mental health officer and that mental health officer has consented to the grant of an emergency detention certificate.
- (4) The conditions referred to in subsection (3)(b) above are—
  - (a) that the patient has a mental disorder; and
  - (b) that, because of the mental disorder, the patient’s ability to make decisions about the provision of medical treatment is significantly impaired.
- (5) The conditions referred to in subsection (3)(c) above are—
  - (a) that it is necessary as a matter of urgency to detain the patient in hospital for the purpose of determining what medical treatment requires to be provided to the patient;
  - (b) 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
  - (c) that making arrangements with a view to the grant of a short-term detention certificate would involve undesirable delay.
- (6) If it is impracticable for the medical practitioner to consult or seek consent under paragraph (d) of subsection (3) above, that paragraph need not be satisfied for the subsection to apply.
- (7) The condition referred to in subsection (1) above is that the measure mentioned in subsection (8)(b)(i) below is authorised by the certificate only if, before the patient is admitted under authority of the certificate to a hospital, the certificate is given to the managers of that hospital.
- (8) The measures referred to in subsection (1) above are—
  - (a) the removal, before the expiry of the period of 72 hours beginning with the granting of the emergency detention certificate, of the patient to a hospital or to a different hospital; and
  - (b) the detention of the patient in hospital for the period of 72 hours beginning with—
    - (i) if, immediately before the certificate is granted, the patient is not in hospital, the first admission under authority of the certificate of the patient to hospital;
    - (ii) if, immediately before the certificate is granted, the patient is in hospital, the granting of the certificate.
- <sup>F4</sup>(9) .....
- (10) The emergency detention certificate—
  - (a) shall state the medical practitioner’s reasons for believing the conditions mentioned in subsections (4) and (5) above to be met in respect of the patient; and
  - (b) shall be signed by the medical practitioner.
- (11) If a medical practitioner grants an emergency detention certificate in respect of a patient who, immediately before the certificate is granted, is in hospital, the medical practitioner shall, as soon as practicable after granting the certificate, give the certificate to the managers of that hospital.

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- (12) In subsection (1) above “appropriate period” means—
- (a) in a case where the medical examination of the patient is completed at least 4 hours before the end of the day (or, if it takes place on two days, the later of the days) on which it is carried out, the period beginning with completion of the examination and ending with the end of that day;
  - (b) in any other case, the period of 4 hours beginning with the completion of the medical examination.

[<sup>F5</sup>(13) A reference in this section to a hospital may be read as a reference to a hospital unit.

- (14) For the purpose of subsection (13) above, “hospital unit” means any part of a hospital which is treated as a separate unit.]

#### Textual Amendments

- F1** Words in s. 36(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(2)**
- F2** S. 36(2)(da) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 4(2)**, 61(2); [S.S.I. 2017/197](#), art. 2, sch.
- F3** S. 36(3)(a) repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 29(3)(a)(i)**, 61(2); [S.S.I. 2017/197](#), art. 2, sch.
- F4** S. 36(9) repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 29(3)(a)(ii)**, 61(2); [S.S.I. 2017/197](#), art. 2, sch.
- F5** S. 36(13)(14) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 11(2)**, 61(2); [S.S.I. 2017/197](#), art. 2, sch.

#### Commencement Information

- I1** S. 36 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, **Sch. 1**
- I2** S. 36 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)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 36(8)(b) words substituted (temp.) by [2020 c. 7 Sch. 9 para. 3](#)

**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\(3\)](#)