



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

## 2003 asp 13

### PART 5 **S**

#### EMERGENCY DETENTION

##### *Emergency detention certificate*

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

(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)

## 37 Notification by medical practitioner **S**

- (1) Subject to subsection (3) below, a medical practitioner who grants an emergency detention certificate shall, when the certificate is given to the managers of the hospital in which the patient is to be detained under authority of the certificate, give notice to them of the matters mentioned in subsection (2) below.
- (2) Those matters are—
- (a) the reason for granting the certificate;
  - (b) whether consent of a mental health officer was obtained to the granting of the certificate;
  - (c) if the certificate was granted without consent to its granting having been obtained from a mental health officer, the reason why it was impracticable to consult a mental health officer;
  - (d) the alternatives to granting the certificate that were considered by the medical practitioner; and
  - (e) the reason for the medical practitioner determining that any such alternative was inappropriate.

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- (3) If it is impracticable for notice to be given when the certificate is given to the managers, the medical practitioner shall give notice as soon as practicable after that time.

#### Commencement Information

- I3** S. 37 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)

### *Duties on hospital managers*

## **38 Duties on hospital managers: examination, notification etc. S**

- (1) This section applies where a patient is detained in hospital under authority of an emergency detention certificate.
- (2) As soon as practicable after the period of detention authorised by the certificate begins as mentioned in section 36(8)(b) of this Act, the managers of the hospital shall make arrangements for an approved medical practitioner to carry out a medical examination of the patient.
- (3) The managers of the hospital shall—
- (a) before the expiry of the period of 12 hours beginning with the giving of the certificate to them, inform the persons mentioned in subsection (4) below of the granting of the certificate; and
  - (b) before the expiry of the period of 7 days beginning with the day on which they receive notice under section 37 of this Act—
    - (i) give notice to the [<sup>F6</sup>Commission of the granting of the certificate and] of the matters notified to them under that section; and
    - (ii) if the certificate was granted without consent to its granting having been obtained from a mental health officer, give notice of those matters to the persons mentioned in subsection (5) below.

[<sup>F7</sup>(3A) The managers of the hospital may, so far as they consider it appropriate, give notice of the matters notified to them under section 37 of this Act to the persons mentioned in subsection (4) below.]

- (4) The persons referred to in [<sup>F8</sup>subsections (3)(a) and (3A)] above are—
- (a) the patient's nearest relative;
  - (b) if that person does not reside with the patient, any person who resides with the patient;
  - (c) if—
    - (i) the managers know who the patient's named person is; and
    - (ii) that named person is not any of the persons mentioned in paragraphs (a) and (b) above,
 the patient's named person; <sup>F9</sup>...
  - [<sup>F10</sup>(ca) if known to the managers and not falling within paragraph (a) or (b) above—
    - (i) any guardian of the patient; and
    - (ii) any welfare attorney of the patient.]
    - <sup>F9</sup>(d) .....

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- (5) The persons referred to in subsection (3)(b)(ii) above are—
- (a) if the managers know where the patient resides, the local authority for the area in which the patient resides; or
  - (b) if the managers do not know where the patient resides, the local authority for the area in which the hospital is situated.

#### Textual Amendments

- F6** Words in s. 38(3)(b)(i) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 4\(3\)\(a\), 61\(2\)](#); [S.S.I. 2017/197, art. 2, sch.](#) (with art. 5)
- F7** S. 38(3A) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 4\(3\)\(b\), 61\(2\)](#); [S.S.I. 2017/197, art. 2, sch.](#) (with art. 5)
- F8** Words in s. 38(4) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 4\(3\)\(c\)\(i\), 61\(2\)](#); [S.S.I. 2017/197, art. 2, sch.](#) (with art. 5)
- F9** S. 38(4)(d) and word repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 4\(3\)\(c\)\(iii\), 61\(2\)](#); [S.S.I. 2017/197, art. 2, sch.](#) (with art. 5)
- F10** S. 38(4)(ca) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 4\(3\)\(c\)\(ii\), 61\(2\)](#); [S.S.I. 2017/197, art. 2, sch.](#) (with art. 5)

#### Commencement Information

- I4** S. 38 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)

### *Revocation of certificate*

## 39 Approved medical practitioner's duty to revoke emergency detention certificate **S**

[<sup>F11</sup>Where a medical examination has been carried out under section 38(2) of this Act and an approved medical practitioner] is not satisfied—

- (a) that the conditions mentioned in section 36(4)(a) and (b) and (5)(b) 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,

the approved medical practitioner shall revoke the certificate.

#### Textual Amendments

- F11** Words in s. 39 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\(3\)](#)

#### Commencement Information

- I5** S. 39 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)

## 40 Revocation of emergency detention certificate: notification **S**

- (1) Where an approved medical practitioner revokes a certificate under section 39 of this Act, the practitioner shall, as soon as practicable after doing so, inform—

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- (a) the patient; and
  - (b) the managers of the hospital in which the patient is detained,
- of the revocation.
- (2) The managers of the hospital shall, as soon as practicable after being informed of the revocation, inform [F12the Commission and] the persons mentioned in section 38(4) and (5) of this Act of the revocation.

#### Textual Amendments

**F12** Words in s. 40(2) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 4\(4\), 61\(2\); S.S.I. 2017/197, art. 2, sch.](#)

#### Commencement Information

**I6** S. 40 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](#))

### *Suspension of authority to detain*

## 41 Suspension of authority to detain **S**

- (1) Where—
- (a) a patient is subject to an emergency detention certificate; and
  - (b) the patient's responsible medical officer grants a certificate specifying a period during which the emergency detention certificate shall not authorise the measure mentioned in section 36(8)(b) of this Act,
- the emergency detention certificate does not authorise that measure during that period.
- (2) A period specified in a certificate granted under subsection (1) above may be expressed as—
- (a) the duration of—
    - (i) an event; or
    - (ii) a series of events; or
  - (b) the duration of—
    - (i) an event; or
    - (ii) a series of events,
 and any associated travel.
- (3) If the responsible medical officer considers that it is necessary—
- (a) in the interests of the patient; or
  - (b) for the protection of any other person,
- a certificate granted under subsection (1) above may include conditions such as are mentioned in subsection (4) below; and any such conditions shall have effect.
- (4) Those conditions are—
- (a) that, during the period specified in the certificate, the patient be kept in the charge of a person authorised in writing for the purpose by the responsible medical officer;
  - (b) such other conditions as may be specified by the responsible medical officer.

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#### Commencement Information

- 17** S. 41 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)

## 42 Certificate under section 41: revocation **S**

- (1) Subsection (2) below applies where a certificate is granted under section 41(1) of this Act in respect of a patient.
- (2) If the patient's responsible medical officer is satisfied that it is necessary—
- (a) in the interests of the patient; or
  - (b) for the protection of any other person,
- that the certificate be revoked, the responsible medical officer may revoke the certificate.
- (3) Where a responsible medical officer revokes a certificate under subsection (2) above, the responsible medical officer shall, as soon as practicable after doing so, inform—
- (a) the patient;
  - (b) if the certificate includes a condition such as is mentioned in section 41(4)(a) of this Act, any person authorised in accordance with that condition; and
  - (c) the managers of the hospital in which the patient is detained,
- of the revocation.
- (4) The managers of the hospital shall, as soon as practicable after being informed of the revocation, inform [<sup>F13</sup>the Commission and] the persons mentioned in section 38(4) and (5) of this Act of the revocation.

#### Textual Amendments

- F13** Words in s. 42(4) inserted (30.6.2017) by Mental Health (Scotland) Act 2015 (asp 9), ss. 4(5), 61(2); S.S.I. 2017/197, art. 2, sch.

#### Commencement Information

- 18** S. 42 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)

*[<sup>F14</sup>Effect of emergency detention certificate on certain orders]*

#### Textual Amendments

- F14** S. 43 cross-heading substituted (30.6.2017) by virtue of Mental Health (Scotland) Act 2015 (asp 9), ss. 7(3)(b), 61(2); S.S.I. 2017/197, art. 2, sch. (with art. 7)

## 43 [<sup>F15</sup>Effect of emergency detention certificate on certain orders] **S**

- (1) This section applies where—
- (a) a patient is subject to a [<sup>F16</sup>relevant order]; and

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- (b) an emergency detention certificate is granted in respect of the patient.
- (2) <sup>F17</sup>[A relevant order] shall, subject to subsection (3) below, cease to authorise the measures specified in it for the period during which the patient is subject to the emergency detention certificate.
- (3) If the measure mentioned in section 66(1)(b) of this Act <sup>F18</sup>[or (as the case may be) section 57A(8)(b) of the 1995 Act] is specified in the <sup>F19</sup>[relevant order], the <sup>F19</sup>[relevant order] shall continue to authorise that measure during the period mentioned in subsection (2) above.
- <sup>F20</sup>(4) In this section, the references to a relevant order are to—
- (a) a compulsion order, or
  - (b) a compulsory treatment order or an interim compulsory treatment order.]

#### Textual Amendments

- F15** S. 43 title substituted (30.6.2017) by virtue of [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 7(3)(a)**, 61(2); [S.S.I. 2017/197](#), **art. 2**, **sch.** (with **art. 7**)
- F16** Words in s. 43(1)(a) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 7(2)(a)**, 61(2); [S.S.I. 2017/197](#), **art. 2**, **sch.** (with **art. 7**)
- F17** Words in s. 43(2) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 7(2)(b)**, 61(2); [S.S.I. 2017/197](#), **art. 2**, **sch.** (with **art. 7**)
- F18** Words in s. 43(3) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 7(2)(c)(i)**, 61(2); [S.S.I. 2017/197](#), **art. 2**, **sch.** (with **art. 7**)
- F19** Words in s. 43(3) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 7(2)(c)(ii)**, 61(2); [S.S.I. 2017/197](#), **art. 2**, **sch.** (with **art. 7**)
- F20** S. 43(4) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 7(2)(d)**, 61(2); [S.S.I. 2017/197](#), **art. 2**, **sch.** (with **art. 7**)

#### Commencement Information

- I9** S. 43 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:**

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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\(3\)](#)