



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

2003 asp 13

PART 6

SHORT-TERM DETENTION

Short-term detention certificate

44 Short-term detention in hospital

(1) Where—

- (a) an approved 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 approved medical practitioner may, before the expiry of the period of 3 days beginning with the completion of the medical examination, grant a short-term detention certificate authorising, if the condition mentioned in subsection (6) below is satisfied, the measures mentioned in subsection (5) 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 [^{F1}subject to]—

- (a) a short-term detention certificate;
- (b) an extension certificate;
- (c) section 68 of this Act; or
- (d) a certificate granted under section 114(2) or 115(2) of this Act.

(3) This subsection applies where—

- (a) there is no conflict of interest in relation to the medical examination;
- (b) the approved medical practitioner considers that it is likely that the conditions mentioned in subsection (4) below are met in respect of the patient;
- (c) the approved medical practitioner consults a mental health officer; and

Status: Point in time view as at 27/09/2005. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Short-term detention certificate is up to date with all changes known to be in force on or before 14 October 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)

- (d) the mental health officer consents to the grant of a short-term detention certificate.
- (4) The conditions referred to subsection (3)(b) above are—
- (a) that the patient has a mental disorder;
 - (b) that, because of the mental disorder, the patient’s ability to make decisions about the provision of medical treatment is significantly impaired;
 - (c) that it is necessary to detain the patient in hospital for the purpose of—
 - (i) determining what medical treatment should be given to the patient; or
 - (ii) giving medical treatment to the patient;
 - (d) 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
 - (e) that the granting of a short-term detention certificate is necessary.
- (5) The measures referred to in subsection (1) above are—
- (a) the removal, before the expiry of the period of 3 days beginning with the granting of the short-term detention certificate, of the patient to a hospital or to a different hospital;
 - (b) the detention of the patient in hospital for the period of 28 days beginning with—
 - (i) if, immediately before the certificate is granted, the patient is not in hospital, the beginning of the day on which admission under authority of the certificate of the patient to hospital first takes place;
 - (ii) if, immediately before the certificate is granted, the patient is in hospital, the beginning of the day on which the certificate is granted;
 - (c) the giving to the patient, in accordance with Part 16 of this Act, of medical treatment.
- (6) The condition referred to in subsection (1) above is that the measure mentioned in subsection (5)(b)(i) above is authorised by the certificate only if, before the patient is admitted to hospital under authority of the certificate, the certificate is given to the managers of that hospital.
- (7) If an approved medical practitioner grants a short-term detention certificate in respect of a patient who, immediately before the certificate is granted, is in hospital, the approved medical practitioner shall, as soon as practicable after granting the certificate, give the certificate to the managers of that hospital.
- (8) Regulations may specify—
- (a) the circumstances in which there is to be taken to be; and
 - (b) the circumstances in which there is not to be taken to be, a conflict of interest in relation to the medical examination.
- (9) The short-term detention certificate—
- (a) shall state the approved medical practitioner’s reasons for believing the conditions mentioned in subsection (4) above to be met in respect of the patient; and
 - (b) shall be signed by the approved medical practitioner.

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- (10) Before granting the short-term detention certificate, the approved medical practitioner shall, subject to subsection (11) below, consult the patient's named person about the proposed grant of the certificate; and the approved medical practitioner shall have regard to any views expressed by the named person.
- (11) The approved medical practitioner need not consult a named person as mentioned in subsection (10) above in any case where it is impracticable to do so.

Textual Amendments

- F1** Words in s. 44(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\(4\)](#)

Commencement Information

- I1** S. 44 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, [Sch. 1](#)

VALID FROM 05/10/2005

45 Mental health officer's duty to interview patient etc.

- (1) Subject to subsection (2) below, before deciding whether to consent for the purposes of section 44(3)(d) of this Act, a mental health officer shall—
- interview the patient;
 - ascertain the name and address of the patient's named person;
 - inform the patient of the availability of independent advocacy services under section 259 of this Act; and
 - take appropriate steps to ensure that the patient has the opportunity of making use of those services.
- (2) If it is impracticable for the mental health officer to—
- interview the patient; or
 - ascertain the name and address of the patient's named person,
- the mental health officer shall comply with the requirements in subsection (3) below.
- (3) Those requirements are—
- recording the steps taken by the mental health officer with a view to complying with the duty concerned; and
 - before the expiry of the period of 7 days beginning with the day on which the mental health officer is consulted by an approved medical practitioner under section 44(3)(c) of this Act, giving a copy of the record to the approved medical practitioner.

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