



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

2003 asp 13

PART 5

EMERGENCY DETENTION

Duties on hospital managers

38 Duties on hospital managers: examination, notification etc.

- (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 [^{F1}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.
- [^{F2}(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 [^{F3}subsections (3)(a) and (3A)] above are—

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Section 38 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

- (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; ^{F4} ...
- [^{F5}(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.]
- ^{F4}(d)
- (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

- F1** 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)
- F2** 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)
- F3** 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)
- F4** 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)
- F5** 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

- I1** 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)

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\(3\)](#)