

MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Emergency Detention

64. In an emergency, the need for a patient to be detained in hospital means that there might not be enough time to make arrangements for the usual procedures leading to short-term detention (see Part 6) or long-term detention (see Part 7) to be followed. Part 5 therefore provides an emergency procedure under which a patient may be removed to hospital and detained there for up to 72 hours on the basis of a certificate granted by a medical practitioner. The procedure for granting an emergency detention certificate is the same whether or not the patient was in hospital prior to being detained.

Section 36: emergency detention in hospital

Issuing the emergency detention certificate

65. Any medical practitioner may grant an “emergency detention certificate” if the conditions in subsection (1) are met. Before granting the certificate, the medical practitioner must examine the patient (subsection (1)(a)). Regulations may provide circumstances which preclude a medical practitioner from carrying out an examination where there may be a conflict of interest.
66. To reflect the urgency of the situation, a certificate can be granted only within the strict time limits which are set out in subsection (12). Those time limits are calculated by reference to the time when the medical examination is completed.
67. A patient cannot be detained under the emergency procedure if, immediately before the examination is carried out, the patient was detained in hospital under any of the authorisations listed in subsection (2).

Consent of mental health officer

68. The effect of subsections (3)(d) and (6) is that, where it is practicable to do so, the medical practitioner must consult and obtain the consent of a mental health officer before the proposed certificate is granted.

Criteria for emergency detention: tests applied by medical practitioner

69. The certifying practitioner must be *satisfied* that the conditions in subsection (5) are met. However, the practitioner need only consider it *likely* that the conditions in subsection (4) are met. Subsection (5)(c) also requires the practitioner to be satisfied that the process of trying to obtain a short-term detention certificate in respect of the patient would involve undesirable delay.

Measures authorised by certificate

70. Subsection (8) sets out the measures authorised by an emergency detention certificate: removal of the patient to hospital within the period of 72 hours from the time at which the certificate was granted; and detention in hospital for 72 hours. Subsection (7), however, provides that the patient's admission to hospital from the community and the subsequent 72-hour period of detention are only authorised where the emergency detention certificate has been given to the managers of the hospital in which the patient is to be detained. Subsection (8)(b)(ii), on the other hand, provides that where a patient is in hospital immediately before the certificate is granted, the 72 hour period of detention begins with the granting of the certificate.

Contents of emergency detention certificate

71. Subsection (10) requires the medical practitioner who examined the patient and granted the certificate to state the reasons for believing that the conditions in subsections (4) and (5) are met and also to sign the certificate.

Sections 37 to 40: actions following emergency detention

Duties of medical practitioner who issued the detention certificate

72. [Section 37](#) places a duty on the medical practitioner who granted the emergency detention certificate to give notice to the managers of the hospital in which the patient is to be detained of the following matters:
- why the certificate was granted;
 - whether a mental health officer consented to the granting of the certificate;
 - where no consent from a mental health officer was obtained, why it was impracticable to consult a mental health officer;
 - the alternatives to the granting of the certificate which the medical practitioner considered and why such alternatives were believed to be inappropriate.
73. Subsection (1) states that the medical practitioner should provide notice of these matters when the emergency detention certificate is given to the hospital managers. Subsection (3) provides, however, that where it is impracticable for the medical practitioner to provide such notice when the certificate is given to the managers, it should be given as soon as practicable after the event.

Medical examination following admission

74. [Section 38](#) imposes on the managers of the hospital in which the patient is detained a duty to arrange for an approved medical practitioner to carry out a medical examination of the patient. [Section 39](#) provides that the approved medical practitioner who examines the patient must revoke the certificate if satisfied that the criteria for emergency detention listed at [section 36\(4\)](#) and [\(5\)\(b\)](#) are no longer met or if it is no longer necessary for the patient to be detained in hospital on the authority of the emergency detention certificate. If the emergency detention certificate is revoked, the practitioner must inform both the patient and the hospital managers of the revocation ([section 40\(1\)](#)). The hospital managers must then inform the parties listed at subsections (4) and (5) of [section 38](#) that the certificate has been revoked ([section 40\(2\)](#)).

Other duties following admission

75. [Section 38](#) places a further series of duties on the hospital managers. First, they must within 12 hours of receiving the detention certificate inform the parties listed at subsection (4) that the certificate has been granted. Second, they must notify the parties listed at subsection (4) of the matters which they were given notice of by way

of section 37. Such notice must be given within 7 days of their receiving it from the practitioner who granted the certificate. Third, if an emergency detention certificate was granted without the consent of a mental health officer, the hospital managers must within 7 days of receiving the information required by section 37 give notice of that information either to the local authority for the area in which the patient resides or (in instances where the hospital managers do not know where the patient resides) to the local authority for the area in which the hospital is situated.

76. The hospital managers are also required by section 230 to appoint an approved medical practitioner to act as the patient's responsible medical officer. The appointment must be made as soon as is reasonably practicable after the emergency detention certificate is granted. (See paragraphs 419 to 421 of these Notes).

Medical treatment during emergency detention

77. Emergency detention, unlike short-term detention, does not give general authority to provide compulsory medical treatment under Part 16. Urgent medical treatment may, however, be administered under section 243.

Sections 41 and 42: temporary suspension of emergency detention

78. **Section 41(1)** allows a patient's responsible medical officer to suspend temporarily the detention requirement when a patient is subject to an emergency detention certificate. The patient is not subject to that requirement for a particular period of time specified by that officer. Where, for example, the suspension is granted to enable the patient to attend an event, subsection (2) enables the period of time to be expressed as the duration of the event. In the circumstances set out in subsection (3), the suspension may be made subject to conditions. It is only the detention requirement which is suspended and the certificate continues to run. The authority to detain will revive when the period of suspension comes to an end.
79. While a temporary suspension is in force, the responsible medical officer may revoke it if either of the conditions in section 42(2) applies. Where the responsible medical officer does revoke the suspension certificate, he must inform the parties listed at subsection (3). Included here are the relevant hospital managers who, under subsection (4), must then inform the persons mentioned in section 38(4) and (5) of the revocation.

Section 43: effect of an emergency detention certificate on a compulsory treatment order

80. **Section 43** deals with the situation where a patient is already subject to a compulsory treatment order (see Part 7) when an emergency detention certificate is granted. Subsection (2) provides that the measures authorised by the order are suspended for the period that the patient is subject to the emergency detention certificate. The order itself continues to subsist, however, and (provided it still has time to run) revives once the emergency detention certificate expires; and operates as it did before suspension. Subsection (3) provides that any medical treatment which was authorised by the compulsory treatment order may continue to be given during the period for which the emergency detention certificate is in force.