



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
- [^{F2}(ca) section 113(5) of this Act;]
- (d) a certificate granted under section 114(2) or 115(2) of this Act.

(3) This subsection applies where—

- ^{F3}(a)
- (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

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- (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.
- ^{F4}(8)
- (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.
- (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.

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(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.

[^{F5}(12) In this section and sections 46 to 49 of this Act, a reference to a hospital may be read as a reference to a hospital unit.

(13) For the purposes of subsection (12) above, “hospital unit” means any part of a hospital which is treated as a separate unit.]

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\(4\)](#)
- F2** S. 44(2)(ca) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 5\(2\)](#), 61(2); [S.S.I. 2017/197](#), art. 2, [sch.](#)
- F3** S. 44(3)(a) repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 29\(3\)\(b\)\(i\)](#), 61(2); [S.S.I. 2017/197](#), art. 2, [sch.](#)
- F4** S. 44(8) repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 29\(3\)\(b\)\(ii\)](#), 61(2); [S.S.I. 2017/197](#), art. 2, [sch.](#)
- F5** S. 44(12)(13) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 11\(3\)](#), 61(2); [S.S.I. 2017/197](#), art. 2, [sch.](#)

Commencement Information

- I1** S. 44 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, [Sch. 1](#)
- I2** S. 44 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)

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—

- (a) interview the patient;
- (b) ascertain the name and address of the patient’s named person;
- (c) inform the patient of the availability of independent advocacy services under section 259 of this Act; and
- (d) 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—

- (a) interview the patient; or
- (b) 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—

- (a) recording the steps taken by the mental health officer with a view to complying with the duty concerned; and
- (b) 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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Commencement Information

- I3** [S. 45](#) 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\(3\)](#)