

PE2108/C: Obtain a second medical opinion before detainment under the Mental Health (Care and Treatment) (Scotland) Act 2003

Scottish Government written submission, 6 November 2024

Thank you for your letter dated 18 October 2024 seeking a view on how the Scottish Government can be confident that just one medical opinion is sufficient when a patient is detained under a Short-Term Detention Certificate (STDC) in terms of section 44 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ('the 2003 Act').

As I am sure you can appreciate, it would not be appropriate for the Scottish Government to comment on points of legislation in other jurisdictions. However, please be assured that the Scottish Government is confident that one medical opinion is sufficient for the granting of a STDC because of the additional safeguards and patients' rights already provided for in the 2003 Act. Some of these were summarised in the earlier correspondence to you by Ms Todd, Minister for Social Care, Mental Wellbeing and Sport on 15 July 2024.

These safeguards include the duties of the Mental Health Officer (MHO) to consider the granting of the STDC and the duties of the Responsible Medical Officer (RMO) to consider the continued necessity of the order. In addition, the patient and named person have a right to advocacy and the right to apply for revocation of the STDC. It might be helpful if I set these out in more detail;

Short-Term Detention Certificate

As previously mentioned, the 2003 Act imposes two specific duties on the Approved Medical Practitioner (AMP) in relation to the granting of an STDC, namely;

- to consult and obtain the consent of an MHO to the granting of the certificate; and
- to consult and have regard to the views of the patient's named person, where it is practicable to do so.

In addition to the above mentioned duties the AMP;

- should take into account relevant information from the other members of the multi-disciplinary team who are providing care and treatment to the patient.
- Section 1(3) of the 2003 Act imposes a duty on certain persons discharging functions by virtue of the 2003 Act, including the MHO and AMP, to have regard to the present and past wishes and feelings of the patient and to the views of any named person, carer, guardian and welfare attorney of the patient which are relevant to the situation.

Role of the MHO

As I am sure you are aware, an MHO is a specially trained social worker who has the training, education, experience and skills to work with people with a mental disorder. They must follow the Section 1 principles of the 2003 Act¹ while carrying out their functions.

Before the MHO can decide whether or not to consent to the granting of the STDC, the MHO will need, wherever practicable, to try to elicit the views of the patient with respect to the

¹ [1 Guiding principles - The New Mental Health Act: A guide to the role of the mental health officer - Information for service users and their carers - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/information-for-service-users-and-their-carers/pages/11-guiding-principles-the-new-mental-health-act-a-guide-to-the-role-of-the-mental-health-officer-information-for-service-users-and-their-carers.aspx)

STDC and assess any possible alternatives. The MHO should make sure that as many forms of informal and less restrictive treatment have been explored before consenting to the STDC.

Regular Reviews

Just to reiterate that an additional safeguard is the duty placed on the RMO under section 49 of the 2003 Act to keep under review whether the patient continues to meet the statutory criteria for an STDC and whether the STDC continues to be necessary. The RMO must revoke the STDC if the patient no longer meets the detention criteria under section 44(4) (a), (b) and (d) of the 2003 Act or the RMO is no longer satisfied that the STDC continues to be necessary.

Right to apply to the Tribunal for revocation

Safeguards under section 50 of the 2003 Act also provide the patient and the named person the right to apply to the Tribunal for revocation of the STDC. Section 51 of the 2003 Act confers a power on the Mental Welfare Commission to revoke the STDC where it is satisfied that it is no longer necessary for the patient to be detained in hospital on the authority of the certificate.

Compulsory Treatment Orders

Finally, I thought that it might be useful to set out the process where an application for a Compulsory Treatment Order (CTO) is made, which is a longer term order that can last up to 6 months and can be renewed for another 6 months. After that it can be renewed for periods of 12 months. Section 63 of the 2003 Act specifies that two mental health reports must be provided. Any such application must be made to the Tribunal by an MHO and, in addition to the two mental health reports must contain;

- the MHO's report prepared under section 61 of the 2003 Act; and
- the proposed care plan produced by the MHO under section 62.

I trust that the information above provides you with the necessary assurance that our mental health legislation is based on rights and principles and provides for rigorous safeguards in respect of individuals' human rights where compulsory detention and treatment is necessary. In particular we consider our legislation in relation to the granting of STDCs to be compliant with the European Convention on Human Rights.

Mental Health & Incapacity Law Unit