

Briefing for the Citizen Participation and Public Petitions Committee on petition PE2108: [Obtain a second medical opinion before detainment under the Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#), lodged by Andrew Muir

Brief overview of issues raised by the petition

The petition calls on the Scottish Parliament to urge the Scottish Government to require medical professionals to obtain a second medical opinion before a person is detained under the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#).

It refers specifically to the short-term detention certificate rather than emergency detentions or compulsory treatment orders.

Short-term detention certificates

A short-term detention certificate (STDC) authorises the patient's detention in hospital for 28 days in order to determine what medical treatment needs to be given to the patient and to provide that treatment.

[Part 6](#) of the Mental Health (Care and Treatment) (Scotland) Act 2003 makes provision for using a STDC. The Act specifies the criteria which an Approved Medical Practitioner (AMP) must consider likely to have been met before a STDC is used. (An AMP is someone who has been approved by a health board or by the State Hospital Board for Scotland as having specialist training experience in the diagnosis and treatment of mental disorder).

All five conditions within the following criteria must be met in order to use a STDC:

1. the patient has a mental disorder
2. because of the mental disorder, the patient's ability to make decisions about the provision of medical treatment is significantly impaired
3. it is necessary to detain the patient in hospital for the purpose of determining what medical treatment should be given to the patient or giving medical treatment to the patient

4. if the patient were not detained in hospital there would be a significant risk to the health, safety or welfare of the patient or to the safety of any other person
5. the granting of a short-term detention certificate is necessary.

The Act also requires the consent of a [Mental Health Officer](#) (MHO) (a specialist social worker) to the STDC. If the patient has a named person, they must also be consulted and their views taken into account.

A [Code of Practice](#), published by the Scottish Government, outlines the detailed conditions which apply to using a STDC. It explains that there is an expectation that a thorough medical examination is carried out before determining if a STDC is justified. The AMP should also take into account the patient's wishes and the views of the wider medical team.

In deciding whether to give consent to the STDC, the MHO must take into account the views of the patient and of other mental health professionals. They must also consider other views, such as those of the patient's named person. In making their decision, the MHO must also consider other alternatives to detention, whilst weighing up the impact on the patient's family if they are not detained. Section 45 of the Act outlines some specific duties for the MHO:

- interview the patient
- ascertain the name and address of the patient's named person
- inform the patient of the availability of independent advocacy services
- take appropriate steps to ensure that the patient has the opportunity to make use of these advocacy services.

[Section 49 of the Act](#) places a duty on the patient's Responsible Medical Officer (RMO) to keep under review the continued necessity for the STDC. If they believe the detention criteria are no longer met, they must revoke the STDC. The guidance suggests that a weekly review is carried out, involving the wider multi-disciplinary team.

[Section 50 of the Act](#) gives the patient and their named person the right to appeal a STDC to the Mental Health Tribunal Scotland. The Tribunal's Annual Report for 2022/2023 notes that 16.43% of applications made to them (which totalled 5,314 that year) were applications to revoke STDCs.

[Research by the Mental Welfare Commission](#) in 2021 explored how long short-term detentions usually last, and how they end (for example, whether they are revoked, or lapse after the full 28 days). Between 2006 and 2018, 39% of STDCs were revoked, 22% lapsed, and 39% were extended. The research found that during that period, STDCs were increasingly revoked at an earlier stage - compared to 2006, STDCs were 10% shorter in 2018. Given the requirement in the Act to keep detentions under review, the Commission considers that "allowing a detention to lapse is poor practice and at worst it might suggest that the principles of the Mental Health Act are not being followed."

Detention in England

In England, [Section 2 of the Mental Health Act 1983](#) makes provision for the detention of patients for assessment and/or treatment for 28 days. The decision whether to detain a patient is made by an approved mental health professional (who may be a social worker, nurse, occupational therapist or psychologist), following assessment by two doctors, one of whom is trained and qualified in the use of the Act (usually a psychiatrist).¹ [When the 1983 Act was being debated](#), the importance of the independence of the two doctors making medical recommendations was stressed, in order to avoid collusion, influence or interference with clinical judgement.

The professionals involved in the assessment must follow the [Mental Health Act Code of Practice](#)

Patients or their nearest relatives have the right to apply to the Mental Health Tribunal to be discharged. The appeal must be made within 14 days of the start of the detention period.

Scottish Government action

In 2019, the Scottish Government commissioned an independent review of mental health law in Scotland, chaired by Lord Scott KC. Its purpose was to consider how best to improve the rights and protections of people subject to mental health, incapacity or adult protection legislation, because of a mental disorder.

In response to the concluding [report](#), the Scottish Government [committed to establishing](#) a Mental Health and Capacity Reform Programme which will

“co-ordinate and drive further change and improvement over time in line with the Review ambitions. This necessarily long-term programme will modernise our legislation to better reflect international human rights standards, particularly the United Nations Convention on the Rights of Persons with Disabilities. It will also seek to bring about improvements across mental health services and strengthen accountability for upholding and fulfilling human rights.”

In June 2024, an initial [Delivery Plan](#) for the programme was published by the Scottish Government, covering October 2023 to April 2025. There are no specific actions regarding the conditions for detention. However, one of the Scottish Government’s priorities is around reducing coercion and it will scope a programme of work with the aim of reducing the use of coercion and restrictive practices, such as seclusion and restraint.

¹ See [Section 2: admission for assessment - Mental Health Law Online](#)

Scottish Parliament action

In a [Parliamentary Question \(S6W-22234\)](#) in October 2023, Tess White MSP asked the Scottish Government:

“To ask the Scottish Government what its response is to figures from the Mental Welfare Commission for Scotland showing that in 60% of cases where someone is detained for compulsory mental health care and treatment, there was no mental health officer consent, in light of the Mental Health (Care and Treatment) (Scotland) Act 2003 requiring that both a doctor and a mental health officer should be responsible for emergency detentions.”

In its response, the Scottish Government said:

“there may be occasions where the urgency of the situation is so great that it would not be practicable for such consultation to take place. In such cases, the practitioner must inform hospital managers who must then inform the Mental Welfare Commission and notify the relevant authority of the reasons why it was impracticable to consult and seek the consent of an MHO.”

The Minister for Social Care, Mental Wellbeing and Sport, Maree Todd MSP, also goes on to acknowledge that capacity is a contributory factor and says that, while it is the responsibility of local authorities to have appropriate levels of MHOs, the Scottish Government has provided additional funding and support.

The Public Audit Committee has undertaken an [inquiry into Adult Mental Health](#). Its concluding report includes a brief reference to an increase in the use of detention, but the Committee did not recommend any changes in this area.

When the Mental Health (Care and Treatment) (Scotland) Act 2003 was scrutinised by the Scottish Parliament’s Health and Community Care Committee in 2002, the following points were made in its [Stage 1 Report](#):

105. An additional requirement is that an MHO must be consulted and must agree to the detention, although in the case of emergency detention, this requirement is waived if it would be "impracticable" to do so.

106. Most of the witnesses who expressed a view were generally satisfied with the gateway criteria set out in Parts 5 and 6.

110. However, witnesses generally welcomed the requirement on a doctor to get agreement from an MHO before authorising detention, especially in relation to emergency detention, where the MHO would be the "experienced partner" compared to most GPs in considering detention cases.

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09/08/2024

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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