

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 5 – Emergency Detention**

##### ***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

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Act 2003 (asp 13) which received Royal Assent on 25 April 2003*

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.