

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Emergency Detention

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hospital managers must then inform the parties listed at subsections (4) and (5) of section 38 that the certificate has been revoked (section 40(2)).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.