

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

Minister for Social Care, Mental Wellbeing and Sport submission, 15 July 2024

Thank you for your e-mail dated 19 June 2024 seeking a view on the contents of Mr Muir's petition which 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 ('2003 Act').

Short-Term Detention Certificate

Firstly, it might be helpful to set out the criteria and steps that must be taken before a Short-Term Detention Certificate (STDC) can be granted. The Approved Medical Practitioner (AMP) must consider it is likely that all of the five criteria at section 44(4) of the 2003 Act are met, namely that;

- the patient has a mental disorder;
- because of the mental disorder, the patient's ability to make decisions about the provision of medical treatment is significantly impaired;
- 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;
- 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; and
- the granting of a short-term detention certificate is necessary.

The 2003 Act also imposes two specific duties on the AMP. These are;

- to consult and obtain the consent of a mental health officer (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.

The certificate can only be granted if the MHO has given his/her consent. Where it has not been practicable for the AMP to consult the named person in advance of granting the certificate, it would be best practice for him/her to attempt to consult the named person as soon as practicably possible after the certificate has been granted.

It is useful to note that once the STDC is in place section 49 of the 2003 Act places a duty on the patient's Responsible Medical Officer (RMO) to consider from time to time the continued necessity of the STDC.

If the RMO is satisfied that the patient no longer meets the detention criteria listed in section 49(1) of the 2003 Act or that the continued detention of the patient in hospital is no longer necessary, then the RMO must revoke the STDC.

Right of Appeal

Mental health legislation in Scotland is based on rights and principles and provides for rigorous safeguards in respect of individuals' human rights where compulsory treatment is necessary. Safeguards include a right to independent advocacy and an efficient and independent Mental Health Tribunal which grants and reviews orders for compulsory treatment.

Section 50 of the 2003 Act provides the patient and the named person the right to apply to the Tribunal for revocation of the STDC.

The Tribunal must allow certain persons, including the patient and the named person, the chance to make representations orally or in writing and to lead or produce evidence. This includes the right to obtain and lodge as evidence their own medical evidence in the form of an independent psychiatric report. If the Tribunal determine that the detention criteria are no longer met or it is no longer necessary for the patient to be detained in hospital the STDC is revoked.

Mental Health and Capacity Reform Programme

While the Scottish Mental Health Law Review did not make any specific recommendations in relation to this matter the Review was asked to look at ways in which people's human rights could be improved through the law, and what could be done to make it easier to get care and support.

In the Scottish Government's initial response to the Review, we committed to establishing the Mental Health and Capacity Reform Programme. In June 2024, the initial delivery plan under the Programme was published. The plan sets out a range of actions that are either underway or planned in the period up to April 2025, against the priorities identified in our initial response. One of these priorities is around reducing coercion - scoping a programme of work with the aim of reducing the use of coercion and restrictive practices, such as seclusion and restraint, over time.

Kind regards,

MAREE TODD