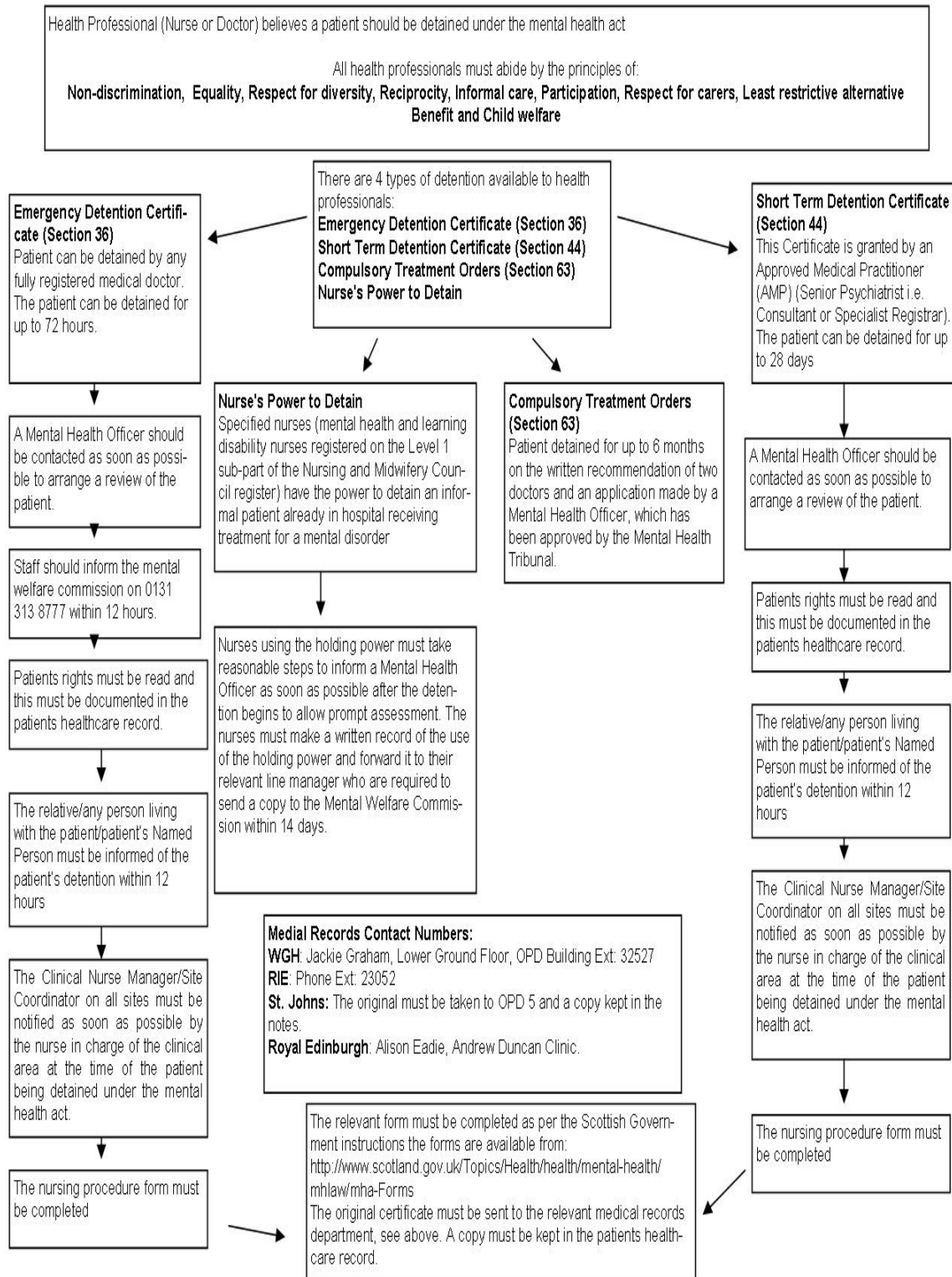


PROCEDURE FOR PATIENTS DETAINED UNDER THE MENTAL HEALTH ACT (CARE AND TREATMENT) SCOTLAND 2003

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Patients detained under the mental health act Flow chart



1. Introduction

- 1.1 At times people will need to be admitted to NHS care who have been, or require to be detained under the Mental Health (Care & Treatment) (Scotland) Act 2003. The large majority of these detentions will be of short duration. However, it is important that staff have the appropriate knowledge to assist them in caring for patients, carers and relatives.
- 1.2 The following procedure provides information about the different legal clauses or 'sections' that a patient can be detained under and the process to follow to ensure the patient and relative/carer/next of kin are informed and cared for appropriately.
- 1.3 The Mental Health (Care & Treatment) (Scotland) Act, the law, sets out principles that should shape decisions about care and treatment:
 1. **Non-discrimination** - People with mental disorder should, wherever possible, retain the same rights and entitlements as those with other health needs.
 2. **Equality** - All powers under the Act should be exercised without any direct or indirect discrimination on the grounds of physical disability, age, gender, sexual orientation, language, religion or national or ethnic or social origin.
 3. **Respect for diversity** - Service users should receive care, treatment and support in a manner that accords respect for their individual qualities, abilities and diverse backgrounds and properly takes into account their age, gender, sexual orientation, ethnic group and social, cultural and religious background.
 4. **Reciprocity** - Where society imposes an obligation on an individual to comply with a programme of treatment or care, it should impose a parallel obligation on the health and social care authorities to provide safe and appropriate services, including ongoing care following discharge from compulsion.
 5. **Informal care** - Wherever possible, care, treatment and support should be provided to people with mental disorder without the use of compulsory powers.
 6. **Participation** - Service users should be fully involved, so far as they are able to be, in all aspects of their assessment, care, treatment and support. Their past and present wishes should be taken into account. They should be provided with all the information and support necessary to enable them to participate fully. Information should be provided in a way which makes it most likely to be understood.
 7. **Respect for carers** - Those who provide care to service users on an informal basis should receive respect for their role and experience, receive appropriate information and advice, and have their views and needs taken into account.
 8. **Least restrictive alternative** - Service users should be provided with any necessary care, treatment and support both in the least invasive manner and in the least restrictive manner and environment compatible with the

delivery of safe and effective care, taking account where appropriate of the safety of others.

- 9. Benefit** - Any intervention under the Act should be likely to produce for the service user a benefit that cannot reasonably be achieved other than by the intervention.
- 10. Child welfare** - The welfare of a child with mental disorder should be paramount in any interventions imposed on the child under the Act.

2. Other Related NHS Lothian Policies:

NHS Lothian Care management for adult patients (16+) with cognitive impairment in a generic hospital setting

NHS Lothian Care management for adult patients (16+) with learning difficulties in a generic hospital setting

NHS Lothian Consent Policy (Page 21 Obtaining consent from patients detained under the mental health (Care and treatment Scotland) Act 2003)

3. Emergency Detention Certificate (Section 36) (Sometimes referred to as DET 1)

All forms are available at:

<http://www.scotland.gov.uk/Topics/Health/health/mental-health/mhlaw/mha-Forms/emergencyshorttermforms>

The Emergency Detention Certificate applies to patients who require, but refuse, admission to the hospital for medical intervention as an emergency. This is on the recommendation of any registered doctor who is of the opinion that the patient is likely to have a mental disorder and that because of the mental disorder, the patient's ability to make decisions about the provision of medical treatment is significantly impaired and that the patient requires hospital admission for assessment of this.

Inpatients who are refusing to remain in hospital can, on the recommendation of a doctor who is of the opinion that the patient requires to remain in hospital for assessment of a potential psychiatric disorder as well as ongoing medical/nursing care, be detained for 72 hours.

The patient can only leave when an Approved Medical Practitioner (Senior Psychiatrist i.e. Consultant or Specialist Registrar) agrees to the patient's discharge.

4. Short Term Detention Certificate (Section 44) (Sometimes referred to as DET 2)

All forms are available at:

<http://www.scotland.gov.uk/Topics/Health/health/mental-health/mhlaw/mha-Forms/emergencyshorttermforms>

This Certificate is granted by an Approved Medical Practitioner (AMP) (Senior Psychiatrist i.e. Consultant or Specialist Registrar) where they are of the opinion that the patient has a mental disorder and that because of the mental disorder the patient's ability to make decisions about medical treatment is significantly impaired.

The AMP must be of the opinion that the patient requires hospital admission for the purpose of determining what medical treatment should be given, or giving medical treatment, to the patient.

The period of detention is up to 28 days.

The patient can only leave the hospital when the AMP agrees that the patient can be discharged.

This section can be the subject of an appeal to the Mental Health Tribunal, which may also lead to the discharge of the patient within the twenty-eight day detention period.

5. Compulsory Treatment Orders (Section 63)

All forms are available at:

<http://www.scotland.gov.uk/Topics/Health/health/mental-health/mhlaw/mha-Forms/cto>

This enables the patient to be detained for up to 6 months on the written recommendation of two doctors and an application made by a Mental Health Officer, which has been approved by the Mental Health Tribunal.

Detention under any of these Sections can only occur if the doctor believes that the patient's mental disorder places their health or safety, or the safety of other people, at risk

6. Nurse's Power to Detain

Forms are available from here:

<http://www.scotland.gov.uk/Topics/Health/health/mental-health/mhlaw/mha-Forms/NUR1>

Specified nurses (mental health and learning disability nurses registered on the Level 1 sub-part of the Nursing and Midwifery Council register) have the power to detain an informal (or a voluntary) patient already in hospital receiving treatment for a mental disorder. Conditions must be met:

- the patient must have a mental disorder
- the detention is necessary to safeguard the patient's health, safety or welfare or to protect any other person

Patients detained under the mental health act (2003)

- it is necessary to carry out a medical examination of the patient to determine whether an emergency or short-term detention certificate should be granted
- it is not practicable to have the patient examined immediately by a doctor.

Nurses using the holding power must take reasonable steps to inform a Mental Health Officer as soon as possible after the detention begins to allow prompt assessment. The nurses must make a written record of the use of the holding power (the form is available [here](#)) and forward it to their relevant line manager (see section 7) who are required to send a copy to the Mental Welfare Commission within 14 days.

Nurses must explain to the patient, as clearly as possible, what is happening and the implications of use of the power. Further information is available from the Mental Welfare Commission [here](#).

7. Procedure for patients detained under the mental health act (Sections 36 and 44)

Procedure for patients detained under the mental health act (Sections 36 and 44)	
Action	Rationale
A fully registered doctor, for section 36, or an Approved Medical Practitioner (AMP) (Senior Psychiatrist i.e. Consultant or Specialist Registrar) for section 44, believe that a patient should be detained under the mental health act, as where they are of the opinion that the patient has a mental disorder and that because of the mental disorder the patient's ability to make decisions about medical treatment is significantly impaired.	To comply with the Mental Health (Care and Treatment) (Scotland) Act 2003 .
A mental health officer should be contacted as soon as possible to review the patient. Contact details are: Edinburgh: 0131 200 2325 East Lothian: 01875 824309 Midlothian: 0131 536 8907 West Lothian: Contact St. Johns switch board who will page the on call Mental health officer.	To comply with the Mental Health (Care and Treatment) (Scotland) Act 2003 .

Patients detained under the mental health act (2003)

<p>Before making contact please ensure that you have the patients name, date of birth and address.</p> <p>If it is not possible to contact a mental health officer before detaining the patient the reasons for not being able to contact the mental health officer should be documented in the patient's healthcare record.</p> <p>The mental health officer should still be contacted to review the patient.</p>	
<p>The Mental Welfare Commission must be informed by phone within 12 hours of the granting of the emergency detention certificate (Section 36) - call on 0131 222 6111 giving the Full name/Date of Birth/Hospital and Ward</p>	<p>To comply with the Mental Health (Care and Treatment) (Scotland) Act 2003.</p>
<p>Patients rights must be read and this must be documented in the patients healthcare record (please see appendix 1 or 2)</p>	<p>To comply with the Mental Health (Care and Treatment) (Scotland) Act 2003.</p>
<p>The relative/any person living with the patient/patient's Named Person must be informed of the patient's detention within 12 hours</p>	<p>To comply with the Mental Health (Care and Treatment) (Scotland) Act 2003.</p>
<p>The Clinical Nurse Manager/Site Coordinator on all sites must be notified as soon as possible by the nurse in charge of the clinical area at the time of the patient being detained under the mental health act.</p> <p>In office hours (Monday – Friday 0900 – 1700) the clinical area's clinical nurse manger must be informed of any patient's detention under the mental health act.</p> <p>Out with office hours the site coordinator should be contacted.</p> <p>RIE: Bleep 1590 WGH: Bleep 8100 St. Johns: Bleep 064</p> <p>Information given to the Clinical Nurse Manager will include:</p> <ul style="list-style-type: none"> • The patient's details 	<p>To comply with the Mental Health (Care and Treatment) (Scotland) Act 2003.</p>

Patients detained under the mental health act (2003)

<ul style="list-style-type: none"> • The ward number • The type of Detention the patient is held under. 	
The relevant certificate must be completed. These can be found here .	To comply with the Mental Health (Care and Treatment) (Scotland) Act 2003 .
The relevant nursing procedure form must be completed (See Appendix 5 or 6).	To ensure an accurate record of the detention and avoid any ambiguity.
<p>The original certificate must be sent to the relevant medical records department as soon as possible. A copy must be kept in the patient's healthcare record.</p> <p>Medial Records Contact Numbers:</p> <p>WGH: Assistant Health Records Manager, Lower Ground Floor, OPD Building Ext: 32527 RIE: Phone Ext: 23052 St. Johns: The original must be taken to OPD 5 and a copy kept in the notes. Royal Edinburgh: Mental Health Act Administrator, Andrew Duncan Clinic.</p> <p>It is the responsibility of the Nurse in Charge at the time of the detention/admission to ensure that this is done. If out with office hours or on a public holiday it is the responsibility of the nurse in charge to ensure that this is handed over to oncoming staff.</p>	<p>To comply with the Mental Health (Care and Treatment) (Scotland) Act 2003.</p> <p>The certificate will then be sent to the Mental welfare commission.</p>
<p>When a patient is detained in hospital please inform the Department of Psychological Medicine as soon as possible. RIE tel. 21398 (answer machine 24 hours). WGH (Bleep 8454, 9am – 5pm, Mon – Fri). Other inpatient areas that have psychiatric staff on call should contact them for example St. Johns or the Royal Edinburgh.</p>	<p>To ensure a quick review of the patient and if required transfer to another inpatient area or revocation of the certificate.</p> <p>To comply with the Mental Health (Care and Treatment) (Scotland) Act 2003.</p>

8. Supply of Documentation

All forms relating to the Mental Health (Care & Treatment Scotland Act) 2003 can be found on the Scottish Government website at

<http://www.scotland.gov.uk/Topics/Health/health/mental-health/mhlaw/mha-Forms>

Documentation and copies of the patients' rights and Information Sheets can also be located in the following areas:

<u>Hospital</u>	<u>Department</u>
Western General Hospital	Acute Receiving Unit Clinical Neurosciences Department Infectious Diseases Unit Medical Records Department
Royal Victoria Hospital	Clinical Wards Nursing Administration (Secretary's Office)
Royal Infirmary of Edinburgh	Accident and Emergency Department Combined Assessment 6 Medical Records Department Department of Psychological Medicine (Tel: 21398)
Liberton Hospital	Hospital Resource Charge Nurse

9. Review of a Patient detained under the Mental Health (Care & Treatment) (Scotland) Act 2003

9.1 An Approved Medical Practitioner (AMP) should review patients detained using an Emergency Detention Certificate as soon as practicable and a decision will be taken by the AMP as to what further action is required. This may be:

- Revocation of the Emergency Detention Order
- Transferring the patient to a Short Term Detention
- Allowing the Emergency Detention Order to expire
- Transfer to another hospital

9.2 Whatever action is taken, the Medical Records Manager must be informed, as there are further forms that require completion.

Information to document and file in Patient's Healthcare Record includes:

Patients detained under the mental health act (2003)

- 1 Note the date and time of commencement of the detention order.
- 2 Copy of Detention Certificates.
- 3 Note of information given to patient's relatives.
- 4 Note of Clinical Manager being informed.
- 5 Note of Mental Welfare Commission being informed.
- 6 Note of Medical Records Department being informed.
- 7 Note of Psychological Medicine being informed

Special Notes

Transfer of a patient to another hospital

If the patient is to be transferred to another hospital, a copy of the section papers will require to be sent with them. It will also be necessary to complete a **form TX2** that authorises the transfer of a patient.

Revocation of a detention order before it expires

This requires the completion of a **form REV1** by an Approved Medical Practitioner. This document should then be forwarded to the local Medical Records Department.

Patient Absconds

If a patient absconds while detained, the Police should be informed, the missing person form should be completed and faxed to the police. They may also be contacted by phone.

Help or Assistance

If any difficulties or uncertainties arise, staff should contact the Department of Psychological Medicine at RIE (Ext 21398) or WGH (Bleep 8454) 9am – 5pm. Out of hours please contact the Royal Edinburgh Hospital for advice (Tie line 7600).

10. References

Mental Health (Care and Treatment) (Scotland) Act 2003 Available at <http://www.legislation.gov.uk/asp/2003/13/contents> Last accessed 15th March 2012

The New Mental Health Act - What's it all about? Available at <http://www.scotland.gov.uk/Publications/2004/01/18753/31686> Last accessed 15th March 2012

Mental Welfare Commission for Scotland Right to Treat? Available at http://reports.mwscot.org.uk/web/FILES/Good_practice_guidance/MWC_RightToTreat.pdf Last accessed 15th March 2012

Mental Welfare Commission for Scotland Admitting a Patient under the Mental Health Act or Criminal Procedure Act. Available from:

Patients detained under the mental health act (2003)

<http://www.mwcscot.org.uk/elearning/Search/search106.htm> Last Accessed 15th March 2012-03-15

Mental Welfare Commission for Scotland About mental health law — principles Available from:

http://www.mwcscot.org.uk/advice_and_information/about_mental_health_law/principles_new.asp. Last Accessed 15th March 2012

NHS Education for Scotland Mental Health (care and treatment) (Scotland) Act 2003 Education for frontline staff Available from: http://www.nes-mha.scot.nhs.uk/compulsory_questions.htm#nine Last Accessed 15th March 2012

Appendix 1: YOUR RIGHTS UNDER THE MENTAL HEALTH (SCOTLAND) (CARE & TREATMENT) ACT 2003

EMERGENCY DETENTION CERTIFICATE

* Delete as appropriate

- **You have been placed on an Emergency Detention Certificate**
- **You have been admitted to this hospital on an Emergency Detention Certificate**

This is on the recommendation of a doctor who is of the opinion that you need medical help. You will be required to remain in hospital for up to 72 hours. You must not leave during this time, unless the doctor agrees that you can. If you do leave, you can be brought back.

When you have been examined by the Consultant in charge of your care, he/she may decide that you should stay in hospital for a longer period. If so, he/she will tell you why and you will be given another leaflet to explain your rights.

Your Letters

Any letters sent to you will normally be given to you, unless, in certain circumstances, your doctor feels it may cause potential distress. You can send letters to anyone, except a person who has said that he/she does not want to get letters from you. If you write to such a person, the hospital staff may stop your letters.

Code of Practice

The practice of doctors and nurses in relation to the detention of patients under the Mental Health (Scotland) (Care & Treatment) Act 2003, is guided by the Code of Practice. This sets out a set of standards by which they should comply.

If you have any questions or complaints

If you want to ask any questions or make any complaints, please discuss this with a nurse, doctor or mental health officer. If you are not satisfied with your care in hospital, you can write to the Hospital Managers or the Mental Welfare Commission, which is an independent body, at the addresses below:

The Chief Operating Officer
NHS Lothian University Hospitals Division
51 Little France Crescent
Edinburgh
EH16 4SA

The Secretary
Mental Welfare Commission for
Scotland
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

A copy of this leaflet will be sent to your Named Person. If there is anything in this leaflet which you do not understand, or would like to discuss further, please ask the Nurse in charge, the Doctor or Mental Health Officer in your ward.

Appendix 2: YOUR RIGHTS UNDER THE MENTAL HEALTH (SCOTLAND) (CARE & TREATMENT) ACT 2003

SHORT-TERM DETENTION CERTIFICATE

* Delete as appropriate

- **You have been placed on a Short-Term Detention Certificate**
- **You have been admitted to this hospital on a Short-Term Detention Certificate**

The Consultant in charge of your treatment, after discussion with others, has decided it will be necessary for you to stay here, for a period of up to 28 days, for assessment and treatment.

This is under Section 44 of the Mental Health (Scotland) (Care & Treatment) Act 2003. You must not leave before the end of this period, unless the doctor agrees that you can. If you try to leave before then, the staff can stop you. If you do leave, you can be brought back to hospital.

You have the right to apply to the Mental Health Tribunal for Scotland for this certificate to be revoked.

At the end of the 28 days, you can be kept in hospital for a further period. This can only happen if two doctors think you need to stay longer and if your Mental Health Officer makes an application to the Mental Health Tribunal for Scotland.

Your Treatment

There are certain guidelines with regard to consent to treatment. Your doctor should have explained the treatment you are to receive. This will also be explained to your relatives. In most cases, you will have to accept his/her advice.

For certain treatments, you will be required to sign a form giving your consent. If you agree, the treatment can go ahead.

Unless it is an emergency, if you do not agree, a doctor from outside the hospital will be asked to examine you, and, if in his/her opinion you should have the treatment, you will be given it.

If at first you give your consent, but later change your mind, you should tell your doctor. He/she will then ask a doctor from outside the hospital to examine you to decide whether or not you need to continue with the treatment.

If you have any anxieties about this, please discuss these with either your doctor, the nurse in charge of the ward or your Mental Health Officer.

Your Letters

Any letters sent to you will normally be given to you, unless, in certain circumstances, your doctor feels it may cause potential distress.

You can send letters to anyone, except a person who has said that he/she does not want to get letters from you. If you write to such a person, the hospital staff may stop your letters.

Code of Practice

The practice of doctors and nurses in relation to the detention of patients under the Mental Health (Scotland) (Care & Treatment) Act 2003, is guided by the Code of Practice. This sets out a set of standards by which they should comply.

If you have any questions or complaints

If you want to ask any questions or make any complaints, please discuss this with a nurse, doctor or Mental Health Officer.

If you are not satisfied with your care in hospital, you can write to the Hospital Managers or the Mental Welfare Commission, which is an independent body, at the addresses below:

The Chief Operating Officer
NHS Lothian University Hospitals Division
51 Little France Crescent
Edinburgh
EH16 4SA

The Secretary
Mental Welfare Commission for
Scotland
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

Mental Health Tribunal Scotland
First Floor
Bothwell House
Caird Park
Caird Street
HAMILTON
ML3 0QA

If you wish to leave hospital

If you think you should be allowed to leave the hospital, you should talk to your doctor. If his/her opinion is that you should stay, but you still want to leave, you may ask the Mental Welfare Commission to review your case.

A copy of this leaflet will be sent to your Named Person.

If there is anything in this leaflet which you do not understand, or would like to discuss further, please ask the nurse in charge, the doctor or Mental Health Officer in your ward.

Appendix 3: Letter to the named contact (Section 37)

Date:

Dear

RE:

Ward:

Hospital:

We are writing to inform you, as the named contact of the above, that they have been admitted /made subject to an emergency detention certificate under Section 37 of the Mental Health (Care & Treatment) (Scotland) Act 2003, in the above hospital on

This can be for a period of up to 72 hours, where Doctors can assess and decide either to revoke or continue to a short-term detention under Section 44 of the Mental Health (Care & Treatment) (Scotland) Act 2003 for a further period of 28 days. You will be informed of this in writing.

If you have any questions, or if you have complaints or concerns about care given, please discuss this with the nurses at

Alternatively, you can speak to the Mental Health Officer or the patient's responsible Medical Officer. You can also write to the Managers of the hospital, or the Mental Welfare Commission, which is an independent body, at the addresses given below:-

The Chief Operating Officer
NHS Lothian University Hospitals Division
51 Little France Crescent
Edinburgh
EH16 4SA

The Secretary
Mental Welfare Commission
for Scotland
Floor K
Argyle House
3 Lady Lawson Street
Edinburgh
EH3 9SH

Yours sincerely

Mental Health Act Administration

Appendix 4: Letter to the named contact (Section 44)

Date:

Dear

RE:

Ward:

Hospital:

We are writing to inform you, as the named contact of the above, that they have been admitted / made subject to a short-term detention certificate under Section 44 of the Mental Health (Care & Treatment) (Scotland) Act 2003, in the above hospital on

This can be for a period of up to 28 days, for assessment and treatment. The certificate can be revoked at any time or the responsible Medical Officer, along with a Mental Health Officer, may make an application to the Mental Health Tribunal Service Scotland for a Compulsory Treatment Order. As the named contact, you can apply to the Tribunal Service to have the certificate revoked. The address is given below.

If you have any questions, or if you have complaints or concerns about care given, please discuss this with the nurses at. Alternatively, you can speak to the Mental Health Officer or the patient's responsible Medical Officer. You can also write to the Managers of the hospital, or the Mental Welfare Commission, which is an independent body, at the addresses given below:-

The Chief Operating Officer
NHS Lothian University Hospitals Division
51 Little France Crescent
Edinburgh
EH16 4SA

The Secretary
Mental Welfare Commission
for Scotland
Floor K
Argyle House
3 Lady Lawson Street
Edinburgh
EH3 9SH

Mental Health Tribunal Scotland
First Floor
Bothwell House
Caird Park
Caird Street
HAMILTON
ML3 0QA

Yours sincerely

Mental Health Act Administration

Appendix 5: Emergency Detention/Section 36 - Nursing Procedure Checklist

Patient Name:

Ward:

Address:

Hospital:

Date of Birth:

CHI Number:

Consultant:

Addressograph Label may be used

	Yes	No	N/A
1. If patient admitted on an Emergency Detention, has the DET1 form been received on the ward? a. Please check that the certification part on page 5 of 8 has been dated and signed. b. Please give date and time of admission to ward: Date: Time: (24 hour clock)			
2. The Mental Welfare Commission must be informed by phone within 12 hours of the granting of the emergency detention certificate - call on 0131 222 6111 giving the Full name/Date of Birth/Hospital and Ward			
3. Is the nearest relative known? Name: Relationship: Address: Telephone:			
4. Has the patient's nearest relative been informed within 12 hours			
5. Has any person who lives with the patient (not including the nearest relative if already informed) been informed within 12 hours			
6. Is there a Named Person known? (If 'Yes', confirm with Mental Health Officer that they have agreed to this) Name: Relationship: Address: Telephone:			
6. Has the patient's Named Person (only if they have agreed to be the Named Person) been informed within 12 hours			
7. Has the patient had their rights verbally explained and been given a copy of the appropriate leaflet? If No, please provide an explanation:			
8. Does the patient have an Advanced Statement?			
Procedure completed and rights explained by: Name: Designation:			
Signed: Date:			

THIS COMPLETED FORM, ALONG WITH THE DET1, MUST BE TAKEN TO THE MENTAL HEALTH ACT ADMINISTRATOR ASAP WITHIN NEXT 12 HOURS, OR BY 10am THE FOLLOWING DAY, OR MONDAY IF A WEEKEND

Appendix 6: Short-term Detention under Section 44 - Nursing Procedure Checklist

Patient Name:

Ward:

Address:

Hospital:

Date of Birth:

CHI Number:

Consultant:

Addressograph Label may be used

	Yes	No	N/A
1. Was the patient admitted to hospital on an STD? If 'Yes', please give time of admission (24hour clock)			
2. Was the patient already on an emergency detention? If 'YES', please give start time of STD (24 hour clock): On page 7 of 9 certification, date the certification was granted:			
3. Has the patient had their rights verbally explained and been given a copy of the appropriate leaflet? If 'NO', please give brief explanation why			
4. Does the patient have a Named Person/Welfare Attorney? If Named Person, have they agreed to this? (This should be ascertained for the MHO) Name: Relationship: Address: Telephone:			
5. Does the patient have an Advanced Statement?			
Procedure completed and rights explained by Name: _____ Designation: _____			
Signed: _____ Date: _____			

THIS COMPLETED FORM, ALONG WITH THE DET2, MUST BE TAKEN TO THE MENTAL HEALTH ACT ADMINSTRATOR ASAP, OR BY 10am THE FOLLOWING DAY, OR MONDAY IF A WEEKEND BY 10am THE FOLLOWING DAY.