THE SCOTTISH OFFICE

Department of Health

NHS
MEL(1997)82

NHS Management Executive
St. Andrew's House
Edinburgh EH1 3DG

10th December 1997

Dear Colleague

EMERGENCY DETENTION PROCEDURES UNDER SECTION 24 AND 25 OF THE MENTAL HEALTH (SCOTLAND) ACT 1984

Summary

This letter encloses copies of a flow-chart which outlines the procedures to be followed when emergency detention of a mentally ill patient under section 24 and 25 of the Mental Health (Scotland) Act 1984 is necessary.

Action

Recent research suggests that some doctors are relatively unfamiliar with the procedures to be followed when an emergency detention under section 24 and 25 of the 1984 Act is required.

In an emergency, the time required for the full section 18 compulsory detention procedure is usually unacceptable in view of the need for immediate treatment. Section 24 of the Act therefore provides an emergency procedure under which a patient may be removed to hospital and detained temporarily on the strength of a formal recommendation by any one doctor, without any accompanying application. An emergency recommendation does not have to be given on a prescribed form. However, a form (Form A1 attached at Annex 1) has been printed for this purpose and its use is strongly recommended. Accordingly, doctors should keep a number of blank forms to hand.

Any fully registered medical practitioner may make an emergency recommendation. It is not necessary for the doctor to be approved for the purposes of section 20 as having special experience in the diagnosis or treatment of mental disorder or for the doctor to be the patient's general practitioner or to have had previous acquaintance with the patient. However, the doctor making the recommendation, must have personally examined the patient on the day on which he or she signs the recommendation as required under section 24(4).

Addressees

For action:
General Managers,
Health Boards

General Manager, State Hospitals Board for Scotland

Chief Executives of NHS Trusts

For information:
Secretary, Mental Welfare Commission
General Manager, Common Services Agency
General Manager, Health Education Board for Scotland
Director, Scottish Health Advisory Service
Executive Director, SCPMDE
Royal College of Psychiatrists
Royal College of General Practitioners

Enquiries to:

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Department of Health
Public Health Policy Unit
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St Andrew's House
EDINBURGH
EH1 3DG

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To help doctors become familiar with emergency detention procedures the flowchart, which appears at Annex 2, has been designed as an A4 laminated card, which folds in the middle so that it may fit into a doctor's bag. Copies of the flowchart (enough for every GP) are being forwarded to Health Boards for individual distribution.

A copy is also enclosed (at Annex 3) of NHS MEL(1992)43 which reminds addressees of their responsibility for ensuring that the Code of Practice on the Mental Health (Scotland) Act 1984 is available to those who need it and that the Code provisions are implemented.

A copy of this circular should be sent to the Area Medical Committee for the attention of the Secretary of the GP Sub-Committee, to all GPs and to the Accident and Emergency Department of hospitals.

Yours sincerely

AGNES ROBSON
Director of Primary Care

FP142410

Emergency recommendation for admission to hospital

Form A1
Mental Health (Scotland) Act 1984
Section 24
355-2147

PART I

(full name and professional address of medical practitioner)

I, _____

of _____

_____

being a registered medical practitioner, have today examined

(full name, date of birth and address of patient)

_____

_____

of _____

_____

and am of the opinion that, by reason of mental disorder, it is urgently necessary for

(a) his/her health or safety
or
(b) for the protection of other persons

that he/she should be admitted to a hospital, but that compliance with the provisions of Part V of the Act relating to an application for admission before the admission of the patient to a hospital would involve undesirable delay.

(complete (a) or (b))

Please read the notes on the back of this form

(a) The consent of (name) _____

of (if MHO office address) _____

_____

(delete (i) or (ii))

who is

(state relationship)

(i) the patient's _____

(name of local authority)

(ii) an officer of _____

appointed to act as a mental health officer
has been obtained to the making of this recommendation.

(b) The consent of a relative of the patient or a mental health officer was not obtained before the making of this recommendation because:—

(explain why it was not practicable to obtain consent and what efforts were made to do so)

_____

_____

_____

_____

_____

_____

Signed _____ Date _____

PART II RECORD OF ADMISSION

(*Note:* Parts II to V are not part of the recommendation but should be completed on behalf of the managers of the hospital after the admission of the patient.)

The patient named above was admitted in pursuance of this

(name of hospital) recommendation to [ ]

(date) (time) on [ ] at [ ] hours.

PART III NOTIFICATION TO NEAREST RELATIVE

(delete (a), (b) or (c) as appropriate)

(name) (a) [ ]

(address) of [ ]

[ ]

who is understood to be the patient's nearest relative within the meaning of the

(state relationship) Act, being the patient's [ ] was informed on

(date) [ ] of the patient's admission to hospital in pursuance of this recommendation.

OR

(b) It is believed that the patient has no nearest relative within the meaning of the Act.

OR

(c) The patient's nearest relative was not informed of his/her admission to hospital because:—

_____

_____

_____

PART IV NOTIFICATION TO PERSON WITH WHOM THE PATIENT LIVES

(delete (a), (b) or (c) as appropriate)

(To be completed only if the patient was not already in hospital when the application was made.)

(name of person informed) (a) [ ], who resides with

(date) the patient, was informed on [ ]

of the patient's admission to hospital in pursuance of this recommendation.

OR

(b) It is believed that the patient resides alone.

OR

(c) It has not proved practicable to inform a responsible person residing with the patient because:—

_____

_____

_____

PART V NOTIFICATION TO THE MENTAL WELFARE COMMISSION

A copy of this report was sent to the Mental Welfare Commission today

Signed _____ Date _____

Designation _____

NOTES

(These notes are for guidance only and do not constitute an exact statement of the provisions of the Act)

1. Section 24(2) of the Act requires the consent of either a relative (not necessarily the nearest relative) or a mental health officer where practicable to an emergency admission. It may be important to look at the list at (2) and the guidance in number 5 to determine whether someone should be considered a relative as defined in the Act.

2. The Act defines "relative" as meaning any of the following:-

(a) spouse
(b) child
(c) father or mother
(d) brother or sister
(e) grandparent
(f) grandchild
(g) uncle or aunt
(h) nephew or niece

3. Section 24(5) of the Act requires the hospital managers to inform the nearest relative, the Mental Welfare Commission and some responsible person resident with the patient.

4. The nearest relative of the patient within the meaning of the Act is determined by the provisions of sections 53 to 55 of the Act. In most cases it should be quite clear who is entitled to carry out the functions of the nearest relative. However, if, after reading these notes, you are still in doubt, you should consult a solicitor.

5. The "nearest relative" for the purposes of the Act is then defined as the first person listed at 2 above who is caring for the patient, or, was caring for the patient before his/her admission to hospital. For example, if a patient is being cared for by a grandchild, that grandchild would be the nearest relative within the meaning of the Act even though a son or daughter or the patient was still alive. The following additional points should be noted:-

(i) if the patient has relatives but none is or was caring for him, then the "nearest relative" is simply the first person listed;

(ii) where there are two or more relatives in any one category, the elder or eldest is preferred;

(iii) an illegitimate person is treated as the legitimate child of his mother;

(iv) where the person who would otherwise be the nearest relative of a patient is under 18 years of age, that person is disregarded unless he or she is the husband, wife, father or mother of the patient;

(v) where a marriage has broken up, and the person who would otherwise be the nearest relative of the patient by virtue of being his or her husband or wife is no longer living with the patient; that person is disregarded;

(vi) where a person who would otherwise be the nearest relative ordinarily resides abroad, that person is disregarded unless the patient also ordinarily resides abroad;

(vii) for the purposes of the Act, the term "spouse" includes a person who is living with the patient as though they were married, and has been so living for not less than 6 months. If such a person is making the application, he or she should state the relationship with the patient as "spouse", and should add the words "by virtue of section 53(5) of the Act";

(viii) a person with whom the patient ordinarily resides and has been so resident for at least 5 years, but who is not a relative and cannot be regarded as a "spouse" in terms of the previous paragraph, is treated as the nearest relative within the meaning of the Act if he or she is caring for the patient. If such a person is making the application, he or she should state the relationship with the patient as "friend with whom the patient has resided in terms of section 53(6) of the Act".

6. Section 54 deals with cases where children are taken into care, and provides that the local authority or person exercising parental rights in such a case is deemed to be the nearest relative within the meaning of the Act.

7. Section 55 deals with cases where children are under guardianship or in the custody of one parent, and provides that the person having the guardianship or custody of the patient shall be deemed to be the nearest relative for the purposes of the Act.

8. Section 56 enables the sheriff to appoint an acting nearest relative in any case where an appliction is made to him in accordance with the provisions of the section.

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(Annex 2)

Emergency Detention Procedures

Emergency Detention
Sections 24 and 25 of the Mental Health (Scotland) Act 1984

1. Registered medical practitioner examines patient *
2. Recommends hospital admission

* This may be at home, in GP surgery, accident and emergency department, police station etc.

Patient refuses admissions

Patient agrees to admission

Consider Grounds for Detention

1. Patient suffers from a mental disorder.
"mental illness or mental handicap however caused or manifested" but "No person shall be treated under this Act as suffering from mental disorder by reason only of promiscuity or other immoral conduct, sexual deviancy or dependance on alcohol or drugs". Section 1 of the Mental Health (Scotland) Act 1984.

AND

2. Patient requires urgent hospital admission.
"By reason of mental disorder, it is urgently necessary for his health or safety or for the protection of other persons, that he should be admitted to hospital, but that an application under Section 18 of the Act would introduce undesirable delay". Section 24 of the Mental Health (Scotland) Act 1984.

Voluntary admission to hospital.

Patient then decides to leave against advice

Seen by doctor in hospital.

NB If doctor not immediately available consider using Section 25(2) - Nurses holding power (up to 2 hours)

Grounds for detention present

Grounds for detention absent

Offer alternative package of care and support

1. **Inform patient of decision to detain**
2. **Seek consent from relative (not necessarily nearest relative) or Mental Health Officer**
3. **Documentation must be completed on the same day as the patient examination**

"An emergency recommendation shall not be made unless, where practicable, the consent of a relative or of a mental health officer has been obtained" Mental Health (Scotland) Act 1984
"[the medical practitioner] should make all reasonable attempts to obtain the consent either of a relative or of a mental health officer" Code of Practice Section 1.5.
"Where it has not been possible to contact a relative or a mental health officer to obtain their consent, the medical practitioner is required to attach a statement of the reasons for the failure to obtain consent". Section 24(2) MHS(A) 1984.

Consent Obtained

Unable to obtain consent due to impracticability

Consent refused by both parties

Patient detained under Section 24 or Section 25

Patient detained under Section 24 or Section 25

"The doctor should arrange for the person to be compulsorily admitted forthwith" Code of Practice Section 1.5

Patient not detained: Offer alternative package of care and support

Hospital managers have a duty to inform:

1. Nearest relative
2. The responsible person living with the patient (Section 24)
3. Mental Welfare Commission

The Code of Practice on the Mental Health (Scotland) Act 1984 (ISBN 0-11-494112-2) provides guidance on the detention and discharge of patients in and from hospital it also contains guidance in relation to medical treatment of patients suffering from mental disorder.
Adapted from the Mental Welfare Commission's Annual Report 1993-94. The Mental Welfare Commission for Scotland is based at Argyle House, Lady Lawson Street, Edinburgh and they can be contacted for advice on telephone number 0131 222-6111.

(Annex 3)

G
HS/NHS.C
(MEL) 43/92

THE SCOTTISH OFFICE

National Health Service in Scotland
Management Executive

NHS
MEL(1992)43

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17 August 1992

Dear Colleague

CODE OF PRACTICE: MENTAL HEALTH (SCOTLAND) ACT 1984

Summary

1. In its Annual Report, which was tabled in Parliament recently, the Mental Welfare Commission stated that the Code of Practice: Mental Health (Scotland) Act 1984 did not always appear to be available to all who might be required to be aware of it, particularly at Ward and Departmental level. The Commission's Report also noted that implementation of the Code of Practice was far from universal.

The Code of Practice was circulated in March 1990 to Health Board General Managers; the General Manager, CSA; Regional and Islands Councils, Chief Executives and Directors of Social Work.

In view of the Commission's report, this Circular, and attached Annex, serve to remind addressees of their responsibility for ensuring that the Code of Practice is available to those who need it and that the Code's provisions are implemented.

Action

2. Addressees are requested to ensure that the Code of Practice: Mental Health (Scotland) Act 1984 is available to all those who need to have access to it and that its provisions are implemented.

3. Further supplies of the Code may be obtained from HMSO.

Yours sincerely

DAVID R STEEL
Director of Administration

Addressees

For action:
General Managers,
Health Boards

For information:
General Manager,
Common Services Agency

General Manager, State Hospital

General Manager,
Health Education Board
for Scotland

Chief Executives, and
Chief Executive
Designate, NHS Trusts

Directors of Social
Work, Regional and
Islands Councils

To be copied to Unit
General Mangers for
action

Enquiries to:

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HPPHD1-4
Room 29E/2
St Andrew's House
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Tel: 031-244 2576
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ANNEX

CODE OF PRACTICE: MENTAL HEALTH (SCOTLAND) ACT 1984

1. The arrangements for the preparation of the Code are set out in Section 119 of the 1984 Act, subsection (1) of which provides that:-

> "The Secretary of State shall prepare, and from time to time revise, a code of practice -
>
> a. for the guidance of medical practitioners, managers and staff of hospitals and mental health officers in relation to the detention and discharge of patients in and from hospitals under this Act: and
>
> b. for the guidance of medical practitioners and members of other professions in relation to the medical treatment of patients suffering from mental disorder."

2. A draft of the Code was prepared initially by a Working Group of Scottish Office and outside interests representing the medical, nursing, social work and legal professions. The Code as prepared by the Working Group was subject to a consultation exercise in terms of Section 119(2) of the 1984 Act and was revised in the light of comments received.

3. As also required by Section 119, the Code was laid before both Houses of Parliament where, within a period of 40 days, it was open to either House to pass a resolution requiring the Code to be withdrawn. The Code was laid on 16 November 1989 and no such resolution was passed during the 40 days thus paving the way for issue of the Code.

4. The opportunity is also being taken to comment on a number of matters which were raised during preparation of the Code of Practice but which it was not felt appropriate to include in the Code itself. Given the importance of these matters this circular has been reproduced within the cover of the Code although it is not strictly part of the Code itself.

GUARDIANSHIP

5. As explained in paragraph 6 of the Introduction to the Code, no mention of guardianship is made in either section 119(1) (a) or (b) of the 1984 Act and the procedures for receiving patients into guardianship contained in the Act do not result in the compulsory detention of patients in hospital nor are they specifically concerned with medical treatment. For these reasons the Code does not provide any guidance on guardianship. The use by local authorities of the aforesaid provisions of the 1984 Act during the past 5 years is a subject of current centrally funded research, the findings from which may be relevant both to the future use of these provisions in their present form and the possibility of central guidance.

CHILDREN

6. Suggestions have also been made that the Code of Practice should make specific reference to the needs of children. The 1984 Act itself makes no distinction between adults and children in relation to detention in hospital in order to receive medical treatment. Child and family

psychiatry is becoming increasingly a community-based service and the number of children admitted to hospital, even on an informal basis, has become very small. Although no specific mention of children is made in the Code, the generality of its guidance will apply to children as it applies to adults but, within the statutory requirements, doctors, nurses, social workers and other professionals may be expected to take the age of the patient into account in following the guidance in the Code.

PROVISION OF SOCIAL CIRCUMSTANCES REPORTS TO THE COURTS

7. Although there is no statutory requirement for a court to have a social circumstances report on an accused person before deciding whether he should be made the subject of a hospital order under Section 175 or 376 of the Criminal Procedure (Scotland) Act 1975, it is open to the court to ask the local authority to provide such a report. A social circumstances report will be of benefit also to the doctor reporting on the accused person's mental state, and he may ask the court to order that such a report should be provided if it is not already available. Similarly, when an accused person is committed to hospital by a court while awaiting trial, or under an interim hospital order under Section 174A or 375A or the 1975 Act, his responsible medical officer should make it a practice to ask the court for a social circumstances report to be provided; although there are no statutory provisions to this effect. This may be done in a variety of ways; for example, the responsible medical officer may approach a mental health officer or a social worker with a request for a report; or he may discuss with the Procurator Fiscal whether the court should be asked to order that a report should be provided; or the hospital in which the accused person has been committed may ask the local authority to provide a report. Whichever approach is adopted, the request for a social circumstances report should be made promptly so that it can be prepared timeously and thus be of maximum benefit both to the court and to the responsible medical officer. In order to facilitate the preparation of reports where there is no statutory requirement on the local authority to produce them, responsible medical officers should agree with their respective social work department how such reports are to be provided when it is considered that they would be of value to all those concerned with a particular case.

8. The report will provide information about the social circumstances of the accused person and in particular on his character and antecedents. This will enable the court to decide whether there are any alternative methods of dealing with him apart from imposing a hospital order. The issues that will be dealt with in such reports provided in accordance with the relevant provisions of Part V of the 1984 Act; although fresh reports should be prepared on each different occasion.

OBTAINING CONSENT OF MENTAL HEALTH OFFICERS OR RELATIVES TO RECOMMENDATION FOR EMERGENCY DETENTION

9. Concern has been expressed from time to time on the number of emergency detentions under the 1984 Act where the consent of a Mental Health Officer or relative has not been obtained by a medical practitioner. Evidence based on cases examined by the Mental Welfare Commission is 1988 showed that in more than half of those cases where the doctor did not obtain consent there was no indication of the efforts made to contact the Mental Health Officer. While the Code deals with this matter in Chapter 1.5, the opportunity is taken in this circular to stress the importance of medical practitioners making all reasonable efforts to obtain

the consent either of a relative or a Mental Health Officer before making a recommendation. Where it has not been possible to contact either person, the Act requires the medical practitioner to attach to the recommendation a statement of the reason for the failure to obtain consent.

10. While medical practitioners will as a matter of good practice seek, as far as may be practicable, to make their approaches for MHO consent within normal working hours, local authorities should ensure that there are adequate arrangements at other times to ensure that a response to any urgent requests of this kind can be made either by the responsible Mental Health Officer or a colleague who is reasonably well placed to deal with the matter in his place. Authorities should ensure that appropriate contact points within their departments are indicated to the Health Board under existing arrangements.

11. As indicated in Paragraph 2 above, the Secretary of State is under a statutory obligation to revise the Code of Practice from time to time and the Act requires that all the procedures in Section 119 followed in regard to the preparation of this first edition of the Code should be observed in respect of any revision of the Code or amendment thereto. In view of the Secretary of State's duty to revise the Code, the Scottish Home and Health Department will take note of any suggestions made in the light of operation of the Code against a future revision of it.

12. Any enquiries about the Code should be made to Dr D Bruce, SWSG, Room 429, 43 Jeffrey Street, Edinburgh EH1 1DN (Tel No: 031-244 5488) or Mr H M MacKenzie, SOHHD, Room 54K, St Andrew's House, Edinburgh EH1 3DE (Tel No: 031-244 2543).