



SCOTTISH EXECUTIVE

Health Department
Directorate of Healthcare Policy and Strategy

Dear Colleague

**MENTAL HEALTH (CARE AND TREATMENT)
(SCOTLAND) ACT 2003:
PROVISIONS RELATING TO THE SUSPENSION OF
DETENTION**

1. The Mental Health (Care and Treatment) (Scotland) Act 2003 (the Act) came into effect on 5 October 2005. This guidance will be of particular interest to Responsible Medical Officers and other allied health professionals, Mental Health Officers, Hospital Managers and Medical Records Officers who care for users of mental health services, including mentally disordered persons who come into contact with the criminal justice system.
2. The purpose of this letter is to provide a brief overview in relation to the grant of suspension of detention from hospital, including restricted patients
3. Further information and guidance on the Act is available on the Reforming Mental Health Law website:
www.scotland.gov.uk/health/mentalhealthdivision

Yours sincerely

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Director of Healthcare Policy and Strategy

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Addresses

For action

Chief Executives, NHS Boards
Chief Executives, Local Authorities
Directors of Social Work / Chief
Social Work Officers
Association of Directors of Social
Work
British Association of Social Workers
Scottish Social Services Council
Chief Executive, State Hospitals
Board for Scotland
Royal College of Psychiatrists,
Scottish Division
Scottish Secretary, British Medical
Association

For information

Chief Executive, Mental Health
Tribunal for Scotland
Director, Mental Welfare
Commission for Scotland
Chief Executive, Scottish Association
of Mental Health
Scottish Court Service
Chief Executive, National
Schizophrenia Fellowship, Scotland
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SUSPENSION OF DETENTION

Overview

1. The new Mental Health (Care and Treatment)(Scotland) Act 2003 (the Act) sets out the statutory procedures for the temporary suspension of the measure in an order or certificate specifying the patient's detention in hospital. Suspension of detention allows for the detention requirement to be suspended for a limited period of time without the order or certificate being revoked in its entirety. (Suspension of detention was generally referred to as 'leave of absence' under the 1984 Act.)
2. Any period outside the hospital grounds has to be authorised by a certificate under the relevant section of the Act. Time out of the ward but within the hospital grounds does not require a suspension of detention certificate. The effect of orders in (d) and (e) below is to give them "restricted" status hence the term restricted patient. For restricted patients, the consent of Scottish Ministers is required before suspension of detention can be granted. Separate guidance on Suspension of Detention in relation to these patients is contained in Chapter 5 of the working version of the Memorandum of Procedure which provides guidance on the management of restricted patients - <http://www.scotland.gov.uk/Publications/2005/10/0584334/43364>.
3. The sections of the Act covering suspension of detention are:
 - a. (*sections 41 and 42*) - an emergency detention certificate (EDC);
 - b. (*sections 53 and 54*) - a short term detention certificate (STDC);
 - c. (*sections 127 and 129*) - a compulsory treatment order (CTO);
 - an interim compulsory treatment order (ICTO);
 - an interim order (extending, varying, or extending and varying a CTO under sections 105 or 106);
 - d. (*sections 221 to 223*) - an assessment order (AO);
 - e. (*sections 224 to 226*) - a treatment order (TO);
 - an interim compulsion order (ICO);
 - a compulsion order with a restriction order (CORO);
 - a hospital direction (HD);
 - a transfer for treatment direction (TTD);
 - f. (*section 179*) - an interim order (extending, varying or extending and varying a CO (sections 168 and 169);
 - a compulsion order (CO)
4. Suspension of detention may be granted for a number of reasons, such as:
 - rehabilitation including pre-transfer visits to another hospital;
 - quality of life;
 - compassionate visits;
 - scheduled treatment in hospital;
 - emergency treatment in hospital;
 - attendance at court;
 - attendance at Tribunal hearings held outwith the hospital grounds.

5. In general terms, during the period where the patient's detention is suspended, they are allowed to leave the hospital. However the patient must comply with any conditions that are set out in the certificate issued by the RMO granting the period of suspension.

Forms to be used

6. Suspension of detention must be granted by the RMO The appropriate certificates are:
 - SUS1 - CTOs, ICTOs, Interim Orders (*section 127*)
 - SUS2 - EDCs and STDCs (*sections 41 & 53*)
 - SUS3 - AO, TO, ICO, CORO, HD, TTD (*sections 221 & s224*)
 - SUS4 - COs, Interim Orders (*section 179*)
7. Notification to the Commission should be made on the relevant form. Suspension plans may be either included on the SUS form or attached to it.

Who is the RMO?

8. Hospital managers must ensure that arrangements are in place to cover an RMO's absence, such as leave or off duty. The patient should always have an RMO available to grant suspension of detention or make other decisions required by the Act.
9. Section 230(3) of the Act permits hospital managers to authorise any approved medical practitioner to act in place of the patient's RMO for a particular purpose or in particular circumstances. Locums may only be authorised to act where they comply with the qualifications, experience and training specified in [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Qualifications, experience and training of approved medical practitioners\) Direction 2005](#)

How is suspension affected by escort arrangements?

10. Escorted outings and visits should be considered to require a suspension of detention. The RMO must grant suspension of detention for any time the patient spends outside the hospital grounds, regardless of whether or not they are being escorted.

Use of suspension of detention

11. Suspension of detention can be granted for:
 - the duration of an event; or a series of events; or
 - the duration of an event; or a series of events; and any associated travel.
12. The RMO may specify conditions to be attached to the suspension where he/she considers that this is necessary in the patient's interests or for the protection of other persons. Conditions should be tailored to the patient's needs and circumstances. For example, conditions may include that the patient be kept in the charge of a person authorised in writing by the RMO (such as a nurse or family member). Wherever possible, the RMO should involve the patient's multi-disciplinary team in reaching

his/her decision. It would also be expected that the patient, the patient's named person and his/her carers be as fully involved as possible with the planning process preceding the decision to grant a suspension certificate.

13. The conditions should be specified on the certificate. It would be best practice to ensure that a copy of the certificate or suspension plan be placed in a prominent position in the patient's case records where nursing staff can easily refer to it.
14. If the conditions attached to the suspension need to be changed then the certificate should be revoked (Part 2 of the SUS form should be used). A certificate may be revoked because it is necessary in the interests of the patient or for the protection of any other person to revoke the certificate. A new certificate including such new conditions that are necessary may then be granted.
15. It would be best practice to consider the patient's suspension of detention arrangements every time the patient's order is reviewed. This is to prevent a patient being subject to suspension certificates for unnecessarily long periods of time.
16. The expiry date of the certificate must not go beyond the expiry date (where applicable) of the emergency or short-term detention certificate, order or direction to which the patient is subject.
17. After a period of suspension, it is good practice for the RMO to talk to family, carers or nursing staff to assess how the suspension went.

Who must be notified of the granting of a suspension certificate?

18. In the case of a patient subject to one of the orders listed at paragraph 3d to 3e, the Scottish Ministers consent should be sought in good time prior to any proposed period of suspension.
19. In the case of a patient subject to one of the orders listed at paragraph 3c, 3e or 3f, if it is proposed to specify a period longer than 28 days, or which taken together with any other certificates granted takes the total over 28 days, whether expressed as a continuous period or a series of events, then the RMO must provide notification *before* the suspension certificate is granted to the following parties:
 - the patient;
 - the patient's named person;
 - the patient's general medical practitioner; and
 - the patient's mental health officer.
20. In the case of a patient subject to one of the orders listed at paragraph 3c, 3e or 3f, the RMO must notify the Commission of single certificates specifying more than 28 days, whether as a continuous period or a cumulative total of events. This must be done within 14 days of the certificate being granted.
21. The Commission does not need to be notified where the cumulative total exceeds 28 days but is covered by more than one certificate.

Duration of suspension

22. The total period of suspension of detention is intended to be calculated fairly accurately when expressed as a series of events. For example, a certificate granting six hours suspension, four times weekly, and 24 hours each weekend will accumulate two days per week.

An example of a suspension plan might be:

- Mr X is granted suspension for the following events:
- Visiting local shops for up to 30 minutes daily, without an escort.
- Visiting home for up to two hours twice weekly, accompanied by his parents
- Going anywhere for up to 3 hours, unlimited in frequency, escorted by nursing staff
- All conditional on Mr X not visiting his grandmother or taking illicit drugs, during periods of suspension.

23. When suspension is for a series of events, a record should be kept of the total amount of time granted by all the certificates issued. A single SUS form can be completed for a series of events.

24. Suspension for periods of days is straightforward. It is granted on the appropriate SUS form. In the case of patients subject to a CTO, or a CO a suspension of detention certificate can be granted for a period of up to six months. In the case of patients subject to a TO, ICO, CORO, HD or TTD a suspension of detention certificate can be granted for a period of up to 3 months. However whether the patient is subject to a CTO, a CO, a TO, an ICO, a CORO, a HD or a TTD, suspension can only be granted for a maximum of nine months in any 12 month-period.

Transitional arrangements

25. Slightly different rules apply to patients subject to deemed CTOs/COs who were on leave of absence (LOA) from hospital when the current Act was introduced (that is persons who were subject to the longer term orders under the old Act or final disposal orders made under Part 6 of the Criminal Procedure (Scotland) Act 1995). Under the Mental Health (Care and Treatment) (Scotland) Act 2003 (Transitional and Savings Provisions) Order 2005, if the patient was on LOA immediately before the commencement of the 2003 Act on 5 October 2005 they are treated as if a certificate had been granted for that absence up to a maximum of 12 months from the start of the LOA or for 9 months from 5 October 2005, whichever is the shorter. There is no need to complete a SUS form. However, RMOs must complete a SUS form when the patient's leave is then renewed. (Guidance on the transitional arrangements was also issued by way of [HDL 2005 42](#)).

What should happen where a patient requires treatment in another hospital?

26. There may be occasions where a patient who is detained in hospital requires to be transferred urgently to another hospital to receive emergency treatment (for example for an acute physical disorder). It would therefore be permissible to grant a suspension

certificate suspending the hospital detention requirement to allow the transfer of the patient to take place urgently. It should be remembered that the patient can not be detained in that hospital. However, the patient's RMO could explicitly cite residence in the second hospital as a condition of the suspension certificate.

27. Where a suspension of detention is granted for an emergency transfer, best practice would suggest that the RMO should take steps to ensure that the patient's named person, primary carer, MHO and other relevant members of the multi-disciplinary team are informed of any emergency transfer as soon as possible after it becomes apparent that the transfer may be necessary.
28. If authority to detain the patient in another hospital is likely to be needed then a formal transfer under the Act should be considered. (The transfer provisions do not apply to the following orders - EDC, STDC, ICTO, ICO, AO, or TO) Managers of an acute medical/surgical hospital must ensure that arrangements are in place with acute psychiatric hospitals/services to provide available AMPs (unless, of course, AMPs are already on the staff of the acute medical/surgical hospital) to enable them to appoint RMOs. Decisions about the treatment of mental disorder and the review of any detention procedures would then become the responsibility of the AMP acting as the patient's RMO appointed under the Act. (*Further guidance on the formal transfer provisions is contained in the Code of Practice*)

What happens at the end of a period of suspension?

29. If a period of suspension has expired then there is no need to revoke the certificate. If a further period of suspension of detention is subsequently granted, then the RMO should complete a new SUS form.
30. It should be borne in mind that the patient's order or certificate may continue to apply after the period of suspension has expired. Where the duration of the suspension certificate is fairly lengthy (for example, for more than 28 days), it would be best practice for the patient's RMO to issue a written reminder to the patient to return to hospital shortly before the period of suspension is due to end. If the patient does not return on time, then he/she will be deemed to have absconded.
32. The RMO should arrange to review the patient's order or certificate well before the expiry of the period of suspension and decide whether further compulsion is required. The RMO should decide whether the patient meets the conditions for continued compulsion and, if so, what further action to take. His/her decision should be based on the principles of the Act. It would be best practice to consult the patient's designated MHO and other health-care or support staff. The patient and his/her carers should also be involved in the decision-making, with the patient's advocacy worker present to support the patient in making his/her feelings known. (*Further information on the review of orders or certificates is contained in the Code of Practice*)
33. The Commission wishes to be informed of any readmission after the maximum period of suspension of detention has expired and the reasons for this.