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ADVICE NOTES

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We heard of a case where an individual was detained under a **short-term detention certificate** which the Tribunal ruled unlawful.

There were discrepancies in the times of examination and granting of the certificate. The order was made under section 291 which, although perhaps not intended for this purpose, allows the **Tribunal** to rule that a certificate has been granted unlawfully. The Tribunal is not required to test the grounds for detention, unlike an appeal under section 50.

The individual was re-detained on a further short-term detention certificate. She appealed again to the Tribunal under section 291 on the basis that this was an unlawful "back-to-back" short-term detention. The Tribunal granted her appeal but this was overturned by the Sheriff Principal.

This means that an individual can lawfully be re-detained in this way if the Tribunal decides that a short-term detention certificate had been granted unlawfully. However, the danger is that this extends the total period of detention well over 28 days before the Tribunal tests the grounds.

As with our **previous advice on back-to-back detention**, we strongly recommend the earliest possible application to the Tribunal for a compulsory treatment order in these circumstances to ensure the individual has the right of independent scrutiny of the grounds for compulsory detention and treatment.





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