



**mental welfare**  
commission for scotland

# Unlawful short term detention and section 291

Advice notes

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# Our mission and purpose

## Our Mission

To be a leading and independent voice in promoting a society where people with mental illness, learning disabilities, dementia and related conditions are treated fairly, have their rights respected, and have appropriate support to live the life of their choice.

## Our Purpose

We protect and promote the human rights of people with mental illness, learning disabilities, dementia and related conditions.

## Our Priorities

To achieve our mission and purpose over the next three years we have identified four strategic priorities.

- To challenge and to promote change
- Focus on the most vulnerable
- Increase our impact (in the work that we do)
- Improve our efficiency and effectiveness

## Our Activity

- Influencing and empowering
- Visiting individuals
- Monitoring the law
- Investigations and casework
- Information and advice

## **Unlawful short term detention and section 291**

**This information was first published in 2013.**

**It was reviewed in July 2020 and remains current.**

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 has 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 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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