



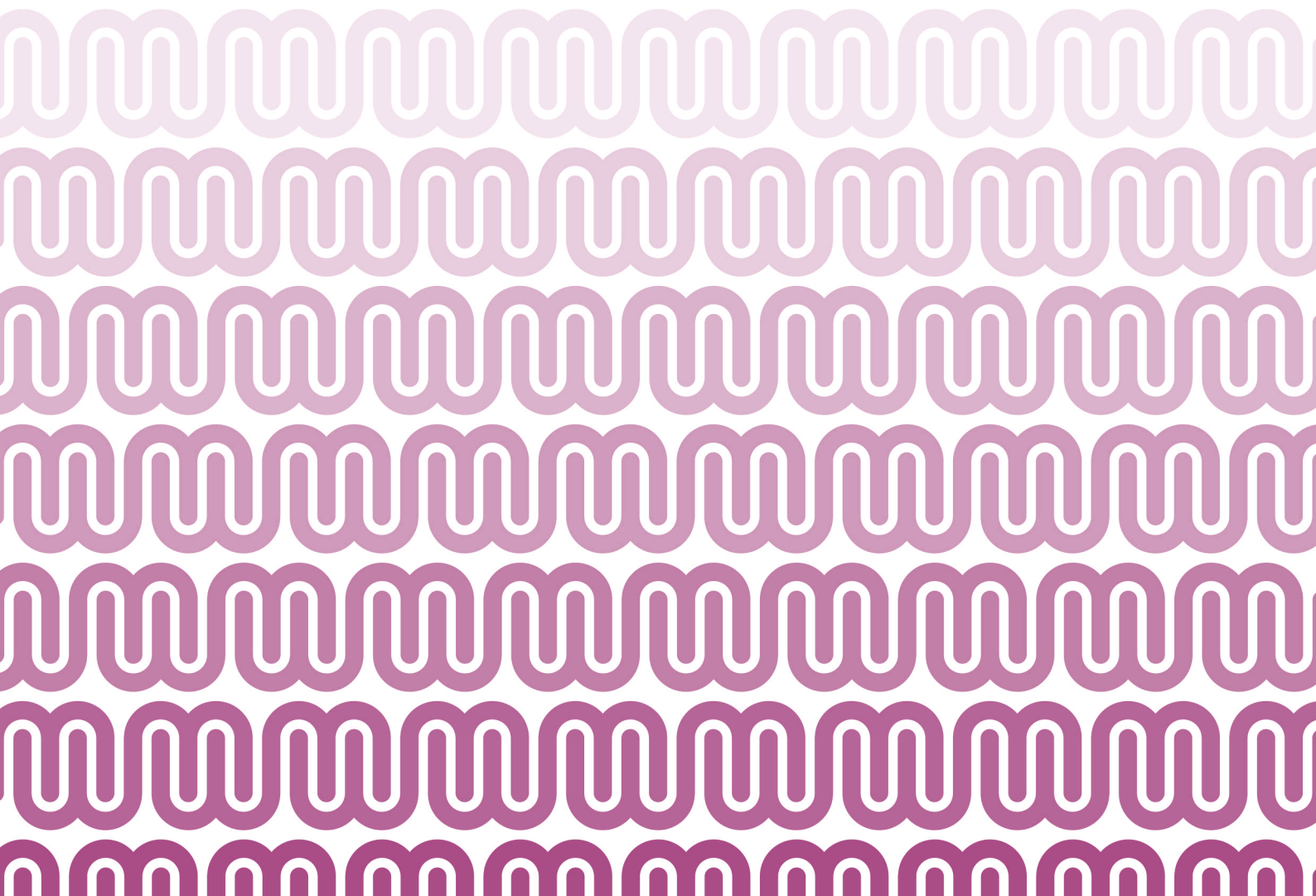
**mental welfare**  
commission for scotland

# **A detention certificate has been left in the ward and not passed on to medical records**

## **Advice notes**

---

July 2025



# 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

## **A detention certificate has been left in the ward and not passed on to medical records. What is the Commission's view?**

**Detention papers found in notes in the ward which have not been sent to medical records in good time can result in the notifications not being made in the required timescales.**

### **Does this invalidate the authority of the certificate?**

Sometimes, notably in general hospitals, an emergency (EDC) or short-term (STDC) detention certificate is left in case notes and not passed to medical records. We have reconsidered the consequences and amended our advice.

Hospital managers have a number of notification duties that may not occur within the timescales specified by the Mental Health (Care and Treatment)( Scotland) Act 2003 (the Mental Health Act). We cannot advise if any of these necessarily invalidate the order. Practitioners and hospital managers should obtain their own legal advice. But the Commission has the following position statements:

For emergency detention certificates, hospital managers must arrange for an approved medical practitioner to carry out an examination “as soon as practicable”<sup>1</sup> after the period of detention starts. Within 12 hours, they must notify the nearest relative, named person, and anyone who resides with the patient. This is only if they consider such notification appropriate. They must notify the Commission within seven days. If there is no mental health officer (MHO) consent, they must notify the relevant local authority within seven days. (See section 38 of the Mental Health Act.)

Our position if these actions have been omitted:

By the time any omission comes to light, the EDC will either have expired, been revoked, or superseded by an STDC. Hospital managers should apologise to the patient (and named person if there is one) if notifications have been omitted. **We consider it unlikely that any of these failures render the certificate unlawfully granted, but any apology should include a statement that the patient or named person may wish to take legal advice.**

---

<sup>1</sup> Our previous legal advice on “as soon as practicable” should be taken as “as soon as it’s not impossible”.

For short-term detention certificates, the situation may be more serious.

Section 46 of the Mental Health Act was changed by the 2015 amendments at our recommendation. Hospital managers must now notify the patient (plus named person, welfare attorney, welfare guardian) of the granting of the order **and** send them a copy of the certificate. This must be done “as soon as practicable”. This was to allow patients and named persons to see the reasons given for the detention in order that they can instruct an appeal. Failure to do so could risk breaching their rights under articles 5 and 6 of ECHR (right to a speedy tribunal review and fairness in legal process).

If the patient lacks capacity to appeal and there is no named person, a welfare guardian or welfare attorney can initiate an appeal. This is why notification to them may be an important human rights matter. (The primary carer or nearest relative also may have the right of appeal in this situation, but there is no legal duty to inform them of the granting of the certificate.) See s257A of the Mental Health Act.

Our position if these actions have been omitted:

If the patient (plus named person, welfare guardian or welfare attorney if there is one) has not been given the certificate, there may be significant detriment. Anyone who discovers this situation must immediately alert medical records and must ensure that the patient (and any named person) is given the STDC as soon as possible. Hospital managers must apologise for the omission and recommend that the patient and named person take legal advice. **Our view, as a result of the amended s46 of the Mental Health Act, is that such an omission can render the certificate open to legal challenge. Legal advice should be sought in each case as circumstances and timescales will vary.**

Hospital managers have the duty to inform the Tribunal and the Commission and send the certificate within seven days. **As with EDCs, we think it less likely that failure to notify the Commission or Tribunal will invalidate the certificate, but the patient and named person should be informed.**



If you have any comments or feedback on this publication, please contact us:

Mental Welfare Commission for Scotland  
Thistle House,  
91 Haymarket Terrace,  
Edinburgh,  
EH12 5HE  
Tel: 0131 313 8777  
Fax: 0131 313 8778  
Freephone: 0800 389 6809  
[mwc.enquiries@nhs.scot](mailto:mwc.enquiries@nhs.scot)  
[www.mwcscot.org.uk](http://www.mwcscot.org.uk)

Mental Welfare Commission 2025