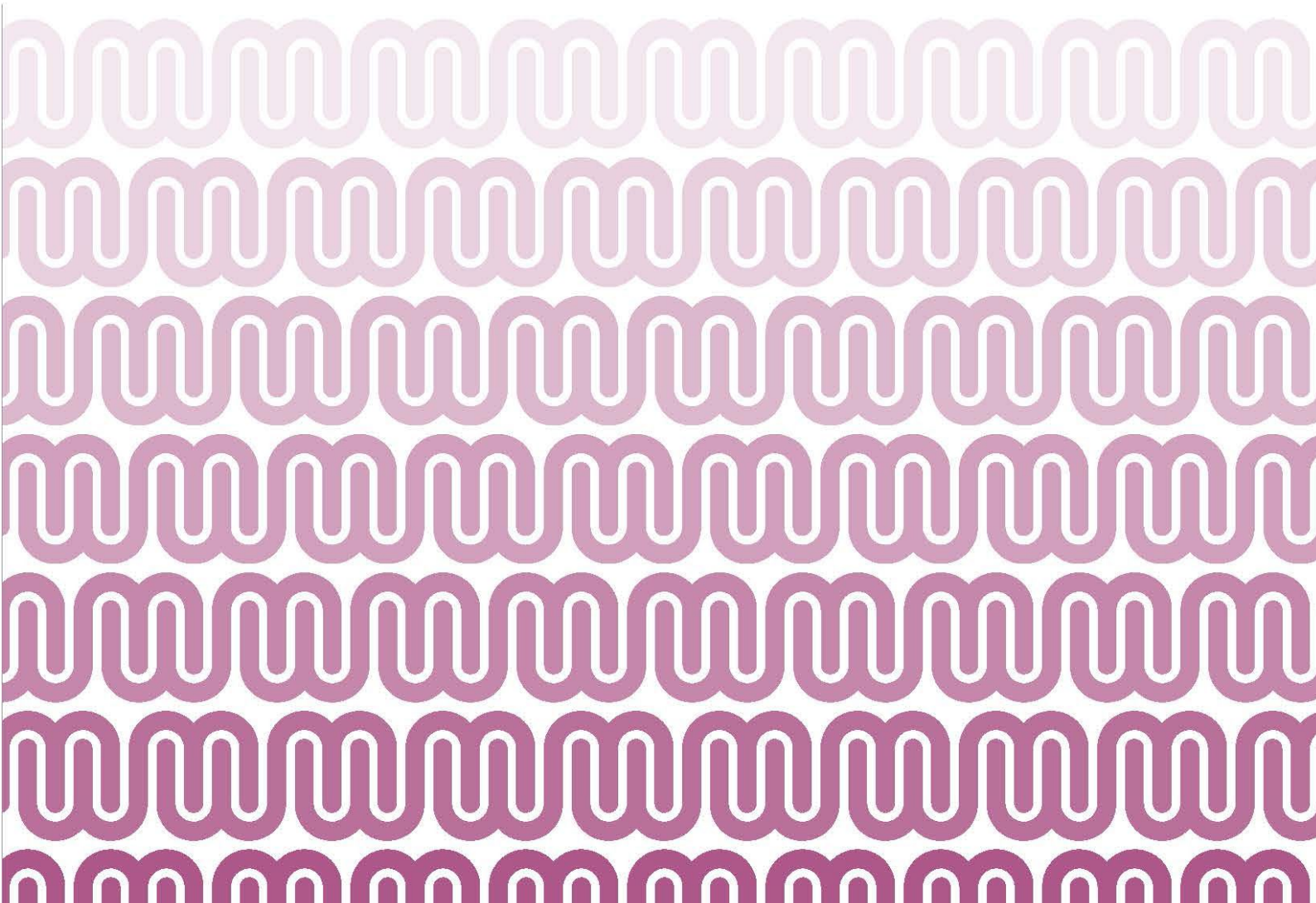
mental welfare commission for scotland

Remote medical examination for Mental Health Act functions

Advice note

August 2026



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

Contents

Relevant legislation

Mental Health (Care and Treatment) (Scotland) Act 2003 (Mental Health Act).

Intended audience

Approved medical practitioners (AMPs), responsible medical officers (RMOs), mental health officers (MHOs); health board Mental Health Act administrators; nursing and medical staff involved in Mental Health Act assessments.

Purpose of this advice note

This advice note addresses the use of remote (primarily video-based, and only exceptionally telephone) medical examination for functions carried out under the Mental Health (Care and Treatment) (Scotland) Act 2003 (Mental Health Act).

It has been prepared following a request from the Royal College of Psychiatrists in Scotland Medical Managers in Psychiatry Group, who identified the need for clear and consistent advice on the use of video technology for Mental Health Act assessments, particularly in rural, remote, and acute clinical settings.

The Commission's view is that face-to-face examination remains the expected standard for examination for the purposes of detention or continuation of compulsory measures. The Commission is therefore not in a position to advise that a remote examination would satisfy the statutory requirement in such cases.

This advice note is intended to support lawful, rights-respecting decision-making where the manner of medical examination requires careful justification.

This advice note provides general advice on the Commission's interpretation of the statutory framework and does not constitute legal advice; NHS responsible medical officers (RMOs) may wish to seek case-specific legal advice from Central Legal Office where uncertainty arises.

Statutory context

The Mental Health Act requires that a patient be examined by a medical practitioner for a range of statutory functions, including emergency detention, short-term detention, and the making, variation, extension, and review of compulsory treatment orders (CTOs).

The Act contains provisions regulating who may carry out a medical examination and the circumstances in which examinations are conducted. For example, section 58 provides that where more than one examination is required, they are to be carried out separately unless the statutory conditions for a joint examination are met.

However, the Act does not define the term “examine”, nor does it prescribe the manner or modality by which an examination must be carried out. The statutory scheme nevertheless proceeds on the basis that examination will ordinarily involve direct engagement between the practitioner and the patient, and in practice, this has traditionally been undertaken in person.

In the absence of express statutory provision on modality, the question of whether a remote examination satisfies the duty to examine will depend on the circumstances of the case and whether the practitioner can demonstrate that a genuine medical examination has taken place and that it is adequate for the statutory purpose. Any departure from face-to-face examination therefore requires careful justification and clear documentation. This advice note does not determine whether a remote examination will satisfy the statutory requirement in any given case.

Code of Practice and medical examination

The Mental Health Act is accompanied by a statutory Code of Practice issued by the Scottish Ministers. The Code does not have the force of statute, but practitioners exercising functions under the Act are required to have regard to it and should ordinarily follow its guidance unless there is a clear and justifiable reason to depart from it.

The Act itself does not define the term “examine” or prescribe the modality by which an examination must be carried out. The Code of Practice, however, provides detailed guidance on what would ordinarily be expected when a medical practitioner examines a patient for the purposes of the Act.

In the context of short-term detention, the Code is explicit that the examination would ordinarily include a direct face-to-face personal examination of the patient together with assessment of the patient’s mental state, relevant physical condition, decision-making ability, potential risks, and consideration of relevant collateral information. This reflects the seriousness and duration of the detention authorised by a short-term detention certificate (STDC).

Elsewhere in the Code, the practitioner is required to examine the patient, but the modality of that examination is not prescribed in the same explicit terms. The Code therefore establishes a clear benchmark for what would ordinarily constitute a sufficiently thorough examination, while not expressly addressing how the requirement to examine should be approached where strict adherence to ordinary practice may not be practicable.

This advice note recognises that benchmark. Face-to-face examination remains the default and expected standard when carrying out medical examinations under the Act. Where a practitioner considers that it is not practicable to undertake an examination in that way, particular caution is required. Practitioners must ensure that the statutory requirement to examine the patient has in fact been met, that the examination is sufficiently thorough for the statutory purpose, and that any departure from face-to-face examination is capable of clear justification and documentation in light of the circumstances and the section 1 principles of the Act.

Legal position in England and Wales and relevance to Scotland

In England and Wales, the courts have considered the question of remote assessment under the Mental Health Act 1983. In several contexts the 1983 Act requires that a patient be "personally seen" by the doctor or approved clinician. The High Court has interpreted this wording as requiring physical presence and has held that assessment conducted solely by video link does not satisfy that statutory requirement. Examples include *Devon Partnership NHS Trust v Secretary of State for Health and Social Care* and *Derbyshire Healthcare NHS Foundation Trust v Secretary of State for Health and Social Care*.

Those decisions reflect the interpretation of the specific statutory language used in the 1983 Act. The Scottish legislation is framed differently. The Mental Health (Care and Treatment) (Scotland) Act 2003 uses the term "examine" but does not define that term or prescribe the modality by which an examination must be carried out. The relevance of the English cases is therefore limited to illustrating how courts may approach questions of statutory interpretation where legislation governing compulsory powers is concerned.

There is currently no Scottish appellate authority determining whether a medical examination under the Mental Health Act may be carried out remotely. The legal position in Scotland therefore turns on the interpretation of the statutory requirement to examine, read in light of the Code of Practice and the section 1 principles of the Act. This advice note does not seek to determine that legal question but instead explains the considerations practitioners should take into account when deciding how the statutory requirement to examine can be fulfilled in the circumstances of a particular case.

Application of section 1 principles

All functions under the Mental Health Act must be exercised in accordance with the principles set out in section 1 of the Act.

Decisions about how statutory functions are exercised, including the manner in which a medical practitioner approaches the examination of a patient, must therefore be informed by those principles. The section 1 principles guide the exercise of powers under the Act, but they do not extend or modify the statutory requirements themselves.

Where a practitioner is considering whether it is practicable to conduct an examination in person, the section 1 principles provide an important framework for professional judgement. In particular, practitioners should have regard to:

- whether the approach taken represents the least restrictive option in the circumstances, taking account of delay, repeated use of emergency powers, or unmanaged risk;
- whether the approach is necessary and proportionate to the seriousness and urgency of the situation;
- the patient's past and present wishes and feelings, including any preference regarding how the examination takes place;
- the patient's ability to participate effectively in the examination;
- the preservation of dignity, privacy, and confidentiality; and
- the provision of information, support, and access to independent advocacy.

The availability of remote technology, or its use elsewhere in the system, does not of itself justify departure from face-to-face examination. Practitioners must therefore ensure that the statutory requirement to examine the patient has been fulfilled and that the approach taken is capable of clear justification in light of the circumstances.

General position

In-person examination remains the default and expected standard for Mental Health Act assessments.

The statutory requirement to examine the patient is central to decisions authorising or continuing compulsory measures. The Commission is not in a position to advise that a remote examination would satisfy that requirement in the context of detention or the continuation of compulsory measures.

Where practitioners encounter circumstances in which it is not practicable to undertake an examination in person, the statutory requirement remains unchanged. In such situations, practitioners should proceed with caution, consider all available options to secure an in-person examination, and seek legal advice where necessary.

Particular caution is required in relation to decisions involving the deprivation or continued deprivation of liberty, including detention and extension of orders. This approach applies across statutory functions under the Act, including detention, renewal, variation, extension, and treatment-related decisions.

Use of remote examination in acute and emergency detention

Questions about remote examination arise most commonly in relation to emergency and urgent detention, including emergency detention certificates (EDCs) and STDCs, particularly in rural or remote settings.

In such circumstances, the statutory requirement that the patient be examined as soon as practicable remains central. Practical factors such as geography, severe weather, transport disruption, and workforce availability may make it difficult to secure timely in-person examination, but do not alter the statutory requirement.

The Commission is not able to advise that a remote examination would satisfy the statutory requirement to examine for the purposes of detention. Where in-person examination cannot be achieved within the required timescale, practitioners should consider all available options, including escalation within services, seeking alternative medical cover, or obtaining legal advice.

Practitioners should also consider the risks associated with delay, including repeated use of emergency detention powers, while recognising that the legal sufficiency of any approach taken may be open to challenge. Clear documentation of the circumstances, the steps taken to secure in-person examination, and the rationale for decisions will be essential.

Situations in which questions about remote examination commonly arise

The Commission is frequently asked about the use of remote examination in a range of situations. The following examples are illustrative and non-exhaustive. They are intended to reflect circumstances in which practitioners may face difficulty in securing timely in-person examination and must consider how best to proceed within the constraints of the statutory framework.

- Rural and island settings where no approved medical practitioner (AMP) is available locally, including temporary arrangements pending transfer to mainland services, and where adverse weather or transport disruption prevents attendance within statutory timescales.
- Situations where delay in obtaining an in-person examination may lead to repeated use of EDCs solely because examination cannot be achieved as soon as practicable.
- Severe weather events, ferry or flight cancellations, or other transport disruption preventing timely physical attendance.
- Circumstances in which there are significant infection prevention and control risks associated with in-person attendance.
- Major transport disruption or civil emergency affecting the ability to attend in person.

These examples do not determine whether a remote examination would satisfy the statutory requirement. Practitioners must proceed on the basis that the requirement to examine remains in force and should consider how best to achieve a lawful and safe outcome in the circumstances, including seeking legal advice where appropriate.

Service convenience or longstanding workforce pressures, in themselves, do not constitute exceptional circumstances.

Use of remote examination in renewals and reviews of orders

Questions also arise in the context of renewal and review of existing CTOs, including community-based orders.

Although these situations may involve established therapeutic relationships and routine use of remote consultation in clinical care, the statutory requirement to examine the patient remains unchanged. Decisions to renew or extend compulsory measures involve the continuation of coercive powers and therefore require particular care.

The Commission is not in a position to advise that a remote examination would satisfy the statutory requirement to examine in this context. Face-to-face examination remains the expected standard.

Where practitioners consider that it is not practicable to undertake an examination in person, they should proceed with caution, ensure that all reasonable steps have been taken to secure an in-person assessment, and seek legal advice where appropriate. The circumstances, reasoning, and any associated risks should be clearly documented.

Particular caution is required where the clinical picture is complex or contested, where engagement or communication is impaired, or where physical examination is material to the decision.

Documentation and scrutiny

Where a practitioner has decided to proceed with a remote examination, clear, contemporaneous documentation is essential.

Where statutory forms are completed, the form of examination (for example, video-based, or exceptionally telephone), the views of the detained person on proceeding remotely and the reasons for that approach should be clearly recorded on the relevant forms, as well as in the clinical record.

The clinical record should demonstrate:

- that the practitioner has had regard to the section 1 principles;
- the patient's views on the manner in which the examination was carried out, including any preference for or objection to a remote examination, and how those views were taken into account;
- why in-person examination was not practicable;
- why delay would have been undesirable or more restrictive of the patient's rights;
- the form and duration of the examination;
- any limitations identified and how these were mitigated; and
- the plan for further review or in-person assessment.

Remote examinations are likely to attract closer scrutiny by the Mental Health Tribunal for Scotland and, where relevant, the courts. Practitioners should be able to explain and justify the adequacy of the examination for the statutory purpose.

In considering challenges to the validity of remote examinations, there is likely to be scrutiny of whether a medical practitioner has in fact carried out a medical examination, as distinct from relying on collateral information, multidisciplinary discussion, or a conversation with the patient alone. Arguments are likely to arise as to whether indirect engagement or reliance on third-party information could amount to examination, and as to the consequences where an examination has not been clearly evidenced. While outcomes will turn on the specific facts of each case, this reinforces the importance of ensuring that an identifiable medical examination has taken place, that its form is clearly recorded, that any limitations and mitigations are explained, and that the approach taken is informed by the section 1 principles. It cannot be assumed that subsequent action will remedy a failure to meet a statutory requirement at the time the examination was required.

Designated medical practitioner (DMP) assessments

The role of the DMP under Part 16 of the Mental Health Act is distinct from that of the responsible medical officer (RMO) in relation to detention. A DMP provides an independent safeguard in relation to medical treatment for mental disorder and does not determine detention or continued deprivation of liberty. For that reason, the legal considerations applying to DMP assessments differ from those applying to decisions authorising or continuing compulsory measures.

The Code of Practice describes the role of the DMP in terms of interviewing the patient in private, carrying out a medical examination, reviewing the relevant medical records, and forming an independent judgement on the proposed treatment. It also emphasises the importance of having regard to any advance statement and facilitating the patient's participation, including the presence of a supporter where appropriate. The Code does not prescribe the modality by which the examination is to be carried out but establishes the expectation that the DMP will undertake a sufficiently thorough and independent assessment.

In this context, the central question is whether the method of assessment allows the DMP to discharge their statutory role effectively, including meaningful engagement with the patient and proper scrutiny of the proposed treatment plan. The requirement to examine the patient remains, but the absence of a decision about deprivation of liberty means that the legal risks associated with remote examination differ from those arising in detention decisions.

In practice, questions about remote DMP assessment may arise where there is an established therapeutic context, where remote consultation is already part of the patient's care, or where practical constraints would delay a timely assessment. Where it is not practicable to undertake an assessment in person, the DMP must proceed with caution and ensure that a genuine and sufficiently thorough medical examination has taken place.

In such circumstances, the DMP should be satisfied that the approach taken allows adequate engagement with the patient, takes account of their wishes about the use of remote assessment, allows appropriate consideration of their views, and permits effective scrutiny of the proposed treatment. The reasons for the approach taken, the alternatives considered, and any limitations and mitigations should be clearly documented.

Where a DMP has examined the patient in person within a recent and clinically relevant period, and a further review is required because of a proposed change to the treatment plan, a remote examination may be considered. In such cases, the DMP should be satisfied that the combination of the earlier face-to-face examination, the

current remote assessment, and available collateral information allows a sufficiently robust examination for the statutory purpose.

Where remote assessment is undertaken, video-based examination will often provide a fuller opportunity for engagement and scrutiny. Telephone-only examination of the patient is likely to provide more limited information and should therefore be used with caution and clear justification.

The duration of a T3 or T3B certificate following a remote DMP assessment remains a matter of clinical judgement for the DMP. A remote assessment that is thorough and adequately safeguards the patient's rights should not, of itself, require a shorter duration than would be granted following a face-to-face assessment.

Recommendations for services

1. In-person examination should remain the default expectation for Mental Health Act assessments.
2. Where it is not practicable to undertake an examination in person within the required timescale, services should treat this as a matter requiring escalation, including seeking alternative medical cover and, where appropriate, obtaining legal advice. Practitioners should proceed on the basis that the statutory requirement to examine the patient remains in force.
3. Services should ensure that existing clinical governance and audit arrangements provide appropriate oversight of the exceptional use of remote medical examination.
4. Recurrent reliance on remote examination, or on emergency detention arising from the inability to secure timely in-person examination, should prompt system-level review.
5. Where patterns of practice give rise to concern, the Commission may seek further information as part of its monitoring functions.

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
www.mwcscot.org.uk