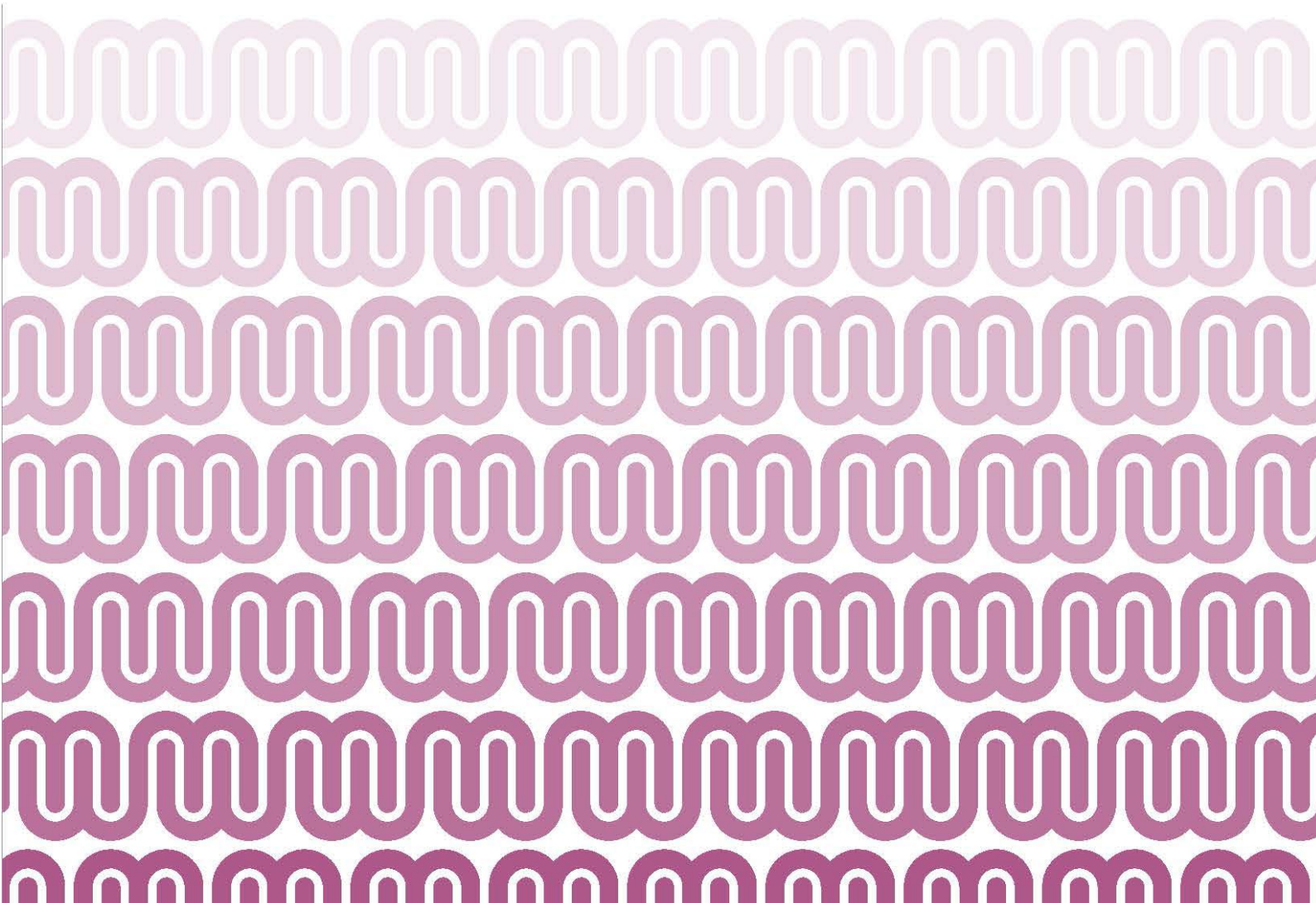
mental welfare commission for scotland

Immediate re-detention following a Tribunal decision

Advice note

October 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

This guidance was last published in November 2012. It was reviewed and updated in October 2026.

Purpose

This advice note provides guidance on the circumstances in which a further short-term detention certificate (STDC) may be considered following a recent Mental Health Tribunal for Scotland decision. It explains the relevance of recent case law and sets out the Commission's expectations regarding good practice, documentation and respect for Tribunal decisions.

Intended audience

This advice is intended for:

- Approved medical practitioners (AMPs)
- Responsible medical officers (RMOs)
- Mental health officers (MHOs)
- Mental health service managers
- Others involved in the application of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Mental Health Act).

Introduction

The Commission has encountered cases in which an individual has been made subject to a further short-term detention certificate (STDC) shortly after the Mental Health Tribunal for Scotland has refused an application or upheld an appeal concerning compulsory measures. This may occur where the Tribunal has upheld an appeal against a STDC or has refused an application for a compulsory treatment order (CTO). The Tribunal's decision may have been based on procedural defects in the proposed CTO or in the original STDC. The Tribunal may, having considered the evidence, not be satisfied that the statutory criteria for the relevant compulsory measure were met.

In these circumstances, a previous Tribunal decision remains highly relevant. A further application should not simply seek a different outcome without identifying a material change in circumstances or other new information.

The law generally recognises a principle of finality, meaning that decisions of courts and tribunals should not be repeatedly revisited without good reason. This promotes certainty, protects individuals from repeated proceedings, and ensures the proper use of Tribunal time.

However, this principle does not strictly apply in proceedings under the Mental Health (Care and Treatment) (Scotland) Act 2003 (Mental Health Act). The Inner House has confirmed that mental health decisions are concerned with the patient's current circumstances, welfare and best interests, all of which may change over time.

Dr Agnes Johnston v GA and Another [2025] CSIH 18[1]

This case concerned a proposed cross-border transfer from Scotland to a specialist eating disorder unit in England. The Mental Health Tribunal for Scotland refused the first transfer warrant. When a second warrant was sought several months later, a differently constituted Tribunal declined to hold a further evidential hearing because it considered that the earlier decision should stand unless there was sufficiently new material to justify reconsideration.

The Inner House confirmed that mental health proceedings are not governed by a rigid rule that an earlier Tribunal decision can never be revisited. Decisions under the Mental Health Act are concerned with the patient's current circumstances, welfare and best interests, which may change over time. However, a previous Tribunal

[1] Case Law: Dr Agnes Louise Johnston v GA and Another [2025] CSIH 18 https://www.scotcourts.gov.uk/media/cm2dtu0n/2025csih18-dr-agnes-louise-johnston-against-ga-and-another.pdf

decision remains highly relevant. A further application should not simply repeat an earlier unsuccessful application or seek a different outcome because the earlier decision is disagreed with. Ordinarily, there should be a material change in circumstances, or other new information capable of giving the case a significantly different complexion.

Although this case concerned a cross-border transfer warrant rather than an STDC, the same principle is relevant whenever a further compulsory measure is being considered shortly after a Tribunal has determined substantially the same issues. Decision-makers should be able to identify what has changed since the Tribunal's decision and why the exercise of a further statutory power is now justified.

The significance of Johnston is therefore not that a fresh exercise of statutory powers requires circumstances to have changed in every case, but that an earlier Tribunal decision cannot simply be disregarded. The decision-maker should consider what was determined by the Tribunal, the reasons for that decision, and whether there has since been a material change in circumstances or other new information capable of giving the case a significantly different complexion. The shorter the interval since the Tribunal's decision, the more important it will be to identify clearly the basis upon which the further exercise of compulsory powers is justified.

Importantly, the Court recognised that this may include circumstances in which the earlier Tribunal identified deficiencies in the evidence before it and those deficiencies have subsequently been remedied. The fact that relevant evidence could have been provided at the earlier hearing does not, of itself, prevent it from being considered subsequently. This may be particularly relevant where the Tribunal's earlier decision turned upon an evidential or procedural deficiency which has since been rectified.

Granting a further STDC

A previous Tribunal decision is therefore highly relevant, but it does not prevent a further application of a statutory power. The concern is not simply that a further STDC is granted soon after a Tribunal decision. The key question is whether there has been a material change in circumstances, or other new information capable of giving the case a significantly different complexion. A further STDC should not be used simply to avoid the effect of a Tribunal decision or to repeat an application that has already failed.

Before granting a further STDC, the AMP should be satisfied that the statutory criteria are met on the facts as they exist at that time. The MHO, when considering whether to consent, should likewise take account of those criteria and the circumstances surrounding the recent Tribunal decision. Where the Tribunal has recently considered the case, particular attention should be given to whether there has been a material change in circumstances since the Tribunal's decision. The reasons for concluding that the statutory criteria are met should be clearly recorded, including any relevant changes in the person's clinical presentation, risks, treatment needs or other material circumstances since the Tribunal's decision, together with an explanation of why a further compulsory measure is now considered justified.

The Commission has seen cases in which repeated use of STDCs has resulted in prolonged detention before the Tribunal had the opportunity to determine the substantive issues. Such situations are of concern. Practitioners should ensure that procedural difficulties or repeated applications do not undermine the safeguards intended by the Mental Health Act or unnecessarily delay independent judicial scrutiny of whether continued compulsory measures remain justified.

The Commission would expect the reasons for any immediate re-detention following a Tribunal decision to be capable of withstanding careful scrutiny.



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