

Citizen Participation and Public Petitions Committee
Wednesday 21 May 2025
9th Meeting, 2025 (Session 6)

PE2108: Obtain a second medical opinion before detainment under the Mental Health (Care and Treatment) (Scotland) Act 2003

Introduction

Petitioner Andrew Muir

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to require medical professionals to obtain a second medical opinion before a person is detained under the Mental Health (Care and Treatment) (Scotland) Act 2003.

Webpage <https://petitions.parliament.scot/petitions/PE2108>

1. [The Committee last considered this petition at its meeting on 9 October 2024](#). At that meeting, the Committee agreed to write to the Scottish Government.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new written submissions from the Scottish Government, the Petitioner and Claire Muir which are set out in **Annexe C**.
4. [Written submissions received prior to the Committee's last consideration can be found on the petition's webpage](#).
5. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
6. [The Scottish Government gave its initial response to the petition on 15 July 2024](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 36 signatures have been received on this petition.

Action

8. The Committee is invited to consider what action it wishes to take.

Clerks to the Committee
May 2025

Annexe A: Summary of petition

PE2108: Obtain a second medical opinion before detainment under the Mental Health (Care and Treatment) (Scotland) Act 2003

Petitioner

Andrew Muir

Date Lodged

19 June 2024

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to require medical professionals to obtain a second medical opinion before a person is detained under the Mental Health (Care and Treatment) (Scotland) Act 2003.

Background information

Under the above Act, a person can be detained and treated for 28 days under a Short-Term Detention Certificate based on the medical opinion of a single psychiatrist. Two signatures should be required on the certificate before detention.

In the English version of the Mental Health Act, it requires two medical opinions before someone can be treated against their will.

The first phase of the introduction of Martha's Rule will be implemented in the NHS in England and Wales from April 2024. Once fully implemented, patients, families, carers and staff will have round-the-clock access to a rapid review from a separate care team if they are worried about a person's condition.

Currently a person's treatment can be reviewed by a Mental Health Tribunal after 28 days or by a Designated Medical Practitioner after 2 months. However, these opinions occur after a person has commenced medication and may already have gone through a personality change or suffered restraint and do not get a true picture of a person's state of mind.

Annexe B: Extract from Official Report of last consideration of PE2108 on 9 October 2024

The Convener: PE2108, which was lodged by Andrew Muir, calls on the Scottish Government to require medical professionals to obtain a second medical opinion before a person is detained under the Mental Health (Care and Treatment) (Scotland) Act 2003.

The SPICe briefing explains that a short-term detention certificate authorises a patient's detention in hospital for 28 days in order to determine what medical treatment the patient needs and to provide that treatment. The 2003 act specifies the criteria that an approved medical practitioner must confirm have been met in order for a detention certificate to be used, and the act requires that a mental health officer must give consent before it is used. If the patient has a named person, that person must also be consulted and have their views taken into account.

In England, the decision on whether to detain a patient is made by an approved mental health professional following an assessment by two doctors. When the Mental Health Act 1983 was being debated, it was stressed that the independence of the two doctors making medical recommendations was important in order to avoid collusion, influence or interference with clinical judgment.

In her response to the petition, the Minister for Social Care, Mental Wellbeing and Sport outlined the use of short-term detention certificates and highlighted the right of appeal. The submission also highlights that reducing coercion is one of the priorities that emerged from the Scottish mental health law review.

The petitioner has shared his view that the certification process

“does not contain sufficient safeguards”

because the mental health officer who grants consent is not necessarily independent of the approved medical practitioner. His view is that the mental health law review was “not fit for purpose” and that, although the review stated that coercion should be reduced, it is not clear how that will be achieved. The petitioner would like

“supported decision making to be the norm rather than substituted decision making.”

These are important issues. I think that I recognise the name of Andrew Muir—he might have lodged petitions with the committee previously. Do colleagues have any comments or suggestions?

Foysoyl Choudhury: We should keep the petition open and write to the Scottish Government to highlight the requirement in England for an assessment by two doctors before short-term detention and to ask how it can be confident that just one medical opinion is sufficient for cases in Scotland.

The Convener: If there are no other suggestions for action, are we content to keep the petition open?

Members *indicated agreement.*

The Convener: We will keep the petition open. We thank Mr Muir for raising the issue with us. We will write to the Scottish Government and see what response we get in the first instance.

That bring us to the end of our public session. Our next meeting will take place on Wednesday 30 October. We will move into private session to consider agenda items 4 and 5. I again thank Marie McNair for joining us as a substitute for David Torrance this morning.

Annexe C: Written submissions

Scottish Government written submission, 6 November 2024

PE2108/C: Obtain a second medical opinion before detainment under the Mental Health (Care and Treatment) (Scotland) Act 2003

Thank you for your letter dated 18 October 2024 seeking a view on how the Scottish Government can be confident that just one medical opinion is sufficient when a patient is detained under a Short-Term Detention Certificate (STDC) in terms of section 44 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ('the 2003 Act').

As I am sure you can appreciate, it would not be appropriate for the Scottish Government to comment on points of legislation in other jurisdictions. However, please be assured that the Scottish Government is confident that one medical opinion is sufficient for the granting of a STDC because of the additional safeguards and patients' rights already provided for in the 2003 Act. Some of these were summarised in the earlier correspondence to you by Ms Todd, Minister for Social Care, Mental Wellbeing and Sport on 15 July 2024.

These safeguards include the duties of the Mental Health Officer (MHO) to consider the granting of the STDC and the duties of the Responsible Medical Officer (RMO) to consider the continued necessity of the order. In addition, the patient and named person have a right to advocacy and the right to apply for revocation of the STDC. It might be helpful if I set these out in more detail;

Short-Term Detention Certificate

As previously mentioned, the 2003 Act imposes two specific duties on the Approved Medical Practitioner (AMP) in relation to the granting of an STDC, namely;

- to consult and obtain the consent of an MHO to the granting of the certificate; and
- to consult and have regard to the views of the patient's named person, where it is practicable to do so.

In addition to the above mentioned duties the AMP;

- should take into account relevant information from the other members of the multi-disciplinary team who are providing care and treatment to the patient.
- Section 1(3) of the 2003 Act imposes a duty on certain persons discharging functions by virtue of the 2003 Act, including the MHO and AMP, to have regard to the present and past wishes and feelings of the patient and to the views of any named person, carer, guardian and welfare attorney of the patient which are relevant to the situation.

Role of the MHO

As I am sure you are aware, an MHO is a specially trained social worker who has the training, education, experience and skills to work with people with a mental disorder. They must follow the Section 1 principles of the 2003 Act¹ while carrying out their functions.

Before the MHO can decide whether or not to consent to the granting of the STDC, the MHO will need, wherever practicable, to try to elicit the views of the patient with respect to the STDC and assess any possible alternatives. The MHO should make sure that as many forms of informal and less restrictive treatment have been explored before consenting to the STDC.

Regular Reviews

Just to reiterate that an additional safeguard is the duty placed on the RMO under section 49 of the 2003 Act to keep under review whether the patient continues to meet the statutory criteria for an STDC and whether the STDC continues to be necessary. The RMO must revoke the STDC if the patient no longer meets the detention criteria under section 44(4) (a), (b) and (d) of the 2003 Act or the RMO is no longer satisfied that the STDC continues to be necessary.

Right to apply to the Tribunal for revocation

Safeguards under section 50 of the 2003 Act also provide the patient and the named person the right to apply to the Tribunal for revocation of the STDC. Section 51 of the 2003 Act confers a power on the Mental Welfare Commission to revoke the STDC where it is satisfied that it is no longer necessary for the patient to be detained in hospital on the authority of the certificate.

Compulsory Treatment Orders

Finally, I thought that it might be useful to set out the process where an application for a Compulsory Treatment Order (CTO) is made, which is a longer term order that can last up to 6 months and can be renewed for another 6 months. After that it can be renewed for periods of 12 months. Section 63 of the 2003 Act specifies that two mental health reports must be provided. Any such application must be made to the Tribunal by an MHO and, in addition to the two mental health reports must contain;

- the MHO's report prepared under section 61 of the 2003 Act; and
- the proposed care plan produced by the MHO under section 62.

I trust that the information above provides you with the necessary assurance that our mental health legislation is based on rights and principles and provides for rigorous safeguards in respect of individuals' human rights where compulsory detention and treatment is necessary. In particular we consider our legislation in relation to the granting of STDCs to be compliant with the European Convention on Human Rights.

¹ [1 Guiding principles - The New Mental Health Act: A guide to the role of the mental health officer - Information for service users and their carers - gov.scot \(www.gov.scot\)](http://www.gov.scot)

Mental Health & Incapacity Law Unit

Petitioner and Claire Muir written submission, 21 November 2024

PE2108/D: Obtain a second medical opinion before detention under the Mental Health (Care and Treatment) (Scotland) Act 2003

The weakness of the Scottish Government's submission is that it does not deal with any worked examples. Instead, I would like to draw on the outcome of my wife Claire's experience of detention, something that we have both campaigned about for many years.

During miscarriage treatment, my wife complained about an organisation's conduct. When the organisation was contacted by an NHS member of staff, without my wife's knowledge, they denied what had happened. This is despite the fact they had already issued a full written apology to my wife. However, the NHS member of staff decided to believe the organisation's denial without question and wrote a letter claiming my wife was delusional. A psychiatrist examined my wife and "confirmed" that she had suffered a delusion about this and granted a Short-Term Detention Certificate. My wife was then treated with several injections of powerful medication. This medication had significant side effects. The side effects of that medication were used as examples of a mental illness in her medical notes. At five Mental Health Tribunals, the psychiatrist successfully argued that my wife had a mental illness. At each stage of the decision-making process, the Mental Health Officer agreed with the psychiatrist that compulsory treatment was necessary.

After many months of complaining I managed to persuade the psychiatrist and the Mental Health Tribunal that a new Responsible Medical Officer should take over. The second psychiatrist examined her and decided that her treatment was a "waste of time and resources" and that her mental illness was "anything you want it to be". Her treatment was formally ended after fifteen months.

Things would have been better if a second medical opinion had been taken before any detention had started. As my wife was forced to take drugs before the first hearing, she could not properly participate in it, which is in breach of the ECHR.

The ten principles in the Mental Health Act were not followed.