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**To: Renfrewshire Integration Joint Board**

**On: 20 March 2020**

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**Report by: Chief Officer**

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**Heading: Role of MHO's in Emergency Detentions under the Mental Health (Care & Treatment) (Scotland) Act 2003**

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## **1. Summary**

1.1. The Mental Health (Care & Treatment) (Scotland) Act 2003 (MHA) is the primary legislation that governs the compulsory care & treatment of individuals who are suffering from a mental disorder. It provides powers to medical professionals (with relevant safeguards) to detain individuals in hospital to provide this treatment.

The Act provides a number of 'Orders' ranging from Emergency Detention Certificates (EDCs), Short Term Detention Certificates (STDCs), and Compulsory Treatment Orders (CTOs) these being the main types of orders used most frequently.

## **1.2. Terminology**

**Emergency Detention Certificates (EDCS)** are designed to be used only in crisis or emergency situations to detain a person who needs urgent care and treatment for mental health. They can be issued by any doctor, with the input of a Mental Health Officer (MHO) and allows someone to be kept in hospital for up to 72 hours for assessment. (treatment is not authorised under these certificates). There is no right of appeal against the granting of an EDC.

**Short Term Detention Certificates (STDCs)** The preferred route to compulsory treatment is through an STDC. The granting of an STDC requires the recommendation of a psychiatrist and the agreement (consent) of a Mental Health Officer (MHO). These certificates allow the detention of an individual in hospital for up to 28 days. Treatment can be provided under an STDC. There is a right of appeal by individuals to STDCs and any such appeal will be heard by a Mental Health Tribunal (MHT).

## 2. Recommendation

It is recommended that the IJB:

- Note the content of this report.

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## 3. The Issues around EDCs

3.1. Annual monitoring of the use of the Mental Health Act is undertaken by the Mental Welfare Commission for Scotland (MWC). The MWC report is normally published in September each year and covers the preceding year (01 April to 31 March). Over the last 10 years the percentage of Emergency Detention Certificates across Scotland with Mental Health Officer consent has fallen from a high of 65% in 2009/10 to the current level of 50% in 2018/19. In 2018/19 out of 2,871 individuals who were subject to EDC only 50% had the consent of an MHO to this detention. Greater Glasgow & Clyde (GG&C), Forth Valley and Western Isles were below the national average for EDCs with MHO consent 2018/19. In GG&C the figure has remained between 30-35% over the past 5 years.

3.2. In 2016 the MWC published a report which examined Scotland's high levels of emergency detentions without the consent of an MHO. It continues to be an area of concern to the MWC owing to the important safeguard in the process of detention of individuals.

3.3. The MWC data does not break the figures down into local Health and Social Care Partnerships as it is not possible for the MWC to record in that way. Locally, monitoring of the use of Emergency Detention Certificates and Short Term Detention Certificates is undertaken within the MHO Service and a track of all such orders is kept with details that allow a more detailed analysis at local level.

3.4. In Renfrewshire for the reporting period 2018/19 there were a total of 118 EDCs implemented. This was broken down as follows:

	<b>Totals</b>	<b>In Normal Hours</b>	<b>Out of Hours / PH</b>
<b>With MHO Consent</b>	50	19	31
<b>Without MHO Consent</b>	68	11	57
	<b>118</b>	<b>30</b>	<b>88</b>

3.5. The figures show that the vast majority of EDCs are implemented 'out of hours' accounting for nearly 60% of total.

- 3.6. Out of hours MHO services are provided by Glasgow & Partners Emergency Social Work Service who employ MHO's to cover the requirements of the service. The out of hours service covers a number of local authority areas. The immediate availability of MHO's for Emergency Detention Certificates can be impacted by volume of calls and their geographical location. It is acknowledged that around 2016/17 there were issues with MHO resourcing in the out of hours social work service that has now been resolved as additional MHO's have been recruited to this service.
- 3.7. From our local monitoring of EDCs notification received from the out of hours service it is clear a large number of EDCs are already implemented as the referring doctor believes the situation is urgent, the patient is attempting to abscond or requires restraint owing to violence and aggression and their contact with out of hours service is to advise of the EDC as opposed to actively seeking the attendance or consent of an MHO. The issue of the definition of what is consult / consent has been raised at national level to inform the relevant training programmes for doctors.
- 3.8. In looking at the EDCs undertaken 'in hours' without MHO consent all are clearly recorded on the EDC form as the implementation of the EDC was urgent for patient (or others) safety usually for reason of absconding or aggressive behaviours requiring physical restraint.
- 3.9. The breakdown of hospitals / locations for the EDCs recorded as without MHO consent in the period are as follows:

<b>In Hours Without Consent</b>	<b>Number of EDCs</b>	<b>Out of Hours without Consent</b>	<b>Number of EDCs</b>
Dykebar Hospital	5	Dykebar Hospital	19
PCMHT Charleston Centre	2	Leverndale Hospital	9
Leverndale Hospital	2	Langhill Clinic	0
Langhill Clinic	1	RAH	20
Esteem Service	1	QEUH	1
		OOH GP Service	7
		Gartnavel Royal	1
<b>TOTALS</b>	<b>11</b>		<b>57</b>

## General Observations on use of EDCs and lack of MHO consent

- 3.10. The issue of the number of EDCs without MHO consent has been commented upon by the MWC over a number of years. Locally we maintain robust monitoring of the use of EDCs and are able to spot early any issue arising. Our monitoring has not shown any problem in relation to availability of MHOs locally. It is acknowledged that additional MHOs have been recruited to this service which has been re-organised by Glasgow HSCP and the situation improved.
- 3.11. In terms of MHO availability 'in hours' we have a well-established duty system for MHO calls and sufficient MHO's to undertake statutory roles in relation to the Mental Health Act and the Adults with Incapacity Act. There is no evidence locally to support any suggestion that the rise in the number of detentions without consent of an MHO is the result of a lack of MHO's.
- 3.12. Locally there is no duty Consultant system where a S22 doctor is automatically available to undertake urgent or emergency assessments of individuals, with duty doctors covering. There is also, as noted above, a dilemma between Consult / Consent and what is understood by this in the operation of the Act in terms of seeking consent. A further pattern is noted in the increase in use of EDCs within general hospitals (Acute settings in both A&E & wards).
- 3.13. The MHA is currently under a major review and it would be hoped that such issues will be taken into consideration by the independent review team in their work. Our Lead Officer Mental Health as Chair of Social Work Scotland's Mental Health Group is involved with this review.

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## Implications of the Report

1. **Financial** – None
2. **HR & Organisational Development** – None
3. **Community Planning** – None
4. **Legal** – The report details the legislative background governing the compulsory care and treatment of individuals who are suffering from a mental disorder. If proper process as laid down in the legislation is not followed it leaves the detaining doctor open to have their action challenged at a Mental Health Tribunal or Court. The principles of the legislation apply to all.
5. **Property/Assets** – property remains in the ownership of the parent bodies.
6. **Information Technology** – None
7. **Equality & Human Rights** – The recommendations contained within this report have been assessed in relation to their impact on equalities and

human rights. The report refers to Emergency Detention Certificates (EDCs) which are used in emergency situations to detain individuals. EDCs are issued under the Mental Health (Care & Treatment) (Scotland) Act 2003 which is compliant with the European Convention on Human Rights. There is potential for an individual's Human Rights to be infringed if the proper process for the use of the legislation is not followed and the principles of the Act adhered to

- 8. **Health & Safety** – None
- 9. **Procurement** – procurement activity will remain within the operational arrangements of the parent bodies.
- 10. **Risk** – None.
- 11. **Privacy Impact** – n/a.

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**List of Background Papers – Nil**

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