

PE1786/I

Cabinet Secretary for Justice submission of 13 November 2020

Thank you for your letter dated 2 November 2020, with your request to consider the variation in the figures for issuing an emergency detention certificate without the consent of a Mental Health Officer (MHO).

We are clear that consent by MHO's is an important safeguard to the patient's rights in this process and whilst it is important that Local Authorities have good out-of-hours arrangements to ensure that MHO's can attend, it is also equally important that Health Boards have good procedures to make sure that medical practitioners seek MHO consent. The Mental Welfare Commission will continue to report on levels of MHO consent as part of its statutory duties on the monitoring of the 2003 Act as well as talking to the independent review of mental health legislation about the way forward for this safeguard.

It is also worth noting that the independent review of mental health legislation, chaired by John Scott QC is currently considering how best to seek and evaluate evidence about the way persons who are subject to compulsion under the Mental Health (Care and Treatment) (Scotland) Act 2003 currently receive care and treatment. That includes issues such as how the application of compulsion has developed since the Act came into force and they also have a dedicated workstream focussing on the issue of compulsion.

I hope this information is helpful.