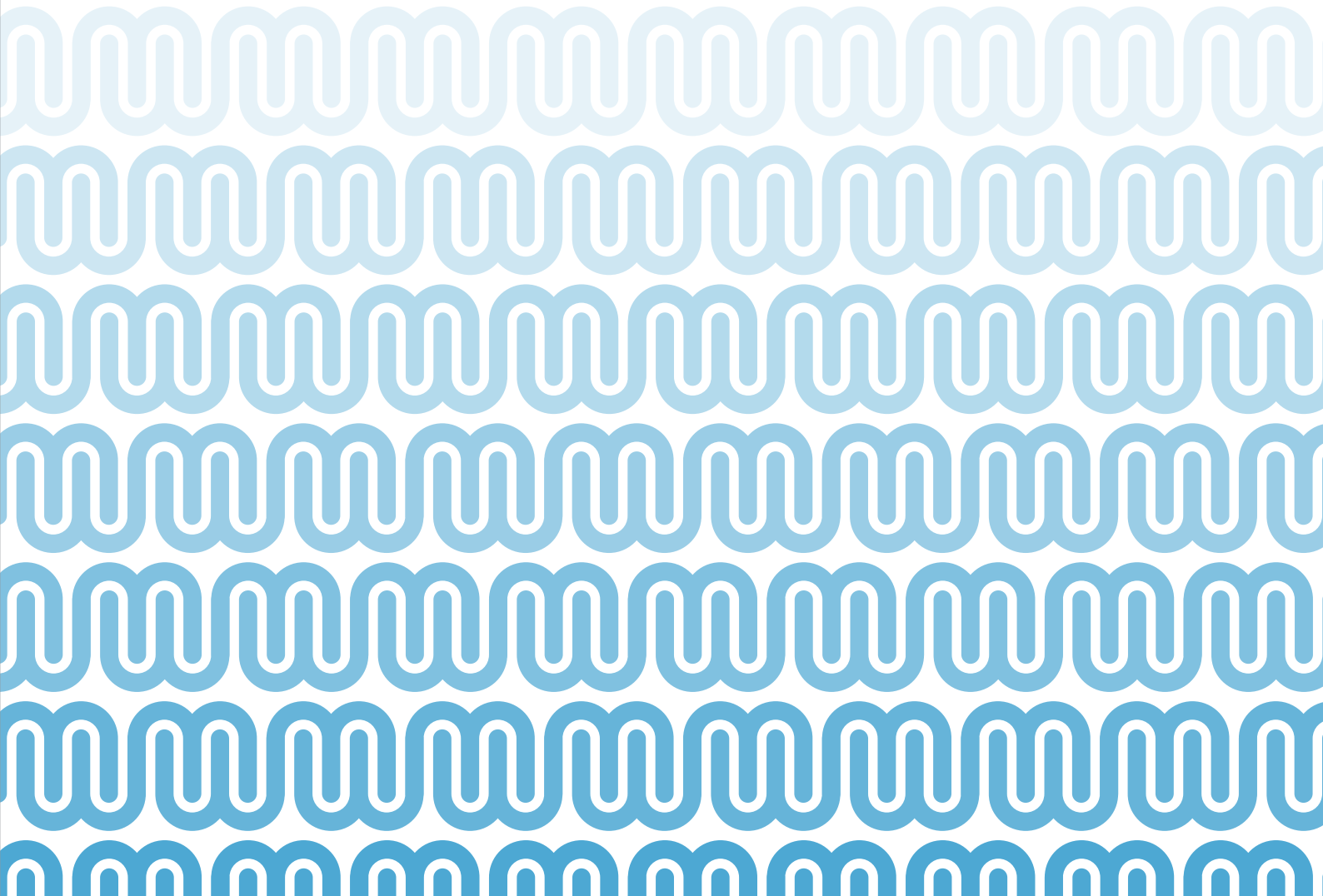
mental welfare commission for scotland

The use of the Mental Health Act in Scotland during the Covid-19 pandemic

Rising numbers, falling safeguards

July 2021



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

Executive summary

Since the first case of Covid-19 was detected in Scotland in early March 2020, almost every aspect of our lives has been disrupted, including access to and delivery of mental health services. This has affected people living with mental illness, and in this report we look at the impact on some of the more vulnerable people in our communities- those who have needed to be treated against their will using compulsory measures under the Mental Health (Care and Treatment) (Scotland) Act 2003 ('the Mental Health Act').

We look at detentions under the Mental Health Act between 1 March 2020 and 28 February 2021. We look in detail into how many detentions there were, where and when they took place, and if there are any differences between health boards and also in characteristics of people who were detained. We compare detentions in 2021 with the average for the last five years to understand the impact of the pandemic on this vulnerable group. The Commission recognises that while this report summarises information at a population level, every incident relates to a person, and represents a time of difficulty for them and their family, friends, carers and those that matter to them.

Key findings

1. There were 9.1% more detentions in 2020-21 compared to 2019-20, with 10,059 detentions in the year, compared to 9,222 detentions in the previous year. This 9.1% rise compares to an average year-on-year rise of 5% for the previous five years, so this is a clear increase.
2. The rise was seen on all types of detention from shorter to longer periods of detention. The difference from the most recent year compared to the average year-on-year change was 10.0% for Emergency Detention Certificates (EDCs) (average=8.0%), 9.5% for Short Term Detention Certificates (STDCs) (average=3.9%), and 6.2% for Community Treatment Orders (CTOs) (average=3.4%). Increases in number of detentions was mainly in the larger health boards. The most significant rise therefore being in STDCs.
3. There was a particular increase in detentions in May which then remained higher than the historical monthly averages for EDCs and STDCs. Number of CTOs fluctuated more over time, with some months close to historical averages.
4. The Commission has raised the problem of lack of mental health officer (MHO) consent in emergency detentions for some time [1]. During the pandemic this seems to have been an even bigger concern – the percent of EDCs that had MHO consent dropped from an average of 51.7% to 43.8% in 2020-21.
5. This is a 7.9% drop of MHO consent compared to the average over the last five years. This drop is across the board- for both in-hours detentions (-7.9%) and out-of-hours detentions (-7.9%), for detentions that started in the community (-6.9%) and for those EDCs that were started in hospital (-8.2%).
6. There were 32 back-to-back STDCs, which was higher than average (average=23). We explored the reasons for each of these instances.
7. There were fewer social circumstances reports (SCRs) prepared compared to the average in previous years reports prepared compared to average (26.9% vs 37.5%).
8. While there are gaps in our data for ethnicity of the person who has been detained, for those where we had ethnicity recorded we saw that compared to the average over the last

five years there were slightly more detentions for people identifying as African, Caribbean or Black, for EDCs (1.9% this year compared to an average of 1.4% over the previous five years), and more for STDCs (2.2% vs 1.5%) and CTOs (2.0% vs 1.5%). This was also true for the Asian group for STDCs (3.6% vs 2.7%) and CTOs (3.6% vs 2.6%).

9. There was no difference in the proportions of people detained from different Scottish Index of Multiple Deprivation (SIMD) deprivation quintiles but there remains a clear gradient with a higher proportion of people who are detained living in the most deprived areas of Scotland.

This report shows that there was an increase in detentions which was higher than increases we have seen in previous years.

Importantly, we show a reduction in the safeguards such as MHO consent for EDCs, a reduction in Social Circumstances Reports, and an increase in detentions for people from visible minorities during the pandemic. The pandemic exacerbated existing problems. We are some years away from any new act that may follow recommendations from the current independent review into Scottish mental health law. In the meantime, best practice with regards the law is not being realised. We make a recommendation to address this below.

With regards the finding of the increase in proportion of detentions of people from visible minorities the Commission will be publishing more detailed work on ethnicity, race and mental health in Scotland and will identify issues and make recommendations substantively in that report.

Recommendations

1. Health and Social Care Partnerships, supported by Local Authorities, should seek to understand the reasons why important safeguards (MHO consent for EDC; preparation of social circumstances reports by MHOs) under the Mental Health Act are not being realised in practice.
2. The Scottish Government is asked to take account of the content of this report as part of its current review of the mental health officer workforce; a critically important workforce which protects and safeguards the rights of vulnerable people.

Introduction

Since the first case of Covid-19 was detected in Scotland in early March 2020, almost every aspect of our lives has been disrupted. Our health services, including mental health services, have been hit with the impact of the pandemic, and the challenges of the pandemic itself and in accessing services has impacted on those living with a mental illness [2].

Negative impact on people's mental health has been reported from research in the general population in Scotland. Survey research has been done three times so far: May-June 2020, July-August 2020, and October-November 2020. About one fifth of people who were surveyed reported depressive symptoms that might need treatment and 16.2% had anxiety symptoms. Compared to the first two survey waves, reported people appeared to be experiencing poorer mental health during the third period data was collected for. People with existing mental health problems in particular reported lower mental wellbeing than people with no existing mental health problem. Overall, 9.9% reported suicidal thoughts in the last week, which was a significant decrease from the second survey wave (14.8%). Suicidal thoughts was higher among those with existing mental health conditions (38.3%), but as well as in the overall survey sample this had declined from the previous wave (42.9%) [3].

We know that mental health services have had to change the way they work, but not all health services can be delivered online. While people with mental ill health have reported that moving services online can provide some continuity of care, it can also act as a barrier to engage and get support [2]. Detention under the Mental Health (Care and Treatment)(Scotland) Act 2003 ('the Mental Health Act') is a particular challenge, and assessments for detention should only in very limited circumstances be done remotely [4].

While we know that the effects of Covid-19 have been significant on life and society in general, this report describes the impact on those who are mentally unwell and required compulsory care and treatment. Whilst this is a statistical report, we recognise that each of the instances we report here relates to a moment of difficulty for the person and those important to them.

This report

For some people who are very unwell, some aspects of their care and treatment might need to be delivered against their wishes. This is done as set out in the Mental Health Act which also provides legal safeguards that ensure the person is cared for appropriately and for the shortest time possible under the Mental Health Act.

In this report we analyse detentions under the Mental Health Act between 1 March (when the first Covid case was reported in Scotland) and 28 February 2021, to mark a full year of reporting through the pandemic and associated restrictions. We look at the number of detentions compared to the previous five years in relation to order type, age, gender, ethnicity, and health board of treatment. We also look at how many people died while they were subject to the Mental Health Act.

We recognise that while this report summarises information at a population level, every incident relates to a person, and represents a time of difficulty for the individual involved and their family, friends or carers.

The role of the Mental Welfare Commission

The Commission has a duty under Section 5 of the Mental Health Act to monitor and promote best practice in the use of the Mental Health Act.

As part of this role, the Commission has, since the start of the pandemic, worked to ensure that the rights of people with mental illness, learning disabilities, dementia, and other related conditions are adhered to. This has included providing advice to people with lived experience, and those important to them and practitioners in the new and sometimes difficult situations that have resulted from the pandemic and the restrictions in place because of the pandemic.

We run an advice line for people to contact us where there are concerns related to care and treatment. This is an important way for us to provide advice to people who use services, families and carers and those that work with them. The advice line also helps us in understanding the challenges and where there are areas that require our attention including directing what aspects we need to monitor in more detail.

The aim of this report was to describe how many detentions there were in this first year of the pandemic. We also wanted to compare this to previous years and see if there were differences in the characteristics of people who were subject to the Mental Health Act; how, where and when the detention happened, and how and whether safeguards for people were affected. We hope the findings from monitoring provide useful information to Scottish Government, Health Boards and our stakeholders in focussing efforts to build back fairer.

Information used in this report

We present the number of orders that started during the period 1 March to 28 February 2021. We present the following types of orders: Emergency Detention Certificates (EDCs), Short-Term Detention Certificates (STDCs), and Compulsory Treatment Orders (CTOs). You can read more about what these mean in the **Glossary**.

A detention order is different from a detention episode, which can involve more than one type of detention by progressing from a shorter detention to a longer one. So when we talk about episodes, this includes all orders that a person was subject to. We also present information about if the person who was detained had previous experience of detention under the Mental Health Act. If someone had a prior episode of treatment under the Mental Health Act, we also calculated how long ago it was that a person had been subject to the Mental Health Act to see if the pandemic may have brought any changes to the usual patterns that we might see.

Throughout this report we compare to average for previous years, which means the same time period (1 March to 28 February) for the years 2015-19. So when we talk about the 'mean', this relates to the average of those last five years. For the averages, we also present the statistical measure of standard deviation (SD) and for median numbers we present the interquartile range (IQR). You can read in more detail about these measures in **Appendix A** and in the **Glossary**.

Deaths while subject to an order

We also looked at the number of people who died during the year while they were subject to either the Mental Health Act and the Adults with Incapacity (Scotland) Act 2005; 'the AWI Act'), or to the mental health orders of the Criminal Procedure (Scotland) Act ('the Criminal Procedure Act'). These deaths are reported to the Commission through our deaths notification system.

The use of the Mental Health Act

There were a total of 10,059 detentions in 2020-21, which was 837 (9.1%) more than the year before. Figure 1 shows the number of detentions for each order over time, which clearly rose for EDCs and STDCs during spring/summer of 2020. Detailed numbers are provided in Tables A1-A4.

Figure 1. Number of detentions by month and order type over five years

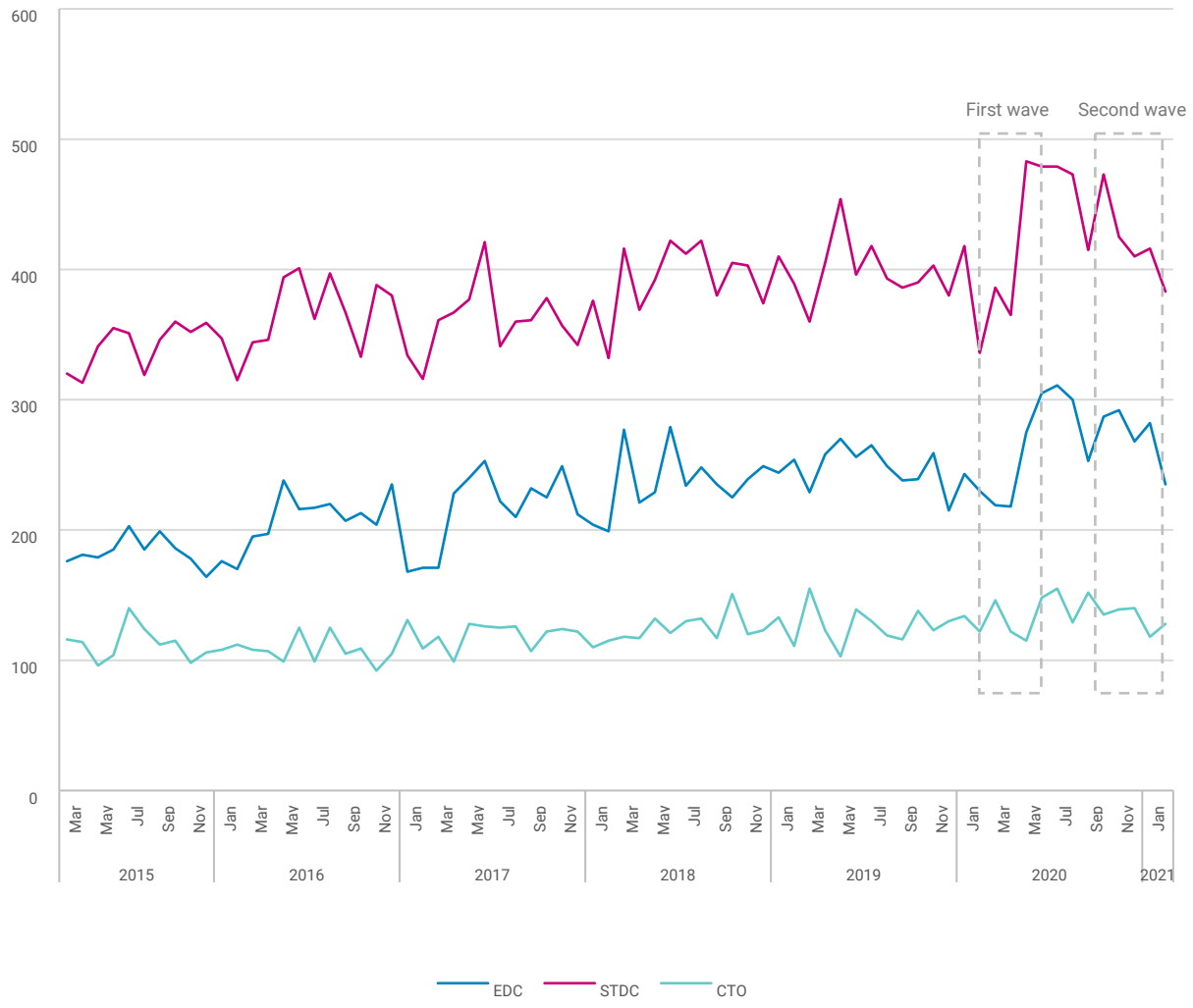
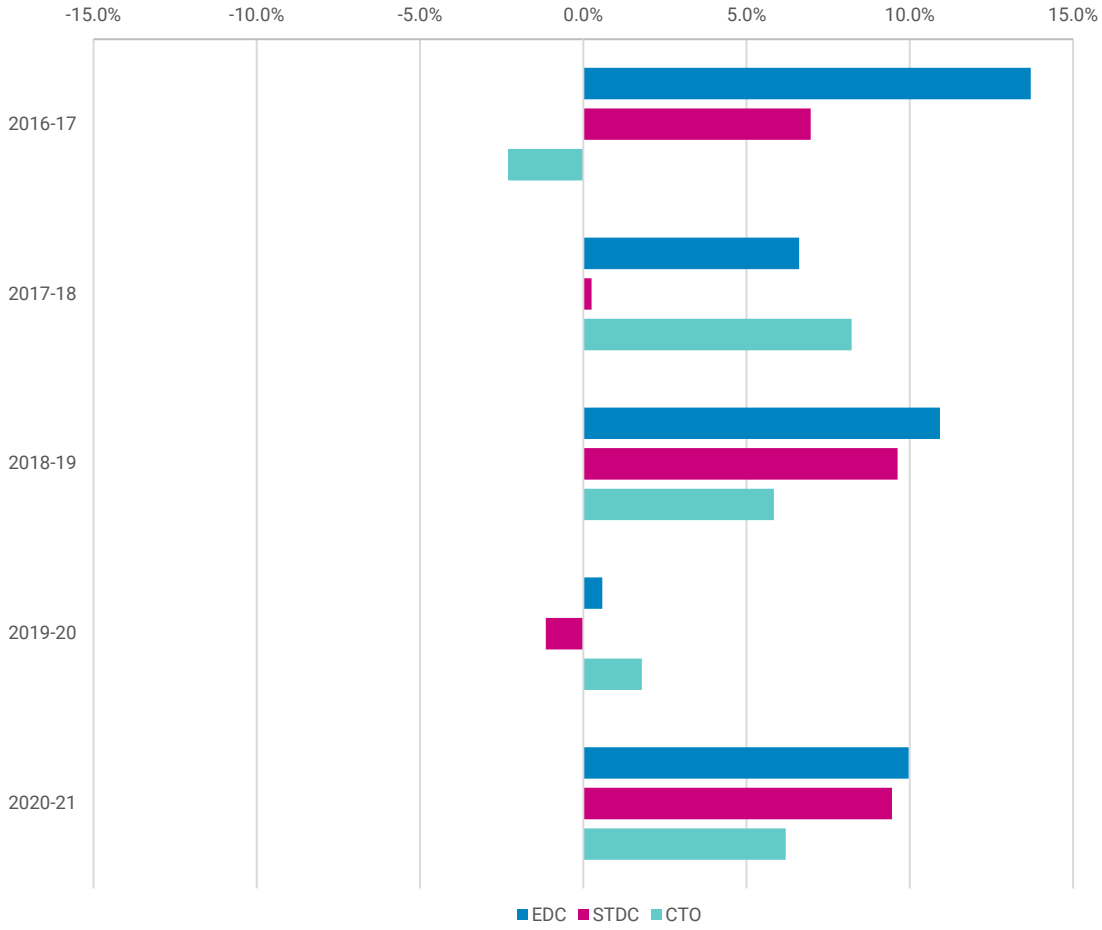


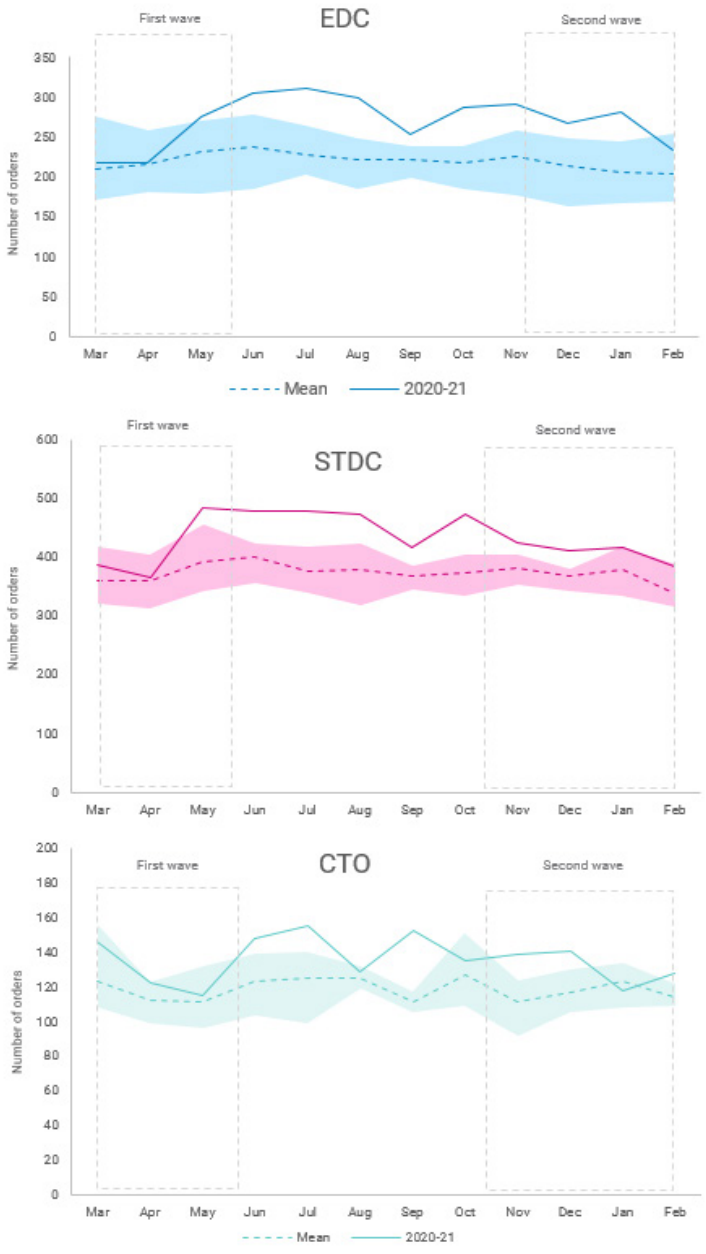
Figure 2 shows the year-on-year change. Compared to 2019-20, there were 10.0% more EDCs, 9.5% STDCs and 6.2% CTOs. The difference between 2019-20 and 2020-21 was higher than the average year-on-year change for previous years (EDCs=8.0%, STDCs=3.9%, CTOs=3.4%). The overall average year-on-year change was 9.1% between 2019-20 and 2020-21, compared to the average of 5.0% in the last five years.

Figure 2. Percent year-on-year change of orders



The pattern of number of detentions varied across different months over the year. Figure 3 shows that EDCs and STDCs at first were similar to the historical average during the first wave but was higher than average in May while CTOs were around average. The number of EDCs and STDCs stayed above the historical average for the rest of the year while the number of CTOs varied between similar numbers to the average and above historical figures, with the exception of January 2021.

Figure 3. Monthly number of orders (shaded area representing historic high and low)



We looked at if there was any difference in what orders a person was under during a detention episode (you can read more about what an episode is in the **Glossary**. We did not find much difference with this, as the order a detention episode started and ended on were very similar

to the average for previous years. The biggest difference was for episodes that started as a STDC and ended on a CTO via an interim CTO (5.8% vs 4.7% average) (see Table A5).

Previous detentions

We heard early on in the pandemic about people who were not previously known to mental health services needing acute mental health support. We wondered whether this might translate to more people being detained who had no prior history of detention. We therefore looked at whether we could see if there were more people who were detained in 2020-21 without a history of being subject to an order before. We did this for EDCs and found that 50.5% of people detained under an EDC were not on our system, which was very similar to the average in the last five years (mean=48.9%, SD=1.1%). This means that the increase in detentions cannot be said to be due to people who had been unwell becoming more unwell again.

We also looked at how long ago people had previously been detained, if they had been detained in the past, by calculating the median number of months since the last episode.[1] We found that in 2020-21 the median was nine months (IQR=1–36), which was similar to the last five years (median=10, IQR=2–41).

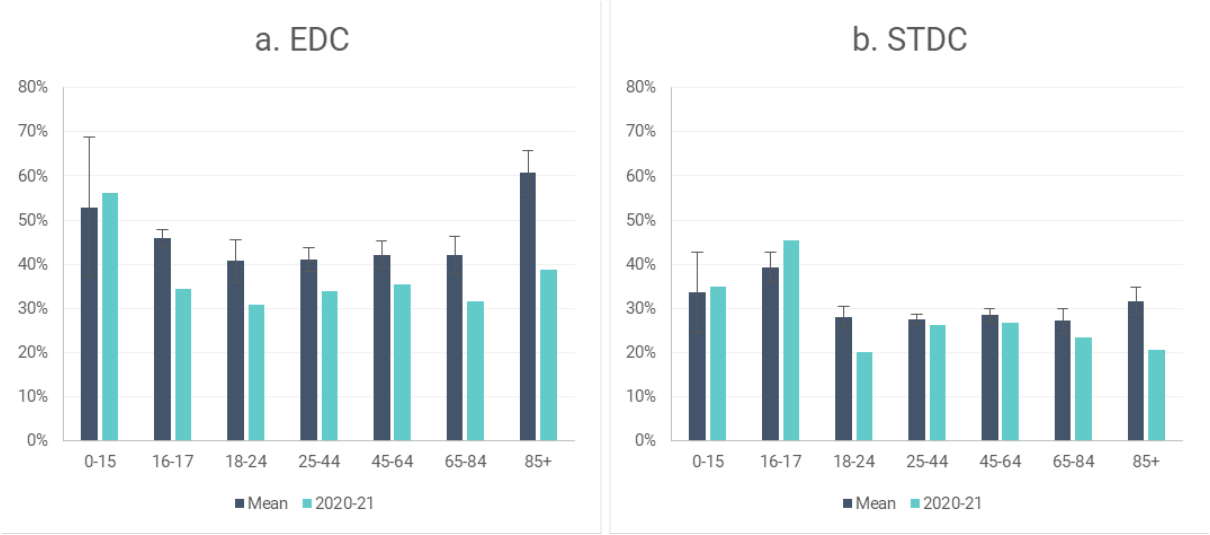
Where and when the detention began

We looked at where people were detained and found that fewer people were detained from the community. The route into hospital for people who require compulsory treatment is meant to be a STDC because there are more safeguards available. We had heard that more people were being detained in community settings on EDCs however the data does not suggest that this was the case. Compared to average, there were 7.6% fewer EDCs starting in the community (41.5% vs 33.9%, SD=3.3%) and 6.4% fewer STDCs (27.4% v 21.0%, SD=1.6%).

Figure 4 shows that fewer EDCs started in the community across all age groups, with the exception for <16 year-olds (but the variation in previous years is big because there are small numbers in this age group). The largest difference was in the age group >85 years (39% vs 61%, SD=5%). Similar to EDCs, there were much fewer detentions starting in the community among those aged >85 years compared to average (20.7% vs 31.7%, SD=3.0%). More STDCs among 16-17 year-olds however started in the community (45.4% vs 39.4%, SD=3%).

[1] We calculated months as about three quarters of episodes occurred within three years of the last across all years, with 60% within a year or less.

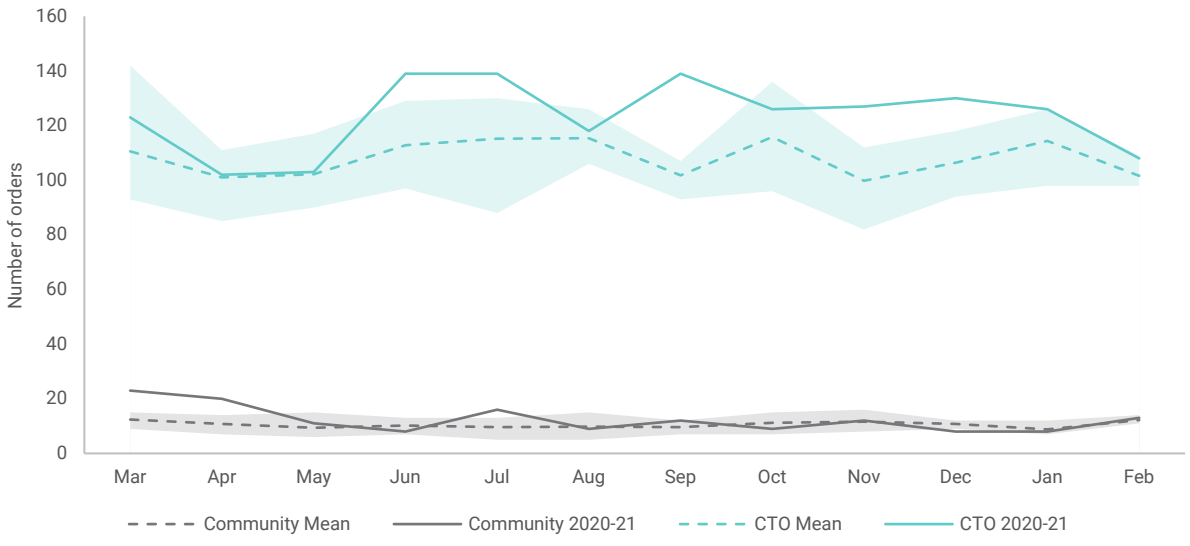
Figure 4a-b. Detentions beginning in the community by age



There was also very little difference in when people were detained– out of hours for EDCs were similar to last five years (70.2% vs 70.3%, SD=0.6%) as were STDCs (25.4% vs 24.5%, SD=1.0%). When we looked at what time the detention happened and where it started (community or as an informal admission) again we found little difference for in- and out-of-hours detentions for both EDCs and STDs, but there was a slight trend towards fewer detentions during out-of-hours for both orders (Table A7).

We looked at the type of CTO people were subject to. Similar percent of CTOs in 2020-21 were hospital-based compared to average (90.9% vs 91.0%, SD=0.6%). As we mentioned in the beginning of this section, CTO was the order with least variation compared to previous years. Figure 5 shows that the number of community CTOs was very similar to previous years, while there was increased activity for hospital-based CTOs during June-July, in September and, in general, higher than average during the fall.

Figure 5. Monthly CTO orders with historic average (dotted line) and historic high and low (shaded area)

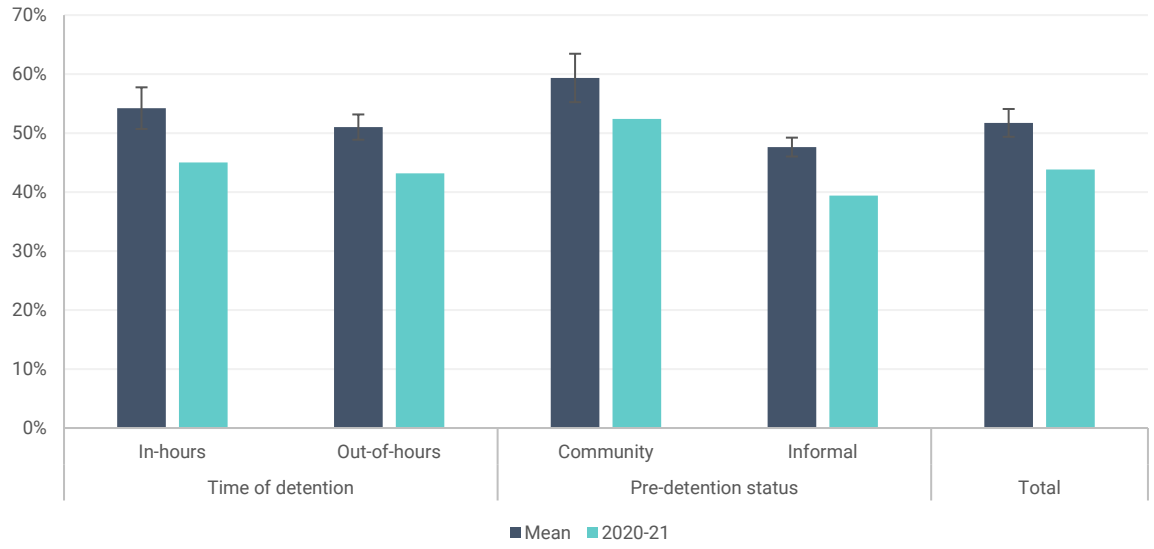


MHO consent

The Commission has raised the problem of lack of MHO consent in emergency detentions for some time [1]. During the pandemic this seems to have been an even bigger concern – the percent of EDCs that had MHO consent dropped from an average of 51.7% (SD=2.4%) to 43.8% in 2020-21.

We see a drop in MHO consent in both detentions that happened during in-hours (9am to 5pm) and out-of-hours (Figure 6). The percent of EDCs with MHO consent was 9.2% lower for in-hours detentions and 7.9% lower for out-of-hours detentions, compared the average. This was also the case for detentions that started in the community (6.9% lower than average) and those that started as an informal admission (8.2% lower than average).

Figure 6. MHO consent by when and where the EDC started



Back-to-back STDCs

We were specifically interested in reviewing then number and circumstances of STDCs which followed directly from another STDC. If someone is detained on a STDC having just been on a STDC it reduces the likelihood of independent scrutiny of the detention and therefore this is actively monitored and the forms ask doctors to certify that prior to the assessment for the STDC the person was not subject to an STDC or other order that might prevent the usual independent scrutiny process. In 2021, there were 32 so-called 'back-to-back' STDCs, compared to average of 23 per year (SD=4.0).

We looked further into the circumstances of why in these 32 cases a short term detention was shortly followed by another one. The reasons why these STDCs had been made are presented in Box 1. In cases we were concerned about we wrote to RMOs and MHOs asking for a full account of the circumstances for the first and the second STDC.

Box 1. Reasons why STDCs were done back-to-back

Examples of original STDCs being revoked, with a given reason (for example the person had settled, was responding well to treatment) and then an unexpected deterioration meant that a further STDC was needed the next day. We note that active review, including revocation based on the individual's progress, is good practice.

Administrative errors, which were alerted to the Commission as well as to the patient/individual. These included changes in working practices during Covid which resulted in missing deadlines for CTO paperwork submission. Covid also impacted on continuity of care and staffing availability leading to timelines being missed. We note that errors may happen but welcome the transparency we saw in these cases.

There were occasions where the STDC appeared to have been allowed to automatically expire and another STDC immediately put in place. These are worrying cases and in a few of these we were notified by practitioners or advocacy workers which allowed us to take appropriate action.

In some cases we do not have information to conclude why the detention occurred as back-to-back but it may be that we did not receive a notification form for revoking an earlier STDC that made it appear like it was back-to-back.

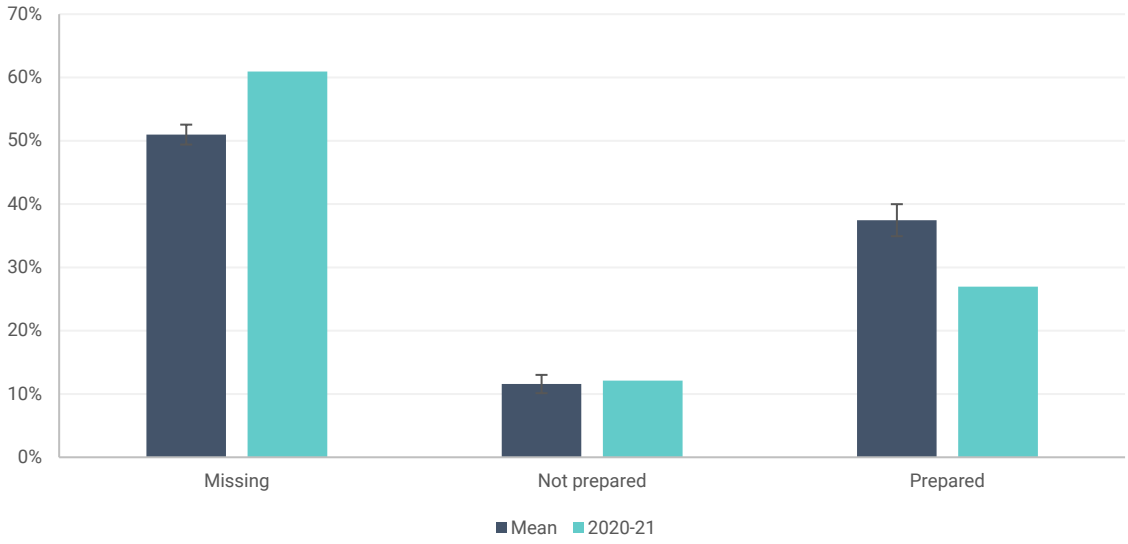
Social circumstances reports

Understanding a person's wider circumstances is important to be able to consider the social context that might have contributed to the detention and what options might be available to help with treatment and recovery. Looking at, as we call it, the social circumstances is very important for mental health services to fulfil their duty to respect people's social, economic and cultural rights. One of these duties is for an MHO to write a Social Circumstances Report (SCR), as described in section 231 of the Mental Health Act. This provides that detail on a person's circumstances.

We have reported before on the downward trend in preparation of SCRs for people detained on a STDC [1] and we have expressed our concerns about the poor use of this safeguard in our submission to the Scottish Mental Health Law Review [5].

Figure 6 shows that there was little difference in reports 'not prepared'. When the MHO writes that a SCR was not prepared it is because they feel it would not serve a purpose. The proportion of reports prepared was lower than average (26.9% vs 37.5%, SD=3%). This then meant that there was an increase in number of STDCs where we had no SCR information submitted to us, which we classify as 'missing' (51.0% vs 60.9%, SD=2%).

Figure 6. SCRs prepared for STDCs



Characteristics of detained people

In this section we look at the characteristics of people who were subject to the Mental Health Act. We did this to see whether there was anything different about who got detained during Covid-19 compared to previous years.

Age and gender

The average age of people who were detained was very similar to average years for EDCs (46.9 vs 47.0 years), STDCs (50.2 vs 50.2 years), and CTOs (52.9 vs 51.8 years). Table A8 shows that the distribution of age groups across all three orders was very similar to the average for previous years.

We looked at the gender of people who were detained, which was 49.6% female for EDC, 50.2% for STDC and 47.6% for CTO, which was similar to average for all orders (Table A9).

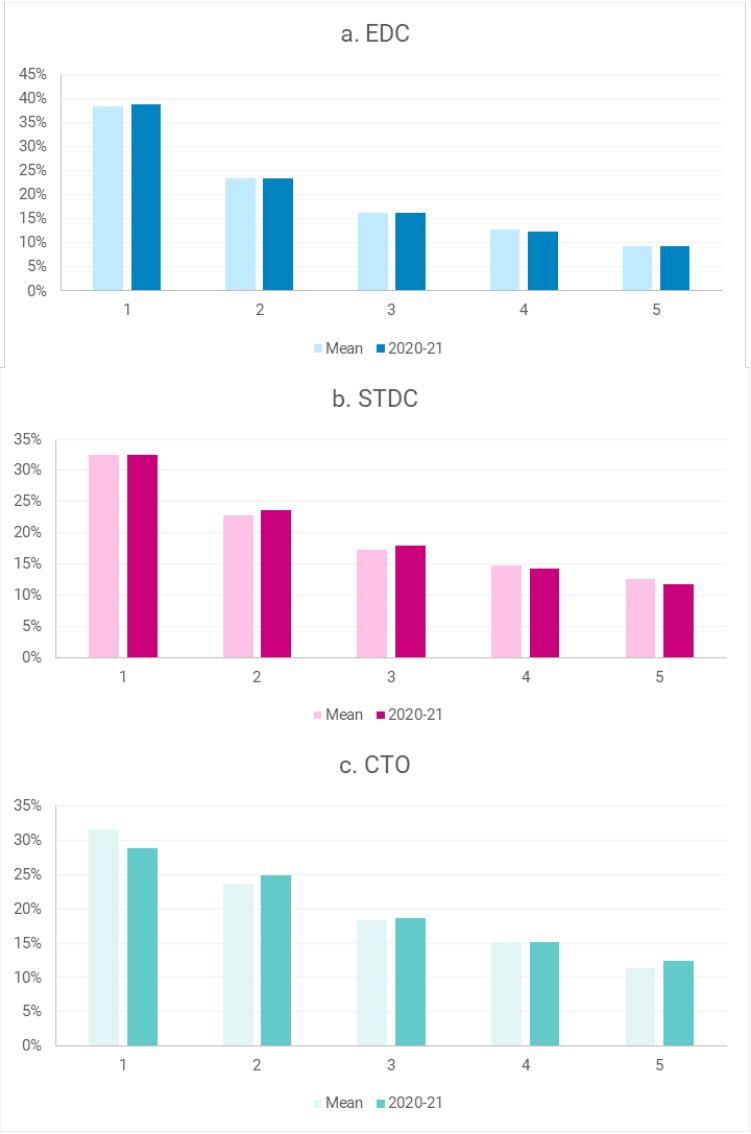
Ethnicity

There was a higher percentage of groups other than White Scottish, White Other British or White Other in 2020-21, i.e. 'visible minorities' compared to the average for these groups in EDCs (6.1% vs 5.2%), STDCs (7.4% vs 5.4%) and CTOs (7.3% vs 5.3%) (Table A10). It is important to note that there are gaps in recording of ethnicity, which we show in Table A11, so this needs to be considered when interpreting these differences. For the people we had ethnicity recorded, there were differences compared to average in the African, Caribbean or Black group for EDCs- they had a higher proportion of the detentions this year than in previous years (1.9% vs 1.4%), STDCs (2.2% vs 1.5%) and CTOs (2.0% vs 1.5%). This was also true for the Asian group for STDCs (3.6% vs 2.7%) and CTOs (3.6% vs 2.6%), there was little difference for EDCs (2.8% vs 2.6%).

Scottish Index of Multiple Deprivation

The Commission started to routinely record postcodes for detentions in 2016, which allows us to look at level of deprivation according to the Scottish Index of Multiple Deprivation (SIMD) [6]. As we had more complete data only from 2016, we looked at SIMD quintiles of detained patients compared to from 2016-17 onwards. We found little, or no, difference to previous years. Figures 8a-c shows that for all orders and years there is a gradient in deprivation, with more people who were detained who live in the most deprived areas of Scotland (Table A12). Our postcode data is not complete and in Table A13 you can read about how many postcodes we were unable to match with SIMD for each year.

Figure 8a-c. SIMD quintiles by order



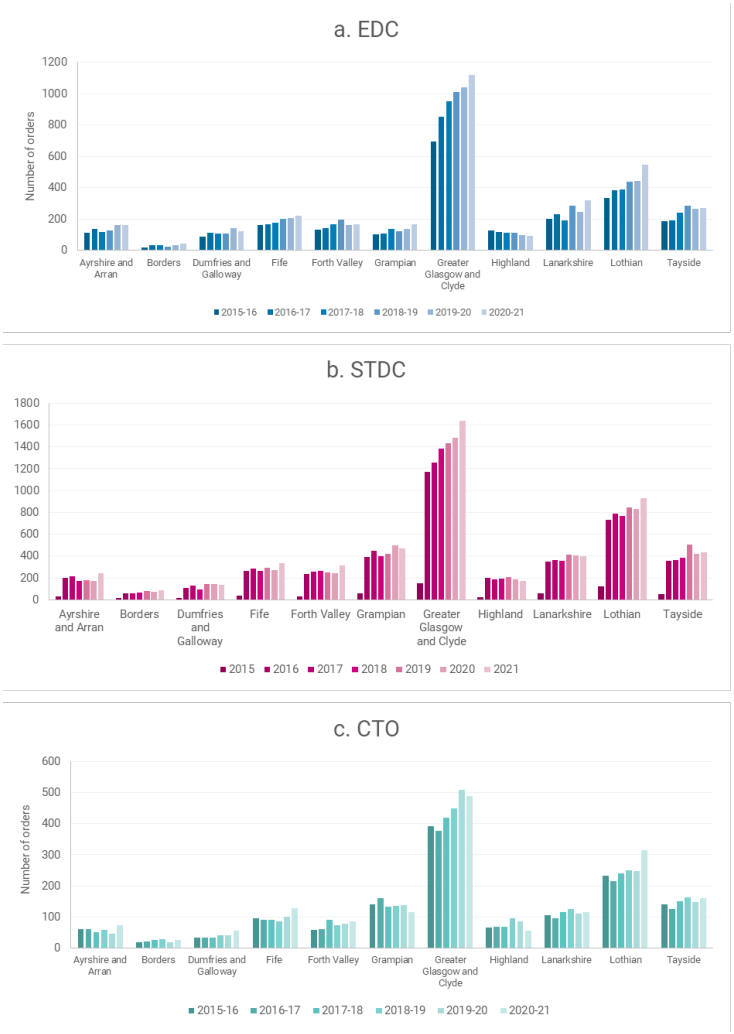
Differences at health board level

Number of detentions

We looked to see whether there were any differences in number of detentions within and between health boards compared to trends in previous years. Overall, we can see that there were increases in detentions in particular health boards. Figures 9a-c (data in Tables 14a-c) show that:

1. There were more EDCs in Greater Glasgow and Clyde, Lothian and Lanarkshire. Continued a downward trend in Highland and many other health boards were similar to previous year(s) or followed the trend from previous years.
2. Sharp increases of STDCs in Ayrshire and Arran, Fife, Forth Valley, Greater Glasgow and Clyde, and Lothian. Continued downward trend in Highland, while Dumfries and Galloway and Lanarkshire had slightly fewer orders compared to the previous year, which was not part of a downward trend.
3. Sharp increases of CTOs in Ayrshire and Arran, Dumfries and Galloway, Fife, and Lothian. Numbers were slightly higher than the previous year in Lanarkshire and Tayside, but not higher than any previous year. The number of CTOs was lower than previous year(s) in Grampian. Continued downward trend in Highland.

Figure 9a-c. Number of detention by year and health board

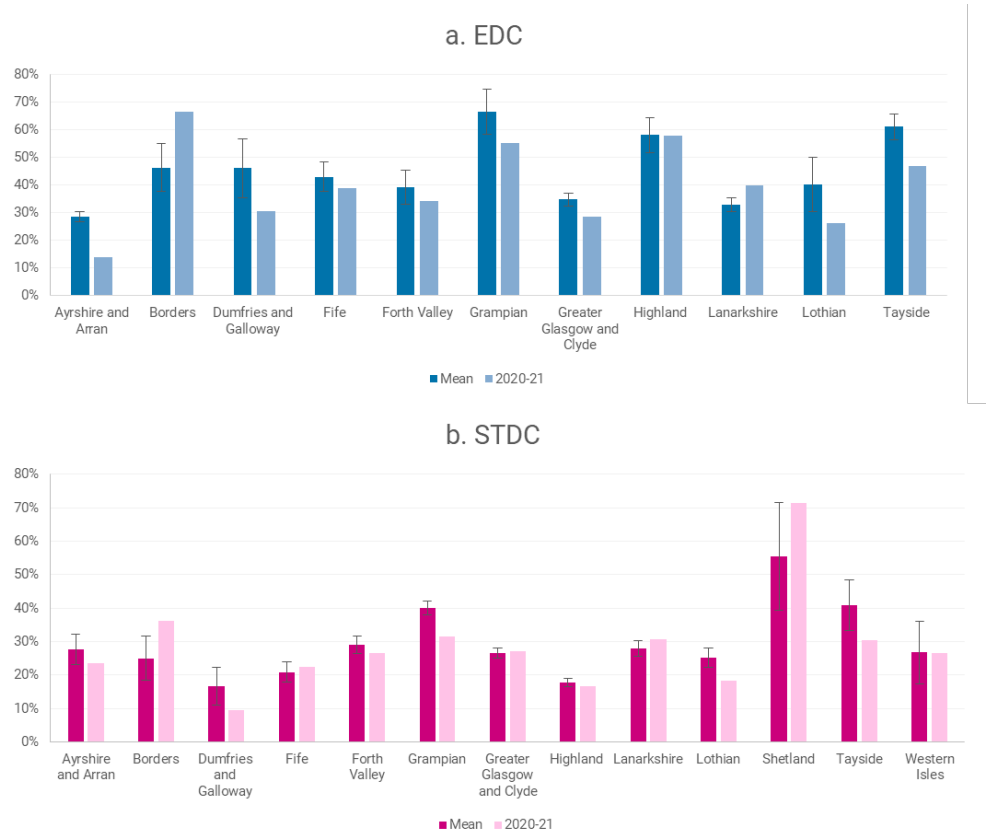


Where the detention started

We looked at if there was any difference in where detentions started, by health board. Figure 10a shows that this differed a lot between health boards. Compared to average, more EDCs started in the community in the Borders (66.7% vs 47.6%) and Western Isles (50.0% vs 41.0%). A smaller percentage than average started in the community in all other health boards, apart from Highland which was the same as previous years (see Table A15).

Figure 10b shows a similar trend for STDCs, with more detentions starting in the community compared to the last five years in the Borders (36.1% vs 25.4%) and Shetland (71.4% vs 54.1%, but very wide differences in previous years). In all other health boards the percent detained in the community was lower than the last five years, or the same (Table A16).

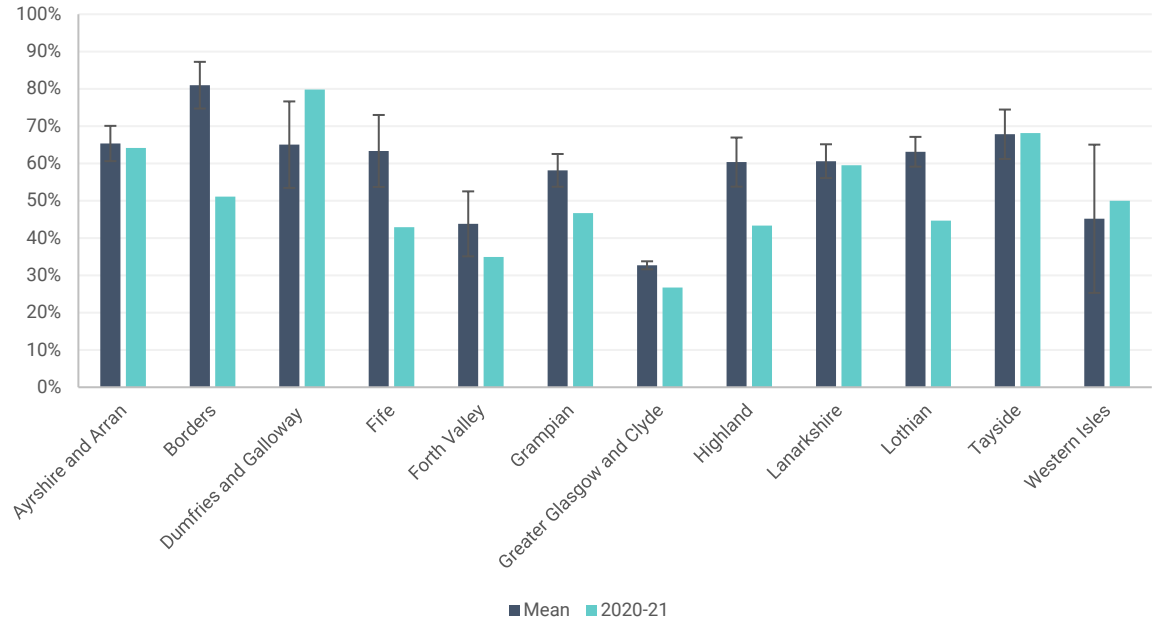
Figures 10a-b. Percent of detentions beginning in the community, by health board



MHO consent

In most health boards the percent of EDCs with MHO consent was lower than previous years. Figure 11 shows that more EDCs in Tayside and Dumfries and Galloway had MHO consent than in the year 2015-16 (1% and 14% difference) while the remaining boards had lower percent with consent compared to the average. The greatest difference was in the Borders, where MHO consent dropped from 80.4% average to 51.1% in 2020-21 (see Table A17).

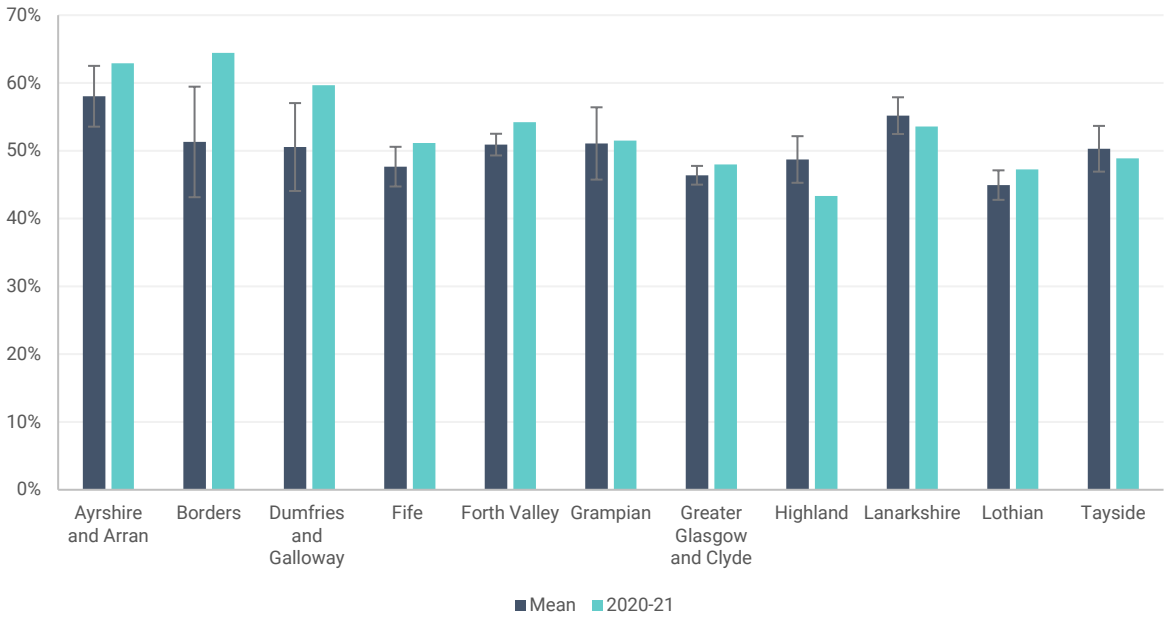
Figure 11. MHO consent for EDCs by health board



Previous detentions

We looked at if there was any difference in individuals getting detained who previously had no detentions. Figure 12 shows that a higher proportion (which differed from the variance from the average) of EDCs in 2020-21 was for individuals with no previous records of detention under the Mental Health Act or the Criminal Procedure Act in the Borders, Dumfries and Galloway, and Forth Valley. The largest difference was in the Borders, and Dumfries and Galloway, where 11% and 10% more EDCs were for individuals without previous detention compared to average.

Figure 12. Percent of EDCs for people without previous detentions

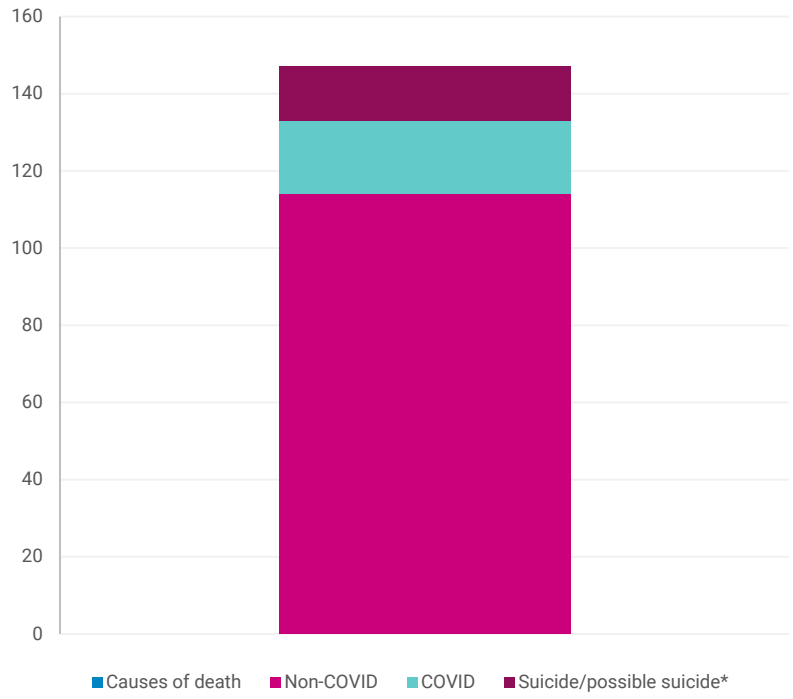


Deaths while subject to detention

Overall deaths

There were a total number of 147 death among people who were detained, compared to an average of 110 deaths per year in the last five years (SD=11.8). Figure 13 shows that 114 deaths were non-COVID-related (77.6%), 19 were due to Covid (12.9%), and 14 were suicide or possible suicide (9.5%). In a small number of cases (n<5) we were still waiting for relevant paperwork that would confirm the cause of death. We have here counted these as non-COVID-related (and not suicide), but this may change once we have received the documentation. Had there been no COVID deaths there would have been 128 deaths in 2020-21 (compared to average of 110).

Figure 13. Cause of death



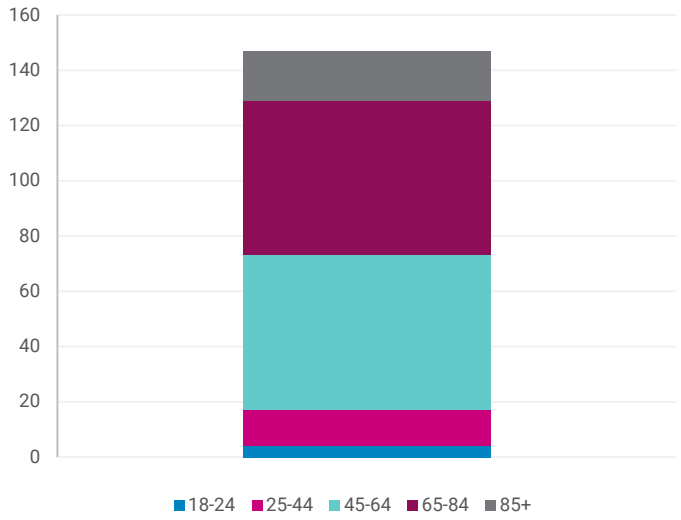
**includes possible suicide*

Characteristics

Of the deaths that occurred in 2020-21, 70.1% (n=103) were male and 29.9% (n=44) were female, which was similar to the percent of deaths that were male and female in the last five years (67.2% and 32.8%, SD=3.8%).

The mean age of deaths was 65 years (SD=16.6, median=68 years). The distribution based on age category is shown in Figure 14. Most of individuals who died were aged 65–84 years (38.1%) or 45–64 years (38.1%).

Figure 14. Deaths, by age groups



Of the deaths that occurred in 2020-21, we had information about ethnicity for 114 individuals (77.6%). Of those we had information for 86.8% were White Scottish and the remaining White Other British (8.8%) and White Other or Asian[2] (4.4%).

[2] Due to the small number of people in these categories we merged them.

Conclusions

There were more detentions in 2020-21 compared the increase we have seen year-on year in the last five years. This suggests there has been a higher need for involuntary psychiatric care than we have seen before, but this demand has differed depending on the order and health board. Importantly, we show a reduction in the safeguards such as MHO consent for EDCs, a reduction in Social Circumstances Reports, and an increase in detentions for people from visible minorities during the pandemic. The pandemic exacerbated existing problems. We are some years away from any new act that may follow recommendations from the independent review into Scottish mental health law. In the meantime, best practice with regards the law is not being realised. We make a recommendation to address this in the section below.

With regards the finding of the increase in proportion of detentions of people from visible minorities, the MWC will be publishing more detailed work on 'Ethnicity, Race and Mental Health in Scotland' later in 2021 and will identify issues and make recommendations substantively in that report.

Recommendations

1. Health and Social Care Partnerships, supported by Local Authorities, should seek to understand the reasons why important safeguards (MHO consent for EDC; preparation of social circumstances reports by MHOs) under the Mental Health Act are not being realised in practice.
2. The Scottish Government is asked to take account of the content of this report as part of its current review of the mental health officer workforce; a critically important workforce which protects and safeguards the rights of vulnerable people.

Authors

Lisa Schölin PhD, Researcher

Callum McLeod, Systems Analyst

Dr Arun Chopra, Medical Director

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[4] Schölin L, Connolly M, Morgan G, et al. Limits of remote working: the ethical challenges in conducting Mental Health Act assessments during COVID-19. *Journal of Medical Ethics* 2021; 0: medethics-2021-107273.

[5] Mental Welfare Commission for Scotland. *Characteristics of young people detained under the Mental Health Act in Scotland, 2015-2019*. Edinburgh, 2020.

[6] Scottish Governemnt. Scottish Index of Multiple Deprivation 2020, https://www.gov.scot/collections/scottish-index-of-multiple-deprivation-2020/ (2020).

Glossary

CTO	A compulsory treatment order (CTO) allows for a person to be treated for their mental illness. In this report we refer to Community CTOs (CCTO) and hospital-based CTOs (CTO).
EDC	An emergency detention certificate (EDC) allows a person to be detained in hospital for up to 72 hours while their condition is assessed.
Episode	In this report we refer to episodes, which are periods during which an individual was subject to the Mental Health Act that were notified to the Commission and appear in the database.
iCTO	**I**n the case where a CTO has been applied for, the Mental Health Tribunal can grant an interim CTO whilst considering the need for a CTO. A patient cannot be subject to an interim order for a period of more than 56 days.
MHO consent	Following a medical examination of a patient in the process to grant an EDC or STDC, the practitioner should seek the consent of a mental health officer (MHO). An MHO is a social worker who has undertaken specialist mental health training that includes the relevant legislation. An EDC can be issued without MHO consent, in circumstances where waiting for the assessment would be considered "impracticable" and result in undesirable delay. A STDC cannot be issued without MHO consent.
POS	Section 297 of the Mental Health Act confers on the police a power to take a person who appears to be mentally disordered and who appears to be in immediate need of care or treatment to a place of safety (POS), usually a hospital. They may be detained there for a period of up to 24 hours to allow for a medical examination by a doctor.
SCR	This is a report that sets out the social circumstances of the person and should be prepared by their MHO.
SD	Standard deviation – a statistical measure of variance in the data relative to the mean.
STDC	In Scotland, short-term detention certificate (STDC) should be the preferred route into hospital over an EDC under the law, as there are more safeguards for the individual. A short-term detention can last up to 28 days.

Appendix A – Detailed methodology

Analysis for Chapter 1

Detention orders

All detentions[3] under the Mental Health Act that started between 1 March 2020 and 28 February 2021 were extracted to an Excel database for analysis. The process for detention data is described in Box 2. For all variables, frequency statistics were computed. Trend data with linear trend was plotted to show the pattern of number of detentions occurring within each month over time. For monthly numbers, we compare the number of detentions in 2020 with the mean number for the corresponding month for the previous five years. We calculated standard deviations (SD)[4] to assess the variance above or below the mean for previous years. A SD that is close to the mean indicates that the value tends to be similar to the mean, while a wider SD range suggests values are more spread out and vary a lot.

For individual characteristics (such as age and gender) we calculated the average percentage for all previous five years combined, which gives an average distribution of previous years compared to the current year. For data on ethnicity, numbers in certain categories are very small and data has therefore been aggregated to explore the overall percentage non-white ethnic minority as well as higher level ethnicity groupings.

For time elapsed since the most recent episode, we extracted individuals who had an Emergency Detention Certificate (EDC), Short Term Detention Certificate (STDC) or Compulsory Treatment Order (CTO) episode that started in the time period 1 March to 31 August 2020 (the 'current' episode). We extracted these for the last five years. The order was linked to a 'last' episode for which the individual was subject to the Mental Health Act. The 'last' episode included episodes related to the Criminal Procedure Act, but did not include Place of Safety (POS)[5] or episodes related to the Adults with Incapacity (Scotland) Act 2000 ('the AWI Act').

For 'new' individuals detained on an EDC, we extracted individuals who had no record of being subject to either the Mental Health Act or the Criminal Procedure Act prior to the episode beginning between 1 March 2020 and 28 February 2021, but excluded individuals with POS episodes or AWI Act episodes.

[3] In this report we refer to detentions, which are episodes under which an individual have been subject to the Mental Health Act. We however recognise that a compulsory treatment order in the community is not a detention *per se (not 'detained' in a hospital)*, and advise that the report is read with this in mind regarding terminology used. We have adopted the common-sense way in which the term is currently used.

[4] For more information about standard deviations and how they are calculated, please see https://en.wikipedia.org/wiki/Standard_deviation

[5] There are two reasons POS orders were not included: a) the low level of intervention compared to other episodes included for comparison, b) changes to the way POS is recorded and reported.

Deaths

In this report we include an overview of number of deaths that have occurred while an individual was subject to either the Mental Health Act or to the Criminal Procedure Act. Due to Covid-19 the Commission has been monitoring more frequently the number of deaths relating to individuals subject to the Mental Health Act and reporting these on a weekly basis to the Scottish Government. This report includes the number of deaths that occurred between 1 March 2020 and 28 February 2021.

The Commission has a notification system for deaths relating to individuals subject to the Mental Health Act, which is sent by the delegate responsible within each health board or other sources (such as from care homes). The notification system involves individuals subject to the Mental Health Act or to the Criminal Procedure Act, and includes individuals who may be subject to more than one legislation (for example the Mental Health Act and the AWI Act). The system does not include individuals subject to the AWI Act alone, as for individuals these obtaining information is more difficult. There may therefore be retrospective adjustments on the figures reported on here in the case there is a delay in notification.

The Commission is currently undertaking work to develop a system for investigating all deaths of patients who, at the time of death, were subject to mental health legislation whether in hospital or in the community, including those who had their detention suspended (Section 37 Review Action 1). During 2020, engagement work has been planned with families and health boards in four pilot areas around the current system to identify approaches, gaps and areas of good practice.[6]

[6] Mental Welfare Commission for Scotland, Deaths in Detention Reviews, 2020. Available at: https://www.mwcscot.org.uk/policy-and-research/deaths-detention-reviews

Appendix B – Data tables

Table A1. Number of EDCs by month and year

Month	Year					
	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Mar	176	195	171	277	229	219
Apr	181	197	228	221	258	218
May	179	238	240	229	270	275
Jun	185	216	253	279	256	305
Jul	203	217	222	234	265	311
Aug	185	220	210	248	249	300
Sep	199	207	232	235	238	253
Oct	186	213	225	225	239	287
Nov	178	204	249	239	259	292
Dec	164	235	212	249	215	268
Jan	176	168	204	244	243	282
Feb	170	171	199	254	230	235

Table A2. Number of STDCs by month and year

Month	Year					
	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Mar	320	344	361	416	360	386
Apr	313	346	367	369	405	365
May	341	394	377	392	454	483
Jun	355	401	421	422	396	478
Jul	351	362	340	412	418	479
Aug	319	397	360	422	393	473
Sep	345	367	361	380	386	415
Oct	360	333	377	405	390	473
Nov	352	388	357	402	403	425
Dec	359	380	342	374	380	410
Jan	347	334	376	410	418	415
Feb	315	316	332	389	336	382

Table A3. Number of CTOs by month and year

Month	Year					
	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Mar	116	108	118	118	155	146
Apr	114	107	99	117	123	122
May	96	99	128	132	103	115
Jun	104	125	126	121	139	148
Jul	140	99	125	130	130	155
Aug	124	125	126	132	119	129
Sep	112	105	107	117	116	152
Oct	115	109	122	151	138	135
Nov	98	92	124	120	123	139
Dec	106	105	122	123	130	140
Jan	108	131	110	133	134	118
Feb	112	109	115	111	122	128

Table A4. Number of detentions by year with percent change

	EDC		STDC		CTO		Total	
Year	n	Change	n	Change	n	Change	n	Change
2015-16	2,182	–	4,077	–	1,345		7,604	–
2016-17	2,481	13.7%	4,362	7.0%	1,314	-1.0%	8,157	7.5%
2017-18	2,645	6.6%	4,371	0.3%	1,422	10.2%	8,438	3.8%
2018-19	2,934	10.9%	4,793	9.6%	1,505	4.1%	9,232	9.1%
2019-20	2,951	0.6%	4,739	-1.1%	1,532	1.9%	9,222	-0.1%
2020-21	3,245	9.9%	5,184	9.5%	1,627	7.4%	10,056	9.3%

Table A5. Order continuation

Order(s)	Mean	2020-21
EDC	21.3%	22.1%
STDC	32.7%	31.7%
EDC-STDC	17.2%	17.9%
iCTO	0.1%	0.1%
STDC-iCTO	2.0%	1.9%
EDC-STDC-iCTO	1.0%	1.0%
CTO	1.5%	1.6%
STDC-CTO	11.5%	12.0%
EDC-STDC-CTO	4.2%	4.4%
iCTO-CTO	0.4%	0.5%
STDC-iCTO-CTO	5.8%	4.7%
EDC-STDC-iCTO-CTO	2.3%	2.1%

Table A6. Number of years since last episode

Number of years	Mean	2020-21	SD
0–1	60.3%	62.4%	1.1%
2–3	15.2%	14.7%	0.3%
4–5	7.0%	7.1%	0.5%
6–7	4.8%	4.2%	0.3%
8–9	3.1%	2.5%	0.4%
10–11	2.7%	1.9%	0.3%
12–13	2.2%	1.8%	0.2%
14–15	1.8%	1.6%	0.1%
16–17	1.2%	1.4%	0.3%
18–19	0.9%	0.9%	0.3%
≥20	0.8%	1.5%	0.3%

Table A7. Time of detention by where the detention started

Order	Measure	Community		Informal	
		In hours	Out of hours	In hours	Out of hours
EDC	**Mean**	37.9%	62.1%	24.2%	75.8%
	2020-21	39.0%	61.0%	25.5%	74.5%
	SD	1.0%	1.0%	0.5%	0.5%
STDC	**Mean**	79.2%	20.8%	73.4%	26.6%
	2020-21	80.7%	19.3%	74.2%	25.8%
	SD	0.7%	0.7%	1.2%	1.2%

Table A8. Age groupings, by order type

Age group	EDC		STDC		CTO	
	Mean	2020-21	Mean	2020-21	Mean	2020-21
<18	2.0%	2.6%	3.3%	3.5%	4.3%	4.3%
18–24	11.4%	12.0%	9.2%	9.2%	10.1%	9.4%
25–44	36.2%	35.3%	30.5%	30.7%	26.6%	26.4%
45–64	29.6%	29.1%	28.6%	28.4%	22.7%	22.4%
65–84	16.8%	16.8%	23.7%	23.6%	30.9%	32.3%
85+	4.1%	4.3%	4.7%	4.6%	5.3%	5.1%

Table A9. Gender by order type

Age group	EDC		STDC		CTO	
	Mean	2020-21	Mean	2020-21	Mean	2020-21
Male	49.0%	49.6%	49.0%	50.2%	52.3%	47.6%
Female	51.0%	50.4%	51.0%	49.8%	52.3%	52.4%

Table A10. Ethnicity by order

Ethnicity	EDC		STDC		CTO	
	Mean	2020-21	Mean	2020-21	Mean	2020-21
African, Caribbean or Black	1.5%	1.9%	1.5%	2.2%	1.5%	2.0%
Asian	2.6%	2.8%	2.7%	3.6%	2.6%	3.6%
Mixed	0.6%	0.7%	0.7%	0.9%	0.8%	0.9%
Other	0.4%	0.7%	0.5%	0.7%	0.4%	0.8%
White - Other British	7.4%	6.8%	7.6%	6.6%	7.8%	7.9%
White - Other	5.6%	5.4%	5.5%	5.5%	4.7%	5.0%
White - Scottish	81.9%	81.7%	81.6%	80.6%	82.1%	79.8%

Table A11. Ethnicity not provided and missing ethnicity information

Missing data category	Order	Year					
		2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Not provided	EDC	135	153	208	213	237	257
	STDC	292	349	388	462	481	535
	CTO	72	91	103	118	127	135
Missing	EDC	179	238	270	229	249	252
	STDC	453	528	594	462	437	487
	CTO	114	114	102	75	72	114

Table A12. SIMD quintile, by order

SIMD quintile	EDC		STDC		CTO	
	Mean	2020-21	Mean	2020-21	Mean	2020-21
1 (most deprived)	38.3%	38.8%	32.5%	32.5%	31.6%	28.8%
2	23.3%	23.4%	22.8%	23.6%	23.7%	24.9%
3	16.2%	16.3%	17.3%	18.0%	18.3%	18.6%
4	12.8%	12.3%	14.8%	14.2%	15.1%	15.2%
5 (least deprived)	9.4%	9.3%	12.6%	11.7%	11.4%	12.4%

Table A13. Hospital and missing postcodes, by year

Missing data category	Order	Year					Total
		2016-17	2017-18	2018-19	2019-20	2020-21	
Hospital postcode	EDC	5	10	6	11	4	36
	STDC	33	39	38	48	44	202
	CTO	25	33	52	40	46	196
Missing[a]	EDC	629	128	139	147	121	1,164
	STDC	1,133	202	249	230	148	1,962
	CTO	350	100	111	122	142	825
Not found[b]	EDC	202	269	336	263	228	1,298
	STDC	333	448	515	393	358	2,047
	CTO	79	105	95	88	76	443

[a]Missing means that no postcode was entered on the form, [b]Not found indicates that the postcode was not located in the SIMD lookup file

Table 14a. Number of EDCs by health board and year

Health board	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Ayrshire and Arran	111	138	115	125	163	159
Borders	19	31	31	22	35	45
Dumfries and Galloway	87	111	105	106	140	124
Fife	159	168	177	201	206	219
Forth Valley	130	141	166	198	162	166
Grampian	103	105	134	123	137	167
Greater Glasgow and Clyde	695	851	953	1,010	1,041	1,119
Highland	129	115	111	112	96	90
Lanarkshire	202	229	193	285	247	321
Lothian	335	383	390	440	445	544
Orkney	13	6	14	9	*	6
Shetland	*	8	7	*	*	*
Tayside	187	191	240	284	265	270
Western Isles	10	*	8	10	6	*

**n<5 or secondary suppression.*

For a total of 21 EDCs across all years no heath board was recorded

Table 14b. Number of STDCs by health board and year

Health board	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Ayrshire and Arran	202	213	169	182	240	174
Borders	61	56	65	78	84	71
Dumfries and Galloway	106	130	95	146	135	141
Fife	261	283	267	294	333	269
Forth Valley	236	260	262	253	312	242
Grampian	393	446	396	417	471	495
Greater Glasgow and Clyde	1,169	1,255	1,383	1,437	1,636	1,485
Highland	197	188	196	208	169	183
Lanarkshire	348	362	355	411	401	406
Lothian	733	792	769	844	932	828
Orkney	0	*	5	5	*	*
Shetland	8	7	8	6	15	9
State Hospital	*	*	*	*	*	*
Tayside	355	360	388	503	437	419
Western Isles	7	7	12	7	15	13

**n<5 or secondary suppression*

Table 14c. Number of CTOs by health board and year

Health boards	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Ayrshire and Arran	61	60	51	57	46	73
Borders	18	21	26	28	18	25
Dumfries and Galloway	32	33	32	40	40	56
Fife	96	90	91	84	101	127
Forth Valley	58	59	90	73	78	85
Grampian	140	161	133	134	137	114
Greater Glasgow and Clyde	392	378	420	450	509	489
Highland	64	67	68	96	86	55
Lanarkshire	106	95	114	126	111	114
Lothian	233	216	240	251	248	316
Orkney	0	*	*	0	0	0
Shetland	0	0	0	0	0	*
State Hospital	*	*	*	*	5	5
Tayside	139	125	150	162	147	160
Western Isles	*	*	*	*	5	7

**n<5 or secondary supression.*

There was one CTO across the years where no health board was recorded

Table A15. Number of EDCs starting in the community or as informal admissions, by year

	2015-16 to 2019-20			2020-21		
	Community	**Informal**	**Total**	**Community**	**Informal**	**Total**
Ayrshire and Arran	197	478	675	22	137	159
Borders	68	75	143	30	15	45
Dumfries and Galloway	251	306	557	38	86	124
Fife	400	539	939	85	134	219
Forth Valley	324	491	815	57	109	166
Grampian	411	211	622	92	75	167
Greater Glasgow and Clyde	1,608	3,024	4,632	320	799	1119
Highland	335	243	578	52	38	90
Lanarkshire	389	797	1186	128	193	321
Lothian	799	1,230	2,029	142	402	544
Orkney	32	15	47	*	*	*
Tayside	721	466	1187	127	143	270
Western Isles	16	23	39	*	*	*

**n<5 or secondary suppression. Shetland only had one EDC in 2021 so is excluded from this table. Also excluding 21 records for which no health board was recorded*

Table A16. Number of STDCs starting in the community or as informal admissions, by year

	2015-16 to 2019-20			2020-21		
	Community	**Informal**	**Total**	**Community**	**Informal**	**Total**
Ayrshire and Arran	260	668	928	56	183	239
Borders	83	244	327	30	53	83
Dumfries and Galloway	99	517	616	13	122	135
Fife	285	1,079	1,364	75	258	333
Forth Valley	362	883	1,245	83	229	312
Grampian	854	1,272	2,126	148	322	470
Greater Glasgow and Clyde	1,750	4,883	6,633	441	1,190	1,631
Highland	170	788	958	28	140	168
Lanarkshire	515	1,333	1,848	123	277	400
Lothian	991	2,948	3,939	169	758	927
Shetland	20	17	37	*	*	14
Tayside	822	1,184	2,006	132	303	435
Western Isles	12	34	46	*	*	15

**n<5 or secondary suppression. Orkney and State Hospital only had one detention in 2021 and are excluded from this table.*

Table A17. Number of EDCs with and without MHO consent by year, n (%)

Health board	2015-16 to 2019-20			2020-21		
	No	Yes	Total	No	Yes	Total
Ayrshire and Arran	235 (34.8)	440 (65.2)	675	57 (35.8)	102 (64.2)	159
Borders	28 (19.6)	115 (80.4)	143	22 (48.9)	23 (51.1)	45
Dumfries and Galloway	191 (34.3)	366 (65.7)	557	25 (20.2)	99 (79.8)	124
Fife	345 (36.7)	594 (63.3)	939	125 (57.1)	94 (42.9)	219
Forth Valley	464 (56.9)	351 (43.1)	815	108 (65.1)	58 (34.9)	166
Grampian	262 (42.1)	360 (57.9)	622	89 (53.3)	78 (46.7)	167
Greater Glasgow and Clyde	3,123 (67.4)	1,509 (32.6)	4,632	820 (73.3)	299 (26.7)	1,119
Highland	230 (39.8)	348 (60.2)	578	51 (56.7)	39 (43.3)	90
Lanarkshire	472 (39.8)	714 (60.2)	1,186	130 (40.5)	191 (59.5)	321
Lothian	749 (36.9)	1,280 (63.1)	2,029	301 (55.3)	243 (44.7)	544
Tayside	393 (33.1)	794 (66.9)	1,187	86 (31.9)	184 (68.1)	270

**n<5. Western Isles, Orkney and Shetland not included due to small number of detentions in 2020-21*

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