

These notes relate to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) which received Royal Assent on 25 April 2003

MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader. They do not form part of the 2003 Act and have not been endorsed by the Scottish Parliament.
2. These Notes should be read in conjunction with the 2003 Act. They are not, and are not meant to be, a comprehensive description of the 2003 Act. Where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.
3. Since Royal Assent there have been two orders made which modify the 2003 Act. These are:
 - The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Modification) Order 2003¹ made on 13 October 2003 and coming into force on 14 October 2003; and
 - The Mental Health (Care and Treatment) (Scotland) Act 2003 Modification Order 2004² made on 1 December 2004 and coming into force on 2 December 2004.

These Notes will indicate at the relevant paragraphs where changes have been effected by the orders.

4. The following terms are referred to in these Notes and have the following meanings:
 - “the 1984 Act” means the Mental Health (Scotland) Act 1984;
 - “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995;
 - “the 2000 Act” means the Adults with Incapacity (Scotland) Act 2000;
 - “the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003;
 - “the 2003 Order” means the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Modifications) Order 2003;
 - “the 2004 Order” means the Mental Health (Care and Treatment) (Scotland) Act 2003 Modification Order 2004;
 - “the Commission” means the Mental Welfare Commission continued in existence by section 4 of the 2003 Act;
 - “the Tribunal” means the Mental Health Tribunal for Scotland established by section 21 of the 2003 Act.

¹ S.S.I. 2003/498

² S.S.I. 2004/533

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Act 2003 (asp 13) which received Royal Assent on 25 April 2003*

5. Certain other important terms are defined in section 329(1) of the 2003 Act as follows:
- “approved medical practitioner” has the meaning given by section 22(4) of the 2003 Act:
 - “carer”, in relation to a person, means “an individual who, otherwise than—
 - (a) by virtue of a contract of employment or other contract with any person; or
 - (b) as a volunteer for a voluntary organisation,provides, on a regular basis, a substantial amount of care for, and support to, the person; and includes, in the case where the person is in hospital, an individual who, before the person was admitted to hospital, provided, on a regular basis, a substantial amount of care for, and support to, the person”.
 - “a medical practitioner who has such qualifications and experience, and has undertaken such training, as may be specified in directions given by the Scottish Ministers; and who has been approved by a Health Board or by the State Hospitals Board for Scotland as having special experience in the diagnosis and treatment of mental disorder”.
 - “hospital” means—
 - (a) any health service hospital (as defined in section 108(1) of the [National Health Service \(Scotland\) Act 1978 \(c.29\)](#));
 - (b) any independent health care service; or
 - (c) any state hospital.”
 - “medical practitioner” means “any registered medical practitioner”.
 - “medical treatment” means “treatment for mental disorder; and for this purpose “treatment” includes—
 - (a) nursing;
 - (b) care;
 - (c) psychological intervention;
 - (d) habilitation (including education, and training in work, social and independent living skills); and
 - (e) rehabilitation (read in accordance with paragraph (d) above)”.
 - “mental health officer” means “a person appointed (or deemed to be appointed) under section 32(1) of this Act”, and “the mental health officer” in relation to a patient, means “a mental health officer having responsibility for the patient’s case”.
 - “patient” means “a person who has, or appears to have, a mental disorder”.
6. Certain other important terms are not defined in section 329 but are defined elsewhere in the 2003 Act. Such terms include:
- “mental disorder”: this is defined in section 328(1) of the Act as meaning “any mental illness, personality disorder or learning disability”. Subsection (2) of that section states, however, that “a person is not mentally disordered by reason only of sexual orientation; sexual deviancy; transsexualism; transvestism; dependence on, or use of, alcohol or drugs; behaviour that causes, or is likely to cause, harassment, alarm or distress to any other person; or acting as no prudent person would act”.
 - “responsible medical officer” means the approved medical practitioner appointed under section 230(1) of the Act.