

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

COMMENTARY ON SECTIONS

Part 17 – Patient Representation

Chapter 2: Advocacy

Advocacy

Section 259: advocacy

499. **Section 259(1)** confers on every patient a right of access to independent advocacy.
500. It places a duty on each local authority and health board to ensure the provision of independent advocacy services to patients within their areas. The duty requires local authorities and health boards to collaborate with each other. Where local authority and health board boundaries are not the same, each health board must collaborate with each local authority in its area and vice versa (see subsections (2) and (3)).
501. Subsection (1) also requires each local authority and health board to take steps to ensure that patients in its area have the opportunity of making use of the independent advocacy services provided.
502. “Advocacy services” is defined in subsection (4) as “services of support and representation made available for the purpose of enabling the person to whom they are available to have as much control of, or capacity to influence, that person’s care and welfare as is, in the circumstances, appropriate”. Such services are considered to be independent for these purposes where they are provided other than by someone mentioned in the list set out in subsection (5).
503. In addition, subsection (7) requires the State Hospitals Board for Scotland to secure independent advocacy services for patients detained in a state hospital, and to take steps to enable those patients to use the services.
504. Subsection (8) deals with the situation of a patient who, having been detained in a state hospital by virtue of section 127 or 193(7), is no longer detained there. In this case, a duty lies with the State Hospitals Board for Scotland along with the local authority and Health Board in whose area such a patient resides, to secure the availability of independent advocacy services.

Section 260: provision of information to the patient

505. **Section 260** contains requirements for appropriate persons, as defined in subsection (5), to take steps to ensure that, at various stages throughout the operation of compulsory measures, patients are aware of their situation and their rights.

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506. The patients with which this section is concerned are listed in subsection (1). They fall into two broad categories: patients detained under the 2003 Act or the 1995 Act; and patients who, although not detained, are subject to compulsory measures.
507. Subsection (2) places duties on the appropriate persons who are the managers of the hospital in which the patient is detained, or would be detained but for suspension of the order, or in any other case the managers of the hospital specified in the order.
508. The appropriate person must take reasonable steps:
- to ensure that the patient understands the “relevant matters”, as specified in subsection (5), which are matters concerning the patient’s status and rights, at a series of relevant times (which are set out in subsection (3));
 - to ensure that the patient is supplied with material appropriate to their needs to enable the patient to refresh their understanding of the relevant matters (subsection (2)(a)(ii)). The material must be given in a form that is appropriate to those needs and permanent. Reasonable steps must be taken to ensure that the patient’s named person is given a copy of any such material, in a form that is appropriate to the needs of the named person (subsection (4)); and
 - to take reasonable steps to inform the patient of the availability of independent advocacy services at each of those relevant times.
509. In addition, the appropriate person requires to take reasonable steps to ensure the patient has the opportunity to use these services.

Section 261: provision of assistance to patient with communication difficulties

510. **Section 261** applies in respect of patients subject to the same sorts of measures as those covered by section 260. Subsection (1) lists those patients. If such a patient has difficulty in communicating generally (for example as a result of their mental disorder, any physical or sensory impairment, or literacy difficulties) or where their first language is not English, then the section imposed further duties upon the appropriate person. (“Appropriate person” has the same meaning here as in section 260(5) (see paragraph 507 of these Notes)).
511. Subsection (2) requires the appropriate person to take all reasonable steps to secure that appropriate arrangements are made, or assistance provided, to enable the patient to communicate effectively at any Tribunal proceedings, any review of the patient’s detention, or any medical examination carried out to assess the patient’s mental disorder.
512. No particular form of assistance is specified. What will be appropriate will depend on the needs of the particular patient. For example, arrangements might include the provision of interpreters or translators, or of appropriate equipment.
513. The steps taken in implementing the duty in subsection (2) must be recorded by the appropriate person in a written record (see subsection (5)).

Sections 262 to 263: access to medical practitioner and inspection of medical records

514. **Section 262** enables a medical practitioner to visit a patient detained under the 2003 Act or the 1995 Act at any reasonable hour and to carry out a medical examination.
515. The visit must be for one of the purposes mentioned in subsection (2). The first of these is to advise the patient (or the patient’s named person) about the making of applications to the Tribunal. The second is to provide information to the patient (or the patient’s named person) about the patient’s condition for the purpose of any such application or any other proceedings before the Tribunal in which the patient (or the named person) is participating.

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516. The medical practitioner must be authorised by the patient or the patient's named person (subsection (4)). An authorisation by the named person may be rescinded by the patient at any time when the patient is capable (subsections (5) and (6)).
517. [Section 263](#) enables a medical practitioner to obtain certain records of a patient.
518. Where a person holds records relating to a patient whose detention in hospital is authorised under the Act or the 1995 Act, a duly authorised medical practitioner may require that person to produce records relating to the patient's detention or medical treatment (subsection (1)).
519. A person who holds records concerning medical treatment of a patient who is subject to a compulsory treatment order, or a compulsion order, which does not authorise detention in hospital, may be required to produce those records for inspection by a duly authorised medical practitioner (subsection (2)).
520. The records must be required for one of a list of purposes, which are set out in subsection (3) and are the same as those applying in relation to a medical examination under section 262 (see paragraphs 514 to 516 of these Notes).