

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 18 – Miscellaneous**

##### **Advance statements: effect**

539. [Section 276](#) sets out the effect of an advance statement which has been made in accordance with [section 275](#), and which has not been withdrawn.
540. If the Tribunal is making a decision, subsection (1) requires it to have regard to the terms of any extant advance statement made by the patient concerned, if the Tribunal is satisfied that:
- because of mental disorder, the patient’s ability to make decisions about his or her treatment is significantly impaired;
  - the statement was properly made (that is, it is in compliance with [section 275\(2\)](#));
  - the statement covers any aspect of the measures or treatment which might be authorised or no longer authorised by the decision to be made by the Tribunal; and
  - the Tribunal is satisfied there has been no material change in circumstances since the statement was made.
541. Subsection (3) provides that, where any person is giving treatment authorised under the 2003 Act or the 1995 Act (for example, the responsible medical officer), that person has to have regard to any extant advance statement made by the patient concerned, if satisfied that the patient’s current decision-making ability is significantly impaired by virtue of mental disorder.
542. Any designated medical practitioner making decisions under the 2003 Act must also have regard to any extant advance statement.
543. The Tribunal must consider an advance statement (or a withdrawal of a statement) to be valid unless the contrary appears. If the Tribunal has considered an advance statement as valid, it should be presumed to be valid by any person giving treatment authorised by a decision of the Tribunal. Similarly, if treatment is being given otherwise than by virtue of a decision of the Tribunal, then the person giving treatment must consider a statement (or its withdrawal) to be valid unless the contrary appears to be the case.
544. Wherever a decision of the Tribunal or a designated medical practitioner, or treatment given under authority of the 2003 Act or the 1995 Act, conflicts with a valid extant advance statement, then the Tribunal or person concerned must record the circumstances and their reasoning in writing, notify various parties including the patient who made the statement and the Commission, and place a copy of the record in the patient’s medical records.

***Section 277: education of persons who have mental disorder***

545. **Section 277** amends section 14 of the Education (Scotland) Act 1980 to require education authorities to make arrangements to provide school education for children unable to attend school because they are subject to measures authorised by the 2003 Act or, in consequence of their mental disorder, by the 1995 Act.
546. Subsection (3) provides a corresponding amendment to section 131 of the 1980 Act to remove the exclusion of children who are detained in hospital by virtue of measures authorised by the 2003 Act from the scope of the 1980 Act.

***Section 278: duty to mitigate adverse effects of compulsory measures on parental relations***

547. **Section 278** requires any person having functions under the 2003 Act to take all reasonable steps to reduce any adverse effect on the relationship between a child and a person having parental responsibilities for that child, where either the child or that person is made subject to measures authorised by the 2003 Act or, in consequence of his or her mental disorder, by the 1995 Act.

***Section 279: information for research***

548. **Section 279** allows the Scottish Ministers to require any person having functions under the 2003 Act to provide relevant information for research purposes, as defined in section 33 of the Data Protection Act 1998. The section provides a number of exceptions and safeguards to this:
- information which a person could not be compelled to give as evidence in proceedings in court need not be provided;
  - information which would enable the person who is the subject of the information to be identified must if reasonably possible be provided in such a way as to prevent identification; and
  - where provision would breach a duty of confidentiality, the information cannot be provided without the permission of the person to whom the information relates.

***Section 280: restriction of Scottish Ministers' powers to delegate management of state hospitals***

549. Originally, Part VIII of the 1984 Act contained provisions regarding state hospitals for patients who required special security. These provisions have now largely been repealed, and the responsibility of the Scottish Ministers to provide such hospitals is contained in section 102 of the National Health Service (Scotland) Act 1978.
550. Section 102 of the 1978 Act provides that a state hospital may be managed on behalf of the Scottish Ministers by:
- a committee constituted under section 91 of the 1984 Act; or
  - a Health Board, Special Health Board, the Common Services Agency or an NHS Trust.
551. Section 91 of the 1984 Act is not re-enacted in the Act. This section removes the reference to it from the 1978 Act.

***Sections 281 to 283: correspondence***

**Correspondence of certain persons detained in hospital**

552. **Section 281** provides powers for a specified person's incoming and outgoing mail to be inspected and withheld in certain circumstances. 'Specified person' means a person

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

detained in hospital who meets other conditions as may be specified by the Scottish Ministers in regulations.

553. Subsections (1) and (3) provide that a postal packet addressed by a specified person to any person may be withheld from a “relevant carrier” (defined in subsection (9)) if the intended recipient has requested in writing that communications from the patient be withheld. The request should be made in writing to the managers of the hospital, the responsible medical officer or the Scottish Ministers. “Postal packet” has the same meaning as in the Postal Services Act 2000, namely “a letter, parcel, packet or other article transmissible by post”.
554. Hospital managers may also withhold a postal packet if they consider that receipt is likely to cause distress to the person to whom it is addressed or any other person (not being a member of staff of the hospital), or to cause danger to any person.
555. Subsection (6) provides that hospital managers may withhold a postal packet addressed to a specified person if they consider it is necessary to do so in the interests of the safety of the patient concerned or for the protection of any other person. The powers described in this paragraph and the preceding one do not apply to any correspondence between a patient and those persons or organisations listed at subsection (5).
556. Subsection (7) provides that hospital managers may open and inspect a postal packet to determine whether they can or should withhold it, or any of its contents.