



# Mental Health (Care and Treatment) (Scotland) Act 2003

## 2003 asp 13

### PART 1

#### INTRODUCTORY

#### **1 Principles for discharging certain functions**

- (1) Subsections (2) to (4) below apply whenever a person who does not fall within subsection (7) below is discharging a function by virtue of this Act in relation to a patient who has attained the age of 18 years.
- (2) In discharging the function the person shall, subject to subsection (9) below, have regard to the matters mentioned in subsection (3) below in so far as they are relevant to the function being discharged.
- (3) The matters referred to in subsection (2) above are—
  - (a) the present and past wishes and feelings of the patient which are relevant to the discharge of the function;
  - (b) the views of—
    - (i) the patient's named person;
    - (ii) any carer of the patient;
    - (iii) any guardian of the patient; and
    - (iv) any welfare attorney of the patient,which are relevant to the discharge of the function;
  - (c) the importance of the patient participating as fully as possible in the discharge of the function;
  - (d) the importance of providing such information and support to the patient as is necessary to enable the patient to participate in accordance with paragraph (c) above;
  - (e) the range of options available in the patient's case;
  - (f) the importance of providing the maximum benefit to the patient;
  - (g) the need to ensure that, unless it can be shown that it is justified in the circumstances, the patient is not treated in a way that is less favourable than

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the way in which a person who is not a patient might be treated in a comparable situation;

- (h) the patient’s abilities, background and characteristics, including, without prejudice to that generality, the patient’s age, sex, sexual orientation, religious persuasion, racial origin, cultural and linguistic background and membership of any ethnic group.

(4) After having regard to—

- (a) the matters mentioned in subsection (3) above;
- (b) if subsections (5) and (6) below apply, the matters mentioned there; and
- (c) such other matters as are relevant in the circumstances,

the person shall discharge the function in the manner that appears to the person to be the manner that involves the minimum restriction on the freedom of the patient that is necessary in the circumstances.

(5) Whenever a person who does not fall within subsection (7) below is discharging a function by virtue of this Act (other than the making of a decision about medical treatment) in relation to a patient, the person shall have regard, in so far as it is reasonable and practicable to do so, to—

- (a) the needs and circumstances of any carer of the patient which are relevant to the discharge of the function and of which the person is aware; and
- (b) the importance of providing such information to any carer of the patient as might assist the carer to care for the patient.

(6) Whenever a person who does not fall within subsection (7) below is discharging a function by virtue of this Act in relation to a person who is, or has been, subject to—

- (a) detention in hospital authorised by a certificate granted under section 36(1) of this Act (any such certificate being referred to in this Act as an “emergency detention certificate”);
- (b) detention in hospital authorised by a certificate granted under section 44(1) of this Act (any such certificate being referred to in this Act as a “short-term detention certificate”);
- (c) an order made under section 64(4)(a) of this Act (any such order being referred to in this Act as a “compulsory treatment order”); or
- (d) an order made under [F1section 57(2)(a) or 57A(2)] of the 1995 Act (any such order being referred to in this Act as a “compulsion order”),

the person who is discharging the function shall have regard to the importance of the provision of appropriate services to the person who is, or has been, subject to the certificate or order concerned (including, without prejudice to that generality, the provision of continuing care when the person is no longer subject to the certificate or order).

(7) A person falls within this subsection if the person is discharging the function by virtue of being—

- (a) the patient;
- (b) the patient’s named person;
- (c) the patient’s primary carer;
- (d) a person providing independent advocacy services to the patient under section 259 of this Act;
- (e) the patient’s legal representative;
- (f) a curator *ad litem* appointed by the Tribunal in respect of the patient;

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- (g) a guardian of the patient; or
  - (h) a welfare attorney of the patient.
- (8) In subsection (3)(a) above, the reference to wishes and feelings of the patient is a reference to those wishes and feelings in so far as they can be ascertained by any means of communication, whether human or by mechanical aid (whether of an interpretative nature or otherwise), appropriate to the patient.
- (9) The person need not have regard to the views of a person mentioned in subsection (3) (b) above in so far as it is unreasonable or impracticable to do so.
- (10) In subsection (3)(d) above, the reference to information is to information in the form that is mostly likely to be understood by the patient.
- (11) In this section, a reference to “discharging”, in relation to a power, includes a reference to exercising the power by taking no action; and “discharge” shall be construed accordingly.

#### Textual Amendments

- F1** Words in s. 1(6)(d) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 53\(4\), 61\(2\)](#); [S.S.I. 2017/197, art. 2, sch.](#)

#### Commencement Information

- II** S. 1 in force at 5.10.2005 by [S.S.I. 2005/161, art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375, art. 2](#) and as amended (22.9.2005) by [S.S.I. 2005/459, art. 2](#))

## 2 Welfare of the child

- (1) This section applies whenever a person who does not fall within section 1(7) of this Act is discharging a function, by virtue of this Act, to which subsection (2) or (3) below applies in relation to a patient who is under the age of 18 years.
- (2) This subsection applies to any duty which may be discharged in more than one manner.
- (3) This subsection applies to any power.
- (4) The person shall discharge the function in the manner that appears to the person to be the manner that best secures the welfare of the patient.
- (5) In determining the manner of discharging the function that best secures the welfare of the patient, the person shall have regard to—
- (a) the matters mentioned in section 1(3) of this Act;
  - (b) the matters mentioned in section 1(5) and (6) of this Act (where those subsections apply); and
  - (c) the importance of the function being discharged in the manner that appears to the person to be the manner that involves the minimum restriction on the freedom of the patient that is necessary in the circumstances.
- (6) Subsections (8) to (10) of section 1 of this Act shall apply for the purpose of subsection (5)(a) above as they apply in relation to subsection (3) of that section.

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- (7) In this section, a reference to “discharging”, in relation to a power, includes a reference to exercising the power by taking no action; and “discharge” shall be construed accordingly.

#### Commencement Information

- I2** S. 2 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

### 3 Equal opportunities

- (1) Subsection (2) below applies whenever a person mentioned in subsection (3) below is discharging a function by virtue of this Act.
- (2) The person shall discharge the function in a manner that encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (3) The persons referred to in subsection (1) above are—
- (a) the Scottish Ministers;
  - (b) the Commission;
  - (c) a local authority;
  - (d) a Health Board;
  - (e) a Special Health Board;
  - (f) a National Health Service trust;
  - [<sup>F2</sup>(fa) (as respects its health service functions only) Healthcare Improvement Scotland;]
  - (g) the managers of a hospital;
  - (h) a mental health officer;
  - (i) a patient’s responsible medical officer;
  - (j) a medical practitioner; and
  - (k) a nurse.
- (4) In this section “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c. 46).

#### Textual Amendments

- F2** S. 3(3)(fa) inserted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, **sch. 2 para. 8(2)**

#### Commencement Information

- I3** S. 3 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 64(8A)(8B) inserted by [2015 asp 9 s. 1\(2\)](#)
- s. 65(7) inserted by [2015 asp 9 s. 1\(3\)](#)