



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

2003 asp 13

PART 18

MISCELLANEOUS

Code of practice

274 Code of practice

- (1) The Scottish Ministers shall, in accordance with this section, draw up, give effect to and publish a code of practice giving guidance to any person discharging functions by virtue of this Act^[F1] or Part VI (mental disorder) of the 1995 Act] as to—
 - (a) the discharge of such of those functions; and
 - (b) such matters arising in connection with the discharge of those functions, as they think fit.
- (2) The Scottish Ministers shall, before giving effect to a code of practice drawn up under subsection (1) above—
 - (a) consult such persons as they think fit; and
 - (b) lay a draft of the code before the Scottish Parliament.
- (3) A code of practice drawn up under subsection (1) above shall be given effect by being—
 - (a) confirmed by order made; and
 - (b) brought into force on a day appointed, by the Scottish Ministers.
- (4) Any person discharging functions by virtue of this Act^[F2] or Part VI (mental disorder) of the 1995 Act] shall have regard (so far as they are applicable to the discharge of those functions by that person) to the provisions of any code of practice published under subsection (1) above for the time being in force.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading:*
Code of practice is up to date with all changes known to be in force on or before 28 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (5) The references in subsections (1) and (4) above to a person discharging functions by virtue of this Act^[F3] or Part VI (mental disorder) of the 1995 Act] do not include references to—
- (a) any court;
 - ^[F4](aa) a prosecutor;
 - (b) the Tribunal; and
 - (c) the Commission.
- (6) The Scottish Ministers may, from time to time, revise the whole or part of any code of practice published under subsection (1) above; and if a code is so revised, the Scottish Ministers shall publish the revised code.
- (7) Subsections (2) to (6) above apply to a code of practice revised under subsection (6) above as they apply to a code of practice published under subsection (1) above.

Textual Amendments

- F1** Words in s. 274(1) inserted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(8)(a)**
- F2** Words in s. 274(4) inserted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(8)(b)**
- F3** Words in s. 274(5) inserted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(8)(c)(i)**
- F4** S. 274(5)(aa) inserted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(8)(c)(ii)**

Commencement Information

- I1** S. 274 in force at 26.3.2004 by [S.S.I. 2004/153](#), art. 2, **Sch. 1**

Changes to legislation:

Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Code of practice is up to date with all changes known to be in force on or before 28 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

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\(3\)](#)