



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

2003 asp 13

PART 4

HEALTH BOARD AND LOCAL AUTHORITY FUNCTIONS

CHAPTER 2

LOCAL AUTHORITY FUNCTIONS

Duty to inquire into individual cases

33 Duty to inquire

- (1) Where it appears to a local authority that—
 - (a) a person in their area who is aged 16 years or over has a mental disorder; and
 - (b) any of the circumstances mentioned in subsection (2) below apply,the authority shall cause inquiries to be made into the person's case.
- (2) Those circumstances are—
 - (a) that the person may be, or may have been, subject, or exposed, at some place other than a hospital to—
 - (i) ill-treatment;
 - (ii) neglect; or
 - (iii) some other deficiency in care or treatment;
 - (b) that, because of the mental disorder, the person's property—
 - (i) may be suffering, or may have suffered, loss or damage; or
 - (ii) may be, or may have been, at risk of suffering loss or damage;
 - (c) that the person may be—
 - (i) living alone or without care; and
 - (ii) unable to look after himself or his property or financial affairs;

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Duty to inquire into individual cases is up to date with all changes known to be in force on or before 25 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

- (d) that the person is not in hospital and, because of the mental disorder, the safety of some other person may be at risk.

Commencement Information

- II** S. 33 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)

34 Inquiries under section 33: co-operation

- (1) This section applies where a local authority are required by section 33(1) of this Act to cause inquiries to be made into a person's case.
- (2) Where it appears to the local authority that the assistance of any of the persons mentioned in subsection (3) below—
- (a) is necessary for the purposes of the inquiries; or
 - (b) would assist the inquiries,
- the authority may request that person to provide the assistance specified in the request.
- (3) Those persons are—
- (a) the Commission;
 - (b) the Public Guardian;
 - [^{F1}(ba) Healthcare Improvement Scotland;]
 - [^{F2}(c) Social Care and Social Work Improvement Scotland;]
 - (d) a Health Board; and
 - (e) a National Health Service trust.
- (4) Where—
- (a) a person receives a request under subsection (2) above; and
 - (b) complying with the request—
 - (i) would be compatible with the discharge of the person's functions (whether under any enactment or otherwise); and
 - (ii) would not prejudice unduly the discharge by the person of any of those functions,
- the person shall comply with the request.

Textual Amendments

- F1** S. 34(3)(ba) inserted (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), sch. 17 para. 32; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F2** S. 34(3)(c) substituted (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), sch. 14 para. 18; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.

Commencement Information

- I2** S. 34 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: Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Duty to inquire into individual cases is up to date with all changes known to be in force on or before 25 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

35 Inquiries under section 33: warrants

- (1) If a sheriff, or a justice of the peace, is satisfied by a relevant mental health officer's evidence on oath—
 - (a) that, for the purposes of inquiries under section 33 of this Act, it is necessary to enter premises; and
 - (b) that the mental health officer—
 - (i) is unable to obtain entry to those premises; or
 - (ii) reasonably apprehends that the mental health officer will be unable to obtain entry to those premises,the sheriff or justice of the peace may grant a warrant under this subsection.
- (2) A warrant under subsection (1) above is a warrant—
 - (a) authorising—
 - (i) the mental health officer specified in the warrant;
 - (ii) any other persons so specified; and[^{F3}(iii) any constable of the Police Service of Scotland,]
before the expiry of the period of 8 days beginning with the day on which the warrant is granted, to enter, for the purposes of the inquiries, any premises so specified; and
 - (b) authorising any such constable, before the expiry of that period, for the purpose of exercising the power mentioned in paragraph (a) above, to open lockfast places on premises so specified.
- (3) An application for a warrant under subsection (1) above shall—
 - (a) if made to the sheriff, be made to the sheriff of the sheriffdom; or
 - (b) if made to a justice of the peace, be made to a justice for the commission area, in which the premises to which the application relates are situated.
- (4) If a sheriff, or a justice of the peace, is satisfied by a relevant mental health officer's evidence on oath—
 - (a) that, for the purposes of inquiries under section 33 of this Act, it is necessary that a medical practitioner carry out a medical examination of the person who is the subject of the inquiries; and
 - (b) that the mental health officer is unable to obtain the consent of that person to that matter,the sheriff, or justice of the peace, may grant a warrant under this subsection.
- (5) A warrant under subsection (4) above is a warrant authorising the detention of the person who is the subject of the inquiries for a period of 3 hours for the purposes of enabling a medical examination of the person to be carried out by the medical practitioner specified in the warrant.
- (6) An application for a warrant under subsection (4) above shall—
 - (a) if made to the sheriff, be made to the sheriff of the sheriffdom; or
 - (b) if made to a justice of the peace, be made to a justice for the commission area, in which the person who is the subject of the inquiries for the time being is.
- (7) If a sheriff, or a justice of the peace, is satisfied by a relevant mental health officer's evidence on oath—

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Duty to inquire into individual cases is up to date with all changes known to be in force on or before 25 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*

- (a) that, for the purposes of inquiries under section 33 of this Act, it is necessary that a medical practitioner have access to the person's medical records; and
 - (b) that the mental health officer is unable to obtain the consent of that person to that matter,
- the sheriff, or justice of the peace, may grant a warrant under this subsection.
- (8) A warrant under subsection (7) above is a warrant requiring any person holding medical records of the person subject to the inquiries to produce them for inspection by the medical practitioner specified in the warrant on being required to do so by the practitioner.
- (9) An application for a warrant under subsection (7) above shall—
- (a) if made to the sheriff, be made to the sheriff of the sheriffdom; or
 - (b) if made to a justice, be made to a justice for the commission area, in which the person who is the subject of the inquiries for the time being is.
- (10) A mental health officer shall as soon as practicable after the sheriff, or justice of the peace, decides to grant or refuse an application for a warrant under subsection (1), (4) or (7) above, give notice to the Commission as to whether a warrant was granted or refused.
- (11) No appeal shall be competent against a decision of a sheriff, or a justice of the peace, under this section granting, or refusing to grant, a warrant.
- (12) References to a relevant mental health officer—
- (a) in subsection (1) above are to a mental health officer appointed by the local authority for the area in which the premises to which the application relates are situated;
 - (b) in subsections (4) and (7) above are to a mental health officer appointed by the local authority which is causing inquiries to be made.

Textual Amendments

- F3** S. 35(2)(a)(iiia) substituted for s. 35(2)(a)(iii) (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012](#) (asp 8), s. 129(2), [sch. 7 para. 23\(4\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

Commencement Information

- I3** S. 35 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:

Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Duty to inquire into individual cases is up to date with all changes known to be in force on or before 25 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\(3\)](#)