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SCHEDULE 18

THE MENTAL WELFARE COMMISSION FOR SCOTLAND: MODIFICATIONS OF THE MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

7 After paragraph 7 insert—

“Commission Visitors

- 7A (1) The Commission must appoint such staff, employed under paragraph 7(1) (a) or (b), to exercise the functions of Commission Visitors; and when doing so those staff are to be known as Commission Visitors.
- (2) The Commission may arrange for such other persons as it thinks fit to be appointed as and exercise the functions of Commission Visitors; and when doing so those persons are to be known as Commission Visitors.
- (3) There may be no more than 10 Commission Visitors appointed by the Commission under sub-paragraph (2).
- (4) The Scottish Ministers may by order amend sub-paragraph (3) by substituting for the maximum number of Commission Visitors for the time being specified there such other number as they think fit.
- (5) In appointing Commission Visitors, the Commission is to have regard to the desirability of appointing—
- (a) persons who have experience of, and have shown capacity and capability in, the provision of services to those who have a mental disorder;
 - (b) persons who use, or have used, such services;
 - (c) persons who are, or have been, carers of those who have a mental disorder;
 - (d) persons who have such other skills, knowledge or experience as the Commission considers to be relevant in relation to the exercise of the functions of Commission Visitors.
- (6) In appointing Commission Visitors, the Commission must appoint at least—
- (a) one person who falls within paragraph (b) of sub-paragraph (5); and
 - (b) one person who falls within paragraph (c) of sub-paragraph (5).
- (7) In this Act (unless the context otherwise requires), any reference to a function of a Commission Visitor (or the functions of Commission Visitors) is a reference to a function conferred by this Act or any other enactment.

Commission Visitors: further provision

- 7B (1) The arrangements entered into by virtue of paragraph 7A(2) may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons.
- (2) Persons appointed as Commission Visitors by virtue of paragraph 7A(2) are not members of staff of the Commission.

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Medical Visitors

- 7C (1) In appointing Commission Visitors, the Commission must appoint one or more persons who have such qualifications, training and experience as may be prescribed by regulations for the purposes of carrying out the functions of Commission Visitors under section 15 of this Act.
- (2) Persons so appointed may also be known as Medical Visitors.

Committees

- 7D (1) The Commission may establish committees for any purpose relating to its functions.
- (2) Subject to sub-paragraph (7), the Commission is to determine the composition of its committees.
- (3) The Commission may appoint persons who are not members of the Commission to be members of a committee.
- (4) A committee of the Commission is to comply with any directions given to it by the Commission.
- (5) The Commission must establish at least one committee (an “advisory committee”) for the purpose of giving advice to it about matters connected to its functions.
- (6) In considering how to exercise its functions, the Commission must have regard to relevant advice and information given to it by any advisory committee (whether or not given at its request).
- (7) An advisory committee must include persons of a description as may be prescribed by regulations.

Procedure and meetings

- 7E (1) The Commission may determine its own procedure and that of its committees, including a quorum for meetings.
- (2) The validity of any proceedings of the Commission, or any of its committees, is not affected by a vacancy in membership nor by any defect in the appointment of a member.
- (3) Members of the Scottish Executive and persons authorised by the Scottish Ministers may attend and take part in meetings of the Commission or any of its committees, but are not entitled to vote at such meetings.

Exercise of certain functions etc.

- 7F (1) A member of the Commission may not—
- (a) exercise the functions of a Commission Visitor;
 - (b) be appointed as a Commission Visitor.
- (2) The chief executive may not be a member of the Commission.

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- (3) A member of staff of the Commission (other than a Commission Visitor) may not exercise the functions of a Commission Visitor.
- (4) An appointment as a Commission Visitor under paragraph 7A(1) does not affect the appointed person's—
 - (a) status as employed under paragraph 7(1)(a) or (b); or
 - (b) ability to perform the duties of the person as so employed.

Delegation of functions

- 7G (1) The Commission may, subject to sub-paragraphs (2), (3) and (4), authorise—
- (a) the chief executive;
 - (b) any other employee;
 - (c) any of its committees,
- to exercise such of its functions, and to such extent, as it may determine.
- (2) The Commission may not authorise any of the following functions to be exercised by any other person—
- (a) the functions of the Commission under section 12 (investigations: further provision);
 - (b) the approval of any acquisition or disposal of land or other property with a value greater than £50,000 or such other amount as the Commission may, with the consent of the Scottish Ministers, determine;
 - (c) the approval of annual reports and accounts;
 - (d) the approval of any budget or other financial plan.
- (3) Any function conferred on a Commission Visitor may not be delegated by the Commission.
- (4) Sub-paragraph (1) does not affect the responsibility of the Commission for the exercise of its functions.
- (5) The chief executive may, with the consent of the Commission, authorise—
- (a) any other employee;
 - (b) any of the Commission's committees,
- to exercise such of the chief executive's functions, and to such extent, as the chief executive, with such consent, may determine.
- (6) Sub-paragraph (5) does not affect the responsibility of the chief executive for the exercise of the chief executive's functions.

Mandatory delegation of functions to chief executive

- 7H (1) The Commission must delegate to the chief executive the functions mentioned in sub-paragraph (2).
- (2) The functions are—
- (a) the Commission's functions relating to the discharge of patients under this Act;
 - (b) the Commission's functions under section 73 of the Adults with Incapacity (Scotland) Act 2000 (asp 4).

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- (3) When exercising those functions so delegated, the chief executive must—
- (a) consult the Commission;
 - (b) consult a Commission Visitor in every case in which it appears to the chief executive appropriate to do so;
 - (c) have regard to any relevant guidance issued by the Commission.
- (4) Sub-paragraph (1) does not affect the responsibility of the Commission for the exercise of its functions.

Location of office

- 7I The Commission's determination of the location of its office premises is subject to the approval of the Scottish Ministers.”.

Commencement Information

- I1** Sch. 18 para. 7 in force at 1.8.2010 for specified purposes by [S.S.I. 2010/221](#), art. 3(2)(3), [Sch.](#)
I2 Sch. 18 para. 7 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), art. 3, [Sch.](#)
I3 Sch. 18 para. 7 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), art. 2, [Sch.](#)

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

- Blanket amendment words substituted by [S.I. 2011/1043 art. 34](#)

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

- Pt. 5 Ch. 3A amendment to earlier affecting provision 2019 asp 6, s. 12(2) by [S.S.I. 2023/127 reg. 3\(4\)](#)
- Pt. 5 Ch. 3A inserted by [2019 asp 6 s. 12\(2\)](#)