



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

2003 asp 13

## PART 2

### THE MENTAL WELFARE COMMISSION FOR SCOTLAND

#### *Particular functions*

#### **7 Duty to bring matters generally to attention of Scottish Ministers and others**

The Commission shall bring to the attention of—

- (a) the Scottish Ministers;
- (b) a local authority;
- (c) a Health Board;
- (d) a Special Health Board;
- (e) a National Health Service trust;
- (f) the Scottish Commission for the Regulation of Care; or
- (g) such other person, or group of persons, as it considers appropriate,

any matter of general interest or concern as respects the welfare of any persons who have a mental disorder which is a matter that the Commission considers ought to be brought to their attention.

#### **8 Duty to bring specific matters to attention of Scottish Ministers and others etc.**

- (1) If it appears to the Commission that a relevant person has, or may have, powers or duties, the exercise or performance of which might prevent or remedy or assist in preventing or remedying, as respects a person who has a mental disorder, any of the circumstances mentioned in subsection (2) below, the Commission shall—

- (a) bring the facts of the person's case to the attention of the relevant person; and
- (b) if it considers it appropriate to do so, make recommendations as respects the case to the relevant person.

- (2) Those circumstances are—

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- (a) the circumstances mentioned in section 11(2)(a), (d), (e) or (f) of this Act;
  - (b) that—
    - (i) the patient is detained in hospital and the detention is authorised by virtue of this Act or the 1995 Act; and
    - (ii) there may be some impropriety in relation to that detention.
- (3) For the purposes of subsection (1) above, “relevant person” means—
- (a) the Scottish Ministers;
  - (b) the Public Guardian;
  - (c) a local authority;
  - (d) a Health Board;
  - (e) a Special Health Board;
  - (f) a National Health Service trust;
  - (g) a mental health officer;
  - (h) a responsible medical officer;
  - (i) the managers of a registered care service;
  - (j) the managers of—
    - (i) a prison; or
    - (ii) a young offenders institution;
  - (k) the Scottish Commission for the Regulation of Care;
  - (l) a police force; or
  - (m) such other person, or group of persons, as the Commission considers appropriate.
- (4) In subsection (3)(i) above, “registered care service” means a care service registered under Part 1 of the Regulation of Care (Scotland) Act 2001 (asp 8).

## **9 Duty to give advice**

- (1) The Commission shall give advice to any person mentioned in subsection (2) below on any matter arising out of this Act which has been referred to the Commission, with its agreement, by that person.
- (2) Those persons are—
- (a) the Scottish Ministers;
  - (b) a local authority;
  - (c) a Health Board;
  - (d) a Special Health Board;
  - (e) the Scottish Commission for the Regulation of Care; or
  - (f) the Scottish Public Services Ombudsman.

## **10 Publishing information, guidance etc.**

- (1) Subject to subsection (2) below, the Commission may publish information or guidance about any matter relevant to its functions and, without prejudice to that generality, may publish information or guidance as respects—
- (a) its conclusions in relation to—
    - (i) an investigation under section 11(1) of this Act; or
    - (ii) an inquiry under section 12(1) of this Act;

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- (b) its conclusions in relation to any action taken (or not taken) in relation to such conclusions; or
  - (c) matters which it considers arise or come to light (or have arisen or come to light) in the course of—
    - (i) such investigations or inquiries; or
    - (ii) visits under section 13(1) or (3) of this Act.
- (2) The Commission may, with the agreement of a person mentioned in subsection (2) of section 9 of this Act, publish advice which it gives under subsection (1) of that section to that person.

## 11 Investigations

- (1) If it appears to the Commission that any of the circumstances mentioned in subsection (2) below apply in respect of a patient, the Commission may—
- (a) carry out such investigation as it considers appropriate into the patient's case; and
  - (b) make such recommendations as it considers appropriate as respects the case.
- (2) Those circumstances are—
- (a) that the patient may be unlawfully detained in hospital;
  - (b) that the patient is detained in hospital and the detention is authorised by virtue of—
    - (i) this Act; or
    - (ii) the 1995 Act;
  - (c) that the patient, though not detained in hospital, is subject to—
    - (i) a compulsory treatment order;
    - (ii) an interim compulsory treatment order;
    - (iii) an emergency detention certificate;
    - (iv) a short-term detention certificate;
    - (v) a compulsion order;
    - (vi) an interim compulsion order;
    - (vii) an assessment order;
    - (viii) a treatment order;
    - (ix) a hospital direction; or
    - (x) a transfer for treatment direction;
  - (d) that the patient may be, or may have been, subject, or exposed, to—
    - (i) ill-treatment;
    - (ii) neglect; or
    - (iii) some other deficiency in care or treatment;
  - (e) that, because of the mental disorder, the patient'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;
  - (f) that the patient may be—
    - (i) living alone or without care; and
    - (ii) unable to look after himself or his property or financial affairs.

## **12 Investigations: further provision**

- (1) The Commission may, if it considers it appropriate to do so, cause an inquiry to be held for the purpose of carrying out an investigation, under section 11(1) of this Act, into any case.
- (2) The Commission—
  - (a) may appoint such person (or persons) as it considers appropriate to chair or to conduct any such inquiry and to report to it on the findings of any such inquiry; and
  - (b) may pay to a person appointed by it under paragraph (a) above such—
    - (i) remuneration; and
    - (ii) expenses,as it may, with the consent of the Scottish Ministers, determine.
- (3) A person appointed to chair any such inquiry—
  - (a) may, by notice, require any person to attend and give evidence at a time and place set out in the notice; and
  - (b) may administer oaths and examine witnesses on oath and may accept, in place of evidence on oath by a person, evidence on affirmation or a statement in writing by the person.
- (4) A person required, by virtue of notice under subsection (3)(a) above, to attend and give evidence for the purposes of an inquiry under subsection (1) above—
  - (a) shall not be obliged to attend and give evidence as required in the notice unless the necessary expenses of attendance are paid or tendered to the person; and
  - (b) shall not be obliged at the inquiry to answer a question which the person would be entitled to decline to answer, on the ground of privilege or confidentiality, if the question were asked in the course of proceedings in a court.
- (5) Proceedings in an inquiry under this section shall have the privilege of proceedings in a court.
- (6) The Commission shall pay to a person required by notice under subsection (3)(a) above to attend for the purposes of an inquiry under subsection (1) above such expenses as it considers appropriate.
- (7) A person—
  - (a) who is required to attend for the purposes of an inquiry by virtue of notice under subsection (3)(a) above; and
  - (b) who refuses or wilfully neglects to attend or, subject to subsection (4)(b) above, to give evidence,shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

## **13 Visits in relation to patients**

- (1) The Commission shall secure that a person authorised by it visits, as often as the Commission considers it appropriate to do so, such patients who fall within the categories mentioned in subsection (2) below as it considers appropriate.
- (2) Those categories are—

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- (a) patients who are detained in hospital and whose detention is authorised by virtue of—
    - (i) this Act; or
    - (ii) the 1995 Act;
  - (b) patients who, though not detained in hospital, are subject to—
    - (i) a compulsory treatment order;
    - (ii) an interim compulsory treatment order;
    - (iii) an emergency detention certificate;
    - (iv) a short-term detention certificate;
    - (v) a compulsion order;
    - (vi) an interim compulsion order;
    - (vii) an assessment order;
    - (viii) a treatment order;
    - (ix) a hospital direction; or
    - (x) a transfer for treatment direction;
  - (c) patients who are subject to—
    - (i) an intervention order of which the Commission has been notified under section 53(10)(b) of the Adults with Incapacity (Scotland) Act 2000 (asp 4); or
    - (ii) a guardianship order of which the Commission has been notified under section 58(7)(d) of that Act;
  - (d) patients in respect of whom a person is a guardian by virtue of subparagraph (4), (5), (6) or (7) of paragraph 1 of schedule 4 to the Adults with Incapacity (Scotland) Act 2000 (asp 4); and
  - (e) patients who have granted, in accordance with section 16 of that Act, a welfare power of attorney, a copy of which has been sent to the Commission under section 19(2)(c) of that Act.
- (3) If it appears to the Commission that patients—
- (a) may be resident, or may be receiving medical treatment, in premises mentioned in subsection (4) below; or
  - (b) may use facilities provided in such premises,
- a person authorised by the Commission may visit such premises for either of the purposes mentioned in subsection (5) below.
- (4) Those premises are—
- (a) a health service hospital (as defined in section 108(1) of the National Health Service (Scotland) Act 1978 (c. 29));
  - (b) premises in which—
    - (i) an independent health care service is provided;
    - (ii) a care home service is provided; or
    - (iii) a secure accommodation service is provided;
  - (c) premises provided by a local authority for the purpose of their duty under section 26 of this Act;
  - (d) a prison; and
  - (e) a young offenders institution.
- (5) The purposes are—
- (a) to inspect such premises or the facilities available in such premises; and

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- (b) to provide an opportunity for any patients who may be present in the premises at the time when the visit takes place to meet representatives of the Commission and to discuss with such representatives any concerns that such patients may have.
- (6) A visit under subsection (1) or (3) above may be made with or without prior notification.
- (7) A person proposing to conduct a visit under subsection (1) or (3) above shall, if requested to do so, produce an authenticated document showing that the Commission has given the requisite authority for the visit.
- (8) In—
  - (a) subsection (4)(b)(ii) above, “care home service” has the meaning given to that expression by section 2(3) of the Regulation of Care (Scotland) Act 2001 ([asp 8](#)); and
  - (b) subsection (4)(b)(iii) above, “secure accommodation service” has the meaning given to that expression by section 2(9) of that Act.

## 14 Interviews

- (1) A person authorised to do so by the Commission (an “authorised person”) may, in connection with the discharge by the Commission of any of its functions under this Act or the Adults with Incapacity (Scotland) Act 2000 ([asp 4](#))—
  - (a) interview—
    - (i) any patient; or
    - (ii) any other person that the authorised person considers it appropriate to interview; and
  - (b) require any such interview to be conducted in private.
- (2) Without prejudice to the generality of subsection (1) above—
  - (a) an authorised person conducting a visit under subsection (1) of section 13 of this Act shall afford an opportunity, on request, during the visit, to—
    - (i) the patient who is the subject of the visit; and
    - (ii) other patients whose presence in the premises where the visit takes place is known to the authorised person,
 to be interviewed in private by the authorised person; and
  - (b) an authorised person conducting a visit under subsection (3) of that section shall afford an opportunity, on request, during the visit, to patients whose presence in the premises that are being visited is known to the authorised person, to be so interviewed.
- (3) An authorised person proposing to interview a person under subsection (1) or (2) above shall, if requested to do so, produce an authenticated document showing that the Commission has given the requisite authority for the purposes of this section.

## 15 Medical examination

- (1) A person authorised by the Commission (an “authorised person”) may, in connection with the discharge by the Commission of any of its functions under—
  - (a) this Act; or
  - (b) the Adults with Incapacity (Scotland) Act 2000 ([asp 4](#)),

carry out in private a medical examination of a patient.

- (2) An authorised person shall be—
  - (a) a medical commissioner; or
  - (b) a member of staff of the Commission who has such qualifications and experience, and has undertaken such training, as may be prescribed by regulations.
- (3) An authorised person proposing to exercise the power conferred by subsection (1) above shall, if requested to do so, produce an authenticated document showing that the Commission has given the requisite authority for the purposes of this section.

## **16 Inspection etc. of records**

- (1) A person authorised by the Commission (an “authorised person”) may, in connection with the discharge by the Commission of any of its functions under—
  - (a) this Act; or
  - (b) the Adults with Incapacity (Scotland) Act 2000 (asp 4),require any person holding medical or other records of a patient to produce them for inspection by the authorised person.
- (2) An authorised person shall be—
  - (a) a member of the Commission; or
  - (b) a member of the staff of the Commission.
- (3) An authorised person proposing to exercise the power conferred by subsection (1) above shall, if requested to do so, produce an authenticated document showing that the authorised person is a member of the Commission or, as the case may be, a member of staff of the Commission.

## **17 Duties of Scottish Ministers, local authorities and others as respects Commission**

- (1) The persons mentioned in subsection (2) below shall afford the Commission, or a person authorised by the Commission, all facilities necessary to enable the Commission, or that person, to discharge the Commission's, or (as the case may be) that person's, functions under this Act.
- (2) Those persons are—
  - (a) the Scottish Ministers;
  - (b) a local authority;
  - (c) a Health Board;
  - (d) a Special Health Board;
  - (e) a National Health Service trust;
  - (f) a police force;
  - (g) the managers of a registered care service;
  - (h) the managers of—
    - (i) a prison; or
    - (ii) a young offenders institution;
  - (i) the Scottish Commission for the Regulation of Care;
  - (j) the Scottish Public Services Ombudsman; and

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(k) such other persons as may be prescribed by regulations.

(3) In subsection (2)(g) above, “registered care service” has the meaning given by section 8(4) of this Act.

## **18 Annual Report**

(1) The Commission shall, as soon as practicable after the end of each financial year of the Commission, submit to the Scottish Ministers, a report on the discharge of its functions during that year.

(2) The Scottish Ministers shall lay before the Scottish Parliament a copy of each report submitted to them under subsection (1) above.

(3) The financial year of the Commission is the period of 12 months ending with 31st March.

## **19 Statistical information**

The Commission shall, in accordance with directions given to it by the Scottish Ministers, provide the Ministers with, and publish, statistical or other information relating to the discharge of its functions.

## **20 Protection from actions of defamation**

(1) For the purposes of the law of defamation, any statement made in pursuance of any of sections 6, 7 to 10 and 18(1) of this Act by the Commission, or any of its employees, shall be privileged unless such statement is shown to be made with malice.

(2) In this section—

“statement” has the same meaning as in the Defamation Act 1996 (c. 31); and

“employees” shall be construed in accordance with paragraph 7 of schedule 1 to this Act.