



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

2003 asp 13

PART 17

PATIENT REPRESENTATION ETC.

CHAPTER 2

ADVOCACY ETC.

Advocacy

259 Advocacy

- (1) Every person with a mental disorder shall have a right of access to independent advocacy; and accordingly it is the duty of—
 - (a) each local authority, in collaboration with the (or each) relevant Health Board; and
 - (b) each Health Board, in collaboration with the (or each) relevant local authority, to secure the availability, to persons in its area who have a mental disorder, of independent advocacy services and to take appropriate steps to ensure that those persons have the opportunity of making use of those services.
- (2) Each relevant Health Board and local authority shall, for the purposes of subsection (1) above, collaborate with the local authority or, as the case may be, Health Board in relation to which it is the relevant Board or authority.
- (3) For the purposes of subsections (1) and (2) above—
 - (a) a Health Board is, in relation to a local authority, a “relevant” Health Board if its area or part of its area is the same as or is included in the area of the local authority; and

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading:

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- (b) a local authority is, in relation to a Health Board, a “relevant” local authority if its area or part of its area is the same as or is included in the area of the Health Board.
- (4) In subsection (1) above, “advocacy services” are services of support and representation made available for the purpose of enabling the person to whom they are available to have as much control of, or capacity to influence, that person’s care and welfare as is, in the circumstances, appropriate.
- (5) For the purposes of subsection (1) above, advocacy services are “independent” if they are to be provided by a person who is none of the following—
 - (a) a local authority;
 - (b) a Health Board;
 - (c) a National Health Service trust;
 - (d) a member of—
 - (i) the local authority;
 - (ii) the Health Board;
 - (iii) a National Health Service trust,
 in the area of which the person to whom those services are made available is to be provided with them;
 - (e) a person who—
 - (i) in pursuance of arrangements made between that person and a Health Board, is giving medical treatment to;
 - (ii) in pursuance of those arrangements, is providing, under the National Health Service (Scotland) Act 1978 (c. 29), treatment, care or services for; or
 - (iii) in pursuance of arrangements made between that person and a local authority, is providing, under Part II of the Social Work (Scotland) Act 1968 (c. 49) (promotion of social welfare) or any of the enactments specified in section 5(1B) of that Act, services for,
 the person to whom the advocacy services are made available;
 - (f) in relation to a patient detained in a state hospital or a person who (by virtue of any of the means specified in subsection (11)(b) below) is no longer detained there, the State Hospitals Board for Scotland or a member of that Board.
- (6) In subsection (5)(d) above the reference to the area of a National Health Service trust is a reference to the Health Board area in which the trust discharges its functions.
- (7) It is the duty of the State Hospitals Board for Scotland (the “State Hospitals Board”) to secure the availability to persons who are patients detained in a state hospital of the services referred to in subsection (1) above and, in relation to those persons, to take the steps there referred to.
- (8) It is the duty of—
 - (a) the State Hospitals Board, in collaboration with each relevant local authority and Health Board; and
 - (b) each relevant local authority and Health Board, in collaboration with the State Hospitals Board,
 to secure the availability to relevant persons of the services referred to in subsection (1) above, and, in relation to those persons, to take the steps there referred to.

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- (9) Each relevant local authority and Health Board shall, for the purposes of subsection (8)(a) above, collaborate with the State Hospitals Board and with each other.
- (10) The State Hospitals Board shall, for the purposes of subsection (8)(b) above, collaborate with each relevant local authority and Health Board.
- (11) For the purposes of subsections (8) to (10) above—
- (a) a local authority or Health Board is a relevant local authority or, as the case may be, Health Board if there is residing in its area a relevant person;
 - (b) a relevant person is a person with a mental disorder who, having been detained as a patient in a state hospital, is (by virtue of section 127 or 193(7) of this Act) no longer detained there.

Commencement Information

- II** S. 259 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)

[^{F1}259A Information gathering

- (1) Each of the bodies mentioned in subsection (2) below must give the Commission such information as the Commission may from time to time seek on how the body—
- (a) has, during a period of at least 2 years specified by the Commission, been exercising the functions conferred on the body by section 259 of this Act, and
 - (b) intends, during a period of at least 2 years specified by the Commission, to exercise the functions conferred on the body by section 259 of this Act.
- (2) The bodies are—
- (a) a local authority,
 - (b) a Health Board,
 - (c) the State Hospitals Board for Scotland.]

Textual Amendments

- F1** [S. 259A](#) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015](#) (asp 9), [ss. 27\(2\)](#), 61(2); [S.S.I. 2017/197](#), [art. 2](#), [sch.](#)

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\(3\)](#)