



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

## 2003 asp 13

### PART 2

#### THE MENTAL WELFARE COMMISSION FOR SCOTLAND

##### *Continued existence of Commission*

#### 4 The Mental Welfare Commission for Scotland

- (1) There shall continue to be a body corporate known as the Mental Welfare Commission for Scotland (in this Act referred to as “the Commission”).
- (2) The Commission shall discharge such functions as are conferred on it by virtue of—
  - (a) this Act;
  - (b) the Adults with Incapacity (Scotland) Act 2000 (asp 4); and
  - (c) any other enactment.

[<sup>F1</sup>(2A) In so discharging its functions, the Commission shall act in a manner which seeks to protect the welfare of persons who have a mental disorder.]

- (3) Schedule 1 to this Act (which makes provision as respects the Commission) shall have effect.

#### Textual Amendments

- F1** S. 4(2A) inserted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 111(2), 134(7)**; [S.S.I. 2010/221](#), **art. 3(2)(3), sch.**; [S.S.I. 2010/321](#), **art. 3, sch.**; [S.S.I. 2011/122](#), **art. 2, sch.**

#### Commencement Information

- I1** S. 4(1)(2) 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**)
- I2** S. 4(3) in force at 1.7.2003 for specified purposes by [S.S.I. 2003/316](#), **art. 2**

*Status: Point in time view as at 01/04/2011.*

*Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Part 2 is up to date with all changes known to be in force on or before 14 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)*

- I3** S. 4(3) in force at 5.10.2005 in so far as not already in force 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)

## *[<sup>F2</sup>Commission Visitors*

### **Textual Amendments**

- F2** [S. 4A and crossheading](#) inserted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 111(3)**, 134(7); [S.S.I. 2010/221](#), art. 3(2)(3), sch.; [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.

## **4A Commission Visitors**

- (1) Commission Visitors are to exercise the functions conferred on them by this Act or any other enactment on behalf of the Commission.
- (2) Commission Visitors may, in addition to the other functions conferred in this Part, exercise the functions of the Commission mentioned in—
  - (a) section 8A of this Act;
  - (b) section 9(1)(d) of the Adults with Incapacity (Scotland) Act 2000 (asp 4).
- (3) The Commission may give the Commission Visitors directions of a general or specific nature in relation to the exercise of the functions conferred on them.
- (4) A Commission Visitor must—
  - (a) comply with any direction given under subsection (3); and
  - (b) act in accordance with any guidance issued by the Commission in relation to the exercise of the functions of Commission Visitors.
- (5) A Commission Visitor acting in the exercise of any function must, if required, produce evidence of the Commission Visitor's authority.
- (6) In this Act, “Commission Visitors” are persons appointed under paragraph 7A(1) or (2) of schedule 1 to this Act.]

## *General duties*

## **5 Duty to monitor operation of Act and promote best practice**

The Commission shall—

- (a) monitor the [<sup>F3</sup>practical application of the observance of Part 1] of this Act; and
- (b) promote best practice in relation to the [<sup>F4</sup>practical application of the observance of Part 1 of this Act].

### **Textual Amendments**

- F3** Words in [s. 5\(a\)](#) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss.**

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 2 is up to date with all changes known to be in force on or before 14 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)*

**111(4)(a)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.

- F4** Words in s. 5(b) substituted (1.8.2010 for specified purposes, 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), **ss. 111(4)(b)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.

#### Commencement Information

- I4** S. 5 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)

## 6 Reporting on operation of Act

The Commission shall bring to the attention of the Scottish Ministers such matters concerning the operation of this Act as the Commission considers ought to be brought to their attention.

#### Commencement Information

- I5** S. 6 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)

### *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;
  - [<sup>F5</sup>(ea) Healthcare Improvement Scotland;]
  - [<sup>F6</sup>(f) Social Care and Social Work Improvement Scotland;]
  - (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.

#### Textual Amendments

- F5** S. 7(ea) 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. 28**; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F6** S. 7(f) 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. 14**; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.

*Status: Point in time view as at 01/04/2011.*

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### Commencement Information

- I6** S. 7 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)

## 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—
- (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;
  - [<sup>F7</sup>(ja) Healthcare Improvement Scotland;]
  - [<sup>F8</sup>(k) Social Care and Social Work Improvement Scotland;]
  - (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 [<sup>F9</sup>Part 5 of the Public Services Reform (Scotland) Act 2010] (asp 8).

### Textual Amendments

- F7** S. 8(3)(ja) 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. 29**; [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.

*Status: Point in time view as at 01/04/2011.*

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- F8** S. 8(3)(k) 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. 15](#); [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.
- F9** Words in s. 8(4) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, [sch. 1 para. 13\(2\)](#)

#### Commencement Information

- I7** S. 8 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)

### [<sup>F10</sup>8A Duty to raise service concerns with certain bodies

- (1) The Commission shall, as it considers appropriate, raise any concerns (of a general or specific nature) about the provision of any service mentioned in subsection (2) as respects a person who has a mental disorder, with—
- (a) Social Care and Social Work Improvement Scotland;
  - (b) Healthcare Improvement Scotland; or
  - (c) such other relevant persons, or group of persons.
- (2) The services are—
- (a) any social service (within the meaning of Part 5 of the Public Services Reform (Scotland) Act 2010 (asp 8));
  - (b) health care (within the meaning of section 10A of the National Health Service (Scotland) Act 1978 (c. 29)).
- (3) In subsection (1), the “provision” of any service includes the organisation or co-ordination of any such service.]

#### Textual Amendments

- F10** S. 8A inserted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 111\(5\)](#), 134(7); [S.S.I. 2010/221](#), art. 3(2)(3), sch.; [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.

## 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;
  - [<sup>F11</sup>(da) Healthcare Improvement Scotland;]
  - [<sup>F12</sup>(e) Social Care and Social Work Improvement Scotland;]
  - (f) the Scottish Public Services Ombudsman.

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#### Textual Amendments

- F11** S. 9(2)(da) 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. 30](#); [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.
- F12** S. 9(2)(e) 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. 16](#); [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.

#### Commencement Information

- I8** S. 9 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)

### [<sup>F13</sup>9A Duty to give advice: further provision

The Commission shall when asked to do so provide advice, so far as is reasonable, to any person about any matters relevant to the functions of the Commission.]

#### Textual Amendments

- F13** [S. 9A](#) inserted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 111\(6\)](#), 134(7); [S.S.I. 2010/221](#), art. 3(2)(3), sch.; [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.

## 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;
  - (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.
- [<sup>F14</sup>(3) The Commission may, with the agreement of a person to whom advice is provided under section 9A, publish that advice.]

*Status: Point in time view as at 01/04/2011.*

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### Textual Amendments

**F14** S. 10(3) added (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 111(7)**, 134(7); [S.S.I. 2010/221](#), art. 3(2)(3), sch.; [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.

### Commencement Information

**I9** S. 10 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)

## 11 Investigations

- (1) If it appears to [<sup>F15</sup>a Commission Visitor] that any of the circumstances mentioned in subsection (2) below apply in respect of a patient, the Commission [<sup>F16</sup>Visitor] may—
- carry out such investigation as [<sup>F17</sup>the Commission Visitor] considers appropriate into the patient's case; and
  - make such recommendations as [<sup>F18</sup>the Commission Visitor] considers appropriate as respects the case.

[<sup>F19</sup>(1A) Where it is brought to the attention of the Commission that any of the circumstances mentioned in subsection (2) below may apply in respect of a patient, the Commission may—

- direct a Commission Visitor to carry out such investigation as the Commission considers appropriate into the patient's case; and
- having consulted the Visitor after the investigation, make such recommendations as it considers appropriate as respects the case.]

(2) Those circumstances are—

- that the patient may be unlawfully detained in hospital;
- that the patient is detained in hospital and the detention is authorised by virtue of—
  - this Act; or
  - the 1995 Act;
- that the patient, though not detained in hospital, is subject to—
  - a compulsory treatment order;
  - an interim compulsory treatment order;
  - an emergency detention certificate;
  - a short-term detention certificate;
  - a compulsion order;
  - an interim compulsion order;
  - an assessment order;
  - a treatment order;
  - a hospital direction; or
  - a transfer for treatment direction;
- that the patient may be, or may have been, subject, or exposed, to—
  - ill-treatment;
  - neglect; or
  - some other deficiency in care or treatment;

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- (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.

#### Textual Amendments

- F15** Words in s. 11(1) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 111(8)(a)(i)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F16** Word in s. 11(1) inserted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 111(8)(a)(ii)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F17** Words in s. 11(1)(a) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 111(8)(a)(iii)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F18** Words in s. 11(1)(b) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 111(8)(a)(iv)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F19** S. 11(1A) inserted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 111(8)(b)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.

#### Commencement Information

- I10** S. 11 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)

## 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, [F20: in relation to any of the circumstances mentioned in section 11(2)] 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



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- (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.

#### Textual Amendments

**F20** Words in s. 12(1) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), ss. [111\(9\)](#), [134\(7\)](#); [S.S.I. 2010/221](#), art. 3(2)(3), sch.; [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.

#### Commencement Information

**I11** S. 12 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)

## 13 Visits in relation to patients

- (1) The Commission shall secure that a [<sup>F21</sup>Commission Visitor] visits, as often as the Commission [<sup>F22</sup>Visitor] considers it appropriate to do so, such patients who fall within the categories mentioned in subsection (2) below as [<sup>F23</sup>the Commission Visitor] considers appropriate.
- (2) Those categories are—
  - (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—

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- (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 [<sup>F24</sup>Commission Visitor] may visit such premises for <sup>F25</sup>... the purposes mentioned in [<sup>F26</sup>subsection (5A)] 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.
- [<sup>F27</sup>(5A) The purposes are—
- (a) to provide an opportunity for any patient who may for the time being be present in the premises to meet a Commission Visitor and discuss with the Visitor any concerns that the patient may have; and
  - (b) to assess whether the requirements of such patients in relation to this Act, the Adults with Incapacity (Scotland) Act 2000 (asp 4) and other relevant legislation are being met.

*Status: Point in time view as at 01/04/2011.*

*Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Part 2 is up to date with all changes known to be in force on or before 14 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)*

(5B) A Commission Visitor may, when visiting premises under subsection (3), conduct an assessment of the suitability of the premises (and its facilities) in relation to the requirements of the patients (or any one of them).]

(6) A visit under subsection (1) or (3) above may be made with or without prior notification.

<sup>F28</sup>(7) . . . . .

(8) In—

(a) subsection (4)(b)(ii) above, “care home service” has the meaning given to that expression by [<sup>F29</sup>paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010 (asp 8)]; and

(b) subsection (4)(b)(iii) above, “secure accommodation service” has the meaning given to that expression by [<sup>F30</sup>paragraph 6 of schedule 12 to] that Act.

#### Textual Amendments

- F21** Words in s. 13(1) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 111(10)(a)(i)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F22** Word in s. 13(1) inserted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 111(10)(a)(ii)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F23** Words in s. 13(1) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **111(10)(a)(iii)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F24** Words in s. 13(3) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **111(10)(b)(i)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F25** Words in s. 13(3) repealed (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **111(10)(b)(ii)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F26** Words in s. 13(3) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **111(10)(b)(iii)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F27** S. 13(5A)(5B) substituted for s. 13(5) (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 111(10)(c)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F28** S. 13(7) repealed (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 111(10)(d)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F29** Words in s. 13(8)(a) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 111(10)(e)(a)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F30** Words in s. 13(8)(b) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss.**

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 2 is up to date with all changes known to be in force on or before 14 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)*

**111(10)(e)(b)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.

#### Commencement Information

**I12** S. 13 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)

## 14 Interviews

- (1) A [<sup>F31</sup>Commission Visitor] 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 [<sup>F32</sup>Commission Visitor] 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) [<sup>F33</sup>a Commission Visitor] 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 [<sup>F34</sup>Commission Visitor],
 to be interviewed in private by the [<sup>F35</sup>Commission Visitor]; and
  - (b) [<sup>F36</sup>a Commission Visitor] 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 [<sup>F37</sup>Commission Visitor], to be so interviewed.

<sup>F38</sup>(3) .....

#### Textual Amendments

- F31** Words in s. 14(1) substituted (1.8.2010 for specified purposes, 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), **ss. 111(11)(a)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F32** Words in s. 14(1)(a)(ii) substituted (1.8.2010 for specified purposes, 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), **ss. 111(11)(b)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F33** Words in s. 14(2)(a) substituted (1.8.2010 for specified purposes, 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), **ss. 111(11)(c)(i)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F34** Words in s. 14(2)(a)(ii) substituted (1.8.2010 for specified purposes, 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), **ss. 111(11)(c)(ii)**, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.

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*Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Part 2 is up to date with all changes known to be in force on or before 14 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)*

- F35** Words in s. 14(2)(a) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 111\(11\)\(c\)\(iii\)](#), 134(7); [S.S.I. 2010/221](#), art. 3(2)(3), sch.; [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.
- F36** Words in s. 14(2)(b) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 111\(11\)\(d\)\(i\)](#), 134(7); [S.S.I. 2010/221](#), art. 3(2)(3), sch.; [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.
- F37** Words in s. 14(2)(b) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 111\(11\)\(d\)\(ii\)](#), 134(7); [S.S.I. 2010/221](#), art. 3(2)(3), sch.; [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.
- F38** S. 14(3) repealed (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 111\(11\)\(e\)](#), 134(7); [S.S.I. 2010/221](#), art. 3(2)(3), sch.; [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.

#### Commencement Information

- I13** S. 14 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)

## 15 Medical examination

- (1) A [<sup>F39</sup>Commission Visitor] 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),
- carry out in private a medical examination of a patient.

[<sup>F40</sup>(1A) Only a Commission Visitor who has also been appointed as a Medical Visitor may exercise the functions under subsection (1).]

<sup>F41</sup>(2) .....

<sup>F41</sup>(3) .....

#### Textual Amendments

- F39** Words in s. 15(1) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 111\(12\)\(a\)](#), 134(7); [S.S.I. 2010/221](#), art. 3(2)(3), sch.; [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.
- F40** S. 15(1A) inserted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 111\(12\)\(b\)](#), 134(7); [S.S.I. 2010/221](#), art. 3(2)(3), sch.; [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.
- F41** S. 15(2)(3) repealed (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 111\(12\)\(c\)](#), 134(7); [S.S.I. 2010/221](#), art. 3(2)(3), sch.; [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.

#### Commencement Information

- I14** S. 15 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), [art. 2](#), [Sch. 1](#)
- I15** S. 15 in force at 5.10.2005 in so far as not already in force 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)

*Status: Point in time view as at 01/04/2011.*

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## 16 Inspection etc. of records

- (1) A person authorised by the Commission (an “authorised person”) [<sup>F42</sup>or Commission Visitor] 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 [<sup>F43</sup>or, as the case may be, the Commission Visitor].
- (2) An authorised person shall be—
- <sup>F44</sup>(a) .....
  - (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 <sup>F45</sup>... a member of staff of the Commission.

### Textual Amendments

- F42** Words in s. 16(1) inserted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 111\(13\)\(a\)\(i\)](#), 134(7); [S.S.I. 2010/221](#), [art. 3\(2\)\(3\)](#), [sch.](#); [S.S.I. 2010/321](#), [art. 3](#), [sch.](#); [S.S.I. 2011/122](#), [art. 2](#), [sch.](#)
- F43** Words in s. 16(1) added (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 111\(13\)\(a\)\(ii\)](#), 134(7); [S.S.I. 2010/221](#), [art. 3\(2\)\(3\)](#), [sch.](#); [S.S.I. 2010/321](#), [art. 3](#), [sch.](#); [S.S.I. 2011/122](#), [art. 2](#), [sch.](#)
- F44** S. 16(2)(a) repealed (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 111\(13\)\(b\)](#), 134(7); [S.S.I. 2010/221](#), [art. 3\(2\)\(3\)](#), [sch.](#); [S.S.I. 2010/321](#), [art. 3](#), [sch.](#); [S.S.I. 2011/122](#), [art. 2](#), [sch.](#)
- F45** Words in s. 16(3) repealed (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 111\(13\)\(c\)](#), 134(7); [S.S.I. 2010/221](#), [art. 3\(2\)\(3\)](#), [sch.](#); [S.S.I. 2010/321](#), [art. 3](#), [sch.](#); [S.S.I. 2011/122](#), [art. 2](#), [sch.](#)

### Commencement Information

- I16** S. 16 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](#))

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

- (1) The persons mentioned in subsection (2) below shall afford the Commission, [<sup>F46</sup>any Commission Visitor,] 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;

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- (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;
  - [<sup>F47</sup>(ha) Healthcare Improvement Scotland;]
  - [<sup>F48</sup>(i) Social Care and Social Work Improvement Scotland;]
  - (j) the Scottish Public Services Ombudsman; and
  - (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.

#### Textual Amendments

- F46** Words in s. 17 inserted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 111(14)**, [134\(7\)](#); [S.S.I. 2010/221](#), [art. 3\(2\)\(3\)](#), [sch.](#); [S.S.I. 2010/321](#), [art. 3](#), [sch.](#); [S.S.I. 2011/122](#), [art. 2](#), [sch.](#)
- F47** S. 17(2)(ha) 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. 31**; [S.S.I. 2010/321](#), [art. 3](#), [sch.](#); [S.S.I. 2011/122](#), [art. 2](#), [sch.](#)
- F48** S. 17(2)(i) 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. 17**; [S.S.I. 2010/321](#), [art. 3](#), [sch.](#); [S.S.I. 2011/122](#), [art. 2](#), [sch.](#)

#### Commencement Information

- I17** S. 17 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), [art. 2](#), **Sch. 1**
- I18** S. 17 in force at 5.10.2005 in so far as not already in force 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](#))

## 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.

#### Commencement Information

- I19** S. 18 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](#))

*Status: Point in time view as at 01/04/2011.*

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## 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.

### Commencement Information

**I20** S. 19 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)

## 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.

### Commencement Information

**I21** S. 20 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)



**Status:**

Point in time view as at 01/04/2011.

**Changes to legislation:**

Mental Health (Care and Treatment) (Scotland) Act 2003, Part 2 is up to date with all changes known to be in force on or before 14 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.