

Status: Point in time view as at 01/07/2003.

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

SCHEDULE 1 **S**

(introduced by section 4)

THE MENTAL WELFARE COMMISSION FOR SCOTLAND

VALID FROM 21/03/2005

PART 1 **S**

MEMBERSHIP, PROCEEDINGS ETC.

VALID FROM 05/10/2005

Status

- 1 The Commission shall not be regarded as the servant or agent of the Crown, or as having any status, immunity or privilege of the Crown, nor shall its members or employees be regarded as civil servants, nor its property as property of, or held on behalf of, the Crown.

VALID FROM 05/10/2005

General powers

- 2 The Commission may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions; and without prejudice to that generality the Commission may in particular—
- (a) acquire and dispose of land and other property; and
 - (b) enter into contracts.

Membership

- 3 (1) The Commission shall consist of the following members appointed by Her Majesty on the recommendation of the Scottish Ministers—
- (a) a member appointed to serve as convener;
 - (b) a minimum of three members, who have such qualifications, training and experience as may be prescribed by regulations, appointed to serve as medical commissioners; and
 - (c) other members who meet such other requirements as may be so prescribed.
- (2) The person who holds the post of chief officer of the Commission shall—
- (a) be a member *ex officio* of the Commission; and
 - (b) cease automatically to hold office as such member on ceasing to hold that post.

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- (3) The Scottish Ministers may, after consulting such persons, or groups of persons, as they consider appropriate, by order—
- (a) amend sub-paragraph (1) above by—
 - (i) adding to that sub-paragraph categories of members; or
 - (ii) removing from it a category which is for the time being set out there;
 - (b) specify the number (including a minimum or maximum number) of—
 - (i) the members of the Commission; or
 - (ii) any category of member,
 that may be appointed under sub-paragraph (1) above;
 - (c) specify the maximum term of appointment (including any reappointment) of a member appointed under that sub-paragraph; or
 - (d) amend sub-paragraph (2) above by adding to it further posts, the holders of which shall—
 - (i) be members *ex officio* of the Commission; and
 - (ii) cease to be such members on ceasing to hold such posts.

VALID FROM 05/10/2005

Terms of office etc.

- 4
- (1) The provisions of this paragraph apply as respects a person appointed as member under paragraph 3(1) above.
 - (2) Subject to the provisions of this schedule, the appointment shall be on such terms and conditions as the Scottish Ministers may determine.
 - (3) Subject to section 23 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), a person holds and vacates office as member in accordance with the terms of appointment of that person.
 - (4) A person may resign office as member at any time by notice to the Scottish Ministers.

VALID FROM 05/10/2005

Eligibility for reappointment

- 5
- Subject to paragraph 3(3)(c) above, a person who ceases, otherwise than by virtue of section 23 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), to be a member of the Commission is eligible for reappointment.

VALID FROM 05/10/2005

Remuneration, pensions, allowances etc.

- 6
- The Commission shall pay—

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- (a) to its members (and to the members of its committees and sub-committees who are not members of the Commission) such remuneration and allowances—
 - (i) on such terms; and
 - (ii) subject to such conditions,as the Scottish Ministers may determine;
- (b) to, or in respect of, persons who have been a member of it (or such members of committees and sub-committees as are mentioned in paragraph (a) above) such pensions, allowances and gratuities—
 - (i) on such terms; and
 - (ii) subject to such conditions,as the Scottish Ministers may determine; or
- (c) to any person who ceases, other than on the expiry of a term of office, to be a member of it, such compensation as the Scottish Ministers may determine.

VALID FROM 05/10/2005

Appointment etc. of chief officer and other staff

- 7
- (1) Subject to sub-paragraphs (2) and (3) below, the Commission—
 - (a) shall appoint a chief officer; and
 - (b) may appoint such other staff as it considers appropriate, on such terms and conditions as it may, with the approval of the Scottish Ministers, determine.
 - (2) A member of the Commission may not be appointed as a member of its staff.
 - (3) The Commission shall obtain the approval of the Scottish Ministers before appointing a chief officer.
 - (4) The Commission may pay to the members of its staff, including its chief officer, (referred to in this paragraph collectively as “employees”) such remuneration and allowances as the Scottish Ministers may determine.
 - (5) The Commission may—
 - (a) pay, or make arrangements for the payment of;
 - (b) make payments towards the provision of; and
 - (c) provide and maintain schemes (whether contributory or not) for the payment of,such pensions, allowances and gratuities to or in respect of such of its employees, or former employees, as the Scottish Ministers may determine.
 - (6) The reference in sub-paragraph (5) above to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment or reduction in remuneration.
 - (7) A determination under sub-paragraph (4) or (5) above may make different provision for different cases or descriptions of case.

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Regulations as to proceedings and delegation of functions

- 8 (1) Subject to sub-paragraph (2) below, regulations may make provision as to—
- (a) the appointment of and composition of committees and sub-committees of the Commission (including committees and sub-committees which consist of or include persons who are not members of the Commission);
 - (b) the procedure of the Commission and of any of its committees or sub-committees (including the constitution of a quorum and the validation of proceedings in the event of vacancies or of defects in appointment);
 - (c) the exercise of functions by any such committee or sub-committee;
 - (d) the delegation by the Commission of any of its functions to any of its committees, sub-committees, members or staff; and
 - (e) what functions the Commission shall not so delegate.
- (2) Before making regulations under sub-paragraph (1) above, the Scottish Ministers shall consult such persons, or groups of persons, as they consider appropriate.

VALID FROM 05/10/2005

Accounts

- 9 The following provisions of the National Health Service (Scotland) Act 1978 (c. 29) shall continue to apply to the Commission as they apply to a Special Health Board—
- (a) section 85 (which makes provision for payment of funds by the Scottish Ministers towards expenditure attributable to performance of functions by the Board);
 - (b) section 85A(1) and (3) (which imposes corresponding financial duties on the Board); and
 - (c) section 86 (which provides for the keeping, transmission to Scottish Ministers and auditing, of accounts).

PART 2 S

TRANSITIONAL PROVISION

- 10 (1) The Mental Health (Scotland) Act 1984 (c. 36) shall be amended as follows.
- (2) In section 2 (membership etc. of the Mental Welfare Commission)—
- (a) in subsection (2), after “commissioners”, where it first occurs, insert “appointed under subsection (4) of this section”;
 - (b) in subsection (4), at the beginning, insert “Subject to subsection (5A) of this section,”;
 - (c) after subsection (5), insert—

“(5A) The person who holds the post of chief officer of the Mental Welfare Commission shall—

 - (a) be a member *ex officio* of the Commission; and

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- (b) cease automatically to hold office as such member on ceasing to hold that post.”; and
 - (d) in subsection (7), for “the said commissioners”, in both places where it occurs, substitute “ commissioners appointed under subsection (4) of this section ”.
- (3) In section 6 (appointment and payment etc. of officers and staff)—
- (a) at the beginning, insert—
 - “(1) The Mental Welfare Commission shall appoint a chief officer on such terms and conditions as the Scottish Ministers may determine.
 - (2) Before appointing a chief officer under subsection (1) above, the Commission shall obtain the approval of the Scottish Ministers.
 - (3) ”; and
 - (b) in subsection (3) (being the existing wording of the section)—
 - (i) in paragraph (a), after “appoint”, insert “ other ”; and
 - (ii) in paragraph (b)(ii), after “of”, insert “ its chief officer or in respect of ”.

Commencement Information

II Sch. 1 para. 10 in force at 1.7.2003 by S.S.I. 2003/316, art. 2

VALID FROM 26/03/2004

SCHEDULE 2 **S**
(introduced by section 21)

THE MENTAL HEALTH TRIBUNAL FOR SCOTLAND

VALID FROM 05/10/2005

SCHEDULE 3 **S**
(introduced by section 71)

APPLICATION OF CHAPTER 1 OF PART 7 TO CERTAIN PATIENTS

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VALID FROM 05/10/2005

SCHEDULE 4 S

(introduced by section 331(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

PROSPECTIVE

SCHEDULE 5 S

(introduced by section 331(2) and (3))

REPEALS AND REVOCATIONS

PART 1 S

REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
The National Health Service (Scotland) Act 1978 (c. 29)	In section 102, paragraph (a) of subsection (4), the word “or” immediately following that paragraph and subsection (5).
The Mental Health (Scotland) Act 1984 (c. 36)	The whole Act ^{F3} with the exception of section 10(1)(b) and (c) and (2) and section 95].
The Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73)	Section 51(2)(b).
The Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)	In section 7(9), in paragraph (c) of the definition of “the managers”, the words from “a State Hospital Management Committee” to “constituted”.
The Children Act 1989 (c. 41)	In Schedule 13, paragraph 50.
The National Health Service and Community Care Act 1990 (c. 19)	In Schedule 5, paragraph 13. In Schedule 9, paragraph 28.
The Access to Health Records Act 1990 (c. 23)	In section 11, in the definition of “health service body”, paragraph (c).
The Mental Health (Detention) (Scotland) Act 1991 (c. 47)	The whole Act.
The Further and Higher Education (Scotland) Act 1992 (c. 37)	In Schedule 9, paragraph 9.

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The Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9)	Section 4(2) and (3). In Schedule 5, paragraph 2.
The State Hospitals (Scotland) Act 1994 (c. 16)	Section 2(4) and (5).
The Children (Scotland) Act 1995 (c. 36)	In Schedule 4, paragraph 33.
The Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)	Section 13(3).
The Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40)	In Schedule 4, paragraph 50.
The Criminal Procedure (Scotland) Act 1995 (c. 46)	In section 52, subsections (2) to (7). In section 58, subsection (1); in subsections (2) and (3), the words “(1) or”; subsections (4) and (5); in subsection (7), the words “hospital order or” and ^{F4} ...; subsection (9); subsection (10); in subsection (11), the words “subsection (1) of”. Section 59(3). In section 200(9), the words “within 24 hours of his remand or, as the case may be, committal,”. In section 210(1), in paragraphs (a) and (c) (iii), the words “52, 53 or”. In section 230(1), the words “, not extending beyond 12 months from the date of the requirement,”. In section 307(1), the definitions of “hospital order”, “residential establishment” and “responsible medical officer”.
The Mental Health (Patients in the Community) Act 1995 (c. 52)	Sections 4 to 6. Schedule 2.
The Crime (Sentences) Act 1997 (c. 43)	In schedule 3, paragraphs 6 to 10.
The Crime and Punishment (Scotland) Act 1997 (c. 48)	Sections 7 and 8. In Schedule 1, paragraph 9.
The Crime and Disorder Act 1998 (c. 37)	In Schedule 8, paragraph 55.
The Health Act 1999 (c. 8)	In Schedule 4, paragraph 70.
The Mental Health (Public Safety and Appeals) (Scotland) Act 1999 (asp 1)	The whole Act.
The Mental Health (Amendment) (Scotland) Act 1999 (c. 32)	The whole Act.
The Immigration and Asylum Act 1999 (c. 33)	Section 120(4) and (5). In Schedule 15, paragraph 10.
The Adults with Incapacity (Scotland) Act 2000 (asp 4)	In section 9(1), the words “Without prejudice to their functions under the 1984 Act,” and paragraphs (a), (b), (e) and (f). In section 12(1)(b), the words “or (e)”.

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<p>The Regulation of Care (Scotland) Act 2001 (asp 8)</p> <p>The International Criminal Court (Scotland) Act 2001 (asp 13)</p> <p>The Scottish Public Services Ombudsman Act 2002 (asp 11)</p>	<p>In section 35(1)(b), the words “or private psychiatric hospital”.</p> <p>Section 38(4).</p> <p>In section 47(2), the words “and to”.</p> <p>Section 48(1).</p> <p>In section 57(3)(a), the words from “approved” to the end.</p> <p>Section 87(2) and (3).</p> <p>In schedule 1, paragraph 1(c)(ii) and the word “or” immediately following it.</p> <p>In schedule 5, paragraph 17(3) to (24).</p> <p>Section 2(5)(b).</p> <p>In section 77, in subsection (1), the definition of “private psychiatric hospital” and, in subsection (2), the words “(not being a private psychiatric hospital)”.</p> <p>In schedule 3, paragraph 11(2) to (7).</p> <p>Section 25.</p> <p>In schedule 6, paragraph 6.</p>
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Textual Amendments

- F3** Words in Sch. 5 inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(28)**
- F4** Words in Sch. 5 repealed (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **Sch. 2**

PART 2 S

REVOCATIONS

<i>Enactment</i>	<i>Extent of repeal</i>
<p>The Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999 (S.I. 1999/1820)</p> <p>The Postal Services Act 2000 (Consequential Modifications No.1) Order 2001 (S.I. 2001/1149)</p>	<p>In Schedule 2, paragraph 74.</p> <p>In Schedule 1, paragraph 60.</p>

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SCHEDULE 6 **S**

(introduced by section 332(1))

TRANSITORY AMENDMENTS OF THE MENTAL HEALTH (SCOTLAND) ACT 1984

- 1 Sections 33, 64 and 66 of the Mental Health (Scotland) Act 1984 (c. 36) shall, until their repeal by this Act, have effect as follows.
- 2 In section 33 (discharge of patients from hospital), in subsection (4)—
 - (a) after “is”, where secondly occurring, insert “ not ”; and
 - (b) in each of paragraphs (a) and (b) omit “not”.
- 3 In section 64 (appeal by patient subject to restriction order)—
 - (a) in subsection (1)—
 - (i) after “shall” insert “ , subject to subsection (2) of this section, ”;
 - (ii) after “is”, where first occurring, insert “ not ”;
 - (iii) in each of paragraphs (a) and (b) omit “not”;
 - (iv) omit “and (in either case)” and paragraph (c);
 - (b) in subsection (2)—
 - (i) for “(1)” substitute “ (A1) ”;
 - (ii) after “is”, where secondly occurring, insert “ not ”;
 - (iii) for the words from “not” to “subsection”, where thirdly occurring, substitute “ is satisfied that it is appropriate for the patient to remain liable to be recalled to hospital for further treatment ”.
- 4 In section 66 (further consideration of case of conditionally discharged patient) in subsection (3) after “is”, where first, secondly and thirdly occurring, insert “ not ”.

Status:

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