



Public Services Reform (Scotland) Act 2010

2010 asp 8

PART 7

THE MENTAL WELFARE COMMISSION FOR SCOTLAND

111 The Mental Welfare Commission for Scotland

- (1) The Mental Health (Care and Treatment) Scotland Act 2003 (asp 13) is amended as follows.
- (2) In section 4 (Mental Welfare Commission for Scotland), after subsection (2) insert—

“(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) After section 4 insert—

“Commission Visitors

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

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- (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.”.
- (4) In section 5 (duty to monitor operation of Act and promote best practice)—
 - (a) in paragraph (a), for “operation” substitute “ practical application of the observance of Part 1 ”,
 - (b) in paragraph (b), for the words from “operation” to the end of the paragraph substitute “ practical application of the observance of Part 1 of this Act ”.
- (5) After section 8 insert—

“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.”.
- (6) After section 9 insert—

“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.”.

- (7) In section 10 (publishing information, guidance etc.), after subsection (2) add—
 - “(3) The Commission may, with the agreement of a person to whom advice is provided under section 9A, publish that advice.”.
- (8) In section 11 (investigations)—
 - (a) in subsection (1)—
 - (i) for “the Commission”, where it first occurs, substitute “ a Commission Visitor ”,
 - (ii) after “Commission”, where it second occurs, insert “ Visitor ”,
 - (iii) in paragraph (a), for “it” substitute “ the Commission Visitor ”,

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- (iv) in paragraph (b), for “it” substitute “ the Commission Visitor ”,
- (b) after that subsection insert—
 - “(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—
 - (a) direct a Commission Visitor to carry out such investigation as the Commission considers appropriate into the patient's case; and
 - (b) having consulted the Visitor after the investigation, make such recommendations as it considers appropriate as respects the case.”.
- (9) In section 12 (investigations: further provision), in subsection (1), for “under section 11(1)” substitute “ in relation to any of the circumstances mentioned in section 11(2) ”.
- (10) In section 13 (visits in relation to patients)—
 - (a) in subsection (1)—
 - (i) for “person authorised by it” substitute “ Commission Visitor ”,
 - (ii) after “Commission”, in the second place it occurs, insert “ Visitor ”,
 - (iii) for “it”, in the third place it occurs, substitute “ the Commission Visitor ”,
 - (b) in subsection (3)—
 - (i) for “person authorised by the Commission” substitute “ Commission Visitor ”,
 - (ii) the words “either of” are repealed,
 - (iii) for “subsection (5)” substitute “ subsection (5A) ”,
 - (c) for subsection (5) substitute—
 - “(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.
 - (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).”,
 - (d) subsection (7) is repealed,
 - (e) in subsection (8)—
 - (a) in paragraph (a), for “section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8)” substitute “ paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010 (asp 8) ”,
 - (b) in paragraph (b), for “section 2(9) of” substitute “ paragraph 6 of schedule 12 to ”.
- (11) In section 14 (interviews)—

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- (a) in subsection (1), for “person authorised to do so by the Commission (an “authorised person”)” substitute “ Commission Visitor ”,
 - (b) in subsection (1)(a)(ii), for “authorised person” substitute “ Commission Visitor ”,
 - (c) in subsection (2)(a)—
 - (i) for “an authorised person” substitute “ a Commission Visitor ”,
 - (ii) in sub-paragraph (ii), for “authorised person” substitute “ Commission Visitor ”,
 - (iii) for “authorised person”, in the third place it occurs, substitute “ Commission Visitor ”,
 - (d) in subsection (2)(b)—
 - (i) for “an authorised person” substitute “ a Commission Visitor ”,
 - (ii) for “authorised person” in the second place it occurs, substitute “ Commission Visitor ”,
 - (e) subsection (3) is repealed.
- (12) In section 15 (medical examination)—
- (a) in subsection (1), for “person authorised by the Commission (an “authorised person”)” substitute “ Commission Visitor ”,
 - (b) after that subsection insert—

“(1A) Only a Commission Visitor who has also been appointed as a Medical Visitor may exercise the functions under subsection (1).”
 - (c) subsections (2) and (3) are repealed.
- (13) In section 16 (inspection etc. of records)—
- (a) in subsection (1)—
 - (i) immediately before “may” insert “ or Commission Visitor ”,
 - (ii) at the end add “ or, as the case may be, the Commission Visitor ”,
 - (b) in subsection (2), paragraph (a) and the word “or” immediately following are repealed,
 - (c) in subsection (3), the words “a member of the Commission or, as the case may be,” are repealed.
- (14) In section 17 (duties of Scottish Ministers, local authorities and others as respects Commission), after “afford the Commission,” insert “ any Commission Visitor, ”.
- (15) Schedule 18 (which makes provision about the governance of the Commission, and Commission Visitors) has effect.

Commencement Information

- I1** [S. 111](#) in force at 1.8.2010 for specified purposes by [S.S.I. 2010/221](#), art. 3(2)(3), [Sch.](#)
- I2** [S. 111](#) in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), art. 3, [Sch.](#)
- I3** [S. 111](#) 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\(2\)](#)