
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 452

**The Mental Health (Care and Treatment) (Scotland) Act
2003 (Transitional and Savings Provisions) Order 2005**

PART 11

GENERAL

Treatments given over a period of time

36.—(1) In relation to an existing patient, the relevant period for the purposes of section 240 of the 2003 Act is any period during which the giving of medical treatment to the patient is authorised by the 1984 Act, the 1995 Act or the 2003 Act.

(2) Where immediately before 5th October 2005, in respect of an existing patient, 2 months or more have passed since that patient was first given any medicine in a relevant period, notwithstanding sub section (4) of section 240 of the 2003 Act, sub section (2) of that section does not apply to the giving of medicine to that patient until 12th October 2005.

(3) Where immediately before 5th October 2005 the conditions have been fulfilled for the giving of medical treatment to an existing patient under section 97 or 98 of the 1984 Act and copies of certificates given under section 97(2) or 98(3) as appropriate have been sent to the Mental Welfare Commission, but such treatment has not been given or has not been completed, such treatment may be given or completed unless at any time before completion of the treatment the patient withdraws consent to the treatment or to a plan of treatment that includes the treatment.

(4) The provisions of section 248 of the 2003 Act shall apply to the medical treatment mentioned in paragraph (3) as if the reference in that section to sections 235, 236, 239 or 241 were a reference to sections 97 or 98 of the 1984 Act and as if the reference in that section to sections 235(2) or (3), 236(2) or (3), 238(1), 239 or 241(1) were a reference to sections 97(2) or 98(3)(b) of the 1984 Act.

Responsible medical officer

37.—(1) Any medical practitioner who immediately prior to 5th October 2005 was, in relation to an existing patient, the responsible medical officer by virtue of section 59 of the 1984 Act, shall be deemed to have been appointed that patient's responsible medical officer under section 230(1) of the 2003 Act.

(2) Any medical practitioner who immediately prior to 5th October 2005 was in relation to an existing community patient, the special medical officer by virtue of section 35A(3) of the 1984 Act shall be deemed to have been appointed that patient's responsible medical officer under section 230(1) of the 2003 Act.

Care plan

38.—(1) As soon as reasonably practicable after 5th October 2005, the responsible medical officer shall prepare—

- (a) a care plan in respect of each 1984 Act patient; and

- (b) a Part 9 care plan, such as is mentioned in section 137(1) of the 2003 Act, in respect of each 1995 Act patient,
and ensure that it is included in the patient's medical records.
- (2) Until a care plan is prepared in accordance with paragraph (1), any plan of treatment in relation to an existing patient shall be deemed to be that patient's care plan.

Mental Health Officer

39.—(1) Relevant local authorities within the meaning of section 229 of the 2003 Act shall as soon as reasonably practicable after 5th October 2005 ensure that a mental health officer is designated as the mental health officer having responsibility for each existing patient's and each existing community patient's case.

(2) Where on 5th October 2005 any existing patient has not yet been interviewed by a mental health officer in accordance with section 22(3) of the 1984 Act, or if a social circumstances report has not yet been provided in respect of that patient, that patient's mental health officer shall interview the patient and prepare a social circumstances report as mentioned in section 231 of the 2003 Act as soon as reasonably practicable.

Provision of information to patient

40. For the purposes of section 260(3) of the 2003 Act, existing patients and existing community patients shall be treated as though they were first detained in hospital or otherwise subject to the 2003 Act on 5th October 2005.

Discharge

41.—(1) Where an order for discharge has been made by the managers of the hospital under section 33(5) of the 1984 Act, section 33(6) of the 1984 Act shall continue to have effect in respect of that order for 7 days from the date when the order for discharge was made.

(2) Section 33(7) of the 1984 Act shall continue to have effect until the sheriff has been notified in compliance with that sub section.

(3) Where 7 days' notice in writing has been given to the managers of a hospital under section 34(1) of the 1984 Act but the 7 days have not expired by 5th October 2005, sections 33 and 34 of the 1984 Act shall continue to have effect in respect of the orders for discharge in question.

Mental Welfare Commission

42.—(1) Commissioners appointed to the Commission under section 2(4) of the 1984 Act shall continue to hold and vacate office under the terms of the instrument under which they are appointed.

(2) Where before 5th October 2005 an enquiry has been caused to be made under section 3(2) (a) of the 1984 Act but has not been completed, such an enquiry shall be completed in accordance with the law in force immediately before that date.

Inquiries

43. Where before 5th October 2005 an inquiry has been caused to be held under section 123 of the 1984 Act but has not been completed, such an inquiry shall be completed in accordance with the law in force immediately before that date.

Protection for acts done in pursuance of the 1984 Act

44. Where as a consequence of this Order the effect of any provision of the 1984 Act continues, the protection afforded by section 122(1) of the 1984 Act shall continue in respect of any act purporting to be done in pursuance of that continuing effect.

General

45. This Order shall have effect notwithstanding the repeal or amendment of any part of the 1984 Act or the 1995 Act.