

MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 - Introductory

Section 1: principles for discharging certain functions

9. **Section 1** sets out a series of factors which must be considered by persons when they are discharging functions under the 2003 Act in relation to a patient who is over 18.
10. “Discharging a function” means carrying out a duty imposed by the 2003 Act or exercising a power conferred by it. (For this purpose, a power may be exercised by taking no action (see subsection (11)). As an example, a doctor, member of medical staff or mental health officer may take a decision concerning emergency or short term detention of a patient, or applying for, renewing, or seeking to vary a compulsory treatment order.
11. Subsection (3) sets out matters which a person discharging a function under the 2003 Act must take account into when doing so. The matters mentioned in subsections (3) (a), (b) and (d) should be read along with subsections (8), (9) and (10) respectively.
12. In addition, subsections (5) and (6) set out further matters that the person is to take account of in certain cases. The matters mentioned in subsection (5) are only to be considered if the function is not the making of a decision about medical treatment. The matters in subsection (6) are only to be considered where the person in relation to whom the function is being discharged is a person who is, or has been, subject to one of the certificates and orders mentioned in the subsection.
13. After having considered the matters mentioned in subsections (3), (5) and (6) and any other relevant matters, the person is required to discharge the function in a manner that appears to the person to be the one that involves the minimum restriction on the freedom of the patient that is necessary in the circumstances(subsection(4)).
14. Subsection (7) exempts certain persons from the ambit of the section.

Section 2: welfare of the child

15. **Section 2** requires that where a person is discharging a function under the 2003 Act which may be discharged in more than one manner in respect of a patient aged under 18, the person shall act in the manner which best secures the welfare of the child. The section sets out how the general principles in section 1 apply in respect of children. The section does not impose duties on the patient or any of the persons mentioned in section 1(7).
16. In deciding how to best secure the welfare of the child, the person discharging the function is to have regard to subsections (3), (5) and (6) of section 1. That person must

*These notes relate to the Mental Health (Care and Treatment) (Scotland)
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also have regard to the importance of acting in the manner which involves the minimum necessary restriction on the freedom of the child.

Section 3: equal opportunities

17. **Section 3** requires the Scottish Ministers, the Commission, Health Boards, hospital managers and local authorities, doctors, nurses and mental health officers to discharge functions under the 2003 Act in a manner which encourages equal opportunities and in particular the equal opportunities requirements. These requirements include the subject matter of the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, and the Disability Discrimination Act 1995. “Equal opportunities” has the same meaning as in the Scotland Act 1998, being “the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions”.