

*These notes relate to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) which received Royal Assent on 25 April 2003*

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 4 – Local Authority and Health Board Functions**

##### *Chapter 1: Health Board duties*

##### *Sections 22 to 24*

#### **Approved medical practitioners**

39. [Section 22](#) places a duty on Health Boards and on the State Hospitals Board for Scotland, (the special Health Board with responsibility for the State Hospital) to each maintain a list of approved medical practitioners having special experience in the diagnosis and treatment of mental disorder. An approved medical practitioner has a number of functions under the 2003 Act. For example, at least one of the mental health reports making a recommendation for a compulsory treatment order must be provided by an approved medical practitioner while a short-term detention certificate may only be granted by an approved medical practitioner.

#### **Provision of services and accommodation: children and young people**

40. Where a patient under 18 is either detained in hospital under Parts 5 or 6 of this Act (that is, on the authority of an emergency detention certificate or a short-term detention certificate respectively) or has been admitted to hospital, whether voluntarily or not, to receive treatment, section 23 places a duty on Health Boards to provide services and accommodation sufficient to meet the young patient's particular needs.

#### **Provision of services and accommodation: mothers with post-natal depression**

41. [Section 24](#) places a duty on Health Boards to provide services and accommodation for mothers with post-natal depression. The duty applies where the mother or adoptive mother of a child under the age of one admitted to hospital for treatment for post-natal depression, cares for the child, and is not likely to endanger the child's health or welfare. The duty consists in providing such services and accommodation as are necessary to ensure that the mother is able, if she wishes, to care for the child in hospital.

##### *Chapter 2: local authority functions*

##### *Sections 25 to 35*

#### **Provision of services**

42. [Section 25\(1\)](#) places a duty on a local authority to provide, or secure the provision of, services that provide care and support for patients in its area who are not in hospital.

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The section also gives local authorities the power to do the same for such patients who are in hospital.

43. Subsection (2) requires the services provided to be designed so as to minimise the effect of the mental disorder and to give the patient the opportunity to lead as normal a life as possible.
44. Subsection (3) describes care and support services which might be provided, including practical and emotional support in a crisis, assistance with daily tasks, and accommodation with appropriate levels of support.
45. Subsection (4) incorporates sections 25 and 26 into section 59(1) of the [Social Work \(Scotland\) Act 1968 \(c.49\)](#), with regard to the duty of local authorities to provide and maintain residential or other establishments.
46. [Section 26\(1\)](#) places a duty on a local authority to provide, or secure the provision of, services that are designed to promote the well-being and social development of those patients in its area who are not in hospital. Like section 25, the section also gives local authorities the power to do the same for patients in hospital.
47. Subsection (2) sets out some of the services that may be provided.
48. Subsection (3) states that the duty conferred by subsection (1) is without prejudice to the existing duty on local authorities to provide social, cultural and recreational activities and vocational and industrial training under section 1 of the [Education \(Scotland\) Act 1980 \(c.44\)](#), and the duty on Scottish Ministers to provide further education under section 1 of the [Further and Higher Education \(Scotland\) Act 1992 \(c.37\)](#).
49. [Section 27](#) places a duty on local authorities to provide, or secure the provision of, transport for patients who are not in hospital to attend or participate in those services provided under sections 25 and 26. Again, local authorities are given a power to do the same for patients in hospital.

### **Charging for services**

50. [Section 28](#) amends section 87 of the Social Work (Scotland) Act 1968 and sections 2 and 22(1) of the Community Care and Health (Scotland) Act 2002, so that:
  - a local authority providing a service under sections 25 to 27 may recover such charge (if any) for it as it considers reasonable;
  - if a patient utilises a service provided under these sections and satisfies the authority that they cannot afford to pay the charge for the service provided, the authority must only charge what that patient can practically afford; and
  - the Scottish Ministers may by regulations exclude certain services from any charging regime under these provisions.

### **Relationship with general duties**

51. [Section 29](#) makes it clear that the duties established under this Part are in addition to the duties set out in sections 12(1), 13A, 13B and 14 of the Social Work (Scotland) Act 1968 (the general duty to promote social welfare, and the duties to provide residential accommodation with nursing, to provide care and after-care, and to provide domiciliary and laundry services) and section 22(1) of the Children (Scotland) Act 1995 (a duty to provide an appropriate range and level of services to safeguard and promote the welfare of children in need).

### **Co-operation and assistance**

52. [Section 30](#) imposes a duty on a local authority providing services, under sections 25 to 27 to co-operate with Health Boards, Special Health Boards, and voluntary

organisations who have an interest in the provision of those services or a power or duty in relation to the provision of services for the patient.

53. [Section 31\(1\)](#) allows local authorities to request that Health Boards and Special Health Boards assist them in the performance of their duties under sections 25 and 26. These bodies are required to co-operate if to do so is compatible with their own responsibilities and would not prejudice the discharge of those responsibilities (subsection (2)). Subsection (3) makes it clear that the section does not interfere with, and is in addition to, the provisions of section 21 of the Children (Scotland) Act 1995.

### **Appointment of mental health officers**

54. A local authority is required by section 32(1) to appoint for its area sufficient mental health officers for the purpose of discharging the functions of such officers under the Act, the 1995 Act and the 2000 Act. Mental health officers carry out a range of functions, including consenting to the granting of a short-term detention certificate under Part 6, and making an application for a compulsory treatment order under Part 7.
55. Subsection (2) sets out the requirements for being appointed as a mental health officer, which will include requirements on registration, qualifications and experience as directed by the Scottish Ministers.
56. Subsection (3) operates so that persons already appointed as mental health officers on the day section 32 comes into force are deemed to be appointed under that section. Effectively, such persons simply continue as mental health officers.
57. A local authority must provide or secure the provision of training of mental health officers in accordance with directions given by the Scottish Ministers, both to enable new mental health officers to be appointed and for those continuing as mental health officers (subsection (4)).
58. Subsection (5) provides for the circumstances in which a local authority is required to terminate the appointment of a mental health officer. The validity of anything done by that mental health officer before termination occurs is unaffected (subsection (6)).
59. Subsection (7) provides that the directions by the Scottish Ministers referred to in paragraphs 54 and 56 above, must be given to local authorities together rather than individually.

### **Duty to inquire into individual cases**

60. [Section 33\(1\)](#) places a duty on local authorities to inquire into situations where an adult patient in its area may be at risk (see subsection (2) for the circumstances). Under section 34, local authorities may, where it is necessary for, or would assist, such inquiries, seek the co-operation of Health Boards, the Commission, the Public Guardian or the Scottish Commission for the Regulation of Care.
61. [Section 35](#) confers powers on a sheriff or justice of the peace, which support the carrying out of inquiries under section 33. A relevant mental health officer may seek a warrant for any of a range of purposes which may be relevant to the inquiry: to enter premises and open lock-fast places; to detain a person for 3 hours for the purpose of a medical examination; or for a medical practitioner to have access to a person's medical records. Such an examination could be a preliminary to emergency detention or short-term detention under Parts 5 and 6 respectively.
62. Where a warrant is granted or refused, the mental health officer who applied for it must notify the Commission (subsection (10)). There is no appeal available against the decision of the sheriff or justice of the peace.
63. The meaning of "relevant mental health officer" for the purposes of this section depends on which warrant is being obtained (see subsection (12)).