



# Mental Health (Care and Treatment) (Scotland) Act 2003

## 2003 asp 13

### PART 17

#### PATIENT REPRESENTATION ETC.

### CHAPTER 2

#### ADVOCACY ETC.

#### *Advocacy*

#### 259 Advocacy

- (1) Every person with a mental disorder shall have a right of access to independent advocacy; and accordingly it is the duty of—
  - (a) each local authority, in collaboration with the (or each) relevant Health Board; and
  - (b) each Health Board, in collaboration with the (or each) relevant local authority, to secure the availability, to persons in its area who have a mental disorder, of independent advocacy services and to take appropriate steps to ensure that those persons have the opportunity of making use of those services.
- (2) Each relevant Health Board and local authority shall, for the purposes of subsection (1) above, collaborate with the local authority or, as the case may be, Health Board in relation to which it is the relevant Board or authority.
- (3) For the purposes of subsections (1) and (2) above—
  - (a) a Health Board is, in relation to a local authority, a “relevant” Health Board if its area or part of its area is the same as or is included in the area of the local authority; and

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- (b) a local authority is, in relation to a Health Board, a “relevant” local authority if its area or part of its area is the same as or is included in the area of the Health Board.
- (4) In subsection (1) above, “advocacy services” are services of support and representation made available for the purpose of enabling the person to whom they are available to have as much control of, or capacity to influence, that person’s care and welfare as is, in the circumstances, appropriate.
- (5) For the purposes of subsection (1) above, advocacy services are “independent” if they are to be provided by a person who is none of the following—
- (a) a local authority;
  - (b) a Health Board;
  - (c) a National Health Service trust;
  - (d) a member of—
    - (i) the local authority;
    - (ii) the Health Board;
    - (iii) a National Health Service trust,
 in the area of which the person to whom those services are made available is to be provided with them;
  - (e) a person who—
    - (i) in pursuance of arrangements made between that person and a Health Board, is giving medical treatment to;
    - (ii) in pursuance of those arrangements, is providing, under the National Health Service (Scotland) Act 1978 (c. 29), treatment, care or services for; or
    - (iii) in pursuance of arrangements made between that person and a local authority, is providing, under Part II of the Social Work (Scotland) Act 1968 (c. 49) (promotion of social welfare) or any of the enactments specified in section 5(1B) of that Act, services for,
 the person to whom the advocacy services are made available;
  - (f) in relation to a patient detained in a state hospital or a person who (by virtue of any of the means specified in subsection (11)(b) below) is no longer detained there, the State Hospitals Board for Scotland or a member of that Board.
- (6) In subsection (5)(d) above the reference to the area of a National Health Service trust is a reference to the Health Board area in which the trust discharges its functions.
- (7) It is the duty of the State Hospitals Board for Scotland (the “State Hospitals Board”) to secure the availability to persons who are patients detained in a state hospital of the services referred to in subsection (1) above and, in relation to those persons, to take the steps there referred to.
- (8) It is the duty of—
- (a) the State Hospitals Board, in collaboration with each relevant local authority and Health Board; and
  - (b) each relevant local authority and Health Board, in collaboration with the State Hospitals Board,
- to secure the availability to relevant persons of the services referred to in subsection (1) above, and, in relation to those persons, to take the steps there referred to.

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- (9) Each relevant local authority and Health Board shall, for the purposes of subsection (8) (a) above, collaborate with the State Hospitals Board and with each other.
- (10) The State Hospitals Board shall, for the purposes of subsection (8)(b) above, collaborate with each relevant local authority and Health Board.
- (11) For the purposes of subsections (8) to (10) above—
- (a) a local authority or Health Board is a relevant local authority or, as the case may be, Health Board if there is residing in its area a relevant person;
  - (b) a relevant person is a person with a mental disorder who, having been detained as a patient in a state hospital, is (by virtue of section 127 or 193(7) of this Act) no longer detained there.

#### Commencement Information

- II** S. 259 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

### [<sup>F1</sup>259A Information gathering

- (1) Each of the bodies mentioned in subsection (2) below must give the Commission such information as the Commission may from time to time seek on how the body—
- (a) has, during a period of at least 2 years specified by the Commission, been exercising the functions conferred on the body by section 259 of this Act, and
  - (b) intends, during a period of at least 2 years specified by the Commission, to exercise the functions conferred on the body by section 259 of this Act.
- (2) The bodies are—
- (a) a local authority,
  - (b) a Health Board,
  - (c) the State Hospitals Board for Scotland.]

#### Textual Amendments

- F1** [S. 259A](#) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015](#) (asp 9), **ss. 27(2)**, 61(2); [S.S.I. 2017/197](#), art. 2, sch.

### Information

#### 260 Provision of information to patient

- (1) This section applies where a patient—
- (a) is detained in hospital by virtue of—
    - (i) this Act; or
    - (ii) the 1995 Act; or
  - (b) though not detained in hospital, is subject to—
    - (i) an emergency detention certificate;
    - (ii) a short-term detention certificate;

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- (iii) a compulsory treatment order;
  - (iv) an interim compulsory treatment order;
  - (v) an assessment order;
  - (vi) a treatment order;
  - (vii) a hospital direction;
  - (viii) a transfer for treatment direction;
  - (ix) an interim compulsion order; or
  - (x) a compulsion order.
- (2) The appropriate person shall—
- (a) take all reasonable steps—
    - (i) to ensure that the patient understands the relevant matters at each of the times mentioned in subsection (3) below;
    - (ii) to ensure that the patient is supplied with material appropriate to the patient’s needs (and in a form that is appropriate to those needs and permanent) from which the patient may refresh the patient’s understanding of those matters; and
    - (iii) to inform the patient of the availability under section 259 of this Act of independent advocacy services at each of those times; and
  - (b) take appropriate steps to ensure that the patient has the opportunity of making use of those services.
- (3) Those times are—
- (a) as soon as practicable after—
    - (i) where the patient is detained in hospital, the beginning of such detention; or
    - (ii) where the patient is not so detained, the making of the order;
  - (b) as soon as practicable after any occasion on which the patient reasonably requests to be informed of those matters; and
  - (c) such other times as may be prescribed by regulations.
- (4) Where material is supplied to the patient under subsection (2)(a)(ii) above, the appropriate person shall, as soon as practicable after such material is supplied, take all reasonable steps to ensure that the patient’s named person is supplied with a copy of such material in a form that is appropriate to the person’s needs.
- (5) In this section—
- “the appropriate person” means—
- (a) where the patient is detained in hospital, the managers of the hospital;
  - (b) where by virtue of a certificate granted under any provision of this Act, the authorisation to detain the patient in a hospital is suspended, the managers of the hospital in which, but for the certificate, the patient would be authorised to be detained;
  - (c) in any other case, the managers of the hospital specified in the order; and
- “the relevant matters” means—
- (a) the provision of this Act or the 1995 Act by virtue of which—
    - (i) the patient is being detained; or
    - (ii) the order has effect;
  - (b) the consequences of the operation of that provision;

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- (c) the powers that the patient’s responsible medical officer and the Tribunal each has in relation to revoking that provision;
- (d) any right to make an application, or appeal, to the Tribunal that the patient has by virtue of that provision;
- (e) the powers exercisable by the Tribunal in the event of any such right being exercised;
- (f) how the patient may exercise any such right;
- (g) the functions that the Commission has that appear to be relevant to the patient’s case;
- (h) how the patient may obtain legal assistance as respects any such right.

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**Modifications etc. (not altering text)**

- C1** S. 260 modified (5.10.2005) by [Mental Health \(Cross-border transfer; patients subject to detention requirement or otherwise in hospital\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/467\)](#), regs. 1(1), **43** (with reg. 2)
- C2** S. 260 modified (3.11.2008) by [Mental Health \(England and Wales Cross-border transfer: patients subject to requirements other than detention\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/356\)](#), regs. 1(1), **30** (with reg. 2)
- C3** S. 260(3) applied (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Transitional and Savings Provisions\) Order 2005 \(S.S.I. 2005/452\)](#), arts. 1, **40**

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**Commencement Information**

- I2** S. 260 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, **Sch. 1**
- I3** S. 260 in force at 5.10.2005 in so far as not already in force by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

## 261 Provision of assistance to patient with communication difficulties

- (1) This section applies where—
- (a) a patient is detained in hospital by virtue of—
    - (i) this Act; or
    - (ii) the 1995 Act; or
  - (b) though not detained in hospital, a patient is subject to—
    - (i) an emergency detention certificate;
    - (ii) a short-term detention certificate;
    - (iii) a compulsory treatment order;
    - (iv) an interim compulsory treatment order;
    - (v) an assessment order;
    - (vi) a treatment order;
    - (vii) a hospital direction;
    - (viii) a transfer for treatment direction;
    - (ix) an interim compulsion order; or
    - (x) a compulsion order,
 and the patient has difficulty in communicating or generally communicates in a language other than English.

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- (2) The appropriate person shall take all reasonable steps to secure that, for the purpose of enabling the patient to communicate during each of the events mentioned in subsection (3) below—
- (a) arrangements appropriate to the patient’s needs are made; or
  - (b) the patient is provided with assistance, or material, appropriate to the patient’s needs.
- (3) Those events are—
- (a) any medical examination of the patient carried out for the purpose of assessing the patient’s mental disorder;
  - (b) any review under this Act or the 1995 Act of the patient’s detention; or
  - (c) any proceedings before the Tribunal relating to the patient.
- (4) As soon as practicable after taking any steps under subsection (2) above, the appropriate person shall make a written record of the steps.
- (5) In this section “the appropriate person” has the meaning given by section 260(5) of this Act.

**Modifications etc. (not altering text)**

- C4** S. 261 modified (5.10.2005) by [Mental Health \(Cross-border transfer; patients subject to detention requirement or otherwise in hospital\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/467\)](#), regs. 1(1), **44** (with reg. 2)
- C5** S. 261 modified (3.11.2008) by [Mental Health \(England and Wales Cross-border transfer: patients subject to requirements other than detention\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/356\)](#), regs. 1(1), **31** (with reg. 2)

**Commencement Information**

- I4** S. 261 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

**[<sup>F2</sup>261A Help with communication at medical examination etc.**

- (1) Subsection (2) below applies where—
- (a) a medical examination or interview referred to in subsection (4)(a) or (b) below is to be carried out, and
  - (b) the subject of it—
    - (i) has difficulty in communicating, or
    - (ii) generally communicates in a language other than English.
- (2) The appropriate person must take all reasonable steps to secure that, for the purpose of enabling the subject of the medical examination or interview to communicate during it—
- (a) arrangements appropriate to the subject's needs are made, or
  - (b) the subject is provided with assistance, or material, appropriate to those needs.
- (3) As soon as practicable after taking any steps under subsection (2) above, the appropriate person must make a written record of the steps.
- (4) This subsection refers to—

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- (a) a medical examination by virtue of section 36(1)(a), 44(1)(a), 57(2) or 136(2) of this Act,
  - (b) an interview by virtue of—
    - (i) section 45(1)(a) or 61(2)(a) of this Act, or
    - (ii) section 57C(2)(a) or 59B(2)(a) of the 1995 Act.
- (5) In subsections (2) and (3) above, “the appropriate person” means—
- (a) in relation to a medical examination by virtue of section 136(2) of this Act, the Scottish Ministers,
  - (b) in relation to a medical examination by virtue of any of the other sections of this Act mentioned in subsection (4)(a) above—
    - (i) if it is to be carried out at a hospital, the managers of the hospital,
    - (ii) if it is to be carried out elsewhere, the medical practitioner carrying it out,
  - (c) in relation to an interview referred to in subsection (4)(b) above—
    - (i) if it is to be carried out at a hospital, the managers of the hospital,
    - (ii) if it is to be carried out elsewhere, the mental health officer carrying it out.]

#### Textual Amendments

- F2** S. 261A inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. **28(2)**, 61(2); S.S.I. 2017/197, art. 2, sch.

### *Access to medical practitioner*

#### **262 Access to medical practitioner for purposes of medical examination**

- (1) This section applies where a patient is detained in hospital by virtue of—
  - (a) this Act; or
  - (b) the 1995 Act.
- (2) A duly authorised medical practitioner may, for any of the purposes mentioned in subsection (3) below, visit the patient at any reasonable hour and carry out a medical examination of the patient in private.
- (3) Those purposes are—
  - (a) advising the patient or, as the case may be, the patient’s named person about the making of applications to the Tribunal in respect of the patient under this Act; and
  - (b) providing to the patient or, as the case may be, the patient’s named person information as respects the condition of the patient for the purpose of—
    - (i) any such application (or proposed application); or
    - (ii) any other proceedings before the Tribunal in respect of the patient in which the patient or, as the case may be, the patient’s named person is taking part (or considering whether to take part).
- (4) For the purposes of subsection (2) above and subject to subsection (5) below, a medical practitioner is duly authorised if authorised for the purposes of this section by—
  - (a) the patient; or

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- (b) the patient’s named person.
- (5) Authorisation given for the purposes of this section by the patient’s named person may be rescinded by the patient at any time when the patient is not incapable.
- (6) In subsection (5) above, “incapable” has the same meaning as in section 250(7) of this Act.

#### Commencement Information

**I5** S. 262 in force at 5.10.2005 by S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

### 263 Inspection of records by medical practitioner

- (1) A duly authorised medical practitioner may, for any of the purposes mentioned in subsection (3) below, require any person holding records relating to—
  - (a) the detention of; or
  - (b) medical treatment given at any time to,
 a patient whose detention in hospital is authorised by virtue of this Act or the 1995 Act to produce them for inspection by the medical practitioner.
- (2) A duly authorised medical practitioner may, for any of the purposes mentioned in subsection (3) below, require any person holding records relating to medical treatment given at any time to a patient who is subject to—
  - (a) a compulsory treatment order; or
  - (b) a compulsion order,
 that does not authorise the detention of the patient in hospital to produce them for inspection by the medical practitioner.
- (3) Those purposes are—
  - (a) advising the patient or, as the case may be, the patient’s named person about the making of applications to the Tribunal in respect of the patient under this Act;
  - (b) providing to the patient or, as the case may be, the patient’s named person information as respects the condition of the patient for the purpose of—
    - (i) any such application (or proposed application); or
    - (ii) any other proceedings before the Tribunal in respect of the patient in which the patient or, as the case may be, the patient’s named person is taking part (or considering whether to take part).
- (4) For the purposes of subsections (1) and (2) above and subject to subsection (5) below, a medical practitioner is duly authorised if authorised for the purposes of this section by—
  - (a) the patient; or
  - (b) the patient’s named person.
- (5) Authorisation given for the purposes of this section by the patient’s named person may be rescinded by the patient at any time when the patient is not incapable.
- (6) In subsection (5) above, “incapable” has the same meaning as in section 250(7) of this Act.



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#### **Commencement Information**

**I6** [S. 263](#) in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375](#), [art. 2](#) and as amended (22.9.2005) by [S.S.I. 2005/459](#), [art. 2](#))

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 64(8A)(8B) inserted by [2015 asp 9 s. 1\(2\)](#)
- s. 65(7) inserted by [2015 asp 9 s. 1\(3\)](#)