



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

## 2003 asp 13

### PART 23

#### GENERAL

#### 325 Power to prescribe forms

Regulations may prescribe—

- (a) the form of any document that is required or authorised to be prepared by virtue of this Act; and
- (b) circumstances in which a form prescribed under paragraph (a) above for a document shall, or may, be used for the document.

#### 326 Orders, regulations and rules

- (1) Any power conferred by this Act on the Scottish Ministers to make orders, regulations or rules shall be exercisable by statutory instrument.
- (2) Any power conferred by this Act on the Scottish Ministers to make orders, regulations or rules—
  - (a) may be exercised so as to make different provision for different cases or descriptions of case or for different purposes; and
  - (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers consider appropriate.
- (3) A statutory instrument containing an order, regulations or rules made under this Act (other than an order under section 333(2) or (3) of this Act) shall, subject to subsection (4) below, be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) A statutory instrument containing—
  - (a) an order under [F<sup>1</sup>section 240(5) or ] paragraph [F<sup>2</sup>2A(2) or 7A(4)] of schedule 1 to this Act;

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- (b) an order under section 330(1) of this Act containing provisions adding to, replacing or omitting any part of the text of an Act; or
- (c) regulations under section 21(3), 66(2), 234(2)(b), 237(3)(b), 240(3)(d), <sup>F3</sup> ... 244, 268(11) to (14), 281(9), 284, 286, [<sup>F4</sup>289,] 290, 309, [<sup>F5</sup>309A,] [<sup>F6</sup>or 310] of this Act,

shall not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

#### Textual Amendments

- F1** Words in s. 326(4)(a) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(23)(a)**
- F2** Words in s. 326(4)(a) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), **sch. 18 para. 1**; S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F3** Words in s. 326(4)(c) omitted (27.9.2005) by virtue of [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(23)(b)**
- F4** Words in s. 326(4)(c) inserted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 71(4), 79(3)**; S.S.I. 2007/334, art. 2(a), sch. 1
- F5** Words in s. 326(4)(c) inserted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 72(2), 79(3)**; S.S.I. 2007/334, art. 2(a), sch. 1
- F6** Words in s. 326(4)(c) substituted (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#), s. 62(2), **sch. 5 para. 6**; S.S.I. 2010/357, art. 2(a)

### 327 Directions

- (1) Any power conferred by virtue of this Act to give a direction shall include power to vary or revoke the direction.
- (2) Any direction given by virtue of this Act shall be in writing.

#### Commencement Information

- I1** S. 327 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, **Sch. 1**
- I2** [S. 327](#) 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)

### 328 Meaning of “mental disorder”

- (1) Subject to subsection (2) below, in this Act “mental disorder” means any—
  - (a) mental illness;
  - (b) personality disorder; or
  - (c) learning disability,
 however caused or manifested; and cognate expressions shall be construed accordingly.
- (2) A person is not mentally disordered by reason only of any of the following—
  - (a) sexual orientation;
  - (b) sexual deviancy;

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- (c) transsexualism;
- (d) transvestism;
- (e) dependence on, or use of, alcohol or drugs;
- (f) behaviour that causes, or is likely to cause, harassment, alarm or distress to any other person;
- (g) acting as no prudent person would act.

#### Commencement Information

**I3** S. 328 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)

### 329 Interpretation

- (1) In this Act, unless the context otherwise requires—
- “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995 (c. 46);
  - “advance statement” has the meaning given by section 275 of this Act;
  - “approved medical practitioner” has the meaning given by section 22(4) of this Act;
  - “assessment order” means an order made under section 52D(2) of the 1995 Act;
  - [<sup>F7</sup>“care home service” has the meaning given by [<sup>F8</sup>paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010] asp 8;]
  - “care plan”, in relation to a patient, means a plan prepared under subsection (1) (a) of section 76 of this Act; and includes a reference to a care plan amended by virtue of subsection (3) or (4)(a) of that section;
  - “carer”, in relation to a person, means an individual who, otherwise than—
    - (a) by virtue of a contract of employment or other contract with any person;
    - or
    - (b) as a volunteer for a voluntary organisation,provides, on a regular basis, a substantial amount of care for, and support to, the person; and includes, in the case where the person is in hospital, an individual who, before the person was admitted to hospital, provided, on a regular basis, a substantial amount of care for, and support to, the person;
  - “the Commission” means the Mental Welfare Commission for Scotland;
  - “community care services” has the meaning given by section 5A(4) of the Social Work (Scotland) Act 1968 (c. 49);
  - “compulsion order” means an order made under section 57A(2) of the 1995 Act;
  - “compulsory treatment order” means an order made under section 64(4)(a) of this Act;
  - “designated medical practitioner” has the meaning given by section 233(2) of this Act;
  - “emergency detention certificate” means a certificate granted under section 36(1) of this Act;
  - “extension certificate” means a certificate granted under section 47(1) of this Act;

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“guardian” means a person appointed as a guardian under the Adults with Incapacity (Scotland) Act 2000 (asp 4) who has power by virtue of section 64(1) (a) or (b) of that Act in relation to the personal welfare of a person;

“Health Board” means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c. 29);

“hospital” means—

- (a) any health service hospital (as defined in section 108(1) of the National Health Service (Scotland) Act 1978 (c. 29));
- (b) any independent health care service; or
- (c) any state hospital;

“hospital direction” means a direction made under section 59A of the 1995 Act;

[<sup>F9</sup>“independent health care service” means any of the following—

- (a) an independent hospital;
- (b) a private psychiatric hospital;
- (c) an independent clinic; or
- (d) an independent medical agency,

as each of those terms is defined in section 10F(2) of the [National Health Service \(Scotland\) Act 1978 \(c.29\)](#); ]

“interim compulsory treatment order” means an order made under section 65(2) of this Act;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);

“managers”, in relation to a hospital, means—

- (a) in the case of a hospital vested in the Scottish Ministers for the purposes of their functions under the National Health Service (Scotland) Act 1978 (c. 29), the Health Board or Special Health Board responsible for the administration of the hospital;
- (b) in the case of a hospital vested in a National Health Service trust, the directors of the trust;
- (c) in the case of an independent health care service which is registered under [<sup>F10</sup>section 10Q(1) of the National Health Service (Scotland) Act 1978 (c.29), the person identified under section 10P(2)(b) of that Act in the application for registration] ; and
- (d) in the case of a state hospital—
  - (i) where the Scottish Ministers have delegated the management of the hospital to a Health Board, Special Health Board, National Health Service trust or the Common Services Agency for the Scottish Health Service, that Board, trust or Agency;
  - (ii) where the management of the hospital has not been so delegated, the Scottish Ministers;

“medical practitioner” means registered medical practitioner;

“medical records” has the meaning given by section 77(1) of the Regulation of Care (Scotland) Act 2001 (asp 8);

“medical treatment” means treatment for mental disorder; and for this purpose

“treatment” includes—

- (a) nursing;
- (b) care;
- (c) psychological intervention;

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- (d) habilitation (including education, and training in work, social and independent living skills); and
  - (e) rehabilitation (read in accordance with paragraph (d) above);
- “mental health officer” means a person appointed (or deemed to be appointed) under section 32(1) of this Act, and “the mental health officer”, in relation to a patient, means a mental health officer having responsibility for the patient’s case;
- “mental health report” has the meaning given by section 57(4) of this Act;
- “named person” means the person who is, in relation to another person, that other person’s named person by virtue of any of sections 250 to 254 and 257 of this Act;
- “National Health Service trust” means a body established by order under section 12A(1) of the National Health Service (Scotland) Act 1978 (c. 29);
- “notice” means notice in writing;
- “patient” means a person who has, or appears to have, a mental disorder;
- “primary”, in relation to a carer, means the individual who provides all, or most, of the care for, and support for, the person;
- “prison” includes any prison other than a naval, military or air force prison;
- “recorded matter” has the meaning given by section 64(4)(a)(ii) of this Act;
- “regulations” means regulations made by the Scottish Ministers;
- “relevant services” has the meaning given by section 19(2) of the Children (Scotland) Act 1995 (c. 36);
- “restriction order” means an order made under section 59 of the 1995 Act;
- “short-term detention certificate” means a certificate granted under section 44(1) of this Act;
- “Special Health Board” means a board constituted by order under section 2(1) (b) of the National Health Service (Scotland) Act 1978 (c. 29);
- “state hospital” means a hospital provided under section 102(1) of the National Health Service (Scotland) Act 1978 (c. 29);
- “transfer for treatment direction” has the meaning given by section 136 of this Act;
- “treatment order” means an order made under section 52M of the 1995 Act;
- “the Tribunal” means the Mental Health Tribunal for Scotland;
- “voluntary organisation” means a body, other than a public or local authority, the activities of which are not carried on for profit;
- “welfare attorney” means an individual authorised, by a welfare power of attorney granted under section 16 of the Adults with Incapacity (Scotland) Act 2000 (asp 4) and registered under section 19 of that Act, to act as such; and
- “young offenders institution” has the same meaning as in the Prisons (Scotland) Act 1989 (c. 45).
- (2) In this Act, unless the context otherwise requires, a reference to the Tribunal is, where the power conferred by paragraph 7(1) of schedule 2 is exercised, to be construed as a reference to the tribunal concerned.
- (3) References in this Act to the giving of medical treatment to a person include references to medical treatment being performed on a person.
- [<sup>F11</sup>(4) References in this Act to a patient’s responsible medical officer are references to the approved medical practitioner who is for the time being–
- (a) appointed under section 230(1) or (3)(a) of this Act; or

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(b) authorised under section 230(3)(b) of this Act,  
in respect of the patient.]

#### Textual Amendments

- F7** Words in s. 329(1) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(24)(a)**
- F8** Words in s. 329(1) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, **sch. 1 para. 13(6)**
- F9** Words in s. 329(1) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, **sch. 2 para. 8(5)(a)**
- F10** Words in s. 329(1) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, **sch. 2 para. 8(5)(b)**
- F11** S. 329(4) substituted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(24)(b)**

#### Commencement Information

- I4** S. 329 in force at 26.3.2004 by [S.S.I. 2004/153](#), art. 2, **Sch. 1**

### 330 Supplementary provisions etc.

- (1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under subsection (1) above may modify any enactment (including this Act).

### 331 Minor and consequential amendments, repeals and revocations

- (1) Schedule 4 to this Act, which contains minor amendments and amendments consequential on the provisions of this Act, shall have effect.
- (2) The enactments mentioned in Part 1 of schedule 5 to this Act (which include provisions that are spent) are hereby repealed to the extent specified in the second column of that schedule.
- (3) The enactments mentioned in Part 2 of schedule 5 to this Act (which include provisions that are spent) are hereby revoked to the extent specified in the second column of that schedule.
- [<sup>F12</sup>(4) Notwithstanding the repeal in respect of sections 1, 125, 128 and 129 of the Mental Health (Scotland) Act 1984 (c. 36) in schedule 5 to this Act, those sections shall continue to have effect for the purposes of sections 10 and 95 of that Act.]

#### Textual Amendments

- F12** S. 331(4) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(25)**

#### Commencement Information

- I5** S. 331 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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### **332 Transitional provisions etc.**

- (1) Schedule 6 to this Act (which contains certain transitory amendments of the Mental Health (Scotland) Act 1984) shall have effect.
- (2) The Scottish Ministers may by order make such other provision as they consider necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.

### **333 Short title and commencement**

- (1) This Act may be cited as the Mental Health (Care and Treatment) (Scotland) Act 2003.
- (2) Chapter 3 of Part 17 of this Act shall come into force on 1st May 2006 or such earlier day as the Scottish Ministers may by order appoint.
- (3) The remaining provisions of this Act, other than this section and sections 325, 326, 330 and 332, shall come into force on such day as the Scottish Ministers may by order appoint.
- (4) Different days may be appointed under subsection (2) or (3) above for different purposes.

**Status:**

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**Changes to legislation:**

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