

**Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, SCHEDULE 1 is up to date with all changes known to be in force on or before 16 December 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULE 1 **S**

(introduced by section 4)

### THE MENTAL WELFARE COMMISSION FOR SCOTLAND

#### PART 1 **S**

##### MEMBERSHIP, PROCEEDINGS ETC.

###### *Status*

- 1 The Commission shall not be regarded as the servant or agent of the Crown, or as having any status, immunity or privilege of the Crown, nor shall its members or employees be regarded as civil servants, nor its property as property of, or held on behalf of, the Crown.

###### Commencement Information

- II** Sch. 1 para. 1 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)

###### *General powers*

- 2 The Commission may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions; and without prejudice to that generality the Commission may in particular—
- (a) acquire and dispose of land and other property; and
  - (b) enter into contracts.

###### Commencement Information

- I2** Sch. 1 para. 2 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>Membership*

###### Textual Amendments

- F1** Sch. 1 para. 2A-2E and crossheadings inserted (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. 4**; [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.

- 2A (1) The Commission is to consist of the following members—
- (a) a person appointed by the Scottish Ministers to chair the Commission; and
  - (b) no fewer than [<sup>F2</sup>6 nor more than 8] other members appointed by the Scottish Ministers.

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- (2) The Scottish Ministers may by order amend sub-paragraph (1)(b) by substituting for the minimum or maximum number of members for the time being specified there such other number as they think fit.]

#### Textual Amendments

**F2** Words in sch. 1 para. 2A(1)(b) substituted (28.6.2021) by Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (asp 15), s. 109(2), sch. 2 para. 4(3)(a); S.S.I. 2021/234, reg. 2, sch.

- 2B (1) In appointing members, the Scottish Ministers are to have regard to the desirability of including—
- (a) persons who have experience of, and have shown capacity and capability in, the provision of services to those who have a mental disorder;
  - (b) persons who use, or have used, such services;
  - (c) persons who are, or have been, carers of those who have a mental disorder;
  - (d) persons who have such other skills, knowledge or experience as the Scottish Ministers consider to be relevant in relation to the exercise of the Commission's functions.
- (2) In appointing members under paragraph 2A(1)(b), the Scottish Ministers must appoint at least—
- (a) one person who falls within paragraph (b) of sub-paragraph (1) of this paragraph; <sup>F3</sup> and]
  - (b) one person who falls within paragraph (c) of sub-paragraph (1) of this paragraph <sup>F4</sup> ...
- <sup>F4</sup> .....

#### Textual Amendments

**F3** Word in sch. 1 para. 2B(2) inserted (28.6.2021) by Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (asp 15), s. 109(2), sch. 2 para. 4(3)(b)(i); S.S.I. 2021/234, reg. 2, sch.

**F4** Sch. 1 para. 2B(2)(c) and word repealed (28.6.2021) by Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (asp 15), s. 109(2), sch. 2 para. 4(3)(b)(ii); S.S.I. 2021/234, reg. 2, sch.

#### <sup>F1</sup> Terms of appointment etc.

- 2C (1) Each member of the Commission is to be appointed for such period as the Scottish Ministers think fit.
- (2) A member—
- (a) holds and vacates office in accordance with the terms and conditions of appointment; but
  - (b) may, by written notice to the Scottish Ministers, resign office as a member.
- (3) A person is, on ceasing to be a member, eligible for reappointment.]

#### <sup>F1</sup> Removal of members

- 2D The Scottish Ministers may, by written notice, remove a member from office if they are satisfied that—

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- (a) the member—
  - (i) has been adjudged bankrupt;
  - (ii) has granted a trust deed for creditors or a composition contract;
  - (iii) has proposed a voluntary arrangement which has been approved;
- (b) the member's estate has been sequestrated;
- (c) the member has been absent from 3 consecutive meetings of the Commission without the permission of the Commission;
- (d) the member is otherwise unfit or unable to discharge the functions of a member.]

*[<sup>F1</sup>Disqualification from membership*

- 2E A person is disqualified from appointment, and from holding office, as a member of the Commission if that person is—
- (a) a member of the Scottish Parliament;
  - (b) a member of the House of Commons;
  - (c) a member of the European Parliament.]

*Membership*

<sup>F53</sup> .....

**Textual Amendments**

**F5** Sch. 1 para. 3 repealed (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. 3**; 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.

*Terms of office etc.*

<sup>F64</sup> .....

**Textual Amendments**

**F6** Sch. 1 para. 4 repealed (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. 3**; 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.

*Eligibility for reappointment*

<sup>F75</sup> .....

**Textual Amendments**

**F7** Sch. 1 para. 5 repealed (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. 3**; 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.; S.S.I. 2011/122, art. 2, sch.

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*Remuneration, pensions, allowances etc.*

- 6 The Commission shall pay—
- (a) to its members (and to the members of its committees and sub-committees who are not members of the Commission) such remuneration and allowances—
    - (i) on such terms; and
    - (ii) subject to such conditions,
 as the Scottish Ministers may determine;
  - (b) to, or in respect of, persons who have been a member of it (or such members of committees and sub-committees as are mentioned in paragraph (a) above) such pensions, allowances and gratuities—
    - (i) on such terms; and
    - (ii) subject to such conditions,
 as the Scottish Ministers may determine; or
  - (c) to any person who ceases, other than on the expiry of a term of office, to be a member of it, such compensation as the Scottish Ministers may determine.

**Commencement Information**

**I3** Sch. 1 para. 6 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)

*Appointment etc. of chief [<sup>F8</sup> executive] and other staff*

**Textual Amendments**

**F8** Word in sch. 1 para. 7 heading 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. 6; [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.

- 7 (1) Subject to sub-paragraphs (2) and (3) below [<sup>F9</sup>and paragraph 10A], the Commission—
- (a) shall appoint a chief [<sup>F10</sup>executive ]; and
  - (b) may appoint such other staff as it considers appropriate,
- on such terms and conditions as it may, with the approval of the Scottish Ministers, determine.
- (2) A member of the Commission may not be appointed as a member of its staff.
- (3) The Commission shall obtain the approval of the Scottish Ministers before appointing a chief [<sup>F11</sup>executive].
- (4) The Commission may pay to the members of its staff, including its chief [<sup>F12</sup>executive], (referred to in this paragraph collectively as “employees”) such remuneration and allowances as the Scottish Ministers may determine.
- (5) The Commission may—
- (a) pay, or make arrangements for the payment of;

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- (b) make payments towards the provision of; and
  - (c) provide and maintain schemes (whether contributory or not) for the payment of,  
such pensions, allowances and gratuities to or in respect of such of its employees, or former employees, as the Scottish Ministers may determine.
- (6) The reference in sub-paragraph (5) above to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment or reduction in remuneration.
- (7) A determination under sub-paragraph (4) or (5) above may make different provision for different cases or descriptions of case.

#### Textual Amendments

- F9** Words in sch. 1 para. 7(1) inserted (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. 5\(a\)](#); 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.
- F10** Word in sch. 1 para. 7(1)(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. 5\(b\)](#); 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.
- F11** Word in sch. 1 para. 7(3) 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. 5\(c\)](#); 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.
- F12** Word in sch. 1 para. 7(4) 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. 5\(d\)](#); 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.

#### Commencement Information

- I4** Sch. 1 para. 7 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>F13</sup>Commission Visitors*

#### Textual Amendments

- F13** Sch. 1 paras. 7A-7I and crossheadings inserted (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. 7](#); 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.

- 7A (1) The Commission must appoint such staff, employed under paragraph 7(1)(a) or (b), to exercise the functions of Commission Visitors; and when doing so those staff are to be known as Commission Visitors.

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- (2) The Commission may arrange for such other persons as it thinks fit to be appointed as and exercise the functions of Commission Visitors; and when doing so those persons are to be known as Commission Visitors.
- (3) There may be no more than 10 Commission Visitors appointed by the Commission under sub-paragraph (2).
- (4) The Scottish Ministers may by order amend sub-paragraph (3) by substituting for the maximum number of Commission Visitors for the time being specified there such other number as they think fit.
- (5) In appointing Commission Visitors, the Commission is to have regard to the desirability of appointing—
  - (a) persons who have experience of, and have shown capacity and capability in, the provision of services to those who have a mental disorder;
  - (b) persons who use, or have used, such services;
  - (c) persons who are, or have been, carers of those who have a mental disorder;
  - (d) persons who have such other skills, knowledge or experience as the Commission considers to be relevant in relation to the exercise of the functions of Commission Visitors.
- (6) In appointing Commission Visitors, the Commission must appoint at least—
  - (a) one person who falls within paragraph (b) of sub-paragraph (5); and
  - (b) one person who falls within paragraph (c) of sub-paragraph (5).
- (7) In this Act (unless the context otherwise requires), any reference to a function of a Commission Visitor (or the functions of Commission Visitors) is a reference to a function conferred by this Act or any other enactment.]

*[<sup>F13</sup>Commission Visitors: further provision*

- 7B
- (1) The arrangements entered into by virtue of paragraph 7A(2) may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons.
  - (2) Persons appointed as Commission Visitors by virtue of paragraph 7A(2) are not members of staff of the Commission.]

*[<sup>F13</sup>Medical Visitors*

- 7C
- (1) In appointing Commission Visitors, the Commission must appoint one or more persons who have such qualifications, training and experience as may be prescribed by regulations for the purposes of carrying out the functions of Commission Visitors under section 15 of this Act.
  - (2) Persons so appointed may also be known as Medical Visitors.]

*[<sup>F13</sup>Committees*

- 7D
- (1) The Commission may establish committees for any purpose relating to its functions.
  - (2) Subject to sub-paragraph (7), the Commission is to determine the composition of its committees.

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- (3) The Commission may appoint persons who are not members of the Commission to be members of a committee.
- (4) A committee of the Commission is to comply with any directions given to it by the Commission.
- (5) The Commission must establish at least one committee (an “advisory committee”) for the purpose of giving advice to it about matters connected to its functions.
- (6) In considering how to exercise its functions, the Commission must have regard to relevant advice and information given to it by any advisory committee (whether or not given at its request).
- (7) An advisory committee must include persons of a description as may be prescribed by regulations.]

#### *[<sup>F13</sup>Procedure and meetings*

- 7E
- (1) The Commission may determine its own procedure and that of its committees, including a quorum for meetings.
  - (2) The validity of any proceedings of the Commission, or any of its committees, is not affected by a vacancy in membership nor by any defect in the appointment of a member.
  - (3) Members of the Scottish Executive and persons authorised by the Scottish Ministers may attend and take part in meetings of the Commission or any of its committees, but are not entitled to vote at such meetings.]

#### *[<sup>F13</sup>Exercise of certain functions etc.*

- 7F
- (1) A member of the Commission may not—
    - (a) exercise the functions of a Commission Visitor;
    - (b) be appointed as a Commission Visitor.
  - (2) The chief executive may not be a member of the Commission.
  - (3) A member of staff of the Commission (other than a Commission Visitor) may not exercise the functions of a Commission Visitor.
  - (4) An appointment as a Commission Visitor under paragraph 7A(1) does not affect the appointed person's—
    - (a) status as employed under paragraph 7(1)(a) or (b); or
    - (b) ability to perform the duties of the person as so employed.]

#### *[<sup>F13</sup>Delegation of functions*

- 7G
- (1) The Commission may, subject to sub-paragraphs (2), (3) and (4), authorise—
    - (a) the chief executive;
    - (b) any other employee;
    - (c) any of its committees,to exercise such of its functions, and to such extent, as it may determine.

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- (2) The Commission may not authorise any of the following functions to be exercised by any other person—
- (a) the functions of the Commission under section 12 (investigations: further provision);
  - (b) the approval of any acquisition or disposal of land or other property with a value greater than £50,000 or such other amount as the Commission may, with the consent of the Scottish Ministers, determine;
  - (c) the approval of annual reports and accounts;
  - (d) the approval of any budget or other financial plan.
- (3) Any function conferred on a Commission Visitor may not be delegated by the Commission.
- (4) Sub-paragraph (1) does not affect the responsibility of the Commission for the exercise of its functions.
- (5) The chief executive may, with the consent of the Commission, authorise—
- (a) any other employee;
  - (b) any of the Commission's committees,
- to exercise such of the chief executive's functions, and to such extent, as the chief executive, with such consent, may determine.
- (6) Sub-paragraph (5) does not affect the responsibility of the chief executive for the exercise of the chief executive's functions.]

*[<sup>F13</sup>Mandatory delegation of functions to chief executive*

- 7H (1) The Commission must delegate to the chief executive the functions mentioned in sub-paragraph (2).
- (2) The functions are—
- (a) the Commission's functions relating to the discharge of patients under this Act;
  - (b) the Commission's functions under section 73 of the Adults with Incapacity (Scotland) Act 2000 (asp 4).
- (3) When exercising those functions so delegated, the chief executive must—
- (a) consult the Commission;
  - (b) consult a Commission Visitor in every case in which it appears to the chief executive appropriate to do so;
  - (c) have regard to any relevant guidance issued by the Commission.
- (4) Sub-paragraph (1) does not affect the responsibility of the Commission for the exercise of its functions.]

*[<sup>F13</sup>Location of office*

- 7I The Commission's determination of the location of its office premises is subject to the approval of the Scottish Ministers.]



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### Regulations as to proceedings and delegation of functions

F148

#### Textual Amendments

- F14** Sch. 1 para. 8 repealed (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. 8**; [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.

### Accounts

- 9 The following provisions of the National Health Service (Scotland) Act 1978 (c. 29) shall continue to apply to the Commission as they apply to a Special Health Board—
- (a) section 85 (which makes provision for payment of funds by the Scottish Ministers towards expenditure attributable to performance of functions by the Board);
  - (b) section 85A(1) and (3) (which imposes corresponding financial duties on the Board); and
  - (c) section 86 (which provides for the keeping, transmission to Scottish Ministers and auditing, of accounts).

#### Commencement Information

- I5** Sch. 1 para. 9 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)

## PART 2 **S**

### TRANSITIONAL PROVISION

- 10 (1) The Mental Health (Scotland) Act 1984 (c. 36) shall be amended as follows.
- (2) In section 2 (membership etc. of the Mental Welfare Commission)—
- (a) in subsection (2), after “commissioners”, where it first occurs, insert “appointed under subsection (4) of this section”;
  - (b) in subsection (4), at the beginning, insert “Subject to subsection (5A) of this section,”;
  - (c) after subsection (5), insert—
    - “(5A) The person who holds the post of chief officer of the Mental Welfare Commission shall—
    - (a) be a member *ex officio* of the Commission; and
    - (b) cease automatically to hold office as such member on ceasing to hold that post.”; and
  - (d) in subsection (7), for “the said commissioners”, in both places where it occurs, substitute “commissioners appointed under subsection (4) of this section”.
- (3) In section 6 (appointment and payment etc. of officers and staff)—

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(a) at the beginning, insert—

“(1) The Mental Welfare Commission shall appoint a chief officer on such terms and conditions as the Scottish Ministers may determine.

(2) Before appointing a chief officer under subsection (1) above, the Commission shall obtain the approval of the Scottish Ministers.

(3) ”; and

(b) in subsection (3) (being the existing wording of the section)—

(i) in paragraph (a), after “appoint”, insert “ other ”; and

(ii) in paragraph (b)(ii), after “of”, insert “ its chief officer or in respect of ”.

#### Commencement Information

**I6** Sch. 1 para. 10 in force at 1.7.2003 by [S.S.I. 2003/316](#), [art. 2](#)

*[<sup>F15</sup>Transitional provision: first chief executive*

#### Textual Amendments

**F15** Sch. 1 para. 10A 10B and crossheadings inserted (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. 9](#); [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.](#)

10A (1) The person who, immediately before the coming into force of this paragraph, holds (by virtue of paragraph 7) the post of chief officer of the Commission becomes the first chief executive of the Commission.

(2) But if—

(a) there is no person holding that post immediately before the coming into force of this paragraph; or

(b) the person holding the post immediately before the coming into force of this paragraph is unwilling or unable to be the chief executive,

the Scottish Ministers are to make the first appointment of the chief executive of the Commission on such terms and conditions as the Scottish Ministers may determine.

(3) Each subsequent chief executive is appointed in accordance with paragraph 7.

(4) Where sub-paragraph (1) applies, the person becoming the first chief executive of the Commission does so on the terms and conditions which applied to the post of chief officer held by that person.]

*[<sup>F15</sup>Transitional provision: Commissioners*

10B Any person who, immediately before the coming into force of this paragraph, is a member of the Commission (including any ex officio members) by virtue of paragraph 3 ceases automatically to hold office as such a member.]

**Changes to legislation:**

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[View outstanding changes](#)

**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\(3\)](#)