



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

## 2003 asp 13

### PART 1

#### INTRODUCTORY

#### **2 Welfare of the child**

- (1) This section applies whenever a person who does not fall within section 1(7) of this Act is discharging a function, by virtue of this Act, to which subsection (2) or (3) below applies in relation to a patient who is under the age of 18 years.
- (2) This subsection applies to any duty which may be discharged in more than one manner.
- (3) This subsection applies to any power.
- (4) The person shall discharge the function in the manner that appears to the person to be the manner that best secures the welfare of the patient.
- (5) In determining the manner of discharging the function that best secures the welfare of the patient, the person shall have regard to—
  - (a) the matters mentioned in section 1(3) of this Act;
  - (b) the matters mentioned in section 1(5) and (6) of this Act (where those subsections apply); and
  - (c) the importance of the function being discharged in the manner that appears to the person to be the manner that involves the minimum restriction on the freedom of the patient that is necessary in the circumstances.
- (6) Subsections (8) to (10) of section 1 of this Act shall apply for the purpose of subsection (5)(a) above as they apply in relation to subsection (3) of that section.
- (7) In this section, a reference to “discharging”, in relation to a power, includes a reference to exercising the power by taking no action; and “discharge” shall be construed accordingly.