

Status: Point in time view as at 02/08/2015.

Changes to legislation: There are currently no known outstanding effects for the Public Services Reform (Scotland) Act 2010, SCHEDULE 18. (See end of Document for details)

SCHEDULE 18

(introduced by section 111)

THE MENTAL WELFARE COMMISSION FOR SCOTLAND: MODIFICATIONS OF THE MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

- 1 In section 326(4)(a) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), for “3(3)” substitute “ 2A(2) or 7A(4) ”.

Commencement Information

- I1** Sch. 18 para. 1 in force at 1.8.2010 for specified purposes by [S.S.I. 2010/221](#), [art. 3\(2\)\(3\)](#), [Sch.](#)
I2 Sch. 18 para. 1 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)
I3 Sch. 18 para. 1 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

- 2 Schedule 1 to that Act is amended as follows.

Commencement Information

- I4** Sch. 18 para. 2 in force at 1.8.2010 for specified purposes by [S.S.I. 2010/221](#), [art. 3\(2\)\(3\)](#), [Sch.](#)
I5 Sch. 18 para. 2 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)
I6 Sch. 18 para. 2 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

- 3 Paragraphs 3, 4 and 5 are repealed.

Commencement Information

- I7** Sch. 18 para. 3 in force at 1.8.2010 for specified purposes by [S.S.I. 2010/221](#), [art. 3\(2\)\(3\)](#), [Sch.](#)
I8 Sch. 18 para. 3 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)
I9 Sch. 18 para. 3 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

- 4 After paragraph 2 insert—

“Membership

- 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 6 nor more than 8 other members appointed by the Scottish Ministers.
- (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.
- 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;

Status: Point in time view as at 02/08/2015.

Changes to legislation: There are currently no known outstanding effects for the Public Services Reform (Scotland) Act 2010, SCHEDULE 18. (See end of Document for details)

- (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; and
 - (b) one person who falls within paragraph (c) of sub-paragraph (1) of this paragraph.

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.

Removal of members

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

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.”.

Commencement Information

I10 Sch. 18 para. 4 in force at 1.8.2010 for specified purposes by [S.S.I. 2010/221](#), art. 3(2)(3), [Sch.](#)

Status: Point in time view as at 02/08/2015.

Changes to legislation: There are currently no known outstanding effects for the Public Services Reform (Scotland) Act 2010, SCHEDULE 18. (See end of Document for details)

- I11** Sch. 18 para. 4 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)
I12 Sch. 18 para. 4 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

- 5 In paragraph 7—
- (a) in sub-paragraph (1), after “below” insert “ and paragraph 10A ”,
 - (b) in sub-paragraph (1)(a), for “officer” substitute “ executive ”,
 - (c) in sub-paragraph (3), for “officer” substitute “ executive ”,
 - (d) in sub-paragraph (4), for “officer” substitute “ executive ”.

Commencement Information

- I13** Sch. 18 para. 5 in force at 1.8.2010 for specified purposes by [S.S.I. 2010/221](#), [art. 3\(2\)\(3\)](#), [Sch.](#)
I14 Sch. 18 para. 5 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)
I15 Sch. 18 para. 5 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

- 6 In the title to paragraph 7, for “officer” substitute “ executive ”.

Commencement Information

- I16** Sch. 18 para. 6 in force at 1.8.2010 for specified purposes by [S.S.I. 2010/221](#), [art. 3\(2\)\(3\)](#), [Sch.](#)
I17 Sch. 18 para. 6 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)
I18 Sch. 18 para. 6 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

- 7 After paragraph 7 insert—

“Commission Visitors

- 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.
- (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;

Status: Point in time view as at 02/08/2015.

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- (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.

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.

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.

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.
- (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.

Status: Point in time view as at 02/08/2015.

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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.

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.

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.
- (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.

Status: Point in time view as at 02/08/2015.

Changes to legislation: There are currently no known outstanding effects for the Public Services Reform (Scotland) Act 2010, SCHEDULE 18. (See end of Document for details)

- (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.

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.

Location of office

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

Commencement Information

- I19** Sch. 18 para. 7 in force at 1.8.2010 for specified purposes by [S.S.I. 2010/221, art. 3\(2\)\(3\)](#), **Sch.**
- I20** Sch. 18 para. 7 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3](#), **Sch.**
- I21** Sch. 18 para. 7 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2](#), **Sch.**

- 8 Paragraph 8 is repealed.

Commencement Information

- I22** Sch. 18 para. 8 in force at 1.8.2010 for specified purposes by [S.S.I. 2010/221, art. 3\(2\)\(3\)](#), **Sch.**
- I23** Sch. 18 para. 8 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3](#), **Sch.**
- I24** Sch. 18 para. 8 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2](#), **Sch.**

- 9 After paragraph 10 insert—

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“Transitional provision: first chief executive

- 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.

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.”.

Commencement Information

- I25** Sch. 18 para. 9 in force at 1.8.2010 for specified purposes by [S.S.I. 2010/221](#), art. 3(2)(3), [Sch.](#)
- I26** Sch. 18 para. 9 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), art. 3, [Sch.](#)
- I27** Sch. 18 para. 9 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), art. 2, [Sch.](#)

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