



# Mental Health (Scotland) Act 2015

## 2015 asp 9

### PART 1

#### THE 2003 ACT

##### *Advance statements and patients' rights*

#### **26 Advance statements to be registered**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 276 there is inserted—

##### **“276A Advance statements to be put with medical records**

- (1) Subsection (2) below applies where a Health Board receives a copy of an advance statement, or a copy of a document withdrawing an advance statement, from—
  - (a) the person who made the statement, or
  - (b) any individual acting with the person's authority in relation to the statement.
- (2) The Health Board must—
  - (a) place a copy of the statement or document with the person's medical records, and
  - (b) inform the Commission—
    - (i) that a copy of the statement or document is held with the person's medical records, and
    - (ii) of the premises at which the medical records are kept (and the personal and administrative details essential for identifying the records as the person's).

**276B Advance statements to be registered by the Commission**

- (1) Where the Commission receives information by virtue of section 276A(2) of this Act, the Commission must enter the information in a register of advance statements maintained by it (and mark the date on which the entry is made).
- (2) The Commission must allow an entry in the register to be inspected at a reasonable time—
  - (a) by the person whose medical records are referred to in the entry,
  - (b) with respect to treatment of the person for mental disorder, by any individual acting on the person's behalf,
  - (c) for the purpose of making decisions or taking steps with respect to the treatment of the person for a mental disorder, by—
    - (i) a mental health officer dealing with the person's case,
    - (ii) the person's responsible medical officer,
    - (iii) the Health Board responsible for the person's treatment.

**276C Publicising support for making advance statements**

- (1) A Health Board is to publicise any support that it offers for—
  - (a) making or withdrawing an advance statement,
  - (b) sending a copy of an advance statement, or a copy of a document withdrawing an advance statement, to a Health Board.
- (2) A Health Board must give the Commission such information as the Commission may from time to time seek on what the Health Board is doing in order to comply with subsection (1) above.”.

**27 Information about advocacy services**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 259 there is inserted—

**“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.”.

## **28      Communication at medical examination etc.**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 261 there is inserted—

### **“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—
  - (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.”.

## **29      Conflicts of interest to be avoided**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 291 there is inserted—

*“Conflicts of interest to be avoided***291A Conflicts of interest to be avoided**

- (1) There must not be a conflict of interest in relation to a medical examination to be carried out for the purpose of section 36(1), 44(1), 47(1), 57(2), 77(2), 78(2), 139(2), 140(2) or 182(2) of this Act.
- (2) Regulations may—
  - (a) specify circumstances in which, in the application of subsection (1) above—
    - (i) there is to be taken to be a conflict of interest,
    - (ii) there is not to be taken to be a conflict of interest,
  - (b) specify circumstances in which subsection (1) above does not apply.”.
- (3) These provisions are repealed—
  - (a) in section 36 (emergency detention in hospital)—
    - (i) paragraph (a) of subsection (3),
    - (ii) subsection (9),
  - (b) in section 44 (short-term detention in hospital)—
    - (i) paragraph (a) of subsection (3),
    - (ii) subsection (8),
  - (c) in section 47 (extension of detention pending application for compulsory treatment order)—
    - (i) paragraph (a) of subsection (2) together with the word “and” immediately following it,
    - (ii) subsection (5),
  - (d) in section 58 (medical examination: requirements), subsection (5).

**30 Safeguarding the patient’s interest**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 245 (certificates under sections 235, 236, 239 and 241), in subsection (3)—
  - (a) the word “and” immediately preceding sub-paragraph (ii) of paragraph (a) is repealed,
  - (b) after sub-paragraph (ii) of paragraph (a) there is inserted—
    - “(iii) any guardian of the patient; and
    - (iv) any welfare attorney of the patient;”.