



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

## 2003 asp 13

### PART 4

#### HEALTH BOARD AND LOCAL AUTHORITY FUNCTIONS

#### CHAPTER 2

#### LOCAL AUTHORITY FUNCTIONS

#### *Provision of services*

#### **25 Care and support services etc.**

- (1) A local authority—
  - (a) shall—
    - (i) provide, for persons who are not in hospital and who have or have had a mental disorder, services which provide care and support; or
    - (ii) secure the provision of such services for such persons; and
  - (b) may—
    - (i) provide such services for persons who are in hospital and who have or have had a mental disorder; or
    - (ii) secure the provision of such services for such persons.
- (2) Services provided by virtue of subsection (1) above shall be designed to—
  - (a) minimise the effect of the mental disorder on such persons; and
  - (b) give such persons the opportunity to lead lives which are as normal as possible.
- (3) In subsection (1) above, “care and support”—
  - (a) includes, without prejudice to the generality of that expression—
    - (i) residential accommodation; and

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- (ii) personal care and personal support (each of those expressions having the meaning given by section 2(28) of the Regulation of Care (Scotland) Act 2001 (asp 8)); but
  - (b) does not include nursing care.
- (4) In section 59(1) of the Social Work (Scotland) Act 1968 (c. 49) (duty of local authorities as respects provision and maintenance of residential or other establishments), for the words “or under” there shall be substituted “sections 25 and 26 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) or”.

## **26 Services designed to promote well-being and social development**

- (1) A local authority—
- (a) shall—
    - (i) provide, for persons who are not in hospital and who have or have had a mental disorder, services which are designed to promote the well-being and social development of those persons; or
    - (ii) secure the provision of such services for such persons; and
  - (b) may—
    - (i) provide such services for persons who are in hospital and who have or have had a mental disorder; or
    - (ii) secure the provision of such services for such persons.
- (2) Services provided by virtue of subsection (1) above shall include, without prejudice to the generality of that subsection, services which provide—
- (a) social, cultural and recreational activities;
  - (b) training for such of those persons as are over school age; and
  - (c) assistance for such of those persons as are over school age in obtaining and in undertaking employment.
- (3) Subsection (1) above is without prejudice to the operation of—
- (a) section 1 of the Education (Scotland) Act 1980 (c. 44) (duties and powers of education authorities in relation to the provision of social, cultural and recreative activities and vocational and industrial training); and
  - (b) section 1 of the Further and Higher Education (Scotland) Act 1992 (c. 37) (duty of Scottish Ministers in relation to the provision of further education).
- (4) In subsection (2)(b) and (c) above, “school age” has the same meaning as in section 31 of the Education (Scotland) Act 1980 (c. 44).

## **27 Assistance with travel**

A local authority—

- (a) shall—
  - (i) provide, for persons who are not in hospital and who have or have had a mental disorder, such facilities for, or assistance in, travelling as the authority may consider necessary to enable those persons to attend or participate in any of the services mentioned in sections 25 and 26 of this Act; or
  - (ii) secure the provision of such facilities or assistance for such persons; and

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- (b) may—
  - (i) provide such facilities or assistance for persons who are in hospital and who have or have had a mental disorder; or
  - (ii) secure the provision of such facilities or assistance for such persons.

### *Charging for services*

## **28 Services under sections 25 to 27: charging**

- (1) In section 87 of the Social Work (Scotland) Act 1968 (c. 49) (charges that may be made for certain services)—
  - (a) in subsection (1), for the words from “section 7” to “Act 1984” there shall be substituted “section 25 (care and support services for persons who have or have had a mental disorder), 26 (services designed to promote well-being and social development of such persons) or 27 (assistance with travel in connection with such services) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)”;
  - (b) in paragraph (a) of subsection (1A), for the words “section 7 or 8 of the said Act of 1984” there shall be substituted “section 25, 26 or 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)”; and
  - (c) in each of subsections (2), (3) and (4), for the words “section 7 of the said Act of 1984” there shall be substituted the words “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)”.
- (2) In—
  - (a) section 2 of the Community Care and Health (Scotland) Act 2002 (asp 5) (meaning of “accommodation” for purpose of certain enactments), for the words from “section 7” to “in relation to” there shall be substituted “section 25 of the 2003 Act (provision of care and support services etc. for”; and
  - (b) section 22(1) of that Act (interpretation)—
    - (i) the definition of “the 1984 Act” shall be repealed;
    - (ii) after the definition of “the 1995 Act”, there shall be inserted—
      - ““the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);”; and
    - (iii) for paragraph (b) of the definition of “social care” there shall be substituted—
      - “(b) under section 25 (care and support services for persons who have or have had a mental disorder), 26 (services designed to promote well-being and social development of such persons) or 27 (assistance with travel in connection with such services) of the 2003 Act”; and
    - (iv) in that definition, for the word “either” there shall be substituted “any”.

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### *Relationship with general duties*

#### **29 Relationship between duties under sections 25 to 27 and duties under Social Work (Scotland) Act 1968 and Children (Scotland) Act 1995**

- (1) The duties of a local authority under sections 25 to 27 of this Act are without prejudice to the duties imposed on them by the enactments mentioned in subsection (2) below as those duties apply in relation to persons who have or have had a mental disorder.
- (2) Those enactments are—
  - (a) sections 12(1) (provision of advice, guidance and assistance on an appropriate scale), 13A (provision of residential accommodation with nursing), 13B (provision of care and after-care) and 14 (provision of domiciliary and laundry services) of the Social Work (Scotland) Act 1968 (c. 49); and
  - (b) section 22(1) of the Children (Scotland) Act 1995 (c. 36) (duty to provide services for children in need).

### *Co-operation and assistance*

#### **30 Co-operation with Health Boards and others**

- (1) In providing services for a person under any of sections 25 to 27 of this Act, a local authority shall co-operate with any—
  - (a) Health Boards;
  - (b) Special Health Boards;
  - (c) National Health Service trusts; or
  - (d) voluntary organisations,
 that appear to the authority to have an interest, power or duty mentioned in subsection (2) below.
- (2) Such an interest, power or duty is—
  - (a) an interest in the provision of services by the local authority under any of sections 25 to 27 of this Act; or
  - (b) a power or duty to provide or secure the provision of services, or an interest in the provision of services,
 for the person.

#### **31 Assistance from Health Boards and others**

- (1) Where it appears to a local authority that the assistance of a Health Board, a Special Health Board or a National Health Service trust—
  - (a) is necessary to enable the authority to perform any of their duties under section 25 or 26 of this Act; or
  - (b) would help the authority to perform any of those duties,
 the authority may request the Health Board, Special Health Board or National Health Service trust to co-operate by providing the assistance specified in the request.
- (2) A Health Board, a Special Health Board or a National Health Service trust receiving a request under subsection (1) above shall, if complying with the request—

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- (a) would be compatible with the discharge of its own functions (whether under any enactment or otherwise); and
  - (b) would not prejudice unduly the discharge by it of any of those functions, comply with the request.
- (3) This section is without prejudice to section 21 of the Children (Scotland) Act 1995 (c. 36) (which enables a local authority to require assistance from a Health Board, a National Health Service trust or others in the exercise of the authority's functions under Part II of that Act).

### *Appointment of mental health officers*

## **32 Appointment of mental health officers**

- (1) A local authority shall appoint a sufficient number of persons for the purpose of discharging, in relation to their area, the functions of mental health officers under—
- (a) this Act;
  - (b) the 1995 Act; and
  - (c) the Adults with Incapacity (Scotland) Act 2000 (asp 4).
- (2) A local authority shall appoint under subsection (1) above only persons—
- (a) who are officers of a local authority; and
  - (b) who satisfy such requirements as the Scottish Ministers may direct as to—
    - (i) registration;
    - (ii) education and training;
    - (iii) experience;
    - (iv) competence as respects persons who have or have had a mental disorder; and
    - (v) any other matters that may be specified in the direction.
- (3) A person duly appointed by a local authority before the day on which this section comes into force to discharge the functions of a mental health officer shall, for the purposes of this Act, be deemed to have been appointed under subsection (1) above; and references in subsections (4) and (5) below to a person appointed under subsection (1) above shall include references to a person deemed by virtue of this subsection to have been so appointed.
- (4) A local authority shall, in accordance with directions given by the Scottish Ministers, provide or secure the provision of training for persons appointed by them under subsection (1) above as respects requirements in directions under subsections (2) above and (5) below.
- (5) A local authority shall terminate the appointment of a person appointed under subsection (1) above if the person—
- (a) ceases to be an officer of a local authority; or
  - (b) does not satisfy—
    - (i) any requirement in a direction under subsection (2) above; or
    - (ii) such other requirements as to any of the matters mentioned in paragraph (b) of that subsection as the Scottish Ministers may, from time to time, by direction specify.

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- (6) The validity of any acts or omissions of a person appointed as a mental health officer in the discharge of the functions of such an officer prior to a termination of appointment by virtue of subsection (5) above is not affected by such termination.
- (7) Directions given by the Scottish Ministers under this section shall be given to local authorities collectively.

*Duty to inquire into individual cases*

**33 Duty to inquire**

- (1) Where it appears to a local authority that—
  - (a) a person in their area who is aged 16 years or over has a mental disorder; and
  - (b) any of the circumstances mentioned in subsection (2) below apply,
 the authority shall cause inquiries to be made into the person’s case.
- (2) Those circumstances are—
  - (a) that the person may be, or may have been, subject, or exposed, at some place other than a hospital to—
    - (i) ill-treatment;
    - (ii) neglect; or
    - (iii) some other deficiency in care or treatment;
  - (b) that, because of the mental disorder, the person’s property—
    - (i) may be suffering, or may have suffered, loss or damage; or
    - (ii) may be, or may have been, at risk of suffering loss or damage;
  - (c) that the person may be—
    - (i) living alone or without care; and
    - (ii) unable to look after himself or his property or financial affairs;
  - (d) that the person is not in hospital and, because of the mental disorder, the safety of some other person may be at risk.

**34 Inquiries under section 33: co-operation**

- (1) This section applies where a local authority are required by section 33(1) of this Act to cause inquiries to be made into a person’s case.
- (2) Where it appears to the local authority that the assistance of any of the persons mentioned in subsection (3) below—
  - (a) is necessary for the purposes of the inquiries; or
  - (b) would assist the inquiries,
 the authority may request that person to provide the assistance specified in the request.
- (3) Those persons are—
  - (a) the Commission;
  - (b) the Public Guardian;
  - (c) the Scottish Commission for the Regulation of Care;
  - (d) a Health Board; and
  - (e) a National Health Service trust.

- (4) Where—
- (a) a person receives a request under subsection (2) above; and
  - (b) complying with the request—
    - (i) would be compatible with the discharge of the person’s functions (whether under any enactment or otherwise); and
    - (ii) would not prejudice unduly the discharge by the person of any of those functions,
- the person shall comply with the request.

### **35      Inquiries under section 33: warrants**

- (1) If a sheriff, or a justice of the peace, is satisfied by a relevant mental health officer’s evidence on oath—
- (a) that, for the purposes of inquiries under section 33 of this Act, it is necessary to enter premises; and
  - (b) that the mental health officer—
    - (i) is unable to obtain entry to those premises; or
    - (ii) reasonably apprehends that the mental health officer will be unable to obtain entry to those premises,
- the sheriff or justice of the peace may grant a warrant under this subsection.
- (2) A warrant under subsection (1) above is a warrant—
- (a) authorising—
    - (i) the mental health officer specified in the warrant;
    - (ii) any other persons so specified; and
    - (iii) any constable of the police force maintained for the area in which the premises are situated,
- before the expiry of the period of 8 days beginning with the day on which the warrant is granted, to enter, for the purposes of the inquiries, any premises so specified; and
- (b) authorising any such constable, before the expiry of that period, for the purpose of exercising the power mentioned in paragraph (a) above, to open lockfast places on premises so specified.
- (3) An application for a warrant under subsection (1) above shall—
- (a) if made to the sheriff, be made to the sheriff of the sheriffdom; or
  - (b) if made to a justice of the peace, be made to a justice for the commission area, in which the premises to which the application relates are situated.
- (4) If a sheriff, or a justice of the peace, is satisfied by a relevant mental health officer’s evidence on oath—
- (a) that, for the purposes of inquiries under section 33 of this Act, it is necessary that a medical practitioner carry out a medical examination of the person who is the subject of the inquiries; and
  - (b) that the mental health officer is unable to obtain the consent of that person to that matter,
- the sheriff, or justice of the peace, may grant a warrant under this subsection.

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- (5) A warrant under subsection (4) above is a warrant authorising the detention of the person who is the subject of the inquiries for a period of 3 hours for the purposes of enabling a medical examination of the person to be carried out by the medical practitioner specified in the warrant.
- (6) An application for a warrant under subsection (4) above shall—
- (a) if made to the sheriff, be made to the sheriff of the sheriffdom; or
  - (b) if made to a justice of the peace, be made to a justice for the commission area, in which the person who is the subject of the inquiries for the time being is.
- (7) If a sheriff, or a justice of the peace, is satisfied by a relevant mental health officer's evidence on oath—
- (a) that, for the purposes of inquiries under section 33 of this Act, it is necessary that a medical practitioner have access to the person's medical records; and
  - (b) that the mental health officer is unable to obtain the consent of that person to that matter,
- the sheriff, or justice of the peace, may grant a warrant under this subsection.
- (8) A warrant under subsection (7) above is a warrant requiring any person holding medical records of the person subject to the inquiries to produce them for inspection by the medical practitioner specified in the warrant on being required to do so by the practitioner.
- (9) An application for a warrant under subsection (7) above shall—
- (a) if made to the sheriff, be made to the sheriff of the sheriffdom; or
  - (b) if made to a justice, be made to a justice for the commission area, in which the person who is the subject of the inquiries for the time being is.
- (10) A mental health officer shall as soon as practicable after the sheriff, or justice of the peace, decides to grant or refuse an application for a warrant under subsection (1), (4) or (7) above, give notice to the Commission as to whether a warrant was granted or refused.
- (11) No appeal shall be competent against a decision of a sheriff, or a justice of the peace, under this section granting, or refusing to grant, a warrant.
- (12) References to a relevant mental health officer—
- (a) in subsection (1) above are to a mental health officer appointed by the local authority for the area in which the premises to which the application relates are situated;
  - (b) in subsections (4) and (7) above are to a mental health officer appointed by the local authority which is causing inquiries to be made.