

EXECUTIVE NOTE

The Mental Health (Care and Treatment) (Scotland) Act 2003 (Code of Practice) Order 2005 SSI/2005/417

The above instrument was made in exercise of the powers conferred by section 274(3) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”). The instrument is subject to negative resolution procedure.

Policy Objectives

Section 274 of the 2003 Act requires the Scottish Ministers to publish a Code of Practice to give guidance to people discharging functions by virtue of the 2003 Act or, as a result of the amendment made by the Mental Health (Care and Treatment) (Scotland) Act 2003 Modification Order 2004 (SSI 2004/533) (“the 2004 Order”), Part VI of the Criminal Procedure (Scotland) Act 1995. Any person who has a function to discharge must have regard to the Code. However, the Code does not bind the Mental Health Tribunal, the courts, the Mental Welfare Commission, nor as a result of an amendment made by the 2004 Order, a prosecutor. However, those persons would be entitled to consider whether other parties exercising those functions had properly applied the Code. The Code may be revised periodically and, if so revised, shall be published.

Consultation

A public consultation was undertaken along with consultation with internal and external stakeholders.

Financial Effects

The instrument has no financial effects on the Scottish Executive or any other organisation.

Scottish Executive Health Department
Mental Health Division
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