

# **PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 7 – Mental Welfare Commission for Scotland**

##### ***Section 111 – Mental Welfare Commission for Scotland***

268. **Section 111** amends the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”), in respect of those provisions relating to the Mental Welfare Commission for Scotland.
269. Subsection (2) amends section 4 of the 2003 Act (the Mental Welfare Commission for Scotland) to require the Commission to act in a manner which seeks to protect the welfare of persons who have a mental disorder when it is discharging functions under the 2003 Act, the Adults with Incapacity (Scotland) Act 2000 (“the 2000 Act”) or any other enactment.
270. Subsection (3) inserts a new section 4A after section 4 of the 2003 Act, making provision in relation to Commission Visitors, who are persons appointed under paragraph 7A(1) or (2) of schedule 1 to the 2003 Act (subsection (6) of section 4A) to exercise the functions conferred on them by the 2003 Act or any other enactment on behalf of the Commission (subsection (1) of section 4A). Commission Visitors may, in addition to the functions conferred on them in Part 2 of the 2003 Act, exercise the Commission’s duty to raise concerns with certain bodies under section 8A of the 2003 Act and its duty under section 9(1)(d) of the 2000 Act to investigate complaints about the exercise of welfare powers by guardians, attorneys and others, if the local authority has not exercised its duty to investigate satisfactorily (subsection (2) of section 4A). Commission Visitors must comply with any directions of a general or specific nature in relation to the exercise by them of Commission functions, which the Commission has power to give, as well as act in accordance with any guidance issued by the Commission in relation to those functions (subsections (3) and (4) of section 4A). Commission Visitors are required under section 4A(5) to produce evidence of their authority if required when exercising any function conferred on them.
271. Subsection (4) amends section 5 of the 2003 Act (duty to monitor operation of Act and promote best practice). Paragraph (a) of section 5 is amended such that the duty on the Commission will now be to monitor the practical application of the observance of Part 1 of the 2003 Act (which includes the principles of the Act). Paragraph (b) of section 5 is amended such that the duty on the Commission is to promote best practice in relation to the practical application of the observance of Part 1 of the 2003 Act.
272. Subsection (5) inserts a new section 8A (duty to raise service concerns with certain bodies) after section 8 of the 2003 Act. The Commission is placed under a duty, as it considers appropriate, to raise any concerns about the provision (including the organisation or co-ordination) of any social service or health care service as respects

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any person with a mental disorder. Any such concerns are to be raised with SCSWIS, HIS or other relevant persons, or groups of persons.

273. Subsection (6) inserts a new section 9A (duty to give advice: further provision) after section 9 of the 2003 Act, which provides that the Commission must provide advice, so far as is reasonable, when asked to do so, to any person about any matters relevant to its functions.
274. Subsection (7) inserts a new subsection (3) to section 10 of the 2003 Act (publishing information, guidance etc), to enable the Commission to publish any advice which it has provided under section 9A(1), provided that the person to whom the advice is provided agrees to such publication.
275. Subsection (8) amends section 11 of the 2003 Act (investigations), by substituting references to “the Commission” for references to Commission Visitors, and thereby conferring the Commission’s investigation functions under section 11 directly on Commission Visitors. A new subsection (1A) is inserted into section 11, which retains a power to the Commission, where it is brought to its attention that any of the circumstances in subsection (2) may apply in respect of a patient, to instigate an investigation by directing a Commission Visitor to carry out such investigation as the Commission considers appropriate into the patient’s case; the Commission may then, having consulted the Visitor after the investigation, make such recommendations as it considers appropriate in relation to the case.
276. Subsection (9) amends section 12 of the 2003 Act (investigations: further provision), as a technical amendment in light of the changes made to section 11, to make clear the circumstances (those mentioned in section 11(2)) in which the Commission may, if it considers it appropriate to do so, cause an inquiry to be held for the purpose of carrying out an investigation into any case.
277. Subsection (10) amends subsections (1) and (3) of section 13 of the 2003 Act (visits in relation to patients), by substituting various references to “the Commission” and “persons authorised by it” for references to Commission Visitors, and thereby conferring the Commission’s visiting functions under section 13 directly on Commission Visitors. Section 13(5) is substituted with two new subsections, (5A) and (5B); subsection (5A) provides that Commission Visitors may visit the premises mentioned in subsection (2) for the purposes of providing an opportunity for any persons who may be present in the premises to meet a Commission Visitor and discuss with that Visitor any concerns that they have, and for the Visitor to assess whether the relevant statutory requirements of such patients are being met; subsection (5B) enables a Commission Visitor, whilst carrying out such a visit, to conduct an assessment of the suitability of the premises in relation to patients as individuals or as a group; consequential amendments are made to subsection (3) to reflect the new subsections (5A) and (5B). Section 13(7), which requires authorised persons to produce an authenticated document in seeking to conduct an interview, is repealed, as new section 4A(5) now makes general provision in that regard. Finally, subsection (8) of section 13 is updated to reflect that the Regulation of Care (Scotland) Act 2001 is being replaced by provision in this Act.
278. Subsection (11) amends subsections (1), (1)(a)(ii), (2)(a) and (2)(b) of section 14 of the 2003 Act (interviews), by substituting various references to “authorised persons”, i.e. persons authorised by the Commission to conduct interviews, for references to Commission Visitors, and thereby now conferring the Commission’s interview functions under section 14 on Commission Visitors. Section 14(3), which requires authorised persons to produce an authenticated document in seeking to conduct an interview, is repealed, as new section 4A(5) now makes general provision in that regard.
279. Subsection (12) amends section 15(1) of the 2003 Act (medical examination), by substituting the references to a “person authorised by the Commission” for a reference to “Commission Visitor”, and thereby now conferring the Commission’s

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medical examination function under section 15 on Commission Visitors. The new subsection (1A) then however makes clear that only a Commission Visitor who has also been appointed as a Medical Visitor under paragraph 7C of schedule 1 to the 2003 Act may exercise that medical examination function. Section 15(2), which currently makes provision as to who is an “authorised person” is repealed as a consequence of these changes. Section 15(3), which requires authorised persons to produce an authenticated document in seeking to carry out a medical examination, is repealed, as new section 4A(5) now makes general provision in that regard.

280. Subsection (13) amends section 16(1) of the 2003 Act (inspection etc. of records), by now including a “Commission Visitor”, in addition to those authorised by the Commission, who can require any person holding medical or other records of a patient to produce them for inspection by the authorised person or the Commission Visitor, as the case may be. Subsection (2) of section 16, which sets out who is an “authorised person” for the purposes of the section, and subsection (3) are also amended, to remove the references to a member of the Commission or “the Commission”, such that staff members only (and not Board members) will now be able to carry out this function in future.
281. Subsection (14) amends section 17(1) of the 2003 Act (duties of Scottish Ministers, local authorities and others as respects Commission), such that the relevant persons mentioned in its subsection (2) must afford Commission Visitors, as well as the Commission and those authorised by it, all facilities necessary to enable them to discharge their functions under the 2003 Act.
282. Subsection (15) gives effect to schedule 18 which makes provision about the governance of the Commission, and about Commission Visitors, modifying the 2003 Act.