



# Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016

2016 asp 14

VALID FROM 01/10/2017

## PART 2

### DUTY OF CANDOUR

#### *Duty of candour procedure*

#### **21 Incident which activates duty of candour procedure**

- (1) A responsible person must follow the duty of candour procedure set out in section 22 as soon as reasonably practicable after becoming aware that subsection (2) applies to a person who has received—
  - (a) a health service from the responsible person,
  - (b) a care service from the responsible person, or
  - (c) a social work service from the responsible person.
- (2) This subsection applies to a person if—
  - (a) an unintended or unexpected incident occurred in the provision of a health service, a care service or a social work service to the person, and
  - (b) in the reasonable opinion of a registered health professional—
    - (i) that incident appears to have resulted in or could result in an outcome mentioned in subsection (4), and
    - (ii) that outcome relates directly to the incident rather than to the natural course of the person's illness or underlying condition.
- (3) For the purposes of subsection (2)(b), a responsible person must ensure that the registered health professional who gives the opinion following an unintended or unexpected incident is not an individual who was involved in the incident.
- (4) The outcomes are—

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- (a) the death of the person,
  - (b) a permanent lessening of bodily, sensory, motor, physiologic or intellectual functions (including removal of the wrong limb or organ or brain damage) (“severe harm”),
  - (c) harm which is not severe harm but which results in—
    - (i) an increase in the person's treatment,
    - (ii) changes to the structure of the person's body,
    - (iii) the shortening of the life expectancy of the person,
    - (iv) an impairment of the sensory, motor or intellectual functions of the person which has lasted, or is likely to last, for a continuous period of at least 28 days,
    - (v) the person experiencing pain or psychological harm which has been, or is likely to be, experienced by the person for a continuous period of at least 28 days,
  - (d) the person requiring treatment by a registered health professional in order to prevent—
    - (i) the death of the person, or
    - (ii) any injury to the person which, if left untreated, would lead to one or more of the outcomes mentioned in paragraph (b) or (c).
- (5) The Scottish Ministers may by regulations modify subsection (4).

## 22 Duty of candour procedure

- (1) The “duty of candour procedure” means the actions to be taken by the responsible person in accordance with regulations made by the Scottish Ministers.
- (2) Regulations under subsection (1) may in particular make provision about—
- (a) the notification to be given by the responsible person,
  - (b) the apology to be provided by the responsible person to the relevant person,
  - (c) the actions to be taken by the responsible person to offer and arrange a meeting with the relevant person, including asking the relevant person whether the relevant person wishes to receive an account of the incident as mentioned in section 21(2) or information about further steps taken,
  - (d) the actions which must be taken at, and following, such a meeting,
  - (e) an account of the incident as mentioned in section 21(2), information about further steps taken and any other information to be provided by the responsible person,
  - (f) the form and manner in which information must be provided,
  - (g) the circumstances in which the responsible person is to make available, or provide information about, support to persons affected by the incident,
  - (h) the keeping of information by the responsible person,
  - (i) steps to be taken by the responsible person—
    - (i) to review the circumstances leading to the incident, and
    - (ii) following such a review,
 even if the relevant person has advised that the relevant person does not wish to receive an account of the incident as mentioned in section 21(2) or information about further steps taken,
  - (j) training to be undertaken by a responsible person,

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(k) training, supervision and support to be provided by a responsible person to any person carrying out any part of the procedure on behalf of the responsible person.

(3) In this section “relevant person” means—

- (a) the person who has received the health service, the care service or the social work service, or
  - (b) where that person—
    - (i) has died, or
    - (ii) is, in the opinion of the responsible person, lacking in capacity or otherwise unable to make decisions about the service provided,
- a person acting on behalf of that person.

## 23 Apologies

- (1) For the purposes of this Part, an “apology” means a statement of sorrow or regret in respect of the unintended or unexpected incident.
- (2) An apology or other step taken in accordance with the duty of candour procedure under section 22 does not of itself amount to an admission of negligence or a breach of a statutory duty.

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## 24 Reporting and monitoring

- (1) A responsible person who provides a health service, a care service or a social work service during a financial year must prepare an annual report on the duty of candour as soon as reasonably practicable after the end of that financial year.
- (2) The report must set out in relation to the financial year—
  - (a) information about the number and nature of incidents to which the duty under section 21(1) has applied in relation to a health service, a care service or a social work service provided by the responsible person,
  - (b) an assessment of the extent to which the responsible person carried out the duty under section 21(1),
  - (c) information about the responsible person's policies and procedures in relation to the duty under section 21(1), including information about—
    - (i) procedures for identifying and reporting incidents, and
    - (ii) support available to staff and to persons affected by incidents,
  - (d) information about any changes to the responsible person's policies and procedures as a result of incidents to which the duty under section 21(1) has applied, and
  - (e) such other information as the responsible person thinks fit.
- (3) A report must not—
  - (a) mention the name of any individual, or
  - (b) contain any information which, in the responsible person's opinion, is likely to identify any individual.

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- (4) The responsible person must publish a report prepared under subsection (1) in such manner as the responsible person thinks appropriate.
- (5) On publishing a report, the responsible person must notify—
  - (a) Healthcare Improvement Scotland, in the case of a report published by a responsible person which provides an independent health care service (within the meaning of section 10F(1) of the 1978 Act),
  - (b) the Scottish Ministers, in the case of a report published by any other responsible person which provides a health service,
  - (c) Social Care and Social Work Improvement Scotland, in the case of a report published by a responsible person which provides a care service or a social work service.
- (6) A person mentioned in subsection (7) may, for the purpose of monitoring compliance with the provisions of this Part, serve a notice on a responsible person requiring—
  - (a) the responsible person to provide the person serving the notice with information about any matter mentioned in subsection (2) as specified in the notice, and
  - (b) that information to be provided within the time specified in the notice.
- (7) The persons are—
  - (a) Healthcare Improvement Scotland, in relation to a responsible person which provides an independent health care service (within the meaning of section 10F(1) of the 1978 Act),
  - (b) the Scottish Ministers, in relation to any other responsible person which provides a health service,
  - (c) Social Care and Social Work Improvement Scotland, in relation to a responsible person which provides a care service or a social work service.
- (8) The Scottish Ministers, Healthcare Improvement Scotland and Social Care and Social Work Improvement Scotland may publish a report on compliance with the provisions of this Part by responsible persons.

### *Interpretation*

## **25 Interpretation of Part 2**

- (1) In this Part—
 

“the 1978 Act” means the National Health Service (Scotland) Act 1978,

“care service” has the meaning given by section 47(1) of the Public Services Reform (Scotland) Act 2010, except that it does not include a service mentioned in paragraph (k) of that section (child minding),

“health service” means—

  - (a) services under the health service continued under section 1 of the 1978 Act, and
  - (b) an independent health care service mentioned in section 10F(1) of the 1978 Act,

“provide” in relation to a health service, a care service and a social work service means to carry on or manage such a service,

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“registered health professional” means a member of a profession to which section 60(2) of the Health Act 1999 applies,

“responsible person” means—

- (a) a Health Board constituted under section 2(1) of the 1978 Act,
- (b) a person (other than an individual) who has entered into a contract, agreement or arrangement with a Health Board to provide a health service,
- (c) the Common Services Agency for the Scottish Health Service constituted under section 10(1) of the 1978 Act,
- (d) a person (other than an individual) providing an independent health care service mentioned in section 10F(1) of the 1978 Act,
- (e) a local authority,
- (f) a person (other than an individual) who provides a care service,
- (g) an individual who provides a care service and who employs, or has otherwise made arrangements with, other persons to assist with the provision of that service (unless the assistance in providing that service is merely incidental to the carrying out of other activities),
- (h) a person (other than an individual) who provides a social work service,

“social work services” has the meaning given by section 48 of the Public Services Reform (Scotland) Act 2010.

- (2) The Scottish Ministers may by regulations modify the definition of “responsible person” in subsection (1).

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