



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

2016 asp 14

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—
 - (a) the death of the person,

Status: This is the original version (as it was originally enacted).

- (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).