



Key rights of mental health carers (Scotland)

This is a brief summary of the most relevant rights to adult mental health carers in Scotland, and should not be seen as a definitive list. See **Further help and guidance** section below for more information on individuals' rights under mental health, carers' and related legislation.

Key rights:

1. People with mental health problems

A selection of the most relevant rights:

- ◆ entitlement to care plan and appropriate treatment services (Mental Health (Care and Treatment Act) Scotland Act 2003)
- ◆ right to receive help with their parenting from adult services if appropriate; e.g. tasks relating to child care can be carried out by a parent's support worker (Community Care and Health (Scotland) Act 2002)
- ◆ rights to challenge compulsory detention and treatment (Mental Health (Care and Treatment Act) Scotland Act 2003)
- ◆ right to access independent advocacy (Mental Health (Care and Treatment) Scotland Act 2003)
- ◆ rights to make their own decisions, and be assumed to have capacity to do so unless it is proved otherwise (Adults with Incapacity (Scotland) Act 2000)
- ◆ right to make an Advance Statement, which details their wishes for treatment and support in the event of an episode of severe mental illness

2. Adult carers of people with mental health problems

Community Care and Health (Scotland) Act 2002 (building on the Carers (Recognition and Services) Act 1995)

Under the key principle that carers should be recognised and treated as key partners in providing care, 'substantial and regular' mental health carers have the:

- ◆ right to have their views taken into account by a local authority when it is considering how best to make provision for a disabled person
- ◆ right to be offered or request a Carers Assessment – local authorities have a duty to inform carers of their right to an assessment
- ◆ right to claim Carers Allowance, under certain conditions

Mental Health (Care and Treatment) Scotland Act 2003 (including related legislation and guidance)

- ◆ right to be included on service user's Care Plan (Care Programme Approach Guidance¹)

MENTAL HEALTH CARERS

Relevant Legislation (Scotland)



The Princess Royal Trust
for Carers

- ◆ right to be given general information about the condition of the person cared for, though not specific information if the service user does not consent (Mental Health (Care and Treatment) Scotland Act, Data Protection Act 1998, Care Programme Approach Guidance)ⁱⁱ
- ◆ right to be given copy of service users care plan if (a) service user consents or (b) issues of duty of care or risk override service user objections (Care Programme Approach Guidance)
- ◆ right to be identified in a patient's Advance Statement, and given support and information to ensure that this is adhered to
- ◆ right to be informed of the patient's detention, and the nearest relative's right to discharge the patient, before application under Section 2 – application for assessment
- ◆ if carer is the **named person**, right to request a needs assessment of the person cared for
- ◆ if carer is the **named person**, right to appeal on behalf of service user against detention in conditions of excessive security
- ◆ If carer is the **named person**, they must be consulted before an emergency or short-term detention certificate is issued for the person they care for
- ◆ if carer is the **named person**, right to seek to have the patient discharged from hospital (giving 72 hours notice), though the doctor in charge of the patient's care can prevent this action

Adults with Incapacity (Scotland) Act 2000

- ◆ right to be consulted by professionals in assessing someone's capacity, (though occasionally this will be impossible, such as in an emergency)
- ◆ right to be involved in determining what is in the best interests of the person cared for, if that person lacks the mental capacity to make a decision
- ◆ right to be named as attorney in person's Power of Attorney
- ◆ right (as a third party) to apply for an independent assessment of whether someone has justly been deprived of their liberty from the Court of Protection
- ◆ if carer is the **welfare guardian** or **welfare attorney**, right to consulted if a short-term detention certificate or community treatment order under the Mental Health (Care and Treatment) Scotland Act is being considered

3. Young Carers

- ◆ Right to a consideration of their needs on the Care Plan for parent (Mental Health (Care and Treatment Act) Act 2003, Children's (Scotland) Act 1995)
- ◆ Right to carers' assessment if under 16 (in contrast to England and Wales), if caring for someone over 18, renewed at least annually, and similar right to direct payments (Community Care and Health (Scotland) Act 2002, Children's (Scotland) Act 1995). In this way, local authorities have a duty to take account of the care provided by a [young] carer, and the views of the person cared for and the carer before deciding on the services to be provided.
- ◆ DO NOT have right to be the 'named person' if young carer is aged under 16. As such, young carers cannot appeal the detention of a patient, present their views at a Mental Health Tribunal, and so on. Patients under the age of 16 also cannot nominate a named person – this role is automatically ascribed to the parent or guardian (Mental Health (Care

MENTAL HEALTH CARERS

Relevant Legislation (Scotland)



The Princess Royal Trust
for Carers

and Treatment (Scotland) Act 2003). Nonetheless, young carers may feature on a patient's Advance Statement.

Further help and guidance

- **Mental Health (Care and Treatment) Scotland Act 2003 guidance** on www.carers.org/professionals
- **Resources on the Adults with Incapacity (Scotland) Act 2000** on www.carers.org/professionals

Disclaimer: This document contains information about organisations, people and resources that have not been checked or vetted by The Princess Royal Trust for Carers. Some sources have been summarised. Before using any of the contacts, information or resources in this document, you **must** check it for safety/ reliability/ appropriateness. Advice in this document does not give a full statement of the law. It is intended for guidance only, and is not a substitute for professional advice. The Trust cannot accept any responsibility for loss or liability occasioned as a result of any person acting or refraining from acting on information contained in this document.

Guidance last updated: Feb 09

ⁱ See <http://www.markwalton.net/cpa/cpa.pdf> for the Care Programme Approach Handbook.

ⁱⁱ See the Confidentiality and Mental Health page on Trustnet for more information, <http://www.carers.org/trustnet/articles/confidentiality-and-mental-health-carers.2086.CA.html>