

## An Enhanced Role for Nursing in Mental Health? June 2022

### Introduction

The Scottish Mental Health Law Review led by John Scott QC ('the Scott review') is due to make its recommendations in September 2022. In our original submission to Scott (May 2020)<sup>1</sup> RCN Scotland argued for an enhanced role for nursing. This position was taken based on input from a small group of senior nurses, including the Mental Health Nurse Leads Group. See Appendix 1 for the text of that element of our submission. Although the submission contained some detail as to what an enhanced role might consist of, it did not provide a comprehensive 'blueprint' for such a role.

We do not know what, if any, recommendations Scott will make regarding existing roles and responsibilities for care and treatment under mental health law, including an enhanced role for nursing (we return to this point below). Similarly, we cannot yet know what precise approach the Scottish Government will take to the legislation that will be required in order to implement the Scott recommendations. However, whatever Scott does or does not recommend, that legislation may be an opportunity for RCN Scotland to lobby for a change to the law intended to secure an enhanced role for nursing in mental health.

In England and Wales there is already an enhanced role for nursing (and other professions, including psychology) in mental health and there has been for circa fifteen years (since 2007). Nurses can undertake training and apply to become Approved Clinicians (ACs), Responsible Clinicians (RCs) and Approved Mental Health Professionals (AMHPs). Uptake has been extremely low, in only double figures. It has been suggested that one reason for this may be the 'philosophical mismatch between the statutory role and nursing identity'.<sup>2</sup>

The potential for a substantially enhanced role for nursing in mental health stems primarily from the potential for nurses to take on roles and responsibilities that currently accrue to other professionals under the Mental Health (Care and Treatment) (Scotland) Act 2003, rather than in other pieces of mental health legislation. This is the case even acknowledging nurses' role under s.47 of the Adults with Incapacity (Scotland) Act 2000, on which see below.

RCN Scotland has limited recorded documentation concerning its position in 2002 on the Bill that eventually became the 2003 Act. However, from what material is available it seems clear enough that, at that time, RCN was not supportive of an enhanced role for nursing in mental health. RCN Scotland specifically supported the language of clause 19 of the Bill, which, essentially unaltered, became s.22 of the 2003 Act. S.22 provides that only 'medical practitioners' may become 'approved medical practitioners.' It is not clear from the recorded documentation exactly why RCN adopted this position, although it must be acknowledged that the position was a product of its time, when the 'medical' element of nursing as a profession had not developed to the extent that it subsequently did and has now reached. Even the subsequent English legislation did not arrive for another five years, in 2007.

When it comes to the question of why RCN Scotland took that position, such institutional memory as does exist, apart from the recorded documentation, recalls that a 'philosophical mismatch' was indeed a live issue. The other memorably live issues at that time were that:

- a) it was not appropriate to expand the professional responsibility of nursing (perhaps to compensate for challenges in recruiting medical practitioners) unless appropriate

---

<sup>1</sup> [Independent review of mental health law in Scotland | Royal College of Nursing Scotland | Royal College of Nursing \(rcn.org.uk\)](#)

<sup>2</sup> See P. Veitch RMN & J. Oates RMN, PhD 'Strange bedfellows? Nurses as Responsible Clinicians under the Mental Health Act (England & Wales)' in *Journal of Psychiatric and Mental Health Nursing*, 2017, 24, 243–251

remuneration was automatically attached (i.e., if you want a nurse to do a job close to being that of a consultant psychiatrist you have to pay them as much as a consultant psychiatrist) and it was not clear that this would happen,

- b) nurses in remote and rural areas who could potentially train for and take on an enhanced role might be pressured to do so because of staff shortages, even though they did not wish to. The issue of an insufficient workforce in such areas was seen as a much more pressing issue in Scotland than in England and Wales, because of Scotland's more dispersed, less concentrated, population.

Referring again to the limited recorded documentation, there was a slightly different sentiment behind RCN Scotland's position a couple of years later, in 2004, with respect to the amendment of s.47 of the Adults with Incapacity (Scotland) Act 2000 by the Smoking, Health and Social Care (Scotland) Act 2005. This amendment gave us s.47 as we know it today which permits registered nurses (amongst others), once appropriately trained, to certify incapacity and consequently authorise medical treatment. RCN supported this enhanced role for nursing, although it represented a much more limited enhancement than any enhancement involving the 2003 Act would have done. RCN also argued, at the same time, for an increase in Nurse Consultants across specialisms, including in mental health and learning disability. The potential contribution of Nurse Consultants was couched in general terms (they 'would be ideally placed to lead modern nursing care with excellence in practice, evidence-based care and service development as core elements'). However, it is still clear from that language that RCN was supportive of an increase in highly qualified nurses occupying senior clinical roles, which might be described as a form of enhanced role.

Notwithstanding RCN Scotland's positions vis-a-vis the 2003 Act, the 2005 amendment of s.47 of the 2000 Act and in our May 2022 submission to the Scott review, we now wish to further engage with our members to gauge their views on an enhanced role for nursing in mental health so that any position we take with respect to such a role, as it could be established under any new or revised law, is appropriately reflective of those views.

### **The route to an enhanced role for nursing in mental health care and treatment**

Scott may recommend substantial changes to existing roles and responsibilities and so exactly how we approach this matter will be for decision once we have seen the recommendations. For now, we can only base our potential approach on the existing law and then seek to adapt that approach as necessary. As the law in Scotland currently stands there are two existing roles, currently closed to nurses, that would constitute an enhanced role in terms of the 2003 Act. Those roles are that of an 'approved medical practitioner (AMP)' and that of a 'responsible medical officer (RMO)'. A summary of these roles, and of that of nursing, at law is given at Appendix 2. In that context, there seems to us to be two routes to securing an enhanced role for nursing:

1. Route 1: The most straightforward route to giving nurses an enhanced role would be to use the legislation that will result from the Scott review to effectively amend the current provisions in s.22 of the 2003 Act to allow suitably qualified nurses to become AMPs, from whose ranks RMOs must be drawn, thus enabling nurses who became AMPs to act as such and those who wished to serve as RMOs to do so. 'Suitably qualified' would need to be defined but it would be likely to mean the level of qualifications concomitant with the status of Advanced Nurse Practitioner or Nurse Consultant. It would not be necessary to be that specific on the face of the legislation, however, as those requirements could be set out in regulations, as is currently the case with respect to s.47 of the 2000 Act via the Adults with Incapacity (Requirements for Signing Medical Treatment Certificates) (Scotland) Regulations 2007.

2. Route 2: The less straightforward route to giving nurses an enhanced role would be to attempt to 'carve out' elements of (and even add new elements to) the role of AMP and/or RMO to create a 'new' enhanced role such as nurses may wish to have. It would need to be set it out in full and its distinct creation lobbied for. This is a much less straightforward route, given the time and resource the profession would need to expend to create that role.

### **Other matters to consider**

Technically speaking in terms of the 2003 Act as it stands (but not, of course, otherwise) the role of an AMP is more involved than that of a nurse. It is also almost impossible to conceive of a situation where a nurse who was an AMP would never be called upon to act as an RMO. The RMO role is a complex and extensive one and carries significant diverse responsibilities. An enhanced role for nursing would almost certainly mean that those who took it on (whether 'freely chosen' or otherwise) would ultimately find themselves taking on similar levels of responsibility to a consultant psychiatrist.

The tenor of the Scott review, such as it can be ascertained to date, does not indicate that it will address the matter of an enhanced role for nursing. It is far more focused on matters of patients' rights than on professional roles and responsibilities except insofar as the latter must uphold the former. It does not appear likely that its recommendations will be of the technical-legal type. Instead it will probably set out principles for law reform by which the Scottish Government should abide and proposals for what law reform should achieve by way of outcomes, whilst leaving the task of expressing these adequately in law to the Scottish Government's and Scottish Parliament's drafting teams.

### **Views of our members**

We are broadly interested in members' view on the following:

- what is 'right' and what is 'wrong' with the current situation (particularly given how different the situation in England and Wales is from that in Scotland)
- what precisely needs changed in the legal sense (rather than changes to, for example, 'culture' or to the provision of training courses)
- whether route 1 or route 2, above, is preferred
- the appetite for change within Scottish nursing and whether there should be any prioritisation of change (i.e., is this the right place to be directing our energies?)

## Appendix 1.

### 2. Enhanced role of nurses (extract from RCN submission to Scott (May 2020))

“There is a common view that in a range of ways, nurses could be given a greater role in mental health services in the legislation. The most appropriate clinician should be given legal responsibility for a patient. In many cases, it is most beneficial to the patient that the person most involved in the assessment, planning, delivery and review of care is given this role. Registered Nurses will often be best placed to this, particularly in a community setting and out of hours, when the availability of other staff can cause delays.

In particular consideration could be given to giving Advanced Nurse Practitioners (ANPs) a greater role. ANPs are nurses who have been educated to a Masters Level in clinical practice, have worked at an advanced level of clinical practice and who have non-medical prescribing rights. They have the freedom and authority to act, making autonomous decisions in the assessment, diagnosis and treatment of patients<sup>10</sup>. ANPs are highly skilled, registered professionals who often have greater patient contact than medical professionals.

With the right training and with governance structures in place ANPs, or Registered Nurses could be given a greater role by the legislation, for example:

- Enabling nurses to determine capacity for the purpose of guardianship or intervention orders.
- Introducing a presumption that nurses should provide evidence in Mental Health Tribunal proceedings.
- In light of the fact that unscheduled psychiatric assessments are already conducted by experienced nursing staff, enabling Registered Nurses to conduct assessments under section 287 of the MHA.
- Amending the RMO role to involve ANPs or Registered Nurses in decisions around care plans following a CTO, the extension of CTOs or the suspension of Emergency Detention Orders etc.

There are already examples of Registered Nurses having this role in the legislation. Section 47 of the AWI Act allows Registered Nurses to authorise medical treatment for adults with incapacity and to “do what is reasonable in the circumstances...to safeguard or promote the physical or mental health of the adult”. Elsewhere in the UK, legislation enables nurses to have a greater role, most notably in England where there has been a move to the idea of a Responsible Clinical Officer, which includes Registered Nurses, replacing the role of the RMO.”

## Appendix 2.

### *Nurses*

A 'registered nurse' has limited duties and obligations at law under the current Scottish mental health legislation, primarily those that come under s.299 of the Mental Health (Care and Treatment) (Scotland) Act 2003 Act and s.47 of the Adults with Incapacity (Scotland) Act 2000 Act, as shown in the table below. The majority of a nurse's 'duties' (perhaps it would be better to say 'of a nurse's roles and responsibilities') with respect to someone with a mental health issue will stem from the NMC Code of Practice and the attendant Standards. They must be complied with in accordance with the law, of course, but they provide for a much more holistic approach to the delivery of care and treatment on the part of a nurse than is provide for at law.<sup>3</sup> There are other provisions affecting the role of a nurse. Part 2 of the Code of Practice to the 2003 Act reads 'In considering whether or not it would be appropriate to grant a short term detention certificate, the approved medical practitioner should take into account relevant information from the other members of the multidisciplinary team who are providing care and treatment to the patient', which would include nurses.<sup>4</sup> A nurse may have a role in Mental Health Tribunal proceedings; for example, they may have to give evidence,<sup>5</sup> or they may become a member of the tribunal.<sup>6</sup> They may also have a role in the normal course of their job, for example, to escort somebody to a tribunal.<sup>7</sup>

### *Approved Medical Practitioner*

An 'approved medical practitioner (AMP)' is appointed under s.22 of the Mental Health (Care and Treatment) (Scotland) Act 2003. An AMP must be a medical practitioner and will typically, if not quite always, be a psychiatrist.<sup>8</sup> Section 22 requires AMPs to 'have such qualifications and experience, and have undertaken such training, as may be specified in directions given by the Scottish Ministers'. Such 'directions' are not easy to pinpoint but some are contained in DLs and the specified training has been delivered by NES since 2017.<sup>9</sup> An AMP has a wider range of duties at law than a nurse, as also shown in the table below.

### *Responsible Medical Officer*

The 'responsible medical officer (RMO)' is appointed under s.230 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and is defined by the role's various responsibilities and duties under that same Act and under the Criminal Procedure (Scotland) Act 1995. The RMO must be an AMP (s.230(1) of the 2003 Act). In short, the RMO is 'in charge' of a patient's case and takes decisions in circumstances of legal detention and compulsion as to those matters and also as to matters of care and treatment, including compulsory treatment. The role of the RMO is complex and extensive and does not lend itself to being expressed, Act-section-by-Act-section in the table below. There are almost five hundred (493) uses of the phrase 'responsible medical officer' in the 2003 Act alone<sup>10</sup> and circa nine hundred uses of the acronym RMO across the Act's three Codes of Practice.<sup>11</sup> This

---

<sup>3</sup> See also H. Patrick and J. Stavert, 'Mental Health Law, Incapacity and the Law in Scotland' (2<sup>nd</sup> ed.), Bloomsbury, London, 2016, par.3.33

<sup>4</sup> See Chapter 2, par. 33 here [mental health \(care and treatment\) \(scotland\) act 2003 code of practice volume 2 ?civil compulsory powers \(parts 5, 6, 7 and 20\) - gov.scot \(www.gov.scot\)](#);

<sup>5</sup> [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Rules 2005 \(legislation.gov.uk\)](#) see rule 60

<sup>6</sup> [The Mental Health Tribunal for Scotland \(Appointment of General Members\) Regulations 2004 \(legislation.gov.uk\)](#) see rule 2.

<sup>7</sup> On the nurse's role in general, see H. Patrick and J. Stavert, *ibid.* pars. 3.32 to 3.38

<sup>8</sup> See Appendix 3

<sup>9</sup> See, [DL\(2021\)34 - Mental Health \(Care and Treatment\) \(Scotland\) Act 2003: approval and management of AMP lists; DL\(2019\)3 - Mental Health \(Care and Treatment\) \(Scotland\) Act 2003: training for approved medical practitioners](#)

<sup>10</sup> There are 18 in the 2015 Act (amending the 2003 Act), the 1995 Act and the Criminal Justice (Scotland) Act 2003), 0 in the 2000 Act, 1 in the 2007 Act (amending the 2003 Act) and 25 in the 1995 Act.

<sup>11</sup> [Mental Health \(care and treatment\) \(Scotland\) Act 2003: Code of Practice Volume 1 - gov.scot \(www.gov.scot\)](#); [mental health \(care and treatment\) \(scotland\) act 2003 code of practice volume 2 ?civil compulsory powers \(parts 5, 6, 7 and 20\) -](#)

gives some indication of the role’s complexity and extent. It is not necessary to summarise the role further for the purposes of this briefing, but it is dealt with relatively accessibly by Patrick and Stavert.<sup>12</sup> Being an RMO is a case-specific appointment and so potentially time-limited, although it is likely that an AMP will be serving as an RMO in one or more cases, at any given point in time.

Role of Approved Medical Practitioner (AMP)	Role of Nurse	Act & Section
		<b>Mental Health (Care and Treatment) (Scotland) Act 2003 (as amended)</b>
encourages equal opportunities and in particular the observance of the equal opportunity requirements (when an RMO but not merely as an AMP)	encourages equal opportunities and in particular the observance of the equal opportunity requirements	s.3
<p>Definition of approved medical practitioners (AMPs). They are folk who:</p> <p>Sec. “1 (a) have such qualifications and experience, and have undertaken such training, as may be specified in directions given by the Scottish Ministers (<i>NB this will be in DL letters</i>); and</p> <p>(b) are approved for the purposes of this paragraph by the (<i>Health</i>) Board concerned as having special experience in the diagnosis and treatment of mental disorder.</p> <p>These people are ‘medical practitioners’ (<i>key phrase</i>) listed by:</p> <p>Sec. 2 (a) a Health Board (or) (b) the State Hospitals Board for Scotland.</p> <p>Being an AMP is reliant on being on the list (i.e., not listed = not an AMP)</p>	[nurses cannot be AMPs under this definition]	s.22
	[only a reference to ‘care and support’ from a LA <u>not</u> including ‘nursing’]	s.25
	[only a reference to LA’s duties under this Act being without prejudice to duties	s.29

[gov.scot \(www.gov.scot\)](http://gov.scot); [mental health \(care and treatment\) \(scotland\) act 2003: code of practice- volume 3 compulsory powers in relation to mentally disordered offenders - gov.scot \(www.gov.scot\)](http://gov.scot)

<sup>12</sup> H. Patrick and J. Stavert, ‘Mental Health Law, Incapacity and the Law in Scotland’ (2<sup>nd</sup> ed.), Bloomsbury, London, 2016

	under SWK(S) Sct 1968 re: <i>inter alia</i> 'provision of residential accommodation with nursing' for folk with a mental disorder]	
<p>Duties on hospital managers including to ensure medical examination by an AMP of a person detained under a 'emergency detention certificate' (EDC) (NB you don't need to be an AMP to <i>grant</i> an EDC)</p> <p>NB CoP 2 Chapter 17: if EDC granted without Mental Health Officer (MHO) consent it is best practice for the examining AMP to inform MHO and if the AMP has concerns about the basis for granting the EDC it is best practice to bring those concerns to the attention of the Mental Welfare Commission (MWC).</p>		s.38
An AMP can revoke an EDC if they think it wasn't required in the first place or is no longer required.		s.39
AMP must inform patient and the hospital managers of a revocation & latter must tell the MWC asap.		s.40
Only an AMP (so not just any medical practitioner) can grant a <b>short-term detention certificate</b> & only with MHO agreement s.44 (3) (presumably a practical measure re EDCs– you can't wait to find an AMP in an emergency situation)- this is a key role of an AMP (see CoP 2, Chapter 2)		s.44
[only a reference to the MHO's duty to inform AMP of steps taken by MHO to comply with MHO's duties under s.44]		s.45
AMP may extend an existing short-term detention certificate if they consider a CTO is necessary (to give time to secure the CTO), ideally but not necessarily with MHO agreement		s.47

<p>AMP must give the s.47 extension certificate to hospital managers and a variety of others (inc. patient &amp; MWC)</p>		<p>s.48</p>
<p>'Patient's right to apply for revocation of short-term detention certificate or extension certificate': the application is made to the Mental Health Tribunal (MHT) and the AMP (along with several others) has a right to be consulted by the MHT before it makes its decision.</p>		<p>s.50</p>
<p>'Mental health officer's duty to apply for compulsory treatment order' – this section is messy – it talks about what the report of an AMP must say without otherwise mentioning AMPs but talking about 'two medical practitioners carry(ing) out medical examinations of the patient in accordance with the requirements of section 58 of this Act' and then...</p>		<p>s.57</p>
<p>... this next section reveals that both medical practitioners under s.57 have to be AMPs, except that the patient's GP can also do it instead of one of the AMPs</p>		<p>s.58</p>
<p>When an RMO is reviewing a CTO, the required medical examination may be done by the RMO or another AMP (remember, only an AMP can be a RMO, see sec. 230)</p>		<p>s.77</p>
<p>When a patient does not comply with a CTO the RMO can have the patient fetched back to hospital and once they are there, the required medical examination may be done by the RMO or another AMP.</p>		<p>s.113</p>
<p>S.130 inserts various sections into the Criminal Procedure (Scotland) Act 1995. S.52M seems (in a bit of a mixed-up way) to provide that one of the two medical practitioners, who must give evidence to the court under s.52M re: an application for a treatment order under sections 52(K) and (L), must be an AMP.</p>		<p>s.130 (52M)</p>



<p>‘Transfer of prisoners for treatment for mental disorder’ is dependent ‘on the written reports of an AMP and a medical practitioner’.</p>		s.136
<p>The medical examination required during review of a compulsion order (made under the 1995 Act) may be undertaken by the RMO doing the reviewing or another AMP.</p>		s.139
<p>The medical examination required during review of a compulsion order and a restriction order (i.e., when they simultaneously apply, as made under the 1995 Act) may be undertaken by the RMO doing the reviewing or another AMP.</p>		s.182
<p>The medical examination required during review of a hospital direction and transfer for treatment direction (made under the 1995 Act) may be undertaken by the RMO doing the reviewing or another AMP.</p>		s.206
<p>Requires that an RMO must be an AMP.</p>		s.230
<p>In order to give treatment to a ‘patient subject to an assessment order’ when the patient does not consent or consents otherwise than in writing or is incapable of consenting to the treatment, an AMP (other than the patient’s RMO) must determine that giving treatment under this section ‘in the patient’s best interests that the treatment be given’.</p>		s.242
<p>A patient can only be received in Scotland from elsewhere in the UK if an RMO, who is an AMP, has been appointed to the patient.</p>		s.289
	<p>Nurse’s power to detain pending medical examination                      Nuanced but essentially: When ‘a patient is in hospital and being given medical treatment’ a nurse (such as prescribed by regulation*) may detain that patient for up to 3 hours (holding detention) in</p>	s.299

	<p>order to get the patient a medical examination by a medical practitioner. Caveats apply: patient has a mental disorder (so this must have been established by somebody else) and it is necessary for the protection of the health, safety or welfare of the patient <u>or</u> the safety of any other person, that they are detained, and the purpose of the medical examination is to decide if either (i) an <b>emergency detention certificate</b>; or (ii) a <b>short-term detention certificate</b> is 'warranted' see <i>sec.36 EDC (can only be granted by a medical practitioner, ideally but not necessarily with MHO agreement s.36(3) &amp; 36(6)) &amp; sec.44 STDC (can only be granted by an AMP &amp; only with MHO agreement s.44(3))</i></p> <p>*See <a href="#">The Mental Health (Class of Nurse) (Scotland) Regulations 2005 (legislation.gov.uk)</a></p> <p>Nurse should take all reasonable steps to inform MHO and record in writing</p> <ul style="list-style-type: none"> <li>• the fact of the 3-hour detention</li> <li>• when it began</li> <li>• 'nurse's reasons for believing that it is likely' that patient has a mental disorder and it is necessary for the protection of the health, safety or welfare of the patient <u>or</u> the safety of any other person, that they are detained, and the purpose of the medical examination is to decide if either (i) an emergency detention certificate; or (ii) a short-term detention certificate is 'warranted'.</li> </ul> <p>And deliver this written record to hospital managers personally or by proxy, which must send it to the MWC within 14 days or receipt.</p>	
	<p>““medical treatment” means treatment for mental disorder; and for this purpose, “treatment” includes (<i>inter alia</i>) ... nursing”</p>	<p>s.329</p>
<p>Par. 8 (5) re: The Criminal Procedure (Scotland) Act 1995 sec.59 inserting phrase AMP into the Act to replace</p>		<p>Sch.4 (re 59C)</p>

<p>older phrasing &amp; Par 8 (6) minor amends to s.61</p> <p>Par. 9 re: The Adults with Incapacity (Scotland) Act 2000 adds AMP into s.57.</p>		
		<p><b>Mental Health (Scotland) Act 2015</b></p>
	<p>Amends s.299 of Mental Health (Care and Treatment) (Scotland) Act 2003 as per above</p>	<p>s.20</p>
		<p><b>Adults with Incapacity (Scotland) Act 2000</b></p>
	<p>Authority of persons responsible for medical treatment</p> <p>As well as ‘the medical practitioner primarily responsible for the medical treatment of the adult’, if a registered nurse (RN, others are also mentioned) ‘who satisfies such requirements as may be so prescribed* who is primarily responsible for medical treatment of the kind in question’ is of the opinion that an adult is incapable (matter of professional judgement in accordance with the requirements of the Code of Practice for Part 5) in relation to a decision about the medical treatment in question; and has certified that they are of this opinion, they ‘shall have... <b>authority</b> to do what is reasonable in the circumstances, in relation to the medical treatment in question, to safeguard or promote the physical or mental health of the adult.’</p> <p>They may delegate this authority (s.47(3). “Medical treatment’ includes any procedure or treatment designed to safeguard or promote physical or mental health.’</p> <p>*See <a href="#">The Adults with Incapacity (Requirements for Signing Medical Treatment Certificates) (Scotland) Regulations 2007 (legislation.gov.uk)</a></p>	<p>s.47 (in Part 5 of the Act)</p>

	<p>The authority does not ‘affect any authority conferred by any other enactment or rule of law’ and is subject to</p> <ul style="list-style-type: none"> <li>• s.49: authority not exercisable if ‘to the knowledge of’ the RN there is an undetermined intervention or guardianship order covering medical treatment; although it is still exercisable if authorised by any other enactment or rule of law for the preservation of the life of the adult or the prevention of serious deterioration in his medical condition, unless an interdict exists with respect to medical treatment</li> <li>• s50: medical treatment where guardian etc. has been appointed: complex but essentially the RN would normally have to abide by the authority of the person appointed; the RN’s decision can be appealed to Court of Session by the medical practitioner primarily responsible for the medical treatment of the adult if that was not the RN; if the guardian and the RN disagree re: treatment the RN can apply to the MWC ‘nominated person’ for their view; if the nominated person agrees to the treatment, the RN may go ahead; effective right of appeal on part of RN and others to Court of Session from MWC nominated person decision; medical treatment suspended pending appeals to Court of Session unless ‘authorised by any other enactment or rule of law for the preservation of the life of the adult or the prevention of serious deterioration in his medical condition’</li> <li>• sections 234, 237, 240, 242, 243 and 244 of the 2003 Act – essentially further hoops that must be jumped through before medical treatment can go ahead (basically, you cannot undertake certain treatments using s.47 (eg brain surgery s.234) unless you have satisfied certain other criteria as per these sections, or it is</li> </ul>	
--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

	<p>urgent under s.243 (tho this only applies to folk detained in hospital)</p> <p>The certificate referred to must be in writing, setting out its own lifetime which can't exceed one year normally or three years if the issuer judges that 'conditions or circumstances prescribed by the Scottish Ministers' apply and they are...??? The certificate is revocable or renewable (one and three years again, same criteria)</p> <p>The RN's 'authority' (also others' authority, including the medical practitioner) doesn't authorise</p> <ul style="list-style-type: none"> <li>• the use of force or detention, unless it is immediately necessary and only for so long as is necessary in the circumstances</li> <li>• action which would be inconsistent with any decision by a competent court (see Code of Practice for Part 5, it means <u>existing</u> decision)</li> <li>• placing an adult in a hospital for the treatment of mental disorder against his will.</li> </ul> <p>If there is an undetermined question before a court as to the authority of any person to provide medical treatment, medical treatment 'shall not be given unless it is authorised by any other enactment or rule of law for the preservation of the life of the adult or the prevention of serious deterioration in his medical condition' (unless an interdict exists with respect to medical treatment)</p>	
<p>An application for guardianship order requires reports from at least two medical practitioners one of whom must be a 'relevant medical practitioner' and a 'relevant medical practitioner' means an AMP s.57(6B).</p>		<p>s.57</p>
		<p><b>Adult Support and Protection</b></p>

		<b>(Scotland) Act 2007</b>
	'health professional' includes a (registered) nurse. This means that nurses can do whatever a health professional can do under the Act, which is to conduct medical examinations of an adult at risk, see s.9 & s.11 (there are a handful of other references to health professionals but not to their proactive role)	s.52
Amends s.57 of the Adults with Incapacity (Scotland) Act 2000 as per above		s.60
Amends s.289 of the Mental Health (Care and Treatment) (Scotland) Act 2003 as per above		s.71
		<b>Criminal Procedure (Scotland) Act 1995</b>
See above at s.130 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (as amended)		s.52M
One of the two medical practitioners who must give evidence re: a number of provisions in the 1995 Act must be an AMP & AMP is as defined by s.22 of the 2003 Act. <ul style="list-style-type: none"> <li>• 52M(2)(a) treatment order</li> <li>• 53(2)(a) interim compulsion order</li> <li>• 54(1)(c) temporary compulsion order when a person is found unfit for trial</li> <li>• 57A(2)(a) compulsion order (the AMP giving evidence here must give oral evidence re: the rating of restriction orders (see s.59(2))</li> <li>• 58(1A)(a) guardianship order</li> <li>• 59A(2)(a) hospital direction</li> <li>• 60C(2)(a) an order authorizing detention of an acquitted person for medical examination</li> </ul>		s.61
Court may impose a 'mental health treatment requirement' essentially subject to an AMP confirming a treatable mental disorder but not one subject to other compulsory measures		s.227R
Requirement for a s.227R report to be signed by an AMP		s.227S

Essentially governs 'supervision and treatment orders' for offenders living in the community with a treatable mental disorder & not subject to a s.57 compulsion order - at least two AMPs must give evidence & AMP is as defined by s.22 of the 2003 Act		Sch.4, Part 2, par.2 (c.f. s.57(29(d)))
An English registered medical practitioner under the Mental Health Act 1983 can act as an AMP for the purposes of sections 227R and 227S of the 2003 Scottish Act		Sch.13, Part 1, Par.3(6)