

# Mental Health (Scotland) Bill

[AS AMENDED AT STAGE 2]

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**Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.**

# Mental Health (Scotland) Bill

## [AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to amend the Mental Health (Care and Treatment) (Scotland) Act 2003 in various respects; to make provision about mental health disposals in criminal cases; to make provision as to the rights of victims of crime committed by mentally-disordered persons; and for connected purposes.

5

### **PART 1**

#### THE 2003 ACT

##### *Procedure for compulsory treatment*

### **1 Measures until application determined**

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

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(2) In section 64 (powers of Tribunal on application under section 63: compulsory treatment order), after subsection (8) there is inserted—

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“(8A) If the patient has been detained in hospital by virtue of section 47(4)(a) or 68(2)(a) of this Act in connection with the application by virtue of which this section applies, the 6 months referred to in subsection (4)(a)(i) above is to be regarded as reduced by the period during which the patient has been so detained under that section.

(8B) Subsection (8A) above is of no effect if the patient has been detained in hospital in accordance with an interim compulsory treatment order made in connection with the application by virtue of which this section applies.”

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(3) In section 65 (powers of Tribunal on application under section 63: interim compulsory treatment order), after subsection (6) there is inserted—

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“(7) If the patient has been detained in hospital by virtue of section 47(4)(a) or 68(2)(a) of this Act in connection with the application by virtue of which this section applies, the 56 days referred to in subsection (3) above is to be regarded as reduced by the period during which the patient has been so detained under that section.”

**2 Information where order extended**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 87 there is inserted—

**“87A Further information where order extended**

- 5 (1) Subsections (2) and (3) below apply where—
  - (a) a mental health officer receives notice of a determination under section 86 of this Act from a patient’s responsible medical officer, and
  - (b) the Tribunal is required by virtue of section 101(2)(a) of this Act to review the determination.
- 10 (2) The mental health officer must—
  - (a) prepare a record stating the information mentioned in subsection (4) below,
  - (b) submit the record to the Tribunal, and
  - (c) at the same time as submitting the record to the Tribunal, send to the persons mentioned in subsection (6) below—
    - 15 (i) a copy of the record, and
    - (ii) a statement of the matters mentioned in subsection (5) below.
- (3) At the same time as submitting the record to the Tribunal, the mental health officer must send a copy of the record to the patient except where the officer considers that doing so carries a risk of significant harm to the patient or others.
- 20 (4) The information to be stated in the record is—
  - (a) the name and address of the patient,
  - (b) if known by the mental health officer, the name and address of—
    - 25 (i) the patient’s named person, and
    - (ii) the patient’s primary carer,
  - (c) the things done by the mental health officer in compliance with the requirements in subsection (2) of section 85 of this Act (and, if by virtue of subsection (3) of that section the first-listed one has not been complied with, the reason why compliance with it was impracticable),
  - 30 (d) so far as relevant to the extension of the compulsory treatment order—
    - (i) the details of the personal circumstances of the patient, and
    - (ii) if known by the mental health officer, the details of any advance statement made by the patient (and not withdrawn by the patient),
  - 35 (e) the views of the mental health officer on the extension of the compulsory treatment order, and
  - (f) any other information that the mental health officer considers relevant in relation to the extension of the compulsory treatment order.
- (5) The matters referred to in subsection (2)(c) above are—

- (a) whether the mental health officer is sending a copy of the record to the patient, and
- (b) if the mental health officer is not sending a copy of the record to the patient, the reason for not doing so.

5 (6) For the purposes of subsection (2)(c) above, the persons are—

- (a) the patient’s named person,
- (b) the patient’s responsible medical officer, and
- (c) the Commission.”.

## **2A Transfer to another hospital**

10 (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) In section 124 (transfer to other hospital)—

(a) in subsection (1), for the words “by a compulsory treatment order.” there is substituted “by—

(a) a compulsory treatment order, or

15 (b) an interim compulsory treatment order.”,

(b) in subsection (14), for the words “compulsory treatment order” there is substituted “order in question”.

### *Emergency, short-term and temporary steps*

## **3 Emergency detention in hospital**

20 (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) In subsection (2) of section 36 (emergency detention in hospital), after paragraph (d) there is inserted—

“(da) section 113(5) of this Act;”.

(3) In section 38 (duties on hospital managers: examination, notification etc.)—

25 (a) in paragraph (b)(i) of subsection (3), for the words “persons mentioned in subsection (4) below” there is substituted “Commission of the granting of the certificate and”,

(b) after subsection (3) there is inserted—

30 “(3A) The managers of the hospital may, so far as they consider it appropriate, give notice of the matters notified to them under section 37 of this Act to the persons mentioned in subsection (4) below.”,

(c) in subsection (4)—

(i) in the text preceding paragraph (a), for the words “subsection (3)(a) and (b)(i)” there is substituted “subsections (3)(a) and (3A)”,

35 (ii) paragraph (d) is repealed together with the word “and” immediately preceding it.

(4) In subsection (2) of section 40 (revocation of emergency detention certificate: notification), after the word “inform” there is inserted “the Commission and”.

- (5) In subsection (4) of section 42 (certificate under section 41: revocation), after the word “inform” there is inserted “the Commission and”.

#### 4 Short-term detention in hospital

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

- (2) In subsection (2) of section 44 (short-term detention in hospital), after paragraph (c) there is inserted—

“(ca) section 113(5) of this Act;”.

- (3) In section 46 (hospital managers’ duties: notification)—

(a) in subsection (3), the words “, and send a copy of it,” are repealed,

(b) after subsection (3) there is inserted—

“(4) When giving notice under subsection (2) or (3) above, the managers of the hospital are to send a copy of the certificate to each recipient of the notice.”.

#### 5 Meaning of temporary compulsion

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

- (2) In section 230 (appointment of patient’s responsible medical officer), in paragraph (c) of the definition of “appropriate act” in subsection (4), the words “under section 54(1)(c) of the 1995 Act” are repealed.

- (3) In section 329 (interpretation), at the appropriate alphabetical place in subsection (1) there is inserted—

““temporary compulsion order” means an order made under section 54(1)(c) of the 1995 Act;”.

#### *Suspension of orders and measures*

#### 6 Suspension of orders on emergency detention

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

- (2) In section 43 (effect of subsequent emergency detention certificate on compulsory treatment order)—

(a) in paragraph (a) of subsection (1), for the words “compulsory treatment order” there is substituted “relevant order”,

(b) in subsection (2), for the words “The compulsory treatment order” there is substituted “A relevant order”,

(c) in subsection (3)—

(i) after the word “Act” there is inserted “or (as the case may be) section 57A(8)(b) of the 1995 Act”,

(ii) for the words “compulsory treatment order” in each place where they occur there is substituted “relevant order”,

(d) after subsection (3) there is inserted—

“(4) In this section, the references to a relevant order are to—

- (a) a compulsion order, or
- (b) a compulsory treatment order or an interim compulsory treatment order.”.

(3) In relation to section 43—

- (a) its title becomes “**Effect of emergency detention certificate on certain earlier orders**”,
- (b) the italic heading immediately preceding it becomes “*Effect of emergency detention certificate on certain orders*”.

## 7 Suspension of orders on short-term detention

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) In section 56 (effect of subsequent short-term detention certificate on compulsory treatment order)—

(a) in paragraph (a) of subsection (1), for the words “compulsory treatment order” there is substituted “relevant order”,

(b) for subsection (2) there is substituted—

“(2) A relevant order shall cease to authorise the measures specified in it for the period during which the patient is subject to—

- (a) the short-term detention certificate, or
- (b) an extension certificate.”,

(c) after subsection (2) there is inserted—

“(3) In this section, the references to a relevant order are to—

- (a) a compulsion order, or
- (b) a compulsory treatment order or an interim compulsory treatment order.”.

(3) In relation to section 56—

- (a) its title becomes “**Effect of short-term detention certificate etc. on certain earlier orders**”,
- (b) the italic heading immediately preceding it becomes “*Effect of short-term detention certificate etc. on certain orders*”.

## 8 Suspension of detention for certain purposes

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) In section 127 (suspension of measure authorising detention)—

(za) in subsection (1), the words “not exceeding 6 months” are repealed,

(zb) after subsection (1) there is inserted—

“(1A) A certificate under subsection (1) above may specify—

- (a) a single period not exceeding 200 days, or
- (b) a series of more than one individual period falling within a particular 6 month period.”,

(zc) after subsection (3) there is inserted—

“(3A) A certificate under subsection (3) above may specify—

(a) a single period, or

(b) a series of more than one individual period.”,

(a) subsection (4) is repealed,

(b) after subsection (4) there is inserted—

“(4A) The purpose for which a certificate under subsection (1) or (3) above is granted must be recorded in the certificate.”.

(3) In section 221 (assessment order: suspension of measure authorising detention)—

(za) after subsection (2) there is inserted—

“(2A) A certificate under subsection (2) above may specify—

(a) a single period, or

(b) a series of more than one individual period.”,

(a) after subsection (3) there is inserted—

“(3A) Subsection (3) above does not require the consent of the Scottish Ministers if the granting of the certificate is for the purpose of enabling the patient to—

(a) attend a hearing in criminal proceedings against the patient, or

(b) meet a medical or dental appointment made for the patient.”,

(b) subsection (4) is repealed,

(c) after subsection (4) there is inserted—

“(4A) The purpose for which a certificate under subsection (2) above is granted must be recorded in the certificate.”.

(4) In section 224 (patients subject to certain other orders and directions: suspension of measure authorising detention)—

(a) in subsection (1), after paragraph (b) there is inserted—

“(ba) a temporary compulsion order;”,

(aa) In subsection (2), the words “not exceeding 3 months” are repealed,

(ab) after subsection (2) there is inserted—

“(2A) A certificate under subsection (2) above may specify—

(a) a single period not exceeding 90 days, or

(b) a series of more than one individual period falling within a particular 3 month period.”,

(b) after subsection (3) there is inserted—

“(3A) In the case of a treatment order, an interim compulsion order or a temporary compulsion order, subsection (3) above does not require the consent of the Scottish Ministers if the granting of the certificate is for the purpose of enabling the patient to—

(a) attend a hearing in criminal proceedings against the patient, or

(b) meet a medical or dental appointment made for the patient.”,

(c) subsection (5) is repealed,

(d) after subsection (5) there is inserted—

“(5A) The purpose for which a certificate under subsection (2) above is granted must be recorded in the certificate.”.

## **9 Maximum suspension of particular measures**

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) In section 127 (suspension of measure authorising detention)—

(aa) for subsection (2) there is substituted—

“(2) The total period that an order does not, by reason of certification under subsection (1) above, authorise the measure mentioned in section 66(1)(a) of this Act must not exceed 200 days (or a higher total by virtue of subsection (10) below)—

(a) in the 12 month period beginning with the day on which the order is made, or

(b) in each subsequent period of 12 months.”,

(ab) after subsection (2) there is inserted—

“(2A) For the purpose of subsection (2) above—

(a) a day does not count towards the total period if the measure is (by reason of such certification) not authorised for a period of 8 hours or less in that day,

(b) a single period (specified in such certification) of more than 8 hours and less than 24 hours, whether in one day or spanning two days, is to count as a whole day towards the total period.”,

(c) after subsection (9) there is inserted—

“(10) The total of 200 days referred to in subsection (2) above is increased in the patient’s case to a higher total if it is approved by an order of the Tribunal on an application by the patient’s responsible medical officer under this subsection.

(11) Where the patient’s responsible medical officer makes an application under subsection (10) above, that officer must inform the Commission of the application and the result of it once determined (including any order made in connection with it under subsection (11B) below).

(11A) Where the Tribunal receives an application under subsection (10) above, the Tribunal must inform the patient and the patient’s named person—

(a) that they may make representations (oral or written), and

(b) of the result of the application once determined (including any order made in connection with it under subsection (11B) below).

(11B) If the Tribunal decides not to make an order approving a higher total on an application under subsection (10) above, the Tribunal may make an order varying the compulsory treatment order to which the patient is subject so that it no longer authorises the measure mentioned in section 66(1)(a) of this Act.

(12) A higher total by virtue of subsection (10) above must not exceed 300 days.”.

(2A) In section 128 (suspension of other measures), in each of subsections (1) and (2), for the words “3 months” there is substituted “90 days”.

(3) In section 224 (patients subject to certain other orders and directions: suspension of measure authorising detention)—

(aa) for subsection (4) there is substituted—

“(4) The total period that an order or direction does not, by reason of certification under subsection (2) above, authorise the detention of a patient in hospital must not exceed 200 days (or a higher total by virtue of subsection (11) below)—

(a) in the 12 month period beginning with the day on which the order or direction is made, or

(b) in each subsequent period of 12 months.”,

(ab) after subsection (4) there is inserted—

“(4A) For the purpose of subsection (4) above—

(a) a day does not count towards the total period if the detention is (by reason of such certification) not authorised for a period of 8 hours or less in that day,

(b) a single period (specified in such certification) of more than 8 hours and less than 24 hours, whether in one day or spanning two days, is to count as a whole day towards the total period.”,

(c) after subsection (10) there is inserted—

“(11) The total of 200 days referred to in subsection (4) above is increased in the patient’s case to a higher total if it is approved by an order of the Tribunal on an application by the patient’s responsible medical officer under this subsection.

(12) Where the patient’s responsible medical officer makes an application under subsection (11) above, that officer must inform the Commission of the application and the result of it once determined.

(12A) Where the Tribunal receives an application under subsection (11) above, the Tribunal must inform the patient and the patient’s named person—

(a) that they may make representations (oral or written), and

(b) of the result of the application once determined.

(13) A higher total by virtue of subsection (11) above must not exceed 300 days.”.

(4) In section 320 (appeal to sheriff principal against certain decisions of the Tribunal), in subsection (1), after paragraph (l) there is inserted—

“(la) a decision to make an order under section 127(11B) of this Act arising by virtue of an application under section 127(10) of this Act;”.

*Specification of hospital units*

**9A Specification for detention measures**

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) In section 36 (emergency detention in hospital), after subsection (12) there is inserted—

5 “(13) A reference in this section to a hospital may be read as a reference to a hospital unit.

(14) For the purpose of subsection (13) above, “hospital unit” means any part of a hospital which is treated as a separate unit.”.

(3) In section 44 (short-term detention in hospital), after subsection (11) there is inserted—

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“(12) In this section and sections 46 to 49 of this Act, a reference to a hospital may be read as a reference to a hospital unit.

(13) For the purposes of subsection (12) above, “hospital unit” means any part of a hospital which is treated as a separate unit.”.

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(4) After section 71 there is inserted—

**“71A Compulsory treatment in hospital unit**

(1) In sections 62 to 68 of this Act, a reference to a hospital may be read as a reference to a hospital unit.

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(2) For the purposes of subsection (1) above, “hospital unit” means any part of a hospital which is treated as a separate unit.”.

**9B Transfer of prisoner to hospital unit**

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) In section 136 (transfer of prisoners for treatment for mental disorder), after subsection (10) there is inserted—

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“(11) A reference in this section to a hospital may be read as a reference to a hospital unit.

(12) For the purpose of subsection (11) above, “hospital unit” means any part of a hospital which is treated as a separate unit.”.

**9C Transfer from specified unit**

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(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) After section 124 there is inserted—

**“124A Transfer to other hospital unit**

(1) Subsection (2) below applies where—

(a) the detention of a patient in hospital is authorised by—

35

(i) a compulsory treatment order, or

(ii) an interim compulsory treatment order, and

(b) that order specifies the hospital unit in which the patient is to be detained.

- (2) The managers of the hospital in which the patient is detained may transfer the patient to another hospital unit within the same hospital.
- (3) In relation to a transfer or proposed transfer under subsection (2) above, section 124(4) to (14) of this Act applies subject to the following modifications—
- 5 (a) a reference to section 124(2) is to be read as a reference to subsection (2) above,
- (b) subsection (10)(a) is to be ignored,
- (c) in subsection (12), a reference to the hospital from which the patient is transferred is to be read as a reference to the hospital in which the patient is detained,
- 10 (d) in subsections (13)(b) and (14), a reference to the hospital to which the patient is transferred is to be read as a reference to the hospital unit to which the patient is transferred.
- (4) For the purposes of this section, “hospital unit” means any part of a hospital which is treated as a separate unit.”
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*Orders regarding level of security*

**9D Requirement for medical report**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 264 (detention in conditions of excessive security: state hospitals), after subsection (7) there is inserted—
- 20 “(7A) An application may not be made under subsection (2) above unless it is accompanied by a report prepared by a medical practitioner which—
- (a) states that in the practitioner’s opinion the patient does not require to be detained under conditions of special security that can be provided only in a state hospital, and
- 25 (b) sets out the practitioner’s reasons for being of that opinion.”
- (3) In section 268 (detention in conditions of excessive security: hospitals other than state hospitals), after subsection (7) there is inserted—
- 30 “(7A) An application may not be made under subsection (2) above unless it is accompanied by a report prepared by a medical practitioner which—
- (a) states that in the practitioner’s opinion the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient, and
- (b) sets out the practitioner’s reasons for being of that opinion.”

**10 Process for enforcement of orders**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) Section 266 (order under section 265: further provision) is repealed.
- (3) In section 267 (orders under sections 264 to 266: recall)—
- 35 (a) in subsection (1), for the words “, 265(3) or 266(3)” there is substituted “or 265(3)”,
- 40

- (b) in subsection (3), for the words “, 265(4) to (6) or 266(4) to (6)” there is substituted “or 265(4) to (6)”.
- (4) The title of section 267 becomes “**Order under section 264 or 265: recall**”.
- (5) Section 270 (order under section 269: further provision) is repealed.
- 5 (6) In section 271 (orders under sections 268 to 270: recall)—
- (a) in subsection (1), for the words “, 269(3) or 270(3)” there is substituted “or 269(3)”,
- (b) in subsection (3), for the words “, 269(4) to (6) or 270(4) to (6)” there is substituted “or 269(4) to (6)”.
- 10 (7) The title of section 271 becomes “**Order under section 268 or 269: recall**”.
- (8) In section 272 (proceedings for specific performance of statutory duty)—
- (a) in subsection (1), for paragraphs (a) to (d) there is substituted—
- “(a) an order under section 264(2) of this Act, or
- (c) an order under section 268(2) of this Act,”,
- 15 (b) in subsection (2), for paragraphs (a) to (d) there is substituted—
- “(a) an order under section 265(3) of this Act, or
- (c) an order under section 269(3) of this Act,”.

## **11 Orders relating to non-state hospitals**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- 20 (2) In section 268 (detention in conditions of excessive security: hospitals other than state hospitals)—
- (a) in subsection (1), the word “qualifying” in the first place where it occurs is repealed,
- (ba) in subsection (2), for the words from “detention” to “patient’s case” there is substituted “the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient”,
- 25 (c) in subsection (5), for the words from “to the managers” to the end there is substituted “of the name of the hospital so identified to the managers of the hospital in which the patient is detained”,
- 30 (d) in subsection (6), the word “qualifying” in each place where it occurs is repealed,
- (e) in subsection (10)—
- (i) except in paragraph (e), the word “qualifying” in each place where it occurs is repealed,
- (ii) in paragraph (e), for the words “qualifying hospital” there is substituted “hospital in which the patient is detained”,
- 35 (f) subsections (11) to (14) are repealed.
- (3) In section 269 (order under section 268: further provision)—
- (a) in each of subsections (1) and (2), the word “qualifying” is repealed,

(aa) in subsection (3), for the words from “detention” to “patient’s case” there is substituted “the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient”,

(c) in subsection (6), for the words from “to the managers” to the end there is substituted “of the name of the hospital so identified to the managers of the hospital in which the patient is detained”.

(4) In section 271 (orders under sections 268 to 270: recall)—

(a) in subsection (1), the word “qualifying” is repealed,

(aa) in subsection (2)(a), for the words from “detention” to “patient’s case” there is substituted “the test specified in regulations made under section 271A(2) of this Act is not met in relation to the patient”.

(4A) After section 271 there is inserted—

*“Process for orders: further provision*

**“271A Regulation-making powers**

(1) A hospital is a “qualifying hospital” for the purposes of sections 268 to 271 of this Act if—

(a) it is not a state hospital, and

(b) it is specified, or is of a description specified, in regulations.

(2) Regulations may specify the test for the purposes of sections 268(2), 269(3) and 271(2)(a) of this Act.

(3) Regulations under subsection (2) above specifying the test—

(a) must include as a requirement for the test to be met in relation to a patient that the Tribunal be satisfied that detention of the patient in the hospital in which the patient is being detained involves the patient being subject to a level of security that is excessive in the patient’s case, and

(b) may include further requirements for the test to be met in relation to a patient.

(4) Regulations may make provision about when, for the purposes of—

(a) any regulations made under subsection (2) above, and

(b) sections 268 to 271 of this Act,

a patient’s detention in a hospital is to be taken to involve the patient being subject to a level of security that is excessive in the patient’s case.

(5) Regulations may modify sections 264 and 268 of this Act so as to provide that a person must meet criteria besides being a medical practitioner in order to prepare a report for the purpose of subsection (7A) in each of those sections.”.

(5) In section 273 (interpretation of Chapter), for the definition of “relevant patient” there is substituted—

““relevant patient” means a patient whose detention in hospital is authorised by—

(a) if the patient is also subject to a restriction order, a compulsion order,

(b) a hospital direction, or

(c) a transfer for treatment direction.”.

- (6) In section 326 (orders, regulations and rules), in subsection (4)(c), for the words “268(11) to (14)” there is substituted “271A”.

#### **11A Meaning of hospital in sections 268 to 273 of the 2003 Act**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 273 (interpretation of Chapter)—
- (a) the words up to the end of the definition of “relevant patient” become subsection (1),
- (b) after that subsection there is inserted—
- “(2) In this Chapter, a reference to a hospital may be read as a reference to a hospital unit.
- (3) For the purposes of this Chapter, “hospital unit” means any part of a hospital which is treated as a separate unit.”.

#### *Removal and detention of patients*

#### **13 Notifying decisions on removal orders**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 295 there is inserted—

##### **“295A Notification of decision under section 293 or 295**

- (1) Subsection (2) below applies in relation to a decision of a sheriff or a justice of the peace under section 293 of this Act making, or refusing to make, a removal order.
- (2) As soon as practicable after the decision is made, the mental health officer who made the application for the removal order must notify the Commission of the decision.
- (3) Subsection (4) below applies in relation to a decision of a sheriff under section 295 of this Act making, or refusing to make, an order recalling or varying a removal order.
- (4) As soon as practicable after the decision is made, the mental health officer specified in the removal order must notify the Commission of—
- (a) the decision, and
- (b) any additional order made under subsection (6) of section 295 of this Act.”.

#### **14 Detention pending medical examination**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 299 (nurse’s power to detain pending medical examination)—
- (a) in subsection (2)—
- (i) paragraph (b) is repealed together with the word “and” immediately preceding it,

(ii) in the text following paragraph (b), for the words from “, subject” to the end there is substituted “be detained in the hospital for a period not exceeding 3 hours (“holding period”) for the purpose of enabling the carrying out of a medical examination of the patient by a medical practitioner”,

(b) in paragraph (c) of subsection (3), for the words “to carry out a medical examination of the patient” there is substituted “for a medical examination of the patient to be carried out by a medical practitioner”,

(d) subsection (4) is repealed.

### *Periodical referral of cases*

#### **16 Periodical referral of cases**

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(1A) In subsection (3)(c) of section 101 (Tribunal’s duty to review determination under section 86), for the words “made to” there is substituted “determined by”.

(2) In section 189 (reference to Tribunal by Scottish Ministers)—

(a) in subsection (2), for the words “made to” in each place where they occur there is substituted “determined by”,

(b) in subsection (3)—

(i) for the words “made to” there is substituted “determined by”,

(ii) after the words “made under subsection (2) above” there is inserted “that has been determined by it”.

(3) In section 213 (reference to Tribunal by Scottish Ministers)—

(a) in subsection (2), for the words “made to” in each place where they occur there is substituted “determined by”,

(b) in subsection (3)—

(i) for the words “made to” there is substituted “determined by”,

(ii) after the words “made under subsection (2) above” there is inserted “that has been determined by it”.

(4) In Schedule 2 (the Mental Health Tribunal for Scotland), paragraph 13A is repealed.

### *Representation by named persons*

#### **18A Named person not to be automatic**

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) Sections 251 and 253 are repealed.

(3) In subsection (2) of section 318 (false statements), sub-paragraph (ii) of paragraph (b) is repealed.

#### **19 Consent to being named person**

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

- (2) In section 250 (nomination of named person)—
- (a) in subsection (1), for the words “(3) and (6)” there is substituted “(2A), (3) and (6)”,
  - (b) after subsection (2) there is inserted—  
5 “(2A) A nomination under subsection (1) above is valid only if—
    - (a) a docket to the nomination states that the person nominated has consented to the nomination,
    - (b) the docket is signed by the nominated person, and
    - (c) the nominated person’s signature is witnessed by a prescribed person.”,
  - 10 (c) in subsection (6), for the words “may decline” there is substituted “ceases”.
- (4) In section 257 (named person: Tribunal’s powers)—
- (a) in subsection (3), after the word “(4)” there is inserted “or (5)”,
  - (b) after subsection (4) there is inserted—  
15 “(5) An order under this section appointing a person to be a patient’s named person may be made only if—
    - (a) a document, signed by the person, states that the person has consented to being the patient’s named person, and
    - (b) the person’s signature is witnessed by someone.
  - 20 (6) A person appointed by an order under this section to be a patient’s named person ceases to be the patient’s named person by giving notice to that effect to—
    - (a) the Tribunal,
    - (b) the patient, and
    - (c) the local authority for the area in which the patient resides.”.

25 **20 Appointment of named person**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 255 (named person: mental health officer’s duties etc.)—
- (a) subsections (3) to (5) are repealed,
  - 30 (b) in paragraph (b) of subsection (7), sub-paragraph (i) is repealed together with the word “or” immediately following it.
- (3) In section 256 (named person: application by patient etc.)—
- (a) paragraph (a) of subsection (1) is repealed,
  - (b) in paragraph (b) of subsection (1), for the words “the applicant” there is substituted “a person mentioned in subsection (2) below (“the applicant)”.
- 35 (4) In section 257 (named person: Tribunal’s powers)—
- (a) subsection (1) is repealed,
  - (b) in subsection (2), for the words from “declaring” to the end there is substituted “as allowed by subsection (3A)”.

(c) after subsection (3) there is inserted—

“(3A) For the purpose of subsection (2), this subsection allows an order—

(a) in any case, to declare that the acting named person is not the named person,

(b) if the patient has not attained the age of 16 years, to appoint the person specified in the order to be the patient’s named person in place of the acting named person.”

(5) In section 320 (appeal to sheriff principal against certain decisions of the Tribunal), paragraph (t) of subsection (1) is repealed.

## 20A Ability to act if no named person

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) After section 257 there is inserted—

*“Ability to act if no named person*

### 257A Ability to act if no named person

(1) This section applies if—

(a) a patient does not have a named person,

(b) the patient has attained the age of 16 years, and

(c) the patient is incapable in relation to a decision as to whether to initiate an application or appeal in the patient’s case.

(2) In subsection (1)(c) above, “incapable” has the same meaning as in section 250 of this Act.

(3) Each of the persons listed in subsection (9)(a) to (d) below has authority to initiate an application or appeal that may be made by the patient under section 50(1), 99(1), 100(2), 120(2), 125(2), 126(2), 163(1), 164(2), 192(2), 201(1), 204(1), 214(2), 219(2), 220(2), 264(2), 268(2), 320(2), 321(1) or 322(2) of this Act.

(4) Each of the persons listed in subsection (9)(a) and (b) below has authority to obtain any notice or information that is to be provided under section 54(3), 60(1), 87(2)(c), 124(4) or (6), 127(7) or (11A)(b), 128(3), 129(3) or (4), 200(3), 218(4), (6) or (10)(b), 218A(4), 224(8) or (12A)(b) or 226(3) of this Act.

(5) The reference in subsection (3) above to section 264(2), 268(2), 320(2), 321(1) or 322(2) of this Act does not apply in relation to a guardian or a welfare attorney of the patient (as that person is already entitled to make an application or appeal under that section).

(6) In the application of subsection (4) above—

(a) the reference to section 87(2)(c) relates only to notice of the determination mentioned in that section (and not also to a copy of the record mentioned in that section),

(b) the reference to section 128(3) or 129(4) relates to a responsible medical officer's reasons only if that officer is satisfied that it is appropriate to give notice of them to a guardian or a welfare attorney of the patient (having regard to the need to ensure the patient's wellbeing and confidentiality).

(7) Neither of the persons listed in subsection (9)(c) or (d) below has authority to act in relation to a patient by virtue of this section if the patient has made a written declaration precluding the person (or all persons) from so acting.

(8) Subsections (2) to (5) and (7) of section 250 of this Act apply to a declaration mentioned in subsection (7) above as they apply to a nomination to which subsection (1) of that section relates (with that section to be read accordingly).

(9) The listed persons are—

(a) any guardian of the patient,

(b) any welfare attorney of the patient,

(c) the patient's primary carer (if any),

(d) the patient's nearest relative.”.

*Advance statements, support and services*

**21 Advance statements to be registered**

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) After section 276 there is inserted—

**“276A Advance statements to be put with medical records**

(1) Subsection (2) below applies where a Health Board receives a copy of an advance statement, or a copy of a document withdrawing an advance statement, from—

(a) the person who made the statement, or

(b) any individual acting with the person's authority in relation to the statement.

(2) The Health Board must—

(a) place a copy of the statement or document with the person's medical records, and

(b) inform the Commission—

(i) that a copy of the statement or document is held with the person's medical records, and

(ii) of the premises at which the medical records are kept (and the personal and administrative details essential for identifying the records as the person's).

**276B Advance statements to be registered by the Commission**

(1) Subsection (2) below applies where the Commission receives information by virtue of section 276A(2) of this Act.

- (2) The Commission must enter the information in a register of advance statements maintained by it (and mark the date on which the entry is made).

**276C Entitlement to inspect register of advance statements**

- (1) Subsection (2) below makes provision as to the register of advance statements maintained by the Commission in accordance with section 276B(2) of this Act.

- (2) The Commission must allow an entry in the register to be inspected at a reasonable time—

- (a) by the person whose medical records are referred to in the entry,  
 (b) with respect to treatment of the person for mental disorder, by any individual acting on the person’s behalf,  
 (c) for the purpose of making decisions or taking steps with respect to the treatment of the person for a mental disorder, by—  
 (i) a mental health officer dealing with the person’s case,  
 (ii) the person’s responsible medical officer,  
 (iii) the Health Board responsible for the person’s treatment.”.

**22 Communication at medical examination etc.**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.  
 (2) After section 261 there is inserted—

**“261A Help with communication at medical examination etc.**

- (1) Subsection (2) below applies where—

- (a) a medical examination or interview referred to in subsection (4)(a) or (b) below is to be carried out, and  
 (b) the subject of it—  
 (i) has difficulty in communicating, or  
 (ii) generally communicates in a language other than English.

- (2) The appropriate person must take all reasonable steps to secure that, for the purpose of enabling the subject of the medical examination or interview to communicate during it—

- (a) arrangements appropriate to the subject’s needs are made, or  
 (b) the subject is provided with assistance, or material, appropriate to those needs.

- (3) As soon as practicable after taking any steps under subsection (2) above, the appropriate person must make a written record of the steps.

- (4) This subsection refers to—

- (a) a medical examination by virtue of section 36(1)(a), 44(1)(a), 57(2) or 136(2) of this Act,  
 (b) an interview by virtue of—  
 (i) section 45(1)(a) or 61(2)(a) of this Act, or  
 (ii) section 59B(2)(a) or 57C(2)(a) of the 1995 Act.

- (5) In subsections (2) and (3) above, “the appropriate person” means—
- (a) in relation to a medical examination by virtue of section 136(2) of this Act, the Scottish Ministers,
  - (b) in relation to a medical examination by virtue of any of the other sections of this Act mentioned in subsection (4)(a) above—
    - (i) if it is to be carried out at a hospital, the managers of the hospital,
    - (ii) if it is to be carried out elsewhere, the medical practitioner carrying it out,
  - (c) in relation to an interview referred to in subsection (4)(b) above—
    - (i) if it is to be carried out at a hospital, the managers of the hospital,
    - (ii) if it is to be carried out elsewhere, the mental health officer carrying it out.”.

## 22A Conflicts of interest to be avoided

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 291 there is inserted—

*“Conflicts of interest to be avoided*

### 291A Conflicts of interest to be avoided

- (1) There must not be a conflict of interest in relation to a medical examination to be carried out for the purpose of section 36(1), 44(1), 47(1), 57(2), 77(2), 78(2), 139(2), 140(2) or 182(2) of this Act.
- (2) Regulations may—
  - (a) specify circumstances in which, in the application of subsection (1) above—
    - (i) there is to be taken to be a conflict of interest,
    - (ii) there is not to be taken to be a conflict of interest,
  - (b) specify circumstances in which subsection (1) above does not apply.”.
- (3) These provisions are repealed—
  - (a) in section 36 (emergency detention in hospital)—
    - (i) paragraph (a) of subsection (3),
    - (ii) subsection (9),
  - (b) in section 44 (short-term detention in hospital)—
    - (i) paragraph (a) of subsection (3),
    - (ii) subsection (8),
  - (c) in section 47 (extension of detention pending application for compulsory treatment order)—
    - (i) paragraph (a) of subsection (2),
    - (ii) subsection (5),
  - (d) in section 58 (medical examination: requirements), subsection (5).

**22B Safeguarding the patient's interest**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 245 (certificates under sections 235, 236, 239 and 241), in subsection (3)—
- (a) the word “and” immediately preceding sub-paragraph (ii) of paragraph (a) is repealed,
- (b) after sub-paragraph (ii) of paragraph (a) there is inserted—
- “(iii) any guardian of the patient; and
- (iv) any welfare attorney of the patient;”.

**23 Services and accommodation for mothers**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 24 (provision of services and accommodation for certain mothers with post-natal depression) —
- (a) in paragraph (d) of subsection (1), for the words “for post-natal depression,” there is substituted “for—
- (i) post-natal depression; or
- (ii) a mental disorder (other than post-natal depression),”;
- (b) after subsection (1) there is inserted—
- “(1A) But a Health Board is required to provide services and accommodation under subsection (1) above only if it is satisfied that doing so would be beneficial to the wellbeing of the child.”.
- (3) The title of section 24 becomes “**Services and accommodation for mothers**”.

*Cross-border transfers and absconding patients***24 Cross-border transfer of patients**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 289 (cross-border transfer: patients subject to requirement other than detention), in paragraph (b) of subsection (1)—
- (a) the words from “a person” to the end become sub-paragraph (i),
- (b) after that sub-paragraph (as so numbered) there is inserted—
- “(ii) a person subject to corresponding requirements in a member State of the European Union (apart from the United Kingdom) and removed from that State.”.
- (3) In section 290 (cross-border transfer: patients subject to detention requirement or otherwise in hospital), in paragraph (c) of subsection (1)—
- (a) the words from “a person” to the end become sub-paragraph (i),
- (b) after that sub-paragraph (as so numbered) there is inserted—

“(ii) a person subject to corresponding measures in a member State of the European Union (apart from the United Kingdom) and removed from that State.”.

(4) In section 309A (cross-border visits: leave of absence), in subsection (1)—

(a) the words from “a person” to the end become paragraph (a),

(b) after that paragraph (as so numbered) there is inserted—

“(b) a person who is subject to a corresponding suspension of detention in a member State of the European Union (apart from the United Kingdom).”.

## **25 Dealing with absconding patients**

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) In paragraph (a)(iii) of subsection (3) of section 303 (taking into custody and return of absconding patients), after the words “compulsory treatment order” there is inserted “or an interim compulsory treatment order”.

(3) In section 309 (patients from other jurisdictions)—

(a) in subsection (1)—

(i) the words from “persons” to the end become paragraph (a),

(ii) after that paragraph (as so numbered) there is inserted—

“(b) persons in Scotland who are subject to corresponding requirements or corresponding measures in a member State of the European Union (apart from the United Kingdom).”.

(b) in subsection (2), for the words “Those regulations” there is substituted “Regulations under subsection (1) above”,

(c) after subsection (2) there is inserted—

“(2ZA) Regulations may make provision applying specific provisions in Part 16 of this Act to persons to whom sections 301 to 303 of this Act apply by virtue of subsection (1) above.

(2ZB) Regulations under subsection (2ZA) above may make such modifications of that Part in that application as the Scottish Ministers think fit.

(2ZC) But regulations under subsection (2ZA) above may not—

(a) apply any of that Part to persons who are subject to requirements or measures corresponding only to detention in hospital in accordance with an emergency detention certificate, or

(b) authorise medical treatment of the types mentioned in section 234(2) or 237(3) of this Act.”.

(4) In section 310 (regulations as to absconding by other patients), after subsection (3) there is inserted—

“(3A) In making provision as described in paragraphs (a) and (b) of subsection (1) above, regulations under that subsection may specify persons who are authorised by patients’ responsible medical officers.”.

*Arrangements for treatment of prisoners***26 Agreement to transfer of prisoners**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 136 (transfer of prisoners for treatment for mental disorder), after paragraph (a) of subsection (3) there is inserted—

“(aa) that—

- (i) a mental health officer has agreed to the making of the direction, or
- (ii) it has been impracticable to obtain the agreement of a mental health officer;”.

**27 Compulsory treatment of prisoners**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In schedule 2 (the Mental Health Tribunal for Scotland), in paragraph 7—

(a) in sub-paragraph (4), for the words “(other than proceedings relating solely to an application under section 255 or 256 of this Act)” there is substituted “(other than excepted proceedings)”;

(b) after sub-paragraph (4) there is inserted—

“(4A) For the purpose of sub-paragraph (4) above, the following are excepted proceedings—

- (a) proceedings relating solely to an application under section 255 or 256 of this Act, or
- (b) proceedings relating to an application for a compulsory treatment order in respect of a patient subject to—
- (i) a hospital direction, or
- (ii) a transfer for treatment direction.”.

- (3) In schedule 3 (application of Chapter 1 of Part 7 to certain patients), after paragraph 1 there is inserted—

“1A In the case of a patient subject to a hospital direction or a transfer for treatment direction, section 60(1) of this Act shall have effect as if, after paragraph (b), there were inserted—

“(ba) to the Scottish Ministers;”.

**PART 2**

## CRIMINAL CASES

*Making and effect of disposals***28 Making certain orders in remand cases**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In each place where they occur as follows, before the words “in custody” there is inserted “remanded”—

(a) in section 52B (prosecutor’s power to apply for assessment order), in subsection (3)(c),

5 (b) in section 52C (Scottish Ministers’ power to apply for assessment order), in subsection (1)(c),

(c) in section 52D (assessment order), in subsection (10)(d),

(d) in section 52F (assessment order: supplementary), in subsection (1)(a),

10 (e) in section 52K (prosecutor’s power to apply for treatment order), in subsection (3)(c),

(f) in section 52L (Scottish Ministers’ power to apply for treatment order), in subsection (1)(c),

(g) in section 52M (treatment order), in subsection (9)(d)(i) and (ii),

(h) in section 52P (treatment order: supplementary), in subsection (2)(a) and (b)(ii).

15 **28A Detention under compulsion orders**

(1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 57 (disposal of case where accused found not criminally responsible or unfit for trial), in subsection (2)—

20 (a) in paragraph (a), for the words “authorising the detention of the person in a hospital” there is substituted “(whether or not authorising the detention of the person in a hospital)”,

(b) for paragraph (b) there is substituted—

25 “(b) subject to subsection (4A) below, make a restriction order in respect of the person (that is, in addition to a compulsion order authorising the detention of the person in a hospital);”

**29 Periods for assessment orders**

(1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 52D (assessment order)—

(a) in subsection (6)—

30 (i) in paragraph (a), for the words “expiry of the period of” there is substituted “end of the day following the”,

(ii) in each of paragraphs (b) and (c), for the words “period of 28 days beginning with the day on which the order is made” there is substituted “relevant period given by subsection (6A) below”,

35 (b) after subsection (6) there is inserted—

“(6A) For the purpose of subsection (6)(b) and (c) above, the relevant period is the period—

(a) beginning with the day on which the order is made,

(b) expiring at the end of the 28 days following that day.”.

- (3) In section 52F (assessment order: supplementary), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.
- (4) In section 52G (review of assessment order)—
- (a) in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”,
- (b) in subsection (4), for words from “7 days” to the end there is substituted “the relevant period given by subsection (4A) below”,
- (c) after subsection (4) there is inserted—
- “(4A) For the purpose of subsection (4) above, the relevant period is the period—
- (a) beginning with the day on which the order would otherwise cease to authorise the detention of the person in hospital,
- (b) expiring at the end of the 14 days following that day.”.
- (5) In section 52H (early termination of assessment order)—
- (a) in subsection (1)—
- (i) in paragraph (a), for the words “period of 7 days beginning with the day on which the order is made” there is substituted “relevant period given by subsection (1A) below”,
- (ii) in paragraph (b), for the words “period of 28 days beginning with the day on which the order is made” there is substituted “relevant period given by subsection (1A) below”,
- (b) after subsection (1) there is inserted—
- “(1A) For the purpose of subsection (1)(a) and (b) above, the relevant period is the period—
- (a) beginning with the day on which the order is made,
- (b) expiring—
- (i) as regards subsection (1)(a) above, at the end of the 7 days following the day mentioned in paragraph (a) of this subsection,
- (ii) as regards subsection (1)(b) above, at the end of the 28 days following the day mentioned in paragraph (a) of this subsection.”.

### 30 **Periods for treatment orders**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 52M (treatment order)—
- (a) in subsection (3)(c), for the words “expiry of the period of” there is substituted “end of the day following the”,
- (b) in subsection (6)(a), for the words “expiry of the period of” there is substituted “end of the day following the”.
- (3) In section 52P (treatment order: supplementary), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.
- (4) In section 52R (termination of treatment order)—

(a) in subsection (1)(a), for the words “period of 7 days beginning with the day on which the order is made” there is substituted “relevant period given by subsection (1A) below”,

(b) after subsection (1) there is inserted—

5 “(1A) For the purpose of subsection (1)(a) above, the relevant period is the period—

(a) beginning with the day on which the order is made,

(b) expiring at the end of the 7 days following that day.”.

### **31 Periods for short-term compulsion**

(1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

10 (2) In section 53 (interim compulsion order)—

(a) in subsection (3)(c), for the words “expiry of the period of” there is substituted “end of the day following the”,

(b) in subsection (8)—

15 (i) in paragraph (a), for the words “expiry of the period of” there is substituted “end of the day following the”,

(ii) in paragraph (b), for the words “12 weeks beginning with the day on which the order is made” there is substituted “the relevant period given by subsection (8A) below”,

20 (iii) in paragraph (c), for the words “period of 12 weeks beginning with the day on which the order is made” there is substituted “relevant period given by subsection (8A) below”,

(c) after subsection (8) there is inserted—

“**(8A)** For the purpose of subsection (8)(b) and (c) above, the relevant period is the period—

25 (a) beginning with the day on which the order is made,

(b) expiring at the end of the 12 weeks following that day.”.

(3) In section 53A (interim compulsion order: supplementary), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.

(4) In section 53B (review and extension of interim compulsion order)—

30 (a) in subsection (4), for the words from “(not exceeding” to “not made)” there is substituted “not exceeding the relevant period given by subsection (4A) below”,

(b) after subsection (4) there is inserted—

“**(4A)** For the purpose of subsection (4) above, the relevant period is the period—

35 (a) beginning with the day on which the order would cease to have effect if it were not extended,

(b) expiring at the end of the 12 weeks following that day.”,

(c) in subsection (5), for the words “12 months beginning with the day on which the order was first made.” there is substituted “the period—

(a) beginning with the day on which the order was first made,

(b) expiring at the end of the 12 months following that day.”.

- (5) In section 54 (unfitness for trial: further provision), in subsection (2B)(a), for the words “expiry of the period of” there is substituted “end of the day following the”.

### 32 Periods for compulsion orders

(1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 57A (compulsion order)—

(a) in subsection (2), for the words “period of 6 months beginning with the day on which the order is made” there is substituted “relevant period given by subsection (2A) below”,

(b) after subsection (2) there is inserted—

“(2A) For the purpose of subsection (2) above, the relevant period is the period—

(a) beginning with the day on which the order is made,

(b) expiring at the end of the 6 months following that day.”,

(c) in subsection (5)(b), for the words “expiry of the period of” there is substituted “end of the day following the”.

(3) In section 57B (compulsion order authorising detention in hospital or requiring residence at place: ancillary provision), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.

(4) In section 57D (compulsion order: supplementary), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.

### 33 Periods for hospital directions

(1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 59A (hospital directions)—

(a) in subsection (4)(b), for the words “expiry of the period of” there is substituted “end of the day following the”,

(b) in subsection (7)(a), for the words “expiry of the period of” there is substituted “end of the day following the”.

(3) In section 59C (hospital direction: supplementary), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.

#### *Variation of certain orders*

### 34 Variation of interim compulsion orders

(1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 53B (review and extension of interim compulsion order)—

(a) in subsection (4)—

(i) the words from “if satisfied” to the end become paragraph (a),

(ii) after that paragraph (as so numbered) there is inserted “, and

(b) if it seems appropriate to do so, direct that the offender be admitted to the hospital specified in the direction.”,

(b) in subsection (6), after the word “order” there is inserted “or make a direction specifying a hospital”,

(c) after subsection (7) there is inserted—

“(7A) Where a direction is made under subsection (4) above, the interim compulsion order has effect as if the hospital specified in the direction were the hospital specified in the order.”.

### **35 Transfer of patient to suitable hospital**

(1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) The italic heading immediately preceding section 61 becomes “*Miscellaneous provision*”.

(3) After section 61 there is inserted—

#### **“61A Transfer of person to suitable hospital**

(1) Subsection (2) below applies in relation to a person who is subject to—

- (a) an assessment order,
- (b) a treatment order,
- (c) an interim compulsion order, or
- (d) a temporary compulsion order (see section 54(1)(c) of this Act).

(2) The person’s responsible medical officer may transfer the person from the specified hospital to another hospital.

(3) The responsible medical officer may transfer the person only if satisfied that, for the purpose for which the order in question is made—

- (a) the specified hospital is not suitable, and
- (b) the other hospital is suitable.

(4) In considering the suitability of each hospital, the responsible medical officer is to have particular regard to the specific requirements and needs in the person’s case.

(5) As far before the transfer as practicable, the responsible medical officer must—

- (a) inform the person of the reason for the transfer,
- (b) notify the managers of the specified hospital, and
- (c) obtain the consent of—
  - (i) the managers of the other hospital, and
  - (ii) the Scottish Ministers.

(6) As soon after the transfer as practicable, the responsible medical officer must notify—

- (a) any solicitor known by the officer to be acting for the person, and
- (b) the court which made the order in question.

(7) A person may be transferred under subsection (2) above only once with respect to the order in question.

(8) Where a person is transferred under subsection (2) above, the order in question has effect as if the other hospital were the specified hospital.

(9) In this section—

“managers” has the meaning given by section 329(1) of the Mental Health (Treatment and Care) Scotland) Act 2003,

“responsible medical officer” has the meaning given by section 329(4) of that Act,

“specified hospital” means hospital to which the person is admitted by virtue of the order in question.”.

### *Specification of hospital units*

#### **35A Specification of unit**

(1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) After section 61 there is inserted—

#### **“61B Specification of hospital unit**

(1) A reference in this Part to a hospital may be read as a reference to a hospital unit.

(2) In the operation of section 61A of this Act in relation to a transfer from one hospital unit to another within the same hospital—

(a) subsection (2) of that section applies by virtue of subsection (1) of that section where the order in question specifies the hospital unit in which the person is to be detained,

(b) in subsection (5) of that section—

(i) paragraph (b) is to be ignored,

(ii) in paragraph (c)(i), the reference to the managers of the other hospital is to be read as a reference to the managers of the hospital in which the person is detained.

(3) For the purposes of this section, “hospital unit” means any part of a hospital which is treated as a separate unit.”.

#### **39 Transfer from specified unit**

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) After section 218 there is inserted—

#### **“218A Transfer of patient from specified hospital unit**

(1) Subsection (2) below applies where—

(a) a patient is subject to—

(i) a compulsion order and a restriction order,

(ii) a hospital direction, or

(iii) a transfer for treatment direction, and

(b) that order or (as the case may be) direction specifies the hospital unit in which the patient is to be detained.

(2) If the condition in subsection (3) below is satisfied, the managers of the hospital in which the patient is detained may transfer the patient to another hospital unit within the same hospital.

(3) The condition is that the Scottish Ministers consent to the transfer.

(4) In relation to a transfer or proposed transfer under subsection (2) above, section 218(4) to (14) of this Act applies subject to the following modifications—

(a) a reference to section 218(2) is to be read as a reference to subsection (2) above,

(b) in subsection (10)(a), a reference to section 218(3) is to be read as a reference to subsection (3) above,

(c) in subsection (12), a reference to the hospital from which the patient is transferred is to be read as a reference to the hospital in which the patient is detained,

(d) in subsections (13)(b) and (14), a reference to the hospital to which the patient is transferred is to be read as a reference to the hospital unit to which the patient is transferred.

(5) For the purposes of this section, “hospital unit” means any part of a hospital which is treated as a separate unit.”.

#### **40 Consequential repeals**

The following enactments are repealed—

(a) section 9 of the Crime and Punishment (Scotland) Act 1997,

(b) paragraph 66 of schedule 7 to the Criminal Justice and Licensing (Scotland) Act 2010.

#### *Miscellaneous amendments*

#### **41 Information on extension of compulsion order**

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) After section 153 there is inserted—

##### **“153A Further information on extension of compulsion order**

(1) Subsections (2) and (3) below apply where—

(a) a mental health officer receives notice of a determination under section 152 of this Act from a patient’s responsible medical officer, and

(b) the Tribunal is required by virtue of section 165(2)(a) of this Act to review the determination.

(2) The mental health officer must—

(a) prepare a record stating the information mentioned in subsection (4) below,

(b) submit the record to the Tribunal, and

(c) at the same time as submitting the record to the Tribunal, send to the persons mentioned in subsection (6) below—

- (i) a copy of the record, and
- (ii) a statement of the matters mentioned in subsection (5) below.

5 (3) At the same time as submitting the record to the Tribunal, the mental health officer must send a copy of the record to the patient except where the officer considers that doing so carries a risk of significant harm to the patient or others.

(4) The information to be stated in the record is—

- 10 (a) the name and address of the patient,
- (b) if known by the mental health officer, the name and address of—
  - (i) the patient’s named person, and
  - (ii) the patient’s primary carer,
- 15 (c) the things done by the mental health officer in compliance with the requirements in subsection (2) of section 151 of this Act (and, if by virtue of subsection (3) of that section the first-listed one has not been complied with, the reason why compliance with it was impracticable),
- (d) so far as relevant to the extension of the compulsion order—
  - (i) the details of the personal circumstances of the patient, and
  - 20 (ii) if known by the mental health officer, the details of any advance statement made by the patient (and not withdrawn by the patient),
- (e) the views of the mental health officer on the extension of the compulsion order, and
- (f) any other information that the mental health officer considers relevant in relation to the extension of the compulsion order.

25 (5) The matters referred to in subsection (2)(c) above are—

- (a) whether the mental health officer is sending a copy of the record to the patient, and
- 30 (b) if the mental health officer is not sending a copy of the record to the patient, the reason for not doing so.

(6) For the purposes of subsection (2)(c) above, the persons are—

- (a) the patient’s named person,
- (b) the patient’s responsible medical officer, and
- (c) the Commission.”.

## 35 **42 Notification of changes to compulsion order**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 157 (application for extension and variation of compulsion order: notification), paragraph (f) is repealed together with the word “and” immediately preceding it.

- (3) In section 160 (application for variation of compulsion order: notification), for the word “(f)” there is substituted “(e)”.

**42A Effect of revocation of restriction order**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In subsection (2) of section 198 (effect of revocation of restriction order), for the words “Tribunal revoked the restriction order” there is substituted “order revoking the restriction order has effect in accordance with section 196 of this Act”.

**PART 3**

VICTIMS’ RIGHTS

*Information and representations*

**43 Right to information: offender imprisoned**

- (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.
- (2) In section 16 (victim’s right to receive information concerning release etc. of prisoner), in subsection (3)—

(a) in paragraph (e)—

(i) for the words “or young” there is substituted “, young”,

(ii) after the word “institution” there is inserted “or hospital”,

(b) the word “and” immediately preceding paragraph (f) is repealed,

(c) in paragraph (f)—

(i) for the words “or young” there is substituted “, young”,

(ii) after the word “institution” there is inserted “or hospital”,

(d) after paragraph (f) there is inserted—

“(g) where the convicted person is liable to be detained in a hospital under a hospital direction or transfer for treatment direction—

(i) that a certificate has been granted, for the first time, under the Mental Health Act which suspends the person’s detention and does not impose a supervision requirement,

(ii) that the certificate mentioned in sub-paragraph (i) has been revoked.”.

(3) In section 16, in subsection (4)—

(a) the word “or” immediately preceding paragraph (b) is repealed, and

(b) at the end of paragraph (b) there is inserted “; or

(c) modify section 18A, by adding, amending or repealing definitions of terms used in the descriptions of information in subsection (3) of this section.”.

**44 Right to information: compulsion order**

- (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.
- (2) After section 16 there is inserted—

**“16A Victim’s right to receive information concerning offender subject to compulsion order**

- (1) Subsection (2) applies where—
  - (a) an offence has been perpetrated against a natural person,
  - (b) another person (“O”) has been made subject to a compulsion order and a restriction order in proceedings in respect of that offence,
  - (c) a person has asked to be given information about O under this section and that person is, or was at the time of asking, a person entitled to ask to be given the information (see section 16B), and
  - (d) O has attained the age of 16 years.
- (2) The Scottish Ministers must give the information about O described in section 16C to the person mentioned in subsection (1)(c).
- (3) But the Scottish Ministers need not give a person information under this section if they consider there to be exceptional circumstances which make it inappropriate to do so.
- (4) If the compulsion order or the restriction order mentioned in subsection (1)(b) is revoked, subsection (2) ceases to apply when the Scottish Ministers give the person mentioned in subsection (1)(c) the information that the order has (or both orders have) been revoked.

**16B Person entitled to ask to be given information under section 16A**

- (1) The reference in section 16A(1)(c) to a person entitled to ask to be given information under that section is to—
  - (a) the natural person (“V”) against whom the offence mentioned in section 16A(1)(a) (“the relevant offence”) was perpetrated,
  - (b) if V is dead—
    - (i) any or all of the four qualifying persons highest listed in section 14(10), and
    - (ii) if V died before attaining the age of 16 years, any other person who cared for V immediately before the relevant offence was perpetrated, or
  - (c) if V has attained the age of 12 years and is incapable for the purposes of this section, the qualifying person highest listed in section 14(10).
- (2) If a person (including V) who would be entitled to ask to be given information by virtue of subsection (1) has not attained the age of 12 years—
  - (a) the person is not entitled to ask to be given the information, and
  - (b) someone who cares for the person is entitled to ask to be given it instead.
- (3) For the purposes of this section—
  - (a) the references to a qualifying person are to a person—

- (i) whose relationship to V is listed in subsection (10) of section 14 (read with the other subsections of that section),
- (ii) who is not incapable for the purposes of this section, and
- (iii) who is not a person accused of, or reasonably suspected of being the perpetrator of, or having been implicated in the perpetration of, the relevant offence,

(b) when determining who is the qualifying person highest listed in section 14(10), if two or more persons have the same relationship to V they are to be listed according to age with the eldest being the highest listed of them,

(c) the expressions “cared for” and “cares for”, are to be construed in accordance with the definition of “someone who cares for” in paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010,

(d) a person is to be considered incapable for the purposes of this section if the person would be considered incapable of making a victim statement by virtue of section 14(6)(b)(i) and (7).

#### **16C Information to be given under section 16A**

(1) This section sets out the information that is to be given under section 16A about the person referred to in that section as O.

(2) The following information is to be given in any case—

(a) that the compulsion order to which O is subject and which is mentioned in section 16A(1)(b) has been revoked,

(b) that the restriction order to which O is subject and which is mentioned in section 16A(1)(b) has been revoked,

(c) the date of O’s death,

(d) that the compulsion order has been varied by way of a modification of the measures specified in it,

(e) that O has been transferred to a place outwith Scotland,

(f) that the Mental Health Tribunal has made an order under section 193(7) of the Mental Health Act conditionally discharging O,

(fa) the terms of any restrictions on things O may do which have been imposed on O as conditions on conditional discharge under section 193(7) or section 200(2) of the Mental Health Act (including under section 193(7) as applied by section 201(3) or 204(3) of that Act),

(g) that the Scottish Ministers have recalled O to hospital under section 202 of the Mental Health Act.

(3) The following information is to be given in a case where the compulsion order authorises O’s detention in hospital—

(a) that O is unlawfully at large from hospital,

(b) that O has returned to hospital having been unlawfully at large,

(c) that a certificate has been granted, for the first time, under the Mental Health Act which suspends O's detention and does not impose a supervision requirement,

(d) that the certificate mentioned in paragraph (c) has been revoked.”.

5 **45 Right to make representations**

(1) The Criminal Justice (Scotland) Act 2003 is amended as follows.

(2) After section 17A there is inserted—

“**17B Mentally-disordered offender: victim's right to make representations**

10 (1) A person (“V”) who is to be given information about another person (“O”) under section 16 or 16A, must be afforded an opportunity to make representations—

(a) in a case where O is subject to a hospital direction or a transfer for treatment direction, before a decision of a type described in subsection (4) is taken in relation to O,

15 (b) in a case where O is subject to a compulsion order and a restriction order, before a decision of a type described in subsection (5) is taken in relation to O.

(2) Representations under this section must be about how the decision in question might affect V or members of V's family.

20 (3) Subsection (1) does not apply unless V has intimated to the Scottish Ministers a wish to be afforded an opportunity to make representations about O under this section.

25 (4) For the purpose of section (1)(a), the type of decision is a decision by O's responsible medical officer about granting for the first time a certificate under the Mental Health Act which suspends O's detention and does not impose a supervision requirement.

(5) For the purpose of subsection (1)(b), the types of decision are a decision—

30 (a) by O's responsible medical officer about granting for the first time a certificate under the Mental Health Act which suspends O's detention and does not impose a supervision requirement,

(b) by the Mental Health Tribunal under section 193 of the Mental Health Act (including a decision under that section as applied by section 201(3) or 204(3) of that Act),

35 (c) by the Scottish Ministers under section 200 of the Mental Health Act about varying conditions in a way which may have an effect on V or members of V's family.

(6) The Scottish Ministers need not afford V an opportunity to make representations before taking a decision of the type described in subsection (5)(c) if it is not reasonably practicable to afford V that opportunity.

40 **17C Making representations under section 17B**

(1) Representations under section 17B—

- (a) may be made orally in relation to a decision of a type described in section 17B(5)(b), but
  - (b) otherwise, must be made in writing.
- (2) The Scottish Ministers are to issue guidance as to how—
- (a) written representations under section 17B should be framed, and
  - (b) oral representations under that section should be made.

**17D Right to information after section 17B decision**

- (1) Subsection (2) applies where—
- (a) before a decision was taken, a person (“V”) was afforded an opportunity to make representations under section 17B,
  - (b) the decision has since been taken,
  - (c) the Scottish Ministers are not required under section 16A to give any information to V as a result of the decision, and
  - (d) V has intimated to the Scottish Ministers a wish to receive information under this section.
- (2) The Scottish Ministers must, unless they consider that there are exceptional circumstances which make it inappropriate to do so, inform V that the decision has been taken.”.

*Additional provisions*

**46 Information sharing**

- (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.
- (2) After section 17D there is inserted—

**“17E Information sharing in respect of mentally-disordered offenders**

- (1) Where the Scottish Ministers are subject to a duty under section 16 or 16A to give a person (“V”) information about another person (“O”), they must give notice to—
- (a) O’s responsible medical officer, and
  - (b) if O is subject to a compulsion order, the Mental Health Tribunal.
- (2) A notice under subsection (1) is to request that the recipient of the notice provide the Scottish Ministers with information in such circumstances as may be specified in the notice.
- (3) The information that the Scottish Ministers may request in a notice under subsection (1) must be information about O which they will require in order to fulfil their duty to give information to V under section 16, 16A or 17D.
- (4) The recipient of a notice under subsection (1) must provide the Scottish Ministers with the information requested in the notice in the circumstances specified in it.
- (5) If the Scottish Ministers cease to be required to give anyone information about O under section 16 or 16A—

- (a) they must intimate that fact to anyone to whom they sent a notice in relation to O in accordance with subsection (1), and
- (b) on receiving that intimation, subsection (4) ceases to apply to the person who received the intimation.”.

5 **47 Associated definitions**

- (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.
- (2) After section 18 there is inserted—

“**18A Interpretation of Part**

- (1) In this Part—

10 “Mental Health Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003,

“Mental Health Tribunal” means the Mental Health Tribunal for Scotland,

15 “transfer for treatment direction” means a direction made under section 136 of the Mental Health Act.

- (2) A reference in this Part—

20 (a) to a certificate under the Mental Health Act which suspends a person’s detention and does not impose a supervision requirement is to a certificate under subsection (2) of section 224 of that Act, which does not include a condition under subsection (7)(a) of that section,

(b) to such a certificate being granted for the first time is to such a certificate being granted for the first time—

25 (i) since the person was detained under the particular order or direction which authorises the person’s detention in a hospital (or would do, but for the certificate’s being granted), or

(ii) in a case where the person, while subject to that order or direction, has been recalled to hospital under section 202 of the Mental Health Act, since the person was so recalled (or most recently so recalled if it has happened more than once).”.

30 **48 Power to make modifications**

- (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.
- (2) After section 18A there is inserted—

“**18B Power to modify Part**

- (1) The Scottish Ministers may by order amend—

35 (a) sections 16A and 16B, by substituting for any age for the time being specified in those sections a different age,

(b) section 16C, by adding descriptions of information,

(c) section 18A, by adding, amending or repealing definitions of terms used in the descriptions of information in section 16C.

40 (2) The Scottish Ministers may by order amend—

(a) section 16A, so that information may be given under that section in some or all cases where a person has been made subject to a compulsion order and either—

- (i) the person has not been made subject to a restriction order, or
- (ii) the restriction order to which the person was made subject has been revoked,

(b) section 17B, to specify types of decision in respect of which representations under that section may be made by persons who have a right to be given information under section 16A as amended by virtue of paragraph (a).

(3) In an order under subsection (2) which amends section 16A or 17B, the Scottish Ministers may make any amendment to the following enactments which they consider necessary or expedient in consequence of the amendment to section 16A or 17B—

- (a) sections 16C, 17E and 18A,
- (b) the Mental Health (Care and Treatment) (Scotland) Act 2003.”.

(3) In section 88 (orders), after “16(4)” there is inserted “, 18B”.

#### **49 Amendments to the 2003 Act**

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) In section 193 (powers of Tribunal on reference or application under certain sections), after subsection (9) there is inserted—

“(9A) Where—

- (a) a person (“V”) is entitled to make victim’s representations before the Tribunal makes a decision under this section, and
- (b) V has not been afforded the opportunity of making representations under subsection (8),

before making a decision about what (if any) conditions to impose on the patient’s conditional discharge under subsection (7), the Tribunal must have regard to any victim’s representations made by V.”.

(3) In section 200 (variation of conditions imposed on conditional discharge), after subsection (2) there is inserted—

“(2A) Before varying any conditions under subsection (2), the Scottish Ministers must have regard to any victim’s representations.”.

(4) In section 224 (patients subject to certain orders and directions: suspension of measure authorising detention), after subsection (6) there is inserted—

“(6A) Before deciding what conditions such as are mentioned in subsection (7) below to include in a certificate under subsection (2) above (if any), the responsible medical officer must have regard to any victim’s representations.”.

(5) In section 329 (interpretation), at the appropriate alphabetical place in subsection (1) there is inserted—

““victim’s representations” means representations made under section 17B of the Criminal Justice (Scotland) Act 2003 in relation to the matter being considered;”.

#### **PART 4**

5

#### COMMENCEMENT AND SHORT TITLE

##### **50 Commencement**

- (1) This Part comes into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- 10 (3) An order under subsection (2) may include transitional, transitory or saving provision.

##### **51 Short title**

The short title of this Act is the Mental Health (Scotland) Act 2015.



# **Mental Health (Scotland) Bill**

[AS AMENDED]

An Act of the Scottish Parliament to amend the Mental Health (Care and Treatment) (Scotland) Act 2003 in various respects; to make provision about mental health disposals in criminal cases; to make provision as to the rights of victims of crime committed by mentally-disordered persons; and for connected purposes.

Introduced by: Alex Neil  
Supported by: Michael Matheson  
On: 19 June 2014  
Bill type: Government Bill

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