

Mental Health (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 51

Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 2A

Dr Richard Simpson

24 After section 2A, insert—

<Use of psychotropic substances

Use of psychotropic substances

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 242 (treatment not mentioned in section 234(2), 237(3) or 240(3)), there is inserted—

“242A Scottish Ministers’ power to make provision in relation to psychotropic substances

- (1) Regulations must prescribe conditions that must be satisfied before treatment by psychotropic substances may be given to a patient—
 - (a) who has a learning disability; and
 - (b) where the giving of medical treatment to the patient is authorised by virtue of this Act or the 1995 Act.
- (2) For the purposes of this section, a psychotropic substance is a substance which is listed in any of Schedules 1 to IV of the Psychotropic Substances Convention.”>

Section 3

Jamie Hepburn

2 In section 3, page 3, line 34, at end insert—

<() after paragraph (c) there is inserted—

“(ca) if known to the managers and not falling within paragraph (a) or (b) above—

- (i) any guardian of the patient; and
- (ii) any welfare attorney of the patient;”>

Section 9

Jamie Hepburn

- 3 In section 9, page 7, line 12, leave out <(or a higher total by virtue of subsection (10) below)>

Jamie Hepburn

- 4 In section 9, page 7, leave out lines 14 to 16 and insert <within any period of 12 months (whenever counted from).”>

Jamie Hepburn

- 5 In section 9, page 7, line 25, leave out from beginning to end of line 5 on page 8

Jamie Hepburn

- 6 In section 9, page 8, line 7, at end insert—
 <() after subsection (2) there is inserted—
 “(2A) A day is to count as a whole day towards the 90 days mentioned in subsection (2) above if any part of that day falls within the period mentioned in paragraph (a) or (b) of that subsection.”>

Jamie Hepburn

- 7 In section 9, page 8, line 13, leave out <(or a higher total by virtue of subsection (11) below)>

Jamie Hepburn

- 8 In section 9, page 8, leave out lines 14 to 16 and insert <within any period of 12 months (whenever counted from).”>

Jamie Hepburn

- 9 In section 9, page 8, leave out lines 25 to 37

Jamie Hepburn

- 10 In section 9, page 8, line 38, leave out subsection (4)

Section 11

Dr Richard Simpson

- 25 In section 11, page 12, line 17, leave out from <and> to end of line 18

After section 11

Jamie Hepburn

- 11 After section 11, insert—

<Section 11: exercise of powers before commencement

- (1) Regulations may be made under section 271A of the Mental Health (Care and Treatment) (Scotland) Act 2003 (which is to be inserted by section 11(4A)) before section 11(4A) comes into force.
- (2) In relation to regulations made (or to be made) by virtue of subsection (1), section 11(6) is to be regarded as being in force.
- (3) Regulations made by virtue of subsection (1) may not come into force before the day on which section 11(4A) comes into force.>

After section 11A

Dr Richard Simpson

26 After section 11A, insert—

<Review of levels of security

- (1) The Mental Welfare Commission for Scotland (“the Commission”) must carry out a review to establish the levels of security to which patients are subject where the detention in hospital of such patients is authorised by virtue of—
 - (a) the Mental Health (Care and Treatment) (Scotland) Act 2003, or
 - (b) the Criminal Procedure (Scotland) Act 1995.
- (2) On completing the review under subsection (1), the Commission must, as soon as practicable, provide a report of the review to the Scottish Ministers which—
 - (a) sets out the conclusions which it has reached,
 - (b) explains why it has reached those conclusions, and
 - (c) makes any recommendations as to regulations that may require to be made under section 271A(1)(b) of the Mental Health (Care and Treatment) (Scotland) Act 2003.
- (3) The review under subsection (1) must be completed within 3 years of this section coming into force.
- (4) The Scottish Ministers must within 1 year of receiving a report under subsection (2)—
 - (a) make regulations under section 271A(1)(b) of the Mental Health (Care and Treatment) (Scotland) Act 2003 in accordance with any recommendation made by the Commission, or
 - (b) where Ministers do not plan to make such regulations, publish a response to the report of the Commission setting out their reasons for not so doing.>

Section 18A

Jamie Hepburn

12 In section 18A, page 14, line 35, at end insert—

- <() In the definition in subsection (1) of section 329 (interpretation) of “named person”, after the words “the person” there is inserted “(if any)”.>

Section 20A

Jamie Hepburn

- 13 In section 20A, page 16, line 29, leave out <or (11A)(b)>

Jamie Hepburn

- 14 In section 20A, page 16, line 29, after <(4),> insert <153(2)(c),>

Jamie Hepburn

- 15 In section 20A, page 16, line 30, leave out <218A(4),>

Jamie Hepburn

- 16 In section 20A, page 16, line 30, leave out <or (12A)(b)>

Jamie Hepburn

- 17 In section 20A, page 16, line 30, after <(12A)(b)> insert <, 225(3)>

Jamie Hepburn

- 18 In section 20A, page 16, line 37, after <87(2)(c)> insert <or 153(2)(c)>

Before section 21

Dr Richard Simpson

- 27 Before section 21, insert—

<Effect of advance statements

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 276 (effect of advance statements), after subsection (8) there is inserted—
 - “(9) Regulations may make provision for the circumstances where—
 - (a) the Tribunal;
 - (b) a person giving medical treatment authorised by virtue of this Act or the 1995 Act;
 - (c) a designated medical practitioner making a decision under section 236(2)(c), 239(1)(c) or 241(1)(c) of this Act,must comply with the wishes specified by a patient who has made and not withdrawn an advance statement.
- (10) The circumstances mentioned in subsection (9) may include reference to specified medical treatment.”.
- (3) In section 326 (orders, regulations and rules), in subsection (4)(c), after the words “268(11) to (14),” there is inserted “276(9),”.

Section 21

Jamie Hepburn

- 19 In section 21, page 17, line 38, leave out from beginning to <The> in line 1 on page 18 and insert—

<(1) Where the Commission receives information by virtue of section 276A(2) of this Act, the>

Jamie Hepburn

- 20 In section 21, page 18, leave out lines 3 to 5

Bob Doris

- 28 In section 21, page 18, line 15, at end insert—

<276D Publicising support for making advance statements

- (1) A Health Board is to publicise any support that it offers for—
- (a) making or withdrawing an advance statement,
 - (b) sending a copy of an advance statement, or a copy of a document withdrawing an advance statement, to a Health Board.
- (2) A Health Board must give the Commission such information as the Commission may from time to time seek on what the Health Board is doing in order to comply with subsection (1) above.”>

After section 21

Jamie Hepburn

- 29 After section 21, insert—

<Information about advocacy services

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 259 there is inserted—

“259A Information-gathering

- (1) Each of the bodies mentioned in subsection (2) below must give the Commission such information as the Commission may from time to time seek on how the body—
- (a) has, during a period of at least 2 years specified by the Commission, been exercising the functions conferred on the body by section 259 of this Act, and
 - (b) intends, during a period of at least 2 years specified by the Commission, to exercise the functions conferred on the body by section 259 of this Act.
- (2) The bodies are—
- (a) a local authority,

- (b) a Health Board,
- (c) the State Hospitals Board for Scotland.”.>

Dr Richard Simpson

30 After section 21, insert—

<Access to advocacy services

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 259 (advocacy), after subsection (11) there is inserted—
 - “(12) Regulations may make provision for the circumstances in which providers of independent advocacy services under this Act, subject to subsection (13), must be notified of matters relating to a patient.
 - (13) Regulations under subsection (12) may make provision for providers of independent advocacy services to be notified of matters relating to a patient only where—
 - (a) there is a requirement under this Act to notify specified persons; and
 - (b) with the exception of the responsible medical officer (if the patient has a responsible medical officer), none of the specified persons may be notified of matters.”.>

Dr Richard Simpson

31 After section 21, insert—

<Access to advocacy services: further provision

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 259 (advocacy), after subsection (11) there is inserted—
 - “(14) Regulations may make provision for the circumstances in which providers of independent advocacy services under this Act, subject to subsection (15), must be afforded an opportunity to make—
 - (a) representations;
 - (b) applications,on behalf of a patient.
 - (15) Regulations under subsection (14) may make provision for providers of independent advocacy services to be afforded an opportunity to make representations or applications on behalf of a patient only where—
 - (a) there is a requirement under this Act to afford specified persons an opportunity to make such representations or applications;
 - (b) the patient is incapable; and
 - (c) with the exception of the responsible medical officer (if the patient has a responsible medical officer), none of the specified persons are able to make such representations or applications on behalf of the patient.
 - (16) In this section “incapable” has the same meaning as in section 250(7) of this Act.”.>

Section 22A

Jamie Hepburn

- 21 In section 22A, page 19, line 36, after <(2)> insert <together with the word “and” immediately following it>

After section 23

Nanette Milne

- 33 After section 23, insert—

<Meaning of “responsible medical officer”

Meaning of “responsible medical officer”

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 230 (appointment of responsible medical officer), after subsection (3) there is inserted—
 - “(3A) The Scottish Ministers may by regulations provide that persons other than an approved medical practitioner may be appointed or approved as a responsible medical officer under subsection (3).
 - (3B) Persons to be appointed or approved by virtue of regulations made under subsection (3A) may include registered psychologists.
 - (3C) Regulations under subsection (3A) may make such consequential provision as is necessary to give effect to provision under subsection (3A), including modifying the term “responsible medical officer”.
 - (3D) Before making regulations under subsection (3A), the Scottish Ministers must consult—
 - (a) bodies representing any persons mentioned in subsection (3A);
 - (b) any other person the Scottish Ministers consider appropriate.
- (3) In section 326 (orders, regulations and rules), in subsection (4)(c), after the words “66(2),” there is inserted “230(3A).”>

Section 24

Nanette Milne

- 34 In section 24, page 21, line 3, at end insert—

<() for paragraph (f) of subsection (2) there is substituted—

- “(f) enable an appeal against any such decision to be made by—
- (i) such a patient,
 - (ii) the named person of such a patient,
 - (iii) if such a patient has no named person—
 - any guardian of such a patient,
 - any welfare attorney of such a patient,

the primary carer (if any) of such a patient,
the nearest relative of such a patient;”.>

After section 27

Jackie Baillie

Supported by: Dr Richard Simpson

1 After section 27, insert—

<Review of the meaning of “mental disorder”

Review of the meaning of “mental disorder”

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 328 there is inserted—

“328A Review of meaning of “mental disorder”

- (1) The Scottish Ministers must carry out a review of the definition of mental disorder no later than 3 years after the Mental Health (Scotland) Act 2015 receives Royal Assent.
 - (2) The purpose of the review under subsection (1) is to consider whether “learning disability” should continue to be within the meaning of “mental disorder”.
 - (3) In carrying out the review under subsection (1) the Scottish Ministers must consult such persons as they consider appropriate.
 - (4) The Scottish Ministers must—
 - (a) publish a report—
 - (i) setting out the findings of the review under subsection (1),
 - (ii) making a recommendation as to whether “learning disability” should continue to be within the meaning of “mental disorder”,
 - (b) lay a copy of that report before the Parliament.
 - (5) The Scottish Ministers must make provision by regulations for the removal of “learning disability” from the meaning of “mental disorder” where a report under subsection (4) recommends that “learning disability” should not continue to be within the meaning of “mental disorder”.
- (3) In section 326 (orders, regulations and rules), in subsection (4)(c) for the words “or 310” there is substituted “, 310 or 328A”.>

Dr Richard Simpson

35 After section 27, insert—

<The Commission: statistical information

The Commission: statistical information

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 19 (statistical information)—

- (a) the words “, in accordance with directions given to it by the Scottish Ministers,” are repealed,
- (b) after the words “other information” there is inserted “of such kind as may be prescribed in regulations”,
- (c) the existing text becomes subsection (1),
- (d) after that subsection, there is inserted—
 - “(2) Before making regulations under subsection (1), the Scottish Ministers shall consult such persons as they consider appropriate.”.
- (3) In subsection (4)(c) of section 326 (orders, regulations and rules) after the words “regulations under section” there is inserted “19(1),”.>

Dr Richard Simpson

36 After section 27, insert—

<Review of deaths in detention or otherwise in hospital for treatment for a mental disorder

Review of deaths in detention or otherwise in hospital for treatment for a mental disorder

- (1) The Scottish Ministers must carry out a review of the arrangements for investigating the deaths of patients who, at the time of death, were—
 - (a) detained in hospital by virtue of—
 - (i) the Mental Health (Care and Treatment) (Scotland) Act 2003;
 - (ii) the Criminal Procedure (Scotland) Act 1995; or
 - (b) admitted voluntarily to hospital for the purpose of receiving treatment for a mental disorder.
- (2) The review must be carried out within 3 years of this section coming into force.
- (3) In carrying out the review under subsection (1), the Scottish Ministers must consult—
 - (a) where practicable, the nearest relatives of patients within the meaning of subsection (1);
 - (b) such other persons as they consider appropriate.
- (4) The Scottish Ministers must—
 - (a) publish a report setting out the findings of the review under subsection (1);
 - (b) lay a copy of that report before the Parliament;
 - (c) notify those persons consulted under subsection (3) of the publication of the report.”.>

Nanette Milne

37 After section 27, insert—

<Miscellaneous amendments

Extension of “relevant party” to include curators ad litem

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

- (2) In section 320 (appeal to sheriff principal against certain decisions of the Tribunal)—
 - (a) after paragraph (b) of subsection (5) there is inserted—

“(ba) that person’s curator *ad litem*,”
 - (b) after paragraph (b) of subsection (6) there is inserted—

“(ba) that person’s curator *ad litem*,”
 - (c) after paragraph (b) of subsection (8) there is inserted—

“(ba) that person’s curator *ad litem*,”
 - (d) after paragraph (b) of subsection (9) there is inserted—

“(ba) that person’s curator *ad litem*,”.
- (3) In section 322 (appeal to the Court of Session against certain decisions of the Tribunal)—
 - (a) after paragraph (b) of subsection (3) there is inserted—

“(ba) that person’s curator *ad litem*,”
 - (b) after paragraph (b) of subsection (4) there is inserted—

“(ba) that person’s curator *ad litem*,”.>

After section 42A

Dr Richard Simpson

38* After section 42A, insert—

<Miscellaneous amendments

Recorded matter

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 167 (powers of Tribunal on application under section 149, 158, 161, 163 or 164) in subsections (2) to (5), after the word “measures” in each place where it occurs there is inserted “or recorded matter”.
- (3) In section 168 (interim extension, etc. of order: application under section 149 or 158) in subsection (2)(b)(ii), after the word “measures” there is inserted “or any recorded matter”.
- (4) In section 171 (powers of tribunal on reference under section 162) in subsection (1)(a), after the word “measures” there is inserted “or any recorded matter”.
- (5) In section 175 (meaning of “modify”), after paragraph (c) there is inserted—
 - (d) specifying a recorded matter in an order”.
- (6) In section 193 (powers of tribunal on reference under section 185(1), 187(2) or 189(2) or application under section 191 or 192(2)) in subsection (6)(b), after the word “measures” there is inserted “or any recorded matter”.
- (7) In section 196 (general effect of orders under section 193) in subsection (1)(d), after the word “measures” there is inserted “or any recorded matter”.
- (8) In section 199 (meaning of “modify”)—
 - (a) in paragraph (b) the word “or” is repealed,

- (b) in paragraph (c) after the words “any measure” there is inserted “; or”
- (c) after paragraph (c) there is inserted—
 - “(d) specifying a recorded matter in an order”.>

Jamie Hepburn

22 After section 42A, insert—

<Clarification of meaning of compulsion order

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) For the definition in subsection (1) of section 307 (interpretation) of “compulsion order” there is substituted—
 - ““compulsion order” means an order under section 57(2)(a) or 57A(2) of this Act;”.
- (3) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (4) In subsection (6)(d) of section 1 (principles for discharging certain functions), for the words “section 57A(2)” there is substituted “section 57(2)(a) or 57A(2)”.
- (5) For the definition in subsection (1) of section 329 (interpretation) of “compulsion order” there is substituted—
 - ““compulsion order” means an order under section 57(2)(a) or 57A(2) of the 1995 Act;”.>

Dr Richard Simpson

40* After section 42A, insert—

<Provision for referral and review of certain cases

Referral by Tribunal to High Court

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 195 there is inserted—

“Reference to High Court by Tribunal

195A Tribunal’s powers to make reference to High Court

- (1) This section applies where—
 - (a) a person—
 - (i) was convicted in the High Court or the sheriff court of an offence punishable by imprisonment (other than an offence the sentence for which is fixed by law); or
 - (ii) was remitted to the High Court by the sheriff under any enactment for sentence for such an offence;
 - (b) the person is subject to a compulsion order and a restriction order; and
 - (c) a determination or order is made under this Act changing the category of the patient’s mental disorder.

- (2) If the conditions in subsection (3) apply, the Tribunal may refer the matter to the High Court.
- (3) Those conditions are that—
 - (a) the Tribunal is satisfied that the category of the patient’s mental disorder has changed from that specified at the time at which the court made the compulsion and restriction order, as the case may be;
 - (b) it appears to the Tribunal that, given the change in category, it is appropriate for the patient to be remitted to the High Court for sentence for the offence for which the person was convicted; and
 - (c) the Tribunal considers that it is in the interests of justice and consistent with the principles of this Act that such a reference should be made.
- (4) In determining whether a reference is in the interests of justice, the Tribunal must have regard to the need for finality and certainty in the determination of criminal proceedings.
- (5) In considering whether or not to make a reference, the Tribunal may at any time refer to the High Court for the Court’s opinion on any point on which it desires the Court’s assistance; and on a reference under this subsection the High Court must consider the point referred and provide the Tribunal with its opinion on the point.
- (6) A reference under subsection (2) may be made by the Tribunal under this Act—
 - (a) on the Tribunal’s own initiative;
 - (b) on application to the Tribunal by;
 - (i) the patient;
 - (ii) the responsible medical officer;
 - (iii) the Commission;
 - (iv) any other person mentioned in subsection (8).
- (7) Before making a reference to the High Court under this section the Tribunal must—
 - (a) afford the persons mentioned in subsection (8) below the opportunity—
 - (i) of making representations (whether orally or in writing); and
 - (ii) of leading, or producing, evidence; and
 - (b) whether or not such representations are made, hold a hearing.
- (8) Those persons are—
 - (a) the patient;
 - (b) the patient’s named person;
 - (c) the patient’s primary carer;
 - (d) any guardian of the patient;
 - (e) any welfare attorney of the patient;
 - (f) any *curator ad litem* appointed by the Tribunal in respect of the patient;

- (g) the Scottish Ministers;
 - (i) the mental health officer;
 - (j) any other person appearing to the Tribunal to have an interest.”
- (3) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (4) After section 61 there is inserted—

“Reference by the Tribunal to the High Court

61A Reference by the Tribunal to the High Court

- (1) Where the Tribunal makes a reference to the High Court under section 195A of the Mental Health (Care and Treatment) (Scotland) Act 2003, the Tribunal must—
 - (a) give to the Court a statement of its reasons for making the reference; and
 - (b) send a copy of the statement to every person who appears to them to be likely to be a party to any proceedings arising from the reference.
- (2) The High Court must hear and determine the case, subject to any directions the High Court may make, as if it were an appeal under Part VIII or, as the case may be, Part X of this Act.

61B Further provision on reference

- (1) The High Court may reject the reference if the Court considers that it is not in the interests of justice that any proceedings arising from the reference should proceed.
- (2) In determining whether or not it is in the interests of justice that any proceedings should proceed, the High Court must have regard to the need for finality and certainty in the determination of criminal proceedings.
- (3) On rejecting a reference under this section, the High Court may make such order as it consider necessary or appropriate.

61C Supplementary provision

- (1) The Scottish Ministers may by regulations make such incidental, consequential, transitional or supplementary provisions as may appear to them to be necessary or expedient for the purpose of bring section 61A and 61B into operation.
- (2) Regulations under subsection (1) are subject to the affirmative procedure.”.>

Dr Richard Simpson

39* After section 42A, insert—

<Duty on Health Boards and Mental Welfare Commission to review certain criminal behaviour by mentally disordered persons

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) After section 63 (appeal by prosecutor in case involving insanity), there is inserted—

“Duty on Health Boards and Mental Welfare Commission to review certain criminal behaviour by mentally disordered persons

63A Duty on Health Boards and Mental Welfare Commission to review certain criminal behaviour by mentally disordered persons

- (1) Subsection (2) applies where a person—
 - (a) is charged with a relevant offence, and
 - (b) has been in receipt of care and treatment from a Health Board under the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) at any time within a period of six months prior to being charged with the relevant offence.
- (2) As soon as practicable after the person is charged with a relevant offence, the procurator fiscal must, where it appears to the procurator fiscal that the person meets the condition specified in subsection (1)(b), notify—
 - (a) the Health Board which provided care and treatment to the mentally disordered person under the terms of subsection (1)(b),
 - (b) the Mental Welfare Commission,that the mentally disordered person has been charged with a relevant offence.
- (3) A Health Board which has been notified under subsection (2) must—
 - (a) undertake an inquiry into care and treatment provided to the mentally disordered person by the Health Board,
 - (b) subject to subsection (4), prepare and publish a report setting out the findings of the inquiry, and
 - (c) as soon as practicable after the publication of a report under paragraph (b), prepare an action plan responding to the findings of the report.
- (4) Reports under subsection (3)(b)—
 - (a) must be published in such a way as not to reveal—
 - (i) the identity of any natural person against whom a relevant offence has been perpetrated,
 - (ii) the identity of the person charged with the relevant offence,
 - (b) must be published in such manner as may be prescribed by the Scottish Ministers in regulations,
 - (c) but, must not be published, unless subsection (5) applies, where either the person charged with the relevant offence or the person against whom the offence was perpetrated objects to its publication.
- (5) The Scottish Ministers may by regulations make provision for the circumstances in which it may be in the public interest to publish a report under subsection (3) regardless of whether an objection to the publication of the report has been made under subsection (4)(c).
- (6) As soon as practicable after the publication of a report and preparation of an action plan under subsection (3), the Health Board must provide the report and action plan to—
 - (a) the Mental Welfare Commission,
 - (b) any natural person against whom the relevant offence has been perpetrated, provided that the Health Board has ascertained that the person to be given the information wishes to receive it.

- (7) The Mental Welfare Commission must, subject to subsection (8), and in accordance with directions given to it by the Scottish Ministers, from time to time, and not less than once in every parliamentary session, lay before the Parliament a report summarising the findings of the reports received since the laying of the last such report.
- (8) Reports under subsection (7)—
 - (a) must be published in such a way as not to reveal—
 - (i) the identity of any natural person against whom a relevant offence has been perpetrated,
 - (ii) the identity of a person charged with a relevant offence,
 - (b) must be published in such manner as may be prescribed by the Scottish Ministers in regulations,
 - (c) but, must not be published, unless subsection (9) applies, insofar as the report relates to a person charged with a relevant offence or the person against whom a relevant offence was perpetrated, where that person charged with a relevant offence or that person against whom an offence was perpetrated objects to its publication insofar as it relates to them.
- (9) The Scottish Ministers may by regulations make provision for the circumstances in which it may be in the public interest to publish a report under subsection (8) regardless of whether an objection to the publication of the report has been made under subsection (8)(c).
- (10) Subsections (11) and (12) apply where—
 - (a) the Parliament is dissolved before the period of 12 months has elapsed since the commencement of the session of Parliament, and
 - (b) as at the date of dissolution a report under subsection (7) has not been published.
- (11) The session in which the Parliament is so dissolved is not to be regarded as a session in which a report under subsection (7) is to be published.
- (12) A report under subsection (7) must be published in the session of the Parliament which—
 - (a) next follows the session in which the Parliament is so dissolved, and
 - (b) is not itself a session in which the Parliament is so dissolved.
- (13) Health Boards must, in exercising any function under this section, have regard to any guidance issued by the Scottish Ministers.
- (14) The Scottish Ministers must publish any guidance they issue for the purposes of this section.
- (15) The Scottish Ministers may revise and revoke such guidance.
- (16) For the purposes of this section, “relevant offence” means the committing of the offence of—
 - (a) murder,
 - (b) culpable homicide,
 - (c) such other offence as the Scottish Ministers may by regulations prescribe.

- (17) The Scottish Ministers may by regulations amend this section, so as to—
- (a) incorporate within the meaning of this section persons charged with a relevant offence who have been in receipt of care and treatment under the 2003 Act from a body other than a Health Board,
 - (b) to require that body to be notified of the charging of that person and to be subject to the requirements of subsections (3) to (6) and (13).
- (18) Regulations under this section are subject to the affirmative procedure.>

Section 44

Jamie Hepburn

- 41** In section 44, page 32, line 18, at end insert—
- <(b) are not to give a person information about the terms of a condition in accordance with section 16C(2)(fa) unless the condition is relevant to that person as described in section 18A(3).>

Jamie Hepburn

- 42** In section 44, page 32, line 21, leave out from <the order> to end of line 22 and insert—
- <(a) the order has been revoked, and
 - (b) the decision to revoke it is final.>

Jamie Hepburn

- 43** In section 44, page 33, line 24, at end insert—
- <() where the order mentioned in paragraph (a) or the order mentioned in paragraph (b) has been revoked, that the decision to revoke it—
 - (i) is being appealed against, or
 - (ii) cannot competently be appealed against and is therefore final,>

Jamie Hepburn

- 44** In section 44, page 33, in line 31 leave out from <restrictions> to <conditions> in line 32 and insert <conditions imposed on O>

Jamie Hepburn

- 45** In section 44, page 34, line 4, at end insert—
- <(4) The following information is to be given in a case where the order mentioned in paragraph (a) or the order mentioned in paragraph (b) of subsection (2) has been revoked and that decision is appealed against—
 - (a) that the Court of Session has decided to allow, or not allow, the appeal against the decision to revoke the order in question,
 - (b) that the Court of Session’s decision—
 - (i) has been appealed against to the Supreme Court, or

- (ii) has not been appealed against to the Supreme Court before the expiry of the time allowed to appeal to the Supreme Court, and therefore if the Court of Session has not allowed the appeal the decision to revoke the order in question is final,
- (c) that the Supreme Court has decided to allow, or not allow, the appeal against the Court of Session’s decision,
- (d) if the Supreme Court’s decision means that the decision to revoke the order in question has not been set aside, that the latter decision is final,
- (e) if the Court of Session’s decision or the Supreme Court’s decision means that O is once more subject to the order in question, that fact.”.>

Section 45

Jamie Hepburn

- 46** In section 45, page 34, line 35, leave out from <varying> to end of line 36 and insert <imposing, altering or removing a condition which is (or would be) relevant to V as described in section 18A(3).>

Jamie Hepburn

- 47** In section 45, page 35, line 18, at end insert—
- <(3) Subsection (4) applies where—
 - (a) in accordance with subsection (2), the Scottish Ministers have informed V that the Tribunal has decided to make an order revoking a compulsion order or restriction order, and
 - (b) by virtue of section 196 of the Mental Health Act, the Tribunal’s order does not have effect because the Court of Session has made an order under section 323(1) of that Act.
 - (4) The Scottish Ministers must—
 - (a) inform V that the Court of Session has made an order under section 323(1) of the Mental Health Act, and
 - (b) give V the information that they would have had to give V by virtue of section 16C(4) had the Court not made that order.”.>

Section 47

Jamie Hepburn

- 48** In section 47, page 36, line 29, at end insert—
- <(3) For the purposes of sections 16A(3)(b) and 17B(5)(c), a condition is relevant to a person (“V”) if—
 - (a) the condition is a restriction on the person referred to in the section in question as O contacting an individual or being in a place, and
 - (b) V has made a valid request to the Scottish Ministers to be informed about any condition which restricts O from—

- (i) contacting that individual, or (as the case may be)
 - (ii) being in that place or any wider area within which the place in question falls.
- (4) The Scottish Ministers may treat a request as invalid for the purposes of subsection (3) if or so far as—
 - (a) it is a request to be informed about any condition which restricts O from being in a place, and
 - (b) the place referred to in the request—
 - (i) is not one which V or any member of V’s family is regularly at or in, or
 - (ii) covers an unreasonably large area having regard to the places where V and members of V’s family regularly go.”.>

Section 50

Jamie Hepburn

- 23** In section 50, page 38, line 7, leave out <comes> and insert <and section (*Section 11: exercise of powers before commencement*) come>

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