

Mental Health (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

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.

After section 22

Jamie Hepburn

48 After section 22, insert—

<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- (3) These provisions are repealed—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).>

Jamie Hepburn

49 After section 22, insert—

<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 - (a) the word “and” immediately preceding sub-paragraph (ii) of paragraph (a) is repealed,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;”.>

Section 23

Jamie Hepburn

50 In section 23, page 16, line 8, leave out <, for the words “for post-natal depression,” in subsection (1)(d)> and insert—

<() in paragraph (d) of subsection (1), for the words “for post-natal depression,”>

Jamie Hepburn

51 In section 23, page 16, line 11, at end insert—

<() 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.”.>

Section 24

Nanette Milne

108 In section 24, page 16, line 29, at end insert—

<() in paragraph (f) of subsection (1), after the word “patient” there is inserted “, or the patient’s named person,”.>

Section 25

Bob Doris

52 In section 25, page 17, line 14, leave out <some or all of> and insert <specific provisions in>

Dr Richard Simpson

- 89 In section 25, page 17, line 14, leave out <some or all of Part 16> and insert <section 243>

Dr Richard Simpson

- 90 In section 25, page 17, line 18, leave out <that Part> and insert <section 243>

Dr Richard Simpson

- 91 In section 25, page 17, line 19, leave out <any of that Part> and insert <section 243>

Bob Doris

- 53 In section 25, page 17, line 21, at end insert <, or
() authorise medical treatment of the types mentioned in section 234(2) or 237(3) of this Act.”.>

Section 26

Jamie Hepburn

- 54 In section 26, page 17, line 30, leave out from <subsection> to the end of line 33 and insert <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;”.>

After section 27

Dr Richard Simpson

- 55 After section 27, insert—

<Meaning of “mental disorder”

Meaning of “mental disorder”

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 328 (meaning of “mental disorder”)—
 - (a) paragraph (c) of subsection (1) is repealed together with the word “or” immediately preceding it,
 - (b) before paragraph (a) in subsection (2) there is inserted—

<“(za) learning disability;
(zb) autism spectrum disorder;”>

Jackie Baillie

56* 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 one year 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 a 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 report 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”.>

Adam Ingram

109 After section 27, insert—

<The Commission: statistical information

Information on adverse incidents etc.

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 19, there is inserted—

“19A Statistical information: further provision

- (1) The Commission must make arrangements for the collection of the statistical information mentioned in subsection (2) in respect of patients detained in hospital by virtue of—
 - (a) this Act; or
 - (b) the 1995 Act.

- (2) That information is the annual number of—
 - (a) deaths;
 - (b) suicides;
 - (c) assaults recorded against a patient;
 - (d) recorded adverse incidents;
 - (e) occasions on which restraints have been used in relation to a patient.
- (3) The information mentioned in subsection (2) must be broken down by—
 - (a) age;
 - (b) gender;
 - (c) diagnosis;
 - (d) class of drug prescribed (where appropriate);
 - (e) Health Board;
 - (f) such other categories as may be prescribed by regulations.
- (4) The Commission must 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 information collected under subsection (1) since the laying of the last report.
- (5) Subsections (6) and (7) 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 (4) has not been published.
- (6) The session in which the Parliament is so dissolved is not to be regarded as a session in which a report under subsection (4) is to be published.
- (7) A report under subsection (4) 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.>

Dr Richard Simpson

110 After section 27, insert—

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

Scottish Ministers review of deaths in detention or otherwise in hospital for treatment for a mental disorder

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 4A, there is inserted—

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

4AA 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 death of a patient who was—
 - (a) detained in hospital by virtue of—
 - (i) this Act;
 - (ii) the 1995 Act; or
 - (b) admitted voluntarily to hospital for the purpose receiving treatment for a mental disorder.
- (2) The review must be carried out within 2 years of this section coming into force.
- (3) In carrying out a review under subsection (1) the Scottish Ministers must consult—
 - (a) the nearest relative of a patient within the meaning of subsection (1);
 - (b) such 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.”.>

After section 28

Jamie Hepburn

57 After section 28, insert—

<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)—
 - (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—
 - “(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);”.>

Section 29

Dr Richard Simpson

111 In section 29, page 19, leave out lines 16 to 22

Section 35

Jamie Hepburn

- 58 In section 35, page 22, line 25, at end insert <, or
() a temporary compulsion order (see section 54(1)(c) of this Act).>

Jamie Hepburn

- 59 In section 35, page 22, line 26, leave out from beginning to <question,> in line 27

Before section 36

Jamie Hepburn

- 112 Before section 36, insert—

<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.”.>

Section 36

Jamie Hepburn

- 61 Leave out section 36

Section 37

Jamie Hepburn

- 62 Leave out section 37

Section 38

Jamie Hepburn

63 Leave out section 38

After section 40

Dr Richard Simpson

92 After section 40, insert—

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

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 prior to being charged with that relevant offence been—
 - (i) in receipt of care and treatment from a health board under the Mental Health (Treatment and Care) (Scotland) Act 2003 (“the 2003 Act”), or
 - (ii) referred to a Health Board for care and treatment under the 2003 Act.
- (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 conditions specified in subsection (1), notify—
 - (a) the Health Board—
 - (i) which provided care and treatment to the mentally disordered person under the 2003 Act, or
 - (ii) to which the mentally disordered person was referred for care and treatment under the 2003 Act, and
 - (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 the mentally disordered person’s interaction with the Health Board,
 - (b) 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) As soon as practicable after the publication of a report and 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 a relevant offence has been perpetrated, provided that the Health Board has ascertained that the person to be given the information wishes to receive it.
- (5) The Mental Welfare Commission must, 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.
- (6) Subsections (7) and (8) 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 (5) has not been published.
- (7) The session in which the Parliament is so dissolved is not to be regarded as a session in which a report under subsection (5) is to be published.
- (8) A report under subsection (5) 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.
- (9) Health Boards must, in exercising any function under this section, have regard to any guidance issued by the Scottish Ministers.
- (10) The Scottish Ministers must publish any guidance they issue for the purposes of this section.
- (11) The Scottish Ministers may revise and revoke such guidance.
- (12) 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.
- (13) For the purposes of this section, “referred” means referred to a Health Board by a medical practitioner, or such other person as the Scottish Ministers may by regulations prescribe.
- (14) The Scottish Ministers may by regulations amend subsections (1) to (9), 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).
- (15) Regulations under subsections (12) and (14) are subject to the affirmative procedure.
- (16) Regulations under subsection (13) are subject to the negative procedure.>

Before section 41

Dr Richard Simpson

113 Before section 41, insert—

<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—
 - (i) a compulsion order; or
 - (ii) 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 order or 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 order 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.”.>

Section 41

Jamie Hepburn

- 64** In section 41, page 25, line 12, leave out <165(2)> and insert <165(2)(a)>

After section 42

Jamie Hepburn

- 65** After section 42, insert—

<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”.>

Section 44

Dr Richard Simpson

- 114** In section 44, page 27, leave out line 17 and insert—

<(1) Where—>

Dr Richard Simpson

- 115** In section 44, page 27, line 24, after <years> insert—

- <(e) there are no exceptional circumstances which, in the opinion of the Scottish Ministers, make it inappropriate to do so, the Scottish Ministers must give the information about O described in section 16C to the person mentioned in subsection (1)(c).>

Dr Richard Simpson

- 116** In section 44, page 27, leave out lines 25 to 33

Jamie Hepburn

- 120** In section 44, page 29, line 2, at end insert—

<() 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),>

Section 45

Jamie Hepburn

- 121** In section 45, page 29, line 32, after <granting> insert <for the first time>

Jamie Hepburn

- 122** In section 45, page 29, line 36, after <granting> insert <for the first time>

Jamie Hepburn

- 123** In section 45, page 30, line 10, leave out <paragraph (b) or (c) of section 17B(5)> and insert <section 17B(5)(b)>

Section 47

Jamie Hepburn

- 124** In section 47, page 31, line 30, at end insert—

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

- (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).”>

Section 49

Dr Richard Simpson

117 In section 49, page 32, line 20, at end insert—

<() In paragraph (a) of subsection (2) of section 167 (powers of tribunal on application under section 149, 158, 161, 163 or 164) after “measures” there is inserted “, or any recorded matter”.>

Jamie Hepburn

125 In section 49, page 32, line 28, leave out <the decision> and insert <a decision about what (if any) conditions to impose on the patient’s conditional discharge under subsection (7)>

Nanette Milne

118 In section 49, page 32, line 38, at end insert—

<() 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*,”.

() 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*.”>

Before section 50

Nanette Milne

119 Before section 50, insert—

<Interpretation

In section 329 (interpretation) of the 2003 Act, in the definition of “medical practitioner”, after the word “practitioner” where it second appears there is inserted “or practitioner psychologist”.>

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