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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2017 No.**

**CRIMINAL LAW**

**The Criminal Justice and Licensing (Scotland) Act 2010  
(Consequential Provisions) Order 2017**

*Made* - - - -

*Coming into force* - - *30th June 2017*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 201(2)(a) and 204(1) and (2) of the Criminal Justice and Licensing (Scotland) Act 2010(a) and all other powers enabling them to do so.

In accordance with section 201(4) of that Act(b) a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. This Order may be cited as the Criminal Justice and Licensing (Scotland) Act 2010 (Consequential Provisions) Order 2017 and comes into force on 30th June 2017.

**The Mental Health (Care and Treatment) (Scotland) Act 2003**

2.—(1) Section 299 (Nurse’s power to detain pending medical examination) of the Mental Health (Care and Treatment) (Scotland) Act 2003(c) is amended as follows.

(2) In subsection (1)—

- (a) in the opening words of paragraph (a), for “section 228(1)” substitute “section 227A(1)”;
- (b) in sub-paragraph (i) of that paragraph, for “subsections (1) and (2)(a) of section 230” substitute “subsections (1) and (3)(a) of section 227R”; and
- (c) in sub-paragraph (ii) of that paragraph, for “subsections (1) and (2)(b)” substitute “subsections (1) and (3)(b)”.

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(a) 2010 asp 13 (“the 2010 Act”).

(b) Section 201(4) is modified by the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10), schedule 3, paragraph 5.

(c) 2003 asp 13; section 299 is amended by the Mental Health (Scotland) Act 2015 (asp 9), section 20.

### **Saving provision**

**3.**—(1) The amendments made by article 2 are of no effect in respect of a person being given medical treatment in hospital by virtue of a relevant order under the Criminal Procedure (Scotland) Act 1995(**a**) (“the 1995 Act”).

(2) In paragraph (1), a “relevant order” is an order under section 228(**b**) of the 1995 Act which includes a requirement by virtue of section 230 of that Act to submit to treatment as a resident patient in hospital or as a non-resident patient at an institution or place specified in the order.

*Name*

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
Date

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(a) 1995 c.46.

(b) Sections 228 and 230 were repealed by the 2010 Act, schedule 2, paragraph 17; the repeal has effect subject to savings provisions specified in S.S.I. 2010/413.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes provision in consequence of the Criminal Justice and Licensing (Scotland) Act 2010 (“the 2010 Act”) which, amongst other things, amended the Criminal Procedure (Scotland) Act 1995 to replace probation orders with community payback orders (see section 14 and paragraph 17 of schedule 2 of the 2010 Act).

Article 2 sets out consequential amendments to the Mental Health (Care and Treatment) (Scotland) Act 2003 which includes a power for nurses, in certain circumstances and for specified purposes, to detain a person who is in hospital for treatment. The amendments clarify that this power will apply where the person is in hospital by virtue of a community payback order which includes a mental health treatment requirement.

Article 3 provides that the amendments will not affect the nurse’s power to detain a person who is in hospital for treatment by virtue of a probation order which includes a mental health treatment requirement. This is necessary because probation orders remain available for persons convicted of offences committed before 1st February 2011, by virtue of savings provisions specified in SSI 2010/413.