

Mental Health (Scotland) Bill

[AS INTRODUCED]

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Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 64-EN. A Policy Memorandum is printed separately as SP Bill 64-PM.

Mental Health (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to restate and amend the law relating to mentally disordered persons; and for connected purposes.

PART 1

INTRODUCTORY

- 5 **1 General principles applicable to the discharge of certain functions etc.**
- (1) Subsection (2) below applies whenever a person mentioned in subsection (3) below is discharging functions by virtue of this Act.
- (2) The person shall discharge those functions in a manner that encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- 10 (3) The persons referred to in subsection (1) above are—
- (a) the Scottish Ministers;
- (b) the Commission;
- (c) a local authority;
- (d) a Health Board;
- 15 (e) a National Health Service trust;
- (f) the managers of a hospital;
- (g) a mental health officer;
- (h) a patient's responsible medical officer;
- (i) a medical practitioner; and
- 20 (j) a nurse.
- (4) Subsections (6) to (9) below apply whenever a person is discharging functions by virtue of Parts 4 to 7 of this Act in relation to a patient.
- (5) Subsections (6) to (8) and (10) below apply whenever a person is coming to a decision by virtue, or in pursuance, of this Act about the medical treatment that is to be provided
- 25 to a patient.

- (6) The person shall have regard to the present and past wishes and feelings of the patient about the discharge of the function, or the treatment to be provided, in so far as those wishes and feelings can be ascertained.
- (7) The person shall have regard also to the views of—
- 5 (a) the patient’s named person;
- (b) the patient’s primary carer;
- (c) any guardian of the patient; and
- (d) any welfare attorney of the patient,
- about the discharge of the function, or the treatment to be provided, in so far as it is
- 10 reasonable and practicable to do so.
- (8) The person shall always consider the range of options available in the patient’s case.
- (9) The person shall not discharge the function in a manner which involves interference with the patient without considering whether there is a manner of discharging the function which involves less interference and, if there is, whether it is appropriate in the
- 15 patient’s case.
- (10) The person shall not opt for treatment which involves interference with the patient without considering whether treatment which involves less interference is available and, if it is, whether it is appropriate in the patient’s case.
- (11) In this section “equal opportunities” and “equal opportunity requirements” have the
- 20 same meanings as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46).

PART 2

THE MENTAL WELFARE COMMISSION FOR SCOTLAND

Continued existence of Commission

2 The Mental Welfare Commission for Scotland

- 25 (1) There shall continue to be a body corporate known as the Mental Welfare Commission for Scotland (in this Act referred to as “the Commission”).
- (2) The Commission shall discharge such functions as are conferred on it by virtue of—
- (a) this Act;
- (b) the Adults with Incapacity (Scotland) Act 2000 (asp 4); and
- 30 (c) any other enactment.
- (3) Schedule 1 to this Act (which makes provision as respects the Commission) shall have effect.

General duties

3 Duty to monitor operation of Act and promote best practice

The Commission shall—

- 35 (a) monitor the operation of this Act; and
- (b) promote best practice in relation to the operation of this Act.

4 Reporting on operation of Act

The Commission shall bring to the attention of the Scottish Ministers such matters concerning the operation of this Act as the Commission considers ought to be brought to their attention.

5 *Particular functions*

5 Duty to bring matters generally to attention of Scottish Ministers and others

The Commission shall bring to the attention of—

- (a) the Scottish Ministers;
- (b) a local authority;
- 10 (c) a Health Board;
- (d) a National Health Service trust;
- (e) the Scottish Commission for the Regulation of Care; or
- (f) such other person, or group of persons, as it considers appropriate,

15 any matter of general interest or concern as respects the welfare of any persons who have a mental disorder which is a matter that the Commission considers ought to be brought to their attention.

6 Duty to bring specific matters to attention of Scottish Ministers and others etc.

- 20 (1) If it appears to the Commission that a relevant person has, or may have, powers or duties, the exercise or performance of which might prevent or remedy or assist in preventing or remedying, as respects a person who has a mental disorder, any of the circumstances mentioned in section 9(2) of this Act, the Commission shall—

- (a) bring the facts of the person's case to the attention of the relevant person; and
- (b) if it considers it appropriate to do so, make recommendations as respects the case to the relevant person.

- 25 (2) For the purposes of subsection (1) above, “relevant person” means—

- (a) the Scottish Ministers;
- (b) a local authority;
- (c) a Health Board;
- (d) a National Health Service trust;
- 30 (e) a mental health officer;
- (f) a responsible medical officer;
- (g) the managers of a registered care service;
- (h) the managers of—
 - 35 (i) a prison; or
 - (ii) a young offenders institution;
- (i) the Scottish Commission for the Regulation of Care;

- (j) a police force; or
 - (k) such other person, or group of persons, as the Commission considers appropriate.
- (3) In subsection (2)(g) above, “registered care service” means a care service registered under Part 1 of the Regulation of Care (Scotland) Act 2001 (asp 8).

5 **7 Duty to give advice**

The Commission shall give advice to—

- (a) the Scottish Ministers;
- (b) a local authority;
- (c) a Health Board; or
- 10 (d) the Scottish Public Services Ombudsman,

on any matter arising out of this Act which has been referred to the Commission, with its agreement, by the Ministers or, as the case may be, the authority, Board or Ombudsman.

8 **8 Publishing information, guidance etc.**

- 15 (1) Subject to subsection (2) below, the Commission may publish information or guidance about any matter relevant to its functions and, without prejudice to that generality, may publish information or guidance as respects—

- (a) its conclusions in relation to—
 - (i) an investigation under section 9(1) of this Act; or
 - 20 (ii) an inquiry under section 10(1) of this Act;
- (b) its conclusions in relation to any action taken (or not taken) in relation to such conclusions; or
- (c) matters which it considers arise or come to light (or have arisen or come to light) in the course of—
 - 25 (i) such investigations or inquiries; or
 - (ii) visits under section 11(1) or (3) of this Act.

- (2) The Commission may, with the agreement of—

- (a) the Scottish Ministers;
- (b) a local authority;
- 30 (c) a Health Board; or
- (d) the Scottish Public Services Ombudsman,

publish advice which it gives under section 7 of this Act to the Ministers or, as the case may be, to the authority, Board or Ombudsman.

9 **9 Investigations**

- 35 (1) If it appears to the Commission that any of the circumstances mentioned in subsection (2) below apply in respect of a patient, the Commission may—

- (a) carry out such investigation as it considers appropriate into the patient’s case; and

(b) make such recommendations as it considers appropriate as respects the case.

(2) Those circumstances are—

(a) that the patient may be unlawfully detained in hospital;

(b) that the patient's detention in hospital is authorised by virtue of—

(i) this Act; or

(ii) the 1995 Act,

and there may be some impropriety in relation to that detention;

(c) that the patient may be, or may have been, subject, or exposed, to—

(i) ill-treatment;

(ii) neglect; or

(iii) some other deficiency in care or treatment;

(d) that, because of the mental disorder, the patient's property—

(i) may be suffering, or may have suffered, loss or damage; or

(ii) may be, or may have been, at risk of suffering loss or damage;

(e) that the patient may be—

(i) living alone or without care; and

(ii) unable to look after himself or his property or financial affairs.

10 Investigations: further provision

(1) The Commission may, if it considers it appropriate to do so, cause an inquiry to be held for the purpose of carrying out an investigation, under section 9(1) of this Act, into any case.

(2) The Commission may appoint such person (or persons) as it considers appropriate to chair or to conduct any such inquiry and to report to it on the findings of any such inquiry.

(3) A person appointed to chair any such inquiry—

(a) may, by notice, require any person to attend and give evidence at a time and place set out in the notice; and

(b) may administer oaths and examine witnesses on oath and may accept, in place of evidence on oath by a person, evidence on affirmation or a statement in writing by the person.

(4) A person required by virtue of notice under subsection (3)(a) above to attend and give evidence for the purposes of an inquiry under subsection (1) above—

(a) shall not be obliged to attend and give evidence as required in the notice unless the necessary expenses of attendance are paid or tendered to the person; and

(b) shall not be obliged at the inquiry to answer a question which the person would be entitled to decline to answer, on the ground of privilege or confidentiality, if the question were asked in the course of proceedings in a court.

(5) Proceedings in an inquiry under this section shall have the privilege of proceedings in a court.

(6) The Commission shall pay to a person required by notice under subsection (3)(a) above to attend for the purposes of an inquiry under subsection (1) above such expenses as it considers appropriate.

(7) A person—

(a) who is required to attend for the purposes of an inquiry by virtue of notice under subsection (3)(a) above; and

(b) who refuses or wilfully neglects to attend or, subject to subsection (4)(b) above, to give evidence,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

11 Visits in relation to patients

(1) The Commission shall secure that a person authorised by it visits, as often as the Commission considers it appropriate to do so, such patients who fall within the categories mentioned in subsection (2) below as it considers appropriate.

(2) Those categories are—

(a) patients who are detained in hospital and whose detention is authorised by virtue of—

(i) this Act; or

(ii) the 1995 Act;

(b) patients who, though not detained in hospital, are subject to—

(i) a compulsory treatment order;

(ii) a compulsion order; or

(iii) an interim compulsion order;

(c) patients who are subject to—

(i) an intervention order of which the Commission has been notified under section 53(10)(b) of the Adults with Incapacity (Scotland) Act 2000 (asp 4); or

(ii) a guardianship order of which the Commission has been notified under section 58(7)(d) of that Act; and

(d) patients who have granted, in accordance with section 16 of that Act, a welfare power of attorney, a copy of which has been sent to the Commission under section 19(2)(c) of that Act.

(3) If it appears to the Commission that patients—

(a) may be resident, or may be receiving medical treatment, in premises mentioned in subsection (4) below; or

(b) may use facilities provided in such premises,

a person authorised by the Commission may visit such premises for either of the purposes mentioned in subsection (5) below.

(4) Those premises are—

- (a) a health service hospital (as defined in section 108(1) of the National Health Service (Scotland) Act 1978 (c.29);
- (b) premises in which—
 - (i) an independent health care service is provided;
 - (ii) a care home service is provided; or
 - (iii) a secure accommodation service is provided;
- (c) premises provided by a local authority for the purpose of their duty under section 21 of this Act;
- (d) a prison; and
- (e) a young offenders institution.

(5) The purposes are—

- (a) to inspect such premises or the facilities available in such premises; and
- (b) to provide an opportunity for any patients who may be present in the premises at the time when the visit takes place to meet representatives of the Commission and to discuss with such representatives any concerns that such patients may have.

(6) A visit under subsection (1) or (3) above may be made with or without prior notification.

(7) A person proposing to conduct a visit under subsection (1) or (3) above shall, if requested to do so, produce an authenticated document showing that the Commission has given the requisite authority for the visit.

(8) In—

- (a) subsection (4)(b)(ii) above, “care home service” has the meaning given to that expression by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8); and
- (b) subsection (4)(b)(iii) above, “secure accommodation service” has the meaning given to that expression by section 2(9) of that Act.

12 Interviews

(1) A person authorised to do so by the Commission (an “authorised person”) may, in connection with the discharge by the Commission of any of its functions under this Act—

- (a) interview—
 - (i) any patient; or
 - (ii) any other person that the authorised person considers it appropriate to interview; and
- (b) require any such interview to be conducted in private.

(2) Without prejudice to the generality of subsection (1) above—

- (a) an authorised person conducting a visit under subsection (1) of section 11 of this Act shall afford an opportunity, on request, during the visit, to—
 - (i) the patient who is the subject of the visit; and
 - (ii) other patients whose presence in the premises where the visit takes place is known to the authorised person,

to be interviewed in private by the authorised person; and

(b) an authorised person conducting a visit under subsection (3) of that section shall afford an opportunity, on request, during the visit, to patients whose presence in the premises that are being visited is known to the authorised person, to be so interviewed.

(3) An authorised person proposing to interview a person under subsection (1) or (2) above shall, if requested to do so, produce an authenticated document showing that the Commission has given the requisite authority for the purposes of this section.

13 Medical examination and inspection etc. of records

(1) A person authorised by the Commission (an “authorised person”) may, in connection with the discharge by the Commission of any of its functions under this Act—

(a) carry out in private a medical examination of a patient; and

(b) require any person holding medical or other records of a patient to produce them for inspection by the authorised person.

(2) An authorised person shall be—

(a) a medical commissioner; or

(b) a member of staff of the Commission who has such qualifications and experience, and has undertaken such training, as may be prescribed by regulations.

(3) An authorised person proposing to exercise a power conferred by subsection (1) above shall, if requested to do so, produce an authenticated document showing that the Commission has given the requisite authority for the purposes of this section.

14 Duties of Scottish Ministers, local authorities and others as respects the Commission

(1) The persons mentioned in subsection (2) below shall afford the Commission, or a person authorised by the Commission, all facilities necessary to enable the Commission or that person to discharge the Commission’s, or (as the case may be) that person’s, functions under this Act.

(2) Those persons are—

(a) the Scottish Ministers;

(b) a local authority;

(c) a Health Board;

(d) a National Health Service trust;

(e) a police force;

(f) the managers of a registered care service;

(g) the managers of—

(i) a prison; or

(ii) a young offenders institution;

(h) the Scottish Commission for the Regulation of Care;

(i) the Scottish Public Services Ombudsman; and

(j) such other persons as may be prescribed by regulations.

- (3) In subsection (2)(f) above, “registered care service” has the meaning given by section 6(3) of this Act.

15 Annual report, financial year

- 5 (1) The Commission shall, as soon as practicable after the end of each financial year of the Commission, submit to the Scottish Ministers, a report on the discharge of its functions during that year.
- (2) The Scottish Ministers shall lay before the Scottish Parliament a copy of each report submitted to them under subsection (1) above.
- 10 (3) The financial year of the Commission is the period of 12 months ending with 31st March.

16 Statistical information

15 The Commission shall, in accordance with directions given to it by the Scottish Ministers, provide the Ministers with, and publish, statistical or other information relating to the discharge of its functions.

17 Protection from actions of defamation

- (1) For the purposes of the law of defamation, any statement made in pursuance of any of sections 5 to 8 of this Act by the Commission, or any of its employees, shall be privileged unless such statement is shown to be made with malice.
- 20 (2) In this section—
- “statement” has the same meaning as in the Defamation Act 1996 (c. 31); and
- “employees” shall be construed in accordance with paragraph 7 of schedule 1 to this Act.

PART 3

THE MENTAL HEALTH TRIBUNAL FOR SCOTLAND

18 The Mental Health Tribunal for Scotland

- (1) There shall be a tribunal to be known as the Mental Health Tribunal for Scotland (in this Act referred to as the “Tribunal”).
- (2) The Tribunal shall discharge such functions as are conferred on it by virtue of this Act.
- 30 (3) Regulations may make such provision in connection with the Tribunal as the Scottish Ministers consider appropriate.
- (4) Schedule 2 to this Act (which makes provision as respects the Tribunal and its proceedings) shall have effect.

PART 4

HEALTH BOARD AND LOCAL AUTHORITY FUNCTIONS

CHAPTER 1

HEALTH BOARD DUTY

5 **19 Approved medical practitioners**

- (1) A Health Board shall compile and maintain for its area a list of medical practitioners who—
- (a) have such qualifications and experience, and have undertaken such training, as may be specified in directions given by the Scottish Ministers; and
 - 10 (b) are approved for the purposes of this paragraph by the Board concerned as having special experience in the diagnosis, or treatment, of mental disorder.
- (2) A medical practitioner included for the time being in a list maintained under subsection (1) above is referred to in this Act as an “approved medical practitioner”.

CHAPTER 2

LOCAL AUTHORITY FUNCTIONS

Provision of services

15 **20 Care and support services etc.**

- (1) A local authority shall—
- 20 (a) provide, for persons who are not in hospital and who have or have had a mental disorder, services which provide care and support; or
 - (b) secure the provision of such services for such persons.
- (2) Services provided by virtue of subsection (1) above shall be designed to—
- (a) minimise the effect of the mental disorder on such persons; and
 - (b) give such persons the opportunity to lead lives which are as normal as possible.
- 25 (3) In subsection (1) above, “care and support”—
- (a) includes, without prejudice to the generality of that expression—
 - 30 (i) residential accommodation; and
 - (ii) personal care and personal support (each of those expressions having the meaning given by section 2(28) of the Regulation of Care (Scotland) Act 2001 (asp 8)); but
 - (b) does not include nursing care.
- (4) In section 59(1) of the Social Work (Scotland) Act 1968 (c.49) (duty of local authorities as respects provision and maintenance of residential or other establishments), for the words “or under” there shall be substituted “sections 20 and 21 of the Mental Health (Scotland) Act 2002 (asp 00) or”.
- 35

21 Services designed to promote well-being and social development

- (1) A local authority shall—
- (a) provide, for persons who are not in hospital and who have or have had a mental disorder, services which are designed to promote the well-being and social development of those persons; or
 - (b) secure the provision of such services for such persons.
- (2) Services provided by virtue of subsection (1) above shall include, without prejudice to the generality of that subsection, services which provide—
- (a) social, cultural and recreational activities;
 - (b) training for such of those persons as are over school age; and
 - (c) assistance for such of those persons as are over school age in obtaining and in undertaking employment.
- (3) The duty of a local authority under subsection (1) above is without prejudice to the operation of—
- (a) section 1 of the Education (Scotland) Act 1980 (c.44) (duties and powers of education authorities in relation to the provision of social, cultural and recreative activities and vocational and industrial training); and
 - (b) section 1 of the Further and Higher Education (Scotland) Act 1992 (c.37) (duty of Scottish Ministers in relation to the provision of further education).
- (4) In subsection (2)(b) and (c) above, “school age” has the same meaning as in section 31 of the Education (Scotland) Act 1980 (c.44).

22 Assistance with travel

A local authority shall—

- (a) provide, for persons who are not in hospital and who have or have had a mental disorder, such facilities for, or assistance in, travelling as the authority may consider necessary to enable those persons to attend or participate in any of the services mentioned in sections 20 and 21 of this Act; or
- (b) secure the provision of such facilities or assistance for such persons.

Charging for services

23 Services under sections 20 to 22: charging

- (1) In section 87 of the Social Work (Scotland) Act 1968 (c.49) (charges that may be made for certain services)—
- (a) in subsection (1), for the words from “section 7” to “Act 1984” there shall be substituted “section 20 (care and support services for persons who have or have had a mental disorder), 21 (services designed to promote well-being and social development of such persons) or 22 (assistance with travel in connection with such services) of the Mental Health (Scotland) Act 2002 (asp 00)”;

(b) in paragraph (a) of subsection (1A), for the words “section 7 or 8 of the said Act of 1984” there shall be substituted “section 20, 21 or 22 of the Mental Health (Scotland) Act 2002 (asp 00)”; and

(c) in each of subsections (2), (3) and (4), for the words “section 7 of the said Act of 1984” there shall be substituted the words “section 20 of the Mental Health (Scotland) Act 2002 (asp 00)”.

(2) In—

(a) section 2 of the Community Care and Health (Scotland) Act 2002 (asp 5) (meaning of “accommodation” for purpose of certain enactments), for the words from “section 7” to “in relation to” there shall be substituted “section 20 of the 2002 Act (provision of care and support services etc. for”); and

(b) section 22(1) of that Act (interpretation)—

(i) the definition of “the 1984 Act” shall be repealed;

(ii) after the definition of “the 1995 Act”, there shall be inserted—

““the 2002 Act” means the Mental Health (Scotland) Act 2002 (asp 00);” and

(iii) for paragraph (b) of the definition of “social care” there shall be substituted—

“(b) under section 20 (care and support services for persons who have or have had a mental disorder), 21 (services designed to promote well-being and social development of such persons) or 22 (assistance with travel in connection with such services) of the 2002 Act”; and

(iv) in that definition, for the word “either” there shall be substituted “any”.

Relationship with general duties

24 Relationship between duties under sections 20 to 22 and duties under Social Work (Scotland) Act 1968 and Children (Scotland) Act 1995

(1) The duties of a local authority under sections 20 to 22 of this Act are without prejudice to the duties imposed on them by the enactments mentioned in subsection (2) below as those duties apply in relation to persons who have or have had a mental disorder.

(2) Those enactments are—

(a) section 12(1) of the Social Work (Scotland) Act 1968 (c.49) (duty to provide or secure the provision of advice, guidance and assistance on an appropriate scale); and

(b) section 22(1) of the Children (Scotland) Act 1995 (c.36) (duty to provide services for children in need).

Co-operation and assistance

25 Co-operation with Health Boards and others

(1) In providing services for a person under any of sections 20 to 22 of this Act, a local authority shall co-operate with any—

(a) Health Boards;

(b) National Health Service trusts; or
(c) voluntary organisations,
that appear to the authority to have an interest, power or duty mentioned in subsection (2) below.

- 5 (2) Such an interest, power or duty is—
- (a) an interest in the provision of services by the local authority under any of sections 20 to 22 of this Act; or
- (b) a power or duty to provide or secure the provision of services, or an interest in the provision of services,
- 10 for the person.

26 Assistance from Health Boards and National Health Service trusts

- (1) Where it appears to a local authority that the assistance of a Health Board or a National Health Service trust—
- 15 (a) is necessary to enable the authority to perform any of their duties under section 20 or 21 of this Act; or
- (b) would help the authority to perform any of those duties,
- the authority may request the Health Board or National Health Service trust to co-operate by providing the assistance specified in the request.
- (2) A Health Board or a National Health Service trust receiving a request under subsection (1) above shall, if complying with the request—
- 20 (a) would be compatible with the discharge of its own functions (whether under any enactment or otherwise); and
- (b) would not prejudice unduly the discharge by it of any of those functions,
- comply with the request.
- (3) This section is without prejudice to section 21 of the Children (Scotland) Act 1995 (c.36) (which enables a local authority to require assistance from a Health Board, a National Health Service trust or others in the exercise of the authority's functions under Part II of that Act).
- 25

Appointment of mental health officers

27 Appointment of mental health officers

- 30 (1) A local authority shall appoint a sufficient number of persons for the purpose of discharging, in relation to their area, the functions of mental health officers under this Act.
- (2) On and after the appointed day, a local authority shall appoint under subsection (1) above only persons who satisfy such requirements as the Scottish Ministers may direct as to—
- 35 (a) registration;
- (b) education and training;

- (c) experience;
 - (d) competence as respects persons who have or have had a mental disorder; and
 - (e) any other matters that may be specified in the direction.
- 5 (3) A person duly appointed by a local authority before the appointed day to discharge the functions of a mental health officer shall, for the purposes of this Act, be deemed to have been appointed under subsection (1) above; and references in subsections (4) and (5) below to a person appointed under subsection (1) above shall include references to a person deemed by virtue of this subsection to have been so appointed.
- 10 (4) A local authority shall, in accordance with directions given by the Scottish Ministers, provide or secure the provision of training for persons appointed by them under subsection (1) above as respects requirements in directions under subsections (2) above and (5) below.
- (5) A local authority shall terminate the appointment of a person appointed under subsection (1) above if the person, at any time on or after the appointed day, does not satisfy—
- 15 (a) any requirement in a direction under subsection (2) above; or
- (b) such other requirements as to any of the matters mentioned in paragraphs (a) to (e) of that subsection as the Scottish Ministers may, from time to time after the appointed day, by direction specify.
- 20 (6) The validity of any acts or omissions of a person appointed as a mental health officer in the discharge of the functions of such an officer prior to a termination of appointment by virtue of subsection (5) above is not affected by such termination.
- (7) In subsections (2), (3) and (5) above, “the appointed day” means such day as the Scottish Ministers may by order appoint.
- 25 (8) Directions given by the Scottish Ministers under this section shall be given to local authorities collectively.

Duty to inquire into individual cases

28 Duty to inquire

- (1) Where it appears to a local authority that—
- 30 (a) a person in their area who is not in hospital has a mental disorder; and
- (b) any of the circumstances mentioned in subsection (2) below apply,
- the authority shall cause inquiries to be made into the person’s case.
- (2) Those circumstances are—
- (a) that the person may be, or may have been, subject, or exposed, to—
- 35 (i) ill-treatment;
- (ii) neglect; or
- (iii) some other deficiency in care or treatment;
- (b) that, because of the mental disorder, the person’s property—
- (i) may be suffering, or may have suffered, loss or damage; or
- (ii) may be, or may have been, at risk of suffering loss or damage;

- 5
- (c) that the person may be—
 - (i) living alone or without care; and
 - (ii) unable to look after himself or his property or financial affairs; and
 - (d) that, because of the mental disorder, the safety of some other person may be at risk.

29 Inquiries under section 28: co-operation

- 10
- (1) This section applies where a local authority is required by section 28(1) of this Act to cause inquiries to be made into a person's case.
 - (2) Where it appears to the local authority that the assistance of any of the persons mentioned in subsection (3) below—
 - (a) is necessary for the purposes of the inquiries; or
 - (b) would assist the inquiries,the authority may request that person to provide the assistance specified in the request.
 - (3) Those persons are—
 - (a) the Commission;
 - (b) the Scottish Commission for the Regulation of Care;
 - (c) a Health Board; and
 - (d) a National Health Service trust.
 - (4) Where—
 - (a) a person receives a request under subsection (2) above; and
 - (b) complying with the request—
 - (i) would be compatible with the discharge of the person's functions (whether under any enactment or otherwise); and
 - (ii) would not prejudice unduly the discharge by the person of any of those functions,the person shall comply with the request.

30 Inquiries under section 28: warrants

- 30
- (1) If a sheriff, or a justice, is satisfied by a mental health officer's evidence on oath—
 - (a) that, for the purposes of inquiries under section 28 of this Act, it is necessary to enter premises; and
 - (b) that the mental health officer—
 - (i) is unable to obtain entry to those premises; or
 - (ii) reasonably apprehends that the mental health officer will be unable to obtain entry to those premises,the sheriff or justice may grant a warrant under this subsection.
- 35

- (2) A warrant under subsection (1) above is a warrant authorising the mental health officer specified in the warrant and any other persons so specified—
- (a) to enter, for the purposes of the inquiries, any premises so specified; and
 - (b) for the purpose of exercising the power mentioned in paragraph (a) above, to open lockfast places on premises so specified.
- (3) If a sheriff, or a justice, is satisfied by a mental health officer’s evidence on oath—
- (a) that, for the purposes of inquiries under section 28 of this Act, it is necessary that a medical practitioner—
 - (i) carry out a medical examination of the person who is the subject of the inquiries; and
 - (ii) have access to the person’s medical records; and
 - (b) that the mental health officer is unable to obtain the consent of that person to those matters,
- the sheriff or justice may grant a warrant under this subsection.
- (4) A warrant under subsection (3) above is a warrant—
- (a) authorising the detention of the person who is the subject of the inquiries for a period of 3 hours for the purposes of enabling a medical examination of the person to be carried out by the medical practitioner specified in the warrant; and
 - (b) requiring any person holding medical records of the person subject to the inquiries to produce them for inspection by that medical practitioner on being required to do so by the practitioner.
- (5) A mental health officer shall, as soon as practicable after applying for a warrant under subsection (1) or (3) above, give notice to the Commission—
- (a) of the making of the application; and
 - (b) as to whether a warrant was granted or refused.

PART 5

EMERGENCY DETENTION

31 Emergency detention in hospital

- (1) Where—
- (a) a medical practitioner carries out a medical examination of a patient;
 - (b) the patient does not fall within subsection (2) below; and
 - (c) subsection (3) below applies,
- the medical practitioner may, before the expiry of the appropriate period, grant a certificate authorising the measures mentioned in subsection (7) below (any such certificate being referred to in this Act as an “emergency detention certificate”).
- (2) The patient falls within this subsection if, immediately before the medical examination mentioned in subsection (1)(a) above is carried out, the patient is detained in hospital under authority of—
- (a) an emergency detention certificate;

- (b) a certificate granted under section 35(1) of this Act (any such certificate being referred to in this Act as a “short-term detention certificate”);
- (c) a certificate granted under section 41(1) of this Act; or
- (d) section 56 of this Act.

- 5 (3) Subject to subsection (6) below, this subsection applies where—
- (a) the medical practitioner considers that it is likely that the conditions mentioned in subsection (4) below are met in respect of the patient;
 - (b) the medical practitioner is satisfied that the conditions mentioned in subsection (5) below are met in respect of the patient; and
 - 10 (c) the medical practitioner has consulted a mental health officer and that mental health officer has consented to the grant of an emergency detention certificate.
- (4) The conditions referred to in subsection (3)(a) above are—
- (a) that the patient has a mental disorder; and
 - (b) that, because of the mental disorder, the patient’s ability to make decisions about the provision of medical treatment is significantly impaired.
- 15 (5) The conditions referred to in subsection (3)(b) above are—
- (a) that it is necessary as a matter of urgency to detain the patient in hospital for the purpose of determining what medical treatment requires to be provided to the patient;
 - 20 (b) that if the patient were not detained in hospital there would be a significant risk—
 - (i) to the health, safety or welfare of the patient; or
 - (ii) to the safety of any other person; and
 - (c) that making arrangements with a view to the grant of a short-term detention certificate, or the making of an application for a compulsory treatment order, would involve undesirable delay.
- 25 (6) If it is impracticable for the medical practitioner to consult or obtain consent under paragraph (c) of subsection (3) above, that paragraph need not be satisfied for the subsection to apply.
- (7) The measures referred to in subsection (1) above are—
- 30 (a) the removal, before the expiry of the period of 72 hours beginning with the granting of the emergency detention certificate, of the patient to a hospital or to a different hospital; and
 - (b) the detention of the patient in a hospital for the period of 72 hours beginning with the production of the certificate to the managers of the hospital.
- 35 (8) In subsection (1) above “appropriate period” means—
- (a) in a case where the medical examination of the patient is completed at least 4 hours before the end of the day (or, if it takes place on two days, the later of the days) on which it is carried out, the period beginning with completion of the examination and ending with the end of that day;
 - 40 (b) in any other case, the period of 4 hours beginning with the completion of the medical examination.

32 Notification by medical practitioner

(1) A medical practitioner who grants an emergency detention certificate shall, before the expiry of the period of 7 days beginning with the day on which the certificate is granted, give notice to—

5 (a) the managers of any hospital in which the patient is, or was, detained under authority of the certificate;

(b) the Commission; and

(c) where the certificate was granted without consent to its granting having been obtained from a mental health officer—

10 (i) if the medical practitioner knows where the patient resides, the local authority for the area in which the patient resides; or

(ii) if the medical practitioner does not know where the patient resides, the local authority for the area in which any hospital in which the patient is, or was, detained under authority of the certificate is situated,

15 of the matters mentioned in subsection (2) below.

(2) Those matters are—

(a) the reason for granting the certificate;

(b) whether consent of a mental health officer was obtained to the granting of the certificate;

20 (c) if the certificate was granted without consent to its granting having been obtained from a mental health officer, the reason why it was impracticable to consult a mental health officer;

(d) the alternatives to granting the certificate that were considered by the medical practitioner; and

25 (e) the reason for the medical practitioner determining that any such alternative was inappropriate.

33 Duties on hospital managers: examination, notification etc.

(1) This section applies where a patient is detained in hospital under authority of an emergency detention certificate.

30 (2) As soon as practicable after production of the emergency detention certificate to the managers of the hospital, the managers shall—

(a) make arrangements for an approved medical practitioner to carry out a medical examination of the patient; and

35 (b) appoint a medical practitioner who is on the staff of the hospital to be the patient's responsible medical officer.

(3) If the approved medical practitioner who carries out the medical examination required by subsection (2)(a) above is not satisfied that all of the conditions mentioned in section 31(4) and (5) of this Act are met in respect of the patient, the approved medical practitioner shall revoke the certificate.

40 (4) The managers of the hospital shall, before the expiry of the period of 12 hours beginning with the production of the certificate to them, give notice of the granting of the certificate in accordance with subsection (5) below.

- (5) Notice is given in accordance with this subsection if given—
- (a) subject to subsection (6) below—
 - (i) if the patient's nearest relative resides with the patient, to that nearest relative; or
 - (ii) if the patient's nearest relative does not reside with the patient, to at least one person who resides with, or appears to the managers of the hospital to be the carer of, the patient;
 - (b) subject to subsection (6) below—
 - (i) if the managers know who the patient's named person is, to the named person; or
 - (ii) if the managers do not know who the patient's named person is, to at least one person who resides with, or appears to the managers to be the carer of, the patient; and
 - (c) where the certificate was granted without consent to its granting having been obtained from a mental health officer—
 - (i) if the managers knows where the patient resides, to the local authority for the area in which the patient resides; or
 - (ii) if the managers do not know where the patient resides, to the local authority for the area in which the hospital is situated.
- (6) Notice need not be given as mentioned in subsection (5)(a) or (b) above in any case where it is impracticable to do so.

34 Urgent medical treatment: notification

Where—

- (a) a patient is in hospital under authority of an emergency detention certificate; and
- (b) by virtue of section 171 of this Act the patient is given medical treatment,

the patient's responsible medical officer shall, before the expiry of the period of 7 days beginning with the day on which the treatment is given (or first given), give notice to the Commission of the giving of the treatment and the reason for its having been given.

PART 6

SHORT-TERM DETENTION

35 Short-term detention in hospital

- (1) Where—
- (a) an approved medical practitioner carries out a medical examination of a patient;
 - (b) the patient does not fall within subsection (2) below; and
 - (c) subsection (3) below applies,
- the approved medical practitioner may grant a short-term detention certificate authorising the measures mentioned in subsection (5) below.

- (2) The patient falls within this subsection if, immediately before the medical examination mentioned in subsection (1)(a) above is carried out, the patient is detained in hospital under authority of—
- (a) a short-term detention certificate;
 - 5 (b) a certificate granted under section 41(1) of this Act; or
 - (c) section 56 of this Act.
- (3) This subsection applies where—
- (a) the approved medical practitioner considers that it is likely that the conditions mentioned in subsection (4) below are met in respect of the patient;
 - 10 (b) the approved medical practitioner consults a mental health officer; and
 - (c) the mental health officer consents to the grant of a short-term detention certificate.
- (4) The conditions referred to subsection (3)(a) above are—
- (a) that the patient has a mental disorder;
 - 15 (b) that, because of the mental disorder, the patient's ability to make decisions about the provision of medical treatment is significantly impaired;
 - (c) that it is necessary to detain the patient in hospital for the purpose of—
 - (i) determining what medical treatment should be given to the patient; or
 - (ii) giving medical treatment to the patient;
 - (d) that if the patient were not detained in hospital there would be a significant risk—
 - 20 (i) to the health, safety or welfare of the patient; or
 - (ii) to the safety of any other person; and
 - (e) that the granting of a short-term detention certificate is necessary.
- (5) The measures mentioned in subsection (1) above are—
- 25 (a) the removal, before the expiry of the period of 3 days beginning with the granting of the short-term detention certificate, of the patient to a hospital or to a different hospital;
 - (b) the detention of the patient in a hospital for the period of 28 days beginning with the production of the certificate to the managers of the hospital; and
 - 30 (c) the giving to the patient, in accordance with Part 13 of this Act, of medical treatment.
- (6) The short-term detention certificate—
- (a) shall state the approved medical practitioner's reasons for believing the conditions mentioned in subsection (4) above to be met in respect of the patient; and
 - (b) shall be signed by the approved medical practitioner.
- 35 (7) Before granting the short-term detention certificate, the approved medical practitioner shall, subject to subsection (8) below, consult the patient's named person about the proposed grant of the certificate; and the approved medical practitioner shall have regard to any views expressed by the named person.
- 40 (8) The approved medical practitioner need not consult a named person as mentioned in subsection (7) above in any case where it is impracticable to do so.

36 Mental health officer's duty to interview patient etc.

- (1) Subject to subsection (2) below, as soon as practicable after being consulted under section 35(3)(b) of this Act, a mental health officer shall—
- (a) interview the patient; and
 - (b) ascertain the name and address of the patient's named person.
- (2) If it is not practicable for the mental health officer to—
- (a) interview the patient; or
 - (b) ascertain the name and address of the patient's named person,
- the mental health officer shall comply with the requirements set out in subsection (3) below.
- (3) Those requirements are—
- (a) recording the steps taken by the mental health officer with a view to complying with the duty concerned; and
 - (b) before the expiry of the period of 7 days beginning with the day on which the mental health officer is consulted by an approved medical practitioner under section 35(3)(b) of this Act, giving a copy of the record to the approved medical practitioner.

37 Hospital managers' duties: notification etc.

- (1) This section applies where a patient is detained in hospital under authority of a short-term detention certificate.
- (2) Except where a responsible medical officer has been appointed for the patient under section 33 of this Act and the appointment subsists, as soon as practicable after production of the short-term detention certificate to the managers of the hospital, the managers shall appoint a medical practitioner who is on the staff of the hospital to be the patient's responsible medical officer.
- (3) The managers of the hospital shall as soon as practicable after the production to them of the short-term detention certificate, give notice of its granting to—
- (a) the patient;
 - (b) the patient's named person; and
 - (c) any guardian of the patient.
- (4) The managers of the hospital shall before the expiry of the period of 7 days beginning with the granting of the certificate, give notice of its granting to—
- (a) the Tribunal; and
 - (b) the Commission.

38 Social circumstances report

- (1) Subject to subsection (3) below, where a short-term detention certificate is granted in respect of a patient, the mental health officer shall, before the expiry of the period of 21 days beginning with the day on which the certificate is granted, take the steps mentioned in subsection (2) below.

- (2) Those steps are—
- (a) preparing in respect of the patient a report setting out such information as may be prescribed by regulations (any such report being referred to in this Act as a “social circumstances report”); and
 - 5 (b) sending copies of the report to the patient’s responsible medical officer and the Commission.
- (3) If in any case a mental health officer considers that a social circumstances report would serve little, or no, practical purpose, the mental health officer—
- (a) need not take the steps mentioned in subsection (2) above; but
 - 10 (b) shall, before the expiry of the period mentioned in subsection (1) above—
 - (i) record the reasons for deciding that any such report would serve little, or no, practical purpose; and
 - (ii) send a copy of those reasons to the patient’s responsible medical officer and the Commission.

15 **39 Responsible medical officer’s duty to review continuing need for detention**

- (1) Where a patient is detained in hospital under authority of a short-term detention certificate, the patient’s responsible medical officer shall, from time to time, consider—
- (a) whether the conditions mentioned in paragraphs (a) to (d) of section 35(4) of this Act continue to be met in respect of the patient; and
 - 20 (b) whether it continues to be necessary for a short-term detention certificate to authorise the detention of the patient in hospital.
- (2) If, having complied with subsection (1) above, the responsible medical officer determines—
- (a) that not all of the conditions referred to in paragraph (a) of that subsection continue to be met in respect of the patient; or
 - 25 (b) that it is not necessary for the patient to continue to be detained in hospital under authority of a short-term detention certificate,
- the responsible medical officer shall revoke the short-term detention certificate.
- (3) The responsible medical officer shall as soon as practicable after revoking the short-term detention certificate, give notice of its revocation to—
- 30 (a) the patient;
 - (b) the patient’s named person; and
 - (c) any guardian of the patient.
- (4) The responsible medical officer shall before the expiry of the period of 7 days beginning with the day on which the certificate is revoked, give notice of its revocation to—
- 35 (a) the Tribunal; and
 - (b) the Commission.

40 Short-term detention certificate: patient’s right to apply for revocation

- (1) Where a patient is in hospital under authority of a short-term detention certificate—

- (a) the patient; or
- (b) the patient's named person,

may apply to the Tribunal for revocation of the certificate.

- 5 (2) On an application under subsection (1) above the Tribunal shall, if not satisfied that all of the conditions mentioned in paragraphs (a) to (d) of section 35(4) of this Act are met in respect of the patient, revoke the short-term detention certificate.

41 Extension of detention pending application for compulsory treatment order

- 10 (1) Where—

- (a) a patient is detained in hospital under authority of a short-term detention certificate;
- (b) an approved medical practitioner carries out a medical examination of the patient; and
- (c) subsections (2) and (3) below apply,

15 the approved medical practitioner may, before the expiry of the period of 24 hours beginning with the completion of that medical examination, grant a certificate (any such certificate being referred to in this section and in section 42 of this Act as an “extension certificate”) authorising the detention in hospital of the patient for the period of 3 days beginning with the day on which the short-term detention certificate ceases to authorise the detention of the patient in hospital.

- 20 (2) This subsection applies where the approved medical practitioner considers—

- (a) that the conditions in paragraphs (a) to (d) of section 35(4) of this Act are met in respect of the patient; and
- (b) that because of a change in the mental health of the patient, an application should be made under section 52 of this Act for a compulsory treatment order.

- 25 (3) This subsection applies where—

- (a) no application has been made under section 52 of this Act;
- (b) it is not reasonably practicable to make an application under that section before the expiry of the period of detention authorised by the short-term detention certificate; and
- (c) subject to subsection (4) below—
 - 30 (i) the approved medical practitioner consults a mental health officer about the proposed grant of an extension certificate; and
 - (ii) the mental health officer consents to the granting of the extension certificate.

- 35 (4) An approved medical practitioner need not consult or obtain consent under subsection (3)(c) above in any case where it is impracticable to do so.

- (5) In reckoning the period of days mentioned in subsection (1) above, there shall be left out of account any day which is a Saturday, Sunday or day on which the office of the Tribunal is closed.

- (6) Regulations may provide that, for the purposes of preventing any conflict of interest, approved medical practitioners of a description specified in the regulations are disqualified from carrying out medical examinations of patients of a description so specified.

5 **42 Extension certificate: notification**

- (1) An approved medical practitioner who grants an extension certificate shall, before the expiry of the period of 24 hours beginning with the granting of the certificate, give notice to the persons mentioned in subsection (2) below—

(a) of the granting of the extension certificate;

10 (b) of the approved medical practitioner's reasons for believing the conditions mentioned in paragraphs (a) to (d) of section 35(4) of this Act to be met in respect of the patient;

(c) as to whether consent of a mental health officer was obtained to the granting of the certificate; and

15 (d) if the certificate was granted without consent to its granting having been obtained from a mental health officer, the reason why it was impracticable to consult a mental health officer.

- (2) Those persons are—

(a) the patient;

20 (b) the patient's named person;

(c) the Tribunal;

(d) the Commission; and

(e) any guardian of the patient.

25 **43 Effect of subsequent short-term detention certificate on emergency detention certificate**

If a short-term detention certificate is granted in respect of a patient who is in hospital under authority of an emergency detention certificate, the emergency detention certificate shall, on the granting of the short-term detention certificate, cease to authorise the detention of the patient in hospital.

30 **44 Effect of subsequent compulsory treatment order on short-term detention certificate**

If a compulsory treatment order is made in respect of a patient who is in hospital under authority of a short-term detention certificate, the certificate shall, on the making of the order, cease to authorise the detention of the patient in hospital.

PART 7

COMPULSORY TREATMENT ORDERS

CHAPTER 1

APPLICATION FOR, AND MAKING OF, ORDERS

Pre-application procedures

45 Mental health officer's duty to apply for compulsory treatment order

- (1) Where subsections (2) to (5) below apply in relation to a patient, a mental health officer shall apply to the Tribunal under section 52 of this Act for an order under section 53(4)(a) of this Act (any such order being referred to in this Act as a “compulsory treatment order”) in respect of that patient.
- (2) This subsection applies where two medical practitioners carry out medical examinations of the patient in accordance with the requirements of section 46 of this Act.
- (3) This subsection applies where each of the medical practitioners who carries out a medical examination mentioned in subsection (2) above is satisfied—
- (a) that the patient has a mental disorder;
- (b) that medical treatment which would be likely to—
- (i) prevent the mental disorder worsening; or
- (ii) alleviate any of the symptoms, or effects, of the disorder,
- is available for the patient;
- (c) that if the patient were not provided with such medical treatment there would be a significant risk—
- (i) to the health, safety or welfare of the patient; or
- (ii) to the safety of any other person;
- (d) that because of the mental disorder the patient's ability to make decisions about the provision of such medical treatment is significantly impaired; and
- (e) that the making of a compulsory treatment order is necessary.
- (4) This subsection applies where each of the medical practitioners who carries out a medical examination mentioned in subsection (2) above submits to the mental health officer a report (any such report being referred to in this Act as a “mental health report”)—
- (a) stating that the medical practitioner submitting the report is satisfied that the conditions mentioned in paragraphs (a) to (e) of subsection (3) above are met in respect of the patient;
- (b) specifying (by reference to the appropriate paragraph (or paragraphs) of the definition of “mental disorder” in section 227 of this Act) the type (or types) of mental disorder that the patient has;
- (c) setting out a description of—
- (i) the symptoms that the patient has of the mental disorder; and
- (ii) the ways in which the patient is affected by the mental disorder;

- (d) specifying the measures that should, in the medical practitioner's opinion, be authorised by the compulsory treatment order;
- (e) specifying the date or dates on which the medical practitioner carried out the medical examination mentioned in subsection (2) above; and
- 5 (f) setting out any other information that the medical practitioner considers to be relevant.

(5) This subsection applies where—

- 10 (a) in relation to each of the conditions mentioned in paragraphs (b) to (e) of subsection (3) above each of the mental health reports states the medical practitioner's reasons for believing the condition to be met in respect of the patient;
- (b) for the purposes of subsection (4)(b) above each of the mental health reports specifies at least one type of mental disorder that is also specified in the other report;
- 15 (c) for the purposes of subsection (4)(d) above each of the mental health reports specifies the same measures; and
- (d) one of the mental health reports states the views of the medical practitioner making the report as to—
 - 20 (i) whether notice should be given to the patient under section 48(1)(a) of this Act; and
 - (ii) whether the patient is capable of arranging for a person to represent the patient in connection with the application under section 52 of this Act.

(6) Where a mental health officer is required by subsection (1) above to make an application for a compulsory treatment order, the mental health officer shall make the application before the expiry of the period of 14 days beginning with—

- 25 (a) in the case where each of the mental health reports specifies the same date (or dates) for the purposes of subsection (4)(e) above, that date (or the later, or latest, of those dates); or
- 30 (b) in the case where each of those reports specifies for those purposes a different date (or different dates), the later (or latest) of those dates.

46 Medical examination: requirements

- (1) The requirements referred to in section 45(2) of this Act are set out in subsections (2) to (6) below.
- (2) Subject to subsection (4) below and to regulations under subsection (5) below—
 - 35 (a) each medical examination of the patient shall be carried out by an approved medical practitioner; and
 - (b) subject to subsection (6) below, each such examination shall be carried out separately.
- (3) Where the medical examinations are carried out separately, the second shall be completed no more than five days after the first.
- 40

- (4) The patient's general medical practitioner may carry out one of the medical examinations of the patient although not an approved medical practitioner.
- (5) Regulations may provide that, for the purposes of preventing any conflict of interest, approved medical practitioners of a description specified in the regulations are disqualified from carrying out medical examinations of patients of a description so specified.
- (6) The medical examinations need not be carried out separately if—
- (a) where the patient is capable of consenting to the examinations, the patient consents to the examinations being carried out at the same time; or
 - (b) where the patient is incapable of consenting to the examinations—
 - (i) the patient's named person;
 - (ii) any guardian of the patient; or
 - (iii) any welfare attorney of the patient,consents to the examinations being carried out at the same time.

47 Mental health officer's duty to identify named person

Where a mental health officer is required by 45(1) of this Act to make an application under section 52 of this Act in respect of a patient, the mental health officer shall, as soon as practicable after the duty to make the application arises, take such steps as are reasonably practicable to ascertain the name and address of the patient's named person.

48 Application for compulsory treatment order: notification

- (1) Where a mental health officer is required by section 45(1) of this Act to make an application under section 52 of this Act in respect of a patient, the mental health officer shall, as soon as practicable after the duty to make the application arises (and, in any event, before making the application) give notice that the application is to be made—
- (a) subject to subsection (2) below, to the patient in respect of whom the application is to be made; and
 - (b) to the patient's named person.
- (2) If the view set out in one of the mental health reports by virtue of section 45(5)(d) of this Act is that notice should not be given under paragraph (a) of subsection (1) above, the mental health officer—
- (a) need not give such notice; but
 - (b) may, if the mental health officer takes the steps mentioned in subsection (3) below, give such notice.
- (3) Those steps are—
- (a) before giving such notice the mental health officer—
 - (i) has regard to the view that notice should not be given; and
 - (ii) consults the approved medical practitioner and affords such practitioner an opportunity to change the view; and
 - (b) if the view is not changed, the mental health officer records—

- (i) the fact that notice is given despite the view to the contrary; and
- (ii) the mental health officer's reason for giving notice.

49 Mental health officer's power to request assessment of needs

- 5 (1) Where a mental health officer is required by section 45(1) of this Act to make an application under section 52 of this Act in respect of a patient, the mental health officer may request the local authority to make an assessment of the needs of the patient under section 12A(1)(a) of the Social Work (Scotland) Act 1968 (c.49).
- (2) In section 23(3) of the Children (Scotland) Act 1995 (c.36) (local authority's duty to carry out, in response to request by parent or guardian, assessment of needs of child)—
- 10 (a) after “by”, where it first occurs, there shall be inserted “—
(a)”; and
- (b) after “guardian”, there shall be inserted “; or
(b) a mental health officer (as defined in section 228 of the Mental Health (Scotland) Act 2002 (asp 00)) who is required by section 45(1) of that Act to make an application under section 52 of that Act in respect of a child,”.
- 15

50 Mental health officer's duty to prepare report

- (1) This section applies where a mental health officer is required by section 45(1) of this Act to make an application under section 52 of this Act in respect of a patient.
- 20 (2) The mental health officer shall, before the date on which, by virtue of section 45(6) of this Act, the application is to be made—
- (a) interview the patient;
 - (b) if the patient has not been given notice under section 48(1)(a) of this Act, inform the patient that the application is to be made; and
 - 25 (c) prepare in relation to the patient a report in accordance with subsection (3) below.
- (3) The report shall state—
- (a) the name and address of the patient;
 - (b) if known by the mental health officer, the name and address of—
 - 30 (i) the patient's named person; and
 - (ii) the patient's primary carer;
 - (c) the steps that the mental health officer has taken to inform the patient of—
 - (i) the patient's rights in relation to the application; and
 - (ii) the availability of advocacy services under section 182 of this Act;
 - (d) in so far as relevant for the purposes of the application, details of the personal circumstances of the patient;
 - 35 (e) the mental health officer's views on the mental health reports relating to the patient;

- (f) if known by the mental health officer, details of any advance statement that the patient has made (and not withdrawn); and
- (g) any other information that the mental health officer considers relevant to the determination by the Tribunal of the application.

5 **51 Mental health officer's duty to prepare care plan**

- (1) This section applies where a mental health officer is required by section 45(1) of this Act to make an application under section 52 of this Act in respect of a patient.
- (2) The mental health officer shall, before the date on which, by virtue of section 45(6) of this Act, the application is to be made, prepare a plan (a “care plan”) relating to the patient.
- (3) The mental health officer shall prepare the care plan—
 - (a) in conjunction with the medical practitioners who provided the mental health reports relating to the patient; and
 - (b) after consulting—
 - 15 (i) subject to subsection (6) below, any person who it is proposed should provide medical treatment, community care services, relevant services or any other services to the patient; and
 - (ii) such other persons as the mental health officer considers appropriate.
- (4) The care plan shall specify—
 - 20 (a) the needs of the patient that have been assessed by the medical practitioners who submitted the mental health reports relating to the patient;
 - (b) in so far as relevant for the purposes of the application—
 - 25 (i) where the patient is a child, the needs of the patient that have been assessed under section 23(3) of the Children (Scotland) Act 1995 (c.36);
 - (ii) where the patient is not a child, the needs of the patient that have been assessed under section 12A(1)(a) of the Social Work (Scotland) Act 1968 (c.49);
 - (c) the medical treatment which it is proposed to give to the patient in relation to each of the needs specified by virtue of paragraph (a) above (including the names of the persons who are to give the treatment and the addresses at which the treatment is to be given);
 - 30 (d) the community care services, relevant services and any other services which it is proposed to provide to the patient in relation to each of the needs specified by virtue of paragraph (b) above (including the names of the persons who are to provide such services and the addresses at which such services are to be provided);
 - 35 (e) where it is proposed that the compulsory treatment order should authorise the detention of the patient in hospital, the name and address of the hospital;
 - 40 (f) where it is proposed that the compulsory treatment order should authorise other measures, details of those other measures;

(g) where it is proposed that the compulsory treatment order should record the details of any services specified by virtue of paragraph (d) above that it is necessary to provide for the purpose of enabling the patient to comply with measures proposed under paragraph (f) above, details of those services;

5 (h) where it is proposed that the compulsory treatment order should authorise measures other than the detention of the patient in hospital, the name of the hospital the managers of which should have responsibility for appointing the patient's responsible medical officer; and

10 (i) the objectives of the medical treatment and services which it is proposed to provide to the patient.

(5) The care plan shall be signed by—

(a) the mental health officer; and

(b) the medical practitioners who submitted the mental health reports relating to the patient.

15 (6) The mental health officer need not consult any person such as is mentioned in paragraph (b)(i) of subsection (3) above in any case where it is impracticable to do so.

(7) In this section—

“child” has the same meaning as in section 23(3) of the Children (Scotland) Act 1995 (c.36);

20 “community care services” has the meaning given by section 5A(4) of the Social Work (Scotland) Act 1968 (c.49); and

“relevant services” has the meaning given by section 19(2) of the Children (Scotland) Act 1995 (c.36).

Application for order etc.

25 **52 Application for compulsory treatment order**

(1) An application to the Tribunal for a compulsory treatment order may be made by, and only by, a mental health officer.

(2) An application—

(a) shall specify—

30 (i) the measures that are sought in relation to the patient in respect of whom the application is made;

(ii) any services specified in the care plan by virtue of section 51(4)(g) of this Act details of which it is sought to have recorded in the order; and

35 (iii) where it is proposed that the order should authorise measures other than the detention of the patient in hospital, the name of the hospital the managers of which should have responsibility for appointing the patient's responsible medical officer; and

(b) shall be accompanied by the documents that are mentioned in subsection (3) below.

40 (3) Those documents are—

- (a) the mental health reports;
 - (b) the report prepared under section 50 of this Act; and
 - (c) the care plan,
- relating to the patient.

5 **53 Powers of Tribunal on application under section 52**

- (1) This section applies where an application is made under section 52 of this Act.
- (2) Before determining the application, the Tribunal shall afford the persons mentioned in subsection (3) below the opportunity—
 - (a) of making representations (whether orally or in writing); and
 - 10 (b) of leading, or producing, evidence.
- (3) Those persons are—
 - (a) the patient;
 - (b) the patient’s named person;
 - (c) the mental health officer;
 - 15 (d) the medical practitioners who submitted the mental health reports which accompany the application;
 - (e) the patient’s primary carer;
 - (f) any curator *ad litem* appointed by the Tribunal; and
 - (g) any other person appearing to the Tribunal to have an interest in the application.
- 20 (4) The Tribunal may—
 - (a) if satisfied that all of the conditions mentioned in subsection (5) below are met, make an order—
 - (i) authorising such of the measures mentioned in section 54(1) of this Act as may be specified in the order;
 - 25 (ii) if the Tribunal considers that, for the purpose of enabling a patient to comply with any measure so specified, it is necessary to provide the patient with particular community care services, relevant services or other services, recording details of such services; and
 - 30 (iii) if the order does not authorise the detention of the patient in hospital, specifying the name of the hospital the managers of which are to have responsibility for appointing the patient’s responsible medical officer; or
 - (b) refuse the application.
- (5) The conditions referred to in subsection (4)(a) above are—
 - (a) that the patient has a mental disorder;
 - 35 (b) that medical treatment which would be likely to—
 - (i) prevent the mental disorder worsening; or
 - (ii) alleviate any of the symptoms, or effects, of the disorder,

is available for the patient;

(c) that if the patient were not provided with such medical treatment there would be a significant risk—

(i) to the health, safety or welfare of the patient; or

(ii) to the safety of any other person;

(d) that because of the mental disorder the patient’s ability to make decisions about the provision of such medical treatment is significantly impaired; and

(e) that the making of a compulsory treatment order in respect of the patient is necessary.

(6) Subject to subsection (7) below, an order under subsection (4)(a) above may, in addition to, or instead of, specifying some or all of the measures sought in the application to which the order relates, specify measures other than those set out in that application.

(7) The Tribunal may specify in the order under subsection (4)(a) above measures other than those set out in the application only if, before making the order, the Tribunal gives notice to the persons mentioned in subsection (3) above—

(a) stating what it is proposing to do;

(b) setting out what those measures are; and

(c) affording those persons an opportunity to make representations in relation to the proposal.

(8) In this section—

“community care services” has the meaning given by section 5A(4) of the Social Work (Scotland) Act 1968 (c.49); and

“relevant services” has the meaning given by section 19(2) of the Children (Scotland) Act 1995 (c.36).

54 Compulsory treatment order: measures that may be authorised

(1) Subject to subsection (2) below, the measures referred to in section 53(4)(a) of this Act are—

(a) the detention of the patient in the specified hospital for the authorised period;

(b) during the authorised period, the giving to the patient, in accordance with Part 13 of this Act, of medical treatment; and

(c) the imposition, during the authorised period, of a requirement on the patient—

(i) to attend, on specified dates, at specified intervals or in accordance with directions given by the responsible medical officer, specified places for the purpose of receiving medical treatment;

(ii) to reside at a specified address;

(iii) to allow monitoring of the patient in the patient’s home, or visits there, by any person responsible for providing medical treatment, community care services, relevant services or other services to the patient;

(iv) to obtain the approval of the mental health officer to any proposed change of address; and

(v) to inform the mental health officer of any change of address before the change takes effect.

(2) Regulations may make provision for measures prescribed by the regulations to be treated as included among the measures mentioned in subsection (1) above.

5 (3) In this section—

“authorised period” means the period of 6 months beginning with the day on which the compulsory treatment order is made;

“community care services” has the meaning given by section 5A(4) of the Social Work (Scotland) Act 1968 (c.49);

10 “relevant services” has the meaning given by section 19(2) of the Children (Scotland) Act 1995 (c.36); and

“specified” means specified in the compulsory treatment order.

55 Compulsory treatment order authorising detention: ancillary authorisation

15 (1) Where a compulsory treatment order authorises the detention of a patient in a hospital specified in the order, this section authorises the removal, before the expiry of the period of 7 days beginning with the appropriate day, of the patient in respect of whom the compulsory treatment order is made to that hospital.

(2) In subsection (1) above, “appropriate day” means the day on which—

20 (a) a compulsory treatment order authorising detention of a patient in hospital is made; or

(b) a compulsory treatment order is varied so as to authorise the detention of a patient in the hospital specified in the order.

Extension of short-term detention: special case

56 Extension of short-term detention pending determination of application

25 Where—

(a) the detention of a patient in hospital is authorised by a short-term detention certificate; and

(b) before the expiry of the period of detention so authorised, an application is made under section 52 of this Act,

30 the patient may be detained in hospital for a period of 5 days beginning with the expiry of that period.

Appointment of patient’s responsible medical officer

57 Appointment of patient’s responsible medical officer

35 As soon as practicable after a compulsory treatment order is made in respect of a patient, the managers of the hospital specified in the order shall appoint a medical practitioner who is on the staff of the hospital to be the patient’s responsible medical officer.

Care plan: placing in medical records

58 Care plan: placing in medical records

As soon as practicable after a patient's responsible medical officer is appointed under section 57 of this Act, the responsible medical officer shall secure that the patient's care plan is included in the patient's medical records.

Social circumstances report

59 Mental health officer's duty to prepare social circumstances report

- (1) Subject to subsection (3) below, where a compulsory treatment order is made in respect of a patient, the mental health officer who applied for the order shall, before the expiry of the period of 21 days beginning with the day on which the order is made, take the steps mentioned in subsection (2) below.
- (2) Those steps are—
 - (a) preparing a social circumstances report in respect of the patient; and
 - (b) sending copies of the report to the patient's responsible medical officer and the Commission.
- (3) If in any case a mental health officer considers that a social circumstances report would serve little, or no, practical purpose, the mental health officer—
 - (a) need not take the steps mentioned in subsection (2) above; but
 - (b) shall, before the expiry of the period mentioned in subsection (1) above—
 - (i) record the reasons for deciding that any such report would serve little, or no, practical purpose; and
 - (ii) send a copy of those reasons to the patient's responsible medical officer and the Commission.

CHAPTER 2

REVIEW OF ORDERS

Mandatory reviews by responsible medical officer

60 First mandatory review

- (1) This section applies where a compulsory treatment order is made in respect of a patient.
- (2) The patient's responsible medical officer shall, during the appropriate period, carry out a review in respect of the order (such review being referred to in this Act as a "first review") by complying with the requirements set out in subsection (3) below.
- (3) Those requirements are—
 - (a) to—
 - (i) carry out a medical examination of the patient; or
 - (ii) make arrangements for an approved medical practitioner to carry out such a medical examination;
 - (b) to consider—

(i) whether the conditions mentioned in paragraphs (a) to (d) of section 53(5) of this Act continue to apply in respect of the patient; and

(ii) whether a compulsory treatment order in respect of the patient continues to be necessary; and

5 (c) to consult—

(i) the mental health officer specified in the patient’s care plan;

(ii) any person who is specified in the compulsory treatment order as being responsible for the provision of medical treatment or services to the patient; and

10 (iii) such other persons as the responsible medical officer considers appropriate.

(4) In subsection (2) above, “appropriate period” means the period of 2 months ending with the day on which the compulsory treatment order ceases to authorise the measures specified in it.

61 Further mandatory reviews

15 (1) This section applies where a compulsory treatment order is extended—

(a) by a determination under section 66 of this Act; or

(b) by virtue of an order under section 79 of this Act.

20 (2) The patient’s responsible medical officer shall, during the period mentioned in subsection (3) below, carry out a review in respect of the order (such review being referred to in this Part of this Act as a “further review”) by complying with the requirements set out in section 60(3) of this Act.

(3) The period referred to in subsection (2) above is the period of 2 months ending with the day on which the compulsory treatment order as extended—

(a) by the determination under section 66 of this Act; or

25 (b) by virtue of the order under section 78 or 79 of this Act,
ceases to authorise the measures specified in it.

Duty generally to keep order under review

62 Responsible medical officer’s duty to review order from time to time

(1) This section applies where a patient is subject to a compulsory treatment order.

30 (2) Without prejudice to the duties imposed on a patient’s responsible medical officer by sections 60(2) and 61(2) of this Act, that officer shall keep the compulsory treatment order under review, by, from time to time—

(a) considering—

35 (i) whether the conditions mentioned in paragraphs (a) to (d) of section 53(5) of this Act continue to apply as respects the patient; and

(ii) whether a compulsory treatment order in respect of the patient continues to be necessary; and

(b) consulting the persons mentioned in subsection (3) below.

- (3) Those persons are—
- (a) the mental health officer specified in the patient’s care plan;
 - (b) any person who is specified in the compulsory treatment order as being responsible for the provision of medical treatment or services to the patient; and
 - (c) such other persons as the responsible medical officer considers appropriate.

Further steps to be taken in relation to reviews

63 Reviews of order: further steps to be taken by responsible medical officer

- (1) This section applies where a patient’s responsible medical officer is carrying out—
- (a) a first review of a compulsory treatment order;
 - (b) a further review of such an order; or
 - (c) a review under section 62(2) of this Act of such an order.
- (2) If, after having regard to any views expressed by persons consulted under section 60(3)(c) or 62(2)(b) of this Act for the purpose of the review being carried out, the patient’s responsible medical officer is satisfied—
- (a) that all of the conditions mentioned in paragraphs (a) to (d) of section 53(5) of this Act continue to apply in respect of the patient; and
 - (b) that a compulsory treatment order in respect of the patient continues to be necessary,
- the responsible medical officer shall take the steps mentioned in subsection (3) below.
- (3) Those steps are—
- (a) to assess the needs of the patient for medical treatment;
 - (b) to consider whether the compulsory treatment order to which the patient is subject should continue to authorise the measures specified in it and to record any services recorded in it.

Revocation of order by responsible medical officer

64 Responsible medical officer’s duty to revoke order

- (1) This section applies where a patient’s responsible medical officer is carrying out—
- (a) a first review of a compulsory treatment order;
 - (b) a further review of such an order; or
 - (c) a review under section 62(2) of this Act of such an order.
- (2) If, after having regard to any views expressed by persons consulted under section 60(3)(c) or 62(2)(b) of this Act for the purpose of the review being carried out, the responsible medical officer is not satisfied—
- (a) that all of the conditions mentioned in paragraphs (a) to (d) of section 53(5) of this Act continue to apply in respect of the patient; and
 - (b) that a compulsory treatment order in respect of the patient continues to be necessary,

the responsible medical officer shall make a determination revoking the compulsory treatment order.

- (3) A determination under this section shall be made as soon as practicable after the duty to make it arises.

5 **65 Determination revoking order: notification**

- (1) Where a patient's responsible medical officer makes a determination under section 64 of this Act, that officer shall, as soon as practicable after the determination is made and, in any event, before the expiry of the period of 7 days beginning with the day on which the determination is made—

- 10 (a) give notice of the determination; and
(b) send a statement of the reasons for it,
to the persons mentioned in subsection (2) below.

- (2) Those persons are—

- 15 (a) the patient;
(b) the patient's named person;
(c) the mental health officer;
(d) the Tribunal; and
(e) the Commission.

Extension of order by responsible medical officer

20 **66 Responsible medical officer's duty to extend order**

- (1) This section applies where a patient's responsible medical officer is carrying out—

- (a) a first review of a compulsory treatment order; or
(b) a further review of such an order.

- 25 (2) If, after having regard to any views expressed by persons consulted under section 60(3)(c) of this Act for the purpose of the review being carried out, the responsible medical officer is satisfied—

- 30 (a) that all of the conditions mentioned in paragraphs (a) to (d) of section 53(5) of this Act continue to apply in respect of the patient;
(b) that a compulsory treatment order in respect of the patient continues to be necessary; and
(c) that the compulsory treatment order to which the patient is subject—
35 (i) should continue to authorise the measures specified in it and to record any services recorded in it; and
(ii) should not be varied by modifying the measures specified in it or any services recorded in it,

the responsible medical officer shall make a determination extending the compulsory treatment order for the period mentioned in subsection (3) below.

- (3) That period is—

(a) where a determination is made in respect of a first review, the period of 6 months beginning with the day on which the compulsory treatment order would cease, were it not extended by the determination, to authorise the measures specified in the order; and

5 (b) where a determination is made in respect of—

(i) the first further review, the period of 12 months beginning with the expiry of the period mentioned in paragraph (a) above; or

10 (ii) a subsequent further review, the period of 12 months beginning with the immediately preceding anniversary, in relation to the further review, of the expiry of the period mentioned in sub-paragraph (i) above.

67 Determination extending order: notification etc.

15 (1) Where a patient's responsible medical officer makes a determination under section 66 of this Act, that officer shall, as soon as practicable after the determination is made and, in any event, before the expiry of the period of 7 days beginning with the day on which the determination is made, comply with the requirements mentioned in subsection (2) below.

(2) Those requirements are—

(a) to prepare a record stating—

20 (i) the determination;

(ii) the reasons for it;

(iii) whether the mental health officer agrees, or disagrees, with the determination or expresses no view;

(iv) if the mental health officer disagrees with the determination, the reasons for the disagreement; and

25 (v) such other matters as may be prescribed by regulations;

(b) to submit the record to the Tribunal; and

(c) at the same time as the responsible medical officer submits the record to the Tribunal, to give notice of the determination and send a copy of the record—

30 (i) subject to subsection (3) below, to the patient;

(ii) to the patient's named person;

(iii) to the mental health officer; and

(iv) to the Commission.

(3) If the responsible medical officer considers that a copy of the record should not be sent to the patient, that officer need not send it to the patient.

35 (4) At the same time as the responsible medical officer submits the record to the Tribunal, that officer shall send to the Tribunal, and to the persons mentioned in subsection (2)(c)(ii) to (iv) above, a statement of the matters mentioned in subsection (5) below.

(5) Those matters are—

40 (a) whether the responsible medical officer is sending a copy of the record to the patient; and

- (b) if the responsible medical officer is not sending a copy of the record to the patient, the reason for not doing so.

Extension and variation of order: application by responsible medical officer

68 Responsible medical officer's duty to apply for extension and variation of order

- 5 (1) This section applies where a patient's responsible medical officer is carrying out—
- (a) a first review of a compulsory treatment order; or
 - (b) a further review of such an order.
- 10 (2) If, after having regard to any views expressed by persons consulted under section 60(3)(c) of this Act for the purpose of the review being carried out, the responsible medical officer is satisfied as to the matters mentioned in subsection (3) below, the responsible medical officer shall make an application to the Tribunal under section 70 of this Act for an order under section 79 of this Act—
- (a) extending the compulsory treatment order for the period mentioned in subsection (4) below; and
 - 15 (b) varying the order by modifying the measures authorised by it or any services recorded in it.
- (3) Those matters are—
- (a) that all of the conditions mentioned in paragraphs (a) to (d) of section 53(5) of this Act continue to apply in respect of the patient;
 - 20 (b) that a compulsory treatment order in respect of the patient continues to be necessary; and
 - (c) that the compulsory treatment order to which the patient is subject should be varied in the way mentioned in subsection (2)(b) above.
- (4) The period referred to in subsection (2)(a) above is—
- 25 (a) where the application is made in respect of a first review, the period of 6 months beginning with the day on which the compulsory treatment order will (unless extended) cease, to authorise the measures specified in it; and
 - (b) where the application is made in respect of—
- 30 (i) the first further review, the period of 12 months beginning with the expiry of the period mentioned in paragraph (a) above; or
 - (ii) a subsequent further review, the period of 12 months beginning with the immediately preceding anniversary, in relation to the further review, of the expiry of the period mentioned in sub-paragraph (i) above.

69 Application for extension and variation of order: notification

- 35 (1) Where by virtue of section 68(2) of this Act, an application is to be made under section 70 of this Act, the patient's responsible medical officer shall, as soon as practicable after the duty to make the application arises (and, in any event, before making the application) give notice that the application is to be made—
- (a) subject to subsection (2) below, to the patient;

- (b) to the patient's named person;
- (c) to the mental health officer; and
- (d) to the Commission.

(2) If the responsible medical officer considers that notice should not be given under subsection (1)(a) above, that officer need not give it.

(3) At the same time as the responsible medical officer gives notice to the persons mentioned in subsection (1)(b) to (d) above, that officer shall send to those persons a statement of the matters mentioned in subsection (4) below.

(4) Those matters are—

- (a) whether the responsible medical officer is giving notice under subsection (1)(a) above to the patient; and
- (b) if the responsible medical officer is not giving notice under that subsection, the reason for not doing so.

70 Application to Tribunal

An application under this section to the Tribunal by a patient's responsible medical officer for an order extending and varying a compulsory treatment order—

(a) shall state—

- (i) the name and address of the patient;
- (ii) the name and address of the patient's named person;
- (iii) the modification of the measures authorised by, or of the services recorded in, the compulsory treatment order that is proposed by the responsible medical officer;
- (iv) the reasons for seeking that modification;
- (v) whether the responsible medical officer is giving notice to the patient under section 69(1)(a) of this Act; and
- (vi) if that officer is not giving notice under that section, the reason for not doing so; and

(b) shall be accompanied by such documents as may be prescribed by regulations.

Variation of order: application by responsible medical officer

71 Variation of order: requirements to be complied with by responsible medical officer

(1) This section applies where a patient's responsible medical officer is carrying out a review of a compulsory treatment order under section 62(2) of this Act.

(2) If, after having regard to any views expressed by persons consulted under section 62(2)(b) of this Act, the responsible medical officer is satisfied as to the matters mentioned in subsection (3) below, the responsible medical officer shall make an application to the Tribunal under section 73 of this Act for an order under section 79 of this Act varying the compulsory treatment order by modifying the measures specified in it or any services recorded in it.

- (3) Those matters are—
- (a) that all of the conditions mentioned in paragraphs (a) to (d) of section 53(5) of this Act continue to apply in respect of the patient;
 - (b) that a compulsory treatment order in respect of the patient continues to be necessary; and
 - (c) that the compulsory treatment order to which the patient is subject should be varied in the way mentioned in subsection (2) above.

72 Application by responsible medical officer for variation of order: notification

- (1) Where, by virtue of section 71(2) of this Act, an application is to be made under section 73 of this Act, the patient's responsible medical officer shall, as soon as practicable after the duty to make the application arises (and, in any event, before making the application) give notice that the application is to be made—
- (a) subject to subsection (2) below, to the patient;
 - (b) to the patient's named person;
 - (c) to the mental health officer; and
 - (d) to the Commission.
- (2) If the responsible medical officer considers that notice should not be given under subsection (1)(a) above, that officer need not give it.
- (3) At the same time as the responsible medical officer gives notice to the persons mentioned in subsection (1)(b) to (d) above, that officer shall send to those persons a statement of the matters mentioned in subsection (4) below.
- (4) Those matters are—
- (a) whether the responsible medical officer is giving notice under subsection (1)(a) above to the patient; and
 - (b) if the responsible medical officer is not giving notice under that subsection, the reason for not doing so.

73 Application by responsible medical officer to Tribunal

An application under this section to the Tribunal by a patient's responsible medical officer for an order varying a compulsory treatment order—

- (a) shall state—
- (i) the name and address of the patient;
 - (ii) the name and address of the patient's named person;
 - (iii) the modification of the measures authorised by, or the services recorded in, the compulsory treatment order that is proposed by the responsible medical officer;
 - (iv) the reasons for seeking that modification;
 - (v) whether the responsible medical officer is giving notice of the application to the patient under section 72(1)(a) of this Act; and

(vi) if that officer is not giving notice under that section, the reason for not doing so; and

(b) shall be accompanied by such documents as may be prescribed by regulations.

Mental health officer's duty to interview patient

5 **74 Mental health officer: duties as respects patient**

(1) This section applies where—

(a) a determination is made under section 66 of this Act; or

(b) an application is made under section 70, 73, 75 or 76 of this Act.

10 (2) The mental health officer specified in the patient's care plan shall, as soon as practicable after receiving notice of the determination or application, take all reasonable steps—

(a) to interview the patient;

(b) if the application is under section 70 or 73 of this Act, and the patient's responsible medical officer has not given the patient notice that the application is to be made, to inform the patient that it has been made; and

15 (c) to inform the patient—

(i) of the patient's rights in relation to the determination or application; and

(ii) of the availability of advocacy services under section 182 of this Act.

Applications by patient etc.

20 **75 Application by patient etc. for revocation of determination extending order**

(1) Where a responsible medical officer makes a determination under section 66 of this Act, any of the persons mentioned in subsection (2) below may make an application under this section to the Tribunal for an order under section 79 of this Act revoking the determination.

(2) Those persons are—

25 (a) the patient;

(b) the patient's named person; and

(c) the Commission.

76 Application by patient etc. for revocation or modification of compulsory treatment order

30 (1) This section applies where a patient is subject to a compulsory treatment order.

(2) Any of the persons mentioned in subsection (3) below may, subject to subsections (4) and (5) below, make an application under this section to the Tribunal for an order under section 79 of this Act—

(a) revoking the compulsory treatment order; or

35 (b) varying such order by modifying the measures authorised by it or the services recorded in it.

- (3) Those persons are—
- (a) the patient;
 - (b) the patient’s named person; and
 - (c) the Commission.
- 5 (4) An application under this section may not be made before the expiry of the period of 3 months beginning with the day on which the compulsory treatment order to which the application relates was made.
- (5) If—
- 10 (a) an application under this section by a patient, or the patient’s named person, for revocation of a compulsory treatment order is refused; or
 - (b) a patient, or the patient’s named person, makes an application under this section for variation of a compulsory treatment order,
- neither the patient nor the named person shall be entitled to make more than one further application under this section during the period mentioned in subsection (6) below.
- 15 (6) That period is—
- (a) where the application mentioned in subsection (5)(a) or (b) above is made before the expiry of the period of 6 months beginning with the day on which the compulsory treatment order was made, that period of 6 months; or
 - (b) where that application is made before the expiry of—
- 20 (i) the period of 12 months beginning with the expiry of the period mentioned in paragraph (a) above, that period of 12 months; or
 - (ii) any subsequent period of 12 months that begins with, or with an anniversary of, the expiry of the period of 12 months mentioned in subparagraph (i) above, that subsequent period of 12 months.

25 *Review by Tribunal of determination extending order*

77 Review by Tribunal of responsible medical officer’s determination under section 66

- (1) This section applies where a patient’s responsible medical officer makes a determination under section 66 of this Act.
- (2) If—
- 30 (a) the record submitted to the Tribunal under section 67(2)(b) of this Act states that the mental health officer disagrees with the determination; or
 - (b) no decision has been made by the Tribunal under this section or section 79 of this Act in respect of the compulsory treatment order to which the determination relates during the period of 2 years ending with the day on which the order, had it not been extended by the determination, would have ceased to authorise the measures specified in it,
- 35 the determination shall, on the application of the mental health officer seeking revocation of the determination and of the order, be reviewed by the Tribunal.
- (3) On the review of a determination under subsection (2) above, the Tribunal may make an order under this section—
- 40

- (a) revoking the determination;
- (b) revoking both the determination and the compulsory treatment order;
- (c) confirming the determination; or
- (d) confirming the determination and varying the compulsory treatment order by modifying the measures authorised by it, or the services recorded in it.
- 5
- (4) Before making a decision under subsection (3) above, the Tribunal shall—
- (a) allow the persons mentioned in subsection (5) below the opportunity—
- (i) of making representations (whether orally or in writing); and
- (ii) of leading, or producing, evidence; and
- 10 (b) whether or not any such representations are made, hold a hearing.
- (5) Those persons are—
- (a) the patient;
- (b) the patient’s named person;
- (c) the mental health officer;
- 15 (d) the responsible medical officer;
- (e) the patient’s primary carer;
- (f) any curator *ad litem* appointed by the Tribunal;
- (g) the Commission; and
- 20 (h) any other person appearing to the Tribunal to have an interest in the determination.

Proceedings before Tribunal

78 Extension of order pending decision of Tribunal

- (1) This section applies where an application is made to the Tribunal under section 70 of this Act.
- 25 (2) If the Tribunal considers—
- (a) that it will be unable to determine the application before the compulsory treatment order to which the application relates ceases to authorise the measures specified in it; and
- (b) that it is appropriate to extend the order to enable the application to be determined,
- 30 the Tribunal may make an order extending the compulsory treatment order for such period not exceeding 28 days as may be specified in the order of the Tribunal.

79 Powers of Tribunal on application under section 70, 73, 75 or 76

- (1) Where an application is made under section 70 of this Act, the Tribunal may make an order—

- (a) extending the compulsory treatment order to which the application relates for the period mentioned in section 68(4) of this Act and varying the compulsory treatment order by modifying the measures specified in it or the services recorded in it;
- 5 (b) extending the compulsory treatment order for that period;
- (c) refusing the application; or
- (d) refusing the application and revoking the compulsory treatment order.
- (2) Where an application is made under section 75 of this Act, the Tribunal may make an order—
- 10 (a) revoking the determination to which the application relates;
- (b) revoking—
- (i) the determination; and
- (ii) the compulsory treatment order to which the determination relates;
- (c) confirming the determination; or
- 15 (d) confirming the determination and varying the compulsory treatment order by modifying the measures specified in it or the services recorded in it.
- (3) Where an application is made under section 76(2)(a) of this Act, the Tribunal may make an order—
- (a) revoking the compulsory treatment order to which the application relates;
- 20 (b) varying the compulsory treatment order by modifying the measures specified in it or the services recorded in it; or
- (c) refusing the application;
- (4) Where an application is made under section 73 or 76(2)(b) of this Act, the Tribunal may make an order—
- 25 (a) varying the compulsory treatment order to which the application relates by modifying the measures specified in it or the services recorded in it;
- (b) refusing the application; or
- (c) refusing the application and revoking that order.
- (5) Before making a decision under any of subsections (1) to (4) above, the Tribunal shall afford the persons mentioned in section 77(5) of this Act the opportunity—
- 30 (a) of making representations (whether orally or in writing); and
- (b) of leading, or producing, evidence.

80 Tribunal's powers etc. when varying compulsory treatment order

- (1) Subject to subsection (2) below, where the Tribunal makes an order under section 77 or 79 of this Act varying a compulsory treatment order, the Tribunal—
- 35 (a) shall specify in its order the modifications made by its order to the measures authorised by, or the services recorded in, the compulsory treatment order; and
- (b) may specify in its order measures or services other than those set out in the application to which its order relates.

- (2) The Tribunal may specify in its order measures, or services, other than those specified in such application, only if, before making its order, the Tribunal gives notice to the persons mentioned in section 77(5) of this Act—
- (a) stating what it is proposing to do;
 - 5 (b) setting out what those measures, or services are; and
 - (c) affording such persons the opportunity—
 - (i) of making representations (whether orally or in writing) in relation to that proposal; and
 - (ii) of leading, or producing, evidence.

10 **81 Ancillary powers of Tribunal**

- (1) This section applies where—
- (a) an application is made to the Tribunal under section 70, 73, 75 or 76 of this Act; or
 - (b) the Tribunal is, under section 77(2) of this Act, reviewing a determination.
- 15 (2) The Tribunal may, in relation to the application or review, require—
- (a) the preparation and submission to it by the mental health officer of a report stating—
 - (i) the steps taken by the mental health officer to comply with section 74(2) of this Act;
 - 20 (ii) in so far as relevant for the purposes of the application or determination, details of the personal circumstances of the patient;
 - (iii) if known by the mental health officer, details of any advance statement that the patient has made (and not withdrawn); and
 - (iv) any other information that the mental health officer considers relevant to the application or determination; or
 - 25 (b) an assessment by the responsible medical officer of the needs of the patient for medical treatment.

Interpretation

30 **82 Meaning of “modify”**

In this Chapter, references, in relation to the measures authorised by, or the services recorded in, a compulsory treatment order, to modifying those measures or services include references to—

- (a) amending those measures or services;
- (b) removing from the order any measure or service;
- 35 (c) adding any measure or service; or
- (d) recording details of services in an order which contains no recorded services.

CHAPTER 3

MISCELLANEOUS

Suspension

83 Suspension of order

- 5 (1) Subject to subsection (6) below, where—
- (a) a patient is subject to a compulsory treatment order; and
 - (b) subsection (2) or (3) below applies,
- the patient's responsible medical officer may, by certificate, suspend the effect of the order for such period not exceeding three months as may be specified in the certificate.
- 10 (2) This subsection applies where—
- (a) the order authorises the detention of the patient in hospital; and
 - (b) the responsible medical officer is considering revoking the order.
- (3) This subsection applies where—
- (a) the order does not authorise the detention of the patient in hospital;
 - 15 (b) the patient has agreed to be admitted to a hospital and to receive medical treatment there; and
 - (c) the patient agrees to remain in the hospital during the period when the order is suspended.
- (4) Suspension of the effect of a compulsory treatment order under subsection (1) above shall not of itself operate so as to reduce the period during which the order authorises the measures specified in it.
- 20 (5) The responsible medical officer shall, not later than 14 days after suspending the effect of a compulsory treatment order under subsection (1) above, give notice to—
- (a) the patient;
 - 25 (b) the patient's named person;
 - (c) the Tribunal; and
 - (d) the Commission,
- of the suspension and its duration.
- (6) If, otherwise than by virtue of the order, the patient is in hospital, such order shall, in so far as it authorises any measures that may be administered in hospital, continue to have effect.
- 30

Breach of order

84 Failure to attend for medical treatment

- (1) Subject to subsection (2) below, where—
- 35 (a) a patient is subject to a compulsory treatment order that—
 - (i) does not authorise the detention of the patient in hospital; but

(ii) imposes on the patient a requirement mentioned in section 54(1)(c)(i) of this Act (“the requirement to attend for treatment”); and

(b) the patient fails to comply with the requirement to attend for treatment,

the patient’s responsible medical officer may exercise the power conferred by subsection (3) below.

(2) The responsible medical officer may exercise the power conferred by subsection (3) below only if—

(a) the responsible medical officer has consulted a mental health officer; and

(b) the mental health officer consents to the power being exercised.

(3) The responsible medical officer may take, or may cause a person authorised for the purpose by the responsible medical officer to take, the patient into custody and convey the patient—

(a) to the place the patient is required to attend by the requirement to attend for treatment; or

(b) to any hospital.

(4) Where by virtue of subsection (3) above the patient is conveyed to the place the patient is required to attend or a hospital—

(a) the patient may be detained there for so long as is necessary for the purpose of giving to the patient any medical treatment that could have been given to the patient had the patient complied with the requirement to attend for treatment; and

(b) any such treatment may be given to the patient.

85 Non-compliance generally with order

(1) Subject to subsection (2) below, where—

(a) a patient is subject to a compulsory treatment order that does not authorise the detention of the patient in hospital;

(b) the patient fails to comply with any measure specified in the order; and

(c) subsection (3) or (4) below applies,

the power conferred by subsection (5) below may be exercised.

(2) That power may be exercised only if—

(a) the patient’s responsible medical officer has consulted a mental health officer; and

(b) the mental health officer consents to the power being exercised.

(3) This subsection applies if the responsible medical officer considers that—

(a) reasonable steps have been taken to contact the patient following the patient’s failure to comply with the measure;

(b) if contact has been made with the patient, the patient has been afforded a reasonable opportunity to comply with the measure; and

(c) if the patient were to continue to fail to comply with the measure, it is reasonably likely that there would be a significant deterioration in the patient’s mental health.

(4) This subsection applies if the responsible medical officer considers that—

(a) if the patient were to continue to fail to comply with the measure, it is reasonably likely that there would be a significant deterioration in the patient's mental health; and

(b) it is necessary as a matter of urgency that the power conferred by subsection (5) below be exercised.

(5) The patient's responsible medical officer may take, or may cause a person authorised for the purpose by the responsible medical officer to take, the patient into custody and convey the patient to a hospital.

(6) As soon as reasonably practicable after the patient has been conveyed to a hospital, the responsible medical officer shall—

(a) carry out a medical examination of the patient; or

(b) make arrangements for an approved medical practitioner to carry out such an examination.

(7) The patient may be detained in the hospital until the completion of the medical examination carried out under subsection (6) above.

86 Short-term detention following examination under section 85(6)

(1) Subsection (2) below applies where, after a patient has been examined under section 85(6) of this Act, the patient's responsible medical officer considers that—

(a) if the patient were not detained in hospital it is reasonably likely that there would be a significant deterioration in the patient's mental health;

(b) the compulsory treatment order should be modified to authorise the detention of the patient in hospital; and

(c) the patient should be detained in hospital while it is being decided whether an application should be made to the Tribunal for the order to be so modified.

(2) Subject to subsection (3) below, the responsible medical officer may grant a certificate authorising the continued detention in hospital of the patient for the period of 28 days beginning with the granting of the certificate.

(3) Before granting a certificate under subsection (2) above the responsible medical officer shall, if it is practicable to do so, consult the patient's named person.

(4) A certificate under subsection (2) above shall—

(a) state the responsible medical officer's reasons for believing the conditions mentioned in subsection (1) above to be met; and

(b) be signed by the responsible medical officer.

(5) As soon as practicable after granting a certificate under subsection (2) above, the responsible medical officer shall give notice to a mental health officer of the granting of the certificate.

(6) Subject to subsection (7) below, as soon as practicable after being given notice under subsection (5) above the mental health officer shall—

(a) interview the patient; and

(b) ascertain the name and address of the patient's named person.

- (7) If it is not practicable for the mental health officer to comply with one or both of the requirements in subsection (6) above, the mental health officer shall—
- (a) record the steps taken by the mental health officer with a view to complying with those requirements; and
 - (b) give a copy of the record to the responsible medical officer.
- (8) Where a certificate is granted under subsection (2) above, section 37 of this Act shall apply as if the certificate were a short-term detention certificate.
- (9) If it is decided that an application such as is mentioned in paragraph (c) of subsection (1) above should be made, the responsible medical officer shall make an application to the Tribunal under section 73 of this Act for an order under section 79 of this Act varying the compulsory treatment order.
- (10) Section 72 of this Act applies where an application is to be made under section 73 of this Act by virtue of subsection (9) above as it applies where such an application is to be made by virtue of section 71(2) of this Act.
- (11) Where the detention in hospital of the patient is authorised by a certificate granted under subsection (2) above, the responsible medical officer shall from time to time consider whether the conditions mentioned in subsection (1) above continue to be met.
- (12) If at any time when the detention in hospital of the patient is so authorised—
- (a) the responsible medical officer considers that not all of those conditions continue to be met; or
 - (b) it is decided not to make an application such as is mentioned in paragraph (c) of subsection (1) above,
- the responsible medical officer shall revoke the certificate.
- (13) Where the detention in hospital of the patient is authorised by a certificate granted under subsection (2) above—
- (a) the patient; or
 - (b) the patient's named person,
- may apply to the Tribunal for revocation of the certificate.
- (14) On an application under subsection (13) above the Tribunal shall, if not satisfied that all of the conditions mentioned in subsection (1) above are met, revoke the certificate.

Transfer between hospitals etc.

87 Transfer of certain detained persons

- (1) This section applies where the detention of a patient in hospital is authorised by a compulsory treatment order.
- (2) The managers of the hospital in which the patient is detained may, where the condition mentioned in subsection (3) below is satisfied, transfer the patient to—
- (a) a hospital unit; or
 - (b) another hospital.
- (3) The condition is that the managers of the hospital or hospital unit to which it is proposed to transfer the patient consent to the proposed transfer.

- (4) Where the managers of a hospital propose to transfer the patient under subsection (2) above, they shall, subject to subsection (5) below, give the persons mentioned in subsection (6) below at least 7 days' notice of the proposed transfer.
- (5) The managers of a hospital need not give notice as mentioned in subsection (4) above in any case where—
- (a) it is impracticable to do so; or
 - (b) the patient consents to the notice being dispensed with.
- (6) The persons referred to in subsection (4) above are—
- (a) the patient;
 - (b) the patient's named person; and
 - (c) the patient's primary carer.
- (7) Where the patient is transferred under subsection (2) above, the managers of the hospital from which the patient is transferred shall, before the expiry of the period of 7 days beginning with the transfer, give notice to the Commission of the matters mentioned in subsection (8) below.
- (8) Those matters are—
- (a) the date on which the patient was transferred; and
 - (b) that—
 - (i) notice was given under subsection (4) above; or
 - (ii) no such notice was given for the reasons specified in the notice.
- (9) Where the patient is transferred under subsection (2) above, the compulsory treatment order shall, for the purposes of this Act (other than sections 88 and 89), be taken to specify the hospital or, as the case may be, hospital unit to which the patient is transferred.

88 Transfer to hospital other than state hospital: appeal to Tribunal

- (1) This section applies where—
- (a) a patient—
 - (i) receives notice under subsection (4) of section 87 of this Act that it is proposed to transfer the patient; or
 - (ii) is transferred under subsection (2) of that section, to a hospital unit or to any hospital other than a state hospital; and
 - (b) the hospital unit, or hospital, to which the patient is, or is proposed to be, transferred is not specified in the compulsory treatment order.
- (2) The patient, or the patient's named person, may, at any time during the period mentioned in subsection (3) below, appeal to the Tribunal against the proposed transfer or, as the case may be, the transfer.
- (3) That period is the period beginning with—
- (a) where notice is given under subsection (4) of section 87 of this Act, the day on which notice is given; or

(b) where no notice is given, the day on which the patient is transferred under subsection (2) of that section,
 and ending 28 days after the transfer.

89 Transfer to state hospital: appeal to Tribunal

(1) This section applies where—

(a) a patient—

(i) receives notice under subsection (4) of section 87 of this Act that it is proposed to transfer the patient; or

(ii) is transferred under subsection (2) of that section,

to a state hospital; and

(b) the state hospital to which the patient is, or is proposed to be, transferred is not specified in the compulsory treatment order.

(2) The patient, or the patient's named person, may, at any time during the period mentioned in subsection (3) below, appeal to the Tribunal against the proposed transfer or, as the case may be, the transfer.

(3) That period is the period beginning with—

(a) where notice is given under subsection (4) of section 87 of this Act, the day on which notice is given; or

(b) where no notice is given, the day on which the patient is transferred under subsection (2) of that section,

and ending 10 weeks after the transfer.

(4) On an appeal under subsection (2) above, the Tribunal may, if not satisfied as to the matter mentioned in subsection (5) below, make an order that the proposed transfer not take place or, as the case may be, that the patient be returned to the hospital or hospital unit from which the patient was transferred.

(5) That matter is that the patient has a mental disorder of such nature or degree—

(a) that treatment cannot be given to the patient except under conditions of special security; and

(b) that those conditions cannot be provided in a hospital that is not a state hospital.

Temporary suspension of detention

90 Suspension, or variation, of detention

(1) This section applies where a patient is subject to a detention requirement.

(2) Subject to subsection (3) below, the patient's responsible medical officer may suspend or vary a detention requirement for such period as the responsible medical officer may specify.

(3) A period of suspension or variation (the "suspension period") shall not exceed—

(a) such period as taken together with any earlier period (or periods) of suspension or variation would exceed 9 months of the 12 months ending with the end of the suspension period; or

(b) 6 months,

5 whichever is the shorter.

(4) If the responsible medical officer considers that it is necessary—

(a) in the interests of the patient; or

(b) for the protection of other persons,

10 a suspension, or variation, under subsection (2) above may be made subject to conditions such as are mentioned in subsection (5) below.

(5) Those conditions are—

(a) that, during the period specified under subsection (2) above, the patient be kept in the charge of a person authorised in writing for the purpose by the responsible medical officer; and

15 (b) such others as may be specified by the responsible medical officer.

(6) Where the responsible medical officer proposes to specify under subsection (2) above a period exceeding 28 days, the responsible medical officer shall, before doing so—

(a) consult—

(i) the patient's general medical practitioner; and

20 (ii) the mental health officer; and

(b) afford them the opportunity of making representations on the appropriateness of the suspension period.

(7) Where the responsible medical officer suspends, or varies, a detention requirement under subsection (2) above, the responsible medical officer—

25 (a) shall not later than 14 days after the beginning of the period specified under that subsection, give notice to the Commission of the suspension or variation; and

(b) if—

(i) the period specified under that subsection exceeds 28 days; and

30 (ii) either (or both) of the persons mentioned in subsection (6)(a) above made representations indicating that such period was inappropriate,

shall, not later than 28 days after the beginning of such period, notify the Commission of the responsible medical officer's reasons for specifying that period.

(8) For the purposes of this section and section 91 of this Act, "detention requirement" means—

35 (a) in so far as it authorises the detention of the patient in the hospital specified in it, a compulsory treatment order; or

(b) if the patient is detained in hospital under authority of a short-term detention certificate, that certificate.

91 Power to terminate suspension, or variation, under section 90

If at any time when a detention requirement is suspended or varied under subsection (2) of section 90 of this Act the patient's responsible medical officer is satisfied that it is necessary—

- (a) in the interests of the patient; or
- (b) for the protection of other persons,

that the suspension or variation be terminated, the responsible medical officer may, by notice to the patient or, where a person has been authorised under subsection (5)(a) of that section, that person, terminate the suspension or variation.

PART 8

MENTALLY DISORDERED PERSONS: CRIMINAL PROCEEDINGS

CHAPTER 1

PRE-SENTENCE MENTAL HEALTH ORDERS

Assessment orders and treatment orders

92 Mentally disordered persons subject to criminal proceedings: assessment and treatment

After section 52 of the 1995 Act there shall be inserted—

“Assessment orders

52A Prosecutor's power to apply for assessment order

- (1) Where—
 - (a) a person has been charged with an offence;
 - (b) a final disposal has not been made in the proceedings in respect of the offence; and
 - (c) it appears to the prosecutor that the person has a mental disorder,
 the prosecutor may apply to the court for an order under section 52C(2) of this Act (in this Act referred to as an “assessment order”) in respect of that person.
- (2) Where the prosecutor applies for an assessment order under subsection (1) above, the prosecutor shall, where practicable, inform—
 - (a) the person in respect of whom the application is made;
 - (b) any solicitor acting for the person; and
 - (c) in the case where the person is in custody, the Scottish Ministers.
- (3) In this section—
 - “court” means any court competent to deal with the case; and
 - “final disposal” means—
 - (a) the liberation in due course of law of the person charged;
 - (b) the desertion of the proceedings *simpliciter*;

- (c) the acquittal of the person charged; or
- (d) the conviction of the person charged.

52B Scottish Ministers' power to apply for assessment order

- 5
- (1) If the circumstances mentioned in subsection (2) or (3) below apply in respect of a person, the Scottish Ministers may apply to the court for an assessment order in respect of that person.
- (2) The circumstances are—
- 10
- (a) the person has been charged with an offence;
 - (b) a final disposal has not been made in the proceedings in respect of the offence;
 - (c) the person is in custody; and
 - (d) it appears to the Scottish Ministers that the person has a mental disorder.
- (3) The circumstances are—
- 15
- (a) the person has been convicted of an offence;
 - (b) the person has not been sentenced;
 - (c) the person is in custody; and
 - (d) it appears to the Scottish Ministers that the person has a mental disorder.
- (4) Where the Scottish Ministers apply for an order under subsection (1) above, they shall, where practicable, inform—
- 20
- (a) the person in respect of whom the application is made;
 - (b) any solicitor acting for the person; and
 - (c) in the case of a person in respect of whom the circumstances mentioned in subsection (2) above apply, the prosecutor.
- (5) In this section, “court” and “final disposal” have the same meanings as in
- 25
- section 52A of this Act.

52C Assessment order

- (1) This section applies where an application for an assessment order is made under section 52A(1) or 52B(1) of this Act.
- (2) If the court is satisfied—
- 30
- (a) on the written or oral evidence of a medical practitioner, as to the matters mentioned in subsection (3) below; and
 - (b) that, having regard to the matters mentioned in subsection (4) below, it is appropriate,
- 35
- it may, subject to subsection (5) below, make an assessment order authorising the measures mentioned in subsection (6) below and specifying any matters to be included in the report under section 52F(1) of this Act.
- (3) The matters referred to in subsection (2)(a) above are—

- (a) that there are reasonable grounds for believing—
- (i) that the person in respect of whom the application is made has a mental disorder;
 - (ii) that it is necessary to detain the person in hospital to assess the person's need for medical treatment; and
 - (iii) that if the assessment order were not made there would be a significant risk of harm to the health, safety or welfare of the person or a significant risk to the safety of any other person;
- (b) that the hospital proposed by the medical practitioner is suitable for the purpose of assessing whether the conditions mentioned in subsection (7) below are met in respect of the person;
- (c) that, if an assessment order were made, the person could be admitted to such hospital before the expiry of the period of 7 days beginning with the day on which the order is made; and
- (d) that it would not be reasonably practicable to carry out the assessment mentioned in paragraph (b) above unless an order were made.
- (4) The matters referred to in subsection (2)(b) above are—
- (a) all the circumstances (including the nature of the offence with which the person in respect of whom the application is made is charged or, as the case may be, of which the person was convicted); and
 - (b) any alternative means of dealing with the person.
- (5) The court may make an assessment order only if the person in respect of whom the application is made has not been sentenced.
- (6) The measures are—
- (a) in the case of a person who, when the assessment order is made, has not been admitted to the specified hospital, the removal, before the expiry of the period of 7 days beginning with the day on which the order is made, of the person to the specified hospital by—
 - (i) a constable;
 - (ii) a person employed in, or contracted to provide services in or to, the specified hospital who is authorised by the managers of that hospital to remove persons to hospital for the purposes of this section; or
 - (iii) any other specified person;
 - (b) the detention, for the period of 28 days beginning with the day on which the order is made, of the person in such hospital; and
 - (c) the giving to the person, during the period of 28 days mentioned in paragraph (b) above, of medical treatment in accordance with sections 170 and 171 of the Mental Health (Scotland) Act 2002 (asp 00).
- (7) The conditions referred to in paragraph (b) of subsection (3) above are—
- (a) that the person in respect of whom the application is made has a mental disorder;

(b) that medical treatment which would be likely to—
(i) prevent the mental disorder worsening; or
(ii) alleviate any of the symptoms, or effects, of the disorder,
is available for the person; and

(c) that if the person were not provided with such medical treatment there would be a significant risk—

- (i) of harm to the health, safety or welfare of the person; or
(ii) to the safety of any other person.

(8) If the court is satisfied—

(a) that it is not practicable or appropriate for the person in respect of whom the application is made to be brought before the court; and

(b) that no objection by or on behalf of the person is taken to the court dealing with the application in the person's absence,

the court may deal with the application in the person's absence.

(9) Where the court makes an assessment order, the court—

(a) in the case of a person who, immediately before the order is made, is in custody, shall; and

(b) in the case of any other person, may,

make a restriction order in respect of the person.

(10) In this section—

“court” has the same meaning as in section 52A of this Act;

“medical treatment” has the meaning given by section 228 of the Mental Health (Scotland) Act 2002 (asp 00); and

“specified” means specified in the assessment order.

52D Assessment order made *ex proprio motu*: application of section 52C

(1) If the circumstances mentioned in subsection (2) or (3) below apply in respect of a person, the court may, *ex proprio motu*, make an assessment order in respect of that person.

(2) The circumstances are—

(a) the person has been charged with an offence;

(b) a final disposal has not been made in the proceedings in respect of the offence; and

(c) it appears to the court that the person has a mental disorder.

(3) The circumstances are—

(a) the person has been convicted of an offence;

(b) the person has not been sentenced; and

(c) it appears to the court that the person has a mental disorder.

(4) Subsections (2) to (10) of section 52C of this Act shall apply for the purposes of subsection (1) above as they apply for the purposes of subsection (1) of that section; but subject to the modification that for any reference to the person in respect of whom the application is made there shall be substituted a reference to the person in respect of whom it is proposed to make an order.

(5) In this section, “final disposal” has the same meaning as in section 52A of this Act.

52E Assessment order: supplementary

(1) If, before the expiry of the period of 7 days beginning with the day on which an assessment order is made—

(a) in the case of a person who, immediately before the order was made, was in custody, it appears to the Scottish Ministers; or

(b) in any other case, it appears to the court,

that, by reason of emergency or other special circumstances, it is not reasonably practicable for the person to be admitted to the hospital specified in the order, the Scottish Ministers, or, as the case may be, the court, may direct that the person be admitted to the hospital specified in the direction.

(2) Where a direction is made under subsection (1) above, the Scottish Ministers, or, as the case may be, the court, shall inform the person having custody of the person subject to the order.

(3) Where a direction is made under subsection (1) above, the assessment order shall have effect as if the hospital specified in the direction were the hospital specified in the order.

(4) In this section, “court” has the same meaning as in section 52A of this Act.

52F Review of assessment order

(1) The responsible medical officer shall, before the expiry of the period of 28 days beginning with the day on which the assessment order is made, submit a report in writing to the court as to whether the conditions mentioned in section 52C(7) of this Act are met in respect of the person subject to the order.

(2) The responsible medical officer shall, at the same time as such officer submits the report to the court, send a copy of such report—

(a) to the person in respect of whom the report is made;

(b) to any solicitor acting for the person;

(c) in a case where—

(i) the person has been charged with an offence; and

(ii) a final disposal has not been made in the proceedings in respect of the offence,

to the prosecutor; and

(d) in a case where the person, immediately before the order was made, was in custody, to the Scottish Ministers.

- (3) The court shall, on receiving a report submitted under subsection (1) above, revoke the assessment order and—
- (a) if satisfied that the conditions mentioned in section 52C(7) of this Act are met in respect of the person, make a treatment order; or
 - (b) if not so satisfied, commit the person to prison or such other institution to which the person might have been committed had the assessment order not been made or otherwise deal with the person as the court considers appropriate.
- (4) The responsible medical officer shall, where that officer is satisfied that there has been a change of circumstances since the assessment order was made which justifies the variation of the order, submit a report to the court in writing.
- (5) Where a report is submitted under subsection (4) above, the court shall—
- (a) if satisfied that the person need not be subject to an assessment order, revoke the order and take any action mentioned in subsection (3)(b) above; or
 - (b) if not so satisfied—
 - (i) confirm the order;
 - (ii) vary the order; or
 - (iii) revoke the order and take any action mentioned in subsection (3)(b) above.
- (6) Sections 52C, 52E, 52G and 52H of this Act and subsections (1) to (3) above apply to the variation of an order under subsection (5)(b)(ii) above as they apply to an assessment order.
- (7) In this section, “court” and “final disposal” have the same meanings as in section 52A of this Act.

52G Early termination of assessment order

- (1) This section applies where—
- (a) in the case of a person who, when the assessment order is made, has not been removed to the hospital specified in the order, the period of 7 days beginning with the day on which the order is made has not expired; or
 - (b) in the case of a person—
 - (i) who, when the assessment order is made, has been admitted to the hospital specified in the order; or
 - (ii) who has been removed under paragraph (a) of subsection (6) of section 52C of this Act to the hospital so specified,the period of 28 days beginning with the day on which the order is made has not expired.
- (2) An assessment order shall cease to have effect on the occurrence of any of the following events—
- (a) the making of a treatment order in respect of the person subject to the assessment order;

- (b) in a case where—
- (i) the person subject to the assessment order has been charged with an offence; and
 - (ii) a final disposal had not been made in the proceedings in respect of that offence when the order was made,
- the making of a final disposal in such proceedings; or
- (c) in a case where the person subject to the assessment order has been convicted of an offence but has not been sentenced, the making of one of the orders such as is mentioned in subsection (3) below or the imposition of any other sentence.

- (3) The orders are—
- (a) an interim compulsion order;
 - (b) a compulsion order;
 - (c) a guardianship order;
 - (d) a hospital direction;
 - (e) any order under section 57 of this Act; or
 - (f) a probation order under section 230 of this Act.
- (4) In this section, “final disposal” has the same meaning as in section 52A of this Act.

52H Power of court on assessment order ceasing to have effect

- (1) Where, other than by virtue of section 52G(2) of this Act, an assessment order ceases to have effect the court shall commit the person who was subject to the order to prison or such other institution to which the person might have been committed had the order not been made or otherwise deal with the person as the court considers appropriate.
- (2) In this section, “court” has the same meaning as in section 52A of this Act.

Treatment orders

52J Prosecutor’s power to apply for treatment order

- (1) Where—
- (a) a person has been charged with an offence;
 - (b) a final disposal has not been made in the proceedings in respect of the offence; and
 - (c) it appears to the prosecutor that the person has a mental disorder,
- the prosecutor may apply to the court for an order under section 52L of this Act (in this Act referred to as a “treatment order”) in respect of that person.
- (2) Where the prosecutor applies for a treatment order under subsection (1) above, the prosecutor shall, where practicable, inform—
- (a) the person in respect of whom the application is made;

- (b) any solicitor acting for the person; and
 - (c) in the case where the person is in custody, the Scottish Ministers.
- (3) In this section, “court” and “final disposal” have the same meanings as in section 52A of this Act.

52K Scottish Ministers’ power to apply for treatment order

- (1) If the circumstances mentioned in subsection (2) or (3) below apply in respect of a person, the Scottish Ministers may apply to the court for a treatment order in respect of that person.
- (2) The circumstances are—
- (a) the person has been charged with an offence;
 - (b) a final disposal has not been made in the proceedings in respect of the offence;
 - (c) the person is in custody; and
 - (d) it appears to the Scottish Ministers that the person has a mental disorder.
- (3) The circumstances are—
- (a) the person has been convicted of an offence;
 - (b) the person has not been sentenced;
 - (c) the person is in custody; and
 - (d) it appears to the Scottish Ministers that the person has a mental disorder.
- (4) Where the Scottish Ministers apply for an order under subsection (1) above, they shall, where practicable, inform—
- (a) the person in respect of whom the application is made;
 - (b) any solicitor acting for the person; and
 - (c) in the case of a person in respect of whom the circumstances mentioned in subsection (2) above apply, the prosecutor.
- (5) In this section, “court” and “final disposal” have the same meanings as in section 52A of this Act.

52L Treatment order

- (1) This section applies where an application for a treatment order is made under section 52J(1) or 52K(1) of this Act.
- (2) If the court is satisfied—
- (a) on the written or oral evidence of an approved medical practitioner and a medical practitioner, as to the matters mentioned in subsection (3) below; and
 - (b) that, having regard to the matters mentioned in subsection (4) below, it is appropriate,
- it may, subject to subsection (5) below, make a treatment order authorising the measures mentioned in subsection (6) below.

- (3) The matters referred to in subsection (2)(a) above are—
- (a) that the conditions mentioned in paragraphs (a) to (c) of subsection (7) of section 52C of this Act are met in relation to the person in respect of whom the application is made;
 - 5 (b) that the hospital proposed by the approved medical practitioner and the medical practitioner is suitable for the purpose of giving medical treatment to the person; and
 - (c) that, if a treatment order were made, such person could be admitted to such hospital before the expiry of the period of 7 days beginning with the day on which the order is made.
- 10
- (4) The matters referred to in subsection (2)(b) above are—
- (a) all the circumstances (including the nature of the offence with which the person in respect of whom the application is made is charged or, as the case may be, of which the person was convicted); and
 - 15 (b) any alternative means of dealing with the person.
- (5) The court may make a treatment order only if the person in respect of whom the application is made has not been sentenced.
- (6) The measures are—
- 20 (a) in the case of a person who, when the treatment order is made, has not been admitted to the specified hospital, the removal, before the expiry of the period of 7 days beginning with the day on which the order is made, of the person to the specified hospital by—
 - (i) a constable;
 - 25 (ii) a person employed in, or contracted to provide services in or to, the specified hospital who is authorised by the managers of that hospital to remove persons to hospital for the purposes of this section; or
 - (iii) any other specified person;
 - (b) the detention of the person in such hospital; and
 - 30 (c) the giving to the person of medical treatment in accordance with sections 170 and 171 of the Mental Health (Scotland) Act 2002 (asp 00).
- (7) If the court is satisfied—
- (a) that it is not practicable or appropriate for the person in respect of whom the application is made to be brought before the court; and
 - 35 (b) that no objection by or on behalf of the person is taken to the court dealing with the application in the person's absence,
- the court may deal with the application in the person's absence.
- (8) Where the court makes a treatment order, the court—
- (a) in the case of a person—
 - 40 (i) who, immediately before the order is made, is in custody; or

(ii) who, immediately before the treatment order is made, is subject to an assessment order and who, immediately before that assessment order was made, was in custody,

shall; and

(b) in the case of any other person, may, make a restriction order in respect of such person.

(9) In this section—

“court” has the same meaning as in section 52A of this Act;

“medical treatment” has the same meaning as in section 52C of this Act; and

“specified” means specified in the treatment order.

52M Treatment order made *ex proprio motu*: application of section 52L

(1) If the circumstances mentioned in subsection (2) or (3) below apply in respect of a person, the court may, *ex proprio motu*, make a treatment order in respect of that person.

(2) The circumstances are—

(a) the person has been charged with an offence;

(b) a final disposal has not been made in the proceedings in respect of the offence; and

(c) it appears to the court that the person has a mental disorder.

(3) The circumstances are—

(a) the person has been convicted of an offence;

(b) the person has not been sentenced; and

(c) it appears to the court that the person has a mental disorder.

(4) Subsections (2) to (9) of section 52L of this Act shall apply for the purposes of subsection (1) above as they apply for the purposes of subsection (1) of that section; but subject to the modification that for any reference to the person in respect of whom the application is made there shall be substituted a reference to the person in respect of whom it is proposed to make an order.

(5) In this section, “final disposal” has the same meaning as in section 52A of this Act.

52N Treatment order: supplementary

(1) If, before the expiry of the period of 7 days beginning with the day on which the treatment order is made—

(a) in the case of a person to whom subsection (2) below applies, it appears to the Scottish Ministers; or

(b) in any other case, it appears to the court,

that, by reason of emergency or other special circumstances, it is not reasonably practicable for the person to be admitted to the hospital specified in the order, the Scottish Ministers, or, as the case may be, the court, may direct that the person be admitted to the hospital specified in the direction.

- 5 (2) This subsection applies to—
- (a) a person who is in custody immediately before the treatment order is made; or
 - (b) a person—
 - 10 (i) who was subject to an assessment order immediately before the treatment order is made; and
 - (ii) who was in custody immediately before that assessment order was made.
- 15 (3) Where a direction is made under subsection (1) above, the Scottish Ministers, or, as the case may be, the court, shall inform the person having custody of the person subject to the order.
- (4) Where a direction is made under subsection (1) above, the treatment order shall have effect as if the hospital specified in the direction were the hospital specified in the order.
- (5) In this section, “court” has the same meaning as in section 52A of this Act.

20 **52P Review of treatment order**

- (1) The responsible medical officer shall, where that officer is satisfied—
- 25 (a) that any of the conditions mentioned in section 52C(7) of this Act are no longer met in respect of the person subject to the treatment order; or
 - (b) that there has otherwise been a change of circumstances since the order was made which makes the continued detention of the person in hospital by virtue of the order no longer appropriate,
- submit a report to the court in writing.
- (2) Where a report is submitted under subsection (1) above, the court shall—
- 30 (a) if satisfied that the person need not be subject to the treatment order—
 - (i) revoke the order; and
 - (ii) commit the person to prison or such other institution to which the person might have been committed had the order not been made or otherwise deal with the person as the court considers appropriate; or
 - 35 (b) if not so satisfied—
 - (i) confirm the order;
 - (ii) vary the order; or
 - (iii) revoke the order and take any action mentioned in paragraph (a)(ii) above.

- (3) Sections 52L, 52N, this section and sections 52R and 52S of this Act apply to the variation of a treatment order under subsection (2)(b)(ii) above as they apply to a treatment order.
- (4) In this section, “court” has the same meaning as in section 52A of this Act.

5 **52R Termination of treatment order**

- (1) This section applies—
 - (a) where, in the case of a person who, when the treatment order is made, has not been removed to the hospital specified in the order, the period of 7 days beginning with the day on which the order is made has not expired; or
 - (b) in the case of a person—
 - (i) who, when the treatment order is made, has been admitted to the hospital specified in the order; or
 - (ii) who has been removed under paragraph (a) of subsection (6) of section 52L of this Act to the hospital so specified.
- (2) A treatment order shall cease to have effect on the occurrence of any of the following events—
 - (a) in a case where—
 - (i) the person subject to the treatment order has been charged with an offence; and
 - (ii) a final disposal had not been made in the proceedings in respect of such offence when the order was made, the making of a final disposal in such proceedings; or
 - (b) in a case where the person subject to the treatment order has been convicted of an offence but has not been sentenced, the making of one of the orders such as is mentioned in subsection (3) below or the imposition of any other sentence.
- (3) The orders are—
 - (a) an interim compulsion order;
 - (b) a compulsion order;
 - (c) a guardianship order;
 - (d) a hospital direction;
 - (e) any order under section 57 of this Act; or
 - (f) a probation order under section 230 of this Act.
- (4) In this section, “final disposal” has the same meaning as in section 52A of this Act.

52S Power of court on treatment order ceasing to have effect

- (1) Where, other than by virtue of section 52R(2) of this Act, a treatment order ceases to have effect the court shall commit the person who was subject to the order to prison or such other institution to which the person might have been committed had the order not been made or otherwise deal with the person as the court considers appropriate.
- (2) In this section, “court” has the same meaning as in section 52A of this Act.”.

Interim compulsion orders

93 Mentally disordered offenders: interim compulsion orders

For section 53 of the 1995 Act (interim hospital orders), there shall be substituted—

“Interim compulsion orders

53 Interim compulsion order

- (1) This section applies where a person (referred to in this section and in sections 53A to 53E of this Act as an “offender”)—
- (a) is 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
- (b) is remitted to the High Court by the sheriff under any enactment for sentence for such an offence.
- (2) If the court is satisfied—
- (a) on the written or oral evidence of an approved medical practitioner and a medical practitioner—
- (i) that the offender has a mental disorder; and
- (ii) as to the matters mentioned in subsection (3) below; and
- (b) that, having regard to the matters mentioned in subsection (4) below, it is appropriate,
- it may, subject to subsection (7) below, make an order (in this Act referred to as an “interim compulsion order”) authorising the measures mentioned in subsection (8) below and specifying any matters to be included in the report under section 53C(1) of this Act.
- (3) The matters referred to in subsection (2)(a)(ii) above are—
- (a) that there are reasonable grounds for believing—
- (i) that the conditions mentioned in subsection (5) below are likely to be met in respect of the offender; and
- (ii) that the offender’s mental disorder is such that it would be appropriate to make one of the disposals mentioned in subsection (6) below in relation to the offender;
- (b) that the hospital to be specified in the order is suitable for the purpose of assessing whether the conditions mentioned in subsection (5) below are met in respect of the offender;

(c) that, were an interim compulsion order made, the offender could be admitted to such hospital before the expiry of the period of 7 days beginning with the day on which the order is made; and

(d) that it would not be reasonably practicable for the assessment mentioned in paragraph (b) above to be made unless an order were made.

(4) The matters referred to in subsection (2)(b) above are—

(a) all the circumstances (including the nature of the offence of which the offender is convicted); and

(b) any alternative means of dealing with the offender.

(5) The conditions referred to in paragraphs (a)(i) and (b) of subsection (3) above are—

(a) that medical treatment which would be likely to—

(i) prevent the mental disorder worsening; or

(ii) alleviate any of the symptoms, or effects, of the disorder,

is available for the offender;

(b) that if the offender were not provided with such medical treatment there would be a significant risk—

(i) of harm to the health or safety of the offender; or

(ii) to the safety of any other person; and

(c) that the making of an interim compulsion order in respect of the offender is necessary.

(6) The disposals are—

(a) both a compulsion order that authorises detention in hospital and a restriction order; or

(b) a hospital direction.

(7) An interim compulsion order may authorise detention in a state hospital only if, on the written or oral evidence of the approved medical practitioner and the medical practitioner, it appears to the court that the offender has a mental disorder of such nature or degree—

(a) that the assessment mentioned in subsection (3)(b) above can be carried out only under conditions of special security; and

(b) that such conditions of special security can be provided only in a state hospital.

(8) The measures are—

(a) in the case of an offender who, when the interim compulsion order is made, has not been admitted to the specified hospital, the removal, before the expiry of the period of 7 days beginning with the day on which the order is made, of the offender to the specified hospital by—

(i) a constable;

(ii) a person employed in, or contracted to provide services in or to, the specified hospital who is authorised by the managers of that

hospital to remove persons to hospital for the purposes of this section; or

(iii) any other specified person;

(b) the detention for a period not exceeding 12 weeks beginning with the day on which the order is made of the offender in such hospital; and

(c) the giving to the offender, during the period of 12 weeks mentioned in paragraph (b) above, of medical treatment in accordance with Part 13 of the Mental Health (Scotland) Act 2002 (asp 00).

(9) An interim compulsion order may include such directions as the court thinks fit for the removal of the offender to, and the detention of the offender in, a place of safety pending the offender's admission to the specified hospital.

(10) Where a court makes an interim compulsion order in relation to an offender, the court—

(a) shall not, at the same time—

(i) make an order under section 200(2)(b) of this Act;

(ii) make any other order for detention;

(iii) impose a fine;

(iv) pass sentence of imprisonment;

(v) make a probation order; or

(vi) make a community service order,

in relation of the offender;

(b) may make any other order which it has power to make apart from this section.

(11) In this section—

“court” means—

(a) in the case of an offender—

(i) convicted on indictment in the High Court; or

(ii) convicted on indictment in the sheriff court and remitted for sentence to the High Court,

the High Court; and

(b) in the case of any other offender, the sheriff court;

“medical treatment” has the same meaning as in section 52C of this Act; and

“specified” means specified in the interim compulsion order.

53A Interim compulsion order: supplementary

- 5 (1) If, before the expiry of the period of 7 days beginning with the day on which the interim compulsion order is made, it appears to the court, or, as the case may be, the Scottish Ministers, that, by reason of emergency or other special circumstances, it is not reasonably practicable for the offender to be admitted to the hospital specified in the order, the court, or, as the case may be, the Scottish Ministers, may direct that the offender be admitted to the hospital specified in the direction.
- 10 (2) Where—
- (a) the court makes a direction under subsection (1) above, it shall inform the person having custody of the offender; and
- (b) the Scottish Ministers make such a direction, they shall inform—
- (i) the court which made the interim compulsion order; and
- (ii) the person having custody of the offender.
- 15 (3) Where a direction is made under subsection (1) above, the interim compulsion order shall have effect as if the hospital specified in the direction were the hospital specified in the order.
- (4) In this section, “court” has the same meaning as in section 53 of this Act.

53B Power of constable and court where offender absconds

- 20 (1) Where an offender absconds—
- (a) while being conveyed to or from a hospital in which he is detained by virtue of an interim compulsion order; or
- (b) from such a hospital,
- a constable may arrest the offender without warrant.
- 25 (2) Where an offender is arrested by virtue of subsection (1) above, the offender shall, as soon as practicable, be brought before the court which made the interim compulsion order.
- (3) Where an offender is brought before the court by virtue of subsection (2) above, the court may—
- 30 (a) revoke the interim compulsion order; and
- (b) deal with the offender in any way in which it could have dealt with the offender if no such order had been made.

53C Review and extension of interim compulsion order

- 35 (1) A responsible medical officer shall, before the expiry of the period specified by the court under section 53(8)(b) of this Act, submit a report in writing to the court as to the matters mentioned in subsection (2) below.
- (2) The matters are—
- (a) whether the conditions mentioned in section 53(5) of this Act are met in respect of the offender;

(b) the type (or types) of mental disorder that the offender has; and

(c) whether it would be appropriate—

(i) to make one of the disposals mentioned in section 53(6) of this Act in relation to the offender; or

(ii) to extend the interim compulsion order for such period as the court thinks fit to allow further time for the assessment mentioned in section 53(3)(b) of this Act.

(3) The responsible medical officer shall, at the same time as such officer submits the report to the court, send a copy of such report to—

(a) the offender; and

(b) any solicitor acting for the offender.

(4) The court may, on receiving the report submitted under subsection (1) above, if satisfied that the extension of the order is appropriate, extend the order for such period (not exceeding 12 weeks beginning with the day on which the order would cease to have effect were such an extension not made) as the court may specify.

(5) The court may extend an interim compulsion order under subsection (4) above for a period only if, by doing so, the total period for which the offender will be subject to the order does not exceed 12 months beginning with the day on which the order was first made.

(6) If—

(a) the offender is represented by counsel or solicitor; and

(b) such counsel or solicitor is given an opportunity of being heard,

the court may, in the absence of the offender, extend an interim compulsion order under subsection (4) above.

(7) Sections 53 to 53B of this Act and this section shall apply to the extension of an interim compulsion order under subsection (4) above as they apply to an interim compulsion order.

(8) Where a report is submitted under subsection (1) above, the court may, before the expiry of the period specified by the court under section 53(8)(b) of this Act—

(a) if satisfied that, in all the circumstances (including the nature of the offence of which the offender is convicted) it is appropriate to make one of the disposals mentioned in section 53(6) of this Act, revoke the interim compulsion order and make one of those disposals; or

(b) if not so satisfied, revoke the interim compulsion order and deal with the offender in any way (other than by making an interim compulsion order) in which the court could have dealt with the offender if no such order had been made.

(9) In this section, “court” has the same meaning as in section 53 of this Act.

53D Early termination of interim compulsion order

- (1) An interim compulsion order shall cease to have effect if the court—
- (a) makes a compulsion order in relation to the offender;
 - (b) makes a hospital direction in relation to the offender; or
 - (c) deals with the offender in some other way, including the imposing of a sentence of imprisonment on the offender.
- (2) In this section, “court” has the same meaning as in section 53 of this Act.

53E Power of court on interim compulsion order ceasing to have effect

- (1) Where, other than by virtue of section 53D of this Act, an interim compulsion order ceases to have effect the court may deal with the offender who was subject to the order in any way (other than the making of a new interim compulsion order) in which it could have dealt with the offender if no such order had been made.
- (2) In this section, “court” has the same meaning as in section 53 of this Act.”.

Remand for inquiry into mental condition

94 Remand for inquiry into mental condition: time-limit for appeals

In section 200 of the 1995 Act (remand for inquiry into physical or mental condition), in subsection (9)—

- (a) after the word “may”, where it first occurs, there shall be inserted “, before the expiry of the period of 24 hours beginning with his remand,”;
- (b) after the word “may”, where it second occurs, there shall be inserted “, at any time during the period when the order for his committal, or, as the case may be, renewal of such order, is in force,”; and
- (c) the words “within 24 hours of his remand or, as the case may be, committal,” shall cease to have effect.

CHAPTER 2

MENTAL HEALTH DISPOSALS

Compulsion orders

95 Mentally disordered offenders: compulsion orders

After section 57 of the 1995 Act there shall be inserted—

“Compulsion orders

57A Compulsion order

- (1) This section applies where a person (in this section and in sections 57B and 57C of this Act, referred to as the “offender”)—
- (a) is 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

(b) is remitted to the High Court by the sheriff under any enactment for sentence for such an offence.

(2) If the court is satisfied—

(a) on the written or oral evidence of an approved medical practitioner and a medical practitioner, that the conditions mentioned in subsection (3) below are met in respect of the offender; and

(b) that, having regard to the matters mentioned in subsection (4) below, it is appropriate,

it may, subject to subsection (5) below, make an order (in this Act referred to as a “compulsion order”) authorising such of the measures mentioned in subsection (7) below as may be specified in the order.

(3) The conditions referred to in subsection (2)(a) above are—

(a) that the offender has a mental disorder;

(b) that medical treatment which would be likely to—

(i) prevent the mental disorder worsening; or

(ii) alleviate any of the symptoms, or effects, of the disorder,

is available for the offender;

(c) that if the offender were not provided with such medical treatment there would be a significant risk—

(i) of harm to the health, safety or welfare of the offender; or

(ii) to the safety of any other person; and

(d) that the making of a compulsion order in respect of the offender is necessary.

(4) The matters referred to in subsection (2)(b) above are—

(a) the mental health officer’s report, prepared in accordance with section 57B of this Act, in respect of the offender;

(b) all the circumstances, including—

(i) the nature of the offence of which the offender was convicted; and

(ii) the antecedents of the offender; and

(c) any alternative means of dealing with the offender.

(5) The court may, subject to subsection (6) below, make a compulsion order authorising the detention of the offender in a hospital only if satisfied, on the written or oral evidence of the approved medical practitioner and the medical practitioner, that—

(a) the medical treatment mentioned in subsection (3)(b) above can be provided only if the offender is detained in hospital;

(b) the offender could be admitted to the hospital to be specified in the order before the expiry of the period of 7 days beginning with the day on which the order is made; and

(c) the hospital to be so specified is suitable for the purpose of giving the medical treatment to the offender.

5 (6) A compulsion order may authorise detention in a state hospital only if, on the written or oral evidence of the approved medical practitioner and the medical practitioner, it appears to the court that the offender has a mental disorder of such nature or degree—

(a) that the medical treatment mentioned in subsection (3)(b) above can be given to the offender only under conditions of special security; and

10 (b) that such conditions of special security can be provided only in a state hospital.

(7) The measures are—

15 (a) in the case of an offender who, when the compulsion order is made, has not been admitted to the specified hospital, the removal, before the expiry of the period of 7 days beginning with the day on which the order is made, of the offender to the specified hospital by—

(i) a constable;

20 (ii) a person employed in, or contracted to provide services in or to, the specified hospital who is authorised by the managers of that hospital to remove persons to hospital for the purposes of this section; or

(iii) any other specified person;

(b) the detention, for the period of 6 months, beginning with the day on which the order is made, of the offender in such hospital;

25 (c) the giving to the offender, during the period of 6 months mentioned in paragraph (b) above, of medical treatment in accordance with Part 13 of the Mental Health (Scotland) Act 2002 (asp 00);

(d) a requirement on the offender to attend, on specified dates, at specified intervals or in accordance with directions of the responsible medical officer, specified places for the purpose of receiving medical treatment;

30 (e) a requirement on the offender to reside at a specified address;

(f) a requirement on the offender to allow monitoring of the offender in the offender's home, or visits there, by any person responsible for providing medical treatment;

35 (g) a requirement on the offender to obtain the approval of the mental health officer to any proposed change of address; and

(h) a requirement on the offender to notify the mental health officer of any change of address.

40 (8) The court shall be satisfied as to the condition mentioned in subsection (3)(a) above only if the descriptions of the offender's mental disorder by both medical practitioners specify, by reference to the appropriate paragraph (or paragraphs) of the definition of "mental disorder" in section 227 of the Mental Health (Scotland) Act 2002 (asp 00), a type (or types) of mental disorder in common.

- (9) A compulsion order—
- (a) shall specify—
 - (i) the type (or types) of mental disorder that both medical practitioners describe the offender as having; and
 - (ii) if the order does not authorise the detention of the offender in hospital, the name of the hospital the managers of which are to have responsibility for appointing the offender's responsible medical officer; and
 - (b) may, in the case of a compulsion order authorising the detention of the offender in a hospital, include, subject to subsection (10) below, such directions as the court thinks fit for the removal of the offender to, and the detention of the offender in, a place of safety pending the offender's admission to the specified hospital.
- (10) The court shall not direct that the offender be removed to and detained in premises which are used for the purpose of providing a care home service unless the court is satisfied that the person providing the care home service is willing to receive the offender.
- (11) Where the court makes a compulsion order in relation to an offender, the court—
- (a) shall not—
 - (i) pass sentence of imprisonment;
 - (ii) impose a fine;
 - (iii) make a probation order; or
 - (iv) make a community service order,in relation to the offender;
 - (b) may make any other order that the court has power to make apart from this section.
- (12) Where the court makes a compulsion order authorising the detention of the offender in a hospital, the court—
- (a) may, in the case of an offender in relation to whom the court previously made an interim compulsion order, make a restriction order in relation to the offender;
 - (b) shall, in the case of any other offender, make a restriction order only if satisfied that, in all the circumstances, making an interim compulsion order is not appropriate.
- (13) In this section—
- “care home service” has the meaning given by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8);
 - “medical treatment” has the same meaning as in section 52C of this Act;
 - “mental health officer” has the meaning given by section 228 of the Mental Health (Scotland) Act 2002 (asp 00);

“place of safety” has the meaning given by section 198 of the Mental Health (Scotland) Act 2002 (asp 00);

“restriction order” means an order under section 59 of this Act;

“sentence of imprisonment” includes any sentence or order for detention;
and

“specified” means specified in the compulsion order.

57B Mental health officer’s report

(1) This section applies where the court is considering making a compulsion order in relation to an offender under section 57A of this Act.

(2) The mental health officer shall, where directed by the court—

(a) interview the offender; and

(b) prepare a report in relation to the offender in accordance with subsection (3) below.

(3) The report shall state—

(a) the name and address of the offender;

(b) if known by the mental health officer, the name and address of—

(i) the offender’s named person; and

(ii) the offender’s primary carer;

(c) in so far as relevant for the purposes of section 57A of this Act, details of the personal circumstances of the offender;

(d) the mental health officer’s views on the medical reports relating to the offender; and

(e) any other information that the mental health officer considers relevant for the purposes of section 57A of this Act.

57C Compulsion order: supplementary

(1) If, before the expiry of the period of 7 days beginning with the day on which a compulsion order authorising detention of the offender in a hospital is made, it appears to the court, or, as the case may be, the Scottish Ministers, that, by reason of emergency or other special circumstances, it is not reasonably practicable for the offender to be admitted to the hospital specified in the order, the court, or, as the case may be, the Scottish Ministers, may direct that the offender be admitted to the hospital specified in the direction.

(2) Where—

(a) the court makes a direction under subsection (1) above, it shall inform the person having custody of the offender; and

(b) the Scottish Ministers make such a direction, they shall inform—

(i) the court which made the compulsion order; and

(ii) the person having custody of the offender.

- (3) Where a direction is made under subsection (1) above, the compulsion order shall have effect as if the hospital specified in the direction were the hospital specified in the order.”.

Probation with a requirement of treatment

5 **96 Amendment of 1995 Act: probation for treatment of mental disorder**

In section 230 of the 1995 Act (probation orders requiring treatment for mental disorder)—

(a) in subsection (1)—

10 (i) at the beginning there shall be inserted “Subject to subsection (3) below,”; and

(ii) the words “, not extending beyond 12 months from the date of the requirement,” shall cease to have effect; and

(b) for subsection (3) there shall be substituted—

15 “(3) A court may make a probation order including a requirement under subsection (1) above only if it is satisfied—

(a) on the written or oral evidence of the registered medical practitioner or chartered psychologist by whom or under whose direction the treatment intended to be specified in the order is to be provided, that the treatment is appropriate; and

20 (b) that arrangements have been made for that treatment, including, where the offender is to be treated as a resident patient, arrangements for his reception in the hospital intended to be specified in the order.”.

CHAPTER 3

MENTALLY DISORDERED PRISONERS

25 **97 Transfer of prisoners for treatment for mental disorder**

(1) This section applies where a person (in this section and in sections 98 and 99 of this Act referred to as the “prisoner”) is serving a sentence of imprisonment.

30 (2) If the Scottish Ministers are satisfied, on the written or oral evidence of an approved medical practitioner and a medical practitioner as to the matters mentioned in subsection (3) below, they may, subject to subsection (5) below, make a direction (referred to in this Act as a “transfer for treatment direction”) authorising the measures mentioned in subsection (6) below.

(3) The matters referred to in subsection (2) above are—

35 (a) that the conditions mentioned in subsection (4) below are met in respect of the prisoner;

(b) that the prisoner could be admitted to the hospital to be specified in the direction before the expiry of the period of 7 days beginning with the day on which the direction is made; and

40 (c) that the hospital to be so specified is suitable for the purpose of giving medical treatment to the prisoner.

- (4) The conditions referred to in subsection (3)(a) above are—
- (a) that the prisoner has a mental disorder;
 - (b) that medical treatment which would be likely to—
 - (i) prevent the mental disorder worsening; or
 - (ii) alleviate any of the symptoms, or effects, of the disorder,is available for the prisoner;
 - (c) that if the prisoner were not provided with such medical treatment there would be a significant risk—
 - (i) of harm to the health, safety or welfare of the prisoner; or
 - (ii) to the safety of any other person; and
 - (d) that the making of a transfer for treatment direction in respect of the prisoner is necessary.
- (5) A transfer for treatment direction may authorise detention in a state hospital only if, on the written or oral evidence of the approved medical practitioner and the medical practitioner, it appears to the Scottish Ministers that the prisoner has a mental disorder of such nature or degree—
- (a) that the medical treatment mentioned in subsection (4)(b) above can be provided to the prisoner only under conditions of special security; and
 - (b) that such conditions of special security can be provided only in a state hospital.
- (6) The measures are—
- (a) the removal, before the expiry of the period of 7 days beginning with the day on which the direction is made, of the prisoner to the specified hospital by—
 - (i) a constable;
 - (ii) a person employed in, or contracted to provide services in or to, the specified hospital who is authorised by the managers of that hospital to remove persons to hospital for the purposes of this section; or
 - (iii) any other specified person;
 - (b) the detention of the prisoner in the specified hospital;
 - (c) the giving to the prisoner of medical treatment in accordance with Part 13 of this Act; and
 - (d) any other requirement on the prisoner that the Scottish Ministers may prescribe by regulations.
- (7) The Scottish Ministers shall be satisfied as to the condition mentioned in subsection (4)(a) above only if each of the medical practitioners mentioned in subsection (2) above specifies, by reference to the appropriate paragraph (or paragraphs) of the definition of “mental disorder” in section 227 of this Act, at least one type of mental disorder that the prisoner has that is also specified by the other.
- (8) A transfer for treatment direction—
- (a) shall specify the type (or types) of mental disorder that each of the medical practitioners mentioned in subsection (2) above specifies that the prisoner has that is also specified by the other; and

(b) may include such directions as the Scottish Ministers think fit for the removal of the prisoner to, and the detention of the prisoner in, a place of safety pending the prisoner's admission to the specified hospital.

5 (9) In subsection (1) above, references to a prisoner serving a sentence of imprisonment include references—

(a) to a prisoner detained in pursuance of any sentence or order for detention made by a court (other than an order under section 54, 57(2), 58, 118(5) or 190 of the 1995 Act);

10 (b) to a prisoner committed by a court to prison in default of payment of any fine to be paid on the prisoner's conviction.

(10) In this section—

“place of safety” has the same meaning as in section 198 of this Act; and

“specified” means specified in the transfer for treatment direction.

98 Transfer for treatment direction: supplementary

15 (1) If, before the expiry of the period of 7 days beginning with the day on which the transfer for treatment direction is made, it appears to the Scottish Ministers that, by reason of emergency or other special circumstances, it is not reasonably practicable for the offender to be admitted to the hospital specified in the direction, they may direct that the offender be admitted to another hospital specified by them.

20 (2) Where a direction is made under subsection (1) above, the Scottish Ministers shall inform the person having custody of the offender.

(3) Where a direction is made under subsection (1) above, the transfer for treatment direction shall have effect as if the hospital specified in the transfer for treatment direction were the hospital specified by the Scottish Ministers under subsection (1) above.

99 Restriction direction

(1) This section applies where a transfer for treatment direction is made in respect of a prisoner.

30 (2) If it appears to the Scottish Ministers that it is necessary for the protection of any person (other than the prisoner) from serious harm, they may make a further direction (referred to in this Act as a “restriction direction”) in respect of the prisoner.

(3) Where a restriction direction is made in respect of a prisoner under subsection (2) above, section 160 of this Act shall apply.

PART 9

PATIENTS SUBJECT TO COMPULSION ORDERS

CHAPTER 1

PRELIMINARY

5 **100 Application of Part**

This Part of this Act applies to a patient in respect of whom a compulsion order but not a restriction order is made.

101 Appointment of patient’s responsible medical officer

10

As soon as practicable after a compulsion order is made in respect of a patient, the managers of the hospital specified in the order shall appoint a medical practitioner to be the patient’s responsible medical officer.

102 Mental health officer’s duty to prepare social circumstances report

15

The mental health officer shall, before the expiry of the period of 21 days beginning with the day on which the compulsion order is made in respect of the patient, take the steps mentioned in subsection (2) of section 59 of this Act.

103 Mental health officer’s duty to identify named person

The mental health officer shall, as soon as practicable after the compulsion order is made in respect of the patient, take such steps as are reasonably practicable to ascertain the name and address of the patient’s named person.

20

CHAPTER 2

FIRST MANDATORY REVIEW OF COMPULSION ORDERS

First mandatory review

104 First review of compulsion order

25

(1) The patient’s responsible medical officer shall, during the appropriate period, carry out a review in respect of the compulsion order made in respect of the patient (such review being referred to in this Part of this Act as a “first review”) by complying with the requirements set out in subsection (2) below.

(2) Those requirements are—

30

(a) to—

(i) carry out a medical examination of the patient; or

(ii) make arrangements for an approved medical practitioner to carry out such a medical examination;

(b) to consider—

35

(i) whether the conditions mentioned in subsection (3) below continue to apply in respect of the patient; and

- (ii) whether a compulsion order in respect of the patient continues to be necessary; and
- (c) to consult—
- (i) the mental health officer specified in the patient’s care plan;
- (ii) any person who is specified in the compulsion order as being responsible for the provision of medical treatment to the patient; and
- (iii) such other persons as the responsible medical officer considers appropriate.
- (3) Those conditions are—
- (a) that the patient has a mental disorder;
- (b) that medical treatment which would be likely to—
- (i) prevent the mental disorder worsening; or
- (ii) alleviate any of the symptoms, or effects, of the disorder,
- is available for the patient; and
- (c) that if the patient were not provided with such medical treatment there would be a significant risk—
- (i) of harm to the health, safety or welfare of the patient; or
- (ii) to the safety of any other person.
- (4) In subsection (1) above, “appropriate period” means the period of 2 months ending with the day on which the compulsion order ceases to authorise the measures specified in it.

Consequences of first mandatory review

105 Responsible medical officer’s duty to revoke order

- (1) This section applies where the patient’s responsible medical officer is carrying out a first review of a compulsion order under section 104 of this Act.
- (2) If, after having regard to any views expressed by persons consulted under section 104(2)(c) of this Act, the responsible medical officer is not satisfied—
- (a) that all of the conditions mentioned in section 104(3) of this Act above continue to apply in respect of the patient; and
- (b) that a compulsion order in respect of the patient continues to be necessary,
- the responsible medical officer shall make a determination revoking the compulsion order.
- (3) A determination under this section shall be made as soon as practicable after the duty to make it arises.
- (4) Section 65 of this Act applies in a case where the responsible medical officer makes a determination under subsection (2) above as if that determination were a determination made under section 64 of this Act.

106 Responsible medical officer’s duty to extend order

- (1) This section applies where the patient’s responsible medical officer is carrying out a first review of a compulsion order under section 104 of this Act.

- (2) If, after having regard to any views expressed by persons consulted under section 104(2)(c) of this Act, the responsible medical officer is satisfied—
- (a) that all of the matters mentioned in section 104(3) of this Act continue to apply in respect of the patient;
 - 5 (b) that the compulsion order in respect of the patient continues to be necessary; and
 - (c) that the compulsion order—
 - (i) should continue to authorise the measures specified in it; and
 - (ii) should not be varied by modification of those measures,
- 10 the responsible medical officer shall make a determination extending the compulsion order for the period of 6 months beginning with the day on which the order would cease, were it not extended by the determination, to authorise the measures specified in it.
- (3) A determination under this section shall be made as soon as practicable after the duty to make such determination arises.
- 15 (4) Section 67 of this Act shall apply in a case where the responsible medical officer makes a determination under subsection (2) above as if that determination were a determination made under section 66 of this Act, subject to the modification that sub-paragraphs (iii) and (iv) of section 67(2)(a) shall not apply.

107 Responsible medical officer's duty to apply for extension and variation of order

- 20 (1) This section applies where the patient's responsible medical officer is carrying out a first review of a compulsion order under section 104 of this Act.
- (2) If, after having regard to any views expressed by persons consulted under section 104(2)(c) of this Act, the responsible medical officer is satisfied as to the matters mentioned in subsection (3) below, the officer shall make an application to the Tribunal under section 108 of this Act for an order under section 79 of this Act—
- 25 (a) extending the compulsion order for the period mentioned in subsection (4) below; and
- (b) varying the order by modifying the measures authorised by it.
- (3) The matters are—
- 30 (a) that all of the conditions mentioned in section 104(3) of this Act continue to apply in respect of the patient;
 - (b) that a compulsion order in respect of the patient continues to be necessary; and
 - (c) that the compulsion order should be varied in the way mentioned in subsection (2)(b) above.
- (4) The period referred to in subsection (2)(a) above is the period of 6 months beginning with the day on which the compulsion order will (unless extended) cease to authorise the measures specified in it.
- 35 (5) Section 69 of this Act shall apply in a case where the responsible medical officer makes, by virtue of subsection (2) above, an application under section 108 of this Act as if that application were an application made, by virtue of section 68(2) of this Act, under
- 40 section 70 of this Act.

108 Application to Tribunal

An application under this section to the Tribunal by a patient's responsible medical officer for an order extending and varying a compulsion order—

(a) shall state—

- 5 (i) the name and address of the patient;
- (ii) the name and address of the patient's named person;
- (iii) the modification of the measures authorised by the compulsion order that is proposed by the responsible medical officer;
- (iv) the reasons for seeking that modification;
- 10 (v) whether the responsible medical officer is giving notice to the patient under section 69(1)(a) of this Act; and
- (vi) if that officer is not giving such notice, the reason why that is the case; and
- (b) shall be accompanied by such documents as may be prescribed by regulations.

Proceedings before Tribunal on first mandatory review

109 Extension of compulsion order pending decision of Tribunal

Section 78 of this Act shall apply in a case where the patient's responsible medical officer makes an application to the Tribunal under section 108 of this Act as if that application were an application made under section 70 of this Act, subject to the modification that references to a compulsory treatment order shall be construed as references to a compulsion order.

110 Review by Tribunal of responsible medical officer's determination under section 106

- (1) This section applies where a patient's responsible medical officer makes a determination under section 106(2) of this Act.
- 25 (2) The determination shall be reviewed by the Tribunal.
- (3) On the review of a determination under subsection (2) above, the Tribunal may make an order under this section—
 - (a) revoking the determination;
 - (b) confirming the determination; or
 - 30 (c) confirming the determination and varying the compulsion order by modifying the measures authorised by it.
- (4) Before making an order under subsection (3) above, the Tribunal shall—
 - (a) allow the persons mentioned in subsection (5) below the opportunity—
 - 35 (i) of making representations (whether orally or in writing); and
 - (ii) of leading, or producing, evidence; and
 - (b) whether or not any such representations are made, hold a hearing.
- (5) Those persons are—

- (a) the patient;
- (b) the patient’s named person;
- (c) the mental health officer;
- (d) the responsible medical officer;
- 5 (e) the Commission; and
- (f) any other person appearing to the Tribunal to have an interest in the determination.

111 Powers of Tribunal on application under section 108

10 Subsections (1) and (5) of section 79 of this Act shall apply to an application under section 108 as if that application were an application under section 70 of this Act, subject to the modifications that—

- (a) references to a compulsory treatment order shall be construed as references to a compulsion order;
- 15 (b) the reference to the period mentioned in section 68(4) shall be construed as a reference to the period mentioned in section 68(4)(a); and
- (c) in subsection (5), the reference to subsections (1) to (4) shall be construed as a reference to subsection (1).

CHAPTER 3

FURTHER MANDATORY REVIEW OF COMPULSION ORDERS

Further mandatory review

112 Further review of compulsion order

- (1) This section applies where a compulsion order is extended—
 - (a) by a determination under section 106 of this Act; or
 - (b) by virtue of an order under section 79 of this Act.
- 25 (2) The patient’s responsible medical officer shall, during the period mentioned in subsection (3) below, carry out a review in respect of the compulsion order (such review being referred to in this Part of this Act as a “further review”) by complying with the requirements of section 104(2) of this Act.
- 30 (3) The period mentioned in subsection (2) above is the period of 2 months ending with the day on which the compulsion order, as extended, ceases to authorise the measures specified in it.

Consequences of further mandatory review

113 Application of sections 63 to 70

35 Sections 63 to 70 of this Act shall apply in the case of a further review under section 112 of this Act as if that review were a further review under section 61 of this Act, subject to the following modifications—

- (a) references to a compulsory treatment order shall be construed as references to a compulsion order;
- (b) references to section 60(3)(c) of this Act shall be construed as references to section 104(2)(c) of this Act;
- 5 (c) references to paragraphs (a) to (d) of section 53(5) of this Act shall be construed as references to paragraphs (a) to (c) of section 104(3) of this Act; and
- (d) references to “services recorded in” an order shall have no effect.

Duty generally to keep compulsion order under review

114 Application of sections 62 and 71 to 73

10 Sections 62 and 71 to 73 of this Act shall apply in the case of a patient to whom this Part of this Act applies as they apply in the case of a patient subject to a compulsory treatment order, subject to the following modifications—

- (a) references to a compulsory treatment order shall be construed as references to a compulsion order;
- 15 (b) in section 62, references to sections 60(2) and 61(2) of this Act shall be construed as references to sections 104(1) and 112(2) of this Act;
- (c) references to paragraphs (a) to (d) of section 53(5) of this Act shall be construed as references to paragraphs (a) to (c) of section 104(3) of this Act;
- (d) references to “services recorded in” an order shall have no effect; and
- 20 (e) references to section 60(3)(c) of this Act shall be construed as references to section 104(2)(c) of this Act.

Mental health officer’s duty to interview patient

115 Mental health officer: duties as respects patient

25 Section 74 of this Act shall apply in the case of a patient to whom this Part of this Act applies as it applies to a patient subject to a compulsory treatment order.

Applications by patient etc.

116 Application of sections 75 and 76

30 Sections 75 and 76 of this Act shall apply in the case of a patient to whom this Part of this Act applies as they apply in the case of a patient subject to a compulsory treatment order, subject to the modifications that—

- (a) references to a compulsory treatment order shall be construed as references to a compulsion order;
- (b) references to “services recorded in” an order shall have no effect; and
- 35 (c) in section 76(4) of this Act, for the words “the period of 3 months” there shall be substituted the words “the period of 6 months”.

Review by Tribunal of determination extending order

117 Application of section 77

5 Section 77 of this Act shall apply in the case of a patient to whom this Part of this Act applies as it applies in the case of a patient subject to a compulsory treatment order, subject to the modification that references to a compulsory treatment order shall be construed as references to a compulsion order.

Proceedings before Tribunal on further mandatory review

118 Application of sections 78 to 81

10 Sections 78 to 81 of this Act shall apply in the case of a patient to whom this Part of this Act applies as they apply in the case of a patient subject to a compulsory treatment order, subject to the modifications that—

- (a) references to a compulsory treatment order shall be construed as references to a compulsion order; and
- (b) references to “services recorded in” an order shall have no effect.

15 *Interpretation*

119 Meaning of “modify”

In this Chapter of this Act, “modify” shall be construed in accordance with section 82 of this Act, subject to the modifications that—

- 20 (a) references to a compulsory treatment order shall be construed as references to a compulsion order; and
- (b) references to “services recorded in” an order and to cognate expressions shall have no effect.

Breach of order

120 Non-compliance with compulsion order

25 Section 84 of this Act shall apply to a compulsion order as that section applies to a compulsory treatment order.

CHAPTER 4

TRANSFER BETWEEN HOSPITALS ETC.

121 Transfer of patients subject to compulsion order

30 Sections 87 to 89 of this Act shall apply in the case of a person to whom this section applies as they apply in the case of a person subject to a compulsory treatment order.

- (a) that the restricted patient has a mental disorder;
- (b) that medical treatment which would be likely to—
- (i) prevent the mental disorder worsening; or
- (ii) alleviate any of the symptoms, or effects, of the disorder,
- 5 is available for the patient;
- (c) that if the patient were not provided with such medical treatment there would be a significant risk—
- (i) of harm to the health, safety or welfare of the patient; or
- (ii) to the safety of any other person;
- 10 (d) that the compulsion order made in respect of the patient continues to be necessary;
- (e) that the restriction order made in respect of the patient continues to be necessary; and
- (f) that the patient’s mental disorder is of such nature or degree that there would be a risk of serious harm to any other person if the patient were not detained in
- 15 hospital, whether for treatment or not.
- (4) In subsection (1) above, “appropriate period” means the period of 2 months ending with the day that falls 12 months after the day on which the compulsion order was made.

126 Further mandatory review of compulsion order and restriction order

- (1) This section applies where a restricted patient’s responsible medical officer has carried
- 20 out a first review under section 125 of this Act.
- (2) The responsible medical officer shall, during the period mentioned in subsection (3) below, carry out a review in respect of both the compulsion order and the restriction order made in respect of the restricted patient (such review being referred to in this Part of this Act as a “further review”) by complying with the requirements of section 125(2)
- 25 of this Act.
- (3) The period mentioned in subsection (2) above—
- (a) where the responsible medical officer has not carried out a further review under subsection (1) above, is the period of 2 years ending with the day that falls 12 months after the day on which the compulsion order was made; or
- 30 (b) in a case where the responsible medical officer has carried out a further review, the period of 2 months ending with the day on which the period of 12 months, beginning with the day by which the responsible medical officer was obliged to carry out the previous further review, expires.

Consequences of mandatory review

127 Responsible medical officer’s report and recommendation following review of compulsion order and restriction order

- (1) This section applies where a restricted patient’s responsible medical officer is carrying
- 35 out—
- (a) a first review of both a compulsion order and a restriction order; or

(b) a further review of such orders.

(2) The responsible medical officer shall submit a report in writing to the Scottish Ministers.

(3) If, after having regard to any views expressed by the mental health officer, the responsible medical officer—

5 (a) is not satisfied that the restricted patient has a mental disorder; or

(b) is so satisfied but is not satisfied as to the matters mentioned in subsection (4) below,

the officer shall include in the report submitted to the Scottish Ministers under subsection (2) above a recommendation that the compulsion order be revoked.

10 (4) The matters are—

(a) that the condition mentioned in paragraph (f) of subsection (3) of section 125 of this Act continues to apply in respect of the restricted patient; and

(b) that each of the conditions mentioned in paragraphs (b) to (d) of that subsection continues to apply in respect of the patient.

15 (5) If, after having regard to any views expressed by the mental health officer, the responsible medical officer is not satisfied that the conditions mentioned in paragraphs (e) and (f) of subsection (3) of section 125 of this Act continue to apply in respect of the restricted patient, the officer shall include in the report submitted to the Scottish Ministers under subsection (2) above a recommendation that the restriction order be
 20 revoked.

(6) If, after having regard to any views expressed by the mental health officer, the responsible medical officer—

(a) is not satisfied that the condition mentioned in paragraph (f) of subsection (3) of section 125 of this Act continues to apply in respect of the patient;

25 (b) is not satisfied that it is necessary for the patient to be detained in hospital; and

(c) is satisfied that the conditions mentioned in paragraphs (b) to (e) of that subsection continue to apply in respect of the patient,

the officer shall include in the report submitted to the Scottish Ministers under subsection (2) above a recommendation that the patient be conditionally discharged.

30 (7) Where the responsible medical officer—

(a) includes in the report submitted to the Scottish Ministers under subsection (2) above, a recommendation that the restriction order be revoked; and

(b) does not include a recommendation that the compulsion order be revoked,

35 the officer shall, if that officer, having regard to any views expressed by the mental health officer, is satisfied that it is not necessary for the restricted patient to be detained in hospital, include in the report a recommendation that the compulsion order be varied to remove the authorisation for the detention of the patient in hospital.

128 Duty of Scottish Ministers on receiving report and recommendation from responsible medical officer

40 (1) This section applies where a restricted patient's responsible medical officer submits a report to the Scottish Ministers under section 127(2) of this Act after carrying out—

- (a) a first review of both a compulsion order and a restriction order; or
 - (b) a further review of such orders.
- (2) If the responsible medical officer includes in the report submitted under section 127(2) of this Act any recommendation under subsection (3), (5), (6) or (7) of that section, the Scottish Ministers shall apply to the Tribunal under section 131 of this Act for the appropriate order or orders under section 133 of this Act.

General duty of Scottish Ministers to review orders

129 Duty of Scottish Ministers to review compulsion order and restriction order from time to time

- (1) Without prejudice to the duty imposed on the Scottish Ministers by section 128(2) of this Act, the Scottish Ministers shall keep the compulsion order and restriction order made in respect of a restricted patient under review by, from time to time, considering whether the matters mentioned in paragraphs (a) to (f) of section 125(3) of this Act continue to apply in respect of the patient.
- (2) The Scottish Ministers may from time to time direct the restricted patient's responsible medical officer—
- (a) to carry out a review complying with the requirements of section 125(2) of this Act; and
 - (b) to submit a report in writing to the Scottish Ministers following such a review.
- (3) If the Scottish Ministers—
- (a) are not satisfied that the restricted patient has a mental disorder; or
 - (b) are so satisfied but are not satisfied as to the matters mentioned in subsection (4) below,
- they shall apply to the Tribunal under section 131 of this Act for an order under section 133 of this Act revoking the compulsion order to which the patient is subject.
- (4) The matters are—
- (a) that the condition mentioned in paragraph (f) of subsection (3) of section 125 of this Act continues to apply in respect of the restricted patient; and
 - (b) that each of the conditions mentioned in paragraphs (b) to (d) of that subsection continues to apply in respect of the patient.
- (5) If the Scottish Ministers are not satisfied that the conditions mentioned in paragraphs (e) and (f) of subsection (3) of section 125 of this Act continue to apply in respect of the restricted patient, the Scottish Ministers shall apply to the Tribunal under section 131 of this Act for an order under section 133 of this Act revoking the restriction order to which the patient is subject.
- (6) If the Scottish Ministers—
- (a) are not satisfied that the condition mentioned in paragraph (f) of subsection (3) of section 125 of this Act continues to apply in respect of the restricted patient;
 - (b) are not satisfied that it is necessary for the patient to be detained in hospital; and
 - (c) are satisfied that the conditions mentioned in paragraphs (b) to (e) of that subsection continue to apply in respect of the patient,

the Scottish Ministers shall apply to the Tribunal under section 131 of this Act for an order under section 133 of this Act conditionally discharging the patient.

(7) Where the Scottish Ministers—

(a) apply to the Tribunal under section 131 of this Act for an order under section 133 of this Act for an order revoking the restriction order; and

(b) do not so apply for an order revoking the compulsion order,

they may, if satisfied that it is not necessary for the restricted patient to be detained in hospital, also apply to the Tribunal for an order varying the compulsion order to remove the authorisation for the detention of the patient in hospital.

130 Application by Scottish Ministers: notification

(1) Where by virtue of section 128 or section 129 of this Act, an application is to be made under section 131 of this Act, the Scottish Ministers shall, as soon as practicable after the duty to make the application arises (and, in any event, before making the application) give notice that the application is to be made—

(a) subject to subsection (2) below, to the restricted patient;

(b) to the patient's named person; and

(c) to the Commission.

(2) If the Scottish Ministers consider that notice should not be given under subsection (1)(a) above, they need not give it.

(3) At the same time as the Scottish Ministers give notice to the persons mentioned in subsection (1)(b) and (c) above, they shall send to such persons a statement of the matters mentioned in subsection (4) below.

(4) Those matters are—

(a) whether the Scottish Ministers are giving notice under subsection (1)(a) above to the patient; and

(b) if they are not giving notice, the reason for not doing so.

131 Application to Tribunal

An application under this section to the Tribunal by the Scottish Ministers for an order under section 133 of this Act—

(a) shall state—

(i) the name and address of the restricted patient;

(ii) the name and address of the patient's named person;

(iii) the order (or orders) sought;

(iv) the modification of the measures authorised by the compulsion order that is proposed by the Scottish Ministers;

(v) the reasons for seeking that modification;

(vi) whether the Scottish Ministers are giving notice of the application to the patient under section 130(1)(a) of this Act; and

(vii) if the Scottish Ministers are not giving notice under that section, the reason for not doing so; and

(b) shall be accompanied by such documents as may be prescribed by regulations.

Application by patient etc.

5 **132 Application by restricted patient and named person for discharge**

(1) The persons mentioned in subsection (2) below may, subject to subsections (3) and (4) below, make an application under this section to the Tribunal for an order under section 133 of this Act—

(a) conditionally discharging the patient;

10 (b) revoking the restriction order to which the patient is subject;

(c) revoking the restriction order and varying the compulsion order to which the patient is subject to remove the authorisation for the detention of the patient in hospital; or

(d) revoking the compulsion order to which the patient is subject.

15 (2) Those persons are—

(a) the restricted patient; and

(b) the patient's named person.

(3) An application under this section may not be made before the expiry of the period of 6 months beginning with the day on which the compulsion order to which the application relates was made.

20 (4) Neither of the persons mentioned in subsection (2) above may make more than one application under this section during—

(a) the period of 12 months beginning with the day on which the compulsion order was made; or

25 (b) any subsequent period of 12 months that begins with or with an anniversary of the expiry of the period of 12 months mentioned in paragraph (a) above.

(5) Where a restricted patient's named person makes an application under subsection (1) above, the named person shall give notice to the restricted patient of the making of the application.

30 *Proceedings before Tribunal*

133 Powers of Tribunal on applications under section 131 or 132

(1) This section applies where an application is made under section 131 or 132 of this Act.

(2) If the Tribunal is satisfied—

(a) that the restricted patient has a mental disorder; and

35 (b) that the effect of that disorder is such that it is necessary, for the protection of any other person from serious harm, that the patient continue to be detained in hospital, whether for treatment or not,

it shall refuse the application.

- (3) If the Tribunal—
- (a) is not satisfied that the patient has a mental disorder; or
 - (b) is so satisfied but is not satisfied as to the matters mentioned in subsection (4) below,
- 5 the Tribunal shall make an order revoking the compulsion order to which the restricted patient is subject.
- (4) The matters are—
- (a) that the condition mentioned in paragraph (f) of subsection (3) of section 125 of this Act continues to apply in respect of the restricted patient; and
 - 10 (b) that each of the conditions mentioned in paragraphs (b) to (d) of that subsection continue to so apply.
- (5) If the Tribunal is not satisfied that the conditions mentioned in paragraphs (e) and (f) of subsection (3) of section 125 of this Act continue to apply in respect of the restricted patient, the Tribunal shall make an order revoking the restriction order to which the patient is subject.
- 15 (6) If the Tribunal—
- (a) is not satisfied that the condition mentioned in paragraph (f) of subsection (3) of section 125 of this Act continues to apply in respect of the restricted patient;
 - (b) is not satisfied that it is necessary for the patient to be detained in hospital; and
 - 20 (c) is satisfied that the conditions mentioned in paragraphs (b) to (e) of that subsection continue to apply in respect of the patient,
- the Tribunal shall make an order that the patient be conditionally discharged.
- (7) If the Tribunal makes an order revoking the restriction order under subsection (5) above, it shall, if satisfied—
- 25 (a) that the conditions mentioned in paragraphs (a) to (d) of subsection (3) of section 125 of this Act continue to apply in respect of the restricted patient; and
 - (b) that it is not necessary for the patient to be detained in hospital,
- make an order varying the compulsion order to which the patient is subject to remove the authorisation for the detention of the patient in hospital.
- 30 (8) Before making an order under this section the Tribunal shall—
- (a) afford the persons mentioned in subsection (9) below the opportunity—
 - (i) of making representations (whether orally or in writing); and
 - (ii) of leading, or producing, evidence; and
 - (b) whether or not any such representations are made, hold a hearing.
- 35 (9) Those persons are—
- (a) the restricted patient;
 - (b) the patient's named person;
 - (c) the Scottish Ministers;
 - (d) the patient's responsible medical officer;

- (e) the mental health officer;
- (f) the Commission; and
- (g) any other person appearing to the Tribunal to have an interest.

134 Tribunal's powers when varying compulsion order

- 5 (1) Subject to subsection (2) below, where the Tribunal makes an order under section 133(7) of this Act varying a compulsion order, the Tribunal—
- (a) shall specify in its order the modifications made by its order to the measures authorised by the compulsion order; and
 - (b) may specify measures other than those specified in the compulsion order to which
10 its order relates.
- (2) The Tribunal may specify in its order measures other than those specified in the compulsion order only if, before making its order, the Tribunal gives notice to the persons mentioned in section 133(9) of this Act—
- (a) stating what it is proposing to do;
 - 15 (b) setting out what those measures are; and
 - (c) affording such persons the opportunity—
 - (i) of making representations (whether orally or in writing) in relation to that proposal; and
 - (ii) of leading, or producing, evidence.

20 **135 Deferral of conditional discharge**

Where the Tribunal makes an order under section 133(6) of this Act conditionally discharging a restricted patient, it may defer that discharge until such arrangements as appear to the Tribunal to be necessary for that purpose have been made.

Effect of modification or revocation of orders

25 **136 General effect of orders under section 133**

- (1) Where the Tribunal makes an order under section 133 of this Act—
- (a) revoking a compulsion order;
 - (b) revoking a restriction order;
 - (c) conditionally discharging the restricted patient; or
 - 30 (d) varying a compulsion order,
- the order shall not have effect until the occurrence of the first to occur of the events mentioned in subsection (2) below.
- (2) Those events are—
- (a) the expiry of the appeal period, no appeal having been lodged within that period; and
 - 35 (b) where an appeal has been lodged within the appeal period by the Scottish Ministers—

(i) the receipt by both the Court of Session and the managers of the hospital in which the restricted patient is detained of notice from the Scottish Ministers that they do not intend to move the Court of Session to make an order under section 222 of this Act;

5 (ii) the refusal by the Court of Session to make such an order; and

(iii) the recall of any such order or the expiry of its effect.

(3) In subsection (2) above—

“appeal” means an appeal under section 221 of this Act; and

10 “appeal period” means, in relation to an appeal, the period, prescribed by regulations made under section 223(7) of this Act, within which the appeal has to be lodged in order to be competent.

137 Effect of revocation of restriction order

(1) This section applies where the Tribunal—

15 (a) makes an order under subsection (5) of section 133 of this Act revoking the restriction order to which the restricted patient is subject; but

(b) does not make an order under subsection (3) of that section revoking the compulsion order to which the patient is subject.

(2) Sections 112 to 119 of this Act shall apply to the restricted patient as if—

20 (a) the patient were a patient to whom section 104 of this Act applies;

(b) the patient’s responsible medical officer had, after carrying out a first review under section 104 of this Act, made a determination under section 106(2) of this Act extending the compulsion order; and

(c) the Tribunal had, instead of making an order revoking the restriction order, confirmed the determination under section 110(3) of this Act.

25 138 Meaning of “modify”

In sections 131 and 134 of this Act, “modification” of the measures authorised by a compulsion order includes—

(a) amending those measures;

(b) removing from the order any measure; or

30 (c) adding any measures.

CHAPTER 3

RECALL FROM CONDITIONAL DISCHARGE

139 Recall of restricted patients from conditional discharge

35 (1) This section applies to a restricted patient conditionally discharged by the Tribunal under section 133(6) of this Act.

(2) If the Scottish Ministers are satisfied—

- (a) that the conditions mentioned in paragraphs (a) to (e) of subsection (3) of section 125 of this Act continue to apply in respect of the patient; and
 - (b) that it necessary for the patient to be detained in hospital,
- they may, by warrant, recall the patient to hospital.

5 **140 Effect of recall from conditional discharge**

Where the Scottish Ministers recall a restricted patient to hospital under section 139 of this Act, if the hospital specified in the warrant is not the hospital specified in the compulsion order to which the patient is subject, that order shall have effect as if the hospital specified in the warrant were the hospital specified in the order.

10 **141 Appeal to Tribunal against recall from conditional discharge**

- (1) Where a restricted patient has been recalled to hospital under section 139 of this Act, the Scottish Ministers shall before the expiry of the period of 28 days beginning with the day on which the patient returns or is returned to hospital, refer the patient's case to the Tribunal.
- 15 (2) Where a patient's case is referred to the Tribunal under subsection (1) above, section 133 of this Act shall apply as if the patient had applied under section 132 of this Act for an order conditionally discharging the patient.

CHAPTER 4

TRANSFER BETWEEN HOSPITALS

20 **142 Transfer of restricted patients**

- (1) The Scottish Ministers may, subject to subsection (2) below, transfer a restricted patient who is detained in hospital to—
 - (a) a hospital unit; or
 - (b) another hospital.
- 25 (2) Where the Scottish Ministers propose to transfer a restricted patient under subsection (1) above, they shall, subject to subsection (3) below, give the persons mentioned in subsection (4) below at least 7 days' notice of the proposed transfer.
- (3) The Scottish Ministers need not give notice as mentioned in subsection (2) above in any case where—
 - 30 (a) it is impracticable to do so; or
 - (b) the restricted patient consents to the notice being dispensed with.
- (4) The persons referred to in subsection (2) above are—
 - (a) the restricted patient;
 - (b) the patient's named person;
 - 35 (c) the managers of the hospital or, as the case may be, hospital unit—
 - (i) from which it is proposed to transfer the restricted patient; and
 - (ii) to which it is proposed to transfer the restricted patient; and

(d) the Commission.

- (5) Where a restricted patient is transferred under subsection (1) above, the compulsion order to which the patient is subject shall, for the purposes of this Act (other than sections 143 and 144), be taken to specify the hospital or, as the case may be, hospital unit to which the patient is transferred.

143 Transfer of restricted patient to hospital other than state hospital: appeal to Tribunal

(1) This section applies where—

(a) a restricted patient—

(i) receives notice under subsection (2) of section 142 of this Act that it is proposed to transfer the patient; or

(ii) is transferred under subsection (1) of that section,

to a hospital unit or to any hospital other than a state hospital; and

(b) the hospital unit, or hospital, to which the patient is, or is proposed to be, transferred is not specified in the compulsion order to which the patient is subject.

(2) The restricted patient or the patient's named person may, at any time during the period mentioned in subsection (3) below, appeal to the Tribunal against the proposed transfer or, as the case may be, the transfer.

(3) That period is the period beginning with—

(a) where notice is given under subsection (2) of section 142 of this Act, the day on which such notice is given; or

(b) where no notice is given, the day on which the patient is transferred under subsection (1) of that section,

and ending 28 days after such transfer.

144 Transfer of restricted patient to state hospital: appeal to Tribunal

(1) This section applies where—

(a) a restricted patient—

(i) receives notice under subsection (2) of section 142 of this Act that it is proposed to transfer the patient; or

(ii) is transferred under subsection (1) of that section,

to a state hospital; and

(b) the state hospital to which the patient is, or is proposed to be, transferred is not specified in the compulsion order to which the patient is subject.

(2) The restricted patient or the patient's named person may, at any time during the period mentioned in subsection (3) below, appeal to the Tribunal against the proposed transfer or, as the case may be, the transfer.

(3) That period is the period beginning with—

(a) where notice is given under subsection (2) of section 142 of this Act, the day on which notice is given; or

(b) where no notice is given, the day on which the patient is transferred under subsection (1) of that section,

and ending 10 weeks after the transfer.

5 (4) On an appeal under subsection (2) above, the Tribunal may, if not satisfied as to the matter mentioned in subsection (5) below, make an order that the proposed transfer not take place or, as the case may be, that the restricted patient be returned to the hospital or hospital unit from which the patient was transferred.

(5) The matter is that the restricted patient has a mental disorder of such nature or degree—

10 (a) that medical treatment can be given to the patient only under conditions of special security; and

(b) that those conditions can be provided only in a state hospital.

CHAPTER 5

TEMPORARY RELEASE FROM DETENTION

145 Temporary release from detention

15 (1) The restricted patient's responsible medical officer may, subject to subsection (2) below, authorise the temporary release of the restricted patient from detention—

(a) for a specified occasion; or

(b) subject to subsection (3) below, for a specified period not exceeding 3 months.

20 (2) The responsible medical officer shall authorise temporary release from detention under subsection (1) above only if the officer has obtained the consent of the Scottish Ministers to the proposed temporary release.

(3) The responsible medical officer may extend, subject to subsection (4) below, the period of temporary release from detention specified under subsection (1)(b) above for a further period not exceeding 3 months from the day on which the specified period would end.

25 (4) If—

(a) the period (the "proposed period") for which the responsible medical officer proposes—

(i) to authorise temporary release from detention under subsection (1)(b) above; or

(ii) to extend a period of temporary release under subsection (3) above; and

(b) any earlier period (or periods) of temporary release from detention,

would, when taken together, exceed 9 months in the period of 12 months ending with the end of the proposed period, the responsible medical officer may not authorise or extend such temporary release for the proposed period.

35 (5) If the responsible medical officer considers that it is necessary—

(a) in the interests of the restricted patient; or

(b) for the protection of other persons,

the temporary release of the patient from detention may be made subject to conditions such as are mentioned in subsection (6) below.

- (6) Those conditions are—
- (a) that, during the temporary release from detention, the patient be kept in the charge of a person authorised in writing for the purpose by the responsible medical officer; and
 - (b) such others as may be specified by the responsible medical officer.
- (7) Where the responsible medical officer authorises temporary release from detention under subsection (1)(b) above or extends a period of temporary release under subsection (3) above for a period exceeding 28 days, the responsible medical officer shall, before the expiry of the period of 28 days beginning with the day on which temporary release is authorised or extended, give notice to—
- (a) the restricted patient’s general medical practitioner;
 - (b) the mental health officer; and
 - (c) the Commission.
- (8) If the responsible medical officer is, or the Scottish Ministers are, satisfied that it is necessary—
- (a) in the interests of the restricted patient; or
 - (b) for the protection of any other person,
- that the temporary release from detention be terminated, they may by notice to the patient or to the person, if any, authorised under subsection (6)(a) above, terminate that temporary release.

PART 11

PATIENTS SUBJECT TO HOSPITAL DIRECTIONS

Preliminary

146 Application of Part

This Part of this Act applies to a patient (in this Act referred to as an “offender patient”) who is subject to a hospital direction under section 59A of the 1995 Act (power of court, on convicting offender, to direct detention in hospital).

147 Appointment of offender patient’s responsible medical officer

As soon as practicable after a hospital direction is made in respect of an offender patient, the managers of the hospital specified in the direction shall appoint a medical practitioner who is on the staff of the hospital to be the offender patient’s responsible medical officer.

148 Mental health officer’s duty to identify named person

The mental health officer shall, as soon as practicable after the hospital direction is made in respect of an offender patient, take such steps as are reasonably practicable to ascertain the name and address of the offender patient’s named person.

Mandatory reviews

149 First review of hospital direction

- 5 (1) The offender patient’s responsible medical officer shall, during the appropriate period, carry out a review in respect of the hospital direction to which the offender patient is subject (such review being referred to in this Part of this Act as a “first review”) by complying with the requirements set out in subsection (2) below.
- (2) Those requirements are—
- (a) to—
- 10 (i) carry out a medical examination of the offender patient; or
- (ii) make arrangements for an approved medical practitioner to carry out such a medical examination;
- (b) to consider whether the conditions mentioned in subsection (3) below continue to apply in respect of the offender patient; and
- (c) to consult—
- 15 (i) the mental health officer; and
- (ii) such other persons as the responsible medical officer considers appropriate.
- (3) Those conditions are—
- (a) that the offender patient has a mental disorder;
- (b) that medical treatment which would be likely to—
- 20 (i) prevent the mental disorder worsening; or
- (ii) alleviate any of the symptoms, or effects, of the disorder, is available for the offender patient;
- (c) that if the offender patient were not provided with such medical treatment there would be a significant risk—
- 25 (i) of harm to the health, safety or welfare of the offender patient; or
- (ii) to the safety of any other person;
- (d) that the hospital direction in respect of the offender patient continues to be necessary; and
- (e) that the patient’s mental disorder is of such nature or degree that there would be a risk of serious harm to any other person if the offender patient were not detained in hospital, whether for treatment or not.
- 30
- (4) In subsection (1) above, “appropriate period” means the period of 2 months ending with the day falling 12 months after the day on which the hospital direction was made.

150 Further review of hospital direction

- 35 (1) This section applies where an offender patient’s responsible medical officer has carried out a first review under section 149 of this Act.
- (2) The offender patient’s responsible medical officer shall, during the period mentioned in subsection (3) below, carry out a review in respect of the hospital direction to which the offender patient is subject (such review being referred to in this Part of this Act as a “further review”) by complying with the requirements of section 149(2) of this Act.
- 40

- (3) The period referred to in subsection (2) above is—
- (a) where the responsible medical officer has not carried out a further review under subsection (2) above, the period of 2 months ending with the day which falls 2 years after the day on which the hospital direction was made; or
 - (b) in a case where the responsible medical officer has carried out a further review, the period of 2 months ending with the day on which the period of 12 months, beginning with the day by which the responsible medical officer was obliged to carry out the previous further review, expires.

Consequences of review: revocation of hospital directions

151 Responsible medical officer's report and recommendation following review of hospital direction

- (1) This section applies where an offender patient's responsible medical officer is carrying out—
- (a) a first review of a hospital direction; or
 - (b) a further review of the hospital direction.
- (2) The responsible medical officer shall submit a report in writing to the Scottish Ministers.
- (3) If, after having regard to any views expressed by persons consulted under section 149(2)(c) of this Act, the responsible medical officer—
- (a) is not satisfied that the offender patient has a mental disorder; or
 - (b) is so satisfied but is not satisfied as to the matters mentioned in subsection (4) below,
- the officer shall include in the report submitted to the Scottish Ministers under subsection (2) above a recommendation that the hospital direction be revoked.
- (4) The matters are—
- (a) that the condition mentioned in paragraph (e) of subsection (3) of section 149 of this Act continues to apply in respect of the offender patient; and
 - (b) that each of the conditions mentioned in paragraphs (b) to (d) of that subsection continues to apply in respect of the offender patient.

152 Revocation by Scottish Ministers of hospital direction

- (1) This section applies where an offender patient's responsible medical officer submits a report to the Scottish Ministers under section 151(2) of this Act after carrying out—
- (a) a first review of a hospital direction; or
 - (b) a further review of such direction.
- (2) If the responsible medical officer includes in the report submitted under subsection (2) of section 151 of this Act a recommendation under subsection (3) of that section, the Scottish Ministers shall revoke the hospital direction to which the offender patient is subject.
- (3) Where the Scottish Ministers revoke a hospital direction under this section they shall direct that the offender patient be admitted to a prison, institution or other place in which

the patient might have been detained had the patient not been detained in hospital under the hospital direction.

- 5 (4) The hospital direction shall cease to have effect on the offender patient's admission to the prison, institution or other place to which the patient is admitted by virtue of the direction under subsection (3) above.

General duty of Scottish Ministers to review directions: revocation

153 Duty of Scottish Ministers to review hospital direction from time to time

- 10 (1) Without prejudice to the duty imposed on the Scottish Ministers by section 152(2) of this Act, the Scottish Ministers shall keep the hospital direction made in respect of an offender patient under review by, from time to time, considering whether the conditions mentioned in paragraphs (a) to (e) of section 149(3) of this Act continue to apply in respect of the offender patient.

- (2) The Scottish Ministers may from time to time direct the offender patient's responsible medical officer—

15 (a) to carry out a review complying with the requirements of section 149(2) of this Act; and

(b) to submit a report in writing to the Scottish Ministers following such a review.

- (3) If the Scottish Ministers—

(a) are not satisfied that the offender patient has a mental disorder; or

20 (b) are so satisfied but are not satisfied as to the matters mentioned in subsection (4) below,

they shall revoke the hospital direction to which the patient is subject.

- (4) Those matters are—

25 (a) that the condition mentioned in paragraph (e) of subsection (3) of section 149 of this Act continues to apply in respect of the offender patient; and

(b) that each of the conditions mentioned in paragraphs (b) to (d) of that subsection continues to apply in respect of the offender patient.

- 30 (5) Subsections (3) and (4) of section 152 of this Act shall apply where the Scottish Ministers revoke a hospital direction under this section as they apply where such a direction is revoked under that section.

Application by offender patient etc.

154 Revocation of hospital direction on application by offender patient and named person

- 35 (1) The persons mentioned in subsection (2) below may, subject to subsections (3) and (4) below, make an application under this section to the Tribunal for the revocation of the hospital direction to which the offender patient is subject.

- (2) Those persons are—

(a) the offender patient; and

(b) the offender patient's named person.

- (3) An application under this section may not be made before the expiry of the period of 6 months beginning with the day on which the hospital direction was made.
- (4) Neither of the persons mentioned in subsection (2) above may make more than one application under this section during—
- 5 (a) the period of 12 months beginning with the day on which the hospital direction was made; or
- (b) any subsequent period of 12 months that begins with or with an anniversary of the expiry of the period of 12 months mentioned in paragraph (a) above.
- (5) Where an offender patient's named person makes an application under subsection (1) above, the named person shall give notice to the offender patient of the making of the application.
- 10
- (6) If, on an application under this section, the Tribunal is not satisfied—
- (a) that the condition mentioned in paragraph (e) of subsection (3) of section 149 of this Act continues to apply; and
- 15 (b) that each of the conditions mentioned in paragraphs (b) to (d) of that subsection continues to apply in respect of the offender patient,
- the Tribunal shall direct the Scottish Ministers to revoke the hospital direction.
- (7) The Scottish Ministers shall, where directed to do so by the Tribunal under subsection (6) above, revoke the hospital direction to which the offender patient is subject.
- 20
- (8) Subsections (3) and (4) of section 152 of this Act shall apply where the Scottish Ministers revoke a hospital direction under this section as they apply where such a direction is revoked under that section.

Termination of direction on release of patient

155 Termination of hospital direction on release of offender patient

25 Where an offender patient in respect of whom a hospital direction has been made is released under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) the hospital direction to which the patient is subject shall cease to have effect.

Transfer of offender patients

156 Transfer of offender patients between hospitals etc.

- 30 (1) The Scottish Ministers may, subject to subsection (2) below, transfer an offender patient who is detained in hospital to—
- (a) a hospital unit; or
- (b) another hospital.
- (2) Where the Scottish Ministers propose to transfer an offender patient under subsection (1) above, they shall, subject to subsection (3) below, give the persons mentioned in subsection (4) below at least 7 days' notice of the proposed transfer.
- 35
- (3) The Scottish Ministers need not give notice as mentioned in subsection (2) above in any case where—
- (a) it is impracticable to do so; or
- 40 (b) the offender patient consents to the notice being dispensed with.

- (4) The persons referred to in subsection (2) above are—
- (a) the offender patient;
 - (b) the offender patient’s named person;
 - (c) the managers of the hospital or, as the case may, hospital unit—
 - (i) from which it is proposed to transfer the offender patient; and
 - (ii) to which it is proposed to transfer the offender patient; and
 - (d) the Commission.
- (5) Where an offender patient is transferred under subsection (1) above, the hospital direction to which the offender patient is subject shall, for the purposes of this Act, be taken to specify the hospital or, as the case may be, hospital unit to which the offender patient is transferred.

PART 12

PATIENTS SUBJECT TO TRANSFER FOR TREATMENT DIRECTIONS

CHAPTER 1

PRELIMINARY

157 Application of Part

This Part of this Act applies to a patient who is subject to a transfer for treatment direction.

158 Appointment of patient’s responsible medical officer

As soon as practicable after a transfer for treatment direction is made in respect of a patient, the managers of the hospital specified in the direction shall appoint a medical practitioner who is on the staff of the hospital to be the patient’s responsible medical officer.

159 Mental health officer’s duty to identify named person

The mental health officer shall, as soon as practicable after a transfer for treatment direction is made in respect of the patient, take such steps as are reasonably practicable to ascertain the name and address of the patient’s named person.

CHAPTER 2

REVIEW OF DIRECTIONS

160 Application of Parts 9 and 11 to patients subject to transfer for treatment directions

- (1) Part 9 of this Act shall, if the patient is not subject to a restriction direction, apply in relation to the patient as if the patient were subject to a compulsion order; but subject to the modifications set out in subsection (2) below.
- (2) Those modifications are—

- (a) references to a compulsion order shall be construed as references to a transfer for treatment direction; and
- (b) references to a restriction order shall be construed as references to a restriction direction.

- 5 (3) Part 11 of this Act shall, if the patient is subject to a restriction direction, apply in relation to the patient as if the patient were subject to a hospital direction; but with references to a hospital direction being construed as references to a transfer for treatment direction.

PART 13

MEDICAL TREATMENT

Designated medical practitioners

161 Designated medical practitioners

- (1) The Commission shall compile and maintain a list of medical practitioners who appear to the Commission to have such—

- 15 (a) qualifications; and
(b) experience,

as the Commission considers appropriate for the purposes of discharging the functions conferred on designated medical practitioners by virtue of this Part of this Act.

- 20 (2) A medical practitioner included for the time being in the list mentioned in subsection (1) above is referred to in this Act as a “designated medical practitioner”.

- (3) The Commission shall ensure that the list mentioned in subsection (1) above includes medical practitioners who have qualifications and experience in relation to persons who have not attained the age of 18 years.

- 25 (4) A designated medical practitioner may, for the purposes of discharging any functions conferred by virtue of this Part of this Act—

- (a) interview a patient at any reasonable time and require any such interview to be conducted in private;
(b) carry out a medical examination of a patient in private at any reasonable time; and
(c) require any person holding medical records of a patient to produce such records for inspection by the designated medical practitioner.

- (5) A designated medical practitioner shall undertake such training as the Commission may require.

- 35 (6) The Commission shall pay to designated medical practitioners for or in connection with the discharge of the functions conferred on them by virtue of this Part of this Act such fees, expenses and allowances as may be prescribed by regulations.

Safeguards for certain surgical operations etc.

162 Certain surgical operations etc.

- (1) The types of medical treatment mentioned in subsection (2) below may be given to a patient only in accordance with section 163 or 164 of this Act.

- 40 (2) The types of medical treatment referred to in subsection (1) above are—

- (a) any surgical operation for destroying—
 - (i) brain tissue; or
 - (ii) the functioning of brain tissue; and
- (b) such other types of medical treatment as may be specified in regulations for the purposes of this section.

- (3) Before making regulations under subsection (2)(b) above the Scottish Ministers shall consult such persons as they consider appropriate.

163 Treatment mentioned in section 162(2): patients capable of consenting

- (1) Medical treatment mentioned in section 162(2) of this Act is given to a patient in accordance with this section if the requirements set out in subsections (2) and (3) below are satisfied.

- (2) Subject to subsection (6) below, the first requirement is that a designated medical practitioner who is not the patient's responsible medical officer certifies in writing that—

- (a) the patient is capable of consenting to the treatment;
- (b) the patient consents in writing to the treatment; and
- (c) having regard to the likelihood of its alleviating, or preventing, a deterioration in the patient's condition, it is in the patient's best interests that the treatment should be given to the patient.

- (3) The second requirement is that two other persons (not being medical practitioners) appointed by the Commission for the purposes of this subsection certify in writing that—

- (a) the patient is capable of consenting to the treatment; and
- (b) the patient consents in writing to the treatment.

- (4) A person appointed for the purposes of subsection (3) above may—

- (a) interview the patient at any reasonable time; and
- (b) require any such interview to be conducted in private.

- (5) If the patient withdraws consent to the treatment (in writing or otherwise) at any time before its completion, this section shall then apply as if the remainder of the treatment were a separate treatment.

- (6) Where—

- (a) the patient is a child; and
- (b) the patient's responsible medical officer is not a child specialist,

the first requirement is that the matters mentioned in paragraphs (a) to (c) of subsection (2) above are certified in writing by a designated medical practitioner who is a child specialist.

164 Treatment mentioned in section 162(2): patients incapable of consenting

- (1) Medical treatment mentioned in section 162(2) of this Act is given to a patient in accordance with this section if—

- (a) the requirements set out in subsections (2) to (4) below are satisfied; and
- (b) the patient does not resist or object to the treatment.
- (2) Subject to subsection (6) below, the first requirement is that a designated medical practitioner who is not the patient's responsible medical officer certifies in writing that—
- (a) the patient is incapable of consenting to the treatment;
- (b) the patient does not object to the treatment; and
- (c) having regard to the likelihood of its alleviating, or preventing, a deterioration in the patient's condition, it is in the patient's best interests that the treatment should be given to the patient.
- (3) The second requirement is that two persons (not being medical practitioners) appointed by the Commission for the purposes of this subsection certify in writing that—
- (a) the patient is incapable of consenting to the treatment; and
- (b) the patient does not object to the treatment.
- (4) The third requirement is that on the application of—
- (a) the patient's responsible medical officer; or
- (b) if the patient does not have a responsible medical officer, the medical practitioner primarily responsible for treating the patient,
- the Court of Session has made an order declaring that the treatment may lawfully be given.
- (5) The Court of Session may make an order such as is mentioned in subsection (4) above only if it is satisfied that—
- (a) having regard to the likelihood of its alleviating, or preventing, a deterioration in the patient's condition, it is in the patient's best interests that the treatment should be given to the patient; and
- (b) the patient does not object to the treatment.
- (6) Where the patient is a child, the first requirement is that the matters mentioned in paragraphs (a) to (c) of subsection (2) above are certified—
- (a) by a medical practitioner approved for the purposes of this subsection by the Commission; and
- (b) if the patient's responsible medical officer is not a child specialist, also by a designated medical practitioner who is a child specialist.

Safeguards for other medical treatment

165 Electro-convulsive therapy etc.

- (1) This section applies where the giving of medical treatment to a patient is authorised by virtue of this Act or the 1995 Act.
- (2) The types of medical treatment mentioned in subsection (3) below may be given to the patient only in accordance with section 166 or 167 of this Act.
- (3) The types of medical treatment referred to in subsection (2) above are—
- (a) electro-convulsive therapy; and

(b) such other types of medical treatment as may be specified in regulations for the purposes of this section.

- (4) Before making regulations under subsection (3)(b) above the Scottish Ministers shall consult such persons as they consider appropriate.

5 **166 Treatment mentioned in sections 165(3) and 168(3): patients capable of consenting**

- (1) Subject to subsection (3) below, medical treatment mentioned in section 165(3) or 168(3) of this Act is given to a patient in accordance with this section if the patient's responsible medical officer or a designated medical practitioner certifies in writing that—

- 10 (a) the patient is capable of consenting to the treatment;
(b) the patient consents in writing to the treatment;
(c) the giving of medical treatment to the patient is authorised by virtue of this Act or the 1995 Act; and
15 (d) having regard to the likelihood of its alleviating, or preventing, a deterioration in the patient's condition, it is in the patient's best interests that the treatment should be given.
- (2) If the patient withdraws consent to the treatment (in writing or otherwise) at any time before its completion, this section shall then apply as if the remainder of the treatment were a separate treatment.
- 20 (3) Where the patient is a child, any certificate under subsection (1) above shall be given by a child specialist.

167 Treatment mentioned in section 165(3): patients incapable of consenting

- (1) Subject to subsection (2) below, medical treatment mentioned in section 165(3) of this Act is given to a patient in accordance with this section if a designated medical practitioner who is not the patient's responsible medical officer certifies in writing that—

- 25 (a) the patient is incapable of understanding the nature, purpose and likely effects of the treatment;
(b) the giving of medical treatment to the patient is authorised by virtue of this Act or
30 the 1995 Act; and
(c) having regard to the likelihood of its alleviating, or preventing, a deterioration in the patient's condition, it is in the patient's best interests that the treatment should be given.
- (2) Where the patient is a child, the certification of the matters mentioned in paragraphs (a) to (c) of subsection (1) above is effective only if done—
- 35 (a) by a medical practitioner approved for the purposes of this subsection by the Commission; and
(b) if the patient's responsible medical officer is not a child specialist, also by a designated medical practitioner who is a child specialist (and is not the
40 practitioner mentioned in paragraph (a) above).

168 Treatments given over period of time etc.

- (1) This section applies where the giving of medical treatment to a patient is authorised by virtue of this Act or the 1995 Act.
- (2) The types of treatment mentioned in subsection (3) below may be given to the patient only in accordance with section 166 or 169 of this Act.
- (3) The types of treatment referred to in subsection (2) above are—
- (a) any medicine given as treatment for mental disorder; and
 - (b) any type of treatment for mental disorder, or in consequence of a patient having a mental disorder, that is specified in regulations for the purposes of this section.
- (4) Subsection (2) above does not apply to the giving of medicine in a relevant period until 2 months have passed since the patient was first in the relevant period given any medicine that was not, when given, a treatment specified under subsection (3)(b) above or section 162(2)(b) or 165(3)(b) of this Act.
- (5) The Scottish Ministers may by order amend subsection (4) above for the purpose of substituting a period specified in the order for (as the case may be)—
- (a) the period of 2 months mentioned in that subsection; or
 - (b) the period that is for the time being mentioned in that subsection in place of that period of 2 months.
- (6) For the purposes of subsection (4) above, “relevant period”, in relation to a patient, means any period during which the giving of medical treatment to the patient is authorised by virtue of this Act or the 1995 Act.

169 Treatment mentioned in section 168(3): patients refusing consent or incapable of consenting

- (1) Subject to subsection (3) below, medical treatment mentioned in section 168(3) of this Act is given in accordance with this section if a designated medical practitioner who is not the patient’s responsible medical officer certifies in writing that—
- (a) the patient—
 - (i) does not consent to the treatment; or
 - (ii) is incapable of consenting to the treatment;
 - (b) the giving of medical treatment to the patient is authorised by virtue of this Act or the 1995 Act; and
 - (c) having regard to the likelihood of its alleviating, or preventing a deterioration in, the patient’s condition, it is in the patient’s best interests that the treatment should be given.
- (2) If the condition mentioned in subsection (1)(a)(i) above applies, the designated medical practitioner shall—
- (a) if the reason for refusal of consent is known, have regard to the reason for the refusal; and
 - (b) if the designated medical practitioner is of the opinion that the treatment should be given, include in any certificate under subsection (1) above a statement of the reason for that opinion.

- (3) Where the patient is a child, the certification of the matters mentioned in paragraphs (a) to (c) of subsection (1) above is effective only if done—
- (a) by a medical practitioner approved for the purposes of this subsection by the Commission; and
 - (b) if the patient's responsible medical officer is not a child specialist, also by a designated medical practitioner who is a child specialist (and is not the practitioner mentioned in paragraph (a) above).

170 Treatment not mentioned in section 162(2), 165(3) or 168(3)

- (1) This section applies where the giving of medical treatment to a patient is authorised by virtue of this Act or the 1995 Act.
- (2) Subject to subsection (3) below, medical treatment may be given to the patient only in accordance with subsection (4) or (5) below.
- (3) This section does not apply to the giving of treatment mentioned in sections 162(2), 165(3) and 168(3) of this Act.

- (4) If the patient—
- (a) is capable of consenting to the treatment; and
 - (b) consents in writing to the treatment,

medical treatment is given to the patient in accordance with this subsection if the treatment is given by, or under the direction of, the patient's responsible medical officer.

- (5) If the patient—
- (a) is capable of consenting to the treatment but—
 - (i) does not consent; or
 - (ii) consents otherwise than in writing; or
 - (b) is incapable of consenting to the treatment,

medical treatment is given to the patient in accordance with this subsection if the requirements in subsection (6) below are satisfied.

- (6) Those requirements are—
- (a) after having regard—
 - (i) in a case where subsection (5)(a)(i) above applies, to the reason for not consenting (if it has been disclosed to the patient's responsible medical officer);
 - (ii) to any views expressed by the patient;
 - (iii) to any views expressed by the patient's named person;
 - (iv) to any advance statement made by the patient; and
 - (v) to the likelihood of the treatment's alleviating, or preventing, a deterioration in the patient's condition,

the responsible medical officer determines that it is in the patient's best interests that the treatment be given;

- (b) the treatment is given by, or under the direction of, the patient's responsible medical officer; and

- (c) the patient's responsible medical officer records in writing the reasons for giving the treatment.

Urgent medical treatment where patient detained in hospital

171 Urgent medical treatment

- 5 (1) This section applies where the detention in hospital of a patient is authorised by virtue of—
- (a) this Act; or
- (b) the 1995 Act.
- 10 (2) Where it is urgently necessary for medical treatment to be given to the patient for any of the purposes mentioned in subsection (3) below, the treatment may, subject to subsection (4) below, be given notwithstanding that the patient—
- (a) does not consent; or
- (b) is incapable of consenting,
- to the treatment.
- 15 (3) The purposes are—
- (a) saving the patient's life;
- (b) preventing serious deterioration in the patient's condition;
- (c) alleviating serious suffering on the part of the patient; and
- (d) preventing the patient from—
- 20 (i) behaving violently; or
- (ii) being a danger to the patient or to others.
- (4) Subsection (2) above authorises the giving of medical treatment—
- (a) for a purpose mentioned in any of paragraphs (b) to (d) of subsection (3) above only if the treatment will not entail unfavourable, and irreversible, physical or
- 25 psychological consequences;
- (b) for a purpose mentioned in paragraph (c) or (d) of that subsection only if the treatment does not entail significant physical hazard to the patient.
- (5) Where the patient is given medical treatment by virtue of subsection (2) above, the
- 30 patient's responsible medical officer shall, before the expiry of the period of 7 days beginning with the day on which such treatment is given, give notice to the Commission of—
- (a) the type of treatment given; and
- (b) the purpose mentioned in subsection (3) above for which it was given.

Supplementary and interpretation

172 Certificates under sections 163, 164, 167 and 169

- (1) This section applies to certificates under sections 163, 164, 167 and 169 of this Act.
- (2) A certificate shall contain such particulars as may be prescribed by regulations.

- (3) Before giving a certificate, the person giving it shall consult—
- (a) subject to subsection (4) below—
 - (i) the patient; and
 - (ii) the patient’s named person; and
 - (b) such person or persons as appear to the person giving the certificate to be principally concerned with the patient’s medical treatment.
- (4) The person giving a certificate need not consult any person such as is mentioned in paragraph (a) of subsection (3) above in any case where it is impracticable to do so.
- (5) A person who gives a certificate shall, before the expiry of the period of 7 days beginning with the day on which the certificate is given, send a copy of it to the Commission.

173 Scope of consent or certificate under sections 163, 164, 166, 167 and 169

Any—

- (a) consent; or
- (b) certificate,

given under section 163, 164, 166, 167 or 169 of this Act may relate to a plan of treatment under which (whether during a specified period or otherwise) one or more of the types of treatment to which the consent or certificate relates is to be given to the patient.

174 Sections 163, 164, 167 and 169: review of treatment etc.

- (1) Where medical treatment is given to a patient by virtue of section 163, 164, 167 or 169 of this Act, the responsible medical officer shall—
- (a) on the next occasion after the giving of the treatment on which the patient’s responsible medical officer is required by section 67 of this Act to submit a report to the Commission; or
 - (b) at such other time as the patient’s responsible medical officer is required to do so by the Commission,
- submit to the Commission a report as to the treatment given and the patient’s condition.
- (2) The Commission may at any time by notice to the patient’s responsible medical officer revoke, with effect from such time as may be specified in the notice, a certificate given under section 163(3), 167 or 169(1) of this Act.
- (3) A time specified in a notice under subsection (2) above may not be earlier than the time of the notice.

175 Interpretation of Part

In this Part—

“child” means a person who has not attained the age of 18 years; and

“child specialist” means a designated medical practitioner who has such qualifications or experience in child and adolescent psychiatry as the Commission may determine from time to time.

PART 14

PATIENT REPRESENTATION

*Named persons***176 Meaning of “named person”: powers of named person**

- 5 (1) In this Act, any reference to the “named person” of an individual is to the person who is the individual’s named person by virtue of sections 177 to 181 of this Act.
- (2) An individual’s named person may—
- (a) represent the interests of;
- (b) support; and
- 10 (c) intervene on behalf of,
- the individual where the individual is the subject of any proceedings under this Act.

177 Nomination of named person

- (1) An individual who has attained the age of 16 years may—
- (a) in accordance with subsection (2) below, nominate a person as the individual’s named person; and
- 15 (b) in accordance with subsection (3) below, revoke the nomination of a named person.
- (2) A person is nominated in accordance with this subsection if—
- (a) the nomination is signed by the individual;
- 20 (b) the individual’s signature is witnessed by a prescribed person;
- (c) the prescribed person certifies that, in the opinion of the prescribed person, the individual—
- (i) understands the effect of nominating a person to be the individual’s named person; and
- 25 (ii) has not been subjected to any undue influence in making the nomination.
- (3) The nomination of a named person is revoked in accordance with this subsection if—
- (a) the revocation is signed by the individual;
- (b) the individual’s signature is witnessed by a prescribed person;
- 30 (c) the prescribed person certifies that, in the opinion of the prescribed person, the individual—
- (i) understands the effect of revoking the appointment of a person as named person; and
- (ii) has not been subjected to any undue influence in making the revocation.
- (4) The nomination of a named person shall be effective—
- 35 (a) notwithstanding the individual’s becoming, after making the nomination, incapable;

(b) until revoked by the individual in accordance with subsection (3) above.

(5) A person nominated in accordance with subsection (2) above may decline to be the individual's named person by giving notice to—

(a) the individual; and

(b) the mental health officer,

to that effect.

(6) In this section—

“incapable” means incapable by reason of mental disorder or of inability to communicate because of physical disability; but a person shall not fall within this definition by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise); and

“prescribed person” means a person of a class prescribed by regulations.

178 Named person where no person nominated or nominated person declines to act

(1) Where, in the case of an individual who has attained the age of 16 years, there is no person who is by virtue of section 177 of this Act the individual's named person, the individual's primary carer shall, subject to subsections (2) and (3) below, be the individual's named person.

(2) Such an individual's primary carer may decline to be the named person of the individual by giving notice to—

(a) the individual; and

(b) the mental health officer,

to that effect.

(3) Where, in the case of an individual who has attained the age of 16 years—

(a) the individual has no primary carer; or

(b) the individual's primary carer has declined to be the individual's named person, the individual's nearest relative shall be the individual's named person.

179 Named person in relation to child

(1) The named person of an individual who is under 16 years of age (“the child”) shall be—

(a) subject to subsection (2) below, in a case where a person has parental rights and parental responsibilities in relation to the child, that person;

(b) in a case where the child is in the care of a local authority by virtue of a care order made under section 31 of the Children Act 1989 (c.41), that authority; or

(c) in any other case, the primary carer of the child.

(2) Where two or more persons have parental rights and parental responsibilities in relation to the child, those persons may agree which of them is to be the named person of the child.

180 Declaration in relation to named person

- (1) A person shall not be the named person of an individual who has attained the age of 16 years if the individual makes a declaration under this section in relation to that person.
- (2) A declaration under this section shall be—
- 5 (a) signed by the individual; and
- (b) witnessed by a prescribed person who shall certify that, in the opinion of the prescribed person, the individual—
- (i) understands the effect of making the declaration; and
- (ii) has not been subjected to any undue influence in making the declaration.
- 10 (3) A declaration under this section shall be effective—
- (a) notwithstanding the individual's becoming, after making the declaration, incapable;
- (b) until revoked by the individual in accordance with subsection (4) below.
- (4) A declaration is revoked in accordance with this subsection if the revocation is—
- 15 (a) signed by the individual; and
- (b) witnessed by a prescribed person who shall certify that, in the opinion of the prescribed person, the individual—
- (i) understands the effect of revoking the declaration; and
- (ii) has not been subjected to any undue influence in making the revocation.
- 20 (5) In this section, “incapable” and “prescribed person” have the same meaning as in section 177 of this Act.

181 Meaning of “nearest relative”

- (1) In this Act, “nearest relative”, in relation to a person (the “relevant person”), means—
- 25 (a) subject to subsection (3) below, in a case where only one person falls within the list set out in subsection (2) below, that person;
- (b) subject to subsections (3) and (4) below, in a case where two or more persons fall within that list, the person falling within the paragraph first appearing in the list set out in subsection (2) below.
- (2) The list mentioned in subsection (1) above is—
- 30 (a) the relevant person's spouse;
- (b) a person such as is mentioned in subsection (6) below;
- (c) the relevant person's child;
- (d) the relevant person's parent;
- (e) the relevant person's brother or sister;
- 35 (f) the relevant person's son-in-law or daughter-in-law;
- (g) the relevant person's father-in-law or mother-in-law;
- (h) the relevant person's brother-in-law or sister-in-law;
- (i) the relevant person's grandparent;

- (j) the relevant person's grandchild;
- (k) the relevant person's uncle or aunt;
- (l) the relevant person's niece or nephew;
- (m) the person mentioned in subsection (7) below;
- 5 (n) the grandparent of the relevant person's spouse;
- (o) the husband or wife of the relevant person's grandson or granddaughter;
- (p) the uncle or aunt of the relevant person's spouse;
- (q) the husband or wife of the relevant person's niece or nephew.

(3) If the relevant person's spouse—

- 10 (a) is permanently separated from the relevant person (either by agreement or under an order of a court); or
- (b) has deserted, or has been deserted by, the relevant person and the desertion continues,

15 paragraphs (a), (g), (h), (n) and (p) of subsection (2) above shall be disregarded for the purposes of subsection (1) above.

(4) Where two or more persons fall within the paragraph first appearing on the list set out in subsection (2) above, the nearest relative shall be—

- 20 (a) if those persons agree that one of them should be the nearest relative, that person; or
- (b) if those persons do not so agree, the person determined in accordance with the following rules—
 - (i) brothers and sisters of the whole blood shall be preferred over brothers and sisters of the half-blood; and
 - (ii) the elder or eldest, as the case may be, shall be preferred.

25 (5) For the purposes of subsection (2) above—

- (a) a relationship of the half-blood shall, subject to subsection (4)(b)(i) above, be treated as a relationship of the whole blood;
- (b) the stepchild of a person shall be treated as the child of that person;
- 30 (c) if the relevant person is ordinarily resident in the United Kingdom, the Channel Islands or the Isle of Man, any person who is not so resident shall be disregarded; and
- (d) any person who is under 16 years of age shall be disregarded.

(6) The person referred to in subsection (2)(b) above is a person who—

- 35 (a) is living with the relevant person in circumstances which are characterised by, among other things, mutual affection, commitment and support based on a subsisting or previous sexual relationship between them; and
- (b) has been living with the relevant person in such circumstances for a period of at least 6 months or, if the relevant person is for the time being in hospital, had been living with the relevant person in such circumstances for such period when the relevant person was admitted to hospital.

40 (7) The person referred to in subsection (2)(m) above is a person who—

- (a) is living with the relevant person and has been living with the relevant person for a period of at least 5 years; or
- (b) if the relevant person is in hospital, had been living with the relevant person for such period the relevant person was admitted to hospital.

5

*Advocacy***182 Advocacy**

- (1) It is the duty of—
 - (a) each local authority, in collaboration with the (or each) relevant Health Board; and
 - (b) each Health Board, in collaboration with the (or each) relevant local authority,

10 to secure the availability, to persons in its area who have a mental disorder, of independent advocacy services and to take appropriate steps to ensure that those persons have the opportunity of making use of those services.
- (2) Each relevant Health Board and local authority shall, for the purposes of subsection (1) above, collaborate with the local authority or, as the case may be, Health Board in relation to which it is the relevant Board or authority.
- 15 (3) For the purposes of subsections (1) and (2) above—
 - (a) a Health Board is, in relation to a local authority, a “relevant” Health Board if its area or part of its area is the same as or is included in the area of the local authority; and
 - 20 (b) a local authority is, in relation to a Health Board, a “relevant” local authority if its area or part of its area is the same as or is included in the area of the Health Board.
- (4) In subsection (1) above, “advocacy services” are services of support, advice and representation made available—
 - 25 (a) for the purpose of enabling the person to whom they are available to have as much control of, or capacity to influence, that person’s care and welfare as is, in the circumstances, appropriate; and
 - (b) where that person is unable to state an opinion on any matter concerning that person’s care or welfare, for the additional purpose of saying or doing anything calculated to protect and advance that person’s interests in that respect.
- 30 (5) For the purposes of subsection (1) above, advocacy services are “independent” if they are to be provided by persons who are neither members of a Health Board or local authority which secures or collaborates in the securing of their provision nor persons employed by the Board or authority to provide them.

Access to medical practitioner

35

183 Access to medical practitioner

- (1) This section applies where the detention of a patient in hospital is authorised by virtue of—
 - (a) this Act; or
 - (b) the 1995 Act.
- 40 (2) A medical practitioner authorised for the purposes of this section—

- (a) by, or on behalf of, the patient; or
- (b) by the patient's named person,

may, for any of the purposes mentioned in subsection (3) below, visit the patient at any reasonable hour and carry out a medical examination of the patient in private.

- 5 (3) The purposes are—
- (a) advising the patient about the making of applications under this Act; and
 - (b) providing information as respects the condition of the patient in relation to any such application (or proposed application).
- 10 (4) A medical practitioner authorised for the purposes of this section may require any person holding records relating to—
- (a) the detention; or
 - (b) the treatment,

of the patient in a hospital by virtue of a compulsory treatment order to produce such records to the medical practitioner for inspection by the medical practitioner.

15 **PART 15**

MISCELLANEOUS

Code of practice

184 Code of practice

- 20 (1) The Scottish Ministers shall publish a code of practice giving guidance to any person discharging functions by virtue of this Act as to—
- (a) the discharge of such of those functions; and
 - (b) such matters arising in connection with the discharge of those functions, as they think fit.
- 25 (2) The Scottish Ministers shall, before publishing a code of practice under subsection (1) above—
- (a) consult such persons as they think fit; and
 - (b) lay a draft of the code before the Scottish Parliament.
- (3) The Scottish Ministers shall bring a code of practice published under subsection (1) above into force by order.
- 30 (4) Any person discharging functions by virtue of this Act shall, so far as applicable to the discharge of those functions by that person, have regard to the provisions of any code of practice published under subsection (1) above for the time being in force.
- (5) Subsection (4) above does not apply to—
- (a) any court;
 - (b) the Tribunal; and
 - (c) the Commission.
- 35

- (6) The Scottish Ministers may, from time to time, revise the whole or part of any code of practice published under subsection (1) above; and if a code is so revised, the Scottish Ministers shall publish the revised code.
- (7) Subsections (2) to (6) above apply to a code of practice revised under subsection (6) above as they apply to a code of practice published under subsection (1) above.

Information

185 Provision of information to patient

- (1) This section applies where a patient—
- (a) is detained in hospital by virtue of this Act; or
 - (b) though not detained in hospital, is subject to a compulsory treatment order.
- (2) Subject to subsection (3) below, the mental health officer shall take all reasonable steps to ensure that the patient—
- (a) understands the relevant matters at each of the times mentioned in subsection (4) below; and
 - (b) is supplied with material in permanent form from which the patient may refresh the patient's understanding of those matters.
- (3) If the patient is detained under section 31 of this Act, the medical practitioner who authorised the detention under that section shall take all reasonable steps to ensure that the patient understands those matters at each of those times.
- (4) Those times are—
- (a) as soon as practicable after—
 - (i) where the patient is detained in hospital by virtue of this Act, the beginning of such detention; or
 - (ii) where the patient is not so detained, the making of the compulsory treatment order;
 - (b) before (but not unreasonably long before) any application is made to the Tribunal as respects—
 - (i) the detention of the patient; or
 - (ii) the compulsory treatment order; and
 - (c) as soon as practicable after any occasion on which the patient reasonably requests to be informed of those matters.
- (5) Where material is supplied to the patient under subsection (2)(b) or (3) above, the mental health officer or, as the case may be, the medical practitioner shall, as soon as practicable after such material is supplied, take all reasonable steps to ensure that the patient's named person is supplied with a copy of such material.
- (6) In this section “the relevant matters” means—
- (a) the provision of this Act by virtue of which—
 - (i) the patient is being detained; or
 - (ii) the compulsory treatment order has effect;
 - (b) the consequences of the operation of that provision;

- (c) any right to make an application, or appeal, to the Tribunal or the Commission that the patient has by virtue of that provision;
- (d) the powers exercisable by the Tribunal or the Commission in the event of any such right being exercised;
- 5 (e) how the patient may exercise any such right;
- (f) how the patient may obtain legal assistance, or advocacy services under section 182 of this Act, as respects any such right;
- (g) the powers that the responsible medical officer and the Tribunal each have in relation to revoking orders that relate to the patient.

10 **186 Provision of assistance to patient with communication difficulties**

(1) This section applies where—

(a) a patient—

- (i) is detained in hospital by virtue of this Act; or
 - (ii) though not detained in hospital, is subject to a compulsory treatment order;
- 15 and

(b) the patient—

- (i) is unable to communicate; or
- (ii) has difficulty in communicating.

20 (2) The mental health officer shall take all reasonable steps to secure that, for the purpose of enabling the patient to communicate during each of the events mentioned in subsection (3) below—

(a) arrangements appropriate to the patient's needs are made; or

(b) the patient is provided with assistance or material, appropriate to the patient's needs.

25 (3) Those events are—

(a) any medical examination of the patient carried out for the purpose of assessing the patient's mental disorder;

(b) any review under this Act of the patient's detention; or

(c) any proceedings before the Tribunal relating to the patient.

30 (4) As soon as practicable after taking any steps under subsection (2) above, the mental health officer shall make a written record of the steps.

Advance statements

187 Advance statements: making and withdrawal

35 (1) An “advance statement” is a statement complying with subsection (2) below specifying—

(a) the ways the person making it wishes to be treated for mental disorder;

(b) the ways the person wishes not to be so treated,

in the event of the person’s becoming mentally disordered and being incapable of making decisions about the matters set out in paragraphs (a) and (b) of this subsection.

- (2) An advance statement complies with this subsection if—
- (a) at the time of making it, the person has the capacity of properly intending the wishes specified in it;
 - (b) it is in writing;
 - (c) it is subscribed by the person making it;
 - (d) that person’s subscription of it is witnessed by a person (the “witness”) who is within the class of persons prescribed by regulations for the purposes of this paragraph and who signs the statement as a witness to that subscription;
 - (e) the witness certifies in writing on the document which comprises the statement that, in the witness’s opinion, the person making the statement has the capacity referred to in paragraph (a) above; and
 - (f) it has not been withdrawn under subsection (3) below.
- (3) An advance statement may be withdrawn by the person who made it by a withdrawal complying with this subsection; and a withdrawal so complies if—
- (a) at the time of making it the person has the capacity properly to intend to withdraw the statement; and
 - (b) it is made by means of a document which, were it an advance statement, would comply with paragraphs (b) to (e) of subsection (2) above.
- (4) References in this section to a person’s being incapable of making decisions and to a person’s having the capacity to intend anything are references respectively to the person’s incapacity within the meaning given in that respect by section 1(6) of the Adults with Incapacity (Scotland) Act 2000 (asp 4) and to the person’s capacity within that meaning.

188 Advance statements: effect

- (1) If the Tribunal is satisfied as to the matters set out in subsection (2) below, it shall—
- (a) in determining whether to make; and
 - (b) in making,
- a compulsory treatment order in respect of a person who has made an advance statement, have regard to the wishes specified in the statement.
- (2) Those matters are—
- (a) that, because of mental disorder, the ability of the person who made the advance statement to make decisions about the matters referred to in subsection (1) of section 187 of this Act is significantly impaired;
 - (b) that the statement complies with subsection (2) of that section;
 - (c) that any treatment which might or is to be authorised by the compulsory treatment order corresponds to any specified treatment in the statement; and

(d) that, since the person made the statement, there has been no change of circumstances which, were the person to have been considering making the statement at the time the Tribunal is making the order, would have been likely to cause the person not to make the statement or to make a substantially different one.

5 (3) A person giving qualifying medical treatment for mental disorder to a person—

(a) who has made an advance statement that complies with subsection (2) of section 187 of this Act; and

10 (b) whose ability to make decisions about the matters referred to in subsection (1) of that section is, because of mental disorder, significantly impaired,

shall have regard to the wishes specified in the advance statement.

(4) For the purposes of subsection (3) above, medical treatment is “qualifying” medical treatment if it is authorised by a compulsory treatment order to which the person receiving the treatment is subject.

15 (5) For the purposes of subsections (1) and (2) above and (in the case where medical treatment is to be given to a person who is not subject to a compulsory treatment order or to a person who is subject to such an order which was made in ignorance of the existence of an advance statement) of subsection (3) above—

20 (a) an advance statement shall be taken to comply with subsection (2) of section 187 of this Act and;

(b) a withdrawal of an advance statement shall be taken to comply with subsection (3) of that section,

unless the contrary appears.

25 (6) For the purposes of subsection (3) above in the case where the medical treatment is authorised by a compulsory treatment order—

(a) an advance statement shall be taken to comply with subsection (2) of section 187 of this Act; and

(b) a withdrawal of an advance statement shall be taken to comply with subsection (3) of that section,

30 if the Tribunal was satisfied when making the order that the statement or, as the case may be, the withdrawal so complies.

(7) If, in respect of a person who has made and not withdrawn an advance statement that complies with subsection (2) of section 187 of this Act—

35 (a) the Tribunal makes a compulsory treatment order authorising treatment that conflicts with the wishes specified in the statement;

(b) a person having functions under this Act gives such treatment to the person; or

(c) treatment which could have been so authorised or so given is not so authorised or so given, with the consequence that there is a conflict with those wishes,

40 then the Tribunal or, as the case may be, the person having those functions shall comply with the requirements set out in subsection (8) below.

(8) Those requirements are—

(a) recording in writing—

- (i) the circumstances falling within whichever of paragraphs (a) to (c) of subsection (7) above applies; and
- (ii) the reasons for authorising or giving the treatment that was authorised or given and, where paragraph (c) of that subsection applies, the reason for not authorising or giving the treatment referred to in that paragraph;

(b) supplying—

- (i) the person who made the statement;
- (ii) that person's named person; and
- (iii) that person's welfare attorney,

with a copy of that record; and

(c) placing a copy of that record with that person's medical records.

Education

189 Education of persons who have mental disorder

(1) The Education (Scotland) Act 1980 (c.44) shall be amended as follows.

(2) In section 14(1) (education for children unable to attend school by reason of extraordinary circumstances or prolonged ill-health), in paragraph (b) after “ill-health” there is inserted “or a pupil's being the subject of a compulsory treatment order made under the Mental Health (Scotland) Act 2002 (asp 00)”.

(3) In section 131(2) (persons to whom duties and powers under the Act do not extend), in paragraph (a) after “court” there is inserted “(other than an order so made under the Mental Health (Scotland) Act 2002 (asp 00))”.

Parental relations

190 Duty to mitigate adverse effect of compulsory treatment order on parental relations

(1) Subsection (2) below applies—

(a) where—

- (i) a child is subject to a compulsory treatment order; and
- (ii) the measures authorised by the order will or will be likely to impair the personal relations or diminish direct contact between the child and any person with parental responsibilities in relation to the child; or

(b) where—

- (i) a person with parental responsibilities in relation to a child is the subject of such an order; and
- (ii) the measures authorised by the order will or will be likely to impair the personal relations or diminish direct contact between that person and the child.

(2) The local authority or Health Board responsible for the administration of the measures shall take such steps as are practicable and appropriate to mitigate the impairment or diminution referred to in subsection (1) above or, as the case may be, the likelihood of that impairment or diminution.

- (3) Before making any decision in pursuance of this section the local authority or Health Board shall, so far as is reasonably practicable, ascertain the views of—
- (a) the child;
 - (b) the child’s parents;
 - 5 (c) any person who is not a parent of the child but who has parental rights in relation to the child; and
 - (d) any other person whose views the authority or Board consider to be relevant, regarding the matter to be decided.
- (4) In making any such decision a local authority shall, so far as reasonably practicable, have regard—
- 10 (a) to the views (if the child wishes to express them) of the child, taking account of the child’s age and maturity;
 - (b) to such views of any person mentioned in subsection (3)(b) to (d) above as they have been able to ascertain; and
 - 15 (c) to the child’s religious persuasion, racial origin and cultural and linguistic background.
- (5) In this section, “child”, “parental responsibilities” and “parental rights” have the same meanings as they have in Part I of the Children (Scotland) Act 1995 (c.36).

Research

191 Information for research

- (1) A person having functions by virtue of this Act shall, on being required to do so by the Scottish Ministers—
- 25 (a) provide them or any other person specified in the requirement with such relevant information as is so specified; and
 - (b) do so in any such form as may be so specified.
- (2) The Scottish Ministers may, under subsection (1) above, require the provision of relevant information only if, in their opinion, it is needed by them (or, as the case may be, the other person specified in the requirement) for research purposes within the meaning given by section 33 of the Data Protection Act 1998 (c.29) (research, history and statistics).
- (3) Information need not be provided under this section if, were it evidence which might be given in proceedings in any court in Scotland, the person having that evidence could not be compelled to give it in such proceedings.
- (4) Where information required under subsection (1) above—
- 35 (a) is, or refers to, information about a natural person and would identify or enable the identification of the person; and
 - (b) can reasonably be provided under subsection (1) above so as not to identify or enable the identification of the person,
- it shall be so provided.
- (5) Where—
- 40

(a) the person required under subsection (1) above to provide the information is under a duty of confidentiality in respect of that information; and

(b) the person cannot provide the information without breaching the duty,

the information shall not be provided unless the person to whom the duty is owed has consented to its provision.

(6) On receipt of information provided under this section, the Scottish Ministers (or any other person provided under this section with the information) may, for the purposes referred to in subsection (2) above, do any, or all, of the following—

(a) process the information;

(b) collate it;

(c) publish it or reports based on it.

(7) Regulations may provide as to the procedure to be followed in making requirements under this section for information and in providing it.

(8) Where information recorded otherwise than in legible form is required to be provided under this section, it shall be provided in legible form.

(9) For the purposes of this section—

(a) information is “relevant” if it is information as to—

(i) the operation of this Act;

(ii) anything which is, or which might have been but was not, done under this Act by persons having functions by virtue of it,

including information going to whether the persons in respect of whom those functions are exercised are, in the same respects, treated equally; and

(b) a person is under a duty of confidentiality in respect of information although the person could notwithstanding that duty be compelled to give evidence as to that information in proceedings in a court in Scotland.

State hospitals

192 Restriction of Scottish Ministers’ power to delegate management of state hospitals

In section 102 of the National Health Service (Scotland) Act 1978 (c.29) (provision and management of state hospitals)—

(a) in subsection (4), paragraph (a) and the word “or” immediately following it; and

(b) subsection (5),

shall cease to have effect.

Communications, security etc.

193 Correspondence of certain persons detained in hospital

(1) A postal packet which is—

(a) addressed to any person by a specified person; and

(b) delivered by the specified person for dispatch,

may, where subsection (2) or (3) below applies, be withheld from the postal operator concerned by the managers of the hospital in which the specified person is detained.

(2) This subsection applies if the person in question has requested that communications addressed to such person by the specified person should be withheld.

5 (3) This subsection applies if—

(a) the hospital is a state hospital;

(b) the postal packet is not addressed to a person mentioned in subsection (5) below; and

(c) the hospital managers consider that the postal packet is likely—

10 (i) to cause distress to the person in question or any other person who is not on the staff of the hospital; or

(ii) to cause danger to any person.

(4) Any request for the purposes of subsection (2) above shall be made in writing to—

(a) the managers of the hospital concerned;

15 (b) the responsible medical officer; or

(c) the Scottish Ministers.

(5) The persons referred to in subsection (3)(b) above are—

(a) any Minister of the Crown or the Scottish Ministers;

(b) any member of either House of Parliament or member of the Scottish Parliament or Northern Ireland Assembly;

20 (c) the Commission;

(d) the Parliamentary Commissioner for Administration;

(e) the Health Service Commissioner for Scotland;

(f) the Commissioner for Local Administration in Scotland;

25 (g) a local authority;

(h) any judge or clerk of court;

(i) the Tribunal;

(j) the managers of the hospital in which the specified person is detained;

(k) any legally qualified person instructed by the specified person to act as the specified person's legal adviser;

30 (l) the European Court of Human Rights; and

(m) such other persons as the Scottish Ministers may by regulations specify.

(6) A postal packet which—

(a) is addressed to a specified person detained in a state hospital; and

35 (b) is not sent by or on behalf of any person mentioned in subsection (5) above,

may be withheld from the specified person by the managers of the hospital if, in their opinion, it is necessary to do so in the interests of the safety of the specified person or for the protection of any other person.

- (7) The managers of a hospital may inspect and open any postal packet for the purposes of determining—
- (a) whether it is a postal packet to which subsection (1) or (6) above applies; and
 - (b) if it is, whether it should be withheld under the subsection in question.
- 5 (8) The power to withhold a postal packet under subsection (1) or (6) above includes power to withhold anything contained in such packet.
- (9) In this section—
- “postal packet” and “postal operator” have the same meanings as those expressions have in the Postal Services Act 2000 (c.26); and
- 10 “specified person” means a person who—
- (a) is detained in a hospital; and
 - (b) meets such other conditions, or in relation to whom such other conditions are met, as may be specified in regulations made by the Scottish Ministers.

194 Correspondence: supplementary

- 15 (1) If a postal packet or anything contained in it is withheld under subsection (1) or (6) of section 193 of this Act, the managers of the hospital shall record that fact in writing.
- (2) If a postal packet or anything contained in it is withheld under—
- (a) subsection (1) of section 193 of this Act by virtue of subsection (3) of that section; or
 - 20 (b) subsection (6) of that section,
- the managers of the hospital shall, before the expiry of the period of 7 days beginning with the withholding of the packet or anything contained in it, give notice to the Commission of the matters mentioned in subsection (3) below.
- (3) Those matters are—
- 25 (a) the name of the specified person;
 - (b) the nature of the postal packet or contents withheld; and
 - (c) the reason for withholding the postal packet or contents.
- (4) If a postal packet or anything contained in it is withheld under—
- 30 (a) subsection (1) of section 193 of this Act by virtue of subsection (3) of that section; or
 - (b) subsection (6) of that section,
- the managers of the hospital shall, before the expiry of the period of 7 days beginning with the withholding of the packet or anything contained in it, give notice to the persons mentioned in subsection (5) below of the fact that the postal packet or anything contained in it has been withheld and the effect of section 195 of this Act.
- 35 (5) Those persons are—
- (a) the specified person; and
 - (b) in a case where the packet is withheld as mentioned in paragraph (b) of subsection (4) above, the person by whom the packet was sent (if known).

(6) The functions under section 193 of this Act and this section of the managers of a hospital shall be discharged on their behalf by a person on the staff of the hospital appointed by them for that purpose; and different persons may be so appointed to discharge different functions.

5 (7) Regulations may—
(a) make provision with respect to the exercise of the powers conferred by section 193 of this Act;
(b) make provision for that section and this section to apply as if references to postal packets included references to written communications by the means specified in the regulations, with such modifications as may be so specified.

10 (8) In this section—
“postal packet” has the same meaning as in section 193 of this Act; and
“specified person” has the same meaning as in that section.

195 Review of decision to withhold postal packet

15 (1) This section applies where a relevant item is withheld under—
(a) subsection (1) of section 193 of this Act by virtue of subsection (3) of that section; or
(b) subsection (6) of that section.

(2) On an application—
20 (a) in the case where a relevant item is withheld as mentioned in paragraph (a) of subsection (1) above, by the specified person; or
(b) in the case where a relevant item is withheld as mentioned in paragraph (b) of that subsection, by—
(i) the specified person; or
25 (ii) the person by whom the postal packet was sent,

the Commission shall review the decision to withhold the relevant item.

(3) Any application under subsection (2) above shall be made before the expiry of the period of 6 months beginning with the day on which the person making the application receives notice under section 194(4) of this Act.

30 (4) On an application under subsection (2) above the Commission may direct that the relevant item should not be withheld; and the managers of the hospital concerned shall comply with any such direction.

(5) Regulations may make provision with respect to the making of applications under subsection (2) above.

35 (6) Regulations under subsection (5) above may in particular make provision as to the production to the Commission of relevant items.

(7) In this section—
“postal packet” has the same meaning as in section 193 of this Act;
“relevant item” means a postal packet or anything contained in it; and
40 “specified person” has the same meaning as in that section.

196 Certain persons detained in hospital: use of telephones

- (1) Regulations may make provision for or in connection with regulating the use of telephones by such persons detained in hospital as may be specified in the regulations (“specified persons”).
- 5 (2) Provision under subsection (1) above may in particular—
- (a) confer rights on specified persons to use telephones;
 - (b) make the entitlement to, or exercise of, any such rights subject to conditions imposed by or under regulations;
 - (c) restrict, or prohibit, the use of telephones by specified persons;
 - 10 (d) authorise the managers of the hospital to intercept, or arrange for the interception of, telephone calls—
 - (i) to specified persons; or
 - (ii) made by specified persons.
- (3) The conditions mentioned in subsection (2)(b) above include in particular conditions as to payment of call charges for calls made by or on behalf of specified persons.
- 15 (4) Regulations under this section may not authorise the interception of a telephone call made by a specified person to a person mentioned in subsection (6) below unless—
- (a) the person has requested the interception of telephone calls made by the specified person to the person; or
 - 20 (b) the telephone call is or would be unlawful for any reason other than one arising from provision made by virtue of this section.
- (5) Regulations under this section may not authorise the interception of a telephone call made to a specified person by a person mentioned in subsection (6) below unless the telephone call is or would be unlawful for any reason other than one arising from provision made by virtue of this section.
- 25 (6) The persons referred to in subsections (4) and (5) above are—
- (a) any of the persons mentioned in paragraphs (a) to (i) and (l) of section 193(5) of this Act;
 - (b) the managers of the hospital;
 - 30 (c) a legally qualified person instructed by the specified person to act as the specified person’s legal adviser; and
 - (d) such other person as may be specified by the regulations.
- (7) In this section “intercept”, in relation to a telephone call, includes—
- (a) listen to, record or otherwise monitor; and
 - 35 (b) interrupt, cut short, divert or prevent from being connected.
- (8) For the purposes of this section, a telephone call is made when the telephone number of the person being called has been dialled.

197 Safety and security in hospitals

Regulations may authorise—

- (a) the search of such persons detained in hospital as may be specified in the regulations and of anything they have with them in the hospital in which they are detained;
- 5 (b) the taking, from external parts of the body of those persons and, by means of swabbing, from the mouth of those persons, of samples of body tissue, blood or other body fluid or other material, the taking hypodermically from those persons of samples of blood and the examination of those samples;
- 10 (c) the placing of restrictions on the kinds of things which those persons may have with them in the hospitals in which they are detained and the removal from them of articles kept in breach of such restrictions;
- (d) the placing of prohibitions and restrictions on the entry into and the conduct while in those hospitals of persons (“visitors”) visiting those persons and on the kinds of things which those visitors may bring with them into those hospitals;
- (e) the surveillance, whether directly or otherwise, of those persons and those visitors;
- 15 (f) the search of those visitors and of anything they bring with them into those hospitals,

and make that which is authorised subject to conditions specified in the regulations.

Removal to place of safety

198 Removal to place of safety

- 20 (1) Where—
 - (a) a constable reasonably suspects—
 - (i) that a person (referred to in this section and in section 199 of this Act as a “relevant person”) who is in a public place has a mental disorder; and
 - (ii) that the relevant person is in immediate need of care or treatment; and
 - 25 (b) the constable considers that it would be in the interests of the relevant person, or necessary for the protection of any other person, to remove the relevant person to a place of safety,

the constable may remove the relevant person to a place of safety.

- 30 (2) A relevant person removed to a place of safety under subsection (1) above may, for the purposes of enabling—
 - (a) arrangements to be made for a medical practitioner to carry out a medical examination of the relevant person; and
 - (b) the making of such arrangements as the medical practitioner considers necessary for the relevant person’s care or treatment,

35 be detained there for a period ending not later than 24 hours after the time at which the relevant person is removed from the public place by the constable.

- (3) If a relevant person absconds—
 - (a) while being removed to a place of safety under subsection (1) above; or
 - (b) from such a place of safety,
- 40 a constable may, at any time during the period mentioned in subsection (2) above, take the person into custody and remove the person to a place of safety.

(4) In this section—

“place of safety” means—

- (a) a hospital;
- (b) premises which are used for the purpose of providing a care home service (as defined in section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8)); or
- (c) any other suitable place (other than a police station) the occupier of which is willing temporarily to receive mentally disordered persons; and

“public place” means a place to which the public, or any section of the public, has, or is permitted to have, access (whether on payment or otherwise); and includes the common parts of a building containing two or more separate dwellings.

(5) If no place of safety is immediately available, a constable may, under subsection (1) or (3) above, remove a relevant person to a police station; and in any such case, any reference in this section and in section 199 of this Act to a place of safety shall be construed as being a reference to a police station.

199 Removal to place of safety: further provision

(1) This section applies where a constable removes a relevant person to a place of safety under section 198 of this Act.

(2) The constable shall—

(a) as soon as reasonably practicable after removing a relevant person to a place of safety, ensure—

- (i) that the local authority in whose area the place of safety is situated are informed of the matters mentioned in subsection (3) below; and
- (ii) subject to subsection (4) below, that the nearest relative of the relevant person is informed of those matters; and

(b) before the expiry of the period of 14 days beginning with the day on which the person is removed to the place of safety, ensure that the Commission is given notice of those matters.

(3) The matters are—

- (a) the name and address of the relevant person;
- (b) the date and time at which the relevant person was removed from the public place;
- (c) the circumstances giving rise to the removal of the relevant person to the place of safety;
- (d) the address of the place of safety;
- (e) if the relevant person is removed to a police station, the reason why the relevant person was removed there; and
- (f) any other matter prescribed by regulations.

(4) Where—

(a) it is impracticable to ensure that the relevant person’s nearest relative is informed of the matters mentioned in subsection (3) above; or

(b) the nearest relative is so informed but the nearest relative does not reside with the relevant person,

the constable shall, as soon as reasonably practicable after removing the relevant person to the place of safety, ensure that, where reasonably practicable, a person falling within subsection (5) below is informed of those matters.

(5) A person falls within this subsection if—

(a) the person—

(i) resides with the relevant person; or

(ii) provides a care service to the relevant person; or

(b) the person is an individual who, otherwise than—

(i) by virtue of a contract of employment, or other contract, with any person; or

(ii) as a volunteer for a voluntary organisation,

provides care for the relevant person.

(6) In this section—

“care service” has the meaning given by section 2(1) of the Regulation of Care (Scotland) Act 2001 (asp 8);

“nearest relative” has the meaning given by section 181 of this Act; and

“place of safety” and “public place” have the meanings given by section 198 of this Act.

Detention pending medical examination

200 Nurse’s power to detain pending medical examination

(1) This section applies where, otherwise than by virtue of this Act or the 1995 Act, a patient is—

(a) in hospital; and

(b) being given medical treatment.

(2) Where—

(a) a nurse of such class as may be prescribed by regulations considers that it is likely that the conditions mentioned in subsection (3) below are met in respect of the patient; and

(b) it is not practicable to secure the immediate medical examination of the patient by a medical practitioner,

the patient may, subject to subsection (4) below, be detained in hospital for a period of 2 hours (the “holding period”) for the purpose of enabling arrangements to be made for a medical examination of the patient to be carried out.

(3) The conditions referred to in subsection (2)(a) above are—

(a) that the patient has a mental disorder;

(b) that it is necessary for the protection of—

(i) the health, safety or welfare of the patient; or

- (ii) the safety of any other person,
that the patient be immediately restrained from leaving the hospital; and
- (c) that it is necessary to carry out a medical examination of the patient for the purpose of determining whether the granting of—
- 5 (i) an emergency detention certificate; or
(ii) a short-term detention certificate,
is warranted.
- (4) If the medical practitioner who first arrives to carry out a medical examination of the patient within the holding period arrives after the expiry of the first hour of the holding period, the period for which the patient may be held shall be the period beginning with the commencement of the patient's detention under subsection (2) above and ending one hour after the arrival of the medical practitioner.
- 10 (5) Where the patient is detained under subsection (2) above the nurse shall, as soon as practicable after the holding period begins, take all reasonable steps to inform a mental health officer of the detention.
- 15 (6) Where the patient is detained under subsection (2) above, the nurse shall, as soon as practicable after the holding period begins, record in writing—
- (a) the fact that the patient has been detained;
(b) the time at which the holding period began; and
- 20 (c) the nurse's reasons for believing that it is likely that the conditions mentioned in paragraphs (a) to (c) of subsection (3) are met in respect of the patient.
- (7) A record made under subsection (6) above shall, as soon as practicable after it is made, be delivered to the managers of the hospital in which the patient is detained by—
- (a) the nurse; or
- 25 (b) a person authorised for the purpose by the nurse.
- (8) Where the managers of a hospital receive a record by virtue of subsection (7) above, they shall, before the expiry of the period of 14 days beginning with the day on which they receive it, send a copy of it to the Commission.
- 30 (9) Any subordinate legislation made under section 25 of the Mental Health (Scotland) Act 1984 (c.36) (detention of patients already in hospital) shall, if in force immediately before the day on which this section comes into force, have effect on and after that day as if made under this section.

Cross-border transfer of patients

201 Cross-border transfer of patients

- 35 (1) Regulations may make provision for or in connection with—
- (a) the removal, of a patient whose detention in hospital is authorised by virtue of this Act or the 1995 Act, from Scotland to a place outwith Scotland (whether or not a place in the United Kingdom);
- 40 (b) the removal, of a patient who for the purposes of being given treatment for mental disorder is in hospital otherwise than by virtue of this Act or the 1995 Act, from Scotland to a place outwith the United Kingdom;

- (c) the removal to Scotland of a person subject to corresponding measures in England, Wales, Northern Ireland, the Isle of Man or the Channel Islands.
- (2) Where provision is made by regulations under paragraph (a) or (b) of subsection (1) above, the regulations shall—
- 5 (a) require a patient’s removal from Scotland to be authorised by warrant issued by the Scottish Ministers;
- (b) require a patient to be given notice of any decision that the patient be removed from Scotland under the regulations;
- 10 (c) require any such giving of notice to be effected, in a case where removal is to a place in the United Kingdom, at least 7 days before the date proposed for the patient’s removal;
- (d) require any such giving of notice to be effected, in a case where removal is to a place outwith the United Kingdom, at least 28 days before the date proposed for the patient’s removal;
- 15 (e) make provision for such a patient to be able to appeal against any such decision; and
- (f) provide for such a patient’s removal not to take place until proceedings on any such appeal have been concluded.
- (3) Where provision is made by regulations under paragraph (a) or (b) of subsection (1) above, the regulations may make provision for exceptions to provisions included in the regulations in order to comply with paragraph (b), (c), (d) or (f) of subsection (2) above.
- (4) Where provision is made by regulations under paragraph (c) of subsection (1) above, the regulations shall provide for removals to Scotland to take place only with the consent of the Scottish Ministers.
- 25 (5) Regulations under subsection (1) above may in particular—
- (a) make provision for things done under the law of a territory other than Scotland to be treated as things done under provisions of the law of Scotland;
- (b) confer powers and immunities on persons engaged in—
- 30 (i) escorting persons being moved under the regulations;
- (ii) pursuing persons who have absconded while being so moved;
- (iii) restraining persons who have absconded, or attempt to abscond, while being so moved;
- (c) authorise the Scottish Ministers to arrange for any of their functions under the regulations to be exercised by other persons;
- 35 (d) authorise the Scottish Ministers to give directions in connection with removals of persons under the regulations or any particular such removal or removals;
- (e) make provision amending provisions of this Act (other than this section) or any other enactment, or providing for any such provision or enactment to have effect with modification.
- 40 (6) Subsections (2) to (5) above are without prejudice to the generality of the powers conferred by subsection (1) above.
- (7) For the purposes of paragraph (c) of subsection (1) above, a person is subject to “corresponding measures” in a territory if under the law of that territory the person—

- (a) is subject to measures corresponding or similar to detention in hospital authorised by virtue of this Act or the 1995 Act; or
- (b) has a status corresponding or similar to that of a patient such as is mentioned in paragraph (b) of that subsection.

5

*Informal patients***202 Application to Tribunal in relation to unlawful detention**

- (1) This section applies where, otherwise than by virtue of this Act or the 1995 Act, a person (“the patient”)—
 - (a) has been admitted to a hospital; and
 - (b) is being given treatment there primarily for mental disorder.
- (2) A person mentioned in subsection (4) below may apply to the Tribunal for an order requiring the managers of the hospital to cease to detain the patient.
- (3) On an application under subsection (2) above the Tribunal shall—
 - (a) if satisfied that the patient is being unlawfully detained in the hospital, make the order mentioned in subsection (2) above; or
 - (b) if not satisfied about the matter mentioned in paragraph (a) above, refuse the application.
- (4) The persons referred to in subsection (2) above are—
 - (a) the patient;
 - (b) if the patient has nominated a person to be the named person under section 177 of this Act (and that nomination has not been revoked), that named person;
 - (c) a mental health officer;
 - (d) the Commission;
 - (e) any guardian of the patient;
 - (f) any welfare attorney of the patient; and
 - (g) any other person having an interest in the welfare of the patient.
- (5) Subsection (2) above is without prejudice to any right that a person has by virtue of any enactment or rule of law.

PART 16

ABSCONDING

*Absconding***203 Absconding etc. by patients subject to compulsory treatment order**

- (1) A patient who is subject to a compulsory treatment order authorising detention in hospital and who—
 - (a) absconds from—
 - (i) any place where the patient is kept pending removal to hospital under the order; or

35

(ii) the hospital in which, under the order, the patient is being or is to be detained; or

(b) while being removed to hospital under the order or transferred under section 87 of this Act, absconds,

5 is liable to be taken into custody and dealt with in accordance with section 205 of this Act.

(2) A patient who is subject to such an order and in respect of whom—

10 (a) the suspension under section 90 of this Act of a detention requirement has the effect of suspending the authority for the detention of the patient under the order; but

(b) a condition under subsection (5) of that section requires—

(i) that the patient be kept in the charge of an authorised person or reside continuously or for or at specified times at a specified address; or

15 (ii) that the patient, on being recalled or on the expiry of a specified period or on or after the occurrence of a specified event, return to the hospital in which the patient was detained under the order or go to such other place as may be specified,

20 and who absconds from the charge of that authorised person or otherwise fails to comply with the condition is liable to be taken into custody and dealt with in accordance with section 205 of this Act.

(3) A patient who is subject to a compulsory treatment order imposing a requirement that the patient reside at a specified address and who fails to comply with that requirement is liable to be taken into custody and dealt with in accordance with section 205 of this Act.

25 (4) A patient who is subject to a compulsory treatment order imposing a requirement that the patient obtain the approval of the mental health officer to any proposed change of address and who changes address without having obtained that approval is liable to be taken into custody and dealt with in accordance with section 205 of this Act.

30 (5) A patient who has been taken into custody under this section and who absconds from that custody remains liable to be taken into custody and dealt with in accordance with section 205 of this Act.

204 Absconding etc. by other patients

(1) Subsection (2) below applies to a patient—

(a) who is subject to an interim order authorising detention or a short-term detention certificate;

35 (b) who is being detained in pursuance of an extension certificate;

(c) to whom an emergency detention certificate applies; or

(d) who is being detained in hospital under section 200 of this Act.

(2) A patient to whom this subsection applies and who absconds from—

40 (a) any place where the patient is kept pending removal to hospital under the order or certificate; or

(b) the hospital in which, under the order or certificate, the patient is detained,

is liable to be taken into custody and dealt with in accordance with section 205 of this Act.

(3) A patient who is subject to an interim order imposing a requirement that the patient reside continuously or for or at specified times at a specified address and who fails to comply with that requirement is liable to be taken into custody and dealt with in accordance with section 205 of this Act.

(4) A patient who is subject to an interim order authorising detention or a short-term detention certificate and in respect of whom—

(a) the suspension under section 90 of this Act of a detention requirement has the effect of suspending the detention under the order or certificate; but

(b) a condition under subsection (5) of that section requires—

(i) that the patient be kept in the charge of an authorised person or reside continuously or for or at specified times at a specified address; or

(ii) that the patient, on being recalled or on the expiry of a specified period or on or after the occurrence of a specified event, return to the hospital in which the patient was detained under the order or go to such other place as may be specified,

and who absconds from the charge of that authorised person or otherwise fails to comply with any such condition is liable to be taken into custody and dealt with in accordance with section 205 of this Act.

(5) In this section, “extension certificate” has the same meaning as in section 41 of this Act.

205 Taking into custody and return of absconding patients

(1) A person specified in subsection (3)(a) below may, during the period specified in subsection (4) below—

(a) take into custody any patient who, under sections 203 or 204 of this Act, is liable to be taken into custody;

(b) return the patient to the hospital in which the patient was detained or, as the case may be, take the patient to the hospital in which the patient was to be detained or, if that is not appropriate or practicable, take the patient to any other place considered appropriate by the responsible medical officer;

(c) return or take the patient to such other place as the patient absconded from or at which the patient failed to reside or, if that is not appropriate or practicable, take the patient to any other place considered appropriate by the responsible medical officer.

(2) The person specified in subsection (3)(b) below may, during the period specified in subsection (4) below—

(a) take into custody any patient in respect of whom a detention requirement is suspended under section 90 of this Act on condition that the patient be kept in charge of that person and who, under section 203 or 204 of this Act is liable to be taken into custody; and

(b) resume the charge of the patient or, if that is not appropriate or practicable, take the patient to any place considered appropriate by the responsible medical officer.

- (3) The—
- (a) persons referred to in subsection (1) above are—
 - (i) a mental health officer;
 - (ii) a constable;
 - 5 (iii) a member of staff of any hospital in which a patient who is subject to a compulsory treatment order could be detained or of any establishment at which such a patient could under such an order be required to reside; and
 - (iv) any other person authorised for the purposes of that subsection by the responsible medical officer;
 - 10 (b) person referred to in subsection (2) above is the person who is authorised under section 90(5)(a) of this Act to have charge of the patient.
- (4) The period referred to in subsection (1) above is—
- (a) in the case of a patient who is subject to a compulsory treatment order, the period of 3 months beginning with the day—
 - 15 (i) when the patient absconded; or
 - (ii) when the patient's conduct or failure first gave rise to liability to be taken into custody;
 - (b) in any other case, the period ending with the expiry of the order, certificate, report or, as the case may be, provision under or in pursuance of which the patient was to be detained.
- 20
- (5) The expiry, during the period referred to in subsection (1) above, of the authorised period in relation to the compulsory treatment order to which a patient is subject does not affect the powers conferred by this section.
- (6) The powers conferred by subsections (1) and (2) above include power to use reasonable force in their exercise.
- 25
- (7) If, on the application of a constable, it appears to the sheriff or a justice—
- (a) that it is necessary to enter premises for the purpose of exercising a power conferred by this section; and
 - (b) that consent to such entry cannot reasonably be sought or, having been sought, has not been given,
- 30
- the sheriff or justice may grant warrant to the constable to enter the premises for that purpose and to open lockfast places on the premises.
- (8) A patient who is, under section 203 or 204 of this Act, liable to be taken into custody ceases to be so liable—
- 35 (a) on returning to the hospital or other place from which the patient absconded or arriving at the hospital in which the patient was to be detained; or
 - (b) on being returned or taken either there or to such other place as is considered appropriate by the responsible medical officer under subsection (1)(b) or (c) or (2)(b) above.

*Effect of unauthorised absence***206 Effect of unauthorised absence**

- 5 (1) References in this section and sections 207 to 211 of this Act to a patient’s unauthorised absence are references to a patient’s being liable, under section 203 of this Act, to be taken into custody and dealt with under section 205 of this Act.
- (2) Subject to sections 207 to 211 of this Act, a patient’s absence without authority does not affect—
- 10 (a) the compulsory treatment order, short-term detention certificate or extension certificate; or
- (b) the application to the patient of the provision of this Act, under or in pursuance of which the patient was, or was to be, detained.
- (3) In this section, “extension certificate” has the same meaning as in section 41 of this Act.

207 Effect of long unauthorised absence ending more than 2 months before expiry of compulsory treatment order

- 15 (1) Where the unauthorised absence of a patient who is subject to a compulsory treatment order—
- (a) lasted longer than 28 consecutive days; and
- (b) ceased more than 2 months before the day when the compulsory treatment order would, apart from this subsection, cease to authorise the measures specified in it,
- 20 the order shall, subject to subsection (2) below, cease to authorise those measures at the expiry of the period of 14 days beginning with the day when the patient’s unauthorised absence ceased.
- (2) If the patient’s responsible medical officer—
- 25 (a) carries out a review in respect of the compulsory treatment order by complying with the requirements set out in subsection (3) of section 60 of this Act; and
- (b) is, for the purposes of this section and having had regard to any views expressed by persons consulted under paragraph (c) of that subsection, satisfied as to the matters referred to in paragraphs (a) and (b) of subsection (2) of section 66 of this Act,
- 30 that officer shall make a determination under this section that subsection (1) above shall not apply to the compulsory treatment order.
- (3) Any determination under this section shall be made before the expiry of the period of 14 days referred to in subsection (1) above.

208 Effect of long unauthorised absence ending less than 2 months before expiry of compulsory treatment order

- 35 (1) Where the unauthorised absence of a patient who is subject to a compulsory treatment order—
- (a) lasted longer than 28 consecutive days; and

(b) ceased within the period beginning 2 months and ending 15 days before the day when the compulsory treatment order would, apart from this subsection, cease to authorise the measures specified in it,

the order shall, subject to the following provisions of this section, cease to authorise those measures at the expiry of the period of 14 days beginning with the day when the patient's unauthorised absence ceased.

(2) If the patient's responsible medical officer—

(a) carries out a review in respect of the compulsory treatment order by complying with the requirements set out in subsection (3) of section 60 of this Act; and

(b) is, for the purposes of this section and having regard to any views expressed by persons consulted under paragraph (c) of that subsection, satisfied as to the matters referred to in paragraph (a) and (b) of subsection (2) of section 66 of this Act,

that officer shall, before the expiry of the period of 14 days referred to in subsection (1) above, make one of the determinations set out in subsection (3) below.

(3) Those determinations are—

(a) a determination that subsection (1) above shall not apply to the compulsory treatment order;

(b) where, had it not been for the unauthorised absence of the patient, a first review of the order would have been carried out by the responsible medical officer, a determination that the order continue to authorise the measures authorised by it for a period of 6 months beginning with the day when the order would otherwise have ceased to authorise the measures specified in it;

(c) where, had it not been for that absence, a further review of the order would have been carried out, a determination that the order continue to authorise the measures authorised by it for a period of 12 months beginning with the day when the order would otherwise have ceased to authorise the measures specified in it.

(4) If the responsible medical officer carries out the review mentioned in subsection (2)(a) above in the way there mentioned and, for the purposes of this section and having regard to any views expressed by persons consulted under section 60(3)(c) of this Act is satisfied as to the matters referred to in subsection (3) of section 68 of this Act, that officer shall, before the expiry of the period of 14 days referred to in subsection (1) above, comply with the requirements mentioned in subsection (2) of section 68 of this Act.

(5) Where the responsible medical officer has, in accordance with subsection (4) above, complied with the requirements there referred to, the compulsory treatment order shall continue in effect as if extended and varied by an order of the Tribunal under section 79 of this Act.

209 Effect of unauthorised absence ending simultaneously with or within 14 days before the expiry of compulsory treatment order

(1) Where the unauthorised absence of a patient who is subject to a compulsory treatment order—

(a) ceases on the day that the order to which the patient is subject would, apart from this subsection, cease to authorise the measures specified in it; or

(b) ceased within a period of 14 days ending with that day,

the order shall, for a period of 14 days beginning with the day when the patient's unauthorised absence ceased but subject to subsection (2) below, continue in effect as if extended by a determination under section 66 of this Act.

5 (2) Subsections (2) to (5) of section 208 of this Act apply in the case referred to in subsection (1) above as they apply in the case referred to in subsection (1) of that section.

10 (3) Where, in consequence of anything done under the provisions applied by subsection (2) above, the compulsory treatment order to which the patient is subject is extended or extended and modified by a determination or order occurring after the day referred to in subsection (1)(a) above, the extension or extension and modification shall be treated as having effect as from that day.

(4) Where, in the case referred to in subsection (1) above, the patient's unauthorised absence begins—

15 (a) after the making of a determination extending the compulsory treatment order to which the patient is subject or an order of the Tribunal extending and modifying that order; but

(b) before that extension or extension and modification comes into effect,

20 and continues beyond the day of the event referred to in paragraph (b) above, that extension or extension and modification shall be treated as not having come into effect.

210 Effect of unauthorised absence ending after expiry of compulsory treatment order

(1) Where the unauthorised absence of a patient who is subject to a compulsory treatment order ceases—

25 (a) within a period of 3 months beginning with the day on which it began; and

(b) after the day when a compulsory treatment order to which the patient was subject would, but for this subsection, have ceased to authorise the measures specified in it,

30 the order shall be treated as having continued in effect and, subject to subsection (2) below, as continuing in effect until the end of the period of 14 days beginning with the day on which the patient's unauthorised absence ceased.

(2) Subsections (2) to (5) of section 208 of this Act apply in the case referred to in subsection (1) above as they apply in the case referred to in subsection (1) of that section.

35 (3) Where, in consequence of anything done under the provisions applied by subsection (2) above, the compulsory treatment order to which the patient was subject is extended or extended and modified, the extension or extension and modification shall be treated as having effect as from the day on which, but for this section, the order would have ceased to authorise the measures specified in it.

211 Effect of unauthorised absence of patient subject to short-term detention certificate

40 Where the unauthorised absence of a patient who is subject to a short-term detention certificate ceases within the period of 13 days ending with the day on which the certificate would, but for this section, have ceased to authorise the measures specified in

it, the certificate shall continue to authorise those measures until the end of the period of 14 days beginning with the day when the patient's unauthorised absence ceased.

212 Patients from other jurisdictions

- 5 (1) Regulations may make provision applying sections 203 to 205 of this Act to persons in Scotland who are subject to corresponding measures in England, Wales, Northern Ireland, the Isle of Man or the Channel Islands.
- (2) Those regulations may make such modifications of those sections in that application as the Scottish Ministers think fit.
- 10 (3) The reference in subsection (1) above to persons subject to corresponding measures shall be construed in accordance with section 201(7) of this Act.

PART 17

OFFENCES

213 Non-consensual sexual acts

- 15 (1) Subject to subsection (5) below, a person who engages in an act mentioned in subsection (2) below with, or towards, a patient shall be guilty of an offence if, at the time of the act, the patient—
- (a) does not consent to the act; or
 - (b) by reason of mental disorder, is incapable of consenting to the act.
- (2) The acts referred to in subsection (1) above are—
- 20 (a) sexual intercourse (whether vaginal or anal); and
- (b) any other sexual act.
- (3) For the purposes of subsection (1)(a) above, a patient shall not be regarded as consenting if the patient purports to consent as a result of—
- 25 (a) being placed in a state of fear; or
- (b) being subjected to any—
- (i) threat;
 - (ii) intimidation;
 - (iii) deceit; or
 - (iv) persuasion,
- 30 which vitiates the patient's consent.
- (4) For the purposes of subsection (1)(b) above, a patient is incapable of consenting to an act if the patient is unable to—
- 35 (a) understand what the act is;
- (b) form a decision as to whether to engage in the act (or as to whether the act should take place); or
- (c) communicate any such decision.

(3) Where a person is charged with an offence under subsection (1) above, it shall be a defence for such person to prove that, at the time of the act, such person did not know, and could not reasonably have been expected to know, that the mentally disordered person was suffering from a mental disorder.

5 (4) A person guilty of an offence under subsection (1) above is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or to both.

(5) References in this section to the provision of care services are references to such services being provided—

(a) by virtue of a contract of employment or other contract; or

10 (b) in such other circumstances as may be prescribed by order made by the Scottish Ministers.

(6) In this section—

“care service” has the meaning given by paragraphs (a), (b), (e), (g), (h), (k) and (n) of section 2(1) of the Regulation of Care (Scotland) Act 2001 (asp 8); and

15 “sexual act”—

(a) does not include any activity which a reasonable person would regard as sexual only with knowledge of the intentions, motives or feelings of the parties; but

20 (b) subject to that, means any activity which such a person would regard as sexual in all the circumstances.

216 Notification requirements for offenders under sections 213 and 215

In Schedule 1 to the Sex Offenders Act 1997 (c.51) (sexual offences to which Part I applies), in paragraph 2(1), after paragraph (e) there shall be added—

“(f) offences under—

25 (i) section 213(1) of the Mental Health (Scotland) Act 2002 (asp 00) (non-consensual sexual acts); and

(ii) section 215(1) of that Act (persons providing care services: sexual offences).”.

217 Ill-treatment and wilful neglect of mentally disordered person

30 (1) This section applies to a person (a “relevant person”) who—

(a) is an individual employed in, or contracted to provide services in or to, a hospital;

(b) not being the Scottish Ministers, is a manager of a hospital;

(c) provides a care service; or

(d) is an individual who, otherwise than—

35 (i) by virtue of a contract of employment or other contract with any person; or

(ii) as a volunteer for a voluntary organisation,

provides care or treatment.

(2) A relevant person who—

(a) whether under this Act or otherwise—

(i) is providing care or treatment; or
(ii) purports to provide care or treatment,
to a patient; and

(b) ill-treats, or wilfully neglects, that patient,
shall be guilty of an offence.

(3) A person guilty of an offence under subsection (2) above shall be liable—

(a) on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both;

(b) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or to both.

(4) In this section, “care service” has the meaning given by paragraphs (a), (b), (e), (g), (h), (k) and (n) of section 2(1) of the Regulation of Care (Scotland) Act 2001 (asp 8).

218 Obstruction

(1) A person who—

(a) refuses to allow a person authorised by virtue of this Act access to any premises;

(b) refuses to allow access to a mentally disordered person by a person authorised by virtue of this Act to have such access;

(c) refuses to allow the interview or examination of a mentally disordered person by a person authorised by virtue of this Act to interview or examine such person;

(d) persists in being present when requested to withdraw by a person authorised by virtue of this Act to interview or examine, in private, a mentally disordered person;

(e) refuses to produce any document or record to a person authorised by virtue of this Act to require the production of such document or record; or

(f) otherwise obstructs a person in the exercise of any functions conferred on such person by virtue of this Act,

shall be guilty of an offence.

(2) A mentally disordered person shall not be guilty of an offence under subsection (1) above if the person mentioned in that subsection—

(a) who is authorised by virtue of this Act, is so authorised; or

(b) who is exercising functions conferred on that person by virtue of this Act, is exercising those functions,

in relation to that mentally disordered person.

(3) In any proceedings against a person for an offence under subsection (1) above it shall be a defence for the accused to show—

(a) in the case of paragraph (b) of that subsection, that the accused had a reasonable excuse for refusing to allow access to the mentally disordered person;

(b) in the case of paragraph (c) of that subsection, that the accused had a reasonable excuse for refusing to allow the interview or, as the case may be, examination of the mentally disordered person;

- (c) in the case of paragraph (e) of that subsection, that the accused had a reasonable excuse for refusing to produce any document or, as the case may be, record; and
- (d) in the case of paragraph (f) of that subsection, that the accused had a reasonable excuse for obstructing a person in the exercise of functions conferred on such person by virtue of this Act.

- 5
- (4) A person guilty of an offence under subsection (1) above shall be liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 3 on the standard scale or to both.

PART 18

APPEALS

10

219 Appeal to sheriff principal against certain decisions of the Tribunal

- (1) This section applies to the following decisions of the Tribunal—
- (a) a decision under section 40(2) of this Act refusing an application for revocation of a short-term detention certificate;
 - 15 (b) a decision under section 53(4)(a) or (b) of this Act making or refusing to make a compulsory treatment order;
 - (c) a decision to make an order under section 77(3)(c) or (d) of this Act confirming the determination of a patient's responsible medical officer extending a compulsory treatment order;
 - 20 (d) a decision to make an order under section 79(1)(a) or (b) of this Act on an application by the patient's responsible medical officer for an order extending and varying a compulsory treatment order;
 - (e) a decision to make an order under section 79(2)(c) or (d) of this Act on an application for revocation of the determination of a patient's responsible medical officer extending a compulsory treatment order;
 - 25 (f) a decision to make an order under section 79(3)(b) or (c) of this Act on an application under section 76(2)(a) of this Act to revoke a compulsory treatment order;
 - (g) a decision to make an order under section 79(4)(a) of this Act on an application by a patient's responsible medical officer to vary a compulsory treatment order;
 - 30 (h) a decision to make an order under section 79(4)(b) of this Act refusing an application under section 76(2)(b) of this Act to vary a compulsory treatment order;
 - (i) a decision allowing or refusing an appeal to the Tribunal against the transfer of a person to a hospital under section 88 or 143 of this Act;
 - 35 (j) a decision allowing or refusing an appeal to the Tribunal against the transfer of a person to a state hospital under section 89 or 144 of this Act; and
 - (k) a decision granting or refusing an application for an order requiring the managers of the hospital to cease to detain a patient under section 202 of this Act.
- 40 (2) A relevant party to proceedings before the Tribunal may appeal to the sheriff principal against a decision to which this section applies.

- (3) An appeal to the sheriff principal under subsection (2) above shall be to the sheriff principal—
- (a) of the sheriffdom in which the person to whom the decision relates is resident at the time when the appeal is lodged;
 - 5 (b) where the person to whom the decision relates is detained in a hospital at the time when the appeal is lodged, of the sheriffdom in which the hospital is situated; or
 - (c) in any other case, of any sheriffdom.
- (4) If the sheriff principal to whom an appeal is made considers that the appeal raises an important or difficult question of law that makes it appropriate to remit the appeal to the Court of Session the sheriff principal may—
- 10 (a) *ex proprio motu*; or
 - (b) on the motion of any party to the appeal,
do so.
- (5) Except in the cases mentioned in subsections (6) and (7) below, in this section “relevant party” means—
- 15 (a) the person to whom the decision relates;
 - (b) that person’s named person;
 - (c) the mental health officer specified in that person’s care plan; and
 - (d) that person’s responsible medical officer.
- (6) Where the person to whom the decision relates is a restricted patient, “relevant party” means—
- 20 (a) the person to whom the decision relates;
 - (b) that person’s named person; and
 - (c) the Scottish Ministers.
- (7) Where the appeal is against a decision mentioned in paragraph (k) of subsection (1) above, “relevant party” means—
- 25 (a) the person to whom the decision relates;
 - (b) that person’s named person;
 - (c) the managers of the hospital; and
 - 30 (d) if the person who applied for the order does not fall within paragraph (a) or (b) above, the person who applied for the order.

220 Appeal to Court of Session against decision of the sheriff principal

- 35 (1) A relevant party to an appeal to the sheriff principal under section 219(2) of this Act may appeal to the Court of Session against the decision of the sheriff principal allowing or refusing the appeal.
- (2) In subsection (1) above, “relevant party” has the same meaning as in section 219(5) of this Act.

221 Appeals to Court of Session against decisions made under section 133

- (1) This section applies to the following decisions of the Tribunal—
- (a) a decision under section 133(2) of this Act refusing an application under section 131 or 132 of this Act;
 - 5 (b) a decision to make an order revoking a compulsion order under section 133(3) of this Act;
 - (c) a decision to make an order revoking a restriction order under section 133(5) of this Act;
 - 10 (d) a decision to make an order conditionally discharging a restricted patient under section 133(6) of this Act; and
 - (e) a decision to make an order varying a compulsion order under section 133(7) of this Act.
- (2) A relevant party to proceedings before the Tribunal may appeal to the Court of Session against a decision to which this section applies.
- 15 (3) In this section “relevant party” means—
- (a) the person to whom the decision relates;
 - (b) that person’s named person; and
 - (c) the Scottish Ministers.

222 Appeal by Scottish Ministers under section 221: suspension of Tribunal’s decision

- 20 (1) Where the Scottish Ministers appeal under section 221(2) of this Act against any decision of the Tribunal under section 133 of this Act, the Court of Session may, on the motion of the Scottish Ministers, order—
- (a) that the restricted patient in respect of whom the Tribunal’s decision was made shall continue, subject to subsection (2) below, to be detained; and
 - 25 (b) that both the compulsion order and restriction order to which the patient is subject shall continue to have effect accordingly.
- (2) An order under subsection (1) above has the effect of continuing the patient’s detention—
- 30 (a) in a case where no appeal is made to the House of Lords against the decision of the Court of Session under section 221(2) of this Act, until the expiry of the time allowed to so appeal to the House of Lords; or
 - (b) in a case where such an appeal is made, until it is abandoned or finally determined.

223 Appeals: general provisions

- 35 (1) An appeal—
- (a) to the sheriff principal under section 219(2) of this Act; or
 - (b) to the Court of Session under section 221(2) of this Act,
- may be made only on one or more of the grounds mentioned in subsection (2) below.
- (2) The grounds referred to in subsection (1) above are—

- (a) that the Tribunal’s decision was based on an error of law;
- (b) that there has been a procedural impropriety in the conduct of any hearing by the Tribunal on the application;
- (c) that the Tribunal has acted unreasonably in the exercise of its discretion;
- 5 (d) that the Tribunal’s decision was not supported by the facts found to be established by the Tribunal.
- (3) The Tribunal may be a party to an appeal under section 219(2) or 221(2) and in any appeal from the decision of the sheriff principal under section 220(1).
- (4) The court may, where it considers it appropriate, order the Tribunal to be represented at
10 any hearing of an appeal under section 219(2), 220(1) or 221(2).
- (5) In allowing an appeal under section 219(2), 220(1) or 221(2) of this Act the court—
- (a) shall set aside the decision of the Tribunal; and
- (b) shall—
- 15 (i) if it considers that it can properly do so on the facts found to be established by the Tribunal, substitute its own decision; or
- (ii) remit the case to the Tribunal for consideration anew.
- (6) If the court remits a case under paragraph (b)(ii) of subsection (5) above, the court may—
- (a) direct that the Tribunal be differently constituted from when it made the decision;
20 and
- (b) issue such other directions to the Tribunal about the consideration of the case as it considers appropriate.
- (7) Regulations may specify the period within which an appeal under section 219(2), 220(1) or 221(2) of this Act shall be made.
- 25 (8) In this section, “the court” means the sheriff principal or the Court of Session as the case may be.

PART 19

GENERAL

224 Power to prescribe forms

30 Regulations may prescribe—

- (a) the form of any document that is required or authorised to be prepared by virtue of this Act; and
- (b) circumstances in which a form prescribed under paragraph (a) above for a document shall, or may, be used for the document.

35 225 Orders, regulations and rules

- (1) Any power conferred by this Act on the Scottish Ministers to make orders, regulations or rules shall be exercisable by statutory instrument.

(2) Any power conferred by this Act on the Scottish Ministers to make orders, regulations or rules—

(a) may be exercised so as to make different provision for different cases or descriptions of case or for different purposes; and

(b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers consider appropriate.

(3) A statutory instrument containing an order, regulations or rules made under this Act (other than an order under section 215(5)(b) or 231(2) or regulations under section 54(2) or 201) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) A statutory instrument containing—

(a) regulations under section 54(2) or 201 of this Act; or

(b) an order under section 215(5)(b) of this Act,

shall not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

226 Directions

(1) Any power conferred by this Act to give a direction shall include power to vary or revoke the direction.

(2) Any direction given under this Act shall be in writing.

227 Meaning of “mental disorder”

In this Act “mental disorder” means any—

(a) mental illness;

(b) personality disorder; or

(c) learning disability,

however caused or manifested; and cognate expressions shall be construed accordingly.

228 Interpretation

(1) In this Act, unless the context otherwise requires—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995 (c.46);

“advance statement” has the meaning given by section 187 of this Act;

“approved medical practitioner” has the meaning given by section 19(2) of this Act;

“assessment order” means an order made under section 52C of the 1995 Act;

“care plan” has the meaning given by section 51(2) of this Act;

“the Commission” means the Mental Welfare Commission for Scotland;

“compulsion order” means an order made under section 57A of the 1995 Act;

“compulsory treatment order” means an order made under section 53(4)(a) of this Act;

“designated medical practitioner” has the meaning given by section 161(2) of this Act;

“emergency detention certificate” has the meaning given by section 31(1) of this Act;

5 “guardian” means a person appointed as a guardian under the Adults with Incapacity (Scotland) Act 2000 (asp 4) who has power by virtue of section 64(1)(a) or (b) of that Act in relation to the personal welfare of a person;

“Health Board” means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c.29);

10 “hospital” means—

- (a) any health service hospital (as defined in section 108(1) of the National Health Service (Scotland) Act 1978 (c.29));
- (b) any independent health care service; or
- (c) any state hospital;

15 “hospital direction” means a direction made under section 59A of the 1995 Act;

“hospital unit” means a part of a hospital that is treated as a separate unit;

“independent health care service” has the meaning given by section 2(5) of the Regulation of Care (Scotland) Act 2001 (asp 8);

20 “interim compulsion order” means an order made under section 53 of the 1995 Act;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);

“managers”, in relation to a hospital, means—

- 25 (a) in the case of a hospital vested in the Scottish Ministers for the purposes of their functions under the National Health Service (Scotland) Act 1978 (c.29), the Health Board or Special Health Board responsible for the administration of the hospital;
- (b) in the case of a hospital vested in a National Health Service trust, the directors of the trust;
- 30 (c) in the case of an independent health care service which is registered under Part 1 of the Regulation of Care (Scotland) Act 2001 (asp 8), the person providing the service; and
- (d) in the case of a state hospital—
 - 35 (i) where the Scottish Ministers have delegated the management of the hospital to a Health Board, Special Health Board, National Health Service trust or the Common Services Agency for the Scottish Health Service, that Board, trust or Agency;
 - (ii) where the management of the hospital has not been so delegated, the Scottish Ministers;

40 “medical practitioner” means registered medical practitioner;

“medical records” has the meaning given by section 77(1) of the Regulation of Care (Scotland) Act 2001 (asp 8);

“medical treatment” means treatment for mental disorder; and for this purpose “treatment” includes—

- (a) nursing;
- (b) care;
- 5 (c) habilitation (including education, and training in work, social and independent living skills); and
- (d) rehabilitation (read in accordance with paragraph (j) above);

“mental health officer” means a person appointed (or deemed to be appointed) under section 27(1) of this Act, and “the mental health officer”, in relation to a patient, means a mental health officer having responsibility for the patient’s case;

“mental health report” has the meaning given by section 45(4) of this Act;

“National Health Service trust” means a body established by order under section 12A(1) of the National Health Service (Scotland) Act 1978 (c.29);

“notice” means notice in writing;

15 “patient” means a person who has, or appears to have, a mental disorder;

“primary carer”, in relation to a patient, means the individual who, otherwise than—

- (a) by virtue of a contract of employment or other contract with any person; or
- (b) as a volunteer for a voluntary organisation,

20 provides all, or most, of the care for, and support to, the patient; and includes, in the case where the patient is in hospital, the individual who, before the patient was admitted to hospital, provided all, or most, of the care for, and support to, the patient;

“prison” includes any prison other than a naval, military or air force prison;

25 “regulations” means regulations made by the Scottish Ministers;

“restricted patient” has the meaning given by section 122 of this Act;

“restriction order” means an order made under section 59 of the 1995 Act;

“short-term detention certificate” has the meaning given by section 35(1) of this Act;

30 “social circumstances report” has the meaning given by section 38(2)(a) of this Act;

“Special Health Board” means a board constituted by order under section 2(1)(b) of the National Health Service (Scotland) Act 1978 (c.29);

35 “state hospital” means a hospital provided under section 102(1) of the National Health Service (Scotland) Act 1978 (c.29);

“transfer for treatment direction” has the meaning given by section 97 of this Act;

“treatment order” means an order made under section 52L of the 1995 Act;

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

40 “voluntary organisation” means a body, other than a public or local authority, the activities of which are not carried on for profit;

“welfare attorney” shall be construed in accordance with section 16(2) of the Adults with Incapacity (Scotland) Act 2000 (asp 4); and

“young offenders institution” has the same meaning as in the Prisons (Scotland) Act 1989 (c.45).

- 5 (2) In this Act, unless the context otherwise requires, a reference to the Tribunal is, where the power conferred by paragraph 6(1) of schedule 2 is exercised, to be construed as a reference to the tribunal concerned.
- (3) References in this Act to the giving of medical treatment to a person include references to medical treatment being performed on a person.
- 10 (4) References in this Act to a patient’s responsible medical officer appointed by the managers of a hospital under any provision of this Act include references to any medical practitioner on the staff of the hospital authorised by the managers to be the responsible medical officer; and any such authorisation may be given generally or in a particular case or class of case or for a particular purpose.

15 **229 Minor and consequential amendments and repeals**

- (1) Schedule 3 to this Act, which contains minor amendments and amendments consequential on the provisions of this Act, shall have effect.
- (2) The enactments mentioned in schedule 4 to this Act are hereby repealed to the extent specified in the second column of that schedule.

20 **230 Transitional provisions etc.**

The Scottish Ministers may by order make such provision as they consider necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.

231 Short title and commencement

- 25 (1) This Act may be cited as the Mental Health (Scotland) Act 2002.
- (2) The provisions of this Act, other than this section and sections 225 and 230, shall come into force on such day as the Scottish Ministers may by order appoint; and different days may be appointed for different purposes.

SCHEDULE 1
(introduced by section 2)

THE MENTAL WELFARE COMMISSION FOR SCOTLAND

Status

- 5 1 The Commission shall not be regarded as the servant or agent of the Crown, or as having any status, immunity or privilege of the Crown, nor shall its members or employees be regarded as civil servants, nor its property as property of or held on behalf of the Crown.

General powers

- 10 2 The Commission may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions; and without prejudice to that generality the Commission may in particular—
- (a) acquire and dispose of land and other property; and
 - (b) enter into contracts.

15 *Membership*

- 3 (1) The Commission shall consist of the following members appointed by Her Majesty on the recommendation of the Scottish Ministers—
- (a) a member appointed to serve as convener;
 - (b) a minimum of three members, who have such qualifications, training and experience as may be prescribed by regulations, appointed to serve as medical commissioners; and
 - (c) other members who meet such other requirements as may be so prescribed.
- (2) The person who holds the post of chief officer of the Commission shall—
- (a) be a member *ex officio* of the Commission; and
 - (b) cease automatically to hold office as such member on ceasing to hold that post.
- (3) The Scottish Ministers may, after consulting such persons, or groups of persons, as they consider appropriate, by order—
- (a) amend sub-paragraph (1) above by—
 - (i) adding to that sub-paragraph categories of members; or
 - (ii) removing from it a category which is for the time being set out there;
 - (b) specify the number (including a minimum or maximum number) of—
 - (i) the members of the Commission; or
 - (ii) any category of member,
that may be appointed under sub-paragraph (1) above;
 - (c) specify the maximum term of appointment (including any reappointment) of a member appointed under that sub-paragraph; or
 - (d) amend sub-paragraph (2) above by adding to it further posts, the holders of which shall—
- 35

- (i) be members *ex officio* of the Commission; and
- (ii) cease to be such members on ceasing to hold such posts.

Terms of office etc.

- 4 (1) The provisions of this paragraph apply as respects a person appointed as member under
 5 paragraph 3(1) above.
- (2) Subject to the provisions of this schedule, the appointment shall be on such terms and conditions as the Scottish Ministers may determine.
- (3) Subject to section 23 of the Ethical Standards in Public Life etc. (Scotland) Act 2000
 10 (asp 7), a person holds and vacates office as member in accordance with the terms of appointment of that person.
- (4) A person may resign office as member at any time by notice to the Scottish Ministers.

Eligibility for reappointment

- 5 Subject to paragraph 3(3)(c) above, a person who ceases, otherwise than by virtue of section 23 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), to be
 15 a member of the Commission is eligible for reappointment.

Remuneration, pensions, allowances etc.

- 6 The Commission shall pay—
- (a) to its members (and to the members of its committees and sub-committees who are not members of the Commission) such remuneration and allowances—
 20 (i) on such terms; and
 (ii) subject to such conditions,
 as the Scottish Ministers may determine;
- (b) to, or in respect of, persons who have been a member of it (or such members of committees and sub-committees as are mentioned in paragraph (a) above) such
 25 pensions, allowances and gratuities—
 (i) on such terms; and
 (ii) subject to such conditions,
 as the Scottish Ministers may determine; or
- (c) to any person who ceases, other than on the expiry of a term of office, to be a
 30 member of it, such compensation as the Scottish Ministers may determine.

Appointment etc. of chief officer and other staff

- 7 (1) Subject to sub-paragraphs (2) and (3) below, the Commission—
 (a) shall appoint a chief officer; and
 (b) may appoint such other staff as it considers appropriate,
 35 on such terms and conditions as it may, with the approval of the Scottish Ministers, determine.

- (2) A member of the Commission may not be appointed as a member of its staff.
- (3) The Commission shall obtain the approval of the Scottish Ministers before appointing a chief officer.
- (4) The Commission may pay to the members of its staff, including its chief officer, (referred to in this paragraph collectively as “employees”) such remuneration and allowances as the Scottish Ministers may determine.
- (5) The Commission may—
- (a) pay, or make arrangements for the payment of;
 - (b) make payments towards the provision of; and
 - (c) provide and maintain schemes (whether contributory or not) for the payment of, such pensions, allowances and gratuities to or in respect of such of its employees, or former employees, as the Scottish Ministers may determine.
- (6) The reference in sub-paragraph (5) above to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment or reduction in remuneration.
- (7) A determination under sub-paragraph (4) or (5) above may make different provision for different cases or descriptions of case.

Regulations as to proceedings and delegation of functions

- 8 The Scottish Ministers, after consulting such persons, or groups of persons, as they consider appropriate, may by regulations make provision as to—
- (a) the appointment of and composition of committees and sub-committees of the Commission (including committees and sub-committees which consist of or include persons who are not members of the Commission);
 - (b) the procedure of the Commission and of any of its committees or sub-committees (including the constitution of a quorum and the validation of proceedings in the event of vacancies or of defects in appointment);
 - (c) the exercise of functions by any such committee or sub-committee;
 - (d) the delegation by the Commission of any of its functions to any of its committees, sub-committees, members or staff; and
 - (e) what functions the Commission shall not so delegate.

Accounts

- 9 The following provisions of the National Health Service (Scotland) Act 1978 (c.29) shall continue to apply to the Commission as they apply to a Special Health Board—
- (a) section 85 (which makes provision for payment of funds by the Scottish Ministers towards expenditure attributable to performance of functions by the Board);
 - (b) section 85A(1) and (3) (which imposes corresponding financial duties on the Board); and
 - (c) section 86 (which provides for the keeping, transmission to Scottish Ministers and auditing, of accounts).

SCHEDULE 2
(introduced by section 18)

THE MENTAL HEALTH TRIBUNAL FOR SCOTLAND

PART 1

MEMBERS OF THE TRIBUNAL

Members

- 1 (1) The Scottish Ministers shall appoint as members of the Tribunal—
- 10 (a) a panel of persons who have such qualifications, training and experience as may be prescribed in regulations for the purposes of serving as conveners of the Tribunal;
- (b) a panel of persons who have such qualifications, training and experience—
- 15 (i) in medicine; and
- (ii) in the diagnosis and treatment of mental disorder,
- as may be prescribed in regulations for the purposes of serving as medical members of the Tribunal; and
- (c) a panel of persons who have such other qualifications, training and experience as may be prescribed in regulations.
- (2) A person is disqualified from appointment as, and being, a member of the Tribunal if the person—
- 20 (a) is a member of the Scottish Parliament;
- (b) is a member of the Scottish Executive or a junior Scottish Minister; or
- (c) is of such other description as may be prescribed in regulations.

The President

- 25 2 (1) The Scottish Ministers shall appoint a person to be known as the President of the Mental Health Tribunal for Scotland (the “President”).
- (2) The President—
- (a) shall preside over the discharge of the Tribunal’s functions; and
- (b) may serve as a convener of the Tribunal.
- 30 (3) The Scottish Ministers may not appoint a person to be the President unless that person has such—
- (a) qualifications;
- (b) training; and
- (c) experience,
- as may be prescribed by regulations.

- (4) The following provisions of this schedule apply to the President as they apply to a member of the Tribunal—
- (a) paragraph 1(2);
 - (b) paragraph 3;
 - 5 (c) paragraph 4; and
 - (d) paragraph 5.
- (5) The functions of the President may, if the President is absent or otherwise unable to act, be discharged by one of the members of the panel mentioned in paragraph 1(1)(a) above appointed for that purpose by the Scottish Ministers.
- 10 (6) Regulations may make provision as to the delegation by the President of any of the President's functions to any of the members of the Tribunal or its staff.
- (7) Regulations made under sub-paragraph (6) above may include provision for different functions to be delegated to different persons for different areas.

Terms of office etc.

- 15 3 (1) Subject to this paragraph and paragraph 4 below, each member of the Tribunal shall hold office in accordance with the terms of such member's instrument of appointment.
- (2) An appointment as a member of the Tribunal shall, subject to sub-paragraphs (3) and (4) below, last for 5 years.
- (3) A member of the Tribunal—
- 20 (a) may at any time resign office by notice to the Scottish Ministers;
- (b) shall vacate office on the day on which such member attains the age of 70; and
- (c) shall vacate office on becoming disqualified from being a member of the Tribunal by virtue of paragraph 1(2) above.
- (4) A member of the Tribunal's appointment shall come to an end upon the member's being removed from office under paragraph 4(1) below.
- 25 (5) A member of the Tribunal whose appointment comes to an end by operation of sub-paragraph (2) above may be reappointed and, except in the circumstances set out in sub-paragraph (6) below, shall be reappointed.
- (6) The circumstances referred to in sub-paragraph (5) above are that—
- 30 (a) the member of the Tribunal has declined that reappointment;
- (b) the member of the Tribunal is aged 69 or over;
- (c) the President has made a recommendation to the Scottish Ministers against the reappointment;
- (d) there has, since the member of the Tribunal was last appointed, been a reduction in the number of members of the panel to which the member belongs required by the Tribunal to discharge its functions;
- 35 (e) since the member of the Tribunal was last appointed, the member has, without reasonable excuse, failed to comply with the terms of the member's appointment; or

(f) the member of the Tribunal does not have such qualifications, training or experience as are for the time being prescribed under paragraph 1(1) above for appointment to the panel to which the member of the Tribunal belongs.

4 (1) A member of the Tribunal may be removed from office only by order of the disciplinary
 5 committee constituted under sub-paragraph (3) below.

(2) The disciplinary committee may order the removal from office of a member of the Tribunal only if, after investigation carried out at the request of the Scottish Ministers, it finds that the member is unfit for office by reason of inability, neglect of duty or misbehaviour.

10 (3) The disciplinary committee shall consist of—

(a) a Senator of the College of Justice or a sheriff principal (who shall preside);

(b) a person who is a solicitor or an advocate of at least ten years' standing; and

(c) one other person,

all appointed by the Lord President of the Court of Session.

15 (4) Regulations—

(a) may make provision—

(i) enabling the disciplinary committee, at any time during an investigation, to suspend a member of the Tribunal from office; and

(ii) as to the effect and duration of such suspension; and

20 (b) shall make such further provision as respects the disciplinary committee (including in particular provision for the procedure of the committee) as the Scottish Ministers consider necessary or expedient.

Remuneration and pensions etc.

5 (1) The Scottish Ministers may pay, or make provision for paying, to, or in respect of, each
 25 member of the Tribunal such remuneration, expenses, pensions and allowances as the Scottish Ministers may determine.

(2) Sub-paragraph (1) above, so far as relating to pensions and allowances, shall not have effect in relation to persons to whom Part I of the Judicial Pensions and Retirement Act 1993 (c.8) applies, except to the extent provided by virtue of that Act.

30 **PART 2**

ORGANISATION AND ADMINISTRATION OF THE TRIBUNAL

Organisation and administration of the functions of the Tribunal

6 (1) The functions of the Tribunal shall be discharged by such number of tribunals (being
 35 tribunals consisting of members of the Tribunal) as may be determined from time to time by the President.

(2) The Tribunal shall sit at such times and in such places as the President may determine.

(3) Subject to the provisions of this Act, regulations made under section 18 and rules made under paragraph 9 below, the President shall secure that the functions of the Tribunal are discharged efficiently and effectively.

(4) The President may—

5 (a) give such directions; and

(b) issue such guidance,

about the administration of the Tribunal as appear to the President to be necessary or expedient for the purpose of securing that the functions of the Tribunal are discharged efficiently and effectively.

10 *Staff*

7 (1) The Scottish Ministers may appoint such staff for the Tribunal as they may determine.

(2) The Scottish Ministers may pay, or make provision for paying, to, or in respect of, the Tribunal's staff, such remuneration, expenses, pensions, allowances and gratuities (including by way of compensation for loss of employment) as the Scottish Ministers may determine.

Finance

8 Such expenses of the Tribunal as the Scottish Ministers may determine shall be defrayed by the Scottish Ministers.

PART 3

20 TRIBUNAL PROCEDURE

Rules

9 (1) The Scottish Ministers may make rules as to the practice and procedure of the Tribunal.

(2) Such rules may, without prejudice to the generality of sub-paragraph (1) above, include provision for or in connection with—

25 (a) the composition of the Tribunal for the purposes of its discharge of particular functions;

(b) where the functions of the Tribunal are being discharged by more than one tribunal—

(i) determining by which tribunal any matter is to be dealt with; and

30 (ii) transferring proceedings from one tribunal to another;

(c) the form of applications to the Tribunal;

(d) the recovery and inspection of documents;

(e) the persons who may appear on behalf of the parties;

35 (f) enabling specified persons other than the parties to appear or be represented in specified circumstances;

- (g) requiring specified persons to give notice to other specified persons of specified matters;
- (h) as to the time within which any notice by virtue of sub-paragraph (g) above shall be given;
- 5 (i) enabling hearings to be conducted in the absence of any member of the Tribunal other than the convener;
- (j) enabling hearings to be held in private;
- (k) enabling the Tribunal to exclude the person to whom the proceedings relate from attending all or part of hearings;
- 10 (l) enabling the Tribunal to determine specified matters without holding hearings;
- (m) enabling the Tribunal to hear and determine concurrently two or more matters relating to the same person;
- (n) the recording, publication and enforcement of decisions and orders of the Tribunal;
- 15 (o) enabling matters to be referred to the Commission;
- (p) enabling the Tribunal to commission medical and other reports in specified circumstances;
- (q) requiring the Tribunal to take specified actions, or to determine specified proceedings, within specified periods;
- 20 (r) the circumstances in which a *curator ad litem* may be appointed.

(3) In sub-paragraph (2) above, “specified” means specified in the rules.

Practice directions

10 Subject to rules made under paragraph 9 above the President may give directions as to the practice and procedure to be followed by the Tribunal in relation to any matter.

25 *Evidence*

11 (1) The Tribunal may by citation require any person to attend, at such time and place as is specified in the citation, for the purpose of—

- (a) giving evidence; or
- 30 (b) producing any document in the custody, or under the control, of such person which the Tribunal considers it necessary to examine.

(2) In relation to persons giving evidence the Tribunal may administer oaths and take affirmations.

(3) A person who is cited to attend the Tribunal and—

- (a) refuses or fails—
 - 35 (i) to attend; or
 - (ii) to give evidence; or
- (b) alters, conceals or destroys, or refuses to produce, a document which such person may be required to produce for the purposes of proceedings before the Tribunal,

shall, subject to sub-paragraph (4) below, be guilty of an offence.

- 5 (4) A person need not give evidence or produce any document if, were it evidence which might be given or a document that might be produced in any court in Scotland, the person having that evidence or document could not be compelled to give or produce it in such proceedings.
- (5) It shall be a defence for a person charged with contravening sub-paragraph (3) above to show that the person has a reasonable excuse for such contravention.
- (6) A person guilty of an offence under sub-paragraph (3)(a) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- 10 (7) A person guilty of an offence under sub-paragraph (3)(b) above shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.

Decisions of the Tribunal

- 15 12 (1) A decision of the Tribunal may be made by majority.
- (2) A decision of the Tribunal shall be recorded in a document which contains a full statement of the facts found by the Tribunal and the reasons for the decision.
- (3) The Tribunal shall—
- (a) inform each party of its decision; and
 - 20 (b) as soon as practicable after being requested to do so by one of the parties, send a copy of the document mentioned in sub-paragraph (2) above to each party.

PART 4

REPORTS, INFORMATION ETC.

Annual report

- 25 13 (1) The President shall, in respect of each period of 12 months beginning on 1st April, prepare a written report as to the Tribunal's discharge of its functions during that period.
- (2) The President shall submit each report prepared under sub-paragraph (1) above, as soon as practicable after the period to which it relates, to the Scottish Ministers.
- 30 (3) The Scottish Ministers shall lay before the Scottish Parliament a copy of each report submitted to them under sub-paragraph (2) above.

Disclosure of information

- 14 The President shall, at such times and in respect of such periods as the Scottish Ministers may specify, provide to—
- (a) the Scottish Ministers;
 - 35 (b) such persons as the Scottish Ministers may specify,

such information relating to the discharge of the Tribunal’s functions as the Scottish Ministers may direct.

Allowances etc. for attendance at hearings of the Tribunal and preparation of reports

5 15 (1) The Tribunal may pay to any person (other than a member of the Tribunal or a member of the staff of the Tribunal) such allowances and expenses as the President shall determine for the purposes of, or in connection with, the person’s attendance at hearings of the Tribunal.

10 (2) The Tribunal may pay to any person (other than a member of the Tribunal or a member of the staff of the Tribunal) such amounts as the President shall determine in connection with any report prepared by the person in accordance with rules made under paragraph 9(2)(p) above.

SCHEDULE 3
(introduced by section 229(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

15 *The Social Work (Scotland) Act 1968 (c.49)*

1 (1) The Social Work (Scotland) Act 1968 shall be amended as follows.

(2) In section 4 (assistance by voluntary organisations in performance of functions), for the words from “section 7” to “1984” substitute “section 20 (provision of care and support services for persons who have or have had a mental disorder), 21 (provision of services designed to promote well-being and social development of such persons) or 22 (assistance with travel in connection with such services) of the Mental Health (Scotland) Act 2002 (asp 00)”.

(3) In section 5(1B) (compliance by local authorities with directions by Scottish Ministers in exercise of functions under certain Acts), for paragraph (k) substitute—

“(k) the Mental Health (Scotland) Act 2002 (asp 00);”.

(4) In section 5A(4) (local authority plans for community care services), in the definition of “community care services”, for the words from “section 7” to “1984” substitute “section 20 (provision of care and support services for persons who have or have had a mental disorder), 21 (provision of services designed to promote well-being and social development of such persons) or 22 (assistance with travel in connection with such services) of the Mental Health (Scotland) Act 2002 (asp 00)”.

(5) In section 6—

(a) in subsection (1)—

(i) for the words from “section 7” to “1984”, where they first occur, substitute “section 20 (provision of care and support services for persons who have or have had a mental disorder) or 21 (provision of services designed to promote well-being and social development of such persons) of the Mental Health (Scotland) Act 2002 (asp 00)”; and

(ii) in paragraph (a), for the words from “section 7” to “1984” substitute “section 20 or 21 of the Mental Health (Scotland) Act 2002”; and

(b) in subsection (2), for the words from “section 7” to “1984” substitute “section 20 or 21 of the Mental Health (Scotland) Act 2002”.

(6) In section 59(1) (provision by local authorities of residential and other establishments etc.), for the words “section 13A” substitute “sections 12 and 13A”.

(7) In section 86(1) (recovery of expenditure on provision of services for person ordinarily resident in the area of another local authority), for paragraph (e) substitute—

“(e) in the provision, for persons ordinarily so resident, of services under section 20 (care and support services for persons who have or who have had a mental disorder), 21 (services designed to promote well-being and social development of such persons) or 22 (assistance with travel in connection with such services) of the Mental Health (Scotland) Act 2002 (asp 00);”.

(8) In section 94(1) (interpretation), for the definition of “mental health officer” substitute—

““mental health officer” means a person appointed under subsection (1) of section 27 of the Mental Health (Scotland) Act 2002 (asp 00); and includes a person deemed, by virtue of subsection (3) of that section, to be so appointed;”.

The Local Government (Scotland) Act 1973 (c.65)

In section 64(5) of the Local Government (Scotland) Act 1973 (enactments concerning appointment of officers continuing to have effect), for paragraph (bb) substitute—

“(bb) section 27 of the Mental Health (Scotland) Act 2002 (asp 00);”.

The Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33)

(1) The Disabled Persons (Services, Consultation and Representation) Act 1986 shall be amended as follows.

(2) In section 2(5)(b) (right of authorised representative to visit disabled person in accommodation provided by virtue of certain enactments), for the words “section 7 of the 1984 Act” substitute “section 20 of the 2002 Act”.

(3) In section 16(1) (interpretation)—

(a) for the definition of “the 1984 Act” substitute—

““the 2002 Act” means the Mental Health (Scotland) Act 2002 (asp 00);”
and

(b) in paragraph (b) of the definition of “the welfare enactments”, for the words “sections 7 and 8 of the 1984 Act” substitute “sections 20 and 21 of the 2002 Act”.

The Tribunals and Inquiries Act 1992 (c.53)

In Part II of Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals under the supervision of the Scottish Committee of the Council on Tribunals), after paragraph 54 insert—

“Mental health

54A. The Mental Health Tribunal for Scotland constituted under section 18 of the Mental Health (Scotland) Act 2002 (asp 00).”.

The Criminal Procedure (Scotland) Act 1995 (c.46)

5 (1) The Criminal Procedure (Scotland) Act 1995 shall be amended as follows.

(2) In section 54 (insanity in bar of trial)—

10 (a) in paragraph (c) of subsection (1)—

(i) in sub-paragraph (i), for the words “Part V of the Mental Health (Scotland) Act 1984” there shall be substituted “Part 7 of the Mental Health (Scotland) Act 2002 (asp 00)”; and

15 (ii) for the words “temporary hospital order” there shall be substituted “temporary compulsion order”; and

(b) in subsection (4), for the word “hospital” there shall be substituted “compulsion”.

(3) In section 57 (disposals in cases where accused found to be insane)—

(a) in subsection (2)—

20 (i) in paragraph (a), for the word “hospital” where it first occurs there shall be substituted “compulsion”;

(ii) in paragraph (b), for the words “section 62(1) of the Mental Health (Scotland) Act 1984” there shall be substituted “Part 10 of the Mental Health (Scotland) Act 2002 (asp 00)”; and

(b) in subsection (4)—

25 (i) after the word “Sections” there shall be inserted “57A,”; and

(ii) for the word “hospital” there shall be substituted “compulsion”.

(4) In section 58 (orders for hospital admission or guardianship)—

30 (a) in subsection (1A), for the words “as mentioned in subsection (1) above” there shall be substituted “in the High Court or the sheriff court of an offence, other than an offence the sentence for which is fixed by law, punishable by that court with imprisonment,”; and

(b) in subsection (7)—

35 (i) for the words “mental illness (including personality disorder) or mental handicap or both” there shall be substituted “mental illness, personality disorder or learning disability”; and

(ii) for the words “the other” there shall be substituted “another”.

(5) In section 59 (hospital orders: restrictions on discharge)—

(a) in subsection (1)—

40 (i) for the words “hospital order” there shall be substituted “compulsion order authorising the detention of a person in a hospital”; and

- (ii) for the words “section 62(1) of the Mental Health (Scotland) Act 1984” there shall be substituted “Part 10 of the Mental Health (Scotland) Act 2002 (asp 00)”; and
- (b) in subsection (2)—
- 5 (i) for the words “medical practitioner approved by the Health Board for the purposes of section 20 of the Mental Health (Scotland) Act 1984” there shall be substituted “approved medical practitioner”; and
- (ii) for the words “section 58(1)(a)” there shall be substituted “section 57A(2)(a)”.
- 10 (6) In section 59A (hospital directions)—
- (a) in subsection (3)(a), for the words “grounds set out in section 17(1) of the Mental Health (Scotland) Act 1984 apply” there shall be substituted “matters mentioned in section 52C(7) of this Act are established”;
- (b) in subsection (3)(b)—
- 15 (i) for the words “suffering from the same form of mental disorder, being mental illness (including personality disorder) or mental handicap” there shall be substituted “having, by reference to the appropriate paragraph (or paragraphs) of the definition of “mental disorder” in section 227 of the
- 20 Mental Health (Scotland) Act 2002 (asp 00), a type (or types) of mental disorder in common”; and
- (ii) for the words “suffering from the other form” there shall be substituted “having another type of mental disorder”;
- (c) for subsection (4) there shall be substituted—
- 25 “(4) A hospital direction may specify a state hospital only if, on the written or oral evidence of two medical practitioners, it appears to the court that the person has a mental disorder of such nature or degree—
- (a) that provision of medical treatment to the person can be carried out only under conditions of special security; and
- (b) that such conditions of special security can be provided only in a state
- 30 hospital.”;
- (d) in subsection (5)—
- (i) for the words “form of mental disorder from which” there shall be substituted “type (or types) of mental disorder that”; and
- (ii) for the words “is found to be suffering” there shall be substituted “has”.
- 35 (7) In section 60 (appeals against hospital orders)—
- (a) for the word “hospital” where it first, second and fourth occurs there shall be substituted “compulsion”; and
- (b) for the word “renewal” there shall be substituted “extension”.
- (8) In section 60A (appeal by prosecutor against hospital orders etc.), in subsection (1)(b),
- 40 for the word “hospital” where it first occurs there shall be substituted “compulsion”.
- (9) In section 60B (intervention orders), for the word “hospital” there shall be substituted “compulsion”.
- (10) In section 200 (remand for inquiry into physical or mental conditions)—

(a) in subsection (2), for paragraph (b)(ii) there shall be substituted—

“(ii) that the accused could be admitted to a hospital that is suitable for his detention,”; and

(b) in subsection (3)(a), for the words “a suitable hospital is available” there shall be substituted “he could be admitted to a hospital that is suitable”.

(11) In section 210 (consideration of time spent in custody), in subsection (1)—

(a) in paragraph (a), for “52” there shall be substituted “52C, 52L”; and

(b) in paragraph (c)(iii), for “52” there shall be substituted “52C, 52L”.

(12) In section 230 (probation orders requiring treatment for mental disorder)—

(a) in subsection (1)—

(i) for the words “a registered medical practitioner approved under section 20 of the Mental Health (Scotland) Act 1984” there shall be substituted “an approved medical practitioner”; and

(ii) for the words “hospital order under Part V of that Act, or under this Act,” there shall be substituted “compulsory treatment order under section 53 of the Mental Health (Scotland) Act 2002 (asp 00) or a compulsion order”; and

(b) in subsection (2), in paragraph (a), for “1984” there shall be substituted “2002”.

(13) In section 307 (interpretation), in subsection (1)—

(a) after the definition of “appropriate court” there shall be inserted—

““approved medical practitioner” has the meaning given by section 19 of the Mental Health (Scotland) Act 2002 (asp 00);

“assessment order” has the meaning given by section 52C of this Act;”;

(b) after the definition of “complaint” there shall be inserted—

““compulsion order” has the meaning given by section 57A of this Act;”;

(c) after the definition of “indictment” there shall be inserted—

““interim compulsion order” has the meaning given by section 53 of this Act;”;

(d) after the definition of “Lord Commissioner of Justiciary” there shall be inserted—

““mental disorder” has the meaning given by section 227 of the Mental Health (Scotland) Act 2002 (asp 00);”;

(e) after the definition of “training school order” there shall be inserted—

““treatment order” has the meaning given by section 52L of this Act;”.

The Adults with Incapacity (Scotland) Act 2000 (asp 4)

6 In section 9(1) of the Adults with Incapacity (Scotland) Act (functions of the Mental Welfare Commission under that Act), for the words “1984 Act” substitute “Mental Health (Scotland) Act 2002 (asp 00)”.

The Regulation of Care (Scotland) Act 2001 (asp 8)

7 In section 77(1) of the Regulation of Care (Scotland) Act 2001 (interpretation), in the definition of “independent hospital”, for the words from “is” to the end substitute “, subject to subsection (2) below, is not a health service hospital”.

5 *The Community Care and Health (Scotland) Act 2002 (asp 5)*

- 8 (1) The Community Care and Health (Scotland) Act 2002 shall be amended as follows.
- (2) In section 4(1) (payment towards cost of accommodation more expensive than local authority would expect usually to provide), for the words from “section 7” to “authorities)” substitute “section 20 of the 2002 Act (provision of care and support services for persons who have or have had a mental disorder)”.
- 10 (3) In section 6(1)(a) (deferred payment of accommodation costs) for the words from “section 7” to “authorities)” substitute “section 20 of the 2002 Act (provision of care and support services for persons who have or have had a mental disorder)”.

The Scottish Public Services Ombudsman Act 2002 (asp 11)

15 9 In schedule 3 to the Scottish Public Services Ombudsman Act 2002 (which specifies tribunals for the purpose of making the administrative actions of certain administrative staff of those tribunals liable to investigation under that Act), after paragraph 4 insert—

“4A The Mental Health Tribunal for Scotland.”.

20 SCHEDULE 4
 (introduced by section 229(2))

REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
25 The National Health Service (Scotland) Act 1978 (c.29)	In section 102, paragraph (a) of subsection (4), the word “or” immediately following that paragraph and subsection (5).
The Mental Health (Scotland) Act 1984 (c.36)	The whole Act.
The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)	Section 13(3).
30 The Criminal Procedure (Scotland) Act 1995 (c.46)	In section 52, subsections (2) to (7).
35	In section 58, subsection (1); in subsections (2) and (3), the words “(1) or”; subsections (4) and (5); in subsection (7), the words “hospital order or” and “paragraph (a) of subsection (1)”; subsection (9); in subsection (10), the words “(1) or”; in subsection (11), the words “subsection (1) of”.

<i>Enactment</i>	<i>Extent of repeal</i>
5 The Adults with Incapacity (Scotland) Act 2000 (asp 4)	<p>In section 200(9), the words “within 24 hours of his remand or, as the case may be, committal,”.</p> <p>In section 230(1), the words “, not extending beyond 12 months from the date of the requirement,”.</p>
10 The Regulation of Care (Scotland) Act 2001 (asp 8)	<p>In section 9(1), paragraphs (a), (b), (e) and (f).</p> <p>Section 2(5)(b).</p> <p>In section 77, in subsection (1), the definition of “private psychiatric hospital” and, in subsection (2), the words “(not being a private psychiatric hospital)”.</p>

Mental Health (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to restate and amend the law relating to mentally disordered persons; and for connected purposes.

Introduced by: Malcolm Chisholm
On: 16 September 2002
Bill type: Executive Bill

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