MENTAL HEALTH (SCOTLAND) BILL

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EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Mental Health (Scotland) Bill introduced in the Scottish Parliament on 19 June 2014:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government statement on legislative competence; and
- the Presiding Officer’s statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 53–PM.
EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

3. The Bill’s overarching objective is to help people with a mental disorder to access effective treatment quickly and easily. The on-going monitoring to which the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) was subject to identified some aspects of the legislation which were not operating as efficiently and effectively as had been intended. To address these matters this Bill amends provisions within the 2003 Act and some related provisions in the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). The Bill also makes provision, through amendments to the Criminal Justice (Scotland) Act 2003, for the introduction of a notification scheme for victims of mentally disordered offenders.

4. A more detailed explanation of the Bill’s purpose can be found in the Policy Memorandum, this also explains the thinking and policy intentions that underpin it.

THE STRUCTURE & A SUMMARY OF THE BILL

5. The Bill is structured in the following Parts:

- **Part 1** amends the 2003 Act in respect of a number of issues relating to compulsory treatment for patients, including procedures for compulsory treatment, suspension of detention, removal of patients and timescales for referrals and disposals. Part 1 also amends provisions relating to representation by named persons and advance statements.

- **Part 2** amends the 1995 Act in respect of treatment for mentally disordered offenders. It amends timescales for assessment and treatment orders for such patients and provides for variation of certain orders.

- **Part 3** creates a new notification scheme for victims of mentally disordered offenders.

- **Part 4** sets out general provisions on coming into force and modification of enactments.

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1. Asp13
Glossary of terms used

AMP – approved medical practitioner
AO – Assessment Order
CO - compulsion order
CORO – compulsion order and a restriction order
CTO – compulsory treatment order
EDC – emergency detention certificate
HD – hospital direction
MHO – mental health officer
RMO – responsible medical officer
STDC – short term detention certificate
The 2003 Act – The Mental Health (Care and Treatment) (Scotland) Act 2003
The Commission – the Mental Welfare Commission for Scotland
The Tribunal – the Mental Health Tribunal for Scotland
TTD – transfer for treatment direction

PART ONE – THE 2003 ACT

Section 1: Measures until application determined

Amendment of sections 64, 65, 68 and 69

6. Compulsory treatments orders (CTO) are orders made by the Mental Health Tribunal for Scotland (the Tribunal). A CTO can authorise detention and/or medical treatment in hospital or it can impose compulsory measures in the community. The arrangements for the application and making of CTOs are contained in part 7 of the 2003 Act (sections 57 to 129). Section 64 of the 2003 Act sets out powers of the Tribunal when considering an application for a CTO under section 63 of the 2003 Act. If the Tribunal is satisfied that the conditions for a CTO are met, then it may authorise for a period of up to 6 months, measures listed in section 66 of the 2003 Act. Section 65 of the 2003 Act empowers the Tribunal to grant an interim compulsory treatment order where an application has been made for a CTO. An interim CTO can be authorised for a period of up to 56 days.

7. Short term detention certificates (STDCs) can be granted in respect of a patient living in the community or a patient in hospital on a voluntary basis and can authorise the detention of a patient in hospital, for 28 days under section 44 of the 2003 Act and for a further 3 days if an extension certificate is granted under section 47.

8. For patients who are already subject to an STDC (or an extension certificate), section 68 provides that once an application for a CTO has been made under section 63, the patient's detention in hospital under authority of the certificate is automatically extended for a further five working days. This is to enable the Tribunal to have sufficient time to come to a decision on the application.
9. Section 1 of the Bill provides that if the Tribunal is making a CTO under section 64 or an interim CTO under section 65 and the patient subject to the orders has been detained in hospital under a STDC or an extension certificate under section 44 or 47 of the 2003 Act, the length of time the patient has been detained under section 68(2)(a) must be deducted from the 6 month period, in the case of section 64, or 56 days under section 65.

10. Section 1 of the Bill also extends the period of short term detention possible under section 68(2)(a) from 5 days to 10 days, and makes consequent amendments to section 69 of the 2003 Act.

Section 2: Information where order extended

11. Section 87 of the 2003 Act sets out the steps that a responsible medical officer (RMO) must take when he or she has determined that a CTO is to be extended without change. In such cases an RMO must prepare a record setting out the reasons for the determination and whether the Mental Health Officer (MHO) agrees, disagrees or has not expressed a view. Also required to be recorded in the case of a disagreement, are the reasons for the disagreement, the type of mental disorder suffered by the patient and whether that has changed from the disorder in the original CTO.

12. This record must be submitted to the Tribunal and a copy sent to the patient (unless the RMO considers there would be significant risk to the patient in doing so), the patient’s named person, the MHO and the Mental Welfare Commission for Scotland (the Commission). The Tribunal must be told if the RMO is sending a copy or not to the patient and, if not, the reasons for that decision.

New section 87A

13. Section 2 of the Bill inserts new section 87A which sets out new duties for the MHO when the Tribunal is required by section 101(2) of the 2003 Act to review the determination. That situation occurs when the determination states that there is a difference between the type of mental disorder that the patient has, and that recorded in the original CTO, or the MHO disagrees with the determination, or has failed to express a view, or when the Tribunal has not reviewed the CTO during the period of 2 years prior to the date on which the CTO would have lapsed had it not been extended by the RMOs determination.

14. When section 101(2) applies, section 87A requires the MHO to prepare and submit a record to the Tribunal with the patient’s name and address and that of the patient’s named person and primary carer (if known), details of what the MHO has done in compliance with section 85 of the 2003 Act, and so far as relevant to the extension of the CTO, the details of the personal circumstances of the patient, any advance statement of the patient (if known by the MHO), the views of the MHO on the extension of the CTO and any other information the MHO considers relevant in relation to the extension of the CTO. A copy of this record must also be sent to the patient, the patient’s named person, RMO and the Commission. The MHO need not send a copy of the record if the MHO considers so doing would carry a significant risk of harm. The Tribunal must be told if the patient is not receiving the report, and the reasons for this decision.
Section 3: Emergency detention in hospital

Amendment of sections 36, 38, 40 and 42

15. Part 5 (sections 36 to 43) of the 2003 Act makes provision for the emergency detention and admission of patients to hospital by means of an emergency detention certificate (EDC). Section 36 sets out the procedure for the granting of an EDC authorising the detention of a patient in hospital for a period of 72 hours. Section 36(2) lists a number of orders, in respect of which, if a patient is subject to any of those orders listed, an EDC cannot be granted in respect of that patient.

16. Section 3(2) of the Bill adds short term detention under section 113(5) of the 2003 Act (non-compliance with order) to that list.

17. Section 38 of the 2003 Act at present provides that in the case of an emergency detention, a hospital manager must inform the following persons: the patient’s nearest relative, any additional person who may reside with the patient, the patient’s named person (if known), and the Commission. Section 3(3) of the Bill amends section 38 so that hospital managers will be required to notify the Commission of any emergency detention, but will have discretion as to whether the other persons listed in section 36(4) of the Act, are notified of an emergency detention. Section 3(4) and 3(5) of the Bill make consequent amendments in respect of the revocation of EDCs in sections 40 and 42 of the 2003 Act.

Section 4: Short term detention in hospital

Amendment of sections 44 and 46

18. Periods of short term detention in hospital are provided for in section 44 of the 2003 Act. In a similar way to section 36(2) of the Act, section 44(2) lists certain orders, which if in place in respect of a patient, a short term detention certificate (STDC) cannot be granted in respect of the patient. Section 4(2) of the Bill adds a detention under section 113(5) of the 2003 Act to the list of orders in section 44(2) of the 2003 Act.

19. Section 46 of the 2003 Act provides that hospital managers must send a copy of a STDC to the Tribunal and the Commission. Section 4(3) of the Bill amends section 46 to provide that a copy of the certificate must now be sent to all recipients as notification of the STDC.

Section 5: Meaning of temporary compulsion

Amendment of section 329

20. Section 5(3) of the Bill inserts a definition of “temporary compulsion order” into section 329 (interpretation) of the 2003 Act. In consequence of this, the reference to section 54(1)(c) in the definition of ‘appropriate act’ in paragraph (c) of section 230(4) of the 2003 Act is repealed.
Section 6: Suspension of orders on emergency detention

Amendment of section 43

21. Section 43 of the 2003 Act deals with the effect of subsequent emergency detention certificates (EDCs) on compulsory treatment orders (CTO). At present where a patient is subject to a CTO and an EDC is granted (for example because a patient’s condition has perhaps deteriorated suddenly to the extent that detention in hospital is required), any measures authorised by the CTO cease to have effect whilst the patient is subject to the EDC (with the exception of any measures authorised under section 66(1)(b) of the 2003 Act, i.e., the giving of medical treatment, in accordance with Part 16 of the Act).

22. Section 6 of the Bill amends section 43 of the 2003 Act to make equivalent provision as regards patients subject to a compulsion order or an interim CTO, and who then become subject to an EDC. The result of the amendments in such cases is that any measures authorised by a CO, interim CTO or CTO will cease to have effect for the duration of the EDC, with the exception of the giving of medical treatment in accordance with Part 16 of the 2003 Act (as authorised under section 66(1)(b) of the 2003 Act as regards CTOs and interim CTOs, or section 57A(8)(b) of the 1995 Act as regards compulsion orders).

23. Section 6(2)(d) and section 6(3) make consequent changes to section 43 and its title.

Section 7: Suspension of orders on short term detention

Amendment of section 56

24. Section 56 of the 2003 Act makes provision for the effect of subsequent short term detention certificates (STDC) on compulsory treatment orders (CTO). At present where a patient is subject to a CTO and a STDC is granted (because a patient’s condition has perhaps deteriorated suddenly to the extent that hospital treatment is required), any measures authorised by the CTO cease to have effect whilst the patient is subject to the STDC.

25. Section 7 of the Bill amends section 56 to provide that if a patient is subject to a CTO, CO, or an interim CTO, and that patient becomes subject to a STDC, any measures authorised by the CO, interim CTO or CTO cease to have effect for the duration of the STDC. Section 7(2)(c) of the Bill and section 7(3) make consequent changes to section 56 and its title.

Section 8: Suspension of detention for certain purposes

26. Section 221 of the 2003 Act makes provision for the suspension of detention for patients subject to an assessment order (AO) made under the 1995 Act. At present, the consent of the Scottish Ministers is required for suspending the AO for any period of time.

27. Section 8 of the Bill provides that consent of the Scottish Ministers will no longer be required if the suspension of detention is required to enable the patient to attend either a hearing in criminal proceedings against the patient or a medical or dental appointment.
28. Section 224 of the 2003 makes provision for the suspension of detention for patients subject to a treatment order, interim compulsion order, compulsion order and a restriction order, hospital direction or transfer for treatment direction. Section 8 of the Bill amends section 224 to provide that the consent of the Scottish Ministers will no longer be required when suspension of detention is necessary for such patients to attend either a hearing in criminal proceedings against the patient, or a medical or dental appointment.

29. Sections 127 (suspension of detention under CTO), 221 and 224 of the 2003 Act are also amended to provide that a certificate suspending detention must record the purpose for which the certificate has been granted.

Section 9: Maximum suspension of detention measures

30. A patient who is subject to a CTO or an interim CTO can have measures authorising the detention under those orders suspended in terms of section 127 of the 2003 Act. At present, a patient’s responsible medical officer (RMO) can grant a certificate suspending detention, as an important part of the patient’s rehabilitation process, allowing patients extended time out of hospital, but still subject to conditions imposed by the RMO. The power is exercised at the RMO’s discretion. Under the current provisions, an RMO can suspend measures for up to 6 months. More than one certificate can be granted but the period of suspension cannot exceed 9 months in any 12 month period. For the purposes of this provision, section 127(4) provides that a period may be expressed as the duration of an event or a series of events and any associated travel.

Amendment of section 127

31. Section 9 of the Bill amends section 127 by providing that the maximum period of suspension of detention may not exceed 200 days in any 12 month period; however, that does not include any period of suspension authorised by the RMO between 9 pm and 8am which is less than 12 hours in duration. Section 9 further amends section 127 by providing that the total of 200 days may be increased by up to a further 100 days in a given 12 month period, if the Tribunal approves an application for an extension. Only one such increase is allowed in a 12 month period and the total must not exceed 300 days. Where an RMO makes an application to the Tribunal for an increase of the 200 day limit, they must notify the Commission of the application and its outcome. The amendments made to section 127 will also apply to patients subject to a compulsion order (CO) by virtue of section 179 of the 2003 Act.

Amendment of section 224

32. Section 9 further amends section 224, by making similar amendments to those made to section 127 referenced above. As is the case with section 127, a patient’s RMO can, with the consent of the Scottish Ministers, grant suspension of detention for a maximum of 9 months in a 12 month period. Section 9 amends this to provide that suspension of detention can now be granted for a maximum of 200 days in any 12 month period. Any period of suspension authorised which is less than 12 hours and does not include any time between 9 pm and 8 am does not count towards the maximum of 200 days. This total can be increased on application to the Tribunal, to a maximum of 300 days in any 12 month period and when an application for an increase in the period of suspension is made to the Tribunal, the RMO is required to notify the Commission of the making of the application and its outcome.
Section 10: Process for enforcement of orders

Amendment of sections 266, 267, 270, 271, and schedule 2 paragraph 13A

33. Chapter 3 of Part 17 of the 2003 Act is concerned with appeals against detention in conditions of excessive security.

34. Section 264 of the 2003 Act provides at present that a patient detained in the State Hospital by virtue of a compulsory treatment order (CTO), a compulsion order (CO), a hospital direction (HD) or a transfer for treatment direction (TTD), can apply to the Tribunal for an order declaring that the patient is being detained in conditions of excessive security. Similar provision is made at section 268 for patients detained in hospitals other than the State Hospital. The Tribunal can make an order declaring that the patient is being detained in conditions of excessive security and can specify a period of three months or less for the health board in which the patient ordinarily resides, to identify another hospital where the patient could be appropriately detained. Under section 265, if a suitable alternative hospital has not been found, a further period of between 28 days and 3 months can be given to the relevant Health Board to find a placement and under section 266, another 28 days can be given to the relevant Health Board to find a placement.

35. Section 10(2) of the Bill repeals section 266 so that a Health Board now has a maximum of six months in which to find a suitable alternative placement for a patient declared to be held in conditions of excessive security. Sections 10(3) and (4) make changes consequent on this amendment.

36. Section 10(5) repeals section 270. This repeal has the same effect as repealing section 266, but in respect of orders relating to detentions in conditions of excessive security for patients in non-state hospitals. Sections 10(6) and 10(7) make changes consequent on the amendment at section 10(5).

37. Section 10(8) reflects the repeal of section 266 and 270 in section 272 of the 2003 Act (proceedings for specific performance of statutory duty).

38. Section 10(9) adds applications under section 264(8) and 268(8) to the list of applications in schedule 2 to the 2003 Act which are treated as not having been made if withdrawn before determination.

Section 11: Orders relating to non-state hospitals

Amendment of section 268

39. Section 268 of the 2003 Act provides patients in non-state hospitals with a right of appeal against conditions of excessive security. At present, that right extends to “qualifying patients” in “qualifying hospitals”, with the definition of what constitutes a qualifying patient or hospital to be provided in regulations. If the Tribunal is satisfied that a patient is being held in conditions of excessive security, then it may make a declaration to that effect and require that the Health Board in which the patient usually resides identifies a hospital where the patient could be detained in conditions of security which are not excessive for that patient.
40. Section 11 of the Bill makes a number of amendments to the provisions relating to appeals against excessive security for patients detained in a hospital other than in the State Hospital. Section 11 removes references to “qualifying” in respect of patients who may appeal under this section (section 12 below makes alternative provision determining the application of section 268). This section also requires, in both section 268 and section 269, that notification of the proposed hospital, or hospital unit (see section 12 below which provides that references to ‘hospital’ can include a ‘hospital unit’) to which the patient is to be moved, is given to the managers of the hospital or unit where the patient is currently resident. This is a slight change from the current requirement (to notify the managers of the ‘qualifying hospital’) to recognise the fact that notification that a patient is moving between units in a hospital may need to be given to the managers of the units as opposed to simply the overall manager of the hospital.

41. Subsections (11) to (14) of section 268, relating to the definition of qualifying patients are repealed and re-enacted (with adjustments) in section 272A (as inserted by section 12 of the Bill). A new definition of a relevant patient is inserted at section 273 of the 2003 Act by section 11(5) of the Bill, namely a patient who may appeal under section 268, provided that patient is detained by virtue of a restriction order, a compulsion order a hospital direction or a transfer for treatment direction.

Section 12: Qualifying non-state hospitals and units.

New section 272A

42. Section 12 of the Bill inserts new section 272A into the 2003 Act, defining a qualifying hospital for the purposes of appeals under section 268. Section 272A provides that a qualifying hospital is a hospital other than a state hospital, with the other requirements for qualification to be defined by regulations.

43. Subsections (2) and (3) of section 272A provide that regulations may also set out what requires to be determined in consideration of whether a patient is subject to an excessive level of security whilst in detention, how sections 268 to 271 operate in particular circumstances and may specify a particular hospital unit or hospitals operating particular measures of security or containment as a “qualifying hospital”.

44. New section 272A also clarifies that a reference to a hospital in sections 268 to 271 may be read as a reference to a hospital unit and that hospital unit means any part of a hospital treated as a separate unit; this will, for example, have the effect that the duty arising on a Health Board under section 268(3) to identify a hospital can be fulfilled by identifying a hospital unit (whether or not in the same hospital as the patient is currently detained).

Section 13: Notifying decisions on removal orders

New section 295A

45. Under section 293 or 294 of the 2003 Act a mental health officer (MHO) can apply for a removal order if he or she considers that a person over 16 who has a mental disorder, is at risk of significant harm and that certain circumstances are met. These circumstances are that the person is being subject or exposed to ill treatment or neglect, or that the person’s property is suffering loss or damage, or at risk of such loss or damage and the person is living alone or without care
These documents relate to the Mental Health (Scotland) Bill (SP Bill 53) as introduced in the Scottish Parliament on 19 June 2014

and unable to look after him or herself. Application is made to the sheriff, or justice of the peace, in urgent cases, for the removal of the person at perceived risk, and detention of that person for a maximum of 7 days.

46. Section 13 of the Bill inserts new section 295A into the 2003 Act which places a new duty on MHOs to notify the Commission of the decision of the sheriff or justice, and any subsequent recall or variation of the removal order.

Section 14: Detention pending medical treatment

Amendment of Section 299

47. Under section 299 of the 2003 Act a nurse has the power to detain certain patients for a period of up to two hours to enable a medical examination to be carried out. Section 14 of the Bill amends section 299 to provide that a nurse will now be able to detain a patient for a maximum of 3 hours, for the purpose of enabling the carrying out of a medical examination of the patient by a medical practitioner and ensuring the patient does not leave the hospital before the granting of an emergency detention certificate (EDC) or a short term detention certificate (STDC), if either is needed.

Section 15: Appeal on hospital transfer

Amendment of section 220

48. Under section 218 of the 2003 Act, the managers of a hospital have the power to transfer a patient detained in a hospital, subject to a compulsion and restriction order (CORO), a hospital direction (HD), or a transfer for treatment direction (TTD), to a state hospital, even when the state hospital is not specified in the order. A patient who is notified of an intention to transfer, or who has been transferred to a state hospital in terms of section 218 of the 2003 Act, has a right of appeal to the Tribunal against the transfer or proposed transfer.

49. Section 15 of the Bill reduces the time limit for making an appeal to the Tribunal from 12 weeks to 28 days.

Section 16: periodical referral of cases

Amendment of section 189 and 213

50. Section 189 of the 2003 Act requires the Scottish Ministers to refer the case of a patient who is subject to a compulsion and restriction order (CORO) to the Tribunal for review every 2 years. The requirement applies where during the relevant 2-year period none of the following references or applications have been made to the Tribunal; namely, a reference under section 185 by a responsible medical officer or an application under section 191 by the Scottish Ministers. Both of these actions would trigger a Tribunal hearing.

51. Section 16 of the Bill provides that a case has to be referred under section 189 if a reference or application under section 185 or section 191 has not been determined by the Tribunal, rather than whether a reference or application has been made, which does not necessarily mean that the Tribunal will have considered and determined the case within the
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relevant 2 year period. Paragraph 13A, schedule 2 of the 2003 Act is amended in consequence of these changes.

Section 17: Recording where late disposal

New paragraph 13B, Schedule 2

52. Schedule 2 to the 2003 Act establishes the membership, organisation and some of the procedural rules of the Tribunal, as well as setting out the reporting requirements of the Tribunal. Section 15 of the Bill inserts new paragraph 13B to schedule 2 requiring that if the Tribunal fails to comply with a time limit imposed by the 2003 Act, or otherwise fails to do something within a particular period as required by the 2003 Act, such as determining an application or an appeal, it must do so without delay, unless no useful purpose would be served by doing so. The Tribunal must also record that the failure has occurred and the reasons for the failure.

Section 18: Opt out from having named person

53. Chapter 1 of Part 17 of the 2003 Act makes provision for the appointment and duties of named persons. Under section 250 of the 2003 Act, a person who is 16 years or over is entitled to nominate another person, over the age of 16 to act as a named person. A named person has a similar role to that of a safeguarder and represents the interests of the patient, but does not necessarily represent the patient. The named person should be involved in discussions about care options for the patient and may take part in any legal proceedings relating to compulsory measures.

54. At present, if a person has not appointed a named person then in the absence of a declaration to the contrary, the person’s primary carer becomes the named person, or the person’s nearest relative where there is no primary carer by virtue of section 251 of the 2003 Act. An individual can decline to be a named person, and a person can make a declaration that a particular person or persons shall not be a named person. The Tribunal also has the authority to appoint a named person in certain cases under section 257.

Amendment to section 251

55. Section 18 amends section 251 to provide that if a person has made a declaration stating that the person’s carer or relative may not become that person’s named person, then the section operates as though such a carer or relative did not exist. The effect of this is that a carer or relative will no longer become a named person unless the person and the carer or relative both agree to that position. Section 18 also amends section 253, by inserting a new subsection (1A) which allows a person over 16 to make a written declaration that the person does not wish to have any named person. Where such a declaration is made, section 251 will not apply.

Section 19: Consent to being named person

Amendment to sections 250, 251 and 257

56. At present, an individual may become a named person under section 251 of the 2003 Act without necessarily consenting to that role, albeit that he or she may decline to act. Section 19 of the Bill makes provision for a person to be appointed as a named person by virtue of sections
250, 251 or 257, only if he or she has agreed to act as the person’s named person and signed a docket to that effect. If no such signed and witnessed docket exists, the appointment of the named person is null and void.

Section 20: Appointment of named person

Amendment of sections 255, 256 and 257

57. The Tribunal currently has power to appoint a named person, in the absence of an existing named person. Section 20 of the Bill removes this power from the Tribunal, together with associated amendments to section 255 and 256 of the 2003 Act which currently allow the Mental Health Officer and certain persons listed in section 256(2) (including the patient) to apply to the Tribunal to have a named person appointed.

New section 257(3A)

58. Subsection (4) of section 20 adds subsection (3A) to section 257. Subsection (3A) makes provision for the Tribunal to remove an existing person if they are considered inappropriate to act as a named person and, if the individual appearing before the Tribunal is under 16, substitute another person to act as named person.

Section 21: Registering of advance statements

New sections 276A, 276B and 276C

59. An advance statement is a statement which may be made by a person at any time provided the person making the statement has capacity to make such a statement. The statement must be in writing and witnessed. The advance statement should set out how a person wishes to be treated for mental disorder and the ways in which a person wishes not to be treated. Section 275 and 276 of the 2003 Act make provision for advance statements.

60. Section 19 of the Bill inserts sections 276A, 276B and 276C to the 2003 Act. Section 276A requires health boards to place a copy of any statement or document withdrawing a statement, with the person’s medical records and send a copy to the Commission.

61. Section 276B places a duty on the Commission, on receipt of an advance statement or a document withdrawing the statement, to keep a copy of the statement in a register to be maintained by the Commission.

62. Section 276C details who may inspect the register, namely the person to whom any matter in the register relates, any individual acting on the person’s behalf, and for the purposes of making decisions or taking steps with respect to the treatment of the person for mental disorder – a mental health officer dealing with the person’s case, the person’s responsible medical officer, or the relevant health board in which the person resides.
Section 22: Communication at medical examination etc.

New section 261A

63. Sections 260 and 261 of the 2003 Act place certain duties on hospital managers, known as appropriate persons for the purposes of these provisions, with regard to the provision of information to patients, and assistance to patients with communication difficulties.

64. Section 22 of the Bill inserts section 261A to the 2003 Act, which places additional duties on appropriate persons, in respect of help with communication at certain medical examinations and interviews specified in subsection (4)(a) and (b).

65. If the subject of a medical examination has difficulty in communicating or generally communicates in a language other than English, all reasonable steps must be taken to make arrangements to ensure the subject of the medical examination can communicate during the examination. A written record must be made of the steps taken to facilitate this. Section 22 concludes by defining appropriate person for the purposes of this section; namely the Scottish Ministers in respect of a medical examination under section 136(2) of the 2003 Act (which is a medical examination for medical disordered prisoners) and otherwise, for examinations or interviews held in a hospital, the managers of that hospital, for examinations held elsewhere, the medical practitioner carrying it out, or for interviews, the mental health officer.

Section 23: Services and accommodation for mothers

Amendment of section 24

66. Section 24 of the 2003 Act places a duty on health boards to provide services and accommodation for certain mothers with post natal depression, to enable those mothers to care for their child in hospital. Section 23 of the Bill amends this provision to extend the duty to provide services for mothers with a mental disorder other than post-natal depression, in addition to provision of services for mothers with post-natal depression.

Section 24: Cross-border transfer of patients

Amendment of sections 289, 290 and 309A

67. Section 24 of the Bill makes a number of small changes to provisions relating to cross-border transfer of patients.

68. Sections 289 and 290 of the 2003 Act give the Scottish Ministers power to make regulations allowing, respectively, for the cross-border transfer of patients subject to measures other than detention, and the cross-border transfer of patients subject to detention. Section 24(2) amends section 289 of the 2003 Act by extending the power to make regulations in respect of the cross-border transfer of patients subject to requirement other than detention, to include persons subject to equivalent requirements in a member state of the European Union. Section 24(3) amends section 290 in the same way in respect of cross-border transfer for patients subject to detention requirements or otherwise in hospital.
69. Section 309A of the 2003 Act allows the Scottish Ministers to make regulations for and in connection with the keeping in charge of a person who is subject to escorted leave of absence authorised under legislation in force in another part of the UK, or in the Isle of Man or the Channel Islands. Regulations made under that section may make such provision by applying provisions of the 2003 Act dealing with absconding patients (sections 301 to 303 of the 2003 Act), with or without modification, to such patients. This enables regulations to make clear the powers of persons escorting patients under authority conferred under legislation in force in other territories, so that there is clear authority under the 2003 Act for those persons to continue to escort the patient whilst in Scotland.

70. Section 24(4) amends section 309A so that regulations made under that section can make provision for and in connection with the keeping in charge of a person who is subject to escorted leave of absence authorised under legislation in force in another member State of the European Union.

71. The effect of all of these changes is that regulations that currently make provision for the cross-border transfer of patients within the UK, under various orders, can now provide for the cross-border transfer of patients within the European Union, provided those patients are subject to equivalent requirements in their home country.

### Section 25: Dealing with absconding patients

#### Amendment of section 303

72. Section 25 makes changes to sections 303, 309 and 310 of the 2003 Act with regard to provisions for absconding patients. Section 303 of the 2003 Act authorises certain persons to exercise powers in relation to any patient subject to an order authorising detention, where that patient has absconded. In particular, section 303(3)(a)(iii) gives a member of staff of any hospital, and where the patient liable to be taken into custody is subject to a compulsory treatment order which specifies a particular hospital, a member of staff of that establishment, the power, amongst other matters to take an absconding patient into custody.

73. Section 25(2) amends section 303(3)(a)(iii) to include a reference to a patient subject to an interim compulsory treatment order as well as a compulsory treatment order.

#### Amendment of section 309 and 310

74. Section 309 of the 2003 Act enables the Scottish Ministers to make regulations applying sections 301 to 303 of the 2003 Act to patients from England, Wales, Northern Ireland, the Isle of Man or the Channel Islands. Regulations made under section 309 allow persons who have absconded from those jurisdictions and are in Scotland to be taken into custody and returned to their own jurisdiction.

75. Section 25(3) of the Bill amends section 309 by extending the power to make regulations applying provisions in relation to absconds, to persons in Scotland subject to corresponding requirements or measures in a member State of the European Union. The section further provides that regulations made under section 309 applying section 301 to 303 to patients from other jurisdictions or member states may apply some or all of Part 16 of the 2003 Act to allow persons...
These documents relate to the Mental Health (Scotland) Bill (SP Bill 53) as introduced in the Scottish Parliament on 19 June 2014

held in custody by virtue of these provisions to be provided with medical treatment (but excluding persons who are subject to detention in accordance with an emergency detention certificate EDC).

76. Section 310 of the 2003 Act currently provides for regulations to provide the circumstances in which certain patients, specified in section 310(3), may be taken into custody, and the steps that can be taken by specified persons upon taking such patients into custody. Section 25(4) of the Bill provides that regulations made under that section may specify persons authorised by the patient’s RMO as persons who can take such patients into custody.

Section 26: Agreement to transfer of prisoners

77. Where a person who is serving a sentence of imprisonment has a mental disorder requiring treatment, section 136 of the 2003 Act allows for that person to be transferred from prison to a specified hospital under a transfer for treatment direction (TTD). Section 26 of the Bill amends section 136 to provide that such a TTD may only be made if a mental health officer has agreed to the making of the direction.

Section 27: Compulsory treatment of prisoners

Amendment of schedule 2, part 2

78. Part 2 of schedule 2 to the 2003 Act concerns the organisation and administration of the Tribunal. In particular paragraph 7(4) of schedule 2 provides that the convenor of proceedings before the Tribunal in relation to a patient subject to a compulsion order and a restriction order, a hospital direction (HD) or a transfer for treatment direction (TTD), must be the President of the Tribunal or a member of the Tribunal who serves as a sheriff convenor, unless those proceedings relate solely to the appointment of a named person in respect of the patient, under section 255 and 257 of the 2003 Act.

79. Section 27 amends paragraph 7 to provide, for proceedings relating to an application for a Compulsory Treatment order (CTO) in respect of a patient subject to a TTD or an HD, that the convenor does not have to be the President, or a member of the Tribunal who serves as a sheriff convenor. This is in addition to the existing exception for proceedings relating solely to the appointment of named persons.

80. The effect of this amendment is that the default provision in sub-paragraph (3) of paragraph 7 will apply to proceedings relating to an application for a CTO in respect of patients subject to a TTD or an HD, with the result that the convenor of the Tribunal will have to be either the President or a legal member selected from the panel mentioned in paragraph (1)(1)(a) of Schedule 2.

New paragraph 1A, schedule 3

81. Chapter 1 of Part 7 of the 2003 Act is concerned with the application for and making of compulsory treatment orders (CTOs). Schedule 3 to the 2003 Act makes a number of modifications to Chapter 1 of Part 7 insofar as it applies to patients who become subject to a CTO whilst already subject to a HD or TTD.
82. Section 27(3) adds a new paragraph to schedule 3, with the result that when a patient is subject to a HD or a TTD, and an application is made for a CTO, notice of the application requires to be given to the Scottish Ministers, in addition to the existing requirement to give notice to the patient, the patient’s named person and the Commission.

PART TWO – CRIMINAL CASES

Section 28: Making certain orders in remand cases

Amendments to sections 52B, 52C, 52D, 52F, 52K, 52L, 52M and 52P

83. The 1995 Act was amended by Parts 8, 9 and 10 of the 2003 Act with regard to the treatment of mentally disordered offenders. Part 2 of the Bill makes a number of minor amendments to the 1995 Act, mainly concerned with timescales, and procedure.

Amendments to sections 52B, 52C, 52D, 52F, 52K, 52L, 52M and 52P

84. Section 28 of the Bill amends the following sections of the 1995 Act: sections 52B, 52C, 52D, 52F, 52K, 52L, 52M and 52P, in the same way. In each of these sections, reference is made to a person being in custody. The Bill adds the words ‘remanded in’ in front of ‘in custody’, on each occasion it occurs, to clarify that the references to a person being in custody are to persons being held in prison, and do not include persons held in police custody.

Section 29: Periods for assessment orders

85. Section 52D of the 1995 Act makes provision for assessment orders. If a person has been charged with an offence, the case has not been concluded, and it appears to the prosecutor that the person has a mental disorder, the prosecutor may apply to the court for an assessment order to allow the appropriate examination and assessment by an approved medical practitioner of a person prior to trial or after conviction but before sentencing. The time periods for assessment orders are amended by section 29 of the Bill.

Amendment to sections 52D, 52F, 52G and 52H

86. Section 29(2)(a) changes the way in which timescales for removal of a person to hospital under an assessment order (AO) are calculated. At present the AO authorises the removal to and detention of a person in a specific hospital for up to 28 days, beginning with the day that the order is issued and ending 28 days after that event. This approach is different from the general rule applicable to the computation of time periods in the criminal court where time periods are calculated from the day the relevant order begins to the end of the day following the expiry of the relevant period. Section 29(2)(a) amends section 52D of the 1995 Act to align the computation of time periods under the parts of the 1995 Act amended by the 2003 Act, to the computation of time periods generally found in criminal procedure. This approach is replicated in the remainder of section 29 for the purposes of computation of time periods with regard to supplementary provision for AOs, review of AOs, and early termination of AOs in sections 52F, 52G and 52H of the 1995 Act respectively.

87. In addition, section 29(4) amends the period of extension for consideration of a case. If the court is satisfied on receipt of an assessment report under 52G(1), that further time is
necessary to consider the case, it may on one occasion only make an order extending the AO for 14 days, beginning with the day on which the order would otherwise cease to authorise the detention of the person in hospital and expiring at the end of the 14 days following that day. This is an increase of 7 days from the previous power to extend an AO.

Section 30: Periods for treatment orders

Amendment of sections 52M, 52P, 52R

88. Treatment orders can be made by a court and authorise certain measures, including, if required, the removal to hospital and detention of a person there, and the giving of specified treatment. Provision for treatment orders is made in sections 52K to 52U of the 1995 Act. Section 30 amends the timescales for treatment orders in sections 52M, 52P and 52R in the same way, and for the same purpose as the timescales for assessment orders (AOs) are amended by section 29 of the Bill.

Section 31: Periods for short term compulsion

89. Section 53 of the 1995 Act makes provision for interim compulsion orders (ICOs). These orders can be made by the court after conviction if a court is satisfied, on the written or oral evidence of two medical practitioners that the offender has a mental disorder.

Amendment of sections 53, 53A, 53B and 54

90. In the same way that section 29 of the Bill amends the timescales for assessment orders, and section 30 amends the time periods for treatment orders, section 31 amends section 53 and section 53A of the 1995 Act in respect of the timescales for ICOs. This section also amends section 53B and section 54 in respect of the timescales for the review and extension of ICOs in the same way.

Section 32: Periods for compulsion orders

Amendment of sections 57A, 57B and 57D

91. Sections 57A to 57D of the 1995 Act make provision for compulsion orders (CO), which may be made by the courts after conviction if the court is satisfied on the written or oral evidence of two medical practitioners that the offender has a mental disorder.

92. Section 32 of the Bill amends the timescales for COs to bring the computation of these timescales in line with practice in criminal procedure more generally. Section 32 amends sections 57A, 57B and 57D of the 1995 Act in the same way and for the same purposes as was the case with sections 28, 29, 30 and 31 of the Bill.

Section 33: Periods for hospital directions

Amendment of sections 59A and 59C

93. Hospital directions (HDS) are directions which allow a person to receive appropriate medical treatment for mental disorder in hospital, and then, if they become well, to be transferred to prison to complete the prison sentence imposed at the time of making the HD. In accordance
with earlier changes made in the Bill, section 33 amends sections 59A(4)(b), 59A(7)(a) and 59C to bring the computation of the relevant timescales in these sections in line with the way timescales are calculated for AOs, treatment orders and compulsion orders under the 1995 Act.

Section 34: Variation of interim compulsion orders

94. When an interim compulsion order (ICO) is made under section 53 of the 1995 Act, the court will specify a hospital to which the offender is to be admitted. Section 53B concerns the review and extension of ICOs. At present whilst the terms of an order can be extended, it is not possible for the court to direct that an offender be moved to a different hospital, notwithstanding the fact that it may have become apparent during the course of the initial period of the ICO that the present hospital was not suitable for the offender in question.

Amendment of section 53B

95. Section 34 of the Bill provides a power for the court to direct that, if it is appropriate to do so, the offender be admitted to a different hospital, specified by direction. If that is done, section 32(2)(c) provides that this is to have the same effect as if the hospital specified in the direction were the hospital specified in the ICO.

Section 35: Transfer of patient to suitable hospital

96. In certain situations, it becomes apparent very quickly that a person who is subject to an assessment order (AO), treatment order (TO), or interim compulsion order (ICO) and has been admitted to hospital by virtue of that order, would be more appropriately treated in another hospital.

New section 61A

97. Section 35 of the Bill inserts section 61A into the 1995 Act, which gives a person’s responsible medical officer (RMO) the authority to transfer a person subject to an AO, a treatment order or an interim CO, before the end of the 7 days beginning with the day on which the person is admitted to hospital by virtue of the order in question. Such a transfer can only occur once, and in making the transfer the RMO must be satisfied both that the current hospital is not suitable and that the new hospital is suitable for the purpose for which the order is made. Before carrying out the transfer, the RMO must, as far as practicable, inform the person of the reason for the transfer, notify the managers of the specified hospital and obtain the consent of the managers of the other hospital and the Scottish Ministers. After the transfer, the RMO must notify any solicitor acting for the person, and the court which made the order.

Section 36: Compulsion orders

New section 57E

98. Section 36 of the Bill inserts new section 57E into the 1995 Act, with the effect that in sections 57(2)(a), 57A, 57B and 57D of that Act, any references to a hospital may be read as references to a hospital unit and a hospital unit means any part of a hospital which is treated as a separate unit.
These documents relate to the Mental Health (Scotland) Bill (SP Bill 53) as introduced in the Scottish Parliament on 19 June 2014

Section 37: Hospital directions

Amendment to section 59A

99. In similar fashion to section 36 of the Bill, section 37 amends section 59A of the 1995 Act to provide that references to hospitals in that section includes reference to hospital units and a unit is any part of a hospital which is treated as a separate unit.

Section 38: Transfer for treatment directions

Amendment to section 136 of the 2003 Act

100. Section 38 of the Bill amends section 136 of the 2003 Act to include, in the same way as achieved by sections 36 and 37 of the Bill, provision for references to hospitals in that section to include reference to hospital units and a unit is any part of a hospital which is treated as a separate unit.

Section 39: Transfer from specified unit

New section 218A

101. Section 39 inserts section 218A into the 2003 Act. Patients subject to compulsion and restriction orders (COROs), hospital directions or transfer for treatment directions, can be subject to an order or direction specifying a hospital unit rather than a hospital. New section 218A allows hospital managers to transfer a patient who is subject to an order specifying a hospital unit, to another unit within the same hospital, but only if the Scottish Ministers consent to that transfer. Again, hospital unit is defined as meaning any part of the hospital treated as a separate unit.

Section 40: Consequential repeals

102. Section 9 of the Crime and Punishment (Scotland) Act 1997, and paragraph 66 of schedule 7 to the Criminal Justice and Licensing (Scotland) Act 2010, relating to power to specify hospital units, are repealed by section 40 of the Bill.

Section 41: Information on extension of compulsion order

New section 153A

103. Section 151 of the 2003 Act sets out the steps that a responsible medical officer (RMO) must take when he or she has determined that a compulsion order (CO) is to be extended without change. In such cases, an RMO must prepare a record setting out the reasons for the determination and whether the mental health officer (MHO) agrees, disagrees or has not expressed a view, and, in the case of a disagreement, the reasons for that, the type of mental disorder suffered by the patient and whether that has changed from the disorder in the original CO. This record must be submitted to the Tribunal and a copy sent to the patient (unless the RMO considers there would be significant risk to the patient in doing so), the patient’s named person, the MHO and the Commission. The Tribunal must be informed if the RMO is sending a copy or not to the patient and, if not, the reasons for that decision. When the MHO disagrees

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with the determination, or the type of mental disorder differs from that originally recorded in the CO, the RMOs decision to extend the CO must be reviewed by the Tribunal.

104. Section 41 of the Bill inserts new section 153A which sets out new duties for the MHO when the Tribunal is required by section 165(2) of the 2003 Act to review the determination. That situation occurs when (i) the determination states that there is a difference between the type of mental disorder that the patient has and that recorded in the CO; (ii) where the MHO disagrees with the determination, or has failed to comply with the duties imposed by section 151 of the 2003 Act to inform the patient of the determination, their rights in relation to this and the right to independent advocacy, and as far as practicable interview the patient; or (iii) when the Tribunal has not reviewed the CTO during the period of 2 years prior to the date on which the CO would have lapsed had it not been extended by the RMOs determination.

105. When section 165(2) applies, the MHO, must prepare and submit a record to the Tribunal with the patient’s name and address and that of the patient’s named person and primary carer, if known, details of what the MHO has done in compliance with section 151 of the 2003 Act, and so far as relevant to the extension of the CO, the details of the personal circumstances of the patient, any advance statement of the patient (if known by the MHO), the views of the MHO on the extension of the CO and any other information the MHO considers relevant in relation to the extension of the CO. A copy of this record must also be sent to the patient and the patient’s named person, RMO and the Commission. The patient need not receive a copy of the record if the MHO considers so doing would carry a significant risk of harm. The Tribunal must be told if the patient is not receiving the report, and the reasons for this decision.

Section 42: Notification of changes to compulsion orders

Amendment of section 157 and 160

106. This section makes consequential minor changes to section 157 and 160 in respect of compulsion orders.

PART THREE – VICTIMS RIGHTS

Section 43: Right to information: offender imprisoned

107. Section 16 of the Criminal Justice (Scotland) Act 2003 (the Criminal Justice Act) as amended by the Victims and Witnesses (Scotland) Act 2014, provides that victims of any offence can receive information mainly related to the circumstances in which a prisoner leaves prison. This may be information about: the first time a prisoner is entitled to be considered for temporary release, an escape, transfer to a prison outwith Scotland, release on licence or parole, death of the prisoner or the end of the custodial sentence.

108. The Bill amends the Criminal Justice Act to provide for the disclosure of information about mentally disordered offenders to their victims or their relatives, in certain circumstances. A mentally disordered offender is the term used to describe a person charged with an offence who, upon conviction or acquittal has either been given a mental health disposal by a court authorising compulsory measures of treatment and, in some cases detention in hospital, rather than being
These documents relate to the Mental Health (Scotland) Bill (SP Bill 53) as introduced in the Scottish Parliament on 19 June 2014

sentenced to imprisonment, or a prisoner who has been found to be suffering from a mental disorder whilst in prison and who is thereafter transferred into the mental health system.

Amendment of section 43 of the Criminal Justice (Scotland) Act 2003

109. Section 43 of the Bill amends section 16 of the Criminal Justice Act to add to the information which a victim can receive under the existing scheme in cases where the offender is in hospital receiving treatment for mental disorder by virtue of a hospital direction or a transfer for treatment direction. In such cases, section 43 of the Bill amends section 16 so that victims can receive notification when the offender is unlawfully at large from a hospital, or has been returned to hospital after being unlawfully at large, and when a certificate has been granted, for the first time, allowing unescorted suspension of detention.

110. Section 43 also extends the order making power in section 16(4) of the Criminal Justice Act by giving the power to the Scottish Ministers to modify section 18A of the Criminal Justice Act by adding, amending, or repealing definitions of terms used in section 16(3).

Section 44: Right to information: compulsion order

111. Section 44 makes further amendment to the Criminal Justice Act 2003 by inserting new sections 16A, 16B and 16C, which make provision regarding victims’ rights to receive certain information relating to offenders who are subject to a compulsion order and a restriction order (CORO).

New section 16A of the Criminal Justice Act 2003

112. New section 16A provides that where a person over 16 has been made subject to a CORO in proceedings in respect of an offence perpetrated against a natural person, the Scottish Ministers must give the information described in section 16C to the person entitled to receive that information (as determined by section 16B), provided that the person has requested to be given the information. The information may only be withheld if the Scottish Ministers consider that disclosing the information would be inappropriate due to exceptional circumstances in the case.

New section 16B

113. Section 16B lists those persons who are entitled to ask to be given information under section 16A, namely, the victim of the offence, or if the victim is dead, the spouse, cohabitee, child or parent of the victim, and if the victim died before reaching 16, any other person who cared for the victim before the relevant offence took place.

114. If the victim is under 12, he or she may not ask for information but someone who cares for the victim may ask instead. The section clarifies that a person who asks for information must be not be incapable, and must not be a person accused of, or reasonably suspected of being the perpetrator, or been implicated in the perpetration of the offence.
New section 16C

115. Section 16C lists the information that is to be given under section 16A; that is, whether the compulsion order has been modified or revoked, whether the restriction order has been revoked, the date of death of the offender, any transfer of the offender to a place outwith Scotland, the conditional discharge of the offender, or the recall of the offender to hospital following conditional discharge.

116. If the offender is subject to a compulsion order authorising detention in hospital, additional information may be disclosed including whether the offender is unlawfully at large from hospital, if they have been returned to hospital after having been unlawfully at large, and that detention has been suspended in respect of the offender for the first time, or that such suspension has been revoked.

Section 45: right to make representations

New section 17B

117. Section 45 of the Bill inserts new sections 17B to 17D to the Criminal Justice Act.

118. Section 17B provides for the victims of mentally disordered offenders to be given a right to make representations in certain cases. A person who has the right to be given information about the offender must, in a case where the offender is subject to a hospital direction or a transfer for treatment direction, be given the chance to make representations before a decision about suspending the offender’s detention is made. Where the offender is subject to a compulsion order and restriction order, an opportunity to make representations must be given before a decision is taken about (i) suspending the offender’s detention; (ii) revoking or varying the compulsion order in any way; (iii) conditionally discharging the offender; or (iv) varying any conditions applying to the conditional discharge of the offender which might affect the victim’s family. Any representations must be about how the decision in question might affect the victim or the victim’s family and the right to make representations only applies if the victim has intimated to the Scottish Ministers a wish to make representations.

New section 17C

119. Section 17C provides that if representations concern revoking or varying the compulsion order in any way or varying any conditions which might affect the victim’s family, representation may be made in person or in writing, but otherwise must be made in writing. Section 17C(2) makes provision for the Scottish Ministers to issue guidance as to how representations, whether written or oral, should be made.

New section 17D

120. Section 17D provides that where a decision has been made under section 17B (mentally disordered offender: victim’s right to make representation), if the victim has asked for information about a decision to be given, the Scottish Ministers must do so unless there are exceptional circumstances which make it inappropriate.
These documents relate to the Mental Health (Scotland) Bill (SP Bill 53) as introduced in the Scottish Parliament on 19 June 2014

Section 46: information sharing.

New section 17E

121. Section 46 of the Bill inserts new section 17E to the Criminal Justice Act, which provides that, where the Scottish Ministers are required by section 16 or 16A to give a victim information about an offender, they must give notice to the offender’s responsible medical officer and, if the offender is subject to a compulsion order, the Tribunal.

122. Notice under subsection (1) is to request that the recipient of the notice must give the Scottish Ministers such information as they may require to fulfil their duties to give information to the victim under sections 16, 16A or 17D. The recipient of this notice must comply with the request given. If the Scottish Ministers cease to be required to give anyone information about the offender they must notify all recipients of the notice, which thereafter ceases to apply to persons in receipt of it.

Section 47: associated definitions

New section 18A

123. Section 47 inserts a new interpretation section to the Criminal Justice Act, Section 18A adds references to the 2003 Act and the Tribunal to the Criminal Justice Act.

Section 48: Power to make modifications

New section 18B

124. Section 48 inserts new section 18B to the Criminal Justice Act. Section 18B gives the Scottish Ministers the power to amend sections 16A and 16B of that Act, by substituting a different age for the ages specified in those sections, section 16C by adding descriptions of information, and section 18A by adding, amending or repealing definitions of terms used in 16C.

125. Section 18B further provides that the power to amend by order includes amending section 16A so that information may be given under that section in some or all cases where a person has been made subject to a compulsion order and either, the person has not been made subject to a restriction order or the restriction order to which the person was made subject has been revoked. Section 18B also provides that section 17B may be amended to specify types of decision in respect of which representations may be made.

126. Finally, section 18B(3) gives the Scottish Ministers power to make any necessary, or expedient amendments in consequence of amendments to 16A or 17B, to sections 16C, 17E and 18A, or to the 2003 Act.

Section 49: Amendments to the 2003 Act

Amendment to section 193

127. Section 49 amends section 193 of the 2003 Act by requiring that where a victim is entitled to make representations before the Tribunal makes a decision, and no opportunity has
been given to the victim to make representations, the Tribunal must have regard to any victim’s representations before making a decision under that section.

128. Section 49 further amends section 200 of the 2003 Act, by requiring the Scottish Ministers to have regard to any victims’ representations before varying any conditions with regard to a conditional discharge of a patient.

129. Section 49(4) of the Bill amends section 224 of the 2003 Act by requiring a responsible medical officer to consider victims’ representations before deciding what conditions should be included in any certificate suspending detention.

130. Section 329 is amended by section 49(5) of the Bill, which adds a definition of victim’s representations at the appropriate place in that interpretation section.

PART FOUR – COMMENCEMENT AND SHORT TITLE

Section 50: Commencement

131. Section 50 provides that the provisions of the Bill (except those which come into force at the beginning of the day following the day on which the Bill receives Royal Assent) will come into force on a date or dates determined by order, made by the Scottish Ministers. Such an order may include transitional, transitory or savings provisions as the Scottish Ministers consider necessary or expedient.

Section 51: Short Title

132. Section 51 gives the short title of the Bill.
INTRODUCTION

1. This Financial Memorandum relates to the Mental Health (Scotland) Bill (“the Bill”). It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Scottish Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Scottish Parliament. The Memorandum summarises the cost implications of the Bill. It should be read in conjunction with the Bill and the other accompanying documents.

2. The Scottish Government has an overarching ambition to help the people of Scotland live longer healthier lives. The Bill seeks to improve the operation of the Mental Health (Care and Treatment) Act 2003 (“the 2003 Act”) and some related provisions in the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). Additionally the Bill makes provision – through amendments to the Criminal Justice (Scotland) Act 2003 – as to the rights of victims of crime in the context of mental health disposals.

BACKGROUND

3. The 2003 Act was commenced in October 2005. It became apparent from the on-going monitoring to which the 2003 Act was subject that there were some aspects of the legislation which were not operating as efficiently and effectively as had been intended. The McManus Review Group was set up in 2008 to undertake a limited review of the civil provisions of the 2003 Act. The Review Group reported in Spring 2009 and the Scottish Government published its response to the review Group’s recommendations in October 2010 (following a further consultation exercise). http://www.scotland.gov.uk/Publications/2013/12/1962/10. The output from these consultation exercises helped inform the consultation exercise on the draft Mental Health (Scotland) Bill with the key amendments to the 2003 Act relating to advance statements, named persons, multiple Tribunal hearings and suspension of detention.

4. In addition to these matters, service users and petitioners have brought to the Scottish Government’s attention a number of more minor and technical matters relating to how the mental health legislation is working in practice. The Bill therefore makes a number of amendments to both the 1995 Act and the 2003 Act to resolve these issues and as such amends the existing mental health care and treatment regime. Following a public consultation, in 2010 the Scottish Government committed to introducing a notification scheme for victims of mentally disordered offenders. As the implementation of such a scheme requires primary legislation this Bill is an appropriate vehicle to use.

OVERVIEW OF THE BILL

5. The provisions in the Bill are set out in four parts. The following provides a brief overview of these Parts—

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3 Link to draft bill consultation http://www.scotland.gov.uk/Publications/2013/12/1962/0
4 Link to VNS consultation http://www.scotland.gov.uk/Publications/2010/08/27104119/0
These documents relate to the Mental Health (Scotland) Bill (SP Bill 53) as introduced in the Scottish Parliament on 19 June 2014

- **Part 1** makes provision for amendments to the 2003 Act relating to advance statements, appeals against excessive security, multiple tribunal hearings, named persons, suspension of detention and minor technical and drafting matters.

- **Part 2** covers mental health disposals in criminal cases. A number of mainly technical amendments are made to the 1995 Act, for example provision adjusting the manner in which the period of detention and treatment under certain orders is calculated.

- **Part 3** relates to victims’ rights and introduces a number of changes to the Criminal Justice (Scotland) Act 2003 to create a victim notification and representative scheme for victims of mentally disordered defendants.

- **Part 4** sets out general provisions on coming into force and modification of enactments.

6. The following sections of the Memorandum consider the cost implications of Parts 1 to 3. Part 4 does not have specific cost implications and so is not discussed here.

**PART 1: MENTAL HEALTH (SCOTLAND) ACT 2003**

**Costs on the Scottish Administration**

7. Part 1 of the Bill sets out a number of changes to the 2003 Act. With the exception of changes to provisions relating to named persons, advance statements and time periods for suspension of detention, the changes are technical and minor in nature. There are no significant anticipated costs to the Scottish Government associated with the changes in this part of the Bill. Costs related to bodies within the Scottish Administration are detailed at paragraphs 10 to 30. There will require to be changes made to the Code of Practice and the implications of this are detailed below.

**Scottish Government**

8. The Scottish Ministers have a statutory duty to prepare, publish and revise a Code of Practice under the 2003 Act. The current Code of Practice is in three volumes\(^5\). The Code, which sets out guidance to professionals on their duties under the Act, may be supplemented by guidance and information to others including service users, carers and advocates. Doctors, mental health officers and others exercising statutory functions under the Act, are under a duty to have regard to the Code.

9. The amendments arising from Part 1 of the Bill will impact on Volumes 1 and 2 of the Code of Practice. Volume 1 deals with a range of issues relating to the general framework within which the 2003 Act operates. These subjects include, for example, the duties placed on health boards and local authorities; cross-border transfers of patients; and medical treatment. The revision of the Code of Practice will be a matter for the Scottish Government as part of the normal business of the Directorate for Health and Social Care Integration and costs are anticipated to be minimal and will be absorbed within the day to day running costs of the directorate.

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Mental Welfare Commission

10. The Mental Welfare Commission (“the Commission”) was originally set up under the Mental Health Act 1960. The Commission’s duties are set out in the 2003 Act and the Adults with Incapacity (Scotland) Act 2000. The Commission aims to ensure that all care, treatment and support for persons treated under the 2003 Act is lawful and respects the rights and promotes the welfare of individuals with mental illness, learning disability and related conditions. The Commission is accountable to the Scottish Ministers for their statutory duties and how, given it is funded by the Scottish Government, it spends public money. The Commission carries out its work and produces reports independently from the Scottish Government.

11. The Commission is notified of all episodes of detention and safeguarded treatments carried out under the 2003 Act. The Scottish Government recommend the use of forms for carrying out these notifications under the 2003 Act. These forms ensure that services record the legal information required when detaining individuals under the 2003 Act or using other parts of the legislation. They also prompt services to make the appropriate notifications required under the legislation, for example to the Mental Health Tribunal for Scotland etc. Only the forms authorising safeguarded treatment under Part 16 of the 2003 Act are statutory but all of the forms are routinely used by services throughout Scotland. Changes to the form are necessitated by the changes made in Part 1 of the Act and it is these changes that will precipitate costs to the Commission.

12. There are 52 forms and they can be viewed at MWC forms. The Commission receives over 30,000 forms a year for both mental health and adult with incapacity legislation. These notifications are received from medical records departments and mental health officers. Forms are received by the Commission both electronically and in paper format. From this database the Commission produces comprehensive information on an annual basis on how the 2003 Act is being used across Scotland, comparing use and trends across health board and local authority areas.

13. Proposals to change provisions within Part 1 of the 2003 Act will require changes to those forms associated with said provisions. The changes contained in the Bill were in the draft bill consulted on between December 2013 and March 2014. The Commission has based estimated costs on the provisions in the draft bill. It is considered around half of the forms will require some changes and there may be a requirement for one or two new forms. This will not be known until the Bill completes the parliamentary process. The Commission also predict some changes to forms as the result of a limited consultation process. For example, when the forms were designed the Mental Health Tribunal Service had yet to come into operation. Some minor adjustments were made in 2007 to make the forms more efficient and effective. The Commission anticipates that there will be administrative changes to the forms to make the overall process more efficient and effective.

14. In addition to changes to the forms there will also be some programming changes required. The costs for the upgrade are detailed at Table 1 below. These estimated costs are based on the Commission’s analysis of the changes contained in the Bill, and the costs associated

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These documents relate to the Mental Health (Scotland) Bill (SP Bill 53) as introduced in the Scottish Parliament on 19 June 2014

with amending the forms which will be required to accommodate the changes brought forward by part 1 of the Bill.

Table 1: Amendment to Mental Health Act: IMP Upgrade costs

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<tr>
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<th>Capital</th>
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<td></td>
<td>Start Nov 2014 (0.6 WTE) Consultation with stakeholders e.g. medical records. Development of forms</td>
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<tr>
<td>Business Analyst</td>
<td>£7,000</td>
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<td>2 days per week. Designing new forms. Finalising specification for quote for upgrade</td>
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<table>
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<th>2015-16</th>
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<tr>
<td>CSE Servlec Quote (V1)</td>
<td>£70,000</td>
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<td>Create new V7 form. Includes changes to Compulsory treatment orders forms pack, suspension of detention forms and other changes currently identified in Mental health draft bill consultation</td>
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<td>Systems testing and user acceptance</td>
<td>£10,000</td>
<td></td>
<td>MWC staff testing including travel</td>
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<tr>
<td>Cardiff consultancy</td>
<td>£10,000</td>
<td></td>
<td>Ensure forms and Imp are compatible.</td>
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<td>Project Manager</td>
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<td>Training</td>
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<td>Medical records and staff. Development of training materials and regional delivery</td>
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<td>Contingency</td>
<td>£15,000</td>
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<th>2016/17 – 2020/2021</th>
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<tr>
<td>Depreciation</td>
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<td></td>
<td>Amortise equally over 5 years (£36,000 per annum).</td>
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| Total               | £182,000 | £180,000 |          |
15. In terms of margins of uncertainty, there are some uncertainties within this project which is reflected in the £15,000 contingency budget line. The legislative process may result in changes to the legislation that are currently not predicted. These changes may have an impact on the mental health forms or result in additional necessary programming. But the Commission will be kept fully informed as the Bill progresses through Parliament so costs can be adjusted accordingly. The consultation on the forms may lead to a demand for bigger revisions than anticipated to make the overall system more effective. There is therefore a small margin of uncertainty as to the costs outlined here. The process will be managed tightly by the Scottish Government working jointly with the Commission and the Mental Health Tribunal for Scotland (“The Tribunal”) to ensure the costs are kept as close to these projected figures as possible.

16. Section 21 (Registering of advance statements) of the Bill places a new duty on the Commission to set up a register of advance statements. The Commission has advised that they do not envisage this resulting in any additional costs. The advance statement will not be on a form used under the 2003 Act and there is therefore no requirement to design this form.

Mental Health Tribunal

17. The Tribunal was established by the 2003 Act. The primary role of the Tribunal is to consider and determine applications for compulsory treatment orders under the 2003 Act and to operate in an appellate role to consider appeals against compulsory measures under the 2003 Act. The Tribunal also plays a monitoring role by periodic review of compulsory measures. The Commission is entitled to refer certain cases to the Tribunal for consideration and in certain circumstances the Scottish Ministers must refer cases to the Tribunal. A number of provisions within Part 1 of the Bill have cost implications for the Tribunal although these may be offset by some small scale efficiency savings.

Costs associated with suspension of detention

18. Sections 6 to 9 of the Bill amend the current provisions within the 2003 Act regarding the suspension of detention of persons detained in hospital by virtue of an order under the 2003 Act. A patient’s Responsible Medical Officer (with, where necessary, the consent of the Scottish Ministers) can grant a certificate suspending an order. During the period of suspension the order will not authorise detention in hospital. The main use of suspension of detention is providing time away from hospital as part of rehabilitation and recovery programmes.

19. The key change proposed in the Bill to the current suspension of detention provisions is that a patient’s Responsible Medical Officer is only permitted to suspend detention for a total period of 200 days in any twelve month period. Only periods of suspension of detention involving an overnight element count towards the 200 day threshold. If the Responsible Medical Officer wishes to suspend detention beyond this 200 day threshold then prior to so doing they must submit an application to the Tribunal.

20. The Tribunal will hold a hearing to consider whether the grounds for compulsion continue to be met and if in the Tribunal’s view, grounds for compulsion do continue to be met the threshold limit for the number of days where detention is suspended is rest to 100 days. This is in essence a new alternative disposal for the Tribunal. Currently every patient should have a hearing to consider whether an order should be varied to a community-based treatment order. This hearing should take place towards the end of the time limit on suspension of detention at
These documents relate to the Mental Health (Scotland) Bill (SP Bill 53) as introduced in the Scottish Parliament on 19 June 2014

present. The change proposed in the Bill places this hearing on a stronger statutory footing but it is not anticipated that this will cause any increase in the numbers of hearings triggered. Therefore no additional costs are anticipated.

21. However where the Tribunal extends the time limit for suspension of detention, additional hearings will arise as there will now require to be a further hearing towards the end of the extension period to consider whether the compulsory treatment order should now be varied to being community based.

22. At this point in time it is impossible to quantify how many extra hearings will arise as a result of this change. An additional hearing will only happen when a responsible medical officer seeks to have a Tribunal extend the time limit for suspension of detention. Such decisions are made on a case by case basis, and will depend entirely on the circumstances of each individual who is subject to measures under the 2003 Act. That being said, having considered the proposed changes with the Scottish Tribunals service, and taking into account current practice of responsible medical officers, it is anticipated that the requests for extensions of the time period for suspension of detention will be very low. This is based on the fact that at present, a maximum of 9 months suspension of detention within a 12 month period is available for patients and it is only in a very small number of cases that an extension to this period would have been beneficial to the patient. Given this anticipated outcome, any additional costs to the Tribunal are expected to be minimal and will be absorbed within existing budgets.

Costs associated with conditions of excessive security appeals

23. Sections 10 to 12 of the Bill amend the existing regulatory framework to enable individuals held in medium secure facilities throughout Scotland to lodge an appeal with the Tribunal against being held in what they perceive to be conditions of excessive security. Individuals will be able to lodge one such appeal in any twelve month period.

24. As no appeal has previously be made under section 268 (detention in conditions of excessive security) of the 2003 Act there is no existing data to help formulate potential costings. To help devise indicative costings the Scottish Government has looked at the number of hearings held in 2013 by the Tribunal in relation to section 264 (detention in conditions of excessive security: state hospital) cases. Out of an average of 132 patients within the State Hospital there were 51 hearings in respect of excessive security, approximately 44%. There are currently circa 150 individuals within the medium secure estate in Scotland.

25. Whilst it could be argued that an individual in the State Hospital is more likely to appeal against their level of security than an individual held at a lower level of security, for the purposes of estimating the potential cost here, the Scottish Government has assumed that 44% of the current 150 patients in the medium secure estate will wish to appeal - which would amount to 66 appeals. The costs associated with this amount are estimated at around £80,000, based on a calculation of the approximate cost of a hearing multiplied by the approximate number of appeal hearings. These costs are subject to a significant margin of uncertainty given that we cannot, with any certainty, predict the number of appeal cases that may be brought under this new provision and the figures are based on an estimation of costs, arising from appeal provisions that have significant differences from those contained within the Bill.
26. We anticipate these costs will be incurred in the initial 12 months following the commencement of the provisions relating to appeals against excessive security. Subject to Parliamentary timetabling, and the duration of the Bill’s progress through Parliament, together with the need to consult on regulations, and the time required for Parliamentary scrutiny of such regulations, it is expected these costs will run from around November 2015 onwards. We expect, however, that in the following years, the costs arising from excessive security appeals will potentially be lower, year on year, as with any new appeal process, the first year always gives a disproportionately high figure given there will undoubtedly be a number of patients who have been waiting some time for such an appeal to be available whose hearings will be included in the initial year’s costs but not subsequently.

Savings to the Tribunal

27. A short term detention certificate, which lasts for 28 days, can be extended where an application for a compulsory treatment order is made to the Tribunal. In these circumstances, the patient’s detention in hospital continues to be authorised for a further five working days from the time when the short term detention certificate would otherwise have expired. This is to allow the hearing to take place. Section 1 of the Bill proposes extending this five working day period to ten working days to allow the patient, in particular, more time to prepare for a hearing. Although it is not possible to estimate specific savings at this point in time it is possible that some small efficiencies savings may accrue as a result of fewer hearings having to be held to determine an application which in turn will assist with the scheduling of tribunal hearings.

28. Similarly, some small efficiency savings in relation to increased flexibility with regard to the scheduling of certain cases may accrue as a result of provision made at the section 26 of the Bill. Section 26 removes the obligation for the Convenor of a Tribunal Panel to be either the Tribunal President or to be selected from the Shrieval Panel in certain cases. These are cases where a prisoner becomes unwell during their prison sentence and has to be transferred to hospital and at the expiry of their sentence are still in hospital and may need to remain subject to compulsory measures of treatment and care under the mental health legislation.

Scottish Legal Aid Board

29. Legal aid in the form of Assistance by Way of Representation (ABWOR) would be available to individuals who wish to lodge an appeal against being held in conditions of excessive security. As evidenced by the Scottish Legal Aid Board’s Annual Report 2012-2013 (Table 3.18(b) Accounts paid and average case costs – civil ABWOR) the average case cost for a Tribunal hearing was £1,041 in 2012-2013. As discussed above, it need not necessarily be the case that each of the 66 appeals would be dealt with at a separate hearing. It may be that the individual concerned lodged an appeal at a time when they were due to attend a Tribunal hearing on a separate matter and both issues are dealt with at one hearing. In cases such as this only a portion of the civil ABWOR cost for the case would be directly attributable to the section 268 appeal element of the Tribunal hearing.

30. However for the purposes of deriving some form of estimate of potential costs here, the Scottish Government, estimates that there could be an additional cost to the Scottish Legal Aid Budget in 2015/16 in the region of £70,000 (66 x £1,041 (rounded up). These figures are based on the estimated cost to the legal aid budget of £1,041 multiplied by the estimated number of appeal hearings based on the number of appeals brought under ,the existing appeal provision for
persons within the State Hospital who have appealed against being held in conditions of excessive security. Again, for the reasons highlighted at paragraph 23 above, there is a significant margin of error with these figures, given the difficulty in predicting with any certainty the number of appeals likely to be brought forward. Costs for subsequent years are difficult to predict as whilst it will be open to an individual to submit a section 268 appeal once in a twelve month period it is not possible to predict with any certainty at this juncture how many appeals are likely to be made.

Costs on local authorities

31. The Scottish Government has responded to consultation feedback and a number of mental health officers’ (MHO) duties and responsibilities as specified in Consultation on proposals for a draft Mental Health (Scotland) Bill have either been removed (e.g. changes to the current procedure for submitting compulsory treatment order applications) or significantly reduced (e.g. submission of MHO reports in relation to section 86).

32. Section 2 of the Bill introduces a new section 87A of the 2003 Act, which places a new requirement on mental health officers and may cause a slight increase in costs for local authorities. The section requires mental health officers to prepare a report for a hearing where a responsible medical officer requires a hearing to review a patient’s compulsion order and the mental health officer disagrees with the responsible medical officer’s assessment of the patient. This is a new duty and the preparation of such reports for hearings will incur additional administrative and staffing costs for local authorities. However, the approximate number of cases where this will apply is less than 20 for the whole of Scotland, based on recent figures for hearings provided by the Commission.

33. Based on figures verified by the Association of Directors of Social Work, it is estimated that the preparation of a report by a mental health office will cost in the region of £475. This results in an additional cost of £9,000 for the estimated 20 hearings where this will apply. This cost will be spread across all local authority areas in Scotland.

34. The Scottish Government therefore considers that the proposed legislative changes will result only in minimal costs for local authorities.

Costs on other bodies, individuals and business

National Health Service

35. There are a number of provisions within the Bill which may result in additional costs being incurred by the NHS and these are outlined below.

36. As discussed at paragraph 19, section 9 (Maximum suspension of detention provisions) of the Bill provides that if a responsible medical officer wishes to suspend detention for a patient beyond the 200 day threshold, then prior to doing so they must submit an application to the Tribunal. The Tribunal will hold a hearing to consider whether the grounds for compulsion continue to be met. Notwithstanding this, the responsible medical officer already has a duty under the 2003 Act to regularly review the appropriateness of any order their patient is subject
to. It is therefore not anticipated that these provisions will result in any substantive increase on costs to the NHS.

37. Sections 22 and 23 of the Bill propose a slight widening of the existing provisions relating to the provision of assistance with communication at medical examinations, and services and accommodation for mothers with mental health disorders.

38. At present, assistance is given to patients with communication difficulties when they are the subject of existing orders. The Bill proposes to extend this to patients with communication difficulties who are subject to an application for these orders. This obligation will rest with the Scottish Ministers, NHS or local authorities and reflects the requirements of the Equality Act 2010\(^7\) which public authorities are already subject to. It is considered therefore that any costs associated with this provision will be minimal and absorbed within current budgets.

39. Section 23 extends the duty Health Boards currently have, to provide services and accommodation for certain mothers with post natal depression, to mothers with post natal depression and any other mental disorder. This will require additional provision of accommodation and services across the NHS estate. However given the number of variables involved, it is difficult to provide costings with any certainty for this proposal. In patient services for mothers with post natal depression to be accompanied by their child are currently organised on a regional basis, with specialists units in the West and East and a couple of beds in the North, served by specialist perinatal nurses and dedicated consultant time but no specialist unit. Costs to extend these provisions to women with other mental disorders are entirely dependent on estimate of need and level of services required together with the timetable to deliver. It is proposed that these changes will require to be met within a 2 year timetable, during which period of time the level of service required will be clarified and costings determined accordingly.

40. As discussed above the proposed legislative changes to section 268 (detention in conditions of excessive security: hospitals other than state hospitals) of the 2003 Act will provide a right of appeal against being held in conditions of excessive security, for persons within a medium secure setting. There will be some additional work for medical staff in terms of preparing for and attending these hearings but it is not anticipated that these costs will be significant as the information required for these hearings is already required for hearings under the present regime.

41. However, as these changes build on existing provision within the NHS, overall the Scottish Government considers that the proposed legislative changes will result in only minimal costs to the NHS.

*Savings*

42. Section 8 of the Bill amends the 2003 Act to remove the need for responsible medical officers to seek the prior approval of the Scottish Ministers before granting a certificate suspending detention in the case of assessment orders, treatment orders, interim compulsion orders and temporary compulsion orders to enable a patient to attend a court hearing or necessary medical (including dental) appointment. This amendment will give rise to some small efficiency

\(^7\) Equality Act 2010, c15
These documents relate to the Mental Health (Scotland) Bill (SP Bill 53) as introduced in the
Scottish Parliament on 19 June 2014

savings as responsible medical officers will no longer having to liaise with Health and Social
Care Integration Directorate staff to obtain the prior approval of the Scottish Ministers. There are
too many variables to enable the Scottish Government to devise a meaningful estimate of what
these potential savings might be.

Individuals

43. The Scottish Government considers that the provisions in Part 1 of the Bill have no direct
financial implications on individuals or businesses.

PART 2: CRIMINAL CASES

44. The 1995 Act was amended by Parts 8, 9 and 10 of the 2003 Act with regard to the
treatment of mentally disordered offenders. Part 2 of the Bill makes a number of minor
amendments to the 1995 Act, mainly concerned with timescales and procedure.

Costs on the Scottish Administration

Codes of Practice

45. The amendments arising from Part 2 of the Bill will impact on Volume 3 of the Code of
Practice. This Volume of the Code of Practice for the 2003 Act covers a range of issues relating
to mentally disordered offenders including procedures for the disposal of cases of persons with
mental disorder who are involved in criminal proceedings which are set out in Part VI and
sections 200 and 230 of the 1995 Act. Provisions in the 2003 Act have replaced or made
amendments to some of these procedures.

46. The revision of the Code of Practice will be a matter for the Scottish Government as part
of the normal business of the Directorate for Health and Social Care Integration. Costs will be
minimal and absorbed accordingly.

Costs on local authorities

47. Section 41 of the Bill proposes a new section 153A of the 2003 Act, which places a new
requirement on mental health officers. This may cause a slight increase in costs for local
authorities. The section requires mental health officers to prepare a report for a hearing where a
responsible medical officer is requiring a hearing to review a patient’s compulsion order and the
mental health officer disagrees with the responsible medical officer’s assessment of the patient.
This is a new duty and the preparation of such reports for hearings will incur additional
administrative and staffing costs for local authorities. However, the approximate number of cases
where this will apply is less than 20 for the whole of Scotland, based on recent figures for
hearings from the Commission. From figures verified by the Association of Directors of Social
Work, it is estimated that the preparation of a report by a mental health office will cost in the
region of £475. This results in an additional cost of £9,000 for the estimated 20 hearings where
this will apply. This cost will be spread across all local authority areas in Scotland.

48. The Scottish Government therefore considers that costs to local authorities from these
provisions will be minimal.
These documents relate to the Mental Health (Scotland) Bill (SP Bill 53) as introduced in the Scottish Parliament on 19 June 2014

**Costs on other bodies, individuals and business**

49. The Scottish Government considers that the provisions in Part 2 of the Bill have no direct financial implications on other bodies, individuals or businesses.

**PART 3: VICTIMS’ RIGHTS**

**Costs on the Scottish Administration**

50. The preparation of the guidance in relation to the Victim Notification Scheme for mentally disordered offenders will be a matter for the Scottish Government as part of the normal business of the Directorate for Health and Social Care Integration.

**The Tribunal**

51. The provisions in Part 3 of the Bill could have minimal financial implications for the Tribunal. At present victims who wish to make representations to the Tribunal are heard on a different day and in a different location from the hearing to which the representation relates. The current number of victim representations is not statistically significant, but this may well increase once the new victim notification scheme is delivered and publicised in the financial year 2016/17. We are mindful of the potential for a small increase in costs with regard to this and it will be included in budget determinations for the financial year 2016/17.

**Costs on local authorities**

52. The provisions in Part 3 of the Bill have no direct financial implications on local authorities.

**Costs on other bodies, individuals and business**

53. The Scottish Governments considers that the provisions in Part 3 of the Bill have no direct financial implications on individuals or businesses.
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 19 June 2014, the Cabinet Secretary for Health and Wellbeing (Alex Neil MSP) made the following statement:

“In my view, the provisions of the Mental Health (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 19 June 2014, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Mental Health (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”