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SPICe Briefing

Mental Health (Scotland) Bill

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The Mental Health (Scotland) Bill was introduced in the Scottish Parliament on 19 June 2014 by the Cabinet Secretary for Health and Wellbeing. The overarching objective of the Bill is to help people with a mental disorder access effective treatment quickly and easily.

This briefing provides background information on previous mental health legislation before outlining the main proposals in the Bill.



The Scottish Parliament
Pàrlamaid na h-Alba

CONTENTS

EXECUTIVE SUMMARY	3
INTRODUCTION	4
MENTAL HEALTH (CARE AND TREATMENT) SCOTLAND ACT 2003	4
<i>The Mental Welfare Commission for Scotland</i>	5
<i>The Mental Health Tribunal for Scotland</i>	5
<i>Duties on local authorities</i>	5
<i>Duties on health boards</i>	5
<i>Advocacy services</i>	5
<i>Named persons</i>	5
<i>Advance statements</i>	6
<i>Detention</i>	6
CRIMINAL PROCEDURE (SCOTLAND) ACT 1995	7
THE MCMANUS REPORT	8
THE SCOTTISH GOVERNMENT'S RESPONSE	11
CONSULTATIONS	11
PREVIOUS WORK BY SCOTTISH PARLIAMENT COMMITTEES	11
PROVISIONS OF THE BILL	12
PART 1: THE 2003 ACT	12
PART 2: CRIMINAL CASES	16
PART 3: VICTIMS' RIGHTS	17
COSTS	19
ANNEX A: THE MILLAN PRINCIPLES	21
SOURCES	22
RELATED BRIEFINGS	26

EXECUTIVE SUMMARY

- The Mental Health (Scotland) Bill was introduced in the Scottish Parliament on 19 June 2014. The overarching objective of the Bill is to help people with a mental disorder access effective treatment quickly and easily. The Bill is structured into three parts.
- Part 1 of the Bill makes provision about the operation of the Mental Health (Care and Treatment) (Scotland) Act 2003. The [Policy Memorandum](#) notes that it will seek to “improve the efficiency and effectiveness of the mental health system in Scotland by implementing the changes the Scottish Government said it would bring forward following on from the McManus Review; to provide a better system for the review of conditions of security to which patients are subject by adjusting the provisions which allow the Tribunal to consider, on application, whether a patient is being detained in conditions of excessive security, and make a number of technical and drafting amendments to improve the legislative framework”. The McManus Review was a limited review of the civil provisions of the 2003 Act which was commissioned by the Scottish Government in 2008.
- Part 2 of the Bill makes provision about criminal cases. The Bill seeks to make a number of minor and technical changes to the Criminal Procedure (Scotland) Act 1995 in relation to the way in which criminal courts deal with people with mental disorders who are involved with criminal proceedings.
- Part 3 of the Bill makes provision, through amendments to the Criminal Justice (Scotland) Act 2003, for the introduction of a notification scheme for victims of some mentally disordered offenders subject to certain orders.
- The Mental Health (Scotland) Bill has been referred to the Health and Sport Committee. The Committee issued a [call for written evidence](#), this closed on 22 August 2014. Information on the Bill can be found on the [Scottish Parliament’s website](#).

INTRODUCTION

The term “mental health problem” covers a wide range of conditions. Common mental health problems in Scotland include depression including bi-polar disorder and post-natal depression, anxiety, personality disorders, schizophrenia, eating disorders and dementia. It is estimated that approximately one in four adults in the UK will experience a diagnosable mental health condition in any given year and one in six experiences this at any given time ([Mental Health Foundation online](#)).

The SPICe briefing [Mental Health in Scotland](#) provides further information on the prevalence of mental health conditions, the organisation of mental health services, the current legislative and policy framework and the costs and funding of mental health services (Nowell, 2014).

The Mental Health (Scotland) Bill was introduced in the Scottish Parliament on 19 June 2014. The Parliamentary Bureau agreed to recommend that the Health and Sport Committee be designated as lead committee for consideration of the Bill at Stage 1, a motion being lodged on 24 June and agreed by the Parliament on 25 June.

The overarching objective of the Bill as stated in the Policy Memorandum is to help people with a mental disorder access effective treatment quickly and easily. The Bill seeks to amend provisions within the [Mental Health \(Care and Treatment\) Scotland Act 2003](#) (the 2003 Act) and some related provisions in the [Criminal Procedures \(Scotland\) Act 1995](#). It also seeks to make provision, through amendments to the [Criminal Justice \(Scotland\) Act 2003](#), for the introduction of a notification scheme for victims of some mentally disordered offenders subject to certain orders.

MENTAL HEALTH (CARE AND TREATMENT) SCOTLAND ACT 2003

The 2003 Act came into force in October 2005. It followed the 2001 report of the [Millan Committee](#) (Scottish Executive, 2001) which reviewed the previous mental health legislation for Scotland. The Millan Committee made recommendations based around the central feature that both the law and practice relating to mental health should be driven by a set of ten principles (see annex A). These principles relate to minimising interference in peoples’ liberty and maximising the involvement of service users in any treatment.

The 2003 Act applies to people who have a mental illness, learning disability or related condition. The Act defines these conditions as a “mental disorder”. It is a rights-based piece of legislation that gives individuals the right to express their views about their care and treatment. It provides for the right to independent advocacy, the right to submit an advanced statement which states an individual’s wishes and the right to choose a named person who can make decisions on an individual’s behalf. Structurally the 2003 Act redefined the role and functions of the [Mental Welfare Commission](#) for Scotland and established the [Mental Health Tribunal](#) as the principal forum for approving and reviewing compulsory measures for the detention, care and treatment of mentally disordered persons¹ (Nowell, 2014).

¹ Previously, decisions regarding the compulsory treatment of mentally ill people were made through the sheriff court.

The Mental Welfare Commission for Scotland

The Mental Welfare Commission for Scotland (the Commission) has a wide ranging role in the regulation of mental health services. It is an independent organisation which works to safeguard the rights and welfare of anyone with a mental illness, learning disability or other mental disorder ([Mental Welfare Commission for Scotland online](#)).

The Mental Health Tribunal for Scotland

The Mental Health Tribunal for Scotland (the Tribunal) was established under section 21 of the 2003 Act and came into being on the 5 October 2005. Its main function is to “consider and determine applications for compulsory treatment orders under the 2003 Act and to consider appeals against compulsory measures made under the 2003 Act. The Tribunal also plays a monitoring role by periodic review of compulsory measures” The Tribunal is made up of three people (a legal member, a psychiatrist and general member – such as a nurse, clinical psychologist or person with experience of using mental health services). ([Mental Health Tribunal online](#)).

Duties on local authorities

The 2003 Act placed a duty on local authorities to provide care and support services for people with a mental disorder who are not in hospital and to provide services to promote their well-being and social development. Local authorities must also appoint a sufficient number of mental health officers² (MHOs) (SAMH, 2014).

Duties on health boards

The 2003 Act placed a duty on health boards to provide services and accommodation, compile a list of approved medical practitioners (AMPs)³ and provide services for women with post-natal depression to allow them to care for their child (SAMH, 2014).

Advocacy services

Advocacy services provide support and representation for people who find it difficult to put their own case to service providers or do not feel in a strong position to defend their rights. Advocates help people express their views and make informed decisions; they are not employed by hospitals or social services. Under the 2003 Act every person with a mental disorder has a right to access independent advocacy. The 2003 Act placed a duty on NHS Boards and local authorities to secure the availability of independent advocacy services within their relevant board or authority (Scottish Government, 2009).

Named persons

A [named person](#) is someone appointed by a patient to look after their interests. Currently anyone aged 16 or over can choose a named person. If an individual does not choose someone to be their named person, then their primary carer will be the named person. An individual's

² A mental health officer is a social worker with specialist training and skills in relation to mental health.

³ An approved medical practitioner is someone who has been approved by a health board or by the State Hospital Board for Scotland as having specialist training experience in the diagnosis and treatment of mental disorder (Mental Health (Scotland) Bill: Policy Memorandum).

primary carer is the carer who provides most or all of the individual's care and support. If an individual does not have a primary carer, then their nearest relative will be the named person. If no carers or relatives are willing or able to be a named person an individual's mental health officer can apply to the tribunal to have someone appointed as a named person. Named persons are entitled to receive information about the patient and in certain circumstances they can make applications on their behalf (Mental Health (Scotland) Bill: Policy Memorandum).

Advance statements

An [advance statement](#) is a signed and witnessed document written by a person setting out their preferences for how they wish to be treated or not treated when they are unwell (Mental Health (Scotland) Bill: Policy Memorandum). Anyone who makes decisions about an individual's treatment should read their advance statement and consider their wishes. An advance statement is not a guarantee that a person's wishes will be followed, but it is a guarantee that they will be taken into account. An advance statement should be witnessed and signed by a health or social care professional.

Detention

Being [detained](#) under the 2003 Act is sometimes referred to as being "sectioned". There are three types of orders emergency detention certificates, short term detention certificates and compulsory treatment orders.

Emergency detention certificates

An [emergency detention certificate](#) allows for a person to be held in hospital, or transferred to a different hospital, and allows for their detention for up to 72 hours while their condition is assessed. Any registered medical practitioner can grant an emergency detention certificate. The doctor does not need to be an AMP ([NHS Education for Scotland online](#)). In 2012-13 1,915 emergency detention certificates were issued (Mental Welfare Commission, 2013).

Short-term detention certificates

A short-term detention certificate allows for a person to be held in hospital, or transferred to a different hospital, and their detention for up to 28 days for assessment and/or treatment. A short-term detention certificate can only be granted by an AMP and a MHO must be consulted. If possible the views of the named person should also be sought ([NHS Education for Scotland online](#)). The short-term detention certificate must be completed within three days of examining the patient. In 2012-13 there were 3,576 new short term detention certificates (Mental Welfare Commission, 2013).

Compulsory treatment orders

A [compulsory treatment order](#) (CTO) allows for a person to be treated for their mental illness. A CTO is granted by a Tribunal and authorises detention and treatment in hospital or the community for an initial period of six months. It is then reviewed annually. A CTO requires two medical reports⁴, a report by the MHO making the application, and a proposed care plan. The CTO will set out a number of conditions that an individual will need to comply with. These conditions will depend on whether the individual has to stay in hospital or is in the community. The individual and their named person should be informed if an application for a CTO is to be made. The Tribunal decides whether a CTO is to be granted. The individual has the right to make their views known to the Tribunal. In 2012-13 1,112 new CTOs were granted (Mental Welfare Commission, 2013).

⁴ These must be carried out either by two AMPs or one AMP and the person's GP.

An interim CTO is authorised by the Tribunal when it is felt additional information is required before it can determine the application. The interim order lasts for up to 28 days (Scottish Government, 2005a).

CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

The provision for disposal⁵ of people by the criminal courts for people with mental disorders is set out in the [Criminal Procedures \(Scotland\) Act 1995](#); this was amended by the 2003 Act. It makes provision for a number of orders including:

- *Assessment orders*, which authorise detention in hospital for 28 days and is used as the starting point into investigation into mental disorder. They can be extended once for seven days (this was provided for by the 2003 Act).
- *Treatment orders*, which authorise detention and treatment in hospital until certain conditions have been met. It is used to facilitate treatment whilst the patient is undergoing court process (this was also provided for by the 2003 Act).
- *Temporary compulsion orders*, which are used when a court decides that a person's trial cannot start or must stop because of their mental disorder.
- *Interim compulsion orders*, which are used when an individual is convicted of an offence and the punishment is prison but instead is admitted to hospital for examination; this lasts for 12 weeks and can be renewed by further periods of 12 weeks for up to one year.
- *Compulsion orders*, which authorise detention and treatment in a hospital or community setting for six months and are then reviewed annually. This is an equivalent of the compulsory treatment order.
- *Restriction orders*, which are made by a court at the time of disposal and are added to a compulsion order. It is the same as a compulsion order but without a time limit. It is reserved for the most serious and high risk offenders.
- *Hospital directions*, which authorise the detention of a patient in hospital until they are well enough to be transferred to prison to complete their sentence.
- *Transfer for treatment directions*, which are issued by Scottish Ministers when a serving prisoner requires hospital treatment for mental disorder. (Mental Health (Scotland) Bill: Policy Memorandum; [Mental Welfare Commission for Scotland](#) online).

⁵ Disposal refers to how a case or proceeding is completed. In mental health cases court disposals include compulsion orders, hospital directions, restriction orders, assessment orders and treatment orders

THE MCMANUS REPORT

In 2008 the Scottish Government commissioned a limited review of the 2003 Act. The Group's Terms of Reference were:

- To consider the operation of the processes in respect of the civil provisions of the Act in the context of the ten Millan Principles (see [Annex A](#)) and advise on changes that should be made to improve the efficiency of the operation of the Act and the experience of patients.
- To advise on other minor amendments to the Act to resolve technical or other issues as provided to the Review Group by the Scottish Government to consider.
- To report to the Minister for Public Health with recommendations following appropriate engagement with those with an interest in the operation of the Act (Scottish Government, 2009).

[The McManus Report](#) was presented to Ministers in March 2009. It identified five key areas for improvement.

1. Advance statements

A number of recommendations were made to increase the take-up of advance statements including:

- Clarifying what can be included in an advance statement.
- Increasing publicity.
- Making it easier to make advance statements.
- Extending the range of people who can witness advance statements.
- Requiring designated medical officers to review when treatment is given in conflict with an individual's advance statement and providing information on efforts made to address the individual's wishes.
- The introduction of a central register of advance statements with copies also to be kept in medical records (Scottish Government, 2009, p9).

2. Independent advocacy

Recommendations included that:

- There should be appropriate provision of independent advocacy services with associated funding.
- Service users, and others, should be empowered to report failures to provide adequate access to advocacy service.
- Advocacy organisations should aim to work in accordance with the Scottish Independent Advocacy Alliance (2010a, 2010b) [Principles and Standards](#) and [Code of Practice](#) and that these should be promoted and monitored.
- Carers should be able to access advocacy services.
- NHS Boards and local authorities should support the development of collective advocacy groups ⁶(Scottish Government, 2009, p12).

Named persons

The McManus Report made 19 recommendations in this area including:

- That a service user should only have a named person if they have chosen to appoint one.
- A nationwide publicity campaign about the role and function of the named person.
- Changes to the form appointing a named person.
- Support for named persons.

⁶ Collective advocacy enables a peer group of people, as well as a wider community with shared interests, to represent their views, preferences and experiences ([Scottish Independent Advocacy Alliance online](#)).

- That people under the age of 16 should be able to appoint a named person.
- Drawing up a code of practice for named persons (Scottish Government, 2009, p26-27).

3. Medical matters

A number of suggested changes were highlighted to the review group by medical professionals in light of their experience of using the 2003 Act (Scottish Government, online). These include:

- **Medical examinations for compulsory treatment orders.** That an application for a CTO should continue to be accompanied by two medical reports. However, whilst one from an AMP the other should be from General Practitioner (GP). The GP should be able to give a view on the AMPs report rather than state all the grounds in section 57(3) of the Act⁷. In exceptional circumstances the GPs report could be provided by a second AMP (Scottish Government, 2009, p31).
- **Medical examinations – conflict of interest.** That regulations should be amended to require that a medical examination for an extension of a CTO applying to a patient in a hospital run by an independent healthcare provider must be made by an AMP independent of that service to bring it in line with application for initial CTOs (Scottish Government, 2009, p32).
- In relation to **CTOs** the McManus Report referred to suspension of detention. This is the period of authorised absence from hospital to help prepare a patient for a managed return into the community. It noted that the current arrangements are inflexible and difficult to manage and have resulted in the development of excessively bureaucratic systems to count up the number of days a patient has had his or her detention requirement suspended.
- **Care plans.** The McManus Report identified widespread confusion about the purpose, content and format of care plans. The Report recommended that the Scottish Government should provide a template for the care plan which should include a recommended timeframe for completion.

Tribunals

The McManus Report identified a number of areas related to the Tribunal system that could be improved including:

- **Multiple hearings.** The problem of people having to attend more than one hearing to reach a conclusion was raised as an issue. Service users, carers and named persons were reported to find attending multiple hearings stressful. In order to improve the system a number of changes were recommended including increasing the time limit whereby a patient can be detained after the expiry of a short-term detention certificate from five to ten working days.

⁷ Section 57(3) of the 2003 Act outlines the conditions that the medical practitioner must be satisfied with before a CTO can be applied for. These are that the patient has a mental disorder; that medical treatment which would be likely to prevent the mental disorder worsening; or alleviate any of the symptoms, or effects, of the disorder, is available for the patient; that if the patient were not provided with such medical treatment there would be a significant risk to the health, safety or welfare of the patient; or to the safety of any other person; that because of the mental disorder the patient's ability to make decisions about the provision of such medical treatment is significantly impaired; and that the making of a compulsory treatment order is necessary.

- **Excessive formality and legality.** To tackle this number of recommendations were made including ongoing training and the production of a code of conduct for legal representatives working in the field of mental health law.
- **Availability, quality and style of legal representation.** Concerns were expressed at the lack of legal expertise in solicitors in the area of mental health law. A number of recommendations were made to counter this, including setting up a postgraduate short course and in-service courses for solicitors to provide training in the proper evaluation of care plans and other aspects of the mental health system with which they are not likely to be familiar.
- **Independent advocacy.** Concerns were raised about the availability of advocacy services and underfunding. Recommendations included ensuring that health boards and local authorities make available sufficient resources to provide equity of prompt access to advocacy services for all service users.
- **Interpretation.** That professional interpretation services should always be offered to people whose first language is not English.
- **Appeals and review right of the President of the Tribunal.** The 2003 Act does not specify any time limits for the hearing of appeals. The McManus review group heard from many respondents that a timeframe should be set out in the Act to regulate the hearing of appeals and that this should impose specific time limits. In relation to short-term detention certificates it was recommended that a time limit should be imposed to require the appeal to be disposed of within the period of the certificate, or within five working days of the appeal being lodged if the appeal is lodged within the last five working days of the certificate. In relation to other appeals it was recommended that a time limit be imposed to require a hearing to take place within 28 days of the lodging of that appeal.
- **Production of independent reports.** Under the Mental Health Tribunal for Scotland (Practice and Procedure) (No 2) Rules 2005 an obligation is placed on relevant persons to provide the tribunal with a copy of any written expert report obtained. The McManus Report noted that this is often not complied with. It recommended that the requirement be removed.
- **Recorded matters at the interim order stage.** The report referred to recorded matters, these are the aspects from a patients care plan that are considered essential by the Tribunal (NHS Education for Scotland online). The report recommended that the 2003 Act should be amended to allow for recorded matters to be made at a time when an interim order is made if considered appropriate. Currently this only happens for CTOs.

Other Issues

- A number of other issues were outlined in the report. Some of these have been addressed in the Bill such as the transfer of a person subject to a community compulsory treatment order from one hospital to another and appeals against excessive security. Others such as learning disability and the law and the availability of MHOs are not addressed in the legislation.

THE SCOTTISH GOVERNMENT'S RESPONSE

The [Scottish Government's response](#) to the McManus Report forms the basis of the changes set out in the Mental Health (Scotland) Bill. The response noted that implementation of the McManus recommendations in certain areas, such as advocacy and excessive formality and legality at the Tribunal, would not require legislation (Scottish Government, 2010).

CONSULTATIONS

The Scottish Government has undertaken a number of consultations regarding this legislation. A [report](#) on the consultation on a draft Bill was published in 2014 (Scottish Government, 2014). Prior to this a consultation in relation to [appeals against conditions of excessive security](#) was [published](#) (Scottish Government, 2013c). A consultation on the [possible introduction of a scheme for victims of mentally disordered offenders similar to the current criminal justice Victim Notification Scheme](#) was issued in 2010 and an [analysis of responses](#) was published in 2011 (Scottish Government, 2011).

PREVIOUS WORK BY SCOTTISH PARLIAMENT COMMITTEES

Prior to the introduction of the Bill Members of the Health and Sport Committee visited Evergreen, a Scottish Association for Mental Health training service providing work experience in horticulture for people who are experiencing or recovering from mental ill health. A roundtable session on mental health took place during the Committee meeting on the [3 June 2014](#). In relation to the draft Mental Health (Scotland) Bill the following issues were discussed (Scottish Parliament, 2014):

- Concerns that the Bill did not include all the elements of the McManus review.
- Concerns that the Bill would make it possible to detain a person on the basis of one medical report. Following consultation this provision has been removed from the Bill.
- The possibility of extended roles for specifically trained nurses and psychologists in relation to the second report.
- Concerns that the Bill will not have the desired effect in relation to a person not being required to have a named person.
- Concerns regarding the absence of independent advocacy in the Bill.
- Concerns about the provisions relating to nurses' holding powers.
- That someone in the care team should be responsible for the completion of an advance statement.
- That there should be more focus in the Bill on groups subject to inequalities such as asylum seekers, refugees and young people.
- That sections 25 to 31 of the 2003 Act, which deals with the obligations of local authorities to promote recovery and access to other services including employability and education, should be revisited.
- The expansion of mandated treatment including psychological care for families where appropriate.

The Public Petitions Committee also considered a petition on mental health legislation. [PE01494](#) called on the Scottish Parliament to urge the Scottish Government to amend the Mental Health (Care and Treatment) (Scotland) Act 2003 to ensure that it is compatible with the European Convention on Human Rights. The Committee agreed to close the petition on the basis that there was broad agreement that the 2003 Act is compliant with human rights legislation and does not require amending in the way sought in the petition.

PROVISIONS OF THE BILL

The key provisions of the Bill relate to recommendations made in [the McManus Report](#). In addition, the Bill makes provision for the introduction of a notification scheme for victims of some mentally disordered offenders.

In Part 1 the Bill makes provision about the operation of the Mental Health (Care and Treatment) (Scotland) Act 2003.

Part 2 of the Bill seeks to amend the Criminal Procedure (Scotland) Act 1995 in relation to the treatment of mentally disordered offenders. It amends timescales for assessment and treatment orders and provides for variations of certain orders.

Part 3 of the Bill creates a new notification scheme for victims of some mentally disordered offenders. This will allow certain information to be provided to victims of offenders subject to certain orders and to allow victims to make representations in certain circumstances in connection with the release of the patient from detention (Mental Health (Scotland) Bill: Policy Memorandum).

The key provisions as stated in the Bill and the accompanying documents can be found on the [Scottish Parliament's website](#).

PART 1: THE 2003 ACT

Part 1 of the Bill makes provision about the operation of the Mental Health (Care and Treatment) (Scotland) Act 2003.

Sections 1 and 2: Procedure for compulsory treatment

Measures until application determined

Currently when an application for a CTO is made in relation to a patient who is liable to detention under a short-term detention certificate, the period of detention is automatically extended for a period of five working days beyond the date the certificate is due to expire. Applications for CTOs are regularly received by the Tribunal at short notice. This results in a logistical burden for the Tribunal and may impact on the patient who will have a limited time to instruct legal representation or instruct an independent medical report (Policy Memorandum p.4). The Bill seeks to increase this time, from five working days to ten working days. It is hoped that this will reduce the problem of multiple hearings that was outlined in the McManus Report. It also makes provision that the proposed extension will not increase the continuous period of detention.

Information where order extended

Currently when an individual's RMO is proposing to extend a CTO they are required to seek the views of certain people, including the MHO, before making a determination. The Bill makes provision that when the Tribunal is required to review a determination (in certain case, see below) the MHO must submit a written report to the Tribunal (Policy Memorandum p.4). The Tribunal will be required to review the determination when:

- The type of mental disorder recorded in the determination to extend the CTO is different from that recorded in the original CTO.
- The MHO disagrees with the extension of the CTO.
- The Tribunal has not reviewed the CTO in the two-year period prior to which the CTO would have lapsed.

The Bill does not make provision for the move to a system whereby only one medical report would be required as was set out in the draft Bill. This change was made following the Scottish Government's consultation.

Sections 3, 4 and 5: Emergency, short term and temporary steps

The Policy Memorandum states that the aim of these provisions is to ensure that an individual is subject to the appropriate order for their condition and that necessary changes can be made quickly and fairly (p.6). The Bill makes provision that if a person is already in a detention regime this will govern subsequent detention rather than emergency or short-term provisions.

When a person is detained under an emergency detention certificate the managers of a hospital must make arrangements for the person to be examined by an AMP. The hospital manager must within 12 hours of the emergency detention certificate being given to them inform certain people that the certificate has been granted (Policy Memorandum p.6). One of the organisations that have to be notified is the Mental Welfare Commission for Scotland. The Commission raised that this notification serves little purpose and as a result the Bill removes the need for the Commission to be notified. In recognition that the information provided by the AMP may be of an unduly sensitive nature the Bill makes provision for hospital managers to exercise discretion when giving notice about the granting of emergency detention certificates.

Sections 6, 7, 8 and 9: Suspension of orders and measures

Suspension of orders on emergency or short-term detention

A CTO may or may not authorise detention in hospital. If a patient's condition suddenly deteriorates urgent hospital treatment may be needed. In these cases there may not be time for the Tribunal to vary the original CTO to provide for detention in hospital and an emergency detention certificate or short-term detention certificate may be required. When this happens any measures authorised by the original measure will cease to have effect (Policy Memorandum p.8). The Bill seeks to extend this to people who have been subject of a CTO then a compulsion order or an interim CTO.

Suspension of detention for certain purposes

The Bill removes the requirement for the prior approval of Scottish Ministers to be sought by the RMO before granting a certificate suspending detention (in the case of assessment orders, treatment orders, interim compulsion orders and temporary compulsion orders) to enable an individual to attend a court hearing or necessary medical or dental appointment. The Scottish Government considers that Ministerial involvement is both unnecessary and inefficient as consent would not be withheld in these situations (Policy Memorandum p.9).

Maximum suspension of detention measures

A suspension of detention can be used as part as rehabilitation and recovery programme as it allows a person to spend an extended time out of hospital whilst still being liable to detention under the 2003 Act. Currently, when a patient is subject to a CTO that authorises detention in hospital, the responsible medical officer (RMO⁸) can grant a certificate suspending that detention for up to 6 months. Some people believe that the current arrangements for suspension of detention are inflexible and difficult to manage. It is believed this has resulted in excessively bureaucratic systems to count up the number of days a patient has had their detention suspended for (Policy Memorandum p.10).

The Bill provides that a RMO can authorise the suspension of detention for a period of no more than 200 days (incorporating an overnight element) in any 12 month period. The RMO will be able to authorise up to a further 100 additional overnight periods of suspended detention within

⁸ An RMO is the lead medical practitioner who has overall responsibility for a patient's care.

the original 12 month period following application to the Tribunal. This provision differs from that proposed in the draft Bill, which was to remove the time limit on suspension of detention altogether.

Sections 10, 11 and 12: Orders regarding level of security

An addition to the Mental Health (Scotland) Bill, following the publication of the draft Bill, relates to orders regarding level of security.

Currently section 268 of the 2003 Act gives qualifying patients held in qualifying hospitals the right to appeal to the Tribunal if they believe that they are being held in conditions of excessive security. However, the definition of qualifying patient and qualifying hospital was to be made by regulation and to date no regulations have been made. Therefore, currently only patients detained in the state hospital have a right of appeal against levels of excessive security. This was the subject of the Supreme Court case [RM vs the Scottish Ministers](#) (The Supreme Court of the United Kingdom, 2012). The problem identified with the current situation is that if a person is found to be held in conditions of excessive security they can be moved to a different hospital but not to a different part of the same hospital that operates at a lower level of security. The Scottish Government notes that this does not reflect the current secure estate in Scotland whereby a number of hospitals have different levels of security on the same site (Policy Memorandum p.12).

The Bill seeks to amend existing provisions to give patients held in medium secure settings a right of appeal against being held in conditions of excessive security. The Scottish Government does not consider that there is a problem with people being held in conditions of excessive security in a low secure setting, as the next step would be release into the community (Policy Memorandum p.12).

Sections 13 and 14: Removal and detention of patients

Removal and detention of patients

The 2003 Act makes provision for a MHO to apply to the sheriff or in certain circumstances a Justice of the Peace for a removal order. A removal order enables a MHO, a police officer and other specified people to enter premises and remove an individual to a place of safety (hospital, care home or other suitable place) and to detain them for up to seven days. The Bill seeks to place a duty on the MHO to notify the Commission when an application for a removal order is made. The policy objective behind this change is to ensure that people subject to removal orders are offered the same support from the Commission as people on similar types of order (Policy Memorandum p.13).

Detention pending medical examinations

Currently certain nurses (mental health or learning disability registered nurse) can detain a patient who is not subject to a CTO for two hours to enable an examination to be carried out by an RMO. This can be extended by an additional hour if the RMO does not arrive in the first hour. The Bill seeks to extend this period to time to three hours. The Policy Memorandum states that this change is to balance the need for flexibility to arrange for a medical examination with maintaining the need for minimum restriction of patients (p. 14).

Sections 15, 16 and 17: Time for appeal, referral or disposal

Time for appeal referral or disposal

The policy objective of this section of the Bill is to ensure that the appeal process under Section 220 of the 2003 Act is brought into line with similar appeals in other parts of the 2003 Act (Policy Memorandum p.15). Currently managers of a hospital have a power to transfer a patient from

one hospital to another or to the state hospital⁹. A patient who is notified of an intention to transfer or who has been transferred to the state hospital has 12 weeks to lodge an appeal.

The Bill seeks to bring the appeal period down from 12 weeks to 28 days. The Policy Memorandum notes that the current 12 week period has caused significant problems. Due to when an appeal is lodged prior to transfer, the transfer cannot take place until the appeal has been considered which can delay a patient's treatment (p.15).

Periodical referral of cases and recording where late disposal

Currently time limits for reviews of certain orders are calculated by the date when an application is made to the Tribunal. This means that there can be a number of weeks between an application being made and the Tribunal determining the case. The Bill seeks to amend the 2003 Act so that time limits for reviewing certain orders would be calculated by the date when the case was determined by the Tribunal rather than when the application was made.

Sections 18, 19 and 20: Representation by named person

Currently a person, over the age of 16, subject to treatment under the 2003 Act can nominate a named person to help protect their interests. If a person does not choose a named person then a carer or their nearest relative may become a named person by default. The Bill seeks to amend the provisions in the 2003 act so that:

- An individual would only have a named person if they choose to have one.
- An individual should give their written and witnessed consent to acting as a named person (as this will enable the person nominated to obtain information on the role and its responsibilities before accepting the nomination).
- The Tribunal would no longer be able to appoint a named person, on application, where none exists except in cases where an application has been made to the Tribunal to remove a named person of a child because they are not acting in the child's best interest. As the child would no longer have a named person the Tribunal could appoint a named person (Scottish Government, 2014a).

Sections 21 and 22: Advance statements

Under the 2003 Act people can make an advanced statement which sets out the way they would like to be treated or not treated when they are unwell. The policy objective of these changes are to ensure that when an advance statement has been made it is used appropriately. The Bill seeks to place a duty on health boards to ensure that a copy of an individual's advance statement is placed in their medical records and that a copy is sent to the Mental Welfare Commission. It also seeks to place a duty on the Mental Welfare Commission to maintain a central register of advance statements. Only certain people will be able to look at the advance statements (the individual, a person acting on the individual's behalf, a MHO dealing with the individual's case, the individual's RMO and the health board responsible for the individual's treatment).

Section 23: Support and services

Communication at medical examination

Currently people with communication difficulties or those who communicate in a language other than English that are subject to certain orders and measures are provided with assistance. The Bill seeks to extend these provisions so that they also apply to people subject to an application for an order or a measure.

⁹ The State Hospital is one of four high secure hospitals in the UK. It is a national service for Scotland and Northern Ireland ([The State Hospital Online](#)).

Services and accommodation for mothers

Currently health boards are required to make provision to allow a mother to care for a young child, under the age of one in hospital where the mother is admitted to be treated for post-natal depression. However, as women can be admitted to hospital for a number of conditions, the Bill seeks to extend the provisions so they apply to mothers admitted to hospital for any type of mental disorder.

Sections 24 and 25: Cross border transfer and absconding patients

The Policy Memorandum states that the objective behind these provisions is to ensure parity of treatment for people in other EU member states in respect of cross boarder transfers and absconding patients from the rest of the UK (p.19). Currently if a patient absconds from hospital in another jurisdiction and is taken into custody in Scotland there is no provision to authorise treatment. The Bill seeks to make provision to allow this to happen.

Sections 26 and 27: Arrangements for treatment of prisoners

Agreement to transfer of prisoners

Currently a person who is serving a prison sentence and has a mental disorder requiring treatment can be transferred from prison to a specified hospital under a transfer for treatment direction. There is no requirement for the involvement of a MHO (Policy Memorandum p.20). The Bill seeks to make provision for the involvement of a MHO in decisions by requiring that the agreement of a MHO is required before a transfer from prison to hospital can take place.

Compulsory treatment of prisoners

When the Tribunal is dealing with cases relating to certain restricted patients (people subject to compulsion orders with restriction orders, transfer for treatment direction and hospital directions) the panel must be led by either the Tribunal President or by someone selected from the Shrieval Panel¹⁰. The Bill seeks to remove this requirement. The Scottish Government believes that this will result in some small efficiencies in relation to scheduling cases (Policy Memorandum p.21).

PART 2: CRIMINAL CASES

Part 2 of the Bill covers mental health disposals in criminal cases.

Sections 28 to 33 Making and effect of disposals

Extension of Assessment Orders

When an assessment order is made by a court the period of detention authorised in hospital, for examination by an RMO, is 28 days. This can be extended for a period of seven days if the court believes that further time is needed to complete the assessment. The Bill seeks to extend the time in which a court can extend an assessment order to 14 days.

Calculating time periods

Currently the time periods for assessment orders, treatment orders, interim compulsion orders, compulsion orders and hospital direction are calculated with the day on which the order is made and running to the end of the last day of the relevant time. However, this approach is different from the calculation of time periods in the criminal courts more generally. Sections 29 to 33 of the Bill seek to amend the time periods so that they are calculated from the day on which the order is made and run until the day following the expiry of the relevant period. It is hoped that this will minimise the miscalculation of time periods (Policy Memorandum p.22).

¹⁰ The Shrieval Panel consists of individuals currently holding the office of sheriff principal, sheriff or part-time sheriff (Scottish Government , 2005b).

Sections 34 to 40: Variation of certain orders and specification of hospital units

Currently the court can make an interim compulsion order after conviction and before final disposal. This order is intended to be used where the offender may present a high risk to the public and a compulsion order and restriction order or a hospital direction is likely. In these cases the RMO would be able to state in their report to the court that the treatment a patient requires is not available at the hospital specified in the order and recommend a change of hospital. However, the current legislation does not allow for this (Policy Memorandum p. 22). The Bill seeks to provide the power for a court to direct that an offender be admitted to a different hospital, specified by direction. The Bill also seeks to enable a RMO, with the consent of Scottish Ministers, to move a patient within the first seven days from the hospital specified in the order to another hospital. This is to overcome the potential issue that during the first seven days it may become apparent that the hospital specified in the order is not the most suitable environment for the patient (Policy Memorandum p.23).

Section 41: Information on extension of compulsion order

Currently the 2003 Act sets out the steps a RMO must take when they have determined that a compulsion order is to be extended without change. The RMO must submit a report which sets out the reasons for the determination and whether the MHO agrees, disagrees or has not expressed a view (Explanatory Notes p.21).

Section 41 of the Bill sets out new duties for the MHO when the Tribunal reviews a determination about a compulsion order when the type of mental disorder recorded in the determination to extend the order is different from that recorded in the original order, the MHO disagrees with the extension of the order or when the Tribunal has not reviewed the order in the two-year period prior to which the order would have lapsed. In these cases the MHO must prepare and submit a report to the Tribunal. This is similar to the provision made in Section 2 of the Bill.

Section 42: Notification of changes to compulsion orders

The Explanatory Notes comment that this section makes minor amendments in respect of compulsion orders (p. 21).

PART 3: VICTIMS' RIGHTS

Mentally disordered offenders (MDOs) are people who have committed an offence punishable by imprisonment but as a result of a mental disorder they are not imprisoned but detained in hospital for treatment (Scottish Government, 2011).

Sections 43 to 49: Victims' Rights

Part 3 of the Bill creates a new notification scheme for victims of some mentally disordered offenders, (that are subject to hospital direction, transfer for treatment direction¹¹ or a compulsion order and restriction order) to bring it into line with the scheme available to victims of other offenders under the Criminal Justice (Scotland) Act 2003 (Policy Memorandum p.23).

¹¹ Transfer of treatment direction is issued by Scottish Ministers when a serving prisoner requires hospital treatment for mental disorder.

The current Victim Notification Scheme.

If an offender has been sentenced to 18 months or more in prison, the victim can choose whether or not to register with the Victim Notification Scheme. The scheme has two parts. Part 1 entitles victims to receive information about the offender's:

- Release
- Date of death, if they die before being released
- Date of transfer, if they are transferred to a place outwith Scotland
- Eligibility for temporary release (for example, for training and rehabilitation programmes or home leave in preparation for release)
- Escape or absconding from prison
- Return to prison for any reason.

Part 2 of the scheme entitles victims to information about the offender being considered either for parole or release on Home Detention Curfew (tagging):

- When the Parole Board for Scotland is due to consider the case affecting the victim, the victim will be given the chance to send written comments to the Board.
- When the Scottish Prison Service is considering a prisoner's release on HDC, the victim will be given the chance to send written comments to the prison service.
- The victim will be told whether the Board recommends or directs the release of the offender.
- The victim will be told whether any conditions have been attached to the licence that relate to them or their family. ([Victims of Crime in Scotland online](#)).

Right to information

Currently there is no provision for victims of MDOs to be notified of changes to the offender's detention. The Bill will allow qualifying victims to receive limited information about the status of the person who perpetrated the crime against them. The information that will be provided is: whether the compulsion order has been modified or revoked; whether the restriction order has been revoked; the date of death of the offender; transfer outwith Scotland; the conditional discharge of the offender or the recall of the offender to hospital following conditional discharge. If the offender is subject to a compulsion order authorising detention in hospital information may also be provided on whether: the offender is unlawfully at large from hospital; if they have been returned to hospital; if detention has been suspended for the first time; or if suspension has been revoked (Explanatory Notes p. 23).

Right to make representation

Under the current VNS some victims are provided with a right to make representations with regards to the release of the offender on licence and the conditions which might be specified. The Bill seeks to provide victims of offenders subject to a hospital direction or transfer for treatment direction with the right to make representations to the RMO before a decision is taken to suspend the offender's detention without imposing a supervision requirement. Where the offender is subject to a compulsion order and restriction order an opportunity to make representation will be given before a decision is taken about suspending the offender's detention, revoking or varying the compulsion order, conditional discharge, and varying the conditions of a conditional discharge which may affect the victim or their family (Explanatory Notes, p.23).

An informal advisory group called Victims' Rights and Victims of MDOs Guidance has been established by the [Forensic Network](#) under the Chairmanship of Dr John Crichton, Consultant Forensic Psychiatrist.

COSTS

The [Financial Memorandum](#) sets out the costs associated with the Bill. The majority of costs of this Bill would occur in the first couple of years following implementation of the provisions.

Part 1

The Financial Memorandum states that provisions in Part 1 of the Bill are technical and minor in nature. No significant costs to the Scottish Government are anticipated.

There will be costs associated with changes to the [Code of Practice](#)¹² and updating the [forms](#) that are used to notify the Commission about detention and safeguarding treatments carried out under the 2003 Act. The estimated capital cost to the Commission in relation to updating the forms and programming costs is £182,000, this includes £15,000 contingency.

The Financial Memorandum notes that the provisions in Part 1 of the Bill have some cost implication for the Tribunal although these may be offset by some small efficiency savings. The Scottish Government has estimated that there may be some costs (£80,000) associated with the conditions of excessive security appeals due to additional appeal hearings¹³. It is anticipated that these costs will be incurred in the first year and that the costs arising from appeals in future years will be lower due to a higher take up in the first year resulting from a potential back-log of patients waiting for an appeals process to become available.

The Scottish Government estimates that there may be an additional cost of £70,000 to the Scottish Legal Aid Board in 2015/16. The Financial Memorandum notes that it is difficult to estimate the costs for subsequent years.

Section 2 of the Bill places new requirements on MHOs to provide reports for some tribunal hearings. It is estimated that this could result in additional costs of £9,000 for local authorities as a result of the extension of CTOs in certain specific circumstances. This is similar to the provision made in Section 41 of the Bill.

Section 23 of the Bill extends the duty health boards have to provide services and accommodation for certain mothers¹⁴ with post-natal depression to mothers with post-natal depression and any other mental disorder. The Financial Memorandum (p35) notes that:

“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.....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

¹² Under the 2003 Act Scottish Ministers are under a duty to prepare, publish and review a Code of Practice. The Code of Practice sets out guidance to professionals on their duties under the Act (Scottish Government, online).

¹³ This is based on the assumption that 44% of the current 150 patients in the medium secure estate would wish to appeal (Mental Health (Scotland) Bill: Explanatory Notes).

¹⁴ Section 24 of the 2003 Act requires health boards to make provision to allow a mother who cares for a child under the age of 1, and is not likely to endanger the child's health or welfare, to care for the child in the hospital where she is being treated for post-natal depression (Mental Health (Scotland) Bill: Policy Memorandum).

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”

Part 2

Section 41 of the Bill places new requirements on MHOs in relation to preparing a report for some Tribunal hearings. It is estimated that this will result in an additional cost of £9,000. This is in relation to compulsion orders being extended. This is similar to the provision made in Section 2 of the Bill.

Part 3

The Financial Memorandum notes that the provisions in Part 3 of the Bill could have minimal financial implications for the Tribunal. It is anticipated that the preparation of guidance on the Victim Notification Scheme for victims of some mentally disordered offenders will be undertaken by the Scottish Government as part of its normal business.

The Finance Committee launched a [call for written evidence](#). This closed on Friday 26 September 2014.

ANNEX A: THE MILLAN PRINCIPLES

The 2003 Act was based on the ten principles outlined by the Millan Committee in the [Report on the Review of the Mental Health \(Scotland\) Act 1984](#).

1. Non discrimination

People with mental disorder should whenever possible retain the same rights and entitlements as those with other health needs.

2. Equality

All powers under the Act should be exercised without any direct or indirect discrimination on the grounds of physical disability, age, gender, sexual orientation, language, religion or national or ethnic or social origin.

3. Respect for diversity

Service users should receive care, treatment and support in a manner that accords respect for their individual qualities, abilities and diverse backgrounds and properly takes into account their age, gender, sexual orientation, ethnic group and social, cultural and religious background.

4. Reciprocity

Where society imposes an obligation on an individual to comply with a programme of treatment and care, it should impose a parallel obligation on the health and social care authorities to provide safe and appropriate services, including ongoing care following discharge from compulsion.

5. Informal care

Wherever possible care, treatment and support should be provided to people with a mental disorder without recourse to compulsion.

6. Participation

Service users should be fully involved, to the extent permitted by their individual capacity, in all aspects of their assessment, care, treatment and support. Account should be taken of both past and present wishes, so far as they can be ascertained. Service users should be provided with all the information and support necessary to enable them to participate fully. All such information should be provided in a way which renders it most likely to be understood.

7. Respect for carers

Those who provide care to service users on an informal basis should receive respect for their role and experience, receive appropriate information and advice, and have their views and needs taken into account.

8. Least restrictive alternative

Service users should be provided with any necessary care, treatment and support both in the least invasive manner and in the least restrictive manner

9. Benefit

Any intervention under the Act should be likely to produce for the service user a benefit which cannot reasonably be achieved other than by the intervention.

10. Child welfare

The welfare of a child with mental disorder should be paramount in any interventions imposed on the child under the Act.

(Scottish Government, 2001, p18-21)

SOURCES

Information Services Division Scotland. (2012) *Mental Health (Psychiatric) Hospital Activity Statistics year ending 31 March 2012*. Available at: <http://www.isdscotland.org/Health-Topics/Mental-Health/Publications/2012-12-18/2012-12-18-MentalHealth-Report.pdf> [Accessed 09 July 2014].

Mental Health (Care and Treatment) (Scotland) Act 2003 asp 15. Available at: <http://www.legislation.gov.uk/asp/2003/13> [Accessed 13 August 2014].

Mental Health (Scotland) Bill [as introduced] Session 4 (2014). SP Bill 53. Edinburgh: Scottish Parliament. Available at: [http://www.scottish.parliament.uk/S4_Bills/Mental%20Health%20\(Scotland\)%20Bill/b53s4-introd-bookmarked.pdf](http://www.scottish.parliament.uk/S4_Bills/Mental%20Health%20(Scotland)%20Bill/b53s4-introd-bookmarked.pdf) [Accessed 02 July 2014].

Mental Health (Scotland) Bill: Explanatory Notes (and other accompanying documents) Session 4 (2014). SP Bill 53. Edinburgh: Scottish Parliament. Available at: [http://www.scottish.parliament.uk/S4_Bills/Mental%20Health%20\(Scotland\)%20Bill/b53s4-introd-en-bookmarked.pdf](http://www.scottish.parliament.uk/S4_Bills/Mental%20Health%20(Scotland)%20Bill/b53s4-introd-en-bookmarked.pdf) [Accessed 02 July 2014].

Mental Health (Scotland) Policy Memorandum Session 4 (2014). SP Bill 53. Edinburgh: Scottish Parliament. Available at: [http://www.scottish.parliament.uk/S4_Bills/Mental%20Health%20\(Scotland\)%20Bill/b53s4-introd-pm-bookmarked.pdf](http://www.scottish.parliament.uk/S4_Bills/Mental%20Health%20(Scotland)%20Bill/b53s4-introd-pm-bookmarked.pdf) [Accessed 02 July 2014].

Mental Health Foundation (online) *Mental Health Statistics*. Available at: <http://www.mentalhealth.org.uk/help-information/mental-health-statistics> [Accessed on 09 July 2014].

Mental Health Tribunal for Scotland (online) *About the Tribunal*. Available at: http://www.mhtscotland.gov.uk/mhts/About_Tribunal/About_Tribunal [Accessed 3 April 2014].

Mental Welfare Commission for Scotland (online) *About us*. Available at: <http://www.mwscot.org.uk/about-us/> [Accessed on 3 April 2014].

Mental Welfare Commission for Scotland (online). *Being Detained*. Available at: <http://www.mwscot.org.uk/get-help/getting-treatment/being-detained/> [Accessed 13 August 2014].

Mental Welfare Commission for Scotland. (2014). *Advance Statements Guidance*. Available at: http://www.mwscot.org.uk/media/128044/advance_statement_final_version_jan_2014.pdf [Accessed 01 July 2014].

Mental Welfare Commission. (2013). *Mental Health Act Monitoring*. Available at: http://www.mwscot.org.uk/media/138265/mha_monitoring_report_final_25_sept_2013.pdf [Accessed 16 July 2014].

NHS Education for Scotland (Online). *Mental Health (Care and Treatments) (Scotland) Act 2003 Education for Frontline Staff*. Available at: <http://www.nes-mha.scot.nhs.uk/cto/recorded.htm> [Accessed 17 July 2014].

NHS Education for Scotland (Online). *Mental Health (Care and Treatments) (Scotland) Act 2003 Education for Frontline Staff*. Available at: <http://www.nes-mha.scot.nhs.uk/edc/criteria.htm> [Accessed 13 August 2014].

NHS Education for Scotland (Online). *Mental Health (Care and Treatment) (Scotland) Act 2003 Education for Frontline Staff*. Available at: <http://www.nes-mha.scot.nhs.uk/stdc/granting.htm> [Accessed 13 August 2014].

Nowell, R. (2014). SB 14/36 *Mental Health in Scotland*. Available at: http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_14-36.pdf [Accessed 26 June 2014].

SAMH. (2014). *SAMH Briefing on the Mental Health (Care and Treatment) (Scotland) Act 2003*. [Unpublished]

Scottish Executive. (2001). *Review of the Mental Health (Scotland) Act 1984*. Available at: https://www.mhtscotland.gov.uk/mhts/files/Millan_Report_New_Directions.pdf [Accessed 26 June 2014]

Scottish Government. (2004). *The New Mental Health Act A Guide to named persons*. Available at: <http://www.scotland.gov.uk/Publications/2004/10/20016/44075> [Accessed 09 June 2014].

Scottish Government. (2005a). *Approved Medical Practitioners- Mental Health (Care and Treatment) (Scotland) Act, 2003, Training Manual*. Available at: <http://www.scotland.gov.uk/Publications/2005/05/1093513/35148> [Accessed 15 July 2014] .

Scottish Government. (2005b). *Mental Health (Care and Treatment) (Scotland) Act 2003; Code of Practice Volume 1*. Available at: <http://www.scotland.gov.uk/Publications/2005/08/29100428/04289> [Accessed 14 August 2014].

Scottish Government. (2008a). *The New Mental Health Act: A guide to compulsory treatment orders*. Available at: <http://www.scotland.gov.uk/Publications/2008/09/24090333/0> [Accessed 09 July 2014].

Scottish Government. (2008b). *The New Mental Health Act - A guide to emergency and short-term powers: Information for Service Users and their Carers*. Available at: <http://www.scotland.gov.uk/Publications/2008/08/21092000/0> [Accessed 09 July 2014].

Scottish Government. (2008c). *Mental Health Act Review Group*. Available at: <http://www.scotland.gov.uk/News/Releases/2008/01/25110736> [Accessed 13 August 2014].

Scottish Government. (2009). *Limited Review of the Mental Health (Care and Treatment) Scotland Act 2003: Report*. Available at: <http://www.scotland.gov.uk/Resource/Doc/281409/0084966.pdf> [Accessed 26 June 2014]

Scottish Government. (2010). *Consultation on the possible introduction of a scheme for victims of mentally disordered offenders similar to the current criminal justice Victim Notification Scheme*. Available at: <http://www.scotland.gov.uk/Publications/2010/08/27104119/0>. [Accessed 26 July 2014].

Scottish Government. (2010). *Mental Health: Legislation Scottish Government response to the "Limited Review of the Mental Health (Care and Treatment) (Scotland) Act 2003: Report"*. Available at: <http://www.scotland.gov.uk/Resource/Doc/1094/0105288.pdf>. [Accessed 26 June 2014].

Scottish Government. (2011). *Disclosure of Information to Victims of Mentally Disordered Offenders: Analysis of Responses to the Consultation*. Available at: <http://www.scotland.gov.uk/Publications/2011/03/21112101/9>. [Accessed 26 July 2014].

Scottish Government. (2013a). *A Consultation on draft proposals for a Mental Health (Scotland) Bill*. Available at: <http://www.scotland.gov.uk/Resource/0044/00441187.pdf>. [Accessed 26 June 2014].

Scottish Government. (2013b). *Mental Health (Care and Treatment) (Scotland) Act 2003 Consultation in relation to section 268 appeals against conditions of excessive security*. Available at: <http://www.scotland.gov.uk/Publications/2013/08/7455>. [Accessed 26 June 2014].

Scottish Government. (2013c). *Consultation in relation to section 268 appeals against conditions of excessive security*. Available at: <http://www.scotland.gov.uk/Publications/2013/12/1047>. [Accessed 26 June 2014].

Scottish Government. (2014). *Consultation on proposals for a Mental Health (Scotland) Bill - An analysis of responses*. Available at: <http://www.scotland.gov.uk/Publications/2014/07/6128> [Accessed 22 July 2014].

Scottish Government. (2014a). *Personal correspondence*.

Scottish Government. (Online). *Code of Practice*. Available at: <http://www.scotland.gov.uk/Topics/Health/Services/Mental-Health/Law/Code-of-Practice>. [Accessed 08 July 2014].

Scottish Government. (online). *Review of the 2003 Act*. Available at: <http://www.scotland.gov.uk/Topics/Health/Services/Mental-Health/Law/Review-2003Act>. [Accessed 01 July 2014].

Scottish Independent Advocacy Alliance. (2010a). *Principles and Standards*. Available at: http://www.siaa.org.uk/wp-content/uploads/2013/11/siaa_principles_and_standards_2010.pdf [Accessed 01 July 2014].

Scottish Independent Advocacy Alliance. (2010b). *Code of Practice*. Available at: http://www.siaa.org.uk/wp-content/uploads/2014/02/SIAA_Code_of_Practice_2010.pdf [Accessed 01 July 2014].

Scottish Independent Advocacy Alliance. (Online). *Types of Advocacy*. Available at: <http://www.siaa.org.uk/independent-advocacy/need-advocate/> [Accessed 13 August 2014].

Scottish Independent Advocacy Alliance. (Online). *What is Independent Advocacy*. Available at: <http://www.siaa.org.uk/> [Accessed 13 August 2014].

Scottish Parliament. (2014). *Official Report 3 June 2014*. Col 5585. Edinburgh: Scottish Parliament. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9223&mode=pdf> [Accessed 17 June 2014].

The State Hospital. (Online). *Welcome and Overview*. Available at: <http://www.tsh.scot.nhs.uk/> [Accessed 15 July 2014].

The Supreme Court of the United Kingdom. (2012). *Press Summary*. Available at: http://supremecourt.uk/decided-cases/docs/UKSC_2011_0212_PressSummary.pdf [Accessed 23 September 2014].

Victims of Crime in Scotland. (Online). *Victim Notification Scheme*. Available at:
<http://www.victimsofcrimeinscotland.org.uk/the-justice-process/after-the-verdict/victim-notification-scheme/> [Accessed 15 July 2014].



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