
Mental Health (Scotland) Bill

[CONSULTATION DRAFT]

An Act of the Scottish Parliament to amend the Mental Health (Care and Treatment) (Scotland) Act 2003 in various respects; to make provision as to mental health disposals in criminal cases; to make provision as to the rights of victims of crime in the context of mental health disposals; and for connected purposes.

PART 1

THE 2003 ACT

Procedure for compulsory treatment

1 Initial mental health report

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 57 (mental health officer's duty to apply for compulsory treatment order)—
 - (a) in subsection (2), for the words from “two” to the end there is substituted “an approved medical practitioner carries out a medical examination of the patient”,
 - (b) in each of subsections (3) and (4), for the words “each of the medical practitioners who carries out a” there is substituted “the approved medical practitioner who carries out the”,
 - (c) in subsection (5)—
 - (i) paragraphs (a) and (b) are repealed (together with the word “and” immediately following them),
 - (ii) in paragraph (c), for the words from the beginning to “that medical practitioner” there is substituted “the mental health report states the views of the approved medical practitioner who carries out the medical examination mentioned in subsection (2) above”,
 - (d) in subsection (6), for the word “A” there is substituted “An approved”,
 - (e) in subsection (7), for paragraphs (a) and (b) there is substituted—
 - “(a) where the mental health report specifies a single date for the purpose of subsection (4)(f) above, that date,
 - (b) where the mental health report specifies two or more dates for that purpose, the later or latest of those dates.”.

2 Report by general practitioner

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 57 there is inserted—

“57A Report by general practitioner

- (1) Before making an application for a compulsory treatment order in respect of a patient as required by section 57(1) of this Act, a mental health officer must obtain a general practitioner’s report.
- (2) For the purpose of subsection (1) above, a general practitioner’s report is a report by the patient’s general medical practitioner (whether or not an approved medical practitioner)—
 - (a) based on a medical examination of the patient carried out by the general medical practitioner, and
 - (b) stating the general medical practitioner’s views on the mental health report relating to the patient (and setting out any other information that the medical practitioner considers to be relevant).
- (3) Subsection (1) above does not apply with respect to the patient if the mental health officer believes that—
 - (a) the patient has no general medical practitioner, or
 - (b) it is impracticable to obtain a general practitioner’s report within the period mentioned in section 57(7) of this Act.
- (4) If subsection (1) above does not apply with respect to the patient, the mental health officer must ensure that the reason for coming to the belief referred to in subsection (3) above is added to the mental health report relating to the patient.”.

3 More on examinations and reports

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 58 (medical examination: requirements)—
 - (a) for subsection (1) there is substituted—

“(1) This section makes further provision in connection with the carrying out of a medical examination of a patient by virtue of section 57(2) or 57A(2) of this Act.”,
 - (b) subsections (2), (3) (4) and (6) are repealed.
- (3) In subsection (4)(f) of section 61 (mental health officer’s duty to prepare report), for the word “reports” there is substituted “report”.
- (4) In subsection (3) of section 63 (application for compulsory treatment order)—
 - (a) in paragraph (a), for the word “reports” there is substituted “report”,
 - (b) after paragraph (a) there is inserted—

“(aa) the general practitioner’s report where obtained under section 57A of this Act;”.

4 Information about extension of order

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 87 there is inserted—

“87A Further information where order extended

- (1) Subsections (2) and (3) below apply where, by virtue of section 87(2)(c)(iii) of this Act, a mental health officer receives a record from a patient’s responsible medical officer in relation to an extension of a compulsory treatment order.
- (2) The mental health officer must—
 - (a) prepare a record stating the information mentioned in subsection (4) below,
 - (b) submit the record to the Tribunal, and
 - (c) at the same time as submitting the record to the Tribunal, send to the persons mentioned in subsection (6) below—
 - (i) a copy of the record, and
 - (ii) a statement of the matters mentioned in subsection (5) below.
- (3) At the same time as submitting the record to the Tribunal, the mental health officer must send a copy of the record to the patient, unless that officer considers that doing so carries a risk of significant harm to the patient or others.
- (4) The information to be stated in the record is—
 - (a) the name and address of the patient,
 - (b) if known by the mental health officer, the name and address of—
 - (i) the patient’s named person, and
 - (ii) the patient’s primary carer,
 - (c) the things done by the mental health officer in compliance with the requirements in subsection (2) of section 85 of this Act (and, if by virtue of subsection (3) of that section the first-listed one has not been complied with, the reason why compliance with it was impracticable),
 - (d) so far as relevant to the extension of the compulsory treatment order—
 - (i) the details of the personal circumstances of the patient, and
 - (ii) if known by the mental health officer, the details of any advance statement made by the patient (and not withdrawn by the patient),
 - (e) the views of the mental health officer on the extension of the compulsory treatment order, and
 - (f) any other information that the mental health officer considers relevant in relation to the extension of the compulsory treatment order.
- (5) The matters referred to in subsection (2)(c) above are—
 - (a) whether the mental health officer is sending a copy of the record to the patient, and
 - (b) if the mental health officer is not sending a copy of the record to the patient, the reason for not doing so.

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- (6) For the purposes of subsection (2)(c) above, the persons are—
- (a) the patient’s named person,
 - (b) the patient’s responsible medical officer, and
 - (c) the Commission.”.

Emergency, short-term and temporary steps

5 Emergency detention in hospital

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In subsection (2) of section 36 (emergency detention in hospital), after paragraph (d) there is inserted—

“(da) section 113(5) of this Act;”.
- (3) In section 38 (duties on hospital managers: examination, notification etc.)—
 - (a) in paragraph (b)(i) of subsection (3), for the words “persons mentioned in subsection (4) below” there is substituted “Commission of the granting of the certificate and”,
 - (b) after subsection (3) there is inserted—

“(3A) The managers of the hospital may, so far as they consider it appropriate, give notice of the matters notified to them under section 37 of this Act to the persons mentioned in subsection (4) below.”,
 - (c) in subsection (4)—
 - (i) in the text preceding paragraph (a), for the words “subsection (3)(a) and (b)(i)” there is substituted “subsections (3)(a) and (3A)”,
 - (ii) paragraph (d) and the word “and” immediately preceding it are repealed.
- (4) In subsection (2) of section 40 (revocation of emergency detention certificate: notification), after the word “inform” there is inserted “the Commission and”.
- (5) In subsection (4) of section 42 (certificate under section 41: revocation), after the word “inform” there is inserted “the Commission and”.

6 Short-term detention in hospital

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In subsection (2) of section 44 (short-term detention in hospital), after paragraph (c) there is inserted—

“(ca) section 113(5) of this Act;”.
- (3) In section 46 (hospital managers’ duties: notification)—
 - (a) in subsection (3), the words “, and send a copy of it,” are repealed,
 - (b) after subsection (3) there is inserted—

“(4) When giving notice under subsection (2) or (3) above, the managers of the hospital are to send to the recipient a copy of the certificate.”.

7 Meaning of temporary compulsion

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 230 (appointment of patient's responsible medical officer), in paragraph (c) of the entry relating to the definition of "appropriate act" in subsection (4), the words "under section 54(1)(c) of the 1995 Act" are repealed.
- (3) In section 329 (interpretation), at the appropriate alphabetical place in subsection (1) there is inserted—

““temporary compulsion order” means an order under section 54(1)(c) of the 1995 Act;”.

Suspension of certain orders etc.

8 Suspension of orders on emergency detention

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 43 (effect of subsequent emergency detention certificate on compulsory treatment order)—
 - (a) in paragraph (a) of subsection (1), for the words "compulsory treatment order" there is substituted "relevant order",
 - (b) in subsection (2), for the words "The compulsory treatment order" there is substituted "A relevant order",
 - (c) in subsection (3)—
 - (i) after the word "Act" there is inserted "or (as the case may be) section 57A(8)(b) of the 1995 Act",
 - (ii) for the words "compulsory treatment order" in each place where they occur there is substituted "relevant order",
 - (d) after subsection (3) there is inserted—

“(4) In this section, the references to a relevant order are to—

 - (a) a compulsion order, or
 - (b) a compulsory treatment order or an interim compulsory treatment order.”.
 - (3) In relation to section 43—
 - (a) its title becomes "**Effect of emergency detention certificate on certain earlier orders**",
 - (b) the italic heading immediately preceding it becomes "*Effect of emergency detention certificate on certain orders*".

9 Suspension of orders on short-term detention

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 56 (effect of subsequent short-term detention certificate on compulsory treatment order)—
 - (a) in paragraph (a) of subsection (1), for the words "compulsory treatment order" there is substituted "relevant order",

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- (b) for subsection (2) there is substituted—
- “(2) A relevant order shall cease to authorise the measures specified in it for the period during which the patient is subject to—
- (a) the short-term detention certificate, or
- (b) an extension certificate.”,
- (c) after subsection (2) there is inserted—
- “(3) In this section, the references to a relevant order are to—
- (a) a compulsion order, or
- (b) a compulsory treatment order or an interim compulsory treatment order.”.
- (3) In relation to section 56—
- (a) its title becomes “**Effect of short-term detention certificate etc. on certain earlier orders**”,
- (b) the italic heading immediately preceding it becomes “*Effect of short-term detention certificate etc. on certain orders*”.

10 Suspension of measures authorising detention

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 127 (suspension of measure authorising detention)—
- (a) in subsection (1)(b), the words “subject to subsection (2) below,” are repealed,
- (b) subsection (2) is repealed.
- (3) In section 221 (assessment order: suspension of measure authorising detention)—
- (a) in subsection (3), after the word “Ministers” there is inserted “(but see subsection (3A) below)”,
- (b) after subsection (3) there is inserted—
- “(3A) Subsection (3) above is to be ignored if the granting of the certificate is for the purpose of ensuring that the patient—
- (a) complies with a requirement to attend a hearing in criminal proceedings against the patient, or
- (b) meets a medical or dental appointment made as necessary for the benefit of the patient.”.
- (4) In section 224 (patients subject to certain other orders and directions: suspension of measure authorising detention)—
- (a) in subsection (1), after paragraph (b) there is inserted—
- “(ba) a temporary compulsion order;”,
- (b) in subsection (2), for the words “subsections (3) and (4)” there is substituted “subsection (3)”,
- (c) in subsection (3), after the word “Ministers” there is inserted “(but see subsection (3A) below)”,
- (d) after subsection (3) there is inserted—

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- “(3A) In the case of a treatment order, an interim compulsion order or a temporary compulsion order, subsection (3) above is to be ignored if the granting of the certificate is for the purpose of ensuring that the patient—
- (a) complies with a requirement to attend a hearing in criminal proceedings against the patient, or
 - (b) meets a medical or dental appointment made as necessary for the benefit of the patient.”.
- (e) subsection (4) is repealed.

Removal and detention of patients

11 Notifying decisions on removal orders

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 295 there is inserted—

“295A Notification of decision under section 293 or 295

- (1) Subsection (2) below applies in relation to a decision of a sheriff or a justice of the peace under section 293(1) of this Act making, or to refusing to make, a removal order.
- (2) As soon as practicable after the decision is made, the mental health officer who made the application for the removal order must notify the Commission of the decision.
- (3) Subsection (4) below applies in relation to a decision of a sheriff under section 295(1) of this Act making, or refusing to make, an order recalling or varying a removal order.
- (4) As soon as practicable after the decision is made, the mental health officer specified in the removal order must notify the Commission of—
 - (a) the decision, and
 - (b) any additional order made under section 295(6) of this Act.”.

12 Detention pending medical examination

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 299 (nurse’s power to detain pending medical examination)—
 - (a) in subsection (2)—
 - (i) paragraph (b) and the word “and” immediately preceding it are repealed,
 - (ii) in the text following paragraph (b), for the words from “, subject” to the end there is substituted “be detained in the hospital for a period not exceeding 3 hours (“holding period”) for the purposes mentioned in subsection (3A) below”,
 - (b) in paragraph (c) of subsection (3), for the words “to carry out a medical examination of the patient” there is substituted “for a medical examination of the patient to be carried out by a medical practitioner”,
 - (c) after subsection (3) there is inserted—

“(3A) The purposes referred to in subsection (2) above are—

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- (a) enabling the carrying out of a medical examination of the patient by a medical practitioner, and
 - (b) ensuring that the patient does not leave the hospital before the granting by the medical practitioner of an emergency detention certificate or a short-term detention certificate (if warranted).”,
 - (d) subsection (4) is repealed.

Timescales for referrals and disposals

13 Periodical referral of cases

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 189 (reference to Tribunal by Scottish Ministers)—
 - (a) in subsection (2) for the words “made to” in each place where they occur there is substituted “determined by”,
 - (b) in subsection (3)—
 - (i) for the words “made to” there is substituted “determined by”,
 - (ii) for the words “made under subsection (2) above” there is substituted “determined by it”.
- (3) In section 213 (reference to Tribunal by Scottish Ministers)—
 - (a) in subsection (2) for the words “made to” in each place where they occur there is substituted “determined by”,
 - (b) in subsection (3)—
 - (i) for the words “made to” there is substituted “determined by”,
 - (ii) for the words “made under subsection (2) above” there is substituted “determined by it”.

14 Time allowed for disposals

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 50 (patient’s right to apply for revocation of short-term detention certificate or extension certificate etc.), after subsection (5) there is inserted—
 - “(6) The Tribunal must do its utmost to determine an application under subsection (1) above before the expiry of the certificate.”.
- (3) In section 103 (powers of Tribunal on application under section 92, 95, 99 or 100), after subsection (6) there is inserted—
 - “(7) The Tribunal must do its utmost to determine an application under section 99 of this Act within 28 days of its making (and before the expiry of the extension to which it relates).”.
- (4) In section 120 (certificates under sections 114(2) and 115(2): patient’s right to apply to Tribunal), at the end there is inserted—
 - “(4) The Tribunal must do its utmost to determine an application under this section within 28 days of its making (and before the expiry of the certificate).”.

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- (5) In section 125 (transfer to hospital other than state hospital: appeal to Tribunal), after subsection (5) there is inserted—
- “(6) The Tribunal must do its utmost to determine an appeal under subsection (2) above within 28 days of its making.”.
- (6) In section 126 (transfer to state hospital: appeal to Tribunal), after subsection (6) there is inserted—
- “(7) The Tribunal must do its utmost to determine an appeal under subsection (2) above within 28 days of its making.”.
- (7) In section 167 (powers of Tribunal on application under section 149, 158, 161, 163 or 164), at the end there is inserted—
- “(9) The Tribunal must do its utmost to determine an application under section 163 of this Act within 28 days of its making (and before the expiry of the extension to which it relates).”.
- (8) In section 201 (appeal to Tribunal against variation of conditions imposed on conditional discharge), after subsection (3) there is inserted—
- “(4) The Tribunal must do its utmost to determine an appeal under subsection (1) above within 28 days of its making.”.
- (9) In section 204 (appeal to Tribunal against recall from conditional discharge), after subsection (3) there is inserted—
- “(4) The Tribunal must do its utmost to determine an appeal under subsection (1) above within 28 days of its making.”.
- (10) In section 219 (appeal to Tribunal against transfer under section 218 to hospital other than state hospital), after subsection (5) there is inserted—
- “(6) The Tribunal must do its utmost to determine an appeal under subsection (2) above within 28 days of its making.”.
- (11) In section 220 (appeal to Tribunal against transfer under section 218 to state hospital), after subsection (6) there is inserted—
- “(7) The Tribunal must do its utmost to determine an appeal under subsection (2) above within 28 days of its making.”.
- (12) In section 291 (application to Tribunal in relation to unlawful detention), after subsection (5) there is inserted—
- “(5A) The Tribunal must do its utmost to determine an application under subsection (2) above within 28 days of its making.”.

15 Recording if time exceeded

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In Schedule 2 (the Mental Health Tribunal for Scotland), after paragraph 13A there is inserted—
- “13B (1) Sub-paragraph (2) below applies if the Tribunal fails to comply with a time limit, or otherwise fails to do something within a particular period, by reference to which there falls to be determined—
- (a) an application or appeal made to it under this Act, or
- (b) another matter coming before it by virtue of this Act.

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- (2) The Tribunal must—
 - (a) except where by reason of lapse of time no useful purpose would be served by doing so, determine the application, appeal or other matter without undue delay,
 - (b) state in its record of the proceedings—
 - (i) that the failure has occurred, and
 - (ii) the reason for the failure.”.

Representation by named persons

16 Opt-out from having named person

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 251 (named person where no person nominated or nominated person declines to act), after subsection (6) there is inserted—

“(7) This section is subject to section 253(1) and (1A) of this Act.”.
- (3) In section 253 (declaration in relation to named person)—
 - (a) in subsection (1), the words “to subsection (4) below and” are repealed,
 - (b) after subsection (1) there is inserted—

“(1A) Where a person who has attained the age of 16 years (“the declarer”) makes a declaration in writing in accordance with subsection (2) below stating that the declarer does not wish to have a named person, sections 251 and 257 of this Act do not apply in relation to the declarer.”.
 - (c) in subsection (4), for the words “under subsection (1) above may be” there is substituted “ceases to have effect for the purpose of subsection (1) or (1A) above if it is”.
- (4) In section 257 (named person: Tribunal’s powers), at the end there is inserted—

“(7) This section is subject to section 253(1A) of this Act.”.

17 Consent to being named person

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 250 (nomination of named person)—
 - (a) in subsection (1), after the word “(3)” there is inserted “, (5A)”,
 - (b) after subsection (5) there is inserted—

“(5A) A nomination under subsection (1) above is valid only if—
 - (a) a docket to the nomination states that the person nominated has consented to the nomination,
 - (b) the docket is signed by the nominated person, and
 - (c) the nominated person’s signature is witnessed by a prescribed person.”.
 - (c) in subsection (6), for the words “may decline” there is substituted “ceases”.
- (3) In section 251 (named person where no person nominated or nominated person declines to act)—

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- (a) after subsection (4) there is inserted—
- “(4A) A carer can be a person’s named person by virtue of this section only if—
- (a) a document, signed by the carer, states that the carer has consented to being the person’s named person, and
 - (b) the carer’s signature is witnessed by someone.”
- (b) in subsection (5)—
- (i) for paragraph (a) and the word “or” immediately following it there is substituted—
 - “(a) a person has no primary carer,
 - (aa) the person’s primary carer has not consented to being the person’s named person as provided for in subsection (4A) above, or”
 - (ii) in paragraph (b), for the word “declines” there is substituted “ceases”,
- (c) in subsection (6), for the word “declines” there is substituted “ceases”.
- (4) In section 257 (named person: Tribunal’s powers)—
- (a) in subsection (3), after the word “(4)” there is inserted “or (5)”,
 - (b) after subsection (4) there is inserted—
 - “(5) An order under this section appointing a person to be a patient’s named person may be made only if—
 - (a) a document, signed by the person, states that the person has consented to being the patient’s named person, and
 - (b) the person’s signature is witnessed by someone.
 - (6) A person appointed by an order under this section to be a patient’s named person ceases to be the patient’s named person by giving notice to that effect to—
 - (a) the Tribunal,
 - (b) the patient, and
 - (c) the local authority for the area in which the patient resides.”

18 Recommendation as to named person

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 257 (named person: Tribunal’s powers), after subsection (3) there is inserted—
 - “(3A) Where an application of a kind mentioned in subsection (1) to (3) above is made, the Tribunal may require the patient’s mental health officer to—
 - (a) state the officer’s belief as to whether it is appropriate for the patient to have a named person, and
 - (b) where the officer believes that it is appropriate for the patient to have one, recommend a person for appointment by an order under this section to be the patient’s named person.”

19 Leave for application by named person

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 50 (patient's right to apply for revocation of short-term detention certificate or extension certificate etc.), after subsection (1) there is inserted—
 - “(1A) The Tribunal's prior leave is required for an application under subsection (1) above by the patient's named person.”.
- (3) In section 99 (application by patient etc. for revocation of determination extending order), after subsection (2) there is inserted—
 - “(2A) The Tribunal's prior leave is required for an application under this section by the patient's named person.”.
- (4) In section 100 (application by patient etc. for revocation or variation of order), after subsection (3) there is inserted—
 - “(3A) The Tribunal's prior leave is required for an application under this section by the patient's named person.”.
- (5) In section 120 (certificates under sections 114(2) and 115(2): patient's right to apply to Tribunal), after subsection (2) there is inserted—
 - “(3) The Tribunal's prior leave is required for an application under this section by the patient's named person.”.
- (6) In section 125 (transfer to hospital other than state hospital: appeal to Tribunal), after subsection (3) there is inserted—
 - “(3A) The Tribunal's prior leave is required for an appeal under subsection (2) above by the patient's named person.”.
- (7) In section 126 (transfer to state hospital: appeal to Tribunal), after subsection (3) there is inserted—
 - “(3A) The Tribunal's prior leave is required for an appeal under subsection (2) above by the patient's named person.”.
- (8) In section 163 (application to Tribunal by patient etc. for revocation of determination extending compulsion order), after subsection (1) there is inserted—
 - “(1A) The Tribunal's prior leave is required for an application under this section by the patient's named person.”.
- (9) In section 164 (application to Tribunal by patient etc. for revocation or variation of compulsion order), after subsection (3) there is inserted—
 - “(3A) The Tribunal's prior leave is required for an application under this section by the patient's named person.”.
- (10) In section 192 (application to Tribunal by patient and named person), after subsection (3) there is inserted—
 - “(3A) The Tribunal's prior leave is required for an application under this section by the patient's named person.”.
- (11) In section 201 (appeal to Tribunal against variation of conditions imposed on conditional discharge), after subsection (2) there is inserted—
 - “(2A) The Tribunal's prior leave is required for an appeal under subsection (1) above by the patient's named person.”.

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- (12) In section 204 (appeal to Tribunal against recall from conditional discharge), after subsection (2) there is inserted—
- “(2A) The Tribunal’s prior leave is required for an appeal under subsection (1) above by the patient’s named person.”.
- (13) In section 214 (application to Tribunal by patient and named person), after subsection (3) there is inserted—
- “(3A) The Tribunal’s prior leave is required for an application under this section by the patient’s named person.”.
- (14) In section 219 (appeal to Tribunal against transfer under section 218 to hospital other than state hospital), after subsection (3) there is inserted—
- “(3A) The Tribunal’s prior leave is required for an appeal under subsection (2) above by the patient’s named person.”.
- (15) In section 220 (appeal to Tribunal against transfer under section 218 to state hospital), after subsection (3) there is inserted—
- “(3A) The Tribunal’s prior leave is required for an appeal under subsection (2) above by the patient’s named person.”.
- (16) In section 264 (detention in conditions of excessive security: state hospitals), after subsection (6) there is inserted—
- “(6A) The Tribunal’s prior leave is required for an application under subsection (2) above by the patient’s named person.”.
- (17) In section 268 (detention in conditions of excessive security: hospitals other than state hospitals), after subsection (6) there is inserted—
- “(6A) The Tribunal’s prior leave is required for an application under subsection (2) above by the qualifying patient’s named person.”.
- (18) In section 291 (application to Tribunal in relation to unlawful detention), after subsection (4) there is inserted—
- “(4A) The Tribunal’s prior leave is required for an application under subsection (2) above by the patient’s named person.”.

Advance statements, support and services

20 Registering of advance statements

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 276 there is inserted—
- “276A Advance statements to be put with medical records**
- (1) Subsection (2) below applies where a Health Board receives a copy of an advance statement, or a copy of a document withdrawing an advance statement, from—
- (a) the person who made the statement, or
- (b) any individual acting with the person’s authority in relation to the statement.
- (2) The Health Board must—

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- (a) place a copy of the statement or document with the person's medical records, and
 - (b) send a copy of the statement or document to the Commission.

276B Advance statements to be kept by the Commission

- (1) Subsection (2) below applies where the Commission receives a copy of an advance statement, or a copy of a document withdrawing an advance statement—
 - (a) by virtue of section 276A(2) of this Act, from a Health Board, or
 - (b) from—
 - (i) the person who made the statement, or
 - (ii) any individual acting with the person's authority in relation to the statement.
- (2) The Commission must keep a copy of the statement or document in a register of advance statements maintained by the Commission.

276C Persons entitled to inspect advance statements

- (1) Subsection (2) below makes provision as to the register of advance statements maintained by the Commission in accordance with section 276B(2) of this Act.
- (2) The Commission must allow anything kept in the register to be inspected at a reasonable time—
 - (a) by the person to whom the thing relates,
 - (b) with respect to treatment of the person for mental disorder, by any individual acting on the person's behalf,
 - (c) for the purpose of making decisions or taking steps with respect to treatment of the person for mental disorder—
 - (i) by a mental health officer dealing with the person's case,
 - (ii) by the person's responsible medical officer,
 - (iii) by the relevant Health Board,
 - (d) in connection with any proceedings before the Tribunal concerning the person, by the Tribunal.”.

21 Communication at medical examination etc.

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 261 there is inserted—

“261A Help with communication at medical examination etc.

- (1) Subsection (2) below applies where—
 - (a) a medical examination or interview referred to in subsection (4)(a) or (b) below is to be carried out, and
 - (b) the subject of it—

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- (i) has difficulty in communicating, or
 - (ii) generally communicates in a language other than English.
 - (2) The appropriate person must take all reasonable steps to secure that, for the purpose of enabling the subject of the medical examination or interview to communicate during it—
 - (a) arrangements appropriate to the subject’s needs are made, or
 - (b) the subject is provided with assistance, or material, appropriate to those needs.
 - (3) As soon as practicable after taking any steps under subsection (2) above, the appropriate person must make a written record of the steps.
 - (4) This subsection refers to—
 - (a) a medical examination by virtue of section 36(1)(a), 44(1)(a), 57(2), 57A(2) or 136(2) of this Act,
 - (b) an interview by virtue of—
 - (i) section 45(1)(a) or 61(2)(a) of this Act, or
 - (ii) section 59B(2)(a) or 57C(2)(a) of the 1995 Act.
 - (5) In subsections (2) and (3) above, “the appropriate person” means—
 - (a) in relation to a medical examination by virtue of section 136(2) of this Act, the Scottish Ministers,
 - (b) in relation to a medical examination by virtue of any of the other sections of this Act referred to in subsection (4)(a) above—
 - (i) if it is to be carried out at a hospital, the managers of the hospital,
 - (ii) if it is to be carried out elsewhere, the medical practitioner carrying it out,
 - (c) in relation to an interview referred to in subsection (4)(b) above—
 - (i) if it is to be carried out at a hospital, the managers of the hospital,
 - (ii) if it is to be carried out elsewhere, the mental health officer carrying it out.”.

22 Services and accommodation for mothers

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 24 (provision of services and accommodation for certain mothers with post-natal depression), for the words “post-natal depression” in subsection (1)(d) there is substituted “a mental disorder”.
- (3) The title of section 24 becomes “**Services and accommodation for mothers**”.

Arrangements for treatment of prisoners

23 Agreement to transfer of prisoners

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

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- (2) In section 136 (transfer of prisoners for treatment for mental disorder), after subsection (4) there is inserted—

“(4A) A transfer for treatment direction may be made only if a mental health officer has agreed to the making of it.”.

24 Compulsory treatment of prisoners

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

- (2) In schedule 2 (the Mental Health Tribunal for Scotland), in paragraph 7—

(a) in sub-paragraph (4), for the words “(other than proceedings relating solely to an application under section 255 or 256 of this Act)” there is substituted “(other than excepted proceedings)”,

(b) after sub-paragraph (4) there is inserted—

“(4A) For the purpose of sub-paragraph (4) above, the following are excepted proceedings—

(a) proceedings relating solely to an application under section 255 or 256 of this Act, or

(b) proceedings relating to an application for a compulsory treatment order in respect of a patient subject to a transfer for treatment direction.”.

- (3) In schedule 3 (application of Chapter 1 of Part 7 to certain patients), after paragraph 1 there is inserted—

“1A In the case of a patient subject to a hospital direction or a transfer for treatment direction, section 60(1) of this Act shall have effect as if, after paragraph (b), there were inserted—

“(ba) to the Scottish Ministers;”.”.

Cross-border and absconding patients

25 Cross-border transfer of patients

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

- (2) In section 289 (cross-border transfer: patients subject to requirement other than detention), in paragraph (b) of subsection (1)—

(a) the words from “a person” to the end become sub-paragraph (i),

(b) after that sub-paragraph (as so numbered) there is inserted—

“(ii) a person subject to corresponding requirements in a member State of the European Union (apart from the United Kingdom) and removed from that State.”.

- (3) In section 290 (cross-border transfer: patients subject to detention requirement or otherwise in hospital), in paragraph (c) of subsection (1)—

(a) the words from “a person” to the end become sub-paragraph (i),

(b) after that sub-paragraph (as so numbered) there is inserted—

“(ii) a person subject to corresponding measures in a member State of the European Union (apart from the United Kingdom) and removed from that State.”.

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- (4) In section 309A (cross-border visits: leave of absence), in subsection (1)—
- (a) the words from “a person” to the end become paragraph (a),
 - (b) after that paragraph (as so numbered) there is inserted—
 - “(b) a person who is subject to a corresponding suspension of detention in a member State of the European Union (apart from the United Kingdom).”.

26 Dealing with absconding patients

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In paragraph (a)(iii) of subsection (3) of section 303 (taking into custody and return of absconding patients), after the words “compulsory treatment order” there is inserted “or an interim compulsory treatment order”,
- (3) In section 309 (patients from other jurisdictions)—
- (a) in subsection (1)—
 - (i) the words from “persons” to the end become paragraph (a),
 - (ii) after that paragraph (as so numbered) there is inserted—
 - “(b) persons in Scotland who are subject to corresponding requirements or corresponding measures in a member State of the European Union (apart from the United Kingdom).”,
 - (b) in subsection (2), for the words “Those regulations” there is substituted “Regulations under subsection (1) above”,
 - (c) after subsection (2) there is inserted—
 - “(2ZA) Regulations may make provision applying some or all of Part 16 of this Act to persons to whom sections 301 to 303 of this Act apply by virtue of subsection (1) above.
 - (2ZB) Regulations under subsection (2ZA) above may make such modifications of that Part in that application as the Scottish Ministers think fit.
 - (2ZC) But regulations under subsection (2ZA) above may not apply any of that Part to persons who are subject to requirements or measures corresponding only to detention in hospital in accordance with an emergency detention certificate.”.
- (4) In section 310 (regulations as to absconding by other patients), after subsection (3) there is inserted—
- “(3A) In making provision as described in paragraphs (a) and (b) of subsection (1) above, regulations under that subsection may specify persons who are authorised by patients’ responsible medical officers.”.

PART 2

CRIMINAL CASES

Making and effect of orders etc.

27 Making certain orders in remand cases

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

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- (2) There is inserted “remanded” before the words “in custody” where occurring in these provisions—
- (a) in section 52B (prosecutor’s power to apply for assessment order), subsection (3)(c),
 - (b) in section 52C (Scottish Ministers’ power to apply for assessment order), subsection (1)(c),
 - (c) in section 52D (assessment order), subsection (10)(d),
 - (d) in section 52F (assessment order: supplementary), subsection (1)(a).
 - (e) in section 52K (prosecutor’s power to apply for treatment order), subsection (3)(c),
 - (f) in section 52L (Scottish Ministers’ power to apply for treatment order), subsection (1)(c),
 - (g) in section 52M (treatment order), subsection (9)(d)(i) and (ii),
 - (h) in section 52P (treatment order: supplementary), subsection (2)(a) and (b)(ii).

28 Periods for assessment orders

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 52D (assessment order)—
 - (a) in subsection (6)—
 - (i) in paragraph (a), for the words “expiry of the period of” there is substituted “end of the day following the”,
 - (ii) in each of paragraphs (b) and (c), for the words “period of 28 days beginning with the day on which the order is made” there is substituted “relevant period given by subsection (6A) below”,
 - (b) after subsection (6) there is inserted—

“(6A) For the purpose of subsection (6)(b) and (c) above, the relevant period is the period—

 - (a) beginning with the day on which the order is made,
 - (b) expiring at the end of the 28 days following that day.”.
- (3) In section 52F (assessment order: supplementary), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.
- (4) In section 52G (review of assessment order)—
 - (a) in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”,
 - (b) in subsection (4), for words from “7 days” to the end there is substituted “the relevant period given by subsection (4A) below”,
 - (c) after subsection (4) there is inserted—

“(4A) For the purpose of subsection (4) above, the relevant period is the period—

 - (a) beginning with the day on which the order would otherwise cease to authorise the detention of the person in hospital,

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- (b) expiring at the end of the 21 days following that day.”.
- (5) In section 52H (early termination of assessment order)—
- (a) in subsection (1)—
- (i) in paragraph (a), for the words “period of 7 days beginning with the day on which the order is made” there is substituted “relevant period given by subsection (1A) below”,
- (ii) in paragraph (b), for the words “period of 28 days beginning with the day on which the order is made” there is substituted “relevant period given by subsection (1A) below”,
- (b) after subsection (1) there is inserted—
- “(1A) For the purpose of subsection (1)(a) and (b) above, the relevant period is the period—
- (a) beginning with the day on which the order is made,
- (b) expiring—
- (i) as regards subsection (1)(a), at the end of the 7 days following that day,
- (ii) as regards subsection (1)(b), at the end of the 28 days following that day.”.

29 Periods for treatment orders

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 52M (treatment order)—
- (a) in subsection (3)(c), for the words “expiry of the period of” there is substituted “end of the day following the”,
- (b) in subsection (6)(a), the words “expiry of the period of” there is substituted “end of the day following the”.
- (3) In section 52P (treatment order: supplementary), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.
- (4) In section 52R (termination of treatment order)—
- (a) in subsection (1)(a), for the words “period of 7 days beginning with the day on which the order is made” there is substituted “relevant period given by subsection (1A) below”,
- (b) after subsection (1) there is inserted—
- “(1A) For the purpose of subsection (1)(a) above, the relevant period is the period—
- (a) beginning with the day on which the order is made,
- (b) expiring at the end of the 7 days following that day.”.

30 Periods for short-term compulsion

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 53 (interim compulsion order)—

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- (a) in subsection (3)(c), for the words “expiry of the period of” there is substituted “end of the day following the”,
- (b) in subsection (8)—
- (i) in paragraph (a), for the words “expiry of the period of” there is substituted “end of the day following the”,
 - (ii) in paragraph (b), for the words “12 weeks beginning with the day on which the order is made” there is substituted “the relevant period given by subsection (8A) below”,
 - (iii) in paragraph (c), for the words “period of 12 weeks beginning with the day on which the order is made” there is substituted “relevant period given by subsection (8A) below”,
- (c) after subsection (8) there is inserted—
- “(8A) For the purpose of subsection (8)(b) and (c) above, the relevant period is the period—
- (a) beginning with the day on which the order is made,
 - (b) expiring at the end of the 12 weeks following that day.”.
- (3) In section 53A (interim compulsion order: supplementary), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.
- (4) In section 53B (review and extension of interim compulsion order)—
- (a) in subsection (4), for the words from “(not exceeding” to “not made)” there is substituted “not exceeding the relevant period given by subsection (4A) below”,
 - (b) after subsection (4) there is inserted—
- “(4A) For the purpose of subsection (4) above, the relevant period is the period—
- (a) beginning with the day on which the order would cease to have effect were such an extension not made,
 - (b) expiring at the end of the 12 weeks following that day.”.
- (c) in subsection (5), for the words “12 months beginning with the day on which the order was first made.” there is substituted “the period—
- (a) beginning with the day on which the order was first made,
 - (b) expiring at the end of the 12 months following that day.”.
- (5) In section 54 (unfitness for trial: further provision), in subsection (2B)(a), for the words “expiry of the period of” there is substituted “end of the day following the”.

31 Periods for compulsion orders

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 57A (compulsion order)—
- (a) in subsection (2), for the words “period of 6 months beginning with the day on which the order is made” there is substituted “relevant period given by subsection (2A) below”,
 - (b) after subsection (2) there is inserted—
- “(2A) For the purpose of subsection (2) above, the relevant period is the period—

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- (a) beginning with the day on which the order is made,
 - (b) expiring at the end of the 6 months following that day.”,
 - (c) in subsection (5)(b), for the words “expiry of the period of” there is substituted “end of the day following the”.
- (3) In section 57B (compulsion order authorising detention in hospital or requiring residence at place: ancillary provision), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.
 - (4) In section 57D (compulsion order: supplementary), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.

32 Periods for hospital directions

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 59A (hospital directions)—
 - (a) in subsection (4)(b), for the words “expiry of the period of” there is substituted “end of the day following the”,
 - (b) in subsection (7)(a), for the words “expiry of the period of” there is substituted “end of the day following the”.
- (3) In section 59C (hospital direction: supplementary), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.

Variation of certain orders etc.

33 Variation of interim compulsion orders

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 53B (review and extension of interim compulsion order)—
 - (a) in subsection (4)—
 - (i) the words from “if satisfied” to the end become paragraph (a),
 - (ii) after that paragraph (as so numbered) there is inserted “, and
 - (b) if it seems appropriate to do so, direct that the offender be admitted to the hospital specified in the direction.”,
 - (b) in subsection (6), after the word “order” there is inserted “or make a direction specifying a hospital”,
 - (c) after subsection (7) there is inserted—
 - “(7A) Where a direction is made under subsection (4) above, the interim compulsion order has effect as if the hospital specified in the direction were the hospital specified in the order.”.

34 Transfer of patient to suitable hospital

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) The italic heading immediately preceding section 61 becomes “*Miscellaneous provision*”.
- (3) After section 61 there is inserted—

“61A Transfer of person to suitable hospital

- (1) Subsection (2) below applies in relation to a person who is subject to—
 - (a) an assessment order,
 - (b) a treatment order, or
 - (c) an interim compulsion order.
- (2) Before the end of the day following the 7 days beginning with the day on which the person is admitted to a hospital by virtue of the order in question, the person’s responsible medical officer may transfer the person to a hospital other than the specified hospital.
- (3) The responsible medical officer may do so only if satisfied that the specified hospital is not suitable, but the other hospital is suitable, for the purpose for which the order in question is made.
- (4) In considering the suitability of each hospital, the responsible medical officer is to have particular regard to the specific requirements or needs relevant in the person’s case.
- (5) As far before doing so as practicable, the responsible medical officer must—
 - (a) inform the person of the reason for the transfer,
 - (b) notify the managers of the specified hospital, and
 - (c) obtain the consent of—
 - (i) the managers of the other hospital, and
 - (ii) the Scottish Ministers.
- (6) As soon after doing so as practicable, the responsible medical officer must notify—
 - (a) any solicitor acting for the person, and
 - (b) the court which made the order in question.
- (7) A person may be transferred under subsection (2) above only once with respect to the order in question.
- (8) Where a person is transferred under subsection (2) above, the order in question has effect as if the other hospital were the specified hospital.
- (9) In this section—

“managers” is as defined in section 329(1) of the Mental Health (Treatment and Care) Scotland) Act 2003,

“responsible medical officer” is as defined in section 329(4) of that Act,

“specified hospital” means hospital to which the person is admitted by virtue of the order in question.”.

Related provisions in the 2003 Act

35 Notifying changes to compulsion orders

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

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- (2) In section 157 (application for extension and variation of compulsion order: notification), paragraph (f) is repealed (together with the word “and” immediately preceding it).
 - (3) In section 160 (application for variation of compulsion order: notification), for the word “(f)” there is substituted “(e)”.

PART 3

VICTIMS’ RIGHTS

36 Right to information: offender imprisoned

- (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.
- (2) In section 16 (victim’s right to receive information concerning release etc. of prisoner), in subsection (3)—
 - (a) in paragraph (e)—
 - (i) for the words “or young” there is substituted “, young”,
 - (ii) after the word “institution” there is inserted “or hospital”,
 - (b) the word “and” immediately preceding paragraph (f) is repealed,
 - (c) in paragraph (f)—
 - (i) for the words “or young” there is substituted “, young”,
 - (ii) after the word “institution” there is inserted “or hospital”,
 - (d) after paragraph (f) there is inserted—
 - “(g) that the convicted person is being detained in a hospital under a hospital direction or transfer for treatment direction;
 - (h) that a hospital direction or transfer for treatment direction in respect of the convicted person has been revoked and the date on which the person is, as a result, admitted to a prison, institution or other place;
 - (j) where the convicted person is liable to be detained in a hospital under a hospital direction or transfer for treatment direction—
 - (i) that a certificate has been granted, for the first time, under the Mental Health Act which suspends the person’s detention and does not impose a supervision requirement,
 - (ii) that the certificate mentioned in sub-paragraph (i) has been revoked.”.
- (3) In section 16, in subsection (4)—
 - (a) the word “or” immediately preceding paragraph (b) is repealed, and
 - (b) at the end of paragraph (b) there is inserted “; or
 - (c) modify section 18A, by adding, amending or repealing definitions of terms used in the descriptions of information in subsection (3) of this section.”.

37 Right to information: compulsion order

- (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.
- (2) After section 16 there is inserted—

“16A Victim’s right to receive information concerning offender subject to compulsion order

- (1) Subsection (2) applies where—
 - (a) an offence has been perpetrated against a natural person (“V”),
 - (b) another person (“O”) has been made subject to a compulsion order in proceedings on an indictment libelling that offence,
 - (c) a person has asked to be given information about O under this section and that person is, or was at the time of asking, a person entitled to ask to be given the information, and
 - (d) O has attained the age of 16 years.
- (2) The Scottish Ministers must give the information about O described in section 16B to the person mentioned in subsection (1)(c).
- (3) But the Scottish Ministers need not give a person information under this section if they consider there to be exceptional circumstances which make it inappropriate to do so.
- (4) The reference in subsection (1)(c) to a person entitled to ask to be given information about O under this section is to—
 - (a) V (unless one of the following paragraphs applies),
 - (b) if V is dead—
 - (i) any or all of the four qualifying persons highest listed in section 14(10), and
 - (ii) if V died before attaining the age of 16 years, any other person who cared for V immediately before the offence mentioned in subsection (1)(a) was perpetrated, or
 - (c) if V has attained the age of 14 years and is incapable for the purposes of this section, the qualifying person highest listed in section 14(10).
- (5) If a person (including V) who would be entitled to ask to be given information by virtue of subsection (4) has not attained the age of 14 years—
 - (a) the person is not entitled to ask to be given the information, and
 - (b) someone who cares for the person is entitled to ask to be given it instead.
- (6) For the purposes of this section—
 - (a) the references to a qualifying person are to a person—
 - (i) whose relationship to V is listed in subsection (10) of section 14 (read with the other subsections of that section),
 - (ii) who is not incapable for the purposes of this section, and
 - (iii) who is not a person accused of, or reasonably suspected of being the perpetrator of, or having been implicated in, the offence mentioned in subsection (1)(a),

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- (b) when determining who is the qualifying person highest listed in section 14(10), if two or more persons have the same relationship to V they are to be listed according to age with the eldest being the highest listed of them,
 - (c) the expressions “cared for” and “cares for”, are to be construed in accordance with the definition of “someone who cares for” in paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010,
 - (d) a person is to be considered incapable for the purposes of this section if the person would be considered incapable of making a victim statement by virtue of section 14(6)(b)(i) and (7).
- (8) The Scottish Ministers may by order amend—
- (a) subsections (4)(c) and (5), by substituting for the age for the time being specified in those subsections such other age as they think fit,
 - (b) section 16B, by adding descriptions of information,
 - (c) section 18A, by adding, amending or repealing definitions of terms used in the descriptions of information in section 16B.

16B Information to be given under section 16A

- (1) This section sets out the information that is to be given under section 16A about a person (“O”) who is subject to a compulsion order as mentioned in subsection (1)(b) of that section.
- (2) The following information is to be given in any case—
 - (a) that the compulsion order has been revoked,
 - (b) the date of O’s death, if it is before the date on which the compulsion order—
 - (i) is revoked, or
 - (ii) ceases to authorise the measures contained in it,
 - (c) that the compulsion order has been varied by way of a modification of the measures specified in it,
 - (d) that O has been transferred to a place outwith Scotland.
- (3) The following information is to be given in a case where the compulsion order authorises O’s detention in hospital—
 - (a) that O is unlawfully at large from hospital,
 - (b) that O has returned to hospital having been unlawfully at large,
 - (c) that a certificate has been granted, for the first time, under the Mental Health Act which suspends O’s detention and does not impose a supervision requirement,
 - (d) that the certificate mentioned in paragraph (c) has been revoked.
- (4) The following information is to be given in a case where, in addition to being made subject to the compulsion order, O was also made subject to a restriction order—
 - (a) that the restriction order has been revoked,

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- (b) that the Mental Health Tribunal has made an order under section 193(7) of the Mental Health Act conditionally discharging O,
 - (c) that the Scottish Ministers have recalled O to hospital under section 202 of the Mental Health Act.
- (5) The information described in subsection (6) is to be given in a case where either—
- (a) O was not made subject to a restriction order in addition to the compulsion order, or
 - (b) O was made subject to a restriction order in addition to the compulsion order and the restriction order has been revoked.
- (6) The information mentioned in subsection (5) is—
- (a) that a determination or an order has been made extending the compulsion order and the period of the extension,
 - (b) that the Mental Health Tribunal has revoked a determination extending the compulsion order.
- (7) For the purpose of subsection (2)(b), a compulsion order is not to be regarded as having ceased to authorise the measures specified in it if it has only ceased to authorise the measures for a particular period.”.

38 Right to make representations

- (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.
- (2) After section 17A there is inserted—

“17B Mentally-disordered offender: victim’s right to make representations

- (1) A person (“V”) who is to be given information about another person (“O”) under section 16 or 16A, must be afforded an opportunity to make representations—
 - (a) in a case where O is subject to a hospital direction or a transfer for treatment direction, before a decision of a type described in subsection (4) is taken in relation to O,
 - (b) in a case where O is subject to a compulsion order and not subject to a restriction order, before a decision of a type described in subsection (5) is taken in relation to O, or
 - (c) in a case where O is subject to a restriction order, before a decision of a type described in subsection (6) is taken in relation to O.
- (2) Representations under this section must be about how the decision in question might affect V or members of V’s family.
- (3) Subsection (1) does not apply unless V has intimated to the Scottish Ministers a wish to be afforded an opportunity to make representations about O under this section.
- (4) For the purpose of section (1)(a), the type of decision is a decision by O’s responsible medical officer about granting a certificate under the Mental Health Act which suspends O’s detention and does not impose a supervision requirement.

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- (5) For the purpose of subsection (1)(b), the types of decision are a decision—
 - (a) by O’s responsible medical officer about granting a certificate under the Mental Health Act which suspends O’s detention and does not impose a supervision requirement,
 - (b) by the Mental Health Tribunal under section 166, 167 or 171 of the Mental Health Act.
 - (6) For the purpose of subsection (1)(c), the types of decision are a decision—
 - (a) by O’s responsible medical officer about granting a certificate under the Mental Health Act which suspends O’s detention and does not impose a supervision requirement,
 - (b) by the Mental Health Tribunal under section 193 of the Mental Health Act (including a decision under that section as applied by section 201(3) or 204(3) of that Act),
 - (c) by the Scottish Ministers under section 200 of the Mental Health Act about varying conditions in a way which may have an effect on V or members of V’s family.
 - (7) The Scottish Ministers need not afford V an opportunity to make representations before taking a decision of the type described in subsection (6)(c) if it is not reasonably practicable to afford V that opportunity.

17C Making representations under section 17B

- (1) Representations under section 17B—
 - (a) may be made orally in relation to a decision of a type described in paragraph (b) or (c) of section 17B(6), but
 - (b) otherwise, must be made in writing.
- (2) Oral representations to the Mental Health Tribunal must be made to a member of the Tribunal who is not dealing with the case in question.
- (3) The Scottish Ministers are to issue guidance as to how—
 - (a) written representations under section 17B should be framed, and
 - (b) oral representations under that section should be made.

17D Right to information after section 17B decision

- (1) Subsection (2) applies where—
 - (a) before a decision was taken, a person (“V”) was afforded an opportunity to make representations under section 17B,
 - (b) the decision has since been taken,
 - (c) the Scottish Ministers are not required under section 16A to give any information to V as a result of the decision, and
 - (d) V has intimated to the Scottish Ministers a wish to receive information under this section.

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- (2) The Scottish Ministers must, unless they consider that there are exceptional circumstances which make it inappropriate to do so, inform V that the decision has been taken.”.

39 Associated definitions

- (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.
- (2) After section 18 there is inserted—

“18A Interpretation of Part

- (1) In this Part—

“Mental Health Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003,

“Mental Health Tribunal” means the Mental Health Tribunal for Scotland.

“transfer for treatment direction” means a direction made under section 136 of the Mental Health Act.

- (2) A reference in this Part to a certificate under the Mental Health Act which suspends a person’s detention and does not impose a supervision requirement is to a certificate—
 - (a) under section 127(1) of that Act, as applied by section 179(1) of that Act, which does not include a condition under section 127(6)(a) of that Act, or
 - (b) under subsection (2) of section 224 of that Act, which does not include a condition under subsection (7)(a) of that section.”.

40 Consequential amendments

The schedule makes amendments to the Mental Health (Care and Treatment) (Scotland) Act 2003 in connection with this Part.

PART 4

COMMENCEMENT AND SHORT TITLE

41 Commencement

- (1) This Part comes into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may include transitional, transitory or saving provision.

42 Short title

The short title of this Act is the Mental Health (Scotland) Act 2014.

SCHEDULE
(introduced by section 40)

VICTIMS' RIGHTS: CONSEQUENTIAL AMENDMENTS

- 1 The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- 2 In section 166, after subsection (3) there is inserted—
- “(4) Where—
- (a) a person (“V”) is entitled to make victim’s representations before a decision under subsection (1) is made, and
- (b) V has not been allowed the opportunity of making representations under subsection (2),
- before making the decision, the Tribunal must have regard to any victim’s representations made by V.”.
- 3 In section 167, after subsection (7) there is inserted—
- “(8) Where—
- (a) a person (“V”) is entitled to make victim’s representations before a decision under any of subsections (1) to (5) is made, and
- (b) V has not been afforded the opportunity of making representations under subsection (6),
- before making the decision, the Tribunal must have regard to any victim’s representations made by V.”.
- 4 In section 171, after subsection (3) there is inserted—
- “(4) Where—
- (a) a person (“V”) is entitled to make victim’s representations before an order under subsection (1) is made, and
- (b) V has not been allowed the opportunity of making representations under subsection (2),
- before making the order, the Tribunal must have regard to any victim’s representations made by V.”.
- 5 In section 179—
- (a) in subsection (1), after the words “but subject to” there is inserted “subsection (1A) and”,
- (b) after subsection (1) there is inserted—
- “(1A) Before granting a certificate under section 127(1) (as applied by subsection (1) of this section) which does not include the condition mentioned in section 127(6)(a), the patient’s responsible medical officer must have regard to any victim’s representations.”.
- 6 In section 193, after subsection (9) there is inserted—
- “(9A) Where—
- (a) a person (“V”) is entitled to make victim’s representations before the Tribunal makes a decision under this section, and

(b) V has not been afforded the opportunity of making representations under subsection (8),

before making the decision, the Tribunal must have regard to any victim's representations made by V.”.

7 In section 200, after subsection (2) there is inserted—

“(2A) Before varying any conditions under subsection (2), the Scottish Ministers must have regard to any victim's representations.”.

8 In section 224, after subsection (6) there is inserted—

“(6A) Before deciding what conditions such as are mentioned in subsection (7) below to include in a certificate under subsection (2) above (if any), the responsible medical officer must have regard to any victim's representations.”.

9 In section 329, at the appropriate alphabetical place in subsection (1) there is inserted—

““victim's representations” means representations made under section 17B of the Criminal Justice (Scotland) Act 2003 in relation to the matter being considered;”.