



# Mental Health (Scotland) Act 2015

## 2015 asp 9

### PART 1

#### THE 2003 ACT

##### *Procedure for compulsory treatment*

#### **1 Measures until application determined**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 64 (powers of Tribunal on application under section 63: compulsory treatment order), after subsection (8) there is inserted—

“(8A) If the patient has been detained in hospital by virtue of section 47(4)(a) or 68(2)(a) of this Act in connection with the application by virtue of which this section applies, the 6 months referred to in subsection (4)(a)(i) above is to be regarded as reduced by the period during which the patient has been so detained under that section.

(8B) Subsection (8A) above is of no effect if the patient has been detained in hospital in accordance with an interim compulsory treatment order made in connection with the application by virtue of which this section applies.”.
- (3) In section 65 (powers of Tribunal on application under section 63: interim compulsory treatment order), after subsection (6) there is inserted—

“(7) If the patient has been detained in hospital by virtue of section 47(4)(a) or 68(2)(a) of this Act in connection with the application by virtue of which this section applies, the 56 days referred to in subsection (3) above is to be regarded as reduced by the period during which the patient has been so detained under that section.”.

#### **2 Information where order extended**

- (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—
  - (a) a mental health officer receives notice of a determination under section 86 of this Act from a patient’s responsible medical officer, and
  - (b) the Tribunal is required by virtue of section 101(2)(a) of this Act to review the determination.
- (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 except where the 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.
- (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.”.

### **3 Transfer to another hospital**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 124 (transfer to other hospital)—
  - (a) in subsection (1), for the words “by a compulsory treatment order.” there is substituted “by—
    - (a) a compulsory treatment order, or
    - (b) an interim compulsory treatment order.”,
  - (b) in subsection (14), for the words “compulsory treatment order” there is substituted “order in question”.

#### *Emergency, short-term and temporary steps*

### **4 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) after paragraph (c) there is inserted—

“(ca) if known to the managers and not falling within paragraph (a) or (b) above—
        - (i) any guardian of the patient; and
        - (ii) any welfare attorney of the patient.”,
      - (iii) paragraph (d) is repealed together with the word “and” immediately preceding it.
- (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”.

## **5 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 a copy of the certificate to each recipient of the notice.”.

## **6 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 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 made under section 54(1)(c) of the 1995 Act;”.

### *Suspension of orders and measures*

## **7 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 orders**”,
- (b) the italic heading immediately preceding it becomes “*Effect of emergency detention certificate on certain orders*”.

## 8 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”,
- (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 orders**”,
- (b) the italic heading immediately preceding it becomes “*Effect of short-term detention certificate etc. on certain orders*”.

## 9 Suspension of detention for certain purposes

(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), the words “not exceeding 6 months” are repealed,
- (b) after subsection (1) there is inserted—

“(1A) A certificate under subsection (1) above may specify—

- (a) a single period not exceeding 200 days, or
- (b) a series of more than one individual period falling within a particular 6 month period.”,

(c) after subsection (3) there is inserted—

“(3A) A certificate under subsection (3) above may specify—

- (a) a single period, or
- (b) a series of more than one individual period.”,

(d) subsection (4) is repealed,

(e) after subsection (4) there is inserted—

“(4A) The purpose for which a certificate under subsection (1) or (3) above is granted must be recorded in the certificate.”.

(3) In section 221 (assessment order: suspension of measure authorising detention)—

(a) after subsection (2) there is inserted—

“(2A) A certificate under subsection (2) above may specify—

(a) a single period, or

(b) a series of more than one individual period.”,

(b) after subsection (3) there is inserted—

“(3A) Subsection (3) above does not require the consent of the Scottish Ministers if the granting of the certificate is for the purpose of enabling the patient to—

(a) attend a hearing in criminal proceedings against the patient, or

(b) meet a medical or dental appointment made for the patient.”,

(c) subsection (4) is repealed,

(d) after subsection (4) there is inserted—

“(4A) The purpose for which a certificate under subsection (2) above is granted must be recorded in the certificate.”.

(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), the words “not exceeding 3 months” are repealed,

(c) after subsection (2) there is inserted—

“(2A) A certificate under subsection (2) above may specify—

(a) a single period not exceeding 90 days, or

(b) a series of more than one individual period falling within a particular 3 month period.”,

(d) after subsection (3) there is inserted—

“(3A) In the case of a treatment order, an interim compulsion order or a temporary compulsion order, subsection (3) above does not require the consent of the Scottish Ministers if the granting of the certificate is for the purpose of enabling the patient to—

(a) attend a hearing in criminal proceedings against the patient, or

(b) meet a medical or dental appointment made for the patient.”,

(e) subsection (5) is repealed,

(f) after subsection (5) there is inserted—

“(5A) The purpose for which a certificate under subsection (2) above is granted must be recorded in the certificate.”.

## **10 Maximum suspension of particular measures**

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

(2) In section 127 (suspension of measure authorising detention)—

(a) for subsection (2) there is substituted—

“(2) The total period that an order does not, by reason of certification under subsection (1) above, authorise the measure mentioned in section 66(1)(a) of this Act must not exceed 200 days within any period of 12 months (whenever counted from).”.

(b) after subsection (2) there is inserted—

“(2A) For the purpose of subsection (2) above—

(a) a day does not count towards the total period if the measure is (by reason of such certification) not authorised for a period of 8 hours or less in that day,

(b) a single period (specified in such certification) of more than 8 hours and less than 24 hours, whether in one day or spanning two days, is to count as a whole day towards the total period.”.

(3) In section 128 (suspension of other measures)—

(a) in each of subsections (1) and (2), for the words “3 months” there is substituted “90 days”,

(b) after subsection (2) there is inserted—

“(2A) A day is to count as a whole day towards the 90 days mentioned in subsection (2) above if any part of that day falls within the period mentioned in paragraph (a) or (b) of that subsection.”.

(4) In section 224 (patients subject to certain other orders and directions: suspension of measure authorising detention)—

(a) for subsection (4) there is substituted—

“(4) The total period that an order or direction does not, by reason of certification under subsection (2) above, authorise the detention of a patient in hospital must not exceed 200 days within any period of 12 months (whenever counted from).”.

(b) after subsection (4) there is inserted—

“(4A) For the purpose of subsection (4) above—

(a) a day does not count towards the total period if the detention is (by reason of such certification) not authorised for a period of 8 hours or less in that day,

(b) a single period (specified in such certification) of more than 8 hours and less than 24 hours, whether in one day or spanning two days, is to count as a whole day towards the total period.”.

*Specification of hospital units***11 Specification for detention measures**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 36 (emergency detention in hospital), after subsection (12) there is inserted—
  - “(13) A reference in this section to a hospital may be read as a reference to a hospital unit.
  - (14) For the purpose of subsection (13) above, “hospital unit” means any part of a hospital which is treated as a separate unit.”.
- (3) In section 44 (short-term detention in hospital), after subsection (11) there is inserted—
  - “(12) In this section and sections 46 to 49 of this Act, a reference to a hospital may be read as a reference to a hospital unit.
  - (13) For the purposes of subsection (12) above, “hospital unit” means any part of a hospital which is treated as a separate unit.”.
- (4) After section 71 there is inserted—

**“71A Compulsory treatment in hospital unit**

- (1) In sections 62 to 68 of this Act, a reference to a hospital may be read as a reference to a hospital unit.
- (2) For the purposes of subsection (1) above, “hospital unit” means any part of a hospital which is treated as a separate unit.”.

**12 Transfer of prisoner to hospital unit**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 136 (transfer of prisoners for treatment for mental disorder), after subsection (10) there is inserted—
  - “(11) A reference in this section to a hospital may be read as a reference to a hospital unit.
  - (12) For the purpose of subsection (11) above, “hospital unit” means any part of a hospital which is treated as a separate unit.”.

**13 Transfer from specified unit**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 124 there is inserted—

**“124A Transfer to other hospital unit**

- (1) Subsection (2) below applies where—
  - (a) the detention of a patient in hospital is authorised by—



- (i) a compulsory treatment order, or
    - (ii) an interim compulsory treatment order, and
  - (b) that order specifies the hospital unit in which the patient is to be detained.
- (2) The managers of the hospital in which the patient is detained may transfer the patient to another hospital unit within the same hospital.
- (3) In relation to a transfer or proposed transfer under subsection (2) above, section 124(4) to (14) of this Act applies subject to the following modifications—
- (a) a reference to section 124(2) is to be read as a reference to subsection (2) above,
  - (b) subsection (10)(a) is to be ignored,
  - (c) in subsection (12), a reference to the hospital from which the patient is transferred is to be read as a reference to the hospital in which the patient is detained,
  - (d) in subsections (13)(b) and (14), a reference to the hospital to which the patient is transferred is to be read as a reference to the hospital unit to which the patient is transferred.
- (4) For the purposes of this section, “hospital unit” means any part of a hospital which is treated as a separate unit.”.

*Orders regarding level of security*

**14 Requirement for medical report**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 264 (detention in conditions of excessive security: state hospitals), after subsection (7) there is inserted—
- “(7A) An application may not be made under subsection (2) above unless it is accompanied by a report prepared by a medical practitioner which—
- (a) states that in the practitioner’s opinion the patient does not require to be detained under conditions of special security that can be provided only in a state hospital, and
  - (b) sets out the practitioner’s reasons for being of that opinion.”.

(3) In section 268 (detention in conditions of excessive security: hospitals other than state hospitals), after subsection (7) there is inserted—

“(7A) An application may not be made under subsection (2) above unless it is accompanied by a report prepared by a medical practitioner which—

    - (a) states that in the practitioner’s opinion the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient, and
    - (b) sets out the practitioner’s reasons for being of that opinion.”.

**15 Process for enforcement of orders**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) Section 266 (order under section 265: further provision) is repealed.
- (3) In section 267 (orders under sections 264 to 266: recall)—
  - (a) in subsection (1), for the words “, 265(3) or 266(3)” there is substituted “or 265(3)”,
  - (b) in subsection (3), for the words “, 265(4) to (6) or 266(4) to (6)” there is substituted “or 265(4) to (6)”.
- (4) The title of section 267 becomes “**Order under section 264 or 265: recall**”.
- (5) Section 270 (order under section 269: further provision) is repealed.
- (6) In section 271 (orders under sections 268 to 270: recall)—
  - (a) in subsection (1), for the words “, 269(3) or 270(3)” there is substituted “or 269(3)”,
  - (b) in subsection (3), for the words “, 269(4) to (6) or 270(4) to (6)” there is substituted “or 269(4) to (6)”.
- (7) The title of section 271 becomes “**Order under section 268 or 269: recall**”.
- (8) In section 272 (proceedings for specific performance of statutory duty)—
  - (a) in subsection (1), for paragraphs (a) to (d) there is substituted—
    - “(a) an order under section 264(2) of this Act, or
    - (c) an order under section 268(2) of this Act,”
  - (b) in subsection (2), for paragraphs (a) to (d) there is substituted—
    - “(a) an order under section 265(3) of this Act, or
    - (c) an order under section 269(3) of this Act,”

**16 Orders relating to non-state hospitals**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 268 (detention in conditions of excessive security: hospitals other than state hospitals)—
  - (a) in subsection (1), the word “qualifying” in the first place where it occurs is repealed,
  - (b) in subsection (2), for the words from “detention” to “patient’s case” there is substituted “the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient”,
  - (c) in subsection (5), for the words from “to the managers” to the end there is substituted “of the name of the hospital so identified to the managers of the hospital in which the patient is detained”,
  - (d) in subsection (6), the word “qualifying” in each place where it occurs is repealed,
  - (e) in subsection (10)—
    - (i) except in paragraph (e), the word “qualifying” in each place where it occurs is repealed,
    - (ii) in paragraph (e), for the words “qualifying hospital” there is substituted “hospital in which the patient is detained”,

- (f) subsections (11) to (14) are repealed.
- (3) In section 269 (order under section 268: further provision)—
  - (a) in each of subsections (1) and (2), the word “qualifying” is repealed,
  - (b) in subsection (3), for the words from “detention” to “patient’s case” there is substituted “the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient”,
  - (c) in subsection (6), for the words from “to the managers” to the end there is substituted “of the name of the hospital so identified to the managers of the hospital in which the patient is detained”.
- (4) In section 271 (orders under sections 268 to 270: recall)—
  - (a) in subsection (1), the word “qualifying” is repealed,
  - (b) in subsection (2)(a), for the words from “detention” to “patient’s case” there is substituted “the test specified in regulations made under section 271A(2) of this Act is not met in relation to the patient”.
- (5) After section 271 there is inserted—

*“Process for orders: further provision*

**271A Regulation-making powers**

- (1) A hospital is a “qualifying hospital” for the purposes of sections 268 to 271 of this Act if—
  - (a) it is not a state hospital, and
  - (b) it is specified, or is of a description specified, in regulations.
- (2) Regulations may specify the test for the purposes of sections 268(2), 269(3) and 271(2)(a) of this Act.
- (3) Regulations under subsection (2) above specifying the test—
  - (a) must include as a requirement for the test to be met in relation to a patient that the Tribunal be satisfied that detention of the patient in the hospital in which the patient is being detained involves the patient being subject to a level of security that is excessive in the patient’s case, and
  - (b) may include further requirements for the test to be met in relation to a patient.
- (4) Regulations may make provision about when, for the purposes of—
  - (a) any regulations made under subsection (2) above, and
  - (b) sections 268 to 271 of this Act,a patient’s detention in a hospital is to be taken to involve the patient being subject to a level of security that is excessive in the patient’s case.
- (5) Regulations may modify sections 264 and 268 of this Act so as to provide that a person must meet criteria besides being a medical practitioner in order to prepare a report for the purpose of subsection (7A) in each of those sections.”.
- (6) In section 273 (interpretation of Chapter), for the definition of “relevant patient” there is substituted—

““relevant patient” means a patient whose detention in hospital is authorised by—

- (a) if the patient is also subject to a restriction order, a compulsion order,
- (b) a hospital direction, or
- (c) a transfer for treatment direction.”.

- (7) In section 326 (orders, regulations and rules), in subsection (4)(c), for the words “268(11) to (14)” there is substituted “271A”.

## **17 Section 16: exercise of powers before commencement**

- (1) Regulations may be made under section 271A of the Mental Health (Care and Treatment) (Scotland) Act 2003 (which is to be inserted by section 16(5)) before section 16(5) comes into force.
- (2) In relation to regulations made (or to be made) by virtue of subsection (1), section 16(7) is to be regarded as being in force.
- (3) Regulations made by virtue of subsection (1) may not come into force before the day on which section 16(5) comes into force.

## **18 Meaning of hospital in sections 264 to 273 of the 2003 Act**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 273 (interpretation of Chapter)—
  - (a) the words up to the end of the definition of “relevant patient” become subsection (1),
  - (b) after that subsection there is inserted—
    - “(2) In this Chapter, a reference to a hospital may be read as a reference to a hospital unit.
    - (3) For the purposes of this Chapter, “hospital unit” means any part of a hospital which is treated as a separate unit.”.

### *Removal and detention of patients*

## **19 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 of this Act making, or 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 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 subsection (6) of section 295 of this Act.”.

## **20 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) is repealed together with the word “and” immediately preceding it,
    - (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 purpose of enabling the carrying out of a medical examination of the patient by a medical practitioner”,
  - (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) subsection (4) is repealed.

### *Periodical referral of cases*

## **21 Periodical referral of cases**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In subsection (3)(c) of section 101 (Tribunal’s duty to review determination under section 86), for the words “made to” there is substituted “determined by”.
- (3) 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) after the words “made under subsection (2) above” there is inserted “that has been determined by it”.
- (4) 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) after the words “made under subsection (2) above” there is inserted “that has been determined by it”.

- (5) In schedule 2 (the Mental Health Tribunal for Scotland), paragraph 13A is repealed.

### *Representation by named persons*

## **22      Named person not to be automatic**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) Sections 251 and 253 are repealed.
- (3) In subsection (2) of section 318 (false statements), sub-paragraph (ii) of paragraph (b) is repealed.
- (4) In the definition in subsection (1) of section 329 (interpretation) of “named person”, after the words “the person” there is inserted “(if any)”.

## **23      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), for the words “(3) and (6)” there is substituted “(2A), (3) and (6)”,
  - (b) after subsection (2) there is inserted—
    - “(2A) 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 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.”.

## **24 Appointment of named person**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 255 (named person: mental health officer's duties etc.)—
  - (a) subsections (3) to (5) are repealed,
  - (b) in paragraph (b) of subsection (7), sub-paragraph (i) is repealed together with the word “or” immediately following it.
- (3) In section 256 (named person: application by patient etc.)—
  - (a) paragraph (a) of subsection (1) is repealed,
  - (b) in paragraph (b) of subsection (1), for the words “the applicant” there is substituted “a person mentioned in subsection (2) below (“the applicant”)”.
- (4) In section 257 (named person: Tribunal's powers)—
  - (a) subsection (1) is repealed,
  - (b) in subsection (2), for the words from “declaring” to the end there is substituted “as allowed by subsection (3A)”,
  - (c) after subsection (3) there is inserted—

“(3A) For the purpose of subsection (2), this subsection allows an order—

    - (a) in any case, to declare that the acting named person is not the named person,
    - (b) if the patient has not attained the age of 16 years, to appoint the person specified in the order to be the patient's named person in place of the acting named person.”.
- (5) In section 320 (appeal to sheriff principal against certain decisions of the Tribunal), paragraph (t) of subsection (1) is repealed.

## **25 Ability to act if no named person**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 257 there is inserted—

*“Ability to act if no named person*

### **257A Ability to act if no named person**

- (1) This section applies if—
  - (a) a patient does not have a named person,
  - (b) the patient has attained the age of 16 years, and
  - (c) the patient is incapable in relation to a decision as to whether to initiate an application or appeal in the patient's case.
- (2) In subsection (1)(c) above, “incapable” has the same meaning as in section 250 of this Act.
- (3) Each of the persons listed in subsection (9)(a) to (d) below has authority to initiate an application or appeal that may be made by the patient under section 50(1), 99(1), 100(2), 120(2), 125(2), 126(2), 163(1), 164(2), 192(2),

201(1), 204(1), 214(2), 219(2), 220(2), 264(2), 268(2), 320(2), 321(1) or 322(2) of this Act.

- (4) Each of the persons listed in subsection (9)(a) and (b) below has authority to obtain any notice or information that is to be provided under section 54(3), 60(1), 87(2)(c), 124(4) or (6), 127(7), 128(3), 129(3) or (4), 153(2)(c), 200(3), 218(4), (6) or (10)(b), 224(8), 225(3) or 226(3) of this Act.
- (5) The reference in subsection (3) above to section 264(2), 268(2), 320(2), 321(1) or 322(2) of this Act does not apply in relation to a guardian or a welfare attorney of the patient (as that person is already entitled to make an application or appeal under that section).
- (6) In the application of subsection (4) above—
  - (a) the reference to section 87(2)(c) or 153(2)(c) relates only to notice of the determination mentioned in that section (and not also to a copy of the record mentioned in that section),
  - (b) the reference to section 128(3) or 129(4) relates to a responsible medical officer's reasons only if that officer is satisfied that it is appropriate to give notice of them to a guardian or a welfare attorney of the patient (having regard to the need to ensure the patient's wellbeing and confidentiality).
- (7) Neither of the persons listed in subsection (9)(c) or (d) below has authority to act in relation to a patient by virtue of this section if the patient has made a written declaration precluding the person (or all persons) from so acting.
- (8) Subsections (2) to (5) and (7) of section 250 of this Act apply to a declaration mentioned in subsection (7) above as they apply to a nomination to which subsection (1) of that section relates (with that section to be read accordingly).
- (9) The listed persons are—
  - (a) any guardian of the patient,
  - (b) any welfare attorney of the patient,
  - (c) the patient's primary carer (if any),
  - (d) the patient's nearest relative."

#### *Advance statements and patients' rights*

## **26 Advance statements to be registered**

- (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—
- (a) place a copy of the statement or document with the person’s medical records, and
  - (b) inform the Commission—
    - (i) that a copy of the statement or document is held with the person’s medical records, and
    - (ii) of the premises at which the medical records are kept (and the personal and administrative details essential for identifying the records as the person’s).

#### **276B Advance statements to be registered by the Commission**

- (1) Where the Commission receives information by virtue of section 276A(2) of this Act, the Commission must enter the information in a register of advance statements maintained by it (and mark the date on which the entry is made).
- (2) The Commission must allow an entry in the register to be inspected at a reasonable time—
- (a) by the person whose medical records are referred to in the entry,
  - (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 the treatment of the person for a mental disorder, by—
    - (i) a mental health officer dealing with the person’s case,
    - (ii) the person’s responsible medical officer,
    - (iii) the Health Board responsible for the person’s treatment.

#### **276C Publicising support for making advance statements**

- (1) A Health Board is to publicise any support that it offers for—
- (a) making or withdrawing an advance statement,
  - (b) sending a copy of an advance statement, or a copy of a document withdrawing an advance statement, to a Health Board.
- (2) A Health Board must give the Commission such information as the Commission may from time to time seek on what the Health Board is doing in order to comply with subsection (1) above.”.

### **27 Information about advocacy services**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 259 there is inserted—

#### **“259A Information gathering**

- (1) Each of the bodies mentioned in subsection (2) below must give the Commission such information as the Commission may from time to time seek on how the body—

- (a) has, during a period of at least 2 years specified by the Commission, been exercising the functions conferred on the body by section 259 of this Act, and
- (b) intends, during a period of at least 2 years specified by the Commission, to exercise the functions conferred on the body by section 259 of this Act.

(2) The bodies are—

- (a) a local authority,
- (b) a Health Board,
- (c) the State Hospitals Board for Scotland.”.

## **28      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—
  - (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) 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 57C(2)(a) or 59B(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 mentioned 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.”.

## **29 Conflicts of interest to be avoided**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 291 there is inserted—

*“Conflicts of interest to be avoided*

### **291A Conflicts of interest to be avoided**

- (1) There must not be a conflict of interest in relation to a medical examination to be carried out for the purpose of section 36(1), 44(1), 47(1), 57(2), 77(2), 78(2), 139(2), 140(2) or 182(2) of this Act.
- (2) Regulations may—
  - (a) specify circumstances in which, in the application of subsection (1) above—
    - (i) there is to be taken to be a conflict of interest,
    - (ii) there is not to be taken to be a conflict of interest,
  - (b) specify circumstances in which subsection (1) above does not apply.”.
- (3) These provisions are repealed—
  - (a) in section 36 (emergency detention in hospital)—
    - (i) paragraph (a) of subsection (3),
    - (ii) subsection (9),
  - (b) in section 44 (short-term detention in hospital)—
    - (i) paragraph (a) of subsection (3),
    - (ii) subsection (8),
  - (c) in section 47 (extension of detention pending application for compulsory treatment order)—
    - (i) paragraph (a) of subsection (2) together with the word “and” immediately following it,
    - (ii) subsection (5),
  - (d) in section 58 (medical examination: requirements), subsection (5).

## **30 Safeguarding the patient’s interest**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 245 (certificates under sections 235, 236, 239 and 241), in subsection (3)—
  - (a) the word “and” immediately preceding sub-paragraph (ii) of paragraph (a) is repealed,

- (b) after sub-paragraph (ii) of paragraph (a) there is inserted—
  - “(iii) any guardian of the patient; and
  - (iv) any welfare attorney of the patient;”.

*Services and accommodation for mothers*

### 31 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)—
  - (a) in paragraph (d) of subsection (1), for the words “for post-natal depression,” there is substituted “for—
    - (i) post-natal depression; or
    - (ii) a mental disorder (other than post-natal depression),”
  - (b) after subsection (1) there is inserted—
 

“(1A) But a Health Board is required to provide services and accommodation under subsection (1) above only if it is satisfied that doing so would be beneficial to the wellbeing of the child.”.
- (3) The title of section 24 becomes “**Services and accommodation for mothers**”.

*Cross-border transfers and absconding patients*

### 32 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)—
  - (a) in paragraph (c) of subsection (1)—
    - (i) the words from “a person” to the end become sub-paragraph (i),
    - (ii) 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.”.
  - (b) for paragraph (f) of subsection (2) there is substituted—
 

“(f) enable an appeal against any such decision to be made by—

- (i) such a patient,
- (ii) the named person of such a patient,
- (iii) if such a patient has no named person—
  - any guardian of such a patient,
  - any welfare attorney of such a patient,
  - the primary carer (if any) of such a patient,
  - the nearest relative of such a patient;”.

- (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).”.

### **33 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 specific provisions in 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—
      - (a) 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, or
      - (b) authorise medical treatment of the types mentioned in section 234(2) or 237(3) of this Act.”.

- (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.”.

### *Arrangements for treatment of prisoners*

## **34 Agreement to transfer of prisoners**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 136 (transfer of prisoners for treatment for mental disorder), after paragraph (a) of subsection (3) there is inserted—
- “(aa) that—
- (i) a mental health officer has agreed to the making of the direction, or
  - (ii) it has been impracticable to obtain the agreement of a mental health officer;”.

## **35 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—
      - (i) a hospital direction, or
      - (ii) 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;””

*Provision of information by the Commission*

**36 Provision of information by the Commission**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 19 (statistical information)—
  - (a) the words “, in accordance with directions given to it by the Scottish Ministers,” are repealed,
  - (b) after the words “other information” there is inserted “of such kind as may be prescribed in regulations”,
  - (c) the existing text becomes subsection (1),
  - (d) after that subsection, there is inserted—

“(2) Before making regulations under subsection (1) above, the Scottish Ministers shall consult such persons as they consider appropriate.”.
- (3) In subsection (4)(c) of section 326 (orders, regulations and rules) after the words “regulations under section” there is inserted “19(1),”.

*Review of deaths of patients in hospital for treatment*

**37 Review of deaths of patients in hospital for treatment**

- (1) The Scottish Ministers must carry out a review of the arrangements for investigating the deaths of patients who, at the time of death, were—
  - (a) detained in hospital by virtue of—
    - (i) the Mental Health (Care and Treatment) (Scotland) Act 2003, or
    - (ii) the Criminal Procedure (Scotland) Act 1995, or
  - (b) admitted voluntarily to hospital for the purpose of receiving treatment for a mental disorder.
- (2) The review must be carried out within 3 years of this section coming into force.
- (3) In carrying out the review under subsection (1), the Scottish Ministers must consult—
  - (a) where practicable, the nearest relatives of patients within the meaning of subsection (1), and
  - (b) such other persons as they consider appropriate.
- (4) The Scottish Ministers must—
  - (a) publish a report setting out the findings of the review under subsection (1),
  - (b) lay a copy of the report before the Parliament, and
  - (c) notify the persons consulted under subsection (3) of the publication of the report.