

**2005 No. 445**

**MENTAL HEALTH**

**The Mental Health (Care and Treatment) (Scotland) Act 2003  
(Modification of Subordinate Legislation) Order 2005**

*Made* - - - - - *12th September 2005*

*Laid before the Scottish Parliament* *13th September 2005*

*Coming into force* - - - *5th October 2005*

The Scottish Ministers, in exercise of the powers conferred by section 330 of the Mental Health (Care and Treatment) (Scotland) Act 2003(a), and of all other powers enabling them in that behalf, hereby make the following Order:

**Citation and commencement**

1. This Order may be cited as the Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Subordinate Legislation) Order 2005 and shall come into force on 5th October 2005.

**Modifications of enactments**

2. The modifications to the Subordinate Legislation listed in the Schedule to this Order shall have effect.

*LEWIS MACDONALD*

Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
12th September 2005

## SCHEDULE

Article 2

### MODIFICATION OF SUBORDINATE LEGISLATION

#### *The National Health Service (Food Premises) (Scotland) Regulations 1987 (S.I. 1987/2)*

1. In regulation 1(2) of the National Health Service (Food Premises) (Scotland) Regulations 1987 (interpretation)(a), in the definition of “health authority”, for “a State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984” substitute “a special Health Board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978(b)”.

#### *Local Government Superannuation (Scotland) Regulations 1987 (S.I. 1987/1850)*

2. In regulation B6(8)(a)(iv) of the Local Government Superannuation (Scotland) Regulations 1987(c) (power to admit employees of other bodies) for “under the Mental Health (Scotland) Act 1984”, substitute “under the Mental Health (Care and Treatment) (Scotland) Act 2003”.

#### *Income Support (General) Regulations 1987 (S.I. 1987/1967)*

3.—1) The Income Support (General) Regulations 1987(d) are amended as follows.

(1) In regulation 2(1) (interpretation), in the definition of “nursing home”, for “a private hospital within the meaning of section 12 of the Mental Health (Scotland) Act 1984 (private hospitals)” substitute “an independent health care service within the meaning of section 2(5) of the Regulation of Care (Scotland) Act 2001(e)”.

(2) In regulation 16 (circumstances in which a person is to be treated as being or not being a member of the household), in paragraph (3)(a), for “section 90(1) of the Mental Health (Scotland) Act 1984 (provision of hospitals for patients requiring special security)” substitute “section 102 of the National Health Service (Scotland) Act 1978 (state hospitals)”.

(3) In regulation 21 (special cases)—

(a) in paragraph (3)—

(i) in the definition of “prisoner”, for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”; and

(ii) in the definition of “residential accommodation”, for “section 7 of the Mental Health (Scotland) Act 1984 (functions of local authorities)” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (care and support services etc.)”; and

(b) in paragraph (3E), for “section 7 of the Mental Health (Scotland) Act 1984” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

(4) In paragraph 2A of Schedule 7 (applicable amounts in special cases) for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

(5) In Schedule 9 (sums to be disregarded in the calculation of income other than earnings)—

(a) in paragraph 15A(1), for “section 7 of the Mental Health (Scotland) Act 1984” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”; and

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(a) S.I. 1987/2.

(b) 1978, c.29 as amended by the National Health Service and Community Care Act 1990, c.19, section 28(a)(ii).

(c) S.I. 1987/1850; to which there are amendments not relevant to this Order.

(d) S.I. 1987/1967; relevant amending instruments are S.I. 1990/547, S.I. 1992/3147, S.I. 1993/518, S.I. 1994/2139, S.I. 1995/516, S.I. 1998/563, S.I. 1998/2117, S.I. 2001/3767 and S.I. 2005/522.

(e) 2001, asp 8.

- (b) in paragraph 66, for “section 8 of the Mental Health (Scotland) Act 1984” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Housing Benefit (General) Regulations 1987 (S.I. 1987/1971)*

**4.—2)** The Housing Benefit (General) Regulations 1987(a) are amended as follows.

(1) In regulation 5 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home)—

- (a) in paragraph (8ZA)(a), for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”; and
- (b) in paragraph (9), in the definition of “residential accommodation”, in sub-paragraph (j)(ii), for “a private hospital within the meaning of section 12 of the Mental Health (Scotland) Act 1984 (private hospitals)” substitute “an independent health care service within the meaning of section 2(5) of the Regulation of Care (Scotland) Act 2001”.

(2) In regulation 7(3)(e)(ii) (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling), for “a private hospital within the meaning of section 12 of the Mental Health (Scotland) Act 1984 (private hospitals)” substitute “an independent health care service within the meaning of section 2(5) of the Regulation of Care (Scotland) Act 2001”.

(3) In regulation 25(5)(d) (meaning of income), for “section 7 of the Mental Health (Scotland) Act 1984 (functions of local authorities)” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

(4) In regulation 63(7)(e)(iii) (non-dependant deductions), for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

(5) The amendment made by sub-paragraph (4) is to the Housing Benefit (General) Regulations 1997 as modified in their application to persons to whom regulation 2 of the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003(b) applies.

*Abolition of Domestic Rates (Domestic and Part-Residential Subjects) (Scotland) Regulations (S.I. 1988/1477)*

**5.—3)** The Abolition of Domestic Rates (Domestic and Part Residential Subjects) (Scotland) Regulations 1988(c) are amended as follows.

(1) In regulation 2 (interpretation)—

- (a) in the definition of “private hospital” for “within the meaning of section 12 of the Mental Health (Scotland) Act 1984 which is registered under that Act” substitute “an independent health care service within the meaning of section 2(5) of the Regulation of Care (Scotland) Act 2001”; and
- (b) in paragraph (c) of the definition of “residential care home” for “section 7 of the Mental Health (Scotland) Act 1984” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989 (S.I. 1989/364)*

**6.** In regulation 3(e) of the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989(d) (services exempted from charges) for “, or received into guardianship, under the Mental Health (Scotland) Act 1984”, substitute “under the Mental Health (Care and Treatment) (Scotland) Act 2003”.

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(a) S.I. 1987/1971; relevant amending instruments are S.I. 1990/2564, S.I. 1992/50, S.I. 1995/560, S.I. 1998/563, S.I. 2003/325 and S.I. 2005/573.

(b) S.I. 2003/325.

(c) S.I. 1988/1477.

(d) S.I. 1989/364 to which there have been amendments not relevant to this Order.

*Evidence in Divorce Actions (Scotland) Order 1989 (S.I. 1989/582)*

7. In article 2(1)(f) of the Evidence in Divorce Actions (Scotland) Order 1989(a) (classes of divorce action to which the regulations apply), for “section 1(2) of the Mental Health (Scotland) Act 1984” substitute “section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Income Tax (Building Societies) (Dividends and Interest) Regulations 1990 (S.I. 1990/2231)*

8. In regulation 2(1) of the Income Tax (Building Societies) (Dividends and Interest) Regulations 1990 (interpretation)(b), in the definition of “mental disorder”, for “section 1(2) of the Mental Health (Scotland) Act 1984” substitute “section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Income Tax (Deposit-Takers) (Interest Payments) Regulations 1990 (S.I. 1990/2232)*

9. In regulation 2 of the Income Tax (Deposit-Takers) (Interest Payments) Regulations 1990 (interpretation)(c), in the definition of “mental disorder”, for “section 1(2) of the Mental Health (Scotland) Act 1984” substitute “section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Radioactive Substances (Hospitals) Exemption Order 1990 (S.I. 1990/2512)*

10. In article 2(1) of the Radioactive Substances (Hospitals) Exemption Order 1990 (interpretation)(d), in the definition of “hospital”, for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Savings Certificates Regulations 1991 (S.I. 1991/1031)*

11. In regulation 33(a) of the Savings Certificates Regulations 1991 (application to Scotland)(e), for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Savings Certificates (Children’s Bonus Bonds) Regulations 1991 (S.I. 1991/1407)*

12. In regulation 29(a) of the Savings Certificates (Children’s Bonus Bonds) Regulations 1991 (application to Scotland)(f), for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Social Security (Attendance Allowance) Regulations 1991 (S.I. 1991/2740)*

13. In regulation 7(1)(a)(ii) of the Social Security (Attendance Allowance) Regulations 1991 (persons in certain accommodation other than hospitals)(g), for “section 7 of the Mental Health (Scotland) Act 1984” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Social Security (Disability Living Allowance) Regulations 1991 (S.I. 1991/2890)*

14.—4) The Social Security (Disability Living Allowance) Regulations 1991(h) are amended as follows.

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(a) S.I. 1989/582.

(b) S.I. 1990/2231; the relevant amending instrument is S.I. 1992/11.

(c) S.I. 1990/2232; the relevant amending instrument is S.I. 1992/13.

(d) S.I. 1990/2512 to which there are amendments not relevant to this Order.

(e) S.I. 1991/1031 to which there are amendments not relevant to this Order.

(f) S.I. 1991/1407 to which there are amendments not relevant to this Order.

(g) S.I. 1991/2740 to which there are amendments not relevant to this Order.

(h) S.I. 1991/2890; the relevant amending instrument is S.I. 1996/1436.

(1) In regulation 9(1)(a)(ii) (persons in certain accommodation other than hospitals), for “section 7 of the Mental Health (Scotland) Act 1984” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003(a)”.

(2) In regulation 12B (exemption from regulation 12A), in paragraphs (5) and (6)(a), for “Part 5 or 6 of the Mental Health (Scotland) Act 1984” substitute “Part 5, 6 or 7 or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 or section 52D or 52M of the Criminal Procedure (Scotland) Act 1995(b)”.

*Clyde Port Authority Scheme 1991 Confirmation Order 1992 (S.I. 1992/304)*

**15.** In paragraph 4(11)(c)(i) of the Schedule to the Clyde Port Authority Scheme 1991 Confirmation Order 1992(c), (constitution of Authority), for “the Mental Health (Scotland) Act 1984” substitute “the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*National Assistance (Charges for Accommodation) (Scotland) Regulations 1992 (S.I. 1992/700)*

**16.** In regulation 1(3) of the National Assistance (Charges for Accommodation) (Scotland) Regulations 1992(d) (citation, commencement and interpretation) for “section 7 of the Mental Health (Scotland) Act 1984” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Council Tax Benefit (General) Regulations 1992 (S.I. 1992/1814)*

**17.—5)** The Council Tax Benefit (General) Regulations 1992(e) are amended as follows.

(1) In regulation 4C—

- (a) in paragraph (5)(a), for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”; and
- (b) in paragraph (6), in the definition of “residential accommodation”, in sub-paragraph (i)(ii), for “a private hospital within the meaning of section 12 of the Mental Health (Scotland) Act 1984 (private hospitals)” substitute “an independent health care service within the meaning of section 2(5) of the Regulation of Care (Scotland) Act 2001”.

(2) In regulation 17(5)(d) (meaning of “income”), for “section 7 of the Mental Health (Scotland) Act 1984 (functions of local authorities)” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (care and support services etc.)”.

(3) The amendment made by sub-paragraph (3) is to the Council Tax Benefit (General) Regulations 1992 as modified in their application to persons to whom regulation 12 of the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003(f) applies.

*Child Support (Maintenance Assessments and Special Cases) Regulations 1992 (S.I. 1992/1815)*

**18.** In regulation 1(2) of the Child Support (Maintenance Assessments and Special Cases) Regulations 1992 (citation, commencement and interpretation)(g), in the definition of “prisoner”, for “the Mental Health (Scotland) Act 1984” substitute “Part 5, 6 or 7 or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 or section 52D or 52M of the Criminal Procedure (Scotland) Act 1995”.

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(a) 2003, asp 13.

(b) 1995, c.46 as amended by the Mental Health (Care and Treatment) (Scotland) Act 2003, asp 13, section 130.

(c) S.I. 1992/304.

(d) S.I. 1992/700.

(e) S.I. 1992/1814; relevant amending instruments are S.I. 1995/560, S.I. 1995/625, S.I. 1998/563, S.I. 2003/325 and S.I. 2005/573.

(f) S.I. 2003/325.

(g) S.I. 1992/1815 to which there are amendments not relevant to this Order.

*Housing (Preservation of Right to Buy) (Scotland) Regulations 1993 (S.I. 1993/2164)*

**19.** In Schedule 2 to the Housing (Preservation of Right to Buy) (Scotland) Regulations 1993(a) (the right to buy provisions as they apply in cases where the right to buy is a preserved right to buy), in the inserted section 61(ii)(q) for “provided by him under section 90 of the Mental Health (Scotland) Act 1984” substitute “provided under section 102(1) of the National Health Service (Scotland) Act 1978”.

*Redundancy Payments (National Health Service) (Modification) Order 1993 (S.I. 1993/3167)*

**20.** In Schedule 1 of the Redundancy Payments (National Health Service) (Modification) Order 1993(b) omit paragraph 7.

*Prisoners and Young Offenders Rules 1994 (S.I. 1994/1931)*

**21.—6)** The Prisoners and Young Offenders Rules 1994(c) are amended as follows.

(1) For rule 31 (transfer to hospital for treatment for mental disorder)(d) substitute—

“**31.—(1)** Where it appears to a medical officer that a prisoner to whom section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 applies has a mental disorder such that the conditions referred to in section 136(4) of that Act are satisfied in respect of that prisoner, he shall obtain reports as mentioned in section 136(2) of that Act.

(2) If the medical reports referred to in paragraph (1) are to the effect that the conditions referred to in section 136(4) of the Mental Health (Care and Treatment) (Scotland) Act 2003 are satisfied, the Governor shall submit the reports to the Scottish Ministers.

(3) Where it appears to a medical officer that an untried prisoner has a mental disorder such that the grounds are satisfied upon which an application may be made for his admission to a hospital under section 52D of the Criminal Procedure (Scotland) Act 1995, he shall obtain in respect of the prisoner such written evidence as is mentioned in section 52D(2)(a) of that Act.

(4) Where it appears to a medical officer that an untried prisoner has a mental disorder such that the grounds are satisfied upon which an application may be made for his admission to a hospital under section 52M of the Criminal Procedure (Scotland) Act 1995, he shall obtain in respect of the prisoner such written evidence as is mentioned in section 52M(2)(a) of that Act by 2 medical practitioners in compliance with the requirements of section 61(1) of that Act, one of whom may be a medical officer.

(5) If the written evidence referred to in paragraph (3) or (4) is to the effect that the grounds upon which an application may be made for the admission of the prisoner to a hospital under section 52D or 52M of the Criminal Procedure (Scotland) Act 1995 are satisfied, the Governor shall submit the written evidence to the Scottish Ministers.”.

(2) In rule 101A(1) (review of punishments following transfer of a prisoner to hospital)(e), for “71 of the Mental Health (Scotland) Act 1984” substitute “136 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*The National Health Service Superannuation Scheme (Scotland) Regulations 1995 (S.I. 1995/365)*

**22.—7)** The National Health Service Superannuation Scheme (Scotland) Regulations 1995(f) are amended as follows.

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(a) S.I. 1993/2164.

(b) S.I. 1993/3167 to which there are amendments not relevant to this Order.

(c) S.I. 1994/1931 to which there are amendments not relevant to this Order.

(d) To which there are amendments not relevant to this Order.

(e) Rule 101A was inserted by S.I. 1999/32, rule 27.

(f) S.I. 1995/365, the relevant amending instrument is S.S.I. 2003/55, regulation 3.

(1) In regulation A2(4) (interpretation) in paragraph (cc) of the definition of “employing authority”, for “section 2 of the Mental Health (Scotland) Act 1984” substitute “section 4 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

(2) In regulation R11 (officers on the staff of special hospitals)–

(a) in paragraph (1) for “by the Secretary of State under Part VIII of the Mental Health (Scotland) Act 1984” substitute “under section 102(1) of the National Health Service (Scotland) Act 1978(a)”; and

(b) in paragraph (2) for “the State Hospital Management Committee where a State Hospital Management Committee has been established under section 91(2) of that Act” substitute “a Special Health Board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978”.

*Jobseeker’s Allowance Regulations 1996 (S.I. 1996/207)*

**23.—8)** The Jobseeker’s Allowance Regulations 1996(b) are amended as follows.

(1) In regulation 1(3) (citation, commencement and interpretation), in the definition of “nursing home”, for “a private hospital within the meaning of section 12 of the Mental Health (Scotland) Act 1984 (private hospitals)” substitute “an independent health care service within the meaning of section 2(5) of the Regulation of Care (Scotland) Act 2001(c)”.

(2) In regulation 85(4) (special cases)–

(a) in the definition of “prisoner”, for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”; and

(b) in the definition of “residential accommodation”, for “section 7 of the Mental Health (Scotland) Act 1984 (functions of local authorities)” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (care and support services etc.)”.

(3) In Schedule 7, paragraph 16(1) (sums to be disregarded in the calculation of income other than earnings), for “section 7 of the Mental Health (Scotland) Act 1984” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996  
(S.I. 1996/2447)*

**24.** In regulation 6(1)(b) of the Advice and Assistance (Consolidation and Amendment) (Scotland) Regulations 1996(d) (applications on behalf of others), for “section 1(2) of the Mental Health (Scotland) Act 1984” substitute “section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997 (S.I. 1997/579)*

**25.** In regulation 2 of the Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997 (interpretation)(e), in the definition of “duly qualified medical practitioner”, for “section 20 or 39 of the Mental Health (Scotland) Act 1984” substitute “section 22(4) of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

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(a) 1978, c.29.

(b) S.I. 1996/207; the relevant amending instrument is S.I. 1998/563.

(c) 2001, asp 8.

(d) S.I. 1996/2447, the relevant amending instrument is S.S.I. 2003/421 regulation 5.

(e) S.I. 1997/579.

*The Sheriff Court Fees Order 1997 (S.I. 1997/687)*

**26.** In article 9(1)(a)(iii) of the Sheriff Court Fees Order 1997(**a**), (proceedings to which fees under this order do not apply), for “the Mental Health (Scotland) Act 1984”, substitute “the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*National Health Service (Scotland) (Injury Benefits) Regulations 1998 (S.I. 1998/1594)*

**27.** In regulation 2(1) of the National Health Service (Scotland) (Injury Benefits) Regulations 1998(**b**) (interpretation), in paragraph (d) of the definition of “employing authority” for “a committee constituted under section 91 of the Mental Health (Scotland) Act 1984”, substitute “a Special Health Board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978(**c**)”.

*Individual Savings Account Regulations 1998 (S.I. 1998/1870)*

**28.** In regulation 12(13) of the Individual Savings Account Regulations 1998 (conditions for application to subscribe to an account)(**d**), for “section 1(2) of the Mental Health (Scotland) Act 1984” substitute “section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (S.I. 1999/929)*

**29.—9)** The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(**e**) is amended as follows.

- (1) In Chapter 3 (rules on applications under specific statutes)—
  - (a) in Part XVI (Adults with Incapacity (Scotland) Act 2000)—
    - (i) in rule 3.16.1 (interpretation) omit the definition of “the 1984 Act”; and
    - (ii) after the definition of “the 2000 Act” insert—

“the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003;  
”; and
    - (iii) in rule 3.16.5(3) (dispensing with service on adult) for “section 20 of the 1984 Act” substitute “section 22(4) of the 2003 Act”; and
  - (b) in Part XXIV (international protection of adults) in rule 3.24, 3(2)(b) (intimation of application) for “section 2 of the Mental Health (Scotland) Act 1984” substitute in rule 3.24, 3(2)(b) “section 4 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Child Support (Maintenance Calculations and Special Cases) Regulations 2000 (S.I. 2001/155)*

**30.** In regulation 1(2) of the Child Support (Maintenance Calculations and Special Cases) Regulations 2000 (citation, commencement and interpretation)(**f**), in the definition of “prisoner”, for “the Mental Health (Scotland Act 1984” substitute “Part 5, 6 or 7 or section 136 of the Mental Health (Care and Treatment) (Scotland) 2003 Act or section 52D or 52M of the Criminal Procedure (Scotland) Act 1995”.

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(a) S.I. 1997/687, to which there have been amendments not relevant to this Order.

(b) S.I. 1998/1594, to which there have been amendments not relevant to this Order.

(c) 1978, c.29.

(d) S.I. 1998/1870; the relevant amending instrument is S.I. 2002/3158.

(e) S.I. 1999/929, relevant amending instruments are S.S.I. 2001/142 regulation 3 and S.S.I. 2003/556 regulation 2.

(f) S.I. 2001/155 to which there are amendments not relevant to this Order.



*Adults with Incapacity (Countersignatories of Applications for Authority to Intromit) (Scotland) Regulations 2001 (S.S.I. 2001/78)*

**31.** In regulation 2 of the Adults with Incapacity (Countersignatories of Applications for Authority to Intromit) (Scotland) Regulations 2001(a), (interpretation) in the definition of “mental health officer” for “section 125 of the Mental Health (Scotland) Act 1984” substitute “section 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Adults with Incapacity (Evidence in Relation to Dispensing with Intimation or Notification) (Scotland) Regulations 2001 (S.S.I. 2001/79)*

**32.** In regulation 2(3) of the Adults with Incapacity (Evidence in Relation to Dispensing with Intimation or Notification) (Scotland) Regulations 2001(b) (evidence to be taken into account) for “section 20 of the Mental Health (Scotland) Act 1984” substitute “section 22(4) of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Parole Board (Scotland) Rules 2001 (S.S.I. 2001/315)*

**33.** In paragraph 6 of the Schedule to the Parole Board (Scotland) Rules 2001(c) (information and documents to be sent by the Scottish Ministers to the Board) from the words “transfer direction” to the end of the paragraph, there is substituted “transfer for treatment direction under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003.”

*Scottish Social Services Council (Consultation on Codes of Practice) Order 2001 (S.S.I. 2001/424)*

**34.** In article 2(k) of the Scottish Social Services Council (Consultation on Codes of Practice) Order 2001(d) (consultation on codes of practice) for “section 2 of the Mental Health (Scotland) Act 1984” substitute “section 4 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*State Pension Credit Regulations 2002 (S.I. 2002/1792)*

**35.—10)** The State Pension Credit Regulations 2002(e) are amended as follows.

(1) In regulation 1(2) (citation, commencement and interpretation), in the definition of “prisoner”, for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

(2) In regulation 5(1)(c)(i) (persons treated as being or not being members of the same household), for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

(3) In regulation 15(7)(d) (income for the purposes of the Act), for “section 7 of the Mental Health (Scotland) Act 1984 (functions of local authorities)” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (care and support services etc.)”.

*Preserved Rights (Transfer to Responsible Authorities) (Scotland) Regulations 2002 (S.S.I. 2002/76)*

**36.** In regulation 2(b) of the Preserved Rights (Transfer to Responsible Authorities) (Scotland) Regulations 2002(f) (disapplication of duties of a responsible authority under section 50(3) to (7)) for “after-care service in accordance with section 7 of the Mental Health (Scotland) Act 1984” substitute “care and support services in accordance with section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

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(a) S.S.I. 2001/78.

(b) S.S.I. 2001/79.

(c) S.S.I. 2001/315.

(d) S.S.I. 2001/424, to which there have been amendments not relevant to this Order.

(e) S.I. 2002/1792; the relevant amending instrument is S.I. 2003/2274.

(f) S.S.I. 2002/76.

*Regulation of Care (Applications and Provision of Advice) (Scotland) Order 2002*  
(S.S.I. 2002/113)

**37.** In article 6 of the Regulation of Care (Applications and Provision of Advice) (Scotland) Order 2002(a) (provision of advice) for “section 2 of the Mental Health (Scotland) Act 1984” substitute “section 4 of the Mental Health (Care and Treatment) (Scotland) Act 2003(b)”.

*Community Care (Additional Payments) Scotland Regulations 2002 (S.S.I. 2002/265)*

**38.** In regulation 1 of the Community Care (Additional Payments) (Scotland) Regulations(c), for “section 7 of the 1984 Act (functions of local authorities)” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (care and support services etc.)”

*Community Care (Personal Care and Nursing Care) (Scotland) Regulations 2002*  
(S.S.I. 2002/303)

**39.—11)** The Community Care (Personal Care and Nursing Care) (Scotland) Regulations 2002(d) are amended as follows.

(1) In regulation 1(2) (citation, commencement and interpretation) for the definition of “the 1984 Act” substitute—

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

(2) In regulation 2, and the preceding cross-heading (accommodation provided under the 1968 Act or section 7 of the 1984 Act) for “section 7 of the 1984 Act” substitute “section 25 (care and support services etc.) of the 2003 Act”.

(3) In regulation 3 (qualification of requirement not to charge) for “section 7 or 8 of the 1984 Act” substitute “section 25 (services designed to promote well-being and social development) of the 2003 Act”.

*Community Care (Joint Working etc.) (Scotland) Regulations 2002 (S.S.I. 2002/533)*

**40.—12)** The Community Care (Joint Working etc.) (Scotland) Regulations 2002(e) are amended as follows.

(1) In Schedule 1 (local authority functions for the purposes of payments under section 13(1) of the 2002 Act) for paragraph 6 substitute—

“6. Sections 25, 26, 27 and 32 of the Mental Health (Care and Treatment) (Scotland) Act 2003.”.

(2) In Schedule 3 (local authority functions for the purposes of joint working under section 15 and the Scottish Ministers directions under section 17 of the Act) for paragraph 6 substitute—

“6. Sections 25, 26 and 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003.”.

*Child Benefit (General) Regulations 2003 (S.I. 2003/493)*

**41.** In regulation 1(2) of the Child Benefit (General) Regulations 2003 (citation, commencement and interpretation)(f), in the definition of “the Mental Health Acts”, for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

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(a) S.S.I. 2002/113.

(b) 2003, asp 13.

(c) S.S.I. 2002/265.

(d) S.S.I. 2002/303.

(e) S.S.I. 2002/533.

(f) S.I. 2003/493 to which there are amendments not relevant to this Order.

*Guardian's Allowance (General) Regulations 2003 (S.I. 2003/495)*

**42.** In regulation 7(1)(b)(iv) of the Guardian's Allowance (General) Regulations 2003 (circumstances in which a person is to be treated as being in prison)(a), for "58" substitute "57A".

*Scottish Parliament (Disqualification) Order 2003 (S.I. 2003/409)*

**43.** In Part 1 of the Schedule to the Scottish Parliament (Disqualification Order 2003)(b) (office-holders disqualified from being a member of the Scottish Parliament) for "committee constituted under section 91 of the Mental Health (Scotland) Act 1984" substitute "Special Health Board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978".

*Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 (S.S.I. 2003/231)*

**44.** In paragraph 4 of Schedule 1 to the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003(c) (proceedings) for "the Mental Health (Scotland) Act 1984 before the Sheriff" substitute "the Mental Health (Care and Treatment) (Scotland) Act 2003 before the Mental Health Tribunal for Scotland".

*Community Care (Direct Payments) (Scotland) Regulations 2003 (S.S.I. 2003/243)*

**45.—13)** The Community Care (Direct Payments) (Scotland) Regulations 2003(d) are amended as follows.

(1) In regulation 1(2) (citation, commencement, interpretation and extent)–

(a) omit the definition of "the 1984 Act"; and

(b) after the definition of "the 2000 Act" insert–

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

(2) In regulation 2 (description of persons specified for the purposes of section 12B(1) of the Act)–

(a) omit paragraph (d); and

(b) for paragraphs (e) and (f) substitute–

“(e) a person who is subject to–

(i) a compulsory treatment order made under section 64(4)(a) (powers of Tribunal on application under section 63: compulsory treatment order) of the 2003 Act that authorises the measure mentioned in section 66(1)(a) (measures that may be authorised) and in respect of which a certificate has been granted under section 127(1) (suspension of measure authorising detention); or

(ii) a compulsion order made under section 57A(2) (compulsion order) of the 1995 Act that authorises the measure mentioned in section 57A(8)(a) of that Act and in respect of which a certificate has been granted under section 127(1) (suspension of measure authorising detention) of the 2003 Act as applied by section 179(1) (suspension of measures) of that Act;

(iii) an emergency detention certificate granted under section 36(1) of the 2003 Act in respect of which a certificate has been granted under section 41(1) of that Act; or

(iv) a short-term detention certificate granted under section 44(1) of the 2003 Act in respect of which a certificate has been granted under section 53(1);

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(a) S.I. 2003/495.

(b) S.I. 2003/409.

(c) S.S.I. 2003/231.

(d) S.S.I. 2003/243.

- (f) a person who is subject to a compulsion order made under section 57A(2) (compulsion order) of the 1995 Act and a restriction order made under section 59 (restriction order) of that Act who has been conditionally discharged in accordance with section 193(7) (powers of the Tribunal on reference under section 185(1), 187(2) or 189(2) on application under section 191 or 192(2)) of the 2003 Act;”.

(c) in paragraph (g), for “58(1) or 58(1)” substitute “57A(2) or 57A(2)”.

*Adults with Incapacity (Management of Residents’ Finances) (No. 2) (Scotland) Regulations 2003 (S.S.I. 2003/266)*

**46.—14)** The Adults with Incapacity (Management of Residents’ Finances) (No. 2) (Scotland) Regulations 2003(a) are amended as follows.

(1) In regulation 3(5) (evidence to be taken into account under section 37(8) of the Act) for “section 20 of the Mental Health (Scotland) Act 1984” substitute “section 22(4) of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

(2) In Schedule 2 (certificate to inform decision whether to dispense with intimation under section 37(3) or action under section 37(4)), for “section 20 of the Mental Health (Scotland) Act 1984” substitute “section 22(4) of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*National Health Service (Compensation for Premature Retirement) (Scotland) Regulations (S.S.I. 2003/344)*

**47.** In regulation 2(1) of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations(b) (interpretation) in paragraph (c) of the definition of the “employing authority”, for “section 2 of the Mental Health (Scotland) Act 1984” substitute “section 4 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Victim Statements (Prescribed Offences) (Scotland) Order 2003 (S.S.I. 2003/441)*

**48.** In the Schedule to the Victim Statements (Prescribed Offences) (Scotland) Order 2003(c) (offence prescribed for the purposes of section 14(2) of the Criminal Justice (Scotland) Act 2003) for paragraph 14 substitute—

“**14.** An offence under section 311 (non-consensual sexual acts) or 313 (persons providing care services: sexual offences) of the Mental Health (Care and Treatment) (Scotland) Act 2003.”.

*Communications (Television Licensing) Regulations 2004 (S.I. 2004/692)*

**49.—15)** The Communications (Television Licensing) Regulations 2004(d) are amended as follows.

(1) In Schedule 4, paragraph 7(1) (Scotland)—

- (a) in the definition of “accommodation for residential care”, for “section 7 of the Mental Health (Scotland) Act 1984” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”; and
- (b) in the definition of “mental disorder”, for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

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(a) S.S.I. 2003/266.

(b) S.S.I. 2003/344.

(c) S.S.I. 2003/441.

(d) S.I. 2004/692; the relevant amending instrument is S.I. 2005/606.

*Victim Notification (Prescribed Offences) (Scotland) Order 2004 (S.S.I. 2004/411)*

**50.** In the Schedule to the Victim Notification (Prescribed Offences) (Scotland) Order 2004(a) (sexual crimes of violence and indecent crimes) for paragraph 17 substitute–

“**17.** An offence under section 313 (persons providing care services: sexual offences) of the Mental Health (Care and Treatment) (Scotland) Act 2003.”.

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(a) S.S.I. 2004/411.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes modifications to subordinate legislation. These modifications are consequential and supplemental to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

Article 1 of the Order makes it clear that the modifications will have effect from 5th October 2005.

The modifications are set out in the Schedule to the Order, which Schedule has effect in accordance with article 2 of the Order.



**2005 No. 445**

**MENTAL HEALTH**

**The Mental Health (Care and Treatment) (Scotland) Act 2003  
(Modification of Subordinate Legislation) Order 2005**

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