

## SCHEDULE 1

(introduced by section 4)

### THE MENTAL WELFARE COMMISSION FOR SCOTLAND

#### PART 1

##### MEMBERSHIP, PROCEEDINGS ETC.

###### *Status*

- 1 The Commission shall not be regarded as the servant or agent of the Crown, or as having any status, immunity or privilege of the Crown, nor shall its members or employees be regarded as civil servants, nor its property as property of, or held on behalf of, the Crown.

###### *General powers*

- 2 The Commission may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions; and without prejudice to that generality the Commission may in particular—
- (a) acquire and dispose of land and other property; and
  - (b) enter into contracts.

###### *Membership*

- 3 (1) The Commission shall consist of the following members appointed by Her Majesty on the recommendation of the Scottish Ministers—
- (a) a member appointed to serve as convener;
  - (b) a minimum of three members, who have such qualifications, training and experience as may be prescribed by regulations, appointed to serve as medical commissioners; and
  - (c) other members who meet such other requirements as may be so prescribed.
- (2) The person who holds the post of chief officer of the Commission shall—
- (a) be a member *ex officio* of the Commission; and
  - (b) cease automatically to hold office as such member on ceasing to hold that post.
- (3) The Scottish Ministers may, after consulting such persons, or groups of persons, as they consider appropriate, by order—
- (a) amend sub-paragraph (1) above by—
    - (i) adding to that sub-paragraph categories of members; or
    - (ii) removing from it a category which is for the time being set out there;
  - (b) specify the number (including a minimum or maximum number) of—
    - (i) the members of the Commission; or
    - (ii) any category of member,that may be appointed under sub-paragraph (1) above;
  - (c) specify the maximum term of appointment (including any reappointment) of a member appointed under that sub-paragraph; or

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- (d) amend sub-paragraph (2) above by adding to it further posts, the holders of which shall—
- (i) be members *ex officio* of the Commission; and
  - (ii) cease to be such members on ceasing to hold such posts.

*Terms of office etc.*

- 4 (1) The provisions of this paragraph apply as respects a person appointed as member under paragraph 3(1) above.
- (2) Subject to the provisions of this schedule, the appointment shall be on such terms and conditions as the Scottish Ministers may determine.
- (3) Subject to section 23 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), a person holds and vacates office as member in accordance with the terms of appointment of that person.
- (4) A person may resign office as member at any time by notice to the Scottish Ministers.

*Eligibility for reappointment*

- 5 Subject to paragraph 3(3)(c) above, a person who ceases, otherwise than by virtue of section 23 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), to be a member of the Commission is eligible for reappointment.

*Remuneration, pensions, allowances etc.*

- 6 The Commission shall pay—
- (a) to its members (and to the members of its committees and sub-committees who are not members of the Commission) such remuneration and allowances—
    - (i) on such terms; and
    - (ii) subject to such conditions,
 as the Scottish Ministers may determine;
  - (b) to, or in respect of, persons who have been a member of it (or such members of committees and sub-committees as are mentioned in paragraph (a) above) such pensions, allowances and gratuities—
    - (i) on such terms; and
    - (ii) subject to such conditions,
 as the Scottish Ministers may determine; or
  - (c) to any person who ceases, other than on the expiry of a term of office, to be a member of it, such compensation as the Scottish Ministers may determine.

*Appointment etc. of chief officer and other staff*

- 7 (1) Subject to sub-paragraphs (2) and (3) below, the Commission—
- (a) shall appoint a chief officer; and
  - (b) may appoint such other staff as it considers appropriate,
- on such terms and conditions as it may, with the approval of the Scottish Ministers, determine.

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- (2) A member of the Commission may not be appointed as a member of its staff.
- (3) The Commission shall obtain the approval of the Scottish Ministers before appointing a chief officer.
- (4) The Commission may pay to the members of its staff, including its chief officer, (referred to in this paragraph collectively as “employees”) such remuneration and allowances as the Scottish Ministers may determine.
- (5) The Commission may—
  - (a) pay, or make arrangements for the payment of;
  - (b) make payments towards the provision of; and
  - (c) provide and maintain schemes (whether contributory or not) for the payment of,such pensions, allowances and gratuities to or in respect of such of its employees, or former employees, as the Scottish Ministers may determine.
- (6) The reference in sub-paragraph (5) above to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment or reduction in remuneration.
- (7) A determination under sub-paragraph (4) or (5) above may make different provision for different cases or descriptions of case.

#### *Regulations as to proceedings and delegation of functions*

- 8 (1) Subject to sub-paragraph (2) below, regulations may make provision as to—
  - (a) the appointment of and composition of committees and sub-committees of the Commission (including committees and sub-committees which consist of or include persons who are not members of the Commission);
  - (b) the procedure of the Commission and of any of its committees or sub-committees (including the constitution of a quorum and the validation of proceedings in the event of vacancies or of defects in appointment);
  - (c) the exercise of functions by any such committee or sub-committee;
  - (d) the delegation by the Commission of any of its functions to any of its committees, sub-committees, members or staff; and
  - (e) what functions the Commission shall not so delegate.
- (2) Before making regulations under sub-paragraph (1) above, the Scottish Ministers shall consult such persons, or groups of persons, as they consider appropriate.

#### *Accounts*

- 9 The following provisions of the National Health Service (Scotland) Act 1978 (c. 29) shall continue to apply to the Commission as they apply to a Special Health Board—
  - (a) section 85 (which makes provision for payment of funds by the Scottish Ministers towards expenditure attributable to performance of functions by the Board);
  - (b) section 85A(1) and (3) (which imposes corresponding financial duties on the Board); and
  - (c) section 86 (which provides for the keeping, transmission to Scottish Ministers and auditing, of accounts).

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## PART 2

### TRANSITIONAL PROVISION

- 10 (1) The Mental Health (Scotland) Act 1984 (c. 36) shall be amended as follows.
- (2) In section 2 (membership etc. of the Mental Welfare Commission)—
- (a) in subsection (2), after “commissioners”, where it first occurs, insert “appointed under subsection (4) of this section”;
  - (b) in subsection (4), at the beginning, insert “Subject to subsection (5A) of this section.”;
  - (c) after subsection (5), insert—
    - “(5A) The person who holds the post of chief officer of the Mental Welfare Commission shall—
      - (a) be a member *ex officio* of the Commission; and
      - (b) cease automatically to hold office as such member on ceasing to hold that post.”; and
  - (d) in subsection (7), for “the said commissioners”, in both places where it occurs, substitute “commissioners appointed under subsection (4) of this section”.
- (3) In section 6 (appointment and payment etc. of officers and staff)—
- (a) at the beginning, insert—
    - “(1) The Mental Welfare Commission shall appoint a chief officer on such terms and conditions as the Scottish Ministers may determine.
    - (2) Before appointing a chief officer under subsection (1) above, the Commission shall obtain the approval of the Scottish Ministers.
    - (3)”; and
  - (b) in subsection (3) (being the existing wording of the section)—
    - (i) in paragraph (a), after “appoint”, insert “other”; and
    - (ii) in paragraph (b)(ii), after “of”, insert “its chief officer or in respect of”.