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*Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, SCHEDULE 2 is up to date with all changes known to be in force on or before 26 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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## SCHEDULE 2

(introduced by section 21)

### THE MENTAL HEALTH TRIBUNAL FOR SCOTLAND

#### PART 1

##### MEMBERS OF THE TRIBUNAL ETC.

###### *Members*

- 1 (1) The Scottish Ministers shall appoint as members of the Tribunal—
- (a) a panel of persons who have such legal—
    - (i) qualifications;
    - (ii) training; and
    - (iii) experience,as may be prescribed in regulations for the purposes of serving as legal members of the Tribunal;
  - (b) a panel of persons who have such qualifications, training and experience—
    - (i) in medicine; and
    - (ii) in the diagnosis and treatment of mental disorder,as may be prescribed in regulations for the purposes of serving as medical members of the Tribunal; and
  - (c) a panel of persons who have—
    - (i) such qualifications, training, skills and experience in caring for, or providing services to, persons having a mental disorder; or
    - (ii) experience of such description,as may be prescribed in regulations for the purposes of serving as general members of the Tribunal.
- (2) A person is disqualified from appointment as, and being, a member of the Tribunal if the person—
- (a) is a member of the Scottish Parliament;
  - (b) is a member of the Scottish Executive or a junior Scottish Minister; or
  - (c) is of such other description as may be prescribed in regulations.

#### **Commencement Information**

- I1** Sch. 2 para. 1(1)(2)(c) in force at 26.3.2004 for specified purposes by [S.S.I. 2004/153, art. 2, Sch. 1](#)
- I2** Sch. 2 para. 1(1) in force at 1.9.2004 in so far as not already in force by [S.S.I. 2004/367, art. 2, Sch. 1](#)
- I3** Sch. 2 para. 1(2)(a)(b) in force at 3.5.2004 by [S.S.I. 2004/153, art. 3, Sch. 2](#)
- I4** Sch. 2 para. 1(2)(c) in force at 3.5.2004 in so far as not already in force by [S.S.I. 2004/153, art. 3, Sch. 2](#)

###### *Shrieval panel*

- 2 There shall be a panel consisting of each person who for the time being holds the office of—
- (a) sheriff principal;
  - (b) sheriff; or

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- (c) part-time sheriff,  
for the purposes of serving as sheriff conveners of the Tribunal.

*The President*

- 3 (1) The Scottish Ministers shall appoint a person to be known as the President of the Mental Health Tribunal for Scotland (the “President”).
- (2) The President—
- (a) shall preside over the discharge of the Tribunal’s functions; and
  - (b) may serve as a convener of the Tribunal.
- (3) The Scottish Ministers may not appoint a person to be the President unless that person has such—
- (a) qualifications;
  - (b) training; and
  - (c) experience,
- as may be prescribed by regulations.
- (4) The following provisions of this schedule apply (with the necessary modifications) to the President as they apply to a member of the Tribunal—
- (a) paragraph 1(2);
  - (b) paragraph 4;
  - (c) paragraph 5; and
  - (d) paragraph 6.
- (5) The functions of the President may, if the President is absent or otherwise unable to act, be discharged by one of the members of the panel mentioned in paragraph 1(1) (a) above appointed for that purpose by the Scottish Ministers.
- (6) Regulations may make provision as to the delegation by the President of any of the President’s functions to any of the members of the Tribunal or its staff.
- (7) Regulations made under sub-paragraph (6) above may include provision for different functions to be delegated to different persons for different areas.

**Commencement Information**

- I5** Sch. 2 para. 3(1)(2)(4)-(7) in force at 3.5.2004 by [S.S.I. 2004/153](#), [art. 3](#), [Sch. 2](#)
- I6** Sch. 2 para. 3(3) in force at 26.3.2004 for specified purposes by [S.S.I. 2004/153](#), [art. 2](#), [Sch. 1](#)
- I7** Sch. 2 para. 3(3) in force at 3.5.2004 in so far as not already in force by [S.S.I. 2004/153](#), [art. 3](#), [Sch. 2](#)

*Terms of office etc.*

- 4 (1) Subject to this paragraph and paragraph 5 below, each member of the Tribunal shall hold office in accordance with the terms of such member’s instrument of appointment.
- (2) An appointment as a member of the Tribunal shall, subject to sub-paragraphs (3) and (4) below, last for 5 years.
- (3) A member of the Tribunal—

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- (a) may at any time resign office by notice to the Scottish Ministers;
  - <sup>F1</sup>(b) .....
  - (c) shall vacate office on becoming disqualified from being a member of the Tribunal by virtue of paragraph 1(2) above.
- (4) A member of the Tribunal's appointment shall come to an end upon the member's being removed from office under paragraph 5(1) below.
- (5) A member of the Tribunal whose appointment comes to an end by operation of sub-paragraph (2) above may be reappointed and, except in the circumstances set out in sub-paragraph (6) below, shall be reappointed.
- (6) The circumstances referred to in sub-paragraph (5) above are that—
- (a) the member of the Tribunal has declined that reappointment;
  - <sup>F2</sup>(b) .....
  - (c) the President has made a recommendation to the Scottish Ministers against the reappointment;
  - (d) there has, since the member of the Tribunal was last appointed, been a reduction in the number of members of the panel to which the member belongs required by the Tribunal to discharge its functions;
  - (e) since the member of the Tribunal was last appointed, the member has, without reasonable excuse, failed to comply with the terms of the member's appointment; or
  - (f) the member of the Tribunal does not have such qualifications, training, skills or experience as are for the time being prescribed under paragraph 1(1) above for appointment to the panel to which the member of the Tribunal belongs.

**Textual Amendments**

- F1** Sch. 2 para. 4(3)(b) repealed (17.10.2005) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), s. 43(3), [sch. 3](#); [S.S.I. 2005/492](#), art. 3(a), [sch. 1](#)
- F2** Sch. 2 para. 4(6)(b) repealed (17.10.2005) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), s. 43(3), [sch. 3](#); [S.S.I. 2005/492](#), art. 3(a), [sch. 1](#)

**Commencement Information**

- I8** Sch. 2 para. 4 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, [Sch. 2](#)

- 5
- (1) A member of the Tribunal may be removed from office only by order of the disciplinary committee constituted under sub-paragraph (3) below.
  - (2) The disciplinary committee may order the removal from office of a member of the Tribunal only if, after investigation carried out at the request of the Scottish Ministers, it finds that the member is unfit for office by reason of inability, neglect of duty or misbehaviour.
  - (3) The disciplinary committee shall consist of—
    - (a) a Senator of the College of Justice or a sheriff principal (who shall preside);
    - (b) a person who is a solicitor or an advocate of at least ten years' standing; and
    - (c) one other person,all appointed by the Lord President of the Court of Session.
  - (4) Regulations—

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- (a) may make provision—
  - (i) enabling the disciplinary committee, at any time during an investigation, to suspend a member of the Tribunal from office; and
  - (ii) as to the effect and duration of such suspension; and
- (b) shall make such further provision as respects the disciplinary committee (including in particular provision for the procedure of the committee) as the Scottish Ministers consider necessary or expedient.

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**Commencement Information**

**I9** Sch. 2 para. 5 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, [Sch. 2](#)

*Remuneration and pensions etc.*

- 6 (1) [<sup>F3</sup>The Scottish Courts and Tribunals Service must] pay, or make provision for paying, to, or in respect of, each member of the Tribunal such remuneration, expenses, pensions, allowances and gratuities (including by way of compensation for loss of office) as the Scottish Ministers may determine.
- (2) Sub-paragraph (1) above, so far as relating to pensions, allowances and gratuities, shall not have effect in relation to persons to whom Part I of the Judicial Pensions and Retirement Act 1993 (c. 8) applies, except to the extent provided by virtue of that Act.

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**Textual Amendments**

**F3** Words in [sch. 2 para. 6\(1\)](#) substituted (1.4.2018) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential and Supplemental Provisions\) Order 2018 \(S.S.I. 2018/93\)](#), arts. 1, 2

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**Commencement Information**

**I10** Sch. 2 para. 6 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, [Sch. 2](#)

**PART 2**

ORGANISATION AND ADMINISTRATION OF THE TRIBUNAL

*Organisation and administration of the functions of the Tribunal*

- 7 (1) The functions of the Tribunal shall be discharged by such number of tribunals as may be determined from time to time by the President.
- (2) The Tribunal shall sit at such times and in such places as the President may determine.
- (3) Subject to sub-paragraph (4) below, and to any rules made under paragraph 10(1) below, a tribunal constituted under sub-paragraph (1) above shall consist of—
- (a) a convener who shall be—
    - (i) the President; or
    - (ii) a member selected by the President from the panel mentioned in paragraph 1(1)(a) above; and

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- (b) a member selected by the President from each of the panels mentioned in paragraph 1(1)(b) and (c) above.
- (4) In relation to [<sup>F4</sup>proceedings [<sup>F5</sup>(other than excepted proceedings)] before the Tribunal in relation to a patient subject to a compulsion order and a restriction order, a hospital direction or a transfer for treatment direction], the convener shall be—
- (a) the President; or
- (b) a person selected by the President from the panel mentioned in paragraph 2 above.
- [<sup>F6</sup>(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.]
- (5) Subject to the provisions of this Act, regulations made under section 21 of this Act and rules made under paragraph 10 below, the President shall secure that the functions of the Tribunal are discharged efficiently and effectively.
- (6) The President may—
- (a) give such directions; and
- (b) issue such guidance,
- about the administration of the Tribunal as appear to the President to be necessary or expedient for the purpose of securing that the functions of the Tribunal are discharged efficiently and effectively.

#### Textual Amendments

- F4** Words in sch. 2 para. 7(4) substituted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(26)(a)**
- F5** Words in sch. 2 para. 7(4) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 35(2)(a)**, 61(2); [S.S.I. 2017/197](#), art. 2, **sch.** (with art. 17)
- F6** Sch. 2 para. 7(4A) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 35(2)(b)**, 61(2); [S.S.I. 2017/197](#), art. 2, **sch.** (with art. 17)

#### Modifications etc. (not altering text)

- C1** Sch. 2 para. 7(1) power to delegate functions conferred (28.9.2004) by [Mental Health Tribunal for Scotland \(Delegation of the President's Functions\) Regulations 2004 \(S.S.I. 2004/373\)](#), regs. 1(1), **2(1)(a)**
- C2** Sch. 2 para. 7(2) power to delegate functions conferred (28.9.2004) by [Mental Health Tribunal for Scotland \(Delegation of the President's Functions\) Regulations 2004 \(S.S.I. 2004/373\)](#), regs. 1(1), **2(1)(b)**
- C3** Sch. 2 para. 7(3)(a)(ii) power to delegate functions conferred (28.9.2004) by [Mental Health Tribunal for Scotland \(Delegation of the President's Functions\) Regulations 2004 \(S.S.I. 2004/373\)](#), regs. 1(1), **2(1)(c)**
- C4** Sch. 2 para. 7(3)(b) power to delegate functions conferred (28.9.2004) by [Mental Health Tribunal for Scotland \(Delegation of the President's Functions\) Regulations 2004 \(S.S.I. 2004/373\)](#), regs. 1(1), **2(1)(d)**
- C5** Sch. 2 para. 7(4)(a) power to delegate functions conferred (28.9.2004) by [Mental Health Tribunal for Scotland \(Delegation of the President's Functions\) Regulations 2004 \(S.S.I. 2004/373\)](#), regs. 1(1), **2(2)**

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- C6** Sch. 2 para. 7(4)(b) power to delegate functions conferred (28.9.2004) by [Mental Health Tribunal for Scotland \(Delegation of the President’s Functions\) Regulations 2004 \(S.S.I. 2004/373\)](#), regs. 1(1), **2(1)(e)**
- C7** Sch. 2 para. 7(6) power to delegate functions conferred (28.9.2004) by [Mental Health Tribunal for Scotland \(Delegation of the President’s Functions\) Regulations 2004 \(S.S.I. 2004/373\)](#), regs. 1(1), **2(1)(f)**

**Commencement Information**

- I11** Sch. 2 para. 7 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, **Sch. 2**

*Staff and accommodation*

- 8 <sup>F7</sup>(1) .....
- <sup>F7</sup>(2) .....
- (3) The persons mentioned in sub-paragraph (4) below shall, in so far as it is reasonably practicable to do so, provide, in response to a request by the President, accommodation for the holding of hearings by the Tribunal.
- (4) The persons referred to in sub-paragraph (3) above are—
- (a) a Health Board;
  - (b) the State Hospitals Board for Scotland;
  - (c) a local authority.

**Textual Amendments**

- F7** Sch. 2 para. 8(1)(2) repealed (1.4.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), **sch. 4 para. 5**; [S.S.I. 2015/77](#), art. 2(2)(3), sch.

**Modifications etc. (not altering text)**

- C8** Sch. 2 para. 8(3) power to delegate functions conferred (28.9.2004) by [Mental Health Tribunal for Scotland \(Delegation of the President’s Functions\) Regulations 2004 \(S.S.I. 2004/373\)](#), regs. 1(1), **2(1)(g)**

**Commencement Information**

- I12** Sch. 2 para. 8 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, **Sch. 2**

*Finance*

- 9 Such expenses of the Tribunal as the Scottish Ministers may determine shall be defrayed by the Scottish Ministers.

**Commencement Information**

- I13** Sch. 2 para. 9 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, **Sch. 2**

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### PART 3

#### TRIBUNAL PROCEDURE

##### *Rules*

- 10 (1) The Scottish Ministers may make rules as to the practice and procedure of the Tribunal.
- (2) Such rules may, without prejudice to the generality of sub-paragraph (1) above, include provision for or in connection with—
- (a) the composition of the Tribunal for the purposes of its discharge of particular functions;
  - (b) where the functions of the Tribunal are being discharged by more than one tribunal—
    - (i) determining by which tribunal any proceedings are to be dealt with; and
    - (ii) transferring proceedings from one tribunal to another;
  - (c) the form of applications to the Tribunal;
  - (d) the recovery and inspection of documents;
  - (e) the persons who may appear on behalf of the parties;
  - (f) enabling specified persons other than the parties to appear or be represented in specified circumstances;
  - (g) requiring specified persons to give notice to other specified persons of specified matters in such form and by such method as may be specified;
  - (h) as to the time within which any notice by virtue of sub-paragraph (g) above shall be given;
  - (i) enabling any matters that are preliminary or incidental to the determination of proceedings to be determined by the convener alone or with such other members of the Tribunal as may be specified;
  - (j) enabling hearings to be held in private;
  - (k) enabling the Tribunal (or the convener, with such other members of the Tribunal as may be specified, as the case may be) to exclude the person to whom the proceedings relate from attending all or part of hearings;
  - (l) enabling specified proceedings or specified matters that are preliminary or incidental to the determination of proceedings to be determined in specified circumstances without the holding of a hearing;
  - (m) enabling the Tribunal to hear and determine concurrently two or more sets of proceedings relating to the same person;
  - (n) the recording, publication and enforcement of decisions and orders of the Tribunal;
  - (o) the admissibility of evidence to the Tribunal;
  - (p) enabling matters to be referred to the Commission;
  - (q) enabling the Tribunal to commission medical and other reports in specified circumstances;
  - (r) requiring specified proceedings, or specified matters that are preliminary or incidental to the determination of proceedings, to be determined, or other specified actions to be taken, within specified periods;
  - (s) the circumstances in which a *curator ad litem* may be appointed.

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(3) In sub-paragraph (2) above, “specified” means specified in the rules.

**Commencement Information**

**I14** Sch. 2 para. 10 in force at 3.5.2004 by [S.S.I. 2004/153](#), [art. 3](#), [Sch. 2](#)

*Practice directions*

11 Subject to rules made under paragraph 10 above the President may give directions as to the practice and procedure to be followed by the Tribunal in relation to any matter.

**Commencement Information**

**I15** Sch. 2 para. 11 in force at 3.5.2004 by [S.S.I. 2004/153](#), [art. 3](#), [Sch. 2](#)

*Evidence*

- 12 (1) The Tribunal may by citation require any person to attend, at such time and place as is specified in the citation, for the purpose of—
- (a) giving evidence; or
  - (b) producing any document in the custody, or under the control, of such person which the Tribunal considers it necessary to examine.
- (2) In relation to persons giving evidence the Tribunal may administer oaths and take affirmations.
- (3) A person who is cited to attend the Tribunal and—
- (a) refuses or fails—
    - (i) to attend; or
    - (ii) to give evidence; or
  - (b) alters, conceals or destroys, or refuses to produce, a document which such person may be required to produce for the purposes of proceedings before the Tribunal,
- shall, subject to sub-paragraph (4) below, be guilty of an offence.
- (4) A person need not give evidence or produce any document if, were it evidence which might be given or a document that might be produced in any court in Scotland, the person having that evidence or document could not be compelled to give or produce it in such proceedings.
- (5) It shall be a defence for a person charged with contravening sub-paragraph (3) above to show that the person has a reasonable excuse for such contravention.
- (6) A person guilty of an offence under sub-paragraph (3)(a) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) A person guilty of an offence under sub-paragraph (3)(b) above shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.



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**Commencement Information**

**I16** Sch. 2 para. 12 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, [Sch. 2](#)

*Decisions of the Tribunal*

- 13 (1) Subject to sub-paragraph (2) below, where a decision is to be made by more than one member of the Tribunal, the decision of the Tribunal shall be made by majority.
- (2) If there is a tie, the convener shall have a second vote as a casting vote.
- (3) A decision of the Tribunal shall be recorded in a document which contains a full statement of the facts found by the Tribunal and the reasons for the decision.
- (4) The Tribunal shall—
- (a) inform each party of its decision; and
  - (b) as soon as practicable after [<sup>F8</sup>completion] of the document mentioned in sub-paragraph (3) above[<sup>F9</sup>, send a copy] to each party.

**Textual Amendments**

- F8** Word in sch. 2 para. 13(4)(b) substituted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, [sch. 1 para. 32\(26\)\(b\)\(i\)](#)
- F9** Words in sch. 2 para. 13(4)(b) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, [sch. 1 para. 32\(26\)\(b\)\(ii\)](#)

**Commencement Information**

**I17** Sch. 2 para. 13 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, [Sch. 2](#)

*[<sup>F10</sup>Withdrawn applications to be disregarded for certain purposes]*

**Textual Amendments**

- F10** Sch. 2 para. 13A and cross-heading inserted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 73, 79\(3\)](#); [S.S.I. 2007/334](#), art. 2(a), sch. 1

<sup>F11</sup>13A .....

**Textual Amendments**

- F11** Sch. 2 para. 13A repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 21\(5\), 61\(2\)](#); [S.S.I. 2017/197](#), art. 2, sch. (with art. 12(d))

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## PART 4

### REPORTS, INFORMATION ETC.

#### *Annual report*

- 14 (1) The President shall, in respect of each period of 12 months beginning on 1st April, prepare a written report as to the Tribunal's discharge of its functions during that period.
- (2) The President shall submit each report prepared under sub-paragraph (1) above, as soon as practicable after the period to which it relates, to the Scottish Ministers.
- (3) The Scottish Ministers shall lay before the Scottish Parliament a copy of each report submitted to them under sub-paragraph (2) above.

#### *Disclosure of information*

- 15 The President shall, at such times and in respect of such periods as the Scottish Ministers may specify, provide to—
- (a) the Scottish Ministers;
  - (b) such persons as the Scottish Ministers may specify,
- such information relating to the discharge of the Tribunal's functions as the Scottish Ministers may direct.

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#### **Commencement Information**

**I18** Sch. 2 para. 15 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, [Sch. 2](#)

#### *Allowances etc. for attendance at hearings of the Tribunal and preparation of reports*

- 16 (1) The Tribunal may pay to any person (other than a member of the Tribunal or a member of the staff of the Tribunal) such allowances and expenses as the President shall determine for the purposes of, or in connection with, the person's attendance at hearings of the Tribunal.
- (2) The Tribunal may pay to any person (other than a member of the Tribunal or a member of the staff of the Tribunal) such amounts as the President shall determine in connection with any report prepared by the person in accordance with rules made under paragraph 10(2)(q) above.

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#### **Modifications etc. (not altering text)**

**C9** Sch. 2 para. 16(1)(2) power to delegate functions conferred (28.9.2004) by [Mental Health Tribunal for Scotland \(Delegation of the President's Functions\) Regulations 2004 \(S.S.I. 2004/373\)](#), regs. 1(1), [2\(1\)\(i\)](#)

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#### **Commencement Information**

**I19** Sch. 2 para. 16 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, [Sch. 2](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Sch. 2 para. 7(3) modified (temp.) by [2020 c. 7 Sch. 9 para. 11](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 64(8A)(8B) inserted by [2015 asp 9 s. 1\(2\)](#)
- s. 65(7) inserted by [2015 asp 9 s. 1\(3\)](#)