

## SCHEDULE 1

### MODIFICATION OF ENACTMENTS

#### *Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)*

- 32.**—(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 36 (emergency detention in hospital) in subsection (2) for “detained in hospital under authority of” substitute “subject to”.
- (3) In section 39 (approved medical practitioner’s duty to revoke emergency detention certificate), for “If the approved medical practitioner who carries out the medical examination required by section 38(2) of this Act” substitute “Where a medical examination has been carried out under section 38(2) of this Act and an approved medical practitioner”.
- (4) In section 44 (short-term detention in hospital) in subsection (2) for “detained in hospital under authority of” substitute “subject to”.
- (5) In section 46 (hospital managers' duties: notification) in subsection (1) for “detained in hospital under authority of” substitute “subject to”.
- (6) In section 47 (extension of detention pending application for compulsory treatment order) in subsection (1)(a) for “detained in hospital under authority of” substitute “subject to”.
- (7) In section 49 (responsible medical officer’s duty to review continuing need for detention) in subsection (1) for “detained in hospital under authority of” substitute “subject to”.
- (8) In section 50 (patient’s right to apply for revocation of short-term detention certificate or extension certificate etc.) in subsection (1) for “in hospital under authority of” substitute “subject to”.
- (9) In section 51 (Commission’s power to revoke short-term detention certificate or extension certificate) in subsection (a) for “the detention of a patient in hospital is authorised by” substitute “a patient is subject to”.
- (10) In section 55 (effect of subsequent short-term detention certificate on emergency detention certificate) for “in hospital under authority of” substitute “subject to”.
- (11) In section 76 (care plan: preparation, placing in medical records etc.) in subsection (1) at the beginning, insert—
- “(A1) This section applies where a compulsory treatment order is made in respect of a patient.”
- (12) In section 127 (suspension of measures authorising detention) in subsection (3)(a)—
- (a) after “subject to” insert “– (i)”; and
- (b) after “Act” insert—
- “; or
- (ii) an interim order made under section 105 or 106 of this Act, extending, extending and varying or varying, as the case may be, a compulsory treatment order that authorises that measure;”.
- (13) In section 130 (mentally disordered persons subject to criminal proceedings: assessment and treatment)—
- (a) in the inserted section 52T (prevention of delay in trials: assessment orders and treatment orders)—
- (i) in subsection (1), for “charged on indictment” substitute “committed for an offence until liberated in due course of law”; and
- (ii) in subsection (4)(a)—

- (iia) for “and” where first occurring substitute “;” and
- (iib) after “110 days” insert “and 140 days”.

(14) In section 133 (mentally disordered offenders: compulsion orders), in inserted section 57A(1) for “57C and” substitute “57B to”.

(15) In section 167 (powers of Tribunal on application under section 149, 158, 161, 163 or 164) in subsection (7)(a) after “166(3)” insert “(a) to (h)”.

(16) In section 168 (interim extension etc. of order: application under section 149)–

- (a) in the section title, after “section 149” insert “or 158”; and
- (b) in subsection (1), after “section 149” insert “or 158”.

(17) In section 171 (powers of Tribunal on reference under section 162) in subsection (3)(a) after “166(3)” insert “(a) to (h)”.

(18) In section 179 (Suspension of measures) in subsection (1) at the end insert “and to section 105 or 106 shall be read as references to section 168 or 169 of this Act”.

(19) In section 248 (sections 235, 236, 238, 239 and 241: review of treatment etc.) in subsection (1) after “236,” insert “238,”.

(20) In section 252 (named person in relation to child)–

- (a) in subsection (1)(a), for “a person who has attained the age of 16 years” substitute “a relevant person”;
- (b) in subsection (2), for “persons who have attained the age of 16 years” substitute “relevant persons”;
- (c) in subsection (3) after “the” where firstly occurring insert “relevant”; and
- (d) in subsection (4)–
  - (i) after the definition of “parental responsibilities” omit “and”; and
  - (ii) after the definition of “parental rights” insert–
    - “; and
    - “relevant person” means–
      - (a) a local authority; or
      - (b) a person who has attained the age of 16 years.”.

(21) In section 254 (meaning of “nearest relative”)–

- (a) in subsection (7)(b) insert–
  - (i) after “hospital” where firstly occurring “or in a care home service”; and
  - (ii) after “hospital” where secondly occurring “or to a care home service”;
- (b) in subsection (8)(b) insert–
  - (i) after “hospital” where firstly occurring “or in a care home service”; and
  - (ii) after “hospital” where secondly occurring “or to a care home service”;

(22) In section 316 (inducing and assisting absconding etc.) in subsection (1) after paragraph (b) insert–

“; or

- (c) “induces or assists a patient to abscond or to attempt to abscond or harbours a patient who absconds while that patient is being removed or transferred under regulations made under section 290 of this Act.”.

(23) In section 326 (orders, regulations and rules) in subsection (4)–

- (a) in paragraph (a), after “under” insert “section 240(5) or”; and
  - (b) in paragraph (c), the reference to section 240(5) is omitted.
- (24) In section 329 (interpretation)–
- (a) in subsection(1) before the definition of “care plan” insert–
    - ““care home service” has the meaning given by section 2(3) of the [Regulation of Care\(Scotland\) Act 2001 \(asp 8\)](#)”; and
  - (b) for subsection (4) substitute–
    - “(4) References in this Act to a patient’s responsible medical officer are references to the approved medical practitioner who is for the time being–
      - (a) appointed under section 230(1) or (3)(a) of this Act; or
      - (b) authorised under section 230(3)(b) of this Act,
    - in respect of the patient.”.
- (25) In section 331 (minor and consequential amendments, repeals and revocations) after subsection (3) insert–
- “(4) Notwithstanding the repeal in respect of sections 1, 125, 128 and 129 of the Mental Health (Scotland) Act 1984 (c. 36) in schedule 5 to this Act, those sections shall continue to have effect for the purposes of sections 10 and 95 of that Act.”.
- (26) In schedule 2 (the Mental Health Tribunal for Scotland)–
- (a) in paragraph 7(4) (organisation and administration of the functions of the Tribunal), for “an application to the Tribunal under section 191 or 192 of this Act” substitute “proceedings (other than proceedings relating solely to an application under section 255 or 256 of this Act) 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”; and
  - (b) in paragraph 13(4)(b) (decisions of the Tribunal)–
    - (i) for “being requested to do so by one of the parties, send a copy” substitute “completion”; and
    - (ii) after “above” insert “, send a copy”.
- (27) In schedule 4 (minor and consequential amendments) in paragraph 8(4)(b)(ii) for “unless” substitute “the offender is described”.
- (28) In schedule 5 (repeals and revocations), in the entry for the Mental Health (Scotland) Act 1984, after “The whole Act” insert “with the exception of section 10(1)(b) and (c) and (2) and section 95”.