

Status: Point in time view as at 25/05/2018.

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003 is up to date with all changes known to be in force on or before 22 May 2024. 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)

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.

Commencement Information

- II** Sch. 1 para. 1 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

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—
- acquire and dispose of land and other property; and
 - enter into contracts.

Commencement Information

- I2** Sch. 1 para. 2 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

[^{F1}Membership

Textual Amendments

- F1** Sch. 1 para. 2A-2E and crossheadings inserted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010](#) (asp 8), s. 134(7), **sch. 18 para. 4**; [S.S.I. 2010/221](#), art. 3(2)(3), sch.; [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.

- 2A (1) The Commission is to consist of the following members—
- a person appointed by the Scottish Ministers to chair the Commission; and
 - no fewer than [^{F2}7 nor more than 9] other members appointed by the Scottish Ministers.

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- (2) The Scottish Ministers may by order amend sub-paragraph (1)(b) by substituting for the minimum or maximum number of members for the time being specified there such other number as they think fit.

Textual Amendments

F2 Words in sch. 1 para. 2A(1)(b) substituted (18.1.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), ss. **31(1)(a)**, 34(1)

- 2B (1) In appointing members, the Scottish Ministers are to have regard to the desirability of including—
- (a) persons who have experience of, and have shown capacity and capability in, the provision of services to those who have a mental disorder;
 - (b) persons who use, or have used, such services;
 - (c) persons who are, or have been, carers of those who have a mental disorder;
 - (d) persons who have such other skills, knowledge or experience as the Scottish Ministers consider to be relevant in relation to the exercise of the Commission's functions.
- (2) In appointing members under paragraph 2A(1)(b), the Scottish Ministers must appoint at least—
- (a) one person who falls within paragraph (b) of sub-paragraph (1) of this paragraph; ^{F3} ...
 - (b) one person who falls within paragraph (c) of sub-paragraph (1) of this paragraph [^{F4}and
 - (c) one person who has such skills, knowledge and experience as the Scottish Ministers consider to be relevant in relation to the carrying out of the NCF functions].]

Textual Amendments

F3 Word in sch. 1 para. 2B(2) omitted (18.1.2014) by virtue of [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), ss. **31(1)(b)**, 34(1)

F4 Sch. 1 para. 2B(2)(c) and word inserted (18.1.2014) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), ss. **31(1)(c)**, 34(1)

[^{F1} Terms of appointment etc.

- 2C (1) Each member of the Commission is to be appointed for such period as the Scottish Ministers think fit.
- (2) A member—
- (a) holds and vacates office in accordance with the terms and conditions of appointment; but
 - (b) may, by written notice to the Scottish Ministers, resign office as a member.
- (3) A person is, on ceasing to be a member, eligible for reappointment.]

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[^{F1}Removal of members

- 2D The Scottish Ministers may, by written notice, remove a member from office if they are satisfied that—
- (a) the member—
 - (i) has been adjudged bankrupt;
 - (ii) has granted a trust deed for creditors or a composition contract;
 - (iii) has proposed a voluntary arrangement which has been approved;
 - (b) the member's estate has been sequestrated;
 - (c) the member has been absent from 3 consecutive meetings of the Commission without the permission of the Commission;
 - (d) the member is otherwise unfit or unable to discharge the functions of a member.]

[^{F1}Disqualification from membership

- 2E A person is disqualified from appointment, and from holding office, as a member of the Commission if that person is—
- (a) a member of the Scottish Parliament;
 - (b) a member of the House of Commons;
 - (c) a member of the European Parliament.]

Membership

^{F5}3

Textual Amendments

- F5** Sch. 1 para. 3 repealed (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), **sch. 18 para. 3**; S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.

Terms of office etc.

^{F6}4

Textual Amendments

- F6** Sch. 1 para. 4 repealed (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), **sch. 18 para. 3**; S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.

Eligibility for reappointment

^{F7}5

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Textual Amendments

- F7** Sch. 1 para. 5 repealed (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [sch. 18 para. 3](#); [S.S.I. 2010/221](#), art. 3(2)(3), sch.; [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.; [S.S.I. 2011/122](#), art. 2, sch.

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.

Commencement Information

- I3** Sch. 1 para. 6 in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

Appointment etc. of chief [^{F8} executive] and other staff

Textual Amendments

- F8** Word in sch. 1 para. 7 heading substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), sch. 18 para. 6; [S.S.I. 2010/221](#), art. 3(2)(3), sch.; [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.

- 7 (1) Subject to sub-paragraphs (2) and (3) below [^{F9}and paragraph 10A], the Commission—
- (a) shall appoint a chief [^{F10}executive]; 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.
- (2) A member of the Commission may not be appointed as a member of its staff.

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- (3) The Commission shall obtain the approval of the Scottish Ministers before appointing a chief [^{F11}executive].
- (4) The Commission may pay to the members of its staff, including its chief [^{F12}executive], (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.

Textual Amendments

- F9** Words in sch. 1 para. 7(1) inserted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [sch. 18 para. 5\(a\)](#); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F10** Word in sch. 1 para. 7(1)(a) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [sch. 18 para. 5\(b\)](#); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F11** Word in sch. 1 para. 7(3) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [sch. 18 para. 5\(c\)](#); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.
- F12** Word in sch. 1 para. 7(4) substituted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [sch. 18 para. 5\(d\)](#); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.

Commencement Information

- I4** Sch. 1 para. 7 in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

[^{F13}Commission Visitors

Textual Amendments

- F13** Sch. 1 paras. 7A-7I and crossheadings inserted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010](#)

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(asp 8), s. 134(7), **sch. 18 para. 7**; S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.

- 7A (1) The Commission must appoint such staff, employed under paragraph 7(1)(a) or (b), to exercise the functions of Commission Visitors; and when doing so those staff are to be known as Commission Visitors.
- (2) The Commission may arrange for such other persons as it thinks fit to be appointed as and exercise the functions of Commission Visitors; and when doing so those persons are to be known as Commission Visitors.
- (3) There may be no more than 10 Commission Visitors appointed by the Commission under sub-paragraph (2).
- (4) The Scottish Ministers may by order amend sub-paragraph (3) by substituting for the maximum number of Commission Visitors for the time being specified there such other number as they think fit.
- (5) In appointing Commission Visitors, the Commission is to have regard to the desirability of appointing—
- (a) persons who have experience of, and have shown capacity and capability in, the provision of services to those who have a mental disorder;
 - (b) persons who use, or have used, such services;
 - (c) persons who are, or have been, carers of those who have a mental disorder;
 - (d) persons who have such other skills, knowledge or experience as the Commission considers to be relevant in relation to the exercise of the functions of Commission Visitors.
- (6) In appointing Commission Visitors, the Commission must appoint at least—
- (a) one person who falls within paragraph (b) of sub-paragraph (5); and
 - (b) one person who falls within paragraph (c) of sub-paragraph (5).
- (7) In this Act (unless the context otherwise requires), any reference to a function of a Commission Visitor (or the functions of Commission Visitors) is a reference to a function conferred by this Act or any other enactment.]

[^{F13}Commission Visitors: further provision

- 7B (1) The arrangements entered into by virtue of paragraph 7A(2) may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons.
- (2) Persons appointed as Commission Visitors by virtue of paragraph 7A(2) are not members of staff of the Commission.]

[^{F13}Medical Visitors

- 7C (1) In appointing Commission Visitors, the Commission must appoint one or more persons who have such qualifications, training and experience as may be prescribed by regulations for the purposes of carrying out the functions of Commission Visitors under section 15 of this Act.
- (2) Persons so appointed may also be known as Medical Visitors.]

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[^{F13}Committees

- 7D (1) The Commission may establish committees for any purpose relating to its functions.
- (2) Subject to sub-paragraph (7), the Commission is to determine the composition of its committees.
- (3) The Commission may appoint persons who are not members of the Commission to be members of a committee.
- (4) A committee of the Commission is to comply with any directions given to it by the Commission.
- (5) The Commission must establish at least one committee (an “advisory committee”) for the purpose of giving advice to it about matters connected to its functions.
- (6) In considering how to exercise its functions, the Commission must have regard to relevant advice and information given to it by any advisory committee (whether or not given at its request).
- (7) An advisory committee must include persons of a description as may be prescribed by regulations.]

[^{F13}Procedure and meetings

- 7E (1) The Commission may determine its own procedure and that of its committees, including a quorum for meetings.
- (2) The validity of any proceedings of the Commission, or any of its committees, is not affected by a vacancy in membership nor by any defect in the appointment of a member.
- (3) Members of the Scottish Executive and persons authorised by the Scottish Ministers may attend and take part in meetings of the Commission or any of its committees, but are not entitled to vote at such meetings.]

[^{F13}Exercise of certain functions etc.

- 7F (1) A member of the Commission may not—
- (a) exercise the functions of a Commission Visitor;
 - (b) be appointed as a Commission Visitor.
- (2) The chief executive may not be a member of the Commission.
- (3) A member of staff of the Commission (other than a Commission Visitor) may not exercise the functions of a Commission Visitor.
- (4) An appointment as a Commission Visitor under paragraph 7A(1) does not affect the appointed person's—
- (a) status as employed under paragraph 7(1)(a) or (b); or
 - (b) ability to perform the duties of the person as so employed.]

[^{F13}Delegation of functions

- 7G (1) The Commission may, subject to sub-paragraphs (2), (3) and (4), authorise—
- (a) the chief executive;

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- (b) any other employee;
 - (c) any of its committees,
- to exercise such of its functions, and to such extent, as it may determine.
- (2) The Commission may not authorise any of the following functions to be exercised by any other person—
- (a) the functions of the Commission under section 12 (investigations: further provision);
 - (b) the approval of any acquisition or disposal of land or other property with a value greater than £50,000 or such other amount as the Commission may, with the consent of the Scottish Ministers, determine;
 - (c) the approval of annual reports and accounts;
 - (d) the approval of any budget or other financial plan.
- (3) Any function conferred on a Commission Visitor may not be delegated by the Commission.
- (4) Sub-paragraph (1) does not affect the responsibility of the Commission for the exercise of its functions.
- (5) The chief executive may, with the consent of the Commission, authorise—
- (a) any other employee;
 - (b) any of the Commission's committees,
- to exercise such of the chief executive's functions, and to such extent, as the chief executive, with such consent, may determine.
- (6) Sub-paragraph (5) does not affect the responsibility of the chief executive for the exercise of the chief executive's functions.]

[^{F13}Mandatory delegation of functions to chief executive

- 7H (1) The Commission must delegate to the chief executive the functions mentioned in sub-paragraph (2).
- (2) The functions are—
- (a) the Commission's functions relating to the discharge of patients under this Act;
 - (b) the Commission's functions under section 73 of the Adults with Incapacity (Scotland) Act 2000 (asp 4).
- (3) When exercising those functions so delegated, the chief executive must—
- (a) consult the Commission;
 - (b) consult a Commission Visitor in every case in which it appears to the chief executive appropriate to do so;
 - (c) have regard to any relevant guidance issued by the Commission.
- (4) Sub-paragraph (1) does not affect the responsibility of the Commission for the exercise of its functions.]

[^{F13}Location of office

- 7I The Commission's determination of the location of its office premises is subject to the approval of the Scottish Ministers.]

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Regulations as to proceedings and delegation of functions

F148

Textual Amendments

- F14** Sch. 1 para. 8 repealed (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [sch. 18 para. 8](#); [S.S.I. 2010/221](#), art. 3(2)(3), sch.; [S.S.I. 2010/321](#), art. 3, sch.; [S.S.I. 2011/122](#), art. 2, sch.

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).

Commencement Information

- I5** Sch. 1 para. 9 in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

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)—

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- (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 ”.

Commencement Information

I6 Sch. 1 para. 10 in force at 1.7.2003 by [S.S.I. 2003/316](#), [art. 2](#)

[^{F15}Transitional provision: first chief executive

Textual Amendments

F15 Sch. 1 para. 10A 10B and crossheadings inserted (1.8.2010 for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010](#) (asp 8), s. 134(7), [sch. 18 para. 9](#); S.S.I. 2010/221, [art. 3\(2\)\(3\)](#), [sch.](#); S.S.I. 2010/321, [art. 3](#), [sch.](#); S.S.I. 2011/122, [art. 2](#), [sch.](#)

- 10A (1) The person who, immediately before the coming into force of this paragraph, holds (by virtue of paragraph 7) the post of chief officer of the Commission becomes the first chief executive of the Commission.
- (2) But if—
- (a) there is no person holding that post immediately before the coming into force of this paragraph; or
- (b) the person holding the post immediately before the coming into force of this paragraph is unwilling or unable to be the chief executive,
- the Scottish Ministers are to make the first appointment of the chief executive of the Commission on such terms and conditions as the Scottish Ministers may determine.
- (3) Each subsequent chief executive is appointed in accordance with paragraph 7.
- (4) Where sub-paragraph (1) applies, the person becoming the first chief executive of the Commission does so on the terms and conditions which applied to the post of chief officer held by that person.]

[^{F15}Transitional provision: Commissioners

- 10B Any person who, immediately before the coming into force of this paragraph, is a member of the Commission (including any ex officio members) by virtue of paragraph 3 ceases automatically to hold office as such a member.]

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[^{F16}SCHEDULE 1A
(introduced by section 4ZA(2))

NATIONAL CONFIDENTIAL FORUM

Textual Amendments

F16 Sch. 1A inserted (18.1.2014 for the purpose of the insertion of sch. 1A paras. 1, 2, 5, 16.5.2014 for the purpose of the insertion of sch. 1A paras. 3, 7(3)-(6), 14, 1.7.2014 in so far as not already in force) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\), ss. 31\(2\), 34\(1\); S.S.I. 2014/117, arts. 2, 3](#)

PART 1

MEMBERS OF NCF ETC.

Membership

- 1 (1) NCF is to consist of—
 - (a) the NCF Head, appointed by the Scottish Ministers, and
 - (b) at least 2 other members, appointed by the Scottish Ministers.
- (2) The Scottish Ministers must, when appointing a person under sub-paragraph (1)(a) or (b), have regard to the recommendation of the selection panel mentioned in paragraph 2(1).
- (3) Each member—
 - (a) is to be appointed for such period as the Scottish Ministers think fit, and
 - (b) holds and vacates office in accordance with the terms of appointment.
- (4) A member may by written notice to the Scottish Ministers resign office as a member.
- (5) The Scottish Ministers must, as soon as practicable after receiving a resignation notice, inform the Commission of the notice.

Membership selection panel

- 2 (1) The selection panel is to consist of—
 - (a) a representative of the Scottish Ministers,
 - (b) the person appointed in accordance with paragraph 2A(1)(a) of schedule 1 to chair the Commission, and
 - (c) other persons of such number and description as may be determined by the Scottish Ministers.
- (2) The selection panel may recommend for appointment only persons who the panel consider to have such skills, knowledge and experience as the panel consider to be relevant to the carrying out of the NCF functions.
- (3) The selection panel may not recommend for appointment persons who are members of the Commission.
- (4) The selection panel is to determine the selection process to be applied in determining persons to be recommended for appointment.

Status: Point in time view as at 25/05/2018.

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003 is up to date with all changes known to be in force on or before 22 May 2024. 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)

NCF staff

- 3 (1) This paragraph applies where—
- (a) the Commission proposes, in accordance with paragraph 7(1)(b) of schedule 1, to appoint a member of staff, and
 - (b) the employment of that person is to relate to the carrying out of NCF functions.
- (2) The person may be appointed only if—
- (a) the person has been recommended for appointment by the NCF Head,
 - (b) the terms of the person's appointment would prevent the person from carrying out any other function conferred on the Commission during the period when the Commission is required to establish and maintain NCF.

NCF powers and procedure

- 4 (1) NCF may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the carrying out of the NCF functions.
- (2) It is for the NCF Head to determine NCF's procedure, having regard to the views of the other NCF members.
- (3) In carrying out its functions and in determining its procedure, NCF must have regard to the need to avoid any unnecessary costs to public funds, eligible persons and others.
- (4) The validity of any proceedings of NCF is not affected by—
- (a) any vacancy in its membership,
 - (b) any defect in the appointment of a member.
- (5) Members of the Scottish Government and persons authorised by the Scottish Government may not attend or take part in meetings of NCF.

Application of schedule 1 to NCF

- 5 (1) The provisions of schedule 1 mentioned in sub-paragraph (2) do not apply in relation to NCF.
- (2) The provisions are—
- (a) paragraph 7D,
 - (b) paragraph 7E,
 - (c) paragraph 7G.

PART 2

DELEGATION OF FUNCTIONS

Delegation by NCF

- 6 (1) NCF must delegate the NCF functions to the persons mentioned in sub-paragraph (3), to the extent determined by the NCF Head.

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- (2) NCF may otherwise delegate the NCF functions to those persons, to the extent determined by NCF.
- (3) Those persons are—
 - (a) the NCF Head,
 - (b) any other member of NCF,
 - (c) any member of NCF staff.
- (4) This paragraph does not affect—
 - (a) NCF's responsibility for the delegated functions, or
 - (b) the NCF Head's accountability for the carrying out of the NCF functions under section 4ZC(2).

PART 3

ELIGIBILITY TO PARTICIPATE IN FORUM

Eligibility

- 7 (1) NCF may receive testimony from any eligible person whose application to provide testimony has been accepted by NCF.
- (2) An “eligible person” is a person who—
 - (a) is 16 years of age or over,
 - (b) was placed in an establishment providing institutional care during the person's childhood, and
 - (c) is no longer in that care.
- (3) In this schedule “institutional care” means a care or health service which meets the conditions in sub-paragraph (4) and is of a description or type prescribed by order made by the Scottish Ministers.
- (4) The conditions are that the care or health service—
 - (a) was provided to children in Scotland at some time (whether or not the service is still provided),
 - (b) included residential accommodation for the children, and
 - (c) was provided by a body corporate or unincorporated.
- (5) An order under sub-paragraph (3) may not prescribe a service provided at premises used wholly or mainly as a private dwelling.
- (6) An order under sub-paragraph (3) is subject to the affirmative procedure.

PART 4

CONDUCT OF HEARINGS ETC.

Testimony given to NCF

- 8 (1) NCF must make provision for receiving testimony under paragraph 7(1).

Status: Point in time view as at 25/05/2018.

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- (2) NCF must make arrangements for testimony to be given—
 - (a) at a hearing established by NCF (a “forum hearing”), or
 - (b) by other means of communication (whether oral or written).
- (3) Where NCF receives testimony at a forum hearing it must ensure that—
 - (a) at least 2 members of NCF are present while the forum hearing is receiving the testimony, and
 - (b) the forum hearing is held in private.
- (4) For the purposes of sub-paragraph (3), a forum hearing is held in private if the only persons present are—
 - (a) the person giving the testimony,
 - (b) any person accompanying that person whose attendance has been approved by NCF,
 - (c) members of NCF,
 - (d) NCF staff.
- (5) It is otherwise for NCF to determine procedures for receiving testimony, taking account of—
 - (a) any procedure determined under paragraph 4(2), and
 - (b) the duty in paragraph 4(3).

Recording of testimony

- 9 (1) NCF may record testimony and any other information received from eligible persons in such manner as it thinks fit.
- (2) NCF must as soon as reasonably practicable after receiving any information from an eligible person take such steps as it thinks fit to organise the information in such a way as to preserve the anonymity of—
 - (a) the person providing the information,
 - (b) any individual mentioned in the testimony, and
 - (c) any establishment providing institutional care mentioned in the testimony.

Payment of expenses

- 10 NCF may require the Commission to pay such expenses as NCF considers reasonable—
 - (a) to eligible persons, and
 - (b) to persons accompanying eligible persons to forum hearings.

PART 5

REPORTING

Reports by NCF

- 11 (1) NCF may prepare—
 - (a) reports based on testimony received,

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- (b) reports setting out, in relation to the testimony, matters it identifies and recommendations made by virtue of section 4ZB(c).
- (2) A report prepared under this paragraph must not identify or include information which creates a real risk of identifying—
 - (a) a person who has been in institutional care during childhood,
 - (b) a person alleged to have experienced or committed abuse,
 - (c) an establishment providing institutional care.
- (3) Sub-paragraph (2) does not prevent a report from including information which is otherwise in the public domain.
- (4) It is otherwise for NCF to determine the form and content of a report prepared under this paragraph.

Annual NCF reports

- 12 (1) As soon as practicable after 31 March in each year, NCF must submit to the Scottish Ministers a report on the discharge of the NCF functions during the period of 12 months ending on 31 March.
- (2) NCF must consult the Commission before preparing a report under this paragraph.
- (3) Sub-paragraph (2) of paragraph 11 applies in relation to a report prepared under this paragraph as it applies in relation to a report prepared under that paragraph.
- (4) NCF must send a copy of each report prepared under this paragraph to the Commission.
- (5) The Scottish Ministers must lay before the Scottish Parliament a copy of each report submitted to them under sub-paragraph (1).

CONFIDENTIALITY

Disclosure of information

- 13 (1) This paragraph applies to—
 - (a) the Commission,
 - (b) a person who is or has been a member of the Commission,
 - (c) NCF,
 - (d) a person who is or has been a member of NCF,
 - (e) a person who is or has been an employee of the Commission,
 - (f) a person who has been given information by a person carrying out NCF functions for the purpose of storing or preserving that information.
- (2) A person must not disclose any information which—
 - (a) has been provided to the person in connection with the carrying out of the NCF functions, and
 - (b) is not otherwise in the public domain.
- (3) Sub-paragraph (2) does not prevent disclosure of any information by the person in so far as—

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- (a) the disclosure is to another person mentioned in sub-paragraph (1) and is necessary for the purpose of enabling or assisting the carrying out by NCF or the Commission of any of its functions under this Act,
 - (b) the disclosure is necessary for the purpose of enabling—
 - (i) NCF to prepare a report in accordance with paragraph 11 or 12, or
 - (ii) the Commission to prepare its annual report mentioned in section 18(1),
 - (c) the disclosure is in accordance with sub-paragraph (4), (5) or (6).
- (4) A member of NCF must disclose to a constable information received by that member to the extent that it is, in the opinion of the member acting in good faith, reasonably necessary to prevent the commission of an offence involving the abuse of a child.
- (5) A member of NCF may disclose to a constable information received by that member to the extent that—
- (a) it relates to an allegation made by a person who has given testimony that an offence involving the abuse of a child has been committed, and
 - (b) it is, in the opinion of the member acting in good faith, in the public interest to do so.
- (6) A court may order disclosure of information in, or for the purposes of, civil or criminal proceedings (including the purposes of the investigation of any offence or suspected offence) if it is satisfied that—
- (a) the disclosure is necessary in the interests of justice, and
 - (b) the extent of the disclosure is necessary in the interests of justice.

PART 7

GENERAL

- 14 In this schedule—
- “child” means a person who is under 18 years of age,
 - “childhood” means the period when a person is under 18 years of age,
 - “eligible person” has the meaning given by paragraph 7(2),
 - “forum hearing” has the meaning given by paragraph 8(2),
 - institutional care” has the meaning given by paragraph 7(3),
 - “NCF staff” means persons appointed in accordance with paragraph 3.]

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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

- I7** 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](#)
- I8** 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](#)
- I9** Sch. 2 para. 1(2)(a)(b) in force at 3.5.2004 by [S.S.I. 2004/153, art. 3, Sch. 2](#)
- I10** 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

- I11** Sch. 2 para. 3(1)(2)(4)-(7) in force at 3.5.2004 by [S.S.I. 2004/153](#), [art. 3](#), [Sch. 2](#)
- I12** Sch. 2 para. 3(3) in force at 26.3.2004 for specified purposes by [S.S.I. 2004/153](#), [art. 2](#), [Sch. 1](#)
- I13** 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;
 - ^{F17}(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;
 - ^{F18}(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

- F17** 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](#)
- F18** 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

- I14** 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.

Commencement Information

I15 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) [^{F19}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.

Textual Amendments

F19 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

Commencement Information

I16 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 [^{F20}proceedings [^{F21}(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.
- [^{F22}(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

- F20** 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)**
- F21** 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)
- F22** 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

- I17 Sch. 2 para. 7 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, **Sch. 2**

Staff and accommodation

- 8 ^{F23}(1)
- ^{F23}(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

- F23** 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

- I18 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

- I19 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.

Status: Point in time view as at 25/05/2018.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003 is up to date with all changes known to be in force on or before 22 May 2024. 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)*

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

Commencement Information

I20 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

I21 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.

Status: Point in time view as at 25/05/2018.

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Commencement Information

I22 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 [^{F24}completion] of the document mentioned in sub-paragraph (3) above[^{F25}, send a copy] to each party.

Textual Amendments

F24 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\(26\)\(b\)\(i\)](#)

F25 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

I23 Sch. 2 para. 13 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, [Sch. 2](#)

[^{F26}Withdrawn applications to be disregarded for certain purposes]

Textual Amendments

F26 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

^{F27}13A

Textual Amendments

F27 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))

Status: Point in time view as at 25/05/2018.

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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.

Commencement Information

I24 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.

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\(1\)\(i\)](#)

Commencement Information

I25 Sch. 2 para. 16 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, [Sch. 2](#)

Status: Point in time view as at 25/05/2018.

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SCHEDULE 3

(introduced by section 71)

APPLICATION OF CHAPTER 1 OF PART 7 TO CERTAIN PATIENTS

1 Section 57(3) of this Act shall have effect as if, for paragraph (e), there were substituted the following—

“(e) that it will be necessary, immediately after the hospital direction or, as the case may be, transfer for treatment direction to which the patient is subject ceases to have effect, for the patient to be subject to a compulsory treatment order.”

Commencement Information

I26 Sch. 3 para. 1 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

[^{F28}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;”]

Textual Amendments

F28 Sch. 3 para. 1A inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015](#) (asp 9), **ss. 35(3), 61(2)**; [S.S.I. 2017/197](#), art. 2, sch. (with art. 17)

2 (1) Section 64(4)(a)(i) of this Act shall have effect subject to the following—

(a) where a compulsory treatment order is made in respect of a patient who is subject to—

(i) a hospital direction; or

(ii) a transfer for treatment direction,

that order shall authorise the measures specified in it only if the direction to which the patient is subject ceases, by virtue of section 217(2) of this Act, to have effect before the expiry of the period of 28 days beginning with the day on which the order is made; and

(b) where—

(i) a compulsory treatment order is made in respect of such a patient; and

(ii) the direction to which the patient is subject ceases, by virtue of section 217(2) of this Act, to have effect before the expiry of the period of 28 days mentioned in sub-sub-paragraph (a) above,

the compulsory treatment order shall authorise the measures specified in it for the period of 6 months beginning with the day on which that direction ceases to have effect.

(2) Section 64(5) shall have effect as if, for paragraph (e), there were substituted—

“(e) that it will be necessary, immediately after the hospital direction or, as the case may be, transfer for treatment direction to which the patient is subject ceases to have effect, for the patient to be subject to a compulsory treatment order.”

Status: Point in time view as at 25/05/2018.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003 is up to date with all changes known to be in force on or before 22 May 2024. 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)*

Commencement Information

I27 Sch. 3 para. 2 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

3 Section 65 of this Act shall not have effect.

Commencement Information

I28 Sch. 3 para. 3 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

SCHEDULE 4

(introduced by section 331(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

The Social Work (Scotland) Act 1968 (c.49)

- 1 (1) The Social Work (Scotland) Act 1968 shall be amended as follows.
- (2) In section 4 (assistance by voluntary organisations in performance of functions), for the words from “section 7” to “1984” substitute “ section 25 (provision of care and support services for persons who have or have had a mental disorder), 26 (provision of services designed to promote well-being and social development of such persons) or 27 (assistance with travel in connection with such services) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) ”.
- (3) In section 5(1B) (compliance by local authorities with directions by Scottish Ministers in exercise of functions under certain Acts), for paragraph (k) substitute—
“(k) the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);”.
- (4) In section 5A(4) (local authority plans for community care services), in the definition of “community care services”, for the words from “section 7” to “1984” substitute “ section 25 (provision of care and support services for persons who have or have had a mental disorder), 26 (provision of services designed to promote well-being and social development of such persons) or 27 (assistance with travel in connection with such services) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) ”.
- ^{F29}(5)
- (6) In section 59(1) (provision by local authorities of residential and other establishments etc.), for the words “section 13A” substitute “ sections 12 and 13A ”.
- (7) In section 86(1) (recovery of expenditure on provision of services for person ordinarily resident in the area of another local authority), for paragraph (e) substitute—
“(e) in the provision, for persons ordinarily so resident, of services under section 25 (care and support services for persons who have or who have had a mental disorder), 26 (services designed to promote well-

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being and social development of such persons) or 27 (assistance with travel in connection with such services) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);”.

- (8) In section 94(1) (interpretation), for the definition of “mental health officer” substitute—

““mental health officer” means a person appointed under subsection (1) of section 32 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13); and includes a person deemed, by virtue of subsection (3) of that section, to be so appointed;”.

Textual Amendments

- F29** Sch. 4 para. 1(5) repealed (23.2.2006) by [Joint Inspection of Childrens Services and Inspection of Social Work Services \(Scotland\) Act 2006 \(asp 3\)](#), **ss. 8(4)(h)**, 10(2)

Commencement Information

- I29** Sch. 4 para. 1 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

The Local Government (Scotland) Act 1973 (c.65)

- 2 In section 64(5) of the Local Government (Scotland) Act 1973 (enactments concerning appointment of officers continuing to have effect), for paragraph (bb) substitute—
- “(bb) section 32 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);”.

Commencement Information

- I30** Sch. 4 para. 2 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

The National Health Service (Scotland) Act 1978 (c.29)

- 3 In section 102(1) of the National Health Service (Scotland) Act 1978 (duty of Scottish Ministers to provide state hospitals)—
- (a) after the word “under” insert “ the Criminal Procedure (Scotland) Act 1995 (c. 46) or ”; and
- (b) for the words “Mental Health (Scotland) Act 1984” substitute “ Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) ”.

Commencement Information

- I31** Sch. 4 para. 3 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

Status: Point in time view as at 25/05/2018.

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The Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33)

- 4 (1) The Disabled Persons (Services, Consultation and Representation) Act 1986 shall be amended as follows.
- (2) In section 2(5)(b) (right of authorised representative to visit disabled person in accommodation provided by virtue of certain enactments), for the words “section 7 of the 1984 Act” substitute “section 25 of the 2003 Act”.
- (3) In section 16(1) (interpretation)—
- (a) for the definition of “the 1984 Act” substitute—
- ““the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);” and
- (b) in paragraph (b) of the definition of “the welfare enactments”, for the words “sections 7 and 8 of the 1984 Act” substitute “sections 25 and 26 of the 2003 Act”.

Commencement Information

I32 Sch. 4 para. 4 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

The Tribunals and Inquiries Act 1992 (c.53)

- 5 In Part II of Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals under the supervision of the Scottish Committee of the Council on Tribunals), after paragraph 54 insert—

“Mental health	54A. The Mental Health Tribunal for Scotland constituted under section 21 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).”.
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Commencement Information

I33 Sch. 4 para. 5 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

The Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)

- 6 In section 4(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (persons detained under the Mental Health (Scotland) Act 1984 (c. 36) by virtue of transfer direction and restriction direction), for the words from first “direction” to “given”, substitute “for treatment direction under section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) is made”.

Status: Point in time view as at 25/05/2018.

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Commencement Information

I34 Sch. 4 para. 6 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

The Children (Scotland) Act 1995 (c.36)

- 7 In section 23(2) of the Children (Scotland) Act 1995 (children affected by disability), for the words from “suffers” to the end substitute “ has a mental disorder (as defined in section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)) ”.

Commencement Information

I35 Sch. 4 para. 7 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

The Criminal Procedure (Scotland) Act 1995 (c.46)

- 8 (1) The Criminal Procedure (Scotland) Act 1995 shall be amended as follows.
- (2) In section 54 (insanity in bar of trial)—
- (a) in paragraph (c) of subsection (1)—
- (i) in sub-paragraph (i), for the words from “he” to “1984” substitute “ the conditions mentioned in subsection (2A) below are met in respect of the person ”;
- (ii) for the words “temporary hospital order” there shall be substituted “ temporary compulsion order ”;
- (iii) for the words “committing him to that hospital” substitute “ authorising the measures mentioned in subsection (2B) below in respect of the person ”;
- (b) after subsection (2) insert—
- “(2A) The conditions referred to in subsection (1)(c)(i) above are—
- (a) that the person has a mental disorder;
- (b) that medical treatment which would be likely to—
- (i) prevent the mental disorder worsening; or
- (ii) alleviate any of the symptoms, or effects, of the disorder,
- is available for the person; and
- (c) that if the person were not provided with such medical treatment there would be a significant risk—
- (a) to the health, safety or welfare of the person; or
- (b) to the safety of any other person.
- (2B) The measures referred to in subsection (1)(c)^{F30} ... above are—
- (a) in the case of a person who, when the temporary compulsion order is made, has not been admitted to the specified hospital, the removal, before the expiry of the period of 7

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days beginning with the day on which the order is made of the person to the specified hospital by—

- (i) a constable;
- (ii) a person employed in, or contracted to provide services in or to, the specified hospital who is authorised by the managers of that hospital to remove persons to hospital for the purposes of this section; or
- (iii) a specified person;
- (b) the detention of the person in the specified hospital; and
- (c) the giving to the person, in accordance with Part 16 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), of medical treatment.”;
- (c) in subsection (4), for the word “hospital” there shall be substituted “compulsion”; and
- (d) in subsection (8), after “section” insert—

““medical treatment” has the same meaning as in section 52D of this Act;

“specified” means specified in the temporary compulsion order; and”.

(3) In section 57 (disposals in cases where accused found to be insane)—

- (a) in subsection (2)—
 - (i) in paragraph (a), for the words from “make” to the end substitute “subject to subsection (4) below, make a compulsion order authorising the detention of the person in a hospital”;
 - (ii) in paragraph (b), for the words from first “an” to the end substitute “such a compulsion order, subject to subsection (4A) below, make a restriction order in respect of the person”;
 - (iii) for paragraph (bb), substitute—
 - “(bb) subject to subsections (3A) and (4B) below, make an interim compulsion order in respect of the person;”;
 - (iv) in paragraph (c), for the words from “make” to the end substitute “subject to subsections (4C) and (6) below, make a guardianship order in respect of the person”;
 - (v) in paragraph (d)—
 - (A) at the beginning insert “subject to subsection (5) below, ”; and
 - (B) after “Act)” insert “in respect of the person”;
- (b) in subsection (3), for the word “hospital” substitute “compulsion”;
- (c) after subsection (3) insert—
 - “(3A) The court may make an interim compulsion order under paragraph (bb) of subsection (2) above in respect of a person only where it has not previously made such an order in respect of the person under that paragraph.”; and
- (d) for subsection (4) substitute—

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- “(4) For the purposes of subsection (2)(a) above—
- (a) subsections (2) to (16) of section 57A of this Act shall apply as they apply for the purposes of subsection (1) of that section, subject to the following modifications—
 - (i) references to the offender shall be construed as references to the person to whom this section applies; and
 - (ii) in subsection (4)(b)(i), the reference to the offence of which the offender was convicted shall be construed as a reference to the offence with which the person to whom this section applies was charged;
 - (b) section 57B of this Act shall have effect subject to the modification that references to the offender shall be construed as references to the person to whom this section applies;
 - (c) section 57C of this Act shall have effect subject to the following modifications—
 - (i) references to the offender shall be construed as references to the person to whom this section applies; and
 - (ii) references to section 57A of this Act shall be construed as references to subsection (2)(a) above; and
 - (d) section 57D of this Act shall have effect subject to the modification that references to the offender shall be construed as references to the person to whom this section applies.
- (4A) For the purposes of subsection (2)(b) above, section 59 of this Act shall have effect.
- (4B) For the purposes of subsection (2)(bb) above—
- (a) subsections (2) to (13) of section 53 of this Act shall apply as they apply for the purposes of subsection (1) of that section, subject to the following modifications—
 - (i) references to the offender shall be construed as references to the person to whom this section applies;
 - (ii) in subsection (3)(a)(ii), the reference to one of the disposals mentioned in subsection (6) of that section shall be construed as a reference to the disposal mentioned in subsection (6)(a) of that section;
 - (iii) in subsection (4)(a), the reference to the offence of which the offender is convicted shall be construed as a reference to the offence with which the person to whom this section applies is charged; and
 - (iv) subsection (6)(b) shall not apply;

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- (b) section 53A of this Act shall have effect subject to the modification that references to the offender shall be construed as references to the person to whom this section applies;
 - (c) section 53B of this Act shall have effect subject to the following modifications—
 - (i) references to the offender shall be construed as references to the person to whom this section applies; and
 - (ii) for paragraphs (a) and (b) of subsection (8) there shall be substituted “, revoke the interim compulsion order and—
 - (a) make an order in respect of the person under paragraph (a), (b), (c) or (d) of subsection (2) of section 57 of this Act; or
 - (b) decide, under paragraph (e) of that subsection, to make no order in respect of the person.”;
 - (d) section 53C of this Act shall have effect subject to the following modifications—
 - (i) references to the offender shall be construed as references to the person to whom this section applies; and
 - (ii) for paragraphs (a) to (c) of subsection (1) there shall be substituted—
 - “(a) makes an order in respect of the person under paragraph (a), (b), (c) or (d) of subsection (2) of section 57 of this Act; or
 - (b) decides, under paragraph (e) of that subsection, to make no order in respect of the person.”; and
 - (e) section 53D of this Act shall have effect subject to the modification that the reference to the offender shall be construed as a reference to the person to whom this section applies.
- (4C) For the purposes of subsection (2)(c) above, subsections (1A), (6) to (8) and (11) of section 58 of this Act shall apply, subject to the modifications that the reference to a person convicted and any references to the offender shall be construed as references to the person to whom this section applies.”.
- (4) In section 58 (orders for hospital admission or guardianship)—
- (a) in subsection (1A), for the words “as mentioned in subsection (1) above” there shall be substituted “in the High Court or the sheriff court of an offence, other than an offence the sentence for which is fixed by law, punishable by that court with imprisonment, ”; and
 - (b) in subsection (7)—

Status: Point in time view as at 25/05/2018.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003 is up to date with all changes known to be in force on or before 22 May 2024. 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)*

- (i) for the words from first “the” to first “suffering” substitute “ (by reference to the appropriate paragraph (or paragraphs) of the definition of “mental disorder” in section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)) the type (or types) of mental disorder that the offender has ”; and
 - (ii) for the words from [F31“the offender is described”] to third “form” substitute “ the descriptions of the offender’s mental disorder by each of the medical practitioners, whose evidence is taken into account under subsection (1A)(a) above, specifies at least one type of mental disorder that is also specified by the other ”.
- (5) In section 59 (hospital orders: restrictions on discharge)—
 - (a) in subsection (1)—
 - (i) for the words “hospital order” there shall be substituted “ compulsion order authorising the detention of a person in a hospital by virtue of paragraph (a) of section 57A(8) of this Act ”; and
 - (ii) for the words “section 62(1) of the Mental Health (Scotland) Act 1984” there shall be substituted “ Part 10 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) ”;
 - (b) in subsection (2)—
 - (i) for the words “medical practitioner approved by the Health Board for the purposes of section 20 of the Mental Health (Scotland) Act 1984” there shall be substituted “ approved medical practitioner ”; and
 - (ii) for the words “section 58(1)(a)” there shall be substituted “ section 57A(2)(a) ”; and
 - (c) after subsection (2) insert—
 - “(2A) The court may, in the case of a person in respect of whom it did not, before making the compulsion order, make an interim compulsion order, make a restriction order in respect of the person only if satisfied that, in all the circumstances, it was not appropriate to make an interim compulsion order in respect of the person.”.
- (6) For section 59A (hospital directions) substitute—

“Hospital directions

59A Hospital direction

- (1) This section applies where a person, not being a child, (in this section and in sections 59B and 59C of this Act referred to as the “offender”) is convicted on indictment in—
 - (a) the High Court; or
 - (b) the sheriff court,of an offence punishable by imprisonment.
- (2) If the court is satisfied—
 - (a) on the written or oral evidence of two medical practitioners—
 - (i) that the conditions mentioned in subsection (3) below are met in respect of the offender; and

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- (ii) as to the matters mentioned in subsection (4) below; and
- (b) that, having regard to the matters mentioned in subsection (5) below, it is appropriate,
- the court may, in addition to any sentence of imprisonment which it has the power or the duty to impose, make, subject to subsection (6) below, a direction (in this Act referred to as a “hospital direction”) authorising the measures mentioned in subsection (7) below.
- (3) The conditions referred to in subsection (2)(a)(i) above are—
- (a) that the offender has a mental disorder;
 - (b) that medical treatment which would be likely to—
 - (i) prevent the mental disorder worsening; or
 - (ii) alleviate any of the symptoms, or effects, of the disorder,
 is available for the offender;
 - (c) that if the offender were not provided with such medical treatment there would be a significant risk—
 - (i) to the health, safety or welfare of the offender; or
 - (ii) to the safety of any other person; and
 - (d) that the making of a hospital direction in respect of the offender is necessary.
- (4) The matters referred to in subsection (2)(a)(ii) above are—
- (a) that the hospital proposed by the two medical practitioners mentioned in subsection (2)(a) above is suitable for the purpose of giving the medical treatment mentioned in paragraph (b) of subsection (3) above to the offender; and
 - (b) that, were a hospital direction made, the offender could be admitted to such hospital before the expiry of the period of 7 days beginning with the day on which the direction is made.
- (5) The matters referred to in subsection (2)(b) above are—
- (a) the mental health officer’s report, prepared in accordance with section 59B of this Act, in respect of the offender;
 - (b) all the circumstances, including—
 - (i) the nature of the offence of which the offender was convicted; and
 - (ii) the antecedents of the offender; and
 - (c) any alternative means of dealing with the offender.
- (6) A hospital direction may authorise detention in a state hospital only if, on the written or oral evidence of the two medical practitioners mentioned in subsection (2)(a) above, it appears to the court—
- (a) that the offender requires to be detained in a state hospital under conditions of special security; and
 - (b) that such conditions of special security can be provided only in a state hospital.
- (7) The measures mentioned in subsection (2) above are—
- (a) in the case of an offender who, when the hospital direction is made, has not been admitted to the specified hospital, the removal, before

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- the expiry of the period of 7 days beginning with the day on which the direction is made, of the offender to the specified hospital by—
- (i) a constable;
 - (ii) a person employed in, or contracted to provide services in or to, the specified hospital who is authorised by the managers of that hospital to remove persons to hospital for the purposes of this section; or
 - (iii) a specified person;
- (b) the detention of the offender in the specified hospital; and
- (c) the giving to the offender, in accordance with Part 16 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), of medical treatment.
- (8) The court shall be satisfied as to the condition mentioned in subsection (3) (a) above only if the description of the offender’s mental disorder by each of the medical practitioners mentioned in subsection (2)(a) above specifies, by reference to the appropriate paragraph (or paragraphs) of the definition of “mental disorder” in section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), at least one type of mental disorder that the offender has that is also specified by the other.
- (9) A hospital direction—
- (a) shall specify, by reference to the appropriate paragraph (or paragraphs) of the definition of “mental disorder” in section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), the type (or types) of mental disorder that each of the medical practitioners mentioned in subsection (2)(a) above specifies that is also specified by the other; and
 - (b) may include such directions as the court thinks fit for the removal of the offender to, and the detention of the offender in, a place of safety pending the offender’s admission to the specified hospital.
- (10) In this section—
- “medical treatment” has the same meaning as in section 52D of this Act; and
 - “specified” means specified in the hospital direction.

59B Hospital direction: mental health officer’s report

- (1) This section applies where the court is considering making a hospital direction in relation to an offender under section 59A of this Act.
- (2) If directed to do so by the court, the mental health officer shall—
- (a) subject to subsection (3) below, interview the offender; and
 - (b) prepare a report in relation to the offender in accordance with subsection (4) below.
- (3) If it is impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the mental health officer need not do so.
- (4) The report shall state—
- (a) the name and address of the offender;

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- (b) if known by the mental health officer, the name and address of the offender’s primary carer;
- (c) in so far as relevant for the purposes of section 59A of this Act, details of the personal circumstances of the offender; and
- (d) any other information that the mental health officer considers relevant for the purposes of that section.

(5) In this section, “carer”, “primary”, in relation to a carer, and “mental health officer” have the same meanings as in section 57C of this Act.

59C Hospital direction: supplementary

(1) If, before the expiry of the period of 7 days beginning with the day on which a hospital direction is made, it appears to the court, or, as the case may be, the Scottish Ministers, that, by reason of emergency or other special circumstances, it is not reasonably practicable for the offender to be admitted to the hospital specified in the hospital direction, the court, or, as the case may be, the Scottish Ministers, may direct that the offender be admitted to such other hospital as is specified.

(2) Where—

- (a) the court makes a direction under subsection (1) above, it shall inform the person having custody of the offender; and
- (b) the Scottish Ministers make such a direction, they shall inform—
 - (i) the court; and
 - (ii) the person having custody of the offender.

(3) Where a direction is made under subsection (1) above, the hospital direction shall have effect as if the hospital specified in the hospital direction were the hospital specified by the court, or, as the case may be, the Scottish Ministers, under subsection (1) above.

(4) In this section, “court” means the court which made the hospital direction.”.

(7) In section 60 (appeals against hospital orders)—

- (a) for the word “hospital” where it first, second and fourth occurs there shall be substituted “compulsion”; and
- (b) for the word “renewal” there shall be substituted “extension”.

(8) In section 60A (appeal by prosecutor against hospital orders etc.), in subsection (1), for paragraphs (a) and (b) substitute—

- “(a) a compulsion order;
- (b) a restriction order;
- (c) a guardianship order;
- (d) a decision under section 57(2)(e) of this Act to make no order; or
- (e) a hospital direction.”.

(9) In section 60B (intervention orders), for the word “hospital” there shall be substituted “compulsion”.

(10) In section 61 (requirements as to medical evidence)—

- (a) in subsection (1), for the words from second “a” to “disorder” substitute “an approved medical practitioner”;

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- (b) in subsection (1A)—
 - (i) for “53(1)” substitute “ 52M(2)(a), 53(2)(a) ”; and
 - (ii) for “58(1)(a)(i)” substitute “ 57A(2)(a) ”;
 - (c) in subsection (2), after first “of” insert “ section 52D(2)(a) or ”;
 - (d) in subsection (3), after “section” insert “ 52D(2)(a) or ”;
 - (e) in subsection (6), for “53(1), 54(1)(c), 58(1)(a) and 59A(3)(a) and (b)” substitute “ 52M(2)(a), 53(2)(a), 54(1)(c), 57A(2)(a), 58(1A)(a), 59A(2)(a) and 60C(2)(a) ”; and
 - (f) after subsection (6) insert—

“(7) In this section, “approved medical practitioner” has the meaning given by section 22 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).”.
- (11) In section 118 (disposal of appeals), in subsection (6), for the words “(3) and (4)” substitute “ (3) to (6) ”.
- (12) In section 190 (disposal of appeal where appellant insane), in subsection (2), for the words “Subsection (4)” substitute “ Subsections (3) to (6) ”.
- (13) In section 200 (remand for inquiry into physical or mental conditions)—
 - (a) in subsection (2), for paragraph (b)(ii) there shall be substituted—

“(ii) that the accused could be admitted to a hospital that is suitable for his detention,”; and
 - (b) in subsection (3)(a), for the words “a suitable hospital is available” there shall be substituted “ he could be admitted to a hospital that is suitable ”.
- (14) In section 210 (consideration of time spent in custody), in subsection (1)—
 - (a) in paragraph (a), after “virtue” insert “ of an assessment order, a treatment order or an interim compulsion order or by virtue ”; and
 - (b) in paragraph (c)(iii), after “virtue” insert “ of an assessment order, a treatment order or an interim compulsion order or by virtue ”.
- ^{F32}(15)
- (16) In section 307 (interpretation), in subsection (1)—
 - (a) after the definition of “appropriate court” there shall be inserted—

““assessment order” has the meaning given by section 52D of this Act;”;
 - (b) after the definition of “complaint” there shall be inserted—

““compulsion order” has the meaning given by section 57A of this Act;”;
 - (c) after the definition of “indictment” there shall be inserted—

““interim compulsion order” has the meaning given by section 53 of this Act;”;
 - (d) after the definition of “Lord Commissioner of Justiciary” there shall be inserted—

““mental disorder” has the meaning given by section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);

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- “Mental Welfare Commission” means the Mental Welfare Commission for Scotland;”;
- (e) after the definition of “training school order” there shall be inserted—
- ““treatment order” has the meaning given by section 52M of this Act;”.

Textual Amendments

- F30** Word in sch. 4 para. 8(2)(b) (in the inserted 1995 c. 46, s. 54(2B)) repealed (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. 2](#)
- F31** Words in sch. 4 para. 8(4)(b)(ii) 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\(27\)](#)
- F32** Sch. 4 para. 8(15) repealed (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 2 para. 48\(b\)](#); S.S.I. 2010/413, art. 2, [sch. \(with art. 3\(1\)\)](#)

Commencement Information

- I36** Sch. 4 para. 8 in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

The Adults with Incapacity (Scotland) Act 2000 (asp 4)

- 9 (1) The Adults with Incapacity (Scotland) Act 2000 shall be amended as follows.
- (2) In section 35(5) (definitions of certain expressions for the purposes of Part 4 of Act), for the words “who is liable to be detained there under the 1984 Act” substitute “whose detention there is authorised by virtue of the Criminal Procedure (Scotland) Act 1995 (c. 46) or the 2003 Act”.
- (3) In section 47(2) (authority in relation to medical treatment of incapable adult), after “section” insert “and sections 234, 237, 240, 242, 243 and 244 of the 2003 Act”.
- (4) In section 57 (application for guardianship order)—
- (a) in subsection (3)(a), for “a” where it second occurs substitute “an approved”; and
- (b) after subsection (6) insert—
- “(7) In subsection (3)(a), “approved medical practitioner” has the meaning given by section 22 of the 2003 Act.”.
- (5) In section 87(1) (interpretation)—
- (a) in the definition of “mental disorder”, for the words from “means” to the end substitute “has the meaning given by section 328 of the 2003 Act”;
- (b) after the definition of “mental disorder” insert—
- ““mental health officer” has the meaning given by section 329 of the 2003 Act;”;
- (c) in the definition of “Mental Welfare Commission”, for the words “section 2 of the 1984 Act” substitute “section 4 of the 2003 Act”;

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- (d) in the definition of “nearest relative”, for the words from “means” to the end substitute “ has the meaning given by section 254 of the 2003 Act ”; and
- (e) after the definition of “the 1984 Act” insert—

““the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).”.

Commencement Information

I37 Sch. 4 para. 9 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

The Regulation of Care (Scotland) Act 2001 (asp 8)

- 10 In section 77(1) of the Regulation of Care (Scotland) Act 2001 (interpretation)—
- (a) in the definition of “independent hospital”, for the words from “is” to the end substitute “ , subject to subsection (2) below, is not a health service hospital ”; and
 - (b) in the definition of “mental disorder”, for “Mental Health (Scotland) Act 1984 (c. 36)” substitute “ Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) ”.

Commencement Information

I38 Sch. 4 para. 10(b) in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

The Housing (Scotland) Act 2001 (asp 10)

- 11 In paragraph 4(6) of schedule 7 to the Housing (Scotland) Act 2001 (power of Scottish Ministers to remove director, trustee, etc. of a registered social landlord), for the words “Mental Health (Scotland) Act 1984 (c. 36)” substitute “ Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) ”.

Commencement Information

I39 Sch. 4 para. 11 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

The Community Care and Health (Scotland) Act 2002 (asp 5)

- 12 (1) The Community Care and Health (Scotland) Act 2002 shall be amended as follows.
- (2) In section 4(1) (payment towards cost of accommodation more expensive than local authority would expect usually to provide), for the words from “section 7” to “authorities)” substitute “ section 25 of the 2003 Act (provision of care and support services for persons who have or have had a mental disorder) ”.
 - (3) In section 6(1)(a) (deferred payment of accommodation costs) for the words from “section 7” to “authorities)” substitute “ section 25 of the 2003 Act (provision of care and support services for persons who have or have had a mental disorder) ”.

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Commencement Information

I40 Sch. 4 para. 12 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

The Scottish Public Services Ombudsman Act 2002 (asp 11)

13 In schedule 3 to the Scottish Public Services Ombudsman Act 2002 (which specifies tribunals for the purpose of making the administrative actions of certain administrative staff of those tribunals liable to investigation under that Act), after paragraph 4 insert—

“4A The Mental Health Tribunal for Scotland.”

Commencement Information

I41 Sch. 4 para. 13 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

SCHEDULE 5

(introduced by section 331(2) and (3))

REPEALS AND REVOCATIONS

PART 1

REPEALS

Commencement Information

I42 Sch. 5 Pt. 1 in force at 5.10.2005 for specified purposes by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

<i>Enactment</i>	<i>Extent of repeal</i>
The National Health Service (Scotland) Act 1978 (c. 29)	In section 102, paragraph (a) of subsection (4), the word “or” immediately following that paragraph and subsection (5).
The Mental Health (Scotland) Act 1984 (c. 36)	The whole Act ^{F33} with the exception of section 10(1)(b) and (c) and (2) and section 95].
The Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73)	Section 51(2)(b).
The Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)	In section 7(9), in paragraph (c) of the definition of “the managers”, the words from

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	“a State Hospital Management Committee” to “constituted”).
The Children Act 1989 (c. 41)	In Schedule 13, paragraph 50.
The National Health Service and Community Care Act 1990 (c. 19)	In Schedule 5, paragraph 13. In Schedule 9, paragraph 28.
The Access to Health Records Act 1990 (c. 23)	In section 11, in the definition of “health service body”, paragraph (c).
The Mental Health (Detention) (Scotland) Act 1991 (c. 47)	The whole Act.
The Further and Higher Education (Scotland) Act 1992 (c. 37)	In Schedule 9, paragraph 9.
The Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9)	Section 4(2) and (3). In Schedule 5, paragraph 2.
The State Hospitals (Scotland) Act 1994 (c. 16)	Section 2(4) and (5).
The Children (Scotland) Act 1995 (c. 36)	In Schedule 4, paragraph 33.
The Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)	Section 13(3).
The Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40)	In Schedule 4, paragraph 50.
The Criminal Procedure (Scotland) Act 1995 (c. 46)	In section 52, subsections (2) to (7). In section 58, subsection (1); in subsections (2) and (3), the words “(1) or”; subsections (4) and (5); in subsection (7), the words “hospital order or” and ^{F34} ...; subsection (9); subsection (10); in subsection (11), the words “subsection (1) of”. Section 59(3). In section 200(9), the words “within 24 hours of his remand or, as the case may be, committal,”. In section 210(1), in paragraphs (a) and (c)(iii), the words “52, 53 or”. In section 230(1), the words “, not extending beyond 12 months from the date of the requirement,”. In section 307(1), the definitions of “hospital order”, “residential establishment” and “responsible medical officer”.
The Mental Health (Patients in the Community) Act 1995 (c. 52)	Sections 4 to 6. Schedule 2.
The Crime (Sentences) Act 1997 (c. 43)	In schedule 3, paragraphs 6 to 10.
The Crime and Punishment (Scotland) Act 1997 (c. 48)	Sections 7 and 8. In Schedule 1, paragraph 9.
The Crime and Disorder Act 1998 (c. 37)	In Schedule 8, paragraph 55.

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The Health Act 1999 (c. 8)	In Schedule 4, paragraph 70.
The Mental Health (Public Safety and Appeals) (Scotland) Act 1999 (asp 1)	The whole Act.
The Mental Health (Amendment) (Scotland) Act 1999 (c. 32)	The whole Act.
The Immigration and Asylum Act 1999 (c. 33)	Section 120(4) and (5). In Schedule 15, paragraph 10.
The Adults with Incapacity (Scotland) Act 2000 (asp 4)	In section 9(1), the words “Without prejudice to their functions under the 1984 Act,” and paragraphs (a), (b), (e) and (f). In section 12(1)(b), the words “or (e)”. In section 35(1)(b), the words “or private psychiatric hospital”. Section 38(4). In section 47(2), the words “and to”. Section 48(1). In section 57(3)(a), the words from “approved” to the end. Section 87(2) and (3). In schedule 1, paragraph 1(c)(ii) and the word “or” immediately following it. In schedule 5, paragraph 17(3) to (24).
The Regulation of Care (Scotland) Act 2001 (asp 8)	Section 2(5)(b). In section 77, in subsection (1), the definition of “private psychiatric hospital” and, in subsection (2), the words “(not being a private psychiatric hospital)”. In schedule 3, paragraph 11(2) to (7).
The International Criminal Court (Scotland) Act 2001 (asp 13)	Section 25.
The Scottish Public Services Ombudsman Act 2002 (asp 11)	In schedule 6, paragraph 6.

Textual Amendments

- F33** Words in Sch. 5 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(28)**
- F34** Words in Sch. 5 repealed (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. 2**

Status: Point in time view as at 25/05/2018.

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PART 2

REVOCATIONS

Commencement Information

I43 Sch. 5 Pt. 2 in force at 5.10.2005 by S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

Enactment

Extent of repeal

The Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999 (S.I. 1999/1820)

In Schedule 2, paragraph 74.

The Postal Services Act 2000 (Consequential Modifications No.1) Order 2001 (S.I. 2001/1149)

In Schedule 1, paragraph 60.

SCHEDULE 6

(introduced by section 332(1))

TRANSITORY AMENDMENTS OF THE MENTAL HEALTH (SCOTLAND) ACT 1984

- 1 Sections 33, 64 and 66 of the Mental Health (Scotland) Act 1984 (c. 36) shall, until their repeal by this Act, have effect as follows.
- 2 In section 33 (discharge of patients from hospital), in subsection (4)—
 - (a) after “is”, where secondly occurring, insert “ not ”; and
 - (b) in each of paragraphs (a) and (b) omit “not”.
- 3 In section 64 (appeal by patient subject to restriction order)—
 - (a) in subsection (1)—
 - (i) after “shall” insert “ , subject to subsection (2) of this section, ”;
 - (ii) after “is”, where first occurring, insert “ not ”;
 - (iii) in each of paragraphs (a) and (b) omit “not”;
 - (iv) omit “and (in either case)” and paragraph (c);
 - (b) in subsection (2)—
 - (i) for “(1)” substitute “ (A1) ”;
 - (ii) after “is”, where secondly occurring, insert “ not ”;
 - (iii) for the words from “not” to “subsection”, where thirdly occurring, substitute “ is satisfied that it is appropriate for the patient to remain liable to be recalled to hospital for further treatment ”.
- 4 In section 66 (further consideration of case of conditionally discharged patient) in subsection (3) after “is”, where first, secondly and thirdly occurring, insert “ not ”.

Status:

Point in time view as at 25/05/2018.

Changes to legislation:

Mental Health (Care and Treatment) (Scotland) Act 2003 is up to date with all changes known to be in force on or before 22 May 2024. 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.