

MENTAL HEALTH (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE & A SUMMARY OF THE ACT

Part One – the 2003 Act

Section 10: Maximum suspension of detention measures

33. A patient who is subject to a CTO or an interim CTO can have measures authorising the detention under those orders suspended in terms of section 127 of the 2003 Act. At present, a patient's responsible medical officer (RMO) can grant a certificate suspending detention, as an important part of the patient's rehabilitation process, allowing patients extended time out of hospital, but still subject to conditions imposed by the RMO. The power is exercised at the RMO's discretion. Under the current provisions, an RMO can suspend measures authorised by a CTO for up to 6 months in a single certificate. More than one certificate can be granted but the total period of suspension cannot exceed 9 months in any 12 month period. For the purposes of this provision, section 127(4) provides that a period may be expressed as the duration of an event or a series of events and any associated travel. Section 128 of the 2003 Act allows for suspension of measures other than detention for those subject to a CTO. More than one certificate can be granted but the total period cannot exceed 3 months.

Amendment of section 127

34. Section 10 of the Act amends section 127 of the 2003 Act by providing that the maximum period of suspension of detention for a CTO may not exceed 200 days in any 12 month period; however, any period of suspension authorised by the RMO of 8 hours or less is not to be counted towards that total. For the purpose of calculation, any period of more than 8 hours and less than 24 hours is counted as one day towards the total period, whether it falls within one day or spans two days. The amendments made to section 127 will also apply to patients subject to a compulsion order (CO) by virtue of section 179 of the 2003 Act.

Amendment of section 128

35. **Section 10** amends section 128 so that the maximum total period of suspension of measures other than detention is 90 days. A day counts as a whole day towards the 90 day limit if any period of suspension falls on that calendar day.

Amendment of section 224

36. **Section 10** further amends section 224, by making similar amendments to those made to section 127 referenced above. As is the case with section 127, a patient's RMO can, with the consent of the Scottish Ministers, grant suspension of detention for a maximum of 9 months in a 12 month period. Section 10 amends this to provide that suspension of detention can now be granted for a maximum of 200 days in any 12 month period. Any period of suspension authorised which is 8 hours or less is not to be counted towards

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the maximum of 200 days, and periods of more than 8 hours but less than 24 hours are to be counted as one day, whether it falls within one day or spans two days.