

*Status: Point in time view as at 21/03/2005.*

*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 18 September 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 **S**

(introduced by section 4)

### THE MENTAL WELFARE COMMISSION FOR SCOTLAND

#### PART 1 **S**

##### MEMBERSHIP, PROCEEDINGS ETC.

VALID FROM 05/10/2005

##### *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.

VALID FROM 05/10/2005

##### *General powers*

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

##### *Membership*

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

*Status: Point in time view as at 21/03/2005.*

**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 18 September 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)

- (b) specify the number (including a minimum or maximum number) of—
  - (i) the members of the Commission; or
  - (ii) any category of member,
 that may be appointed under sub-paragraph (1) above;
- (c) specify the maximum term of appointment (including any reappointment) of a member appointed under that sub-paragraph; or
- (d) amend sub-paragraph (2) above by adding to it further posts, the holders of which shall—
  - (i) be members *ex officio* of the Commission; and
  - (ii) cease to be such members on ceasing to hold such posts.

#### Commencement Information

**II** Sch. 1 para. 3 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, [Sch. 1](#)

VALID FROM 05/10/2005

#### *Terms of office etc.*

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

VALID FROM 05/10/2005

#### *Eligibility for reappointment*

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

VALID FROM 05/10/2005

#### *Remuneration, pensions, allowances etc.*

- 6
- The Commission shall pay—

*Status: Point in time view as at 21/03/2005.*

**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 18 September 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)*

- (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.

VALID FROM 05/10/2005

*Appointment etc. of chief officer and other staff*

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

*Status: Point in time view as at 21/03/2005.*

*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 18 September 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)*

*Regulations as to proceedings and delegation of functions*

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

**Commencement Information**

**I2** Sch. 1 para. 8 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, [Sch. 1](#)

VALID FROM 05/10/2005

*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).

**PART 2 S**

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—

*Status: Point in time view as at 21/03/2005.*

**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 18 September 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)*

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

#### Commencement Information

**I3** Sch. 1 para. 10 in force at 1.7.2003 by S.I. 2003/316, art. 2

## SCHEDULE 2 **S**

(introduced by section 21)

### THE MENTAL HEALTH TRIBUNAL FOR SCOTLAND

#### PART 1 **S**

##### 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

*Status: Point in time view as at 21/03/2005.*

*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 18 September 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)*

- (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

- I4** 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**
- I5** 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**
- I6** Sch. 2 para. 1(2)(a)(b) in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, **Sch. 2**
- I7** 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**

VALID FROM 05/10/2005

#### *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
  - (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,

*Status: Point in time view as at 21/03/2005.*

**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 18 September 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)*

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**

- 18** Sch. 2 para. 3(1)(2)(4)-(7) in force at 3.5.2004 by [S.S.I. 2004/153](#), [art. 3](#), [Sch. 2](#)
- 19** Sch. 2 para. 3(3) in force at 26.3.2004 for specified purposes by [S.S.I. 2004/153](#), [art. 2](#), [Sch. 1](#)
- 110** 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—
  - (a) may at any time resign office by notice to the Scottish Ministers;
  - (b) shall vacate office on the day on which such member attains the age of 70; and
  - (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;
  - (b) the member of the Tribunal is aged 69 or over;
  - (c) the President has made a recommendation to the Scottish Ministers against the reappointment;

*Status: Point in time view as at 21/03/2005.*

*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 18 September 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)*

- (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.

**Commencement Information**

**I11** 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—
    - (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**

**I12** 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) The Scottish Ministers may 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



*Status: Point in time view as at 21/03/2005.*

*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 18 September 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)*

and Retirement Act 1993 (c. 8) applies, except to the extent provided by virtue of that Act.

#### Commencement Information

**I13** Sch. 2 para. 6 in force at 3.5.2004 by S.S.I. 2004/153, art. 3, Sch. 2

## PART 2 **S**

### 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
  - (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 an application to the Tribunal under section 191 or 192 of this Act, the convener shall be—
- (a) the President; or
  - (b) a person selected by the President from the panel mentioned in paragraph 2 above.
- (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.

#### 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)**

*Status: Point in time view as at 21/03/2005.*

**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 18 September 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)*

- 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)**
- 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

- I14 Sch. 2 para. 7 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, **Sch. 2**

#### *Staff and accommodation*

- 8 (1) The Scottish Ministers may appoint such staff and provide such accommodation for the Tribunal as they may determine.
- (2) The Scottish Ministers may pay, or make provision for paying, to, or in respect of, the Tribunal's staff, such remuneration, expenses, pensions, allowances and gratuities (including by way of compensation for loss of employment) as the Scottish Ministers may determine.
- (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.

#### 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

- I15 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

- I16 Sch. 2 para. 9 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, **Sch. 2**

*Status: Point in time view as at 21/03/2005.*

*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 18 September 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)*

## PART 3 **S**

### 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 21/03/2005.*

*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 18 September 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**

**I17** 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**

**I18** 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 21/03/2005.*

*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 18 September 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

**I19** 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 being requested to do so by one of the parties, send a copy of the document mentioned in sub-paragraph (3) above to each party.

#### Commencement Information

**I20** Sch. 2 para. 13 in force at 3.5.2004 by [S.S.I. 2004/153](#), [art. 3](#), [Sch. 2](#)

## PART 4 **S**

### REPORTS, INFORMATION ETC.

#### *Annual report*

VALID FROM 05/10/2005

- 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,

*Status: Point in time view as at 21/03/2005.*

*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 18 September 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)*

such information relating to the discharge of the Tribunal’s functions as the Scottish Ministers may direct.

**Commencement Information**

**I21** 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**

**I22** Sch. 2 para. 16 in force at 3.5.2004 by [S.S.I. 2004/153](#), [art. 3](#), [Sch. 2](#)

VALID FROM 05/10/2005

**SCHEDULE 3 S**  
*(introduced by section 71)*

**APPLICATION OF CHAPTER 1 OF PART 7 TO CERTAIN PATIENTS**

VALID FROM 05/10/2005

**SCHEDULE 4 S**  
*(introduced by section 331(1))*

**MINOR AND CONSEQUENTIAL AMENDMENTS**

*Status: Point in time view as at 21/03/2005.*

*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 18 September 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)*

PROSPECTIVE

## SCHEDULE 5 **S**

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

### REPEALS AND REVOCATIONS

#### PART 1 **S**

##### REPEALS

<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 <sup>F3</sup> 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 “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.

*Status: Point in time view as at 21/03/2005.*

*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 18 September 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)*

The Criminal Procedure (Scotland) Act 1995 (c. 46)	<p>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 <sup>F4</sup>...; 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”.</p>
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.
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)	<p>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).</p>



*Status: Point in time view as at 21/03/2005.*

*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 18 September 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)*

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

- F3** 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)**
- F4** 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**

## PART 2 **S**

### REVOCATIONS

<i>Enactment</i>	<i>Extent of repeal</i>
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 **S**

*(introduced by section 332(1))*

### TRANSITORY AMENDMENTS OF THE MENTAL HEALTH (SCOTLAND) ACT 1984

- 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.
- In section 33 (discharge of patients from hospital), in subsection (4)—
  - after “is”, where secondly occurring, insert “ not ”; and
  - in each of paragraphs (a) and (b) omit “not”.
- In section 64 (appeal by patient subject to restriction order)—
  - in subsection (1)—
    - after “shall” insert “ , subject to subsection (2) of this section, ”;

---

*Status: Point in time view as at 21/03/2005.*

**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 18 September 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)*

---

- (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 21/03/2005.

**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 18 September 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.