
EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force the provisions in Part 3 of the Mental Health (Scotland) Act 2015 (“the Act”). It also makes transitional provisions. The Order appoints two days for commencement of the provisions: 15th September 2017 and 30th September 2017.

Part 3 of the Act makes amendments to the Criminal Justice (Scotland) Act 2003 (“the Criminal Justice Act”), to make provision in relation to the rights of victims of certain offenders who have been made subject to detention in hospital in connection with the offence perpetrated against the victim.

The new provisions of the Criminal Justice Act, as amended, will enable victims of offenders who have been made subject to a compulsion order and a restriction order (under the Criminal Procedure (Scotland) Act 1995 – “the 1995 Act”), a hospital direction (also under the 1995 Act) or a transfer for treatment direction (under the Mental Health (Care and Treatment) (Scotland) Act 2003) to be provided with specified information about the offender and to be given an opportunity to make representations in certain circumstances. These provisions are collectively known as the “Victim Notification Scheme”.

This Order commences certain provisions on the first appointed day for the purpose only of enabling victims to register with the Victim Notification Scheme i.e. by making a request in accordance with the relevant provisions to receive information or make representations under the Scheme. The provisions which enable the Scottish Ministers to obtain information about offenders for the purposes of the Scheme are also commenced on the first appointed day, as are the interpretation provisions. On the second appointed day, all remaining provisions of Part 3 are commenced for all purposes.

Articles 3 to 8 make transitional provisions in connection with the commencement of Part 3. Articles 3 and 4 relate to the information that is to be provided to victims of offenders who have been sentenced to imprisonment for a period of 18 months or more, and detained in hospital in connection with that sentence of imprisonment, before the first appointed day. Articles 5 to 8 relate to the information that is to be provided to victims of offenders who have been made subject to, or have been treated as subject to, a compulsion order and restriction order before the first appointed day.

By virtue of section 61(1) of the Act, section 17 and Part 4 (sections 61 and 62) came into force on 5th August 2015, which was the day after the Act received Royal Assent (on 4th August 2015). Sections 14, 15, 16 and 18 of the Act, which make amendments to chapter 3 of Part 17 of the Mental Health (Care and Treatment) (Scotland) Act 2003 in respect of detention in conditions of excessive security, came into force on 16th November 2015. Section 37 of the Act creates a duty on the Scottish Ministers to carry out a review of the arrangements for investigating the deaths of patients with mental disorder; section 37 came into force on 24th December 2015. Sections 23(1) and (2), 29, 32, 33, 54 and 58 were brought into force for the purposes of allowing regulations to be made; those provisions came into force on 5th May 2017. The remaining provisions of Parts 1 and 2 of the Act were brought into force on 30th June 2017, with the exception of sections 40 to 45 (which make provision to amend the 1995 Act in respect of criminal cases) which are brought into force on 30th September 2017.