Draft Order laid before the Scottish Parliament under section 326(4)(b) of the Mental Health (Care and Treatment) (Scotland) Act 2003, for approval by resolution of the Scottish Parliament. This draft supersedes the draft laid on 23rd June 2005.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2005 No.

MENTAL HEALTH

The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005

Made - - - - 2005

Coming into force in accordance with article 1

The Scottish Ministers, in exercise of the powers conferred by section 330 of the Mental Health (Care and Treatment) (Scotland) Act 2003(**a**), and of all other powers enabling them in that behalf, hereby make the following Order, a draft of which has, in accordance with section 326(4)(b) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation and commencement

1. This Order may be cited as the Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 and shall come into force on the day after the day on which it is made.

Modifications of enactments

2. Schedule 1, which contains modifications of enactments, shall have effect.

Repeals

3. The repeals in Schedule 2 shall have effect.

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
2005

(**a**) 2003 asp 13.

SCHEDULE 1

Article 2

MODIFICATION OF ENACTMENTS

Polish Resettlement Act 1947 (c.19)

1.—(1) The Polish Resettlement Act 1947 is amended as follows.

(2) In section 11 (application to Scotland), in subsection (3)(b) for "Mental Health (Scotland) Act 1984" substitute "Mental Health (Care and Treatment) (Scotland) Act 2003".

National Assistance Act 1948 (c.29)

2.—(1) The National Assistance Act 1948 is amended as follows.

(2) In section 65 (general provisions as to application to Scotland) in paragraph (f)(**a**), for "section 7 (functions of local authorities) of the Mental Health (Scotland) Act 1984" substitute "section 25 (care and support services etc.) of the Mental Health (Care and Treatment) (Scotland) Act 2003".

Police (Scotland) Act 1967 (c.77)

3.—(1) The Police (Scotland) Act 1967 is amended as follows.

(2) In section 9 (civilian employees)(**b**), in subsection (1D) for "Mental Health (Scotland) Act 1984 (c.36)" substitute "Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)" and for "Act of 1984" substitute "Act of 2003".

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

4.—(1) The Social Work (Scotland) Act 1968 is amended as follows.

(2) In section 1 (local authorities for the administration of the Act) in subsection (4)(b)(**c**), for "Mental Health (Scotland) Act 1984" substitute "Mental Health (Care and Treatment) (Scotland) Act 2003".

(3) In section 92A (power of the Secretary of State to make grants)(**d**), for "sections 7 and 8 of the Mental Health (Scotland) Act 1984" substitute "sections 25 to 31 of the Mental Health (Care and Treatment) (Scotland) Act 2003".

(4) In section 94 (interpretation), in subsection (1)(**e**)–

(a) for the definition of "hospital" substitute–

""hospital" has the meaning assigned to it by section 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003"; and

(b) in the definition of "mental disorder" for "section 1(2) of the Mental Health (Scotland) Act 1984" substitute "section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003".

(**a**) Section 65(f) was amended by Schedule 9 of the National Health Service and Community Care Act 1990 (c.19).
(**b**) Section 9 was substituted by section 49 of the Police and Magistrates' Courts Act 1994 (c.29) and amended by section 76 of the Criminal Justice (Scotland) Act 2003 (asp 7).
(**c**) Section 1(4)(b) was amended by the Mental Health (Scotland) Act 1984, section 127(1) and paragraph 14 of Schedule 3.
(**d**) Section 92A was inserted by the National Health Service and Community Care Act 1990 (c.19), section 58.
(**e**) To which there are amendments not relevant to this Order.

Chronically Sick and Disabled Persons Act 1970 (c.44)

5.—(1) The Chronically Sick and Disabled Persons Act 1970 is amended as follows.

(2) In section 18 (information as to accommodation of younger with older persons under Part III of National Assistance Act 1948), in subsection (2)(**a**), for "section 1(2) of the Mental Health (Scotland) Act 1984" substitute "section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003".

Rehabilitation of Offenders Act 1974 (c.53)

6.—(1) The Rehabilitation of Offenders Act 1974 is amended as follows.

(2) In section 5 (rehabilitation periods for particular sentences) in subsection (7)(**b**), for "Part VI of the Mental Health (Scotland) Act 1984 (with or without a restriction order)" substitute "Part VI of the Criminal Procedure (Scotland) Act 1995".

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

7.—(1) The National Health (Service) Act 1978 is amended as follows.

(2) In section 100 (accommodation for persons displaced in course of development) in subsection (1)(**c**), for "Mental Health (Scotland) Act 1984" substitute "Mental Health (Care and Treatment) (Scotland) Act 2003".

(3) In section 108 (interpretation and construction) in subsection (1), in the definition of "illness"(**d**), for "the Mental Health (Scotland) Act 1984" substitute "section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003".

Concessionary Travel for Handicapped Persons (Scotland) Act 1980 (c.29)

8.—(1) The Concessionary Travel for Handicapped Persons (Scotland) Act 1980 is amended as follows.

(2) In section 2 (interpretation)(**e**), in subsection (1)(a) for "the Mental Health (Scotland) Act 1984" substitute "section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003".

Solicitors (Scotland) Act 1980 (c.46)

9.—(1) The Solicitors (Scotland) Act 1980 is amended as follows.

(2) In section 18 (suspension of practising certificates) in subsection (1)(a)–

(a) for "Mental Health (Scotland) Act 1984" substitute "Mental Health (Care and Treatment) (Scotland) Act 2003"; and

(b) for "admitted to hospital and becomes liable to be detained there" substitute "detained in hospital".

(3) In section 19 (further provisions relating to suspension of practising certificate), in subsection (5A) for "liable to be detained" substitute "detained in hospital".

(**a**) Section 18(2) was amended by the Children (Scotland) Act 1995 (c.36), section 105(4) and Schedule 4 and the Mental Health (Scotland) Act 1984, section 127(1) and Schedule 3.

(**b**) Section 5(7) was relevantly amended by the Mental Health (Scotland) Act 1984, section 127(1) and Schedule 3, and the Mental Health (Amendment) Act 1982, section 65(1) and Schedule 3.

(**c**) Section 100(1) was relevantly amended by the Mental Health (Scotland) Act 1984, section 127(1) and Schedule 3.

(**d**) The definition of "illness" was amended by the Mental Health (Scotland) Act 1984, section 127(1) and Schedule 3.

(**e**) Section 2 was amended by the Mental Health (Scotland) Act 1984, section 127(1) and Schedule 3 and by the Transport Act 1985 (c.67), section 139(2) and (3) and Schedule 7.

(4) In section 24F (suspension of registration certificates)(**a**), in subsection (1)(a)–

(a) for "Mental Health (Scotland) Act 1984" substitute "Mental Health (Care and Treatment) (Scotland) Act 2003"; and

(b) for "admitted to a hospital and becomes liable to be detained there or becomes subject to guardianship" substitute "detained in hospital".

(5) In section 24G (further provisions relating to suspension of registration certificate)(**b**) for "liable to be detained or subject to guardianship" substitute "detained".

Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55)

10.—(1) The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 is amended as follows.

(2) In Schedule 1 (ineligibility for and disqualification and excusal from jury service), Part I (persons ineligible), Group C (the mentally disordered)(**c**)–

(a) for "Mental Health (Scotland) Act 1960" substitute "Mental Health (Care and Treatment) (Scotland) Act 2003"; and

(b) in paragraph (a)(i) for "resident in a hospital" substitute "detained in hospital under the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) or the Criminal Procedure (Scotland) Act 1995 (c.46)".

Contempt of Court Act 1981 (c.49)

11.—(1) The Contempt of Court Act 1981 is amended as follows.

(2) In Schedule 1 (times when proceedings are active for purposes of section 2), in paragraph 10 (criminal proceedings ceasing to be active)(**d**), in sub-paragraph (b) for "a transfer order ceases to have effect by virtue of section 73(1) of the Mental Health (Scotland) Act 1984" substitute "an assessment order or a treatment order ceases to have effect by virtue of sections 52H or 52R respectively of the Criminal Procedure (Scotland) Act 1995".

Representation of the People Act 1983 (c.2)

12.—(1) The Representation of the People Act 1983 is amended as follows.

(2) In section 3A (disfranchisement of offenders detained in mental hospitals)(**e**) in subsection (3)–

(a) in paragraph (a), after "57(2)(a) or (b)" insert ", 57A(2)"; and

(b) in paragraph (b), for "section 69 of the Mental Health (Scotland) Act 1984 or section 71 of that Act (being a person to whom that section applies by virtue of subsection (2)(a) of that section)" substitute "section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003".

(3) In section 7 (residence: patients in mental hospitals who are not detained offenders or on remand)(**f**), in subsection (6)(b), for "Mental Health (Scotland) Act 1984" substitute "Mental Health (Care and Treatment) (Scotland) Act 2003".

(**a**) Section 24F was inserted by the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 (S.S.I. 2000/121), regulation 37(1) and Schedule 1, paragraph 1(3).
(**b**) Section 24G was inserted by S.S.I. 2000/121.
(**c**) To which there are amendments not relevant to this Order.
(**d**) Paragraph 10 was relevantly amended by the 1984 Act, section 127(1) and Schedule 3.
(**e**) Section 3A was inserted by the Representation of the People Act 2000 (c.2), section 2.
(**f**) Section 7 was substituted by the Representation of the People Act 2000 (c.2), section 4 and amended by S.I. 2001/1184.

(4) In section 7A (residence: persons remanded in custody etc.)(**a**), in subsection (6)(d), for "a committal to a hospital under section 52" substitute "an assessment order under section 52D or a treatment order under section 52M".

Mental Health Act 1983 (c.20)

13.—(1) The Mental Health Act 1983 is amended as follows.

(2) In section 80 (removal of patient to Scotland)(**b**) in subsection (7) for "Mental Health (Scotland) Act 1984" substitute "Mental Health (Care and Treatment) (Scotland) Act 2003".

(3) In section 88 (patients absent from hospitals in England and Wales)(**c**), in subsection (3)(a) for "Mental Health (Scotland) Act 1984" substitute "Mental Health (Care and Treatment) (Scotland) Act 2003".

Health and Social Services and Social Security Adjudications Act 1983 (c.41)

14.—(1) The Health and Social Services and Social Security Adjudications Act 1983 is amended as follows.

(2) In section 21 (recovery of sums due to local authority where persons in residential accommodation have disposed of assets), in subsection (8)(**d**) for "section 7 (functions of local authorities) of the Mental Health (Scotland) Act 1984" substitute "section 25 (care and support services etc.) of the Mental Health (Care and Treatment) (Scotland) Act 2003".

Repatriation of Prisoners Act 1984 (c.47)

15.—(1) The Repatriation of Prisoners Act 1984 is amended as follows.

(2) In the Schedule (operation of certain enactments in relation to the prisoner)(**e**), in paragraph 5(3)(a) for "Mental Health (Scotland) Act 1984" substitute "Mental Health (Care and Treatment) (Scotland) Act 2003".

Foster Children (Scotland) Act 1984 (c.56)

16.—(1) The Foster Children (Scotland) Act 1984 is amended as follows.

(2) In section 2 (exceptions to section 1), in subsection (4) for "or subject to guardianship under the Mental Health (Scotland) Act 1984" substitute "under the Mental Health (Care and Treatment) (Scotland) Act 2003".

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

17.—(1) The Disabled Persons (Services, Consultation and Representation) Act 1986(**f**) is amended as follows.

(2) In section 1 (appointment of authorised representatives of disabled persons), in subsection (6) for "Part V of the 1984 Act" substitute "Parts 5, 6 and 7 of the 2003 Act".

(**a**) Section 7A was inserted by the Representation of the People Act 2000 (c.2), section 5 and amended by S.I. 2001/1184.
(**b**) Section 80 was amended by the Mental Health (Amendment) (Scotland) Act 1983 (c.39), section 41(2), Schedule 1, paragraph 2, Schedule 2, paragraph 1(a) and the 1984 Act, sections 79(1), 126(2)(d), 127 and Schedule 3, paragraph 51.
(**c**) Section 88 was amended by the 1984 Act, section 127 and Schedule 3, paragraph 52 and by S.I. 1986/596.
(**d**) Section 21(8) was amended by the National Health Service and Community Care Act 1990 (c.19), section 66(1) and Schedule 9, paragraph 25(2).
(**e**) To which there are amendments not relevant to this Order.
(**f**) To which there are amendments not relevant to this Order.

(3) In section 2 (rights of authorised representatives of disabled persons) in subsection (5)(e) for "Part V of the 1984 Act" substitute "Parts 5, 6 and 7 of the 2003 Act".

(4) In section 7 (persons discharged from hospital), in the definition of "medical treatment" in subsection (9) for "section 125(1) of the 1984 Act" substitute "section 329(1) of the 2003 Act".

(5) In section 16 (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);".

Insolvency Act 1986 (c.45)

18.—(1) The Insolvency Act 1986 is amended as follows.

(2) In section 389A (authorisation of nominees and supervisors)(**b**), in subsection (3)(c), for "section 125(1) of the Mental Health (Scotland) Act 1984" substitute "section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003".

(3) In section 390 (persons not qualified to act as insolvency practitioners)(**c**), in subsection (4)(c), for "section 125(1) of the Mental Health (Scotland) Act 1984" substitute "section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003".

Housing (Scotland) Act 1987 (c.26)

19.—(1) The Housing (Scotland) Act 1987 is amended as follows.

(2) In section 61 (secure tenant's right to purchase), in subsection (11) (q)(**d**) for "provided by him under section 90 of the Mental Health (Scotland) Act 1984" substitute "provided under section 102(1) of the National Health Service (Scotland) Act 1978".

Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c.47)

20.—(1) The Abolition of Domestic Rates Etc. (Scotland) Act 1987 is amended as follows.

(2) In Schedule 1A (personal community charge: exemption)(**e**)–

(a) in paragraph 1(1)(c) for "Part V or section 69, 70, 71 or 118 of the Mental Health (Scotland) Act 1984" substitute "Parts 5, 6 or 7 or sections 136 or 297 of the Mental Health (Care and Treatment) (Scotland) Act 2003 or sections 52D or 52M of the Criminal Procedure (Scotland) Act 1995";

(b) in paragraph 9(2) for "section 7 of the Mental Health (Scotland) Act 1984" substitute "section 25 (care and support services etc.) of the Mental Health (Care and Treatment) (Scotland) Act 2003"; and

(c) in paragraph 9(4) for "private hospital within the meaning of section 12 of the Mental Health (Scotland) Act 1984 which is registered under that Act" substitute "independent health care service within the meaning of section 2(5) of the Regulation of Care (Scotland) Act 2001 (asp 9)".

(**a**) There have been amendments to section 16 not relevant to this Order.
(**b**) Section 389A was inserted by the Insolvency Act 2000 (c.39), section 4. There have been other amendments not relevant to this Order.
(**c**) Section 390 was amended by the Enterprise Act 2002 (c.40), Schedule 21, paragraph 4. There have been other amendments not relevant to this Order.
(**d**) There are amendments to section 61(11) which are not relevant to this Order.
(**e**) Schedule 1A was inserted by the Local Government Finance Act 1988 (c.41), section 137 and paragraph 35 of Schedule 12.

Social Security Contributions and Benefits Act 1992 (c.4)

21.—(1) The Social Security Contributions and Benefits Act 1992 is amended as follows.

(2) In section 67 (exclusions by regulation), in subsection (2)(a)(iv), for "section 7 of the Mental Health (Scotland) Act 1984" substitute "section 25 (care and support services etc.) of the Mental Health (Care and Treatment) (Scotland) Act 2003".

(3) In section 72 (the care component), in subsection (8)(a)(ii), for "section 7 of the Mental Health (Scotland) Act 1984" substitute "section 25 (care and support services etc.) of the Mental Health (Care and Treatment) (Scotland) Act 2003".

Local Government Finance Act 1992 (c.14)

22.—(1) The Local Government Finance Act 1992 is amended as follows.

(2) In Schedule 1 (persons disregarded for purposes of discount)–

(a) in paragraph 1(1)(d) (persons in detention), for "Part V or section 69, 70, 71 or 118 of the Mental Health (Scotland) Act 1984" substitute "Parts 5, 6 and 7 or sections 136 or 297 of the Mental Health (Care and Treatment) (Scotland) Act 2003 or sections 52D or 52M or the Criminal Procedure (Scotland) Act 1995;"; and

(b) in paragraph 8(2)(**a**) (patients in homes in Scotland) for the definition of "private hospital" substitute–

> ""private hospital" means an independent health care service as defined in section 329(1) of the Mental Health (Care and treatment) (Scotland) Act 2003".

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

23.—(1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is amended as follows.

(2) In section 10 (life prisoners transferred to Scotland), in subsection (4)(b)(**b**) for paragraph (ib) substitute–

> "(ib) a decision of the responsible authority under article 6 (removal to Scotland of patients to Northern Ireland) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005(**c**) authorising the prisoner's removal to Scotland from Northern Ireland".

(3) In Schedule 6 (transitional provision and savings) paragraph 1, in the definition of "new provisions"(**d**) for "Mental Health (Scotland) Act 1984" substitute "Mental Health (Care and Treatment) (Scotland) Act 2003".

Criminal Justice and Public Order Act 1994 (c.33)

24.—(1) The Criminal Justice and Public Order Act 1994 is amended as follows.

(2) In section 102 (arrangements for the provision of prisoner escorts)(**e**)–

(a) in subsection (3)(b), for "Mental Health (Scotland) Act 1984" substitute "Mental Health (Care and Treatment) (Scotland) Act 2003"; and

(b) in subsection (6)–

(**a**) Paragraph 8(2) was amended by the Regulation of Care (Scotland) Act 2001 (asp 8) schedule 3, paragraph 18.
(**b**) In subsection (4)(b), paragraphs (ia) and (ib) were inserted by the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7) section 3.
(**c**) S.I. 2005/2078.
(**d**) The definition of "new provisions" has been amended by the Crime (Sentences) Act 1997 (c.43) section 55 and Schedule 4 paragraph 16 and the Criminal Justice and Public Order Act 1994 (c.33) section 134(1)(a)(ii).
(**e**) Section 102 was relevantly amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4, paragraph 93.

(i) in the definition of "hospital", for "Mental Health (Scotland) Act 1984" substitute "Mental Health (Care and Treatment) (Scotland) Act 2003";

(ii) in the definition of "hospital order"–

(aa) after "section" where first occurring, insert "52D, 52M,";

(bb) for "58" substitute "57A"; and

(cc) omit the words "or section 70 of the Act of 1984"; and

(iii) in the definition of "warrant"–

(aa) for "warrant under section 69, 73, 74 or 75 of the Act of 1984, a transfer direction under section 71 of that Act" substitute "transfer for treatment direction under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003"; and

(bb) for "the Act of 1984" substitute "the Mental Health (Care and Treatment) (Scotland) Act 2003".

Pensions Act 1995 (c.26)

25. In section 29 of the Pensions Act 1995 (persons disqualified for being trustees)(**a**), in subsection (4)(a) for "the Mental Health (Scotland) Act 1984" substitute "section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003".

Children (Scotland) Act 1995 (c.36)

26. In section 36 of the Children (Scotland) Act 1995 (welfare of certain children in hospitals and nursing homes etc.)(**b**), in subsection (3) for paragraph (c)(i) substitute–

"(c)(i) an independent health care service within the meaning of the Regulation of Care (Scotland) Act 2001 (asp 8).".

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

27.—(1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 19A(6)(i) (samples etc. from persons convicted of sexual and violent offences)–

(a) in paragraph (i) of the definition of "relevant sexual offence"–

(i) for sub-paragraph (iii), substitute–

"(iii) section 311 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (non-consensual sexual acts);"; and

(ii) for sub-paragraph (iv), substitute–

"(iv) section 313 of that Act (persons providing care services: sexual offences);"; and

(b) in the definition of "sentence of imprisonment" omit "hospital" where it first occurs and substitute "compulsion".

(3) In section 271(12) (evidence of vulnerable persons: special provisions) in the definition of "vulnerable person"–

(a) in paragraph (b)(ii) for "section 1(2) of the Mental Health (Scotland) Act 1984" substitute "section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003"; and

(**a**) There have been amendments to section 29 not relevant to this Order.
(**b**) Section 36 was amended by the Regulation of Care (Scotland) Act 2001 (asp 8), section 79 and paragraph 19 of Schedule 3.

(b) in paragraph (b)(ii) for "transfer direction under section 71(1) of the 1984 Act" substitute "transfer for treatment direction under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003".

(4) In section 274 (restrictions on evidence relating to sexual offences), in subsection (2)(g) for "106(1)(a) or 107 of the Mental Health (Scotland) Act 1984 (unlawful intercourse with mentally handicapped female or with patient)" substitute "311 (non-consensual sexual acts) or 313 (persons providing care services: sexual offences) of the Mental Health (Care and Treatment) (Scotland) Act 2003".

(5) In section 288C (prohibition of personal conduct of defence in cases of certain sexual offences) in subsection (2)(h), for "106(1)(a) or 107 of the Mental Health (Scotland) Act 1984 (c.36) (unlawful sexual intercourse with mentally handicapped female or with patient)" substitute "311 (non-consensual sexual acts) or 313 (persons providing care services: sexual offences) of the Mental Health (Care and Treatment) (Scotland) Act 2003".

(6) In Schedule 4 (making and effect of orders), in paragraph 2–

(a) in sub-paragraph (1)(b), for "medical practitioners approved for the purposes of section 20 of the Mental Health (Scotland) Act 1984" substitute "approved medical practitioners"; and

(b) after sub-paragraph (3) insert–

"(4) In this Schedule "approved medical practitioner" has the meaning given by section 22(4) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).".

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

28.—(1) The Adults with Incapacity (Scotland) Act 2000 is amended as follows.

(2) In section 1 (general principles and fundamental definitions) in subsection (4)(b) after "relative" insert ", named person".

(3) In section 26 (application for authority to intromit)–

(a) in subsection (1), paragraph (d) after "relative" insert ", named person"; and

(b) in subsection (3) after "carer" insert "his named person".

(4) In section 37 (residents whose affairs may be managed)–

(a) in subsection (3) at the end insert "and named person"; and

(b) in subsection (4)(a) at the end insert "and named person".

(5) In section 41 (duties and functions of managers of authorised establishments) in paragraph (f) after "relative" insert ", his named person".

(6) In section 66(3) (gifts) after "carer" insert ", his named person".

(7) In section 72 (discharge of guardian with financial powers) in subsection (2) after "carer" insert "his named person".

(8) In section 73 (recall of powers of guardian) in subsection (5) after "carer" insert ", his named person".

(9) In section 87(1) (interpretation) after the definition of "Mental Welfare Commission" insert–

""named person" has the meaning given by section 329 of the 2003 Act;".

Sexual Offences (Amendment) Act 2000 (c.44)

29.—(1) The Sexual Offences (Amendment) Act 2000 is amended as follows.

(2) In section 4 (meaning of "position of trust") in subsection (9) (**a**) in the definition of "private hospital"–

(**a**) Section 4(9) was amended by the Regulation of Care (Scotland) Act 2001, schedule 3, paragraph 25.

(a) omit "has";

(b) in paragraph (a) for "the meaning given by section 12(2) of the Mental Health (Scotland) Act 1984" substitute "means "private psychiatric hospital" within the meaning of section 77(1) of the Regulation of Care (Scotland) Act 2001 (asp 8)"; and

(c) in paragraph (b) after "Ireland," insert "has".

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

30.—(1) The Regulation of Care (Scotland) Act 2001 shall be amended as follows.

(2) In section 77 (interpretation) in subsection (1)(**a**)–

(a) for the definition of "private psychiatric hospital" substitute–

""private psychiatric hospital" means any premises used or intended to be used for the provision of medical treatment to one or more patients subject to an order or direction under the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) or the Criminal Procedure (Scotland) Act 1995 (c.46) (whether or not other persons are treated there), not being–

(a) any health service hospital (as defined in section 108(1) of the National Health Service (Scotland) Act 1978 (c.29);

(b) any state hospital; or

(c) otherwise an independent health care service;"; and

(b) after the definition of "medical records" insert–

" "medical treatment" has the meaning given by section 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);".

Scottish Public Services Ombudsman Act 2002 (asp 11)

31.—(1) The Scottish Public Services Ombudsman Act 2002 is amended as follows.

(2) In schedule 4 (matters which the Ombudsman must not investigate) in paragraph 11 for paragraphs (a) and (b) substitute–

"(a) section 51 (Commission's power to revoke short-term detention certificate or extension certificate) of the Mental Health (Care and Treatment) (Scotland) Act 2003;

(b) section 81 (Commission's power to revoke order) of that Act;

(ba) section 143 (Commission's power to revoke compulsion order) of that Act;".

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

32.—(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) In section 36 (emergency detention in hospital) in subsection (2) for "detained in hospital under authority of" substitute "subject to".

(3) In section 39 (approved medical practitioner's duty to revoke emergency detention certificate), for "If the approved medical practitioner who carries out the medical examination required by section 38(2) of this Act" substitute "Where a medical examination has been carried out under section 38(2) of this Act and an approved medical practitioner".

(4) In section 44 (short-term detention in hospital) in subsection (2) for "detained in hospital under authority of" substitute "subject to".

(**a**) Section 77 is prospectively amended by the Mental Health (Care and Treatment) (Scotland) Act 2003 schedules 4 and 5. See also S.S.I. 2005/161 and 2005/375.

(5) In section 46 (hospital managers' duties: notification) in subsection (1) for "detained in hospital under authority of" substitute "subject to".

(6) In section 47 (extension of detention pending application for compulsory treatment order) in subsection (1)(a) for "detained in hospital under authority of" substitute "subject to".

(7) In section 49 (responsible medical officer's duty to review continuing need for detention) in subsection (1) for "detained in hospital under authority of" substitute "subject to".

(8) In section 50 (patient's right to apply for revocation of short-term detention certificate or extension certificate etc.) in subsection (1) for "in hospital under authority of" substitute "subject to".

(9) In section 51 (Commission's power to revoke short-term detention certificate or extension certificate) in subsection (a) for "the detention of a patient in hospital is authorised by" substitute "a patient is subject to".

(10) In section 55 (effect of subsequent short-term detention certificate on emergency detention certificate) for "in hospital under authority of" substitute "subject to".

(11) In section 76 (care plan: preparation, placing in medical records etc.) in subsection (1) at the beginning, insert–

"(A1) This section applies where a compulsory treatment order is made in respect of a patient.".

(12) In section 127 (suspension of measures authorising detention) in subsection (3)(a)–

(a) after "subject to" insert "- (i)"; and

(b) after "Act" insert–

"; or

(ii) an interim order made under section 105 or 106 of this Act, extending, extending and varying or varying, as the case may be, a compulsory treatment order that authorises that measure;".

(13) In section 130 (mentally disordered persons subject to criminal proceedings: assessment and treatment)–

(a) in the inserted section 52T (prevention of delay in trials: assessment orders and treatment orders)–

(i) in subsection (1), for "charged on indictment" substitute "committed for an offence until liberated in due course of law"; and

(ii) in subsection (4)(a)–

(iia) for "and" where first occurring substitute ","; and

(iib) after "110 days" insert "and 140 days".

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

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

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

(a) in the section title, after "section 149" insert "or 158"; and

(b) in subsection (1), after "section 149" insert "or 158".

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

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

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

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

(a) in subsection (1)(a), for "a person who has attained the age of 16 years" substitute "a relevant person";

(b) in subsection (2), for "persons who have attained the age of 16 years" substitute "relevant persons";

(c) in subsection (3) after "the" where firstly occurring insert "relevant"; and

(d) in subsection (4)–

(i) after the definition of "parental responsibilities" omit "and"; and

(ii) after the definition of "parental rights" insert–

"; and

"relevant person" means–

(a) a local authority; or

(b) a person who has attained the age of 16 years.".

(21) In section 254 (meaning of "nearest relative")–

(a) in subsection (7)(b) insert–

(i) after "hospital" where firstly occurring "or in a care home service"; and

(ii) after "hospital" where secondly occurring "or to a care home service";

(b) in subsection (8)(b) insert–

(i) after "hospital" where firstly occurring "or in a care home service"; and

(ii) after "hospital" where secondly occurring "or to a care home service";

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

"; or

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

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

(a) in paragraph (a), after "under" insert "section 240(5) or"; and

(b) in paragraph (c), the reference to section 240(5) is omitted.

(24) In section 329 (interpretation)–

(a) in subsection(1) before the definition of "care plan" insert–

""care home service" has the meaning given by section 2(3) of the Regulation of Care(Scotland) Act 2001 (asp 8);"; and

(b) for subsection (4) substitute–

"(4) References in this Act to a patient's responsible medical officer are references to the approved medical practitioner who is for the time being–

(a) appointed under section 230(1) or (3)(a) of this Act; or

(b) authorised under section 230(3)(b) of this Act,

in respect of the patient.".

(25) In section 331 (minor and consequential amendments, repeals and revocations) after subsection (3) insert–

"(4) Notwithstanding the repeal in respect of sections 1, 125, 128 and 129 of the Mental Health (Scotland) Act 1984 (c.36) in schedule 5 to this Act, those sections shall continue to have effect for the purposes of sections 10 and 95 of that Act.".

(26) In schedule 2 (the Mental Health Tribunal for Scotland)–

(a) in paragraph 7(4) (organisation and administration of the functions of the Tribunal), for "an application to the Tribunal under section 191 or 192 of this Act" substitute "proceedings (other than proceedings relating solely to an application under section 255 or 256 of this Act) before the Tribunal in relation to a patient subject to a compulsion order and a restriction order, a hospital direction or a transfer for treatment direction"; and

(b) in paragraph 13(4)(b) (decisions of the Tribunal)–

(i) for "being requested to do so by one of the parties, send a copy" substitute "completion"; and

(ii) after "above" insert ", send a copy".

(27) In schedule 4 (minor and consequential amendments) in paragraph 8(4)(b)(ii) for "unless" substitute "the offender is described".

(28) In schedule 5 (repeals and revocations), in the entry for the Mental Health (Scotland) Act 1984, after "The whole Act" insert "with the exception of section 10(1)(b) and (c) and (2) and section 95".

Sexual Offences Act 2003 (c.42)

33.—(1) The Sexual Offences Act 2003 is amended as follows.

(2) In section 133 (Part 2: general interpretation) in subsection (1)(**a**)–

(a) in the definition of "admitted to a hospital", in paragraph (a), for "58" substitute "57A(2)"; and

(b) in the definition of "detained in a hospital", in paragraph (a), for "section 71 of the Mental Health (Scotland) Act 1984 (c.36)" substitute "section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)".

Criminal Justice (Scotland) Act 2003 (asp 7)

34.—(1) The Criminal Justice (Scotland) Act 2003 is amended as follows.

(2) In section 1–

(a) in the inserted section 210B(2)(a) for "interim hospital order" substitute "interim compulsion order";

(b) in the inserted section 210D–

(i) in subsection (1)(a) for "interim hospital order" substitute "interim compulsion order"; and

(ii) in subsection (2) for "interim hospital order" substitute "interim compulsion order".

(c) in the inserted section 210G in subsection (1)(a) and (b) for "interim hospital order" substitute "interim compulsion order".

(3) In section 7 (preparation of risk management plans)–

(a) in subsection (2)–

(i) in paragraph (a), for "hospital order under section 58 (order for hospital admission or guardianship)" substitute "compulsion order under section 57A (compulsion order)";

(ii) for paragraph (c) substitute–

"(c) Part 5 (emergency detention), 6 (short-term detention) or 7 (compulsory treatment orders) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) ("the 2003 Act");"; and

(**a**) Section 133 was amended by the Domestic Violence, Crime and Victims Act 2004 (c.28), section 58 and paragraph 57 of Schedule 10.

(iii) in paragraph (d) for "direction under section 71 (removal to hospital of prisoners) of the 1984 Act" substitute "for treatment direction under section 136 of the 2003 Act"; and

(b) in subsection (4) for "section 125 (interpretation) of the 1984 Act" substitute "section 329 (interpretation) of the 2003 Act".

SCHEDULE 2

Article 3

REPEALS

Enactment	*Extent of Repeal*
Colonial Prisoners Removal Act 1883 (c.31)	Section 10(4).
Local Government (Scotland) Act 1966 (c.51)	In Part II of Schedule 4, paragraph 25.
National Health Service (Scotland) Act 1978 (c.29)	Paragraph (c) of section 85B(2).
Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55)	In Part 1 of Schedule 1, in Group C, paragraph (a)(ii)
Mental Health Act 1983 (c.20)	Section 80(2)–(5). In section 80(6) the words "to which he is subject by virtue of subsection (2) of this section". Sections 80A(2) and (3). In section 116, in subsection (2)(b) the words "or the Mental Health (Scotland) Act 1960" and in subsection (2)(c) the words "or under the Mental Health (Scotland) Act 1984".
Income and Corporation Taxes Act 1988 (c.1)	Paragraph (e) of section 519A(2).
Health and Medicines Act 1988 (c.49)	In section 18 the words "or section 91(2) of the Mental Health (Scotland) Act 1984".
National Health Service and Community Care Act 1990 (c.19)	In section 60, in subsection (1)(a) the words "the Mental Health (Scotland) Act 1984" and in subsection (7), paragraph (c).
Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)	Section 26.
Sexual Offences Act 2003 (c.42)	In section 133, in the definition of "admitted to hospital" the words "section 69 of the Mental Health (Scotland) Act 1984"; in the definition of "detained in a hospital" in paragraph (c) the words "section 69 of the Mental Health (Scotland) Act 1984; and in the definition of "restriction order" the words "section 69 of the Mental Health (Scotland) Act 1984".
Criminal Justice (Scotland) Act 2003 (asp 7)	In section 7, subsection (2) the words "(or liable to be detained)".

Enactment	*Extent of Repeal*
Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)	In section 130, in the inserted section 52T, in subsection (4)(a) the words "respectively" and "paragraphs (a) and (b) of"; in subsection (4)(b) the words "or (7) respectively"; in the inserted section 52U in subsection (2) the words ", subject to subsection (3) below," and subsection (3). In section 172 the words "Subject to subsection (2) below,". Section 314. In schedule 4, paragraph 8(2)(b), in the inserted subsection (2B), "(i)" and in paragraph 9(3) the words "and 244". In schedule 5, in the entry for the Criminal Procedure (Scotland) Act 1995 the words "and "paragraph (a) of subsection (1)"".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes modification (including, where appropriate, repeals) to enactments having effect in Scotland. These modifications are consequential and supplemental to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) ("the 2003 Act"). The Order also makes modification to the 2003 Act to ensure that the purposes of the 2003 Act may be fully achieved and that full effect is given to the provisions of the Act.

The modifications are set out in Schedule 1 to the Order, which Schedule has effect in accordance with article 2 of the Order. The repeals are set out in Schedule 2 which Schedule has effect in accordance with article 3 of the Order.

Draft Order laid before the Scottish Parliament under section 326(4)(b) of the Mental Health (Care and Treatment) (Scotland) Act 2003, for approval by resolution of the Scottish Parliament. This draft supersedes the draft laid on 23rd June 2005.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

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MENTAL HEALTH

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