Consultation on the implementation of certain sections of the Mental Health (Scotland) Act 2015 and associated regulations (Part 2)

Scottish Government
Riaghaltas na h-Alba
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Chapter 1 – Introduction, objective and scope of consultation

Introduction

The Mental Health (Scotland) Act 2015 makes changes to the operation of the Mental Health (Care and Treatment) (Scotland) Act 2003 and to the Criminal Procedure (Scotland) Act 1995 about the treatment of mentally disordered offenders. It also creates a new victim information and representation scheme for victims of some mentally disordered offenders. Two areas of the Act have come into force so far. The first extends the right to appeal against being held in a level of security that is excessive to patients in medium secure units. The second requires Scottish Ministers to review the arrangements for investigating the deaths of patients in hospital for treatment for a mental disorder.

The interaction between the changes in the 2015 Act, related secondary legislation, the Tribunal rules and the statutory Code of Practice, means that we expect the majority of the rest of Parts 1 and 2 of the Act to come into force on a single date in spring 2017.

This is the second consultation on the implementation of the 2015 Act and covers several topics, including regulations relating to cross-border transfers and absconding patients, along with transitional and savings provisions which will set out when individual sections of the 2015 Act come into force and how these provisions relate to existing provisions in the 2003 Act.

A glossary is included at Annex B. The term ‘patient’ is used throughout this document as this is the legal term used in the 2003 Act.

Objective and Scope

This consultation focuses on specific provisions of the 2015 Act related to cross-border transfer regulations, regulations relating to absconding patients and the transitional and savings provisions for the bulk of parts 1 and 2 of the 2015 Act, including suspension of detention. The aim is to gather views on the proposals for relevant secondary legislation and transitional and savings provisions, and associated work to implement the 2015 Act. Secondary legislation may be required where an Act sets out that Ministers may make provision by regulations, order or rules. Transitional and savings provisions help move from the current law to the new law. This is because in some cases, for example, it would not be practical to move straight from one system to another on the day that the relevant part of the 2015 Act comes into force.

We have set out our proposals for implementing these aspects of the 2015 Act. Our intention is that these should best protect and safeguard the rights of service users and make sure that the system under the 2015 Act provides for efficient and effective treatment.

Questions

Chapter 2 seeks your views on proposals about changes to regulations related to cross-border transfer of patients, both as a result of provisions in the 2015 Act and other potential changes to the existing regulations.

Chapter 3 seeks your views on proposals for changes to regulations relating to absconding patients as a result of provisions in the 2015 Act.

Chapter 4 relates to transitional and savings provisions, in particular in relation to suspension of detention provisions.

Chapter 5 seeks your views on the likely impact of these proposals on equalities; children's rights; business and service providers; and privacy. This will inform impact assessments for the implementation of the 2015 Act.

Not all questions will be of interest or relevant for everyone and you are welcome to only respond to those questions or chapters in which interest you.

Duration

The consultation will be open from 25 July to 17 October 2016.

Responding to this consultation paper

We are inviting responses to this consultation by 17 October 2016

Please respond to this consultation online at https://consult.scotland.gov.uk/mental-health-law/mental-health-act-part-2. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the close date.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) and send to:

The Scottish Government
Area 3-ER, St Andrews House
Edinburgh
EH1 3DG

Handling your response

If you respond using Citizen Space, you will be automatically directed to the Respondent Information Form at the start of the questionnaire. This will let us know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public.

If you are unable to respond via Citizen Space, please complete and return the **Respondent Information Form** as this will ensure that we treat your response appropriately. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at http://consult.scotland.gov.uk. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

The Scottish Government
Area 3-ER, St Andrews House
Edinburgh
EH1 3DG

Scottish Government consultation process

Consultation is an essential part of the policy making process. It gives us the opportunity to get your opinion and expertise on a proposed area of work.

You can find all our consultations online: http://consult.scotland.gov.uk. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (http://ideas.scotland.gov.uk)

After a consultation is closed we publish all responses where we have been given permission to do so.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Chapter 2 – Cross-border transfer regulations

Background

Under the 2003 Act there are existing regulations that deal with the cross border transfer of patients. These are:

- The Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008 ('the cross border transfer 2008 regulations').
- The Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005 ('the 2005 regulations').
- The Mental Health (Cross-border Visits) (Scotland) Regulations 2008 ('the cross border visits 2008 regulations').

The 2005 regulations are the most frequently used of these, and most of this paper is about them. They deal with cross-border transfers out of Scotland to elsewhere in the United Kingdom as well as to places outside the United Kingdom. They also deal with the cross-border transfer into Scotland of patients from England, Wales, Northern Ireland, the Channel Islands or the Isle of Man. These regulations set out the duties of Responsible Medical Officers (RMO), Mental Health Officers (MHO) and Scottish Ministers when a cross-border transfer is to take place. They set out information that must be provided to the patient and his or her representatives and timescales that must apply before a patient can be moved. They also set out rights of appeal to the Mental Health Tribunal for Scotland ('the Tribunal') and the Court of Session.

The 2015 Act allows for regulations to make equivalent provisions for the reception in Scotland of a person from another EU member state. It also requires that the regulations provide for a right of appeal against the decision to remove a patient from Scotland for the named person or, where there is no named person, for the guardian, welfare attorney, primary carer or nearest relative.

As well as the changes that are needed because of the 2015 Act, we are also seeking your views on whether, in light of experience since 2005, any other adjustments to the process for removal from Scotland set out in the 2005 regulations are necessary.

As a summary, the current process contains the following main steps:

Transfer of a patient from Scotland:

- Transfers will be discussed with the patient, care team and carers at Care Planning Meetings.
- After consulting the patient's MHO, the RMO must give notice to the patient, the patient's named person (or carer for voluntary patients), guardian and/or welfare attorney, and the MHO that an application is to be made to Scottish Ministers for a warrant that would allow a cross-border transfer. The patient may also make his or her wishes or preferences known to Scottish Ministers.
- There is then a 7 day period where the above parties may make their views known to the RMO and the patient may additionally make his or her wishes known to Scottish Ministers. Within this period, the patient's MHO must interview the patient about the transfer and inform them of his or her rights in relation to the transfer and to the support of independent advocacy services. The RMO must have regard to any representations made to them before deciding to make an application to Scottish Ministers for a warrant that would allow a cross-border transfer.

- Once this 7 day period has passed (or sooner if the MHO has carried out their duties and representations have been made by all parties to both the RMO and to Scottish Ministers), the RMO may submit an application for a warrant to Scottish Ministers.
- Scottish Ministers then consider a range of factors and decide whether or not to grant the warrant. Once this decision is made the patient, the named person, the RMO, the MHO, the Mental Welfare Commission for Scotland ('the Commission') and the country or territory to which it is proposed that the patient should be removed must be informed.
- A warrant that is granted will have an effective date, and the transfer must take place within 14 calendar days of that date. For transfers of patients to the rest of the UK, there must be a period of 7 calendar days between the effective date and the date of transfer. Where the transfer is urgent, or all parties consent to the transfer, this period can be shortened, but there must be a period of 3 working days between the effective date and the date of transfer. For transfers of patients to countries outside the UK, there must be a period of at least 28 calendar days between the effective date and the earliest date of transfer. Where the transfer is urgent this period can be shortened to a period of 7 calendar days. Where all parties consent to the transfer, this period can be shortened to a period of 3 working days between the effective date and the date of transfer.
- If the patient does not want the transfer to go ahead, the patient may appeal to the Tribunal against the decision of Scottish Ministers to grant a warrant before the transfer takes place.

Transfer of a patient to Scotland

- A request is made to Scottish Ministers for consent to the transfer. The request must include certain details including the name and address of the patient and of their carer or nearest relative; the type of mental disorder the patient has; details of the relevant measures to which the patient is currently subject; and the name and address of the hospital in the relevant territory in which the patient is presently detained or is liable to be detained.
- An RMO and an MHO must then be appointed for the patient.
- Upon arrival, the patient will become subject to the corresponding order, direction or certificate under the 2003 or 1995 Act and the relevant duties relating to these orders will now apply.
- The MHO must ascertain whether the patient has a named person, prepare a social circumstances report and inform them of their right to support from independent advocacy services.
- The RMO must carry out an examination of the patient within 7 days of their arrival and must consider whether the order, direction or certificate that the patient is now subject to is appropriate and if not must revoke it.
- The patient will be visited by the Commission within six months of the patient's transfer.

Appeals and notifications

Appeals against a transfer outwith Scotland

The 2015 Act ensures that the regulations will provide a right of appeal against transfers under the 2005 regulations to named persons and, where there is no named person, to listed persons. A listed person is a carer, nearest relative, guardian or welfare attorney. They can make an application or appeal to the Tribunal when the patient does not have a named person and does not have capacity to make the appeal on their own behalf.

We also intend to make clearer the process for reissuing a warrant for transfer if there is an unsuccessful appeal against the transfer. In many cases, the warrant will not be valid after the appeal has concluded, as it is only authorises transfer within 14 days of the effective date and a transfer after appeal cannot take place with 21 days of the decision unless the patient gives their written consent. A warrant can be varied by Scottish Ministers and we would propose that the regulations and guidance set out clearly what the varied warrant should contain.

Question 1 - Do you agree with these proposals? Please state if you have any concerns or suggestions for changes to the proposal.

Appeals against detention for patients recently transferred to Scotland

Patients can be transferred to Scotland from other jurisdictions on a longer term order that has not been authorised by a court or tribunal process, as long as that order is considered to correspond to an equivalent Scottish measure. As shown in the summary of the cross border transfer process above, they become subject to the equivalent order. This is treated as having been made on the date that the original order in the previous jurisdiction was made. The RMO must examine the patient within 7 days to consider whether the order etc. is appropriate.

Under the 2003 Act, a patient can only apply to the Tribunal to have a Compulsory Treatment Order (CTO) revoked or varied once three months has elapsed since the date the order was granted. This condition also applies to patients who transfer to Scotland and are made subject to a CTO as the equivalent order. As with any CTO, the Commission is able to refer such cases to the Tribunal within three months.

We would like to explore whether such patients who have transferred to Scotland and have not appealed nor had an appeal heard in the other jurisdiction should have a right of appeal to the Tribunal. This right of appeal would be within 3 months, calculated from the date of the original order and not from the date of transfer for patients' whose original order was not authorised by a court or tribunal.

We are considering whether the regulations should introduce a right to apply to the Tribunal for a CTO to be varied or revoked when all the following circumstances are met:

- That the patient has been transferred to Scotland on a cross border transfer under the 2005 regulations
- That the patient's original order or certificate lasts longer than 28 days or the equivalent order that the patient is placed on is a CTO
- That the original order or certificate was not granted by a Tribunal, court or equivalent
- That the order or certificate was granted within the last three months and therefore the patient, named person etc cannot make an application under section 100.
- That, following an examination of the patient, the RMO has determined that the order is appropriate.
- That the patient did not have an appeal heard against detention ahead of transfer.

Question 2 - Do you agree that a right to apply to the Tribunal as set out above should be introduced? Please state if you have any concerns or suggestions for changes to the proposal. Are there any related circumstances where such a right to apply to the Tribunal should be introduced?

Notifications where patient has been transferred to Scotland from another jurisdiction

A further suggestion relates to regulation 41(2) of the 2005 regulations. This regulation requires that managers at the receiving hospital provide certain information, following assessment of the

patient in Scotland, to the patient, the patient's named person, the Commission, the MHO and depending on the order, either the Tribunal or Scottish Ministers. This information is:

- The name and address of the sending and receiving hospitals
- The date of the transfer
- The name and contact details of the RMO
- Whether following assessment that the RMO is content that the patient meets the criteria for continued detention for treatment
- The date until which detention is authorised unless otherwise extended
- Where relevant the date of the next mandatory review.

To make this regulation consistent with other notification requirements in the 2003 Act, and to ensure protections for patients who do not have a named person, we are proposing that the managers of the receiving hospital should also give information to any guardian or welfare attorney or equivalent in the other jurisdiction. A similar change would be made to regulation 28 of the cross border transfer 2008 regulations.

Question 3 - Do you agree with the proposal that limited information about the transfer should be provided to any guardian or welfare attorney or equivalent where there is no named person? Do you consider it appropriate for the guardian or welfare attorney to receive all of the information listed above, or should they only receive this in part? Where there is no named person, or guardian or welfare attorney, should information be provided to the primary carer?

Other changes for patients being transferred to Scotland

Currently a Designated Medical Practitioner (DMP) opinion for 'treatments given over period of time etc' (s240 of the 2003 Act) is required two months after a cross border transfer. However the cross border patient may have been on the treatment for a much longer period of time without the safeguard of a DMP or equivalent opinion. One option would be to shorten the timescale within which the DMP visit takes place to 4 weeks. However, the course of treatment suggested by the new RMO may be different, making this visit less effective. We do not think that multiple visits from a DMP within the first two months would be practicable. Any change would apply to patients transferring under the 2005 regulations and the cross border transfer 2008 regulations (e.g. those subject to community orders as well).

Question 4 - Do you think there should be changes made to the timescale after which a DMP should visit a patient who has transferred to Scotland to authorise the continuation of 'treatments given over a period of time'? If so, what timescale would you suggest and should this apply in all circumstances or are there specific circumstances where it should apply? Do you agree that if the DMP has visited within the first two months, a DMP visit after two months should not be required?

Question 5 – Overall, are there any further changes that you think should be made to these regulations in relation to the reception of patients into Scotland?

Other changes for patients being transferred from Scotland

The 2005 regulations have been in operation for over 10 years and practice suggests there are some areas where they could be improved or added to.

For transfers of patients from Scotland to a country outside the UK, the regulations currently specify differing dates for the earliest date of transfer in relation to the effective date of the warrant. We think it would be sensible to rationalise these timescales to make them consistent with the approach for cross-border transfers to other UK jurisdictions.

We would suggest that a transfer for a patient to a country outside the UK could not take place until 28 days after the effective date, to allow for appeals, with the warrant specifying that the transfer must take place within the 14 days after this 28 day period has expired. In urgent cases or where all parties indicate their assent in writing, this 28 day period could be waived to 3 days.

Question 6 – Do you agree with this proposed change? Please state if you have any concerns or suggestions for changes to the proposal.

We are aware of differing views as to the circumstances in which a person who has had their detention suspended can be transferred to another jurisdiction. We think there may be circumstances in which transfer of patients whose detention is suspended would be desirable and are seeking your views on what circumstances should be covered by the regulations.

Question 7 – Are there circumstances where the regulations should allow a cross border transfer for a patient whose detention is suspended? If so, should there be any variation to the process for other cross-border transfers? Do you consider there should be any additional information required or different safeguards?

We are aware that some concerns exist with timescales where all parties agree to transfer, for example because the patient has strong ties to another area in the UK and wishes to return there. One suggestion that has been made is that in cases when all parties consent to the transfer, including the patient and named person if applicable, written consent could be provided to Scottish Ministers with the application for a warrant that would include a confirmation that the patient and named person would like to waive the mandatory period after the effective date of the warrant.

This would mean that the transfer could take place as soon as is practicable after the warrant is issued, rather than requiring three working days between the effective date and the transfer. If this suggestion is taken forward we would want to ensure that this was only with regard to applications where the patient has capacity to make the necessary decision and we would also want to ensure that the patient and named person would be able to withdraw this waiver at any point before the transfer, if he or she subsequently changed his or her mind and wanted to appeal.

We are also exploring whether the warrant should always only allow transfer to one specific ward or hospital. We are aware that there are situations where the patient has a strong desire to transfer to a specific geographic area where there are multiple appropriate wards (e.g. general adult psychiatry). Currently, if the original bed was no longer available there was an alternative bed available in a nearby hospital, the warrant would not be valid for transfer to the alternative bed. We expect that this change would be for cases like this rather than transfers for specialist treatment. In addition, such a transfer could only go ahead if information was provided to Scottish Ministers to demonstrate that the alternative bed met the patient's needs in a similar way to the original proposed bed.

Question 8 – Do you agree with these proposals? Please state if you have any concerns or suggestions for changes to the proposal. Are there any additional safeguards or alternative ways of amending the regulations that should be considered?

Question 9 – Overall, are there any further changes that you think should be made to these regulations in relation to the transfer of patients from Scotland?

Reception of patients from other EU countries

The 2015 Act allows for all three sets of regulations listed above to be revised to allow for the regulations to apply to the reception of patients from other EU states. The Scottish Government's policy is to maintain Scotland's relationship with the EU and these amended regulations will come into force before any possible change to Scotland or the UK's status within the EU.

A summary of the process and the information that must be provided to Scottish Ministers to authorise a transfer of a patient into Scotland under the 2005 regulations and the duties for MHOs and RMOs is set out above. Similar conditions apply for the 2008 cross border transfer regulations.

There may be greater variation between Scottish orders and orders from other EU countries than there is between Scottish orders and those for the rest of the UK. Additional information, such as the basis for detention or the right of appeal that the patient has had so far may be required for Scottish Ministers when considering the transfer request. A further suggestion is that the patient should have a right to apply to the Tribunal to review the 'equivalent order' decision by Scottish Ministers.

Question 10 - Do you consider that the same process should apply for reception of patients from other EU countries as does for reception of patients from elsewhere in the UK? Are there any additional safeguards that should apply? Is there any additional information that should be provided to Scottish Ministers, including in relation to possible arrangements or concerns following discharge of the patient from hospital?

Question 11 – Do you have any other comments to make about cross border transfers, either in law, guidance or in practice?

Chapter 3 – Absconding regulations

Absconding by patients from outwith Scotland

Background

If a patient is detained for treatment in Scotland and leaves hospital or fails to return from a suspension of detention, efforts are made to return them to hospital. Whilst they are in a different hospital or address the law allows for the patient to be detained and treated until their return to the original hospital.

The authority to treat the patient continues under the original order or certificate and Part 16 of the 2003 Act, which authorises medical treatment under that Act, will apply to the giving of such treatment.

Currently, the law does not provide for the treatment of patients who have absconded from other jurisdictions, although it does allow for the return of patients to other jurisdictions within the UK. Currently, if a patient needs to be detained or receive treatment before they are returned to their original hospital, a Short Term Detention Certificate (STDC) is used. This is then revoked when the patient is returned to their original hospital.

The 2015 Act allows for the treatment of patients who have absconded to Scotland from other jurisdictions. It allows Scottish Ministers to make regulations as to how the other sections of Part 16 may be applied to patients in this situation, excluding treatments authorised under sections 234 or 237 within Part 16, which includes electro-convulsive therapy and certain surgery.

New provisions

In most cases, we expect that patients would be returned to the original hospital within a few days. If there is likely to be a longer delay, for example, whilst transport is arranged, the patient could be made subject to a STDC if needed, as is current practice. However, if the patient will only be in Scotland for a few days, the granting of an STDC may be unduly burdensome. The patient may still require treatment under the 2003 Act in this very short time, in line with the principles of the 2003 Act, including that the treatment is of most benefit to the patient.

Part 16 contains provisions which authorise treatment for those patients who are capable of consenting and consent to that treatment. We propose that the regulations apply these provisions from Part 16 to absconding patients. This would be except for those provisions that relate to the treatments authorised by sections 234 or 237, as these are expressly excluded by the 2015 Act.

Question 12 – do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal.

Section 243, which falls within Part 16 of the 2003 Act allows for treatment without consent to save the patient's life or, as long as the treatment is not likely to have any unfavourable, and irreversible, physical or psychological consequences, in the following circumstances:

- to prevent serious deterioration;
- to alleviate serious suffering by the patient;
- to prevent the patient from behaving violently; or
- being a danger to themselves or to others.

For the final two bullet points, the treatment must also not entail significant physical hazard to the patient.

These provisions will allow for any new urgently required medication or treatment to be given so that the patient is well enough to travel to the original hospital. They will also allow for a patient to be given continuing medication where withdrawal of this medication could lead serious deterioration in the condition or cause serious suffering by the patient. We take the view that it would be in line with the principles of the 2003 Act for the regulations to allow treatment under section 243 of the 2003 Act for patients who have absconded from another jurisdiction and who will only be in Scotland for a very short time.

Question 13 - Do you agree that these regulations should allow patients to be treated under section 243 of the 2003 Act ? Please state if you have any concerns or suggestions for changes to the proposal.

We are also seeking views as to whether there might be other circumstances where it would be of benefit to the patient to receive on-going treatment (i.e. treatment that they had been receiving in the original hospital) that might not meet the criteria under section 243 of the 2003 Act. For example, if there could be circumstances where withdrawal of medication would not be of clinical benefit, but would not lead to serious deterioration. We are also seeking views as to whether it would be appropriate to allow treatments that have a lasting effect, such as depot injections.

Question 14 – Do you consider that there might be situations where it would be of benefit for a patient to receive treatment that may not fit under the criteria of section 243? If so, please describe them and any exemptions or safeguards that you would expect to be included.

We do not propose to set out in the regulations any time limit for the provisions which relate to medical treatment but would propose under statutory guidance to set out best practice to deal with rare situations where a patient is in Scotland for more than a few days. This is to provide a suitable framework for practitioners and patients that will promote patient's rights and avoid unnecessary bureaucracy. For example there may be circumstances where, a patient was expected to be in Scotland for less than 72 hours and then the transport to return them is delayed by a day or two and guidance is a more suitable vehicle to manage such situations.

Question 15 – Do you agree that guidance should be set out for these circumstances? What timescales and other protections do you think would be most appropriate for the guidance?

The 2015 Act allows these regulations to be applied to patients who have absconded to Scotland from other EU jurisdictions who are subject to measures or requirements that correspond to measures in Scotland such as a compulsory treatment order or short term detention certificate. The orders in other EU jurisdictions may not be fully equivalent with those in Scotland, for example they may have different criteria for detention. We would not expect any patient to be detained if they did not also meet the criteria for detention under the 2003 Act and we are considering if the regulations should set out any specific safeguards.

Question 16 – Are there any circumstances where you consider that a patient who has absconded from another jurisdiction should not be returned to the original hospital or country of origin? Are there any safeguards that you consider should be part of the regulations in relation to patients who have absconded from other jurisdictions?

Absconding by other patients regulations

Background

The 2003 Act allows regulations to detail the circumstances in which certain patients, may be taken into custody, and the steps that can be taken by specified persons upon taking such patients into custody. The regulations which set this out are the Mental Health (Absconding by mentally disordered offenders) (Scotland) Regulations 2005. The regulations do not apply to patients subject to civil orders.

The 2015 Act provides that these regulations may specify persons authorised by the patient's RMO as persons who can take such patients into custody.

New provisions

We propose that the new regulations allow the RMO to specify classes of persons, e.g. police officers, that are authorised to take the absconding patient into custody.

Question 17 - Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal. Should the regulations or guidance specify anything related to the process for this authorisation?

We are also considering proposals to amend when the regulations require that the Commission is informed when a patient absconds or is returned. We are proposing that RMOs should inform the Commission in the same circumstances as they must inform Scottish Ministers (when the patient is subject to a Compulsion Order with Restriction Order (CORO), Hospital Direction (HD) or Transfer for Treatment Direction (TTD)), instead of for patients on all relevant orders and for those held in medium and high secure units. These regulations do not apply to patients on civil orders, but statutory guidance could also set out that it would be best practice to inform the Commission for civil patients in medium secure units.

Question 18 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal.

Chapter 4 – Transitional and savings provisions

Suspension of detention

Background

There are four major changes regarding suspension of detention introduced by the 2015 Act:

- what the suspension certificate specifies;
- the maximum period of a single certificate;
- maximum cumulative total in any 12 months; and
- requirements for gaining consent from Scottish Ministers is certain circumstances.

Section 9 of the 2015 Act sets out that any certificate authorising suspension of detention must:

- must record the purpose for which the certificate is granted and
- may authorise a single period of detention or a series of more than one individual period falling within a particular 6 month period.

It also sets out that consent from Scottish Ministers is no longer needed for suspension of detention for attending criminal proceedings or for medical or dental appointments, for patients subject to treatment orders, interim compulsion orders or temporary compulsion orders.

Importantly, this section also sets the limit for a single period in days rather than months:

- where the limit was previously 6 months it is now 200 days; and
- where it was 3 months it is now 90 days.

Section 10 of the 2015 Act sets out that:

- the maximum cumulative total of suspension of detention allowed in any 12 month period (i.e. in a rolling year) is 200 days;
- that periods of less than 8 hours do not count towards the total; and
- the maximum cumulative total for suspension of measures other than detention is now set at 90 days.

Transitional regulations will need to set out how we move from the current system and limits to the new one and we are trying to establish how best to do this.

Proposed transitional and savings provisions

Currently, the total maximum period of suspension of detention is 9 months in any 12 month period. All periods of suspension, however short, count towards the total.

The 2015 Act sets out that the total maximum period of suspension of detention is 200 days in any 12 month period. Only periods of suspension of 8 hours or more count towards the total. Any period over 8 hours but less than 24 hours counts as 1 day (i.e. there is no need to add hours together).

In relation to cumulative totals, we are proposing the simplest option. On the commencement date, the new limits and calculations apply. The suspension limits would not need to be calculated to fit with the new timescales where a patient's order comes to an end or is converted to a community-based order shortly after the Act comes into force (the commencement date) as a compliance period (see below) would be included. In other cases, the new timescales would apply on a rolling previous 12 month basis
This would mean that on any date after the commencement date, any previous suspension of detention in the previous 12 month period of over 8 hours would count towards the new 200 day

limit. Practitioners would need to calculate how previous suspended detention would fit with the new limits.

We propose that there is a compliance period after the commencement date. This means that the current timescales could still apply for a short time; our current proposal is three months after the commencement date.

This should also assist with any situations where suspension of detention has been carried out under the previous system in the months leading up to the commencement date and is compliant with the previous limits but not the new limits.

In this compliance period, the previous limits could apply where appropriate. We would ensure that a simple tool (most likely an Excel spread sheet) would be available to make these calculations as easy as possible and we will ensure that guidance is provided to Health Boards to assist those making calculations.

We are proposing that existing certificates can remain valid after the commencement date, and that only certificates granted on or after the commencement date would need to meet the new criteria.

You can find more details in the following examples.

Suspension of detention – example scenarios for transitional and savings provisions

For illustrative purposes only, our examples use 1 May 2017 as the commencement date for the 2015 Act and assume that the transitional provisions will contain a three month compliance period, expiring on 31 July 2017.

These examples are also only looking at what would be allowed under the law, rather than what best practice would be in relation to applying for a community-based order or revoking the order rather than suspending detention for several months.

Example 1 – patient potentially reaching new maximum sus limit (200 days) shortly before 1 May 2017.

John has had several short periods of suspension for testing out between August and November 2016. These lasted between 2 and 10 days and totalled 30 days. His detention was then suspended on a longer term basis and has been suspended continuously since 8 November 2016.

Under the new 2015 Act timescales, John will have had his detention suspended for 204 days of the previous year on 1 May, in excess of the new 200 day limit. If there was no compliance period, and if the order has not been revoked or converted to a community-based order, then John would be required to return to hospital and his detention could not be suspended again until August.

However, as there is a three-month compliance period in the transitional provisions, the current timescales of 9 months can be applied meaning that he can continue to be under suspension of detention for another 65 days or so in total during the period 1 May – 31 July 2017, during which time arrangements can be made for a community based order or revocation of the order etc.

Example 2 - patient potentially reaching new maximum suspension limit (200 days) shortly after 1 May 2017.

Ruth had her detention suspended for the first time on 8 January 2017 and it has been suspended continuously since. This means it will have been suspended for 113 days by 1 May. Under the current timescales, detention could then be suspended until around 8 October 2017, i.e. 9 months of suspended detention.

Under the new timescales in the 2015 Act, detention could only be suspended until 27 July 2017, if they came into force immediately, as that is the date on which the total would be 200 days. With a three month compliance period, detention could be suspended until 30 July 2017, the end of the compliance period but still within 9 months.

Example 3 – patient who has only had their detention suspended shortly before 1 May 2017.

Dan has had suspended detention for 5 accompanied daytime visits in February 2017 and then several short periods of sus testing out between 1 March and 25 March 2017 totalling 17 days. He then has his detention suspended from 2 April, meaning that his suspension total on 1 May is 46 days. His detention could therefore be continuously suspended until after 31 July (the end of the compliance period) under either of the limits.

The new timescales should therefore be used, which means the 5 days in January no longer count towards the limit, as periods of less than 8 hours no longer count towards the cumulative limit. Detention can be suspended for a cumulative total of up to 154 further days until 1 March 2018.

For the provision in section 9 of the 2003 Act that relates to gaining consent from Scottish Ministers for certain reasons for patients on certain orders, we are proposing that where the event for which the suspension is required falls after the commencement date, then consent from Scottish Ministers is not required.

Question 19 – do you agree with the proposals set out above? Please state if you have any concerns or suggestions for changes to the proposal.

Other provisions

Transitional and savings provisions need to be considered for the majority of parts 1 and 2 of the 2015 Act to allow for the transition from the current system where there are changes.

As a general approach, where the change is to something about the granting or reviewing of an order (e.g. the length or the notification requirements) then it is proposed these only apply to those where the process for granting or reviewing of the order, certificate or direction begins on or after the commencement date. If it is a change to something about an action other than review whilst someone is subject to an order, then generally it is proposed that the action, can be taken from the commencement date, regardless of when the order was granted. We hope that will be the simplest and clearest approach for service users and practitioners.

Question 20 – do you agree with the general approach to savings and transitional provisions detailed above? Please state if you have any concerns or suggestions for changes to the proposal.

You can find our proposal for the following transitional provisions at Annex A including examples.

Procedure for compulsory treatment – sections 1-3
Emergency, short-term and temporary steps – sections 4 and 5 only
Suspension of orders and measures – sections 7 and 8 only
Specification of hospital units – sections 11-13
Removal and detention of patients – sections 19-20
Periodical referral of cases – section 21
Advance statements and patients' rights – sections 26 and 30 only
Services and accommodation for mothers – section 31
Cross-border transfers and absconding patients – section 33 only
Arrangements for treatment of prisoners – section 35 only
Part 2 – Criminal cases – sections 40-44 and 46-50 only.

[to note – sections 9 and 10 are covered above. Sections 14-18 are already in force. Sections 22 – 25 were covered by our previous consultation. Any other section in Parts 1 and 2 of the 2015 Act that are not covered in Annex A is considered not to require transitional and savings provisions.]

Question 21 – do you have any views on the proposals for individual sections as set out at Annex A?

We will ensure that these changes are supported by clear guidance for practitioners, service users and others in relation to transitional and savings provisions, to ensure it is clear how and when each section of the 2015 Act applies.

Question 22 – Do you have any views about specific information that should be contained in the guidance in relation to transitional and savings provisions? Do you have any views on how best this guidance should be targeted, including to specific groups of practitioners?

Chapter 5 – Impact Assessments

We are considering the impact of implementing the Act and associated secondary legislation.

An Equalities Impact Assessment (EQIA) will help us understand policy impacts on people because of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. This will allow us to identify (and mitigate) negative impacts and proactively look for opportunities to promote equality. Under the Equality Act 2010, the definition of disability includes where learning disabilities, mental health conditions or autism (which are all included in the definition of mental disorder in the 2003 Act and therefore relevant to these proposals) has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities

A Business Regulatory Impact Assessment (BRIA) will allow us to assess the likely financial costs and benefits and the associated risks of the proposals that might have an impact on the public, private or third sector.

A Children's Rights and Wellbeing Assessment (CRIA) will allow us to assess whether the proposals will advance the realisation of children's rights in Scotland and protect and promote the wellbeing of children and young people.

A Privacy Impact Assessment (PIA) will allow us to identify and address the potential privacy impacts of these proposals.

Question 23 – Do you think any of the proposals set out in this consultation will have an impact, positive and negative, on equalities as set out above and if so, what impact do you think that will be?

Question 24 – What implications (including potential costs) will there be for business and public sector delivery organisations from these proposals?

Question 25 – Do you think any of these proposals will have an impact, positive and negative, on children's rights and if so, what impact do you think that will be?

Question 26 – Do you think any of these proposals will have an impact, positive and negative, on privacy and if so, what impact do you think that will be?

Chapter 6 – Other aspects of implementation

As set out in the introduction, this is the second consultation about the implementation of Parts 1 and 2 the Mental Health (Scotland) Act 2015.

The first consultation covered provisions including named persons, advance statements and conflict of interest regulations. More information about that consultation can be found here: [https://consult.scotland.gov.uk/mental-health-law/mental-health-act]

Question 27 – Do you have any other suggestions, comments or views about the implementation of Parts 1 and 2 of the 2015 Act that were not covered by other chapters of this consultation or by the first consultation?

ANNEX A

Other transitional and savings provisions

The following sets out our proposals for transitional provisions in relation to individual sections of the 2015 Act. Where helpful we have used examples to illustrate how the proposed transitional provisions might work in different scenarios. This is likely only to be of interest to those who work with the Act on a day-to-day basis, as in most cases, the transitional provisions will apply for only a short time.

The examples are to demonstrate the interaction of dates and processes only, rather than necessarily reflecting best practice. All these examples are based on 1 May as the commencement date. This is for illustrative purposes only, as the commencement date is yet to be proposed. Further details of the exact provisions of the 2015 Act can be found in the Explanatory Notes:
http://www.legislation.gov.uk/asp/2015/9/notes/contents

Section 1 of the 2015 Act
What the provision does:
Reduces period of initial 6-month CTO or 56 day maximum of an Interim Compulsory Treatment Order (ICTO) if a patient has been detained under an extension certificate or for 5 day period for arranging a hearing, meaning that the maximum length of the Compulsory Treatment Order (CTO) or ICTO dates from the end of the original Short Term Detention Certificate (STDC).

Proposed transitional provisions:
That this applies only to CTOs or ICTOs where the process for application for begins on or after the commencement date, i.e. when both the medical examinations required under s57(2) of the Act take place on or after the commencement date.

Why we have suggested this:
This means that when an application is made for a CTO, the patient will only be subject to one set of provisions throughout the process, from medical examination to the decision of the Tribunal whether or not to grant a CTO.

Examples in practice (with 1 May used as the commencement date):
Patient A's CTO (or ICTO) is granted by the Tribunal on 20 April but will run past the commencement date – as the medical examination took place before 1 May, the 2015 Act provisions do **not** apply.

Patient B's ICTO is granted on 20 April and, following a Tribunal hearing, a CTO is granted on 20 May – as the medical examination took place before 1 May, the 2015 Act provisions do **not** apply.

The first medical examination for the CTO application for Patient C takes place on 29 April and the second on 2 May. The application is made by the Mental Health Officer (MHO) on 10 May - as the first medical examination took place before 1 May, the 2015 Act provisions do **not** apply.

Both the medical examinations under s57(2) for the CTO application for Patient D take place on 2 May – the 2015 Act provisions apply.

Section 2 and section 50
What the provisions do:
Section 2 requires MHOs to provide a report to the Mental Health Tribunal when a CTO is being reviewed (where diagnosis has changed or where MHO disagrees with, or does not give view on, decision to extend a CTO.) Section 50 makes this provision for Compulsion Orders (CO).

Proposed transitional provisions:
That this applies to all relevant cases where the section 86 (2003 Act) determination (for CTOs) or the section 152 (2003 Act) determination (for COs) is made by the Responsible Medical Officer (RMO) on or after the commencement date.

Why we have suggested this:
This determination is made when there must be a mandatory review of the order. The RMO must determine under section 86 or 152 if the order is still required. This means that the new provisions will only apply where the formal process for reviewing the order in these circumstances begins after the commencement date.

Examples in practice (with 1 May used as the commencement date):
The RMO makes the section 86 determination on 27 April in relation to Patient A, the MHO gives their view disagreeing with assessment on 2 May and hearing takes place later in May – as the RMO's determination was made before 1 May, the 2015 Act provisions do **not** apply.

The RMO makes a section 86 determination on 2 May in relation to Patient B. B's diagnosis has changed since the CTO was granted or last reviewed by the Tribunal – the 2015 Act provisions apply and the MHO must provide a report to the Tribunal.

Section 4 and Section 5
What the provisions do:
These sections contain two main provisions; section 4 relates to Emergency Detention Certificates (EDC) and section 5 to STDCs.
(a) Adds category of patients who are recalled to hospital for non-compliance with order to those who cannot be detained under EDC or STDC.
(b) Changes requirements around notifications for EDCs or STDCs.

Proposed transitional provisions:
(a) That this applies only to certificates granted on or after the commencement date and does not invalidate any certificate already granted in these circumstances.
(b) That this only applies to certificates granted on or after commencement date.

Why we have suggested this:
This will avoid any certificate made under the current provisions shortly before the commencement date being inadvertently invalidated as it did not comply with provisions that came into place between the making of and expiry of the certificate.

Examples in practice (with 1 May used as the commencement date):
(a) An STDC is granted for Patient A on 30 April in the circumstances described above – certificate remains valid. A certificate cannot be granted in these circumstances from 1 May onwards.

(b) An STDC is granted for Patient B on 30 April but hospital managers are not able to notify all relevant parties until the next day – as the certificate was granted before the commencement date, the 2015 Act provisions do not apply.

Section 7 and Section 8
What the provisions do:
Provide that measures authorised by COs or interim CTOs are suspended (with exception of giving medical treatment under part 16) when patients become subject to EDC (section 7) or an STDC (section 8), in same way as currently for CTOs.

Proposed transitional provisions:
That this only applies to EDCs or STDCs granted in these circumstances on or after the commencement date regardless of when the CO or ICTO was granted.

Why we have suggested this:
This should be the simplest option as practitioners will only have to check the date that the EDC or STDCs is granted to determine whether 2015 Act provisions apply.

Examples in practice (with 1 May used as the commencement date):
A community-based interim CTO is granted for Patient A on 23 April but A becomes more unwell an STDC is granted on 29 April – as the STDC is granted before the commencement date, the 2015 Act provisions do **not** apply.

A community-based CO is granted for Patient B on 26 March but B becomes more unwell an STDC is granted on 2 May – as the STDC is granted after the commencement date, the 2015 Act provisions do apply and the measures authorised by the interim CTO are suspended.

Section 11-13 and sections 47-48
What the provisions do (see explanatory notes for full details of individual sections):
(a) Allow a range of certificates, orders and directions under the Act to specify detention in a particular hospital unit.
(b) Allow transfers between specific units within the same hospital where a unit is specified in the certificate, order or direction in certain circumstances.

Proposed transitional provisions:
(a) That this applies where the process for initiating, renewing or amending certificates, orders and directions begins on or after the commencement date.
(b) That these apply to all orders that specify a unit from the commencement date.

Why we have suggested this:
(a) This will ensure that, in line with other provisions of this type, the process will take place under the same provisions from start to finish.
(b) This will mostly apply to any order granted under the new provisions described at (a) and will make clear that the provisions described at (b) apply to these orders as soon as they are granted. If there were any circumstances where an order etc already specified a unit, these provisions would also apply to them as our view is this would be simplest and clearest.

Examples in practice (with 1 May used as the commencement date):
The process for applying for a CTO for Patient A (e.g. medical examinations and MHO interview) take place between 27-29 April. The CTO is granted by the Tribunal on 3 May – as the process to apply for the order began before the commencement date, the 2015 Act provisions do **not** apply.

An STDC for Patient B on 15 April. The clinical team decide to apply for a CTO for Patient B and the first medical examination in relation to this application takes place on 5 May – as the process to apply for the relevant order began after the commencement date, the 2015 Act provisions apply and the order can specify a unit. The provisions relating to transfer between units also apply.

Section 19
What the provisions do:
Introduces requirement for MHOs to notify the Commission as to (a) whether any application for a removal order under section 293 is refused or granted, and (b) the outcome of any application to the sheriff under section 295 seeking recall or variation or a removal order.

Proposed transitional provisions:
(a) Applies to any order applied for on or after the commencement date.
(b) Applies to any application for recall or variation made on or after the commencement date.

Why we have suggested this:
This will avoid MHOs inadvertently not fulfilling a duty in relation to an order made under the current provisions shortly before the commencement date as the provisions changed between the making of and expiry of the certificate.

Examples in practice (with 1 May used as the commencement date):
(a) An MHO applies for a removal order for Patient A on 30 April and the decision is made on 1 May – the 2015 Act provisions do **not** apply (although it is best practice in the Code of Practice)

(a) An MHO applies for a removal order for Patient A on 2 May – the 2015 Act provisions apply and the Mental Welfare Commission must be notified of decision.

(b) A removal order is granted for Patient B on 28 April. An MHO applies for the recall or variation of the removal order on 30 April and the decision is made on 1 May - the 2015 Act provisions do **not** apply (although it is best practice in the Code of Practice)

(b) A removal order is granted for Patient C on 28 April. An MHO applies for the recall or variation of the removal order on 1 May and the decision is made on 2 May - the 2015 Act provisions apply and the Commission must be notified of decision.

Section 21
What the provision does:
Provide that two year referrals of CTOs, COs, Compulsion Orders with Restriction Orders (CORO), Transfer for Treatment Directions (TTD) and Hospital Direction (HD) to the Tribunal are required where an application has not been determined by the Tribunal within the two years prior to the 'relevant day' (the anniversary of the granting of the order), rather than whether an application for review has been made in that time.

Proposed transitional provisions:
That this applies to orders the next time the 'relevant day' occurs on or after the commencement date.

Why we have suggested this:
The determination whether the order or direction must be referred to the Tribunal is made on or shortly after the 'relevant day'. This should be simplest as those making the determination will be able to tell clearly and easily if the new provisions apply.

Examples in practice (with 1 May used as the commencement date):
'Relevant day' falls on 28 April, though determination whether referral required until 24 May – 'relevant day' falls before commencement date so 2015 Act provisions do **not** apply.

'Relevant day' falls on 3 May - 'relevant day' falls after commencement date so 2015 Act provisions apply and referral to the Tribunal is now only required if the application has not been determined in the previous two years rather than made.

Section 26
What the provision does:
(a) Requires copy of advance statements to be placed with person's medical records. Requires certain information, including the location of the advance statement, to be sent to Commission to be held in register which can be accessed by certain persons.
(b) Places duty on Health Board to publicise information about support it offers on making an advance statement.

Proposed transitional provisions:
Only required for (a). Propose that this applies to existing advance statements held by Health Boards. Health Boards would be given a short compliance period from the commencement date and we would propose this is 3 months.

Why we have suggested this:
Part of the purpose of the provision is to give service users confidence that medical teams will be aware of their statement and also to ensure that the Commission has an accurate overview of the number of valid advance statements. These provisions will ensure that all existing advance statements are included. The compliance period will allow Health Boards sufficient time to gather the relevant information, as advance statements may be held in a variety of areas in the Health Board depending on what services the service user has had contact with.

Examples in practice (with 1 May used as the commencement date):
Health Board has been given a copy of an advance statement on 1 February – Health Board must ensure that it is placed with records and the relevant information sent to Commission by 31 July.

Health Board is given a copy of an advance statement on or after 1 May – the statement must be placed with records and the information sent to the Commission as soon as is practicable.

Section 30
What the provisions do:
Adds guardian and welfare attorneys to people who must be consulted before certificate allowing treatment under certain sections of Part 16 is granted.

Proposed transitional provisions:
That this applies only to certificates which are granted after the commencement date.

Why we have suggested this:
This was intended to provide an additional safeguard in particular where a patient no longer has a named person. If it applied to existing certificates as well, many would have to be reissued on or shortly after the commencement date, adding a burden to practitioners and potential uncertainty for patients.

Examples in practice (with 1 May used as the commencement date):
A treatment certificate is granted for Patient A on 1 April and authorises treatment for several months – the 2015 Act provisions do **not** apply and the certificate remains valid.

A treatment certificate is granted for Patient A on 4 May and authorises treatment for several months – the 2015 Act provisions apply and any guardian or welfare attorney must be consulted.

Section 35
What the provisions do:
(a) Provides that for proceedings relating to an application for a CTO in respect of a patient subject to a TTD or an HD, the convener does not have to be the President of the Tribunal or a member of the Tribunal who serves as a sheriff.
(b) Adds requirement to give notice to Scottish Ministers where CTO applied for, for patients subject to HD and TTD.

Proposed transitional provisions:
(b) That it applies only where the process for application begins on or after the commencement date.

Why we have suggested this:
(b) This will avoid practitioners inadvertently not fulfilling a duty in relation to an order made under the current provisions shortly before the commencement date as the provisions changed between the making of and expiry of the certificate.

Examples in practice (with 1 May used as the commencement date):
(b) The medical examinations for the CTO application for Patient A and the CTO application is determined by the Tribunal on 3 May - as the first formal part of process began before 1 May, the 2015 Act provisions do **not** apply.

(b) The medical examinations for the CTO application take place on 1 and 3 May and the MHO interview on 4 May – as the first formal part of the process began on the commencement date, the 2015 Act provisions apply and notification must be given to Scottish Ministers.

Section 40 and sections 41-44
What the provisions do:
(a) Changes the way in which timescales for removal of a person to hospital under an assessment order (AO), treatment order (TO), interim compulsion order (ICO), compulsion order and hospital direction are calculated.
(b) Section 40 also allows the court to make an order extending the AO for 14 days, instead of 7 days at present.

Proposed transitional provisions:
That these changes would only apply to orders where the criminal proceedings for the order falls on or after the commencement date

Why we have suggested this:
This means that when an application is made for an order or direction listed above, the patient will only be subject to one set of provisions throughout the process, from the beginning of the proceedings until the granting of the order or direction by the court.

Examples in practice (with 1 May used as the commencement date):
The first court appearance for patient A is on 29 April and an assessment order is made. In late May, an application to extend the AO is made – as the proceedings began before the commencement date, the 2015 provisions do **not** apply.

The first court appearance for patient B is on 3 May – the 2015 provisions apply and, if needed, the court can further extend the assessment order of up to 14 days.

There are also a small number of sections of the 2015 Act where that require simple transitional provisions that state that the provision applies from on or after the commencement date. The table below sets these out.

	Description of provision	Proposal
3	Allows transfer of those detained in hospital on the authority of an interim CTO in the same way as those subject to CTOs.	That this applies to any proposed transfer on or after the commencement date, whenever the ICTO was granted.
20	Amends nurse's power to detain so that patient can be detained for up to 3 hours for the purpose of enabling an examination of the patient to be carried out by a medical practitioner.	That this applies only to incidences beginning on or after the commencement date.
31	Extends requirement to provide accommodation to mothers to allow them to care for a child up to a year old beyond those with post-natal depression to all mothers with a mental disorder. Also adjusts duty to allow the welfare of the child to be taken into account more clearly.	That the changes to the duty apply from the commencement date.
33	(i) Extends scope of absconding regulations to other EU countries and allows regulations to set out how Part 16 of 2003 Act can be applied to patients absconding from other jurisdictions. (ii) Adds interim CTO to provisions about absconding for patients subject to CTO. (iii) Allows for regulations to specify persons authorised by patient's RMO as persons who can take absconding patients into custody.	(i) and (iii) will be dealt with in regulations. (ii) That applies to all relevant patients from the commencement date.
46	Give the RMO authority to transfer a person subject to an AO, a treatment order, an interim CO, or a temporary CO to a hospital other than that originally specified by the court. Involves consent of Scottish Ministers.	That this applies to all orders, regardless of when made.
49	Makes consequential repeals to section 9 of the Crime and Punishment (Scotland) Act 1997, and paragraph 66 of schedule 7 to the Criminal Justice and Licensing (Scotland) Act 2010, relating to power to specify hospital units.	Would specify, if required, that this does not impact the validity of existing orders which rely on 1997 Act to authorise detention in a specified hospital unit.

Glossary

- **Advance Statement** – A signed and witnessed document written by a person setting out their preferences for how they wish to be treated, or not treated, when they are unwell.
- **Approved Medical Practitioner (AMP)** – a medical practitioner who has been approved under the 2003 Act by a Health Board or by the State Hospitals Board for Scotland as having specialist training experience in the diagnosis and treatment of mental disorder .
- **Assessment Order (AO)** – an order granted by a criminal which authorises detention in hospital for a limited time, used as the starting point of investigation into mental disorder.
- **Compulsion Order (CO)** – a final disposal made by a criminal court authorising detention and treatment in a hospital or community setting for an initial period of six months, which can be extended and then reviewed annually. Requires two medical reports and an MHO report.
- **Compulsion Order with Restriction Order (CORO)** – same as Compulsion Order but without limit of time. Reserved for the most serious and high risk offenders.
- **Compulsory Treatment Order (CTO)** – a civil equivalent to the CO. Granted by a Tribunal under the 2003 Act, authorises detention and treatment in hospital or community for an initial period of six months, which can be extended and is then reviewed annually. Requires two medical reports and an MHO report.
- **Designated Medical Practitioner (DMP)** – an independent experienced psychiatrist, appointed by the Mental Welfare Commission for Scotland
- **Emergency Detention Certificate (EDC)** – an order granted by a medical practitioner which lasts for 72 hours and is used to detain a person in hospital for making urgent inquiries into their mental health.
- **Hospital Direction (HD)** - an order which authorises detention of a patient in hospital until they are well enough to be transferred to prison to complete their sentence.
- **Independent Advocate** – a person who helps patients express their views in relation to their care and treatment. Advocacy is provided free of charge under section 259 to all persons with a mental disorder.
- **Interim CO (ICO) -** an order which may be made whilst further medical reports have been requested before a full compulsion order can be imposed by the Court.
- **Interim CTO (ICTO) -** an order which may be made by the Tribunal if a decision cannot be made at a hearing (e.g. because more information is required) about the granting of a full CTO. Lasts up to 28 days, and can be renewed repeatedly so long as total detention does not exceed 56 days.
- **Listed person** – a role introduced by the 2015 Act allowing the patient's carer, nearest relative, guardian or welfare attorney to initiate an appeal or application on the patient's behalf if the patient does not have a named person or the capacity to do this on their own behalf.
- **Mental Health Officer (MHO)** – a social worker with specialist training and skills in relation to mental health.
- **Mental Health Tribunal for Scotland** – an independent judicial body which deals with applications for review, variation and recall for civil orders and compulsion orders, including those with restriction.
- **Mental Welfare Commission for Scotland**– an independent regulatory body which provides on-going monitoring of the 2003 Act to Scottish Ministers. Provides advice to professionals and service users, and also has powers to investigate cases where there are concerns of care standards.
- **Named Person** – someone appointed to look after the patient's interests. They are entitled to receive information about the patient and in certain circumstances can make applications on their behalf.
- **Responsible Medical Officer (RMO)** – the lead medical practitioner who has overall responsibility for a patient's care and treatment.

- **Savings provision –** this saves the old law, so that it continues to apply in relation to specified cases or situations, despite the commencement of the new law**.**
- **Short Term Detention Certificate (STDC)** - granted by an approved medical practitioner which enables a patient to be detained in hospital for a period of 28 days for the purposes of assessment or treatment of the patient‘s mental condition.
- **Transfer for Treatment Direction (TTD)** - a direction issued by Scottish Ministers under the 2003 Act where a serving prisoner requires hospital treatment for mental disorder.
- **Transitional provisions -** modify the new law in its application to circumstances existing when the new law comes into force.
- **Treatment Order (TO)** - an order granted a by a court which authorises detention and treatment in hospital until certain conditions have been met. Used to facilitate treatment whilst the patient is undergoing court process.
- **United Kingdom (UK) –** existing regulations relating to cross-border transfers and absconding regulations that relate to other UK jurisdictions may also include Crown Dependencies including the Channel Islands and the Isle of Man.

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