
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 234 (C. 19)

MENTAL HEALTH

**The Mental Health (Scotland) Act 2015 (Commencement
No. 5 and Transitional Provisions) Order 2017**

Made - - - - 29th June 2017
*Laid before the Scottish
Parliament* - - - - 30th June 2017
Coming into force - - 15th September 2017

The Scottish Ministers make the following Order in exercise of the powers conferred by section 61(2) and (3) of the Mental Health (Scotland) Act 2015(1) and all other powers enabling them to do so.

PRELIMINARY

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Mental Health (Scotland) Act 2015 (Commencement No. 5 and Transitional Provisions) Order 2017 and comes into force on 15th September 2017.

(2) In this Order—

“the Act” means the Mental Health (Scotland) Act 2015;

“the 2005 Order” means the Mental Health (Care and Treatment) (Scotland) Act 2003 (Transitional and Savings Provisions) Order 2005(2);

“the 2003 Act” means the Criminal Justice (Scotland) Act 2003(3);

“the 2003 Mental Health Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003(4);

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(5); and

“the 1984 Act” means the Mental Health (Scotland) Act 1984(6).

(1) 2015 asp 9.

(2) S.S.I. 2005/452.

(3) 2003 asp 7.

(4) 2003 asp 13.

(5) 1995 c.46.

(6) 1984 c.36. The Act was repealed by the Mental Health (Care and Treatment) (Scotland) Act 2003 subject to savings and transitional provisions in the Mental Health (Care and Treatment) (Scotland) Act 2003 (Transitional and Savings Provisions) Order 2005.

(3) For the purposes of articles 3 to 8 of this Order, “the appointed day” means 15th September 2017.

Appointed day

2.—(1) 15th September 2017 is the day appointed for the coming into force of the following provisions of the Act—

- (a) section 54 (right to information: offender imprisoned) for the purpose only of enabling any person who is entitled to receive information under section 16(1) of the 2003 Act (victim’s rights to receive information concerning release etc. of offender) to intimate a wish to receive the information that is required to be given by virtue of the amendments made to that section by section 54 of the Act;
- (b) section 55 (right to information: compulsion order) for the purpose only of enabling persons who are entitled by virtue of section 16A(1)(c) (as read with section 16B) of the 2003 Act to ask to be given information about O under section 16A(1) of the 2003 Act;
- (c) section 56 (right to make representations) for the purpose only of enabling a person who is to be given information under section 16 or 16A of the 2003 Act to intimate—
 - (i) under section 17B of that Act a wish to be afforded an opportunity to make representations under that section; and
 - (ii) under section 17D of that Act a wish to receive information under that section;
- (d) section 57 (information sharing); and
- (e) section 58 (associated definitions), so far as not already in force.

(2) 30th September 2017 is the day appointed for the coming into force of the following provisions of the Act—

- (a) sections 54, 55 and 56 so far as not already in force;
- (b) section 59 (power to make modifications); and
- (c) section 60 (amendments to the 2003 Act).

(3) In paragraph (1)(b) “O” has the same meaning as in section 16A(1) of the 2003 Act.

TRANSITIONAL PROVISIONS

Victim’s right to information on offender: section 16 of the 2003 Act

3. Despite the commencement of section 54 of the Act—

- (a) the amendments to section 16(3)(f) of the 2003 Act (victim’s right to receive information concerning release etc. of offender) have no effect where the convicted person who was unlawfully at large from hospital as described in section 16(3)(f)(i) has been returned to hospital as described in section 16(3)(f)(ii) before the appointed day; and
- (b) section 16(3)(g)(ii) of the 2003 Act has no effect where the certificate mentioned in section 16(3)(g)(i) was revoked before the appointed day.

4.—(1) Paragraph (2) applies where—

- (a) an offence has been perpetrated against a natural person;
- (b) another person (“O”) was convicted of that offence and sentenced in respect of it as described in section 16(1)(a) to (c) of the 2003 Act and, immediately before 5th October 2005, was subject to a transfer direction made under section 71 of the 1984 Act (removal to

hospital of persons serving sentences of imprisonment and other prisoners) in connection with that sentence of imprisonment or treated as so subject; and

- (c) O continues to be treated on or after the appointed day as if subject to a transfer for treatment direction made under section 136 of the 2003 Mental Health Act (transfer of prisoners for treatment for mental disorder) and as if liable to be detained by virtue of that Act, in accordance with article 29 of the 2005 Order (transfer directions).

(2) For the purposes of section 16(3)(g) of the 2003 Act (as read with section 18A of that Act (interpretation)), O is to be treated as liable to be detained in hospital under a transfer for treatment direction made under section 136 of the 2003 Mental Health Act (transfer of prisoners for treatment for mental disorder).

Victim’s right to information on offender subject to compulsion order: sections 16A to 16C of the 2003 Act

5.—(1) Paragraph (2) applies where—

- (a) an offence has been perpetrated against a natural person;
- (b) another person (“O”), immediately before 5th October 2005, was subject to a hospital order or an order having the effect of a hospital order made under section 58 of the 1995 Act (order for hospital admission or guardianship) in proceedings in respect of that offence and was subject to the special restrictions set out in section 62(1) of the 1984 Act (effect of restriction orders); and
- (c) O fell to be treated on that date as if a compulsion order and a restriction order had been made in respect of O, by virtue of article 20 of the 2005 Order (restriction orders).

(2) For the purposes of section 16A(1)(b) of the 2003 Act (victim’s right to receive information concerning offender subject to compulsion order), O is to be treated as if O has been made subject to a compulsion order and a restriction order in proceedings in respect of an offence as described in subsection (1)(a) of that section.

6.—(1) Despite the commencement of section 55 of the Act, where paragraph (2) applies—

- (a) section 16A(2) of the 2003 Act has no effect; and
- (b) provided that it is reasonably practicable for them to do so, the Scottish Ministers must give the information about O (as defined in section 16A(1) of the 2003 Act) described in paragraph (3) to the person mentioned in section 16A(1)(c) of the 2003 Act.

(2) This paragraph applies where—

- (a) the circumstances set out in section 16A(1)(a) to (d) apply; and
- (b) the compulsion order or the restriction order referred to in section 16A(1)(b) ceased to have effect before the appointed day.

(3) The following information is to be given—

- (a) that the compulsion order to which O was subject was revoked before the appointed day and that revocation is final;
- (b) that the restriction order to which O was subject was revoked before the appointed day and that revocation is final; or
- (c) where neither sub-paragraph (a) nor sub-paragraph (b) applies, that O died before the appointed day and the date of O’s death.

7.—(1) For the purposes of article 6 of this Order, an order has “ceased to have effect” if—

- (a) it is revoked and the revocation is final; or

- (b) it ceased to have effect in consequence of O's death.
 - (2) For the purposes of paragraph (1), a revocation is final if any of the circumstances mentioned in paragraph (3) apply.
 - (3) The circumstances are—
 - (a) the decision to revoke the order has not been appealed against before the expiry of the time allowed to appeal to the Court of Session;
 - (b) the decision to revoke the order has been appealed against and—
 - (i) the Court of Session has decided not to allow the appeal; and
 - (ii) the Court of Session's decision has not been appealed against to the Supreme Court before the expiry of the time allowed to appeal to the Supreme Court; or
 - (c) the decision to revoke the order has been appealed against and—
 - (i) the Court of Session has decided to allow or not to allow the appeal;
 - (ii) the Court of Session's decision has been appealed against to the Supreme Court; and
 - (iii) the Supreme Court has decided not to allow the appeal.
- 8.—(1)** Despite the commencement of section 55 of the Act—
- (a) section 16C(2)(e) of the 2003 Act (information to be given under section 16A) has no effect where the compulsion order referred to in that section has been varied before the appointed day;
 - (b) section 16C(2)(g) of the 2003 Act has no effect where the order mentioned in that subsection has been made before the appointed day, if the Scottish Ministers have recalled O to hospital under section 202 of the 2003 Mental Health Act (recall of patients from conditional discharge) before that day;
 - (c) where sub-paragraph (b) applies, section 16C(2)(h) and (2)(i) of the 2003 Act have no effect;
 - (d) section 16C(3)(b) of the 2003 Act has no effect where O has returned to hospital before the appointed day; and
 - (e) section 16C(3)(d) of the 2003 Act has no effect where the certificate mentioned in section 16C(3)(c) was revoked before the appointed day.
- (2) For the purposes of paragraph (1), O is to be treated as having been recalled to hospital under section 202 of the 2003 Mental Health Act before the appointed day if O has returned, or has been returned, to hospital before that day in pursuance of a warrant issued by the Scottish Ministers under that section.
- (3) In this article, "O" has the same meaning as in section 16A(1) of the 2003 Act.

St Andrew's House,
Edinburgh
29th June 2017

MAUREEN WATT
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

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

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

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

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

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

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

| <i>Provision</i> | <i>Date of Commencement</i> | <i>Instrument No.</i> |
|--|-----------------------------|--------------------------|
| Sections 2 to 13 | 30th June 2017 | 2017/197 |
| Sections 14, 15, 16 and 18 | 16th November 2015 | 2015/361 |
| Sections 23(1) and (2), 29, 32 and 33 (partially) | 5th May 2017 | 2017/126 |
| Section 37 | 24th December 2015 | 2015/417 |
| Sections 19 to 22, 23 (so far as not already in force), 24 to 28, 29 (so far as not already in force), 30, 31, 32 and 33 (so far as not already in force), 34 to 36, 38 and 39 | 30th June 2017 | 2017/197 |
| Sections 40 to 45 | 30th September 2017 | 2017/197 |
| Sections 46 to 53 | 30th June 2017 | 2017/197 |
| Sections 54 and 58 (partially) | 5th May 2017 | 2017/126 |