

**2005 No. 2078 (S.9)**

**CONSTITUTIONAL LAW**

**DEVOLUTION, SCOTLAND**

**MENTAL HEALTH**

**The Mental Health (Care and Treatment) (Scotland) Act 2003  
(Consequential Provisions) Order 2005**

*Made* - - - -

*21st July 2005*

*Coming into force in accordance with article 1(1) and (2)*

Whereas a draft of this Order has been laid before and approved by a resolution of each House of Parliament in accordance with section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, the Scotland Act 1998(a);

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by sections 104, 112(1) and 113 of that Act, and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation, commencement, interpretation and extent**

1.—(1) This Order may be cited as the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 and, subject to paragraph (2), shall come into force on 5th October 2005.

(2) The entry in Schedule 3 to this Order in respect of the Mental Health (Scotland) Act 1984(b) shall come into force immediately after the coming into force of the entry in Schedule 5 to the 2003 Act in respect of the Mental Health (Scotland) Act 1984.

(3) In this Order, unless the context otherwise requires—

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

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

“hospital”, except as provided in articles 2(7) and 4(8), has the meaning given in section 329(1) of the 2003 Act;

“hospital direction” means a direction made under section 59A(e) of the 1995 Act;

“patient” has the meaning given in section 329(1) of the 2003 Act;

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(a) 1998 c.46.

(b) 1984 c.36.

(c) 1995 c.46.

(d) 2003 asp 13.

(e) Section 59A was inserted by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (“the 2003 Act”), section 331(1) and Schedule 4.

“restriction order” means an order made under section 59(a) of the 1995 Act; and

“transfer for treatment direction” has the meaning given by section 136 of the 2003 Act.

(4) A reference in this Order to “a patient whose detention in hospital was authorised by virtue of the 2003 Act or the 1995 Act” shall be read as including references to a patient in respect of whom a certificate under one of the provisions listed in section 290(7)(a) of the 2003 Act is in operation.

(5) Articles 2 and 3 extend to England and Wales only(b).

(6) Articles 4, 5, 6, 7 and 9 extend to Northern Ireland only(c).

(7) Articles 8, 10, 11 and 12(2) extend to England and Wales and Northern Ireland only(d).

(8) Articles 12(1), 13 and 14 extend to Scotland only(e).

(9) Subject to paragraph (10), the modifications in Schedules 1 and 2 and the repeals in Schedule 3 have the same extent as the provisions being modified or repealed.

(10) Those modifications and repeals do not extend to Scotland other than the modifications in paragraphs 1(4)(b), 5 and 6 of Schedule 1 and paragraph 20 of Schedule 2 and the repeal in Schedule 3 of the Mental Health (Scotland) Act 1984(f).

### **Removal to England and Wales of hospital patients from Scotland**

2.—(1) This article applies to a patient whose detention in hospital was authorised by virtue of the 2003 Act or the 1995 Act immediately before the removal of the patient to England and Wales under regulations made under section 290 of the 2003 Act.

(2) Where a patient to whom this article applies is admitted to a hospital in England and Wales, he shall be treated—

(a) as if on the date of his admission he had been so admitted in pursuance of an application made, or an order or direction made or given, on that date under the enactment in force in England and Wales which most closely corresponds to the enactment to which he was subject immediately before his removal; and

(b) where he is subject to a measure under any enactment in force in Scotland restricting his discharge, as if he were subject to an order or direction under the enactment in force in England and Wales which most closely corresponds to the enactment restricting his discharge to which he was subject immediately before his removal.

(3) Where a patient to whom this article applies was immediately before his removal liable to be detained under the 2003 Act by virtue of a transfer for treatment direction, given while he was serving a sentence of imprisonment (within the meaning of section 136(9) of the 2003 Act) imposed by a court in Scotland, he shall be treated as if the sentence had been imposed by a court in England and Wales.

(4) Where a patient to whom this article applies was immediately before his removal subject to a hospital direction or transfer for treatment direction, the restriction direction or limitation direction under the Mental Health Act 1983 to which he is subject by virtue of paragraph (2) shall expire on the date on which either of the two first-mentioned directions would have expired if he had not been so removed.

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(a) Section 59 was amended by the 2003 Act, section 331 and Schedules 4 and 5. There has been another amendment not relevant to this Order.

(b) Articles 2 and 3 extend only to England and Wales to make provision in the receiving jurisdiction for patients removed to that jurisdiction in accordance with regulations made under section 290 of the 2003 Act.

(c) Articles 4, 5, 6, 7 and 9 extend only to Northern Ireland to make provision in that jurisdiction for the reception or removal of patients received or removed in accordance with regulations made under section 290 of the 2003 Act.

(d) Articles 8, 10, 11 and 12(2) extend only to England and Wales and Northern Ireland to make provision in those jurisdictions for patients absent from hospitals in Scotland, offences in relation to assisting patients absent without leave, provisions as to custody, removal and detention of patients and the protection for acts done under this Order.

(e) Articles 12(1), 13 and 14 extend only to Scotland as they relate to the exercise in Scotland of reserved powers concerning immigration law and the protection for acts done under this Order in Scotland.

(f) 1984 c.36. In general the modifications and repeals made by this Order can be made in respect of Scotland using subordinate legislation under the 2003 Act. The modifications in paragraphs 1(4)(b), 5 and 6 of Schedule 1 and paragraph 20 of Schedule 2 and the repeal in Schedule 3 of the Mental Health (Scotland) Act 1984 cannot be made in respect of Scotland using subordinate legislation under the 2003 Act.

(5) Where a patient to whom this article applies was immediately before his removal liable to be detained under the 2003 Act by virtue of a hospital direction, he shall be treated as if any sentence of imprisonment passed at the time at which the hospital direction was made had been imposed by a court in England and Wales.

(6) Any directions given by the Scottish Ministers under regulations made under section 290 of the 2003 Act as to removal of the patient to a hospital in England and Wales shall have effect as if they had been given under the Mental Health Act 1983(a).

(7) In this article references to a hospital in England and Wales shall be construed as references to a hospital within the meaning of Part 2 of the Mental Health Act 1983.

### **Transfer of patients to England and Wales from Scotland: conditional discharge**

3.—(1) This article applies to any patient—

- (a) who is transferred under regulations made under section 290 of the 2003 Act; and
- (b) who, before that transfer, was subject to—
  - (i) a restriction order; and
  - (ii) a conditional discharge under section 193(7) of the 2003 Act.

(2) Where such a patient is so transferred, the patient shall be treated—

- (a) as if on the date of the transfer he had been conditionally discharged under the most closely corresponding enactment in force in England and Wales; and
- (b) as if he were subject to a restriction order under the most closely corresponding enactment in force in England and Wales.

(3) A patient to whom this article applies may only be transferred from Scotland to England and Wales with the consent of the Secretary of State.

### **Removal to Northern Ireland of hospital patients from Scotland**

4.—(1) This article applies to a patient whose detention in hospital was authorised by virtue of the 2003 Act or the 1995 Act immediately before the removal of the patient to Northern Ireland under regulations made under section 290 of the 2003 Act.

(2) Subject to the provisions of paragraph (3) of this article, where a patient to whom this article applies is admitted to a hospital in Northern Ireland, he shall be treated—

- (a) as if on the date of his admission he had been so admitted in pursuance of an application made, or an order or direction made or given, on that date under the enactment in force in Northern Ireland which most closely corresponds to the enactment to which he was subject immediately before his removal; and
- (b) where he is subject to a measure under any enactment in force in Scotland restricting his discharge, as if he were subject to a restriction order or a restriction direction under the enactment in force in Northern Ireland which most closely corresponds to the enactment restricting his discharge to which he was subject immediately before his removal.

(3) Where a patient to whom this article applies was immediately before his removal liable to be detained by virtue of a compulsory treatment order under section 64 of the 2003 Act, he shall, on his admission to a hospital in Northern Ireland, be treated as if he were detained for treatment under Part 2 of the Mental Health (Northern Ireland) Order 1986(b) by virtue of a report under Article 12(1) of that Order made on the date of his admission.

(4) Where a patient to whom this article applies was immediately before his removal liable to be detained under the 2003 Act by virtue of a transfer for treatment direction given while he was serving a sentence of imprisonment (within the meaning of section 136(9) of the 2003 Act) imposed by a court in Scotland, he shall be treated as if the sentence had been imposed by a court in Northern Ireland.

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(a) 1983 c.20.

(b) S.I. 1986/595 (N.I. 4). There have been amendments to Part 2 not relevant to this Order.

(5) Where a patient to whom this article applies was immediately before his removal subject to a transfer for treatment direction, the restriction direction under the Mental Health (Northern Ireland) Order 1986 to which he is subject by virtue of paragraph (2) shall expire on the date on which the first-mentioned direction would have expired if he had not been so removed.

(6) Where a patient to whom this article applies was immediately before his removal liable to be detained under the 2003 Act by virtue of a hospital direction, he shall be treated as if any sentence of imprisonment passed at the time at which the hospital direction was made had been imposed by a court in Northern Ireland.

(7) Any directions given by the Scottish Ministers under regulations made under section 290 of the 2003 Act as to removal of the patient to a hospital in Northern Ireland shall have effect as if they had been given under the Mental Health (Northern Ireland) Order 1986.

(8) In this article “hospital” has the same meaning as in Article 2(2) of the Mental Health (Northern Ireland) Order 1986(a).

### **Transfer of patients to Northern Ireland from Scotland: conditional discharge**

5.—(1) This article applies to any patient—

- (a) who is transferred under regulations made under section 290 of the 2003 Act; and
- (b) who, before that transfer, was subject to—
  - (i) a restriction order; and
  - (ii) a conditional discharge under section 193(7) of the 2003 Act.

(2) Where such a patient is so transferred the patient shall be treated—

- (a) as if on the date of the transfer he had been conditionally discharged under the most closely corresponding enactment in force in Northern Ireland; and
- (b) as if he were subject to a restriction order under the most closely corresponding enactment in force in Northern Ireland.

(3) A patient to whom this article applies may only be transferred from Scotland to Northern Ireland with the consent of the Secretary of State.

### **Removal to Scotland of hospital patients from Northern Ireland**

6.—(1) If it appears to the responsible authority that it is in the interests of the patient who is for the time being subject to guardianship under the Mental Health (Northern Ireland) Order 1986 to remove him to Scotland, and arrangements have been made for receiving him into guardianship there, the responsible authority may authorise his removal to Scotland and may give any necessary directions for his removal to his destination.

(2) If it appears to the responsible authority that it is in the interests of the patient who is for the time being liable to be detained under that Order (otherwise than by virtue of Article 42, 43 or 45 of that Order), and that arrangements have been made for admitting him to a hospital, or where he is not admitted to a hospital, for his detention in hospital to be authorised by virtue of the 2003 Act or the 1995 Act, the responsible authority may authorise his removal to Scotland and may give any necessary directions for his removal to his destination.

(3) In this article—

- (a) “the responsible authority” means the Department of Health, Social Services and Public Safety for Northern Ireland or, in relation to a patient who is subject to a restriction order or restriction direction in terms of Article 47 or 55 of the Mental Health (Northern Ireland) Order 1986, the Secretary of State; and
- (b) references to a patient’s “detention in hospital to be authorised by virtue of the 2003 Act or the 1995 Act” shall be read as including references to a patient in respect of whom a certificate under one of the provisions listed in section 290(7)(a) of the 2003 Act is in operation.

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(a) Article 2(2) was amended by S.I. 1994/429 (N.I. 2).

### **Transfer of patients to Scotland from Northern Ireland: conditional discharge**

7. If it appears to the Secretary of State, in the case of a patient who—
- (a) is subject to a restriction order under Article 47(1) of the Mental Health (Northern Ireland) Order 1986; and
  - (b) has been conditionally discharged under Article 48(2) or 78(2) of that Order,

that a transfer under this article would be in the interests of the patient, the Secretary of State may, with the consent of the Scottish Ministers, transfer the patient to Scotland.

### **Patients absent from hospitals in Scotland**

8.—(1) Subject to the provisions of this article, any person who may be taken into custody in Scotland under—

- (a) sections 301 to 303 of the 2003 Act; or
- (b) regulations made under section 290 or 310 of that Act,

may be taken into custody in, and returned to Scotland from, any other part of the United Kingdom.

(2) For the purposes of the enactments referred to in paragraph (1), in their application by virtue of this article to England and Wales or Northern Ireland—

- (a) “constable” includes a constable in England or Wales or a constable of the Police Service of Northern Ireland, as the case may be; and
- (b) “mental health officer” includes—
  - (i) in England and Wales, any approved social worker within the meaning of the Mental Health Act 1983; and
  - (ii) in Northern Ireland, any approved social worker within the meaning of the Mental Health (Northern Ireland) Order 1986.

### **Patients absent from hospitals in Northern Ireland**

9. Any person who is subject to corresponding measures (within the meaning of section 290(8) of the 2003 Act) in Northern Ireland and who is taken into custody in Scotland under regulations made under section 309 or 310 of the 2003 Act, as a result of being subject to those measures, may be returned to Northern Ireland by any person authorised by or by virtue of those regulations to take him into custody.

### **Assisting patients to absent themselves without leave etc.**

10.—(1) Any person who in England and Wales or Northern Ireland does anything in relation to a person whose detention in hospital is authorised by the 2003 Act which, if done in Scotland, would make him guilty of an offence under section 316 of the 2003 Act shall be guilty of an offence.

(2) Where a person is charged with an offence under paragraph (1) as it applies to section 316(1)(b) of the 2003 Act, it shall be a defence for such person to prove that the doing of that with which the person is charged—

- (a) did not obstruct the discharge by any person of a function conferred or imposed on that person by virtue of the 2003 Act or this Order; and
- (b) was intended to protect the interests of the patient.

(3) Any person guilty of an offence under this article shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 5 on the standard scale;

- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

### **Provisions as to custody, removal and detention**

**11.**—(1) Any person required or authorised by or by virtue of the 2003 Act or by virtue of this Order to be moved to any place or to be kept in custody or detained in a place of safety shall, while being so moved, kept or detained, as the case may be, be deemed to be in legal custody.

(2) A constable or any other person required or authorised by or by virtue of that Act or by virtue of this Order to take any person into custody, or to move or detain any person shall, for the purposes of taking him into custody or moving or detaining him, have all the powers, authorities, protection and privileges which a constable has—

- (a) in the case of a constable, within the area for which he acts as constable; and
- (b) in the case of any other person, in the area where he has taken any person into custody or is moving or detaining him.

### **Protection for acts done under this Order**

**12.**—(1) No person shall be liable, whether on ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this paragraph in respect of any act purporting to be done in pursuance of this Order, unless the act was done in bad faith or without reasonable care.

(2) Section 139 of the Mental Health Act 1983 (which relates to protection for acts done in pursuance of that Act) shall apply in respect of any act purporting to be done in pursuance of articles 2 to 11 of this Order.

### **Persons detained under immigration law**

**13.** Section 136 of the 2003 Act (transfer of prisoners for treatment for mental disorder) shall apply to any person detained under the Immigration Act 1971<sup>(a)</sup> or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)<sup>(b)</sup> as that section applies to a person serving a sentence of imprisonment.

### **Mental health services provided by local authorities**

**14.**—(1) No services shall be provided under sections 25 to 27 of the 2003 Act to a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits)<sup>(c)</sup> applies solely—

- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(2) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of paragraph (1) as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph of that Schedule to the Secretary of State substitute references to a local authority.

### **Modifications**

**15.** The modifications in Schedules 1 and 2 have effect.

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(a) 1971 c.77.  
(b) 2002 c.41.  
(c) 1999 c.33.

**Repeals and saving**

**16.**—(1) The repeals in Schedule 3 have effect.

(2) Notwithstanding the repeal in respect of sections 1, 125, 128 and 129 of the Mental Health (Scotland) Act 1984 in Schedule 3, those sections shall continue to have effect for the purposes of sections 10 and 95 of that Act.

*DAVID CAIRNS*  
Parliamentary Under Secretary of State,  
Scotland Office,  
Department for Constitutional Affairs

Dover House,  
London  
21st July 2005

## MODIFICATION OF PUBLIC GENERAL ACTS

*Representation of the People Act 1983 (c.2)*

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

(2) In section 3A(3) (disfranchisement of offenders detained in mental hospitals)(a)–

- (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)(b), in subsection (6)(b), for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

(4) In section 7A(6) (residence: persons remanded in custody etc.)(c)–

- (a) in paragraph (d), for “a committal to a hospital under section 52” substitute “an assessment order under section 52D or a treatment order under section 52M”; and
- (b) for paragraph (e), substitute “a transfer for treatment direction under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 made in respect of a person to whom that section applies by virtue of article 13 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005”.

*Mental Health Act 1983 (c.20)*

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

(2) In section 69 (applications to tribunals concerning patients subject to hospital and guardianship orders)(d), in subsection (2)(a), for “section 77(2) of the Mental Health (Scotland) Act 1984” substitute “article 2(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005”.

(3) In section 79 (interpretation of Part 5)(e), in subsection (1)(c), for “section 77(2) of the Mental Health (Scotland) Act 1984” substitute “article 2(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005”.

(4) In section 80 (removal of patients to Scotland)(f)–

- (a) in subsection (1) after “there,” insert “or, where he is not to be admitted to a hospital, for his detention in hospital to be authorised by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995”;
- (b) in subsection (7), for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”; and

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(a) Section 3A was inserted by the Representation of the People Act 2000 (c.2), section 2.

(b) Section 7 was substituted by the Representation of the People Act 2000 (c.2), section 4 and amended by S.I. 2001/1184.

(c) Section 7A was inserted by the Representation of the People Act 2000 (c.2), section 5 and amended by S.I. 2001/1184.

(d) Section 69 was amended by the Mental Health (Scotland) Act 1984 (c.36) (“the 1984 Act”), section 127(1) and Schedule 3, paragraph 49. There have been other amendments not relevant to this Order.

(e) Section 79 was amended by the 1984 Act, section 127(1) and Schedule 3, paragraph 50. There have been other amendments not relevant to this Order.

(f) 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) after subsection (7) add–

“(8) Reference in this section to a patient’s detention in hospital being authorised by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995 shall be read as including references to a patient in respect of whom a certificate under one of the provisions listed in section 290(7)(a) of the Act of 2003 is in operation.”.

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

(6) In section 90 (regulations for purposes of Part 6)(b)–

(a) for “Part 7 of the Mental Health (Scotland) Act 1984” substitute “regulations made under section 290 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and articles 2, 3 and 10 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005”; and

(b) for “those Parts” substitute “that Part or those regulations or articles”.

(7) In section 91 (general provisions as to patients removed from England and Wales)–

(a) in subsection (1), after “guardianship” where secondly appearing, insert “or, where he is not received into a hospital but his detention in hospital is authorised by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995”; and

(b) after subsection (2) add–

“(3) Reference in this section to a patient’s detention in hospital being authorised by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995 shall be read as including references to a patient in respect of whom a certificate under one of the provisions listed in section 290(7)(a) of the Act of 2003 is in operation.”.

(8) In section 92 (interpretation of Part 6)(c), in subsection (3), for “Part 7 of the Mental Health (Scotland) Act 1984” substitute “the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 and regulations made under section 290 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

(9) In section 135 (warrant to search for and remove patients)(d)–

(a) in subsection (2)–

(i) for “section 83 of the Mental Health (Scotland) Act 1984” substitute “article 8 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005”; and

(ii) for “section 83” where secondly occurring, substitute “article 8”; and

(b) in subsection (4)(b), for “section 83 of the Mental Health (Scotland) Act 1984” substitute “article 8 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005”.

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(a) Section 88 was amended by the 1984 Act, sections 127 and Schedule 3, paragraph 52 and by S.I. 1986/596.

(b) Section 90 was amended by the 1984 Act, section 127 and Schedule 3, paragraph 53.

(c) Section 92 was amended by the 1984 Act, section 127 and Schedule 3, paragraph 54. There have been other amendments not relevant to this Order.

(d) Section 135 was amended by the 1984 Act, section 127 and Schedule 3, paragraph 56. There have been other amendments not relevant to this Order.

*Insolvency Act 1986 (c.45)*

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

(2) In section 389A (authorisation of nominees and supervisors)(a), 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)(b), 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”.

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

**4.—**(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 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 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Immigration and Asylum Act 1999 (c.33)*

**5.** In section 156(7) of the Immigration and Asylum Act 1999 (arrangements for the provision of escorts and custody)–

- (a) the words “a transfer direction given under” become paragraph (a) of that subsection;
- (b) the existing paragraphs (a) and (b) become, respectively, sub-paragraphs (i) and (ii) of that new paragraph;
- (c) in the new sub-paragraph (i), omit the words “or section 71 of the Mental Health (Scotland) Act 1984”; and
- (d) after the new sub-paragraph (ii), add–
  - “or
  - (b) a transfer for treatment direction given under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 as applied by article 13 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005.”.

*Nationality, Immigration and Asylum Act 2002 (c.41)*

**6.** In section 46 of the Nationality, Immigration and Asylum Act 2002 (section 44: supplemental: Scotland and Northern Ireland), for subsections (4) and (5) substitute–

“(4) The following shall be substituted for article 14(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (mental health services provided by local authorities)–

“(2) Section 95(2) to (7) of the Immigration and Asylum Act 1999 shall apply for the purposes of paragraph (1); and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to a local authority.”.

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(a) Section 389A was inserted by the Insolvency Act 2000 (c.39), section 4. There have been other amendments not relevant to this Order.

(b) 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.

*Sexual Offences Act 2003 (c.42)*

7. In section 133(1) of the Sexual Offences Act 2003 (Part 2: general interpretation)(a)–
- (a) in paragraph (a) of the definition of “admitted to a hospital”, for “58” substitute “57A(2)”; and
  - (b) in paragraph (a) of the definition of “detained in a hospital”, 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)”.

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(a) Section 133 has been prospectively amended by the Domestic Violence, Crime and Victims Act 2004 (c.28), Schedule 10, paragraph 57. There have been other amendments to section 133 not relevant to this Order.

## MODIFICATION OF STATUTORY INSTRUMENTS

*Mental Health (Hospital, Guardianship and Consent to Treatment) Regulations 1983 (S.I. 1983/893)*

1. In regulation 11(1) of the Mental Health (Hospital, Guardianship and Consent to Treatment) Regulations 1983 (removal to England and Wales)(a), for “Part 6 of the Mental Health (Scotland) Act 1960” substitute “the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 and regulations made under section 290 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595)*

2.—(1) The Mental Health (Northern Ireland) Order 1986(b) is amended as follows.

(2) In Article 84(1)(c) (interpretation), for “section 80(2) of the Mental Health (Scotland) Act 1984 substitute “article 4(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005”.

(3) In Article 129(3) (warrant to search for and remove patients), for “section 84 of the Mental Health (Scotland) Act 1984” substitute “article 8 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005”.

(4) In Article 132(5) (retaking of patients escaping from custody)—

- (a) for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”; and
- (b) for “Part 7 of the Act of 1984” substitute “being removed to Northern Ireland under regulations made under section 290 of the Act of 2003”.

(5) In Article 134 (patients removed to or from Northern Ireland)—

- (a) in paragraph (1), for “Part 7 of the 1984 Act” substitute “admitted to hospital in Northern Ireland under article 4 of the 2005 Order”;
- (b) in paragraph (3), for “Part 7 of the 1984 Act” substitute “regulations made under section 290 of the Mental Health (Care and Treatment) (Scotland) Act 2003”;
- (c) in paragraph (4)—
  - (i) for “Part 7 of the 1984 Act” substitute “article 6 of the 2005 Order”; and
  - (ii) after “guardianship” where secondly appearing, insert “or, where he is not received into a hospital but his detention in hospital is authorised by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995”;
- (d) in paragraph (6), for “Part 7 of the 1984 Act” substitute “article 6 of the 2005 Order”;
- (e) in paragraph (7)—
  - (i) omit the words from “the 1984 Act” to the end; and
  - (ii) at the end add—

““the 2005 Order” means the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005.”; and

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(a) S.I. 1983/893 to which there are amendments not relevant to this Order.

(b) S.I. 1986/595 (N.I. 4) to which there are amendments not relevant to this Order.

(f) after paragraph (7) add–

“(8) Reference in this Article to a patient whose detention in hospital is authorised by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995, shall be read as including references to a patient in respect of whom a certificate under one of the provisions listed in section 290(7)(a) of the Act of 2003 is in operation.”.

*Income Support (General) Regulations 1987 (S.I. 1987/1967)*

**3.—**(1) The Income Support (General) Regulations 1987(**a**) are amended as follows.

(2) In regulation 2(1) (interpretation), in the definition of “nursing home”, for “a private hospital within the meaning of section 12 of the Mental Health (Scotland) Act 1984 (private hospitals)” substitute “an independent health care service within the meaning of section 2(5) of the Regulation of Care (Scotland) Act 2001”.

(3) In regulation 16 (circumstances in which a person is to be treated as being or not being a member of the household), in paragraph (3)(a), for “section 90(1) of the Mental Health (Scotland) Act 1984 (provision of hospitals for patients requiring special security)” substitute “section 102 of the National Health Service (Scotland) Act 1978 (state hospitals)”.

(4) In regulation 21 (special cases)–

(a) in paragraph (3)–

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

(ii) in the definition of “residential accommodation”, for “section 7 of the Mental Health (Scotland) Act 1984 (functions of local authorities)” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (care and support services etc.)”; and

(b) in paragraph (3E), for “section 7 of the Mental Health (Scotland) Act 1984” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

(5) In paragraph 2A of Schedule 7 (applicable amounts in special cases) for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

(6) In Schedule 9 (sums to be disregarded in the calculation of income other than earnings)–

(a) in paragraph 15A(1), for “section 7 of the Mental Health (Scotland) Act 1984” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”; and

(b) in paragraph 66, for “section 8 of the Mental Health (Scotland) Act 1984” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Housing Benefit (General) Regulations 1987 (S.I. 1987/1971)*

**4.—**(1) The Housing Benefit (General) Regulations 1987(**b**) are amended as follows.

(2) In regulation 5 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home)–

(a) in paragraph (8ZA)(a), for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”; and

(b) in paragraph (9), in the definition of “residential accommodation”, in subparagraph (j)(ii), for “a private hospital within the meaning of section 12 of the Mental Health (Scotland) Act 1984 (private hospitals)” substitute “an independent health care

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(a) S.I. 1987/1967; relevant amending instruments are S.I. 1990/547, S.I. 992/3147, S.I. 1993/518, S.I. 1994/2139, S.I. 1995/516, S.I. 1998/563, S.I. 1998/2117 and S.I. 2001/3767.

(b) S.I. 1987/1971; relevant amending instruments are S.I. 1990/2564, S.I. 1992/50, S.I. 1995/560, S.I. 1998/563, S.I. 2003/325 and S.I. 2005/573.

service within the meaning of section 2(5) of the Regulation of Care (Scotland) Act 2001”.

(3) In regulation 7(3)(e)(ii) (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling), for “a private hospital within the meaning of section 12 of the Mental Health (Scotland) Act 1984 (private hospitals)” substitute “an independent health care service within the meaning of section 2(5) of the Regulation of Care (Scotland) Act 2001”.

(4) In regulation 25(5)(d) (meaning of income), for “section 7 of the Mental Health (Scotland) Act 1984 (functions of local authorities)” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

(5) In regulation 63(7)(e)(iii) (non-dependant deductions), for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

(6) The amendment made by sub-paragraph (4) is to the Housing Benefit (General) Regulations 1997 as modified in their application to persons to whom regulation 2 of the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003(a) applies.

*Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405)*

5. In article 348A(3)(c) of the Insolvency (Northern Ireland) Order 1989 (authorisation of nominees and supervisors)(b), for “section 125(1) of the Mental Health (Scotland) Act 1984 (c.36)” substitute “section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*National Health Service Trusts (Membership and Procedure) Regulations 1990 (S.I. 1990/2024)*

6. In regulation 1(2) of the National Health Service Trusts (Membership and Procedure) Regulations 1990 (citation, commencement and interpretation)(c), in the definition of “health service body”, omit sub-paragraph (c).

*Radioactive Substances (Hospitals) Exemption Order 1990 (S.I. 1990/2512)*

7. In article 2(1) of the Radioactive Substances (Hospitals) Exemption Order 1990 (interpretation)(d), in the definition of “hospital”, for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Income Tax (Building Societies) (Dividends and Interest) Regulations 1990 (S.I. 1990/2231)*

8. In regulation 2(1) of the Income Tax (Building Societies) (Dividends and Interest) Regulations 1990 (interpretation)(e), 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”.

*Income Tax (Deposit-Takers) (Interest Payments) Regulations 1990 (S.I. 1990/2232)*

9. In regulation 2 of the Income Tax (Deposit-Takers) (Interest Payments) Regulations 1990 (interpretation)(f), 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”.

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(a) S.I. 2003/325.

(b) S.I. 1989/2405; the relevant amending instrument is S.I. 2002/3152.

(c) S.I. 1990/2024 to which there are amendments not relevant to this Order.

(d) S.I. 1990/2512 to which there are amendments not relevant to this Order.

(e) S.I. 1990/2231; the relevant amending instrument is S.I. 1992/11.

(f) S.I. 1990/2232; the relevant amending instrument is S.I. 1992/13.

*Savings Certificates Regulations 1991 (S.I. 1991/1031)*

**10.** In regulation 33(a) of the Savings Certificates Regulations 1991 (application to Scotland)(a), for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Savings Certificates (Children’s Bonus Bonds) Regulations 1991 (S.I. 1991/1407)*

**11.** In regulation 29(a) of the Savings Certificates (Children’s Bonus Bonds) Regulations 1991 (application to Scotland)(b), for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Social Security (Attendance Allowance) Regulations 1991 (S.I. 1991/2740)*

**12.** In regulation 7(1)(a)(ii) of the Social Security (Attendance Allowance) Regulations 1991 (persons in certain accommodation other than hospitals)(c), for “section 7 of the Mental Health (Scotland) Act 1984” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Social Security (Disability Living Allowance) Regulations 1991 (S.I. 1991/2890)*

**13.—**(1) The Social Security (Disability Living Allowance) Regulations 1991(d) are amended as follows.

(2) In regulation 9(1)(a)(ii) (persons in certain accommodation other than hospitals), for “section 7 of the Mental Health (Scotland) Act 1984” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

(3) In regulation 12B (exemption from regulation 12A), in paragraphs (5) and (6)(a), for “Part 5 or 6 of the Mental Health (Scotland) Act 1984” substitute “Part 5, 6 or 7 or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 or section 52D or 52M of the Criminal Procedure (Scotland) Act 1995”.

*Council Tax Benefit (General) Regulations 1992 (S.I. 1992/1814)*

**14.—**(1) The Council Tax Benefit (General) Regulations 1992(e) are amended as follows.

(2) In regulation 4C—

(a) in paragraph (5)(a), for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”; and

(b) in paragraph (6), in the definition of “residential accommodation”, in sub-paragraph (i)(ii), for “a private hospital within the meaning of section 12 of the Mental Health (Scotland) Act 1984 (private hospitals)” substitute “an independent health care service within the meaning of section 2(5) of the Regulation of Care (Scotland) Act 2001”.

(3) In regulation 17(5)(d) (meaning of “income”), for “section 7 of the Mental Health (Scotland) Act 1984 (functions of local authorities)” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (care and support services etc.)”.

(4) The amendment made by sub-paragraph (3) is to the Council Tax Benefit (General) Regulations 1992 as modified in their application to persons to whom regulation 12 of the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003(f) applies.

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(a) S.I. 1991/1031 to which there are amendments not relevant to this Order.

(b) S.I. 1991/1407 to which there are amendments not relevant to this Order.

(c) S.I. 1991/2740 to which there are amendments not relevant to this Order.

(d) S.I. 1991/2890; the relevant amending instrument is S.I. 1996/1436.

(e) S.I. 1992/1814; relevant amending instruments are S.I. 1995/560, S.I. 1995/625, S.I. 1998/563, S.I. 2003/325 and S.I. 2005/573.

(f) S.I. 2003/325.

*Child Support (Maintenance Assessments and Special Cases) Regulations 1992 (S.I. 1992/1815)*

**15.** In regulation 1(2) of the Child Support (Maintenance Assessments and Special Cases) Regulations 1992 (citation, commencement and interpretation)(a), in the definition of “prisoner”, for “the Mental Health (Scotland) Act 1984” substitute “Part 5, 6 or 7 or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 or section 52D or 52M of the Criminal Procedure (Scotland) Act 1995”.

*Redundancy Payments (National Health Service) (Modification) Order 1993 (S.I. 1993/3167)*

**16.** In Schedule 1 of the Redundancy Payments (National Health Service) (Modification) Order 1993(b), omit paragraph 7.

*Jobseeker’s Allowance Regulations 1996 (S.I. 1996/207)*

**17.**—(1) The Jobseeker’s Allowance Regulations 1996(c) are amended as follows.

(2) In regulation 1(3) (citation, commencement and interpretation), in the definition of “nursing home”, for “a private hospital within the meaning of section 12 of the Mental Health (Scotland) Act 1984 (private hospitals)” substitute “an independent health care service within the meaning of section 2(5) of the Regulation of Care (Scotland) Act 2001”.

(3) In regulation 85(4) (special cases)—

(a) in the definition of “prisoner”, for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”; and

(b) in the definition of “residential accommodation”, for “section 7 of the Mental Health (Scotland) Act 1984 (functions of local authorities)” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (care and support services etc.)”.

(4) In Schedule 7, paragraph 16(1) (sums to be disregarded in the calculation of income other than earnings), for “section 7 of the Mental Health (Scotland) Act 1984” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997 (S.I. 1997/579)*

**18.** In regulation 2 of the Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997 (interpretation)(d), in the definition of “duly qualified medical practitioner”, for “section 20 or 39 of the Mental Health (Scotland) Act 1984” substitute “section 22(4) of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Individual Savings Account Regulations 1998 (S.I. 1998/1870)*

**19.** In regulation 12(13) of the Individual Savings Account Regulations 1998 (conditions for application to subscribe to an account)(e), for “section 1(2) of the Mental Health (Scotland) Act 1984” substitute “section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

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(a) S.I. 1992/1815 to which there are amendments not relevant to this Order.  
(b) S.I. 1993/3167 to which there are amendments not relevant to this Order.  
(c) S.I. 1996/207; the relevant amending instrument is S.I. 1998/563.  
(d) S.I. 1997/579.  
(e) S.I. 1998/1870; the relevant amending instrument is S.I. 2002/3158.



*Asylum Support Regulations 2000 (S.I. 2000/704)*

**20.** In regulation 23(1)(e) of the Asylum Support Regulations 2000 (meaning of “destitute” for certain other purposes)(a), for “sections 7(3) and 8(4) of the Mental Health (Scotland) Act 1984” substitute “article 14 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005”.

*Child Support (Maintenance Calculations and Special Cases) Regulations 2000 (S.I. 2001/155)*

**21.** In regulation 1(2) of the Child Support (Maintenance Calculations and Special Cases) Regulations 2000 (citation, commencement and interpretation)(b), in the definition of “prisoner”, for “the Mental Health (Scotland) Act 1984” substitute “Part 5, 6 or 7 or section 136 of the Mental Health (Care and Treatment) (Scotland) 2003 Act or section 52D or 52M of the Criminal Procedure (Scotland) Act 1995”.

*State Pension Credit Regulations 2002 (S.I. 2002/1792)*

**22.—**(1) The State Pension Credit Regulations 2002(c) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation), in the definition of “prisoner”, for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

(3) In regulation 5(1)(c)(i) (persons treated as being or not being members of the same household), for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

(4) In regulation 15(7)(d) (income for the purposes of the Act), for “section 7 of the Mental Health (Scotland) Act 1984 (functions of local authorities)” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (care and support services etc.)”.

*Child Benefit (General) Regulations 2003 (S.I. 2003/493)*

**23.** In regulation 1(2) of the Child Benefit (General) Regulations 2003 (citation, commencement and interpretation)(d), in the definition of “the Mental Health Acts”, for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Guardian’s Allowance (General) Regulations 2003 (S.I. 2003/495)*

**24.** In regulation 7(1)(b)(iv) of the Guardian’s Allowance (General) Regulations 2003 (circumstances in which a person is to be treated as being in prison)(e), for “58” substitute “57A”.

*Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2003 (S.I. 2003/762)*

**25.—**(1) The Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2003(f) are amended as follows.

(2) In regulation 1(2) (citation, commencement and application)–

(a) omit ““the 1984 Act” means the Mental Health (Scotland) Act 1984;” and

(b) before ““direct payment”” insert ““the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003;”.

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(a) S.I. 2000/704 to which there are amendments not relevant to this Order.  
(b) S.I. 2001/155 to which there are amendments not relevant to this Order.  
(c) S.I. 2002/1792; the relevant amending instrument is S.I. 2003/2274.  
(d) S.I. 2003/493 to which there are amendments not relevant to this Order.  
(e) S.I. 2003/495 to which there are amendments not relevant to this Order.  
(f) S.I. 2003/762.

(3) In regulation 2(2) (prescribed descriptions of persons – community care services and services for carers)–

- (a) in sub-paragraph (i), for “after-care under a community care order under section 35A of the 1984 Act” substitute “the imposition of any of the requirements mentioned in section 66(1)(c), (d), (e) or (f) of the 2003 Act”;
- (b) in sub-paragraph (j), for “section 27 of the 1984 Act” substitute “section 41(1), 53(1) or 127 of the 2003 Act”;
- (c) in sub-paragraph (l), for “a restricted patient within the meaning of section 63(1) of the 1984 Act who has been given a conditional discharge under section 64 or 68 of that Act” substitute “a patient who is subject to a restriction order within the meaning of the 2003 Act who has been conditionally discharged under section 193(7) of that Act”; and
- (d) in sub-paragraph (m), after “57(2)(a), (b), (c) or (d),” insert “57A(2),”.

*Communications (Television Licensing) Regulations 2004 (S.I. 2004/692)*

**26.—**(1) The Communications (Television Licensing) Regulations 2004(a) are amended as follows.

(2) In Schedule 4, paragraph 7(1) (Scotland)–

- (a) in the definition of “accommodation for residential care”, for “section 7 of the Mental Health (Scotland) Act 1984” substitute “section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003”; and
- (b) in the definition of “mental disorder”, for “Mental Health (Scotland) Act 1984” substitute “Mental Health (Care and Treatment) (Scotland) Act 2003”.

*Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2004 (S.I. 2004/1748)*

**27.—**(1) The Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2004(b) are amended as follows.

(2) in regulation 2(1) of the English text (interpretation)–

- (a) omit ““the 1984 Act” (“*Deddf 1984*”) means the Mental Health (Scotland) Act 1984;” and
- (b) before ““the 2003 Regulations”” insert ““the 2003 Act” (“*Deddf 2003*”) means the Mental Health (Care and Treatment) (Scotland) Act 2003;”.

(3) In regulation 2(1) of the Welsh text (dehongli)–

- (a) omit “ystyr “*Deddf 1984*” (“the 1984 Act”) yw *Deddf Iechyd Meddwl (Yr Alban) 1984*;”;
- (b) before “mae I “*gwasanaeth perthnasol*”” insert ystyr “*Deddf 2003*” (“the 2003 Act”) yw *Deddf Iechyd Meddwl (Gofal a Thriniaeth) (Yr Alban) 2003*;”.

(4) In Schedule 1 of the English text (persons to whom direct payments may not be made)–

- (a) in paragraph (i), for “after-care under a community care order under section 35A of the 1984 Act” substitute “the imposition of any of the requirements mentioned in section 66(1)(c), (d), (e) or (f) of the 2003 Act”;
- (b) in paragraph (j), for “section 27 of the 1984 Act” substitute “section 41(1), 53(1) or 127 of the 2003 Act”;
- (c) in paragraph (l), for “a restricted patient within the meaning of section 63(1) of the 1984 Act and who has been given a conditional discharge under section 64 or 68 of that Act” substitute “a patient who is subject to a restriction order within the meaning of the 2003 Act who has been conditionally discharged under section 193(7) of that Act”; and

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(a) S.I. 2004/692; the relevant amending instrument is S.I. 2005/606.

(b) S.I. 2004/1748 (W.185). The Welsh title of the Regulations is “*Rheoliadau Gofal Cymunedol, Gwasanaethau ar gyfer Gofalwyr a Gwasanaethau Plant (Taliadau Uniongyrchol) (Cymru) 2004 (S.I. 2004/1748 (Cy. 185))*”.

(d) in paragraph (m), after “57(2)(a), (b), (c) or (d),” insert “57A(2),”.

(5) In Schedule 1 of the Welsh text (Atodlen 1 – personau na cheir gwneud taliadau uniongyrchol iddynt)–

(a) in paragraph (ff), for “yn destun ol-olaf o dan orchymyn gofal cymunedol o dan adran 35A o Ddeddf 1984” substitute “sy’n ddarostyngedig i unrhyw un neu rhai o’r gofynion a grybwyllir yn adran 66(1)(c), (d), (e) neu (f) o Ddeddf 2003”;

(b) in paragraph (g), for “adran 27 o Ddeddf 1984” substitute “adran 41(1), 53(1) neu 127 o Ddeddf 2003”;

(c) in paragraph (h), for “cyfyngedig yn ystyr adran 63(1) o Ddeddf 1984 y rhoddwyd rhyddhad amodol iddo o dan adran 64 neu 68 o’r Ddeddf honno” substitute “, sy’n destun gorchymyn cyfyngu yn ystyr Deddf 2003 ac y rhoddwyd rhyddhad amodol id do o dan adran 193(7) o’r Ddeddf honno”;

(d) in paragraph (i), after “57(2)(a), (b), (c) neu (d),” insert “57A(2),”.

## SCHEDULE 3

Article 16

### REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
Mental Health Act 1983 (c.20)	Section 25J(1). Section 80(2) to (6). Section 80A(2) and (3). In section 116, in subsection (2)(b) the words “or the Mental Health (Scotland) Act 1984” and in subsection (2)(c) the words “or under the Mental Health (Scotland) Act 1984”.
Mental Health (Scotland) Act 1984 (c.36)	The whole Act except sections 10, 95 and 130. In section 10(1), paragraphs (a) and (aa); in paragraph (b), the words “the following provisions of this Act or under”; and in paragraph (c), the words “under this Act or”.
Income and Corporation Taxes Act 1988 (c.1)	In section 519A(2), paragraph (e).
Children Act 1989 (c.41)	Section 83(9)(d).

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes provision consequential on the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”), principally in respect of the law of England and Wales and Northern Ireland to provide for the reception of patients from Scotland and the removal of patients to Scotland.

Article 2 provides that where patients are removed from Scotland to England and Wales they will become subject to the measure in England and Wales which most closely corresponds to the measure to which the patient was subject in Scotland. Where the patient is subject to a prison sentence the sentence will be treated as if it were imposed in a court in England and Wales. Article 3 provides for the treatment of a restriction order and conditional discharge where a patient is transferred from Scotland to England and Wales. On transfer the order and conditional discharge will be treated as if they were made under the relevant enactment in force in England and Wales.

Articles 4 and 5 make provision equivalent to articles 2 and 3 in respect of patients transferred from Scotland to Northern Ireland. Article 6 empowers the responsible authority in Northern Ireland to authorise the removal of patients detained under the Mental Health (Northern Ireland) Order 1986 (“the 1986 Order”) to Scotland. Article 7 empowers the Secretary of State to transfer patients to Scotland where the patient was subject, in Northern Ireland, to a restriction order and a conditional discharge under the 1986 Order.

Article 8 provides that any person who may be taken into custody in Scotland under the 2003 Act or regulations made under the 2003 Act may be taken into custody in any other part of the UK and returned to Scotland. Article 9 provides for the return to Northern Ireland of persons subject to corresponding measures taken into custody under regulations made under the 2003 Act. Article 10 makes it an offence in England and Wales and in Northern Ireland to do anything in relation to a person subject to the 2003 Act that would be an offence under section 316 of the 2003 Act if done in Scotland. Section 316 makes it an offence to induce or assist patients to abscond. Article 11 provides that where patients are being conveyed to any place in England, Wales or Northern Ireland by virtue of the 2003 Act or this Order they will be in legal custody while being conveyed through those territories. Paragraph (2) provides that persons taking patients into custody or conveying or detaining them by virtue of the 2003 Act or this Order will have all the powers and privileges of a constable.

Article 12 gives protection to acts done in pursuance of this Order in Scotland, and for England and Wales and Northern Ireland extends the protection afforded by section 139 of the Mental Health Act 1983 to acts done in pursuance of this Order. Article 13 applies section 136 of the 2003 Act, regarding the transfer of prisoners for treatment of mental disorder, to persons detained under immigration legislation. Article 14 makes provision that social services will not be provided to a person subject to section 115 of the Immigration and Asylum Act 1999 by reason only of the fact that the person is destitute.

Article 15 and Schedules 1 and 2 make modifications to primary and subordinate legislation and Article 16 and Schedule 3 provide for repeals.





**2005 No. 2078 (S.9)**

**CONSTITUTIONAL LAW**

**DEVOLUTION, SCOTLAND**

**MENTAL HEALTH**

**The Mental Health (Care and Treatment) (Scotland) Act 2003  
(Consequential Provisions) Order 2005**

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