



## SCOTTISH EXECUTIVE

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Health Department  
Service Policy and Planning Directorate

Dear Colleague

### **THE MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003**

1. The [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) (the 'Act') which received Royal Assent in April 2003 came into effect on 5 October 2005. The Act repeals the Mental Health (Scotland) Act 1984 and amends the [Criminal Procedure \(Scotland\) Act 1995](#). The Act establishes the Mental Health Tribunal for Scotland which became operational from 5 October 2005.
2. The Act places new duties on Health Boards and local authorities which include ensuring that patients are aware of their rights under the new Act.
3. The purpose of this letter is to provide:
  - information about the Act – see Annex A; and
  - guidance in relation to the timing of the submission to the court of a report under section 52G(1) of the [Criminal Procedure \(Scotland\) Act 1995](#) ("the 1995 Act") – see Annex B.

Yours sincerely

**IAN GORDON**  
Director of Service Policy and Planning

**September 2005**

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#### **Addresses**

##### For action

Chief Executives, Health Boards  
General Manager, State Hospitals  
Board for Scotland  
Chief Executives, Local Authorities  
Directors of Social Work/Chief Social  
Work Officers  
General Manager, State Hospitals  
Board for Scotland  
Royal College of Psychiatrists,  
Scottish Division  
Scottish Secretary, British Medical  
Association  
Royal College of General  
Practitioners, Scottish Division  
Royal College of Psychiatrists,  
Scottish Division  
Royal College of Nursing, Scottish  
Division  
British Psychological Society,  
Scottish Division  
Scottish Board, College of  
Occupational Therapists  
Scottish Social Services Council  
Scottish Commission for the  
Regulation of Care  
Scottish Courts Service  
Scottish Secretary, British Medical  
Association  
Sheriff Clerks  
Clerk of Justiciary  
Clerks to District Courts  
Crown Office

##### For information

Director, Mental Welfare  
Commission for Scotland  
Law Society of Scotland

#### **Enquiries to:**

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## **MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003**

1. A number of Regulations and other Orders have been made to complete the detail of how the provisions of the Act should operate in practice.
2. Particular note should be taken of two Modification Orders which amend provisions of the Act. These are:
  - **The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments ) Order 2004 ([SSI 2004/533](#))**
  - **The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments ) Order 2005 ([SSI 2005/465](#))**
3. All legislation can be viewed on website of the Office of Public Sector information: [www.opsi.gov.uk/legislation/about\\_legislation.htm](http://www.opsi.gov.uk/legislation/about_legislation.htm).
4. To order copies of legislation or any other former HMSO publications please contact The Stationery Office Ltd (TSO).
5. [HDL 2005/42](#) provides guidance on The Transitional And Savings Provisions) ([SSI 2005/452](#)) to be applied for existing patients on the introduction of the Act.
6. [HDL 2005/43](#) provides guidance on The Cross Border Transfer of Patients subject to detention requirements or otherwise in hospital) ([SSI 2005/467](#)) to be applied for existing patients on the introduction of the Act.
7. All forms required for use under the Act may be downloaded from the Mental Health Law website. Where paper copies of the forms are required these can be ordered from ASTRON in the same manner as forms under the 1984 Act.
8. A Code of Practice (ISBN 0 7559 4568 9) has been developed with guidance for practitioners and others who carry out functions under the Act. A number of guidance booklets have been produced on explaining various aspects of the Act. These publications are available from Blackwells Bookshop (free of charge other than postage and packing).
9. Full information on the Regulations, Code of Practice and other guidance now in place is on the Mental Health Law website: [www.scotland.gov.uk/health/mentalhealthdivision](http://www.scotland.gov.uk/health/mentalhealthdivision)
10. Health Boards and local authorities are advised to ensure that they are aware of the duties placed on them by the new Act.

**ASSESSMENT ORDERS: REPORT TO THE COURT UNDER SECTION 52G(1) OF THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995**

1. This guidance is about the timing of the submission to the court of a report under section 52G(1) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). This guidance has been agreed by the Scottish Courts Service and should be followed in cases where a patient is subject to an Assessment Order.
2. Where a patient is subject to an Assessment Order under section 52D of the 1995 Act, the patient’s Responsible Medical Officer (“RMO”) has a duty in terms of section 52G(1) of that Act to submit a report to the court before the expiry of the period of 28 days beginning with the day on which the Assessment Order is made. The report must address whether the conditions set out in section 52D(7) of the 1995 Act are met and any other matters specified by the court under section 52D(2) of that Act.
3. To avoid problems where the 28<sup>th</sup> day falls on a weekend or a Public Holiday RMOs should submit their report so that it is with the court no later than by the last working day of the court prior to the expiry of the 28 day period. This also applies where the RMO is requesting a 7 day extension to the Assessment Order in terms of section 52G(4) of the 1995 Act.

SEHD  
September 2005