

Mental Health (Scotland) Act 2015 – key changes

This information is also available as SG mental health law [webpages](#). If you could link to these webpages on your organisation websites this would be most appreciated. We also have a twitter account that we use to link to various resources. If your organisation uses twitter please follow us @MHlawteam. We will discuss in the meeting the resources and channels for implementation information.

We set out how some changes brought in by the 2015 Act will make a difference for individual patients or service users and their carers, and professionals who work with them. This is not intended to include everything, but will highlight some of the key areas that you might want to be thinking about now. You can find out more about the all the changes in the 2015 Act in the [explanatory notes](#).

We have set out the sections of the 2015 Act that bring in the changes. The majority of these changes are expected to start in late June 2017, but some are already in place and we point these out.

Mental Health (Scotland) Act 2015 – key changes

Individuals, carers and families

Appeals against excessive security

Sections 14-16 of the 2015 Act

These sections of the 2015 Act extend appeals against excessive security. These changes have already taken effect and came into force in October 2015, with accompanying regulations. The changes mean that people who are detained in the three medium secure units in Scotland can apply to the Mental Health Tribunal for Scotland (the Tribunal) to decide that they are being held at a level of security that is excessive for them. People detained in the State Hospital could already do this. Any of these applications must include a report from a doctor known as an Approved Medical Practitioner (AMP) which says the AMP's view is that the individual is being held at a level of security that is excessive.

What does this mean for me?

People treated in the three medium secure units – the Orchard Clinic in Edinburgh, Rowanbank Clinic in Glasgow, and the medium secure service at the Rohallion Clinic in Perth are now able to make an application to the Tribunal if they think that the security in their unit is excessive for them and they have a report from a doctor (AMP) that agrees. This change is already in place and people are making applications to the Tribunal.

Named person

Sections 22 – 25 of the 2015 Act

These sections of the 2015 Act make various changes to the provisions around appointing a named person. The named person in the 2003 Act has a right to be consulted about some aspects of your care and treatment and can also make applications to the Tribunal. The changes include:

- You will only have a named person if you actively choose one. The 2015 Act removes the sections of the 2003 Act that give an individual over 16 a named person by default if they have not chosen one.
- The named person will actively choose to do the role. The 2015 Act changes the 2003 Act so that named person must consent in writing to taking on the role.
- The Tribunal won't be able to appoint a named person for people over 16. The 2015 Act removes the current power of Tribunal to appoint named person for an individual over 16 and for the Mental Health Officer (MHO) and others to apply to Tribunal for appointment of named person;
- The Tribunal will be able to remove an inappropriate named person. The 2015 Act makes provision for the Tribunal to remove an existing person if they are considered inappropriate to act as a named person and, if the service user is under 16, substitute another person to act as named person;
- People who lack capacity and have no named person are still protected. The 2015 Act allows the carer, nearest relative, welfare guardian or welfare guardian to initiate applications/appeals and receive information at specified points when (a) there is no named person and (b) the individual does not have capacity to do so on their own behalf. The individual can state in writing that they do not want any of those listed above to act in this way.

Mental Health (Scotland) Act 2015 – key changes

Individuals, carers and families

What does this mean for me?

This is likely to be one of the biggest changes from the 2015 Act for individuals aged 16 and over and their carers and families. It will give individuals more choice over their representation and privacy. As noted above, the changes will bring an end to named persons appointed by default (i.e. according to an order set out in the 2003 Act, unless the individual specifically chooses who it should be). It means individuals will not have to have a named person and will only have one if they actively nominate a named person in writing, or have previously done this. To provide support to individuals who do not choose to have a named person, the individuals carer, nearest relative, welfare guardian or welfare attorney will be able to make certain applications and appeals to the Tribunal on the individual's behalf when they are not able to do it themselves.

You have time to think about what you want to do. Have a think about who your named person is and speak to them, your social worker or doctor about what will happen once the 2015 Act comes in. You might be thinking about keeping things as they are, nominating the person who has been your named person, choosing someone else, or not having a named person at all. It's an important decision, but remember you can change your mind as things go along.

Advance statements

Section 26 of the 2015 Act

The 2015 Act makes some changes to promote advance statements. You may find it helpful to write an advance statement when you are well, stating how you would like to be treated if you become ill in future. Anyone who makes decisions about your treatment, like doctors or a tribunal, should read your advance statement and take your wishes into account.

Because of changes brought in by the 2015 Act, a copy of your advance statement will be with your medical record so that the people who provide your care and treatment can see what you have written. The Mental Welfare Commission will make a list of everyone who has an advance statement and where it is held. This is so that if you move area or have new people looking after you, they can find out if you made an advance statement and where to look for it. Health Boards will have to let people know what they are doing to help people make advance statements.

What does this mean for me?

This should give you more confidence that the professionals caring for them will know where to find their advance statement and help individuals locate and access support for making an advance statement. If you have an advance statement, you might want to think about whether it is up to date. It is a good idea to review your advance statement every six or twelve months to make sure it is up to date. If you don't have an advance statement, you might want to think about making one. The Mental Welfare Commission has good information about how to go about it on their website - [MWC advance statements page](#)

Mental Health (Scotland) Act 2015 – key changes

Mental Health Officers (MHO)

Providing reports

Sections 2 and 50 of the 2015 Act

These sections of the 2015 Act require MHOs to provide a report to the Mental Health Tribunal for Scotland when a Compulsory Treatment Order (CTO) or Compulsion Order (CO) is being reviewed under section 86 or 152 where:

- diagnosis has changed; or
- the MHO disagrees with, or does not give view on, decision to extend a CTO/CO.

What does this mean for me?

This is quite a small change. Providing these reports is already best practice in the Code of Practice. Figures for the number of reviews in these circumstances for November 2013 – November 2014 suggest this would have required 11 extra reports across Scotland.

Notifications

Section 19 of the 2015 Act

This section on the 2015 Act introduces a requirement for MHOs to notify the Commission as to (i) whether any application for a removal order under section 293 is refused or granted, and (ii) the outcome of any application to the sheriff under section 295 seeking recall or variation or a removal order.

What does this mean for me?

Many MHOs will already be doing this as a matter of good practice. It is already in the Code of Practice and this change makes it a requirement.

Named Persons

Sections 22-25 of the 2015 Act

These sections of the 2015 Act make various changes to the provisions around appointing a named person. This includes:

- The named person will actively choose to do the role. The 2015 Act changes the 2003 Act so that named person must consent in writing to taking on the role.
- The Tribunal won't be able to appoint a named person for people over 16. The 2015 Act removes the current power of Tribunal to appoint named person for an individual over 16 and for the Mental Health Officer (MHO) and others to apply to Tribunal for appointment of named person;
- The Tribunal will be able to remove an inappropriate named person. The 2015 Act makes provision for the Tribunal to remove an existing person if they are considered inappropriate to act as a named person and, if the service user is under 16, substitute another person to act as named person;
- People who lack capacity and have no named person are still protected. The 2015 Act allows the carer, nearest relative, welfare guardian or welfare guardian to initiate applications/appeals and receive information at specified points when (a) there is no named person and (b) the individual does not have capacity to do so on their own behalf. The individual can state in writing that they do not want any of those listed above to act in this way.

Mental Health (Scotland) Act 2015 – key changes

Mental Health Officers (MHO)

What does this mean for me?

This will remove the duty from the MHO to establish who the default named person is as there will no longer be named persons appointed by default. In the short-term, MHOs are likely to play a key role in helping individuals understand their options in relation to representation and help choose the best option for them. This additional role will be short term.

Advance Statements

Section 26 of the 2015 Act

This section of the 2015 Act requires a copy of advance statements to be placed with person's medical records. Requires certain information to be sent to the Mental Welfare Commission to be held in register which can be accessed by certain persons including the MHO. Places duty on Health Board to publicise information about support it offers on making an advance statement.

What does this mean for me?

There are no additional duties for MHOs, although MHOs may want to ensure that any advance statements they hold or have a copy with, are also held with medical records at the health board and that where appropriate they also have a copy of any held by the health board.

Communication Assistance

Section 28 of the 2015 Act

This section of the 2015 Act extends circumstances where communication assistance must be provided. This includes interviews with the patient under section 45 (STDC) and 61 (CTO application) of the 2003 Act and 57C (CO application) and 59B (Hospital Direction) If the interview does not take place in hospital, the MHO has the responsibility to organise this assistance (if the interview takes place in hospital, the responsibility lies with hospital managers).

What does this mean for me?

Organising communication assistance will already be a matter of good practice. We think that there would be a very small number of cases each year where the MHO would have this responsibility.

Transfer for Treatment Direction

Section 34 of the 2015 Act

This section of the 2015 Act provides that a Transfer for Treatment Direction (TTD) can only be made if the MHO has agreed to it unless impracticable.

What does this mean for me?

There are a relatively low number of TTDs made each year, 45 in 2013/14 and 36 in 2014/5. It is currently best practice in the Code of Practice for an MHO's opinion to be sought. We will provide guidance in the Code of Practice including a suggested protocol for MHOs who are local to the prison to act on behalf of the MHO from the area of origin.

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Responsible Medical Officers (RMO) and other doctors

MHOs Providing reports

Sections 2 and 50 of the 2015 Act

This section of the 2015 Act requires MHOs to provide a report to the Mental Health Tribunal for Scotland and also send a copy to the RMO when a Compulsory Treatment Order (CTO) or Compulsion Order (CO) is being reviewed under section 86 or 152 where:

- diagnosis has changed; or
- the MHO disagrees with, or does not give view on, decision to extend a CTO/CO.

What does this mean for me?

This will be a small impact for RMOs, but they will wish to be aware that this is now a duty in legislation.

Suspension of Detention

Section 9-10 of the 2015 Act

These sections of the 2015 Act make various changes to the rules around suspension of detention. In particular, it changes the maximum cumulative total allowed to 200 days in a rolling year period, excluding any period of less than 8 hours.

What does this mean for me?

This will have a small impact for RMOs who will wish to be aware of the changes to timescales and the new sus limits.

Appeals against excessive security

Sections 14-16 of the 2015 Act

These sections of the 2015 Act make changes to the provisions around appeals against excessive security. These changes have already taken effect and came into force in October 2015, with accompanying regulations. The changes add individuals detained in the three medium secure units in Scotland to apply to the Mental Health Tribunal for Scotland that they are being held at a level of security that is excessive in their individual case (this already applied to those individuals detained in the State Hospital). It also requires any application in such cases to be accompanied by a report from an approved medical practitioner stating that the AMP's view is that the individual is being held at a level of security that is excessive in their case.

What does this mean for me?

RMOs will wish to be aware that individuals held in the three medium secure units – the Orchard Clinic in Edinburgh, Rowanbank Clinic in Glasgow, and the medium secure service at the Rohallion Clinic in Perth – who will now be able make an apply to the Tribunal in these circumstances and that all applications, including those from the State Hospital, should be accompanied by a supportive AMP report.

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Responsible Medical Officers (RMO) and other doctors

Named persons

Sections 22-25 of the 2015 Act

These sections of the 2015 Act make various changes to the provisions around appointing a named person. This includes:

- Removes the sections of the 2003 Act that give an individual over 16 a named person by default if they have not chosen one;
- Changes the 2003 Act so that named person must consent in writing to taking on the role;
- Removes current power of Tribunal to appoint named person for an individual over 16 and for MHO and others to apply to Tribunal for appointment of named person;
- Makes provision for the Tribunal to remove an existing person if they are considered inappropriate to act as a named person and, if the service user is under 16, substitute another person to act as named person;
- Allows the carer, nearest relative, welfare guardian or welfare guardian to initiate applications/appeals and receive information at specified sections of the Act when (a) there is no named person and (b) the individual does not have capacity to do so on their own behalf.

What does this mean for me?

As well as needing to be aware of the changes, RMOs will have a role in supporting individuals, their carers and families, to understand the new options for representation and helping the individual to decide what is best for them.

Advance Statements

Section 26 of the 2015 Act

This section of the 2015 Act requires a copy of advance statements to be placed with person's medical records. Requires certain information to be sent to the Mental Welfare commission to be held in register which can be accessed by certain persons including the RMO. Places duty on Health Board to publicise information about support it offers on making an advance statement.

What does this mean for me?

There are no additional duties for RMOs, but RMOs will want to be aware that advance statements will be held with medical records and the new duties on Health Boards. It may prove useful when a new patient moves to your service to be able to find out if they have an advance statement

Conflict of Interest

Section 29 of the 2015 Act

This section of the 2015 Act adds medical examinations related to mandatory reviews of CTOs and COs to the list of medical examinations where regulations may set out what is considered a conflict of interest and what is not a permitted conflict of interest. These will be set out in regulations.

What does this mean for me?

RMOs will need to be aware of, and make sure they are acting in line with, the new conflict of interest regulations when confirmed, including that these will now govern mandatory reviews of CTOs and COs.

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Responsible Medical Officers (RMO) and other doctors

Consulting welfare guardians and welfare attorneys

Section 30 of the 2015 Act

This section of the 2015 Act adds welfare guardians and welfare attorneys to the list of people who must be consulted before a certificate is granted under sections:

- 235 (certain surgical operations etc. where the patient is capable of consenting),
- 236 (certain surgical operations etc. where the patient is incapable of consenting),
- 239 (electro-convulsive therapy etc.) and
- 241 (treatments given over period of time etc)

What does this mean for me?

This is an additional duty where RMOs already are required to consult the individual service user and their named person.

Postnatal services

Section 31 of the 2015 Act

This section of the 2015 Act extends the duties in section 24 of the 2003 Act to provide provide services and accommodation for certain mothers with post-natal depression to mothers with a mental disorder other than post-natal depression.

What does this mean for me?

These services are often already offered to the mothers who will now be included, but RMOs should be aware that there is now a duty to provide these services and accommodation.

Cross Border transfers

Section 32 – 33 of the 2015 Act

These sections of the 2015 Act allow regulations relating to cross-border transfers to Scotland and to absconding patients from other jurisdictions to be applied to those transferring or absconding from other EU jurisdictions. It also allows the regulations to apply treatment under certain sections of Part 16 of the 2003 Act to patients who have absconded from other jurisdictions. The specific changes will be set out in regulations.

What does this mean for me? -

New regulations, instructions and forms are being drafted. The aim is to make this process transparent and timely whilst protecting the rights of patients. If you are involved in cross border transfers, you will want to look out for further updates on the detail of the new regulations.

Transfer for Treatment Orders

Section 34 of the 2015 Act

This section of the 2015 Act provides that a Transfer for Treatment Direction (TTD) can only be made if the MHO has agreed to it unless impracticable.

What does this mean for me?

There are a relatively low number of TTDs made each year, 45 in 2013/14 and 36 in 2014/5. It is currently best practice in the Code of Practice for an MHO's opinion to

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Responsible Medical Officers (RMO) and other doctors

be sought and RMOs will need to be aware that this is now a duty except where it would be impracticable.

Assessment Orders

Section 40 of the 2015 Act

This section of the 2015 Act includes a change to the timescales for assessment orders, meaning that the court can grant one extension of up to 14 days, rather than up to 7 days as at present.

What does this mean for me?

RMOs involved with assessment orders will need to be aware of these changes to timescales.

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Nursing staff

Holding power

Section 20 of the 2015 Act

This section of the 2015 Act amends the holding power under section 299 of the 2003 Act so that it applies for up to three hours from the outset.

What does this mean for me?

Guidance will make clear that this power should be used in the least restrictive manner and that an Approved Medical Practitioner (AMP) should still attend as quickly as possible so the impact should be low, but make the timescales clearer.

Named Persons

Sections 22-25 of the 2015 Act

These sections of the 2015 Act make various changes to the provisions around appointing a named person. This includes:

- Removes the sections of the 2003 Act that give an individual over 16 a named person by default if they have not chosen one;
- Changes the 2003 Act so that named person must consent in writing to taking on the role;
- Removes current power of Tribunal to appoint named person for an individual over 16 and for MHO and others to apply to Tribunal for appointment of named person;
- Makes provision for the Tribunal to remove an existing person if they are considered inappropriate to act as a named person and, if the service user is under 16, substitute another person to act as named person;
- Allows the carer, nearest relative, welfare guardian or welfare guardian to initiate applications/appeals and receive information at specified sections of the Act when (a) there is no named person and (b) the individual does not have capacity to do so on their own behalf.

What does this mean for me?

As well as needing to be aware of the changes, nursing staff will have a role in supporting individuals, their carers and families, to understand the new options for representation and helping the individual to decide what is best for them.

Advance statements

Section 26 of the 2015 Act

This section of the 2015 Act Requires copy of advance statements to be placed with person's medical records. Requires certain information to be sent to the Mental Welfare Commission to be held in register which can be accessed by certain persons. Places duty on Health Board to publicise information about support it offers on making an advance statement.

What does this mean for me?

There are no additional duties for nursing staff, but nurses will want to be aware that advance statements will be held with medical records and the new duties on Health Boards, especially if they are likely to take a role in supporting the individual to make an advance statement.

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Mental Health Act administrators and medical records staff

Suspension of Detention

Section 9-10 of the 2015 Act

These sections make various changes to the rules around suspension of detention. In particular, it changes the maximum cumulative total allowed to 200 days in a rolling year period, excluding any period of less than 8 hours.

What does this mean for me?

In the short term, there will be work to ensure relevant suspension of detention periods are calculated to fit with the new totals. We are working to help with the transition to the new way of calculating. However, calculating total suspension of detention will be simpler once the transition is over.

Named Person

Sections 22-25 of the 2015 Act

These sections of the 2015 Act make various changes to the provisions around appointing a named person. This includes:

- Removes the sections of the 2003 Act that give an individual over 16 a named person by default if they have not chosen one;
- Changes the 2003 Act so that named person must consent in writing to taking on the role;

What does this mean for me?

In the short term, there may be work to identify whether records suggest whether individual service users actively nominated their named person to ensure such nominations remain valid.

Advance Statements

Section 26 of the 2015 Act

This section of the 2015 Act requires copy of advance statements to be placed with person's medical records. Requires certain information to be sent to the Mental Welfare Commission to be held in register which can be accessed by certain persons including the Health board. Places duty on Health Board to publicise information about support it offers on making an advance statement and to report how they are meeting this duty to the Commission.

What does this mean for me?

As well as ensuring that processes are in place for keeping advance statements with medical records, up to date information about the existence and storage of advance statements will need to be passed to the Commission.

Mental Health (Scotland) Act 2015 – key changes

Organisations and hospital managers

Notification of EDC and STDC

Sections 4-5 of the 2015 Act

These sections of the 2015 Act include amendments to the duties to notify certain parties about Emergency Detention Certificates (EDC) and Short-Term Detention Certificates (STDC). For EDCs, section 4 adds welfare guardians and welfare attorneys (if known) to the list of people who should be notified if an EDC is granted. It gives hospital managers discretion as to whether the full notification should be shared to those listed.

For STDCs, section 5 adds a duty to send a copy of the certificate to the patient, the patient's named person and any guardian or welfare attorney of the patient and notification, but not a copy, of the certificate to the Tribunal and the Commission.

Planning

Internal processes and guidance should be up to date to make sure that the correct parties are notified.

Advance Statements

Section 26 of the 2015 Act

This section of the 2015 Act requires copy of advance statements to be placed with person's medical records. Requires certain information to be sent to the Mental Welfare Commission to be held in register which can be accessed by certain persons including the Health board. Places duty on Health Board to publicise information about support it offers on making an advance statement and to report how they are meeting this duty to the Commission.

Planning

As well as ensuring that processes are in place for keeping advance statements with medical records, Health Boards will need to proactively ensure that they are publicising the support available to individuals to make an advance statement. Guidance will set out how best this should be done, but this could include ensuring that individuals are aware of the Commission support and guidance for this, ensuring that individuals are informed about how members of their care team can help and support them in making an advance statement and ensuring individuals know about third sector support, such as peer support services, which can support the individual to make an advance statement.

Providing information to the Mental Welfare Commission

Section 27 of the 2015 Act

This section of the 2015 Act requires local authorities, Health Boards, and the State Hospitals Board for Scotland to provide information to the Mental Welfare Commission on how they are meeting their duties to secure the availability of independent advocacy support under section 259 of the 2003 Act and how they plan to do so.

Planning

This will require reporting every two years, the Mental Welfare Commission will set out what information is required.

Mental Health (Scotland) Act 2015 – key changes

Organisations and hospital managers

Communication assistance

Section 28 of the 2015 Act

This section of the 2015 Act extends circumstances where communication assistance must be provided. This includes interviews with the patient under section 45 (STDC) and 61 (Compulsory Treatment Order application) of the 2003 Act and 57C (Compulsion Order application) and 59B (Hospital Direction) If the interview takes place in hospital, the responsibility lies with hospital managers.

Planning

This is likely to be good practice at the moment but formalises the duty.

Conflict of Interest

Section 29 of the 2015 Act

This section of the 2015 Act adds medical examinations related to mandatory reviews of CTOs and COs to the list of medical examinations where regulations may set out what is considered a conflict of interest and what is not a permitted conflict of interest. These will be set out in regulations.

Planning

Health Boards will need to be aware of, and make sure that RMOs are acting in line with, the new conflict of interest regulations when confirmed, including that these will now govern mandatory reviews of CTOs and COs. The regulations are likely to have most impact where the individual is detained and resident in a independent hospital, Health Boards may wish to consider arrangements needed if a patient from the health board area is in independent healthcare.

Postnatal services

Section 31 of the 2015 Act

This section of the 2015 Act extends the duties in section 24 of the 2003 Act to provide provide services and accommodation for certain mothers with post-natal depression to mothers with a mental disorder other than post-natal depression.

Planning

These services are often already offered to the mothers who will now be included, but Health Boards should be aware that there is now a duty to provide these services and accommodation.

**Mental Health (Scotland) Act 2015 Implementation Reference Group,
9 May 2017**

Update on the Victim Notification Scheme (Paper 2)

Part 3 (Victims' Rights) of the 2015 Act provides for the disclosure of information relating to offenders who are subject to a compulsion order and a restriction order (CORO), a transfer for treatment direction (TTD), or a hospital direction (HD). It also provides for a right for victims to make representations in certain cases.

Victims must register with the Scottish Government in order to receive information and make representations.

Information Provided to Victims

Where an offender is subject to an HD or TTD, victims can be provided with the following information (in addition to any information which would presently be provided under the current VNS):

- Offender unlawfully at large from hospital
- Offender returned to hospital after being unlawfully at large
- Suspension of detention — certificate granted for the first time

Where an offender is subject to a CORO, victims can be provided with the following information:

- Information on a condition of conditional discharge (only where the condition is relevant to the person)
- Whether the compulsion order/restriction order is revoked
- Whether the decision to revoke the restriction order is under appeal or cannot be appealed against is therefore final
- The date of death of the offender
- Whether the compulsion order has been modified
- Transfer of the offender outside Scotland
- Conditional discharge of the offender and the terms of restrictions
- Recall of offender to hospital following conditional discharge
- Whether an offender is unlawfully at large from hospital
- Return of offender to hospital after being unlawfully at large
- Suspension of detention — certificate granted for the first time
- Revocation of certificate suspending detention for first time
- Information where the compulsion order and/or restriction order is revoked and that decision is appealed

Representations

- Where offender subject to TTD or HD, a chance to make representation about suspending the offender's detention for the first time
- Where offender subject to a CORO an opportunity to make representation before:
 - Suspending detention for the first time

- Revoking or varying the compulsion order in any way
- Conditional discharge of the offender
- Imposing, altering or removing any conditions applying to the conditional discharge of the offender which might affect the victim or family of the victim

Right to Information after Decisions

Where a victim has asked for information about a decision, where the victim was afforded an opportunity to make representations, it must be provided (unless there are exceptional circumstances):

- This includes for TTD/HD cases, information that the decision, on granting for the first time a certificate suspending detention, has been taken
- For CORO cases, information on decisions granting for the first time a certificate suspending detention, a decision by the Mental Health Tribunal under section 193 of the Mental Health (Care and Treatment) Act 2003, and decisions of Scottish Ministers under section 200 of the Mental Health (Care and Treatment) Act 2003 about changes to conditions

Implementation Progress

- The current information available for victims is being updated to include references to the new rights to information and representation created by the 2015 Act
- The Scottish Government is to issue guidance as to how representations, whether written or oral, should be made
- The Scottish Government's Restricted Patient Team (who will administer the scheme) are currently considering the issue of identifying qualifying victims (this will not be a task for the Responsible Medical Officer)
- The scheme will be operational at the end of June on the same day as the remaining provisions in the 2015 Act are commenced