

MENTAL HEALTH (PUBLIC SAFETY AND APPEALS) (SCOTLAND) ACT 1999

EXPLANATORY NOTES

BACKGROUND

3. The Mental Health (Scotland) Act 1984 ('the 1984 Act') sets out procedures by reference to which a person with a mental disorder, as defined in section 1(2) of the 1984 Act, can be compulsorily detained in hospital. Part VI of the 1984 Act, together with the Criminal Procedure (Scotland) Act 1995 ('the 1995 Act'), provides that persons convicted of a criminal offence who suffer from a mental disorder (or persons found by the court to be insane in bar of trial or who are acquitted by reason of insanity) may be detained in hospital under a 'hospital order' (or an order having the same effect) imposed by that court (sections 57 and 58 of the 1995 Act). Where the court considers it is necessary for the protection of the public from serious harm it may impose a restriction order (or an order having the same effect) – see sections 57 and 59 of the 1995 Act. The effect of a restriction order is set out in section 62(1) of the 1984 Act.
4. The 1984 Act defines 'restricted patient' to mean a patient subject to a restriction order as described in paragraph 3 above; prisoners subject to a 'transfer direction' with a 'restriction direction' (sections 71 and 72 of the 1984 Act); and prisoners given a prison sentence combined with hospital detention in terms of a 'hospital direction' (section 59A of the 1995 Act).
5. The Scottish Ministers may, in exercise of their discretion contained in section 68 of the 1984 Act, lift a restriction order where they are satisfied that it is no longer necessary for the protection of the public from serious harm. By contrast, a restriction direction and hospital direction will cease to have effect where the patient is returned to prison having recovered from his or her mental disorder to the extent that no further treatment in hospital is necessary; or alternatively where the underlying prison sentence itself expires (section 74 of the 1984 Act). It is also open to the patient to appeal to a Sheriff in the sheriffdom in which the detaining hospital is located to order absolute or conditional discharge under sections 63, 65 and 66 of the 1984 Act. Section 64 of the 1984 Act, which has now been amended by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), sets out the criteria which, if satisfied, require a sheriff to direct either absolute or conditional discharge. (In the case of a patient subject to a restriction direction or a hospital direction, a successful appeal will result in the patient returning to prison.)
6. Subject to the provisions on conditional discharge mentioned in the next paragraph, the patient must be absolutely discharged if the sheriff is not satisfied either:-
 - that the patient is suffering from a mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
 - that it is necessary for the health and safety of the patient or for the protection of other persons that he should receive such treatment.

These notes relate to the Mental Health (Public Safety and Appeals) (Scotland) Act 1999 (asp 1)

7. If the sheriff is not satisfied as to the preceding matters, but is nevertheless satisfied that it is appropriate that the patient remain liable to be recalled to hospital for further treatment, the sheriff is required to order a conditional discharge. In those circumstances the patient's discharge will be subject to any conditions which the sheriff considers appropriate. The patient can thereafter be recalled to hospital by the Scottish Ministers in terms of section 68(3) of the 1984 Act at any time while he or she is subject to conditional discharge. If the discharge is absolute the restriction order ceases to have effect completely, and there is no possibility of recalling the patient to hospital or of attaching conditions to his or her discharge.