

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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS OF THE ACT

#### *Section 1*

10. **Section 1(1)** of the Act adds new subsections (A1), (B1) and (C1) to section 64 (*right of appeal of patients subject to restriction order*) of the 1984 Act. New subsection (A1) provides that, where a sheriff is considering an appeal by a restricted patient, the sheriff must refuse the appeal if satisfied that the patient, at the time of the hearing, is suffering from a mental disorder the effect of which is such that the patient must continue to be detained in hospital in order to protect the public from serious harm. This is so whether or not the patient is to receive medical treatment for that mental disorder. New subsection (B1) provides that the burden of proof in satisfying the sheriff as to the matters specified in new subsection (A1) is on the Scottish Ministers.
11. Section 102 of the National Health Service (Scotland) Act 1978 (“the 1978 Act”) requires the Scottish Ministers to provide such hospitals (referred to as “state hospitals”) as appear to them to be necessary for persons subject to detention under the 1984 Act who require *treatment* under conditions of special security on account of their dangerous, violent or criminal propensities. New subsection (A1) (see paragraph 10 above) contemplates a situation in which persons may continue to be detained under the 1984 Act despite the fact that they are not receiving *medical treatment* for their mental disorder. New subsection (C1) therefore makes clear that nothing in the wording of section 102 of the 1978 Act prevents or restricts the detention in state hospitals of such patients in consequence of new subsection (A1).
12. **Section 1(1)(b)** of the Act makes a necessary consequential amendment to section 64(1) of the 1984 Act.
13. **Section 1(2)(a)** of the Act adds new subsections (1A), (1B) and (1C) into section 66 (*further consideration of case of conditionally discharged patient*) of the 1984 Act. Section 66 enables a patient to appeal to the sheriff against recall from conditional discharge (as well as against the continuation of conditions on discharge). New subsection (1A) provides that the sheriff must refuse an appeal against recall if satisfied that the patient, at the time of the hearing, is suffering from a mental disorder the effect of which is such that the patient must continue to be detained in hospital in order to protect the public from serious harm. Again that is so whether or not the detention is for medical treatment. New subsection (1B) imposes on the Scottish Ministers the burden of proof of establishing the matters set out in new subsection (1A). For the purposes of section 66, new subsection (1C) makes the same provision in relation to section 102 of the 1978 Act as is made for section 64 by new section 64(C1) (see paragraph 11 above).
14. **Section 1(2)(b)** makes a necessary consequential amendment to section 66(3) of the 1984 Act.

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

15. [Section 1\(2\)\(c\)](#) and (d) makes the same provision for deferring the effect of conditional and absolute discharges following a sheriff's decision under section 66 as is made in relation to decisions under section 64 of the 1984 Act by section 2 (see paragraph 21 below). In summary, unless the Scottish Ministers confirm that they do not seek to prolong the detention pending the outcome of an appeal, the effect of those discharges is delayed until it is clear that there is to be no appeal against them or any such appeal has been completed.
16. [Section 1\(3\)](#) of the Act adds new subsections (2A) and (2B) to section 68 (*Powers of the Scottish Ministers in respect of patients subject to restriction orders*) of the 1984 Act. Prior to this amendment, the Scottish Ministers had a power in terms of section 68(2) of the 1984 Act, as they thought fit and at any time while a restriction order was in force, to direct the absolute or conditional discharge of a patient. New subsection (2A) prevents the Scottish Ministers from discharging a patient under section 68(2) if they are satisfied that the patient is suffering from a mental disorder the effect of which is such that the patient must continue to be detained in hospital in order to protect the public from serious harm. That is the case whether the continued detention is for medical treatment or not.
17. For the purposes of section 68, new subsection (2B) makes the same provision in relation to section 102 of the 1978 Act as is made for section 64 by new section 64(C1) (see paragraph 11 above).
18. [Section 1\(4\)](#) of the Act adds new subsections (1B) and (1C) into section 74 (*transfer of patients back to prison*) of the 1984 Act. These make the same provision, in relation to transfers under section 74, as is made by section 1(3) in relation to discharge under section 68 (see paragraph 16 above). A patient who meets the new statutory criteria may not be transferred back to prison.
19. [Section 1\(5\)](#) provides for the amendments made by section 1 to have effect from 1 September 1999 (the date of publication of the Bill).