

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Section 2

20. [Section 2](#) of the Act confers on both the patient and the Scottish Ministers a new right of appeal to the Court of Session against the decision of a sheriff under section 64 or 66 or a notification or a notification or recommendation by a sheriff under section 65 of the 1984 Act.
21. [Section 2\(1\)\(a\)](#) and (b) of the Act amends subsections (3) and (4) of section 64 of the 1984 Act so that the absolute and conditional discharges, respectively, mentioned in those subsections are deferred to allow any appeal to take place. This is achieved by deferring their effect until the occurrence of any of the events set out by new subsection (4A), which is added by section 2(1)(c). Broadly, unless the Scottish Ministers confirm that they do not seek to prolong the detention pending the outcome of an appeal, discharge is delayed until it is clear that there is to be no appeal against them or any such appeal has been completed. The events set out in new subsection (4A) are:-
 - the expiry of the appeal period (14 days), if no appeal has been lodged within that time (see paragraph 25 below);
 - the receipt by both the Court of Session and the managers of the hospital in which the patient is detained of notice from the Scottish Ministers that they do *not* intend to move the Court of Session to make an order in terms of new section 66A(3) of the 1984 Act to continue the patient’s detention in hospital until the appeal has been finally concluded (see paragraph 26 below);
 - the refusal by the Court of Session to make an order under section 66A(3) continuing the patient’s detention;
 - the recall of any order under section 66A(3) or the expiry of its effect.
22. [Section 2\(1\)\(c\)](#) of the Act also adds a new subsection (4B) into section 64 of the 1984 Act. This provision defines “appeal” and “appeal period” for the purposes of new section 64(4A).
23. [Section 2\(2\)](#) of the Act adds a new section 66A to the 1984 Act. This provides for the new appeal right to the Court of Session. Prior to this amendment decisions of a sheriff under part VI of the 1984 Act were subject only to judicial review.
24. New subsection 66A(1) sets out the new right of appeal. This allows either the patient or the Scottish Ministers to appeal to the Court of Session against the decision of a sheriff under section 64 or 66 of the 1984 Act or a notification or recommendation by the sheriff under section 65 of the 1984 Act. The new section does not restrict any such appeal only to questions of law or to matters of fact, and either may therefore be raised.

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

25. New subsection 66A(2) requires any appeal to be lodged within 14 days of the decision, notification or recommendation of the sheriff appealed against.
26. New subsections (3) and (4) of section 66A enable the Scottish Ministers, where an appeal has been lodged, to ask the Court of Session to continue the patient's detention, or the effect of an order or direction, until any further appeal to the House of Lords has been completed or the time for such an appeal has expired without any appeal being made.