

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

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).

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.

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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.
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.

Section 3

27. **Section 3** of the Act amends the definition of “mental disorder” in the 1984 Act and the 1995 Act. It provides that the term ‘mental illness’ includes within it “personality disorder’. For the purposes of the new restriction now contained in sections 64(A1), 66(1A), 68(2A) and 74(1B) of the 1984 Act, this amendment had effect from 1 September, 1999.

Section 4

28. **Section 4** of the Act states the short title of the Act. Since no provision for postponed commencement is made, the Act came into force on 13 September 1999, the date of Royal Assent (but subject to the retrospective effect of sections 1 and 3 – see paragraphs 19 and 27 above).