



30th December 1997  
December 1997

Dear Colleague

**AMENDMENTS TO THE MENTAL HEALTH (SCOTLAND) ACT 1984 BY THE CRIME AND PUNISHMENT (SCOTLAND) ACT 1997**

**Summary**

1. The purpose of this letter is to inform you of the coming into force on 1 January 1998 of provisions in the Crime and Punishment (Scotland) Act 1997 (1997 Act). Details of changes to the Mental Health (Scotland) 1984 (1984 Act) as a result of the 1997 Act which came into force on 1 August 1997 were outlined in NHS MEL(1997)46 circulated on 6 August 1997.

2. These new provisions which come into force on 1 January 1998 include a new disposal for the courts called a hospital direction, power for the courts and the Secretary of State to specify hospital units and a reduction in the timescale for admission to hospital from 28 days to 7 days. Other provisions amend the Criminal Procedure (Scotland) Act 1995 (1995 Act) and the 1984 Act. Guidance on amendments to the 1995 Act affecting mentally disordered offenders is outlined in HD18/97.

3. Annex A to this letter summarises in more detail the amendments to the 1984 Act and the changes in procedure as a result of the new legislation. Annex B sets out the legislative amendments in full.

**Action**

4. This letter should be drawn to the attention of those whose duties require knowledge of restricted patients and the relevant Mental Health (Scotland) Act 1984. In particular it should be drawn to the attention of consultant psychiatrists and medical record staff in mental illness hospitals.

Yours sincerely

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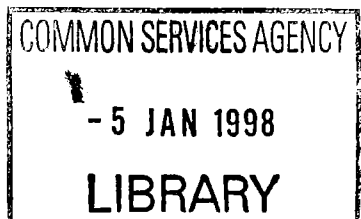
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### **Purpose of a Hospital Direction**

1. The 1997 Act introduces a new disposal for the courts in cases involving mentally disordered offenders who are convicted on indictment. The court may, in addition to applying a sentence of imprisonment, make a hospital direction. This will allow an offender who is convicted of an offence on indictment and sentenced to imprisonment but who is also mentally disordered and needs hospital attention to be sent straight to hospital.

2. A Hospital Direction cannot be made in respect of a child. The court must be satisfied on the written or oral evidence of two medical practitioners that the grounds for admission under Section 17 of the 1984 Act to hospital are met. A Hospital Direction can only be applied to a mentally disordered offender who is convicted of an offence on indictment (ie a serious offence). It cannot be applied to a mentally disordered offender who is acquitted on account of insanity or deemed to be "insane in bar" of trial. Once the patient recovers from the mental illness he may be returned to prison to serve the rest of his sentence. Section 125 (Interpretation) of the 1984 Act has been amended to include a definition of "Hospital Direction". This has the meaning assigned to it by new subsection 59A(1) of the 1995 Act.

3. A psychiatrist may not recommend a hospital direction as it is attached to a custodial sentence. Where a psychiatrist has difficulty in making a diagnosis it is expected that he will recommend that the court impose an Interim Hospital Order before reaching a final decision on sentencing. An amendment to the 1995 Act has extended the period in which a person may be treated, assessed and diagnosed in hospital under an Interim Hospital Order from six months up to a period of 12 months.

4. The 1984 Act has been amended to take account of the new Hospital Direction. The effect is to make a person who is detained under the new Hospital Direction subject to the same constraints as a restricted patient. This means that the patient while in hospital cannot be transferred, given leave of absence or returned to prison without the approval of the Secretary of State for Scotland. The Hospital must send Form K (ie the admission form), the Court Order and the psychiatric reports to The Department of Health, Public Health Policy Unit 1-4, St Andrew's House, Edinburgh immediately on receipt. The Scottish Office rely on hospitals to keep them informed of restricted patients as we do not receive notification from the courts. Notification should also be sent to the Mental Welfare Commission.

5. Section 63 of the 1984 Act has been amended to allow for appeals to a sheriff against the continued application of a Hospital Direction, in the same way as presently allowed in relation to hospital orders and transfer directions.

### **Return to Prison of Hospital Direction patient**

6. The new section 74(1A) is designed to allow a hospital direction patient transferred to hospital to be returned to prison if he no longer requires to be detained in hospital for

treatment. The patient must meet the same criteria as currently set out in Section 74 of the 1984 Act in connection with transferred prisoners. A direction for the return to prison of a Hospital Direction patient is given by warrant on the recommendation of the Responsible Medical Officer (RMO). **In no circumstances can the RMO return the person to prison without the Secretary of State's warrant.** The new sub sections 74(8A) and 74(8B) provide that where a hospital direction has been made in respect of a person who has reached the end of their sentence, the hospital direction will cease and the person will be discharged from detention unless a report is furnished in respect of him under section 74(9). Any person who was subject to a Hospital Direction and returned to prison and who subsequently relapses may be returned to hospital by way of a transfer direction under Section 71 of the 1984 Act. A restriction direction under Section 72 may be applied if appropriate.

### **Power to Specify Hospital Units**

7. The new provisions introduce a power for the courts and the Secretary of State to specify, when making hospital orders or directions under Section 57, 58, 59A of the Criminal Procedure (Scotland) Act and Section 71 of the Mental Health (Scotland) Act 1984, where appropriate, a particular unit rather than the "hospital" in which the patient is to be detained. In England some NHS Trusts currently provide "medium" and "non-secure" psychiatric care under the same management. This is not the practice currently in Scotland but it was considered prudent to amend the legislation in line with England to allow units to be specified should NHS Trusts provide in the future "medium" and "non-secure" psychiatric care under the same management. This will ensure that the patient is admitted to a "unit" or "hospital" which is particularly suited to the security requirements of the patient.

8. The 1997 Act also introduces amendments to the 1984 Act to ensure that the Secretary of State's agreement is obtained before any transfer is made. This will avoid the transfer taking place of a patient in "medium" security to "low" security without the Secretary of State's agreement. A "hospital unit" is defined as any part of the hospital which is treated as a separate unit. The Mental Welfare Commission should be informed of transfers between units in the same way as it is notified about transfers between hospitals.

### **Change to the specified period for admission from court to hospital**

9. An amendment has been made to the time specified for a mentally disordered person to be admitted and detained in hospital following a court disposal. This has been changed from 28 days to 7 days to allow the patient to be admitted to hospital as soon as possible and recognises the priority for the swift admission of mentally disordered offenders to hospital for treatment. Before a court makes an order, it will be assured of the availability of a suitable bed in the hospital or unit concerned. New provisions which amend the 1995 Act require that one medical practitioner whose evidence is to be taken into account when recommending an Interim Hospital Order, a Hospital Order or a Restriction Order (Sections 53, 54, 57, 58 or 59 of the 1995 Act) must be employed at the hospital named on the Order. Before the court can admit an accused person to hospital (instead of remanding him in custody) it must be satisfied that a hospital is available for his admission and is suitable for his detention. A unit may only be specified by the Court when a Hospital Order is made under Section 57(2)(a), Section 58 or Section 59A.

10. There are provisions in cases of emergency or other special circumstances where it is not possible to admit the patient to the hospital or unit specified within the 7 days. The Secretary of State may direct that the patient be admitted to another hospital or unit. Should any delay occur the Department of Health, Public Health Policy Unit should be informed immediately so that the Secretary of State can take a view on whether a direction is appropriate.

**Remand of persons suffering from mental disorder to private hospital**

11. This provision removes the current restriction preventing a remand prisoner from being detained in a private hospital. The current distinction between remand and sentenced prisoners was considered unduly restrictive. This power therefore allows the use of a private hospital registered under the 1984 Act to be considered for remand prisoners as well as sentenced prisoners. At present there are no private hospitals registered under Part IV of the 1984 Act.

**Crime and Punishment (Scotland) Act 1997**  
**Schedule Amendments**

(1) In section 60 (effect of hospital orders) -

(a) in subsection (1)(a) -

(i) after the word "officer" there shall be inserted the words "  
an officer on the staff of the hospital specified in the order"; and

(ii) for the words "28" there shall be substituted the word "7";

(b) in subsection (4), for the words "28" there shall be substituted the  
word "7".

(2) In section 62 (restriction orders) -

(a) after subsection (1) there shall be inserted the following  
subsection -

"(1A) Where the managers of a hospital specified in a restriction  
order propose to admit the patient to a hospital unit in that hospital,  
they shall, if that unit was not so specified, notify the Secretary of State  
and the Mental Welfare Commission of the patient's proposed  
admission to and detention in that unit; and the patient shall not be so  
admitted unless the Secretary of State has consented to the proposed  
admission."; and

(3) In Section 77 (transfers to England and Wales), after subsection (5)  
there shall be inserted the following subsection -

"(5A) Where a patient removed under this section was immediately  
before his removal liable to be detained under this Act by virtue of a  
hospital direction made by a court in Scotland, he shall be treated as if  
any sentence of imprisonment passed at the time at which the hospital  
direction was made had been imposed by a court in England and  
Wales."

(4) In section 80 (transfers to Northern Ireland), after subsection (6), there  
shall be inserted the following subsection -

"(6A) Where a patient removed under this section was  
immediately before his removal liable to be detained under this Act by  
virtue of a hospital direction made by a court in Scotland, he shall be  
treated as if any sentence of imprisonment passed at the time at which  
the hospital direction was made had been imposed by a court in  
Northern Ireland."

(5) In section 125(1), after the definition of “hospital order” there shall be inserted the following definition -

““hospital unit” means any part of a hospital which is treated as a separate unit;”.

(6) In Part II of Schedule 2 (application of provisions of Part V to restricted patients), for paragraph 6 there shall be substituted the following paragraph -

“6. In section 29 -

(a) for subsection (1) there shall be substituted -

“(1) A patient who is for the time being detained in a hospital or a hospital unit specified in a restriction order or a hospital direction or notified to the Secretary of State under section 62(1A) or 62A(2) of this Act may, with the consent of the Secretary of State, be transferred by the managers of the hospital -

(a) to another hospital, with the consent of the managers of that hospital; or

(b) to another hospital unit -

(i) in the hospital managed by them; or

(ii) in another hospital with the consent of the managers of that hospital.”;

(b) in subsection (2) -

(i) after the word “hospital” there shall be inserted the words “within which or”; and

(ii) the words after “transferred” shall be omitted; and

(c) in subsection (3) for the words from “as follows” to the end of the subsection there shall be substituted the words “as if the order or direction by virtue of which he was liable under Part VI of this Act to be detained before being transferred were an order or direction for his admission or removal to the hospital or hospital unit to which he is transferred.”.

**Crime and Punishment (Scotland) Act 1997**  
**Sections 7, 8 and 9**

7.—(1) After section 62 of the 1984 Act, there shall be inserted the following section—

“Effect of hospital direction.

62A.—(1) A hospital direction made under section 59A of the Criminal Procedure (Scotland) Act 1995 shall be sufficient authority—

Effect of hospital direction.

1995 c.46.

- (a) for a constable, a mental health officer, an officer on the staff of the hospital specified in the direction or other person directed to do so by the court to convey the person in respect of whom the direction has been made to the hospital specified in the direction within a period of 7 days; and
- (b) for the managers of the hospital so specified to admit him at any time within that period and thereafter to detain him in accordance with the provisions of this Act.

(2) Where the managers of a hospital specified in a hospital direction propose to admit the patient to a hospital unit in that hospital, they shall, if that unit was not so specified, notify the Secretary of State and the Mental Welfare Commission of the patient's proposed admission to and detention in that unit; and the patient shall not be so admitted unless the Secretary of State has consented to the proposed admission.

(3) If within the period of 7 days referred to in subsection (1) of this section it appears to the Secretary of State that by reason of an emergency or other special circumstance it is not practicable for the person to whom the hospital direction relates to be received into the hospital specified in the direction, he may give a direction under this subsection for the admission of that person to such other hospital as appears to be appropriate in lieu of the hospital so specified.

(4) Where a direction is given by the Secretary of State under subsection (3) of this section, he shall cause the person having custody of the person to whom the hospital direction relates to be informed, and the hospital direction shall have effect as if the hospital specified in the direction under subsection (3) of this section were substituted for the hospital specified in the hospital direction.

(5) Where a patient has been admitted to a hospital under a hospital direction—

(a) none of the provisions of Part V of this Act relating to the duration, renewal and expiration of authority for the detention of patients shall apply, and the patient shall continue to be liable to be detained by virtue of the relevant hospital direction until he is remitted to prison in accordance with section 65(2) or 74(3) of this Act or he is discharged in accordance with section 74(8B) of this Act;

(b) the following powers shall be exercisable only with the consent of the Secretary of State, that is to say—

(i) power to grant leave of absence to the patient under section 27 of this Act;

(ii) power to transfer the patient under section 29 of this Act;

and if leave of absence is granted under the said section 27 the power to recall shall be vested in the Secretary of State as well as in the responsible medical officer;

(c) the power to take the patient into custody and return him under section 28 of this Act may be exercised at any time,

and in relation to any such patient the provisions of the said Part V specified in Part II of the Second Schedule to this Act shall have effect subject to the exceptions and modifications set out in that Part and the remaining provisions of Part V shall not apply.”.

(2) In section 63 of that Act (rights of appeal of restricted patients)—

(a) in subsection (1)—

(i) in the definition of “restricted patient” after the word “order” there shall be substituted the words “, to a hospital direction”; and

(ii) for the definition of “relevant hospital order” and “relevant transfer direction” there shall be substituted the following definition—

““relevant hospital order”, “relevant hospital direction” and “relevant transfer direction”, in relation to a restricted patient, mean the hospital order, hospital direction or transfer direction by virtue of which he is liable to be detained in a hospital.”; and

(b) in subsection (2), in paragraph (a), after the word “order” there shall be inserted the words “, hospital direction”.



(3) In section 65 of that Act (appeal where person is subject to restriction direction)—

(a) in subsection (1), after the word “subject” there shall be inserted the words “to a hospital direction or”;

(b) in subsection (2)—

(i) in paragraph (a) for the words “removed to hospital” there shall be substituted the words “conveyed under a relevant hospital direction or removed under a relevant transfer direction to a hospital specified in the direction” and for the words “so removed” there shall be substituted the words “so conveyed or removed”; and

(ii) the words after paragraph (b) shall cease to have effect: and

(c) after subsection (2) there shall be inserted the following subsection—

“(3) Where a direction has been given under subsection (2) of this section, on the person’s arrival in the prison or other institution or place to which he has been remitted by virtue of such a direction the relevant hospital direction or, as the case may be, the relevant transfer direction together with the restriction direction given in respect of the person shall cease to have effect.”.

(4) In section 74 of that Act (further provision as to transfer directions and restriction directions)—

(a) after subsection (1), there shall be inserted the following subsection—

“(1A) This subsection applies if the Secretary of State is satisfied as regards a person who has been conveyed to a hospital under a hospital direction as to the matters mentioned in subsection (2) below at a time when the person, by virtue of a sentence of imprisonment imposed on him at the time that direction was made, would but for that direction be in prison or being detained other than in a hospital.”;

(b) in subsection (2), after the words “subsection (1)” there shall be inserted the words “and (1A)”;

(c) in subsection (3)—

(i) after the words “subsection (1)” there shall be inserted the words “or (1A)”;

(ii) after the word “been”, where it occurs for the second time, there shall be inserted the words “conveyed or”: and

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(iii) for the words "so removed" there shall be substituted the words "so conveyed or removed";

(d) in subsection (4), after the words "subsection (1)" there shall be inserted the words "or (1A)";

(e) in subsection (5), after the words "restriction direction" there shall be inserted the words "or, as the case may be, the hospital direction";

(f) after subsection (8), there shall be inserted the following subsections—

"(8A) This subsection applies where a hospital direction has been made in respect of a person and he has thereafter been released under the Crime and Punishment (Scotland) Act 1997.

(8B) Where subsection (8A) above applies—

(a) the hospital direction shall forthwith cease to have effect; and

(b) the person shall thereupon be discharged from hospital unless a report is furnished in respect of him under subsection (9) below.";

(g) in subsection (9)—

(i) after the word "before" there shall be inserted—

"- (a)"; and

(ii) after the word "above" there shall be inserted the following paragraph—

"; or

(b) a hospital direction ceases to have effect,";

(h) in subsection (10), after the words "restriction direction", in both places where they occur, there shall be inserted the words "or, as the case may be, hospital direction"; and

(i) in subsection (11), after the words "transfer direction" there shall be inserted the words "or, as the case may be, hospital direction".

(5) In section 125 of that Act (interpretation), after the definition of "hospital" there shall be inserted the following definition—

"“hospital direction” has the meaning assigned to it by section 59A(1) of the Criminal Procedure (Scotland) Act 1995;”.

1995 c.46.

Remand of persons suffering from mental disorder to private hospital.

8. In section 70 of the 1984 Act (removal to hospital of persons on remand), the words "(not being a private hospital)" shall cease to have effect.

Power to specify hospital unit.

9.—(1) Subject to subsection (2) below, any power to specify a hospital which is conferred by—

(a) section 57(2)(a) of the 1995 Act (disposal where accused insane);

(b) section 58 of the 1995 Act (hospital orders);

(c) section 59A of the 1995 Act (hospital directions); or

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(d) section 71 of the 1984 Act (transfer direction), includes a power to specify a hospital unit; and where such a unit is specified in relation to any person in the exercise of such a power, any reference in any enactment (including one contained in this Act) to him being, or being liable to be, detained in a hospital shall be construed accordingly.

(2) In subsection (1) above—

- (a) paragraph (a) shall not apply unless the court also makes an order under paragraph (b) of section 57(2) of the 1995 Act;
- (b) paragraph (b) shall not apply unless the court also makes an order under section 59 of the 1995 Act;
- (c) paragraph (d) shall not apply unless the Secretary of State also gives a direction under section 72 of the 1984 Act.

(3) In this section—

“hospital”, in relation to the exercise of a power, has the same meaning as in the enactment which confers the power;

“hospital unit” means any part of a hospital which is treated as a separate unit.