



## SCOTTISH EXECUTIVE

Health Department  
Directorate of Service Policy and Planning

NHS  
HDL (2005) 4

Dear Colleague

### AMENDMENTS TO THE MENTAL HEALTH (SCOTLAND) ACT 1984 BY THE CRIME AND PUNISHMENT (SCOTLAND) ACT 1997 THE USE OF HOSPITAL DIRECTIONS

#### Purpose

1. This letter amends guidance on Hospital Directions contained in NHS MEL (1997) 86. In particular, the role of psychiatrists in that process.
2. NHS MEL (1997) 86 advised that a psychiatrist may not recommend a Hospital Direction to the courts as it is attached to a custodial sentence. That policy has been revised (in light of subsequent research findings) to leave the decision to the psychiatrist on whether or not to recommend a Hospital Direction disposal to the court. Please therefore replace Annex A, paragraphs 1-6 of NHS MEL (1997) 86, with the attached.

#### Background

3. The Hospital Direction was introduced under the [Crime and Punishment \(Scotland\) Act 1997](#) and can only be applied to a mentally disordered offender who is convicted of an offence on indictment (i.e. 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. The effect of a Hospital Direction means the person is subject to the same constraints as a restricted patient whilst detained in hospital.

#### Research Findings

4. The Scottish Executive commissioned research from the University of Glasgow on the use of and impact of Hospital Directions and Interim Hospital Orders. The findings are contained in "[Publication of Crime and Criminal Justice Research Findings No 56: Mentally Disordered Offenders and](#)

2<sup>nd</sup> February 2005

#### Addresses

##### For action

Consultant Psychiatrists

##### For information

Chief Executives, NHS Boards  
Chief Executive, State Hospitals  
Board for Scotland  
Directors of Social Work  
Mental Welfare Commission for Scotland  
Royal College of Psychiatrists  
Chief Executive, Scottish Health Advisory Service  
Scottish Court Service  
Clerk of Justiciary  
Sheriff Clerks  
Clerks of District Courts  
Crown Office  
Home Office  
Northern Ireland Office  
Central Legal Office for the Scottish Health Service

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[the use of Hospital Directions and Interim Hospital Orders](#)” (September 2001). Although no single reason was found to explain the low use of Hospital Directions, interviews with legal and psychiatric personnel suggested that sentencers’ lack of familiarity with the provisions and psychiatrists’ reluctance to explicitly recommend Hospital Directions in the light of the original guidance from the Scottish Executive may have been contributory factors. Interviews conducted with psychiatrists indicated that they broadly welcomed the Hospital Direction as a clinically useful option but some continued to see it as an ethical dilemma.

## Action

5. **Psychiatrists preparing reports for the court should have regard to the revised guidance contained in the Annex which replaces that contained in paragraphs 1-6 of Annex A of NHS MEL (1997) 86 and note that the decision on whether or not to recommend a Hospital Direction rests with them.** The psychiatrist should base his or her recommendation on the individual circumstances of the case. This letter should be drawn to the attention of those whose duties require knowledge of restricted patients and the Mental Health (Scotland) Act 1984. In particular it should be drawn to the attention of consultant psychiatrists. The guidance will be unchanged by the implementation of the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#).

Yours sincerely

IAN GORDON

## Purpose of a Hospital Direction

1. The [Crime and Punishment \(Scotland\) Act 1997](#) introduced a new disposal for the courts in cases involving mentally disordered offenders who were convicted on indictment. As a result the court can, in addition to applying a sentence of imprisonment, make a Hospital Direction. This allows an offender who is convicted of an offence on indictment and sentenced to imprisonment but who is also mentally disordered and needs hospital care 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 Mental Health (Scotland) Act 1984 to hospital are met. A Hospital Direction can only be applied to a mentally disordered offender who is convicted of an offence on indictment (i.e. 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 includes a definition of “Hospital Direction”. This has the meaning assigned to it by subsection 59A(1) of the [Criminal Procedure \(Scotland\) Act 1995](#).

3. 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 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 was amended to take account of the Hospital Direction. The effect is to make a person who is detained under the 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 Scottish Ministers. The Hospital must send Form K (i.e. the admission form), the Court Order and the psychiatric reports to the Health Department, Mental Health Division, St Andrew’s House, Edinburgh immediately on receipt. The Scottish Executive 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 for Scotland.

5. Section 63 of the 1984 Act was 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.

### 6. Return to Prison of Hospital Direction Patient

Section 74(1A) of the 1984 Act 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 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 Scottish Ministers’ warrant. The 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 will be 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.