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Department of Health

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23 April 1996

Dear Colleague

**AMENDMENT TO MENTAL HEALTH (SCOTLAND)
ACT 1984 BY THE CRIMINAL PROCEDURE
(CONSEQUENTIAL PROVISIONS) (SCOTLAND) ACT
1995**

Summary

1. The purpose of this circular is to inform you of the coming into force of the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 on 1 April 1996 and of the consequent changes to the Mental Health (Scotland) Act 1984. The details of the changes are set out in the attached annex.
2. The changes are made necessary by the coming into force, also from 1 April 1996, of the provisions of the Criminal Procedure (Scotland) Act 1995 which provides for the first consolidation of Scottish criminal procedure law since 1975. This Act brings together all of the legislation relating to procedure and evidence which applies to criminal proceedings in Scotland. It replaces the Criminal Procedure (Scotland) Act 1975 as the main statute governing Scottish criminal procedure.
3. Sections 52-63 of the Criminal Procedure (Scotland) Act 1995 update previous legislation to bring into force a comprehensive new system for the handling by the criminal justice system of those who are found unfit to plead or acquitted on grounds of insanity. A detailed guide to these provisions has been issued under cover of Scottish Office Home Department Circular No HD 6/1996, dated 22 March 1996.

Action

4. This letter should be drawn to the attention of those whose duties require knowledge of the legislation.

Yours sincerely

KEVIN J WOODS
Director of Purchasing

April 1996

Addressees

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AMENDMENTS TO THE MENTAL HEALTH (SCOTLAND) ACT 1984

- (1) In section 60 (**effect of hospital orders**) -
 - (a) in subsection (1) for the words "section 175 or 376 of the Criminal Procedure (Scotland) Act 1975" there shall be substituted the words "section 58 of the Criminal Procedure (Scotland) Act 1995"; and
 - (b) in subsection (3) for the words "section 178(3) or 379(3) of the said Act of 1975" there shall be substituted the words "section 59(3) of the said Act of 1995."
- (2) In subsection (1) of section 61 (**effect of guardianship orders**) for the words "section 175 or 376 of the Criminal Procedure (Scotland) Act 1975" there shall be substituted the words "section 58 of the Criminal Procedure (Scotland) Act 1995".
- (3) In subsection (1) of section 62 (**effect of restriction orders**), for the words "section 178 or 379 of the Criminal Procedure (Scotland) Act 1975" there shall be substituted the words "section 59 of the Criminal Procedure (Scotland) Act 1995".
- (4) In subsection (3) of section 69 (**persons ordered to be kept in custody during Her Majesty's pleasure**), for the words from "an order" to the end there shall be substituted "a hospital order together with a restriction order".
- (5) In subsection (7) of section 71 (**removal to hospital of persons serving sentences of imprisonment etc**), in paragraph (a) for the words from "section 174" to "1975" there shall be substituted the words "section 54, 57, 118 or 190 of the Criminal Procedure (Scotland) Act 1995".
- (6) In subsection (1) of section 73 (**further provisions as to persons removed to hospital while awaiting trial etc**), for the words from "section 174ZC" to "1975" there shall be substituted the words "section 53, 57, 58 or 59 of the Criminal Procedure (Scotland) Act 1995".
- (7) In section 76 (interpretation of Part VI) for the words "section 178(3) or 379(3) of the Criminal Procedure (Scotland) Act 1975" there shall be substituted the words "section 59(3) of the Criminal Procedure (Scotland) Act 1995".
- (8) After section 121 there shall be inserted the following section -

"Warrants for arrest of escaped mental patients."

121A.- (1) On an application being made to a justice alleging that any person is a convicted mental patient liable to be retaken under section 18, 38(7) or 138 of the Mental Health Act 1983, section 28, 44 or 121 of this Act or section 30 or 108 of the Mental Health Act (Northern Ireland) 1961 (retaking of mental patients who are

absent without leave or have escaped from custody), the justice may issue a warrant to arrest him and bring him before any sheriff.

(2) Where a person is brought before a sheriff in pursuance of a warrant for his arrest under this section, the sheriff shall, if satisfied that he is the person named in the warrant and if satisfied that he is a convicted mental patient as mentioned in subsection (1) above, order him to be kept in custody or detained in a place of safety pending his admission to hospital.

(3) Section 137 of the Mental Health Act 1983 and section 107 of the Mental Health Act (Northern Ireland) 1961 (custody, conveyance and detention of certain mental patients) shall apply to a convicted mental patient required by this section to be conveyed to any place or to be kept in custody or detained in a place of safety as they apply to a person required by or by virtue of the said Act of 1983 or 1961, as the case may be, to be so conveyed, kept or detained.

(4) In this section -

“convicted mental patient” means a person liable after being convicted of an offence to be detained under Part III of the Mental Health Act 1983, part VI of this Act, part III of the Mental Health Act (Northern Ireland) 1961 or section 52, 59(1) to (10) or 60 of the Criminal Procedure (Scotland) Act 1995 in pursuance of a hospital order or transfer direction together with an order or direction restricting his discharge or a person liable to be detained under section 38 of the said Act of 1983;

“place of safety” has the same meaning as in Part III of the said Act of 1983 or part III of the said Act of 1961 or section 297 of the said Act of 1995, as the case may be.”

(9) In section 125 -

(a) in the definition of “hospital order” and “guardianship order” for the words “section 175 or 376 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “section 58 of the Criminal Procedure (Scotland) Act 1995”;

(b) in the definition of “restriction order” for the words “section 178 or 379 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “section 59 of the Criminal Procedure (Scotland) Act 1995”; and

(c) in subsection (4) for the words from “section 174” to “1975” there shall be substituted the words “section 54, 57, 58 or 59 of the Criminal Procedure (Scotland) Act 1995”.