



NHS Management Executive
St. Andrew's House
Edinburgh EH1 3DG

6 August 1997
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Dear Colleague

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

Summary

1. The purpose of this circular is to inform you of the coming into force on 1 August of a number of provisions in the Crime and Punishment (Scotland) Act 1997. The details of the changes which affect the Mental Health (Scotland) Act 1984 are set out in the attached Annex.

2. Many of the changes due to come into force on 1 August which affect the 1984 Act are simply clarifying amendments where references to previous legislation have not been updated. There is however a new Section 71A which deals with prisoners transferred to a mental hospital.

Purpose of the New Section 71A

3. The new section is designed to overcome a gap in the law. The 1984 Act makes no provision as to what should happen in a case where a prisoner transferred to a mental hospital under Section 71 and without a restriction order under Section 72 subsequently recovers before the end of the sentence of imprisonment ordered by the court. The new Section allows the Secretary of State to order the patient's return by warrant to prison or decide that he should continue to be detained in hospital.

4. In effect, this brings the statutory position into line with what currently exists for those prisoners transferred to a mental hospital under Section 71 with a restriction direction under Section 72. The new Section 71A allows the Secretary of State by warrant to order the person to be returned to prison to complete his sentence, if he no longer requires to be detained in hospital for treatment. It also provides for the case of partial recovery - that is, where the person no longer needs to be

August 1997

Addressees

For action:

General Managers, Health Boards
Chief Executives, NHS Trusts
General Manager, State Hospitals
Board for Scotland

For information:

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detained in hospital but does require to remain liable to recall to hospital. In such a case the Secretary of State may either order his return to prison or decide that he should continue to be detained in hospital until completion of his sentence.

5. A direction for the return of a transferee to prison 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.** If the RMO concludes that it is unnecessary or inappropriate for the transferee to remain in hospital, the RMO should contact Mrs Lorraine McDonald, Public Health Policy Unit, Room 429, St Andrew's House (Tel: 0131 244 2546 or Fax: 0131 244 2846) to arrange for a warrant to be prepared returning the transferee to prison.

Action

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kevin Woods', with a stylized flourish at the end.

DR KEVIN WOODS
Director of Purchasing

AMENDMENTS TO THE MENTAL HEALTH (SCOTLAND) ACT 1984

(1) In Section 62 (**restriction orders**) -

(b) in subsection (3), for the words "section 178(3) and 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 Section 71 (**removal to hospital of persons serving sentences of imprisonment and other persons**), in subsection (4) at the beginning there shall be inserted the following words "Subject to section 71A of this Act,".

(3) After Section 71 there shall be inserted the following section -

"71A - (1) Where the Secretary of State is satisfied, in relation to a person in respect of whom he has made a transfer direction under section 71(1) of this Act, that -

(a) either -

(i) the person is not suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or

(ii) it is not necessary for the health or safety of the person or for the protection of other persons that he should receive such treatment; and

(b) it is not appropriate for the person to remain liable to be recalled to hospital for further treatment,

he shall by warrant direct that the person be remitted to any prison or other institution or place in which he might have been detained had he not been removed to hospital and that he be dealt with there as if he had not been so removed.

(2) Where the Secretary of State is satisfied as to the matters mentioned in subsection (1)(a) above, but not as to the matters mentioned in subsection (1)(b) above, he may either -

(a) by warrant give such direction as is mentioned in subsection (1) above; or

(b) decide that the person shall continue to be detained in hospital.

(3) If a direction is given under subsection (1) or (2)(a) above, then on the person's arrival in the prison or other institution or place to which he is remitted by virtue of that subsection the transfer direction shall cease to have effect".

(4) In section 72(2) (**restriction directions**) 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”.

(5) In section 82(2) (**removal of certain patients from the Channel Islands**), for the words “section 174 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “section 57(2)(a) and (b) of the Criminal Procedure (Scotland) Act 1995.”

(6) In section 96 (**application of provisions relating to consent to treatment**), in paragraph (b) for the words “section 177 or 378 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “section 58(9) of the Criminal Procedure (Scotland) Act 1995”.

(7) In section 106(4) (**protection of mentally handicapped patients**), for the words “Section 18 of the Sexual Offences (Scotland) Act 1976” there shall be substituted the words “Section 16 of the Criminal Law (Consolidation) (Scotland) Act 1995”.

(8) In section 107(3) (**further protection of patients**), for the words “section 80(6) of the Criminal Justice (Scotland) Act 1980” there shall be substituted the words “section 13(4) of the Criminal Law (Consolidation) (Scotland) Act 1995”.

(9) In section 121A (**warrants for arrest of escaped patients**) -

(a) in subsection (1), for the words “section 30 or 108 of the Mental Health Act (Northern Ireland) 1961” there shall be substituted the words “Articles 29, 45(6) and 132 of the Mental Health (Northern Ireland) Order 1986”;

(b) in subsection (3), for the words “section 107 of the Mental Health Act (Northern Ireland) 1961” there shall be substituted the words “Article 131 of the Mental Health (Northern Ireland) Order 1986”; and

(c) in subsection (4) -

(i) In the definition of “convicted mental patient”, for the words “the Mental Health Act (Northern Ireland) 1961” there shall be substituted the words “the Mental Health (Northern Ireland) Order 1986”; and

(ii) in the definition of “place of safety”, for the words “the said Act of 1961” there shall be substituted the words “the said Order of 1986”.