



Mental Health (Scotland) Act 1984

1984 CHAPTER 36

PART VI

DETENTION OF PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS ETC. AND TRANSFER OF PATIENTS UNDER SENTENCE

Transfer to hospital or guardianship of prisoners etc.

70 Removal to hospital of persons in prison awaiting trial etc.

- (1) If in the case of a person committed in custody while awaiting trial or sentence it appears to the Secretary of State that the grounds are satisfied upon which an application may be made for his admission to a hospital under Part V of this Act he may apply to the sheriff for an order that that person be removed to and detained in such hospital (not being a private hospital) as may be specified in the order; and the sheriff, if satisfied by reports from 2 medical practitioners (complying with the provisions of this section) that the grounds are satisfied as aforesaid may make an order accordingly.
- (2) An order under this section (in this Act referred to as " a transfer order ") shall cease to have effect at the expiration of the period of 14 days beginning with the date on which it is made, unless within that period the person with respect to whom it was made has been received into the hospital specified therein.
- (3) A transfer order with respect to any person shall have the like effect as a hospital order made in his case together with a restriction order in respect of him made without limit of time.
- (4) Of the medical practitioners whose reports are taken into account under subsection (1) of this section, at least one shall be a practitioner approved for the purposes of section 20 of this Act by a Health Board as having special experience in the diagnosis or treatment of mental disorder.
- (5) A transfer order shall specify the form or forms of mental disorder, being mental illness or mental handicap or both, from which the patient is found by the sheriff to be suffering; and no such order shall be made unless the patient is described by each

of the practitioners whose evidence is taken into account as aforesaid as suffering from the same form of mental disorder, whether or not he is also described by either of them as suffering from the other form.

71 Removal to hospital of persons serving sentences of imprisonment and other prisoners

- (1) If in the case of a person to whom this section applies the Secretary of State is satisfied by the like reports as are required for the purposes of section 70 of this Act that the grounds are satisfied upon which an application may be made for his admission to a hospital under Part V of this Act the Secretary of State may make a direction (in this Act referred to as " a transfer direction ") in respect of him.
- (2) This section applies to the following persons, that is to say—
 - (a) persons serving sentences of imprisonment;
 - (b) civil prisoners, that is to say, persons committed by court to prison in respect of a civil debt;
 - (c) persons detained under the Immigration Act 1971.
- (3) Subsections (2), (4) and (5) of section 70 of this Act shall apply for the purposes of this section and of any transfer direction given by virtue of this section as they apply for the purposes of that section and of any transfer order thereunder, with the substitution for any references to the sheriff of a reference to the Secretary of State.
- (4) A transfer direction with respect to any person shall have the like effect as a hospital order made in his case.
- (5) Where a transfer direction is given in respect of any person that person may, within one month of his transfer to a hospital thereunder, appeal to the sheriff to cancel the direction, and the sheriff shall cancel the direction unless he is satisfied that the grounds are satisfied upon which an application may be made for the admission of the person to a hospital under Part V of this Act; and, if a transfer direction is so cancelled, the Secretary of State shall direct that the person be remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed.
- (6) Subsections (2) , (3) and (4) of section 35 of this Act shall apply to an appeal under subsection (5) of this section in like manner as they apply to an appeal referred to in that section.
- (7) References in this section to a person serving a sentence of imprisonment include references—
 - (a) to a person detained in pursuance of any sentence or order for detention made by a court in criminal proceedings (other than an order under section 174 or 255 of the Criminal Procedure (Scotland) Act 1975, or under any enactment to which section 69 of this Act applies);
 - (b) to a person committed by a court to a prison or other institution to which the Prisons (Scotland) Act 1952, applies in default of payment of any fine to be paid on his conviction.

72 Restriction on discharge of prisoners removed to hospital

- (1) Where a transfer direction is given in respect of any person, the Secretary of State, if he thinks fit, may by warrant direct that that person shall be subject to the special restrictions set out in section 62(1) of this Act. .
- (2) A direction under this section (in this Act referred to as " a restriction direction ") shall have the like effect as a restriction order in respect of the patient made under section 178 or 379 of the Criminal Procedure (Scotland) Act 1975.

73 Further provisions as to persons removed to hospital while awaiting trial etc.

- (1) Subject to the following provisions of this section any transfer order made in respect of a person under section 70(1) of this Act shall cease to have effect if the proceedings in respect of him are dropped or when his case is disposed of by the court to which he was committed, or by which he was remanded, but without prejudice to any power of that court to make a hospital order or other order under section 174A, 175, 178, 375A, 376 or 379 of the Criminal Procedure (Scotland) Act 1975 in his case.
- (2) Where a transfer order has been made in respect of any such person as aforesaid, then, if the Secretary of State is notified by the responsible medical officer at any time before that person is brought before the court to which he was committed, or by which he was remanded, that he no longer requires treatment for mental disorder, the Secretary of State may by warrant direct that he be remitted to any place where he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed, and on his arrival at the place to which he is so remitted the transfer order shall cease to have effect.
- (3) Where a transfer order in respect of any person ceases to have effect under subsection (1) of this section, then unless his case has been disposed of by the court—
 - (a) passing a sentence of imprisonment (within the meaning of section 175(7) or 376(10) of the said Act of 1975) on him; or
 - (b) making a probation order under section 183, 184, 384 or 385 of the said Act of 1975 in relation to him; or
 - (c) making a hospital order or guardianship order in his case,he shall continue to be liable to be detained in the hospital in which he was detained under the transfer order as if he had been admitted thereto, on the date on which that order ceased to have effect, in pursuance of an application for admission made under Part V of this Act, and the provisions of this Act shall apply accordingly.

74 Further provisions as to prisoners under sentence

- (1) Where a transfer direction and a restriction direction have been given in respect of a person serving a sentence of imprisonment and the Secretary of State is satisfied—
 - (a) that 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
 - (b) that 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 (in either case)
 - (c) that it is not appropriate for the person to remain liable to be recalled to hospital for further treatment,he shall—

- (i) by warrant direct that the person be remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed ; or
 - (ii) exercise any power of releasing the person on licence or discharging the person under supervision, which would have been exercisable if he had been remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital,
- and on his arrival in the prison or other institution, or as the case may be his release or discharge as aforesaid, the transfer direction and the restriction direction shall cease to have effect.
- (2) Where in the case of any such person as is mentioned in subsection (1) of this section the Secretary of State is satisfied as to the matter referred to in paragraph (a) or (b) of that subsection but not as to the matters referred to in paragraph (c) of that subsection he may—
- (a) by warrant direct that the person be remitted to any prison or other institution in which he might have been detained if he had not been removed to a hospital, there to be dealt with as if he had not been removed ; or
 - (b) exercise any power of releasing the person on licence or discharging the person under supervision, which would have been exercisable if he had been remitted to any prison or other institution in which he might have been detained if he had not been removed to a hospital ; or
 - (c) decide that the person should continue to be detained in a hospital,
- and on his arrival in the prison or other institution or, as the case may be, his release or discharge as aforesaid, the transfer direction and the restriction direction shall cease to have effect.
- (3) A restriction direction given in respect of a person serving a sentence of imprisonment shall cease to have effect on the expiration of the sentence.
- (4) Subject to the following provisions of this section, where a restriction direction ceases to have effect in respect of a person that person shall be discharged unless a report is furnished in respect of him under subsection (5) of this section.
- (5) Within a period of 28 days before a restriction direction ceases to have effect in respect of a person, the responsible medical officer shall obtain from another medical practitioner a report on the condition of the patient in the prescribed form and thereafter shall assess the need for the detention of the patient to be continued; and, if it appears to him that it is necessary in the interests of the health or safety of the patient or for the protection of other persons that the patient should continue to be liable to be detained in hospital, he shall furnish to the managers of the hospital where the patient is liable to be detained and to the Mental Welfare Commission a report to that effect in the prescribed form along with the report first mentioned.
- (6) Where a report is duly furnished under subsection (5) of this section, the patient shall be treated as if he had been admitted to the hospital in pursuance of a hospital order (without a restriction order) made on the date on which the restriction direction ceased to have effect, but the provisions of section 30(5) and (6) and of section 35 of this Act shall apply to him in like manner as they apply to a patient the authority for whose detention in hospital has been renewed in pursuance of subsection (4) of the said section 30.

- (7) Subject to subsection (8) of this section, references in this section to the expiration of a person's sentence are references to the expiration of the period during which he would have been liable to be detained in a prison or other institution if the transfer direction had not been given and if he had not forfeited remission of any part of the sentence after his removal in pursuance of the direction.
- (8) For the purposes of subsection (2) of section 37 of the Prisons (Scotland) Act 1952 (which subsection provides for discounting from the sentence of certain prisoners periods while they are unlawfully at large) a patient who, having been transferred in pursuance of a transfer direction from any such institution as is referred to in that subsection, is at large, in circumstances in which he is liable to be taken into custody under any provision of this Act, shall be treated as unlawfully at large and absent from that institution.
- (9) In this section " prescribed " means prescribed by regulations made by the Secretary of State.

75 Further provisions as to civil prisoners and persons detained under the Immigration Act 1971

- (1) Subject to subsection (2) of this section, a transfer direction given in respect of any such person as is described in paragraph (b) or (c) of section 71(2) of this Act shall cease to have effect on the expiration of the period during which he would, but for his removal to a hospital, be liable to be detained in the place from which he was removed.
- (2) Where a transfer direction and a restriction direction have been given in respect of any such person as is mentioned in subsection (1) of this section and the Secretary of State is satisfied—
- (a) that 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
 - (b) that 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 (in either case),
 - (c) that it is not appropriate for the person to remain liable to be recalled to hospital for further treatment,
- he shall—
- (i) by warrant direct that the person be remitted to any prison or other institution in which he might have been detained if he had not been removed to a hospital, there to be dealt with as if he had not been so removed; or
 - (ii) exercise any power of releasing the person on licence or discharging the person under supervision which would have been exercisable if he had been remitted to any prison or other institution in which he might have been detained if he had not been removed to a hospital,
- and on his arrival in the prison or other institution, or as the case may be, his release or discharge as aforesaid, the transfer direction and the restriction direction shall cease to have effect.
- (3) Where in the case of any such person as is mentioned in subsection (2) of this section the Secretary of State is satisfied as to the matters referred to in paragraph (a) or (b) of that subsection but not as to the matters referred to in paragraph (c) of that subsection he may—

- (a) by warrant direct that the person be remitted to any prison or other institution in which he might have been detained if he had not been removed to a hospital, there to be dealt with as if he had not been so removed ; or
 - (b) exercise any power of releasing the person on licence or discharging the person under supervision, which would have been exercisable if he had been remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital ; or
 - (c) decide that the person should continue to be detained in hospital,
- and on his arrival in the prison or other institution or, as the case may be, his release or discharge as aforesaid, the transfer direction and the restriction direction shall cease to have effect.