



Mental Health (Scotland) Act 1984

1984 CHAPTER 36

PART VI

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

Provisions for compulsory detention and guardianship of patients charged with offences etc.

60 Effect of hospital orders.

- (1) A hospital order made under section [F¹section 58 of the Criminal Procedure (Scotland) Act 1995] shall be sufficient authority—
 - (a) for a constable, a mental health officer [F², an officer on the staff of the hospital specified in the order], or any other person directed to do so by the court to convey the patient to the hospital specified in the order within a period of [F³7] days; and
 - (b) for the managers of the hospital to admit him at any time within that period, and thereafter to detain him in accordance with the provisions of this Act.
- (2) A patient who is admitted to a hospital in pursuance of a hospital order shall be treated for the purposes of Part V of this Act (other than section 23) as if he had been so admitted on the date of the order in pursuance of an application for admission, except that the power to order the discharge of the patient under section 33 of this Act shall not be exercisable by his nearest relative; and accordingly the provisions of the said Part V specified in Part I of the Second Schedule to this Act shall apply in relation to him, subject to the exceptions and modifications set out in that Part and the remaining provisions of the said Part V shall not apply.
- (3) Subject to the provisions of [F⁴section 59(3) of the said Act of 1995], where a patient is admitted to a hospital in pursuance of a hospital order any previous application or hospital order by virtue of which he was liable to be detained in a hospital shall cease to have effect:

Status: Point in time view as at 29/04/2005.

Changes to legislation: Mental Health (Scotland) Act 1984, Part VI is up to date with all changes known to be in force on or before 09 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Provided that, if the order first-mentioned or the conviction to which it relates is quashed on appeal, this subsection shall not apply and section 32 of this Act shall have effect as if during any period for which the patient was liable to be detained under the order he had been detained in custody as mentioned in that section.

- (4) If within the period of [^{F5}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 circumstances it is not practicable for the patient to be received into the hospital specified in the order, he may give directions for the admission of the patient to such other hospital as appears to be appropriate in lieu of the hospital so specified; and where such directions are given the Secretary of State shall cause the person having the custody of the patient to be informed, and the hospital order shall have effect as if the hospital specified in the directions were substituted for the hospital specified in the order.

[^{F6}(5) Where—

- (a) a patient admitted to a hospital in pursuance of a hospital order is absent without leave;
- (b) a warrant to arrest him has been issued under section 13 of the ^{M1}Criminal Procedure (Scotland) Act 1975; and
- (c) he is held pursuant to the warrant in any country or territory other than the United Kingdom, any of the Channel Islands and the Isle of Man,

he shall be treated as having been taken into custody under section 28 of this Act on first being so held.]

Textual Amendments

- F1** Words in s. 60(1) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 50(2)(a) (with Sch. 3, paras. 1, 3)
- F2** Words in s. 60(1)(a) inserted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(2)(a) (with s. 33(6)); S.I. 1997/2323, art. 4, **Sch. 2**
- F3** Words in s. 60(1)(a) substituted (1.1.1998) by 1997 c. 48, ss. 62(1), 65(2)(4), **Sch. 1**, para. 9(2)(a) (with s. 33(6)); S.I. 1997/2323, art. 4, **Sch. 2**
- F4** Words in s. 60(3) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 50(2)(b) (with s. 3, Sch. 3, paras. 1, 3)
- F5** Words in s. 60(4) substituted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(2)(b) (with s. 33(6)); S.I. 1997/2323, art. 4, **Sch. 2**
- F6** S. 60(5) inserted (1.4.1996) by 1995 c. 52, **ss. 5(9)**, 7(2)

Marginal Citations

- M1** 1975 c. 21.

^{F7}61

Textual Amendments

- F7** S. 61 repealed (1.4.2002) by 2000 asp 4, s. 88(3), **Sch. 6**; S.S.I. 2001/81, art. 3, **Sch. 2**

62 Effect of restriction orders.

(1) The special restrictions applicable to a patient in respect of whom a restriction order made under [^{F8}section 59 of the Criminal Procedure (Scotland) Act 1995] is in force are as follows, that is to say—

(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 order until he is absolutely discharged under sections 63 to 68 of this Act;

[^{F9}(aa) none of the provisions of Part V of this Act relating to community care orders shall apply;]

(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; and

(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 the patient under that section shall be vested in the Secretary of State as well as in the responsible medical officer; and

(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.

[^{F10}(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.]

(2) While a person is a restricted patient within the meaning of section 63 of this Act or a person to whom section 67 (persons treated as restricted patients) of this Act applies, the responsible medical officer shall at such intervals (not exceeding one year) as the Secretary of State may direct examine and report to the Secretary of State on that person; and every report shall contain such particulars as the Secretary of State may require.

(3) Without prejudice to the provisions of [^{F11}section 59(3) of the said Act of 1995], where a restriction order in respect of a patient ceases to have effect while the relevant hospital order continues in force, the provisions of section 60 of this Act and Part I of the Second Schedule to this Act shall apply to the patient 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 order ceased to have effect.

Textual Amendments

F8 Words in s. 62(1) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 50(4) (with **Sch. 3**, paras. 1, 3)

F9 S. 62(1)(aa) inserted (1.4.1996) by 1995 c. 52, ss. 4(2), 7(2), **Sch. 2**, para. 4

Status: Point in time view as at 29/04/2005.

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F10 S. 62(1A) inserted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(3)(a); S.I. 1997/2323 art. 4, Sch. 2

F11 Words in s. 62(3) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(3)(b); S.I. 1997/1712 art. 3, Sch.

Modifications etc. (not altering text)

C1 S. 62(1) extended (1.4.1996) by 1995 c. 46, **ss. 57(2)(b)**, 59(1), 309(2) (with 24(2))

[^{F12}62A Effect of hospital direction.

- (1) A hospital direction made under section 59A of the ^{M2}Criminal Procedure (Scotland) Act 1995 shall be sufficient authority—
 - (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;

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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.]

Textual Amendments

F12 S. 62A inserted (S.) (1.1.1998) by 1997 c. 48, s. 7(1); S.I. 1997/2323, art. 4, Sch. 2

Marginal Citations

M2 1995 c.46.

63 Right of appeal of restricted patients etc.

- (1) In this section and in sections 64 to 67 of this Act—

“restricted patient” means a patient who is subject to a restriction order [^{F13}, to a hospital direction] or to a restriction direction;

[^{F14}“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.]

- (2) A restricted patient detained in a hospital may appeal by way of summary application to a sheriff of the sheriffdom within which the hospital in which he is liable to be detained is situated—

- (a) in the period between the expiration of 6 months and the expiration of 12 months beginning with the date of the relevant hospital order [^{F15}, hospital direction] or transfer direction; and

- (b) in any subsequent period of 12 months,

to order his discharge under section 64 or 65 of this Act.

- (3) The provisions of section 35(3) and (4) of this Act shall have effect in relation to an appeal under sections 63 to 67 of this Act as they have in relation to an appeal under Part V of this Act.

Textual Amendments

F13 Words in s. 63(1) in definition of “restricted patient” expressed to be substituted (S.) (1.1.1998) by 1997 c. 48, s. 7(2)(a)(i); S.I. 1997/2323, art. 4, Sch. 2

F14 S. 63(1): definition of “relevant hospital order” and “relevant transfer direction” substituted (S.) (1.1.1998) by 1997 c. 48, s. 7(2)(a)(ii); S.I. 1997/2323, art. 4, Sch. 2

F15 Words in s. 63(2)(a) inserted (S.) (1.1.1998) by 1997 c. 48, s. 7(2)(b); S.I. 1997/2323, art. 4, Sch. 2

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64 Right of appeal of patients subject to restriction orders.

[^{F16}(A1) Where an appeal to the sheriff is made by a restricted patient who is subject to a restriction order, the sheriff shall refuse the appeal if satisfied that the patient is, at the time of the hearing of the appeal, suffering from a mental disorder the effect of which is such that it is necessary, in order to protect the public from serious harm, that the patient continue to be detained in a hospital, whether for medical treatment or not.

(B1) The burden of proof of the matters as to which the sheriff is to be satisfied for the purposes of subsection (A1) of this section is on the Scottish Ministers.

(C1) Nothing in section 102 (State hospitals) of the National Health Service (Scotland) Act 1978 (c.29) prevents or restricts the detention of a patient in a State hospital in pursuance of the refusal, under subsection (A1) of this section, of an appeal.]

(1) [^{F17}Where the sheriff has decided, under subsection (A1) of this section, not to refuse an appeal], the sheriff shall [^{F18}, subject to subsection (2) of this section,] direct the absolute discharge of the patient if he is [^{F19}not] satisfied-

(a) that the patient is ^{F20}..., at the time of the hearing of the appeal, 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 ^{F21}... necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment; ^{F22}...

^{F23}(c)

(2) Where in the case of any such patient as is mentioned in subsection [^{F24}(A1)] of this section the sheriff is [^{F25}not] satisfied as to the matters referred to in paragraph (a) or (b) of [^{F26}subsection (1) of this section] but [^{F27}is satisfied that it is appropriate for the patient to remain liable to be recalled to hospital for further treatment] he shall direct the conditional discharge of the patient.

(3) Where a patient is absolutely discharged under subsection (1) of this section he shall [^{F28}, on the occurrence of any of the events mentioned in subsection (4A) of this section,] cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.

(4) Where a patient is conditionally discharged under subsection (2) of this section [^{F29}the conditional discharge shall have effect on the occurrence of any of the events mentioned in subsection (4A) of this section and, when it does, the following provisions shall apply in relation to the patient—]—

(a) he may be recalled by the Secretary of State under section 68(3) of this Act as if he had been conditionally discharged under subsection (2) of that section; and

(b) he shall comply with such conditions (if any) as may be imposed at the time of discharge by the sheriff or at any subsequent time by the Secretary of State.

[^{F30}(4A) The events are—

(a) the expiry of the appeal period, no appeal having been lodged within it;

(b) the receipt by both the Court of Session and the managers of the hospital in which the patient is detained of notice from the Scottish Ministers that they do not intend to move the Court to make an order under section 66A(3) of this Act;

(c) the refusal by the Court to make such an order;

(d) the recall of any such order or the expiry of its effect.

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(4B) In subsection (4A) of this section—

“appeal” means an appeal under section 66A of this Act;

“appeal period” means, in relation to an appeal, the period within which, under section 66A(2) of this Act, the appeal has to be lodged in order to be competent.]

- (5) The Secretary of State may from time to time vary any condition imposed (whether by the sheriff or by him) under subsection (4) of this section.
- (6) Where a restriction order in respect of a patient ceases to have effect after he has been conditionally discharged under subsection (2) of this section the patient shall, unless previously recalled, be deemed to be absolutely discharged on the date when the order ceases to have effect and shall cease to be liable to be detained by virtue of the relevant hospital order.
- (7) The sheriff may defer a direction for the conditional discharge of a patient until such arrangements as appear to the sheriff to be necessary for that purpose have been made to his satisfaction; and where by virtue of any such deferment no direction has been given on an appeal before the time when the patient’s case comes before the sheriff on a subsequent appeal, the previous appeal shall be treated as one on which no direction under this section can be given.
- (8) This section is without prejudice to section 68 of this Act.

Textual Amendments

- F16** S. 64(A1)(B1)(C1) inserted (13.9.1999) by 1999 asp 1, s. 1(a)(5)
- F17** Words in s. 64(1) substituted (13.9.1999) by 1999 asp 1, s. 1(b)(5)
- F18** Words in s. 64(1) inserted (25.4.2003) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(3), sch. 6 para. 3(a)(i)
- F19** Word in s. 64(1) inserted (25.4.2003) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(3), sch. 6 para. 3(a)(ii)
- F20** Word in s. 64(1)(a) omitted (25.4.2003) by virtue of Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(3), sch. 6 para. 3(a)(iii)
- F21** Word in s. 64(1)(b) omitted (25.4.2003) by virtue of Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(3), sch. 6 para. 3(a)(iii)
- F22** Words in s. 64(1) omitted (25.4.2003) by virtue of Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(3), sch. 6 para. 3(a)(iv)
- F23** S. 64(1)(c) omitted (25.4.2003) by virtue of Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(3), sch. 6 para. 3(a)(iv)
- F24** Word in s. 64(2) substituted (25.4.2003) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(3), sch. 6 para. 3(b)(i)
- F25** Word in s. 64(2) inserted (25.4.2003) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(3), sch. 6 para. 3(b)(ii)
- F26** Words in s. 64(2) substituted (14.10.2003) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Modification) Order 2003 (S.S.I. 2003/498), arts. 1, 2
- F27** Words in s. 64(2) substituted (25.4.2003) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(3), sch. 6 para. 3(b)(iii)
- F28** Words in s. 64(3) substituted (13.9.1999) by 1999 asp 1, s. 2(1)(a)
- F29** Words in s. 64(4) inserted (13.9.1999) by 1999 asp 1, s. 2(1)(b)
- F30** S. 64(4A)(4B) inserted (13.9.1999) by 1999 asp 1, s. 2(1)(c)

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65 Right of appeal of patients subject to restriction directions.

- (1) Where an appeal to the sheriff is made by a restricted patient who is subject [^{F31}to a hospital direction or] to a restriction direction, the sheriff—
- (a) shall notify the Secretary of State if, in his opinion, the patient would, if subject to a restriction order, be entitled to be absolutely or conditionally discharged under section 64 of this Act; and
 - (b) if he notifies the Secretary of State that the patient would be entitled to be conditionally discharged, may recommend that [^{F32}the patient] should continue to be detained in a hospital.

[^{F33}(2) If the sheriff notifies the Secretary of State—

- (a) that the patient would be entitled to be absolutely discharged, the Secretary of State shall by warrant direct that the patient be remitted to any prison or other institution or place in which he might have been detained had he not been [^{F34}conveyed under a relevant hospital direction or removed under a relevant transfer direction to a hospital specified in the direction]] and that he shall be dealt with there as if he had not been [^{F34}so conveyed or removed];
- (b) that the patient would be entitled to be conditionally discharged, the Secretary of State may—
 - (i) by warrant give such direction as is mentioned in paragraph (a) above; or
 - (ii) decide that the patient should continue to be detained in a hospital,

^{F35} . . .

[^{F36}(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.]

Textual Amendments

- F31** Words in s. 65(1) inserted (S.)(1.1.1998) by 1997 c. 48, s. 7(3)(a); S.I. 1997/2323, art. 4, Sch. 2
- F32** Words in s. 65 substituted (1.10.1993) by 1993 c. 9, s. 47(1), Sch. 5 para. 2(2); S.I. 1993/2050, art. 3(4)
- F33** S. 65(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), Sch. 5 para. 2(3); S.I. 1993/2050, art. 3(4)
- F34** Words in s. 65(2)(a) substituted (S.)(1.1.1998) by 1997 c. 48, s. 7(3)(b)(i); S.I. 1997/2323, art. 4, Sch. 2
- F35** Words in s. 65(2) repealed (S.)(1.1.1998) by 1997 c. 48, ss. 7(3)(b)(ii), 62(2) Sch. 3; S.I. 1997/2323, art. 4, Sch. 2
- F36** S. 65(3) inserted (S.)(1.1.1998) by 1997 c. 48, s. 7(3)(c); S.I. 1997/2323, art. 4, Sch. 2

66 Further consideration of case of conditionally discharged patient.

- (1) Where a restricted patient has been conditionally discharged under sections 64 or 68(2) of this Act and is subsequently recalled under section 68(3) of this Act to hospital he may, within one month of the day on which he returns or is returned to hospital, appeal against such recall to a sheriff of the sheriffdom in which the hospital in which he is liable to be detained by virtue of the warrant under the said section 68(3) is situated.

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- [^{F37}(1A) The sheriff shall refuse an appeal under subsection (1) above if satisfied that the patient is, at the time of the hearing of the appeal, suffering from a mental disorder the effect of which is such that it is necessary, in order to protect the public from serious harm, that the patient continue to be detained in a hospital, whether for medical treatment or not.
- (1B) The burden of proof of the matters as to which the sheriff is to be satisfied for the purposes of subsection (1A) of this section is on the Scottish Ministers.
- (1C) Nothing in section 102 (State hospitals) of the National Health Service (Scotland) Act 1978 (c.29) prevents or restricts the detention of a patient in a State hospital in pursuance of the refusal, under subsection (1A) of this section, of an appeal.]
- (2) Where a restricted patient has been conditionally discharged as aforesaid but is not recalled to hospital he may appeal—
- (a) in the period between the expiration of 12 months and the expiration of 2 years beginning with the date on which he was conditionally discharged; and
 - (b) in any subsequent period of 2 years,
- to a sheriff of the sheriffdom in which he resides.
- (3) [^{F38}Where the sheriff has decided, under subsection (1A) of this section not to refuse an appeal under subsection (1) and in any appeal under subsection (2) of this section, if] the sheriff is [^{F39}not] satisfied as mentioned in section 64(1) or (2) of this Act, he shall uphold the appeal and—
- (a) where he is [^{F39}not] satisfied as mentioned in the said section 64(1), he shall direct the absolute discharge of the patient;
 - (b) where he is [^{F39}not] satisfied as mentioned in the said section 64(2), he shall direct, or (as the case may be) continue, the conditional discharge of the patient; and, in either case, he may vary any condition to which the patient is subject in connection with his discharge or impose any condition which might have been imposed in connection therewith.
- [^{F40}(3A) A conditional discharge under subsection (3)(b) of this section shall have effect on the occurrence of any of the events mentioned in subsection (4A) of section 64 of this Act.]
- (4) Where a patient is absolutely discharged in an appeal under subsection (1) or (2) of this section he shall [^{F41}on the occurrence of any of the events mentioned in subsection (4A) of section 64 of this Act] cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.

Textual Amendments

- F37** S. 66(1A)-(1C) inserted (13.9.1999) by 1999 asp 1, s. 1(2)(a)(5)
- F38** Words in s. 66(3) substituted (13.9.1999) by 1999 asp 1, s. 1(2)(b)(5)
- F39** Words in s. 66(3) inserted (25.4.2003) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(3), sch. 6 para. 4
- F40** S. 66(3A) inserted (13.9.1999) by 1999 asp 1, s. 1(2)(c)(5)
- F41** Words in s. 66(4) substituted (13.9.1999) by 1999 asp 1, s. 1(2)(d)(5)

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[^{F42}66A Appeal to Court of Session against sheriff’s decisions under sections 64, 65 and 66

- (1) It shall be competent to appeal to the Court of Session against the decision of the sheriff under section 64 or 66 or a notification or recommendation by the sheriff under section 65 of this Act.
- (2) An appeal under subsection (1) of this section shall be competent only if it is lodged within 14 days of the decision, notification or recommendation appealed against.
- (3) Where an appeal has been lodged under subsection (1) of this section against a decision of the sheriff to direct the discharge of a patient under section 64 or 66 or a notification or recommendation by the sheriff under section 65 of this Act, the Court of Session may, on a motion by the Scottish Ministers, order—
 - (a) that the patient who is the subject of the appeal shall continue, in accordance with subsection (4) of this section, to be detained; and
 - (b) that the relevant order or direction shall continue to have effect accordingly.
- (4) An order under subsection (3) of this section has the effect of continuing the patient’s detention—
 - (a) where no appeal is made to the House of Lords against the decision of the Court of Session on an appeal under this section, until the expiry of the time allowed, without leave, to appeal to the House of Lords against the decision; and
 - (b) where such an appeal has been made, until it is abandoned or finally determined.]

Textual Amendments

F42 S. 66A inserted (13.9.1999) by 1999 asp 1, s. 2(2)

67 Application of sections 63 to 66 to other persons treated as restricted patients.

- (1) Sections 63, 64 and 66 of this Act shall apply to a person who—
 - (a) is subject to—
 - (i) a direction which by virtue of section 69(3) of this Act; ^{F43} . . .
 - ^{F43}(ii)
 has the like effect as a hospital order and a restriction order; or
 - (b) is treated as subject to a hospital order and a restriction order by virtue of section 80(2) of the ^{M3}Mental Health Act 1983 or section 81(2) of this Act, as they apply to a restricted patient who is subject to a restriction order and references in the said sections 63, 64 and 66 to the relevant hospital order or restriction order shall be construed as references to the direction under section 69(1) of this Act ^{F44} . . .
- (2) Sections 63 and 65 of this Act shall apply to a person who is treated as subject to a transfer direction and a restriction direction by virtue of section 80(2) of the Mental Health Act 1983 or section 81(2) of this Act as they apply to a restricted patient who is subject to a restriction direction and references in the said sections 63 and 65 to the relevant transfer direction or the restriction direction shall be construed as references to the transfer direction or restriction direction to which that person is treated as subject by virtue of the said section 80(2) or 81(2).

Textual Amendments

- F43** S. 67(1)(a)(ii) and the word “or” immediately preceding it repealed (31.3.1996) by 1995 c. 20, ss. 117, 118(2), Sch. 6 Pt. I para. 165(a), **Sch. 7 Pt. I**; S.I. 1996/517, **art. 3(2)**
- F44** Words in s. 67(1) repealed 31.3.1996) by 1995 c. 20, ss. 117, 118(2), Sch. 6 Pt. I para. 165(b), **Sch. 7 Pt. I**; S.I. 1996/517, **art. 3(2)**

Marginal Citations

- M3** 1983 c. 20.

68 Powers of Secretary of State in respect of patients subject to restriction orders.

- (1) If the Secretary of State is satisfied that a restriction order in respect of a patient is no longer required for the protection of the public from serious harm, he may direct that the patient shall cease to be subject to the special restrictions set out in section 62(1) of this Act; and, where the Secretary of State so directs, the restriction order shall cease to have effect and subsection (3) of that section shall apply accordingly.
- (2) At any time while a restriction order is in force in respect of a patient, the Secretary of State may, if he thinks fit, by warrant discharge the patient from hospital, either absolutely or subject to conditions; and where a person is absolutely discharged under this subsection he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.
- [^{F45}(2A) The Scottish Ministers shall not, however, discharge a patient from hospital under subsection (2) of this section if they are satisfied that the patient is suffering from a mental disorder the effect of which is such that it is necessary, in order to protect the public from serious harm, that the patient continue to be detained in a hospital, whether for medical treatment or not.
- (2B) Nothing in section 102 (State hospitals) of the National Health Service (Scotland) Act 1978 (c.29) prevents or restricts the detention of a patient in a State hospital in pursuance of the decision of Scottish Ministers, under subsection (2A) of this section, not to discharge the patient.]
- (3) The Secretary of State may, at any time during the continuance in force of a restriction order in respect of a patient who has been conditionally discharged under subsection (2) of this section, and without prejudice to his further discharge as aforesaid, by warrant recall the patient to such hospital as may be specified in the warrant; and thereupon—
- (a) if the hospital so specified is not the hospital from which the patient was conditionally discharged, the hospital order and the restriction order shall have effect as if the hospital specified in the warrant were substituted for the hospital specified in the hospital order;
 - (b) in any case, the patient shall be treated for the purposes of section 28 of this Act as if he had absented himself without leave from the hospital specified in the warrant, and if the restriction order was made for a specified period, that period shall not in any event expire until the patient returns to the hospital or is returned to the hospital under that section.
- (4) If a restriction order ceases to have effect in respect of a patient after the patient has been conditionally discharged under this section, the patient shall, unless previously recalled under the last foregoing subsection, be deemed to be absolutely discharged

Status: Point in time view as at 29/04/2005.

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on the date when the order ceases to have effect, and shall cease to be liable to be detained by virtue of the relevant hospital order accordingly.

- (5) The Secretary of State may, if satisfied that the attendance at any place in Great Britain of a patient who is subject to a restriction order is desirable in the interests of justice or for the purposes of any public inquiry, direct him to be taken to that place; and where a patient is directed under this subsection to be taken to any place he shall, unless the Secretary of State otherwise directs, be kept in custody while being so taken, while at that place, and while being taken back to the hospital in which he is liable to be detained.

Textual Amendments

F45 S. 68(2A)(2B) inserted (S.) (13.9.1999) by 1999 asp 1, s. 1(3)(5)

^{F46}69 **Persons ordered to be kept in custody during Her Majesty's pleasure.**

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Textual Amendments

F46 S. 69 repealed (29.4.2005) by Armed Forces Act 1996 (c. 46), s. 36(2), Sch. 7 Pt. III; S.I. 2005/1119, art. 2

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 ^{F47} . . . 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 [^{F48}(including personality disorder)] or mental handicap or both, from which

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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.

Textual Amendments

- F47** Words in s. 70(1) repealed (1.1.1998) by 1997 c. 48, ss. 8, 62(2), **Sch. 3**; S.I. 1997/2323, art. 4, **Sch. 2**
F48 Words in s. 70(5) inserted (13.9.1999) by 1999 asp 1, s. 3(1)(b)

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;
 - ^{F49}(b)
 - (c) persons detained under the ^{M4}Immigration Act 1971 [^{F50}or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by the Secretary of State)] .
- (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) [^{F51}Subject to section 71A of this Act,] 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 ^{F52}. . . (other than an order under [^{F53}section 54, 57, 118 or 190 of the Criminal Procedure (Scotland) Act 1995], or under any enactment to which section 69 of this Act applies);

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- (b) to a person committed by a court to a prison or other institution to which the ^{M5}Prisons (Scotland) Act 1952, applies in default of payment of any fine to be paid on his conviction.

Textual Amendments

- F49** s. 71(2)(b) repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt. I**; S.I. 1993/2050, **art. 3(4)**
- F50** Words in s. 71(2)(c) added (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 62(11)(a), 162(1)** (with s. 159); S.I. 2003/1, art. 2, Sch.
- F51** Words in s. 71(4) inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 9(4)** (with s. 33(6)); S.I. 1997/1712, **art. 3**
- F52** Words in s. 71(7)(a) repealed (1.10.1993) by 1993 c. 9, **ss. 4(2), 5, 6, 10, 47(3)**, **Sch. 7 Pt. I**; S.I. 1993/2050, **art. 3(4)**
- F53** Words in s. 71(7)(a) substituted (1.4.1996) by 1995 c. 40, **ss. 5, 7(2)**, **Sch. 4 para. 50(6)**

Modifications etc. (not altering text)

- C2** S. 71 extended (1.1.1998) by 1997 c. 48, **s. 9(1)(d)** (with s. 33(6)); S.I. 1997/2323, art. 4, **Sch. 2**

Marginal Citations

- M4** 1971 c. 77.
M5 1952 c. 61.

[^{F54}71A Further provision as to persons removed to hospital under section 71.

- (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.]

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Textual Amendments

F54 S. 71A inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 9(5)**; S.I. 1997/1712, art. 3, **Sch.**

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 [^{F55}section 59 of the ^{M6}Criminal Procedure (Scotland) Act 1995].

Textual Amendments

F55 Words in s. 72(2) substituted (S.)(1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(6); S.I. 1997/1712, art. 3, **Sch. art. 4**

Marginal Citations

M6 1995 c.46.

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 [^{F56}section 53, 57, 58 or 59 of the Criminal Procedure (Scotland) Act 1995] 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.

^{F57}(3)

Textual Amendments

F56 Words in s. 73(1) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 50(7)(a)

F57 S. 73(3) repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt.I**; S.I. 1993/2050, **art. 3(4)**

Status: Point in time view as at 29/04/2005.

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[74] ^{F58}Further provision as to transfer directions and restriction directions.

(1) This subsection applies where a transfer direction and a restriction direction have been given in respect of a person—

- (a) serving a sentence of imprisonment; or
- (b) who is detained (other than in respect of a criminal offence) under or by virtue of the Immigration Act 1971 [^{F59}or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by the Secretary of State)] ,

if the Secretary of State is satisfied, at a time when the person would but for those directions be, by virtue of the circumstance mentioned in paragraph (a) or (b) above, in prison or being detained other than in a hospital, as to the matters mentioned in subsection (2) below.

[This subsection applies if the Secretary of State is satisfied as regards a person ^{F60}(1A) 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.]

[^{F61}(1B) Neither of subsections (1) and (1A) above apply, however, where the Scottish Ministers are satisfied, at the respective times mentioned in these subsections, that the person is, at the relevant time, suffering from a mental disorder the effect of which is such that it is necessary, in order to protect the public from serious harm, that the person continue to be detained in a hospital, whether for treatment or not.

(1C) Nothing in section 102 (State hospitals) of the National Health Service (Scotland) Act 1978 (c.29) prevents or restricts the detention of a person in a State hospital in consequence of subsection (1B) above.]

(2) The matters referred to in subsection (1) [^{F62}and (1A)] above are—

- (a) that 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) 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
- (b) that it is not appropriate for the person to remain liable to be recalled to hospital for further treatment.

(3) Where subsection (1) [^{F63}or (1A)] above applies, the Secretary of State 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 [^{F63}conveyed or] removed to hospital and that he be dealt with there as if he had not been [^{F64}so conveyed or removed].

(4) Where subsection (1) [^{F65}or (1A)] above does not apply only because the Secretary of State is not satisfied as to the matter mentioned in subsection (2)(b) above, he may either—

- (a) by warrant give such direction as is mentioned in subsection (3) above; or
- (b) decide that the person shall continue to be detained in hospital.

(5) If a direction is given under subsection (3) or (4)(a) above, then on the person's arrival in the prison or other institution or place to which remitted by virtue of that subsection the transfer direction and the restriction direction [^{F66}or, as the case may be, the hospital direction] shall cease to have effect.

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- (6) This subsection applies where a transfer direction and a restriction direction have been given in respect of such person as is mentioned in subsection (1) above and he has thereafter been released under Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993 [^{F67}or otherwise] .
- (7) Where subsection (6) above applies—
- (a) the transfer direction and the restriction 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.
- (8) A transfer direction or restriction direction given in respect of a person detained (other than in respect of a criminal offence) under or by virtue of the Immigration Act 1971 shall, if it does not first cease to have effect under subsection (5) above or under section 65(2) of this Act, cease to have effect when his liability to be so detained comes to an end.
- ^{F68}(8A) This subsection applies where a hospital direction has been made in respect of a person and he has thereafter been released under [^{F69}Part I of the ^{M7}Prisoners and Criminal Proceedings (Scotland) Act 1993].
- (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.]
- (9) Not earlier than 28 days before [^{F70}—
- (a)] a restriction direction given in respect of a person ceases to have effect other than by virtue of subsection (8) above [^{F71}; or
 - (b) a hospital direction ceases to have effect,] the responsible medical officer shall obtain from another medical practitioner a report on the condition of the person in the prescribed form and thereafter shall assess the need for the detention of the person to be continued; and, if it appears to the responsible medical officer that it is necessary in the interests of the health or safety of the person or for the protection of others that the person should continue to be liable to be detained in hospital, the officer shall furnish to the managers of the hospital where the person is liable to be detained and to the Mental Welfare Commission a report to that effect in the prescribed form along with the report of the other medical practitioner.
- (10) Where a report has been furnished under subsection (9) above the person shall, after the restriction direction [^{F72}or, as the case may be, hospital direction] ceases to have effect, be treated as if he had, on the date on which the restriction direction [^{F72}or, as the case may be, hospital direction] ceased to have effect, been admitted to the hospital in pursuance of an application for admission; but the provisions of sections 30(5) and (6) and 35 of this Act shall apply to the person and that report as they apply to a patient the authority for whose detention in hospital has been renewed in pursuance of subsection (4) of, and to a report under subsection (3) of, the said section 30.
- (11) For the purposes of section 40(2) of the Prisons (Scotland) Act 1989 (discounting from sentence periods while unlawfully at large) a person who, having been transferred to hospital in pursuance of a transfer direction [^{F73}or, as the case may be, hospital direction] from a prison or young offenders institution, is at large in circumstances in

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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 the prison or young offenders institution.

- (12) In this section “prescribed” means prescribed by regulations made by the Secretary of State.

Textual Amendments

- F58** S. 74 substituted (1.10.1993) for ss. 74 and 75 by 1993 c. 9, ss. 4(3), 5, 6, 10; S.I. 1993/2050, art. 3(4)
- F59** Words in s. 74(1)(b) added (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 62(11)(b), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.
- F60** S. 74(1A) inserted (1.1.1998) by 1997 c. 48, s. 7(4)(a); S.I. 1997/2323, art. 4
- F61** S. 74(1B)(1C) inserted (13.9.1999) by 1999 asp 1, s. 1(4)(5)
- F62** Words in s. 74(2) inserted (S.) (1.1.1998) by 1997 c. 48, s. 7(4)(b); S.I. 1997/2323, art. 4
- F63** Words in s. 74(3) inserted (S.) (1.1.1998) by 1997 c. 48, s. 7(4)(c)(ii); S.I. 1997/2323, art. 4
- F64** Words in s. 74(3) substituted (S.) (1.1.1998) by 1997 c. 48, s. 7(4)(c)(iii); S.I. 1997/2323, art. 4
- F65** Words in s. 74(4) inserted (S.) (1.1.1998) by 1997 c. 48, s. 7(4)(d); S.I. 1997/2323, art. 4
- F66** Words in s. 74(5) inserted (S.) (1.1.1998) by 1997 c. 48, s. 7(4)(e); S.I. 1997/2323, art. 4
- F67** Words in s. 74(6) inserted (17.12.2001) by 2001 asp 13, s. 25 (with s. 29); S.S.I. 2001/456, art. 2
- F68** S.74(8A)(8B) inserted (S.) (1.1.1998) by 1997 c. 48, s. 7(4)(f); S.I. 1997/2323, art. 4
- F69** Words in s. 74(8A) substituted (retrospective to 1.1.1998) by 1998 c. 37, ss. 119, 121(2), Sch. 8 para. 55(1)(2)
- F70** Words in s. 74(9) inserted (S.) (1.1.1998) by 1997 c. 48, s. 7(4)(g)(i); S.I. 1997/2323, art. 4
- F71** S. 74(9)(b) and word inserted (S.) (1.1.1998) by 1997 c. 48, s. 7(4)(g)(ii); S.I. 1997/2323, art. 4
- F72** Words in s. 74(10) inserted (S.) (1.1.1998) by 1997 c. 48, s. 7(4)(h); S.I. 1997/2323, art. 4
- F73** Words in s. 74(11) inserted (S.) (1.1.1998) by 1997 c. 48, s. 7(4)(i); S.I. 1997/2323, art. 4

Marginal Citations

- M7** 1993 c.9.

Supplementary

76 Interpretation of Part VI.

- (1) In the following provisions of this Part of this Act, that is to say—

- (a) section 60(2) and (3);
- ^{F74}(b)
- (c) section 62(1); and
- (d) section 68

and in [^{F75}section 59(3) of the Criminal Procedure (Scotland) Act 1995] any reference to a hospital order ^{F76}. . . or a restriction order in respect of a patient subject to a hospital order shall be construed as including a reference to any order or direction under this Part of this Act having the like effect as the first-mentioned order; and the exceptions and modifications set out in the Second Schedule to this Act in respect of the provisions of Part V of this Act described in that Schedule accordingly include those which are consequential on the provisions of this subsection.

- (2) References in this Part of this Act to persons serving a sentence of imprisonment shall be construed in accordance with section 71(7) of this Act.

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Textual Amendments

- F74** S. 76(1)(b) repealed (1.4.2002) by 2000 asp 4, s. 88(3), **Sch. 6**; S.S.I. 2001/81, art. 3, **Sch. 2**
- F75** Words in s. 76 substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 50(8)
- F76** Words in s. 76(1) repealed (1.4.2002) by 2000 asp 4, s. 88(3), **Sch. 6**; S.S.I. 2001/81, art. 3, **Sch. 2**

Status:

Point in time view as at 29/04/2005.

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