MENTAL HEALTH (PUBLIC SAFETY AND APPEALS) (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Mental Health (Public Safety and Appeals) (Scotland) Bill introduced in the Scottish Parliament on 31 August 1999. It has been prepared by the Scottish Administration to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Administration and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 1–EN.

POLICY OBJECTIVES OF THE BILL

2. The objective of the Bill is to close a loophole in the Mental Health (Scotland) Act 1984, identified in a recent appeal at Lanark Sheriff Court, where a restricted patient, though suffering from a mental disorder and a potential danger to the public, was discharged on the grounds that the disorder was not of a nature or degree which made it appropriate for him to be liable to be detained in a hospital for medical treatment. As the law stands at present, where the Sheriff is satisfied that medical treatment in hospital is not likely to alleviate or prevent a deterioration in the person’s condition, he is bound to order absolute discharge, and is not required to consider other issues, such as the protection of the public.

3. To respond to this legislative gap, the Bill aims:

   • to add public safety to the grounds for not discharging restricted patients (including prisoners transferred to hospital), detained under the 1984 Act. In particular, a Sheriff will be required to refuse an appeal for discharge, if 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 should continue to be detained in a hospital. It will be for the Scottish Ministers to convince the Sheriff that the patient is suffering from a mental disorder of such a degree. A similar test will also require to be applied by the Scottish Ministers when considering the discharge of restricted patients either back to prison under section 71A or to the community under section 68 of the 1984 Act. Currently no specific criteria are set out in section 68 of
This document relates to the Mental Health (Public Safety and Appeals) (Scotland) Bill (SP Bill 1) as introduced in the Scottish Parliament on 31 August 1999

the 1984 Act to guide the Scottish Ministers in deciding whether to grant discharge to a restricted patient. The amendment will ensure the Scottish Ministers, too, are clearly seen to be giving due weight to public safety in reaching their decision;

• to introduce a new right of appeal to the Court of Session, for either the patient or Scottish Ministers, against the decision of the Sheriff. Where an appeal is lodged against the decision of the Sheriff to direct the discharge of a patient, the Court of Session may, on a motion by the Scottish Ministers, order that the patient continue to be detained until the appeal process has been concluded. During the period within which consideration is given to lodging an appeal (14 days), the patient remains in hospital;

• to make clear that the term ‘mental disorder’ in the 1984 Act includes personality disorder.

4. The Bill is perceived as an interim measure, pending the outcome of the reviews currently being undertaken by the Committees under the chairmanship of the Rt Hon Bruce Millan and the Hon Lord MacLean respectively. The MacLean Committee is reviewing the sentencing and treatment of serious violent and sexual offenders, including those with personality disorders, while the Millan Committee is reviewing the Mental Health (Scotland) Act 1984. Both Chairmen have been assured that the Bill is in no way intended to pre-empt their work.

ALTERNATIVE APPROACHES

5. It was concluded that the legislative proposals in the Bill offered the most practical and effective approach, bearing in mind considerations such as the implications of the European Convention on Human Rights, and the importance of immediate action.

CONSULTATION

6. Because of the need for immediate legislation, no formal consultations have taken place on the Bill. However, informal briefings have been given to a range of relevant interests, including the Scottish Association of Mental Health, the Law Society of Scotland, the Mental Welfare Commission, and the Royal College of Psychiatrists (Scottish Division).

EFFECTS OF THE BILL

7. In the view of the Scottish Ministers and the Scottish Law Officers, the Bill is compatible with the European Convention on Human Rights. It is not envisaged that the Bill will have any effect on equal opportunities, island communities, local government, sustainable development or any other matter.
MENTAL HEALTH (PUBLIC SAFETY AND APPEALS) (SCOTLAND) BILL

POLICY MEMORANDUM

This document relates to the Mental Health (Public Safety and Appeals) (Scotland) Bill (SP Bill 1) as introduced in the Scottish Parliament on 31 August 1999

© Copyright The Scottish Parliamentary Corporate Body 1999

EDINBURGH: THE STATIONERY OFFICE

Printed in the United Kingdom by The Stationery Office Limited

Applications for reproduction should be made in writing to the Copyright Unit, Her Majesty’s Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ. Fax 01603 723000.

Produced and published in Scotland on behalf of the Scottish Parliament by The Stationery Office Ltd.

Her Majesty’s Stationery Office is independent of and separate from the company now trading as The Stationery Office Ltd, which is responsible for printing and publishing Scottish Parliament publications.

ISBN 0-33-820002-9