

ACCOMPANYING DOCUMENTS

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Mental Health (Public Safety and Appeals) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to add public safety to the grounds for not discharging certain patients detained under the Mental Health (Scotland) Act 1984; to provide for appeal against the decision of the sheriff on applications by these patients for their discharge; and to amend the definition of “mental disorder” in that Act.

5 **1 Continued detention of mentally disordered patients on grounds of public safety**

(1) In section 64 (right of appeal of patients subject to restriction orders) of the Mental Health (Scotland) Act 1984 (c.36) (“the 1984 Act”)—

(a) at the beginning there are inserted the following subsections—

10 “(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.

15 (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.

20 (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.”;

(b) in subsection (1), for the words from the beginning to “order” there is substituted “Where the sheriff has decided, under subsection (A1) of this section, not to refuse an appeal”.

(2) In section 66 (appeal to sheriff by conditionally discharged patient) of the 1984 Act—

25 (a) after subsection (1) there are inserted the following subsections—

“(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.”;

(b) in subsection (3) for the words from the beginning to “section”, where first occurring, there is substituted “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”;

(c) after subsection (3) there is inserted the following subsection—

“(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.”;

(d) in subsection (4) for “thereupon” there is substituted “on the occurrence of any of the events mentioned in subsection (4A) of section 64 of this Act”.

(3) In section 68 (power of Scottish Ministers to discharge patients) of the 1984 Act, after subsection (2) there are inserted the following subsections—

“(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.”.

(4) In section 74 (transfer of patients back to prison) of the 1984 Act after subsection (1A) there are inserted the following subsections—

“(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.”.

(5) The amendments made by subsections (1) and (2) above have effect in relation to appeals proceeding under section 64, 65 or 66 of the 1984 Act in which the hearing takes place on or after 1 September 1999 and the amendments made by subsections (3) and (4) above have effect in relation to cases considered by the Scottish Ministers on or after that date.

2 Appeal from decisions etc. of sheriff under sections 64, 65 and 66 of 1984 Act

(1) In section 64 of the 1984 Act—

(a) in subsection (3), for “thereupon” there is substituted “, on the occurrence of any of the events mentioned in subsection (4A) of this section,”;

(b) in subsection (4), after “section”, where first occurring, there is inserted “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—”;

(c) after subsection (4) there are inserted the following subsections—

“(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.

(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.”.

(2) After section 66 of the 1984 Act there is inserted the following section—

“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.”.

5 **3 Meaning of “mental disorder” in 1984 Act**

- (1) In section 1(2) (interpretation) of the 1984 Act, in the definition of “mental disorder”, after “illness” there is inserted “(including personality disorder)”.
- (2) The amendment made by subsection (1) above has effect, for the purposes of sections 64(A1), 66(1A), 68(2A) and 74(1B) of the 1984 Act, as from 1st September 1999.

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4 Short title and commencement

- (1) This Act may be cited as the Mental Health (Public Safety and Appeals) (Scotland) Act 1999.
- (2) Section 2 of this Act comes into force on such day as the Scottish Ministers may, by order made by statutory instrument, appoint.
- (3) Different days may be so appointed for different purposes.

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Introduced by: Jim Wallace
On: 31 August 1999
Bill Type: Executive Bill

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

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ISBN 0-33-820000-2

