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# 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

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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;
  - <sup>F1</sup>(b) . . . . .
  - (c) persons detained under the <sup>M1</sup>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 <sup>F2</sup>. . . (other than an order under section 174 [<sup>F3</sup>, 174ZC, 254, 375, 375ZC or 453D] of the <sup>M2</sup>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 <sup>M3</sup>Prisons (Scotland) Act 1952, applies in default of payment of any fine to be paid on his conviction.

### Textual Amendments

**F1** 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)**

**F2** 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)**

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**F3** Words in s. 71(7)(a) substituted (31.3.1996) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. 1 para. 167**; S.I. 1996/517, art. 3(2), **Sch. 2**

#### Marginal Citations

**M1** 1971 c. 77.

**M2** 1975 c. 21.

**M3** 1952 c. 61.

VALID FROM 01/08/1997

#### [<sup>F4</sup>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.]

#### Textual Amendments

**F4** 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.

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(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 [F5174ZC]174A, 175, 178, [F5375ZC,]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.

F6(3) .....

<b>Textual Amendments</b>	
<b>F5</b>	Words in s. 73(1) inserted (31.3.1996) by 1995 c. 20, s. 117(1), <b>Sch. 6 Pt. I para. 168</b> ; S.I. 1996/517, <b>art. 3(2)</b>
<b>F6</b>	S. 73(3) repealed (1.10.1993) by 1993 c. 9, s. 47(3), <b>Sch. 7 Pt.I</b> ; S.I. 1993/2050, <b>art. 3(4)</b>

**[74] F7 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,

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.

(2) The matters referred to in subsection (1) 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

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- (b) that it is not appropriate for the person to remain liable to be recalled to hospital for further treatment.
- (3) Where subsection (1) 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 removed to hospital and that he be dealt with there as if he had not been so removed.
- (4) Where subsection (1) 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—
- by warrant give such direction as is mentioned in subsection (3) above; or
  - 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 shall cease to have effect.
- (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.
- (7) Where subsection (6) above applies—
- the transfer direction and the restriction direction shall forthwith cease to have effect; and
  - 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.
- (9) Not earlier than 28 days before a restriction direction given in respect of a person ceases to have effect other than by virtue of subsection (8) above, 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 ceases to have effect, be treated as if he had, on the date on which the restriction 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

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to hospital in pursuance of a transfer direction from a prison or young offenders institution, 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 the prison or young offenders institution.

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

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**Textual Amendments**

**F7** 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)

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