

Victim Notification Scheme Mentally Disordered Offenders

**Guidance for Victims
Offenders with a mental disorder:
Prisoners transferred to hospital**

October 2017



Scottish Government
Riaghaltas na h-Alba
gov.scot

Introduction

This booklet has been written to help victims understand the information you have been given about an offender who is being managed in the mental health system. It may also help you think about what representations you may wish to make. There is a lot of information in this booklet, and you may find that you want to read it in parts, rather than through from beginning to end.

If you want to speak to someone about this booklet, you can contact Victim Support Scotland, a national charity that helps victims of crime. You can find details of your local office in the telephone directory under "Victim Support", or you can contact them on 0345 603 9213 from Monday to Friday between 8 a.m. and 8 p.m. You can also find details of your local office on Victim Support Scotland's website at www.victimssupportsco.org.uk.

Terms you may not be familiar with

Compulsory treatment order allows a person to be treated for their mental disorder on a compulsory basis. It sets out a number of conditions that the person will need to comply with. The conditions will depend on whether the person has to stay in hospital or in the community.

Earliest date of liberation is the point where an offender has to be released automatically.

Home detention curfew allows certain offenders to serve some of their sentence (subject to minimum and maximum periods set out in law) on licence in the community, while wearing an electronic tag.

Mental Health Officer (sometimes shortened to MHO) is a social worker who has special training and experience in working with people who have a mental disorder.

Mental Health Tribunal for Scotland (often referred to as the Tribunal) is an independent judicial body set up to make and review decisions on the compulsory care and treatment and detention in hospital of people with a mental disorder in Scotland.

Parole Board for Scotland is a public body that works within the criminal justice system. Its job is to protect the public by risk assessing prisoners to decide whether they can be safely released into the community on licence.

Parole qualifying date is the halfway-point of a sentence that is 4 years or more.

Responsible Medical Officer (sometimes shortened to RMO) is a psychiatrist who must have required qualifications and experience and be approved by a Health Board as having special experience in the diagnosis and treatment of mental disorder.

Suspension of detention allows an offender to spend time outside of the ward or hospital grounds. It can be escorted or unescorted.

Transfer for treatment direction is the decision of the court which allows an offender serving a prison sentence to be transferred to hospital for treatment.

Offenders with a mental disorder

A person serving a prison sentence may be transferred to hospital for treatment of a mental disorder if they have a mental disorder; there is medical treatment available which would be likely to prevent the mental disorder worsening or alleviate any of the symptoms, or effects; that if the prisoner were not provided with such medical treatment there would be a significant risk to the health, safety or welfare of the offender, or to the safety of any other person; and that the making of a transfer for treatment direction is necessary. If these criteria are met and there is a suitable hospital available, the Scottish Ministers make a Transfer for Treatment Direction and the offender is removed to hospital.

Management of the offender

On admission of an offender to hospital, their responsible medical officer (psychiatrist) will, together with the rest of the multidisciplinary clinical team and the designated mental health officer (specialist social worker), seek to treat the offender's mental disorder. In some cases, this period of assessment and treatment may take several years.

Regular review of the offender's mental disorder

Scottish Ministers have to refer the case of an offender who is subject to a transfer for treatment direction to the Mental Health Tribunal for Scotland for review every 2 years. The requirement applies where the direction has not been revoked during the 2-year period detained in hospital. Where the direction has been revoked the offender will be returned to prison.

Suspension of detention

An offender who remains subject to a transfer for treatment direction which authorises their detention in hospital for treatment cannot leave hospital unless their detention is suspended (leave from hospital).

Detention is suspended to allow an offender to appear in court or to attend medical appointments, but may also be suspended as part of the offender's treatment plan. Suspension of detention which is always well thought-out and carefully and sensitively executed, has an important part to play in the treatment and rehabilitation of offenders. Suspensions of detention provide information for the assessment of risk and help clinicians and the Scottish Ministers in determining when, and under what conditions, moves within the hospital system can safely be made.

Decisions on suspending detention as part of the offender's treatment are made by the offender's responsible medical officer and are only taken after a risk assessment has been carried out (including risk of harm to others) and taking into account the fears of victims and others who may have been affected by the offender's behaviour. Normally the offender will be accompanied by hospital staff, but treatment may mean

the offender progresses to detention being suspended without supervision. This may include conditions that limit contact or places that may be visited.

The first time an offender progresses to detention being suspended without supervision, victims who have indicated a wish to make representations about such a decision will have the opportunity to tell the responsible medical officer how the decision might affect them or members of their family. The responsible medical officer must take into account victims' representations before deciding what conditions to include in a certificate granting suspension of detention without a supervision requirement. Victims will be informed that such a certificate has been granted. Victims will, however, not be told about each period of suspension of detention without supervision after that.

Consent to unescorted suspension of detention does not automatically move with the offender if they are subsequently transferred.

Transfers

An offender subject to a transfer for treatment direction may be transferred to another ward or unit within the same hospital, or between hospitals in Scotland or to a hospital outwith Scotland. A transfer may happen because of the treatment needs of the offender, due to ward or hospital closure or because the offender has been assessed as no longer needing the level of security in their current hospital. Any transfer which would result in a reduction in security or which involves a transfer out of Scotland would only be considered following an assessment of the risks posed by the offender and would always require the consent of Scottish Ministers.

End of a transfer for treatment direction

Where an offender is subject to a transfer for treatment direction, they will remain subject to that direction for so long as they would have been held in custody under their prison sentence had they not been transferred to hospital (unless they no longer require detention in hospital, in which case they are returned to prison at an earlier stage to serve the remainder of their sentence).

For "short-term" prisoners, that is those sentenced to less than 4 years in prison, the transfer for treatment direction ends when the prisoner is automatically released as soon as they have served one half of their sentence. Certain offenders serving a sentence of less than 4 years may be released on home detention curfew up to 6 months before they are due to be released from prison.

For "long-term" prisoners, that is those sentenced to 4 years or more (excluding those sentenced to an Order of Lifelong Restriction or life imprisonment), the transfer for treatment direction ends when the prisoner is paroled (early release on licence). The Parole Board will consider an offender's release on a parole licence at the half-way point of their sentence or anytime between then and the offender's earliest date of liberation.

When an offender who is being held on a transfer for treatment direction reaches their earliest date of liberation the offender may be released. If they still require

treatment for a mental disorder they may continue to be detained in hospital under a Compulsory Treatment Order. In any case, no further health information about the offender is available under the Victim Notification Scheme.

Where a person has been sentenced to an Order of Lifelong Restriction, life imprisonment, detention for life or detention without limit of time, they will not have an “earliest date of liberation”. Therefore, if they are transferred to hospital, the transfer for treatment direction will apply indefinitely. If the person makes a full recovery from mental disorder, 2 options exist; either –

- a return to prison; or
- release on life licence direct from hospital.

In either event, again the transfer for treatment direction will cease to have effect and no further health information about the offender is available under the Victim Notification Scheme.

With Order of Lifelong Restriction and life sentence offenders a punishment expiry part is set and it is at this point they are considered for release.

What support is available for me?

Information on support organisations is available at www.mygov.scot/crime-justice-and-the-law

If you need help about anything in this booklet you can contact **Victim Support Scotland** on **0345 603 9213** from **Monday to Friday between 8 a.m. and 8 p.m.** You can also find details of your local office on **Victim Support Scotland’s website** at www.victimsupportsco.org.uk

More information about your rights as a victim of crime, and how to exercise these rights, can be found in the Victims’ Code for Scotland. It is available from the Scottish Government website <https://www.mygov.scot/victims-code-for-scotland/>

Victim Support Scotland

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Room 3-ER
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EH1 3DG
Tel. 0131 244 3340
Email: vns@gov.scot

Mental Health Tribunal for Scotland
President's Office
Hamilton House
Caird Park
Hamilton
ML3 0QA
Telephone: 01698 390019
Email: representations@scotcourtribunals.gov.uk

Parole Board for Scotland
Saughton House
Broomhouse Drive
Edinburgh EH11 3XD
Tel. 0131 244 8373
<http://www.scottishparoleboard.gov.uk>

Further Information

More information on how the Criminal Justice System works in Scotland can be found at:

www.mygov.scot/crime-justice-and-the-law

More information about sentencing can be found at:

<https://www.scottishsentencingcouncil.org.uk/>

More information about mental health disposals under the Criminal Procedures Act can be found at:

<http://www.mwcscot.org.uk/the-law/criminal-procedures-act/>

More information about the Mental Health Tribunal for Scotland can be found at:

https://www.mhtscotland.gov.uk/mhts/Home/Welcome_to_the_Mental_Health_Tribunal

More information about how the parole system works and the role of the Parole Board for Scotland can be found at:

www.scottishparoleboard.gov.uk



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