

Victim Notification Scheme Mentally Disordered Offenders

**Guidance for Victims
Offenders with a mental disorder:
Compulsion order and restriction
order**

October 2017



Scottish Government
Riaghaltas na h-Alba
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Introduction

This booklet has been written to help victims understand about mental health care and treatment and what the information you have been given under the Victim Notification Scheme means. 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

Absolute discharge is when an offender is no longer subject to a compulsion order.

Compulsion order is used when an offender commits an offence that is punishable by imprisonment, but is found to have a mental disorder. The court can decide not to send the offender to prison but that they must stay in hospital for mental health treatment.

Conditional discharge allows a period of formal supervision of the offender in the community by closely monitoring their mental health. The offender will be subject to conditions.

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 illness, learning disability or related condition.

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.

Multi Agency Public Protection Arrangements (shortened to MAPPA) is a set of arrangements which the police service, local authority, prison service, health service and others are legally obliged to operate on a multiagency basis, with the objective of protecting the public from the risks that may be posed by serious offenders.

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.

Restriction order can be added to a compulsion order. It is made by the court at the time of sentencing where the court considers that the person presents a risk of serious harm to the public.

Suspension of detention allows an offender to spend time outside of the ward or hospital grounds. It can be escorted or unescorted, that is accompanied by a nurse or without supervision.

Offenders with a mental disorder

These are offenders who have been found by the court (after hearing medical evidence), to have a mental disorder. The judge must be satisfied that medical treatment is available to treat the disorder and its effects or to try to prevent them worsening. The court can order the person to be detained in hospital for treatment, or receive treatment in the community for six months. This order is called a compulsion order and can be extended, varied or revoked by the Mental Health Tribunal for Scotland.

If the court considers the offender to pose a risk of serious harm to the public, it can also make the offender subject to a restriction order. This order means they will be detained 'without limit of time'. The Tribunal reviews these orders at which Scottish Ministers make representation. The Scottish Ministers have to approve any request for a move between hospitals, or leave from the hospital (suspension of detention).

Management of the offender

On admission of an offender to hospital, the offender becomes a patient. The offender's responsible medical officer (psychiatrist) will, together with the rest of the multidisciplinary clinical team and the designated mental health officer (specialist social worker), seek not only to treat the offender's mental disorder but to understand the relationship between the disorder and the offender's behaviour. The aim will be to understand what led to the dangerous behaviour that resulted in the offender's detention and, as the mental disorder is treated, to assess the extent to which that treatment has reduced the risk of the offender behaving dangerously if returned to the community. 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 compulsion and restriction order to the Tribunal for review every 2 years. The requirement applies where during the 2-year period the Tribunal has not made a decision that:

- the compulsion order be revoked
- the restriction order be revoked
- the restriction order be revoked (and the compulsion order varied)
- the offender be conditionally discharged

Suspension of detention

An offender who is under a compulsion order and restriction order 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 go to 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. Suspensions of detention can also provide valuable information to all parties, including the Tribunal, when considering discharge into the community.

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 respect 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 registered under the Victim Notification Scheme 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 under the scheme 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.

Offenders on a Compulsion Order and Restriction Order are managed under the Multi Agency Public Protection Arrangements (MAPPA). A referral to MAPPA has to be made before the first occasion of unescorted suspension of detention.

Consent to unescorted suspension of detention does not automatically move with the offender if they are later moved to another ward, unit or hospital.

Transfers

An offender subject to a compulsion order and a restriction order 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.

Planning for conditional discharge

Only when the offender's condition has so improved that the level of risk to the public is reduced to the extent that detention within hospital is no longer considered necessary, is consideration given to conditional discharge.

A lot of work is done by the multidisciplinary team managing the offender and the community team to make sure that effective and thorough planning takes place before an offender is considered for conditional discharge. This includes identifying suitable accommodation and employment or other daytime occupation as well as the offender's suspension of detention gradually being increased to overnights out of hospital. Risks are assessed at each stage.

It is the Mental Health Tribunal for Scotland which makes the decision about conditional discharge. If after a hearing, the Tribunal is satisfied that it is not necessary for the offender to be detained in hospital (to protect others from serious harm or for any other reason) then it may make an order for conditional discharge and will impose conditions as it thinks fit. The offender remains under a compulsion order and restriction order and is subject to conditions which may include supervision and treatment requirements; exclusion zones; "no contact" conditions; conditions about abstinence from drugs/alcohol; and place of residence. Scottish Ministers can vary these conditions.

An offender on conditional discharge is closely monitored and the offender's mental health is assessed for any perceived increase in risk to the public so that steps can be taken to protect the public and the offender can be recalled to hospital if necessary. In particular, attention is paid to:

- any change in mental state;
- any concerning behaviour;
- failure to attend appointments with supervisors or other members of the multidisciplinary team;
- non-compliance with medication or proposed change to medication;
- abuse of drugs/alcohol;
- any change of address; and
- any changes to the level of supervision/support or other aspects of their care plan.

Recall to hospital

The offender must obey the conditions of discharge and this must be monitored closely by the supervising team. Where there is a breach of any of the conditions of discharge, this will automatically trigger a review of whether recall is appropriate.

The focus is always on the degree of danger which the offender might present in relation to his mental disorder. Where the offender has a history of serious violence, comparatively minor irregularities in behaviour or failure of co-operation this would be sufficient to raise the question of the possible need for recall. Where recall is considered by the Scottish Ministers to be necessary, a warrant is signed and the offender may be returned in the most appropriate manner to the hospital specified on the warrant.

End of restrictions

Where an offender is subject to a compulsion order and restriction order, the assessment of the risk posed by the offender and the measures needed to manage any risks may be such that it is no longer felt to be necessary for the offender to be subject to a restriction order. The offender may continue to meet the criteria for a compulsion order. If a Tribunal decides that the offender no longer poses a risk of serious harm to the public, it may revoke the restriction order.

A restriction order may be revoked if restrictions are no longer serving a useful purpose in protecting the public from a risk of serious harm. This may, for example, be when:

- an offender continues to be detained in hospital with little prospect of conditional discharge due to the severity of their illness but has become frail, particularly due to age, and will never pose a threat of serious harm to others; and
- the offender's management is almost entirely to protect his or her own health and safety needs rather than those of others.

In this situation, the compulsion order may be varied, for example to provide for treatment in the community; to require the offender to live at a given address; to require the offender to allow visits from the clinical team; or to go to a given place for treatment.

Absolute discharge

If the offender no longer requires to be subject to a compulsion order it may be revoked. This is called absolute discharge. Offenders may no longer need treatment, or they readily comply with it, without any compulsion, and as a result pose little risk.

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 to decide whether to join the Victim Notification Scheme or 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/>

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The Scottish Government

(Victim Notification Scheme Administration Team)

The Hub

Mental Health and Protection of Rights Division

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Edinburgh

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

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.mwscot.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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