



Mental Health Alliance

## **Criminal justice system – duty to transfer prisoners**

House of Commons Committee stage amendment briefing

### **Amendment**

Clause 14, page 9, line 9, at end insert—

‘(1A) In section 47 (Removal to hospital of persons serving sentences of imprisonment, etc) in subsection (1) leave out from “condition” to the end of the subsection and insert—

“the Secretary of State must by warrant direct that that person be removed and detained in such hospital as may be specified in the direction: and a direction under this section shall be known as “a transfer direction”.’.

### **Purpose of the amendment**

To provide that where those exercising the function of responsible clinician form the view that a prisoner or person on remand should be transferred to hospital, a duty is placed on the Home Secretary to order his transfer to hospital.

### **Reason for the amendment**

Section 47 of the Mental Health Act 1983 Section 47 allows the Home Secretary to order the transfer of a sentenced prisoner to hospital. This decision is made by the Home Secretary 1 - based on reports from two doctors.

The Alliance is concerned that despite this provision, prisoners with mental health problems are still not getting the specialist medical treatment they need. In a Parliamentary Oral Answer on 13 February 2006, The Parliamentary Under-Secretary of State for the Home Department (Fiona Mactaggart) stated:

‘The most comprehensive national assessment to estimate the incidence of mental illness in prison was published in the Office for National Statistics (ONS) survey of mental ill health in the prison populations in England and Wales in 1997. It indicated that 90% of prisoners have at least one mental health disorder, including personality disorder, psychosis, neurosis, alcohol misuse and drug dependence.’

The majority of that number have ‘common’ mental health problems such as depression and anxiety, much of which may be related to their imprisonment rather than a contributing factor to it. A smaller (but much bigger than average) proportion have more ‘severe’ problems such as

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1 In practice this decision is taken by the Home Office Mental Health Unit which is an administrative body.

schizophrenia or are said to have a personality disorder. Many have a combination of mental health and other social problems, frequently related to the difficulties they have faced in their lives prior to offending.

If a measure of the success of the policy of diversion is the numbers of mentally disordered offenders who end up in prison, then there is a good argument to say that the policy has failed. Despite the policy of – and the numerous mechanisms to secure the practice of – diversion of offenders suffering from mental disorder from the penal to the hospital system, the numbers of such persons amongst sentenced prison populations has been consistently well documented.

The 2002/03 annual report of the Chief Inspector of Prisons estimated that 41% of prisoners in health care centres should have been in secure NHS accommodation. In 2004, it was discovered that at any one time at least 40 prisoners assessed as needing a transfer to hospital had been waiting over three months for it to take place.

Prison is a secure institution that, while paying lip service to rehabilitation, also places emphasis on reduced liberty; some people see prison as punishment as opposed to rehabilitation. The NHS, however, has a curative outlook with emphasis on health and healing. According to London's prison mental health services: A review by the Sainsbury Centre for Mental Health (SCMH), "Most inreach staff had struggled at times in working in an environment in which security was prioritised over health, and sometimes felt that the success of clinical interventions was jeopardised. One participant said that there is a 30-35% non attendance of inreach appointments, with security and prison routine playing a significant part in this." There is a large divide between the health care that individuals are able to receive in the community and what can be achieved in the prisons owing to the difference in priority and the limited resources. Prisons are not the place for people with mental health problems as they cannot provide appropriate levels of care. An underlying principle for all interventions provided to individuals with mental health problems is that everyone deserves the same standard and quality of care regardless of where they receive that care, be it in the community or within the criminal justice system.

Under the 1983 Act the decision whether to transfer a patient lies with the Home Secretary who 'may, if he is of the opinion, having regard to the public interest and all the circumstances, that it is expedient to do so direct that the person in question be transferred to a specified hospital' (section 47). This provision is very widely worded and can include such things as the availability of a hospital bed. The courts have even stated that 'the Secretary of State is never obliged to act under section 47 even if he thinks that the necessary preconditions are fulfilled'.<sup>2</sup>

The Alliance is concerned that section 47 has not proved to be an effective mechanism for transferring prisoners with mental health problems to hospital for specialist care. In line with the recommendation of the joint Parliamentary Scrutiny Committee, we believe that where two responsible clinicians agree that a transfer to hospital is needed then the Home Secretary should be under a duty to order his/her transfer to hospital.

The Government has opposed this reform on the grounds that it would require the Home Secretary to direct transfer, irrespective of the merits of the individual case or the public interest. In our view this argument exemplifies the dangers of mental health law being distorted by its use for public protection – especially when decisions regarding the use of that law are made by an administrative arm of the state (in this case the Home Office Mental Health Unit) whose focus is on public protection than also with clinical matters. The Home Office often take a juridical view of the level of security required and often insist that prisoners be placed in a medium secure unit even when, despite their crime, they would never be deemed suitable if they had not been a prison transfer. This results in considerable delays, and the local primary care trust has to be strongly persuaded that they want to spend their money on what they see as an inappropriate admission.

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<sup>2</sup> R v Secretary of State for the Home Department ex p K [1990] 1 All ER 703 (DC) McCullough J obiter at 716.

Dr Adrian Grounds, a forensic psychiatrist who works in prisons and who is also a senior lecturer at the Institute of Criminology at Cambridge University, estimates that there may be up to 3,700 prisoners who are so severely mentally disordered that they should be in a psychiatric hospital but for whom there is no bed.