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Chairman, Regional Health
Authority
Chairman, District Health
Authority
The Director of Social Services
The General Manager,
Regional Health Authority
The General Manager,
District Health Authority

To Judges of the Crown Court
The Circuit Administrator
The Courts Administrator
The Chief Clerk to the Crown Court
The Clerk to the Justices (with a copy for the information of
the Chairman of the Bench)
The Chief Officer of Police
The Chief Probation Officer
The Medical Officer, HM Prison
The Clerk to the Magistrates' Courts Committee

Dear Sir/Madam

Home Office Circular No 66/90

PROVISION FOR MENTALLY DISORDERED OFFENDERS

The purpose of this circular is to draw the attention of the courts and those services responsible for dealing with mentally disordered persons who commit, or are suspected of committing, criminal offences to

(a) the legal powers which exist; and

(b) the desirability of ensuring effective co-operation between agencies to ensure that the best use is made of resources and that mentally disordered persons are not prosecuted where this is not required by the public interest.

BACKGROUND

2. It is government policy that, wherever possible, mentally disordered persons should receive care and treatment from the health and social services. Where there is sufficient evidence, in accordance with the principles of the Code for Crown Prosecutors, to show that a mentally disordered person has committed an offence, careful consideration should be given to whether prosecution is required by the public interest. It is desirable that alternatives to prosecution, such as cautioning by the police, and/or admission to hospital, if the person's mental condition requires hospital treatment, or support in the community, should be considered first before deciding that prosecution is necessary. The government recognises that this policy can be effective only if the courts and criminal justice agencies have access to health and social services. This requires consultation and co-operation, and this circular aims to provide guidance on the establishment of a satisfactory working relationship between courts, criminal justice agencies and health and social services.

3. Provisions for mentally disordered offenders in the prison system in England and Wales were studied by an interdepartmental working group of Home Office and DHSS officials which reported in 1987. It recommended that the courts should be encouraged to use the existing provisions of the Mental Health Act, wherever practicable, to enable appropriate mentally disordered persons to be taken into the health system rather than the penal system, and that information should be made available to the courts about the provision of places in special hospitals, regional secure units and local hospitals.

POLICE

4. The first point of contact between the criminal justice system and a mentally disordered person is often the police, who may be called to intervene in incidents involving a mentally disordered person. There are a range of powers which are available to the police, and it is important that they establish close working relationships with local health, probation, and social services to assist them in exercising their powers:

- i. section 136 of the Mental Health Act 1983 provides a constable with a power to remove to a place of safety a person found in a place to which the public have access and who appears to be suffering from mental disorder within the meaning of the Act and in immediate need of care or control if the constable thinks it is necessary to do so in the interests of that person or for the protection of others. The person may be detained for a maximum of 72 hours. The power in this section may be used in relation to persons who have not committed an offence, and to those who have (or are suspected of having) committed an offence, but where it is not considered necessary in the public interest to arrest that person for the offence. Agreement should be reached with local hospitals and local social services departments so that persons detained under section 136 are

assessed by a psychiatrist and interviewed by an Approved Social Worker as soon as possible for the purpose of making any necessary arrangements for the person's treatment or care. It is desirable that, wherever possible, the place of safety in which the person might be detained should be a hospital and not a police station. Guidance on the use of section 136 is contained in Chapter 10 of the Department of Health Code of Practice on the implementation of the Mental Health Act 1983 (a copy is attached at Annex A);

- ii. Section 135 of the 1983 Act empowers a justice of the peace - on information on oath laid by an Approved Social Worker - to issue a warrant authorising any constable to enter specified premises to remove to a place of safety - which should normally be a hospital - a person believed to be suffering from mental disorder who has been, or is being, ill-treated, neglected or not kept under proper control, or who is living alone and unable to care for himself. The warrant will authorise the person's detention in a place of safety for a maximum of 72 hours. The initiative in seeking a warrant will normally rest with an Approved Social Worker. The warrant may apply to any premises within the justice's jurisdiction, including private property to which the police powers under section 136 do not extend;
- iii. where it is suspected that a mentally disordered person may have committed an offence, consideration should be given - in consultation with the Crown Prosecution Service, where appropriate - to whether any formal action by the police is necessary, particularly where it appears that prosecution is not required in the public interest in view of the nature of the offence. If the suspect is able to meet the requirements for a caution to be administered, he might be cautioned. If the criteria for a caution are not met, the police should consider whether any action need be taken against the suspect. In some cases the public interest might be met by diverting mentally disordered persons from the criminal justice system and finding alternatives to prosecution, such as admission to hospital under sections 2 or 3 or to guardianship under section 7 of the 1983 Act or informal support in the community by social services departments. The development of effective liaison with health and social services authorities will play an essential role in developing satisfactory arrangements to respond constructively in such cases;
- iv. the questioning of mentally disordered persons suspected of committing offences is subject to the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers issued under section 66 of the Police and Criminal Evidence Act 1984. (Annex E of the Code summarises the provisions relating to mentally ill and mentally handicapped persons). Paragraph 9.2 requires the custody officer immediately to call a police surgeon if a person brought to a police station or already detained there appears to be suffering from a mental disorder. In urgent cases the person must be sent to hospital. These requirements apply even if the person makes no request for

medical attention. In the case of mentally disordered persons, chief officers of police may find it helpful to arrange with their local health authorities for psychiatrists to fill the role of police surgeon. Chief officers will be aware that even with the protection afforded by the Police and Criminal Evidence Act 1984, some mentally disordered suspects may make confessions which are untrue, and therefore it is always advisable to seek other evidence which may support or reject the suspect's story;

- v. where it is decided that the public interest requires the prosecution of a mentally disordered person for an offence it should be borne in mind that he has the same right as other suspects to bail after charge. If his mental state or other factors, such as homelessness, give rise to difficulties in releasing him on bail, arrangements should be made with the health, probation, and social services to ensure that appropriate support can be provided, such as admission to hospital, where his mental condition warrants it, or to a hostel, if the managers agree. Police bail cannot, of course, be subject to conditions of residence or medical treatment, but satisfactory arrangements to provide for these on a voluntary basis may enable the police to release the suspect on bail rather than to detain him pending his appearance before the magistrates' court;
- vi. after a mentally disordered person has been charged, wherever possible arrangements should be made with the health, probation, and social services for his assessment with a view to ensuring that he receives any medical treatment that may be necessary, and that the Crown Prosecution Service and court can be advised of any particular bail conditions or, after conviction, disposal that may be appropriate to his circumstances. At annex B to this circular is a note outlining court psychiatric assessment arrangements which have been established at certain central London and at Peterborough magistrates' courts to secure expert medical advice when required. Chief officers of police may wish to explore with their local chief probation officers and health authorities the possibility of setting up similar arrangements to ensure that suspects who are thought to be mentally disordered and in need of medical assessment should be seen by a psychiatrist as soon as possible.

5. A small minority of cases involving mentally disordered persons result in findings by the Crown Court of unfitness to plead under the provisions of the Criminal Procedure (Insanity) Act 1964. Details of the consequences of such a finding are set out in paragraph 13 below. It is important to note, however, that, although the accused is admitted to hospital as if subject to a hospital order and a restriction order without limit of time, a finding of unfitness to plead is not a disposal by the court. The intention of the Act is that the accused should return to court to stand trial, wherever possible, if his condition improves sufficiently to enable him to do so. It is, therefore, essential that, where a person is found unfit to plead, all the relevant

evidence should be preserved either until the accused is remitted for trial, or until formal notification is received from the Crown Prosecution Service or Home Office that a trial will not be held.

CROWN PROSECUTION SERVICE

6. Where proceedings are instituted against a person by the police, the papers will be referred to the Crown Prosecution Service which will review the sufficiency of the evidence and consider carefully whether or not the public interest requires a prosecution in accordance with the Code for Crown Prosecutors. Any information provided by the police with the papers regarding that person's mental condition, or discussions held with other agencies to consider the advisability of diverting him from court, will be taken into account. It will be important to distinguish between those forms of mental disorder which are made worse by the institution of criminal proceedings and those forms of mental disorder which come about by reason of the institution of criminal proceedings. Where the Service is satisfied that the probable effect upon a person's mental health outweighs the interests of justice in the particular case, it will consider discontinuing the proceedings. Where the form of mental disorder is present without there being any indication that proceedings will have an adverse effect, the Crown Prosecutor will take account of the public interest in attempting to ensure that the offence will not be repeated as well as having regard to the welfare of the person in question.

MAGISTRATES' COURTS

7. Mentally disordered persons have the same rights as other persons, including a right to bail. A mentally disordered person should never be remanded to prison simply to receive medical treatment or assessment. It is desirable for the court to receive professional advice at as early a stage as possible on facilities which may be available to assist it with mentally disordered persons. Annex B to this circular describes court psychiatric assessment arrangements at certain central London and at Peterborough magistrates' courts. These enable the courts to receive speedy medical advice and to ensure that, where appropriate, arrangements can be made quickly to admit a mentally disordered person to hospital, for example as a condition of bail or, with the agreement of the hospital managers, under section 35 of the Mental Health Act 1983 following conviction. Where neither of these courses is applicable but the accused person nevertheless requires admission to hospital for assessment or treatment, the health and social services can be asked to consider using their civil powers of admission under sections 2 or 3 of the Act.

8. In considering cases involving mentally disordered persons magistrates may wish to bear in mind the possible courses of action which may be open to them. These include:

- i. where the Crown Prosecution Service decides to proceed with a case, the court will be required to consider the question of bail in the normal way. In cases where medical treatment is considered desirable this may be achieved as a condition of bail, such as requiring residence at a hospital or attendance at an outpatient clinic, although the bailed person cannot be compelled to comply with

treatment under these circumstances. Magistrates will wish also to bear in mind the desirability of arranging for a medical report on the accused's condition to be prepared on bail. Their attention is drawn to Annex C of this circular, which describes the multi-agency assessment scheme operating in Hertfordshire;

- ii. in cases where an accused person has been convicted of an offence punishable with imprisonment, or has been charged with such an offence and the court is satisfied he did the act or made the omission charged, and it is considered necessary to remand him in custody rather than on bail, the attention of magistrates is drawn to the power of the court under section 35 of the 1983 Act to remand to hospital provided it is satisfied in accordance with section 35(4) that arrangements have been made for the admission of the accused within a period of seven days. This power should be used wherever possible to obtain a medical report on an accused person's condition, providing the court has written or oral evidence from a doctor who is approved under section 12(2) of the Act as having special experience in the diagnosis and treatment of mental disorder, that there is reason to suspect that the accused is suffering from mental illness, psychopathic disorder, mental impairment or severe mental impairment and the court is of the opinion that it would be impracticable for a report on the accused's mental condition to be made if he were remanded on bail. Normally the local psychiatric hospital or unit in a general hospital will be able to provide adequate arrangements for the assessment of mentally disordered persons, but in addition most regional health authorities are able to provide secure hospital accommodation in cases where this is necessary, and places may be sought in a special hospital in respect of persons who are thought to require treatment in conditions of special security because of their violent, dangerous, or criminal propensities. At Annex D is a note of health service hospital facilities. Magistrates' courts are requested to consider with their regional health authority the establishment of working arrangements to ensure that appropriate hospital facilities can be made available speedily when necessary;
- iii. where a person suffering from mental illness or severe mental impairment is charged with an offence punishable on conviction with imprisonment (other than where the sentence is fixed by law), a magistrates' court has power under section 37(3) of the 1983 Act to make a hospital order without convicting him provided the court is satisfied that the accused did the act or made the omission charged, and that on the evidence of two registered medical practitioners, one of whom is approved under section 12(2) of the Act, the accused is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in hospital for treatment. In the case of psychopathic disorder or mental impairment the court must also be satisfied, on the same evidence, that such treatment is likely to alleviate or stabilise the condition. Before making an order, the court must be satisfied under section 37(4) that arrangements have been

made for the offender's admission to hospital within 28 days of an order being made. The requirements for determining whether the offence should be tried summarily or on indictment need not necessarily be complied with, nor is a trial necessary, before exercising this power. However, its exercise will usually require the consent of those acting for the defendant if he is under a disability so that he cannot be tried (see R v Lincolnshire (Kesteven) Justices, ex p. O'Connor [1983] 1AER 901);

- iv. where a mentally disordered person is convicted of an offence the court will wish to consider whether a non-penal disposal may be appropriately imposed. These include:
- a) a hospital order under section 37 of the 1983 Act in cases where the accused person is convicted of an offence punishable with imprisonment (other than where the sentence is fixed by law), if the court is satisfied on evidence from two registered medical practitioners, one of whom is approved under section 12(2) of the Act, that the offender is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in hospital for treatment, and that in the case of psychopathic disorder or mental impairment the treatment is likely to alleviate or stabilise the condition. The court must also be satisfied that, in accordance with section 37(4), arrangements have been made for the offender's admission to hospital within twenty eight days;
 - b) an interim hospital order under section 38 of the 1983 Act. To assist the court and hospital in determining whether it is appropriate to make a hospital order in respect of an offender, the courts may make an interim hospital order so that the offender's response in hospital can be evaluated without any irrevocable commitment on either side to this method of dealing with the offender if it should prove unsuitable.

Before making an interim hospital order the court must be satisfied on evidence from two doctors, one of whom is approved under section 12(2) of the Act, that the offender is suffering from mental disorder such as makes it reasonable to suppose that a hospital order might be appropriate. It must also be satisfied in accordance with section 38(4) that arrangements have been made for the offender's admission to hospital within 28 days;
 - c) a guardianship order under section 37 of the 1983 Act in cases where the offender is convicted of an offence punishable with imprisonment (other than where the sentence is fixed by law), placing the offender under the guardianship of the local social services authority or a person approved by it, provided he has reached the age of 16 and the court is satisfied on evidence from two registered medical practitioners,

one of whom is approved under section 12(2) of the Act, that the mental disorder is of a nature or degree which warrants reception into guardianship. By virtue of section 37(6) a guardianship order is not to be made unless the court is satisfied that the authority or person in question is willing to receive the offender.

The purpose of guardianship is primarily to ensure that the offender receives care and protection rather than medical treatment, although the guardian does have powers to require the offender to attend for medical treatment. The effect of a guardianship order is to give the guardian power to require the offender to live at a specific place (this may be used to discourage the offender from sleeping rough or living with people who may exploit or mistreat him, or ensure that he resides at a particular hostel), to attend specific places at specified times for medical treatment, occupation, education, or training, and to require access to the offender to be given at the place where the offender is living to any doctor, approved social worker, or other person specified by the guardian. This power could be used, for example, to ensure the offender did not neglect himself;

- d) a probation order with a condition of psychiatric treatment under section 3 of the Powers of Criminal Courts Act 1973. This is a normal probation order which has been adapted to meet the needs of an offender who does not need to be detained in a hospital, but who is suffering from a mental condition which can be treated and needs treatment. A probation order may not be made unless the Court is satisfied that arrangements have been made for the treatment which the court intends to specify in the order, including arrangements for the offender's reception where he is to be required to submit to treatment as an in-patient. The court may make a probation order in the normal way, with the consent of the offender; and if it is satisfied on the evidence of a doctor approved as having special experience in the diagnosis or treatment of mental disorder that the offender needs treatment for his mental condition but does not need to be detained in hospital, the court may include in the probation order a requirement that he undergoes medical treatment with a view to the improvement of his mental condition. A condition of residence at a hospital can be attached to the probation order, if appropriate, even where formal detention under the Mental Health Act is not indicated. The court may also wish to call for a social enquiry report to assist it in reaching a decision in such cases. The offender may be required to undertake treatment for the whole of the period of the probation order, or for part of it. If he fails to comply with the requirements of the probation order, the offender is in breach of probation and may be dealt with in the

same way as any other offender who is in breach of probation;

- e) discharge, either absolute or conditional, so that arrangements may be made on an informal basis for the offender to receive any necessary medical treatment or social work support. Under such a disposal, however, treatment may not be administered compulsorily, unless the offender is subsequently detained under the civil powers of the 1983 Act.

9. It is open to any magistrates' court which is minded to make a hospital or interim hospital order in respect of any person to ask the Regional Health Authority under the provisions of section 39 of the 1983 Act for information about hospitals which can accommodate that person (see paragraph 15 below).

CROWN COURT

10. In considering cases involving mentally disordered persons the Crown Court may wish to bear in mind its powers to obtain a medical report by:

- i. remanding on bail with a condition of attendance at, or residence in, a hospital for the purpose of medical assessment;
- ii. remanding to hospital under the provisions of section 35 of the 1983 Act an accused person suffering from mental illness, psychopathic disorder, mental impairment or severe mental impairment who is awaiting trial for an offence punishable with imprisonment, or who has been arraigned but not yet sentenced or otherwise dealt with.

This power may be exercised where the court is satisfied on the evidence of a doctor, who is approved under section 12(2) of the Act that there is reason to suspect the accused is suffering from mental disorder, and the court is of the opinion that it would be impracticable for a medical report to be made if he were remanded on bail. The court must also be satisfied in accordance with section 37(4) that the accused will be admitted to hospital within 7 days. (This power may not be exercised in respect of a person convicted before the court if the sentence for the offence of which he has been convicted is fixed by law.)

11. The Crown Court has power under section 36 of the 1983 Act to remand an accused person (other than a person charged with an offence the sentence for which is fixed by law) to hospital for treatment. The court must be satisfied on the evidence of two registered medical practitioners, one of whom must be approved under section 12(2) of the Act, that the accused is suffering from mental illness or severe mental impairment of a nature or degree which makes it appropriate for him to be detained in hospital for medical treatment. The court must also be satisfied, in accordance with section 36(3), that the accused will be admitted to hospital within 7 days. The court may find this power helpful when considering

cases of mentally disordered persons who may be unfit to plead but whose mental condition might improve as a result of medical treatment.

12. Cases may arise where an accused person, who has been remanded in prison custody, is transferred by the Home Secretary to hospital for urgent treatment under the provisions of section 48 of the 1983 Act. If it appears to the Crown Court in such a case that it is impracticable or inappropriate to bring that person before the court, the court may, in accordance with section 51(5), make a hospital order (with or without a restriction order) in his absence and, in the case of a person awaiting trial, without convicting him. Before doing so the court must be satisfied on the written or oral evidence of at least two registered medical practitioners, one of whom is approved under section 12(2) of the Act, that the accused is suffering from mental illness or severe mental impairment which makes it appropriate for him to be detained in hospital for treatment, and that it is proper to make such an order.

13. In cases where the accused is found to be unfit to plead under the provisions of section 4 of the Criminal Procedure (Insanity) Act 1964, the court is required by section 5 of the Act to make an order that the accused be admitted to such hospital as may be specified by the Secretary of State. This may be a special hospital, a regional secure unit or a local hospital, depending on the gravity of the alleged offence and the apparent risk to the public. The accused is treated as though subject to a hospital order and a restriction order without limit of time made under the provisions of sections 37 and 41 of the Mental Health Act 1983. In view of the nature of this disposal, courts are asked to bear in mind their power under section 4(2) of the 1964 Act to postpone consideration of the defendant's fitness to plead until anytime up to the opening of the case for the defence. This provides an opportunity to test the prosecution case and may reduce the likelihood of an innocent person being detained. This may be particularly important in the case of persons who appear to be suffering from severe mental impairment. Their condition is unlikely to change after receiving medical treatment and consequently they may never be able to benefit from a normal trial. Where a person is found unfit to plead the Home Secretary will arrange for his case to be reviewed at six monthly intervals during the first two years of his detention in hospital to consider his fitness to stand trial, and he would normally expect to remit that person for trial should he receive medical advice that he is fit to plead. If, at the end of two years, the Home Secretary is advised that he remains unfit to plead he will review the continuing need for the restriction order under section 42(1) of the 1983 Act and will terminate it if he concludes it is unnecessary for the protection of the public from serious harm.

14. If a mentally disordered person is convicted of an offence the court will wish to consider the suitability of non-penal disposals. These include:

- i. a hospital order in cases where a person is convicted of an offence (other than one for which the sentence is fixed by law) punishable with imprisonment, if the court is satisfied, in accordance with the provisions of section 37(2) of the 1983 Act, on the evidence of two registered medical practitioners, one of whom is approved under

section 12(2) of the Act, that the offender is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in hospital for treatment, and that, in the case of psychopathic disorder or mental impairment, the treatment is likely to alleviate or stabilise the condition. The court must also be satisfied that, in accordance with the provisions of section 37(a), arrangements have been made for the offender's admission to hospital within twenty eight days. In addition to the special hospitals (Ashworth (formerly Moss Side and Park Lane Hospitals), Broadmoor and Rampton), which provide treatment in conditions of special security for persons with violent, dangerous, or criminal propensities, most regional health authorities provide a range of hospital facilities for the treatment of mentally disordered offenders, including secure units. At Annex D is a note of health service hospital facilities;

- ii. an interim hospital order (see paragraph 8.iv.(b) above);
- iii. a restriction order. In any case where it makes a hospital order under section 37 of the 1983 Act, the court may also make a restriction order under section 41 where it appears necessary for the protection of the public from serious harm. The decision on whether to make the order rests with the court and does not depend upon the agreement of the hospital or the doctor in whose care the patient will be placed, although at least one of the doctors whose evidence is taken into account in making a hospital order must have given oral evidence in court. In reaching its decision the court must take into account the nature of the offence, the antecedents of the offender, and the risk of his committing further offences if set at large. (The law governing the making of restriction orders was clarified by the Court of Appeal in R v Birch [1989] CLR June 296.) A restriction order may be either for a specified period or without limit of time, and may be terminated at any time by the Home Secretary under section 42(1). The effect of a restriction order is that the patient may not be discharged (except by a Mental Health Review Tribunal), granted leave of absence, or transferred to another hospital without the consent of the Home Secretary. Restricted patients are generally discharged from hospital subject to conditions of residence and supervision by a doctor and a social worker or probation officer, remaining liable to recall to hospital by the Home Secretary for a period after their discharge. Where circumstances warrant it, however, such patients can be absolutely discharged from hospital instead of having to complete a period of supervised living in the community;
- iv. a guardianship order (see paragraph 8.iv.(c) above);
- v. a probation order (see paragraph 8.iv.(d) above);
- vi. discharge. Where the court is satisfied that, following conviction, the public interest requires no formal sentence or other disposal it is open to the court to discharge the offender, either absolutely or conditionally, particularly if it believes that satisfactory arrangements for the care

and treatment of the offender can be made on an informal basis.

In considering these options, the court may find it useful to involve the Crown Court liaison probation officer in approaching the health authorities or social services departments or in making appropriate arrangements for the preparation of a social inquiry report.

15. To assist the courts in deciding whether to make a hospital or interim hospital order, section 39 of the 1983 Act places a duty on Regional Health Authorities to respond to requests from courts for information about hospitals which could provide accommodation for people in respect of whom the courts are considering making hospital orders. This obliges Regional Health Authorities to inform the court as to the facilities they provide for detained patients, including those who may require treatment in appropriate conditions of security; and it will also enable the Regional Health Authority to advise in cases where there is some room for doubt as to the patient's normal place of residence or other factor determining the appropriate hospital within whose catchment area he falls. The intention is to provide a court with all possible assistance short of removing the obligation in section 37(4) of the 1983 Act to be satisfied that the necessary arrangements have been made before making a hospital order, in cases where the necessary criteria for a hospital order are satisfied and it is minded to make one, but no hospital place has been made available. Regional Health Authorities have been encouraged to make standing arrangements for meeting such requests for information from courts, and it is intended that these arrangements will reduce the number of cases in which a hospital order appears suitable but the court is frustrated in the search for a place. In cases where it is desired to make use of this provision, the clerk of the court should contact the Regional Medical Officer or solicitor for the Regional Health Authority covering the area from which the offender appears to come. (There is no longer any scope for disputes between Regional Health Authorities as to responsibility for dealing with the enquiry, as any Authority approached by the court is under a statutory duty to provide information about hospitals "in its region or elsewhere" at which arrangements could be made for the person to be admitted. If the Authority first contacted believes it to be more appropriate for another Authority to respond, it will only be able to pass on responsibility if the second Authority agrees.)

16. Where a court is satisfied that at the time of committing the act with which he is charged the accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing or, if he did know it, that he did not know he was doing what was wrong, it shall return the special verdict of not guilty by reason of insanity. In accordance with the provisions of section 5(1) of the Criminal Procedure (Insanity) Act 1964 the court is required to make an order that the accused be admitted to such hospital as may be specified by the Home Secretary (the level of security being determined by the seriousness of the offence and the apparent risk of further offending), where he will be detained as though subject to a hospital order and restriction order without limit of time made under sections 37 and 41 of the Mental Health Act 1983.

PROBATION SERVICE

17. The probation service should act as part of a network of agencies (social services, health services, voluntary organisations) providing accommodation, care and treatment in the community for mentally disordered offenders. Information about facilities for accommodation, treatment, education, supervision etc should be pooled, and there should be a shared list of contact points with telephone numbers for each agency. (In some areas it may be sensible for the probation service to take the lead in co-ordinating this network, but elsewhere the lead might be taken by a voluntary organisation or by the social services with their responsibility for care in the community.) The special role of the probation service is:

- to provide information to the courts for bail and sentencing decisions;
- to provide information to the Crown Prosecution Service in connection with bail information schemes;
- to provide bail and probation hostels and other accommodation projects for offenders and persons on bail;
- to supervise offenders on probation orders;
- to provide for the throughcare and supervision of offenders released from prison on licence and parole.

Chief Probation Officers are asked to establish liaison arrangements with other agencies to ensure that the probation service can carry out these tasks effectively. At annex E is a note outlining seminars and training courses organised by the West Yorkshire and the Greater Manchester Probation Services and by the Northern Regional Committee for Probation Staff Development which chief officers might find helpful as examples of good practice in encouraging co-operation with other agencies and with the courts.

18. When a mentally disordered person is arrested and charged, the probation service should play its part in diverting him or her from custodial remand. They can do this in several ways. If there is a bail information scheme, the probation officer will visit the accused in police custody to interview him and obtain information which, if verified, can be passed on to the Crown Prosecution Service to inform the bail decision. Mentally disordered persons may be particularly at risk of being remanded in custody, because their circumstances and way of life may be unstable. Good liaison between the bail information scheme, the police, the health service and social services will therefore be particularly important. If in-patient treatment is not warranted, the probation officer may be able to identify suitable accommodation in a bail hostel or lodging scheme organised by the probation service, or by the social services. Intervention at this stage can prevent unnecessary remands to prison establishments.

19. If there is no bail information scheme the first contact may not occur until the accused's first court appearance. The court will have the range of options described in paragraph 8(i) and (ii) above. In particular, mentally disordered persons may be remanded

to hospital by the courts under the provisions of section 35 and 36 of the Mental Health Act 1983. In other cases it is open to the courts to remand the accused on bail with a condition of residence in a hospital or of attendance at a hospital. Persons whose condition is not such as to require in-patient treatment may be considered for placement in a bail hostel where this is desirable to avoid a remand in custody. Or they may be remanded on bail with other conditions (eg living at a specified address). The court duty probation officer can help the court by advising on ways of avoiding a custodial remand making use of resources and treatment available in the community. This will succeed only if the probation service has good liaison with, and support from, other agencies, especially the health service and the local authority social services, whose responsibilities are described at Annex F.

20. When mentally disordered persons are convicted of offences, the court will wish to consider the possibility of a community disposal. In cases where detention in hospital for treatment under the provisions of section 37 of the 1983 Act is not considered necessary, but the offender's mental condition is still treatable, a probation order with a condition of psychiatric treatment may be given. If the offender's condition is not treatable, a probation order may be made without a condition of treatment, but with other conditions or arrangements which make for effective supervision. These may include residence at a probation hostel or other community care arrangements made by the social services or a voluntary organisation. It is important that the court should have a social inquiry report available to it in addition to medical advice. The SIR should set out the full range of sentencing options which may be suitable, and give details of the type of supervision and accommodation which could and would be provided in the community. There should be liaison between probation officer, author of the medical report and the offender's lawyer about an appropriate recommendation to the court.

21. It is important that all accused persons who are likely to be suitable candidates for probation orders are identified at as early a stage as possible and that arrangements are made quickly for their medical assessment. Chief probation officers are asked to review their procedures, in consultation with police, the courts, social services and health authorities, to ensure that they identify candidates for community disposals at an early stage in the prosecution process and assist in achieving a swift disposal of the case by the courts. (At Annex C is a brief description of a multi-agency assessment scheme in operation in Hertfordshire.)

22. The effectiveness of probation orders with a condition of treatment depends on close co-operation, understanding and communication between the probation service and local psychiatric services, and is aided by the presence at local level of psychiatric staff with an interest in forensic psychiatry. It would be helpful for each probation area to draw up its own code of practice for probation officers undertaking supervision of a mentally disordered offender, defining lines of responsibility and accountability (eg clarifying of boundaries between the responsible medical officer and the probation officer, especially where both are carrying statutory responsibilities).

PRISON MEDICAL SERVICE

23. Consolidated guidance will be issued shortly to the prison medical service in a circular instruction from the Director of the Prison Medical Service. This reminds medical officers when examining remand prisoners on reception into prison to be alert for signs of mental disorder. Any prisoner who is suffering from mental illness or severe mental impairment of a nature or degree which makes it appropriate for him to be detained in hospital for medical treatment, and is in urgent need of hospital treatment, should be recommended for transfer to hospital in accordance with the provisions of section 48 of the Mental Health Act 1983. Medical officers are encouraged to discuss with C3 Division any case where there is doubt about what initiative to take or where there is any difficulty in securing a hospital place. Medical officers should also seek to identify those remand prisoners who might benefit from medical treatment after conviction, for example by means of a hospital order, psychiatric probation order, or guardianship order. In such cases they should offer advice to the court and, where appropriate, should seek the assistance of the probation service, for example in arranging for a psychiatric probation or a guardianship order to be made by the court.

24. In the case of sentenced prisoners, medical officers are reminded of the need to arrange the transfer to hospital under section 47 of the Mental Health Act 1983 as soon as possible during the course of their sentences of those prisoners suffering from mental illness, psychopathic disorder, mental impairment, or severe mental impairment of a nature or degree which makes it appropriate for them to be detained in hospital for treatment. Medical officers should ask a consultant psychiatrist from the catchment area hospital or regional secure unit, or special hospital covering the prisoner's home to visit as soon as possible to assess the prisoner and to arrange his admission to their hospital, taking account of the level of security which is required. Recommendations for transfer from two registered medical practitioners, at least one of whom is approved for the purposes of section 12 of the Mental Health Act 1983 as having special experience in the diagnosis or treatment of mental disorder, should then be put forward to C3 Division. Medical officers are encouraged to discuss any cases where there is doubt, or where difficulty is experienced in finding a hospital place, with C3 Division.

CONCLUSION

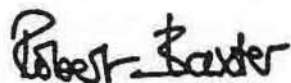
25. It is the government's policy to divert mentally disordered persons from the criminal justice system in cases where the public interest does not require their prosecution. Where prosecution is necessary it is important to find suitable non-penal disposals wherever appropriate and the police, courts, and probation service are asked to work together with their local health and social services to make effective use of the provisions of the Mental Health Act 1983 and of the services which exist to help the mentally disordered. They are also asked to ensure that all their officers are aware of this circular, and to consider any training which is necessary to equip them in their contacts with mentally disordered persons.

26. In summary:

- i. Chief Officers of Police are asked to ensure that, taking account of the public interest, consideration is always given to alternatives to prosecuting mentally disordered offenders, including taking no further action where appropriate, and that effective arrangements are established with local health and social services authorities to ensure their speedy involvement when mentally disordered persons are taken into police custody;
- ii. Courts are asked to ensure that alternatives to custody are considered for all mentally disordered persons, including bail before sentence, and that persons who are in need of medical treatment are not sent to prison. The attention of court clerks is drawn, in particular, to the desirability of establishing arrangements in co-operation with the probation service and the local health and social services authorities, for speedy access to professional advice for the court to assist it in its decision making;
- iii. Chief Probation Officers are asked to ensure that effective arrangements are established to provide courts with information and advice to enable them to make use of alternatives to imprisonment in dealing with mentally disordered offenders. Attention is drawn to the need to co-operate with local health and social services authorities to provide professional advice to courts and to facilitate a wider use of treatment and non custodial disposals, including remands on bail before sentence and psychiatric probation orders and guardianship orders, where appropriate, after conviction; and
- iv. Prison medical officers are asked to ensure that action is taken to arrange transfer to hospital under the provisions of section 48 of the Mental Health Act 1983 in respect of any mentally ill or severely mentally impaired person remanded in custody who appears to require urgent treatment in hospital, and to consider advising the courts of the suitability of any other mentally disordered person on remand for treatment as part of a non-custodial disposal, such as a psychiatric probation order or guardianship order, after conviction. Prison medical officers are asked to ensure that action is taken to arrange the transfer to hospital under the provisions of section 47 of the Mental Health Act 1983 of any sentenced prisoner who appears to require treatment in hospital for mental disorder.

27. Enquiries about this circular should be addressed to Robert Wallich, C3 Division, Home Office, 50 Queen Anne's Gate, London SW1 (telephone 071-273-3118).

Yours faithfully

A handwritten signature in black ink that reads "Robert Baxter". The signature is written in a cursive style with a large initial 'R'.

Robert Baxter
C3 Division

TO HOME OFFICE CIRCULAR No 66/90
ADDENDUM/ - SEPARATE ARRANGEMENTS IN WALES

In a few respects, principally because of the absence of a Regional Health Authority, separate arrangements apply in Wales. These are set out below, by reference to the paragraph numbers of Circular No 66/90.

- 4.i. The Code of Practice on the implementation of the Mental Health Act 1983 applies equally in Wales and the document is a joint Welsh Office/ Department of Health publication.
- 8.ii. Magistrates' courts should consider with relevant District Health Authorities in Wales the establishment of the required working arrangements.
9. The requisite information in Wales should be sought from the Welsh Office.
15. Where reference is made to a Regional Health Authority corresponding reference in Wales should, in accordance with section 39(2) of the Mental Health Act 1983, be to the Secretary of State for Wales. Approaches to the Welsh Office will normally be delegated to a designated District Health Authority.

ANNEX A

DEPARTMENT OF HEALTH

CODE OF PRACTICE

Implementation of the Mental Health Act 1983

CHAPTER 10

THE POLICE POWER TO REMOVE TO A PLACE OF SAFETY (SECTION 136)
(PARA 293 OF MEMORANDUM)

Good Practice

10.1 This depends on:-

- a. the local social services authority, district health authority and the Chief Officer of Police establishing a clear policy for its implementation;
- b. all professionals involved in its implementation understanding the power and its purpose and following the local policy concerning its implementation.

The Local Policy

10.2 The aim of the policy should be to secure the competent and speedy assessment by a doctor and an authorised social worker (ASW) of the person detained under the power.

10.3 The policy should define, in particular, the responsibilities of:-

- a. police officers to remain in attendance, where the patient's health or safety or the protection of others so require when the patient is taken to a place of safety (other than a police station);
- b. police officers, doctors and ASWs for the satisfactory returning to the community of the person assessed under Section 136 but not admitted to hospital or immediately placed in accommodation.

10.4 The policy should include provisions for the use of the Section to be monitored so that:-

- a. a check can be made of how it is being used, including its use in relation to particular categories of people or in particular circumstances;

- b. informed consideration can be given by all parties to the policy to any changes in the mental health services that might result in the reduction of its use.

The Place of Safety

10.5 The identification of preferred places of safety is a matter for local agreement. Regard should be had to any impact different types of place of safety may have on the person held and hence on the outcome of an assessment.

Good Practice Points

10.6 Where an individual is detained by the police under Section 136 it is desirable that:-

- a. where he is to be taken to a hospital as a place of safety immediate contact is made by the police with both the hospital and the local social services department;
- b. where the police station is to be used as a place of safety immediate contact is made with the local social services authority and the appropriate doctor.

The local policy for the implementation of Section 136 should ensure that police officers have no difficulty in identifying whom to contact.

Record keeping

10.7 A record of the person's time of arrival must be made immediately he reaches the place of safety. As soon as the individual is no longer detained under Section 136 he must be so advised by those who are detaining him. It would be good practice for Managers (where the hospital is used as the place of safety) to devise and use a form for recording the end of the person's detention under this Section (similar to the form used for Section 5(4)).

10.8 Section 136 is not an emergency admission Section. It enables an individual who falls within its criteria to be detained for the purposes of an assessment by a doctor and ASW, and for any necessary arrangements for his treatment and care to be made. When these have been completed, within the 72 hour detention period, the authority to detain the patient ceases. Where a hospital is used as a place of safety it may be better for the patient not to be formally admitted although he may have to be cared for on a ward. Where such a policy is adopted it is essential to remember that the patient must be examined by a doctor in the same way as if he had been formally admitted.

Information about Rights

10.9 Where an individual has been arrested by the police under Section 136:-

a. the arrested person is entitled to have another person of his choice informed of his arrest and whereabouts. (Section 56 of Police and Criminal Evidence Act);

b. when the arrested person is in police detention (ie a police station is being used as a place of safety) he has a right of access to legal advice. (Section 58 of Police and Criminal Evidence Act);

c. where detention is in a place of safety other than a police station access to legal advice should be facilitated whenever it is requested.

10.10 Where the hospital is used as a place of safety the managers must ensure that the provisions of Section 132 (information) are complied with.

10.11 Where the police station is a place of safety, although Section 132 does not apply, it would be good practice for the policy referred to above to require that the same information is given in writing on the person's arrival at the place of safety.

Assessment

10.12 Local implementation policy should ensure that the doctor examining the patient should wherever possible be "approved" (under section 12(2) of the Mental Health Act 1983).

10.13 Assessment by both doctor and social worker should begin as soon as possible after the arrival of the individual at the place of safety. Any implementation policy should set target times for the commencement of the assessment and the health authority/local authority should review what happens in practice against these targets.

10.14 The person must be seen by both the doctor and the ASW. The local policy should include the necessary arrangements to enable the person wherever possible to be jointly assessed. If the doctor sees the person first and concludes that admission to hospital is unnecessary, or the person agrees to informal admission, the individual must still be seen by an ASW, who must consult with the doctor about any other necessary arrangements for his treatment and care that might need to be made. It is desirable for a consultant psychiatrist in mental handicap and an ASW with experience of working with mentally handicapped people to be available to make a joint assessment should there be a possibility that the detained person has a mental handicap.

10.15 The role of the ASW includes:-

- interviewing the person;

- contacting any relevant relatives/friends;
- ascertaining whether there is a psychiatric history;
- considering any possible alternatives to admission to hospital;
- considering the need to make any other "necessary" arrangements.

Treatment

10.16 Part IV of the Act does not apply to persons detained under Section 136. The person can only be treated in the absence of consent in accordance with provisions of the common law.

Necessary arrangements

10.17 Once the assessment has been concluded it is the responsibility of the doctors and ASW to consider if any necessary arrangements for the person's treatment and care have to be made.

10.18 Where compulsory admission is indicated:-

a. where the hospital is the place of safety the person should be admitted either under Section 2 or Section 3 (whichever is appropriate). Wherever possible where the approved doctor providing one recommendation is on the staff of the hospital (as is usually the case) the second recommendation should be provided by a doctor with previous knowledge of the person (for example their GP). It has to be recognised that many people detained under Section 136 are not registered with a GP and in these circumstances as well as where it is not possible to secure the attendance of a GP who knows the person, it would be preferable for the second opinion to be provided by a second approved doctor;

b. persons detained under Section 136 and who are formally admitted should not find their detention being continued under Section 5(2) or Section 5(4);

c. where the police station is the place of safety then compulsory admission should be under Sections 2 or 3 (whichever is appropriate); but there may be exceptional circumstances where there is urgent necessity to remove the person to hospital, in which case Section 4 must be considered.

10.19 Section 136 provides the lawful authority for the removal by the police of a person to whom the provision applies, from a place to which the public have access. Where it is necessary to consider gaining access (and possibly

removing to a place of safety) to a mentally disordered individual other than in a public place and where access is denied then consideration must be given to invoking the powers of entry under Section 135(1) or (2). Local authorities should issue guidance to ASWs on how to invoke the power.

ANNEX B

COURT PSYCHIATRIC ASSESSMENT ARRANGEMENTS

A. DUTY PSYCHIATRIST SCHEME AT PETERBOROUGH MAGISTRATES' COURT

This scheme was initiated by Peterborough Magistrates' Court in 1986 because of concern about administrative delays in obtaining sufficient information - by written requests for psychiatric examinations and reports - to determine the most appropriate disposal of cases involving mentally disordered offenders. The court sought the co-operation of Peterborough Health Authority, the psychiatric division of Peterborough district hospital, the probation service and the local probation liaison committee to devise a more streamlined system.

2. As soon as the police or a duty solicitor identify a person who has been charged and is in custody as likely to need psychiatric assistance, the court is informed by telephone. The court then telephones Peterborough district hospital, which arranges for the nominated duty consultant psychiatrist to examine that person in the cells. He then prepares a report the same or next day with a view to determining:-

- a. if the person is fit to enter a plea
- b. if he is mentally disordered but could be fully assessed for the purposes of a report in prison
- c. if he is in urgent need of a hospital bed.

This enables the court, within days of the first indication of mental disturbance, to reach a preliminary decision on that person's case. The psychiatrist's expenses are paid from

central funds under the costs in Criminal Cases (General) Regulations 1986.

3. The scheme has proved successful despite limited local psychiatric facilities and problems in placing persons thought to be dangerous. Although some of the latter are suitable for remand to a regional secure unit, there is considerable demand for the limited places available. The most dangerous therefore have to be remanded to prison pending their examination by a special hospital consultant.

Contact for further information

4. Those involved in the Peterborough scheme consider that other areas could benefit from similar arrangements. They feel that the initiative should come from local magistrates' courts. The Clerk to the Peterborough Justices is willing to advise clerks to other courts on setting up their own duty psychiatrist schemes.

B. PSYCHIATRIC ASSESSMENT SERVICE AT BOW STREET AND GREAT MARLBOROUGH STREET MAGISTRATES' COURT

5. These busy Inner London courts deal with large numbers of mentally disordered offenders. It was a source of concern that many of these persons were being remanded in custody not because of the nature of their offences but because of their lack of community ties, their psychiatric problems and the unavailability of suitable bail hostel places. Delays in obtaining psychiatric assessments following remand in custody were a further obstacle to the appropriate placement of these offenders.

6. Discussions between magistrates and the local social and psychiatric services led to the setting up of a psychiatric assessment service in February 1989. The scheme's main objective is to avoid remands in custody solely for the

preparation of medical reports. A psychiatric on-call service is available for two sessions per week and referrals are accepted from the magistrates, probation officers, duty solicitor, or sometimes the police officers in the gaolers' area. The assessment of the defendant is made in the gaolers' area at the court, usually in the probation officer's or duty solicitor's room, or occasionally in the cell itself. Following psychiatric assessment, if admission to hospital is indicated, an approved social worker and second doctor are readily available to attend. Following completion of the assessment and the securing of a hospital bed, the psychiatrist provides a verbal report to the court which allows for further questioning by the magistrates if required.

7. The scheme brings several benefits. A great deal more information is available to the psychiatrist because he has access to the Crown Prosecution Service file - which gives details of the charge, witness statements and previous convictions of the accused - and can readily examine the accused. The duty probation officer is present to provide background information on the accused and should often be able to discuss such options as bail hostels. The duty solicitor is also available to discuss issues regarding entering a plea. The most important advantage, though, is the opportunity for the psychiatrist, magistrate and Crown Prosecution Service to discuss whether there is scope for diverting the accused from the prison system, which is fundamental to the success of the scheme.

8. Further information about this scheme can be obtained from:

Dr P Joseph
Visiting Psychiatrist
Great Chapel Street Medical Centre
13 Great Chapel Street
LONDON W1V 8AL

**C. THE PSYCHIATRIC ASSESSMENT SERVICE AT HORSEFERRY ROAD
MAGISTRATES' COURT**

9. This scheme is part of the forensic psychiatric liaison service between the probation team at Marsham Street Probation Office and the Riverside Health Authority. It was established in June 1989 following concern about the increasing numbers of mentally disordered persons appearing before Horseferry Road Magistrates' Court and involves liaison between all three services. Its objective was to prevent lengthy remands in custody and custodial sentences for mentally disordered offenders for whom psychiatric treatment was more appropriate.

10. The service available to the court is currently limited to one session a week on Monday mornings, and involves a psychiatrist approved under the Mental Health Act 1983 and a community forensic nurse. Both are from the Riverside Health Authority and are based at the Horton Hospital in Epsom. They have access to inpatient beds and can also refer to outpatients, day care and specialist drug and alcohol services within the Riverside Health Authority. They are available to the court for immediate psychiatric assessment of persons whose mental health is causing concern. Assessments are made mainly on a pre-trial basis but also include post conviction assessments. Persons referred for assessment will normally have been remanded in custody the previous week.

11. Referrals are predominantly made by or via the court duty probation team, but can also be made by the court, the duty solicitor, the Crown Prosecution Service or the gaolers. A file with all available information is prepared by the duty probation team and made available to the psychiatrist and nurse before court the following Monday. They are also notified by the duty probation officer on the date a psychiatric assessment is requested and, if possible, endeavour to assess the subject at the remand prison prior to the next

court appearance. Liaison is currently in progress with the Crown Prosecution Service with a view to ensuring that full details of alleged offences are available to the psychiatric team.

12. Referrals to the psychiatric team currently average 3 or 4 a week. Reports on these defendants are prepared at the court following liaison with the court duty team, and are available to the court on the same day. At present, assessments of defendants take place in the cells, through the cell door. This arrangement is considered unsatisfactory, and more suitable interviewing facilities are being sought.

13. There is currently no cost to the court for this service, as it is provided within the NHS. There is enthusiasm and commitment to this innovative and pro-active service among all the agencies involved. Referrals have increased as sentencers and other agencies feel better informed about mental health legislation and more confident about their role and powers.

14. New community options for mentally disordered persons for whom a disposal under the Mental Health Act 1983 is not appropriate are being explored. It is hoped that liaison with the Westminster Approved Social Work Team will facilitate assessments and informal admissions to the local psychiatric hospital, especially where a remand for a report under section 35 is inappropriate. Difficulties do, however, arise in arranging and paying for transport for persons not subject to a court order but needing further assessment or treatment, due to the geographical distance between the court and Horton Hospital.

15. In November 1989, one of the South Westminster Justices Probation Liaison Panel training meetings was devoted to a forum on the Mental Health Act 1983 and mentally disordered offenders. The meeting was attended by magistrates, court clerks, approved social workers, local community police, the

probation service, and interested psychiatrists. This was found to be a valuable opportunity for the discussion of experiences and difficulties confronting the various agencies involved.

16. Further information about this scheme can be obtained from:

Bev Thatcher
Senior Probation Officer
Inner London Probation Service
75 Marsham Street
London
SW1P 3DX