[2018] IEHC 531

THE HIGH COURT

2017 No. 635 JR

Between:

M

Applicant

– and –
THE PAROLE BOARD
– and –
THE MINISTER FOR JUSTICE AND EQUALITY

Respondents

JUDGMENT of Mr Justice Max Barrett delivered on 1st October, 2018.

1. In 2007, Mr M pleaded guilty to murder and was sentenced to life imprisonment. While serving his life sentence Mr M was transferred to the Central Mental Hospital (CMH) pursuant to s.15 of the Criminal Law (Insanity) Act 2006 ("*Transfer of prisoner to designated centre*"). This was because, unfortunately, he was (and, it seems, is) suffering from a chronic mental disorder. (Section 15 and various other of the statutory provisions referred to in this judgment are quite lengthy; to make the judgment more coherent, the terms of those provisions are generally set out in the Appendix hereto). Mr M was transferred back to the prison system more than once following treatment at the CMH. However, his treatment regressed as, while in prison, he did not take his prescribed medication and even managed to gain access to illegal drugs. He was last transferred to the CMH in January 2012, a relatively long time ago, and has been detained there since that time pursuant to his life sentence and the related s.15 order. According to the papers before the court, Mr M last had his detention reviewed by the Mental Health (Criminal Law) Review Board on 22nd June, 2017.

2. The Review Board has the power to direct the transfer of a prisoner detained at the CMH back to the prison system but thus far has not considered Mr M's case to be one in which it is appropriate so to direct. In its review of June 2017 (which appears from the pleadings to be the most recent review), the Board recites the troubling details of Mr M's mental ill-health before concluding that he "*continues to suffer with a serious and chronic mental disorder which requires in-patient treatment and care in the [CMH]…which would not be available to him in prison. He would be very likely to be non-compliant with necessary medication and would be likely to avail of illicit drugs in prison, resulting in a rapid relapse in his mental health. Accordingly, the Board refuses to return him to prison*".

3. Given the length of time that he has now spent in custody, in a letter of 3rd February 2017, Mr M placed a personal query with the Parole Board as to whether and when he would be considered for parole. (The Parole Board is a non-statutory departmental body which advises the Minister in the context of parole applications and eligibility and makes recommendations which the Minister may or may not accept). By letter of 7th February, 2017, the Parole Board responded to indicate that "*as you are currently a patient in the Central Mental Hospital the Board is unable to review your case at this time*". By July 2017, Mr M had obtained legal representation and his solicitors raised Mr M's case with the Minister for Justice. An official at the Department responded to that query in the following terms, in a letter of 21st July, 2017:

> *"Dear Sir/Madam*
>
> *I am directed by the Minister for Justice and Equality, Charles Flanagan TD, to refer to your correspondence dated 5th July, 2017, regarding your client…and his request to be considered for a Parole Board review of his sentence.*
>
> *The Parole Board is a non-statutory advisory body. It advises the Minister for Justice & Equality in relation to the administration of long term prison sentences in cases which the Minister refers to it for review. The Board's main role is to make recommendations to the Minister on the management of such sentences. This may involve a recommendation for release or steps the prisoner should follow so that they are given the opportunity to address their offending behaviour and rehabilitate themselves. The Board advise the Minister of progress made to date, the degree to which there has been engagement with the various therapeutic services such as the Probation & Psychology Services and how best to proceed with the future management and administration of that sentence.*
>
> *The Mental Health (Criminal Law) Review Board's main function is to review the detention of those found not guilty by reason of insanity or unfit to be tried, who have been detained in a designated centre by order of a court. The Review Board also has responsibility for people [such as Mr M] who have been convicted of offences and who are subsequently deemed to be suffering from a mental illness while serving their sentences. The Review Board must have regard to the welfare and safety of the person whose detention it reviews and to the public interest. The Board is obliged to review each detention at least once every 6 months.*
>
> *The powers of the Mental Health Review Board are set out in the Criminal Law (Insanity) Act 2006 and they include the review of the detention of such persons in designated centres. Temporary release and transfers are also matters for the Review Board in conjunction with the Minister for Justice & Equality.*
>
> *Section 18 of the same Act ["Transfer back to prison"] provides:*
>
> > *'Where the Clinical Director of a designated centre forms the opinion in relation to a prisoner detained in the centre pursuant to Section 15 that he or she is no longer in need of in-patient care or treatment, he or she shall, after consultation with the Minister, direct in writing –*
> >
> > *(a) the transfer of the prisoner back to the prison from which he or she was transferred to the centre, or*
> >
> > *(b) the transfer of the prisoner to such other prison as the Minister considers appropriate in all the circumstances of the case.'*
>
> *If any prisoner is transferred back to a prison, that person can be referred by the Irish Prison Service after consultation with the in-reach psychiatric service, to the Minister for a review of their case by the Parole Board, as their detention will no longer [be] subject to review by the Mental Health (Criminal Law) Review Board. The Minister will then consider whether that case is to be referred to the Parole Board for review.*

The Parole Board has no role in reviewing the detention of patients transferred from a prison to a designated centre such as the Central Mental Hospital (CMH). Those powers are set out in statute and do not provide a role for the Parole Board. Where a prisoner is in the long term care of the CMH, the Parole Board is plainly not in a position to advise the Minister, as it would in the case of a person in the custody of the prison system. It could not, for example, advise the Minister of the person's progress to date, the degree to which there has been engagement with the various therapeutic services such as the Probation & Psychology Service, how that person has addressed their offending behaviour and how best to proceed with the future management and administration of that sentence.

Put simply, the Parole Board could not advise the Minister on the sentence management of a person under treatment in the CMH. In such circumstances, it would not be in the public interest for the Minister to make a decision until such time as the prisoner has stabilised, returns to prison from the CMH and engages with the relevant services in prison to address his offending behaviour. The Minister cannot refer your client's case to the Parole Board for review at this time. Should [your client]…no longer require treatment in the CMH, be returned to prison and engage with the therapeutic services available to him in prison, the matter will then be reconsidered.

Yours sincerely…".

4. The essence of Mr M's case as it now stands is as follows (the case as relied upon in court was more constrained than had initially been pleaded): (i) the statutory powers to remit punishment under ss.23 ("*Remission of punishment, forfeitures and disqualifications*") and 23A of the Criminal Justice Act 1951 and the power of temporary release under s.2 of the Criminal Justice Act 1960 ("*Temporary release of persons from prisons and from Saint Patrick's Institution*", *i.e*. the CMH), which can be used in respect of life prisoners following a period of time in custody are exercisable by the Minister; (ii) there is nothing in the just-mentioned legislation which precludes, inhibits or restricts the respondents in the exercise of their respective functions and duties from considering the prospects for the release of Mr M merely because he is unwell and is residing at the CMH, pursuant to an order made under s.15 of the Criminal Law (Insanity) Act 2006, as amended; (iii) Mr M, given the time that he has now spent in custody, would ordinarily be considered for parole at this point in his sentence; (iv) there is an unlawful fettering of discretion inherent in the refusal to consider applications for parole, remission or temporary release from Mr M, where such refusal is due to the fact that Mr M is currently detained for treatment at the CMH pursuant to an order made under s,15 of the Act of 2006; (v) Mr M's most recent Review Board review at the time the pleadings closed (i.e. that of June 2017) recommends his continued treatment in the CMH, with the only alternative being a recommendation for transfer back to prison (which the Review Board considers will only cause Mr M's condition to regress); and (vi) the end result of the foregoing is that Mr M faces the prospect of detention for the remainder of his natural existence at the CMH as a result of his mental illness; however, were Mr M to benefit from the exercise by the Minister of his parole powers, it would remain the case that the provisions of the Mental Health Act 2001, could be invoked in respect of Mr M were that course of action deemed medically appropriate.

5. Even if one ignores for a moment the constraints that exist as regards judicial review of the executive branch's power of clemency (and those constraints cannot be ignored; the court turns to them later below), it seems to the court that the within application is, with respect, fundamentally flawed. The Minister's power to grant parole is governed by s.2 of the Act of 1960 (as amended by s.1 of the Criminal Justice (Temporary Release of Prisoners Act 2003) and s.8 of the Prisons Act 2015). The Minister does not have a separate free-wheeling power to release prisoners on parole. Under s.2(1) of the Act of 1960, as amended, "*The Minister may direct that such person as is specified in the direction (being a person who is serving a sentence of imprisonment) shall be released from prison for such temporary period, and subject to such conditions, as may be specified in the direction…*" [Emphasis added]. Section 1 of the Act of 1960 (as amended by s8 of the Act of 2015) does not define 'prison' (which must be presumed to bear its ordinary meaning as a word); however, it does define the CMH as meaning "*the Central Criminal Lunatic Asylum established in pursuance of the Central Criminal Lunatic Asylum (Ireland) Act 1845*"; the fact that the CMH is defined in contradistinction to 'prison' means that a prison cannot be the CMH and *vice versa*. (It is true that under s.2(11)(b) of the Act of 1960, the term prison includes a place of detention under s.2 of the Prisons Act 1970; however, there is only one such place of detention at this time and that is not the CMH). Buttressing the conclusion that one must be in prison to avail of parole are the references in s.2(2)(h)(i), (4) and (5) of the Act of 1960 to the involvement of a prison governor in the parole process.

6. Mr M, though he retains his status as a prisoner, is not in prison. He is in the CMH pursuant to a separate statutory regime and so cannot be released from prison on parole, unless at some future time, pursuant to s.13 ("Review of detention") or s.18 of the Act of 2006, he is returned to a prison, in which case he could be considered for parole in the ordinary way. Any alternative interpretation of s.2(1) of the Act of 1960 to that just offered in the foregoing text would do the severest of violence to the express and clear wording of s2(1) of the Act of 1960; there is nothing to suggest that such an alternative interpretation is mandated by, or would be correct as a matter of, law.

7. Three further points might perhaps usefully be made at this juncture:

– first, the court does not perceive any lacuna to present in the operation of the parole and mental health regimes. In truth, the two regimes appear to operate fairly seamlessly: Mr M is suffering from a serious mental illness; as a result he has been transferred to the CMH where he can properly be cared for; whether he is returned to prison from the CMH will be determined at statutorily prescribed or lesser intervals by the Review Board, a competent party; once and if Mr M is well enough to be returned to the prison system he can then seek to be released on parole by the Minister (with input from the Parole Board).

– second, neither does the court accept that this is a case where, in breach of *Vinter v. United Kingdom* [2013] ECHR 786, Mr M is subject to a full life term without possibility of remission or parole: if Mr M's mental health improves to the point where he can safely be returned to prison, there is no reason to believe that he will not be returned to prison and no reason to believe that the Minister would at that time discharge his power of clemency other than in accordance with applicable law.

– third, there is and has been no fettering by the Minister of his statutory discretion to direct release on parole. He is, it is clear from the letter of 21st July, 2017, perfectly amenable to properly exercising his statutory discretion under s.2 of the Act of 1960 (whatever way that discretion may ultimately be exercised), provided that a fundamental pre-requisite to the exercise of same, i.e. that Mr M is in prison and so can be released from prison, is satisfied. This is not a case akin, as was contended, to *Dunne v. Donohoe* [2002] 2 IR 533, where there was a partial abdication of a statutory discretion from the so-called *persona designata* to another. Nor is it an example of a categorisation of prisoners, such as occurred in *Corish v. Minister for Justice* [2000] 2 IR 548. In truth, it is but a case where the Minister is seeking properly (and successfully) to conform to what is required of him by statute. Under s.2 of the Act of 1960, the Minister is empowered to direct the release of persons from prison; Mr M is not in prison.

8. Mr M comes to court at this time seeking, *inter alia*: (i) an order of *mandamus* directing the Parole Board to consider recommending Mr M for parole, remission or temporary release; (ii) an order of *mandamus* directing the Minister to consider Mr M for temporary release pursuant to ss. 2 of the Criminal Justice Act 1960 and/or to remit Mr M's punishment pursuant to ss. 23 and 23A of the Criminal Justice Act 1951; (iii) an order of *certiorari* in respect of the decision of the Parole Board communicated to Mr M by letter of 3rd February, 2017, refusing to consider Mr M for parole while he was detained at the CMH; (iv) a declaration that the Minister should consider Mr M's application for temporary release or remission of punishment in the same manner as a prisoner detained in prison.

9. The court notes that the power of clemency has been allocated to the executive branch of government (see in this regard Art.13.6 of the Constitution, s. 2 of the Act of 1960, and, *inter alia, Lynch and Whelan v. Minister for Justice* [2012] 1 IR 1 and *McKevitt v. Minister for Justice* [2015] IECA 122, the dicta in which it seems to the court apply with equal rigour to s. 2 of the Act of 1960). It follows from the foregoing that (i) the granting of parole is in the nature of a privilege or concession vested in (and emanating from) the executive, (ii) the scope of any judicial review is, in consequence, necessarily constrained so that the judicial branch of government does not encroach unduly upon a power vested by the Constitution in the executive branch of government, and (iii) there is no right to parole that rests with a prisoner. The effect of (ii) is that a court (consistent with the judgment of Finlay CJ in *Murray v. Ireland* [1991] ILRM 465, 473) will only intervene where such clemency powers as have been bestowed upon the Minister, *inter alia*, pursuant to s. 2 of the Act of 1960, are exercised in a capricious, arbitrary or unjust way. (See also in this regard *Kinahan v. Minister for Justice* [2001] 4 IR 454). Also of particular note in the context of the facts presenting in the within application is the decision of the Supreme Court in *Doherty v. Governor of Portlaoise Prison* [2002] 2 IR 252 (see esp. 263-4), the effect of which is that the court's review powers are likewise constrained when it comes to the anterior issue of whether or not the Minister might be obliged to consider granting parole. There is no suggestion/evidence to the effect that the Minister in this case has acted capriciously, arbitrarily or in an unjust way. So the within judicial review falls to fail on this basis alone. However, as can be seen from the foregoing pages, one does not even get to this point because – to borrow from the wording of counsel for the Minister in his submissions – the powers of the Minister under s.2 of the Act of 1960 are not "*at large*", i.e. parole just cannot be granted in any event (for the reasons stated previously above).

10. For the reasons aforesaid, all the reliefs sought are, for the reasons stated, respectfully refused.

11. In closing, the court would make a trio of obiter observations:

> – first, as mentioned previously above, according to the papers before the court, Mr M last had his detention reviewed by the Mental Health (Criminal Law) Review Board on 22nd June, 2017. The court is mindful that real life can often overtake the version of events as set out in pleadings and has little doubt that there has been further requisite review of Mr M's detention since 22nd June, 2017. In the unlikely event that this is not so, the court would respectfully draw the attention of the Review Board to s.13(1) of the Act of 2006. Again, however, the court emphasises that real life events can quickly overtake facts as pleaded.
>
> – second, it is not un-disturbing that one of the reasons offered by the Review Board in its review of June 2017 as to why Mr M has not been returned to the main prison is that he "*would be likely to avail of illicit drugs in prison*". Were that the sole reason offered by the Review Board for the non-return of Mr M to prison (the Review Board also offered as a reason that Mr M "*continues to suffer with a serious and chronic mental disorder*") that would mean that the sole reason for Mr M's non-return was not due to his illness but due to an alleged failure by the State to operate a prison system where illegal drugs are not available. Such a scenario, were it ever to present, would almost certainly lead to a most interesting judicial review application.
>
> – third, a potential consequence of the present regime is that it could conceivably deter a needful prisoner from seeking treatment for mental ill-health issues, for fear that such treatment could lead to her or his being sent to the CMH and thereafter encountering difficulties as regards returning to a position in which parole is available.

APPENDIX

Criminal Justice Act 1951

"23. (1) […] the Government may commute or remit, in whole or in part, any punishment imposed by a Court exercising criminal jurisdiction, subject to such conditions as they may think proper.

23A. (1) The Government, may by order, delegate to the Minister for Justice any power of the Government under section 23 of this Act.

(2) The Government may, by order, revoke an order under this section."

Criminal Justice Act 1960

"2. (1) The Minister may direct that such person as is specified in the direction (being a person who is serving a sentence of imprisonment) shall be released from prison for such temporary period, and subject to such conditions, as may be specified in the direction (including, if appropriate, any condition under section 108 of the Criminal Justice Act 2006) or rules under this section applying to that person—

(a) for the purpose of—

(i) assessing the person's ability to reintegrate into society upon such release,

(ii preparing him for release upon the expiration of his sentence of imprisonment, or upon his being discharged from prison before such expiration, or

(iii) assisting the Garda Síochána in the prevention, detection or investigation of offences, or the apprehension of a person guilty of an offence or suspected of having committed an offence,

(b) where there exist circumstances that, in the opinion of the Minister, justify his temporary release on—

(i) grounds of health, or

(ii) other humanitarian grounds,

(c) where, in the opinion of the Minister, it is necessary or expedient in order to—

(i) ensure the good government of the prison concerned, or

(ii) maintain good order in, and humane and just management of, the prison concerned, or

(d) where the Minister is of the opinion that the person has been rehabilitated and would, upon being released, be capable of reintegrating into society.

(2) The Minister shall, before giving a direction under this section, have regard to—

(a) the nature and gravity of the offence to which the sentence of imprisonment being served by the person relates,

(b) the sentence of imprisonment concerned and any recommendations of the court that imposed that sentence in relation thereto,

(c) the period of the sentence of imprisonment served by the person,

(d) the potential threat to the safety and security of members of the public (including the victim of the offence to which the sentence of imprisonment being served by the person relates) should the person be released from prison,

(e) any offence of which the person was convicted before being convicted of the offence to which the sentence of imprisonment being served by him relates,

(f) the risk of the person failing to return to prison upon the expiration of any period of temporary release,

(g) the conduct of the person while in custody, while previously the subject of a direction under this section, or during a period of temporary release to which rules under this section, made before the coming into operation of the Criminal Justice (Temporary Release of Prisoners) Act 2003, applied,

(h) any report of, or recommendation made by—

(i) the governor of, or person for the time being performing the functions of governor in relation to, the prison concerned,

(ii the Garda Síochána,

(iii) a probation and welfare officer, or

(iv) any other person whom the Minister considers would be of assistance in enabling him to make a decision as to whether to give a direction under subsection (1) that relates to the person concerned,

(i) the risk of the person committing an offence during any period of temporary release,

(j) the risk of the person failing to comply with any conditions attaching to his temporary release, and

(k) the likelihood that any period of temporary release might accelerate the person's reintegration into society or improve his prospects of obtaining employment.

(3) The Minister shall not give a direction under this section in respect of a person—

(a) if he is of the opinion that, for reasons connected with any one or more of the matters referred to in subsection (2), it would not be appropriate to so do,

(b) where the release of that person from prison is prohibited by or under any enactment, whether passed before or after the passing of this Act, or

(c) where the person has been charged with, or convicted of, an offence and is in custody pursuant to an order of a court remanding him to appear at a future sitting of a court.

(4) A direction under this section shall be given to the governor of, or person for the time being performing the functions of governor in relation to, the prison concerned.

(5) The governor of, or person for the time being performing the functions of governor in relation to, the prison concerned to whom a direction under this section is given shall comply with that direction, and shall make and keep a record in writing of that direction.

(6) Without prejudice to subsection (1), the release of a person pursuant to a direction under this section shall not confer an entitlement on that person to further such release.

(7) (a) The Minister may make rules for the purpose of enabling this section to have full effect and such rules may contain such incidental, supplementary and consequential provisions as the Minister considers to be necessary or

expedient.

(b) Rules under this section may specify conditions to which all persons released pursuant to a direction under this section shall be subject or conditions to which all persons belonging to such classes of persons as are specified in the rules shall be subject.

(8) Every rule under this section shall be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution annulling the rule is passed by either such House within the next 21 days on which that House has sat after the rule is laid before it, the rule shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

(9) This section shall not affect the operation of the Criminal Justice (Release of Prisoners) Act 1998.

(10) In this section, 'probation and welfare officer' means a person appointed by the Minister to be—

(a) a welfare officer,

(b) a probation officer, or

(c) a probation and welfare officer.

(11) In this section—

(a) references to a person who is serving a sentence of imprisonment shall be construed as including references to a person being detained in a place provided under section 2 of the Prisons Act 1970 and 'sentence of imprisonment' shall be construed accordingly, and

(b) references to a prison shall be construed as including references to a place provided under the said section 2."

Criminal Law Insanity Act 2006

"13. (1) The Review Board shall ensure that the detention of a patient is reviewed at intervals of such length not being more than 6 months as it considers appropriate and the clinical director of the designated centre where the patient is detained shall comply with any request by the Review Board in connection with the review.

(2) (a) Where the clinical director of a designated centre forms the opinion in relation to a patient detained pursuant to section 4 that the patient is no longer unfit to be tried for an offence he or she shall forthwith notify the court that committed the patient to the designated centre of this opinion and the court shall order that the patient be brought before it, as soon as may be, to be dealt with as the court thinks proper.

(b) Where the clinical director of a designated centre forms the opinion in relation to a patient detained pursuant to section 202 of the Defence Act 1954, that the patient is no longer unfit to take his or her trial he or she shall forthwith notify the Director of Military Prosecutions (within the meaning of that Act) of this opinion and the Director of Military Prosecutions may direct—

(i) that the matter be referred to the summary court-martial or that the Court-Martial Administrator convene a general court-martial or limited court-martial, as specified in the direction,

and

(ii) that the person be brought before such court-martial as soon as may be to be dealt with as the court-martial considers proper.

(3) Where the clinical director of a designated centre forms the opinion in relation to a patient detained pursuant to section 4 or to section 202 of the Defence Act 1954, that the patient, although still unfit to be tried, is no longer in need of in-patient care or treatment at a designated centre he or she shall forthwith notify the Review Board of this opinion.

(4) Where the Review Board receives a notification under subsection (3), it shall order that the patient be brought before it as soon as may be, and shall, having heard evidence relating to the mental condition of the patient given by the consultant psychiatrist responsible for his or her care or treatment, determine the question whether or not the treatment referred to in subsection (3) is still required in the same manner as if that question were being determined pursuant to the relevant provision of this Act or the Defence Act 1954, as may be appropriate, and shall make such order as it thinks proper in relation to the patient, whether for further detention, care or treatment in a designated centre, for his or her conditional discharge under section 13A or for his or her unconditional discharge.

(5) Where the clinical director of a designated centre forms the opinion in relation to a patient detained pursuant to section 5 or section 203 of the Defence Act 1954, that he or she is no longer in need of in-patient care or treatment at a designated centre he or she shall forthwith notify the Review Board of this opinion.

(6) Where the Review Board receives a notification under subsection (5), it shall order that the patient be brought before it, as soon as may be, and shall, having heard evidence relating to the mental condition of the patient given by the consultant psychiatrist responsible for his or her care or treatment, determine the question whether or not the treatment referred to in subsection (5) is still required and shall make such order as it thinks proper in relation

to the patient, whether for further detention, care or treatment in a designated centre, for his or her conditional discharge under section 13A or for his or her unconditional discharge.

(7) A patient detained pursuant to section 4 or to section 202 of the Defence Act 1954, may apply to the Review Board for a review of his or her detention and the Review Board shall, unless satisfied that such a review is not necessary because of any review undertaken in accordance with this section, order that the patient be brought before it, as soon as may be, and—

(a) if, having heard evidence relating to the mental condition of the patient given by the consultant psychiatrist responsible for his or her care or treatment, the Review Board determines that he or she is no longer unfit to be tried by reason of mental disorder or to participate in proceedings referred to in section 4 it shall order that the patient be brought before the court which committed him or her to the designated centre to be dealt with as that court thinks proper or in the case of a patient detained pursuant to section 202 of the Defence Act 1954, it shall notify the Director of Military Prosecutions (within the meaning of that Act) and the Director of Military Prosecutions may direct—

(i) that the matter be referred to the summary court-martial or that the Court-Martial Administrator convene a general court-martial or limited court-martial, as specified in the direction, and

(ii) that the person be brought before such court-martial as soon as may be to be dealt with as the court-martial considers proper.

(b) if the Review Board determines that the patient, although still unfit to be tried is no longer in need of in-patient care or treatment at a designated centre, the Review Board may make such order as it thinks proper in relation to the patient, whether for further detention, care or treatment in a designated centre, for his or her conditional discharge under section 13A or for his or her unconditional discharge.

(8) A patient detained pursuant to section 5 or to section 203 of the Defence Act 1954, may apply to the Review Board for a review of his or her detention and the Review Board shall, unless satisfied that such a review is not necessary because of any review undertaken in accordance with this section, order that the patient be brought before it, as soon as may be, and shall, having heard evidence relating to the mental condition of the patient given by the consultant psychiatrist responsible for his or her care or treatment, determine the question of whether or not the patient is still in need of in-patient treatment in a designated centre and shall make such order as it thinks proper in relation to the patient whether for further detention, care or treatment in a designated centre, for his or her conditional discharge under section 13A or for his or her unconditional discharge.

(9) The Review Board may on its own initiative review the detention of a patient detained pursuant to section 4 or 5 or to section 202 or 203 of the Defence Act 1954, and subsection (7) or (8), as appropriate, shall apply to such review as if the patient had applied for the review under the subsection concerned."

…

"15 (1) Where—

(a) a relevant officer certifies in writing that a prisoner is suffering from a mental disorder for which he or she cannot be afforded appropriate care or treatment within the prison in which the prisoner is detained, and

(b) the prisoner voluntarily consents to be transferred from the prison to a desig-nated centre for the purpose of receiving care or treatment for the mental disorder,

then the Governor of the prison may direct in writing the transfer of the prisoner to any designated centre for that purpose.

(2) Where 2 or more relevant officers certify in writing that a prisoner is suffering from a mental disorder for which he or she cannot be afforded appropriate care or treatment within the prison in which the prisoner is detained, then the Governor of the prison may direct in writing the transfer of the prisoner to any designated centre for the purpose of the prisoner receiving care or treatment for the mental disorder notwithstanding that the prisoner is unwilling or unable to voluntarily consent to the transfer.

(3) The Governor of a prison who gives a direction under subsection (1) or (2) shall cause—

(a) the original of the direction to be sent to the clinical director of the designated centre to which the prisoner the subject of the direction is to be transferred,

(b) a copy of the direction to be given to the prisoner before the prisoner is transferred to the centre,

(c) a copy of the direction to be sent to the Minister, and

(d) where subsection (2) is applicable—

(i) the original of the certification concerned referred to in that subsection to accompany the original referred to in paragraph (a),

(ii) a copy of that certification to accompany the copy referred to in paragraph (b), and

(iii) a copy of that certification to accompany the copy referred to in paragraph (c).

(4) A direction under subsection (1) and (2) shall be sufficient authority to transfer the prisoner the subject of the direction from the prison in which the prisoner is detained to the designated centre specified in the direction.

(5) Where a prisoner who has been transferred to a designated centre pursuant to a direction under subsection (1) refuses to receive care or treatment there for a mental disorder, then—

(a) if 2 or more relevant officers certify in writing that the prisoner is suffering from a mental disorder for which the prisoner should remain in the centre for the purpose of the prisoner receiving care or treatment for the mental disorder, the prisoner shall continue to remain in the centre for that purpose,

(b) in any other case—

(i) the prisoner shall be transferred back to the prison from which he or she was transferred to the centre, or

(ii) the prisoner shall be transferred to such other prison as the Minister considers appropriate in all the circumstances of the case.

(6) Where subsection (5)(a) is applicable to a prisoner transferred to a designated centre, the clinical director of the centre shall cause—

(a) a copy of the certification referred to in that subsection to be given to the prisoner as soon as is practicable after the certification has been made, and

(b) a copy of that certification to be sent to the Minister as soon as practicable after the certification has been made.

(7) Where a prisoner transferred to a designated centre pursuant to a direction under subsection (1) or (2) is required to appear in court, the prisoner may be transferred to and from court as so required.

(8) A prisoner transferred under this section—

(a) from a prison to a designated centre is deemed to be in lawful custody while being so transferred, while at the centre and while being transferred back to prison,

(b) from a designated centre to a court is deemed to be in lawful custody while being so transferred, while in court and while being transferred back to the centre,

(c) while being so transferred may be escorted by any members of the staff of the prison or centre, and

(d) while being so escorted by any such members is deemed to be in their lawful custody.

(9) In this section, 'relevant officer' means—

(a) an approved medical officer, or

(b) a person registered in the General Register of Medical Practitioners established under the Medical Practitioners Acts 1978 to 2002."

…

18 Where the clinical director of a designated centre forms the opinion in relation to a prisoner detained in the centre pursuant to section 15 that he or she is no longer in need of in-patient care or treatment he or she shall, after consultation with the Minister, direct in writing—

(a) the transfer of the prisoner back to the prison from which he or she was transferred to the centre, or

(b) the transfer of the prisoner to such other prison as the Minister considers appropriate in all the circumstances of the case."