



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART III

#### PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS OR UNDER SENTENCE

##### *Restriction orders*

#### **41 Power of higher courts to restrict discharge from hospital.**

- (1) Where a hospital order is made in respect of an offender by the Crown Court, and it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that it is necessary for the protection of the public from serious harm so to do, the court may, subject to the provisions of this section, further order that the offender shall be subject to the special restrictions set out in this section <sup>F1</sup>. . . ; and an order under this section shall be known as “a restriction order”.
- (2) A restriction order shall not be made in the case of any person unless at least one of the registered medical practitioners whose evidence is taken into account by the court under section 37(2)(a) above has given evidence orally before the court.
- (3) The special restrictions applicable to a patient in respect of whom a restriction order is in force are as follows—
  - (a) none of the provisions of Part II of this Act relating to the duration, renewal and expiration of authority for the detention of patients shall apply, and the patient shall continue to be liable to be detained by virtue of the relevant hospital order until he is duly discharged under the said Part II or absolutely discharged under section 42, 73, 74 or 75 below;
  - <sup>F2</sup>(aa) none of the provisions of Part II of this Act relating to [<sup>F3</sup>community treatment orders and community patients] shall apply;
  - (b) no application shall be made to [<sup>F4</sup>the appropriate tribunal] in respect of a patient under section 66 or 69(1) below;
  - (c) the following powers shall be exercisable only with the consent of the Secretary of State, namely—

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- (i) power to grant leave of absence to the patient under section 17 above;
  - (ii) power to transfer the patient in pursuance of regulations under section 19 above [<sup>F5</sup>or in pursuance of subsection 3 of that section]; and
  - (iii) power to order the discharge of the patient under section 23 above; and if leave of absence is granted under the said section 17 power to recall the patient under that section shall vest in the Secretary of State as well as the [<sup>F6</sup>responsible clinician] ; and
  - (d) the power of the Secretary of State to recall the patient under the said section 17 and power to take the patient into custody and return him under section 18 above may be exercised at any time;
- and in relation to any such patient section 40(4) above shall have effect as if it referred to Part II of Schedule 1 to this Act instead of Part I of that Schedule.
- (4) A hospital order shall not cease to have effect under section 40(5) above if a restriction order in respect of the patient is in force at the material time.
  - (5) Where a restriction order in respect of a patient ceases to have effect while the relevant hospital order continues in force, the provisions of section 40 above and Part I of Schedule 1 to this Act shall apply to the patient as if he had been admitted to the hospital in pursuance of a hospital order (without a restriction order) made on the date on which the restriction order ceased to have effect.
  - (6) While a person is subject to a restriction order the [<sup>F6</sup>responsible clinician] shall at such intervals (not exceeding one year) as the Secretary of State may direct examine and report to the Secretary of State on that person; and every report shall contain such particulars as the Secretary of State may require.

#### Textual Amendments

- F1** Words in s. 41(1) omitted (1.10.2007) and repealed (3.11.2008) by virtue of [Mental Health Act 2007 \(c. 12\)](#), **ss. 40(1)**, 55, 56, [Sch. 11 Pt. 8](#) (with [Sch. 10](#)); [S.I. 2007/2798](#), **art. 2(d)**; [S.I. 2008/1900](#), **art. 2(p)** (with [art. 3](#), [Sch.](#))
- F2** [S. 41\(3\)\(aa\)](#) inserted (1.4.1996) by [1995 c. 52](#), **ss. 1(2)**, 7(2), **Sch. 1**, para. 5
- F3** Words in [s. 41\(3\)\(aa\)](#) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 32**, 56, **Sch. 3 para. 17** (with [Sch. 10](#)); [S.I. 2008/1210](#), **art. 2(b)** (with [art. 4](#))
- F4** Words in [s. 41\(3\)\(b\)](#) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), **art. 6**, **Sch. 3 para. 41**
- F5** Words in [s. 41\(3\)\(c\)\(ii\)](#) inserted (1.10.1997) by [1997 c. 43](#), **s. 49(2)**; [S.I. 1997/2200](#), **art. 2**
- F6** Words in [s. 41\(3\)\(c\)\(6\)](#) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 10(6)**, 56 (with [Sch. 10](#)); [S.I. 2008/1900](#), **art. 2(b)** (with [art. 3](#), [Sch.](#))

#### Modifications etc. (not altering text)

- C1** [S. 41\(1\)](#) modified (28.3.2009 for certain purposes, otherwise 31.10.2008) by [Armed Forces Act 2006 \(c. 52\)](#), **ss. 169**, 383, **Sch. 4 para. 2**; [S.I. 2009/812](#), **art. 3(a)** (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), **art. 4**

## 42 Powers of Secretary of State in respect of patients subject to restriction orders.

- (1) If the Secretary of State is satisfied that in the case of any patient a restriction order is no longer required for the protection of the public from serious harm, he may direct that the patient shall cease to be subject to the special restrictions set out in section 41(3)

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- above; and where the Secretary of State so directs, the restriction order shall cease to have effect, and section 41(5) above shall apply accordingly.
- (2) At any time while a restriction order is in force in respect of a patient, the Secretary of State may, if he thinks fit, by warrant discharge the patient from hospital, either absolutely or subject to conditions; and where a person is absolutely discharged under this subsection, he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.
- (3) The Secretary of State may at any time during the continuance in force of a restriction order in respect of a patient who has been conditionally discharged under subsection (2) above by warrant recall the patient to such hospital as may be specified in the warrant.
- (4) Where a patient is recalled as mentioned in subsection (3) above—
- (a) if the hospital specified in the warrant is not the hospital from which the patient was conditionally discharged, the hospital order and the restriction order shall have effect as if the hospital specified in the warrant were substituted for the hospital specified in the hospital order;
  - (b) in any case, the patient shall be treated for the purposes of section 18 above as if he had absented himself without leave from the hospital specified in the warrant<sup>F7</sup> . . . .
- (5) If a restriction order in respect of a patient ceases to have effect after the patient has been conditionally discharged under this section, the patient shall, unless previously recalled under subsection (3) above, be deemed to be absolutely discharged on the date when the order ceases to have effect, and shall cease to be liable to be detained by virtue of the relevant hospital order accordingly.
- (6) The Secretary of State may, if satisfied that the attendance at any place in Great Britain of a patient who is subject to a restriction order is desirable in the interests of justice or for the purposes of any public inquiry, direct him to be taken to that place; and where a patient is directed under this subsection to be taken to any place he shall, unless the Secretary of State otherwise directs, be kept in custody while being so taken, while at that place and while being taken back to the hospital in which he is liable to be detained.

#### Textual Amendments

- F7** Words in s. 42(4)(b) omitted (1.10.2007) and repealed (3.11.2008) by virtue of [Mental Health Act 2007 \(c. 12\)](#), [ss. 40\(2\)](#), 55, 56, [Sch. 11 Pt. 8](#) (with [Sch. 10](#)); [S.I. 2007/2798](#), [art. 2\(d\)](#); [S.I. 2008/1900](#), [art. 2\(p\)](#) (with [art. 3](#), [Sch.](#))

### 43 Power of magistrates' courts to commit for restriction order.

- (1) If in the case of a person of or over the age of 14 years who is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment—
- (a) the conditions which under section 37(1) above are required to be satisfied for the making of a hospital order are satisfied in respect of the offender; but
  - (b) it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences

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- if set at large, that if a hospital order is made a restriction order should also be made,
- the court may, instead of making a hospital order or dealing with him in any other manner, commit him in custody to the Crown Court to be dealt with in respect of the offence.
- (2) Where an offender is committed to the Crown Court under this section, the Crown Court shall inquire into the circumstances of the case and may—
- (a) if that court would have power so to do under the foregoing provisions of this Part of this Act upon the conviction of the offender before that court of such an offence as is described in section 37(1) above, make a hospital order in his case, with or without a restriction order;
  - (b) if the court does not make such an order, deal with the offender in any other manner in which the magistrates' court might have dealt with him.
- (3) The Crown Court shall have the same power to make orders under sections 35, 36 and 38 above in the case of a person committed to the court under this section as the Crown Court has under those sections in the case of an accused person within the meaning of section 35 or 36 above or of a person convicted before that court as mentioned in section 38 above.
- [<sup>F8</sup>(4) The powers of a magistrates' court under [<sup>F9</sup>section 14 [<sup>F10</sup>, 16 or 16A] of the Sentencing Code] (which enable such a court to commit an offender to the Crown Court where the court is of the opinion, or it appears to the court, as mentioned in the section in question) shall also be exercisable by a magistrates' court where it is of that opinion (or it so appears to it) unless a hospital order is made in the offender's case with a restriction order.]
- (5) The power of the Crown Court to make a hospital order, with or without a restriction order, in the case of a person convicted before that court of an offence may, in the same circumstances and subject to the same conditions, be exercised by such a court in the case of a person committed to the court under section 5 of the <sup>M1</sup>Vagrancy Act 1824 (which provides for the committal to the Crown Court of persons who are incorrigible rogues within the meaning of that section).

#### Textual Amendments

- F8** S. 43(4) substituted (18.6.2012 for specified purposes, 5.11.2012 for specified purposes; 28.5.2013 for specified purposes) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 3 para. 55\(2\)](#); [S.I. 2012/1320](#), art. 4(1)(c)(2)(3) (with art. 5) (see [S.I. 2012/2574](#), art. 4(2) and [S.I. 2013/1103](#), art. 4); [S.I. 2012/2574](#), art. 2(2)(3), [Sch.](#) (with arts. 3, 4) (as amended (4.11.2012) by [S.I. 2012/2761](#), art. 2) (with [S.I. 2013/1103](#), art. 4); [S.I. 2013/1103](#), art. 2(1)(c)(2)(3) (with arts. 3, 4)
- F9** Words in s. 43(4) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 74](#) (with [Sch. 24 para. 447](#), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F10** Words in s. 43(4) substituted (30.4.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\)](#), s. 50(1)(i), [Sch. 13 para. 15](#)

#### Marginal Citations

- M1** 1824 c. 83.

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#### **44 Committal to hospital under s. 43.**

- (1) Where an offender is committed under section 43(1) above and the magistrates' court by which he is committed is satisfied on written or oral evidence that arrangements have been made for the admission of the offender to a hospital in the event of an order being made under this section, the court may, instead of committing him in custody, by order direct him to be admitted to that hospital, specifying it, and to be detained there until the case is disposed of by the Crown Court, and may give such directions as it thinks fit for this production from the hospital to attend the Crown Court by which his case is to be dealt with.
- (2) The evidence required by subsection (1) above shall be given by the [<sup>F11</sup>approved clinician who would have overall responsibility for the offender's case] or by some other person representing the managers of the hospital in question.
- (3) The power to give directions under section 37(4) above, section 37(5) above and section 40(1) above shall apply in relation to an order under this section as they apply in relation to a hospital order, but as if references to the period of 28 days mentioned in section 40(1) above were omitted; and subject as aforesaid an order under this section shall, until the offender's case is disposed of by the Crown Court, have the same effect as a hospital order together with a restriction order <sup>F12</sup> . . . .

##### **Textual Amendments**

- F11** Words in s. 44(2) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 10\(7\)](#), 56 (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))
- F12** Words in s. 44(3) omitted (1.10.2007) and repealed (3.11.2008) by virtue of [Mental Health Act 2007 \(c. 12\)](#), [ss. 40\(3\)\(a\)\(7\)](#), 55, 56, [Sch. 11 Pt. 8](#) (with [Sch. 10](#)); [S.I. 2007/2798](#), [art. 2\(d\)](#); [S.I. 2008/1900](#), [art. 2\(p\)](#) (with [art. 3](#), [Sch.](#))

#### **45 Appeals from magistrates' courts.**

- (1) Where on the trial of an information charging a person with an offence a magistrates' court makes a hospital order or guardianship order in respect of him without convicting him, he shall have the same right of appeal against the order as if it had been made on his conviction; and on any such appeal the Crown Court shall have the same powers as if the appeal had been against both conviction and sentence.
- (2) An appeal by a child or young person with respect to whom any such order has been made, whether the appeal is against the order or against the finding upon which the order was made, may be brought by him or by his parent or guardian on his behalf.

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