



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART III

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

##### *Transfer to hospital of prisoners, etc.*

#### **47 Removal to hospital of persons serving sentences of imprisonment, etc.**

- (1) If in the case of a person serving a sentence of imprisonment the Secretary of State is satisfied, by reports from at least two registered medical practitioners—
- that the said person is suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment; and
  - that the mental disorder from which that person is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and, in the case of psychopathic disorder or mental impairment, that such treatment is likely to alleviate or prevent a deterioration of his condition;

the Secretary of State may, if he is of the opinion having regard to the public interest and all the circumstances that it is expedient so to do, by warrant direct that that person be removed to and detained in such hospital<sup>F1</sup>. . . as may be specified in the direction; and a direction under this section shall be known as “a transfer direction”.

- (2) A transfer direction shall cease to have effect at the expiration of the period of 14 days beginning with the date on which it is given unless within that period the person with respect to whom it was given has been received into the hospital specified in the direction.
- (3) A transfer direction with respect to any person shall have the same effect as a hospital order made in his case.
- (4) A transfer direction shall specify the form or forms of mental disorder referred to in paragraph (a) of subsection (1) above from which, upon the reports taken into account under that subsection, the patient is found by the Secretary of State to be suffering;

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and no such direction shall be given unless the patient is described in each of those reports as suffering from the same form of disorder, whether or not he is also described in either of them as suffering from another form.

- (5) References in this Part of this Act to a person serving a sentence of imprisonment include references—
- (a) to a person detained in pursuance of any sentence or order for detention made by a court in criminal proceedings (other than an order under any enactment to which section 46 above applies);
  - (b) to a person committed to custody under section 115(3) of the <sup>M1</sup>Magistrates' Courts Act 1980 (which relates to persons who fail to comply with an order to enter into recognisances to keep the peace or be of good behaviour); and
  - (c) to a person committed by a court to a prison or other institution to which the <sup>M2</sup>Prison Act 1952 applies in default of payment of any sum adjudged to be paid on his conviction.

#### Textual Amendments

- F1** Words in s. 47(1) repealed (1.10.1997) by 1997 c. 43, ss. 49(3), 56(2), **Sch. 6**; S.I. 1997/ 2200, art. 2 (with saving in art. 5(6))

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

- C1** S. 47 excluded (E.W.) (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), s. 5(1), **Sch. 1 para. 2(4)** (with saving in s. 8); S.I. 1991/2488, **art. 2**
- C2** S. 47 extended (1.10.1997) by 1997 c. 43, **s. 47(1)(c)**; S.I. 1997/2200, **art. 2**

#### Marginal Citations

- M1** 1980 c. 43.  
**M2** 1952 c. 52.

## 48 Removal to hospital of other prisoners.

- (1) If in the case of a person to whom this section applies the Secretary of State is satisfied by the same reports as are required for the purposes of section 47 above that that person is suffering from mental illness or severe mental impairment of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and that he is in urgent need of such treatment, the Secretary of State shall have the same power of giving a transfer direction in respect of him under that section as if he were serving a sentence of imprisonment.
- (2) This section applies to the following persons, that is to say—
- (a) persons detained in a prison or remand centre, not being persons serving a sentence of imprisonment or persons falling within the following paragraphs of this subsection;
  - (b) persons remanded in custody by a magistrates' court;
  - (c) civil prisoners, that is to say, persons committed by a court to prison for a limited term (including persons committed to prison in pursuance of a writ of attachment), who are not persons falling to be dealt with under section 47 above;

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- (d) persons detained under the <sup>M3</sup>Immigration Act 1971 [<sup>F2</sup>or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)].
- (3) Subsections (2) to (4) of section 47 above shall apply for the purposes of this section and of any transfer direction given by virtue of this section as they apply for the purposes of that section and of any transfer direction under that section.

#### Textual Amendments

**F2** Words in s. 48(2)(d) added (10.2.2003) by 2002 c. 41, ss. 62(10)(a), 162 (with s. 159); S.I. 2003/1, art. 2, Sch.

#### Marginal Citations

**M3** 1971 c. 77.

### 49 Restriction on discharge of prisoners removed to hospital.

- (1) Where a transfer direction is given in respect of any person, the Secretary of State, if he thinks fit, may by warrant further direct that that person shall be subject to the special restrictions set out in section 41 above; and where the Secretary of State gives a transfer direction in respect of any such person as is described in paragraph (a) or (b) of section 48(2) above, he shall also give a direction under this section applying those restrictions to him.
- (2) A direction under this section shall have the same effect as a restriction order made under section 41 above and shall be known as “a restriction direction”.
- (3) While a person is subject to a restriction direction the responsible medical officer 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.

### 50 Further provisions as to prisoners under sentence.

- (1) Where a transfer direction and a restriction direction have been given in respect of a person serving a sentence of imprisonment and before the expiration of that person’s sentence the Secretary of State is notified by the responsible medical officer, any other registered medical practitioner or a Mental Health Review Tribunal that that person no longer requires treatment in hospital for mental disorder or that no effective treatment for his disorder can be given in the hospital to which he has been removed, the Secretary of State may—
- (a) by warrant direct that he be remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed; or
- (b) exercise any power of releasing him on licence or discharging him under supervision which would have been exercisable if he had been remitted to such a prison or institution as aforesaid,
- and on his arrival in the prison or other institution or, as the case may be, his release or discharge as aforesaid, the transfer direction and the restriction direction shall cease to have effect.

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- (2) A restriction direction in the case of a person serving a sentence of imprisonment shall cease to have effect on the expiration of the sentence.
- (3) Subject to subsection (4) below, references in this section to the expiration of a person's sentence are references to the expiration of the period during which he would have been liable to be detained in a prison or other institution if the transfer direction had not been given <sup>F3</sup>
- (4) For the purposes of section 49(2) of the <sup>M4</sup>Prison Act 1952 (which provides for discounting from the sentences of certain prisoners periods while they are unlawfully at large) a patient who, having been transferred in pursuance of a transfer direction from any such institution as is referred to in that section, is at large in circumstances in which he is liable to be taken into custody under any provision of this Act, shall be treated as unlawfully at large and absent from that institution.
- [<sup>F4</sup>(5) The preceding provisions of this section shall have effect as if—
- (a) the reference in subsection (1) to a transfer direction and a restriction direction having been given in respect of a person serving a sentence of imprisonment included a reference to a hospital direction and a limitation direction having been given in respect of a person sentenced to imprisonment;
  - (b) the reference in subsection (2) to a restriction direction included a reference to a limitation direction; and
  - (c) references in subsections (3) and (4) to a transfer direction included references to a hospital direction.]

#### Textual Amendments

**F3** Words in s. 50(3) repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), Sch. 13; S.I. 1992/333, art. 2(2), Sch. 2.

**F4** S. 50(5) added (1.10.1997) by 1997 c. 43, s. 55, Sch. 4, para 12(5); S.I. 1997/2200, art. 2

#### Marginal Citations

**M4** 1952 c. 52.

## 51 Further provisions as to detained persons.

- (1) This section has effect where a transfer direction has been given in respect of any such person as is described in paragraph (a) of section 48(2) above and that person is in this section referred to as “the detainee”.
- (2) The transfer direction shall cease to have effect when the detainee's case is disposed of by the court having jurisdiction to try or otherwise deal with him, but without prejudice to any power of that court to make a hospital order or other order under this Part of this Act in his case.
- (3) If the Secretary of State is notified by the responsible medical officer, any other registered medical practitioner or a Mental Health Review Tribunal at any time before the detainee's case is disposed of by that court—
- (a) that the detainee no longer requires treatment in hospital for mental disorder; or
  - (b) that no effective treatment for his disorder can be given at the hospital to which he has been removed,

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the Secretary of State may by warrant direct that he be remitted to any place where he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed, and on his arrival at the place to which he is so remitted the transfer direction shall cease to have effect.

(4) If (no direction having been given under subsection (3) above) the court having jurisdiction to try or otherwise deal with the detainee is satisfied on the written or oral evidence of the responsible medical officer—

- (a) that the detainee no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given at the hospital to which he has been removed,

the court may order him to be remitted to any such place as is mentioned in subsection (3) above or [<sup>F5</sup>, subject to section 25 of the Criminal Justice and Public Order Act 1994,] released on bail and on his arrival at that place or, as the case may be, his release on bail the transfer direction shall cease to have effect.

(5) If (no direction or order having been given or made under subsection (3) or (4) above) it appears to the court having jurisdiction to try or otherwise deal with the detainee—

- (a) that it is impracticable or inappropriate to bring the detainee before the court; and
- (b) that the conditions set out in subsection (6) below are satisfied,

the court may make a hospital order (with or without a restriction order) in his case in his absence and, in the case of a person awaiting trial, without convicting him.

(6) A hospital order may be made in respect of a person under subsection (5) above if the court—

- (a) is satisfied, on the written or oral evidence of at least two registered medical practitioners, that the detainee is suffering from mental illness or severe mental impairment of a nature or degree which makes it appropriate for the patient to be detained in a hospital for medical treatment; and
- (b) is of the opinion, after considering any depositions or other documents required to be sent to the proper officer of the court, that it is proper to make such an order.

(7) Where a person committed to the Crown Court to be dealt with under section 43 above is admitted to a hospital in pursuance of an order under section 44 above, subsections (5) and (6) above shall apply as if he were a person subject to a transfer direction.

#### Textual Amendments

- F5** Words in s. 51(4) inserted (10.4.1995) by 1994 c. 33, s. 168, **Sch. 10**, para. 51; S.I. 1995/721, art. 2, **Sch.** Appendix A

## 52 Further provisions as to persons remanded by magistrates' courts.

(1) This section has effect where a transfer direction has been given in respect of any such person as is described in paragraph (b) of section 48(2) above; and that person is in this section referred to as “the accused”.

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- (2) Subject to subsection (5) below, the transfer direction shall cease to have effect on the expiration of the period of remand unless the accused is committed in custody to the Crown Court for trial or to be otherwise dealt with.
- (3) Subject to subsection (4) below, the power of further remanding the accused under section 128 of the <sup>M5</sup>Magistrates' Courts Act 1980 may be exercised by the court without his being brought before the court; and if the court further remands the accused in custody (whether or not he is brought before the court) the period of remand shall, for the purposes of this section, be deemed not to have expired.
- (4) The court shall not under subsection (3) above further remand the accused in his absence unless he has appeared before the court within the previous six months.
- (5) If the magistrates' court is satisfied, on the written or oral evidence of the responsible medical officer—
  - (a) that the accused no longer requires treatment in hospital for mental disorder; or
  - (b) that no effective treatment for his disorder can be given in the hospital to which he has been removed,
 the court may direct that the transfer direction shall cease to have effect notwithstanding that the period of remand has not expired or that the accused is committed to the Crown Court as mentioned in subsection (2) above.
- (6) If the accused is committed to the Crown Court as mentioned in subsection (2) above and the transfer direction has not ceased to have effect under subsection (5) above, section 51 above shall apply as if the transfer direction given in his case were a direction given in respect of a person falling within that section.
- (7) The magistrates' court may, in the absence of the accused, inquire as examining justices into an offence alleged to have been committed by him and commit him for trial in accordance with section 6 of the <sup>M6</sup>Magistrates' Courts Act 1980 if—
  - (a) the court is satisfied, on the written or oral evidence of the responsible medical officer, that the accused is unfit to take part in the proceedings; and
  - (b) where the court proceeds under subsection (1) of that section, the accused is represented by counsel or a solicitor.

#### **Marginal Citations**

**M5** 1980 c. 43 .

**M6** 1980 c. 43.

### **53 Further provisions as to civil prisoners and persons detained under [<sup>F6</sup>the Immigration Acts].**

- (1) Subject to subsection (2) below, a transfer direction given in respect of any such person as is described in paragraph (c) or (d) of section 48(2) above shall cease to have effect on the expiration of the period during which he would, but for his removal to hospital, be liable to be detained in the place from which he was removed.
- (2) Where a transfer direction and a restriction direction have been given in respect of any such person as is mentioned in subsection (1) above, then, if the Secretary of State is notified by the responsible medical officer, any other registered medical practitioner

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or a Mental Health Review Tribunal at any time before the expiration of the period there mentioned—

- (a) that that person no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given in the hospital to which he has been removed,

the Secretary of State may by warrant direct that he be remitted to any place where he might have been detained if he had not been removed to hospital, and on his arrival at the place to which he is so remitted the transfer direction and the restriction direction shall cease to have effect.

#### **Textual Amendments**

- F6** [S. 53](#): words in heading substituted (10.2.2003) by virtue of [2002 c. 41](#), [ss. 62\(10\)\(b\)](#), [162](#) (with [s. 129](#)); [S.I. 2003/1](#), [art. 2](#), [Sch](#)

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