



Mental Health (Scotland) Act 1984

1984 CHAPTER 36

PART VI

DETENTION OF PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS ETC. AND TRANSFER OF PATIENTS UNDER SENTENCE

Provisions for compulsory detention and guardianship of patients charged with offences etc.

60 Effect of hospital orders.

- (1) A hospital order made under section [F¹section 58 of the Criminal Procedure (Scotland) Act 1995] shall be sufficient authority—
 - (a) for a constable, a mental health officer [F², an officer on the staff of the hospital specified in the order], or any other person directed to do so by the court to convey the patient to the hospital specified in the order within a period of [F³7] days; and
 - (b) for the managers of the hospital to admit him at any time within that period, and thereafter to detain him in accordance with the provisions of this Act.
- (2) A patient who is admitted to a hospital in pursuance of a hospital order shall be treated for the purposes of Part V of this Act (other than section 23) as if he had been so admitted on the date of the order in pursuance of an application for admission, except that the power to order the discharge of the patient under section 33 of this Act shall not be exercisable by his nearest relative; and accordingly the provisions of the said Part V specified in Part I of the Second Schedule to this Act shall apply in relation to him, subject to the exceptions and modifications set out in that Part and the remaining provisions of the said Part V shall not apply.
- (3) Subject to the provisions of [F⁴section 59(3) of the said Act of 1995], where a patient is admitted to a hospital in pursuance of a hospital order any previous application or hospital order by virtue of which he was liable to be detained in a hospital shall cease to have effect:

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Provided that, if the order first-mentioned or the conviction to which it relates is quashed on appeal, this subsection shall not apply and section 32 of this Act shall have effect as if during any period for which the patient was liable to be detained under the order he had been detained in custody as mentioned in that section.

- (4) If within the period of [^{F5}7] days referred to in subsection (1) of this section it appears to the Secretary of State that by reason of an emergency or other special circumstances it is not practicable for the patient to be received into the hospital specified in the order, he may give directions for the admission of the patient to such other hospital as appears to be appropriate in lieu of the hospital so specified; and where such directions are given the Secretary of State shall cause the person having the custody of the patient to be informed, and the hospital order shall have effect as if the hospital specified in the directions were substituted for the hospital specified in the order.

[^{F6}(5) Where—

- (a) a patient admitted to a hospital in pursuance of a hospital order is absent without leave;
- (b) a warrant to arrest him has been issued under section 13 of the ^{M1}Criminal Procedure (Scotland) Act 1975; and
- (c) he is held pursuant to the warrant in any country or territory other than the United Kingdom, any of the Channel Islands and the Isle of Man,

he shall be treated as having been taken into custody under section 28 of this Act on first being so held.]

Textual Amendments

- F1** Words in s. 60(1) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 50(2)(a) (with Sch. 3, paras. 1, 3)
- F2** Words in s. 60(1)(a) inserted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(2)(a) (with s. 33(6)); S.I. 1997/2323, art. 4, **Sch. 2**
- F3** Words in s. 60(1)(a) substituted (1.1.1998) by 1997 c. 48, ss. 62(1), 65(2)(4), **Sch. 1**, para. 9(2)(a) (with s. 33(6)); S.I. 1997/2323, art. 4, **Sch. 2**
- F4** Words in s. 60(3) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 50(2)(b) (with s. 3, Sch. 3, paras. 1, 3)
- F5** Words in s. 60(4) substituted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(2)(b) (with s. 33(6)); S.I. 1997/2323, art. 4, **Sch. 2**
- F6** S. 60(5) inserted (1.4.1996) by 1995 c. 52, ss. 5(9), 7(2)

Marginal Citations

- M1** 1975 c. 21.

61 Effect of guardianship orders.

- (1) A guardianship order made under [^{F7}section 58 of the Criminal Procedure (Scotland) Act 1995] shall confer on the authority or person therein named as guardian the like powers as a guardianship application effective under Part V of this Act.
- (2) A patient who is received into guardianship in pursuance of a guardianship order shall be treated for the purposes of Part V of this Act (other than section 42) as if he had been so received on the date of the order in pursuance of a guardianship application as aforesaid, except that the power to order the discharge of the patient under section 50 of

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this Act shall not be exercisable by his nearest relative; and accordingly the provisions of the said Part V specified in Part III of the Second Schedule to this Act shall apply in relation to him subject to the exceptions and modifications set out therein, and the remaining provisions of the said Part V shall not apply.

- (3) Where a patient is received into guardianship in pursuance of a guardianship order any previous application or order by virtue of which he was subject to guardianship shall cease to have effect:

Provided that, if the order first-mentioned or the conviction to which it relates is quashed on appeal, this subsection shall not apply and section 49 of this Act shall have effect as if during any period for which the patient was subject to guardianship under the order he had been detained in custody as mentioned in that section.

Textual Amendments

- F7** Words in s. 61(1) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 50(3) (with s. 3, **Sch. 3**, paras. 1, 3)

62 Effect of restriction orders.

- (1) The special restrictions applicable to a patient in respect of whom a restriction order made under [^{F8}section 59 of the Criminal Procedure (Scotland) Act 1995] is in force are as follows, that is to say—

- (a) none of the provisions of Part V 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 absolutely discharged under sections 63 to 68 of this Act;

- [^{F9}(aa) none of the provisions of Part V of this Act relating to community care orders shall apply;]

- (b) the following powers shall be exercisable only with the consent of the Secretary of State, that is to say—

- (i) power to grant leave of absence to the patient under section 27 of this Act; and

- (ii) power to transfer the patient under section 29 of this Act;

and if leave of absence is granted under the said section 27 the power to recall the patient under that section shall be vested in the Secretary of State as well as in the responsible medical officer; and

- (c) the power to take the patient into custody and return him under section 28 of this Act may be exercised at any time,

and in relation to any such patient the provisions of the said Part V specified in Part II of the Second Schedule to this Act shall have effect subject to the exceptions and modifications set out in that Part and the remaining provisions of Part V shall not apply.

- [^{F10}(1A) Where the managers of a hospital specified in a restriction order propose to admit the patient to a hospital unit in that hospital, they shall, if that unit was not so specified, notify the Secretary of State and the Mental Welfare Commission of the patient's proposed admission to and detention in that unit; and the patient shall not be so admitted unless the Secretary of State has consented to the proposed admission.]

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- (2) While a person is a restricted patient within the meaning of section 63 of this Act or a person to whom section 67 (persons treated as restricted patients) of this Act applies, 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.
- (3) Without prejudice to the provisions of [^{F11}section 59(3) of the said Act of 1995], 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 60 of this Act and Part I of the Second Schedule 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.

Textual Amendments

- F8** Words in s. 62(1) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4**, para. 50(4) (with **Sch. 3**, paras. 1, 3)
- F9** S. 62(1)(aa) inserted (1.4.1996) by 1995 c. 52, ss. 4(2), 7(2), **Sch. 2**, para. 4
- F10** S. 62(1A) inserted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(3)(a); S.I. 1997/2323 art. 4, Sch. 2
- F11** Words in s. 62(3) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1**, para. 9(3)(b); S.I. 1997/1712 art. 3, Sch.

Modifications etc. (not altering text)

- C1** S. 62(1) extended (1.4.1996) by 1995 c. 46, ss. 57(2)(b), 59(1), 309(2) (with 24(2))

[^{F12}62A Effect of hospital direction.

- (1) A hospital direction made under section 59A of the ^{M2}Criminal Procedure (Scotland) Act 1995 shall be sufficient authority—
- (a) for a constable, a mental health officer, an officer on the staff of the hospital specified in the direction or other person directed to do so by the court to convey the person in respect of whom the direction has been made to the hospital specified in the direction within a period of 7 days; and
 - (b) for the managers of the hospital so specified to admit him at any time within that period and thereafter to detain him in accordance with the provisions of this Act.
- (2) Where the managers of a hospital specified in a hospital direction propose to admit the patient to a hospital unit in that hospital, they shall, if that unit was not so specified, notify the Secretary of State and the Mental Welfare Commission of the patient's proposed admission to and detention in that unit; and the patient shall not be so admitted unless the Secretary of State has consented to the proposed admission.
- (3) If within the period of 7 days referred to in subsection (1) of this section it appears to the Secretary of State that by reason of an emergency or other special circumstance it is not practicable for the person to whom the hospital direction relates to be received into the hospital specified in the direction, he may give a direction under this subsection for the admission of that person to such other hospital as appears to be appropriate in lieu of the hospital so specified.

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- (4) Where a direction is given by the Secretary of State under subsection (3) of this section, he shall cause the person having custody of the person to whom the hospital direction relates to be informed, and the hospital direction shall have effect as if the hospital specified in the direction under subsection (3) of this section were substituted for the hospital specified in the hospital direction.
- (5) Where a patient has been admitted to a hospital under a hospital direction—
- (a) none of the provisions of Part V 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 direction until he is remitted to prison in accordance with section 65(2) or 74(3) of this Act or he is discharged in accordance with section 74(8B) of this Act;
 - (b) the following powers shall be exercisable only with the consent of the Secretary of State, that is to say—
 - (i) power to grant leave of absence to the patient under section 27 of this Act;
 - (ii) power to transfer the patient under section 29 of this Act;
 and if leave of absence is granted under the said section 27 the power to recall shall be vested in the Secretary of State as well as in the responsible medical officer;
 - (c) the power to take the patient into custody and return him under section 28 of this Act may be exercised at any time,

and in relation to any such patient the provisions of the said Part V specified in Part II of the Second Schedule to this Act shall have effect subject to the exceptions and modifications set out in that Part and the remaining provisions of Part V shall not apply.]

Textual Amendments

F12 S. 62A inserted (S.) (1.1.1998) by 1997 c. 48, s. 7(1); S.I. 1997/2323, art. 4, Sch. 2

Marginal Citations

M2 1995 c.46.

63 Right of appeal of restricted patients etc.

- (1) In this section and in sections 64 to 67 of this Act—
- “restricted patient” means a patient who is subject to a restriction order ^[F13], to a hospital direction] or to a restriction direction;
- ^[F14]“relevant hospital order”, “relevant hospital direction” and “relevant transfer direction”, in relation to a restricted patient, mean the hospital order, hospital direction or transfer direction by virtue of which he is liable to be detained in a hospital.]
- (2) A restricted patient detained in a hospital may appeal by way of summary application to a sheriff of the sheriffdom within which the hospital in which he is liable to be detained is situated—

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- (a) in the period between the expiration of 6 months and the expiration of 12 months beginning with the date of the relevant hospital order [^{F15}, hospital direction] or transfer direction; and
 - (b) in any subsequent period of 12 months,
- to order his discharge under section 64 or 65 of this Act.
- (3) The provisions of section 35(3) and (4) of this Act shall have effect in relation to an appeal under sections 63 to 67 of this Act as they have in relation to an appeal under Part V of this Act.

Textual Amendments

- F13** Words in s. 63(1) in definition of “restricted patient” expressed to be substituted (S.) (1.1.1998) by 1997 c. 48, s. 7(2)(a)(i); S.I. 1997/2323, art. 4, Sch. 2
- F14** S. 63(1): definition of “relevant hospital order” and “relevant transfer direction” substituted (S.) (1.1.1998) by 1997 c. 48, s. 7(2)(a)(ii); S.I. 1997/2323, art. 4, Sch. 2
- F15** Words in s. 63(2)(a) inserted (S.) (1.1.1998) by 1997 c. 48, s. 7(2)(b); S.I. 1997/2323, art. 4, Sch. 2

64 Right of appeal of patients subject to restriction orders.

- [^{F16}(A1) Where an appeal to the sheriff is made by a restricted patient who is subject to a restriction order, the sheriff shall refuse the appeal if satisfied that the patient is, at the time of the hearing of the appeal, suffering from a mental disorder the effect of which is such that it is necessary, in order to protect the public from serious harm, that the patient continue to be detained in a hospital, whether for medical treatment or not.
- (B1) The burden of proof of the matters as to which the sheriff is to be satisfied for the purposes of subsection (A1) of this section is on the Scottish Ministers.
- (C1) Nothing in section 102 (State hospitals) of the National Health Service (Scotland) Act 1978 (c.29) prevents or restricts the detention of a patient in a State hospital in pursuance of the refusal, under subsection (A1) of this section, of an appeal.]
- (1) [^{F17}Where the sheriff has decided, under subsection (A1) of this section, not to refuse an appeal], the sheriff shall direct the absolute discharge of the patient if he is satisfied-
- (a) that the patient is not, at the time of the hearing of the appeal, suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
 - (b) that it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment; and (in either case)
 - (c) that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment.
- (2) Where in the case of any such patient as is mentioned in subsection (1) of this section the sheriff is satisfied as to the matters referred to in paragraph (a) or (b) of that subsection but not as to the matters referred to in paragraph (c) of that subsection he shall direct the conditional discharge of the patient.
- (3) Where a patient is absolutely discharged under subsection (1) of this section he shall [^{F18}, on the occurrence of any of the events mentioned in subsection (4A) of this section,] cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.

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- (4) Where a patient is conditionally discharged under subsection (2) of this section [F19] the conditional discharge shall have effect on the occurrence of any of the events mentioned in subsection (4A) of this section and, when it does, the following provisions shall apply in relation to the patient—
- (a) he may be recalled by the Secretary of State under section 68(3) of this Act as if he had been conditionally discharged under subsection (2) of that section; and
 - (b) he shall comply with such conditions (if any) as may be imposed at the time of discharge by the sheriff or at any subsequent time by the Secretary of State.

[F20](4A) The events are—

- (a) the expiry of the appeal period, no appeal having been lodged within it;
- (b) the receipt by both the Court of Session and the managers of the hospital in which the patient is detained of notice from the Scottish Ministers that they do not intend to move the Court to make an order under section 66A(3) of this Act;
- (c) the refusal by the Court to make such an order;
- (d) the recall of any such order or the expiry of its effect.

(4B) In subsection (4A) of this section—

“appeal” means an appeal under section 66A of this Act;

“appeal period” means, in relation to an appeal, the period within which, under section 66A(2) of this Act, the appeal has to be lodged in order to be competent.]

- (5) The Secretary of State may from time to time vary any condition imposed (whether by the sheriff or by him) under subsection (4) of this section.
- (6) Where a restriction order in respect of a patient ceases to have effect after he has been conditionally discharged under subsection (2) of this section the patient shall, unless previously recalled, 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.
- (7) The sheriff may defer a direction for the conditional discharge of a patient until such arrangements as appear to the sheriff to be necessary for that purpose have been made to his satisfaction; and where by virtue of any such deferment no direction has been given on an appeal before the time when the patient’s case comes before the sheriff on a subsequent appeal, the previous appeal shall be treated as one on which no direction under this section can be given.
- (8) This section is without prejudice to section 68 of this Act.

Textual Amendments

- F16** S. 64(A1)(B1)(C1) inserted (13.9.1999) by 1999 asp 1, s. 1(a)(5)
F17 Words in s. 64(1) substituted (13.9.1999) by 1999 asp 1, s. 1(b)(5)
F18 Words in s. 64(3) substituted (13.9.1999) by 1999 asp 1, s. 2(1)(a)
F19 Words in s. 64(4) inserted (13.9.1999) by 1999 asp 1, s. 2(1)(b)
F20 S. 64(4A)(4B) inserted (13.9.1999) by 1999 asp 1, s. 2(1)(c)

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65 Right of appeal of patients subject to restriction directions.

(1) Where an appeal to the sheriff is made by a restricted patient who is subject [^{F21}to a hospital direction or] to a restriction direction, the sheriff—

- (a) shall notify the Secretary of State if, in his opinion, the patient would, if subject to a restriction order, be entitled to be absolutely or conditionally discharged under section 64 of this Act; and
- (b) if he notifies the Secretary of State that the patient would be entitled to be conditionally discharged, may recommend that [^{F22}the patient] should continue to be detained in a hospital.

[^{F23}(2) If the sheriff notifies the Secretary of State—

- (a) that the patient would be entitled to be absolutely discharged, the Secretary of State shall by warrant direct that the patient be remitted to any prison or other institution or place in which he might have been detained had he not been [^{F24}conveyed under a relevant hospital direction or removed under a relevant transfer direction to a hospital specified in the direction]] and that he shall be dealt with there as if he had not been [^{F24}so conveyed or removed];
- (b) that the patient would be entitled to be conditionally discharged, the Secretary of State may—
 - (i) by warrant give such direction as is mentioned in paragraph (a) above; or
 - (ii) decide that the patient should continue to be detained in a hospital,

^{F25} . . .

[^{F26}(3) Where a direction has been given under subsection (2) of this section, on the person's arrival in the prison or other institution or place to which he has been remitted by virtue of such a direction the relevant hospital direction or, as the case may be, the relevant transfer direction together with the restriction direction given in respect of the person shall cease to have effect.]

Textual Amendments

- F21** Words in s. 65(1) inserted (S.)(1.1.1998) by 1997 c. 48, s. 7(3)(a); S.I. 1997/2323, art. 4, **Sch. 2**
- F22** Words in s. 65 substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 2(2)**; S.I. 1993/2050, **art. 3(4)**
- F23** S. 65(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 2(3)**; S.I. 1993/2050, **art. 3(4)**
- F24** Words in s. 65(2)(a) substituted (S.)(1.1.1998) by 1997 c. 48, s. 7(3)(b)(i); S.I. 1997/2323, art. 4, **Sch. 2**
- F25** Words in s. 65(2) repealed (S.)(1.1.1998) by 1997 c. 48, ss. 7(3)(b)(ii), 62(2) Sch. 3; S.I. 1997/2323, art. 4, **Sch. 2**
- F26** S. 65(3) inserted (S.)(1.1.1998) by 1997 c. 48, s. 7(3)(c); S.I. 1997/2323, art. 4, **Sch. 2**

66 Further consideration of case of conditionally discharged patient.

(1) Where a restricted patient has been conditionally discharged under sections 64 or 68(2) of this Act and is subsequently recalled under section 68(3) of this Act to hospital he may, within one month of the day on which he returns or is returned to hospital, appeal against such recall to a sheriff of the sheriffdom in which the hospital in which he is liable to be detained by virtue of the warrant under the said section 68(3) is situated.

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- [^{F27}(1A) The sheriff shall refuse an appeal under subsection (1) above if satisfied that the patient is, at the time of the hearing of the appeal, suffering from a mental disorder the effect of which is such that it is necessary, in order to protect the public from serious harm, that the patient continue to be detained in a hospital, whether for medical treatment or not.
- (1B) The burden of proof of the matters as to which the sheriff is to be satisfied for the purposes of subsection (1A) of this section is on the Scottish Ministers.
- (1C) Nothing in section 102 (State hospitals) of the National Health Service (Scotland) Act 1978 (c.29) prevents or restricts the detention of a patient in a State hospital in pursuance of the refusal, under subsection (1A) of this section, of an appeal.]
- (2) Where a restricted patient has been conditionally discharged as aforesaid but is not recalled to hospital he may appeal—
- (a) in the period between the expiration of 12 months and the expiration of 2 years beginning with the date on which he was conditionally discharged; and
 - (b) in any subsequent period of 2 years,
- to a sheriff of the sheriffdom in which he resides.
- (3) [^{F28}Where the sheriff has decided, under subsection (1A) of this section not to refuse an appeal under subsection (1) and in any appeal under subsection (2) of this section, if] the sheriff is satisfied as mentioned in section 64(1) or (2) of this Act, he shall uphold the appeal and—
- (a) where he is satisfied as mentioned in the said section 64(1), he shall direct the absolute discharge of the patient;
 - (b) where he is satisfied as mentioned in the said section 64(2), he shall direct, or (as the case may be) continue, the conditional discharge of the patient; and, in either case, he may vary any condition to which the patient is subject in connection with his discharge or impose any condition which might have been imposed in connection therewith.
- [^{F29}(3A) A conditional discharge under subsection (3)(b) of this section shall have effect on the occurrence of any of the events mentioned in subsection (4A) of section 64 of this Act.]
- (4) Where a patient is absolutely discharged in an appeal under subsection (1) or (2) of this section he shall [^{F30}on the occurrence of any of the events mentioned in subsection (4A) of section 64 of this Act] cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.

Textual Amendments

- F27** S. 66(1A)-(1C) inserted (13.9.1999) by 1999 asp 1, s. 1(2)(a)(5)
- F28** Words in s. 66(3) substituted (13.9.1999) by 1999 asp 1, s. 1(2)(b)(5)
- F29** S. 66(3A) inserted (13.9.1999) by 1999 asp 1, s. 1(2)(c)(5)
- F30** Words in s. 66(4) substituted (13.9.1999) by 1999 asp 1, s. 1(2)(d)(5)

[^{F31}66A Appeal to Court of Session against sheriff's decisions under sections 64, 65 and 66

- (1) It shall be competent to appeal to the Court of Session against the decision of the sheriff under section 64 or 66 or a notification or recommendation by the sheriff under section 65 of this Act.

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- (2) An appeal under subsection (1) of this section shall be competent only if it is lodged within 14 days of the decision, notification or recommendation appealed against.
- (3) Where an appeal has been lodged under subsection (1) of this section against a decision of the sheriff to direct the discharge of a patient under section 64 or 66 or a notification or recommendation by the sheriff under section 65 of this Act, the Court of Session may, on a motion by the Scottish Ministers, order—
 - (a) that the patient who is the subject of the appeal shall continue, in accordance with subsection (4) of this section, to be detained; and
 - (b) that the relevant order or direction shall continue to have effect accordingly.
- (4) An order under subsection (3) of this section has the effect of continuing the patient’s detention—
 - (a) where no appeal is made to the House of Lords against the decision of the Court of Session on an appeal under this section, until the expiry of the time allowed, without leave, to appeal to the House of Lords against the decision; and
 - (b) where such an appeal has been made, until it is abandoned or finally determined.]

Textual Amendments
F31 S. 66A inserted (13.9.1999) by 1999 asp 1, s. 2(2)

67 Application of sections 63 to 66 to other persons treated as restricted patients.

- (1) Sections 63, 64 and 66 of this Act shall apply to a person who—
 - (a) is subject to—
 - (i) a direction which by virtue of section 69(3) of this Act; ^{F32} . . .
 - ^{F32}(ii)
 has the like effect as a hospital order and a restriction order; or
 - (b) is treated as subject to a hospital order and a restriction order by virtue of section 80(2) of the ^{M3}Mental Health Act 1983 or section 81(2) of this Act, as they apply to a restricted patient who is subject to a restriction order and references in the said sections 63, 64 and 66 to the relevant hospital order or restriction order shall be construed as references to the direction under section 69(1) of this Act ^{F33} . . .
- (2) Sections 63 and 65 of this Act shall apply to a person who is treated as subject to a transfer direction and a restriction direction by virtue of section 80(2) of the Mental Health Act 1983 or section 81(2) of this Act as they apply to a restricted patient who is subject to a restriction direction and references in the said sections 63 and 65 to the relevant transfer direction or the restriction direction shall be construed as references to the transfer direction or restriction direction to which that person is treated as subject by virtue of the said section 80(2) or 81(2).

Textual Amendments
F32 S. 67(1)(a)(ii) and the word “or” immediately preceding it repealed (31.3.1996) by 1995 c. 20, ss. 117, 118(2), Sch. 6 Pt. I para. 165(a), Sch. 7 Pt. I; S.I. 1996/517, art. 3(2)

Status: Point in time view as at 13/09/1999.

Changes to legislation: Mental Health (Scotland) Act 1984, Cross Heading: Provisions for compulsory detention and guardianship of patients charged with offences etc. is up to date with all changes known to be in force on or before 20 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

F33 Words in s. 67(1) repealed 31.3.1996) by 1995 c. 20, ss. 117, 118(2), Sch. 6 Pt. I para. 165(b), Sch. 7 Pt. I; S.I. 1996/517, art. 3(2)

Marginal Citations

M3 1983 c. 20.

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

(1) If the Secretary of State is satisfied that a restriction order in respect of a patient 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 62(1) of this Act; and, where the Secretary of State so directs, the restriction order shall cease to have effect and subsection (3) of that section 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.

[^{F34}(2A) The Scottish Ministers shall not, however, discharge a patient from hospital under subsection (2) of this section if they are satisfied that the patient is suffering from a mental disorder the effect of which is such that it is necessary, in order to protect the public from serious harm, that the patient continue to be detained in a hospital, whether for medical treatment or not.

(2B) Nothing in section 102 (State hospitals) of the National Health Service (Scotland) Act 1978 (c.29) prevents or restricts the detention of a patient in a State hospital in pursuance of the decision of Scottish Ministers, under subsection (2A) of this section, not to discharge the patient.]

(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) of this section, and without prejudice to his further discharge as aforesaid, by warrant recall the patient to such hospital as may be specified in the warrant; and thereupon—

(a) if the hospital so specified 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 28 of this Act as if he had absented himself without leave from the hospital specified in the warrant, and if the restriction order was made for a specified period, that period shall not in any event expire until the patient returns to the hospital or is returned to the hospital under that section.

(4) If a restriction order ceases to have effect in respect of a patient after the patient has been conditionally discharged under this section, the patient shall, unless previously recalled under the last foregoing subsection, 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.

(5) 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

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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

F34 S. 68(2A)(2B) inserted (S.) (13.9.1999) by 1999 asp 1, s. 1(3)(5)

69 Persons ordered to be kept in custody during Her Majesty's pleasure.

- (1) The Secretary of State may by warrant direct that any person who, by virtue of any enactment to which this subsection applies, is required to be kept in custody during Her Majesty's pleasure or until the directions of Her Majesty are known shall be detained in a State hospital or such other hospital as he may specify and, where that person is not already detained in the hospital, give directions for his removal there.
- (2) The enactments to which subsection (1) of this section applies are section 16 of the ^{M4}Courts-Martial (Appeals) Act 1968, section 116 of the ^{M5}Army Act 1955, section 116 of the ^{M6}Air Force Act 1955, and section 63 of the ^{M7}Naval Discipline Act 1957.
- (3) A direction under this section in respect of any person shall have the like effect as [^{F35}a hospital order together with a restriction order].

Textual Amendments

F35 Words in s. 69(3) substituted (31.3.1996) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 166**; S.I. 1996/517, **art. 3(2)** (which substituting Act (1995 c. 20) was repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with s. 3, **Sch. 3 para. 3**)) and those same words in s. 69(3) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 50(5)**

Marginal Citations

M4 1968 c. 20.
M5 1955 c. 18.
M6 1955 c. 19.
M7 1957 c. 53.

Status:

Point in time view as at 13/09/1999.

Changes to legislation:

Mental Health (Scotland) Act 1984, Cross Heading: Provisions for compulsory detention and guardianship of patients charged with offences etc. is up to date with all changes known to be in force on or before 20 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.