



Mental Health (Amendment) Act 1982

1982 CHAPTER 51

PART III

PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS ETC.

Hospital orders

19 Power to make hospital order

- (1) Section 60 of the principal Act (power of court to make hospital order) shall be amended as follows.
- (2) In subsection (1) after the words " convicted before the Crown Court of an offence " there shall be inserted the words " punishable with imprisonment ".
- (3) For subsection (1)(a) there shall be substituted—
 - “(a) the court is satisfied, on the written or oral evidence of two medical practitioners (complying with the provisions of section 62 of this Act), that the offender is suffering from mental illness, psychopathic disorder, mental impairment or severe mental impairment and that the conditions set out in subsection (1A) of this section are complied with ; and”.
- (4) After subsection (1) there shall be inserted—
 - “(1A) The conditions referred to in subsection (1)(a) of this section are—
 - (a) that the mental disorder from which the offender 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 ; or
 - (b) in the case of an offender who has attained the age of sixteen years, that the mental disorder is of a nature or degree which warrants his reception into guardianship under this Act.”

Status: This is the original version (as it was originally enacted).

- (5) In subsection (3) (which requires the court to be satisfied that arrangements have been made for the admission of the offender to the hospital in question) after the words " unless the court is satisfied " there shall be inserted the words " on the written or oral evidence of the medical practitioner who would be in charge of his treatment or of some other person representing the managers of the hospital ".

20 Applications in respect of patient subject to hospital order

- (1) After subsection (3) of section 63 of the principal Act (effect of hospital orders and guardianship orders) there shall be inserted—

“(3A) Without prejudice to any provision of Part IV of this Act as applied by this section, an application to a Mental Health Review Tribunal in respect of a patient admitted to a hospital in pursuance of a hospital order may be made by the nearest relative of the patient—

- (a) in the period between the expiration of six months and the expiration of twelve months beginning with the date of the order ; and
 (b) in any subsequent period of twelve months.”

- (2) In subsection (4) of that section the words " admitted to a hospital in pursuance of a hospital order, or " shall be omitted.

- (3) Where a person detained in a hospital or mental nursing home—

- (a) is treated as subject to a hospital order or transfer direction by virtue of section 37(2) below, section 65(5) or 87(2) of the principal Act, section 73(2) of the Mental Health (Scotland) Act 1960 or section 5(1) of the Criminal Procedure (Insanity) Act 1964 ; or
 (b) is subject to a direction having the same effect as a hospital order by virtue of section 71(4), 72(3) or 73(3) of the principal Act,

then, without prejudice to any provision of Part IV of the principal Act as applied by section 63 of that Act, that person may make an application to a Mental Health Review Tribunal in the period of six months beginning with the date of the order or direction mentioned in paragraph (a) above or, as the case may be, the date of the direction mentioned in paragraph (b) above.

- (4) In sections 52(1) and (5) and 53 of the principal Act (appointment by court of acting nearest relative) references to Part IV of that Act shall include references to section 63 (3A) and (4) of that Act and in subsection (4)(a) of section 53 of that Act the reference to detention in pursuance of an application for admission for treatment and to guardianship under tot Part shall include a reference to detention and guardianship by virtue of an order or direction under Part V of that Act.

21 Committal for hospital order

- (1) Section 68 of the principal Act (admission to hospital of person committed by magistrates' court with a view to the making of a hospital order) shall be amended as follows.

- (2) In subsection (1) for the words " the magistrates" court by which he is committed is satisfied that arrangements have been made for the admission of "the offender to a hospital there shall be substituted the words " 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 ".

(3) After subsection (1) there shall be inserted—

“(1A) The evidence required by subsection (1) of this section shall be given by the medical practitioner who would be in charge of the offender's treatment or by some other person representing the managers of the hospital in question.”

Transfer directions

22 Removal to hospital of persons serving sentences of imprisonment etc.

For section 72(1)(b) of the principal Act (removal to hospital of persons serving sentences of imprisonment etc..) there shall be substituted—

“(b) 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;”.

23 Removal to hospital of other prisoners

(1) Section 73 of the principal Act (removal to hospital of other prisoners) shall be amended as follows.

(2) In subsection (1) for the words " which warrants the detention of the patient in a hospital for medical treatment" there shall be substituted the words " which makes it appropriate for him to be detained in a hospital for medical treatment and that the patient is in urgent need of such treatment ".

(3) For paragraphs (a), (b) and (c) of subsection (2) there shall be substituted—

“(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;”.

(4) For paragraph (f) of subsection (2) there shall be substituted—

“(f) persons detained under the Immigration Act 1971.”

24 Persons under sentence

(1) Section 75 of the principal Act (provisions applying where person under sentence has been transferred to hospital) shall be amended as follows.

(2) In subsection (1) for the words " and the Secretary of State is notified by the responsible medical officer at any time before the expiration of that person's sentence that that person no longer requires treatment for mental disorder " there shall be substituted the words " and before the expiration of that person's sentence the Secretary of State is notified by the responsible medical officer, any other 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 ".

(3) At the end of subsection (3) there shall be inserted the words " and that period shall be treated as expiring on the date on which he could have been discharged if he had

Status: This is the original version (as it was originally enacted).

not forfeited remission of any part of the sentence after his removal pursuant to the direction ".

25 Persons committed for trial etc.

- (1) Section 76 of the principal Act (provisions applying where person committed for trial etc. has been transferred to hospital) shall be amended as follows.
- (2) In subsection (2)(a)—
 - (a) for the words " the Secretary of State is notified by the responsible medical officer at any time before that person is brought before the court" there shall be substituted the words " the Secretary of State is notified by the responsible medical officer, any other medical practitioner or a Mental Health Review Tribunal at any time before that person's case is disposed of by the court ";
 - (b) for the words " that he no longer requires treatment for mental disorder " there shall be substituted the words " that he no longer requires treatment in hospital for mental disorder or that no effective treatment for his disorder can be given at the hospital to which he has been removed ".
- (3) After subsection (2)(a) there shall be inserted—
 - “(aa) if (no direction having been given under paragraph (a) of this subsection) that court is satisfied, on the written or oral evidence of the responsible medical officer, that that person no longer requires treatment in hospital for mental disorder or 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 aforesaid or 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;”.
- (4) In subsection (2) (b) for the words " (no direction having been given under paragraph (a) of this subsection) " there shall be substituted the words " (no direction or order having been given or made under paragraph (a) or (aa) of this subsection) ".
- (5) In subsection (3) for the words " on the oral evidence of at least two medical practitioners " there shall be substituted the words " on the written or oral evidence of at least two medical practitioners " and for the the words " which warrants the detention of the patient in a hospital for medical treatment" there shall be substituted the words " which makes it appropriate for the patient to be detained in a hospital for medical treatment ".

26 Persons remanded by magistrates' courts

- (1) This section has effect where a transfer direction has been given in respect of a person remanded in custody by a magistrates' court; and that person is in this section referred to as " the accused ".
- (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 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

Status: This is the original version (as it was originally enacted).

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 76 of the principal Act 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 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.

27 Civil prisoners and persons detained under the Immigration Act 1971

- (1) Subject to subsection (2) below, a transfer direction given in respect of any such person as is described in paragraph (e) or (f) of section 73(2) of the principal Act (civil prisoners and persons detained under the Immigration Act 1971) 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 medical practitioner 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.

Status: This is the original version (as it was originally enacted).

Orders and directions restricting discharge

28 Restriction orders and restriction directions

- (1) In section 65(1) of the principal Act (power to make an order restricting an offender's discharge if necessary for the protection of the public) after the words " the protection of the public " there shall be inserted the words " from Serious harm "and the same amendment shall be made in section 66(1) of that Act (power to revoke order if no longer required for that purpose).
- (2) An order under section 65 of the principal Act shall be known as " a restriction order" instead of as " an order restricting discharge "; and a direction under section 74 of that Act (which has the same effect as such an order) shall be known as " a restriction direction " instead of as " a direction restricting discharge ".
- (3) While a person is subject to a restriction order or 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.
- (4) Schedule 1 to this Act shall have effect for enabling persons who are subject to restriction orders or restriction directions to be discharged by Mental Health Review Tribunals ; and section 66(6) to (8) of the principal Act (under which such a tribunal has only advisory powers in respect of such persons) shall cease to have effect.

Remands to hospital and interim hospital orders

29 Remand to hospital for report on accused's mental condition

- (1) Subject to the provisions of this section, the Crown Court or a magistrates' court may remand an accused person to a hospital specified by the court for a report on his mental condition.
- (2) For the purposes of this section an accused person is—
 - (a) in relation to the Crown Court, any person who is awaiting trial before the court for an offence punishable with imprisonment or who has been arraigned before the court for such an offence and has not yet been sentenced or otherwise dealt with for the offence for which he has been arraigned ;
 - (b) in relation to a magistrates' court, any person who has been convicted by the court of an offence punishable on summary conviction with imprisonment and any person charged with such an offence if the court is satisfied that he did the act or made the omission charged or he has consented to the exercise by the court of the powers conferred by this section.
- (3) Subject to subsection (4) below, the powers conferred by this section may be exercised if—
 - (a) the court is satisfied, on the written or oral evidence of a medical practitioner approved for the purposes of section 28 of the principal Act, that there is reason to suspect that the accused person is suffering from mental illness, psychopathic disorder, mental impairment or severe mental impairment; and
 - (b) the court is of opinion that it would be impracticable for a report on his mental condition to be made if he were remanded on bail ;

Status: This is the original version (as it was originally enacted).

but those powers shall not be exercised by the Crown Court in respect of a person who has been convicted before the court if the sentence for the offence of which he has been convicted is fixed by law.

- (4) The court shall not remand an accused person to a hospital under this section unless satisfied, on the written or oral evidence of the medical practitioner who would be responsible for making the report or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital and for his admission to it within the period of seven days beginning with the date of the remand ; and if the court is so satisfied it may, pending his admission, give directions for his conveyance to and detention in a place of safety.
- (5) Where a court has remanded an accused person under this section it may further remand him if it appears to the court, on the written or oral evidence of the medical practitioner responsible for making the report, that a further remand is necessary for completing the assessment of the accused person's mental condition.
- (6) The power of further remanding an accused person under this section may be exercised by the court without his being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.
- (7) An accused person shall not be remanded or further remanded under this section for more than twenty-eight days at a time or for more than twelve weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.
- (8) An accused person remanded to hospital under this section shall be entitled to obtain at his own expense an independent report on his mental condition from a medical practitioner chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (7) above.
- (9) Where an accused person is remanded under this section—
 - (a) a constable or any other person directed to do so by the court shall convey the accused person to the hospital specified by the court within the period mentioned in subsection (4) above ; and
 - (b) the managers of the hospital shall admit him within that period and thereafter detain him in accordance with the provisions of this section.
- (10) If an accused person absconds from a hospital to which he has been remanded under this section, or while being conveyed to or from that hospital, he may be arrested without warrant by any constable and shall, after being arrested, be brought as soon as practicable before the court that remanded him ; and the court may thereupon terminate the remand and deal with him in any way in which it could have dealt with him if he had not been remanded under this section.

30 Remand of accused person to hospital for treatment

- (1) Subject to the provisions of this section, the Crown Court may, instead of remanding an accused person in custody, remand him to a hospital specified by the court if satisfied, on the written or oral evidence of two medical practitioners, that he 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.
- (2) For the purposes of this section an accused person is any person who is in custody awaiting trial before the Crown Court for an offence punishable with imprisonment

Status: This is the original version (as it was originally enacted).

(other than an offence the sentence for which is fixed by law) or who at any time before sentence is in custody in the course of a trial before that court for such an offence.

- (3) Of the medical practitioners whose evidence is taken into account under subsection (1) above at least one shall be a practitioner approved for the purposes of section 28 of the principal Act.
- (4) The court shall not remand an accused person under this section to a hospital unless it is satisfied, on the written or oral evidence of the medical practitioner who would be in charge of his treatment or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital and for his admission to it within the period of seven days beginning with the date of the remand ; and if the court is so satisfied it may, pending his admission, give directions for his conveyance to and detention in a place of safety.
- (5) Where a court has remanded an accused person under this section it may further remand him if it appears to the court, on the written or oral evidence of the responsible medical officer, that a further remand is warranted.
- (6) The power of further remanding an accused person under this section may be exercised by the court without his being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.
- (7) An accused person shall not be remanded or further remanded under this section for more than twenty-eight days at a time or for more than twelve weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.
- (8) An accused person remanded to hospital under this section shall be entitled to obtain at his own expense an independent report on his mental condition from a medical practitioner chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (7) above.
- (9) Subsections (9) and (10) of section 29 above shall have effect in relation to a remand under this section as they have effect in relation to a remand under that section.

31 Interim hospital orders

- (1) Where a person is convicted before the Crown Court of an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law) or is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment and the court before or by which he is convicted is satisfied, on the written or oral evidence of two medical practitioners—
 - (a) that the offender is suffering from mental illness, psychopathic disorder, mental impairment or severe mental impairment; and
 - (b) that there is reason to suppose that the mental disorder from which the offender is suffering is such that it may be appropriate for a hospital order to be made in his case,

the court may, before making a hospital order or dealing with him in some other way, make an order (" an interim hospital order ") authorising his admission to such hospital as may be specified in the order and his detention there in accordance with this section.
- (2) In the case of an offender who is subject to an interim hospital order the court may make a hospital order without his being brought before the court if he is represented

by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.

- (3) Of the medical practitioners whose evidence is taken into account under subsection (1) above at least one shall be a practitioner approved for the purposes of section 28 of the principal Act and at least one shall be employed at the hospital which is to be specified in the order.
- (4) An interim hospital order shall not be made for the admission of an offender to a hospital unless the court is satisfied, on the written or oral evidence of the medical practitioner who would be in charge of his treatment or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital and for his admission to it within the period of twenty-eight days beginning with the date of the order; and if the court is so satisfied the court may, pending his admission, give directions for his conveyance to and detention in a place of safety.
- (5) An interim hospital order—
 - (a) shall be in force for such period, not exceeding twelve weeks, as the court may specify when making the order; but
 - (b) may be renewed for further periods of not more than twenty-eight days at a time if it appears to the court, on the written or oral evidence of the responsible medical officer, that the continuation of the order is warranted;but no such order shall continue in force for more than six months in all and the court shall terminate the order if it makes a hospital order in respect of the offender or decides, after considering the written or oral evidence of the responsible medical officer, to deal with the offender in some other way.
- (6) The power of renewing an interim hospital order may be exercised without the offender being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.
- (7) Where an interim hospital order is made in respect of an offender—
 - (a) a constable or any other person directed to do so by the court shall convey the offender to the hospital specified in the order within the period mentioned in subsection (4) above ; and
 - (b) the managers of the hospital shall admit him within that period and thereafter detain him in accordance with the provisions of this section.
- (8) If an offender absconds from a hospital in which he is detained in pursuance of an interim hospital order, or while being conveyed to or from such a hospital, he may be arrested without warrant by a constable and shall, after being arrested, be brought as soon as practicable before the court that made the order; and the court may thereupon terminate the order and deal with him in any way in which it could have dealt with him if no such order had been made.

Information and evidence

32 Information as to hospitals

- (1) Where a court is minded to make a hospital order (or interim hospital order in respect of any person it may request—

Status: This is the original version (as it was originally enacted).

- (a) the Regional Health Authority for the region in which that person resides or last resided ; or
- (b) any other Regional Health Authority that appears to the court to be appropriate,

to furnish the court with such information as that Authority has or can reasonably obtain with respect to the hospital or hospitals (if any) in its region or elsewhere at which arrangements could be made for the admission of that person in pursuance of the order, and that Authority shall comply with any such request.

- (2) In its application to Wales, subsection (1) above shall have effect as if for any reference to any such Authority as is mentioned in paragraph (a) or (b) of that subsection there were substituted a reference to the Secretary of State, and as if for the words " in its region or elsewhere " there were substituted the words " in Wales " .

33 Reports by medical practitioners etc.

- (1) For the purposes of any provision of Part V of the principal Act or of this Part of this Act under which a court may act on the written evidence of—

- (a) a medical practitioner or a medical practitioner of any description; or
- (b) a person representing the managers of a hospital,

a report in writing purporting to be signed by a medical practitioner or a medical practitioner of such a description or by a person representing the managers of a hospital may, subject to the provisions of this section, be received in evidence without proof of the signature of the practitioner or that person and without proof that he has the requisite qualifications or authority or is of the requisite description; but the court may require the signatory of any such report to be called to give oral evidence.

- (2) Where, in pursuance of a direction of the court, any such report is tendered in evidence otherwise than by or on behalf of the person who is the subject of the report, then—

- (a) if that person is represented by counsel or a solicitor, a copy of the report shall be given to his counsel or solicitor;
- (b) if that person is not so represented, the substance of the report shall be disclosed to him or, where he is a child or young person, to his parent or guardian if present in court; and
- (c) except where the report relates only to arrangements for his admission to a hospital, that person may require the signatory of the report to be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of that person.

Mental condition of persons accused of murder

34 Amendments of Bail Act 1976 etc.

- (1) The Bail Act 1976 shall be amended in accordance with subsections (2) to (4) below.

- (2) After subsection (6) of section 3 (conditions of bail) there shall be inserted—

“(6A) In the case of a person accused of murder the court granting bail shall, unless it considers that satisfactory reports on his mental condition have already been obtained, impose as conditions of bail—

Status: This is the original version (as it was originally enacted).

- (a) a requirement that the accused shall undergo examination by two medical practitioners for the purpose of enabling such reports to be prepared; and
 - (b) a requirement that he shall for that purpose attend such an institution or place as the court directs and comply with any other directions which may be given to him for that purpose by either of those practitioners.
- (6B) Of the medical practitioners referred to in subsection (6A) above at least one shall be a practitioner approved for the purposes of section 28 of the Mental Health Act 1959.”
- (3) In subsection (7) of that section (obligations of parent or guardian in respect of conditions of bail) for the words " subsection (6) above " there shall be substituted the words " subsection (6) or (6A) above ".
 - (4) In paragraph 8(3) of Schedule 1 (exceptions from restriction of conditions of bail) after the words " shall not" there shall be inserted the words " apply to the conditions required to be imposed under section 3(6A) of this Act or ".
 - (5) Without prejudice to its powers under section 3 of the Costs in Criminal Cases Act 1973, the Crown Court may order the payment out of central funds of such sums as appear to it reasonably sufficient to compensate any medical practitioner for the expenses, trouble or loss of time properly incurred by him in preparing and making a report to the court on the mental condition of a person accused of murder.