



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART III

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

##### *Hospital and guardianship orders*

#### **37 Powers of courts to order hospital admission or guardianship.**

- (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,<sup>F1</sup> . . . , or is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment, and the conditions mentioned in subsection (2) below are satisfied, the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of a local social services authority or of such other person approved by a local social services authority as may be so specified.

[<sup>F2</sup>(1A) In the case of an offence the sentence for which would otherwise fall to be imposed—

- (a) under section 51A(2) of the Firearms Act 1968,
- (b) under section 110(2) or 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000,<sup>F3</sup> . . .
- (c) under [<sup>F4</sup>section 225(2) or 226(2)] of the Criminal Justice Act 2003,<sup>[F5</sup> or
- (d) under section 29(4) or (6) of the Violent Crime Reduction Act 2006 (minimum sentences in certain cases of using someone to mind a weapon).]

nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

- (1B) References in subsection (1A) above to a sentence falling to be imposed under any of the provisions mentioned in that subsection are to be read in accordance with section 305(4) of the Criminal Justice Act 2003.]

- (2) The conditions referred to in subsection (1) above are that—

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- (a) the court is satisfied, on the written or oral evidence of two registered medical practitioners, that the offender is suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment and that either—
    - (i) 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
    - (ii) in the case of an offender who has attained the age of 16 years, the mental disorder is of a nature or degree which warrants his reception into guardianship under this Act; and
  - (b) the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section.
- (3) Where a person is charged before a magistrates' court with any act or omission as an offence and the court would have power, on convicting him of that offence, to make an order under subsection (1) above in his case as being a person suffering from mental illness or severe mental impairment, then, if the court is satisfied that the accused did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.
- (4) An order for the admission of an offender to a hospital (in this Act referred to as “a hospital order”) shall not be made under this section unless the court is satisfied on the written or oral evidence of the registered 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<sup>F6</sup>. . . , and for his admission to it within the period of 28 days beginning with the date of the making of such an order; and the court may, pending his admission within that period, give such directions as it thinks fit for his conveyance to and detention in a place of safety.
- (5) If within the said period of 28 days 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 instead of the hospital so specified; and where such directions are given—
- (a) the Secretary of State shall cause the person having the custody of the patient to be informed, and
  - (b) the hospital order shall have effect as if the hospital specified in the directions were substituted for the hospital specified in the order.
- (6) An order placing an offender under the guardianship of a local social services authority or of any other person (in this Act referred to as “a guardianship order”) shall not be made under this section unless the court is satisfied that that authority or person is willing to receive the offender into guardianship.
- (7) A hospital order or guardianship order shall specify the form or forms of mental disorder referred to in subsection (2)(a) above from which, upon the evidence taken into account under that subsection, the offender is found by the court to be suffering; and no such order shall be made unless the offender is described by each of the practitioners whose evidence is taken into account under that subsection as suffering

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from the same one of those forms of mental disorder, whether or not he is also described by either of them as suffering from another of them.

- (8) Where an order is made under this section, the court [<sup>F7</sup> shall not—
- (a) pass sentence of imprisonment or impose a fine or make a [<sup>F8</sup> community order (within the meaning of Part 12 of the Criminal Justice Act 2003)] in respect of the offence,
  - (b) if the order under this section is a hospital order, make a referral order (within the meaning of [<sup>F9</sup> the Powers of Criminal Courts (Sentencing) Act 2000]) in respect of the offence, or
  - (c) make in respect of the offender [<sup>F10</sup> a supervision order (within the meaning of that Act) or an order under section 150 of that Act (binding over of parent or guardian)],

but the court may make any other order which it] has power to make apart from this section; and for the purposes of this subsection “sentence of imprisonment” includes any sentence or order for detention.

#### Textual Amendments

- F1** Words in s. 37(1) omitted (4.4.2005) by virtue of [Criminal Justice Act 2003 \(c. 44\)](#), ss. 304, 336, [Sch. 32 para. 38\(a\)](#); S.I. 2005/950, [art. 2\(1\)](#), Sch. 1 para. 42(18) (with [art. 2\(2\)](#), Sch. 2 (as amended by S.I. 2005/2122, [art. 2](#)))
- F2** S. 37(1A)(1B) substituted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 304, 336, [Sch. 32 para. 38\(b\)](#); S.I. 2005/950, [art. 2\(1\)](#), Sch. 1 para. 42(18) (with [art. 2\(2\)](#), Sch. 2 (as amended by S.I. 2005/2122, [art. 2](#)))
- F3** Word in s. 37(1A)(b) repealed (6.4.2007) by [Violent Crime Reduction Act 2006 \(c. 38\)](#), ss. 49, 65, [66\(2\)\(3\)](#), Sch. 1 para. 2, [Sch. 5](#); S.I. 2007/858, [art. 2\(n\)\(iii\)](#)
- F4** Words in s. 37(1A)(c) substituted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 148, 153, [Sch. 26 para. 8](#); S.I. 2008/1586, [art. 2\(1\)](#), Sch. 1 para. 48(f)
- F5** S. 37(1A)(d) and preceding word inserted (6.4.2007) by [Violent Crime Reduction Act 2006 \(c. 38\)](#), ss. 49, [66\(2\)\(3\)](#), [Sch. 1 para. 2](#); S.I. 2007/858, [art. 2\(g\)](#)
- F6** Words in s. 37(4) repealed (1.10.1997) by 1997 c. 43, s. 55, Sch. 4, para. 12(3), [Sch. 6](#); S.I. 1997/2200, [art. 2\(1\)\(o\)\(2\)\(f\)](#)
- F7** Words in s. 37(8) substituted (26.6.2000) by 1999 c. 23, s. 67(1), [Sch. 4 para. 11](#) (with Sch. 7 para. 3(3), [para. 5\(2\)](#)); S.I. 2000/1587, 2(b)
- F8** Words in s. 37(8) substituted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 304, 336, [Sch. 32 para. 38\(c\)](#); S.I. 2005/950, [art. 2\(1\)](#), Sch. 1 para. 42(18) (with [art. 2\(2\)](#), Sch. 2 (as amended by S.I. 2005/2122, [art. 2](#)))
- F9** Words in s. 37(8) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), [Sch. 9 para. 90\(1\)\(6\)\(a\)](#)
- F10** Words in s. 37(8) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), [Sch. 9 para. 90\(1\)\(6\)\(b\)](#)

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

- C1** S. 37 modified (31.3.2005) by [Criminal Procedure \(Insanity\) Act 1964 \(c. 84\)](#), s. 5A(1) (as substituted by 2004 c. 28, [ss. 24\(1\)](#), 60 (with Sch. 12 para. 8)); S.I. 2005/579, [art. 3\(b\)](#)
- S. 37 modified (31.3.2005) by [Army Act 1955 \(c. 18\)](#), s. 116B(1) (as substituted by 2004 c. 28, ss. 26, 60, Sch. 3, para. 1 (with Sch. 12 para. 8)); S.I. 2005/579, [art. 3\(b\)](#)
- S. 37 modified (31.3.2005) by [Airforce Act 1955 \(c. 19\)](#), s. 116B(1) (as substituted by 2004 c. 28, ss. 26, 60, [Sch. 3 para. 1](#) (with Sch. 12 para. 8)); S.I. 2005/579, [art. 3\(b\)](#)
- S. 37 modified (31.3.2005) by [Naval Discipline Act 1957 \(c. 53\)](#), s. 63B(1), (as substituted by 2004 c. 28, ss. 26, 60, [Sch. 3 para. 3](#) (with Sch. 12 para. 8)); S.I. 2005/579, [art. 3\(b\)](#)

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- S. 37 modified (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 169, 383, [Sch. 4 para. 1](#); S.I. 2009/812, [art. 3\(a\)](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)
- C2** S. 37(1) modified (1.1.1992) by [Criminal Procedure \(Insanity and Unfitness to Plead\) Act 1991 \(c. 25, SIF 39:1\)](#), [s. 5\(2\)](#), (with saving in s. 8); S.I. 1991/2488, [art. 2](#)
- C3** S. 37 extended (1.10.1997) by [1997 c. 43, s. 47\(1\)\(a\)](#); S.I. 1997/2200, [art. 2\(1\)\(i\)](#)
- C4** S. 37 applied (1.10.1997) by [1996 c. 27, s. 51](#); S.I. 1997/1892, [art. 3\(1\)\(a\)](#)

### **38 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 registered medical practitioners—
  - (a) that the offender is suffering from mental illness, psychopathic disorder, severe mental impairment or 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 (in this Act referred to as “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) At least one of the registered medical practitioners whose evidence is taken into account under subsection (1) above 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 registered 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 28 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 12 weeks, as the court may specify when making the order; but
  - (b) may be renewed for further periods of not more than 28 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 [F11twelve months] in all and the court shall terminate the order if it makes a hospital order in respect of the offender

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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) 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.

#### Textual Amendments

**F11** Words in s. 38(5) substituted (1.10.1997) by 1997 c. 43, s. 49(1); S.I. 1997/2200, art. 2

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

- C5** S. 38 modified (31.3.2005) by Army Act 1955 (c. 18), s. 116B(2)(d) (as substituted by 2004 c. 28, ss. 26, 60, Sch. 3 para.1 (with Sch. 12 para. 8)); S.I. 2005/579, art. 3(b)  
S. 38 modified (31.3.2005) by Naval Discipline Act 1957 (c. 53), s. 63B(2)(d) (as substituted by 2004 c. 28, ss. 26, 60, Sch. 3 para. 3 (with Sch. 12 para. 8)); S.I. 2005/579, art. 3(b)  
S. 38 modified (31.3.2005) by Airforce Act 1955 (c. 19), s. 116B(2)(d) (as substituted by 2004 c. 28, ss. 26, 60, Sch. 3 para.1 (with Sch. 12 para. 8)); S.I. 2005/579, art. 3(b)  
S. 38 modified (28.3.2009 for certain purposes, otherwise 31.10.2009) by Armed Forces Act 2006 (c. 52), ss. 169, 383, Sch. 4 para. 5; S.I. 2009/812, art. 3(a) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- C6** S. 38 applied (1.10.1997) by 1996 c. 27, s. 51; S.I. 1997/1892, art. 3(1)(a)
- C7** S. 38(7) modified (31.3.2005) by Courts-Martial (Appeals) Act 1968 (c. 20), s. 16(5)(b), (as substituted by 2004 c. 28, ss. 26, 60, Sch. 3 para. 7 (with Sch. 12 para. 8)); S.I. 2005/579, art. 3(b)  
S. 38(7) modified (31.3.2005) by Courts-Martial (Appeals) Act 1968 (c. 20), s. 23(5)(b), (as substituted by 2004 c. 28, ss. 26, 60, Sch. 3 para. 10 (with Sch. 12 para. 8)); S.I. 2005/579, art. 3(b)  
S. 38(7) modified (31.3.2005) by Courts-Martial (Appeals) Act 1968 (c. 20), s. 25B(3)(b), (as substituted by 2004 c. 28, ss. 26, 60, Sch. 3 para. 13, (with Sch. 12 para. 8)); S.I. 2005/579, art. 3(b)

### 39 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—
  - (a) the <sup>F12</sup>Primary Care Trust or <sup>F13</sup>Local Health Board for <sup>F14</sup>the area in which that person resides or last resided; or
  - (b) <sup>F15</sup>the National Assembly for Wales or any other <sup>F12</sup>Primary Care Trust or <sup>F13</sup>Local Health Board that appears to the court to be appropriate,to furnish the court with such information as <sup>F14</sup>that <sup>F12</sup>Primary Care Trust or <sup>F13</sup>Local Health Board <sup>F16</sup>or National Assembly for Wales have or can reasonably obtain with respect to the hospital or hospitals (if any) in <sup>F14</sup>their area or elsewhere at which arrangements could be made for the admission of that person in pursuance of the order, and <sup>F14</sup>that <sup>F12</sup>Primary Care Trust or <sup>F13</sup>Local Health Board <sup>F17</sup>or National Assembly for Wales shall comply with any such request.

<sup>F18</sup>(2) .....

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#### Textual Amendments

- F12** Words in s. 39(1) inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 46**; S.I. 2002/2478, **art. 3(1)(d)** (with saving in **art. 3(3)**) and transitional provision in **art. 4**)
- F13** Words in s. 39(1) substituted (1.4.2007) by The References to **Health Authorities Order 2007** (S.I. 2007/961), **art. 3, Sch. para. 13(8)(a)**
- F14** Words in s. 39(1) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, s. 2(1)(3), 8, **Sch. 1, Pt. III, para. 107(5)(a)**
- F15** Words in s. 39(1)(b) substituted (1.4.2007) by The References to **Health Authorities Order 2007** (S.I. 2007/961), **art. 3, Sch. para. 13(8)(b)**
- F16** Words in s. 39(1) inserted (1.4.2007) by The References to **Health Authorities Order 2007** (S.I. 2007/961), **art. 3, Sch. para. 13(8)(c)**
- F17** Words in s. 39(1) inserted (1.4.2007) by The References to **Health Authorities Order 2007** (S.I. 2007/961), **art. 3, Sch. para. 13(8)(d)**
- F18** S. 39(2) repealed (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1), 8, **Sch. 1, Pt. III, para. 107(5)(b), Sch. 3** (with **Sch. 2 para. 6**)

#### [39A] <sup>F19</sup> **Information to facilitate guardianship orders.**

Where a court is minded to make a guardianship order in respect of any offender, it may request the local social services authority for the area in which the offender resides or last resided, or any other local social services authority that appears to the court to be appropriate—

- (a) to inform the court whether it or any other person approved by it is willing to receive the offender into guardianship; and
- (b) if so, to give such information as it reasonably can about how it or the other person could be expected to exercise in relation to the offender the powers conferred by section 40(2) below;

and that authority shall comply with any such request.]

#### Textual Amendments

- F19** S. 39A inserted (E.W.) (1.10.1992) by **Criminal Justice Act 1991** (c. 53, SIF 39:1), **s. 27(1)** (with saving in s. 28); S.I. 1992/333, **art. 2(2), Sch.2.**

#### 40 **Effect of hospital orders, guardianship orders and interim hospital orders.**

- (1) A hospital order shall be sufficient authority—
  - (a) for a constable, an approved social worker 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 28 days; and
  - (b) for the managers of the hospital to admit him at any time within that period and thereafter detain him in accordance with the provisions of this Act.
- (2) A guardianship order shall confer on the authority or person named in the order as guardian the same powers as a guardianship application made and accepted under Part II of this Act.
- (3) Where an interim hospital order is made in respect of an offender—

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- (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 section 38(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 section 38 above.
- (4) A patient who is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, shall, subject to the provisions of this subsection, be treated for the purposes of the provisions of this Act mentioned in Part I of Schedule 1 to this Act as if he had been so admitted or placed on the date of the order in pursuance of an application for admission for treatment or a guardianship application, as the case may be, duly made under Part II of this Act, but subject to any modifications of those provisions specified in that Part of that Schedule.
- (5) Where a patient is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, any previous application, hospital order or guardianship order by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect; but if the first-mentioned order, or the conviction on which it was made, is quashed on appeal, this subsection shall not apply and section 22 above shall have effect as if during any period for which the patient was liable to be detained or subject to guardianship under the order, he had been detained in custody as mentioned in that section.
- [<sup>F20</sup>(6) 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 72 of the <sup>M1</sup>Criminal Justice Act 1967; 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 18 above on first being so held.]

#### Textual Amendments

**F20** S. 40(6) inserted (1.4.1996) by 1995 c. 52, ss. 2(4), 7(2)

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

**C8** S. 40(5) modified (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(3) (with saving in s. 8); S.I. 1991/2488, art. 2

#### Marginal Citations

**M1** 1967 c. 80.

**Status:**

Point in time view as at 14/07/2008.

**Changes to legislation:**

Mental Health Act 1983, Cross Heading: Hospital and guardianship orders is up to date with all changes known to be in force on or before 05 December 2023. 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.