



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART III

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

##### *Restriction orders*

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

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

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**Changes to legislation:** *Mental Health Act 1983, Section 41 is up to date with all changes known to be in force on or before 09 November 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. (See end of Document for details) View outstanding changes*

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

#### Textual Amendments

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

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

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

**Changes to legislation:**

Mental Health Act 1983, Section 41 is up to date with all changes known to be in force on or before 09 November 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.

View outstanding changes

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act applied by [1996 c. 46 Sch. 2 para. 9](#)(replacing [1968 c 20 s. 23](#)) (Act applied (prosp.) by [1968 c. 20, s. 23\(4\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2, para. 9](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act applied by [1996 c. 46 Sch. 2 para. 4](#)(replacing [1957 c 53 s. 63](#)) (Act applied (prosp.) by [1957 c. 53, s. 63C\(6\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2, para. 4](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing [1955 c 19 s. 116](#)) (Act applied (prosp.) by [1955 c. 19, s. 116C\(6\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2 para. 1](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)](#))
- Act applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing [1955 c 18 s 116](#)) (Act applied (prosp.) by [1955 c. 18, s. 116C\(6\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2 para. 1](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act power to applied by [1996 c. 46 Sch. 2 para. 4](#)(replacing [1957 c 53 s. 63](#)) (Act: Power to apply conferred (prosp.) by [1957 c. 53, s. 63B\(4\)\(c\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2, para. 4](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act power to applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing [1955 c 19 s. 116](#)) (Act: Power to apply conferred (prosp.) by [1955 c. 19, s. 116B\(4\)\(c\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2, para. 1](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act power to applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing [1955 c 18 s 116](#)) (Act: Power to apply conferred (prosp.) by [1955 c. 18, s. 116B\(4\)\(c\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2 para. 1](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))

**Whole provisions yet to be inserted into this Act (including any effects on those provisions):**

- s. 74(8) inserted by [2015 c. 2 Sch. 3 para. 3\(3\)](#)