



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 175 or 376 of the Criminal Procedure (Scotland) Act 1975 shall be sufficient authority—
 - (a) for a constable, a mental health officer, 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 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 section 178(3) or 379(3) of the said Act of 1975, 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:

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 28 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.

61 Effect of guardianship orders

- (1) A guardianship order made under section 175 or 376 of the Criminal Procedure (Scotland) Act 1975 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 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.

62 Effect of restriction orders

- (1) The special restrictions applicable to a patient in respect of whom a restriction order made under section 178 or 379 of the Criminal Procedure (Scotland) Act 1975 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;
- (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.

- (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 section 178(3) or 379(3) of the said Act of 1975, 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.

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 or to a restriction direction ;
- "relevant hospital order" and "relevant transfer direction", in relation to a restricted patient, mean the hospital order 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—
- (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 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.

64 Right of appeal of patients subject to restriction orders

- (1) Where an appeal to the sheriff is made by a restricted patient who is subject to a restriction order, 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 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.
- (4) Where a patient is conditionally discharged under subsection (2) of this section—
- (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.
- (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.

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 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 in the event of the patient's not being released on licence or discharged under supervision under subsection 2(b)(ii) of this section he should continue to be detained in a hospital.

- (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—
 - (i) by warrant direct that the patient be remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed ; or
 - (ii) exercise any power of releasing the patient on licence or discharging the patient under supervision which would have been exercisable if the patient had been remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital;
 - (b) that the patient would be entitled to be conditionally discharged, the Secretary of State may—
 - (i) by warrant direct that the patient be remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed; or
 - (ii) exercise any power of releasing the patient on licence or discharging the patient under supervision which would have been exercisable if the patient had been remitted to any prison or other institution in which he might have been detained if he had not been removed to hospital; or
 - (iii) decide that the patient should continue to be detained in a hospital, and on his arrival in the prison or other institution or, as the case may be, his release or discharge as aforesaid, the transfer direction and the restriction direction shall cease to have effect.

66 Further consideration of case of conditionally discharged patients

- (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.
- (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) If in any appeal under subsection (1) or (2) of this section 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.

- (4) Where a patient is absolutely discharged in an appeal under subsection (1) or (2) of this section 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.

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; or
 - (ii) an order which by virtue of section 174(4) of the Criminal Procedure (Scotland) Act 1975,
 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 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 or the order under section 174(3) of the Criminal Procedure (Scotland) Act 1975.
- (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).

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.
- (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 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.

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 Courts-Martial (Appeals) Act 1968, section 116 of the Army Act 1955, section 116 of the Air Force Act 1955, and section 63 of the Naval Discipline Act 1957.
- (3) A direction under this section in respect of any person shall have the like effect as an order referred to in section 174(3) of the Criminal Procedure (Scotland) Act 1975.