



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.

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.