



Domestic Violence, Crime and Victims Act 2004

2004 CHAPTER 28

PART 3

VICTIMS ETC

CHAPTER 2

REPRESENTATIONS AND INFORMATION

Hospital orders

[^{F1}38A Information where restriction order not made

- (1) This section applies if, in a case where section 36 applies, the hospital order in respect of the patient was made without a restriction order.
- (2) The responsible clinician must inform the managers of the relevant hospital—
 - (a) whether he is to make an order for discharge in respect of the patient under section 23(2) of the Mental Health Act 1983;
 - (b) whether he is to make a community treatment order in respect of the patient;
 - (c) if a community treatment order is to be made in respect of the patient, what conditions are to be specified in the order;
 - (d) if a community treatment order is in force in respect of the patient, of any variation to be made under section 17B(4) of the Mental Health Act 1983 of the conditions specified in the order;
 - (e) if a community treatment order in respect of the patient is to cease to be in force, of the date on which it is to cease to be in force;
 - (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, it does not appear to the responsible clinician that the

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conditions set out in subsection (4) of that section are satisfied, of the date on which the authority for the patient's detention is to expire.

^{F2}(3)

(4) Subsection (5) applies if—

- (a) an application is made to [^{F3}the First-tier Tribunal or the Mental Health Review Tribunal for Wales] under section 66 or 69 of the Mental Health Act 1983,
- (b) the patient's case is referred to [^{F3}the First-tier Tribunal or the Mental Health Review Tribunal for Wales] under section 67 of that Act, or
- (c) the managers of the relevant hospital refer the patient's case to [^{F3}the First-tier Tribunal or the Mental Health Review Tribunal for Wales] under section 68 of that Act.

(5) The tribunal must inform the managers of the relevant hospital if it directs that the patient is to be discharged.

(6) Subsection (7) applies if a person who appears to the managers of the relevant hospital to be the victim of the offence or to act for the victim of the offence—

- (a) when his wishes were ascertained under section 36(4), expressed a wish to receive the information specified in section 36(6), or
- (b) has subsequently informed the managers of the relevant hospital that he wishes to receive that information.

(7) The managers of the relevant hospital order must take all reasonable steps—

- (a) to inform that person whether the patient is to be discharged under section 23 or 72 of the Mental Health Act 1983;
- (b) to inform that person whether a community treatment order is to be made in respect of the patient;
- (c) if a community treatment order is to be made in respect of the patient and is to specify conditions which relate to contact with the victim or his family, to provide that person with details of those conditions;
- (d) if a community treatment order is in force in respect of the patient and the conditions specified in the order are to be varied under section 17B(4) of the Mental Health Act 1983, to provide that person with details of any variation which relates to contact with the victim or his family;
- (e) if a community treatment order in respect of the patient is to cease to be in force, to inform that person of the date on which it is to cease to be in force;
- (f) if, following the examination of the patient under section 20 of the Mental Health Act 1983, the authority for the patient's detention is not to be renewed, to inform that person of the date on which the authority is to expire;
- (g) to provide that person with such other information as the managers of the relevant hospital consider appropriate in all the circumstances of the case.

(8) The relevant hospital has the meaning given by section 36A(6).]

Textual Amendments

- F1** Ss. 38A, 38B inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 48, 56(1), [Sch. 6 para. 7](#) (as amended by [S.I. 2008/912](#), [Sch. 1 para. 24\(2\)\(b\)](#)) (with s. 50(8)-(13)); [S.I. 2008/1900](#), arts. 1(1), [2\(o\)](#) (with [art. 3](#), [Sch.](#))

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- F2** S. 38A(3) omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 39(4)(e)(i)**, 306(4); S.I. 2012/1319, art. 2(3)
- F3** Words in s. 38A(4)(a)-(c) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), arts. 1(1), 9(1), **Sch. 3 para. 208**

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