



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART III

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

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

- C1** Pt. III (ss. 35 - 55) certain definitions applied (E.W.) (1.1.1992) by [Criminal Procedure \(Insanity and Unfitness to Plead\) Act 1991 \(c. 25, SIF 39:1\)](#), s. 6(2); S.I. 1991/2488, art. 2

#### *Remands to hospital*

### **35 Remand to hospital for report on accused's mental condition.**

- (1) Subject to the provisions of this section, the Crown Court or a magistrates' court may remand an accused person to a hospital specified by the court for a report on his mental condition.
- (2) For the purposes of this section an accused person is—
  - (a) in relation to the Crown Court, any person who is awaiting trial before the court for an offence punishable with imprisonment or who has been arraigned before the court for such offence and has not yet been sentenced or otherwise dealt with for the offence on which he has been arraigned;
  - (b) in relation to a magistrates' court, any person who has been convicted by the court of an offence punishable on summary conviction with imprisonment and any person charged with such an offence if the court is satisfied that he did the act or made the omission charged or he has consented to the exercise by the court of the powers conferred by this section.
- (3) Subject to subsection (4) below, the powers conferred by this section may be exercised if—
  - (a) the court is satisfied, on the written or oral evidence of a registered medical practitioner, that there is reason to suspect that the accused person is suffering

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from mental illness, psychopathic disorder, severe mental impairment or mental impairment; and

- (b) the court is of the opinion that it would be impracticable for a report on his mental condition to be made if he were remanded on bail;

but those powers shall not be exercised by the Crown Court in respect of a person who has been convicted before the court if the sentence for the offence of which he has been convicted is fixed by law.

- (4) The court shall not remand an accused person to a hospital under this section unless satisfied, on the written or oral evidence of the registered medical practitioner who would be responsible for making the report 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 seven days beginning with the date of the remand; and if the court is so satisfied it may, pending his admission, give directions for his conveyance to and detention in a place of safety.
- (5) Where a court has remanded an accused person under this section it may further remand him if it appears to the court, on the written or oral evidence of the registered medical practitioner responsible for making the report, that a further remand is necessary for completing the assessment of the accused person's mental condition.
- (6) The power of further remanding an accused person under this section may be exercised by the court 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.
- (7) An accused person shall not be remanded or further remanded under this section for more than 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.
- (8) An accused person remanded to hospital under this section shall be entitled to obtain at his own expense an independent report on his mental condition from a registered medical practitioner chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (7) above.
- (9) Where an accused person is remanded under this section—
- (a) a constable or any other person directed to do so by the court shall convey the accused person to the hospital specified by the court within the period mentioned in subsection (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 this section.
- (10) If an accused person absconds from a hospital to which he has been remanded under this section, or while being conveyed to or from that hospital, he may be arrested without warrant by any constable and shall, after being arrested, be brought as soon as practicable before the court that remanded him; and the court may thereupon terminate the remand and deal with him in any way in which it could have dealt with him if he had not been remanded under this section.

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

- C2** S. 35 modified (31.3.2005) by [Army Act 1955 \(c. 18\)](#), s. 116B(2)(a)(c) (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. 35 modified (31.3.2005) by [Airforce Act 1955 \(c. 19\)](#), s. 116B(2)(a)(c), (as substituted by [2004 c. 28](#), ss. 26, 60, [Sch. 3 para. 1](#) (with [Sch. 12 para. 8](#))); S.I. 2005/579, [art. 3\(b\)](#)

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S. 35 modified (31.3.2005) by [Naval Discipline Act 1957 \(c. 53\), s. 63B\(2\)\(a\)\(c\)](#), (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. 35 modified (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\), ss. 169, 383, Sch. 4 para. 3](#); [S.I. 2009/812, art. 3\(a\)](#) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167, art. 4](#)

**C3** S. 35 applied (1.10.1997) by [1996 c. 27, ss. 48, 67\(2\)](#); [S.I. 1997/1892, art. 3\(1\)\(a\)](#)

**C4** S. 35 applied (15.10.2001) by [1996 c. 52 s. 156\(4\)](#); [S.I. 2001/3164, art. 2](#)

### **36 Remand of accused person to hospital for treatment.**

- (1) Subject to the provisions of this section, the Crown Court may, instead of remanding an accused person in custody, remand him to a hospital specified by the court if satisfied, on the written or oral evidence of two registered medical practitioners, that he is suffering from mental illness or severe mental impairment of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment.
- (2) For the purposes of this section an accused person is any person who is in custody awaiting trial before the Crown Court for an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law) or who at any time before sentence is in custody in the course of a trial before that court for such an offence.
- (3) The court shall not remand an accused person under this section to a hospital unless it 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 seven days beginning with the date of the remand; and if the court is so satisfied it may, pending his admission, give directions for his conveyance to and detention in a place of safety.
- (4) Where a court has remanded an accused person under this section it may further remand him if it appears to the court, on the written or oral evidence of the responsible medical officer, that a further remand is warranted.
- (5) The power of further remanding an accused person under this section may be exercised by the court 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.
- (6) An accused person shall not be remanded or further remanded under this section for more than 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.
- (7) An accused person remanded to hospital under this section shall be entitled to obtain at his own expense an independent report on his mental condition from a registered medical practitioner chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (6) above.
- (8) Subsections (9) and (10) of section 35 above shall have effect in relation to a remand under this section as they have effect in relation to a remand under that section.

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

**C5** S. 36 modified (31.3.2005) by [Army Act 1955 \(c. 18\), s. 116B\(2\)\(b\)\(c\)](#), (as substituted by [2004 c. 28, ss. 26, 60, Sch. 3 para.1](#) (with [Sch. 12 para. 8](#))); [S.I. 2005/579, art. 3\(b\)](#)

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S. 36 modified (31.3.2005) by [Airforce Act 1955 \(c. 19\), s. 116B\(2\)\(b\)\(c\)](#), (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. 36 modified (31.3.2005) by [Naval Discipline Act 1957 \(c. 53\), s. 63B\(2\)\(b\)\(c\)](#), (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. 36 modified (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\), ss. 169, 383, Sch. 4 para. 4](#); S.I. 2009/812, [art. 3\(a\)](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)

### *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 any of sections 225 to 228 of the Criminal Justice Act 2003,<sup>[F4</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—

- (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.

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- (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>F5</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 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>F6</sup>shall not—
  - (a) pass sentence of imprisonment or impose a fine or make a [<sup>F7</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>F8</sup>the Powers of Criminal Courts (Sentencing) Act 2000]) in respect of the offence, or
  - (c) make in respect of the offender [<sup>F9</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.

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### 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** 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\(g\)](#)
- F5** 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\(1\)\(o\)\(2\)\(f\)](#)
- F6** 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)
- F7** 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](#)))
- F8** Words in s. 37(8) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), [Sch. 9 para. 90\(1\)\(6\)\(a\)](#)
- F9** 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)

- C6** 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\(b\)](#)  
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](#)
- C7** 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](#)
- C8** S. 37 extended (1.10.1997) by 1997 c. 43, [s. 47\(1\)\(a\)](#); S.I. 1997/2200, [art. 2\(1\)\(i\)](#)
- C9** 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,

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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 [<sup>F10</sup>twelve months] in all and the court shall terminate the order if it makes a hospital order in respect of the offender 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

**F10** 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)

**C10** 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)

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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**

**C11** S. 38 applied (1.10.1997) by 1996 c. 27, **s. 51**; S.I. 1997/1892, **art. 3(1)(a)**

**C12** 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>F11</sup>Primary Care Trust or][<sup>F12</sup>Local Health Board] for [<sup>F13</sup>the area] in which that person resides or last resided; or
- (b) [<sup>F14</sup>the National Assembly for Wales or any other][<sup>F11</sup>Primary Care Trust or][<sup>F12</sup>Local Health Board] that appears to the court to be appropriate,

to furnish the court with such information as [<sup>F13</sup>that [<sup>F11</sup>Primary Care Trust or][<sup>F12</sup>Local Health Board][<sup>F15</sup>or National Assembly for Wales] have] or can reasonably obtain with respect to the hospital or hospitals (if any) in [<sup>F13</sup>their area] or elsewhere at which arrangements could be made for the admission of that person in pursuance of the order, and [<sup>F13</sup>that [<sup>F11</sup>Primary Care Trust or][<sup>F12</sup>Local Health Board][<sup>F16</sup>or National Assembly for Wales] shall] comply with any such request.

<sup>F17</sup>(2) .....

#### Textual Amendments

- F11** 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)
- F12** 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)**
- F13** 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)**
- F14** 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)**
- F15** 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)**
- 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)(d)**
- F17** 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>F18</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



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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

**F18** 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—
  - (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>F19</sup>(6) Where—

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- (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

**F19** S. 40(6) inserted (1.4.1996) by 1995 c. 52, ss. 2(4), 7(2)

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

**C13** 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.

### *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>F20</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>F21</sup>(aa) none of the provisions of Part II of this Act relating to after-care under supervision shall apply;]
  - (b) no application shall be made to a Mental Health Review 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—
    - (i) power to grant leave of absence to the patient under section 17 above;

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- (ii) power to transfer the patient in pursuance of regulations under section 19 above [<sup>F22</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 responsible medical officer ; 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 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.

#### Textual Amendments

- F20** Words in s. 41(1) omitted (1.10.2007) and repealed (prosp.) 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\(d\)](#)
- F21** [S. 41\(3\)\(aa\)](#) inserted (1.4.1996) by [1995 c. 52](#), [ss. 1\(2\)](#), 7(2), [Sch. 1](#), para. 5
- F22** Words in [s. 41\(3\)\(c\)\(ii\)](#) inserted (1.10.1997) by [1997 c. 43](#), [s. 49\(2\)](#); [S.I.1997/2200](#), [art. 2](#)

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

- C14** [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](#)

## 42 Powers of Secretary of State in respect of patients subject to restriction orders.

- (1) If the Secretary of State is satisfied that in the case of any patient a restriction order 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 41(3) above; and where the Secretary of State so directs, the restriction order shall cease to have effect, and section 41(5) above 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.

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- (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) above by warrant recall the patient to such hospital as may be specified in the warrant.
- (4) Where a patient is recalled as mentioned in subsection (3) above—
- (a) if the hospital specified in the warrant 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 18 above as if he had absented himself without leave from the hospital specified in the warrant <sup>F23</sup> . . . .
- (5) If a restriction order in respect of a patient ceases to have effect after the patient has been conditionally discharged under this section, the patient shall, unless previously recalled under subsection (3) above, 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.
- (6) 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.

#### Textual Amendments

**F23** Words in s. 42(4)(b) omitted (1.10.2007) and repealed (3.11.2008) by virtue of [Mental Health Act 2007 \(c. 12\)](#), [ss. 40\(2\)](#), [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.](#))

### 43 Power of magistrates' courts to commit for restriction order.

- (1) If in the case of a person of or over the age of 14 years who is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment—
- (a) the conditions which under section 37(1) above are required to be satisfied for the making of a hospital order are satisfied in respect of the offender; but
  - (b) 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 if a hospital order is made a restriction order should also be made,
- the court may, instead of making a hospital order or dealing with him in any other manner, commit him in custody to the Crown Court to be dealt with in respect of the offence.
- (2) Where an offender is committed to the Crown Court under this section, the Crown Court shall inquire into the circumstances of the case and may—

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- (a) if that court would have power so to do under the foregoing provisions of this Part of this Act upon the conviction of the offender before that court of such an offence as is described in section 37(1) above, make a hospital order in his case, with or without a restriction order;
  - (b) if the court does not make such an order, deal with the offender in any other manner in which the magistrates' court might have dealt with him.
- (3) The Crown Court shall have the same power to make orders under sections 35, 36 and 38 above in the case of a person committed to the court under this section as the Crown Court has under those sections in the case of an accused person within the meaning of section 35 or 36 above or of a person convicted before that court as mentioned in section 38 above.
- (4) The power of a magistrates' court under [F<sup>24</sup>section 3 of the M<sup>2</sup>Powers of Criminal Courts (Sentencing) Act 2000] (which enables such a court to commit an offender to the Crown Court where the court is of the opinion that greater punishment should be inflicted for the offence than the court has power to inflict) shall also be exercisable by a magistrates' court where it is of the opinion that greater punishment should be inflicted as aforesaid on the offender unless a hospital order is made in his case with a restriction order.
- (5) The power of the Crown Court to make a hospital order, with or without a restriction order, in the case of a person convicted before that court of an offence may, in the same circumstances and subject to the same conditions, be exercised by such a court in the case of a person committed to the court under section 5 of the M<sup>3</sup>Vagrancy Act 1824 (which provides for the committal to the Crown Court of persons who are incorrigible rogues within the meaning of that section).

#### Textual Amendments

F24 Words in s. 43(4) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), Sch. 9 para. 91

#### Marginal Citations

M2 20000 c. 6.

M3 1824 c. 83.

## 44 Committal to hospital under s. 43.

- (1) Where an offender is committed under section 43(1) above and the magistrates' court by which he is committed is satisfied on written or oral evidence that arrangements have been made for the admission of the offender to a hospital in the event of an order being made under this section, the court may, instead of committing him in custody, by order direct him to be admitted to that hospital, specifying it, and to be detained there until the case is disposed of by the Crown Court, and may give such directions as it thinks fit for this production from the hospital to attend the Crown Court by which his case is to be dealt with.
- (2) The evidence required by subsection (1) above shall be given by the registered medical practitioner who would be in charge of the offender's treatment or by some other person representing the managers of the hospital in question.
- (3) The power to give directions under section 37(4) above, section 37(5) above and section 40(1) above shall apply in relation to an order under this section as they apply

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in relation to a hospital order, but as if references to the period of 28 days mentioned in section 40(1) above were omitted; and subject as aforesaid an order under this section shall, until the offender's case is disposed of by the Crown Court, have the same effect as a hospital order together with a restriction order <sup>F25</sup> . . . .

#### Textual Amendments

**F25** Words in s. 44(3) omitted (1.10.2007) and repealed (prosp.) by virtue of [Mental Health Act 2007 \(c. 12\)](#), [ss. 40\(3\)\(a\)\(7\)](#), 55, 56, [Sch. 11 Pt. 8](#) (with [Sch. 10](#)); S.I. 2007/2798, [art. 2\(d\)](#)

#### 45 Appeals from magistrates' courts.

- (1) Where on the trial of an information charging a person with an offence a magistrates' court makes a hospital order or guardianship order in respect of him without convicting him, he shall have the same right of appeal against the order as if it had been made on his conviction; and on any such appeal the Crown Court shall have the same powers as if the appeal had been against both conviction and sentence.
- (2) An appeal by a child or young person with respect to whom any such order has been made, whether the appeal is against the order or against the finding upon which the order was made, may be brought by him or by his parent or guardian on his behalf.

*[<sup>F26</sup> Hospital and limitation directions]*

#### Textual Amendments

**F26** [Ss. 45A, 45B](#) inserted (1.10.1997) by [1997 c. 43](#), [ss. 46](#); S.I. 1997/2200, [art. 2](#) (with saving in [art. 5\(1\)](#))

#### <sup>F27</sup>45A Power of higher courts to direct hospital admission.

- (1) This section applies where, in the case of a person convicted before the Crown Court of an offence the sentence for which is not fixed by law—
  - (a) the conditions mentioned in subsection (2) below are fulfilled; and
  - (b) <sup>F28</sup> . . . , the court considers making a hospital order in respect of him before deciding to impose a sentence of imprisonment (“the relevant sentence”) in respect of the offence.
- (2) The conditions referred to in subsection (1) above are that the court is satisfied, on the written or oral evidence of two registered medical practitioners—
  - (a) that the offender is suffering from psychopathic disorder;
  - (b) that 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
  - (c) that such treatment is likely to alleviate or prevent a deterioration of his condition.
- (3) The court may give both of the following directions, namely—

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- (a) a direction that, instead of being removed to and detained in a prison, the offender be removed to and detained in such hospital as may be specified in the direction (in this Act referred to as a “hospital direction”); and
  - (b) a direction that the offender be subject to the special restrictions set out in section 41 above (in this Act referred to as a “limitation direction”).
- (4) A hospital direction and a limitation direction shall not be given in relation to an offender unless at least one of the medical practitioners whose evidence is taken into account by the court under subsection (2) above has given evidence orally before the court.
- (5) A hospital direction and a limitation direction shall not be given in relation to an offender 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—
  - (a) for his admission to that hospital; and
  - (b) for his admission to it within the period of 28 days beginning with the day of the giving of such directions;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.
- (6) 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 hospital direction, he may give instructions for the admission of the patient to such other hospital as appears to be appropriate instead of the hospital so specified.
- (7) Where such instructions are given—
  - (a) the Secretary of State shall cause the person having the custody of the patient to be informed, and
  - (b) the hospital direction shall have effect as if the hospital specified in the instructions were substituted for the hospital specified in the hospital direction.
- (8) Section 38(1) and (5) and section 39 above shall have effect as if any reference to the making of a hospital order included a reference to the giving of a hospital direction and a limitation direction.
- (9) A hospital direction and a limitation direction given in relation to an offender shall have effect not only as regards the relevant sentence but also (so far as applicable) as regards any other sentence of imprisonment imposed on the same or a previous occasion.
- (10) The Secretary of State may by order provide that this section shall have effect as if the reference in subsection (2) above to psychopathic disorder included a reference to a mental disorder of such other description as may be specified in the order.
- (11) An order made under this section may—
  - (a) apply generally, or in relation to such classes of offenders or offences as may be specified in the order;
  - (b) provide that any reference in this section to a sentence of imprisonment, or to a prison, shall include a reference to a custodial sentence, or to an institution, of such description as may be so specified; and

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- (c) include such supplementary, incidental or consequential provisions as appear to the Secretary of State to be necessary or expedient.]

**Textual Amendments**

- F27** S. 45A inserted (1.10.1997) by 1997 c. 43, s. 46; S.I. 1997/2200, art. 2 (with saving in art. 5(1))
- F28** Words in s. 45A(1)(b) repealed (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 304, 332, 336, Sch. 32 para. 39, Sch. 37 Pt. 7; S.I. 2005/950, art 2(1), Sch. 1 paras. 42(18), 44(4)(g) (with art. 2(2), Sch. 2 (as amended by S.I. 2005/2122, art. 2))

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

- C15** S. 45A extended (1.10.1997) by 1997 c. 43, s. 47(1)(b); S.I. 1997/2200, art. 2

[<sup>F29</sup>**45B** **Effect of hospital and limitation directions.**

- (1) A hospital direction and a limitation direction shall be sufficient authority—
- (a) for a constable or any other person directed to do so by the court to convey the patient to the hospital specified in the hospital direction 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) With respect to any person—
- (a) a hospital direction shall have effect as a transfer direction; and
  - (b) a limitation direction shall have effect as a restriction direction.
- (3) While a person is subject to a hospital direction and a limitation direction 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.]

**Textual Amendments**

- F29** S. 45B inserted (1.10.1997) by 1997 c. 43, s. 46; S.I. 1997/2200, art. 2 (with saving in art. 5(1))

*Detention during Her Majesty's pleasure*

**46** **Persons ordered to be kept in custody during Her Majesty's pleasure.** **U.K.**

**F30** .....

**Textual Amendments**

- F30** S. 46 repealed (29.4.2005) by Armed Forces Act 1996 (c. 46), ss. 35(2), 36, Sch. 7 Pt. III: S.I. 2005/1119, art. 2



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**46 Persons ordered to be kept in custody during Her Majesty’s pleasure. E+W**

F30  
.....

**Textual Amendments**

**F30** S. 46 repealed (29.4.2005) by [Armed Forces Act 1996 \(c. 46\)](#), ss. 35(2), 36, Sch. 7 Pt. III: S.I. 2005/1119, [art. 2](#)

*Transfer to hospital of prisoners, etc.*

**47 Removal to hospital of persons serving sentences of imprisonment, etc.**

- (1) If in the case of a person serving a sentence of imprisonment the Secretary of State is satisfied, by reports from at least two registered medical practitioners—
  - (a) that the said person is suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment; and
  - (b) that the mental disorder from which that person 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;the Secretary of State may, if he is of the opinion having regard to the public interest and all the circumstances that it is expedient so to do, by warrant direct that that person be removed to and detained in such hospital<sup>F31</sup> . . . as may be specified in the direction; and a direction under this section shall be known as “a transfer direction”.
- (2) A transfer direction shall cease to have effect at the expiration of the period of 14 days beginning with the date on which it is given unless within that period the person with respect to whom it was given has been received into the hospital specified in the direction.
- (3) A transfer direction with respect to any person shall have the same effect as a hospital order made in his case.
- (4) A transfer direction shall specify the form or forms of mental disorder referred to in paragraph (a) of subsection (1) above from which, upon the reports taken into account under that subsection, the patient is found by the Secretary of State to be suffering; and no such direction shall be given unless the patient is described in each of those reports as suffering from the same form of disorder, whether or not he is also described in either of them as suffering from another form.
- (5) References in this Part of this Act to a person serving a sentence of imprisonment include references—
  - (a) to a person detained in pursuance of any sentence or order for detention made by a court in criminal proceedings (other than an order [<sup>F32</sup>made in consequence of a finding of insanity or unfitness to stand trial]);
  - (b) to a person committed to custody under section 115(3) of the <sup>M4</sup>Magistrates’ Courts Act 1980 (which relates to persons who fail to comply with an order to enter into recognisances to keep the peace or be of good behaviour); and

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- (c) to a person committed by a court to a prison or other institution to which the <sup>M5</sup>Prison Act 1952 applies in default of payment of any sum adjudged to be paid on his conviction.

#### Textual Amendments

**F31** Words in s. 47(1) repealed (1.10.1997) by 1997 c. 43, ss. 49(3), 56(2), **Sch. 6**; S.I. 1997/2200, art. 2 (with saving in art. 5(6))

**F32** Words in s. 47(5)(a) substituted (31.3.2005) by **Domestic Violence, Crime and Victims Act 2004** (c. 28), ss. 58(1), 60, **Sch. 10 para. 18** (with Sch. 12 para. 8); S.I. 2005/579, **art. 3(g)(k)**

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

**C16** S. 47 excluded (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(4)** (with saving in s. 8); S.I. 1991/2488, **art. 2**

**C17** S. 47 extended (1.10.1997) by 1997 c. 43, **s. 47(1)(c)**; S.I. 1997/2200, **art. 2**

#### Marginal Citations

**M4** 1980 c. 43.

**M5** 1952 c. 52.

## 48 Removal to hospital of other prisoners.

- (1) If in the case of a person to whom this section applies the Secretary of State is satisfied by the same reports as are required for the purposes of section 47 above that that person is suffering from mental illness or severe mental impairment of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and that he is in urgent need of such treatment, the Secretary of State shall have the same power of giving a transfer direction in respect of him under that section as if he were serving a sentence of imprisonment.
- (2) This section applies to the following persons, that is to say—
- (a) persons detained in a prison or remand centre, not being persons serving a sentence of imprisonment or persons falling within the following paragraphs of this subsection;
  - (b) persons remanded in custody by a magistrates' court;
  - (c) civil prisoners, that is to say, persons committed by a court to prison for a limited term <sup>F33</sup>. . . , who are not persons falling to be dealt with under section 47 above;
  - (d) persons detained under the <sup>M6</sup>Immigration Act 1971 [<sup>F34</sup>or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)].
- (3) Subsections (2) to (4) of section 47 above shall apply for the purposes of this section and of any transfer direction given by virtue of this section as they apply for the purposes of that section and of any transfer direction under that section.

#### Textual Amendments

**F33** Words in s. 48(2)(c) repealed (22.7.2004) by **Statute Law (Repeals) Act 2004** (c. 14), **ss. 1(1)**, {Sch. 1 Pt. 17 Group 8}

*Status: Point in time view as at 01/04/2008.*

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**F34** Words in s. 48(2)(d) added (10.2.2003) by 2002 c. 41, ss. 62(10)(a), 162 (with s. 159); S.I. 2003/1, art. 2, Sch.

#### Marginal Citations

**M6** 1971 c. 77.

### 49 Restriction on discharge of prisoners removed to hospital.

- (1) Where a transfer direction is given in respect of any person, the Secretary of State, if he thinks fit, may by warrant further direct that that person shall be subject to the special restrictions set out in section 41 above; and where the Secretary of State gives a transfer direction in respect of any such person as is described in paragraph (a) or (b) of section 48(2) above, he shall also give a direction under this section applying those restrictions to him.
- (2) A direction under this section shall have the same effect as a restriction order made under section 41 above and shall be known as “a restriction direction”.
- (3) While a person is subject to a restriction direction 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.

### 50 Further provisions as to prisoners under sentence.

- (1) Where a transfer direction and a restriction direction have been given in respect of a person serving a sentence of imprisonment and before [<sup>F35</sup>his release date] the Secretary of State is notified by the responsible medical officer, any other registered medical practitioner or a Mental Health Review Tribunal that that person no longer requires treatment in hospital for mental disorder or that no effective treatment for his disorder can be given in the hospital to which he has been removed, the Secretary of State may—
  - (a) by warrant direct that he 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
  - (b) exercise any power of releasing him on licence or discharging him under supervision which would have been exercisable if he had been remitted to such a prison or institution as aforesaid,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.
- [<sup>F36</sup>(2) A restriction direction in the case of a person serving a sentence of imprisonment shall cease to have effect, if it has not previously done so, on his release date.
- (3) In this section, references to a person’s release date are to the day (if any) on which he would be entitled to be released (whether unconditionally or on licence) from any prison or other institution in which he might have been detained if the transfer direction had not been given; and in determining that day there shall be disregarded—
  - (a) any powers that would be exercisable by the Parole Board if he were detained in such a prison or other institution, and

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- (b) any practice of the Secretary of State in relation to the early release under discretionary powers of persons detained in such a prison or other institution.]
- (4) For the purposes of section 49(2) of the <sup>M7</sup>Prison Act 1952 (which provides for discounting from the sentences of certain prisoners periods while they are unlawfully at large) a patient who, having been transferred in pursuance of a transfer direction from any such institution as is referred to in that section, is at large in circumstances in which he is liable to be taken into custody under any provision of this Act, shall be treated as unlawfully at large and absent from that institution.
- [<sup>F37</sup>(5) The preceding provisions of this section shall have effect as if—
- (a) the reference in subsection (1) to a transfer direction and a restriction direction having been given in respect of a person serving a sentence of imprisonment included a reference to a hospital direction and a limitation direction having been given in respect of a person sentenced to imprisonment;
  - (b) the reference in subsection (2) to a restriction direction included a reference to a limitation direction; and
  - (c) references in subsections (3) and (4) to a transfer direction included references to a hospital direction.]

#### Textual Amendments

- F35** Words in s. 50(1) substituted (20.1.2004) by [Criminal Justice Act 2003 \(c. 44\)](#), **ss. 294(2)**, 336; S.I. 2004/81, **art. 2(2)(b)**
- F36** S. 50(2)(3) substituted (20.1.2004) by [Criminal Justice Act 2003 \(c. 44\)](#), **ss. 294(3)**, 336; S.I. 2004/81, **art. 2(2)(b)**
- F37** S. 50(5) added (1.10.1997) by [1997 c. 43](#), s. 55, **Sch. 4**, para 12(5); S.I. 1997/2200, **art. 2**

#### Marginal Citations

- M7** 1952 c. 52.

## 51 Further provisions as to detained persons.

- (1) This section has effect where a transfer direction has been given in respect of any such person as is described in paragraph (a) of section 48(2) above and that person is in this section referred to as “the detainee”.
- (2) The transfer direction shall cease to have effect when the detainee’s case is disposed of by the court having jurisdiction to try or otherwise deal with him, but without prejudice to any power of that court to make a hospital order or other order under this Part of this Act in his case.
- (3) If the Secretary of State is notified by the responsible medical officer, any other registered medical practitioner or a Mental Health Review Tribunal at any time before the detainee’s case is disposed of by that court—
  - (a) that the detainee no longer requires treatment in hospital for mental disorder; or
  - (b) that no effective treatment for his disorder can be given at the hospital to which he has been removed,

the Secretary of State may by warrant direct that he be remitted to any place where he might have been detained if he had not been removed to hospital, there to be dealt

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with as if he had not been so removed, and on his arrival at the place to which he is so remitted the transfer direction shall cease to have effect.

(4) If (no direction having been given under subsection (3) above) the court having jurisdiction to try or otherwise deal with the detainee is satisfied on the written or oral evidence of the responsible medical officer—

- (a) that the detainee no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given at the hospital to which he has been removed,

the court may order him to be remitted to any such place as is mentioned in subsection (3) above or [<sup>F38</sup>, subject to section 25 of the Criminal Justice and Public Order Act 1994,] released on bail and on his arrival at that place or, as the case may be, his release on bail the transfer direction shall cease to have effect.

(5) If (no direction or order having been given or made under subsection (3) or (4) above) it appears to the court having jurisdiction to try or otherwise deal with the detainee—

- (a) that it is impracticable or inappropriate to bring the detainee before the court; and
- (b) that the conditions set out in subsection (6) below are satisfied,

the court may make a hospital order (with or without a restriction order) in his case in his absence and, in the case of a person awaiting trial, without convicting him.

(6) A hospital order may be made in respect of a person under subsection (5) above if the court—

- (a) is satisfied, on the written or oral evidence of at least two registered medical practitioners, that the detainee is suffering from mental illness or severe mental impairment of a nature or degree which makes it appropriate for the patient to be detained in a hospital for medical treatment; and
- (b) is of the opinion, after considering any depositions or other documents required to be sent to the proper officer of the court, that it is proper to make such an order.

(7) Where a person committed to the Crown Court to be dealt with under section 43 above is admitted to a hospital in pursuance of an order under section 44 above, subsections (5) and (6) above shall apply as if he were a person subject to a transfer direction.

#### Textual Amendments

**F38** Words in s. 51(4) inserted (10.4.1995) by 1994 c. 33, s. 168, **Sch. 10**, para. 51; S.I. 1995/721, art. 2, **Sch.** Appendix A

## 52 Further provisions as to persons remanded by magistrates' courts.

(1) This section has effect where a transfer direction has been given in respect of any such person as is described in paragraph (b) of section 48(2) above; and that person is in this section referred to as “the accused”.

(2) Subject to subsection (5) below, the transfer direction shall cease to have effect on the expiration of the period of remand unless the accused is [<sup>F39</sup>sent] in custody to the Crown Court for trial or to be otherwise dealt with.

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- (3) Subject to subsection (4) below, the power of further remanding the accused under section 128 of the <sup>M8</sup>Magistrates' Courts Act 1980 may be exercised by the court without his being brought before the court; and if the court further remands the accused in custody (whether or not he is brought before the court) the period of remand shall, for the purposes of this section, be deemed not to have expired.
- (4) The court shall not under subsection (3) above further remand the accused in his absence unless he has appeared before the court within the previous six months.
- (5) If the magistrates' court is satisfied, on the written or oral evidence of the responsible medical officer—
- (a) that the accused no longer requires treatment in hospital for mental disorder; or
  - (b) that no effective treatment for his disorder can be given in the hospital to which he has been removed,
- the court may direct that the transfer direction shall cease to have effect notwithstanding that the period of remand has not expired or that the accused is [<sup>F40</sup>sent] to the Crown Court as mentioned in subsection (2) above.
- (6) If the accused is [<sup>F41</sup>sent] to the Crown Court as mentioned in subsection (2) above and the transfer direction has not ceased to have effect under subsection (5) above, section 51 above shall apply as if the transfer direction given in his case were a direction given in respect of a person falling within that section.
- (7) The magistrates' court may, in the absence of the accused, [<sup>F42</sup>send him to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998] if—
- (a) the court is satisfied, on the written or oral evidence of the responsible medical officer, that the accused is unfit to take part in the proceedings; and
  - (b) <sup>F43</sup> . . . the accused is represented by counsel or a solicitor.

#### Textual Amendments

- F39** Word in s. 52(2) substituted (9.5.2005 for certain purposes and otherwise prosp.) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 41, 336, [Sch. 3 para. 55\(3\)\(a\)](#); S.I. 2005/1267, art. 2, Sch. Pt. 1 para. 1(1)(k)
- F40** Word in s. 52(5) substituted (9.5.2005 for specified purposes, 18.6.2012 for specified purposes, 5.11.2012 for specified purposes) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 3 para. 55\(3\)\(b\)](#); S.I. 2005/1267, art. 2(1)(2)(a), Sch. Pt. 1 para. 1(1)(k); S.I. 2012/1320, art. 4(1)(c) (2) (3) (with art. 5 and S.I. 2012/2574, art. 4(2)); S.I. 2012/2574, art. 2(1)(c)(2)(3), Sch. (as amended (4.11.2012) by S.I. 2012/2761, art. 2) (with arts. 3, 4 of said S.I. 2012/2574 and [S.I. 2013/1103](#), art. 4)
- F41** Word in s. 52(6) substituted (9.5.2005 for specified purposes, 18.6.2012 for specified purposes, 5.11.2012 for specified purposes) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 3 para. 55\(3\)\(c\)](#); S.I. 2005/1267, art. 2(1)(2)(a), Sch. Pt. 1 para. 1(1)(k); S.I. 2012/1320, art. 4(1)(c) (2) (3) (with art. 5 and S.I. 2012/2574, art. 4(2)); S.I. 2012/2574, art. 2(1)(c)(2)(3), Sch. (as amended (4.11.2012) by S.I. 2012/2761, art. 2) (with arts. 3, 4 of said S.I. 2012/2574 and [S.I. 2013/1103](#), art. 4)
- F42** Word in s. 52(7) substituted (9.5.2005 for specified purposes, 18.6.2012 for specified purposes, 5.11.2012 for specified purposes) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 3 para. 55\(3\)\(d\)](#); S.I. 2005/1267, art. 2(1)(2)(a), Sch. Pt. 1 para. 1(1)(k); S.I. 2012/1320, art. 4(1)(c) (2) (3) (with art. 5 and S.I. 2012/2574, art. 4(2)); S.I. 2012/2574, art. 2(1)(c)(2)(3), Sch. (as amended (4.11.2012) by S.I. 2012/2761, art. 2) (with arts. 3, 4 of said S.I. 2012/2574 and [S.I. 2013/1103](#), art. 4)
- F43** Words in s. 52(7)(b) repealed (9.5.2005 for specified purposes, 18.6.2012 for specified purposes, 5.11.2012 for specified purposes) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 3 para. 55\(3\)\(d\)](#), Sch. 37 Pt. 4; S.I. 2005/1267, art. 2(1)(2)(a), Sch. Pt. 1 para. 1(1)(k); S.I. 2012/1320, art. 4(1)(c) (2) (3) (with art. 5 and S.I. 2012/2574, art. 4(2)); S.I. 2012/2574, art. 2(1)(c)(2)(3), Sch.

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(as amended (4.11.2012) by S.I. 2012/2761, art. 2) (with arts. 3, 4 of said S.I. 2012/2574 and S.I. 2013/1103, art. 4)

#### Marginal Citations

M8 1980 c. 43 .

### 53 Further provisions as to civil prisoners and persons detained under [<sup>F44</sup>the Immigration Acts].

- (1) Subject to subsection (2) below, a transfer direction given in respect of any such person as is described in paragraph (c) or (d) of section 48(2) above shall cease to have effect on the expiration of the period during which he would, but for his removal to hospital, be liable to be detained in the place from which he was removed.
- (2) Where a transfer direction and a restriction direction have been given in respect of any such person as is mentioned in subsection (1) above, then, if the Secretary of State is notified by the responsible medical officer, any other registered medical practitioner or a Mental Health Review Tribunal at any time before the expiration of the period there mentioned—
  - (a) that that person no longer requires treatment in hospital for mental disorder; or
  - (b) that no effective treatment for his disorder can be given in the hospital to which he has been removed,

the Secretary of State may by warrant direct that he be remitted to any place where he might have been detained if he had not been removed to hospital, and on his arrival at the place to which he is so remitted the transfer direction and the restriction direction shall cease to have effect.

#### Textual Amendments

**F44** S. 53: words in heading substituted (10.2.2003) by virtue of 2002 c. 41, ss. 62(10)(b), 162 (with s. 129); S.I. 2003/1, art. 2, Sch

### *Supplemental*

### 54 Requirements as to medical evidence.

- (1) The registered medical practitioner whose evidence is taken into account under section 35(3)(a) above and at least one of the registered medical practitioners whose evidence is taken into account under sections 36(1), 37(2)(a), 38(1) [<sup>F45</sup>45A(2)] and 51(6)(a) above and whose reports are taken into account under sections 47(1) and 48(1) above shall be a practitioner approved for the purposes of section 12 above by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder.
- (2) For the purposes of any provision of this Part of this Act under which a court may act on the written evidence of—
  - (a) a registered medical practitioner or a registered medical practitioner of any description; or
  - (b) a person representing the managers of a hospital,

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a report in writing purporting to be signed by a registered medical practitioner or a registered medical practitioner of such a description or by a person representing the managers of a hospital may, subject to the provisions of this section, be received in evidence without proof of the signature of the practitioner or that person and without proof that he has the requisite qualifications or authority or is of the requisite description; but the court may require the signatory of any such report to be called to give oral evidence.

- (3) Where, in pursuance of a direction of the court, any such report is tendered in evidence otherwise than by or on behalf of the person who is the subject of the report, then—
- (a) if that person is represented by counsel or a solicitor, a copy of the report shall be given to his counsel or solicitor;
  - (b) if that person is not so represented, the substance of the report shall be disclosed to him or, where he is a child or young person, to his parent or guardian if present in court; and
  - (c) except where the report relates only to arrangements for his admission to a hospital, that person may require the signatory of the report to be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of that person.

#### Textual Amendments

**F45** Words in s. 54 inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4**, para. 12(6); S.I. 1997/2200, **art. 2**

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

**C18** S. 54(2)(3) extended (30.9.1998) by 1969 c. 54, **s. 12B(3)** (as inserted by 1998 c. 37, ss. 106, **Sch. 7**, para. 5(3)); S.I. 1998/2327, **art. 2(1)(w)** (as amended by S.I. 1998/2412, **art. 2** and S.I. 1998/2906, **art. 2**)

**C19** S. 54(2)(3) extended (E.W.) (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), **s. 1(2)** (with saving in s. 8); S.I. 1991/2488, **art. 2**

S. 54(2)(3) applied (25.8.2000) by 2000 c. 6, ss. 42, 168(1), **Sch. 2 para. 5(9)**

S. 54(2)(3) extended (E.W.) (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), s. 5(3), **Sch. 2 para. 2(3)** (with saving in s. 8); S.I. 1991/2488, **art. 2**

S. 54(2)(3) extended (1.10.1992) by Powers of Criminal Courts Act 1973 (c. 62, SIF 39:1), s. 3(3), **Sch. 1A para. 5(9)** (as inserted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 8(3), 9(2), 101(1), Sch. 1 Pt. II, **Sch. 12 para. 1**; S.I. 1992/333, art. 2(2), **Sch. 2**.)

#### [54A] <sup>F46</sup>Reduction of period for making hospital orders.

- (1) The Secretary of State may by order reduce the length of the periods mentioned in sections 37(4) and (5) and 38(4) above.
- (2) An order under subsection (1) above may make such consequential amendments of sections 40(1) and 44(3) above as appear to the Secretary of State to be necessary or expedient.]

#### Textual Amendments

**F46** S. 54A inserted (E.W.) (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), **s. 27(2)** (with saving in s. 28); S.I. 1992/333, art. 2(2), **Sch.2**.



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## 55 Interpretation of Part III.

(1) In this Part of this Act—

“child” and “young person” have the same meaning as in the <sup>M9</sup>Children and Young Persons Act 1933;

“civil prisoner” has the meaning given to it by section 48(2)(c) above;

“guardian”, in relation to a child or young person, has the same meaning as in the Children and Young Persons Act 1933;

“place of safety”, in relation to a person who is not a child or young person, means any police station, prison or remand centre, or any hospital the managers of which are willing temporarily to receive him, and in relation to a child or young person has the same meaning as in the Children and Young Persons Act 1933;

“responsible medical officer”, in relation to a person liable to be detained in a hospital within the meaning of Part II of this Act, means the registered medical practitioner in charge of the treatment of the patient.

(2) Any reference in this Part of this Act to an offence punishable on summary conviction with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment relating to the imprisonment of young offenders.

(3) Where a patient who is liable to be detained in a hospital in pursuance of an order or direction under this Part of this Act is treated by virtue of any provision of this Part of this Act as if he had been admitted to the hospital in pursuance of a subsequent order or direction under this Part of this Act or a subsequent application for admission for treatment under Part II of this Act, he shall be treated as if the subsequent order, direction or application had described him as suffering from the form or forms of mental disorder specified in the earlier order or direction or, where he is treated as if he had been so admitted by virtue of a direction under section 42(1) above, such form of mental disorder as may be specified in the direction under that section.

(4) Any reference to a hospital order, a guardianship order or a restriction order in section 40(2), (4) or (5), section 41(3) to (5), or section 42 above or section 69(1) below shall be construed as including a reference to any order or direction under this Part of this Act having the same effect as the first-mentioned order; and the exceptions and modifications set out in Schedule 1 to this Act in respect of the provisions of this Act described in that Schedule accordingly include those which are consequential on the provisions of this subsection.

(5) Section 34(2) above shall apply for the purposes of this Part of this Act as it applies for the purposes of Part II of this Act.

(6) References in this Part of this Act to persons serving a sentence of imprisonment shall be construed in accordance with section 47(5) above.

(7) Section 99 of the <sup>M10</sup>Children and Young Persons Act 1933 (which relates to the presumption and determination of age) shall apply for the purposes of this Part of this Act as it applies for the purposes of that Act.

### Marginal Citations

**M9** 1933 c. 12.

**M10** 1933 c. 12.

**Status:**

Point in time view as at 01/04/2008.

**Changes to legislation:**

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