



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART III

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

##### *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 [<sup>F3</sup>imposed under section 258, [<sup>F4</sup>258A,][<sup>F5</sup>268A, 273, 274, [<sup>F6</sup>274A,] 282A], 283 [<sup>F7</sup>, 285 or 285A] of the Sentencing Code or under Chapter 7 of Part 10 of that Code, 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.

[<sup>F8</sup>(1B) For the purposes of subsection (1A) above—

- (a) a sentence falls to be imposed under section 258 [<sup>F9</sup>or 258A] of the Sentencing Code if the court is obliged by that section to pass a sentence of detention for life under section 250 of that Code;
- [<sup>F10</sup>(aa) a sentence falls to be imposed under section 268A or 282A of that Code if it is required by section 268B(2) or 282B(2) of that Code and the court is not of the opinion there mentioned;]
- (b) a sentence falls to be imposed under section 273 [<sup>F11</sup>, 274 or 274A] of that Code if the court is obliged by that section to pass a sentence of custody for life;

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- (c) a sentence falls to be imposed under section 283<sup>[F12]</sup>, 285 or 285A] of that Code if the court is obliged by that section to pass a sentence of imprisonment for life;
  - (d) a sentence falls to be imposed under Chapter 7 of Part 10 of that Code if it is required by section 311(2), <sup>[F13]</sup>312(2A), 313(2A), 314(2A) or 315(2A)] of that Code and the court is not of the opinion there mentioned.]
- (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 <sup>[F14]</sup>mental disorder] 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 <sup>[F15]</sup>appropriate medical treatment is available for him; 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.
- (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 <sup>F16</sup>. . . , 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 <sup>[F17]</sup>approved clinician who would have overall responsibility for his case] or of some other person representing the managers of the hospital that arrangements have been made for his admission to that hospital<sup>F18</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.

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- (7) <sup>F19</sup> .....
- (8) Where an order is made under this section, the court [<sup>F20</sup>shall not—
- (a) pass sentence of imprisonment or impose a fine or make a [<sup>F21</sup>community order (within [<sup>F22</sup>the meaning given by section 200 of the Sentencing Code])][<sup>F23</sup> or a youth rehabilitation order (within [<sup>F24</sup>the meaning given by section 173 of that Code])] in respect of the offence,
  - (b) if the order under this section is a hospital order, make a referral order (within [<sup>F25</sup>the meaning given by section 83 of that Code]) in respect of the offence, or
  - (c) make in respect of the offender <sup>F26</sup> . . . [<sup>F27</sup> an order under [<sup>F28</sup>section 376 of that Code] (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.]

#### 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** Words in s. 37(1A) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 73\(2\)](#) (with [Sch. 24 para. 447](#), [Sch. 27](#)); S.I. 2020/1236, [reg. 2](#)
- F4** Word in s. 37(1A) inserted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 3\(16\)\(a\)\(i\)](#), 208(5)(b)
- F5** Words in s. 37(1A) substituted (29.6.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\)](#), s. 50(2)(v), [Sch. 13 para. 8\(a\)](#)
- F6** Word in s. 37(1A) inserted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 3\(16\)\(a\)\(ii\)](#), 208(5)(b)
- F7** Words in s. 37(1A) substituted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 3\(16\)\(a\)\(iii\)](#), 208(5)(b)
- F8** S. 37(1B) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 73\(3\)](#) (with [Sch. 24 para. 447](#), [Sch. 27](#)); S.I. 2020/1236, [reg. 2](#)
- F9** Words in s. 37(1B)(a) inserted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 3\(16\)\(b\)\(i\)](#), 208(5)(b)
- F10** S. 37(1B)(aa) inserted (29.6.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\)](#), s. 50(2)(v), [Sch. 13 para. 8\(b\)](#)
- F11** Words in s. 37(1B)(b) substituted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 3\(16\)\(b\)\(ii\)](#), 208(5)(b)
- F12** Words in s. 37(1B)(c) substituted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 3\(16\)\(b\)\(iii\)](#), 208(5)(b)
- F13** Words in s. 37(1B)(d) substituted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(k), [Sch. 12 para. 1](#) (with s. 124(11)(12))
- F14** Words in s. 37(2)(a) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 1, 56, [Sch. 1 para. 7\(a\)](#) (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(a\)](#) (with [art. 3](#), [Sch.](#))
- F15** Words in s. 37(2)(a)(i) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 4\(5\)](#), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))
- F16** Words in s. 37(3) repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 1, 55, 56, [Sch. 1 para. 7\(b\)](#), [Sch. 11 Pt. 1](#) (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(a\)\(p\)](#) (with [art. 3](#), [Sch.](#))

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- F17** Words in s. 37(4) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 10(4)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)
- F18** 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)**
- F19** S. 37(7) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 55, 56, **Sch. 11 Pt. 1** (with Sch. 10); S.I. 2008/1900, **art. 2(p)** (with art. 3, Sch.)
- F20** 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)
- F21** 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))
- F22** Words in s. 37(8)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 73(4)(a)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F23** Words in s. 37(8)(a) inserted (30.11.2009) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 6, 153, {Sch. 4 para. 30(a)} (with Sch. 27 para. 5): S.I. 2009/3074, **art. 2(p)(v)**
- F24** Words in s. 37(8)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 73(4)(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F25** Words in s. 37(8)(b) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 73(5)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F26** Words in s. 37(8)(c) repealed (30.11.2009) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 6, 149, 153, Sch. 4 para. 30(b), {Sch. 28 Pt. 1} (with Sch. 27 para. 5): S.I. 2009/3074, **arts. 2(p)(v)(u)(ix)**
- F27** Words in s. 37(8) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), **Sch. 9 para. 90(1)(6)(b)**
- F28** Words in s. 37(8)(c) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 73(6)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

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

- C1** 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**
- C2** S. 37 modified (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by Sentencing (Pre-consolidation Amendments) Act 2020 (c. 9), **ss. 1**, 5(2)(3); S.I. 2012/1236, reg. 2
- C3** 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**
- C4** S. 37 extended (1.10.1997) by 1997 c. 43, **s. 47(1)(a)**; S.I. 1997/2200, **art. 2(1)(i)**
- C5** S. 37 applied (1.10.1997) by 1996 c. 27, **s. 51**; S.I. 1997/1892, **art. 3(1)(a)**

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