



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART III

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

##### *Hospital and guardianship orders*

#### **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 [<sup>F1</sup>mental disorder] ; 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,

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 [<sup>F2</sup>an authorised person who] 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 [<sup>F3</sup>approved clinician who would have overall responsibility for his case] or of some other person

**Changes to legislation:** *Mental Health Act 1983, Section 38 is up to date with all changes known to be in force on or before 08 November 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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 [<sup>F4</sup>responsible clinician] , that the continuation of the order is warranted;

but no such order shall continue in force for more than [<sup>F5</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 [<sup>F4</sup>responsible clinician] 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

- F1** Words in s. 38(1)(a) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 1, 56, [Sch. 1 para. 8](#) (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(a\)](#) (with [art. 3](#), [Sch.](#))
- F2** Words in s. 38(2) substituted (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), ss. 208, 211, [Sch. 21 para. 56](#) (with ss. 29, 192, 193); S.I. 2009/3250, [art. 2\(h\)](#) (subject to arts. 6, 9)
- F3** Words in s. 38(4) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 10\(5\)\(a\)](#), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))
- F4** Words in s. 38(5) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 10\(5\)\(b\)](#), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))
- F5** 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)

- C1** 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\(b\)](#)  
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](#)
- C2** S. 38 applied (1.10.1997) by 1996 c. 27, [s. 51](#); S.I. 1997/1892, [art. 3\(1\)\(a\)](#)
- C3** 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\(b\)](#)

---

**Changes to legislation:** *Mental Health Act 1983, Section 38 is up to date with all changes known to be in force on or before 08 November 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)*

---

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)**

**C4** S. 38(7) modified by 1968 c. 19, s. 30A(2) (as inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 47, 153, **Sch. 8 para. 8**); S.I. 2008/1586, **art. 2(1)**, Sch. 1 para. 26

**Changes to legislation:**

Mental Health Act 1983, Section 38 is up to date with all changes known to be in force on or before 08 November 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

View outstanding changes

**Changes and effects yet to be applied to :**

- s. 38(1) modified (temp.) by [2020 c. 7 Sch. 8 para. 6](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act applied by [1996 c. 46 Sch. 2 para. 9](#)(replacing [1968 c 20 s. 23](#)) (Act applied (prosp.) by [1968 c. 20, s. 23\(4\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2, para. 9](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act applied by [1996 c. 46 Sch. 2 para. 4](#)(replacing [1957 c 53 s. 63](#)) (Act applied (prosp.) by [1957 c. 53, s. 63C\(6\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2, para. 4](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing [1955 c 19 s. 116](#)) (Act applied (prosp.) by [1955 c. 19, s. 116C\(6\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2 para. 1](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)](#))
- Act applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing [1955 c 18 s 116](#)) (Act applied (prosp.) by [1955 c. 18, s. 116C\(6\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2 para. 1](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act power to applied by [1996 c. 46 Sch. 2 para. 4](#)(replacing [1957 c 53 s. 63](#)) (Act: Power to apply conferred (prosp.) by [1957 c. 53, s. 63B\(4\)\(c\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2, para. 4](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act power to applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing [1955 c 19 s. 116](#)) (Act: Power to apply conferred (prosp.) by [1955 c. 19, s. 116B\(4\)\(c\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2, para. 1](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))
- Act power to applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing [1955 c 18 s 116](#)) (Act: Power to apply conferred (prosp.) by [1955 c. 18, s. 116B\(4\)\(c\)](#) (as substituted (prosp.) by [1996 c. 46, ss. 8, 36\(2\), Sch. 2 para. 1](#) which said amending provision was repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(2\), 60, Sch. 11; S.I. 2005/579, art. 3\(h\)\(i\)\(ix\)\)](#))

**Whole provisions yet to be inserted into this Act (including any effects on those provisions):**

- s. 74(8) inserted by [2015 c. 2 Sch. 3 para. 3\(3\)](#)