Status: Point in time view as at 01/10/2007.
Changes to legislation: Mental Health Act 1983, Section 42 is up to date with all changes known to be in force
on or before 02 April 2024. 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)

Mental Health Act 1983

1983 CHAPTER 20

PART III

PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS OR UNDER SENTENCE

Restriction orders

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.

(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 **F1**. . . .

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(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
F1   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.)

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