



Mental Health Act 1959

1959 CHAPTER 72

PART V

ADMISSION OF PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS, ETC., AND TRANSFER OF PATIENTS UNDER SENTENCE

*Provisions for compulsory admission or guardianship
of patients convicted of criminal offences, etc.*

60 Powers of courts to order hospital admission or guardianship

(1) Where a person is convicted before a court of assize or quarter sessions of an offence 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 following conditions are satisfied, that is to say—

(a) the court is satisfied, on the written or oral evidence of two medical practitioners (complying with the provisions of section sixty-two of this Act),

—
(i) that the offender is suffering from mental illness, psychopathic disorder, subnormality or severe sub-normality ; and

(ii) that the mental disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment, or the reception of the patient into guardianship under this Act; and

(b) the court is of 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,

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 health authority or of such other person approved by a local health authority as may be so specified.

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- (2) 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) of this section in his case as being a person suffering from mental illness or severe subnormality, 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.
- (3) An order for the admission of an offender to a hospital (in this Part of this Act referred to as a hospital order) shall not be made under this section unless the court is satisfied that arrangements have been made for the admission of the offender to that hospital in the event of such an order being made by the court, and for his admission thereto within a period of twenty-eight days beginning with the date of the making of such an order.
- (4) An order placing an offender under the guardianship of a local health authority or of any other person (in this Part of 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.
- (5) A hospital order or guardianship order shall specify the form or forms of mental disorder referred to in paragraph (a) of subsection (1) of this section from which, upon the evidence taken into account under that paragraph, 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 as aforesaid 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 those forms.
- (6) Where an order is made under this section, the court shall not pass sentence of imprisonment or impose a fine or make a probation order in respect of the offence, but may make any other order which the court 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, including an order sending an offender to an approved school.

61 Additional powers in respect of children and young persons

- (1) If in the case of a child or young person brought before a juvenile court under section sixty-two or section sixty-four of the Children and Young Persons Act, 1933.—
 - (a) the court is satisfied that the child or young person is in need of care or protection, or that his parent or guardian is unable to control him, as the case may be; and
 - (b) the conditions which, under section sixty of this Act, are required to be satisfied for the making of a hospital order or guardianship order in respect of a person convicted as therein mentioned are so far as applicable satisfied in the case of the child or young person,

the court shall have the like power to make a hospital order or guardianship order as if the child or young person had been convicted by the court of an offence punishable on summary conviction with imprisonment; and the provisions of the said section sixty shall with the necessary modifications apply accordingly.
- (2) A juvenile court shall not make a hospital order or guardianship order in respect of a person brought before the court under section sixty-four of the Children and Young Persons Act, 1933, as being beyond the control of his parent or guardian unless the

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court is satisfied that the parent or guardian understands the results which will follow from the order and consents to its being made.

- (3) Where a hospital order is made by virtue of this section in respect of a child or young person, the court may also make an order committing him to the care of a fit person under the Children and Young Persons Act, 1933; but except as aforesaid no order shall be made under section sixty-two or sixty-four of that Act in conjunction with a hospital order or guardianship order.

62 Requirements as to medical evidence

- (1) Of the medical practitioners whose evidence is taken into account under paragraph (a) of subsection (1) of section sixty of this Act, at least one shall be a practitioner approved for the purposes of section twenty-eight of this Act by a local health authority as having special experience in the diagnosis or treatment of mental disorders.
- (2) For the purposes of the said paragraph (a) a report in writing purporting to be signed by a medical practitioner may, subject to the provisions of this section, be received in evidence without proof of the signature or qualifications of the practitioner ; but the court may in any case require that the practitioner by whom such a report was signed be called to give oral evidence.
- (3) Where, in pursuance of directions of the court, any such report as aforesaid is tendered in evidence otherwise than by or on behalf of the accused, then—
 - (a) if the accused is represented by counsel or solicitor, a copy of the report shall be given to his counsel or solicitor;
 - (b) if the accused is not so represented, the substance of the report shall be disclosed to the accused or, where he is a child or young person, to his parent or guardian if present in court;
 - (c) in any case, the accused may require that the practitioner by whom the report was signed be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of the accused.
- (4) In relation to a child or young person brought before a juvenile court under section sixty-two or section sixty-four of the Children and Young Persons Act, 1933, subsection (3) of this section shall have effect as if for references to the accused there were substituted references to the child or young person ; and in the case of a child or young person brought before the court under the said section sixty-four paragraphs (a) to (e) of that subsection shall have effect as if those references included references to his parent or guardian, and as if in the said paragraph (b) the words from " or, where " to the end of the paragraph were omitted.

63 Effects of hospital orders and guardianship orders

- (1) A hospital order shall be sufficient authority—
 - (a) for a constable, a mental welfare officer 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 twenty-eight 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.

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- (2) A guardianship order shall confer on the authority or person therein named as guardian the like powers as a guardianship application made and accepted under Part IV of this Act.
- (3) A patient who is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, shall be treated for the purposes of Part IV of this Act (other than sections thirty-one and thirty-two, or section thirty-four, as the case may be) 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 the said Part IV, except that—
- (a) the power to order the discharge of the patient under section forty-seven shall not be exercisable by his nearest relative; and
 - (b) the special provisions relating to the expiration and renewal of authority for detention and guardianship in the case of psychopathic and subnormal patients shall not apply;

and accordingly the provisions of the said Part IV specified in the first column of the Third Schedule to this Act shall apply in relation to him subject to the exceptions and modifications set out in the second column of that Schedule and the remaining provisions of the said Part IV shall not apply.

- (4) Without prejudice to any provision of Part IV of this Act as applied by this section, an application to a Mental Health Review Tribunal may be made in respect of a patient admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, as follows, that is to say—
- (a) by the patient, within the period of six months beginning with the date of the order or with the day on which he attains the age of sixteen years, whichever is the later;
 - (b) by the nearest relative of the patient, within the period of twelve months beginning with the date of the order, and in any subsequent period of twelve months.

- (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:

Provided that if the first-mentioned order, or the conviction on which it was made, is quashed on appeal, this subsection shall not apply and section forty-six of this Act 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.

64 Supplementary provisions as to hospital orders

- (1) The court by which a hospital order is made may give such directions as it thinks fit for the conveyance of the patient to a place of safety and his detention therein pending his admission to the hospital within the period of twenty-eight days referred to in subsection (1) of section sixty-three of this Act.
- (2) If within the said period of twenty-eight days it appears to the Minister 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 in lieu of

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the hospital so specified; and where such directions are given the Minister shall cause the person having the custody of the patient to be informed, and the hospital, order shall have effect as if the hospital specified in the directions were substituted for the hospital specified in the order.

65 Power of higher courts to restrict discharge from hospital

- (1) Where a hospital order is made in respect of an offender by a court of assize or quarter sessions, 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 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, either without limit of time or during such period as may be specified in the order.
- (2) An order under this section (in this Act referred to as an order restricting discharge) shall not be made in the case of any person unless at least one of the medical practitioners whose evidence is taken into account by the court under paragraph (a) of subsection (1) of section sixty of this Act has given evidence orally before the court.
- (3) The special restrictions applicable to a patient in respect of whom an order restricting discharge is in force are as follows, that is to say—
 - (a) none of the provisions of Part IV 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 IV or absolutely discharged under the next following section;
 - (b) no application shall be made to a Mental Health Review Tribunal in respect of the patient under section sixty-three of this Act or under any provision of the said Part IV;
 - (c) the following powers shall be exercisable only with the consent of the Secretary of State, that is to say—
 - (i) power to grant leave of absence to the patient under section thirty-nine of this Act;
 - (ii) power to transfer the patient in pursuance of regulations under section forty-one of this Act; and
 - (iii) power to order the discharge of the patient under section forty-seven of this Act;and if leave of absence is granted under the said section thirty-nine the power to recall the patient under that section shall be vested 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 thirty-nine, and the power to take the patient into custody and return him under section forty of this Act, may be exercised at any time ;and in relation to any such patient the provisions of the said Part IV described in the first column of the Third Schedule to this Act shall have effect subject to the exceptions and modifications set out in the third column of that Schedule in lieu of those set out in the second column of that Schedule.
- (4) A hospital order shall not cease to have effect under subsection (5) of section sixty-three of this Act if an order restricting the discharge of the patient is in force at the material time.

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- (5) Where an order restricting the discharge of a patient ceases to have effect while the relevant hospital order continues in force, the provisions of section sixty-three of this Act and the Third Schedule to this Act shall apply to the patient as if he had been admitted to the hospital in pursuance of a hospital order (without an order restricting his discharge) made on the date on which the order restricting his discharge ceased to have effect.

66 Powers of Secretary of State in respect of patients subject to restriction orders

- (1) If the Secretary of State is satisfied that an order restricting the discharge of a patient is no longer required for the protection of the public, he may direct that the patient shall cease to be subject to the special restrictions set out in section sixty-five of this Act; and where the Secretary of State so directs, the order restricting the discharge of the patient shall cease to have effect, and subsection (5) of the last foregoing section shall apply accordingly.
- (2) At any time while an order restricting the discharge of a patient is in force, 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 order restricting his discharge shall cease to have effect accordingly.
- (3) The Secretary of State may at any time during the continuance in force of an order restricting the discharge of a patient who has been conditionally discharged under the last foregoing subsection, by warrant recall the patient to such hospital as may be specified in the warrant; and thereupon—
- (a) if the hospital so specified is not the hospital from which the patient was conditionally discharged, the hospital order and the order restricting his discharge 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 forty of this Act as if he had absented himself without leave from the hospital specified in the warrant, and if the order restricting his discharge was made for a specified period, that period shall not in any event expire until the patient returns to the hospital or is returned to the hospital under that section.
- (4) If an order restricting the discharge of a patient ceases to have effect after the patient has been conditionally discharged under this section, the patient shall, unless previously recalled under the last foregoing subsection, 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.
- (5) The Secretary of State may, if satisfied that the attendance at any place in Great Britain of a patient who is subject to an order restricting discharge 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.
- (6) The Secretary of State may at any time refer to a Mental Health Review Tribunal for their advice the case of a patient who is for the time being subject to an order restricting

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his discharge, and, where so requested in writing in accordance with the following provisions of this section by such a patient who is detained in hospital, shall do so within the period of two months beginning with the receipt of the request unless during that period the patient is discharged absolutely or conditionally under subsection (2) of this section or the order restricting his discharge ceases to have effect.

- (7) A patient shall not be entitled to make a request to the Secretary of State under the last foregoing subsection before the expiration of the period of one year beginning with the date of the relevant hospital order, but subject as aforesaid may make one such request during each period during which he could have made an application to a Mental Health Review Tribunal if he had been subject to a hospital order "without an order restricting his discharge and the authority for his detention had been renewed at the requisite intervals.
- (8) Where a patient subject to an order restricting his discharge has been conditionally discharged under subsection (2) of this section and subsequently recalled to hospital, the last foregoing subsection shall apply as if the relevant hospital order had been made on the day on which he returns or is returned to hospital, but he may also make one such request as aforesaid between the expiration of the period of six months and the expiration of the period of one year beginning with that day.

67 Power of magistrates' courts to commit for restriction order

- (1) If in the case of a person of or over the age of fourteen years who is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment—
 - (a) the conditions which, under subsection (1) of section sixty of this Act, 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 an order restricting his discharge 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 quarter sessions to be dealt with in respect of the offence.
- (2) Subsection (2) of section twenty-nine of the Criminal Justice Act, 1948 (which specifies the court of quarter sessions by which an offender committed to quarter sessions for sentence is to be dealt with) shall apply in relation to the committal of an offender under this section as it applies in relation to the committal of an offender for sentence under section twenty-nine of the Magistrates' Courts Act, 1952.
- (3) Where an offender is committed to quarter sessions under this section, the court of quarter sessions shall inquire into the circumstances of the case and may—
 - (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 subsection (1) of section sixty of this Act, make a hospital order in his case, with or without an order restricting his discharge;
 - (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;

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and the Poor Prisoners Defence Act, 1930, shall apply as if the offender were committed for trial for an indictable offence, subject to the modifications specified in subsections (4) and (5) of section eighteen of the Legal Aid and Advice Act, 1949.

- (4) The power of a magistrates' court under section twenty-nine of the Magistrates' Courts Act, 1952 (which enables such a court to commit an offender to quarter sessions where the court is of 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 opinion that greater punishment should be inflicted as aforesaid on the offender unless a hospital order is made in his case with an order restricting his discharge.
- (5) The power of a court of quarter sessions to make a hospital order, with or without an order restricting discharge, in the case of a person convicted before that court of an offence may, in the like circumstances and subject to the like conditions, be exercised by such a court in the case of a person committed to the court under section five of the Vagrancy Act, 1824 (which provides for the committal to quarter sessions of persons being incorrigible rogues within the meaning of that section).

68 Committal to hospital under s. 67

- (1) Where an offender is committed under subsection (1) of section sixty-seven of this Act and the magistrates' court by which he is committed is satisfied 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 quarter sessions, and may give such directions as it thinks fit for his production from the hospital to attend the court of quarter sessions by which his case is to be dealt with.
- (2) Subsection (1) of section sixty-three and section sixty-four of this Act shall apply in relation to an order under this section as they apply in relation to a hospital order, but as if references to the period of twenty-eight days mentioned in the said subsection (1) were omitted; and subject as aforesaid an order under this section shall, until the offender's case is disposed of by quarter sessions, have the like effect as a hospital order together with an order restricting his discharge, made without limitation of time.
- (3) Where an order has been made under this section in respect of an offender, the notice of the date on which the case will be dealt with required by subsection (2) of section twenty-nine of the Criminal Justice Act, 1948, to be given by the clerk of the peace to the governor of the prison or remand centre shall instead be given to the managers of the hospital in which he is detained.

69 Appeals from assizes and quarter sessions

- (1) Where an order restricting discharge is made by a court of quarter sessions in respect of a person committed under section twenty-nine of the Magistrates' Courts Act, 1952, under section five of the Vagrancy Act, 1824, or under section sixty-seven of this Act, that person may appeal to the Court of Criminal Appeal against the order in like manner as against an order made on his conviction on indictment, and the provisions of the Criminal Appeal Act, 1907, shall apply accordingly.
- (2) On any appeal to the Court of Criminal Appeal against an order restricting the discharge of an offender (including an appeal under subsection (1) of this section) the court shall have the like powers under subsection (3) of section four of the Criminal

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Appeal Act, 1907, as if the appeal were an appeal against the hospital order in respect of him as well as against the order restricting his discharge.

- (3) On any appeal to the Court of Criminal Appeal by an offender against a hospital order or guardianship order, the court shall have the like powers under subsection (3) of the said section four as if the appeal were an appeal against any further order made by the court which made the hospital order or guardianship order, as well as against the hospital order or guardianship order.

70 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 like right of appeal against the order as if it had been made on his conviction; and on any such appeal quarter sessions shall have the like powers as if the appeal had been against both conviction and sentence.
- (2) Where a juvenile court, on being satisfied that a child or young person brought before the court is in need of care or protection or that his parent or guardian is unable to control him, makes such an order as aforesaid, the child or young person may appeal to quarter sessions against the order.
- (3) 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.
- (4) Section two of the Summary Jurisdiction (Appeals) Act, 1933 (which relates to legal aid) shall with the necessary modifications apply in relation to an appeal against a hospital order or guardianship order made by a magistrates' court (whether or not brought under this section) as it applies in relation to an appeal against sentence.

71 Persons ordered to be kept in custody during Her Majesty's pleasure

- (1) Where under any enactment to which this subsection applies any person is ordered to be kept in custody during Her Majesty's pleasure, that person shall, until detained in pursuance of any directions under subsection (2) of this section, be detained in such place of safety as the court may order, and the order shall be sufficient authority for his conveyance to that place.
- (2) The Secretary of State may by warrant direct that any person who, by virtue of any enactment to which this subsection applies, is required to be kept in custody during Her Majesty's pleasure or until the directions of Her Majesty are known shall be detained in such hospital (not being a mental nursing home) as may be specified in the warrant and, where that person is not already detained in the hospital, give directions for his removal there.
- (3) The enactments to which subsection (1) of this section applies are section two of the Criminal Lunatics Act, 1800, section two of the Trial of Lunatics Act, 1883, and subsection (4) of section five of the Criminal Appeal Act, 1907; and the enactments to which subsection (2) of this section applies are the aforementioned enactments and subsection (4) of section six of the Courts-Martial (Appeals) Act, 1951, section one hundred and sixteen of the Army Act, 1955, section one hundred and sixteen of the Air Force Act, 1955, and section sixty-three of the Naval Discipline Act, 1957.

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- (4) A direction under this section in respect of any person shall have the like effect as a hospital order together with an order restricting his discharge, made without limitation of time; and where such a direction is given in respect of a person while he is in the hospital, he shall be deemed to be admitted in pursuance of, and on the date of, the direction.
- (5) Where the Secretary of State is notified by the responsible medical officer that a person detained in a hospital, being a person ordered under section two of the Criminal Lunatics Act, 1800, to be kept in custody, no longer requires treatment for mental disorder, the Secretary of State may remit that person to prison, or to a remand centre provided under section forty-three of the Prison Act, 1952, for trial at the next quarter sessions or, as the case may be, assizes for the place where, but for the order, he would have been tried, and on his arrival at the prison or remand centre the direction under this section shall cease to have effect.