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Part 3.11 – Mental health

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3.11 Mental health

3.11.1. Guardianship orders

Availability and power to order

MHA 1983 s.37¹⁸²⁹: Powers of courts to order hospital admission or guardianship

s.37(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 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.

Test to apply

MHA 1983 s.37¹⁸³⁰: Powers of courts to order hospital admission or guardianship

s.37(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 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 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.

¹⁸²⁹ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸³⁰ Commencement: 30 September 1983, MHA 1983 s.149(2).

Power to order: Unfit to plead

MHA 1983 s.37¹⁸³¹: Powers of courts to order hospital admission or guardianship

- s.37(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, 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.

Authority or person must be willing to receive individual

MHA 1983 s.37¹⁸³²: Powers of courts to order hospital admission or guardianship

- s.37(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.

Effect of guardianship order

MHA 1983 s.40¹⁸³³: Effect of hospital orders, guardianship orders and interim hospital orders

- s.40(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.
- s.40(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.
- s.40(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.

¹⁸³¹ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸³² Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸³³ Commencement: Section 40(1), (2), (4) and (5) in force 30 September 1983, MHA 1983 s.149(2). Section 40(3) in force 1 October 1984, SI 1984/1357 art.2. Section 40(6) in force 1 April 1996, as inserted by Mental Health (Patients in the Community) Act 1995 s.2(4), MH(PC)A 1995 s.7(2).

Information from social services etc.

MHA 1983 s.39A¹⁸³⁴: Information to facilitate guardianship orders

- s.39A - 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 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.

¹⁸³⁴ Commencement: 1 October 1992, as inserted by CJA 1991 s.27(1), SI 1992/333 art.2(2) and Sch.2 para.1

3.11.2. Hospital orders

3.11.2.1. Powers of the court

Availability and power to order

MHA 1983 s.37¹⁸³⁵: Powers of courts to order hospital admission or guardianship

s.37(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 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.

C(S)A 1997 s.47¹⁸³⁶: Power to specify hospital units

s.47(1) - subject to subsection (2) below, any power to specify a hospital which is conferred by—

- (a) section 37 of the 1983 Act (hospital orders);
- (b) section 45A of that Act (hospital and limitation directions);
- (c) section 47 of that Act (transfer directions),

includes power to specify a hospital unit; and where such a unit is specified in relation to any person in the exercise of such a power, any reference in any enactment (including one contained in this Act) to him being, or being liable to be, detained in a hospital shall be construed accordingly.

s.47(2) - in subsection (1) above—

- (a) paragraph (a) shall not apply unless the court also makes an order under section 41 of the 1983 Act (restriction orders);
- (b) paragraph (c) shall not apply unless the Secretary of State also gives a direction under section 49 of that Act (restriction directions).

s.47(3) - in this section—

"hospital", in relation to any exercise of a power, has the same meaning as in the enactment which confers the power;

"hospital unit" means any part of a hospital which is treated as a separate unit.

s.47(4) - a reference in this section to section 37 or 41 of the 1983 Act includes a reference to that section as it applies by virtue of—

- (a) section 5 of the Criminal Procedure (Insanity) Act 1964,
- (b) section 6 or 14 of the Criminal Appeal Act 1968, or
- (c) Schedule 4 to the Armed Forces Act 2006 (including as applied by section 16(2) of the Court Martial Appeals Act 1968).

¹⁸³⁵ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸³⁶ Commencement: 1 October 1997, SI 1997/2200 art.2(1)(i).

Power to order: Unfit to plead

MHA 1983 s.37¹⁸³⁷: Powers of courts to order hospital admission or guardianship

s.37(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, 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.

Power to order where individual committed under Vagrancy Act 1824

MHA 1983 s.43¹⁸³⁸: Power of magistrates' courts to commit for restriction order

s.43(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 Vagrancy Act 1824 (which provides for the committal to the Crown Court of persons who are incorrigible rogues within the meaning of that section).

Attendance of defendant not required where interim order in place

MHA 1983 s.38¹⁸³⁹: Interim hospital orders

s.38(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 an authorised person who is given an opportunity of being heard.

Mandatory and required sentences

MHA 1983 s.37¹⁸⁴⁰: Powers of courts to order hospital admission or guardianship

s.37(1A) - in the case of an offence the sentence for which would otherwise fall to be imposed:

- (za) under section 1(2B) or 1A(5) of the Prevention of Crime Act 1953,
- (a) under section 51A(2) of the Firearms Act 1968,
- (aa) under section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988,
- (b) under section 110(2) or 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000,
- (ba) under section 224A of the Criminal Justice Act 2003,
- (c) under section 225(2) or 226(2) of the Criminal Justice Act 2003, 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.

¹⁸³⁷ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸³⁸ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸³⁹ Commencement: 1 October 1984, SI 1984/1357 art.2

¹⁸⁴⁰ Commencement: 30 September 1983, MHA 1983 s.149(2).

s.37(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.

Requirement for medical evidence

MHA 1983 s.37¹⁸⁴¹: Powers of courts to order hospital admission or guardianship

s.37(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 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, 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, given such directions as it thinks fit for his conveyance to and detention in a place of safety.

MHA 1983 s.54A¹⁸⁴²: Reduction of period for making hospital orders

s.54A(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.

s.54A(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.

3.11.2.2. Making the order

Power to request information

MHA 1983 s.39¹⁸⁴³: Information as to hospitals

s.39(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 clinical commissioning group or Local Health Board for the area in which that person resides or last resided; or
- (b) the National Health Service Commissioning Board or the National Assembly for Wales or any other clinical commissioning group or Local Health Board that appears to the court to be appropriate,

to furnish the court with such information as that clinical commissioning group or Local Health Board or the National Health Service Commissioning Board or the National Assembly for Wales have or can reasonably obtain with respect to the hospital or hospitals (if any) in their area or elsewhere at which arrangements could be made for the admission of that person in pursuance of the order, and that clinical commissioning group or Local Health Board or the National Health Service Commissioning Board or the National Assembly for Wales shall comply with any such request.

¹⁸⁴¹ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁴² Commencement: 1 October 1992, as inserted by CJA 1991 s.27(2), SI 1992/333 art.2(2) and Sch.2 para.1.

¹⁸⁴³ Commencement: 30 September 1983, MHA 1983 s.149(2).

- s.39(1ZA) - a request under this section to the National Health Service Commissioning Board may relate only to services or facilities the provision of which the Board arranges.
- s.39(1A) - in relation to a person who has not attained the age of 18 years, subsection (1) above shall have effect as if the reference to the making of a hospital order included a reference to a remand under section 35 or 36 above or the making of an order under section 44 below.
- s.39(1B) - where the person concerned has not attained the age of 18 years, the information which may be requested under subsection (1) above includes, in particular, information about the availability of accommodation or facilities designed so as to be specially suitable for patients who have not attained the age of 18 years.

Test to apply

MHA 1983 s.37¹⁸⁴⁴: Powers of courts to order hospital admission or guardianship

- s.37(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 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 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.

3.11.2.3. Effect of a hospital order

Constable etc. to convey individual to specified hospital

MHA 1983 s.40¹⁸⁴⁵: Effect of hospital orders, guardianship orders and interim hospital orders

- s.40(1) - a hospital order shall be sufficient authority—
- (a) for a constable, an approved mental health professional 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.

¹⁸⁴⁴ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁴⁵ Commencement: Section 40(1), (2), (4) and (5) in force 30 September 1983, MHA 1983 s.149(2). Section 40(3) in force 1 October 1984, SI 1984/1357 art.2. Section 40(6) in force 1 April 1996, as inserted by Mental Health (Patients in the Community) Act 1995 s.2(4), MH(PC)A 1995 s.7(2).

Modifications to Part 2 of the Act

MHA 1983 s.40¹⁸⁴⁶: Effect of hospital orders, guardianship orders and interim hospital orders

s.40(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.

Previous orders

MHA 1983 s.40¹⁸⁴⁷: Effect of hospital orders, guardianship orders and interim hospital orders

s.40(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.

Absence without leave

MHA 1983 s.40¹⁸⁴⁸: Effect of hospital orders, guardianship orders and interim hospital orders

s.40(6) - where—

- (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 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.

¹⁸⁴⁶ Commencement: Section 40(1), (2), (4) and (5) in force 30 September 1983, MHA 1983 s.149(2). Section 40(3) in force 1 October 1984, SI 1984/1357 art.2. Section 40(6) in force 1 April 1996, as inserted by Mental Health (Patients in the Community) Act 1995 s.2(4), MH(PC)A 1995 s.7(2).

¹⁸⁴⁷ Commencement: Section 40(1), (2), (4) and (5) in force 30 September 1983, MHA 1983 s.149(2). Section 40(3) in force 1 October 1984, SI 1984/1357 art.2. Section 40(6) in force 1 April 1996, as inserted by Mental Health (Patients in the Community) Act 1995 s.2(4), MH(PC)A 1995 s.7(2).

¹⁸⁴⁸ Commencement: Section 40(1), (2), (4) and (5) in force 30 September 1983, MHA 1983 s.149(2). Section 40(3) in force 1 October 1984, SI 1984/1357 art.2. Section 40(6) in force 1 April 1996, as inserted by Mental Health (Patients in the Community) Act 1995 s.2(4), MH(PC)A 1995 s.7(2).

3.11.2.4. After the order is made

Not practicable for patient to be received into hospital

MHA 1983 s.37¹⁸⁴⁹: Powers of courts to order hospital admission or guardianship

- s.37(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.

¹⁸⁴⁹ Commencement: 30 September 1983, MHA 1983 s.149(2).

3.11.3. Restriction orders

3.11.3.1. Power of magistrates' court to commit to Crown Court for restriction order

Availability and power to commit

MHA 1983 s.43¹⁸⁵⁰: Power of magistrates' courts to commit for restriction order

- s.43(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.

Crown Court to inquire into the case

MHA 1983 s.43¹⁸⁵¹: Power of magistrates' courts to commit for restriction order

- s.43(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—
- (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.

Powers of the court

MHA 1983 s.43¹⁸⁵²: Power of magistrates' courts to commit for restriction order

- s.43(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.

¹⁸⁵⁰ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁵¹ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁵² Commencement: 30 September 1983, MHA 1983 s.149(2).

Other committal powers

MHA 1983 s.43¹⁸⁵³: Power of magistrates' courts to commit for restriction order

- s.43(4) - the powers of a magistrates' court under section 3 or 3B of the Powers of Criminal Courts (Sentencing) Act 2000 (which enable such a court to commit an offender to the Crown Court where the court is of the opinion, or it appears to the court, as mentioned in the section in question) shall also be exercisable by a magistrates' court where it is of that opinion (or it so appears to it) unless a hospital order is made in the offender's case with a restriction order.
- s.43(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 Vagrancy Act 1824 (which provides for the committal to the Crown Court of persons who are incorrigible rogues within the meaning of that section).

Power to have defendant detained in hospital instead of committed in custody

MHA 1983 s.44¹⁸⁵⁴: Committal to hospital under s. 43

- s.44(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 his production from the hospital to attend the Crown Court by which his case is to be dealt with.

Evidence required for detention in hospital

MHA 1983 s.44¹⁸⁵⁵: Committal to hospital under s. 43

- s.44(2) - the evidence required by subsection (1) above shall be given by the approved clinician who would have overall responsibility for the offender's case or by some other person representing the managers of the hospital in question.

Power to give directions

MHA 1983 s.44¹⁸⁵⁶: Committal to hospital under s. 43

- s.44(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 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

¹⁸⁵³ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁵⁴ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁵⁵ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁵⁶ Commencement: 30 September 1983, MHA 1983 s.149(2).

3.11.3.2. Making a restriction order

Power to order and test to apply

MHA 1983 s.41¹⁸⁵⁷: Power of higher courts to restrict discharge from hospital

s.41(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; and an order under this section shall be known as “a restriction order”.

Medical evidence

MHA 1983 s.41¹⁸⁵⁸: Power of higher courts to restrict discharge from hospital

s.41(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.

Effect of the restriction

MHA 1983 s.41¹⁸⁵⁹: Power of higher courts to restrict discharge from hospital

s.41(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;
- (aa) none of the provisions of Part II of this Act relating to community treatment orders and community patients shall apply;
- (b) no application shall be made to the appropriate 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;
 - (ii) power to transfer the patient in pursuance of regulations under section 19 above 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 clinician; and

¹⁸⁵⁷ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁵⁸ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁵⁹ Commencement: 30 September 1983, MHA 1983 s.149(2).

- (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.

- s.41(6) - while a person is subject to a restriction order the responsible clinician 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.

Effect of restriction order on hospital order

MHA 1983 s.41¹⁸⁶⁰: Power of higher courts to restrict discharge from hospital

- s.41(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.
- s.41(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.

Termination of the order

MHA 1983 s.42¹⁸⁶¹: Powers of Secretary of State in respect of patients subject to restriction orders

- s.42(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.
- s.42(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.

¹⁸⁶⁰ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁶¹ Commencement: 30 September 1983, MHA 1983 s.149(2).

3.11.3.3. Powers of Secretary of State in relation to restriction orders

MHA 1983 s.42¹⁸⁶²: Powers of Secretary of State in respect of patients subject to restriction orders

- s.42(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.
- s.42(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.
- s.42(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.
- s.42(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.
- s.42(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.
- s.42(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.

¹⁸⁶² Commencement: 30 September 1983, MHA 1983 s.149(2).

3.11.4. “Hybrid orders” - Directions under s.45A

3.11.4.1. Availability

R. v Fort [2013] EWCA Crim 2332; [2014] 2 Cr. App. R. (S.) 24 (p.167)

A section 45A direction was not available for persons under the age of 21 at the time of conviction.

3.11.4.2. Making the order

Applicability

MHA 1983 s.45A¹⁸⁶³: Power of higher courts to direct hospital admission

s.45A(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) 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.

Test to apply

MHA 1983 s.45A¹⁸⁶⁴: Power of higher courts to direct hospital admission

s.45A(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 mental 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 appropriate medical treatment is available for him.

¹⁸⁶³ Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

¹⁸⁶⁴ Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

Discretionary power to order

MHA 1983 s.45A¹⁸⁶⁵: Power of higher courts to direct hospital admission

s.45A(3) - the court may give both of the following directions, namely—

- (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*”).

C(S)A 1997 s.47¹⁸⁶⁶: Power to specify hospital units

s.47(1) - subject to subsection (2) below, any power to specify a hospital which is conferred by—

- (a) section 37 of the 1983 Act (hospital orders);
- (b) section 45A of that Act (hospital and limitation directions);
- (c) section 47 of that Act (transfer directions),

includes power to specify a hospital unit; and where such a unit is specified in relation to any person in the exercise of such a power, any reference in any enactment (including one contained in this Act) to him being, or being liable to be, detained in a hospital shall be construed accordingly.

s.47(2) - in subsection (1) above—

- (a) paragraph (a) shall not apply unless the court also makes an order under section 41 of the 1983 Act (restriction orders);
- (b) paragraph (c) shall not apply unless the Secretary of State also gives a direction under section 49 of that Act (restriction directions).

s.47(3) - in this section—

“*hospital*”, in relation to any exercise of a power, has the same meaning as in the enactment which confers the power;

“*hospital unit*” means any part of a hospital which is treated as a separate unit.

s.47(4) - a reference in this section to section 37 or 41 of the 1983 Act includes a reference to that section as it applies by virtue of—

- (a) section 5 of the Criminal Procedure (Insanity) Act 1964,
- (b) section 6 or 14 of the Criminal Appeal Act 1968, or
- (c) Schedule 4 to the Armed Forces Act 2006 (including as applied by section 16(2) of the Court Martial Appeals Act 1968).

¹⁸⁶⁵ Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

¹⁸⁶⁶ Commencement: 1 October 1997, SI 1997/2200 art.2(1)(i).

Evidence

MHA 1983 s.45A¹⁸⁶⁷: Power of higher courts to direct hospital admission

s.45A(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.

s.45A(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 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—

- (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.

Length of order

MHA 1983 s.45A¹⁸⁶⁸: Power of higher courts to direct hospital admission

s.45A(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.

MHA 1983 s.38¹⁸⁶⁹: Interim hospital orders

s.38(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 clinician, that the continuation of the order is warranted;

but no such order shall continue in force for more than 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 clinician to deal with the offender in some other way.

¹⁸⁶⁷ Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

¹⁸⁶⁸ Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

¹⁸⁶⁹ Commencement: 1 October 1984, SI 1984/1357 art.2

Power to request information

MHA 1983 s.45A¹⁸⁷⁰: Power of higher courts to direct hospital admission

s.45A(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.

MHA 1983 s.39¹⁸⁷¹: Information as to hospitals

s.39(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 clinical commissioning group or Local Health Board for the area in which that person resides or last resided; or
- (b) the National Health Service Commissioning Board or the National Assembly for Wales or any other clinical commissioning group or Local Health Board that appears to the court to be appropriate,

to furnish the court with such information as that clinical commissioning group or Local Health Board or the National Health Service Commissioning Board or the National Assembly for Wales have or can reasonably obtain with respect to the hospital or hospitals (if any) in their area or elsewhere at which arrangements could be made for the admission of that person in pursuance of the order, and that clinical commissioning group or Local Health Board or the National Health Service Commissioning Board or the National Assembly for Wales shall comply with any such request.

s.39(1ZA) - a request under this section to the National Health Service Commissioning Board may relate only to services or facilities the provision of which the Board arranges.

s.39(1A) - in relation to a person who has not attained the age of 18 years, subsection (1) above shall have effect as if the reference to the making of a hospital order included a reference to a remand under section 35 or 36 above or the making of an order under section 44 below.

s.39(1B) - where the person concerned has not attained the age of 18 years, the information which may be requested under subsection (1) above includes, in particular, information about the availability of accommodation or facilities designed so as to be specially suitable for patients who have not attained the age of 18 years.

¹⁸⁷⁰ Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

¹⁸⁷¹ Commencement: 30 September 1983, MHA 1983 s.149(2).

3.11.4.3. Effect of s.45A direction

MHA 1983 s.45B: Effect of hospital and limitation directions

- s.45B(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.
- s.45B(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.
- s.45B(3) - while a person is subject to a hospital direction and a limitation direction the responsible clinician 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.

3.11.4.4. After the direction has been given

Not practicable for defendant to be received into hospital

MHA 1983 s.45A¹⁸⁷²: Power of higher courts to direct hospital admission

- s.45A(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.
- s.45A(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.

¹⁸⁷² Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

3.11.4.5. Power to make interim s.45A direction

MHA 1983 s.45A¹⁸⁷³: Power of higher courts to direct hospital admission

s.45A(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.

MHA 1983 s.38¹⁸⁷⁴: Interim hospital orders

s.38(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 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.

¹⁸⁷³ Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

¹⁸⁷⁴ Commencement: 1 October 1984, SI 1984/1357 art.2

3.11.5. Interim hospital orders

3.11.5.1. Making the order

Availability and power to order

MHA 1983 s.38¹⁸⁷⁵: Interim hospital orders

s.38(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 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.

The evidence

MHA 1983 s.38¹⁸⁷⁶: Interim hospital orders

s.38(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.

Arrangement must be made for defendant's admission

MHA 1983 s.38¹⁸⁷⁷: Interim hospital orders

s.38(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 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 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, given directions for his conveyance to and detention in a place of safety.

¹⁸⁷⁵ Commencement: 1 October 1984, SI 1984/1357 art.2

¹⁸⁷⁶ Commencement: 1 October 1984, SI 1984/1357 art.2

¹⁸⁷⁷ Commencement: 1 October 1984, SI 1984/1357 art.2

MHA 1983 s.54A¹⁸⁷⁸: Reduction of period for making hospital orders

- s.54A(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.
- s.54A(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.

Length of the order

MHA 1983 s.38¹⁸⁷⁹: Interim hospital orders

- s.38(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 clinician, that the continuation of the order is warranted;

but no such order shall continue in force for more than 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 clinician to deal with the offender in some other way.

Power to request information

MHA 1983 s.39¹⁸⁸⁰: Information as to hospitals

- s.39(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 clinical commissioning group or Local Health Board for the area in which that person resides or last resided; or
 - (b) the National Health Service Commissioning Board or the National Assembly for Wales or any other clinical commissioning group or Local Health Board that appears to the court to be appropriate,

to furnish the court with such information as that clinical commissioning group or Local Health Board or the National Health Service Commissioning Board or the National Assembly for Wales have or can reasonably obtain with respect to the hospital or hospitals (if any) in their area or elsewhere at which arrangements could be made for the admission of that person in pursuance of the order, and that clinical commissioning group or Local Health Board or the National Health Service Commissioning Board or the National Assembly for Wales shall comply with any such request.

- s.39(1ZA) - a request under this section to the National Health Service Commissioning Board may relate only to services or facilities the provision of which the Board arranges.

¹⁸⁷⁸ Commencement: 1 October 1992, as inserted by CJA 1991 s.27(2), SI 1992/333 art.2(2) and Sch.2 para.1.

¹⁸⁷⁹ Commencement: 1 October 1984, SI 1984/1357 art.2

¹⁸⁸⁰ Commencement: 30 September 1983, MHA 1983 s.149(2).

- s.39(1A) - in relation to a person who has not attained the age of 18 years, subsection (1) above shall have effect as if the reference to the making of a hospital order included a reference to a remand under section 35 or 36 above or the making of an order under section 44 below.
- s.39(1B) - where the person concerned has not attained the age of 18 years, the information which may be requested under subsection (1) above includes, in particular, information about the availability of accommodation or facilities designed so as to be specially suitable for patients who have not attained the age of 18 years.

3.11.5.2. Effect of an interim hospital order

MHA 1983 s.40¹⁸⁸¹: Effect of hospital orders, guardianship orders and interim hospital orders

- s.40(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.

3.11.5.3. After the order has been made

Renewing the order

MHA 1983 s.38¹⁸⁸²: Interim hospital orders

- s.38(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 clinician, that the continuation of the order is warranted;
- but no such order shall continue in force for more than 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 clinician to deal with the offender in some other way.
- s.38(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.

¹⁸⁸¹ Commencement: Section 40(1), (2), (4) and (5) in force 30 September 1983, MHA 1983 s.149(2). Section 40(3) in force 1 October 1984, SI 1984/1357 art.2. Section 40(6) in force 1 April 1996, as inserted by Mental Health (Patients in the Community) Act 1995 s.2(4), MH(PC)A 1995 s.7(2).

¹⁸⁸² Commencement: 1 October 1984, SI 1984/1357 art.2

Power of arrest where defendant absconds

MHA 1983 s.38¹⁸⁸³: Interim hospital orders

- s.38(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.

¹⁸⁸³ Commencement: 1 October 1984, SI 1984/1357 art.2

3.11.6. Remand for medical reports etc.

3.11.6.1. Magistrates' Courts

Power to order and test to apply

PCC(S)A 2000 s.11¹⁸⁸⁴: Remand by magistrates' court for medical examination

- s.11(1) - if, on the trial by a magistrates' court of an offence punishable on summary conviction with imprisonment, the court—
- (a) is satisfied that the accused did the act or made the omission charged, but
 - (b) is of the opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined,
- the court shall adjourn the case to enable a medical examination and report to be made, and shall remand him.

Time limits

PCC(S)A 2000 s.11¹⁸⁸⁵: Remand by magistrates' court for medical examination

- s.11(2) - an adjournment under subsection (1) above shall not be for more than three weeks at a time where the court remands the accused in custody, nor for more than four weeks at a time where it remands him on bail.

Bail

PCC(S)A 2000 s.11¹⁸⁸⁶: Remand by magistrates' court for medical examination

- s.11(3) - where on an adjournment under subsection (1) above the accused is remanded on bail, the court shall impose conditions under paragraph (d) of section 3(6) of the Bail Act 1976 and the requirements imposed as conditions under that paragraph shall be or shall include requirements that the accused—
- (a) undergo medical examination by a registered medical practitioner or, where the inquiry is into his mental condition and the court so directs, two such practitioners; and
 - (b) for that purpose attend such an institution or place, or on such practitioner, as the court directs and, where the inquiry is into his mental condition, comply with any other directions which may be given to him for that purpose by any person specified by the court or by a person of any class so specified.

¹⁸⁸⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁸⁸⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁸⁸⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.11.6.2. Crown Court

Availability

MHA 1983 s.35¹⁸⁸⁷: Remand to hospital for report on accused's mental condition

- s.35(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 an 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.

Power

MHA 1983 s.35¹⁸⁸⁸: Remand to hospital for report on accused's mental condition

- s.35(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.

Evidence

MHA 1983 s.35¹⁸⁸⁹: Remand to hospital for report on accused's mental condition

- s.35(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 from mental disorder; 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.

- s.35(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 approved clinician 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.

¹⁸⁸⁷ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁸⁸ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁸⁹ Commencement: 1 October 1984, SI 1984/1357 art.2.

Further remand

MHA 1983 s.35¹⁸⁹⁰: Remand to hospital for report on accused's mental condition

- s.35(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 approved clinician responsible for making the report, that a further remand is necessary for completing the assessment of the accused person's mental condition.
- s.35(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 an authorised person who is given an opportunity of being heard.

Time limits

MHA 1983 s.35¹⁸⁹¹: Remand to hospital for report on accused's mental condition

- s.35(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.

Entitlement to independent report

MHA 1983 s.35¹⁸⁹²: Remand to hospital for report on accused's mental condition

- s.35(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 or approved clinician chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (7) above.

Power to convey individual to hospital

MHA 1983 s.35¹⁸⁹³: Remand to hospital for report on accused's mental condition

- s.35(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.

¹⁸⁹⁰ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁹¹ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁹² Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁹³ Commencement: 1 October 1984, SI 1984/1357 art.2.

Power of arrest where individual absconds

MHA 1983 s.35¹⁸⁹⁴: Remand to hospital for report on accused's mental condition

s.35(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.

3.11.6.3. Remand for medical treatment

Power to order

MHA 1983 s.36¹⁸⁹⁵: Remand of accused person to hospital for treatment

s.36(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

- (a) he is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment; and
- (b) appropriate medical treatment is available for him.

Availability

MHA 1983 s.36¹⁸⁹⁶: Remand of accused person to hospital for treatment

s.36(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.

Evidence

MHA 1983 s.36¹⁸⁹⁷: Remand of accused person to hospital for treatment

s.36(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 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 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.

¹⁸⁹⁴ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁹⁵ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁹⁶ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁹⁷ Commencement: 1 October 1984, SI 1984/1357 art.2.

Further remand

MHA 1983 s.36¹⁸⁹⁸: Remand of accused person to hospital for treatment

- s.36(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 clinician, that a further remand is warranted.
- s.36(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 an authorised person who is given an opportunity of being heard.

Time limits

MHA 1983 s.36¹⁸⁹⁹: Remand of accused person to hospital for treatment

- s.36(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.

Entitlement to independent report

MHA 1983 s.36¹⁹⁰⁰: Remand of accused person to hospital for treatment

- s.36(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 or approved clinician chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (6) above.

Power to convey individual to hospital

MHA 1983 s.36¹⁹⁰¹: Remand of accused person to hospital for treatment

- s.36(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.

MHA 1983 s.35¹⁹⁰²: Remand to hospital for report on accused's mental condition

- s.35(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.

¹⁸⁹⁸ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁹⁹ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁹⁰⁰ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁹⁰¹ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁹⁰² Commencement: 1 October 1984, SI 1984/1357 art.2.

Power of arrest where individual absconds

MHA 1983 s.36¹⁹⁰³: Remand of accused person to hospital for treatment

s.36(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.

MHA 1983 s.35¹⁹⁰⁴: Remand to hospital for report on accused's mental condition

s.35(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.

¹⁹⁰³ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁹⁰⁴ Commencement: 1 October 1984, SI 1984/1357 art.2.

3.11.7. Requirements as to medical evidence

Must be approved practitioner

MHA 1983 s.54¹⁹⁰⁵: Requirements as to medical evidence

s.54(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)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 or by another person by virtue of section 12ZA or 12ZB above, as having special experience in the diagnosis or treatment of mental disorder.

Court acting upon written report without proof of signature etc.

MHA 1983 s.54¹⁹⁰⁶: Requirements as to medical evidence

s.54(2) - for the purposes of any provision of this Part of this Act under which a court may act on the written evidence of any person, a report in writing purporting to be signed by that person may, subject to the provisions of this section, be received in evidence without proof of the following—

- (a) the signature of the person; or
- (b) his having the requisite qualifications or approval or authority or being of the requisite description to give the report.

Report writer may be required to give oral evidence

MHA 1983 s.54¹⁹⁰⁷: Requirements as to medical evidence

s.54(2A) - but the court may require the signatory of any such report to be called to give oral evidence.

Copies of the reports etc.

MHA 1983 s.54¹⁹⁰⁸: Requirements as to medical evidence

s.54(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 an authorised person, a copy of the report shall be given to that authorised person;
- (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.

¹⁹⁰⁵ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁹⁰⁶ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁹⁰⁷ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁹⁰⁸ Commencement: 30 September 1983, MHA 1983 s.149(2).

3.11.8. Interaction with other sentencing orders

Bind over of parent/guardian, community orders, fines, imprisonment, referral order, YRO

MHA 1983 s.37¹⁹⁰⁹: Powers of courts to order hospital admission or guardianship

- s.37(8) - where an order is made under this section, the court shall not:
- (a) pass sentence of imprisonment or impose a fine or make a community order (within the meaning of Part 12 of the Criminal Justice Act 2003 or a youth rehabilitation order (within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008))¹⁹¹⁰ in respect of the offence,
 - (b) if the order under this section is a hospital order, make a referral order (within the meaning of the Powers of Criminal Courts (Sentencing) Act 2000) in respect of the offence, or
 - (c) make in respect of the offender 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.

Court may make hospital order without defendant present where interim order in place

MHA 1983 s.38¹⁹¹¹: Interim hospital orders

- s.38(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 an authorised person who is given an opportunity of being heard.

Section 45A directions and other sentences of imprisonment

MHA 1983 s.45A¹⁹¹²: Power of higher courts to direct hospital admission

- s.45A(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.

¹⁹⁰⁹ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁹¹⁰ The final closing bracket appears to be in the wrong place here, it should be placed immediately after “CJA 2003”.

¹⁹¹¹ Commencement: 1 October 1984, SI 1984/1357 art.2

¹⁹¹² Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

Existing hospital order or guardianship order

MHA 1983 s.40¹⁹¹³: Effect of hospital orders, guardianship orders and interim hospital orders

- s.40(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.

¹⁹¹³ Commencement: Section 40(1), (2), (4) and (5) in force 30 September 1983, MHA 1983 s.149(2). Section 40(3) in force 1 October 1984, SI 1984/1357 art.2. Section 40(6) in force 1 April 1996, as inserted by Mental Health (Patients in the Community) Act 1995 s.2(4), MH(PC)A 1995 s.7(2).

3.11.9. Appeals

Order imposed without conviction: Same right of appeal as if order imposed on conviction

MHA 1983 s.45¹⁹¹⁴: Appeals from magistrates' courts

- s.45(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.
- s.45(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.

No hospital available

R. v Jones [1977] Crim LR 158

Where a hospital order is suitable but no hospital is available, it is not appropriate for an appeal to come before the Court of Appeal as the only purpose to be served is to give the issue publicity. There is no reason to suppose the court will be able to make a hospital order.

Fresh evidence

R. v Beesley [2011] EWCA Crim 1021; [2012] 1 Cr. App. R. (S.) 15 (p.71)

Where a defendant wishes to rely on a medical report to suggest that a hospital order should be imposed, the rule for the admission of fresh evidence under CAA 1968 s.23 had to be applied.

R. v Fort [2013] EWCA Crim 2332; [2014] 2 Cr. App. R. (S.) 24 (p.167)

[Where an appellant suffers from a mental disorder], the aim of any “fresh evidence” that this appellant wishes the court to receive on appeal pursuant to s.23 of the Criminal Appeal Act 1968 (as amended) must be to assist in satisfying the burden upon him that: (i) at the time of sentence he was suffering from a mental disorder that was susceptible to treatment; (ii) the reason for the offence was the appellant's mental disorder; (iii) the appellant does not pose a significant risk of serious harm to members of the public occasioned by the commission of serious offences if his mental disorder were to be cured or substantially alleviated; so that (iv) the sentence of custody for life was wrong in principle.

In the context of conviction appeals, this court has emphasised that fresh expert evidence (which in many cases concerns the mental state of the appellant), will not automatically be received by the court pursuant to s.23 of the Criminal Appeal Act 1968: see *R. v Erskine*; *R. v Williams [2010] 1 W.L.R. 183*. Reception will depend on the facts and circumstances of the particular case. Whilst the court must have regard to the matters set out in s.23(2), ultimately the test is the broad one set out in s.23(1), viz. whether this court thinks it “necessary or expedient in the interests of justice” to receive the proposed “fresh” evidence. (Aikens LJ, at [65] - [66])

¹⁹¹⁴ Commencement: 30 September 1983, MHA 1983 s.149(2).

3.11.10. Interpretation of MHA 1983 Part 3

MHA 1983 s.55¹⁹¹⁵: Interpretation of Part III

s.55(1) - in this Part of this Act—

“authorised person” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience (within the meaning of that Act);

“child” and *“young person”* have the same meaning as in the 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 clinician”, in relation to a person liable to be detained in a hospital within the meaning of Part 2 of this Act, means the approved clinician with overall responsibility for the patient’s case.

s.55(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.

s.55(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.

s.55(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.

s.55(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.

s.55(7) - Section 99 of the 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.

¹⁹¹⁵ Commencement: 30 September 1983, MHA 1983 s.149(2).

3.11.11. Unfitness to plead

3.11.11.1. Orders capable of being imposed upon finding that accused did the act or made the omission charged

CP(I)A 1964 s.5¹⁹¹⁶: Powers to deal with persons not guilty by reason of insanity or unfit to plead etc.

- s.5(1) - this section applies where–
- (a) a special verdict is returned that the accused is not guilty by reason of insanity; or
 - (b) findings have been made that the accused is under a disability and that he did the act or made the omission charged against him.
- s.5(2) - the court shall make in respect of the accused–
- (a) a hospital order (with or without a restriction order);
 - (b) a supervision order; or
 - (c) an order for his absolute discharge.
- s.5(3) - where–
- (a) the offence to which the special verdict or the findings relate is an offence the sentence for which is fixed by law, and
 - (b) the court have power to make a hospital order,
- the court shall make a hospital order with a restriction order (whether or not they would have power to make a restriction order apart from this subsection).
- s.5(4) - in this section–
- “hospital order” has the meaning given in section 37 of the Mental Health Act 1983;
“restriction order” has the meaning given to it by section 41 of that Act;
“supervision order” has the meaning given in Part 1 of Schedule 1A to this Act.

CP(I)A 1964 s.5A¹⁹¹⁷: Orders made under or by virtue of section 5

- s.5A(1) - in relation to the making of an order by virtue of subsection (2)(a) of section 5 above, section 37 (hospital orders etc) of the Mental Health Act 1983 (“the 1983 Act”) shall have effect as if–
- (a) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 5 above applies;
 - (b) the words after “punishable with imprisonment” and before “or is convicted” were omitted; and
 - (c) for subsections (4) and (5) there were substituted–
- “(4) Where an order is made under this section requiring a person to be admitted to a hospital (“a hospital order”), it shall be the duty of the managers of the hospital specified in the order to admit him in accordance with it.”

¹⁹¹⁶ Commencement: 31 August 1964 CP(I)A 1964 s.8(3).

¹⁹¹⁷ Commencement: 31 August 1964 CP(I)A 1964 s.8(3).

- s.5A(2) - in relation to a case where section 5 above applies but the court have not yet made one of the disposals mentioned in subsection (2) of that section–
- (a) section 35 of the 1983 Act (remand to hospital for report on accused's mental condition) shall have effect with the omission of the words after paragraph (b) in subsection (3);
 - (b) section 36 of that Act (remand of accused person to hospital for treatment) shall have effect with the omission of the words "(other than an offence the sentence for which is fixed by law)" in subsection (2);
 - (c) references in sections 35 and 36 of that Act to an accused person shall be construed as including a person in whose case this subsection applies; and
 - (d) section 38 of that Act (interim hospital orders) shall have effect as if–
 - (i) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 5 above applies; and
 - (ii) the words "(other than an offence the sentence for which is fixed by law)" in that subsection were omitted.
- s.5A(3) - in relation to the making of any order under the 1983 Act by virtue of this Act, references in the 1983 Act to an offender shall be construed as including references to a person in whose case section 5 above applies, and references to an offence shall be construed accordingly.
- s.5A(4) - where–
- (a) a person is detained in pursuance of a hospital order which the court had power to make by virtue of section 5(1)(b) above, and
 - (b) the court also made a restriction order, and that order has not ceased to have effect,
- the Secretary of State, if satisfied after consultation with the responsible clinician that the person can properly be tried, may remit the person for trial, either to the court of trial or to a prison.
- On the person's arrival at the court or prison, the hospital order and the restriction order shall cease to have effect.
- s.5A(5) - Schedule 1A to this Act (supervision orders) has effect with respect to the making of supervision orders under subsection (2)(b) of section 5 above, and with respect to the revocation and amendment of such orders.
- s.5A(6) - in relation to the making of an order under subsection (2)(c) of section 5 above, section 12(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (absolute and conditional discharge) shall have effect as if–
- (a) the reference to a person being convicted by or before a court of such an offence as is there mentioned included a reference to the case where section 5 above applies; and
 - (b) the reference to the court being of opinion that it is inexpedient to inflict punishment included a reference to it thinking that an order for absolute discharge would be most suitable in all the circumstances of the case.

3.11.11.2. Supervision orders

CP(I)A 1964 Sch.1A¹⁹¹⁸: Supervision Orders

- para.1(1) - in this Schedule “*supervision order*” means an order which requires the person in respect of whom it is made (“the supervised person”) to be under the supervision of a social worker, an officer of a local probation board [or an officer of a provider of probation services (“the supervising officer”) for a period specified in the order of not more than two years .
- para.1(2) - a supervision order may, in accordance with paragraph 4 or 5 below, require the supervised person to submit, during the whole of that period or such part of it as may be specified in the order, to treatment by or under the direction of a registered medical practitioner.
- para.1(3) - the Secretary of State may by order direct that sub-paragraph (1) above shall be amended by substituting, for the period for the time being specified there, such period as may be specified in the order.
- para.1(4) - an order under sub-paragraph (3) above may make in paragraph 11(2) below any amendment which the Secretary of State thinks necessary in consequence of any substitution made by the order.
- para.1(5) - the power of the Secretary of State to make orders under sub-paragraph (3) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

3.11.12.2.1 Making and effect of supervision orders

Circumstances in which orders may be made

CP(I)A 1964 Sch.1A¹⁹¹⁹: Supervision Orders

- para.2(1) - the court shall not make a supervision order unless it is satisfied that, having regard to all the circumstances of the case, the making of such an order is the most suitable means of dealing with the accused or appellant.
- para.2(2) - the court shall not make a supervision order unless it is also satisfied–
- (a) that the supervising officer intended to be specified in the order is willing to undertake the supervision; and
 - (b) that arrangements have been made for the treatment intended to be specified in the order.

¹⁹¹⁸ Commencement: 31 March 2005, as inserted by DVCVA 2004 Sch.2 para.1, SI 2005/579 art.3(b).

¹⁹¹⁹ Commencement: 31 March 2005, as inserted by DVCVA 2004 Sch.2 para.1, SI 2005/579 art.3(b).

Requirements as to residence

CP(I)A 1964 Sch.1A¹⁹²⁰: Supervision Orders

para.3(1) - a supervision order shall either–

- (a) specify the local social services authority area in which the supervised person resides or will reside, and require him to be under the supervision of a social worker of the local social services authority for that area; or
- (b) specify the local justice area in which that person resides or will reside, and require him to be under the supervision of an officer of a local probation board appointed for or assigned to that area, or (as the case may be) an officer of a provider of probation services acting in that area.

para.3(2) - before making such an order, the court shall explain to the supervised person in ordinary language–

- (a) the effect of the order (including any requirements proposed to be included in the order in accordance with paragraph 4, 5 or 8 below); and
- (b) that a magistrates' court has power under paragraphs 9 to 11 below to review the order on the application either of the supervised person or of the supervising officer.

para.3(3) - after making such an order, the court shall forthwith give copies of the order to an officer of a local probation board assigned to the court or an officer of a provider of probation services acting at the court, and he shall give a copy–

- (a) to the supervised person; and
- (b) to the supervising officer.

para.3(4) - after making such an order, the court shall also send to the designated officer for the local justice area in which the supervised person resides or will reside (“the local justice area concerned”)–

- (a) a copy of the order; and
- (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order.

para.3(5) - where such an order is made, the supervised person shall keep in touch with the supervising officer in accordance with such instructions as he may from time to time be given by that officer and shall notify him of any change of address.

¹⁹²⁰ Commencement: 31 March 2005, as inserted by DVCVA 2004 Sch.2 para.1, SI 2005/579 art.3(b).

Requirements as to medical treatment

CP(I)A 1964 Sch.1A¹⁹²¹: Supervision Orders

- para.4(1) - a supervision order may, if the court is satisfied as mentioned in sub-paragraph (2) below, include a requirement that the supervised person shall submit, during the whole of the period specified in the order or during such part of that period as may be so specified, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of his mental condition.
- para.4(2) - the court may impose such a requirement only if satisfied on the written or oral evidence of two or more registered medical practitioners, at least one of whom is duly registered, that the mental condition of the supervised person–
- (a) is such as requires and may be susceptible to treatment; but
 - (b) is not such as to warrant the making of a hospital order within the meaning of the Mental Health Act 1983.
- para.4(3) - the treatment required under this paragraph by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say–
- (a) treatment as a non-resident patient at such institution or place as may be specified in the order; and
 - (b) treatment by or under the direction of such registered medical practitioner as may be so specified;
- but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a) or (b) above.
- para.5(1) - this paragraph applies where the court is satisfied on the written or oral evidence of two or more registered medical practitioners that–
- (a) because of his medical condition, other than his mental condition, the supervised person is likely to pose a risk to himself or others; and
 - (b) the condition may be susceptible to treatment.
- para.5(2) - the supervision order may (whether or not it includes a requirement under paragraph 4 above) include a requirement that the supervised person shall submit, during the whole of the period specified in the order or during such part of that period as may be so specified, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of the condition.
- para.5(3) - the treatment required under this paragraph by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say–
- (a) treatment as a non-resident patient at such institution or place as may be specified in the order; and
 - (b) treatment by or under the direction of such registered medical practitioner as may be so specified;
- but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a) or (b) above.

¹⁹²¹ Commencement: 31 March 2005, as inserted by DVCVA 2004 Sch.2 para.1, SI 2005/579 art.3(b).

para.6(1) - where the medical practitioner by whom or under whose direction the supervised person is being treated in pursuance of a requirement under paragraph 4 or 5 above is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which–

- (a) is not specified in the order, and
- (b) is one in or at which the treatment of the supervised person will be given by or under the direction of a registered medical practitioner,

he may, with the consent of the supervised person, make arrangements for him to be treated accordingly.

para.6(2) - such arrangements may provide for the supervised person to receive part of his treatment as a resident patient in an institution or place of any description.

para.6(3) - where any such arrangements are made for the treatment of a supervised person–

- (a) the medical practitioner by whom the arrangements are made shall give notice in writing to the supervising officer, specifying the institution or place in or at which the treatment is to be carried out; and
- (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the supervision order.

para.7 - while the supervised person is under treatment as a resident patient in pursuance of arrangements under paragraph 6 above, the supervising officer shall carry out the supervision to such extent only as may be necessary for the purpose of the revocation or amendment of the order.

para.8(1) - subject to sub-paragraph (2) below, a supervision order may include requirements as to the residence of the supervised person.

para.8(2) - before making such an order containing any such requirement, the court shall consider the home surroundings of the supervised person.

3.11.12.2.2 Revocation and amendment of supervision orders

Revocation

CP(I)A 1964 Sch.1A¹⁹²²: Supervision Orders

para.9(1) - where a supervision order is in force in respect of any person and, on the application of the supervised person or the supervising officer, it appears to a magistrates' court acting for the local justice area concerned that, having regard to circumstances which have arisen since the order was made, it would be in the interests of the health or welfare of the supervised person that the order should be revoked, the court may revoke the order.

para.9(2) - the court by which a supervision order was made may of its own motion revoke the order if, having regard to circumstances which have arisen since the order was made, it considers that it would be inappropriate for the order to continue.

¹⁹²² Commencement: 31 March 2005, as inserted by DVCVA 2004 Sch.2 para.1, SI 2005/579 art.3(b).

Amendment of order by reason of change of residence

para.10(1) - this paragraph applies where, at any time while a supervision order is in force in respect of any person, a magistrates' court acting for the local justice area concerned is satisfied that the supervised person proposes to change, or has changed, his residence from the area specified in the order to another local social services authority area or local justice area.

para.10(2) - subject to sub-paragraph (3) below, the court may, and on the application of the supervising officer shall, amend the supervision order by substituting the other area for the area specified in the order.

para.10(3) - the court shall not amend under this paragraph a supervision order which contains requirements which, in the opinion of the court, cannot be complied with unless the supervised person continues to reside in the area specified in the order unless, in accordance with paragraph 11 below, it either–

- (a) cancels those requirements; or
- (b) substitutes for those requirements other requirements which can be complied with if the supervised person ceases to reside in that area.

Amendment of requirements of order

CP(I)A 1964 Sch.1A¹⁹²³: Supervision Orders

para.11(1) - without prejudice to the provisions of paragraph 10 above, but subject to sub-paragraph (2) below, a magistrates' court for the local justice area concerned may, on the application of the supervised person or the supervising officer, by order amend a supervision order–

- (a) by cancelling any of the requirements of the order; or
- (b) by inserting in the order (either in addition to or in substitution for any such requirement) any requirement which the court could include if it were the court by which the order was made and were then making it.

para.11(2) - the power of a magistrates' court under sub-paragraph (1) above shall not include power to amend an order by extending the period specified in it beyond the end of two years from the day of the original order.

Amendment of requirements in pursuance of medical report

CP(I)A 1964 Sch.1A¹⁹²⁴: Supervision Orders

para.12(1) - where the medical practitioner by whom or under whose direction the supervised person is being treated for his mental condition in pursuance of any requirement of a supervision order–

- (a) is of the opinion mentioned in sub-paragraph (2) below, or
- (b) is for any reason unwilling to continue to treat or direct the treatment of the supervised person,

¹⁹²³ Commencement: 31 March 2005, as inserted by DVCVA 2004 Sch.2 para.1, SI 2005/579 art.3(b).

¹⁹²⁴ Commencement: 31 March 2005, as inserted by DVCVA 2004 Sch.2 para.1, SI 2005/579 art.3(b).

he shall make a report in writing to that effect to the supervising officer and that officer shall apply under paragraph 11 above to a magistrates' court for the local justice area concerned for the variation or cancellation of the requirement.

para.12(2) - the opinion referred to in sub-paragraph (1) above is–

- (a) that the treatment of the supervised person should be continued beyond the period specified in the supervision order;
- (b) that the supervised person needs different treatment, being treatment of a kind to which he could be required to submit in pursuance of such an order;
- (c) that the supervised person is not susceptible to treatment; or
- (d) that the supervised person does not require further treatment.

Supplemental

CP(I)A 1964 Sch.1A¹⁹²⁵: Supervision Orders

para.13(1) - on the making under paragraph 9 above of an order revoking a supervision order, the designated officer for the local justice area concerned, or (as the case may be) the Crown Court, shall forthwith give copies of the revoking order to the supervising officer.

para.13(2) - a supervising officer to whom in accordance with sub-paragraph (1) above copies of a revoking order are given shall give a copy to the supervised person and to the person in charge of any institution in which the supervised person is residing.

para.14(1) - on the making under paragraph 10 or 11 above of any order amending a supervision order, the designated officer for the local justice area concerned shall forthwith–

- (a) if the order amends the supervision order otherwise than by substituting a new area or a new place for the one specified in the supervision order, give copies of the amending order to the supervising officer;
- (b) if the order amends the supervision order in the manner excepted by paragraph (a) above, send to the designated officer for the new local justice area concerned–
 - (i) copies of the amending order; and
 - (ii) such documents and information relating to the case as he considers likely to be of assistance to a court acting for that area in exercising its functions in relation to the order;

and in a case falling within paragraph (b) above, the designated officer for that area shall give copies of the amending order to the supervising officer.

para.14(2) - where the designated officer for the court making the order is also the designated officer for the new local justice area–

- (a) sub-paragraph (1)(b) above does not apply; but
- (b) the designated officers shall give copies of the amending order to the supervising officer.

¹⁹²⁵ Commencement: 31 March 2005, as inserted by DVCVA 2004 Sch.2 para.1, SI 2005/579 art.3(b).

para.14(3) - where in accordance with sub-paragraph (1) or (2) above copies of an order are given to the supervising officer, he shall give a copy to the supervised person and to the person in charge of any institution in which the supervised person is or was residing.

3.11.11.3. Appeals

CAA 1968 s.16A¹⁹²⁶: Right of appeal against hospital order etc.

s.16A(1) - a person in whose case the Crown Court–

- (a) makes a hospital order or interim hospital order by virtue of section 5 or 5A of the Criminal Procedure (Insanity) Act 1964, or
 - (b) makes a supervision order under section 5 of that Act,
- may appeal to the Court of Appeal against the order.

s.16A(2) - an appeal under this section lies only–

- (a) with the leave of the Court of Appeal; or
- (b) if the judge of the court of trial grants a certificate that the case is fit for appeal.

CAA 1968 s.16B¹⁹²⁷: Disposal of appeal under s.16A

s.16B(1) - if on an appeal under section 16A of this Act the Court of Appeal consider that the appellant should be dealt with differently from the way in which the court below dealt with him–

- (a) they may quash any order which is the subject of the appeal; and
- (b) they may make such order, whether by substitution for the original order or by variation of or addition to it, as they think appropriate for the case and as the court below had power to make.

s.16B(2) - the fact that an appeal is pending against an interim hospital order under the Mental Health Act 1983 shall not affect the power of the court below to renew or terminate the order or deal with the appellant on its termination.

s.16B(4) - the fact that an appeal is pending against a supervision order under section 5 of the Criminal Procedure (Insanity) Act 1964 shall not affect the power of the court below to revoke the order, or of a magistrates' court to revoke or amend it.

s.16B(5) - where the Court of Appeal make a supervision order by virtue of this section, the power of revoking or amending it shall be exercisable as if the order had been made by the court below.

¹⁹²⁶ Commencement: 31 March 2005, as inserted by DVCVA 2004 s.25, SI 2005/579 art.3(b).

¹⁹²⁷ Commencement: 31 March 2005, as inserted by DVCVA 2004 s.25, SI 2005/579 art.3(b).