



National Offender
Management Service

Mental Health Casework Section

Lifting of special restrictions by the
Secretary of State under the Mental Health
Act 1983

23 May 2016

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Legal Provision

Section 42(1) of the Act

1. Section 42(1) gives the Secretary of State the power to lift the restrictions placed on a restricted patient under section 41 (or 49) of the Mental Health Act 1983 (MHA). In exercising this power, the Secretary of State will need to be satisfied that the restriction order is no longer required for the protection of the public from serious harm. Section 42(1) reads:

‘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.’

Patients Detained in Hospital

2. If the restrictions are lifted, the patient will continue to be detained as if he/she had been admitted to hospital under a hospital order without restrictions as in section 41(5). Management of the patient is transferred to his/her responsible clinician, although the First-tier Tribunal (Mental Health) may order discharge. This also means that the Secretary of State’s permission is no longer required before a patient can be granted section 17 leave, transferred to another hospital or discharged.
3. The provisions of section 40(4) will also apply to the patient so that although the nearest relative still has no power of discharge, they may apply to the First-tier Tribunal (Mental Health) at the same time as the patient.

Conditionally Discharged Patients

4. Under section 41(5) of the Act, if a restriction order is lifted whilst the patient is on conditional discharge from hospital, s/he will cease to be liable to be detained and not subject to the power of recall under section 42(3) - in effect, an absolute discharge.

Section 55(4) of the Act

5. The powers contained in section 42(1) apply to all restricted patients. Although possible, it is unlikely that the Secretary of State would lift restrictions under section 42(1) for those patients who are transferred prisoners under section 47 or 48 or those with hospital directions under section 45A of the MHA. In these cases, the restrictions are in place because the patient would otherwise be serving a custodial sentence in prison as imposed by the court. For those with determinate sentences, the restrictions will cease automatically on the prisoner’s earliest release date.

Reasons for Lifting Restrictions

6. When restrictions are imposed by a court it is because a decision has been made that *“it is necessary for the protection of the public from serious harm so to do”*. Decisions to ‘lift’ restrictions are not taken lightly and the Secretary of State will need

to consider, on the basis of evidence provided by professionals, whether this requirement is still valid. If the need to protect the public from serious harm is no longer met, it would not be appropriate to leave the restrictions in place.

Consultation

7. On receipt of a request to lift the restrictions, the Mental Health Casework Section, on behalf of the Secretary of State will seek evidence from the patient's responsible clinician on the level of risk presented by the patient. If the evidence indicates that detention is still required to ensure compliance with treatment but the patient no longer poses a risk of serious harm to others, then consideration should be given to the lifting of the restriction order.
8. The lifting of restrictions set in place by the court is a decision requiring careful and comprehensive evaluation of the evidence. Although the responsible clinician may make the request, it is only the Secretary of State who has the powers under the MHA to remove the restrictions.
9. The First-tier Tribunal (Mental Health) may recommend that a patient's restrictions be removed, however the Tribunal has no statutory powers in this regard and it remains a decision for the Secretary of State. The Tribunal will however be notified by MHCS of the reasons why, if appropriate, the restrictions were not lifted.
10. The protection of the public is a key concern for the Secretary of State who will not lift restrictions unless it is considered safe to do so. The presence of special restrictions does not present a barrier to absolute discharge if detention and treatment in hospital is no longer required and liability to recall is unnecessary. If treatment remains necessary but detention in hospital is no longer required consideration should be given to a conditional discharge.

Criminal Procedures (Insanity) Act 1964 (CPI) Patients

11. Special restrictions may also apply to a patient found 'unfit to plead' under the Criminal Procedures (Insanity) Act 1964. Under section 5A(4) of the Criminal Procedures Insanity Act 1964, where an individual has been found not fit to plead but to have done the act or omission charged, and was given a hospital order with a restriction order, the Secretary of State has the power to remit the individual if he is satisfied that the individual is fit for trial.
12. A relevant factor in the Secretary of State's consideration of whether to lift the restrictions under section 42(1) for these patients will be whether it is confirmed that legal proceedings will not be resumed in the future.

Procedure

13. Given the range of individual circumstances, it is difficult to give specific examples of circumstances in which the lifting of restrictions might be appropriate. It may be that the patient has become so ill or frail that there is no longer any risk to others and management within hospital is designed to protect the patient and provide treatment rather than the protection of others. The merits of each individual case will be considered by the Secretary of State as they arise.

14. If a responsible clinician wishes to request the removal of restrictions for a patient, they should submit a written request, taking care to explain why the request is being made, how the level of risk posed by the patient has been reduced, how any residual risks will be managed and/or mitigated and what impact removal of restrictions will have on the patient. It would also be helpful to have a long-term prognosis for the patient and clarification of any ongoing need for treatment and support within the hospital setting.
15. After consideration of a request, the Secretary of State's decision will be notified to the patient's responsible clinician. If the decision is to lift the restrictions, a Secretary of State warrant will be sent to the responsible clinician with an explanatory letter. The police will similarly be notified and the patient advised by a letter containing details about access to the First-tier Tribunal.