



Mental Health (Amendment) Act 1982

1982 CHAPTER 51

PART VI

CONSENT TO TREATMENT

42 Preliminary

- (1) This Part of this Act applies to any patient liable to be detained under the principal Act or this Act except—
 - (a) a patient who is liable to be detained by virtue of an emergency application and in respect of whom the second medical recommendation referred to in section 29 (3) (a) of the principal Act has not been given and received;
 - (b) a patient who is liable to be detained by virtue of section 30(2) or (4), 64(1), 135 or 136 of that Act or by virtue of section 29 above ; and
 - (c) a patient who has been conditionally discharged under section 66(2) of that Act or paragraph 5 or 6 of Schedule 1 to this Act and has not been recalled to hospital.
- (2) In this Part of this Act " the responsible medical officer " means the medical practitioner in charge of the treatment of the patient in question and " hospital " includes a mental nursing home.
- (3) Any certificate for the purposes of this Part of this Act shall be in such form as may be prescribed by regulations made by the Secretary of State.

43 Treatment requiring consent and a second opinion

- (1) This section applies to the following forms of medical treatment for mental disorder—
 - (a) any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue ; and
 - (b) such other forms of treatment as may be specified for the purposes of this section by regulations made by the Secretary of State.

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- (2) Subject to section 48 below, a patient shall not be given any form of treatment to which this section applies unless he has consented to it and—
 - (a) a medical practitioner appointed for the purposes of this Part of this Act by the Secretary of State (not being the responsible medical officer) and two other persons appointed for the purposes of this paragraph by the Secretary of State (not being medical practitioners) have certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it; and
 - (b) the medical practitioner referred to in paragraph (a) above has certified in writing that, having regard to the likelihood of the treatment alleviating or preventing a deterioration of the patient's condition, the treatment should be given.
- (3) Before giving a certificate under subsection (2)(b) above the medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment, and of those persons one shall be a nurse and the other shall be neither a nurse nor a medical practitioner.
- (4) Before making any regulations for the purposes of this section the Secretary of State shall consult such bodies as appear to him to be concerned.

44 Treatment requiring consent or a second opinion

- (1) This section applies to the following forms of medical treatment for mental disorder—
 - (a) such forms of treatment as may be specified for the purposes of this section by regulations made by the Secretary of State ; and
 - (b) the administration of medicine to a patient by any means (not being a form of treatment specified under paragraph (a) above or section 43 above) at any time during a period for which he is liable to be detained as a patient to whom this Part of this Act applies if three months or more have elapsed since the first occasion in that period when medicine was administered to him by any means for his mental disorder.
- (2) The Secretary of State may by order vary the length of the period mentioned in subsection (1)(b) above.
- (3) Subject to section 48 below, a patient shall not be given any form of treatment to which this section applies unless—
 - (a) he has consented to that treatment and either the responsible medical officer or a medical practitioner appointed for the purposes of this Part of this Act by the Secretary of State has certified in writing that the patient is capable of understanding its nature, purpose and likely effects and has consented to it; or
 - (b) a medical practitioner appointed as aforesaid (not being the responsible medical officer) has certified in writing that the patient is not capable of understanding the nature, purpose and likely effects of that treatment or has not consented to it but that, having regard to the likelihood of its alleviating or preventing a deterioration of his condition, the treatment should be given.
- (4) Before giving a certificate under subsection (3)(b) above the medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment, and of those persons one shall be a nurse and the other shall be neither a nurse nor a medical practitioner.

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- (5) Before making any regulations for the purposes of this section the Secretary of State shall consult such bodies as appear to him to be concerned.

45 Plans of treatment

Any consent or certificate under section 43 or 44 above may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more of the forms of treatment to which that section applies.

46 Withdrawal of consent

- (1) Where the consent of a patient to any treatment has been given for the purposes of section 43 or 44 above, the patient may, subject to section 48 below, at any time before the completion of the treatment withdraw his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.
- (2) Without prejudice to the application of subsection (1) above to any treatment given under a plan of treatment to which a patient has consented, a patient who has consented to such a plan may, subject to section 48 below, at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.

47 Review of treatment

- (1) Where a patient is given treatment in accordance with section 43(2) or 44(3) (b) above a report on the treatment and the patient's condition shall be given by the responsible medical officer to the Secretary of State—
- (a) on the next occasion on which the responsible medical officer furnishes a report in respect of the patient under section 43(3) of the principal Act (renewal of authority for detention); and
 - (b) at any other time if so required by the Secretary of State.
- (2) In relation to a patient who is subject to a restriction order or restriction direction subsection (1) above shall have effect as if paragraph (a) required the report to be made—
- (a) in the case of treatment in the period of six months beginning with the date of the order or direction, at the end of that period ;
 - (b) in the case of treatment at any subsequent time, on the next occasion on which the responsible medical officer makes a report in respect of the patient under section 28(3) above.
- (3) The Secretary of State may at any time give a notice to the responsible medical officer directing that, subject to section 48 below, a certificate given in respect of a patient under section 43(2) or 44(3)(b) above shall not apply to treatment given to him after a date specified in the notice and sections 43 and 44 above shall then apply to any such treatment as if that certificate had not been given.

48 Urgent treatment

- (1) Sections 43 and 44 above shall not apply to any treatment—
- (a) which is immediately necessary to save the patient's life; or

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- (b) which (not being irreversible) is immediately necessary to prevent a serious deterioration of his condition ; or
 - (c) which (not being irreversible or hazardous) is immediately necessary to alleviate serious suffering by the patient; or
 - (d) which (not being irreversible or hazardous) is immediately necessary and represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or to others.
- (2) Sections 46 and 47(3) above shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with section 43 or 44 above if the responsible medical officer considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.
- (3) For the purposes of this section treatment is irreversible if it has unfavourable irreversible physical or psychological consequences and hazardous if it entails significant physical hazard.

49 Treatment not requiring consent

The consent of a patient shall not be required for any medical treatment given to him for the mental disorder from which he is suffering, not being treatment falling within section 43 or 44 above, if the treatment is given by or under the direction of the responsible medical officer.

50 Extension of section 43 and related provisions to voluntary patients

Sections 43, 45, 46 and 48 above shall apply to any patient who is not liable to be detained under the principal Act or this Act.