



# Mental Health (Amendment) Act 1982

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## ELIZABETH II



# Mental Health (Amendment) Act 1982

## 1982 CHAPTER 51

An Act to amend the Mental Health Act 1959 and for  
connected purposes. [28th October 1982]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### DEFINITION OF MENTAL DISORDER

1.—(1) For references in the Mental Health Act 1959 (“ the principal Act ”) to subnormality or severe subnormality there shall be substituted references to mental impairment or severe mental impairment within the meaning of section 4 of that Act as amended by subsection (2) below. Replacement of “ sub-normality ” by “ mental impairment ”. 1959 c. 72.

(2) For subsections (2) and (3) of the said section 4 there shall be substituted—

“ (2) In this Act ‘ severe mental impairment ’ means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned.

(3) In this Act ‘ mental impairment ’ means a state of arrested or incomplete development of mind (not amounting

## PART I

to severe mental impairment) which includes significant impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned.”

Other amendments of definition of mental disorder.

2.—(1) For subsection (4) of section 4 of the principal Act (definition of “psychopathic disorder”) there shall be substituted—

“ (4) In this Act ‘ psychopathic disorder ’ means a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned.”

(2) In subsection (5) of that section (person not to be treated as suffering from mental disorder by reason only of promiscuity or other immoral conduct) after the words “ or other immoral conduct ” there shall be inserted the words “ , sexual deviancy or dependence on alcohol or drugs.”

## PART II

## COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

*Admission to hospital*

Admission for assessment.

3.—(1) In section 25 of the principal Act (under which a person may be detained in a hospital under observation if an application for admission for observation is made in accordance with that section)—

(a) for the words “ application for admission for observation ”, wherever they occur, there shall be substituted the words “ application for admission for assessment ” ; and

(b) in subsection (2)(a) for the words “ detention of the patient in a hospital under observation (with or without other medical treatment) ” there shall be substituted the words “ detention of the patient in a hospital for assessment (or for assessment followed by medical treatment) ”.

(2) In section 27 of the principal Act (general provisions as to applications) after subsection (1) there shall be inserted—

“ (1A) Before or within a reasonable time after an application for the admission of a patient for assessment is made by a mental welfare officer, that officer shall take such steps as are practicable to inform the person (if any) appearing to be the nearest relative of the patient that the application is to be or has been made and of the power

of the nearest relative under section 47 of this Act to discharge the patient.”

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(3) In section 29 of the principal Act (emergency application for admission for assessment)—

(a) in subsection (2) (persons by whom emergency application may be made) for the words “any relative of the patient” there shall be substituted the words “the nearest relative of the patient”;

(b) for subsection (4) there shall be substituted—

“ (4) In relation to an emergency application, section 27 of this Act shall have effect as if in subsection (3) of that section for the words “the period of fourteen days ending with the date of the application” there were substituted the words “the previous twenty-four hours.”

(4) In section 31 of the principal Act—

(a) for subsection (1)(b) (time limit for acting on emergency application for admission for assessment) there shall be substituted—

“ (b) in the case of an emergency application, the period of twenty-four hours beginning at the time when the patient was examined by the practitioner giving the medical recommendation first referred to in subsection (3) of section 29 of this Act, or at the time when the application is made, whichever is the earlier ”;

(b) after subsection (3) there shall be inserted—

“ (3A) A patient who is admitted to a hospital in pursuance of an application for admission for assessment may apply to a Mental Health Review Tribunal within the period of fourteen days beginning with the day on which he is so admitted.”

4.—(1) Section 26 of the principal Act (admission for treatment) shall be amended as follows. Admission for treatment.

(2) For subsection (2)(a) and (b) (grounds for application for admission of patient) there shall be substituted—

“ (a) that he is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment, being a mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital ; and

(b) in the case of psychopathic disorder or mental impairment, that such treatment is likely to alleviate or prevent a deterioration of his condition ; and

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(c) that it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and that it cannot be provided unless he is detained under this section."

(3) In subsection (3) (contents of medical recommendations) for the words "paragraphs (a) and (b)", "the said paragraph (a)" and "the said paragraph (b)" there shall be substituted respectively the words "paragraphs (a), (b) and (c)", "the said paragraphs (a) and (b)" and "the said paragraph (c)".

**Medical recommendations.**

5.—(1) Section 28 of the principal Act (general provisions as to medical recommendations) shall be amended as follows.

(2) In subsection (1) (which requires the two practitioners making the recommendations to have examined the patient either together or at an interval of not more than seven days) for the words from "either together" onwards there shall be substituted the words "either together or separately but where they have examined the patient separately not more than five days must have elapsed between the days on which the separate examinations took place."

(3) At the beginning of subsection (3) (which provides that only one of the recommendations may be given by a practitioner on the staff of the hospital to which the patient is to be admitted) there shall be inserted the words "Subject to subsection (3A) of this section" and after that subsection there shall be inserted—

"(3A) Subsection (3) of this section shall not preclude both the medical recommendations being given by practitioners on the staff of the hospital in question if—

(a) compliance with that subsection would result in delay involving serious risk to the health or safety of the patient; and

(b) one of the practitioners giving the recommendations works at the hospital for less than half of the time which he is bound by contract to devote to work in the health service; and

(c) where one of those practitioners is a consultant, the other does not work (whether at the hospital or elsewhere) in a grade in which he is under that consultant's directions."

(4) In subsection (4)(e) after the words "subsection (3)" there shall be inserted the words "or (3A)".

(5) After subsection (4) there shall be inserted—

"(5) A general practitioner who is employed part-time in a hospital shall not for the purposes of this section be regarded as a practitioner on its staff."



**6.—(1)** Section 30 of the principal Act (applications in respect of patients already in hospital) shall be amended as follows. PART II  
Patients  
already in  
hospital.

(2) In subsection (2) (detention for three days on report by medical practitioner in charge of the treatment of the patient) for the words “a period of three days beginning with the day on which the report is so furnished” there shall be substituted the words “a period of seventy-two hours from the time when the report is so furnished.”

(3) After subsection (2) there shall be inserted—

“ (3) The medical practitioner in charge of the treatment of a patient in a hospital may nominate one (but not more than one) other medical practitioner on the staff of that hospital to act for him under subsection (2) of this section in his absence.

(4) If, in the case of a patient who is receiving treatment for mental disorder as an in-patient in a hospital and who is not liable to be detained therein under this Part of this Act, it appears to a nurse of the prescribed class—

(a) that the patient is suffering from mental disorder to such a degree that it is necessary for his health or safety or for the protection of others for him to be immediately restrained from leaving the hospital; and

(b) that it is not practicable to secure the immediate attendance of a practitioner for the purpose of furnishing a report under subsection (2) of this section,

the nurse may record that fact in writing; and in that event the patient may be detained in the hospital for a period of six hours from the time when that fact is so recorded or until the earlier arrival at the place where the patient is detained of a practitioner having power to furnish a report under that subsection.

(5) A record made under subsection (4) of this section shall be delivered by the nurse (or by a person authorised by the nurse in that behalf) to the managers of the hospital as soon as possible after it is made; and where a record is made under that subsection the period mentioned in subsection (2) of this section shall begin at the time when it is made.

(6) In subsection (4) of this section “prescribed” means prescribed by an order made by the Secretary of State.”

#### *Reception into guardianship*

**7.—(1)** Section 33 of the principal Act (application for guardianship) shall be amended as follows. Guardianship  
applications.

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(2) In subsection (1) for the words “ A patient may be received into guardianship ” there shall be substituted the words “ A patient who has attained the age of sixteen years may be received into guardianship ”.

(3) In subsection (2)(a) (guardianship application on grounds of mental disorder, being, in the case of a patient of any age, mental illness or severe subnormality or, in the case of a patient under the age of twenty-one years, psychopathic disorder or subnormality) for sub-paragraphs (i) and (ii) there shall be substituted the words “ mental illness, severe mental impairment, psychopathic disorder or mental impairment ”.

(4) In subsection (2)(b) (guardianship necessary in the interests of the patient) for the words “ the interests of the patient ” there shall be substituted the words “ the interests of the welfare of the patient ”.

## Effect of guardianship applications.

8. In section 34(1) of the principal Act (under which the effect of a guardianship application when duly accepted is to confer on the guardian all such powers as would be exercisable if the guardian were the father of the patient and the patient were under the age of fourteen years) for the words from “ all such powers ” onwards there shall be substituted the words “ the following powers, that is to say—

- (a) power to require the patient to reside at a place specified by the authority or person named as guardian ;
- (b) power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training ;
- (c) power to require access to the patient to be given, at any place where the patient is residing, to any registered medical practitioner, mental welfare officer or other person so specified.”

*Care and treatment of detained patients*

## Visiting and examination of patients.

9.—(1) Section 37 of the principal Act (visiting and examination of patients) shall be amended as follows.

(2) After subsection (1) there shall be inserted—

“ (1A) Any medical practitioner authorised for the purposes of subsection (1) of this section to visit and examine a patient may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.”

(3) In subsection (2) (examination of patients in mental nursing homes) for the words “ a registration authority ” there shall be substituted the words “ the Secretary of State ” and for

the words " that authority " there shall be substituted the words " the Secretary of State or, as the case may be, that authority ".

(4) In subsection (3) (production and inspection of medical records of patients in mental nursing homes) for the words " medical records " there shall be substituted the word " records ".

**10.** After section 38(1) of the principal Act (re-classification of patients) there shall be inserted— Re-classification of patients.

" (1A) Where a report under subsection (1) of this section in respect of a patient detained in a hospital is to the effect that he is suffering from psychopathic disorder or mental impairment but not from mental illness or severe mental impairment the responsible medical officer shall include in the report a statement of his opinion whether further medical treatment in hospital is likely to alleviate or prevent a deterioration of the patient's condition ; and if he states that in his opinion such treatment is not likely to have that effect the authority of the managers to detain the patient shall cease.

(1B) Before furnishing a report under subsection (1) of this section the responsible medical officer shall consult one or more other persons who have been professionally concerned with the patient's medical treatment."

**11.**—(1) Sections 39 and 40 of the principal Act (leave of absence and patients absent without leave) shall be amended as follows. Leave of absence and patients absent without leave.

(2) At the end of subsection (3) of section 39 (persons who may have custody of patient during leave of absence) there shall be inserted the words " or, if the patient is required in accordance with conditions imposed on the grant of leave of absence to reside in another hospital, of any officer on the staff of that other hospital."

(3) After subsection (1) of section 40 (persons who may take into custody and return a patient absent without leave) there shall be inserted—

" (1A) Where the place referred to in paragraph (c) of subsection (1) of this section is a hospital other than the one in which the patient is for the time being liable to be detained, the references in that subsection to an officer on the staff of the hospital and the managers of the hospital shall respectively include references to an officer on the staff of the first-mentioned hospital and the managers of that hospital."

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(4) In subsection (3) of section 40 (period within which patient may be taken into custody) for the words from “after the expiration of the following period” to “twenty-eight days” there shall be substituted the words “after the expiration of the period of twenty-eight days beginning with the first day of his absence without leave”.

(5) After subsection (3) of section 40 there shall be inserted—

“ (3A) A patient shall not be taken into custody under this section if the period for which he is liable to be detained is that specified in section 25(4), 29(3) or 30(2) or (4) of this Act and that period has expired.”

*Duration of detention or guardianship and discharge of patients*

**Duration of authority for detention and guardianship.**

**12.**—(1) Section 43 of the principal Act (duration of authority for detention and guardianship) shall be amended as follows.

(2) In subsections (1) and (2)(a) (initial period of detention or guardianship and period of first renewal) for the words “one year” there shall be substituted the words “six months”.

(3) In subsection (2) (subsequent periods of renewal) for the words “two years”, in both places where they occur, there shall be substituted the words “one year”.

(4) In subsection (3) (renewal report by responsible medical officer) for the words from “if it appears to him” onwards there shall be substituted the words “if it appears to him that the conditions set out in subsection (3A) of this section are satisfied he shall furnish to the managers of the hospital where the patient is detained a report to that effect in the prescribed form.”

(5) After subsection (3) there shall be inserted—

“ (3A) The conditions referred to in subsection (3) of this section are—

- (a) that the patient is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment, being a mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
- (b) that such treatment is likely to alleviate or prevent a deterioration of his condition; and
- (c) that it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and that it cannot be provided unless he continues to be detained;

but, in the case of mental illness or severe mental impairment, it shall be an alternative to the condition specified in

paragraph (b) of this subsection that the patient, if discharged, is unlikely to be able to care for himself, to obtain the care which he needs or to guard himself against serious exploitation.

(3B) Before furnishing a report under subsection (3) of this section the responsible medical officer shall consult one or more other persons who have been professionally concerned with the patient's medical treatment."

(6) In subsection (4) (renewal report in case of guardianship) for the words from "if it appears to him" onwards there shall be substituted the words "if it appears to him—

(i) that the patient is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment, being a mental disorder of a nature or degree which warrants his reception into guardianship, and

(ii) that it is necessary in the interests of the welfare of the patient or for the protection of other persons that the patient should remain under guardianship, he shall furnish to the guardian and, where the guardian is a person other than a local social services authority, the responsible local social services authority a report to that effect in the prescribed form."

(7) After subsection (5) there shall be inserted—

"(5A) Where the form of mental disorder specified in a report furnished under subsection (3) or (4) of this section is a form of disorder other than that specified in the application for admission for treatment or, as the case may be, in the guardianship application, that application shall have effect as if that other form of mental disorder were specified in it; and where on any occasion a report specifying such a form of mental disorder is furnished under either of those subsections by the responsible medical officer or the patient's nominated medical attendant he need not on that occasion furnish a report under section 38 of this Act."

13.—(1) For paragraphs (a) and (b) of section 47(2) of the principal Act (under which the patient's nearest relative may make an order of discharge if the patient is liable to be detained in pursuance of an application for admission for treatment but not if he is liable to be detained in pursuance of an application for admission for assessment) there shall be substituted—

"(a) where the patient is liable to be detained in a hospital in pursuance of an application for admission for assessment or for treatment, by the responsible medical officer, by the managers or by the nearest relative of the patient;";

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(2) In subsection (3) of section 48 of the principal Act (right of nearest relative to apply to Mental Health Review Tribunal if his order for discharge is nullified under subsection (2) of that section) after the words “in respect of a patient” there shall be inserted the words “who is liable to be detained in pursuance of an application for admission for treatment”.

*Functions of relatives of patients*

**Definition of relative and nearest relative.**

**14.—**(1) Section 49 of the principal Act (definition of relative and nearest relative) shall be amended as follows.

(2) In subsection (1) for paragraphs (c) and (d) there shall be substituted—

“ (c) father or mother ; ”.

(3) After subsection (3) there shall be inserted—

“ (3A) Subject to the provisions of this section and to the following provisions of this Part of this Act, where the patient ordinarily resides with or is cared for by one or more of his relatives (or, if he is for the time being an in-patient in a hospital, he last ordinarily resided with or was cared for by one or more of his relatives) his nearest relative shall be determined—

(a) by giving preference to that relative or those relatives over the other or others ; and

(b) as between two or more such relatives, in accordance with subsection (3) of this section.”

(4) In subsection (4) after the words “ subsection (3) ” there shall be inserted the words “ or (3A) ” and for paragraph (a) there shall be substituted—

“ (a) in the case of a patient ordinarily resident in the United Kingdom, the Channel Islands or the Isle of Man, is not so resident ; or ”.

(5) After subsection (6) there shall be inserted—

“ (7) A person, other than a relative, with whom the patient ordinarily resides (or, if the patient is for the time being an in-patient in a hospital, last ordinarily resided before he was admitted), and with whom he has or had been ordinarily residing for a period of not less than five years, shall be treated for the purposes of this Part of this Act as if he were a relative but—

(a) shall be treated for the purposes of subsection (3) of this section as if mentioned last in subsection (1) of this section ; and

(b) shall not be treated by virtue of this subsection as the nearest relative of a married patient unless the

husband or wife of the patient is disregarded by virtue of paragraph (b) of subsection (4) of this section."

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15.—(1) Sections 52 and 53 of the principal Act (appointment by court of acting nearest relative) shall be amended as follows.

Appointment by court of acting nearest relative.

(2) After section 52(4) there shall be inserted—

“(4A) An order made on the ground specified in subsection (3)(a) or (b) of this section may specify a period for which it is to continue in force unless previously discharged under section 53 of this Act.”

(3) In section 53(4) after the words “cease to have effect” there shall be inserted the words “at the expiration of the period, if any, specified under subsection (4A) of that section or, where no period is so specified”.

*Applications and references*

16.—(1) Section 54 of the principal Act (duty of mental welfare officer to make applications) shall be amended as follows.

Applications by mental welfare officers.

(2) In subsection (1) for the words “the local authority” there shall be substituted the words “the local social services authority”.

(3) After subsection (1) there shall be inserted—

“(1A) Before making an application for the admission of a patient to hospital a mental welfare officer shall interview the patient in a suitable manner and satisfy himself that detention in a hospital is in all the circumstances of the case the most appropriate way of providing the care and medical treatment of which the patient stands in need.

(1B) An application under this section by a mental welfare officer may be made outside the area of the local social services authority by whom he is appointed.

(1C) It shall be the duty of a local social services authority, if so required by the nearest relative of a patient residing in their area, to direct a mental welfare officer as soon as practicable to take the patient’s case into consideration under subsection (1) of this section with a view to making an application for his admission to hospital; and if in any such case that officer decides not to make an application he shall inform the nearest relative of his reasons in writing.”

17. Where a patient is admitted to a hospital in pursuance of an application (other than an emergency application) made under Part IV of the principal Act by his nearest relative, the managers of the hospital shall as soon as practicable give notice of that

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fact to the local social services authority for the area in which the patient resided immediately before his admission ; and that authority shall as soon as practicable arrange for a social worker of their social services department to interview the patient and provide the managers with a report on his social circumstances.

Power of Secretary of State to refer cases to tribunal.

18. The existing provisions of section 57 of the principal Act (power of Secretary of State to refer cases to tribunal) shall become subsection (1) and after those provisions there shall be inserted—

“(2) For the purpose of furnishing information for the purposes of such a reference any medical practitioner authorised by or on behalf of the patient may, at any reasonable time, visit the patient and examine him in private and require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.”

## PART III

## PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS ETC.

*Hospital orders*

Power to make hospital order.

19.—(1) Section 60 of the principal Act (power of court to make hospital order) shall be amended as follows.

(2) In subsection (1) after the words “convicted before the Crown Court of an offence” there shall be inserted the words “punishable with imprisonment”.

(3) For subsection (1)(a) there shall be substituted—

“(a) the court is satisfied, on the written or oral evidence of two medical practitioners (complying with the provisions of section 62 of this Act), that the offender is suffering from mental illness, psychopathic disorder, mental impairment or severe mental impairment and that the conditions set out in subsection (1A) of this section are complied with ; and”.

(4) After subsection (1) there shall be inserted—

“(1A) The conditions referred to in subsection (1)(a) of this section are—

(a) 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, in the case of psychopathic disorder or mental impairment, that such treatment is likely to alleviate or prevent a deterioration of his condition ; or

(b) in the case of an offender who has attained the age of sixteen years, that the mental disorder is of a



nature or degree which warrants his reception into guardianship under this Act.” PART III

(5) In subsection (3) (which requires the court to be satisfied that arrangements have been made for the admission of the offender to the hospital in question) after the words “ unless the court is satisfied ” there shall be inserted the words “ on the written or oral evidence of the medical practitioner who would be in charge of his treatment or of some other person representing the managers of the hospital ”.

**20.**—(1) After subsection (3) of section 63 of the principal Act (effect of hospital orders and guardianship orders) there shall be inserted— Applications in respect of patient subject to hospital order.

“ (3A) Without prejudice to any provision of Part IV of this Act as applied by this section, an application to a Mental Health Review Tribunal in respect of a patient admitted to a hospital in pursuance of a hospital order may be made by the nearest relative of the patient—

(a) in the period between the expiration of six months and the expiration of twelve months beginning with the date of the order ; and

(b) in any subsequent period of twelve months.”

(2) In subsection (4) of that section the words “ admitted to a hospital in pursuance of a hospital order, or ” shall be omitted.

(3) Where a person detained in a hospital or mental nursing home—

(a) is treated as subject to a hospital order or transfer direction by virtue of section 37(2) below, section 65(5) or 87(2) of the principal Act, section 73(2) of the Mental Health (Scotland) Act 1960 or section 5(1) of the Criminal Procedure (Insanity) Act 1964 ; or 1960 c. 61.  
1964 c. 84.

(b) is subject to a direction having the same effect as a hospital order by virtue of section 71(4), 72(3) or 73(3) of the principal Act,

then, without prejudice to any provision of Part IV of the principal Act as applied by section 63 of that Act, that person may make an application to a Mental Health Review Tribunal in the period of six months beginning with the date of the order or direction mentioned in paragraph (a) above or, as the case may be, the date of the direction mentioned in paragraph (b) above.

(4) In sections 52(1) and (5) and 53 of the principal Act (appointment by court of acting nearest relative) references to Part IV of that Act shall include references to section 63(3A) and (4) of that Act and in subsection (4)(a) of section 53 of that Act

**PART III** the reference to detention in pursuance of an application for admission for treatment and to guardianship under that Part shall include a reference to detention and guardianship by virtue of an order or direction under Part V of that Act.

**Committal for hospital order.** **21.**—(1) Section 68 of the principal Act (admission to hospital of person committed by magistrates' court with a view to the making of a hospital order) shall be amended as follows.

(2) In subsection (1) for the words "the magistrates' court by which he is committed is satisfied that arrangements have been made for the admission of the offender to a hospital" there shall be substituted the words "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".

(3) After subsection (1) there shall be inserted—

"(1A) The evidence required by subsection (1) of this section shall be given by the medical practitioner who would be in charge of the offender's treatment or by some other person representing the managers of the hospital in question."

#### *Transfer directions*

**Removal to hospital of persons serving sentences of imprisonment etc.** **22.** For section 72(1)(b) of the principal Act (removal to hospital of persons serving sentences of imprisonment etc.) there shall be substituted—

"(b) that the mental disorder from which that person is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and, in the case of psychopathic disorder or mental impairment, that such treatment is likely to alleviate or prevent a deterioration of his condition ;".

**Removal to hospital of other prisoners.** **23.**—(1) Section 73 of the principal Act (removal to hospital of other prisoners) shall be amended as follows.

(2) In subsection (1) for the words "which warrants the detention of the patient in a hospital for medical treatment" there shall be substituted the words "which makes it appropriate for him to be detained in a hospital for medical treatment and that the patient is in urgent need of such treatment".

(3) For paragraphs (a), (b) and (c) of subsection (2) there shall be substituted—

"(a) persons detained in a prison or remand centre, not being persons serving a sentence of imprisonment or persons falling within the following paragraphs of this subsection ;".

(4) For paragraph (f) of subsection (2) there shall be substituted— PART III

“(f) persons detained under the Immigration Act 1971.”

**24.**—(1) Section 75 of the principal Act (provisions applying Persons under where person under sentence has been transferred to hospital) sentence. shall be amended as follows.

(2) In subsection (1) for the words “and the Secretary of State is notified by the responsible medical officer at any time before the expiration of that person’s sentence that that person no longer requires treatment for mental disorder” there shall be substituted the words “and before the expiration of that person’s sentence the Secretary of State is notified by the responsible medical officer, any other medical practitioner or a Mental Health Review Tribunal that that person no longer requires treatment in hospital for mental disorder or that no effective treatment for his disorder can be given in the hospital to which he has been removed”.

(3) At the end of subsection (3) there shall be inserted the words “and that period shall be treated as expiring on the date on which he could have been discharged if he had not forfeited remission of any part of the sentence after his removal pursuant to the direction”.

**25.**—(1) Section 76 of the principal Act (provisions applying Persons where person committed for trial etc. has been transferred to hospital) shall be amended as follows. Persons committed for trial etc.

(2) In subsection (2)(a)—

(a) for the words “the Secretary of State is notified by the responsible medical officer at any time before that person is brought before the court” there shall be substituted the words “the Secretary of State is notified by the responsible medical officer, any other medical practitioner or a Mental Health Review Tribunal at any time before that person’s case is disposed of by the court”;

(b) for the words “that he no longer requires treatment for mental disorder” there shall be substituted the words “that he no longer requires treatment in hospital for mental disorder or that no effective treatment for his disorder can be given at the hospital to which he has been removed”.

(3) After subsection (2)(a) there shall be inserted—

“(aa) if (no direction having been given under paragraph (a) of this subsection) that court is satisfied, on the written or oral evidence of the responsible medical

## PART III

officer, that that person no longer requires treatment in hospital for mental disorder or that no effective treatment for his disorder can be given at the hospital to which he has been removed, the court may order him to be remitted to any such place as aforesaid or released on bail and on his arrival at that place or, as the case may be, his release on bail the transfer direction shall cease to have effect ;”.

(4) In subsection (2)(b) for the words “(no direction having been given under paragraph (a) of this subsection)” there shall be substituted the words “(no direction or order having been given or made under paragraph (a) or (aa) of this subsection)”.

(5) In subsection (3) for the words “on the oral evidence of at least two medical practitioners” there shall be substituted the words “on the written or oral evidence of at least two medical practitioners” and for the the words “which warrants the detention of the patient in a hospital for medical treatment” there shall be substituted the words “which makes it appropriate for the patient to be detained in a hospital for medical treatment”.

Persons  
remanded by  
magistrates’  
courts.

26.—(1) This section has effect where a transfer direction has been given in respect of a person remanded in custody by a magistrates’ court; and that person is in this section referred to as “the accused”.

(2) Subject to subsection (5) below, the transfer direction shall cease to have effect on the expiration of the period of remand unless the accused is committed in custody to the Crown Court for trial or to be otherwise dealt with.

1980 c. 43.

(3) Subject to subsection (4) below, the power of further remanding the accused under section 128 of the Magistrates’ Courts Act 1980 may be exercised by the court without his being brought before the court; and if the court further remands the accused in custody (whether or not he is brought before the court) the period of remand shall, for the purposes of this section, be deemed not to have expired.

(4) The court shall not under subsection (3) above further remand the accused in his absence unless he has appeared before the court within the previous six months.

(5) If the magistrates’ court is satisfied, on the written or oral evidence of the responsible medical officer—

(a) that the accused no longer requires treatment in hospital for mental disorder; or

(b) that no effective treatment for his disorder can be given in the hospital to which he has been removed,

the court may direct that the transfer direction shall cease to have effect notwithstanding that the period of remand has not expired or that the accused is committed to the Crown Court as mentioned in subsection (2) above.

PART III

(6) If the accused is committed to the Crown Court as mentioned in subsection (2) above and the transfer direction has not ceased to have effect under subsection (5) above, section 76 of the principal Act shall apply as if the transfer direction given in his case were a direction given in respect of a person falling within that section.

(7) The magistrates' court may, in the absence of the accused, inquire as examining justices into an offence alleged to have been committed by him and commit him for trial in accordance with section 6 of the Magistrates' Courts Act 1980 if—

1980 c. 43.

- (a) the court is satisfied, on the written or oral evidence of the responsible medical officer, that the accused is unfit to take part in the proceedings; and
- (b) where the court proceeds under subsection (1) of that section, the accused is represented by counsel or a solicitor.

27.—(1) Subject to subsection (2) below, a transfer direction given in respect of any such person as is described in paragraph (e) or (f) of section 73(2) of the principal Act (civil prisoners and persons detained under the Immigration Act 1971) shall cease to have effect on the expiration of the period during which he would, but for his removal to hospital, be liable to be detained in the place from which he was removed.

Civil prisoners and persons detained under the Immigration Act 1971. 1971 c. 77.

(2) Where a transfer direction and a restriction direction have been given in respect of any such person as is mentioned in subsection (1) above, then, if the Secretary of State is notified by the responsible medical officer, any other medical practitioner or a Mental Health Review Tribunal at any time before the expiration of the period there mentioned—

- (a) that that person no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given in the hospital to which he has been removed,

the Secretary of State may by warrant direct that he be remitted to any place where he might have been detained if he had not been removed to hospital, and on his arrival at the place to which he is so remitted the transfer direction and the restriction direction shall cease to have effect.

#### *Orders and directions restricting discharge*

28.—(1) In section 65(1) of the principal Act (power to make an order restricting an offender's discharge if necessary

Restriction orders and restriction directions.

**PART-III**

for the protection of the public) after the words "the protection of the public" there shall be inserted the words "from serious harm" and the same amendment shall be made in section 66(1) of that Act (power to revoke order if no longer required for that purpose).

(2) An order under section 65 of the principal Act shall be known as "a restriction order" instead of as "an order restricting discharge"; and a direction under section 74 of that Act (which has the same effect as such an order) shall be known as "a restriction direction" instead of as "a direction restricting discharge".

(3) While a person is subject to a restriction order or a restriction direction the responsible medical officer 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.

(4) Schedule 1 to this Act shall have effect for enabling persons who are subject to restriction orders or restriction directions to be discharged by Mental Health Review Tribunals; and section 66(6) to (8) of the principal Act (under which such a tribunal has only advisory powers in respect of such persons) shall cease to have effect.

*Remands to hospital and interim hospital orders*

**29.**—(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.

(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 for 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.

(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 medical practitioner approved for the purposes of

Remand to hospital for report on accused's mental condition.

section 28 of the principal Act, that there is reason to suspect that the accused person is suffering from mental illness, psychopathic disorder, mental impairment or severe mental impairment ; and

- (b) the court is of 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.

(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 medical practitioner 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.

(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 medical practitioner responsible for making the report, that a further remand is necessary for completing the assessment of the accused person's mental condition.

(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 counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.

(7) An accused person shall not be remanded or further remanded under this section for more than twenty-eight days at a time or for more than twelve 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.

(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 medical practitioner chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (7) above.

(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 hospi-

## PART III

tal 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.

(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.

Remand of  
accused person  
to hospital for  
treatment.

**30.**—(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 medical practitioners, that he is suffering from mental illness or severe mental impairment of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment.

(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.

(3) Of the medical practitioners whose evidence is taken into account under subsection (1) above at least one shall be a practitioner approved for the purposes of section 28 of the principal Act.

(4) 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 medical practitioner who would be in charge of his treatment 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.

(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 responsible medical officer, that a further remand is warranted.



(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 counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.

(7) An accused person shall not be remanded or further remanded under this section for more than twenty-eight days at a time or for more than twelve 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.

(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 medical practitioner chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (7) above.

(9) Subsections (9) and (10) of section 29 above shall have effect in relation to a remand under this section as they have effect in relation to a remand under that section.

**31.**—(1) Where a person is convicted before the Crown Court Interim of an offence punishable with imprisonment (other than an hospital orders. 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 medical practitioners—

- (a) that the offender is suffering from mental illness, psychopathic disorder, mental impairment or severe mental impairment; 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 (“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.

(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 counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.

(3) Of the medical practitioners whose evidence is taken into account under subsection (1) above at least one shall be a

## PART III

practitioner approved for the purposes of section 28 of the principal Act and at least one shall be employed at the hospital which is to be specified in the order.

(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 medical practitioner who would be in charge of his treatment 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 twenty-eight days beginning with the date of the order; and if the court is so satisfied the court may, pending his admission, give directions for his conveyance to and detention in a place of safety.

(5) An interim hospital order—

- (a) shall be in force for such period, not exceeding twelve weeks, as the court may specify when making the order; but
- (b) may be renewed for further periods of not more than twenty-eight days at a time if it appears to the court, on the written or oral evidence of the responsible medical officer, that the continuation of the order is warranted;

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

(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.

(7) 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 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.

(8) 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.

PART III

*Information and evidence*

**32.**—(1) Where a court is minded to make a hospital order or interim hospital order in respect of any person it may request—

Information as to hospitals.

(a) the Regional Health Authority for the region in which that person resides or last resided; or

(b) any other Regional Health Authority that appears to the court to be appropriate,

to furnish the court with such information as that Authority has or can reasonably obtain with respect to the hospital or hospitals (if any) in its region or elsewhere at which arrangements could be made for the admission of that person in pursuance of the order, and that Authority shall comply with any such request.

(2) In its application to Wales, subsection (1) above shall have effect as if for any reference to any such Authority as is mentioned in paragraph (a) or (b) of that subsection there were substituted a reference to the Secretary of State, and as if for the words “in its region or elsewhere” there were substituted the words “in Wales”.

**33.**—(1) For the purposes of any provision of Part V of the principal Act or of this Part of this Act under which a court may act on the written evidence of—

Reports by medical practitioners etc.

(a) a medical practitioner or a medical practitioner of any description; or

(b) a person representing the managers of a hospital,

a report in writing purporting to be signed by a medical practitioner or a medical practitioner of such a description or by a person representing the managers of a hospital may, subject to the provisions of this section, be received in evidence without proof of the signature of the practitioner or that person and without proof that he has the requisite qualifications or authority or is of the requisite description; but the court may require the signatory of any such report to be called to give oral evidence.

(2) 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 counsel or a solicitor, a copy of the report shall be given to his counsel or solicitor;

PART III

- (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.

*Mental condition of persons accused of murder*

Amendments of Bail Act 1976 etc. 1976 c. 63.

34.—(1) The Bail Act 1976 shall be amended in accordance with subsections (2) to (4) below.

(2) After subsection (6) of section 3 (conditions of bail) there shall be inserted—

“(6A) In the case of a person accused of murder the court granting bail shall, unless it considers that satisfactory reports on his mental condition have already been obtained, impose as conditions of bail—

(a) a requirement that the accused shall undergo examination by two medical practitioners for the purpose of enabling such reports to be prepared ; and

(b) a requirement that he shall for that purpose attend such an institution or place as the court directs and comply with any other directions which may be given to him for that purpose by either of those practitioners.

(6B) Of the medical practitioners referred to in subsection (6A) above at least one shall be a practitioner approved for the purposes of section 28 of the Mental Health Act 1959.”

(3) In subsection (7) of that section (obligations of parent or guardian in respect of conditions of bail) for the words “subsection (6) above ” there shall be substituted the words “subsection (6) or (6A) above ”.

(4) In paragraph 8(3) of Schedule 1 (exceptions from restriction of conditions of bail) after the words “shall not ” there shall be inserted the words “apply to the conditions required to be imposed under section 3(6A) of this Act or ”.

1973 c. 14.

(5) Without prejudice to its powers under section 3 of the Costs in Criminal Cases Act 1973, the Crown Court may order the payment out of central funds of such sums as appear to it reasonably sufficient to compensate any medical practitioner

for the expenses, trouble or loss of time properly incurred by him in preparing and making a report to the court on the mental condition of a person accused of murder. PART III

#### PART IV

##### REMOVAL OF PATIENTS TO AND FROM THE UNITED KINGDOM

**35.**—(1) Section 90 of the principal Act (removal of alien patients etc.) shall not apply to any patient unless he is detained pursuant to— Removal of alien patients etc.

- (a) an application under section 26 of the principal Act or section 12 of the Mental Health Act (Northern Ireland) 1961 ; 1961 c. 15 (N.I.).
- (b) a hospital order under section 60 of the principal Act or section 48 of the said Act of 1961 ; or
- (c) an order or direction under either of those Acts having the like effect as such a hospital order.

(2) The Secretary of State shall not exercise his powers under the said section 90 in the case of any patient except with the approval of a Mental Health Review Tribunal or, as the case may be, of the Mental Health Review Tribunal for Northern Ireland.

(3) Where the Secretary of State exercises his powers under the said section 90 in respect of a patient who is detained pursuant to a hospital order under section 60 of the principal Act and in respect of whom a restriction order is in force, those orders shall, notwithstanding section 95 of that Act, continue in force so as to apply to the patient if he returns to England and Wales at any time before the end of the period for which those orders would have continued in force.

(4) In paragraph (b) of the said section 90 for the words “ a mental hospital or institution within the meaning of the Mental Health (Northern Ireland) Act 1948 ” there shall be substituted the words “ a hospital within the meaning of the Mental Health Act (Northern Ireland) 1961 ”.

**36.** If it appears to the Secretary of State, in the case of a patient who is for the time being liable to be detained or subject to guardianship under the principal Act, that it is in the interests of the patient to remove him to any of the Channel Islands or to the Isle of Man, and that arrangements have been made for admitting him to a hospital or, as the case may be, for receiving him into guardianship there, the Secretary of State may authorise his removal to the island in question and may give any necessary directions for his conveyance to his destination. Removal of patients to Channel Islands or Isle of Man.

**PART IV**  
**Patients**  
**removed from**  
**Channel**  
**Islands or**  
**Isle of Man.**

**37.—(1)** This section applies to any patient who is removed to England and Wales from any of the Channel Islands or the Isle of Man under a provision corresponding to section 36 above and who immediately before his removal was liable to be detained or subject to guardianship in the island in question under a provision corresponding to an enactment contained in the principal Act.

(2) Where the patient is admitted to a hospital in England and Wales he shall be treated as if on the date of his admission he had been so admitted in pursuance of an application made, or an order or direction made or given, on that date under the corresponding enactment contained in the principal Act and, where he is subject to an order or direction restricting his discharge, as if he were subject to a restriction order or restriction direction.

(3) Where the patient is received into guardianship in England and Wales, he shall be treated as if on the date on which he arrives at the place where he is to reside he had been so received in pursuance of an application, order or direction under the corresponding enactment contained in the principal Act and as if the application had been accepted or, as the case may be, the order or direction had been made or given on that date.

(4) Where the patient was immediately before his removal liable to be detained by virtue of a transfer direction given while he was serving a sentence of imprisonment imposed by a court in the island in question, he shall be treated as if the sentence had been imposed by a court in England and Wales.

(5) Where the patient was immediately before his removal subject to an order or direction restricting his discharge, being an order or direction of limited duration, the restriction order or restriction direction to which he is subject by virtue of subsection (2) above shall expire on the date on which the first-mentioned order or direction would have expired if he had not been removed.

(6) While being conveyed to the hospital referred to in subsection (2) or, as the case may be, the place referred to in subsection (3) above, the patient shall be deemed to be in legal custody, and section 140 of the principal Act (retaking of patients escaping from custody) shall apply to him as if he were in legal custody by virtue of section 139 of that Act.

(7) In the case of a patient removed from the Isle of Man the reference in subsection (4) above to a person serving a sentence of imprisonment includes a reference to a person detained as mentioned in section 60(6)(a) of the Mental Health Act 1974 (an Act of Tynwald).

38. Any person (other than a person subject to guardianship) who under any provision corresponding to section 40 or 140 of the principal Act may be taken into custody in any of the Channel Islands or the Isle of Man, may be taken into custody in, and returned to the island in question from, England and Wales by a mental welfare officer or constable.

**PART IV**  
Patients  
absconding  
from  
hospital in  
Channel  
Islands or  
Isle of Man.

## PART V

### MENTAL HEALTH REVIEW TRIBUNALS

39.—(1) At the end of section 122(2) of the principal Act (which provides that where a person is authorised to make an application within a specified period not more than one such application shall be made by him within that period) there shall be added the words “but for that purpose there shall be disregarded any application which is withdrawn in accordance with rules made under section 124 of this Act.”

**Powers and  
procedure of  
tribunals.**

(2) In section 123(1) of the principal Act (cases in which tribunal is to direct discharge of patient) for the words from “and shall so direct” onwards there shall be substituted the words “and—

(a) the tribunal shall direct the discharge of a patient liable to be detained under section 25 of this Act if they are satisfied—

(i) that he is not then suffering from mental disorder or from mental disorder of a nature or degree which warrants his detention in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period ; or

(ii) that his detention as aforesaid is not justified in the interests of his own health or safety or with a view to the protection of other persons ;

(b) the tribunal shall direct the discharge of a patient liable to be detained otherwise than under section 25 of this Act if they are satisfied—

(i) that he is not then suffering from mental illness, psychopathic disorder, mental impairment or severe mental impairment or from any of those forms of disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment ; or

(ii) that it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment ; or

(iii) in the case of an application under section 48(3) of this Act, that the patient, if released, would

## PART V

not be likely to act in a manner dangerous to other persons or to himself.”

(3) After section 123(1) of the principal Act there shall be inserted—

“ (1A) In determining whether to direct the discharge of a patient detained otherwise than under section 25 of this Act in a case not falling within paragraph (b) of subsection (1) of this section, the tribunal shall have regard—

(a) to the likelihood of medical treatment alleviating or preventing a deterioration of the patient’s condition ; and

(b) in the case of a patient suffering from mental illness or severe mental impairment, to the likelihood of the patient, if discharged, being able to care for himself, to obtain the care he needs or to guard himself against serious exploitation.

(1B) A tribunal may under subsection (1) of this section direct the discharge of a patient on a future date specified in the direction ; and where a tribunal do not direct the discharge of a patient under that subsection the tribunal may—

(a) with a view to facilitating his discharge on a future date, recommend that he be granted leave of absence or transferred to another hospital or into guardianship ; and

(b) further consider his case in the event of any such recommendation not being complied with.”

(4) In section 123(2)(b) of the principal Act (discharge of patient subject to guardianship) for the words “ the interests of the patient ” there shall be substituted the words “ the interests of the welfare of the patient ”.

(5) In section 124(2) of the principal Act (matters capable of being dealt with by rules) after paragraph (j) there shall be inserted—

“ (k) for enabling any functions of a tribunal which relate to matters preliminary or incidental to an application to be performed by the chairman of the tribunal.”

(6) Any functions conferred on the chairman of a Mental Health Review Tribunal by rules under section 124 of the principal Act may, if for any reason he is unable to act, be exercised by another member of that Tribunal appointed by him for the purpose.

(7) A Mental Health Review Tribunal may pay allowances in respect of travelling expenses, subsistence and loss of earnings to any person attending the tribunal as an applicant or witness, to the patient who is the subject of the proceedings if he attends



otherwise than as the applicant or a witness and to any person (other than counsel or a solicitor) who attends as the representative of an applicant. **PART V**

**40.—(1) Where—**

- Duty of  
managers of  
hospitals to  
refer cases to  
tribunal.
- (a) a patient who is admitted to a hospital in pursuance of an application for admission for treatment does not exercise his right to apply to a Mental Health Review Tribunal under section 31(4) of the principal Act ; or
- (b) a patient who is transferred from guardianship to hospital does not exercise his right to apply to such a tribunal under section 41(5) of that Act,

the managers of the hospital shall at the expiration of the period for making such an application refer the patient's case to such a tribunal unless an application or reference in respect of the patient has then been made under section 38(2), 48(3), 52(6) or 57 of the principal Act.

(2) If the authority for the detention of a patient in a hospital is renewed under section 43 of the principal Act and a period of three years (or, if the patient has not attained the age of sixteen years, one year) has elapsed since his case was last considered by a Mental Health Review Tribunal, whether on his own application or otherwise, the managers of the hospital shall refer his case to such a tribunal.

(3) For the purpose of furnishing information for the purposes of any reference under this section, any medical practitioner authorised by or on behalf of the patient may at any reasonable time visit and examine the patient in private and require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.

(4) The Secretary of State may by order vary the length of the periods mentioned in subsection (2) above.

(5) For the purposes of subsection (1) above a person who applies to a tribunal but subsequently withdraws his application shall be treated as not having exercised his right to apply, and where a person withdraws his application on a date after the expiration of the period mentioned in that subsection the managers shall refer his case as soon as possible after that date.

(6) References in this section to a hospital shall be construed as references to a hospital within the meaning of Part IV of the principal Act.

**PART V**  
Applications to tribunal by patients under the age of sixteen.

**41.—**(1) A patient who has not attained the age of sixteen years shall have the same rights under the provisions of the principal Act mentioned in subsection (2) below (applications to Mental Health Review Tribunal) as a person who has attained that age.

(2) The provisions referred to in subsection (1) above are sections 31(4), 38(2), 43(6) and 63(4)(a).

## **PART VI**

### **CONSENT TO TREATMENT**

Preliminary.

**42.—**(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.

Treatment requiring consent and a second opinion.

**43.—**(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.

(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

## PART VI

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.**—(1) This section applies to the following forms of medical treatment for mental disorder—

Treatment requiring consent or a second opinion.

- (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

## PART VI

(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.

(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.

## Plans of treatment.

**45.** 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.

## Withdrawal of consent.

**46.—**(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.

## Review of treatment.

**47.—**(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.

## PART VI

(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.**—(1) Sections 43 and 44 above shall not apply to any treatment— Urgent  
treatment.

- (a) which is immediately necessary to save the patient's life ;  
or
- (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.** 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 Treatment  
not requiring  
consent.

## PART VI

43 or 44 above, if the treatment is given by or under the direction of the responsible medical officer.

Extension of section 43 and related provisions to voluntary patients.

50. 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.

## PART VII

## MISCELLANEOUS AND SUPPLEMENTARY

After-care.

51.—(1) This section applies to persons who, having been detained under section 26 of the principal Act, or having been admitted to a hospital in pursuance of a hospital order made under section 60 of the principal Act, or having been transferred to a hospital in pursuance of a transfer direction given under section 72 or 73 of the principal Act, cease to be detained and leave hospital.

(2) It shall be the duty of the District Health Authority and of the local social services authority to provide, in co-operation with relevant voluntary agencies, after-care services for any person to whom this section applies.

(3) The duty laid down by subsection (2) above shall continue until the District Health Authority and the local social services authority are satisfied that the person concerned is no longer in need of such services.

(4) In this section “the District Health Authority” means the District Health Authority for the District, and “the local social services authority” means the local social services authority for the area, in which the person concerned is resident or to which he is sent on discharge by the hospital in which he was detained.

Correspondence of patients.

52.—(1) A postal packet addressed to any person by a patient detained in a hospital under the principal Act or this Act and delivered by the patient for despatch may be withheld from the Post Office—

- (a) if that person has requested that communications addressed to him by the patient should be withheld; or
- (b) subject to subsection (3) below, if the hospital is a special hospital and the managers of the hospital consider that the postal packet is likely—
  - (i) to cause distress to the person to whom it

is addressed or to any other person (not being a person on the staff of the hospital); or

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(ii) to cause danger to any person;

and any request for the purposes of paragraph (a) above shall be made by a notice in writing given to the managers of the hospital, the medical practitioner in charge of the treatment of the patient or the Secretary of State.

(2) Subject to subsection (3) below, a postal packet addressed to a patient detained in a special hospital under the principal Act or this Act may be withheld from the patient if, in the opinion of the managers of the hospital, it is necessary to do so in the interests of the safety of the patient or for the protection of other persons.

(3) Subsections (1)(b) and (2) above do not apply to any postal packet addressed by a patient to, or sent to a patient by or on behalf of—

- (a) any Minister of the Crown or Member of either House of Parliament;
- (b) the Master or Deputy Master or any other officer of the Court of Protection or any of the Lord Chancellor's Visitors;
- (c) the Parliamentary Commissioner for Administration, the Health Service Commissioner for England, the Health Service Commissioner for Wales or a Local Commissioner within the meaning of Part III of the Local Government Act 1974;
- (d) a Mental Health Review Tribunal;
- (e) a health authority within the meaning of the National Health Service Act 1977, a local social services authority, a Community Health Council or a probation and after-care committee appointed under paragraph 2 of Schedule 3 to the Powers of Criminal Courts Act 1973;
- (f) the managers of the hospital in which the patient is detained;
- (g) any legally qualified person instructed by the patient to act as his legal adviser; or
- (h) the European Commission of Human Rights or the European Court of Human Rights.

(4) The managers of a hospital may inspect and open any postal packet for the purposes of determining whether it is one to which subsection (1) or (2) above applies and, if so, for determining whether or not it should be withheld under that subsection; and the power to withhold a postal packet under either

**PART VII** of those subsections includes power to withhold anything contained in it.

(5) Where a postal packet or anything contained in it is withheld under subsection (1) or (2) above the managers of the hospital shall record that fact in writing.

(6) Where a postal packet or anything contained in it is withheld under subsection (1)(b) or (2) above the managers of the hospital shall within seven days give notice of that fact to the patient and, in a case under subsection (2) above, to the person (if known) by whom the postal packet was sent; and any such notice shall be in writing and shall contain a statement of the effect of section 56(7) and (8) below.

(7) The functions of the managers of a hospital under this section shall be discharged on their behalf by a person on the staff of the hospital appointed by them for that purpose, and different persons may be appointed to discharge different functions.

(8) The Secretary of State may make regulations with respect to the exercise of the powers conferred by this section.

1953 c. 36. (9) In this section "postal packet" has the same meaning as in the Post Office Act 1953 and the provisions of this section shall have effect notwithstanding anything in section 56 of that Act.

(10) References in this section to a hospital shall be construed as references to a hospital within the meaning of Part IV of the principal Act.

(11) Section 36 of the principal Act (which is superseded by this section) and section 134 of that Act (restriction on correspondence of patients not subject to detention) shall cease to have effect.

**Code of practice.**

**53.—**(1) The Secretary of State shall prepare, and from time to time revise, a code of practice—

(a) for the guidance of medical practitioners, managers and staff of hospitals and mental nursing homes and mental welfare officers in relation to the admission of patients to hospitals and mental nursing homes under the principal Act or this Act; and

(b) for the guidance of medical practitioners and members of other professions in relation to the medical treatment of patients suffering from mental disorder.

(2) The code shall, in particular, specify forms of medical treatment, in addition to any specified by regulations made for the purposes of section 43 above, which in the opinion of the



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Secretary of State give rise to special concern and should accordingly not be given by a medical practitioner unless the patient has consented to the treatment (or to a plan of treatment including that treatment) and a certificate in writing as to the matters mentioned in subsection (2)(a) and (b) of that section has been given by another medical practitioner, being a practitioner appointed for the purposes of this section by the Secretary of State.

(3) Before preparing the code or making any alteration in it the Secretary of State shall consult such bodies as appear to him to be concerned.

(4) The Secretary of State shall lay copies of the code and of any alteration in the code before Parliament; and if either House of Parliament passes a resolution requiring the code or any alteration in it to be withdrawn the Secretary of State shall withdraw the code or alteration and, where he withdraws the code, shall prepare a code in substitution for the one which is withdrawn.

(5) No resolution shall be passed by either House of Parliament under subsection (4) above in respect of a code or alteration after the expiration of the period of forty days beginning with the day on which a copy of the code or alteration was laid before that House; but for the purposes of this subsection no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(6) The Secretary of State shall publish the code as for the time being in force.

**54.**—(1) The Secretary of State may make such provision as he may with the approval of the Treasury determine for the payment of remuneration, allowances, pensions or gratuities to or in respect of medical practitioners appointed by him for the purposes of Part VI of this Act and section 53 above and to or in respect of other persons appointed for the purposes of section 43(2)(a) above. Practitioners approved for purposes of Part VI and s. 53.

(2) A medical practitioner or other person appointed by the Secretary of State for the purposes of the provisions mentioned in subsection (1) above may, for the purpose of exercising his functions under those provisions, at any reasonable time—

(a) visit and interview and, in the case of a medical practitioner, examine in private any patient detained in a mental nursing home; and

(b) require the production of and inspect any records relating to the treatment of the patient in that home.

PART VII  
General  
protection of  
detained  
patients.

55.—(1) The Secretary of State shall keep under review the exercise of the powers and the discharge of the duties conferred or imposed by the principal Act and this Act so far as relating to the detention of patients or to patients liable to be detained under those Acts and shall make arrangements for persons authorised by him in that behalf—

(a) to visit and interview in private patients detained under those Acts in hospitals and mental nursing homes ; and

(b) to investigate—

(i) any complaint made by a person in respect of a matter that occurred while he was detained under those Acts in a hospital or mental nursing home and which he considers has not been satisfactorily dealt with by the managers of that hospital or mental nursing home ; and

(ii) any other complaint as to the exercise of the powers or the discharge of the duties conferred or imposed by those Acts in respect of a person who is or has been so detained.

(2) The arrangements made under this section in respect of the investigation of complaints may exclude matters from investigation in specified circumstances and shall not require any person exercising functions under the arrangements to undertake or continue with any investigation where he does not consider it appropriate to do so.

(3) Where any such complaint as is mentioned in subsection (1)(b)(ii) above is made by a Member of Parliament and investigated under the arrangements made under this section the results of the investigation shall be reported to him.

(4) For the purpose of any such review as is mentioned in subsection (1) above or of carrying out his functions under arrangements made under this section any person authorised in that behalf by the Secretary of State may at any reasonable time—

(a) visit and interview and, if he is a medical practitioner, examine in private any patient in a mental nursing home ; and

(b) require the production of and inspect any records relating to the detention or treatment of any person who is or has been detained in a mental nursing home.

(5) The matters in respect of which regulations may be made under section 6 of the Nursing Homes Act 1975 shall include the keeping of records relating to the detention and treatment of persons detained under the principal Act or this Act in a mental nursing home.

(6) The Secretary of State may make such provision as he may with the approval of the Treasury determine for the payment of remuneration, allowances, pensions or gratuities to or in respect of persons exercising functions in relation to any such review as is mentioned in subsection (1) above or functions under arrangements made under this section.

(7) The powers and duties referred to in subsection (1) above do not include any power or duty conferred or imposed by Part VIII of the principal Act.

**56.**—(1) The Secretary of State shall under section 11 of the National Health Service Act 1977 establish a special health authority to be known as the Mental Health Act Commission. Mental Health Act Commission. 1977 c. 49.

(2) Without prejudice to the generality of his powers under section 13 of that Act, the Secretary of State shall direct the Commission to perform on his behalf—

(a) the function of appointing medical practitioners for the purposes of Part VI of this Act and section 53 above and of appointing other persons for the purposes of section 43(2)(a) above ; and

(b) the functions of the Secretary of State under sections 47 and 55(1) and (4) above.

(3) The medical practitioners and other persons appointed for the purposes mentioned in subsection (2)(a) above may include members of the Commission.

(4) The Secretary of State may, at the request of or after consultation with the Commission and after consulting such other bodies as appear to him to be concerned, direct the Commission to keep under review the care and treatment, or any aspect of the care and treatment, in hospitals and mental nursing homes of patients who are not liable to be detained under the principal Act or this Act.

(5) For the purpose of any such review as is mentioned in subsection (4) above any person authorised in that behalf by the Commission may at any reasonable time—

(a) visit and interview and, if he is a medical practitioner, examine in private any patient in a mental nursing home ; and

(b) require the production of and inspect any records relating to the treatment of any person who is or has been a patient in a mental nursing home.

(6) The Secretary of State may make such provision as he may with the approval of the Treasury determine for the payment of

## PART VII

remuneration, allowances, pensions or gratuities to or in respect of persons exercising functions in relation to any such review as is mentioned in subsection (4) above.

(7) The Commission shall review any decision to withhold a postal packet (or anything contained in it) under subsection (1)(b) or (2) of section 52 above if an application in that behalf is made—

(a) in a case under subsection (1)(b), by the patient ; or

(b) in a case under subsection (2), either by the patient or by the person by whom the postal packet was sent ;

and any such application shall be made within six months of the receipt by the applicant of the notice referred to in subsection (6) of that section.

(8) On an application under subsection (7) above the Commission may direct that the postal packet which is the subject of the application (or anything contained in it) shall not be withheld and the managers in question shall comply with any such direction.

(9) The Secretary of State may by regulations make provision with respect to the making and determination of applications under subsection (7) above, including provision for the production to the Commission of any postal packet which is the subject of such an application.

(10) The Commission shall in the second year after its establishment and subsequently in every second year publish a report on its activities ; and copies of every such report shall be sent by the Commission to the Secretary of State who shall lay a copy before each House of Parliament.

(11) Paragraph 9 of Schedule 5 to the said Act of 1977 (pay and allowances for chairman and members of health authorities) shall have effect in relation to the authority established pursuant to this section as if references in sub-paragraphs (1) and (2) to the chairman included references to any member and as if sub-paragraphs (4) and (5) were omitted.

Duty of managers of hospitals to give information to detained patients.

**57.**—(1) The managers of a hospital or mental nursing home in which a patient is detained under the principal Act or this Act shall take such steps as are practicable to ensure that the patient understands—

(a) under which of the provisions of those Acts he is for the time being detained and the effect of that provision ; and

(b) what rights of applying to a Mental Health Review Tribunal are available to him in respect of his detention under that provision ;

and those steps shall be taken as soon as practicable after the commencement of the patient's detention under the provision in question.

(2) The managers of a hospital or mental nursing home in which a patient is detained as aforesaid shall also take such steps as are practicable to ensure that the patient understands the effect, so far as relevant in his case, of—

(a) sections 47 and 48 of the principal Act (discharge by responsible medical officer, managers, nearest relative etc.); and

(b) Part VI of this Act and sections 52, 53 and 55 above ;

and those steps shall be taken as soon as practicable after the commencement of the patient's detention in the hospital or nursing home.

(3) The steps to be taken under subsections (1) and (2) above shall include giving the requisite information both orally and in writing.

(4) The managers of a hospital or mental nursing home in which a patient is detained as aforesaid shall, except where the patient otherwise requests, take such steps as are practicable to furnish the person (if any) appearing to them to be his nearest relative with a copy of any information given to him in writing under subsections (1) and (2) above ; and those steps shall be taken when the information is given to the patient or within a reasonable time thereafter.

(5) Section 52(5) of the principal Act (effect of order substituting acting nearest relative) shall have effect as if subsection (4) above were contained in Part IV of that Act.

58.—(1) Where a patient liable to be detained under the principal Act or this Act in a hospital or mental nursing home is to be discharged otherwise than by virtue of an order for discharge made by his nearest relative, the managers of the hospital or mental nursing home shall, subject to subsection (2) below, take such steps as are practicable to inform the person (if any) appearing to them to be the nearest relative of the patient ; and that information shall, if practicable, be given at least seven days before the date of discharge.

Duty of managers of hospitals to inform nearest relative of discharge of detained patient.

(2) Subsection (1) above shall not apply if the patient or his nearest relative has requested that information about the patient's discharge should not be given under this section.

(3) Section 52(5) of the principal Act (effect of order substituting acting nearest relative) shall have effect as if this section were contained in Part IV of that Act.

**PART VII**  
Management  
of property  
and affairs  
of patients.

**59.**—(1) In section 100(2) of the principal Act (functions of Court of Protection) for the words “the property of persons under disability” there shall be substituted the words “the property and affairs of persons under disability”.

(2) In section 103 of the principal Act there shall be omitted—

(a) in subsection (1)(d) and (dd) (powers not generally exercisable except by the Lord Chancellor or a nominated judge) the words from “so however” onwards; and

(b) in subsection (3) (settlement of property of an infant) the words from the beginning to “and” where it first occurs.

Protection  
for acts  
done in  
pursuance of  
the principal  
Act and this  
Act.

**60.**—(1) Section 141 of the principal Act (protection for acts done in pursuance of that Act) shall be amended as follows.

(2) For subsection (2) there shall be substituted—

“(2) No civil proceedings shall be brought against any person in any court in respect of any such act without the leave of the High Court; and no criminal proceedings shall be brought against any person in any court in respect of any such act except by or with the consent of the Director of Public Prosecutions.”

(3) In subsection (3) for the words “any provision of this Act” there shall be substituted the words “any other provision of this Act”.

(4) After subsection (3) there shall be inserted—

“(3A) This section does not apply to proceedings against the Secretary of State or against a health authority within the meaning of the National Health Service Act 1977.”

(5) For subsection (4) there shall be substituted—

“(4) In relation to Northern Ireland the reference in this section to the Director of Public Prosecutions shall be construed as a reference to the Director of Public Prosecutions for Northern Ireland.”

Replacement  
of mental  
welfare officers  
by approved  
social workers.

**61.**—(1) After the expiration of the period of two years beginning with the day on which this Act is passed the functions conferred by the principal Act and this Act on mental welfare officers shall be discharged by officers of local social services authorities to be known as approved social workers.

(2) A local social services authority shall appoint a sufficient number of approved social workers for the purpose of discharging the functions referred to in subsection (1) above; and no person shall be appointed as an approved social worker unless he is approved by the authority as having appropriate competence in dealing with persons who are suffering from mental disorder.

(3) In approving a person for appointment as an approved social worker a local social services authority shall have regard to such matters as the Secretary of State may direct.

(4) Any appointment of a person as a mental welfare officer for the purposes of the principal Act and this Act shall terminate at the expiration of the period mentioned in subsection (1) above but without prejudice to anything previously done by that person or to the continuation by an approved social worker of anything which is then in process of being done by that person.

**62.**—(1) In section 4(3) of the Representation of the People Act 1949 for the words from “who is a patient” to “at any place” there shall be substituted the words “who is detained at any place in legal custody or by virtue of any enactment relating to persons suffering from mental disorder”. Electoral registration of patients. 1949 c. 68.

(2) Schedule 2 to this Act shall have effect with respect to electoral registration and voting in the case of voluntary mental patients.

**63.**—(1) In the definition of “hospital” in section 147(1) of the principal Act for paragraphs (a), (b) and (c) there shall be substituted— Definition of hospital and medical treatment.

“ (a) any health service hospital within the meaning of the National Health Service Act 1977 ; and

(b) any accommodation provided by a local authority and used as a hospital by or on behalf of the Secretary of State under that Act ; ”.

(2) In the definition of “medical treatment” in section 147(1) of the principal Act and in the definition of “mental nursing home” in section 2(1) of the Nursing Homes Act 1975 for the words “care and training under medical supervision” there shall be substituted the words “care, habilitation and rehabilitation under medical supervision”. 1975 c. 37.

**64.**—(1) In section 130(1) of the principal Act (obstruction) for the words “who refuses to allow the inspection of any premises, or without reasonable cause refuses” there shall be substituted the words “who without reasonable cause refuses to allow the inspection of any premises, or refuses”. Minor amendments.

(2) The function of appointing medical practitioners under subsection (3) of section 137 of the principal Act (examination of Members of Parliament) shall be exercised by the President of the Royal College of Psychiatrists instead of by the Presidents of the bodies there mentioned and accordingly in that subsection for

## PART VII

the words from “appointed as follows” to “Presidents” there shall be substituted the words “appointed by the President of the Royal College of Psychiatrists, being practitioners appearing to the President”.

(3) Section 146 of the principal Act (warrants by Secretary of State to be given under the hand of the Secretary of State or an Under Secretary of State) shall cease to have effect.

1977 c. 49.

(4) In section 105(1) of the National Health Service Act 1977 (payments by local authorities for medical examinations with a view to admission to hospital under Part IV of the principal Act) for the words “the council which is the local authority for the purposes of the Local Authority Social Services Act 1970 for the area where the person examined resides” there shall be substituted the words “the Secretary of State”.

(5) In paragraph 2(1)(d) of Schedule 8 to the said Act of 1977 (functions of mental welfare officers in relation to persons received into guardianship under Part IV of the principal Act) after the words “Part IV” there shall be inserted the words “or Part V”.

1980 c. 43.

(6) Section 32 of the Magistrates’ Courts Act 1980 (maximum fine on summary conviction) shall extend to Northern Ireland so far as it relates to section 129(3)(a) of the principal Act.

Consequential  
amendments  
and repeals.

**65.**—(1) The enactments mentioned in Schedule 3 to this Act shall have effect with the amendments there specified, being amendments consequential on the provisions of this Act.

(2) The enactments mentioned in Schedule 4 to this Act (which include spent provisions) are hereby repealed to the extent specified in the third column of that Schedule.

Orders and  
regulations.

**66.**—(1) Any power of the Secretary of State to make orders or regulations under this Act shall be exercisable by statutory instrument.

(2) Any statutory instrument containing regulations made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) No order shall be made under section 40(4) above or paragraph 3(3) of Schedule 1 to this Act unless a draft of it has been approved by a resolution of each House of Parliament.

Expenses.

**67.** There shall be paid out of moneys provided by Parliament—

(a) any expenses incurred by the Secretary of State under this Act; and



- (b) any increase attributable to this Act in the sums so payable under any other Act. PART VII

**68.**—(1) In this Act “the principal Act” means the Mental Health Act 1959. Interpretation and supplementary provisions. 1959 c. 72.

(2) Sections 56 and 59 of the principal Act (supplementary provisions for Part IV) shall have effect as if section 17 above were contained in Part IV of that Act, section 80 of that Act (interpretation of Part V) shall have effect as if sections 26 to 33 above were contained in Part V of that Act, and sections 94 to 96 of that Act (supplementary provisions for Part VI) shall have effect as if sections 36 and 37 above were contained in Part VI of that Act.

(3) The following provisions of the principal Act, that is to say—

- (a) section 4 (definition and classification of mental disorder) ;
- (b) section 122 (applications to tribunals) ;
- (c) section 125 (forgery etc. of documents) ;
- (d) section 129 (assisting patients to absent themselves without leave etc.) ;
- (e) section 130 (penalty for obstruction) ;
- (f) section 135(2) and (4) (warrants to search for and remove patients) ;
- (g) section 139 (custody of patients etc.) ;
- (h) section 141 (protection for acts done in pursuance of the principal Act) ;
- (i) section 142 (default powers) ;
- (j) section 143 (inquiries) ;
- (k) section 147 (general interpretation) ; and
- (l) section 149(3) (power to repeal or amend local enactments),

shall have effect as if the provisions of this Act other than section 62 and Schedule 2 were contained in the principal Act.

**69.**—(1) Subject to the provisions of this section, this Act shall come into force on 30th September 1983. Commencement and transitional provisions.

(2) Sections 29, 30 and 31 above shall come into force on such day (not being earlier than the said 30th September) as may be appointed by an order made by the Secretary of State, and a different day may be appointed for each of those sections or for different purposes of any of those sections.

## PART VII

(3) Section 56(1) and (11) above shall come into force on the said 30th September or on such earlier day as may be appointed by an order made by the Secretary of State.

(4) Section 61 above shall come into force as provided in that section and Part II of Schedule 3 and Part II of Schedule 4 to this Act shall come into force at the expiration of the period mentioned in subsection (1) of that section; and at the expiration of that period, the references to a mental welfare officer or mental welfare officers in sections 38 and 53(1)(a) above shall be construed as references to an approved social worker or approved social workers appointed under section 61.

1960 c. 61.  
1961 c. 15  
(N.I.).

(5) Section 62 above, Schedule 2 to this Act and in Schedule 4 to this Act the repeal in Schedule 7 to the principal Act and the repeals in the Mental Health (Scotland) Act 1960 and the Mental Health Act (Northern Ireland) 1961 shall come into force on 1st April 1983.

(6) Schedule 5 to this Act, which contains transitional provisions and savings, shall have effect with respect to the matters there mentioned.

Short title  
and extent.

**70.**—(1) This Act may be cited as the Mental Health (Amendment) Act 1982.

(2) Sections 62 and 64(2) above and Schedule 2 to this Act extend to Scotland and Northern Ireland, sections 35(1) and (2) and 64(6) above extend to Northern Ireland and any amendment or repeal by this Act of an enactment which extends to Scotland or Northern Ireland has the same extent as that enactment but, save as aforesaid, this Act extends to England and Wales only.

(3) Section 154(2) of the principal Act (power to extend Act to Isles of Scilly) shall have effect as if the provisions of this Act were contained in that Act.

## SCHEDULES

### SCHEDULE 1

Section 28(4).

#### DISCHARGE OF RESTRICTED PATIENTS

##### *Preliminary*

1. In this Schedule—

“restricted patient” means a patient who is subject to a restriction order or restriction direction;

“the relevant hospital order” and “the relevant transfer direction”, in relation to a restricted patient, mean the hospital order or transfer direction by virtue of which he is liable to be detained in a hospital;

“hospital” includes a mental nursing home.

##### *Right to apply to Mental Health Review Tribunal*

2. A restricted patient detained in a hospital may apply to a Mental Health Review Tribunal—

(a) in the period between the expiration of six months and the expiration of twelve months beginning with the date of the relevant hospital order or transfer direction; and

(b) in any subsequent period of twelve months.

##### *Reference by Secretary of State*

3.—(1) The Secretary of State may at any time refer the case of a restricted patient to a Mental Health Review Tribunal.

(2) The Secretary of State shall refer to a Mental Health Review Tribunal the case of any restricted patient detained in a hospital whose case has not been considered by such a tribunal, whether on his own application or otherwise, within the last three years.

(3) The Secretary of State may by order vary the length of the period mentioned in sub-paragraph (2) above.

(4) Any reference under sub-paragraph (1) above in respect of a patient who has been conditionally discharged and not recalled to hospital shall be made to the tribunal for the area in which the patient resides.

##### *Discharge of patients*

4. Section 123(1) of the principal Act shall not apply in the case of a restricted patient except as provided in paragraphs 5 and 6 below.

5.—(1) Where an application to a Mental Health Review Tribunal is made by a restricted patient who is subject to a restriction order, or where the case of such a patient is referred to such a tribunal, the tribunal shall direct the absolute discharge of the patient if satisfied—

(a) as to the matters mentioned in paragraph (b)(i) or (ii) of section 123(1) of the principal Act; and

**SCH. 1**

(b) that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment.

(2) Where in the case of any such patient as is mentioned in sub-paragraph (1) above the tribunal are satisfied as to the matters referred to in paragraph (a) of that sub-paragraph but not as to the matter referred to in paragraph (b) of that sub-paragraph the tribunal shall direct the conditional discharge of the patient.

(3) Where a patient is absolutely discharged under this paragraph 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.

(4) Where a patient is conditionally discharged under this paragraph—

(a) he may be recalled by the Secretary of State under subsection (3) of section 66 of the principal Act as if he had been conditionally discharged under subsection (2) of that section ; and

(b) the patient shall comply with such conditions (if any) as may be imposed at the time of discharge by the tribunal or at any subsequent time by the Secretary of State.

(5) The Secretary of State may from time to time vary any condition imposed (whether by the tribunal or by him) under sub-paragraph (4) above.

(6) Where a restriction order in respect of a patient ceases to have effect after he has been conditionally discharged under this paragraph the patient shall, unless previously recalled, 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.

(7) A tribunal may defer a direction for the conditional discharge of a patient until such arrangements as appear to the tribunal to be necessary for that purpose have been made to their satisfaction ; and where by virtue of any such deferment no direction has been given on an application or reference before the time when the patient's case comes before the tribunal on a subsequent application or reference, the previous application or reference shall be treated as one on which no direction under this paragraph can be given.

(8) This paragraph is without prejudice to section 66 of the principal Act (termination of restriction orders and absolute or conditional discharge by the Secretary of State).

6.—(1) Where an application to a Mental Health Review Tribunal is made by a restricted patient who is subject to a restriction direction, or where the case of such a patient is referred to such a tribunal, the tribunal—

(a) shall notify the Secretary of State whether, in their opinion, the patient would, if subject to a restriction order, be

entitled to be absolutely or conditionally discharged under paragraph 5 above ; and

- (b) if they notify him that the patient would be entitled to be conditionally discharged, may recommend that in the event of his not being discharged under this paragraph he should continue to be detained in hospital.

(2) If in the case of a patient not falling within sub-paragraph (4) below—

- (a) the tribunal notify the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged ; and
- (b) within the period of ninety days beginning with the date of that notification the Secretary of State gives notice to the tribunal that the patient may be so discharged,

the tribunal shall direct the absolute or, as the case may be, the conditional discharge of the patient.

(3) Where a patient continues to be liable to be detained in a hospital at the end of the period referred to in sub-paragraph (2)(b) above because the Secretary of State has not given the notice there mentioned, the managers of the hospital shall, unless the tribunal have made a recommendation under sub-paragraph (1)(b) above, transfer the patient to a prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed.

(4) If, in the case of a patient who is subject to a transfer direction under section 73 of the principal Act, the tribunal notify the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged, the Secretary of State shall, unless the tribunal have made a recommendation under sub-paragraph (1)(b) above, by warrant direct that the patient be remitted to a prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed.

(5) Where a patient is transferred or remitted under sub-paragraph (3) or (4) above the relevant transfer direction and the restriction direction shall cease to have effect on his arrival in the prison or other institution.

(6) Sub-paragraphs (3) to (8) of paragraph 5 above shall have effect in relation to this paragraph as they have effect in relation to that paragraph, taking references to the relevant hospital order and the restriction order as references to the transfer direction and the restriction direction.

(7) This paragraph is without prejudice to sections 75 and 76 of the principal Act and sections 26 and 27 of this Act (termination of transfer directions and return to prison etc. of transferred prisoners) in their application to patients who are not discharged under this paragraph.

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*Further consideration of case of conditionally discharged patient*

7.—(1) Where a restricted patient has been conditionally discharged under this Schedule or under section 66(2) of the principal Act and is subsequently recalled to hospital—

- (a) the Secretary of State shall, within one month of the day on which the patient returns or is returned to hospital, refer his case to a Mental Health Review Tribunal ; and
- (b) paragraph 2 above shall apply to the patient as if the relevant hospital order or transfer direction had been made on that day.

(2) Where a restricted patient has been conditionally discharged as aforesaid but has not been recalled to hospital he may apply to a Mental Health Review Tribunal—

- (a) in the period between the expiration of twelve months and the expiration of two years beginning with the date on which he was conditionally discharged ; and
- (b) in any subsequent period of two years.

(3) Any application under sub-paragraph (2) above shall be made to the tribunal for the area in which the patient resides.

(4) Paragraphs 5 and 6 above shall not apply to an application under sub-paragraph (2) above but on any such application the tribunal may—

- (a) vary any condition to which the patient is subject in connection with his discharge or impose any condition which might have been imposed in connection therewith ;  
or
- (b) direct that the restriction order or restriction direction to which he is subject shall cease to have effect ;

and if the tribunal give a direction under paragraph (b) above the patient shall cease to be liable to be detained by virtue of the relevant hospital order or transfer direction.

*Procedure and composition of tribunals*

8.—(1) Rules under section 124 of the principal Act may make provision as to the procedure to be adopted in cases concerning restricted patients and, in particular—

- (a) for restricting the persons qualified to serve as president of a tribunal for the consideration of any application or reference relating to a restricted patient ;
- (b) for the transfer of proceedings from one tribunal to another in any case where, after the making of a reference or application in accordance with paragraph 3(4) or 7(3) above, the patient ceases to reside in the area of the tribunal to which the reference or application was made.

(2) Paragraph 6 of Schedule 1 to the principal Act shall have effect subject to any rules made by virtue of sub-paragraph (1)(a) above.

*Persons treated as restricted patients*

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9.—(1) Subject to the provisions of this paragraph, the foregoing provisions of this Schedule shall have effect in relation to a person to whom this paragraph applies as they have effect in relation to a restricted patient.

(2) This paragraph applies to any person who—

- (a) is subject to a direction which by virtue of section 71(4) of the principal Act has the same effect as a hospital order and a restriction order ; or
- (b) is treated as subject to a hospital order and a restriction order by virtue of an order under section 5(1) of the Criminal Procedure (Insanity) Act 1964 or section 6 or 1964 c. 84. 14(1) of the Criminal Appeal Act 1968 ; or 1968 c. 19.
- (c) is treated as subject to a hospital order and a restriction order or to a transfer direction and a restriction direction by virtue of section 87(2) of the principal Act, section 37(2) of this Act or section 73(2) of the Mental Health 1960 c. 61. (Scotland) Act 1960.

(3) In the case of a person within paragraph (a) of sub-paragraph (2) above references in this Schedule to the relevant hospital order or restriction order shall be construed as references to the direction referred to in that paragraph.

(4) In the case of a person within paragraph (b) of sub-paragraph (2) above references in this Schedule to the relevant hospital order or restriction order shall be construed as references to the order under the provisions mentioned in that paragraph.

(5) Where a person who is treated as subject to a hospital order and a restriction order by virtue of an order under section 5(1) of the Criminal Procedure (Insanity) Act 1964 does not exercise his right to apply to a Mental Health Review Tribunal in the period of six months beginning with the date of that order the Secretary of State shall at the expiration of that period refer his case to a tribunal.

(6) For the purposes of sub-paragraph (5) above a person who applies to a tribunal but subsequently withdraws his application shall be treated as not having exercised his right to apply, and where a patient withdraws his application on a date after the expiration of the period there mentioned the Secretary of State shall refer his case as soon as possible after that date.

(7) In the case of a person within paragraph (c) of sub-paragraph (2) above references in this Schedule to the relevant hospital order, the relevant transfer direction, the restriction order or the restriction direction or to a transfer direction under section 73 of the principal Act shall be construed as references to the hospital order, transfer direction, restriction order, restriction direction or transfer direction under that section to which that person is treated as subject by virtue of the provisions mentioned in that paragraph.

Section 62(2).

## SCHEDULE 2

ELECTORAL REGISTRATION AND VOTING IN CASE OF  
VOLUNTARY MENTAL PATIENTS*Interpretation*

1. In this Schedule—

1949 c. 68.

“the Act of 1949” means the Representation of the People Act 1949 ;

“mental hospital” means any establishment maintained wholly or mainly for the reception and treatment of persons suffering from any form of mental disorder ;

“voluntary mental patient” means a person who is a patient in a mental hospital but is not liable to be detained there by virtue of any enactment.

*Registration of voluntary mental patients*

2.—(1) Subject to sub-paragraph (2) below, a person who on the qualifying date is a voluntary mental patient shall not be entitled to be registered as mentioned in section 8(1) or (2) of the Act of 1949 except in pursuance of a declaration made with reference to that date in accordance with paragraph 3 below.

(2) Sub-paragraph (1) above is without prejudice to the registration of a voluntary mental patient by virtue of his residence at an address other than the mental hospital in which he is a patient in any case in which he would be entitled to be so registered apart from this Schedule.

*Patient's declaration*

3.—(1) A voluntary mental patient may make a declaration under this paragraph (a “patient's declaration”) if he is able to do so without assistance.

(2) A patient's declaration shall be made with a view to registration in the register of electors for a particular year and with reference to the qualifying date for that register.

(3) A patient's declaration shall be made during the twelve months ending with the qualifying date by reference to which it is made but shall not have effect if after it is made and before that date the declarant ceases to be a voluntary mental patient or cancels the declaration.

(4) A patient's declaration may be made by a declarant notwithstanding the fact that by reason of his age he is not yet entitled to vote.

(5) A patient's declaration shall state that it was made by the declarant without assistance and—

(a) the date of the declaration ;

(b) that on that date and, unless it is the qualifying date, on the qualifying date next following the declarant is or will be a voluntary mental patient ;



- (c) the address of the mental hospital in which the declarant is a voluntary mental patient ;
- (d) the address where the declarant would be resident in the United Kingdom if he were not a voluntary mental patient or, if he cannot give any such address, an address (other than a mental hospital) at which he has resided in the United Kingdom ;
- (e) that on the date of the declaration the declarant is a Commonwealth citizen or a citizen of the Republic of Ireland ; and
- (f) whether the declarant had on the date of the declaration attained the age of eighteen years and, if he had not, the date of his birth.

(6) A patient's declaration shall be attested in the prescribed manner.

(7) If a person makes a patient's declaration declaring to more than one address, or makes more than one patient's declaration bearing the same date and declaring to different addresses, the declaration or declarations shall be void.

(8) A patient's declaration may at any time be cancelled by the declarant and, subject to sub-paragraph (7) above, a patient's declaration bearing a later date shall, without any express cancellation, cancel a declaration bearing an earlier date if it is made with reference to the same qualifying date.

(9) In this paragraph "assistance" does not include assistance necessitated by blindness or other physical incapacity.

#### *Effect of patient's declaration*

4.—(1) A voluntary mental patient whose patient's declaration is made with reference to the qualifying date for any register shall be treated in relation to that register—

- (a) as resident on the qualifying date at the address specified in the declaration pursuant to paragraph 3(5)(d) above ;
- (b) in the case of registration in Northern Ireland, as resident in Northern Ireland during the whole of the period of three months ending on the qualifying date ; and
- (c) in any case, until the contrary is proved, as being a Commonwealth citizen or a citizen of the Republic of Ireland of the age appearing from the declaration and as not being subject to any legal incapacity except as so appearing.

(2) Where a patient's declaration appearing to be properly made out and attested is transmitted to the registration officer in the proper manner, the declarant shall, until the contrary is proved, be treated for the purposes of registration as having been from the date of the declaration or such later date, if any, as appears therefrom, and as continuing to be, qualified to be registered as an elector.

## SCH. 2

*Local government elections*

5.—(1) Subject to sub-paragraph (2) below, no patient's declaration shall be specially made by any person for the purpose of local government elections but any patient's declaration made for the purpose of parliamentary elections shall have effect also for the purpose of local government elections.

(2) A patient's declaration may be made for the purpose of local government elections only by any person who is a peer subject to a legal incapacity to vote at parliamentary elections and, where so made, shall be marked to show that it is available for local government elections only but shall in all other respects be the same as any other patient's declaration.

*Offences*

6. Section 49 of the Act of 1949 shall have effect in relation to a patient's declaration as it has effect in relation to a service declaration, taking the reference to subsection (2) of section 10 of that Act as a reference to sub-paragraph (1) of paragraph 3 above and the reference to the particulars required by regulations under that section as a reference to the particulars required by sub-paragraph (5) of that paragraph.

*Voting by post*

7.—(1) A person who is registered by virtue of a patient's declaration may vote by post if he applies to be treated as an absent voter and furnishes an address in the United Kingdom to which a ballot paper is to be sent for the purpose.

(2) The application shall be for a particular election only.

(3) An application to be treated as an absent voter by virtue of this paragraph shall be made to the registration officer and shall be allowed by him if he is satisfied that the applicant is, or will if registered be, entitled under this paragraph to vote as an absent voter.

*Supplementary*

8. This Schedule and the Act of 1949 shall have effect as if this Schedule were contained in Part I of that Act.

Section 65(1).

## SCHEDULE 3

## CONSEQUENTIAL AMENDMENTS

## PART I

*The Mental Health Act 1959*

1959 c. 72.

1. In sections 27(1), 29(1) and (2), 30(1)(b) and 32(1) for the word "observation" there shall be substituted the word "assessment".

2. In section 33—

(a) after subsection (2) there shall be inserted—

"(2A) A guardianship application shall be founded on the written recommendations in the prescribed form of

two medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in paragraphs (a) and (b) of subsection (2) of this section are complied with; and each such recommendation shall include—

- (a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in the said paragraph (a); and
- (b) a statement of the reasons for that opinion so far as it relates to the conditions set out in the said paragraph (b).

(2B) A guardianship application shall state the age of the patient or, if his exact age is not known to the applicant, shall state (if it be the fact) that the patient is believed to have attained the age of sixteen years.”;

(b) for subsection (5) there shall be substituted—

“(5) Subsection (4) of section 26 and sections 27 and 28 of this Act shall apply in relation to a guardianship application as they apply in relation to an application for admission for treatment, but subject to the following modifications, that is to say—

- (a) in subsection (4) of section 26 the reference to subsection (2) of that section shall be construed as a reference to subsection (2) of this section;
- (b) in section 27 the words in subsection (1) “shall be addressed to the managers of the hospital to which the admission is sought, and” and subsection (1A) shall be omitted;
- (c) in section 28 subsections (3), (3A) and (5) shall be omitted and for paragraph (e) of subsection (4) there shall be substituted—
  - ‘(e) the person named as guardian in the application’.

3. In section 41(2)(a) for the word “observation” there shall be substituted the word “assessment”.

4. In section 42(3) for the words “the interests of the patient” there shall be substituted the words “the interests of the welfare of the patient”.

5. In sections 47(3) and 52(4) for the word “observation” there shall be substituted the word “assessment”.

6. In section 59—

- (a) in subsection (1), in paragraph (a) of the definition of “the responsible medical officer”, for the word “observation” there shall be substituted the word “assessment”;
- (b) in subsection (3) for the word “subnormal” and for the word “subnormality”, in both places, there shall be substituted respectively the words “mentally impaired” and

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“mental impairment” and after the words “section thirty-eight” there shall be inserted the words “or 43(5A)”.

7. In section 60(2) for the words “severe subnormality” there shall be substituted the words “severe mental impairment”.

8. In section 65—

- (a) in subsections (2) and (3) for the words “an order restricting discharge” there shall be substituted the words “a restriction order”;
- (b) at the end of subsection (3)(a) there shall be inserted the words “or Schedule 1 to the Mental Health (Amendment) Act 1982”;
- (c) in subsection (4) for the words “an order restricting the discharge of the patient” there shall be substituted the words “a restriction order in respect of the patient”;
- (d) in subsection (5) for the words “an order restricting the discharge of a patient”, “an order restricting his discharge” and “the order restricting his discharge” there shall be substituted respectively the words “a restriction order in respect of a patient”, “a restriction order” and “the restriction order”.

9. In section 66—

- (a) in subsection (1) for the words “an order restricting the discharge of a patient” and “the order restricting the discharge of the patient” there shall be substituted respectively the words “in the case of any patient a restriction order” and “the restriction order”;
- (b) in subsection (2) for the words “an order restricting the discharge of a patient is in force” and “the order restricting his discharge” there shall be substituted respectively the words “a restriction order is in force in respect of a patient” and “the restriction order”;
- (c) in subsection (3) for the words “an order restricting the discharge of a patient” and “the order restricting his discharge”, in both places, there shall be substituted respectively the words “a restriction order in respect of a patient” and “the restriction order”;
- (d) in subsection (4) for the words “an order restricting the discharge of a patient” there shall be substituted the words “a restriction order in respect of a patient”;
- (e) in subsection (5) for the words “an order restricting discharge” there shall be substituted the words “a restriction order”.

10. In section 67—

- (a) in subsections (1)(b), (3)(a) and (4) for the words “an order restricting his discharge” there shall be substituted the words “a restriction order”;

(b) after subsection (3) there shall be inserted—

“(3A) The Crown Court shall have the like power to make orders under sections 29, 30 and 31 of the Mental Health (Amendment) Act 1982 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 29 or 30 or of a person convicted before that court as mentioned in section 31.”;

(c) in subsection (5) for the words “an order restricting discharge” there shall be substituted the words “a restriction order”.

11. In section 68(2) for the words “an order restricting his discharge” there shall be substituted the words “a restriction order”.

12. In section 71(4) for the words “an order restricting his discharge” there shall be substituted the words “a restriction order”.

13. In section 72(1)(a) for the words “subnormality or severe subnormality” there shall be substituted the words “mental impairment or severe mental impairment”.

14. In section 73(1) for the words “severe subnormality” there shall be substituted the words “severe mental impairment”.

15. In section 74—

(a) in subsection (1) for the words “paragraphs (a) to (d)” there shall be substituted the words “paragraph (a) or (d)”;

(b) in subsection (2) for the words “a direction restricting discharge” and “an order restricting the discharge of the patient” there shall be substituted respectively the words “a restriction direction” and “a restriction order”.

16. In section 75—

(a) in subsection (1) for the words “direction restricting discharge”, in both places, there shall be substituted the words “restriction direction”;

(b) in subsection (2) for the words “direction restricting the discharge” there shall be substituted the words “restriction direction in the case”.

17. In section 76—

(a) in subsection (1) for the words “paragraphs (a) to (c)” there shall be substituted the words “paragraph (a)” and after the words “this Part of this Act” there shall be inserted the words “or the Mental Health (Amendment) Act 1982”;

(b) in subsection (2)(b) for the words “an order restricting discharge” there shall be substituted the words “a restriction order”;

(c) in subsection (3) for the words “severe subnormality” there shall be substituted the words “severe mental impairment”.

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18. In section 80(4) for the words “an order restricting the discharge of a patient subject to a hospital order” there shall be substituted the words “a restriction order”.

19. In section 81—

- (a) in subsection (2)(a) for the words “an order or direction under any enactment in this Act restricting his discharge” there shall be substituted the words “a restriction order or restriction direction under any enactment in this Act”;
- (b) in subsection (3) for the word “observation” there shall be substituted the word “assessment”;
- (c) in subsection (5) for the words from “an order or direction restricting discharge” onwards there shall be substituted the words “a restriction order or restriction direction of limited duration, the order or direction restricting his discharge to which he is subject by virtue of subsection (2)(a) of this section shall expire on the date on which the restriction order or restriction direction would have expired if he had not been so removed.”

20. In section 85—

- (a) in subsection (2)(a) for the words “an order or direction under any enactment in this Act restricting his discharge” there shall be substituted the words “a restriction order or restriction direction under any enactment in this Act”;
- (b) in subsection (3) for the word “observation” there shall be substituted the word “assessment”;
- (c) in subsection (6) for the words from “an order or direction restricting discharge” onwards there shall be substituted the words “a restriction order or restriction direction of limited duration, the order or direction restricting his discharge to which he is subject by virtue of subsection (2)(a) of this section shall expire on the date on which the restriction order or restriction direction would have expired if he had not been so removed.”

21. In section 87—

- (a) in subsection (2)(a) for the words “an order or direction under the corresponding enactment in force in England and Wales” there shall be substituted the words “a restriction order or restriction direction”;
- (b) in subsection (3)(a) for the word “observation” there shall be substituted the word “assessment”;
- (c) in subsection (5) for the words from “that order or direction” onwards, there shall be substituted the words “the restriction order or restriction direction to which he is subject by virtue of subsection (2)(a) of this section shall expire on the date on which the first-mentioned order or direction would have expired if he had not been so removed.”

22. In subsection (2)(a) of section 123 for the words “subnormality or severe subnormality” there shall be substituted the

words “mental impairment or severe mental impairment” and for subsection (4) of that section there shall be substituted—

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“ (4) This section applies in relation to references to a Mental Health Review Tribunal as it applies in relation to applications made to such a tribunal by or in respect of a patient.”

23. In section 140(2) for the words “an order under Part V of this Act restricting his discharge” there shall be substituted the words “a restriction order under Part V of this Act”.

24. In section 147(1) after the definition of “patient” there shall be inserted—

“ ‘restriction direction’ has the meaning assigned to it by section 74 of this Act ;

‘restriction order’ has the meaning assigned to it by section 65 of this Act ;”.

25. In Schedule 3—

(a) for the entry in the third column relating to section 37 there shall be substituted an entry in the same terms as that in the second column ;

(b) for the entry in the second and third columns relating to section 40 there shall be substituted respectively “Sub-section (3A) shall be omitted” and “Subsections (2), (3) and (3A), and in subsection (1) the words ‘subject to the provisions of this section’, shall be omitted” ;

(c) at the end of the entry in the second column relating to section 43 there shall be added the words “and in subsection (5A) for the words “the application for admission for treatment or, as the case may be, in the guardianship application, that application” there shall be substituted the words “the relevant order or direction under Part V of this Act, that order or direction” ;

(d) for the entry in the second column relating to section 45 there shall be substituted “None” ;

(e) for the entry in the second column relating to section 47 there shall be substituted “In paragraph (a) of subsection (2) the reference to an application for admission for assessment, and in that paragraph and paragraph (c) of that subsection the references to the nearest relative, shall be omitted” and for the second entry in the third column relating to that section there shall be substituted “In paragraph (a) of subsection (2) the reference to an application for admission for assessment and the reference to the nearest relative shall be omitted and paragraph (c) of that subsection shall be omitted.”

26. In Schedule 6—

(a) in paragraph 12(3) for the words from the beginning to “that sub-paragraph” there shall be substituted the words

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“ Any such patient as is mentioned in paragraph 9(3)(b) of this Schedule ” ;

- (b) in paragraph 15(3) and (6) for the words “ a direction restricting his discharge ” there shall be substituted the words “ a restriction direction ” ;
- (c) in paragraph 17 for the words “ a direction restricting the discharge of ” there shall be substituted the words “ a restriction direction in respect of ” and for the word “ subnormality ”, in both places, there shall be substituted the words “ mental impairment ”.

## 1955 c. 18.

*The Army Act 1955*

27. In section 116(7)—

- (a) for the words “ detention in a hospital under observation (with or without other medical treatment) ” there shall be substituted the words “ detention in a hospital for assessment (or for assessment followed by medical treatment) ” ;
- (b) for the words “ admission for observation ” there shall be substituted the words “ admission for assessment ”.

## 1955 c. 19.

*The Air Force Act 1955*

28. In section 116(7)—

- (a) for the words “ detention in a hospital under observation (with or without other medical treatment) ” there shall be substituted the words “ detention in a hospital for assessment (or for assessment followed by medical treatment) ” ;
- (b) for the words “ admission for observation ” there shall be substituted the words “ admission for assessment ”.

## 1956 c. 69.

*The Sexual Offences Act 1956*

29. In section 45 for the words from “ severe subnormality ” onwards there shall be substituted the words “ a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning. ”

## 1957 c. 53.

*The Naval Discipline Act 1957*

30. In section 71(6)—

- (a) for the words “ detention in a hospital under observation (with or without other medical treatment) ” there shall be substituted the words “ detention in a hospital for assessment (or for assessment followed by medical treatment) ” ;
- (b) for the words “ admission for observation ” there shall be substituted the words “ admission for assessment ”.

## 1960 c. 61.

*The Mental Health (Scotland) Act 1960*

31. In section 73—

- (a) in subsection (2)(a) for the words “ an order or direction under the corresponding enactment in force in England and Wales ” there shall be substituted the words “ a restriction order or restriction direction under the corresponding enactment in force in England and Wales ” ;



- (b) in subsection (4) for the words from “that order or direction” onwards there shall be substituted the words “the restriction order or restriction direction to which he is subject by virtue of subsection (2)(a) of this section shall expire on the date on which the first-mentioned order or direction would have expired if he had not been so removed.”

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*The Administration of Justice Act 1960*

1960 c. 65.

32. In section 5—

- (a) after subsection (4) there shall be inserted—

“(4A) Where an order is made under the said subsection (1) in the case of a defendant who, but for the decision of the court below, would be liable to be detained in pursuance of an interim hospital order under section 31 of the Mental Health (Amendment) Act 1982, the order may, if the court thinks fit, be one authorising his continued detention in a hospital or mental nursing home and in that event—

- (a) subsection (3) of this section shall not apply to the order ;
- (b) Part V of the said Act of 1959 shall apply as if he had been ordered under this section to be detained in custody so long as any appeal under section 1 of this Act is pending and were detained in pursuance of a transfer direction together with a restriction direction ; and
- (c) if the defendant is detained by virtue of this subsection and the appeal by the prosecutor succeeds, subsection (2) of the said section 31 (power of court to make hospital order in the absence of an offender who is subject to an interim hospital order) shall apply as if the defendant were still subject to an interim hospital order.” ;
- (b) in subsection (5) for the words “subsection (3) or subsection (4)” there shall be substituted the words “subsection (3), (4) or (4A)”.

*The Criminal Procedure (Insanity) Act 1964*

1964 c. 84.

33. In paragraph 2(1) of Schedule 1 for the words “an order restricting discharge” there shall be substituted the words “a restriction order”.

*The Sexual Offences Act 1967*

1967 c. 60.

34. In section 1—

- (a) in subsection (3) for the words “severe subnormality”, in both places, there shall be substituted the words “severe mental handicap” and the words “within the meaning of the Mental Health Act 1959” shall be omitted ;

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(b) after subsection (3) there shall be inserted—

“(3A) In subsection (3) of this section ‘severe mental handicap’ means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning.”

1967 c. 80.

*The Criminal Justice Act 1967*

35. In section 72—

(a) in subsection (1)(b) after the words “the Mental Health Act 1959” there shall be inserted the words “or section 31(8) of the Mental Health (Amendment) Act 1982”;

(b) in subsection (4) at the end of the definition of “convicted mental patient” there shall be inserted the words “or a person liable to be detained under section 31 of the Mental Health (Amendment) Act 1982”.

1968 c. 19.

*The Criminal Appeal Act 1968*

36. In section 8 after subsection (3) there shall be inserted—

“(3A) If the person ordered to be retried was, immediately before the determination of his appeal, liable to be detained in pursuance of a remand under section 30 of the Mental Health (Amendment) Act 1982 or an interim hospital order under section 31 of that Act, the Court of Appeal may, if they think fit, order that he shall continue to be detained in a hospital or mental nursing home, and in that event Part V of the Mental Health Act 1959 shall apply as if he had been ordered under this section to be kept in custody pending his retrial and were detained in pursuance of a transfer direction together with a restriction direction.”

37. In section 11 after subsection (4) there shall be inserted—

“(5) The fact that an appeal is pending against an interim hospital order under the Mental Health (Amendment) Act 1982 shall not affect the power of the court below to renew or terminate the order or to deal with the appellant on its termination; and where the Court of Appeal quash such an order but do not pass any sentence or make any other order in its place the Court may direct the appellant to be kept in custody or released on bail pending his being dealt with by the court below.

(6) Where the Court of Appeal make an interim hospital order by virtue of subsection (3) of this section—

(a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by the court below and not by the Court of Appeal; and

(b) the court below shall be treated for the purposes of section 31(8) of the said Act of 1982 (absconding offenders) as the court that made the order.”

38. In section 14(2)—

(a) for the words “detention in a hospital under observation (with or without other medical treatment)” there shall

be substituted the words "detention in a hospital for assessment (or for assessment followed by medical treatment)";

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- (b) for the words "admitted for observation" there shall be substituted the words "admitted for assessment".

39. In section 37—

- (a) after subsection (4) there shall be inserted—

"(4A) Where an order is made under this section in the case of a defendant who, but for the decision of the Court of Appeal, would be liable to be detained in pursuance of a remand under section 30 of the Mental Health (Amendment) Act 1982 or an interim hospital order under section 31 of that Act, the order may, if the Court of Appeal thinks fit, be one authorising his continued detention in a hospital or mental nursing home and in that event—

- (a) subsection (3) of this section shall not apply to the order ;

- (b) Part V of the said Act of 1959 shall apply to him as if he had been ordered under this section to be detained in custody so long as an appeal to the House of Lords is pending and were detained in pursuance of a transfer direction together with a restriction direction ; and

- (c) if the defendant, having been subject to an interim hospital order, is detained by virtue of this subsection and the appeal by the prosecutor succeeds, subsection (2) of the said section 31 (power of court to make hospital order in the absence of an offender who is subject to an interim hospital order) shall apply as if the defendant were still subject to an interim hospital order." ;

- (b) in subsection (5) for the words "subsection (3) or (4)" there shall be substituted the words "subsection (3), (4) or (4A)".

40. In section 50(1) for the words "an order restricting discharge" there shall be substituted the words "a restriction order, and an interim hospital order under the Mental Health (Amendment) Act 1982".

41. In Schedule 1—

- (a) in paragraph 2 for the words "an order restricting discharge" there shall be substituted the words "a restriction order" ;

- (b) in paragraph 3 for the word "observation" there shall be substituted the word "assessment".

42. In Schedule 3, in paragraph 2, for the words "a direction restricting discharge" there shall be substituted the words "a restriction direction".

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1968 c. 20.

*The Courts-Martial (Appeals) Act 1968*

43. In section 23—

- (a) in subsection (2)(a) for the words “detention in a hospital under observation (with or without other medical treatment)” there shall be substituted the words “detention in a hospital for assessment (or for assessment followed by medical treatment)”;
- (b) in subsection (3) for the words “admission for observation” there shall be substituted the words “admission for assessment”.

1969 c. 54.

*The Children and Young Persons Act 1969*

44. In section 2(10) for the words “the court may make an interim order in respect of him” there shall be substituted the words “the court may make—

- (a) an interim order ; or
- (b) an interim hospital order within the meaning of section 31 of the Mental Health (Amendment) Act 1982,

in respect of him ; but an order shall not be made in respect of the relevant infant in pursuance of paragraph (b) of this subsection unless the conditions which, under the said section 31, are required to be satisfied for the making of an interim hospital order in respect of a person convicted as mentioned in that section are satisfied in his case so far as they are applicable.

1970 c. 42.

*The Local Authority Social Services Act 1970*45. At the end of Schedule 1 there shall be inserted—  
“Mental Health (Amendment) Act 1982 (c.51)

Section 17 ...	Social report on patient admitted on application of nearest relative.
Section 51 ...	After-care of detained patients.
Section 61 ...	Appointment of approved social workers.”

1973 c. 14.

*The Costs in Criminal Cases Act 1973*

46. In section 3(7) after “1959” there shall be inserted the words “, an interim hospital order under section 31 of the Mental Health (Amendment) Act 1982”.

47. In section 18(1)(c) for the words “an order restricting his discharge” there shall be substituted the words “a restriction order”.

1974 c. 23.

*The Juries Act 1974*

48. In Schedule 1, for Group D there shall be substituted—

## “GROUP D

*Mentally disordered persons*

A person who suffers or has suffered from mental illness, psychopathic disorder, mental handicap or severe mental handicap and on account of that condition either—

- (a) is resident in a hospital or other similar institution ; or

- (b) regularly attends for treatment by a medical practitioner.

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A person for the time being in guardianship under section 33 of the Mental Health Act 1959.

A person who, under Part VIII of that Act, has been determined by a judge to be incapable, by reason of mental disorder, of managing and administering his property and affairs.

(In this Group—

- (a) 'mental handicap' means a state of arrested or incomplete development of mind (not amounting to severe mental handicap) which includes significant impairment of intelligence and social functioning ;
- (b) 'severe mental handicap' means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning ;
- (c) other expressions are to be construed in accordance with the said Act of 1959.)”.

*The Rehabilitation of Offenders Act 1974*

1974 c. 53.

49. In section 5(7) for the words “an order restricting discharge” there shall be substituted the words “a restriction order”.

*The Criminal Procedure (Scotland) Act 1975*

1975 c. 21.

50. In section 13—

- (a) in subsection (1)(b) after the words “the Mental Health Act 1959” there shall be inserted the words “, section 31(8) of the Mental Health (Amendment) Act 1982” ;
- (b) in subsection (4) at the end of the definition of “convicted mental patient” there shall be inserted the words “or a person liable to be detained under section 31 of the Mental Health (Amendment) Act 1982”.

51. In section 322—

- (a) in subsection (1)(b) after the words “the Mental Health Act 1959” there shall be inserted the words “, section 31(8) of the Mental Health (Amendment) Act 1982” ;
- (b) in subsection (4) at the end of the definition of “convicted mental patient” there shall be inserted the words “or a person liable to be detained under section 31 of the Mental Health (Amendment) Act 1982”.

*The Nursing Homes Act 1975*

1975 c. 37.

52. In section 3(2)(c) after the words “the Mental Health Act 1959” there shall be inserted the words “or the Mental Health (Amendment) Act 1982”.

SCH. 3 53. In section 10(2) after the words “the Mental Health Act 1959” there shall be inserted the words “or the Mental Health (Amendment) Act 1982”.

1976 c. 36.

*The Adoption Act 1976*

54. In section 32(3)(c) for the words “the said Act of 1959” there shall be substituted the words “the Mental Health Act 1959 or the Mental Health (Amendment) Act 1982”.

1977 c. 49.

*The National Health Service Act 1977*

55. In section 4 after the words “the Mental Health Act 1959” there shall be inserted the words “or the Mental Health (Amendment) Act 1982”.

56. In section 105(1) for the word “observation” there shall be substituted the word “assessment”.

1980 c. 6.

*The Foster Children Act 1980*

57. In section 2(5) after the words “the Mental Health Act 1959” there shall be inserted the words “or the Mental Health (Amendment) Act 1982”.

1980 c. 58.

*The Limitation Act 1980*

58. In section 38(4)—

(a) in paragraph (a) after the words “the Mental Health Act 1959” there shall be inserted the words “or section 30 or 31 of the Mental Health (Amendment) Act 1982”;

(b) in paragraph (b) for the words from “within” to “guardianship under that Act” there shall be substituted the words “within the meaning of the said Act of 1959 without being liable to be detained as aforesaid, being treatment which follows without any interval a period during which he was liable to be detained or subject to guardianship as aforesaid”.

1981 c. 49.

*The Contempt of Court Act 1981*

59. In section 14(4)—

(a) after “1959” there shall be inserted the words “or an interim hospital order under section 31 of the Mental Health (Amendment) Act 1982”;

(b) for the words “severe subnormality” there shall be substituted the words “severe mental impairment”.

60. After section 14(4) there shall be inserted—

“(4A) Each of the superior courts shall have the like power to make an order under section 29 of the said Act of 1982 (remand for report on accused’s mental condition) where there is reason to suspect that a person who could be committed to prison for contempt of court is suffering from mental illness or severe mental impairment as the Crown Court has under that section in the case of an accused person within the meaning of that section.”

*The Supreme Court Act 1981*

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1981 c. 54.

61. In section 48—

(a) in subsection (6)(a) for the words “an order restricting discharge” there shall be substituted the words “a restriction order, and an interim hospital order under the Mental Health (Amendment) Act 1982”;

(b) after subsection (6) there shall be inserted—

“ (7) The fact that an appeal is pending against an interim hospital order under the said Act of 1982 shall not affect the power of the magistrates’ court that made it to renew or terminate the order or to deal with the appellant on its termination; and where the Crown Court quashes such an order but does not pass any sentence or make any other order in its place the Court may direct the appellant to be kept in custody or released on bail pending his being dealt with by that magistrates’ court.

(8) Where the Crown Court makes an interim hospital order by virtue of subsection (2)—

(a) the power of renewing or terminating the order and of dealing with the appellant on its termination shall be exercisable by the magistrates’ court whose decision is appealed against and not by the Crown Court; and

(b) that magistrates’ court shall be treated for the purposes of section 31(8) of the said Act of 1982 (absconding offenders) as the court that made the order.”

*The Armed Forces Act 1981*

1981 c. 55.

62. In section 13(1), (2)(a) and (6)(c) for the word “observation” there shall be substituted the word “assessment”.

PART II

*The Mental Health Act 1959*

1959 c. 72.

63. In section 22 for the words “A mental welfare officer” and “such an officer” there shall be substituted the words “An approved social worker” and “such a social worker” respectively.

64. In section 27 for the words “a mental welfare officer” wherever they occur, there shall be substituted the words “an approved social worker”, in subsection (1A) for the words “that officer” there shall be substituted the words “that social worker” and in subsection (2) for the words “that officer”, wherever they occur, and “such an officer” there shall be substituted respectively the words “that social worker” and “such a social worker”.

65. In section 29(2) for the words “a mental welfare officer” there shall be substituted the words “an approved social worker”.

66. In section 34(1)(c) for the words “mental welfare officer” there shall be substituted the words “approved social worker”.

SCH. 3 67. In section 40(1) for the words “any mental welfare officer” there shall be substituted the words “any approved social worker”.

68. In section 42(3) for the words “a mental welfare officer” there shall be substituted the words “an approved social worker”.

69. In section 52(2) for the words “a mental welfare officer” and “such an officer” there shall be substituted respectively the words “an approved social worker” and “such a worker”.

70. In section 53(2) for the words “a mental welfare officer” there shall be substituted the words “an approved social worker”.

71. In section 54 for the words “a mental welfare officer” wherever they occur, there shall be substituted the words “an approved social worker” and in subsections (1) and (1C) of that section for the words “that officer” there shall be substituted the words “that social worker”.

72. In sections 63(1)(a), 92, 93(3), 135(1) and (4) and 136(2) for the words “a mental welfare officer” there shall be substituted the words “an approved social worker”.

73. In section 140(1)(a) for the words “mental welfare officer” there shall be substituted the words “approved social worker”.

74. In section 147(1) after the definition of “absent without leave” there shall be inserted—

“‘approved social worker’ means an officer of a local social services authority appointed to act as an approved social worker for the purposes of this Act;”.

1960 c. 61.

*The Mental Health (Scotland) Act 1960*

75. In section 83(3)(a) for the words “mental welfare officer” there shall be substituted the words “approved social worker”.

1977 c. 49.

*The National Health Service Act 1977*

76. For paragraph 2(1)(d) of Schedule 8 there shall be substituted—

“(d) for the exercise of the functions of the authority in respect of persons suffering from mental disorder who are received into guardianship under Part IV or Part V of the Mental Health Act 1959 (whether the guardianship of the local social services authority or of other persons).”



## SCHEDULE 4

Section 65(2).

## REPEALS

## PART I

Chapter	Short title	Extent of repeal
7 & 8 Eliz. 2. c. 72.	The Mental Health Act 1959.	<p>Section 26(5).</p> <p>In section 31(4) the words “ or with the day on which he attains the age of sixteen years, whichever is the later ”.</p> <p>In section 34(5) the words “ or with the day on which he attains the age of sixteen years, whichever is the later ”.</p> <p>Section 36.</p> <p>In section 38(2) the words “ who has attained the age of sixteen years ”.</p> <p>In section 41(5) the words “ having attained the age of sixteen years ”.</p> <p>In section 43(6) the words “ who has attained the age of sixteen years ”.</p> <p>Section 44.</p> <p>In section 45, in subsection (2) the words “ or subsection (2) of section forty-four ” and in subsection (3) the words “ or section forty-four ”.</p> <p>Section 48(1).</p> <p>Section 62(2) to (4).</p> <p>In section 63, in subsection (3), paragraph (b) together with the word “ and ” preceding it and in subsection (4) the words “ admitted to a hospital in pursuance of a hospital order, or ” and “ or with the day on which he attains the age of sixteen years, whichever is the later ”.</p> <p>Section 66(6) to (8).</p> <p>In section 75(1)(b) the words “ or authorise ” and “ to exercise ”.</p> <p>Sections 77 and 78.</p> <p>In section 103, in subsection (1)(a) and (d) the words from “ so however ” onwards and in subsection (3) the words from the beginning to “ and ”, where it first occurs.</p> <p>Section 103A(5).</p> <p>Section 131(2).</p> <p>Section 134.</p> <p>Section 137(6).</p> <p>Section 144(2).</p>

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Chapter	Short title	Extent of repeal
7 & 8 Eliz. 2. c. 72.— <i>cont.</i>	The Mental Health Act 1959.— <i>cont.</i>	Section 146. In section 147, in subsection (1), the definitions of “direction restricting discharge” and “order restricting discharge”, and subsection (5). In section 152 the words “section one hundred and forty-six”. In Schedule 3, the entries relating to section 36. In Schedule 7, in Part II, the entry relating to the Representation of the People Act 1949.
8 & 9 Eliz. 2. c. 61.	The Mental Health (Scotland) Act 1960.	In Schedule 4, the entry relating to the Representation of the People Act 1949.
1961 c. 15 (N.I.).	The Mental Health Act (Northern Ireland) 1961.	In Schedule 5, paragraph 5.
1967 c. 60.	The Sexual Offences Act 1967.	In section 1(3) the words “within the meaning of the Mental Health Act 1959”.
1968 c. 19.	The Criminal Appeal Act 1968.	In Schedule 3, paragraph 1.
1969 c. 48.	The Post Office Act 1969.	In Schedule 4, paragraph 66.
1969 c. 54.	The Children and Young Persons Act 1969.	In Schedule 5, paragraph 41.
1971 c. 23.	The Courts Act 1971.	In Schedule 8, in paragraph 38, the figures “73(2)(c)”, “77(1)” and “73(2)(b)”.
1975 c. 29.	The Mental Health (Amendment) Act 1975.	The whole Act.
1977 c. 49.	The National Health Service Act 1977.	In Schedule 14, in paragraph 13(1)(b) the figure “95”. In Schedule 15, paragraph 33(a).
1980 c. 43.	The Magistrates’ Courts Act 1980.	In Schedule 7, paragraphs 33 and 34.
1980 c. 53.	The Health Services Act 1980.	In Schedule 1, paragraph 13(8).
1981 c. 54.	The Supreme Court Act 1981.	In Schedule 5, paragraph 1 of the entry relating to the Mental Health Act 1959 and the entry relating to the Courts Act 1971.

## PART II

Chapter	Short title	Extent of repeal
7 & 8 Eliz. 2. c. 72.	The Mental Health Act 1959.	In section 147(1) the definition of “mental welfare officer”.
1982 c. 51	The Mental Health (Amendment) Act 1982.	Section 64(5).

SCHEDULE 5

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TRANSITIONAL PROVISIONS AND SAVINGS

Section 69(6).

*Definition of mental disorder*

1. Sections 1 and 2 of this Act, and the amendments in Schedule 3 which are consequential on those sections, do not affect the authority for the detention or guardianship of a person who is liable to be detained or subject to guardianship under the principal Act immediately before the date on which those sections come into force but apply to any renewal of that authority on or after that date.

*Admission to hospital*

2. Sections 3 to 5 of this Act, and the amendments in Schedule 3 which are consequential on those sections, do not affect the principal Act in relation to any application made before the coming into force of those sections.

*Reception into guardianship*

3. Where on the day on which section 7 of this Act comes into force a person who has not attained the age of sixteen years is subject to guardianship by virtue of a guardianship application the authority for his guardianship shall terminate on that day.

4. Section 8 of this Act has effect in relation to a guardianship application made before the coming into force of that section as well as in relation to one made later.

*Duration of detention or guardianship*

5. The amendment by section 12 of this Act of section 43(1) of the principal Act has effect in relation to any application for admission for treatment and to any guardianship application made after the date on which section 12 comes into force and the amendment by that section of section 43(2) of the principal Act has effect in relation to any renewal of authority after that date ; and where an authority has been renewed on or before that date for a period of two years of which less than sixteen months has expired on that date that period shall expire at the end of eighteen months from the date on which it began.

*Discharge of patients*

6. Section 13(1) of this Act does not apply to a patient detained in pursuance of an application made before the coming into force of that section.

*Nearest relative*

7. Where at any time before the coming into force of section 14 of this Act an application to a Mental Health Review Tribunal has been made by a person who at that time was the patient's nearest relative, then, if—

(a) the application has not been determined when that section comes into force ; and

(b) that person would by reason of that section cease to be the patient's nearest relative,

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that person shall nevertheless be treated for the purposes of the application as continuing to be his nearest relative.

*Applications by persons subject to hospital orders*

8. Section 20(2) of this Act and the corresponding repeal in Schedule 4 to this Act do not apply to a patient who is liable to be detained immediately before those provisions come into force.

*Transfer directions*

9.—(1) Subject to sub-paragraph (2) below, sections 24 to 27 of this Act have effect in relation to a transfer direction given before the coming into force of those sections as well as in relation to one given later.

(2) Where, apart from this sub-paragraph, a transfer direction given before the date on which subsection (3) of section 24 comes into force would by virtue of that subsection have ceased to have effect before that date it shall cease to have effect on that date.

(3) The repeal by this Act of section 77 of the principal Act does not affect subsection (4) of that section in its application to a transfer direction given before the coming into force of section 26 of this Act.

*Restriction orders and directions*

10.—(1) The amendment by subsection (1) of section 28 of this Act of section 66(1) of the principal Act has effect in relation to a restriction order made before the coming into force of that section as well as in relation to one made later.

(2) Subsection (3) of that section has effect in relation to a restriction order or restriction direction made or given before the coming into force of that section as well as in relation to one made or given later.

(3) Schedule 1 to this Act has effect in relation to a restriction order or restriction direction made or given before the coming into force of that Schedule as well as in relation to one made or given later but—

(a) for the purposes of section 122(2) of the principal Act in its application to paragraphs 2 and 7(2) of that Schedule any reference to a tribunal under section 66(6) of the principal Act in respect of a patient shall be treated as an application made by him ; and

(b) paragraphs 7(1)(a) and 9(5) of that Schedule do not apply where the period in question has expired before the coming into force of that Schedule.

*Removal of alien patients etc.*

11. Subsection (3) of section 35 of this Act does not apply in relation to a patient removed from England and Wales before the coming into force of that subsection.

*Duty of managers to refer cases to tribunal*

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12. Subsection (1) of section 40 of this Act does not apply to any patient admitted or transferred to hospital more than six months before the coming into force of that section ; and subsection (2) of that section applies only in relation to a renewal of authority for detention after the coming into force of that section.

*Consent to treatment*

13.—(1) Subsection (3) of section 44 of this Act shall not apply to any treatment given to a patient in the period of six months beginning with the day on which that section comes into force if—

- (a) the detention of the patient began before the beginning of that period ; and
- (b) that subsection has not been complied with in respect of any treatment previously given to him in that period.

(2) The Secretary of State may by order reduce the length of the period mentioned in sub-paragraph (1) above.

*Duty of managers to give information to detained patients*

14. In the case of a patient who is detained at the time when section 57 of this Act comes into force the steps required by that section shall be taken as soon as practicable after that time.

*Time for applications to tribunal by persons under sixteen*

15. The repeals by this Act in sections 31(4), 34(5) and 63(4)(a) of the principal Act shall not affect the time within which an application may be made to a tribunal by a person—

- (a) who was admitted to hospital in pursuance of an application for admission for treatment ; or
- (b) in respect of whom a guardianship application was accepted ;  
or
- (c) in respect of whom a hospital order was made,  
before the coming into force of the repeals.

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